

ORDINANCE NO. 1309

AN ORDINANCE TO REGULATE BURNING IN THE OPEN WITHIN THE CITY; TO PROVIDE A STATEMENT OF DEFINITIONS; TO PROVIDE FOR INSPECTION; TO PROVIDE FOR PERMITS AND EXCEPTIONS; TO PROVIDE FOR HEARING AND APPEAL; TO PROVIDE PENALTIES FOR VIOLATIONS; TO PROVIDE A SEVERABILITY CLAUSE; AND TO PROVIDE THE EFFECTIVE DATE THEREOF.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF LEXINGTON, NEBRASKA:

Section 1. Definitions. The following definitions shall apply in the interpretation and enforcement of this Ordinance:

a. Ambient Air is the air that envelopes and surrounds the earth and includes all space outside of buildings, stacks, and exterior ducts.

b. Garbage is all animal and vegetable waste and all other putrescible matter.

c. Open fire is a fire in which any material is burned in the open or in a receptacle other than a furnace, incinerator, or other equipment connected to a stack.

d. Stack is any flue, pipe, duct, or chimney arranged to conduct gaseous effluent to the ambient air.

Section 2. Any duly authorized officer, employee, or representative of the City may enter and inspect any property, premise, or place at any reasonable time for the purpose of investigating or testing either an actual or suspected source of open burning, or of ascertaining the state of compliance with this Ordinance and regulations in force pursuant thereto. No person shall refuse entry or access to any authorized representative of the City who requests entry for the aforementioned purposes, and who presents appropriate credentials and warrant; nor

shall any person object, hamper or interfere with such inspection.

Section 3. Except as noted below, no person shall kindle an open fire in any public or private place outside of any building. Fires started in violation of this Ordinance shall be promptly extinguished by the person(s) responsible for same upon written notice by the City Manager or his duly designated agent.

a. Open burning may be done under permit as follows:

(1) Application for burning permit shall be on forms provided by the City Manager.

(2) No permit shall be issued unless the issuing officer is satisfied that (a) there is no practical available alternate method for the disposal of the material to be burned; (b) no hazardous condition will be created by such burning; (c) no salvage operation by open burning will be conducted; and (d) no leaves shall be burned in those areas where provision is made for public collection thereof.

(3) Any permit issued may be limited by the imposition of conditions to protect property and the health, safety, and comfort of persons from the effects of the burning.

(4) If it becomes apparent at any time to the City Manager that limitations need to be imposed for any of the reasons stated in sub-paragraph "(3)" above, the City Manager or his duly designated agent shall notify the permittee in writing and any limitations so imposed shall be treated as conditions under which the permit is issued.

b. Open burning may be done without permit as follows:

(1) In those areas where provisions for public collection of leaves is not made, the open burning of leaves is permitted.

(2) In those areas where regular refuse collection is not provided, open burning or ordinary household trash by householders is permitted, provided that: (a) fires are located no closer than one hundred feet (100') to any neighboring habitable dwelling or place where people work or congregate; (b) garbage, dead animals, and animal waste are not burned; and (c) materials which create dense smoke or emissions injurious or noxious to people or property are not burned.

(3) Open fires may be set in performance of an official duty of any public officer if the fire is necessary for one or more of the following reasons or purposes: (a) for the prevention of a fire hazard which cannot be abated by other means; (b) for the instruction of public fire fighters or industrial employees under supervision of the fire department; or (c) for the protection of public health.

(4) Fire may be used for the cooking of food, provided no smoke nuisance is created.

(5) Burners or other devices may be used for heating by construction or other workers, provided no smoke nuisance is created.

(6) Fires may be set in the course of agricultural operations in growing crops or raising fowl or animals, provided no nuisance is created.

(7) Open fires may be set for recreational purposes, such as campfires, provided no smoke nuisance is created.

Section 4. a. Whenever the City Manager, Chief of Police, or any Police Officer has reason to believe that a violation of any provision of this Ordinance or any rule or regulation issued pursuant thereto has occurred, it may cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of the Ordinance, rule or regulation alleged to be violated, and the facts alleged constitute a violation thereof, and may order that the necessary corrective action be taken within a reasonable time. Any such order shall become final unless, no later than fifteen (15) days after the date such order is served, the person or persons named therein request in writing a hearing before the City Manager. In lieu of such order, the City Manager may require that the alleged violator or violators appear before the City Manager for a hearing at a time and place specified in the notice to answer the charges complained of, or the City Manager may initiate appropriate action for the recovery of a penalty pursuant to Section 6 of this Ordinance.

b. After such hearing, the City Manager shall affirm, modify, or rescind its order or issue an appropriate order or orders for the prevention, abatement, or control of the open burning involved. Such order shall prescribe

the date or dates by which the violation or violations shall cease and may prescribe time tables for necessary action in preventing, abating, or controlling the open burning.

c. Nothing in this Ordinance shall prevent the City Manager from making efforts to obtain voluntary compliance to warning, conference, or any appropriate means.

d. The hearing provided for in this Section may be conducted by the City Manager, or the City Manager may designate hearing officers who shall have the power and authority to conduct such hearing in the name of the City at any time and place.

Section 5. Any person aggrieved by any order of the City Manager may have review thereof by a proceeding in the District Court of Dawson County.


Section 6. a. Any person who violates any provision of this Ordinance, or any rules or regulations in force pursuant thereto shall be subject to a penalty as provided for in Section 1-7 of the Code.

b. Actions pursuant to such sub-section "a" of this Section shall not be a bar to enforcement of this Ordinance, rules and regulations in force pursuant thereto, and orders may pursue unto this Ordinance by injunction or other appropriate remedy, and the City Manager shall have the power to initiate and maintain in the name of the City any and all such enforcement proceedings.

Section 7. Should any section, sub-section, sentence, clause, or phrase of this Ordinance be declared invalid by Court of competent jurisdiction, such decision shall not affect the validity of the Ordinance in its entirety or any part thereof other than that so declared to be invalid.

Section 8. This Ordinance shall be in full force and take effect from and after the passage, approval, and publication. It shall be published by title only and then made available and distributed in pamphlet form.

PASSED AND APPROVED this 10th day of July, 1973.



Mayor

APPROVED:



City Clerk

(SEAL)