

TOWN OF EUREKA, DAKOTA COUNTY, MINNESOTA

ORDINANCE NO. 2011-03

**AN ORDINANCE REGULATING OPEN BURNING WITHIN THE TOWNSHIP,
AND AUTHORIZING A SERVICE CHARGE FOR CERTAIN FIRE CALLS**

THE TOWN BOARD OF EUREKA TOWNSHIP HEREBY ORDAINS:

1. Purpose. The Town Board of Eureka Township finds that local regulation of open burning is necessary to reduce the incidence of hazardous and illegal fires within the Township and to safeguard the health and safety of the Town's citizens. The Board further finds that the costs attributable to fire calls from the Town's contract fire departments are increasing annually, and that recovery of fire call costs from those responsible for illegal or negligent fires is necessary to protect the Town's taxpayers.

2. Definitions.

"Burner" means a container approved by the Commissioner of the Minnesota Department of Natural Resources for the burning of vegetative material, around which the ground five feet from the base of the burner has been cleared of all combustible material.

"Campfire" means a fire set for cooking, warming, or ceremonial purposes, which is not more than three feet in diameter by three feet high, and has had the ground five feet from the base of the fire cleared of all combustible material.

"Fire Marshal" means the fire marshal of the fire department contractually responsible for responding to and investigating a fire, based upon the fire's location within the Township.

"Open Burning" means a fire burning in matter, whether concentrated or dispersed, which is not contained within a fully enclosed firebox, structure or vehicle and from which the smoke and other products of combustion are emitted directly to the open air without passing through a stack, duct or chimney.

"Snow-covered" means that the ground surrounding the immediate area of the fire has a continuous unbroken cover of snow, to a depth of three inches or more, sufficient to keep the fire from spreading.

3. Permit required. No person shall cause, allow or permit open burning within the Township without first obtaining a permit from the Fire Marshal responsible for the property on which the fire is intended to burn. The decision to approve or deny a request for an open burning permits lies in the professional judgment and sole discretion of the responsible Fire Marshal.

4. Exceptions. The following fires shall not require an open burning permit:

- a. Campfires, as defined above.
- b. Fires within a charcoal or gas grill, camp stove, or other device designed for the purpose of cooking.
- c. Fires started and maintained while the ground is snow-covered.
- d. Fires contained in a burner, between the hours of 6:00 P.M. and 8:00 A.M.

5. Prohibited materials in fires.

- a. General. No person shall conduct, cause, or permit open burning of rubber, plastics, chemically treated materials, oil, or other materials which produce excessive or noxious smoke including, but not limited to, tires, railroad ties, chemically treated lumber, composite shingles, tar paper, insulation, composition board, sheetrock, wiring, paint, or paint filters.
 - i. The Town Board, or another board of health exercising jurisdiction in the Township, may authorize burning one or more of the materials listed above after determining that doing so is necessary to abate a public health nuisance.
 - ii. The commissioner of the Pollution Control Agency may specifically authorize the open burning of oil as an emergency response to an oil spill.
- b. Hazardous waste. No person shall conduct, cause, or permit open burning of hazardous waste as defined in Minnesota Statutes, Section 116.06, subdivision 11.
- c. Industrial solid waste. No person shall conduct, cause, or permit open burning of solid waste generated from an industrial or manufacturing process or from a service or commercial structure.
- d. Demolition debris. No person shall conduct, cause, or permit open burning of burnable building material generated from demolition of commercial or institutional structures. A farm building is not a commercial structure.
- e. Salvage operations. No person shall conduct, cause, or permit salvage operations by open burning.
- f. Motor vehicles. No person shall conduct, cause, or permit the processing of motor vehicles by open burning.

g. Garbage. No person shall conduct, cause, or permit open burning of discarded material resulting from the handling, processing, storage, preparation, serving, or consumption of food.

6. Prohibited Acts.

a. Burning ban. No person shall conduct, cause, or permit open burning during a burning ban put into effect by the Town, county, or a state department or agency.

b. Smoldering fires. Fires must not be allowed to smolder with no flame present, except when conducted for the purpose of managing forests, prairies, or wildlife habitats.

c. Failure to extinguish a fire. Any person who starts a fire must control or extinguish the fire, whether on owned property or on the property of another, before the fire endangers or causes damage to the property of another person or of the public.

d. Failure to control a permit fire. Any person who has a burning permit must keep the permitted fire contained within the area described on the burning permit and keep the fire restricted to the materials specifically listed on the burning permit.

e. Careless or negligent fires. No person shall carelessly or negligently start a fire that endangers or causes damage to the property of another person or of the public.

f. Careless or negligent acts. No person shall participate in an act involving careless or negligent use of motor vehicles, other internal combustion engines, firearms with tracers or combustible wads, fireworks, smoking materials, electric fences, torches, flares, or other burning or smoldering substances whereby a fire is started and is not immediately extinguished before the fire endangers or causes damage to the property of another person or of the public.

7. Cost recovery for fire calls. When a fire within the Township results in a call for fire department services, the fire marshal of the responding department shall determine whether the fire was started, maintained, or allowed to burn in violation of this Ordinance. If the Fire Marshal makes such a determination, the Town Clerk shall assess a fire call charge to the property on which the fire took place, in an amount established by the Town Board by separate resolution or ordinance. A property owner aggrieved by the charge may petition the Town Board within 30 days of receiving the notice of charge to request that the charge be forgiven. The Town Board, in its sole discretion, may forgive a charge for a fire call upon finding that the ordinance violation was not attributable to the acts or omissions of an owner, lessee, occupant, or invitee on the property. On or before October 15th of each year, the Town Clerk shall certify all fire call charge balances

outstanding for more than 30 days to the County Auditor for collection with property taxes levied against the property.

8. Penalty. Violation of any portion of Sections 3, 5 or 6 of this Ordinance is a misdemeanor. The filing of a misdemeanor complaint shall not preclude the Town from pursuing other legal remedies related to the violation of this Ordinance, including but not limited to criminal charges under Minnesota statutes and the assessment and collection of a fire call fee as described in Section 7.

9. Severability. If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of law, the remainder of this ordinance shall not be affected and shall remain in full force.

10. Effective Date. This ordinance shall be in full force and effect from and after its passage and publication according to law.

EUREKA TOWNSHIP, STATE OF MINNESOTA

Nanett Sandstrom
Town Clerk

Brian Budenski
Chair, Eureka Township Board

Date: 5/9/2011

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Summary of Ordinance 2011-03 approved by Town Board and published in the Thisweek Newspaper on May 20, 2011.