

LMC SAMPLE ORDINANCE AUTHORIZING AND REGULATING THE OPEN BURNING OF LEAVES

Before adopting this ordinance, a city should be familiar with the contents of the LMC information memo "Open Burning in Cities" (April 2012).

INTRODUCTION AND INSTRUCTIONS:

This sample open burning ordinance contains a number of provisions a city may adopt. A city wishing to adopt this ordinance should review it with the city attorney to determine which provisions are suited to the city's circumstances. A city can modify this ordinance by eliminating provisions that concern activities it does not seek to regulate. Because provisions within this ordinance are controlled by statute, the city attorney should review any modifications to ensure they conform to state law. In addition, the city attorney should review the entire ordinance before it is adopted because it establishes rights and responsibilities of both the city and the permit applicants and holders.

This sample ordinance is drafted in the form prescribed by Minn. Stat. § 412.191, subd. 4, for statutory cities. Home rule charters often contain provisions concerning how the city may enact ordinances. Home rule charter cities should consult their charter and city attorney to ensure that the city complies with all charter requirements.

This ordinance will affect existing burning permits. Therefore, a copy of the proposed ordinance should be mailed to each permit holder to inform them of its contents and provide them an opportunity to make their views known.

If your city has codified its ordinances, a copy of any open burning ordinance must be furnished to the county law library or its designated depository pursuant to Minn. Stat. § 415.021.

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING AND REGULATING THE OPEN BURNING OF LEAVES WITHIN THE CITY OF _____, MINNESOTA

THE CITY COUNCIL OF THE CITY OF _____ DOES ORDAIN:

SECTION 1. BURNING PERMITTED.

Subject to the provisions of the Minn. Stat. § 116.082, the open burning of dried leaves between September 15th and December 1st is hereby allowed, subject to the limits and conditions specified in this ordinance.

SECTION 2. LIMITS AND CONDITIONS.

The burning of leaves will only be permitted under the following limits and conditions:

(A) The open burning of leaves will only be permitted between September 15th and December 1st.

(B) Burning shall be limited only to the areas of the city zoned residential.

(C) A fire shall not be less than five (5) feet from any property line or within 25 feet of any building, lumber pile, wood yard, hay stack, or other combustible material.

(D) A responsible person shall be in constant attendance until the fire is completely extinguished.

(E) Burning will only be allowed during daylight hours.

(F) The burning of leaves is prohibited on city streets, alleys, sidewalks, boulevards, or any public parking by private citizens.

(G) No burning shall take place during an air pollution alert, high fire danger, warning or other emergency declared by this city, the Minnesota Pollution Control Agency (MPCA), or the Minnesota Department of Natural Resources (DNR).

(H) The Fire Chief, or another local fire authority designee, will have the authority to discontinue a burn when:

(1) A fire hazard exists or develops during the course of the burn.

(2) Any of the conditions of the permit are violated during the course of the burn.

(3) It is determined that the smoke emissions are offensive to occupants of the surrounding property.

Comment: *The city should be aware that while Minn. Stat. § 116.082 does not mandate a formal permit process, it is within its authority to require obtaining a permit prior to the open burning of leaves. This option could be addressed by:*

SECTION 2. PERMITS.

(A) Upon determination that all necessary precautions have been taken to protect life and property, the Fire Chief, City Clerk, or other authorized agent may issue a leaf burning permit.

(B) The cost of obtaining a permit to burn dried leaves shall be at such rate as approved from time to time by the City Council. The fee will be paid by the applicant upon receipt of permit.

(C) The permit shall be valid for a period of seven (7) days, beginning on the date of issuance.

SECTION 3. COPY TO STATE AGENCIES.

A copy of this Section, or any amendment thereof, shall be submitted to the MPCA and the DNR.

SECTION 4. PENALTY.

Any person convicted of violating any provision of this ordinance is guilty of a misdemeanor and shall be punished by a fine not to exceed one thousand dollars (\$1,000.00) or imprisonment for not more than ninety (90) days, or both, plus the costs of prosecution in either case.

SECTION 4. APPLICATION.

The provisions of this ordinance shall only apply to the burning of leaves. It is unlawful for any person to burn any materials prohibited under the City of _____ ordinances or state statute.

SECTION 5. SEVERABILITY.

If any provision of this ordinance is found to be invalid for any reason by a court of competent jurisdiction, the validity of the remaining provisions shall not be affected.

SECTION 6. EFFECTIVE DATE.

This ordinance becomes effective on the date of its publication, or upon the publication of a summary of the ordinance as provided by Minn. Stat. § 412.191, subd. 4, as it may be amended from time to time, which meets the requirements of Minn. Stat. § 331A.01, subd. 10, as it may be amended from time to time.

Passed by the Council this _____ day of _____, 20_____.

Mayor

Attested:

Clerk