

STARKE COUNTY ORDINANCE 2010-____ BURNING REGULATIONS

THE BOARD OF COMMISSIONERS OF STARKE COUNTY (the “Commissioners”) have determined that open burning of materials in the unincorporated areas of Starke County is detrimental to the public health, safety and welfare of the community, because open burning contributes to air pollution including production of smoke, noxious odors and toxic fumes and other atmospheric contaminants, and significantly increases the risk and frequency of wild fires.

The Commissioners have reviewed the existing county ordinances regulating burning in the unincorporated areas of the county and, after public hearings, have determined that the ordinances should be reformed to (a) ensure Starke County’s ordinances regulating burning comply with all Indiana laws and regulations, and (b) provide a clear framework for enforcement.

NOW, THEREFORE, BE IT ORDAINED that the Starke County Code be amended to add Ordinance 2010-____, **Burning Regulations** superseding, replacing and repealing all prior ordinances inconsistent with the terms hereof. The ordinance is as follows:

Section I. Adoption by Reference of Indiana State Laws, Rules and Regulations

All portions, terms, definitions, regulations, and procedures of 326 Indiana Administrative Code Article 4 “Burning Regulations” as amended as of the date of this ordinance and henceforth, are hereby adopted and incorporated as the Burning Regulations of Starke County. In addition, all laws, rules and regulations of the State of Indiana relevant to controls of burning are hereby adopted and incorporated herein.

It is the intent and policy of Starke County that the minimum state standards for regulation of burning shall apply throughout the county, and such standards shall be applicable as if fully set forth herein.

Section II. Violations Defined

Violation of Indiana laws, rules and regulations regarding burning, including without limitation 326 IAC Article 4, as amended, constitutes violation of this Ordinance. All references to violations shall be cited by direct reference to the Indiana state authority, including without limitation the Indiana Code (IC), Indiana Administrative Code (IAC) or such other rule, regulation, decision or other authoritative source as shall apply.

Section III. Enforcement

1. The following agencies are authorized to take action for enforcement of this Ordinance:

- a. the Starke County Sheriff's Department, and all other local, state and federal law enforcement agencies lawfully operating in the unincorporated areas of Starke County,
 - b. the staff and agents of the Starke County Health Department and
 - c. the staff and agents of the Starke County Environmental Management Board.
2. It is the duty of any authorized agencies listed hereinabove to accept, evaluate and investigate all complaints alleging that a violation of this Ordinance has occurred or is occurring within the unincorporated areas of Starke County, Indiana.
3. Upon conclusion of their investigation, the authorized entity conducting the investigation shall promptly file a "Report of Unlawful Burning" with the director of the Starke County Environmental Management District. The report shall, at a minimum:
 - a. identify the location of the alleged unlawful burning,
 - b. specify the dates and times the unlawful burning is alleged to have occurred,
 - c. identify the record owner of the premises on which the unlawful burning is alleged to have occurred
 - d. identify the person who reported the alleged unlawful burning
 - e. identify any witnesses to the alleged unlawful burning
 - f. identify the officer responsible for the investigation, and the dates on which the investigation was conducted
 - g. identity of the person or persons allegedly responsible for the unlawful burning
 - h. provide a narrative description of what the unlawful burning consisted of (i.e. the materials burned, impacts observed, and other related information)
 - i. include any relevant photographs of the burning or the site of the burning or similar recorded or documentary evidence
 - j. a copy of any statement by the person allegedly responsible for the burning, if one is available.
4. The following agencies are authorized to take action for enforcement of this Ordinance:
 - a. the Starke County Sheriff's Department, and all other local, state and federal law enforcement agencies lawfully operating in the unincorporated areas of Starke County,
 - b. the staff and agents of the Starke County Health Department and
 - c. the staff and agents of the Starke County Environmental Management Board.

Section IV. Penalties

1. **Class "A" Violation** Any person whose acts violate this ordinance by burning of **noxious materials** and/or **hazardous materials** commits a Class "A" violation of this ordinance. A person responsible for a Class "A" violation shall:
 - a. Contact the Starke County Solid Waste Management District within the time permitted on the Notice of Violation.
 - b. Pay a fine of Two Hundred Fifty Dollars (\$250.00), except as provided in Section 12.5 (c).
 - c. Pay for the cost of fire suppression, if the fire department was required to extinguish the fire.
 - d. Provide receipts evidencing all costs related to the clean-up of the

- waste and proper disposal of any waste related to the violation; reimburse the authorized enforcement agents for all cost related to the clean-up.
- e. Provide an acceptable plan for any future waste disposal.
1. **Class "B" Violation** Any person who violates any of the provisions of this ordinance, except the burning of noxious materials and/or hazardous materials, and whose violation is a **second violation** or any other subsequent violation, commits a Class "B" violation of this ordinance. A person responsible for a Class "B" violation shall:
- a. Contact the Starke County Solid Waste Management District within the permitted time on the Notice of Violation.
 - b. Pay a fine of **One Hundred Dollars (\$100.00)**, except as provided in Section 12.5 (b)
 - c. Pay the cost of fire suppression, if the fire department was required to extinguish the fire.
 - d. Provide evidence/receipts that the site of the illegal burn, including the burn barrel, has been cleaned up and the waste has been properly disposed or reimburse the authorized enforcement agents for all costs related to the clean-up.
 - e. Provide an acceptable plan for any future trash disposal.
2. **Class "C" Violation** Any person who violates any of the provisions of this ordinance, except burning of noxious materials and/or hazardous materials, and whose violation is a **first violation**, commits a Class "C" violation of this ordinance. Class "C" violations have no fines if the person(s) responsible for a Class "C" violation shall:
- a. Contact the Starke County Solid Waste Management District within the permitted time on the notice.
 - b. Pay costs of fire suppression-if the fire department was required to extinguish the fire.
 - c. Provide evidence/receipts that the site of the illegal burn, including the burn barrel, has been cleaned up and the waste has been properly disposed or reimburse the authorized enforcement agent for all costs related to the clean-up.
 - d. Provide an acceptable plan for any future trash disposal.
3. If multiple violations of this ordinance are found to have been caused on the same property or by the acts or omissions of the same person, or if the owner of a property where a violation has been found to have occurred fails to act action to bring their property into compliance within the permitted time, the county may bring an action for enforcement in the Starke Circuit Court, or any other court of competent jurisdiction. The County Attorney, the Solid Waste Management District Attorney, or a designated agent of these may prosecute litigation of this ordinance on behalf of the county.
4. Upon adjudication or admission of any violation of this ordinance in Starke

County Circuit Court, or any successor court, the violator shall be subject to the following fines and penalties:

- a. Any person who has committed a Class "A" violation of this ordinance shall be fined by the Court a sum of not less than Five Hundred Dollars (\$500.00) and not greater than Two Thousand Five Hundred Dollars (\$2,500.00) per violation.
- b. Any person who has committed a Class "B" violation of this ordinance shall be fined by the Court a sum of not less than Two Hundred Fifty Dollars (\$250.00) and not greater than One Thousand Dollars (\$1000.00) per violation.
- c. Any person who has committed a Class "C" violation of this ordinance shall be fined by the Court a sum of not less than One Hundred Dollars (\$100.00) and not greater than Five Hundred Dollars (\$500.00) per violation.
- d. Any person found to be in violation of any provision of this ordinance, whether by admission or adjudication shall, in addition to any fines as set forth above, shall (1) be required to provide an acceptable plan for any future solid waste disposal, shall (2) be assessed all costs and expenses of the fire suppression, investigation, clean-up and removal of waste connected with the violation, and may (3) be liable for reasonable attorney fees, court costs, and other costs incurred by the County or District in connection with the enforcement of the ordinance.
- e. Failure or refusal by an owner, possessor or leaseholder to bring their property into compliance with this ordinance after adjudication of a violation shall constitute an additional Class "A" violation of this ordinance. Each day a noncompliance continues shall constitute a separate violation of this ordinance.

Section V. Vicarious Liability

1. An owner, leaseholder or possessor of a property where unlawful burning is found to have occurred may not assert as a defense that the fire was set by vandals, was accidental or was caused by an "Act of God" pursuant to 326 IAC 4-1 if the court finds that the fire was substantially caused or exacerbated by the presence of a substantial and non-natural accumulation of combustible materials on the premises.
2. Any owner, leaseholder or possessor of a property where unlawful burning is found to have occurred who causes, directs or knowingly allows actions on the premises in violation of this Ordinance shall be vicariously liable for violation under this Ordinance.

Section VI. Burning Violations Fund

The Starke County Burning Violations Fund is hereby established. All fines, penalties and settlement fees collected pursuant to enforcement of this Ordinance shall be deposited in the fund, for distribution as follows;

- a. First, to Fire Departments for reimbursement for costs associated with the suppression of the fire that was subject of the enforcement action.

- b. Second, for clean-up costs at affected sites.
- c. Lastly, to defray court costs and attorney's fees.
- d. Notwithstanding the above, if a court order or settlement agreement specifically sets forth the terms of distribution of the funds from the penalty, fine or settlement, the court order shall be controlling.

Section VII. Effective Date

This Ordinance shall be in full force and effect immediately upon passage and any required notices. This Ordinance repeals, revokes and supersedes all previous Starke County ordinances, rules or regulations in regards to the subject matter hereof.

Presented to the Board of Commissioners of Starke County, Indiana, and approved on the first reading the _____ day of _____, 2010, by the following vote:

Dated: _____, 2010.

BOARD OF COMMISSIONERS OF STARKE COUNTY

VOTE

Daniel D. Bridegroom, *President*

Kathy J. Norem, *Vice President*

Jennifer Davis, *Member*

Presented to the Board of Commissioners of Starke County, Indiana, and approved on second reading this _____ day of _____, 2010, by the following vote: _____.

ATTEST:

Michaelene J. Houston, *Auditor*
Of Starke County