

**JOINT SPENCER COUNTY  
TRASH BURNING ORDINANCE  
COUNTY ORDINANCE NO. 2005-6**

**THIS IS AN ORDINANCE** to control unsafe and improper burning of wastes, to define trash burning, to establish violations thereof, and to protect the citizens of Spencer County from the health threats associated with the burning of trash.

**WHEREAS**, the burning of residential trash has traditionally been tolerated as acceptable means of disposal;

**WHEREAS**, in recent years public awareness has greatly increased with regard to the source of pollutants in our environment;

**WHEREAS**, it is quite evident that burning in general generates smoke which by its nature contains pollutants and contaminates the environment, in turn, causing harm to human and animal life;

**WHEREAS**, said pollutants are a danger to the health, safety and welfare of all the citizens of Spencer County; and

**WHEREAS**, the health and safety factors far outweigh the traditional tolerance of burning as a means of trash disposal.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF SPENCER COUNTY, INDIANA, THE SPENCER COUNTY SOLID WASTE DISTRICT BOARD OF DIRECTORS AND PARTICIPATING INCORPORATED COMMUNITIES as follows:

**Section 1: TITLE**

**1.00 Title.** This ordinance is titled “Joint Spencer County Illegal Trash Burning Ordinance”

**Section 2: PURPOSE**

**2.00 Purpose.** This ordinance is intended to promote the public health, safety and welfare and to safeguard the health, comfort, living conditions, safety and welfare of the citizens of Spencer County, Indiana due to the air pollution and fire hazards of outdoor burning and burning trash.

**Section 3: APPLICABILITY**

**3.00 Applicability.** This ordinance applies to all outdoor burning and trash burning within Spencer County. If a provision in a city or town ordinance in Spencer County covers a provision contained in this ordinance, the city or town ordinance controls.

**3.1** This ordinance does not apply to grilling or cooking using charcoal, wood, propane, natural gas in cooking or grilling appliances.

**3.2** This ordinance does not apply to burning in a stove, furnace, fireplace or other heating device unless the material being burned includes trash as defined in Section 4 of this ordinance.

**3.3** This ordinance does not apply to the use of propane, acetylene, natural gas, gasoline or kerosene in a device intended for heating construction or maintenance activities.

## Section. 4 DEFINITIONS

### 4.00 Definitions.

**4.1 “Clean Wood”** means natural wood which has not been painted, varnished or coated with a similar material, has not been pressure treated with preservatives and does not contain resins or glues as in plywood or other composite wood products.

**4.2 “Emergency Situation”** – refers to any situation that because of: a) the type of material being burned (i.e. hazardous or noxious materials), b) the atmospheric conditions during the burning, or c) the careless nature in which the burning is occurring; poses a threat to the public health, the safety of public or private property, or the welfare of the environment.

**4.3 “Exemption”** – defined under 326 IAC 4-1-3: Exemptions include, but are not limited to, allowances for open burning to occur when burning clean untreated wood and natural wood products (including leaves), charcoal and other traditional food cooking fuels, vegetation from a farm, an orchard, a nursery, a tree farm, or a drainage ditch as well as fires used for recreational or ceremonial purposes, such as school pep rally fires or the celebration of scout activities, unless prohibited by a burn ban or local ordinance.

**“Hazardous Materials”** – means any waste that because of its quantity; concentration; or physical, chemical, or infectious characteristics may: a) cause or significantly contribute to an increase in mortality or increase in serious irreversible, or incapacitating reversible, illness; or, b) pose a substantial present or potential hazard to health or the environment when improperly treated, stored, transported, handled, disposed of or otherwise managed; or c) be nondegradable or persistent in the environment; or d) be biologically magnified; or e) cause or tend to cause cumulative effects; or f) be defined in 40 CFR 261.3 and any future amendments.

**4.5 “Noxious Materials”** – are defined as materials that when burned produce by-products that may be injurious to human health or the environment. This list of materials shall include, but not be limited to, tires, roofing material, treated lumber, waste oil, oil contaminated products, herbicide/pesticide products and their containers.

**4.6 “Open Burning”** - defined under 326 IAC 4-1-0.5 (6) as the burning of any materials wherein air contaminants resulting from combustion are emitted directly into the air, without passing through a stack or chimney from an enclosed chamber.”

**4.7 “Predominantly Wooden Structure”** defined as a “clean wood” structure with no coatings, wiring, plumbing fixtures, or other non-wood items.

**4.8 “Person”** – for the purposes of this ordinance, shall be defined by the definition in IC 13-11-2-158 as any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, municipal corporation, city, school city, town, school district, school corporation, county, any consolidated unit of government, political subdivision, state agency, a contractor or any other legal entity.

**4.9 “Solid Waste”** – shall mean any garbage, refuse, sludge, or other discard or disposed materials including solid, liquid or semi-solid or contained gaseous materials resulting from any operation, activity or source. For the purposes of this ordinance this definition excludes hazardous materials as defined above.

**4.10 “Stack”** – means a duct, chimney, flue, or other conduit arranged for the purpose

of emission or channeling of air pollutants into the atmosphere.

**4.11 “Trash”** – means any waste material except clean wood products and leaves.

**4.12 “Unattended Burning”** – means the burning of materials without a person in attendance. This definition shall include, but not be limited to, leaving the property where open burning is occurring, being outside of visual sight of where the open burning is occurring, going indoors while open burning, and leaving a fire before it is fully extinguished.

**4.13 “Variance”** – a permit allowing open burning with the approval of the Indiana Air Pollution Control Board or its designated agent or agents.

## **Section. 5 ACTS PROHIBITED**

### **5.00 Acts Prohibited.**

**5.1** Burning of all hazardous materials and all noxious materials, as defined within this ordinance or as defined by any state or federal laws, rules or regulations.

**5.2** Burning of household trash either on the ground or in a burn barrel including but not limited to food waste, packaging, newspaper, corrugated cardboard, container board, office paper, plastic containers, polystyrene and disposable diapers.

**5.3** Wood products that are painted, varnished, or stained including, but not limited to, plywood, composite wood products.

**5.4** Unattended burning that creates or could create an emergency situation.

**5.5** Any burning not exempt as provided herein or allowed by a variance.

## **Section. 6 ACTS ALLOWED**

**6.00 Acts Allowed.** All acts as defined by IC 13-17-9-1 subject to the conditions of IC 13-17-9-3 and as amended, including exemptions as defined herein.

**6.1** Burning of clean wood, leaves, weeds, brush, stumps and any other vegetative debris.

**6.1(a)** If the brush pile is ***More Than*** one hundred twenty-five (125) cubic feet (for example 5 ft long, 5 ft. wide, 5 ft. high) Spencer County Dispatch must be notified at 649-2286 or (800) 498-7300 before igniting.

**6.2** Recreational or ceremonial fires that meet the following conditions:

**6.2(a)** Only clean untreated wood or charcoal shall be used. Paper products can be used for ignition purposes only.

**6.2(b)** If the pile is ***More Than*** one hundred twenty-five (125) cubic feet (for example 5ft long, 5 ft. wide, 5 ft. high) Spencer County Dispatch must be notified at least twenty-four (24) hours prior to any burning.

**6.2(c)** The fire shall not be ignited more than two (2) hours before the recreational activity is to take place and shall be extinguished upon the conclusion of the activity.

**6.2(d)** The pile to be burned shall be less than one thousand (1,000) cubic feet (For example: 10 ft long, 10 ft. wide and 10 ft. high.)

**6.2(e)** The fires shall not be used solely for disposal purposes.

**6.2(f)** Fires shall not take place within five hundred (500) feet of any fuel storage area or pipeline.

**6.3** Burning of predominantly wood structures on real property or wood remnants of the

demolition of a predominantly wooden structure originally located on real property.

**6.3(a)** The Spencer County Solid Waste Management District must be notified 72 hours (3 days) before the planned burn.

**6.4** All Allowed Acts and Variances are subject to and shall adhere to the Illegal Trash Burning Ordinance Policies and Guidelines as adopted by the Spencer County Solid Waste Management District Board.

**Section 7: VARIANCES**

**7.00 Variances.** Variances must be obtained from the Indiana Air Pollution Control Board or its designated agent or agents for the following circumstances.

**7.1** Burning of refuse consisting of material resulting from a natural disaster.

**7.2** Burning for the purpose of fire training.

**7.3** Burning of natural growth derived from a clearing operation or removal of natural growth for change in the use of the land.

**Section 8: BURNING GUIDELINES**

**8.00 Burning Guidelines.** All Allowed Acts and Variances must follow these guidelines (defined in 326 IAC 4-1-3):

**8.1** Only wood products or other pre-approved material may be burned.

**8.2** Fires shall be attended at all times until completely extinguished and all cold.

**8.3** Burning shall occur only in daylight hours with the exception of rallies and recreational or ceremonial fires.

**8.4** If a fire creates an air pollution problem, a nuisance or a fire hazard, it shall be extinguished.

**8.5** No burning shall be conducted during unfavorable meteorological conditions such as temperature inversions, high winds, air stagnation, etc.

**8.6** All persons during burning shall have sufficient fire suppression equipment present.

**8.7** Burning must be in compliance with any state and/or local burn bans.

Any granted variance cannot violate the provisions of the 326 I.A.C. 4-1-3 et seq. and as amended, or I.C.13-17-9.

**Section 9: ORDINANCE ENFORCEMENT AUTHORITY**

**9.00 Ordinance Enforcement Authority.** The following shall be authorized enforcement agents in the enforcement of this ordinance within the limits of Spencer County, Indiana: Area law enforcement officials serving the County, the Spencer County Health Department and the Spencer County Solid Waste Management District.

**Section 10: INVESTIGATION**

**10.00 Investigation.**

**10.1** It shall be the duty of the authorized enforcement agents to evaluate any report or complaint of a violation of this ordinance for proper enforcement procedures.

**10.2** Authorized enforcement agents shall provide a written “Illegal Burning Case Report” of all reported burning violations to the Solid Waste Management District.

**10.3** The Solid Waste Management District shall be responsible for issuing the violator a “Notice of Violation for Illegal Burning” and, if necessary, enforcement of penalties or fines as set forth herein.

**10.4** If access to property is granted, the investigation shall proceed on a voluntary basis. If access is needed to proceed with any investigation, but is denied, the authorized enforcement agents may seek any necessary authorizations, including a search warrant, to enter the property; provided, however, in cases of a visible emergency situation a access to property shall be deemed granted.

**10.4(a)** Any pertinent evidence may be considered to determine whether a violation of this ordinance has occurred and the identity of any violator.

**Section 11. ENFORCEMENT**

**11.00 Enforcement.**

**11.1** If a condition violating this ordinance exists on real property, the authorized enforcement agents *may* take the following actions:

**11.1(a)** In cases of actions violating this Ordinance a certified “Notice of Violation” shall be issued by the Solid Waste Management District to all owner(s) of record at their last known mailing address.

**11.1(b)** In cases of an emergency situation, an authorized enforcement agent, as set forth herein, may take immediate action to suppress the fire. If action to suppress the fire and bring the property into compliance is taken; the costs of these actions may be recovered as set forth in this ordinance.

**11.2** It shall be a violation of this ordinance to interfere with any authorized enforcement agent while in the performance of their duties hereunder.

**11.3** The owner(s) of property on which illegal burning acts have occurred may be included as a party in an enforcement action against a person who committed the violation.

**11.4** A notice of ordinance violation shall state the name of the person(s) to whom the notice is being issued, the nature of the violation, the specific section of this ordinance that has been violated, the date of the notice, and the fine imposed, if warranted, for the violation in accordance with this ordinance. The notice of ordinance violation shall direct

the person to whom it is issued to respond to the Director of the Spencer County Solid Waste Management District and submit an acceptable clean-up plan specifying dates and an acceptable plan for any future solid waste disposal.

## **Section 12: PENALTIES AND FINES**

### **12.00 Penalties and Fines.**

**12.1 Class “C” 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 **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:

**12.1(a)** Contact the Spencer County Solid Waste Management District within the permitted time on the Notice of Violation.

**12.1(b)** Pay for the costs of fire-suppression – if the fire department was required to extinguish the fire.

**12.1(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 agents for all costs related to the clean-up.

**12.1(d)** Provide an acceptable plan for any future trash disposal.

**12.2 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. Person(s) responsible for a Class “B” violation shall:

**12.2(a)** Contact the Spencer County Solid Waste Management District within the permitted time on the Notice of Violation.

**12.2(b)** Pay a fine of One Hundred Dollars (\$100.00), except as provided in Sec. 12.5(b)

**12.2(c)** Pay for the cost of fire suppression, if the fire department was required to extinguish the fire.

**12.2(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.

**12.2(e)** Provide an acceptable plan for any future trash disposal.

**12.3 Class “A” Violation** Any person whose acts violate this ordinance by the burning of **noxious materials** and/or **hazardous materials** commits a Class “A” violation of this ordinance. Person(s) responsible for a Class “A” violation shall:

**12.3(a)** Contact the Spencer County Solid Waste Management District within the permitted time on the Notice of Violation.

**12.3(b)** Pay a fine of Two Hundred Fifty Dollars (\$250.00), except as provided in Sec. 12.5 (c)

**12.3(c)** Pay for the cost of fire suppression, if the fire department was required to extinguish the fire.

**12.3(d)** Provide receipts evidencing all costs related to the clean-up of the waste and proper disposal of any waste related to the violation; or reimburse the authorized enforcement agents for all cost related to the clean-up.

**12.3(e)** Provide an acceptable plan for any future waste disposal.

**12.4** If further actions in violation of this ordinance occur, or if no action to bring a property into compliance by the property owner(s) occurs within the permitted time, litigation may be pursued in the County Circuit Court, or any successor court.

**12.4(a)** The County Attorney, the Solid Waste Management District Attorney, or a designated agent of these, may pursue litigation of this ordinance in the County Circuit Court, or any successor court.

**12.5** Upon adjudication or admission of any violation of this ordinance in Spencer County Circuit Court, or any successor court, the violator shall be subject to the following fines and penalties:

**12.5(a)** 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.

**12.5(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 (\$1,000.00) per violation.

**12.5(c)** 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.

**12.5(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, be required to provide an acceptable plan for any future solid waste disposal, be assessed all costs and expenses of the fire suppression, investigation, clean-up and removal of waste connected with the violation, and shall, in addition, be liable for all reasonable attorney fees, court costs, and other costs incurred by the County or District in connection with the enforcement of the ordinance.

**12.5(e)** Failure or refusal to bring property into compliance with this ordinance after adjudication of a violation shall constitute a Class “A” violation of this ordinance. Each day a noncompliance continues shall constitute a separate violation of this ordinance.

### **Section 13: INDIRECT LIABILITY**

#### **13.00 Indirect Liability.**

**13.1** Any person who allows the accumulation or existence of combustible material(s) which constitutes or contributes to a fire causing air pollution may not refute liability for the violation of this ordinance on the basis that said fire was set by vandals, accidental, and/or act of God, pursuant to 326 I.A.C. 4-1.

**13.2** A property owner cannot direct another person to carry out actions in violation of this ordinance or knowingly allow another person to carry out actions in violations of this ordinance on their property.

Violating this provision constitutes a violation of the ordinance and carries the equivalent sanctions and penalties as the violation.

**Section 14: SPENCER COUNTY ILLEGAL BURNING FUND**

**14.00 Spencer County Illegal Trash Burning Fund.**

**14.1** All fines, penalties, and clean-up costs paid pursuant to this ordinance shall be deposited into the Spencer County Illegal Trash Burning Fund.

**14.2** The funds collected in the Spencer County Illegal Trash Burning Fund shall be administered under the direction of the Spencer County Solid Waste Management District Board of Directors after a public meeting notice has been sent to all affected Spencer County taxing authorities.

**14.3** The funds collected within the Spencer County Illegal Trash Burning Fund shall be used for the following purposes:

**14.3(a)** Reimbursement to area fire departments for costs related to the suppression of fires

**14.3(b)** Clean-up and disposal cost of materials collected at illegal burn sites.

**14.3(c)** Court fees and attorney fees related to the prosecution of burn violations.

**14.3(d)** Educational materials to inform residents of and the publicizing of the Trash Burning Ordinance.

**14.3(e)** Other expenditures as deemed appropriate by the Spencer County Solid Waste Management District Board of Directors and affected Spencer County taxing authorities.

**Section 15: SEVERABILITY**

**15.00 Severability.** If any part of this ordinance shall be deemed invalid its invalidity shall not affect the remaining parts of this ordinance.

**Section 16: APPLICABILITY AND EFFECTIVE DATE**

**16.00 Applicability and effective date.**

**16.1** This ordinance shall apply to the entirety of Spencer County, Indiana. Enforcement shall include incorporated cities and towns that adopt this ordinance, unless such areas currently enforce a more stringent ordinance.

Incorporated Cities and Towns, without a burn ordinance, may enter into an inter-local agreement with the Solid Waste Management District to delineate enforcement and investigation procedures of this ordinance.

**16.2** All portions of former ordinances in conflict herewith are hereby repealed or superseded. This ordinance shall become effective from and after its adoption and publication as required by law.



Passed and adopted by the Board of Commissioners of Spencer County, Indiana, this 6th day of September, 20 05.

**BOARD OF COMMISSIONERS OF  
SPENCER COUNTY, INDIANA**

Dan Rininger

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Thomas A. Logsdon

**ATTEST:**

Sara Arnold

**Auditor**

Passed and approved by the Board of Directors of the Spencer County Solid Waste Management District, this 12th day of September, 20 05.

Dan Rininger

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