

ORDINANCE NO. 01-2022

ORDINANCE BY THE CITY COUNCIL OF THE CITY OF HARLOWTON, AMENDING TITLE 7, CHAPTER 8, TO DEFINE PERMITTED OPEN BURNING WITHIN THE CITY LIMITS OF THE CITY OF HARLOWTON, TO ADOPT REVISED RESTRICTIONS ON OPEN BURNING WITH THE CITY LIMITS OF THE CITY OF HARLOWTON, AND TO ADOPT LIABILITY PROVISIONS FOR ALL RESIDENTS, PERSONS, CORPORATIONS AND THEIR AGENTS FOR COSTS INCURRED IN THE EXTINGUISHMENT OF FIRES RESULTING FROM OPEN BURNING, AND REPEALING AND REPLACING EXISTING SECTIONS 7.08.010 AND 7.08.020.

RECITALS

WHEREAS, THE City Council has found that the existing Municipal Codes Chapter 7.08 concerning "Prohibiting the Building of Outdoor Fires," prohibit burning without using a paper burner or incinerator within the city limits of the City of Harlowton, unless built to the specifications listed in Section 7.08.020; and

WHEREAS, the specifications for paper burners in Section 7.08.020, appear to be outdated and not appropriate for present day use, and the penalties provided for in Section 7.08.010, are also inadequate for current times; and

WHEREAS, members of the public, residents of the City of Harlowton, and local law enforcement have commented on, and brought to the attention of Council members, the need for a city ordinance addressing open burning within the City of Harlowton; and

WHEREAS, the City Council finds that the public interest is served by adopting changes and additions to the Harlowton Municipal Codes that address when open burning is permitted and prohibited within the City Limits of the City of Harlowton, and to include liability provisions for costs incurred by the City of Harlowton for extinguishing fires resulting from open burning; and

WHEREAS, the City Council finds that it is in the best interest of the City of Harlowton to amend Title 7, Chapter 8, to repeal and replace Sections 7.08.010 and 7.08.020, and to add sections 7.08.030, 7.08.040, 7.08.050, 7.08.060, and 7.08.070, as provided below:

NOW, THEREFORE, BE IT ORDAINED, By the City Council, City of Harlowton, Montana, as follows:

Section 1: Action

- A. The City Council proposes that the chapter title of Title 7, Chapter 8 (previously titled "Prohibiting the Building of Outdoor Fires") be changed as follows:

OPEN BURNING

- B. The City Council proposes that Section 7.08.010 (previously titled "Burning Without Using Paper Burner – Penalty") amended to repeal existing language and to read as follows:

Open Burning—Definition. Open burning means burning done under such conditions that the products of combustion are emitted directly into ambient air space. Open burning shall include, but not limited to, burning on the ground or other flat surfaces, burning done in simple outdoor structures, receptacles, or other devices which are designed primarily to

contain the materials being burned or to minimize the risk of fire and which do not provide effective control of the air pollutants generated. Open burning shall not be used for waste disposal purposes and shall be of the minimum size for the intended purpose.

- C. The City Council proposes that Section 7.08.020 (previously titled “Description of Paper Burner”) be amended to repeal existing language and to read as follows:

Prohibited Open Burning. Any burning which violates the provisions of the Natural Resources and Environmental Protection Act (Public Act 1994, No. 451) shall be prohibited. The Wheatland County Commission or the Fire Chief of Wheatland County or his designee shall prohibit open burning which will be offensive or objectionable due to smoke or odor emissions or when atmospheric conditions or local circumstances make such fires hazardous. The Fire Chiefs of Wheatland County and the City of Harlowton, and/or their designee, and/or the Wheatland County Sheriff’s Department, shall order the extinguishment of any fire/open burn which creates or adds to a hazardous or objectionable situation. In no case shall any person engage in open burning which in any way endangers any person or property or is offensive or objectionable to other city residents. The following types of open burning are also prohibited:

- A. When the Wheatland County Fire Department has stated that a “burn ban” is in place—until further notice;
- B. The open burning of yard debris, brush, leaves and trees;
- C. The open burning of household or other refuse at a private residence;
- D. The open burning of refuse from a multiple-resident dwelling;
- E. The open burning of refuse at commercial and industrial sites;
- F. The open burning of building, demolition or construction material;
- G. The open burning of automobiles or parts thereof;
- H. The open burning of tires, plastics and similar material;
- I. The open burning of highly flammable, toxic or explosive materials; and
- J. The open burning of hazardous or toxic materials.

- D. The City Council proposes that Section 7.08.030 be enacted to read as follows:

Restricted Burning. The burning of trees, brush, leaves, logs and stumps may be allowed at licensed disposal sites on an intermittent basis under a schedule approved by the local health department.

- E. The City Council proposes that Section 7.08.040 (Allowable Open Burning) be enacted as follows:

Allowable Open Burning. Open burning is permitted for the following reasons:

- A. For highway safety flares;
- B. For smudge pots;

- C. For occupational needs similar to A. and B. above, and for commercial/industrial burning of paper and refuse, but only after consultation with the Fire Chiefs of the City of Harlowton and Wheatland County and in an appropriate container or incinerator, and under the supervision of the Fire Chiefs of the City of Harlowton and Wheatland County or their designees;
- D. For outdoor food preparation, provided that such fires are safely contained in an appropriate cooking device (grill, etc...) and fueled by charcoal, clean (non-treated) dry wood, or propane/natural gas, and provided said fires are maintained in a manner so as not to endanger other persons or property; and
- E. For recreational use, provided said fires are completely and safely contained in a "Fire Pit", defined as any non-combustible structure or container constructed in accordance with this ordinance, with the following requirements:
 - 1. Fire Pits must be a safe distance from buildings, property lines and any combustible material, including but not limited to, buildings, fences, patio decks or foliage as measured from the nearest Fire Pit edge; and
 - 2. Be less than two (2) feet high; and
 - 3. Be less than three (3) feet wide; and
 - 4. Have enclosed sides made from bricks, concrete, stone or heavy-gauge metal; and
 - 5. Be located on a flat, level surface, and be built on or have included in its base, a non-combustible material. The base must extend a minimum of eighteen (18") inches beyond the Fire Pit in all directions.
- F. The City Council proposes that Section 7.08.050 (Restrictions on Allowable Open Burning) be enacted as follows:

Restrictions on Allowable Open Burning. Open burning as described in Section 7.08.040 is permitted only between the hours of 7:00 a.m. and 12:00 a.m. (midnight), only under favorable weather conditions (no fog, winds less than 15 mph), and only when supervised by an adult at ALL times. A charged water hose and/or fire extinguisher must be nearby and easily accessed to douse a fire. Smoke may not obscure roads, and/or homes, nor sparks be allowed to travel to nearby homes. Fires should be small and clean-burning, preferably using dry fuels to limit the amount of smoke drifting on to your neighbors' property.

- G. The City Council proposes that Section 7.08.060 (Penalties and Fines) be enacted as follows:

Penalties and Fines. The owner, his agent, and/or the occupant of any city property shall be liable for all extinguishment costs incurred by the City of Harlowton resulting from violation of any term(s) of this ordinance. The City of Harlowton shall place a lien upon the lot or lots involved, and in the event the charges are not paid by the owner, agent or occupant of said lot within ninety (90) days from the date of billing, payment shall become delinquent, and said lien shall be enforceable as a tax lien against the lot or lots and be collected in the same manner as other taxes are

levied and collected. A violation of any section of Chapter 7.08 shall be deemed a misdemeanor. If the Wheatland County Sheriff's Department is called and there is a violation present, the owner of the property will be subject to fines, as follows:

First Offense: \$75.00

Second Offense: \$150.00

Third Offense: \$300.00

- H. The City Council proposes that Section 7.08.070 (Procedure for Appeals) be enacted as follows:

Procedure for Appeals. All decisions by the fire chief or their designees and/or the Wheatland County Sheriff's Department relating to any violations of this ordinance and/or imposition of costs of fire extinguishment may be appealed to the City Commission of the City of Harlowton within thirty (30) days from the date the penalty is imposed.

Section 2: Repealer

All resolutions, ordinances, and sections of the City of Harlowton Municipal Codes in conflict herewith are hereby repealed.

Section 3: Severability

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provision or application and, to this end, the provision of this ordinance is declared to be severable.

Karen Finstad Hammel, City Attorney

ATTEST:

A handwritten signature in black ink, appearing to read "Lara Brisco", written over a horizontal line.

Lara Brisco, City Clerk