



# Council Communication

Office of the City Manager

Date

October 12, 2009

Agenda Item No. 38

Roll Call No. ~~09-~~

Communication No. ~~09-708~~

Submitted by: John F. TeKippe, Fire Chief

## AGENDA HEADING:

Approval of an ordinance for open burning regulations in the City of Des Moines.

## SYNOPSIS:

To create uniform regulations regarding open burning throughout all portions of the City and newly annexed land areas. The City of Des Moines has properties in two counties with differing regulations; this ordinance will uniformly impact all City of Des Moines boundaries equally.

## FISCAL IMPACT: NONE

Amount: N/A

Funding Source: N/A

## ADDITIONAL INFORMATION:

The annexation of property in Warren County has created two different policies related to open burning rules within the City. The adoption of this ordinance will create uniform open burning regulations throughout the City by allowing the Fire Department to administer the same regulations in Warren County as are administered in Polk County.

The State of Iowa holds jurisdiction regarding open burning laws, Iowa Administrative Rule 567-23.2(455B). The State does not allow unrestricted open burning in the cities of Des Moines, Clive, Pleasant Hill, Urbandale, West Des Moines or Windsor Heights. In Iowa, local jurisdictions can be more restrictive than State law, but not less restrictive than State law.

Polk County has a 28E Agreement with the State of Iowa to uniformly enforce open burning laws throughout Polk County. The Polk County ordinance, Polk County Board of Health Rules and Regulations Chapter V Article III, follows the State of Iowa laws regarding open burning, with the exception of being more restrictive regarding recreational fires. Whereas, the State of Iowa will allow a recreational fire without a permit, Polk County will not. Permits for recreational fires, or bonfires, may be applied for public gatherings under the sponsorship of recognized civic, fraternal, religious, education or similar organizations.

Local jurisdictions' ability to enforce all portions of the State open burning rules is often limited by a community's capability to measure, review and administer the statute's elements. For example, one common administrative element is the measurement of percentage of opacity, or the obscuring nature, of smoke. Neither the Des Moines Fire Department, nor Warren County, has this capability. In Polk

County, Air Pollution Control has the capability to measure opacity, and with the above-mentioned 28E Agreement, has served the City's interest well via the County's role reviewing all requests for variances to open burning rules. The State of Iowa, via Iowa DNR Air Quality Bureau, has the ability to measure opacity and has served Warren County citizens in their requests for variances to open burning rules, but has allowed recreational fires without a permit. However, recreational fires, and fires for flag retirement ceremonies, do not require an opacity measurement and identify the area of difference between the State law and the more restrictive Polk County ordinance.

The proposed City ordinance would result in the following:

Open burning rules, including recreational fires, would be the same for all portions of the City, including response to, extinguishment of and/or investigation by the Des Moines Fire Department.

Requests for variances to any open burning rules, in the Polk County portion of the City, will continue to be reviewed by Polk County Air Pollution Control.

Requests for variances to open burning rules regarding recreational fires, and fires for flag burning ceremonies, in the Warren County portion of the City, will be reviewed by the Des Moines Fire Department.

Requests for variances to open burning rules excluding recreational fires, and fires for flag burning ceremonies, in the Warren County portion of the City, will continue to be reviewed by the State of Iowa DNR Air Quality Bureau.

Changes for Property Owners:

If your property was in the City, in Polk County, prior to the annexations, you will see no change: no open burning in the City of Des Moines. A limited number of variances, including recreational fires, are allowed by permit, administered by Polk County Air Pollution Control. Cooking fires, with approved devices and materials, do not require a permit.

If your property became a part of the City via annexation, and is within Polk County, you continue to be covered by the same rules administered by Polk County. However, you are now subject to the State prohibition of open burning in the City of Des Moines. A limited number of variances, including recreational fires, are allowed by permit, administered by Polk County Air Pollution Control. Cooking fires, with approved devices and materials, do not require a permit.

If your property became a part of the City via annexation, and is within Warren County, you will see two changes. You will continue to be covered by State rules, the same as Polk County, with the exception that a recreational fire, and fires for flag retirement ceremonies, will now require a permit administered by the Des Moines Fire Department. You are also now subject to the State prohibition of open burning in the City of Des Moines. Cooking fires, with approved devices and materials, do not require a permit.

Resources for Property Owners

City of Des Moines (Polk County): No open burning. All requests for variances are administered by Polk County Air Pollution Control 515-286-2107.

City of Des Moines (Warren County): No open burning. Requests for permitting of recreational fires, and fires for flag retirement ceremonies, are administered by the Des Moines Fire Department 515-283-4240. All other requests for variances continue to be administered by Iowa DNR Air Pollution Bureau 515-242-5100.

The proposed ordinance will allow uniform application of open burning rules, including recreational fires, whether the burn site resides in the Warren or Polk County portion of the City, and this ordinance is recommended by the Chief of the Fire Department.

**PREVIOUS COUNCIL ACTION(S): NONE**

**BOARD/COMMISSION ACTION(S): NONE**

**ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE**

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