

ORDINANCE 2023-003R1
AN ORDINANCE OF THE TOWN OF GURLEY, ALABAMA,
TO AMEND ORDINANCE 2023-003

BE IT ORDAINED by the Town Council of the Town of Gurley, Alabama, on this the 21st day of March, 2023, that Ordinance Number 2023-003, adopted on February 7, 2023, is hereby amended as follows:

SECTION 1. Short Title and Purpose

The Ordinance, to be known and cited as the “Gurley Open Burning Ordinance”, is enacted to protect, preserve, and promote the safety and welfare of the citizens of the Town of Gurley, Alabama, through the reduction, control and prevention of open burning within the Town limits.

SECTION 2. Definitions

The following words, terms, and phrases, when used in the Ordinance, shall have the meanings ascribed to them in the section, except where the context clearly indicates a different meaning:

Contractor means the primary contractor/builder for a particular construction site or for which a building permit has been issued.

Fire Marshal the officer or other designated authority or their duly authorized representative charged with the administration and supervision of the Gurley Fire and Rescue. The Fire Marshal, the Mayor or Mayor’s designee or their duly authorized representative is charged with the responsibility for investigation of all fires that occur within the city.

Fire extinguishing equipment means an approved ten-pound ABC fire extinguisher, or any other equipment required in writing by the Fire Marshal, the Mayor or Mayor’s designee.

Mayor or Mayor’s designee means the CEO of the Town of Gurley or any person who has been designated by the Mayor to act in Mayor’s behalf.

Open burning means the burning of any matter in such manner that the products of combustion resulting from the burning are emitted directly into the ambient air without passing through an adequate stack, duct, or chimney.

SECTION 3. Open burning prohibited.

No person shall cause, suffer, allow or permit open burning within the Town limits of the Town of Gurley, except as specifically permitted by the ordinance.

SECTION 4. Exceptions to prohibition.

Following are listed exceptions to the prohibition of open burning:

- a. No open burning permit or notification is required for fires used for cooking of food, including barbecues, outdoor fireplaces, portable firepits, and permanent outdoor firepits (which must be not more than 60 inches in diameter and completely encircled by noncombustible material, such as stone, brick, concrete, or metal). Only clean fuel may be burned. No heavy oils, asphaltic materials, items containing natural or synthetic rubber, garbage, plastics, metals, shingles, batteries, wires, treated lumber or other hazardous materials or other refuse may be burned.
- b. Open burning as specified in the subsection may be conducted, subject to the limitations as spelled out in the open burning permit which is issued upon approval of the Fire Marshal, the Mayor or Mayor's designee. The grant of exception shall in no way relieve the person responsible for such open burning from the consequences of or the damages or injuries resulting from such burning. The Fire Marshal, the Mayor or Mayor's designee's approval shall be based upon Mayor's judgment as to the fire safety potential of the proposed open burning activity. Open burning of trees, brush, grass, and other vegetable matter in the clearing of property may be conducted, provided that the following conditions are met:
 - i. Burning is done using an air curtain destructor or other approved device, at suitable sites as approved by the Fire Marshal, the Mayor or Mayor's designee, when such device is operated in a manner satisfactory to the Fire Marshal, the Mayor or Mayor's designee, and with a valid open burning permit obtained from the Fire Marshal, the Mayor or Mayor's designee.
 - ii. The burning will take place on days and hours designated by the Fire Marshal, the Mayor or Mayor's designee. Designated days of burning will always be tentative and will be regulated according to weather conditions.
 - iii. The location of burning must be at least 1,000 feet from the nearest occupied building other than a building located on the property on which the burning is conducted. The location of burning must also be at least 1,000 feet from any public park or recreation area.
 - iv. The burning must be controlled to avoid creating a traffic hazard on any public road, street, or highway as a result of the air contaminants emitted.
 - v. Only untreated wood and vegetation which originated on the property may be burned. Under no circumstances shall heavy oils, asphaltic materials, items containing natural or synthetic rubber, garbage, plastics,

- metals, shingles, batteries, wires, treated lumber or other hazardous materials or other refuse be burned.
- vi. Open burning must be attended by the permit holder or owner at all times. Permits will be permanently revoked if left unattended.
- c. Fires set between October 1 and April 30, for the purpose of providing warmth to workers at construction sites for which a building permit has been issued, providing the following conditions are met:
- i. Any fire is contained in a noncombustible container not to exceed 55 U.S. gallons, or other similar device, with the opening covered by an ash screen.
 - ii. Fire containers shall be located a minimum of 15 feet from any structure, tree, or bush, vehicle or street.
 - iii. Fire containers shall be located a minimum of 15 feet from electrical lines and/or electrical service.
 - iv. Only clean fuel not containing heavy oils, asphaltic materials, items containing natural or synthetic rubber, garbage, plastics, metals, shingles, batteries, wires, treated lumber or other hazardous materials or other refuse is permitted.
 - v. Fire extinguishing equipment shall be located within 15 feet of the fire container.
 - vi. Fires shall be extinguished when no person is in attendance to monitor the fire.
 - vii. If the fire is at a construction site, then the contractor, as defined in Section 2, above, or a subcontractor working under a contractor's building permit, shall apply in advance for a burning permit issued in his name from the Fire Marshal, the Mayor or Mayor's designee. The party applying for the permit shall be held liable for all permit violations on the burn site.
 - viii. If the fire is at a construction site, the contractor, as defined in Section 2, above, shall be responsible for any violation of the Ordinance committed on a job site for which the contractor has obtained a building permit; unless the violation is committed by a subcontractor who has obtained and subsequently violated the terms of a required burning permit.
- d. No permit is required for fires for the purpose of reduction of yard debris and leaves on residential or domestic premises on which they fall, set, maintained and supervised by the person owning or residing at the premises, provided all the following conditions are met:
- i. No burning of stumps or whole trees.
 - ii. All burning must be done in a non-combustible (preferably steel), 55-gallon drum or barrel.
 - iii. An ash screen must be utilized for the duration of the fire – no exceptions.
 - iv. All burning shall be carried out between 8:00 a.m. and 6:00 p.m.

- v. All fires shall be completely extinguished by 6:00 p.m.
 - vi. No burning within 100 feet of any structure.
 - vii. All burning shall be located on private property so as not to interfere with any traffic on public streets or sidewalks.
 - viii. During any open burning, an operational garden hose or fire extinguisher must be present within 50 feet of the fire.
 - ix. Only clean fuel not containing heavy oils, asphaltic materials, items containing natural or synthetic rubber, garbage, plastics, metals, shingles, batteries, wires, treated lumber or other hazardous materials or other refuse is permitted.
- e. Activities specified in the subsection may be conducted without an open burning permit. Notification of intent to conduct such activity as specified below shall be made to the Fire Marshal, the Mayor or Mayor's designee no less than twenty-four (24) hours prior to the time the open burning activity is to begin. The person conducting any of the following open burning activities shall be responsible for the consequences of such open burning:
- i. Fires set for the training and instruction of public or private firefighting personnel.
 - ii. Fires set by or at the direction of responsible fire control agencies for the prevention, elimination or reduction of a fire hazard.
 - iii. Smokeless flares or safety flares for the combustion of waste gases.
 - iv. Fires used for agricultural, horticultural and silvicultural purposes, when specifically recommended by the state extension service or state forestry commission, provided that such fires are conducted only in situations where the actual burning is at least 1,000 feet from the closest occupied building.
 - v. Fires used to destroy pests, germs, dead animals, etc., when the open burning is being conducted in accordance with, or under the direct supervision of, the local or state health department.

SECTION 5. Permit Applications.

Open burn permits may be issued subject to specific conditions. The holder of an open burn permit shall comply with conditions contained in such permit as well as all applicable provisions of the ordinance.

- a. Applications for an open burn permit shall be completed on the form provided by the Fire Marshal, the Mayor or Mayor's designee. The application shall be completed with all information requested to enable the Fire Marshal, the Mayor or Mayor's designee to make the determination required to issue a permit. Property owner's name, address of the burn, contact information, reason for the burn request and date of the open burn. Permit Applications will cost \$50.00.

- b. Applications must be submitted a minimum of five (5) days prior to the requested burn date. All open burn permits shall be displayed and available for inspection at the site by all and any persons who may request to see the permit.
- c. The Fire Marshal, the Mayor or Mayor's designee shall act, within a reasonable time, on an application for an open burn permit and shall notify the applicant in writing of its approval, conditional approval or denial.
- d. The Fire Marshal, the Mayor or Mayor's designee shall not issue an open burn permit for any open burn activity subject to an open burn prohibition imposed by the Alabama Forestry Commission or the Alabama Department of Environmental Management during such time that the open burning prohibition is in effect.
- e. Open burn permits shall not be transferable whether by operation of law or otherwise, either from one location to another or from one person to another.
- f. Open burn permits shall expire on the date specified on the face of the permit or on the date of the burn completion, whichever is sooner. No new open burn is allowed after that date unless approved by the Fire Marshal, the Mayor or Mayor's designee in writing. Any burn permit issued by the Town will expire immediately upon imposition of an open burn prohibition by the Alabama Forestry Commission or the Alabama Department of Environmental Management.
- g. An open burn permit will be required for any on-site burn of organic materials that exceeds normal cutting of small branches, bushes or limbs. For example, large trees, brush, limbs, wood debris from the clearing of on-site property, falling trees from wind/storm or bad weather.

SECTION 6. Revocation of Permit.

Any open burning permit granted by the Fire Marshal, the Mayor or Mayor's designee may be revoked, after notice, for any of the following causes:

- a. Failure to comply with the provisions of the Ordinance.
- b. Failure to comply with any conditions of the open burning permit.
- c. For any other cause if, in the judgment of the Fire Marshal, the Mayor or Mayor's designee, continuance of the permit is not consistent with the purposes of the Ordinance.

SECTION 7. Exceptions based on undue hardship.

- a. Applications for a permit for exception from the standards or requirements designated in the Ordinance may, on the basis of undue hardship, be made to the Fire Marshal, the Mayor or Mayor's designee. Any permit granted hereunder shall contain all conditions upon which said permit has been granted and shall specify a reasonable time that the permit shall be effective. The Fire Marshal, the Mayor or Mayor's

designee may grant the exception as applied for only if the applicant represents and the Fire Marshal, the Mayor or Mayor's designee finds that open burning as permitted will not violate recognized safety standards, that no other reasonable alternative is available to the applicant, and that the burning can be conducted in such a manner as to be consistent with the purposes of the Ordinance.

- b. Upon the issuance of any exception permit, the Fire Marshal, the Mayor or Mayor's designee may prescribe any reasonable conditions or requirements he deems necessary to minimize the adverse effects upon the community.

SECTION 8. Penalties and Enforcement.

- a. Penalties: Any person who violates or fails or refuses to obtain permits required by the Ordinance or who fails or refuses to obey or comply with any provision of the Ordinance or the guidelines contained in the permit, or submits any false information required by the Ordinance, shall be guilty of a misdemeanor, punishable by a fine of not less than Two Hundred Fifty Dollars (\$250.00), nor more than Five Hundred Dollars (\$500.00), and may, in addition, be sentenced to not more than six (6) months in jail, or both. Each day that said violation continues shall constitute a separate offense for purposes of the ordinance.

Further, should the fire department be called out to extinguish or manage, *any* unattended, rekindled, or out of control fire, whether permitted or not, the permit holder and/or the property owner shall be billed the sum of \$250 for fire department labor, materials and equipment usage.

- b. Subsequent Offenses: If any person violates the Ordinance on a second or more occasion within a two-year period, the minimum fine shall be increased to not less than Five Hundred Dollars (\$500.00). Each day that said violation continues shall constitute a separate offense for purposes of the ordinance. For purposes of this section, each recurrence shall be considered the beginning of a new two-year period.
- c. Enforcement: The Fire Marshal, the Mayor or Mayor's designee or any person acting under Mayor's supervision, and any law enforcement officer are hereby authorized to enforce this Ordinance. The Fire Marshal, the Mayor or Mayor's designee or any person acting under Mayor's supervision may enforce the Ordinance by filing a Complaint in municipal court. Upon filing of such a Complaint, the Court Clerk/Magistrate shall issue a summons requiring the person to appear in municipal court to answer charges of violation of any of the provisions of the Ordinance.

SECTION 9. Severability

If any section, subsection, sentence, clause or phrase of the ordinance is for any reason held to be unconstitutional, void or invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The Town Council of the Town of Gurley declares that it would have passed the law, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional, void or invalid.

SECTION 10. Compliance with Other Laws

In addition to the requirements of this Ordinance, all open burning must comply with the requirements of all applicable planning and safety laws, regulations, permitting requirements and ordinances, including but not limited to burning regulations enacted by the Alabama Department of Environmental Management and the Alabama Forestry Commission, as well as any applicable state and federal laws.

Furthermore, the Town of Gurley Nuisance Ordinance 2018-001-R1 (and any subsequent amendments) shall always be deemed to be superior to this burn ordinance. Any type of nuisance, including, but not limited to, smoke, noxious fumes, etc., related to any type of burn shall be addressed in accordance with the guidelines set forth in the Nuisance Ordinance.

SECTION 11. Conflicts

This Ordinance shall be deemed cumulative with and supplemental to all statutes of the State of Alabama and the Alabama Department of Environmental Management (“ADEM”) regulations regarding the subject matter hereof and to be subordinate to same and in no manner intended to supersede any such statutes of the State of Alabama or ADEM regulations. Any provision hereof in conflict with any provision of any State statute or ADEM regulations shall be construed to be in harmony with the same where possible and otherwise to be subordinate to and superseded by the provisions of such State statute. Simply stated, where a conflict between this ordinance and state statutes and/or ADEM guidelines arises, state statutes and/or ADEM guidelines will be controlling.

SECTION 12. Effective Date

This ordinance shall be effective upon its adoption and publication as required by law.

READ, APPROVED, AND ADOPTED AT A REGULARLY SCHEDULED MEETING OF THE TOWN COUNCIL OF THE TOWN OF GURLEY, ALABAMA, ON THIS 21st DAY OF MARCH, 2023.

Stan Simpson
Mayor and Presiding Officer of the Town Council,
Town of Gurley, Alabama

ATTEST:

Ginger Patterson, Town Clerk