

AT A REGULAR MEETING OF THE GLOUCESTER COUNTY BOARD OF SUPERVISORS, HELD ON TUESDAY, MARCH 2, 2004, AT 7:00 P.M., IN THE BOARD ROOM IN THE OLD COURTHOUSE, COURT CIRCLE, GLOUCESTER, VIRGINIA: ON A MOTION DULY MADE BY MR. ADAMS, AND SECONDED BY MS. THEBERGE, THE FOLLOWING AMENDED RESOLUTION WAS ADOPTED BY THE FOLLOWING VOTE:

John J. Adams, Sr., yes;
Charles R. Allen, Jr., yes;
Teresa L. Altemus, absent;
Burton M. Bland, yes;
Michelle Ressler, yes;
Christian D. Rilee, yes;
Louise D. Theberge, yes;

**AN ORDINANCE TO AMEND CHAPTER 8 OF THE
GLOUCESTER COUNTY CODE TO REGULATE OPEN BURNING.**

WHEREAS, the Gloucester County Code contains provisions related to open fires and open burning; and

WHEREAS, the Code of Virginia authorizes certain additional regulation of open burning by localities; and

WHEREAS, the Board of Supervisors of Gloucester County has determined that further regulation of certain aspects of open burning in Gloucester County is appropriate and necessary to protect the safety of persons and structures and to maintain a high level of air quality; and

WHEREAS, the Board of Supervisors of Gloucester County has held public hearings concerning the ordinance to regulate opening burning on December 3, 2002 and August 5, 2003; and

WHEREAS, in accordance with state law, sections 8-27 and 8-36 through 8-41 have been submitted to the Department of Environmental Quality for approval and said approval was received by letter dated February 5, 2004 from Robert Burnley, Director of the Department of Environmental Quality.

NOW THEREFORE BE IT ORDAINED AND ENACTED, by the Gloucester County Board of Supervisors that Chapter 8 of the Gloucester County Code is hereby amended as follows:

- 1. Sections 8-2, 8-3, and 8-4 of the Gloucester County Code are hereby repealed.**
- 2. A new article, Article IV, entitled “Forest Fire Prevention” consisting of Sections 8-25 through 8-28 is enacted to read as follows:**

Article IV.
Forest Fire Prevention.

Section 8-25 - Burning of woods, brush, etc. restricted.

(a) It shall be unlawful for any owner or lessee of land to set fire to, or to procure another to set fire to, any woods, brush, logs, leaves, grass, debris, or other flammable material upon such land unless he previously shall have taken all reasonable care and precaution, by having cut and piled the same or carefully cleared around the same, to prevent the spread of such fire to lands other than those owned or leased by him. It shall also be unlawful for any employee of any such owner or lessee of land to set fire to or to procure another to set fire to any woods, brush, logs, leaves, grass, debris, or other flammable material, upon such land unless he shall have taken similar precautions to prevent the spread of such fire to any other land.

(b) During the period beginning February fifteenth and ending April thirtieth of each year, even though the precautions required by the foregoing subsection shall have been taken, it shall be unlawful for any person to set fire to, or to procure another to set fire to, any brush, leaves, grass, debris or field containing dry grass or other flammable material capable of spreading fire, located in or within three hundred (300) feet of any woodland or brushland, except between the hours of 4:00 p.m. and midnight.

(c) Any person who builds a fire in the open air, or uses a fire built by another in the open air, within 150 feet of any woodland, brushland or field containing dry grass or other flammable material, shall totally extinguish the fire before leaving the area and shall not leave the fire unattended.

(d) Any person violating any provision of this section shall, upon conviction, be fined not more than \$500.00 for each separate offense. If any forest fire shall originate as a result of the violation by any person of any provision of this section, such person shall, in addition to the above penalty, be liable to the state, the county, and/or the responding fire departments, whether paid or volunteer, for the full amount of all expenses incurred respectively in suppressing such fire.

8-26 - Bonfires.

(a) No person shall kindle or maintain any bonfire or other ceremonial fire or authorize any such fire to be kindled or maintained on any private land unless (1) the location is not less than fifty feet from any structure and adequate provision is made to prevent fire from spreading to within fifty feet of any structure, or (2) the fire is contained in a standard type waste burner located safely not less than fifteen feet from any structure.

(b) Bonfires or ceremonial fires shall not be more than five (5) feet by five (5) feet by five (5) feet and shall not burn longer than three (3) hours. This size may be increased by the Agent, as defined in Section 8-37. Fuel for such fires shall consist only of seasoned dry firewood ignited with paper. Such fires may not be used for waste disposal purposes.

(c) Bonfires or other ceremonial fires shall be constantly attended by a competent person until such fire is extinguished. This person shall have a garden hose connected to the water supply, or other fire extinguishing equipment readily available for use.

(d) The Agent, as defined in Section 8-37, or the chief of any volunteer fire department in the County may prohibit bonfires and outdoor ceremonial fires when atmospheric conditions or local circumstances makes such fire hazardous.

Section 8-27 - Attendance of Fires Required.

All open burning as defined in Section 8-37 shall be constantly attended until the fire is extinguished. At least one portable fire extinguisher with a minimum 4A rating, two portable fire extinguishers with a minimum 2A rating each or other approved on-site fire extinguishing equipment such as dirt, sand, water barrel, garden hose, or water truck shall be available for immediate use. Such equipment shall be sufficient to extinguish the fire.

Section 8-28 - Intentionally or negligently damaging or jeopardizing property of another by fire.

It shall be unlawful, and punishable as a Class 1 misdemeanor, for any person to intentionally or negligently set any woods or marshes on fire, or set fire to any stubble, brush, straw or any other substance capable of spreading fire on lands, whereby the property of another is damaged or put in jeopardy; and, in addition to any penalty which may be imposed for violation of this section, such person shall be liable for the full amount of all expenses incurred in fighting the fire.

Section 8-29 through 8-35 Reserved for future legislation.

3. A new article, Article V, titled “Other Open Burning Requirements” consisting of Sections 8-36 through 8-41, is enacted to read as follows:

Article V

Other Open Burning Requirements

Section 8-36 - Purpose.

The purpose of this article is to protect public health, safety, and welfare by regulating open burning within Gloucester County to provide for the safety of persons and structures in close proximity to open burning and to achieve and maintain, to the greatest extent practicable, a level of air quality that will provide comfort and convenience while promoting economic and social development. This article is intended to supplement the applicable regulations promulgated by the state Air Pollution Control Board and other applicable regulations and laws.

Section 8-37 - Definitions.

For the purpose of this Article and subsequent amendments, the following words or phrases shall have the meaning given them in this section:

- (a) (a) “Agent” means the County Administrator or his designee.
- (b) (b) “*Clean burning waste*” means waste which does not produce dense smoke when burned and is not prohibited to be burned under this Article.
- (c) (c) “*Construction waste*” means solid waste which is produced or generated during construction of structures. Construction waste consists of lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids, and garbage are not construction wastes and the disposal of such materials must be in accordance with the regulations of the Virginia Waste Management Board.
- (d) (d) “*Debris waste*” means stumps, wood, brush, and leaves from land clearing operations.
- (e) (e) “*Demolition waste*” means that solid waste which is produced by the destruction of structures and their foundations and includes the same materials as construction waste.
- (f) “*Hazardous waste*” means a solid waste or combination of solid waste which, because of its quantity, concentration or physical, chemical or infectious characteristics, may:
 - 1. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating illness; or
 - 2. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.
- (g) “*Household refuse*” means solid waste normally accumulated by a household in the course of ordinary day-to-day living.
- (h) “*Open burning*” means the burning of any matter in such a manner that the products resulting from combustion are emitted directly into the atmosphere without passing through a stack, duct or chimney.
- (i) “*Open pit incinerator*” means a device used to burn waste for the primary purpose of reducing the volume by removing combustible matter. Such devices function by directing a curtain of air at an angle across the top of a trench or similarly enclosed space, thus reducing the amount of combustion by-products emitted into the

atmosphere. The term also includes trench burners, air curtain destructors and over draft incinerators.

(j) “*Refuse*” shall mean solid waste.

(k) “*Salvage operation*” means any operation consisting of a business trade or industry participating in salvaging or reclaiming any product or material, such as, but not limited to, reprocessing of used motor oils, metals, chemicals, shipping containers or drums, and specifically including automobile graveyards and junkyards.

(l) “*Smoke*” means small gas-borne particulate matter consisting mostly, but not exclusively, of carbon, ash and other material in concentrations sufficient to form a visible plume.

(m) “*Solid waste*” means garbage, refuse and other discarded solid materials, including solid-waste materials resulting from industrial, commercial, and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents, dissolved materials in irrigation return flows, or other common water pollutants.

(n) “*Special incineration device*” means a pit incinerator, conical or teepee burner, or any other device specifically designed to provide good combustion performance.

Section 8-38 - Prohibited Open Burning.

(a) (a) No owner or other person shall cause or permit open burning or the use of a special incineration device for the disposal of solid waste, including specifically household refuse, except as provided in this article.

(b) (b) No owner or other person shall cause or permit open burning or the use of a special incineration device for disposal of rubber tires, asphaltic materials, crankcase oil, impregnated wood or other rubber or petroleum based material except when conducting bona fide fire fighting instruction as permitted in Section 8-39.

(c) (c) No owner or other person shall cause or permit open burning or the use of a special incineration device for disposal of hazardous waste or containers for such materials.

(d) (d) No owner or other person shall cause or permit open burning or the use of a special incineration device for the purpose of a salvage operation.

(e) No owner or other person shall cause or permit open burning or the use of a special incineration device for any purpose which violates any provision of state, federal or local law.

(f) Open burning or the use of special incineration devices permitted under the provisions of this Article does not exempt or excuse any owner or other person from any liability, damages or injuries which may result from such conduct; nor does it excuse or exempt any owner or other

person from complying with other applicable laws, ordinances, regulations and orders of the governmental entities having jurisdiction. In this regard, special attention should be directed to Section 10.1-1142 of the Forest Fire law of Virginia, the regulations of the Virginia Waste Management Board, and the State Air Pollution Control Board's regulations for the Control and Abatement of Air Pollution.

(g) Upon declaration of an alert, warning or emergency state of an air pollution episode as described in the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution, or when deemed advisable by the State Air Pollution Control Board to prevent a hazard to, or an unreasonable burden upon, public health or welfare, no owner or other person shall cause or permit open burning or use of a special incineration device. Any in process burning or use of special incineration devices shall be immediately terminated in the designated air quality control region.

8-39 - Permissible Open Burning.

(a) Open burning pursuant to the written authorization of an appropriate federal, state or local official having regulatory authority over the open burning is permitted.

(b) Open burning is permitted for training and instruction of fire fighters under the supervision of a bona fide fire fighting official, industrial in-house fire fighting personnel, or for the purpose of training the public in firefighting techniques as approved by the chiefs of any volunteer fire departments within the County.

(c) Open burning is permitted for campfires or other fires that are used solely for recreational purposes, for ceremonial occasions, for outdoor noncommercial preparation of food, and for warming of outdoor workers.

(d) Open burning is permitted for the destruction of any combustible liquid or gaseous material by burning in a flare or flare stack.

(e) Open burning is permitted for forest management and agriculture practices approved by the State Air Pollution Control Board.

(f) Open burning is permitted for the disposal of leaves, and tree, yard, and garden trimmings located on the premises of private property by the residents of such property, provided that the following conditions are met:

(1) Such burning shall be conducted in small piles. The term "small pile" shall be governed by common sense and shall generally mean the smallest sized pile which reasonably will allow the material to be disposed of effectively. In no event shall any such pile or the total of such piles be greater than 100 square feet in area, nor shall any individual pile be more than ten (10) feet in height.

(2) No burning shall occur in roadside ditches or on any public or private road.

- (3) No burning shall occur in any public or private drainage facility.
- (4) The burn pile shall not be less than 100 feet from any occupied dwelling other than a dwelling located on the property where the burning is being conducted and shall not be less than 50 feet from any structure wherever located. For any burn pile more than three (3) feet in height, the distance from an occupied dwelling other than a dwelling located on the property where the burning is being conducted shall be increased to 150 feet. In addition, provisions shall be made to prevent the fire from spreading to within 50 feet of any structure.
- (5) The open burning shall be attended constantly until the fire is completely extinguished and water, sand, dirt, or fire extinguishers shall be available at the burn site and in quantities sufficient to completely extinguish the fire.
- (6) To the extent possible, the open burning shall be conducted so as to use the prevailing winds to carry smoke away from any subdivision or other built up residential or commercial area.
- (g) Open burning is permitted for the disposal of debris waste resulting from property maintenance, when such debris waste cannot be adequately addressed under the provisions of subsection (f) of this Section, from the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills, or from any other clearing operations which may be approved by the Agent provided the following conditions are met:
 - (1) (1) All reasonable effort shall be made to minimize the amount of material burned, with the number and size of the debris piles approved by the Agent;
 - (2) (2) The material to be burned shall consist of brush, stumps and similar debris waste and shall not include demolition or construction waste;
 - (3) (3) The burning shall be at least 300 feet away from any occupied building other than a building located on the property on which the burning is conducted, unless otherwise approved by the Agent;
 - (4) (4) The burning shall be conducted at the greatest distance practicable from highways and airfields;
 - (5) (5) The burning shall be attended at all times in accordance with Section 8-27 and conducted to ensure the best possible combustion with a minimum of smoke being produced;
 - (6) (6) The burning shall not be allowed to smolder beyond the minimum period of time necessary for the destruction of the materials;
 - (7) The burning shall be conducted only when the prevailing winds are away from any subdivision or other built-up residential or commercial areas.

- (8) A permit must be obtained.

Section 8-40 - Permits.

(a) (a) When open burning of debris waste (Section 8-39 (g)) is to occur within the County, the person responsible for the burning shall obtain a permit from the County prior to the burning. Such a permit may be granted only after confirmation by the Agent that the burning can and will comply with the provisions of this Article, any other conditions which are deemed necessary to ensure that the burning will not endanger the public health and welfare, and with any applicable provisions of the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution. The permit may be issued for each occasion of burning or for a specific period of time deemed appropriate by the Agent.

(b) (b) Prior to the initial installation (or reinstallation, in cases of relocation) and operation of special incineration devices, the person responsible for the burning shall obtain a permit from the County, such permits to be granted only after confirmation by the Agent that the burning can and will comply with the applicable provisions of the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution and that any conditions are met which are deemed necessary by the Agent to ensure that the operation of such devices will not endanger the public health and welfare. Permits granted for the use of special incineration devices shall at a minimum contain the following conditions:

(1) (1) All reasonable efforts shall be made to minimize the amount of material that is burned.

(2) (2) The material to be burned shall consist of brush, stumps and similar debris waste and shall not include demolition material.

(3) The burning shall be at least 300 feet from any occupied building other than a building located on the property on which the burning is conducted; the burning shall be conducted at the greatest distance practicable from highways and air fields. If the Agent determines that it is necessary to protect public health and welfare, he may direct that any of the otherwise required distances be increased.

(4) The burning shall be attended at all times and conducted to ensure the best possible combustion with a minimum of smoke being produced. Under no circumstances should the burning be allowed to smolder beyond the minimum period of time necessary for the destruction of the materials.

(5) The burning shall be conducted only when the prevailing winds are away from any subdivision or other built-up residential or commercial areas.

(6) The use of special incineration devices shall be allowed only for the disposal of debris waste or other clean burning waste authorized by the State Air Pollution Control Board.

(7) Permits issued under this subsection shall be limited to a specific period of time deemed appropriate by the Agent.

(c) Any application for a permit under Section 8-40 (a) or Section 8-40 (b) shall be accompanied by a processing fee of Twenty-five dollars (\$25.00) per permit.

Sec. 8-41 - Penalties for violation.

(a) (a) Any violation of this Article is punishable as a Class 1 misdemeanor, except for violations of Section 8-39 (f) which shall be punishable as a Class 3 misdemeanor.

(b) Each separate incident may be considered a new violation.

This ordinance shall be effective May 1, 2004.

A Copy Teste:

William H. Whitley, County Administrator