

ORDINANCE NO. 313

AN ORDINANCE PROHIBITING AND REGULATING
CERTAIN TYPES OF OUTDOOR BURNING

WHEREAS, Indiana Code Sections 36-1-3-1 et. seq. permit any town in the State of Indiana to exercise any power or perform any function necessary to the public interest in the context of its municipal or internal affairs, which is not prohibited by the Constitution of the United States or of the State of Indiana, or denied or pre-empted by any other law, or is not expressly granted by any other law to another governmental entity;

WHEREAS, the Town of Middlebury, Indiana is authorized pursuant to Indiana Code Section 13-1-1-10 to enact ordinances regulating air pollution;

WHEREAS, a need exists requiring the regulation of open burning in the Town of Middlebury, Indiana;

WHEREAS, it is in the best interests of the citizens of the Town of Middlebury, Indiana that an ordinance be enacted addressing this need;

WHEREAS, the State of Indiana has adopted specific standards contained in 326 IAC 4-1-1 et. seq. which apply everywhere throughout the State of Indiana;

WHEREAS, the Town of Middlebury, Indiana believes that the adoption of local standards by way of local ordinance shall enhance the quality of air in the Town of Middlebury, Indiana and the enforceability of the State standards and regulations;

NOW, THEREFORE, BE IT ORDAINED, ORDERED, AND RESOLVED by the Town Council of the Town of Middlebury, Indiana, as follows:

SECTION 1. APPLICATION.

All outdoor burning of any material is hereby banned and declared unlawful within the municipal corporate limits of the Town of Middlebury, Indiana except as provided in Section Two (2) below which is consistent with, but not inclusive of, the exceptions under 326 IAC 4-1-3.

SECTION 2. EXCEPTIONS.

(A) The following types of fires are permitted subject to the limitations contained below in subsection (B):

- (1) Fires used for celebrating Twelfth Night Ceremonies.
- (2) Fires used for celebrating school pep rallies.
- (3) Fires used for celebrating Scout activities.

- (4) Fires used for recreational and cooking purposes, i.e. campfires.
- (5) Farm burning and burning by the Department of Natural Resources as allowed by 326 IAC 4-1-3.
- (6) Burning with prior receipt of a variance application and approval of the Indiana Air Pollution Control Board or its designated agent as allowed by 326 IAC 4-1-4.

(B) All permitted fires shall be subject to the following limitations:

- (1) Only untreated wood products shall be burned unless otherwise stated.
- (2) Fires shall be attended at all times until completely extinguished.
- (3) If a fire creates an air pollution problem, a nuisance, a health hazard, or a fire hazard, it shall be extinguished.
- (4) All farm burning shall occur between the hours of 12:00 o'clock noon and 6:00 o'clock p.m. during which times the fire may be replenished, but only in such manner that all of the burning material is consumed by 6:00 o'clock p.m.
- (5) No burning shall be conducted unless the wind is at least five (5) m.p.h. and no more than fifteen (15) m.p.h.
- (6) No burning shall be conducted on property owned by another party, including publicly owned streets, roads, and highways.
- (7) No burning shall be conducted within twenty-five (25) feet of a structure owned by another party.

SECTION 3. ENFORCEMENT AND PENALTIES.

(A) The Town of Middlebury may extinguish any fire that is in violation of this Ordinance and charge the party responsible Two Hundred Fifty Dollars (\$250.00) for each such extinguishment.

(B) Any person found to be in violation of this Ordinance shall be punished by a fine of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00) plus costs for each separate violation.

(C) Any person found in violation of this Ordinance who rekindles a prohibited fire extinguished by the Town of Middlebury shall be punished by a fine of not less than Five Hundred Dollars (\$500.00) plus costs for each such violation.

(D) Ordinance violations shall be enforced under proceedings brought pursuant to Indiana Code Sections 34-4-32-1 et. seq. in a manner similar to that of infractions with complaint and summons described in Indiana Code Section 9-30-3-6 issued by the Middlebury Police Department or other police agency.

SECTION 4. INTERPRETATION AND SEVERABILITY.

(A) The provisions of this Ordinance shall be interpreted so as to be valid and enforceable and consistent with, but more restrictive than, 326 IAC 4-1-1 et. seq.

(B) The provisions of this Ordinance are hereby declared to be severable. If any provision contained in this Ordinance shall be declared to be invalid or void for any reason by a court of competent jurisdiction, such declaration shall not affect the remaining portions of this Ordinance which shall remain in full force and effect.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect following publication in accordance with the requirements of law on the 1st day of September, 1994.

SECTION 6. SUNSET PROVISION.

This Ordinance shall terminate upon the declaration by a court of competent jurisdiction located in Elkhart County, Indiana that the Town of Middlebury has failed to provide or arrange for a curbside leaf pick-up program in the Fall of any year for the citizens of the Town of Middlebury. This provision shall provide no defense to the enforcement of this Ordinance unless a declaration from a court of competent jurisdiction in Elkhart County, Indiana has been obtained or issued prior to the date of a cited Ordinance violation.

ORDAINED AND ADOPTED this 18th day of July, 1994.

VOTING IN FAVOR

Richard W. Habtala
Johnnie C. Colby
Dorothy Weaver
Charles Mather

VOTING AGAINST

TOWN COUNCIL OF THE TOWN OF
MIDDLEBURY, INDIANA

By Gregory Raymond, President

Attest:

Dorothy Weaver
Dorothy Weaver, Clerk-Treasurer,
Town of Middlebury, Indiana

EXAMINED AND APPROVED this 18th day of July, 1994.

Gregory Raymond, President, Town
Council of the Town of Middlebury,

Indiana