ORDINANCE 2017-17

AN ORDINANCE AMENDING CHAPTER 91 OF THE CITY OF FORT MITCHELL CODE OF ORDINANCES TO MODIFY REQUIREMENTS FOR OPEN BURNING.

Whereas, the City Council of the City of Fort Mitchell has determined that it is in the public interest to provide clear and concise open burning requirements.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF FORT MITCHELL, KENTUCKY:

SECTION I

Sections 91.35, 91.36, and 91.37 in Chapter 91 of the City of Fort Mitchell Code of Ordinances are hereby amended with the following words and phrases:

SECTION 91.35 RESTRICTIONS FOR OPEN BURNING

Any outdoor fire is prohibited except, for that of candles, torches, grills, and approved properly positioned and maintained fire pits, with a fuel load of paper, firewood, charcoal, propane or natural gas and no more than thee (3) square feet in area. Open burning of trees and all forms of vegetation for the purpose of land clearing is prohibited. The burning of leaves and other all forms of trash is also prohibited. Burn permits from the Fort Mitchell Fire Department are not required for the approved type of fires defined in this Chapter.

~~[SECTION 91.35 PERMIT REQUIRED FOR BONFIRES AND SIMILAR BURNING.~~

~~(A) No person shall build, make or maintain a bonfire or other similar outdoor fire or burning, or assist in so doing, within the limits of the city unless the fire is authorized under § 91.37, or a permit therefor has been first issued under the provisions of § 91.36, which permit has not been revoked.~~

~~(B) No person shall burn any wood, plastic, cardboard, grass, leaves, brush, trees, waste paper or other combustible material, or assist in so doing, within the limits of the city, except in an approved furnace or fireplace within an enclosed building, unless the fire is authorized under § 91.37, or a permit therefor has been first issued under the provisions of § 91.36, which permit has not been revoked.~~

~~SECTION 91.36 ISSUANCE OF BURNING PERMIT.~~

~~(A) Upon application by the owner or occupant of any real property in the city upon which is located any debris or other similar matter which cannot be disposed of reasonably otherwise than by burning, the Fire Chief may issue a permit to the applicant authorizing the burning of the debris or other similar matter on the real property, subject to provisions hereinafter set forth.~~

(B) The permit shall be issued only after a determination by the Fire Chief that the burning shall not endanger life or property and shall not constitute a public nuisance under § 92.03.

(C) The permit shall set forth the name of the person or organization to whom issued, the address of the real property, and shall prescribe the time of burning and any conditions which in the determination of the Fire Chief are necessary to protect life and property and avoid any public nuisance.

(D) If, in the determination of the Fire Chief, a burning for which a permit has been issued hereunder shall endanger life or property or shall become or constitute a public nuisance, the Fire Chief may revoke the permit immediately and the fire shall be immediately extinguished by the applicant and by the person or organization in charge of the burning.

SECTION 91.37 RECREATIONAL FIRE RESTRICTIONS, OUTDOOR COOKING FIRE RESTRICTIONS AND UNRESTRICTED FIRES.

(A) *Recreational fire restrictions.*

(1) It is the intent of the city that all citizens, property owners and renters shall have the opportunity to have recreational fires at single and multi-family dwellings provided that such recreational fires are in compliance with the requirements and restrictions relating to recreational fires. It is further the intent of the city that the Police Department, the Fire Department and any Code Enforcement Officer shall enforce these requirements/restrictions so as to insure that such recreational fires do not become a public nuisance or compromise public safety.

(2) A recreational fire is a fire that meets the requirements/restrictions laid out in this section of the city's ordinances. If the fire does not meet the requirements and restrictions of a recreational fire, outdoor cooking fire or unrestricted fires then it is deemed a bonfire and subject to permit requirements and restrictions under § 91.35.

(3) Portable fire pits, chimaeras, patio hearths, fire tables and other similar devices shall be elevated from the ground and shall be fabricated from steel, concrete clay, or similar materials. Permanent fire pits shall be dug into the ground and shall comply with the provisions of this chapter governing such pits.

(4) Recreational fire requirements and restrictions:

(a) The recreational fire must be fueled by seasoned (i.e. not green) firewood, charcoal, natural gas, propane, or other clean burning fuel, with emissions equal or less than that created by seasoned firewood and all devices must be based upon a non-combustible surface, or a surface protected by a fire retardant mat designed specifically for this purpose.

(b) Material used to make a recreational fire cannot include construction materials, plastics, trash or rubbish.

(c) The recreational fire's total area (i.e. fuel area, firebox, or the center area of a fire pit where fuel is placed) can be no more than three feet in diameter, height, or width; and no higher than three feet, measured from the location upon which the wood or other fuel source is placed upon to the top of the wood or other fuel source. No burning firewood or other burning fire fueling material shall extend outside the fire pit.

(d) All recreational fires shall be placed at a safe reasonable distance from any structure, ten feet from any flammable or non-portable combustible material when used, and set back a minimum of six feet from adjoining property lines.

(e) The means for extinguishing any fire must be kept immediately available at all times when a recreational fire is burning.

(f) No recreational fire shall be started or allowed to continue burning when the wind direction or wind speed will cause embers or other burning material to be carried onto any building or combustible material; nor any time that wind direction will carry smoke into the open windows of any building. Smoke from any recreational fire shall not create a nuisance for neighboring properties and fires shall be completely extinguished when a police officer, fire department member, or Code Enforcement Officer determines a nuisance is present or the fire otherwise compromises public safety.

(g) If a permanent fire pit is used, the construction and use of the permanent fire pit shall, in addition to the above requirements, comply with the following additional requirements:

1. The diameter, width, and height of the pit opening or base upon which the fuel material is placed shall not exceed three feet;

2. The depth of the pit shall be at least one foot;

3. The top of the rim of the pit shall be lined with, rock, concrete brick, steel, or other non-combustible material designed and of a sufficient width to stop the spread of fire.

(B) *Outdoor cooking fire restrictions.*

(1) Outdoor cooking over a fire contained in a device or structure designed for such use is permitted but subject to the following requirements/restrictions:

(a) Material used to make a cooking fire cannot include construction materials, plastics, trash or rubbish.

(b) All cooking devices must be in good working condition to prevent the possible spread of the fire.

(c) For all multi-family dwellings more than one story in height, the use and/or storage of any portable cooking device, except electric powered cooking devices, including any portable fireplaces is strictly prohibited above the first floor of occupancy. The definition of a multi-family dwelling shall mean a single structure containing three or more dwelling units, regardless of whether such units are rented or owned as a condominium or other form of ownership.

(d) No cooking fire shall be started or allowed to continue burning when the wind direction or wind speed will cause embers or other burning material to be carried onto any building or combustible material; nor any time will that wind direction carry smoke into the open windows of any building. Smoke from any cooking fire shall not create a nuisance for neighboring properties and fires shall be completely extinguished when a police officer, Fire Department member, or Code Enforcement Officer determines a nuisance is present or the fire otherwise compromises public safety.

(c) A fire shall be deemed a recreational fire and not a cooking fire and thus subject to the requirements and restrictions of recreational fires, if, in the opinion and judgment of a member of the Police Department, Fire Department, or Code Enforcement Officer, the primary use of the fire is recreational in nature and not for cooking.

(C) *Unrestricted fires.*

(1) The following devices that involve an open fire or flame may be used without restrictions as long as they are used in a safe manner and the use follows the recommended manufacturer's guidelines: The burning and/or use of:

(a) Lighters;

(b) Matches;

(c) Candles;

(d) Lanterns;

(e) Lamps;

(f) Insect repellent torches;

(g) Tiki type torches;

(h) Cigarettes;

(i) Cigars, and/or braziers, or any similar devices.

(2) Fires that are lit and burned in an approved furnace or fireplace within an enclosed building are unrestricted and permitted.

(D) *Nuisance orders.* Members of the Police Department, Fire Department, and any Code Enforcement Officer are authorized and shall issue orders to any individual or property owner to immediately extinguish any fire, however classified, including, without limitation, a recreational fire, cooking fire, unrestricted fire, or bonfire deemed to be a nuisance or that otherwise compromises public safety. Members of the police department or the Fire Chief, any Assistant Fire Chief, or any designee of the Fire Chief, in the event of a second or subsequent call concerning a recreational fire at a particular address, may issue written orders to the property owner or any individual either prohibiting additional fires or types of fires specified in the orders or permitting additional fires or types of fires specified in the orders with such conditions or restrictions deemed appropriate, for either an indefinite period of time or for a specific period of time specified in the order. Appeal of such orders may be had to the Fire Chief by delivering notice of that appeal to the Fire Chief, who may uphold the order, rescind the order, or modify the order as deemed appropriate in the Fire Chief's reasonable judgment. Providing a citation has been issued an additional appeal may be submitted to the Code Enforcement Board, who may uphold the order, rescind the order, or modify the order. No person shall violate any order issued under this section.

(E)] The penalties for any violation of this section shall be as set forth in § 91.99. In addition to the foregoing penalties, any person who fails to maintain a fire in accordance with the

applicable city ordinances or negligently allows such a fire to burn out of control shall pay any and all costs incurred by the city or any other municipality responding under mutual-aid for any fire, police, ambulance or other related service provided as a result of the party's failure to comply with said ordinance.

SECTION II

Section 91.99 of the City of Fort Mitchell Code of Ordinances is hereby amended with the following words and phrases:

SECTION 91.99 PENALTY.

(A) Any person violating the provisions of §§ 91.02 or 91.04, the regulations issued thereunder or any order issued thereunder, or who knowingly induces another, directly or indirectly, to violate the provisions of those sections, shall be fined not more than $1,000, or imprisoned for not more than 30 days, or both.

(B) Any person who violates any other provision of §§ 91.01 to 91.06 [~~this chapter~~] shall be guilty of a misdemeanor and shall be fined not more than $500.

(C) Any person convicted of violating the provisions of § 91.07 (B) shall be fined an amount not to exceed $500 or imprisoned in the county jail for a term not to exceed 30 days. Any person convicted of violating the provisions of § 91.07 (C) shall be fined an amount not to exceed $500.

(D) Any person violating the provisions of § 91.35 shall be guilty of a violation and shall, upon conviction thereof, be fined not less than $25 nor more than $200.

(E) Any other violation of this chapter is hereby classified as a civil offense, pursuant to Chapter 41 and KRS 65.8808, and such classification is intended, and shall be construed, to provide an additional or supplemental means of obtaining compliance with the applicable code sections, and nothing contained herein or in Chapter 41 shall prohibit the enforcement of this chapter by any other means authorized by law.

(F) If a citation for a violation of this chapter is not contested by the person charged with the violation, the civil fine to be imposed for each offense shall be $50 for the first offense, $90 for the second offense, and $210 for the third, and thereafter, offense.

(G) If a citation is contested and a hearing before the Code Enforcement Board is required, the maximum civil fine which may be imposed at the discretion of the Board shall be from $20 to $200 for the first offense, from $60 to $600 for the second offense, and from $180 to $1,800 for the third, and thereafter, offense.

(H) Each section of the ordinance violated shall be considered a separate fineable offense. If two or more sections of the ordinance are violated, the fines shall be cumulative and be enforced

under the same citation. Each day a violation exists shall be considered a separate offense upon issuance of a separate citation.

SECTION III

All Ordinances or parts of Ordinances in conflict herewith are, to the extent of such conflict, if any, hereby repealed.

SECTION IV

The Provisions of this Ordinance are severable and the invalidity of any provision of this Ordinance shall not affect the validity of any other provisions hereof, and such other provisions shall remain in full force and effect as long as they remain valid in the absence of that provision determined to be invalid.

SECTION V

This Ordinance shall be in full force and effect from and after its passage and publication according to law, and said publication may be in summary form.

CITY OF FORT MITCHELL, KENTUCKY

BY: _____
Jude S. Hehman, Mayor

ATTEST:

_____
Linda Bartels, City Clerk

Date of First Reading: 10.16.17
Date of Second Reading and Enactment: 11.6.17
Date Published: _____