

JUN 14 2005

ORDINANCE NO. 9A-13

BOARD OF SUPERVISORS
JAMES CITY COUNTY
VIRGINIA

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 9, FIRE PROTECTION, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE I, FIRE PREVENTION CODE, SECTION 9-2, DEFINITIONS; SECTION 9-3, AMENDMENTS; AND BY AMENDING AND RENAMING SECTION 9-4, OPEN BURNING OF YARD WASTE.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 9, Fire Protection, is hereby amended and reordained by amending Section 9-2, Definitions; Section 9-3, Amendments; and by amending and renaming Section 9-4, Open burning prohibitions.

Chapter 9. Fire Protection

Article I. Fire Prevention Code*

Sec. 9-2. Definitions.

The following words and terms used in the fire prevention code shall have the definitions ascribed to them in this section:

Debris waste. Includes stumps, wood, brush and leaves from land clearing operations.

Fire official. The fire marshal of the county or his duly authorized representative. For the purposes of this code, the term code official shall also mean fire official.

Fireworks. Any item known as a firecracker, torpedo, skyrocket or other substance or thing, of whatever form or construction, that contains any explosive or flammable compound or substance and is intended or commonly known as fireworks and which explodes, rises into the air, or travels laterally, or fires projectiles into the air. The term "fireworks" shall also include pinwheels, sparklers, fountains or Pharaoh's serpents. The term "fireworks" shall not include auto flares or caps for pistols.

IFC. International Fire Code/2000.

Jurisdiction. The County of James City, Virginia.

Legal department of the jurisdiction. The county attorney or an attorney appointed by the board of supervisors to represent the county in legal matters.

Local governing body. The James City County Board of Supervisors.

Cross reference - Fire protection requirements in subdivisions, § 19-63.

***State regulation reference** - 13 Virginia Administrative Code 5-51-Virginia Statewide Fire Prevention Code.

Primary service area. The primary service area (PSA) is the area as defined in Chapter 24, Article I, Section 24-2 of this code.

Yard waste. Include leaves, brush, grass, stumps, scrub vegetation, bushes, and twigs or branches.

Sec. 9-3. Amendments.

The fire prevention code is hereby amended, modified and changed as set out in the following subsections of this section.

- (1) *SFPC Section 107.2, Permits required*, is hereby added:

Permits shall be obtained, when required, from the fire official. Permits shall be available at all times on the premises designated in the permit for inspection of the fire official. Fees for such permits, and for inspections, shall be in such amounts as are from time to time established by resolution of the board of supervisors.

With exception of mandatory permits for explosives and blasting agents, the county shall require permits issued as a part of the Statewide Fire Prevention Code for the following:

- (a) Fireworks.
- (b) Open burning of debris waste as a result of land clearing, refuse as a result of agricultural and forestal management practices, and bonfires.

- (2) *SFPC Table 107.2, Operational Permit Requirements* is hereby added:

- (a) \$100.00 per event or \$200.00 per calendar year (at same site with similar displays) for fireworks.
- (b) \$50.00 for each waste open burning permit.
- (c) \$25.00 for each bonfire permit.

- (3) *SFPC Section 112.1, Local Board of Fire Prevention Code Appeals (BFPCA)*, is hereby added:

The James City County Board of Building Code Appeals is hereby constituted as and shall serve as the James City County Board of Fire Prevention Code Appeals.

- (4) *SFPC Section 112.2.1, Chairman* is hereby added:

The chairman of the James City County Board of Building Code Appeals shall also serve as chairman of the James City County Board of Fire Prevention Code Appeals.

- (5) *IFC Section 503.2.2, Authority* is hereby added:

Fire apparatus access roads, when required, shall conform to the specifications issued by the fire official. The fire official shall maintain records of those properties which are required to establish and maintain fire apparatus access roads.

(6) *IFC Section 307.2.2, Prohibited open burning*, is hereby added:

Open burning shall be allowed without prior notification to the fire official for recreational fires, highway safety flares, smudge pots and similar occupational needs, and the burning of yard waste, and household debris, except garbage, when conducted in accordance with this code; provided, however, pursuant to section 10.1-1142 of the Code of Virginia, that:

- (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 inflammable material upon such land unless he previously has 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 inflammable material upon such land unless he has taken similar precautions to prevent the spread of such fire to any other land.
- (b) Except as provided in subsection (c), during the period beginning February 15 and ending April 30 of each year, even though the precautions required by the foregoing subsection have been taken, it shall be unlawful in this county or any portion thereof organized for forest fire control under the direction of the state forester, 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 inflammable material capable of spreading fire located in or within three hundred feet of any woodland, brushland or field containing dry grass or other inflammable material, except between the hours of 4:00 p.m. and 12:00 midnight.

The provisions of this subsection shall not apply to any fires which may be set on federal land

- (c) Subsection (b) shall not apply to any fire set between February 15 and March 1 of each year, if:
 - 1. The fire is set for “prescribed burning” that is conducted in accordance with a “prescription” and managed by a “certified prescribed burn manager” as those terms are defined in Va. Code section 10.1-1150.1;
 - 2. The burn is conducted in accordance with Va. Code section 10.1-1150.4;
 - 3. The state forester has, prior to February 1, approved the prescription for the burn; and
 - 4. The burn is being conducted for one of the following purposes: (i) control of exotic and invasive plant species that cannot be accomplished at other times of the year; (ii) wildlife habitat establishment and maintenance that cannot be accomplished at other times of the year; or (iii) management necessary for natural heritage resources.

The state forester may on the day of any burn planned to be conducted pursuant to this subsection revoke his approval of the prescription for the burn if hazardous fire conditions exist. The state forester may revoke the certification of any certified prescribed burn manager who violates any provision of this subsection.

- (d) 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 inflammable material shall totally extinguish the fire before leaving the area and shall not leave the fire unattended.
- (e) Any person violating any of the provisions of this section shall be guilty of a Class 3 misdemeanor for each separate offense. If any forest fire originates 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 Commonwealth for the full amount of all expenses incurred by the Commonwealth in suppressing such fire. Such amounts shall be recoverable by action brought by the state forester in the name of the Commonwealth on behalf of the Commonwealth and credited to the Forestry Operations Fund.

- (7) *IFC Section 307.3, Location*, is added:

~~The location of any open burning conducted for the disposal for land clearing refuse which has been permitted in accordance with regulations concerning open burning issued by the Virginia Department of Environmental Quality shall not be less than 500 feet from an occupied dwelling.~~

The location of any open burning for the disposal of land clearing debris waste which has been permitted in accordance with the regulations concerning open burning issued by the Virginia Department of Environmental Quality shall not be less than 1000 feet from an occupied dwelling or commercial building, except open burning may be permitted within 1000 feet of an occupied dwelling or commercial building where written permission of the occupant is obtained by the applicant for the open burn. No open burning for the disposal of land clearing debris waste shall be permitted within the PSA or within 1000 feet of the perimeter of the PSA unless the open burn is conducted in an appropriate pit with a special incineration device to reduce smoke and ash, such as an air curtain destructor, approved by the fire official.

- (8) *IFC Section 1404.3, Open burning* is hereby added:

Open burning of construction waste, demolition waste, refuse or any other type of waste is prohibited when located at a construction or demolition site. The removal of such waste from a construction or demolition site and the subsequent burning of the same at another location in James City County is also prohibited.

Exception: Approved open burning for the disposal of land clearing ~~refuse~~ debris waste shall be allowed on construction sites when conducted in accordance with the regulations concerning open burning issued by the Virginia Department of Environmental Quality and this Code.

- (9) *IFC Section 307.2.2, Prohibited open burning* is hereby added:

Open burning shall not be used for waste disposal purposes, the quantity of material to be burned shall not exceed five feet in any dimension, and the fuel shall be chosen to minimize the generation and emission of air contaminants.

Exception: Approved burning for forest management and agriculture practices, and open burning for disposal of land clearing ~~refused~~*debris waste* when conducted in accordance with regulations concerning open burning issued by the Virginia Department of Environmental Quality.

- (10) *IFC 3301.1.3 Fireworks, Exception 4 is not applicable to Chapter 9, article 1, of this code.*

- (101) *SFPC Section 3301.2, Permit required,* is hereby added:

- (a) *Except as otherwise provided in this section it shall be unlawful for any person to transport, manufacture, assemble, store, sell, offer or display for sale, or to buy, use, possess, ignite or explode any fireworks without a permit.*
- (b) *The provision of this section shall not be applicable to any organization or group of individuals which has been granted a permit by the fire official for the public or private display of fireworks, provided that such fireworks are stored, handled, transported and used in compliance with the terms and conditions of such permit.*
- (c) A permit shall be obtained from the fire official for the display or discharge of fireworks. Upon written application by an organization or association representing a fair or amusement park or by any administrator, organization or group of individuals to the county fire department, a permit may be issued for the display of fireworks; provided, that such display shall be held under proper supervision and at a location safe to persons and property. Such application shall include a description of the types of fireworks to be displayed and the location to be used to ensure the safety of those in attendance. The permittee shall furnish a bond or certificate of insurance in the amount required by section 3301.2.4.2 of the Virginia Statewide Fire Prevention Code. A permit, when issued, shall be for a stated period. No such permit shall be issued by the fire official to any organization or association or group of individuals unless the fire official is satisfied that the display will be held at an appropriate site. A member of the fire department shall, prior to the issuance of such a permit, inspect the scene for its appropriateness for the display of fireworks. An authorized member of the fire department may revoke any such permit during the display if such is conducted in any manner not in keeping with the application or in compliance with this section and the display shall thereupon be immediately stopped.

- (11) ~~*SFPC Section 3302.1, Definitions, is hereby amended to read:*~~

~~The following words and terms shall, for the purpose of this chapter and as stated elsewhere in this Code, have the meanings shown herein.~~

~~"Fireworks." Any item known as a firecracker, torpedo, skyrocket or other substance or thing, of whatever form or construction, that contains any explosive or flammable compound or substance and is intended or commonly known as fireworks and which explodes, rises into the air, or travels laterally, or fires projectiles into the air. The term "fireworks" shall also include pinwheels, sparklers, fountains or Pharaoh's serpents. The term "fireworks" shall not include auto flares or caps for pistols.~~

~~"Permissible fireworks." Any auto flares or caps for pistols.~~

(12) *SFPC Section 3301.2.4.2, Fireworks display* is amended to read:

The permit holder shall furnish a bond or certificate of insurance at a minimum amount of \$1,000,000.00 for the payment of all potential damage caused by either to the person or property due to the permitted display, and arising from any acts of the permit holder, employees, or agent of the permit holder. The property owner shall agree in writing to the bond or certificate of insurance amount prior to the permit being issued.

(13) *SFPC Section 3301.7, Seizure* is amended to read:

The fire marshal or any law enforcement officer shall be authorized to seize, take, remove or cause to be removed, at the expense of the owner, all fireworks offered or exposed for display or sale, stored, possessed or held in violation of this section. Violation of this chapter is a class 1 misdemeanor.

Sec. 9-4. Open burning of yard waste *prohibitions*.

The fire prevention code is hereby amended, modified and changed as set out in the following subsection of this section:

1. Yard waste.

(1) *IFC Section 307.2.2, Prohibited open burning*, is hereby added.

- (a) Notwithstanding any other provision of this Code, open burning of yard waste by any person shall be unlawful within the county except in those areas zoned A-1, General Agriculture; provided, however, even within A-1 acres, yard waste shall not be burned in platted subdivisions consisting of five or more lots of which at least three lots have occupied dwellings or in manufactured home parks. In those areas where the open burning of yard waste is otherwise permitted, it shall be unlawful for any person to burn yard waste during the period beginning February 15 and ending April 30 of each year, except between the hours of 4:00 p.m. and 12:00 midnight.
- (b) Open burning of yard waste performed in an area permitted in paragraph (a) shall comply with any applicable provisions of state law and this article.

- (c) Notwithstanding paragraphs (a) and (b), open burning of yard waste shall be allowed for farming activities and pursuant to a permit for forest management and agriculture practices and open burning for disposal of land clearing ~~refuse debris waste~~ when conducted in accordance with regulations concerning open burning issued by the Virginia Department of Environmental Quality.

2. Land clearing debris.

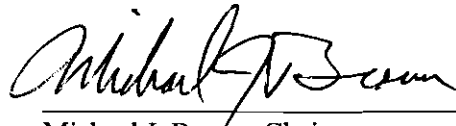
(a) *Except as otherwise provided in this section, open burning of land clearing debris shall be prohibited.*

(b) *Exception: In the event of a declaration of local emergency, pursuant to Title 44, Military and Emergency Laws, of the Code of Virginia, the fire marshal may issue a permit to allow the burning of land clearing debris waste in order to protect the health, safety and welfare of the public.*

State law reference - Code of Va., §§ 27-97 and 10.1-1142.

Secs. 9-5 - 9-6. Reserved.

This Ordinance shall apply to all open burning permits issued after June 14, 2005.



Michael J. Brown, Chairman
Board of Supervisors

ATTEST:



Sanford B. Wanner
Clerk to the Board

<u>SUPERVISOR</u>	<u>VOTE</u>
HARRISON	AYE
GOODSON	ABSENT
MCGLENNON	AYE
BRADSHAW	AYE
BROWN	AYE

Adopted by the Board of Supervisors of James City County, Virginia, on this 14th day of June, 2005.