

FIRE PREVENTION AND PROTECTION

Sec. 6-12. Burning trash, rubbish, garbage, yard waste, etc.

(a) No person shall build, maintain or allow to be operated or maintained on a premises controlled by him/her, any waste burner, refuse burner, trash burner or other similar appliance unless such device is permitted with the approval of the Inspections Supervisor and the Fire Chief, or his designee.

(b) No person shall operate an outside incinerator, burn garbage, or leaves within the City. (Code 1965, §19.05(1), (3)-(5); Ord 1-91, §1(19.05(1), (3)-(5)), 1-9-91; Ord 174-93, §1, 10-19-93; Ord 119-96, §1, 12-18-96, Ord 65-99, §1, 9-19-99; Ord 23-09, §1, 1-13-09)

Sec. 6-13. Open outdoor fires, outdoor fireplaces, cooking fires and barbecue grills, kettles and outdoor hibachis.

(a) No open outdoor fires, including fires confined within outdoor fireplaces and outdoor cooking fires, with the exception of fires fueled by natural gas, propane or charcoal in commercially manufactured appliances or a non-commercially manufactured appliance approved by the Fire Chief or his designee, shall be started by any person unless a permit is first obtained from the Fire Department. No permit shall be granted for open burning for multifamily occupancies without separate private yards for each tenant, nor without the property owner's permission, in a public right-of-way, alley or other public thoroughfare.

- (1) Daily permits are available for bonfires, brush burns, wildland management burns, outdoor fireplaces and cooking fires.
- (2) Annual permits are available for recreational fires in outdoor fireplace appliances. (January 1 through December 31).
- (3) Annual and single day permits are valid 6:00 a.m. to 10:00 p.m. Sunday through Thursday, 6:00 a.m. to 12:00 a.m. Friday, Saturday, and any day/evening preceding a federal holiday.
- (4) No permit will be issued for any fire within ten (10) feet of any building, structure, fence, combustible material or property line.
- (5) Only those fuels and appliances approved by the Fire Chief or his designee shall be used.
- (6) Burning is to be attended at all times by a person at least eighteen (18) years of age, with an approved means of extinguishing the

fire available for use at the location of the fire.

(b) Barbecue grills, kettles, outdoor hibachis.

(1) Charcoal burners and other open-flame devices shall not be operated on combustible balconies or within ten (10) feet of combustible construction in all dwellings. Exceptions:

a. Single family dwellings.

b. Permanently piped natural gas fired barbecue grills, where dwellings, balconies, and decks are protected by automatic sprinkler system.

(2) Cylinders having water capacities greater than 2½ lb. (1 kg) [nominal 1 lb. (0.5 kg) LP-Gas capacity] shall not be located on balconies above the first floor that are attached to a multiple family dwelling of three (3) or more living units.

(c) No person shall install, use or maintain a woodfire furnace, stove or boiler that is not located within a building intended for habitation by humans within the City limits. This prohibition shall apply to furnaces, stoves or boilers installed after the effective date of this ordinance.

(d) The Fire Chief or his designee shall have the authority to prohibit any and all open burning when atmospheric conditions or local circumstances make such fire hazardous. No burning will be allowed if wind conditions will cause smoke, embers or other burning materials to be carried towards any building or other combustible material, nor anytime the wind is in excess of nine miles per hour (9 m.p.h.) as measured by the Outagamie County Emergency Communication Center.

(e) The Fire Chief or his designee is authorized to require any fire to be immediately discontinued if determined that the smoke emissions are offensive to occupants of the surrounding properties or if the fire is determined to constitute a hazardous condition. (Code 1965, §19.05(2); Ord 1-91, §1(19.05(2)), 1-9-91, Ord 136-01, §1, 8-20-01; Ord 135-05, §1, 11-22-05; Ord 23-09, §1, 1-13-09)

Sec. 6-14. Careless smoking prohibited.

(a) It is unlawful for any person, by reason of careless, willful or wanton conduct in smoking or in the use of lighters or matches in smoking to set fire to any bedding, carpet, curtains, draperies, furniture, household equipment or other goods or chattels or to any building.

APPLETON MUNICIPAL CODE

ARTICLE II. PUBLIC NUISANCES
GENERALLY*

Sec. 12-26. Penalty for violation of article.

Any person who shall violate any provision of this article shall be subject to a penalty as provided in §1-16.
(Code 1965, §9.05)

Sec. 12-27. Public nuisance defined.

A public nuisance is a thing, act, occupation, condition or use of property which shall continue for such length of time as to:

- (1) Substantially annoy, injure or endanger the comfort, health, repose or safety of the public.
- (2) In any way render the public insecure in life or in the use of property.
- (3) Greatly offend the public morals or decency.
- (4) Unlawfully and substantially interfere with, obstruct or tend to obstruct or render dangerous for passage any street, alley, highway, navigable body of water, or other public way or the use of public property.

(Code 1965, §9.02(1))

Cross reference(s) – Sanitary facilities required for housing, §4-238. Definitions and rules of construction generally, §1-2.

State law reference – Nuisances, W.S.A. §823.01, et seq.

Sec. 12-28. Public nuisances affecting health.

The following acts, omissions, places, conditions and things are hereby specifically declared to be public health nuisances, but such enumeration shall not be construed to exclude other health nuisances coming within the provisions of §12-27.

- (1) All decayed, harmfully adulterated or unwholesome food or drink sold or offered for sale to the public.
- (2) Carcasses of animals, birds or fowl not intended for human consumption or food which are not buried or otherwise disposed of in a sanitary manner within twenty-four (24) hours after death.
- (3) Accumulations of decayed animal or vegetable matter, trash, rubbish, rotting lumber, bedding, packing material, scrap metal or any material whatsoever in which flies, mosquitoes, disease-carrying insects, rats or other vermin may breed.
- (4) Any pit, hole, excavation, gully, ditch or depression of any nature whatsoever wherein water is

accumulated and retained for more than seventy-two (72) hours, except that stormwater conveyance systems or water quality devices installed or maintained by the City; or permitted stormwater control practices installed and maintained on public or private property, are not included.

- (5) Privy vaults and garbage cans which are not flytight.
- (6) All noxious weeds and other rank growth of vegetation.
- (7) All domestic animals running at large.
- (8) The pollution of any public well or cistern, stream, lake, canal or other body of water by sewage, creamery or industrial wastes or other substances.
- (9) Any use of property substances or things within the city emitting or causing any foul, offensive, noisome, nauseous, noxious or disagreeable odors, gases, effluvia or stenches extremely repulsive to the physical senses of ordinary persons which annoy, discomfort, injure or inconvenience the health of any appreciable number of persons within the city.
- (10) Any use of property which causes any nauseous or unwholesome liquid or substance to flow into or upon any street, gutter, alley, sidewalk or public place within the city.

(Code 1965, §9.02(2); Ord 118-08, §1, 7-8-08)

Cross reference(s) – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

Sec. 12-29. Public nuisances offending morals and decency.

The following acts, omissions, places, conditions and things are hereby specifically declared to be public nuisances offending public morals and decency, but such enumeration shall not be construed to exclude other nuisances offending public morals and decency coming within the provisions of §12-27.

- (1) All disorderly houses, bawdy houses, houses of ill fame, gambling houses and buildings or structures kept or resorted to for the purpose of prostitution, promiscuous sexual intercourse or gambling.
- (2) All gambling devices and slot machines.
- (3) All places where intoxicating liquor or fermented malt beverages are sold, possessed, stored, brewed, bottled, manufactured or rectified without a permit or license as provided for by the ordinances of the City.



"...meeting community needs...enhancing quality of life."

APPLETON FIRE DEPARTMENT
700 N. DREW STREET
APPLETON, WI 54911

MEMORANDUM

To: Chief Vander Wyst
From: B/C Joseph Strauss
Date: 6/7/2016
Re: **AMC 6-13(e)**

When the Appleton Fire Department receives a complaint that a recreational fire is bothersome to the occupants of a nearby residence, it has been the practice to determine the following:

1. Does the person having the fire have a valid permit with the City of Appleton,
2. Is the fire pit or appliance compliant (i.e. screen, cover, appropriate size, availability of water source, set backs, etc),
3. Is the person burning within the legally prescribed hours,
4. Is the person burning when the winds are below 9 mph,
5. Is the person burning approved fuels (i.e. dry, natural wood), and
6. Is the burning attended by someone at least eighteen (18) years of age.

These requirements are all clearly defined in AMC 6-13 (a) & (d).

It has been the position of the Appleton Fire Department in recent years that if the person burning their recreational fire is in legal compliance, that we would not ask them to extinguish it based simply upon a neighbors smoke complaint.

Upon examination of AMC 6-13 (See attached copy), subsection (e) includes the following language:

"The Fire Chief or his designee is authorized to require any fire to be immediately discontinued if determined that the smoke emissions are offensive to occupants of the surrounding properties or if the fire is determined to constitute a hazardous condition."

This subsection contradicts the position of the fire department as it relates to the smoke emissions of a recreational fire. As previously stated, as a department, we have determined that if a fire is in compliance, we would not have it extinguished simply because the smoke is offensive to someone. What is determined to be an offensive odor to one

"Appleton Fire Department....serving with P.R.I.D.E."

person can equally be pleasant to another. Further, if a fire pit is compliance, the owner should have the legal right to enjoy the fire, despite objections of a neighbor. Subsection (e) contains additional vague language such as "surrounding properties" and "hazardous condition." Does surrounding properties mean adjoining properties? What if the smoke wafts several houses down the block where it finds an open window? Is that surrounding? Equally vague, the term "hazardous condition" could mean a dangerous condition or it could mean chemically hazardous. What is the intent of the word hazardous?

Thus, my proposal would be to modify AMC 6-13 by eliminating subsection (e) in its entirety.

By eliminating subsection (e), AMC 6-13 would be consistent with the department's position that if a recreational fire is in compliance, we would not require its extinguishment simply due to smoke emissions.

Should the department be dispatched to a property that is having a fire and despite the legal compliance of the fire pit/appliance something is inherently dangerous/unsafe, the department could always fall back on AMC 12-27 (1) and classify the fire as a "Public Nuisance." AMC 12-27 (1) reads as follows:

Sec. 12-27. Public nuisance defined.

A public nuisance is a thing, act, occupation, condition or use of property which shall continue for such length of time as to:

(1) Substantially annoy, injure or endanger the comfort, health, repose or safety of the public.

By having the ability to utilize AMC 12-27 (1), the department will have some discretion to deal with a fire pit that although may be in compliance, is creating an obvious safety problem at that point in time. However, there is need to be cognizant that AMC 12-27 (1) should not be utilized to extinguish a fire that is in compliance but is "annoying" to a neighbor simply because they do not like the odor associated with the burning of a fire. AMC 12-27 (1) should be used with extreme caution and care as to address those fires that are inherently unsafe/dangerous. I would see the usage of AMC 12-27 (1) as being applied very rarely. I would encourage the officers to evaluate a fire by using items 1-6 as detailed above. If any of those items are not complied with, the fire can and should be extinguished. AMC 12-27 (1) should not be used to deal with a neighborhood dispute (i.e. a history of bad blood between neighbors) where there is a regular, small, controlled and safe backyard campfire producing a minimal amount of smoke that is typical for such a fire.

Recreational fire permits have increased from 868 in 2013 to 1,052 in 2015. We have seen a substantial increase in use of the on-line permit process for the fire permits. The Common Council made a determination years ago that recreational fires are one of those quality of life issues that citizens should have the ability to enjoy. This modification to the ordinance will be consistent with our position and the intent of the Common Council.