

**TOWN OF DILLSBORO
CONTROL AND PROHIBITION OF OPEN BURNING**

**ARTICLE I
STATUTORY AUTHORITY AND STATEMENT OF PURPOSE**

Section 1.1 Statutory Authority

The Legislature of the State of North Carolina has in Article 8 of Chapter 174, 175 and 185 delegated the responsibility to local governments of protecting the public health, safety and general welfare.

Section 1.2 Statement of Purpose

The purpose of this ordinance is to prevent and control air pollution resulting from air contaminants released in the open burning of combustible materials. This ordinance is consistent with and supplements state and federal laws and regulations governing air pollution.

**ARTICLE II
GENERAL PROVISIONS**

1. Open burning for land clearing or right-of-way maintenance within 1,000 feet of any dwelling other than a dwelling structure located on the property on which the burning is done is hereby prohibited. Where such burning is allowed, it shall be done consistent with the State of North Carolina's Air Pollution Control Requirements contained in North Carolina's Administrative Code, Title 15, Chapter 2, Subchapter 2D .0520.
2. Open burning of leaves, tree branches or yard trimmings originating on the premises of private residences and burned on those premises shall be allowed between the hours of 8:00 a.m. and 6:00 p.m. However, said burning shall not create a nuisance by allowing significant amounts of smoke, fly-ash or other pollutants from accumulating in any residential or commercial area.

**ARTICLE III
EFFECTIVE DATE**

This Ordinance shall be effective upon adoption.

Adopted this the ____ day of September, 1994.

ARTICLE III EMERGENCY DECLARATION DURING DROUGHT CONDITIONS

1. The Town Board of Alderman may declare a fire emergency due to dry and/or drought conditions and thereby prohibit all open burning. During this period no person shall cause, allow or permit the open burning of refuse or other combustible material.

2. Said declaration shall be in force for 60 days and may be extended by the Board of Alderman as needed in increments of 30-days.

ARTICLE IV PENALTIES AND REMEDIES

Any or all of the following procedures may be used to enforce the provisions of this ordinance.

1. Equitable Remedies. This ordinance may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction, including by way of example and not by way of limitation, the equitable remedies of injunction, mandamus or temporary restraining order, pursuant to NCGS 160A-175(d).

2. Any person who violates this ordinance shall be subject to the assessment of a civil penalty in accordance with the following procedures:

(a) Responsible Parties. The owner or occupant of any land, building or structure and any architect, builder, contractor, agent, or other person, who participates or acts in concert, assists, directs, creates, or maintains any condition that is in violation of this Ordinance may be held responsible for the violation and subject to the civil penalties and remedies provided herein.

(b) Notice of Violation. When the Town Clerk finds a violation of this Ordinance, it shall be his duty to issue the owner or occupant a "Notice of Violation" stating the following:

(1) That the Town Board of Aldermen has issued an Emergency Declaration due to dry and/or drought conditions and thereby prohibits all open burning;

(2) That the fire and all embers are to be extinguished immediately.

The Notice of Violation shall be in writing, and shall be delivered, by personal service, or by posting conspicuously on the property. The owner

or occupant shall remedy the violation within the time specified in the Notice of Violation.

(c) Issuance of Citations. No civil penalty shall be assessed under this Section until the person alleged to be in violation has been served with a Notice of Violation. If after receiving a Notice of Violation the owner or other violator fails to correct the violation, a civil penalty shall be imposed in the form of a citation. Such citation shall be in writing; shall be delivered by personal service, or by posting conspicuously on the property; shall state the civil penalty to be imposed upon the violator; and shall direct the violator to pay the civil penalty within 10 business days of the date of the violation. The following language shall be placed on any citation issued and served pursuant to this Ordinance: "Failure to pay the civil penalty stated hereinabove, in addition to other remedies against you, shall subject you to the payment of reasonable attorney's fees, not to exceed 15% of the outstanding balance, including the principal amount of the penalty and interest accruing thereon."

(d) Payment of Civil Penalties. The schedule for civil penalties shall be set forth in the Fee Schedule maintained in the Town Office by the Town Clerk. For each day the violation is not corrected, the violator will be guilty of an additional and separate offense and subject to additional civil penalty. If the offender fails to pay the civil penalties within 30 days after having been cited, the Town of Dillsboro shall recover the penalties in a civil action in the nature of debt. Assessment of civil penalties shall be stayed pending an appeal before the Town Board of Aldermen.

(e) Civil penalties assessed for violations of this ordinance shall constitute a lien against the property upon which the violation is, or has been, conducted.

3. Criminal Penalties. The maximum fine for any violation of this Ordinance prosecuted pursuant to NCGS 14- 4 shall be \$500.

ARTICLE V EFFECTIVE DATE

This Ordinance shall be effective upon adoption. Adopted this the _____ day of November, 1999.

W. Wade Wilson, Mayor

ATTEST: _____
Herbert A. Nolan, Town Clerk