



The Town of Hilton Head Island Regular Public Safety Committee Meeting

RESCHEDULED - Tuesday, June 4, 2013

10:00 a.m. – Benjamin M. Racusin Council Chambers

AGENDA

As a Courtesy to Others Please Turn Off All Cell Phones and Pagers during the Meeting

1. **Call to Order**
2. **Freedom of Information Act Compliance**
Public notification of this meeting has been published, posted, and mailed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.
3. **Approval of Minutes**
 - a. Regular Public Safety Committee Meeting of May 6, 2013
4. **Unfinished Business**
 - a. Consideration of a recommendation concerning proposed Ordinance prohibiting the composition, reviewing, or sending of electronic messages while operating a motor vehicle in the Town of Hilton Head Island
5. **New Business**
 - a. Consideration of a recommendation concerning proposed Ordinance prohibiting open burning of yard debris in the Town of Hilton Head Island
6. **Adjournment**

Please note that a quorum of Town Council may result if four (4) or more of Town Council members attend this meeting.

TOWN OF HILTON HEAD ISLAND
PUBLIC SAFETY COMMITTEE REGULAR MEETING

Date: May 6, 2013

Time: 10:00 a.m.

Members Present: Marc A. Grant, *Chairman*; Bill Harkins, *Council Member*; John J. McCann, *Council Member*

Members Absent: None

Town Staff Present: Lavarn Lucas, *Fire Chief*; Joheida Fister, *Fire Marshal*; Greg DeLoach, *Assistant Town Manager*; Brian Hulbert, *Staff Attorney*; Rene Phillips, *Website/Court Systems Administrator*; and Lynn Buchman, *Administrative Assistant*

Others Present: Lee Edwards, George Williams, and Kim Likins, *Council Members*; Captain Toby McSwain, *Beaufort County Sheriff's Office*; Keira Morris, *Beaufort County Sheriff's Office*; and Eleanor O'Key, *Lowcountry Inside Track*

Media Present: Brian Heffernan, *Island Packet*

1. Call to Order

2. Freedom of Information Act Compliance

Public notification of this meeting has been published, posted, and mailed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.

3. Approval of Minutes

Motion to approve the minutes of the January 28, 2013 Special Meeting of the Public Safety Committee was made by Mr. Harkins and seconded by John McCann. The Motion was approved unanimously.

Motion to approve the minutes of the January 31, 2013 Special Meeting of the Public Safety Committee was made by Mr. Harkins and seconded by John McCann. The Motion was approved unanimously.

Motion to approve the minutes of the February 4, 2013 Regular Meeting of the Public Safety Committee was made by Mr. Harkins and seconded by John McCann. The Motion was approved unanimously.

4. Unfinished Business

None

5. New Business

a. General Discussion of Texting

Joe Kopf, former Chairman of the Parks and Recreation Commission, Board Member of the Island Recreation and Senior Center, and a member of the Greater Island Council, presented a letter from Stu Rodman, Chairman of the Greater Island Council, recommending that Town Council consider enacting an Ordinance banning texting while driving. While recognizing that cell phone usage is also a problem, the Greater Island Council is asking that the Ordinance be patterned after current House Bill H.3121 to apply to all ages, but only as to texting and not apply to cell phone usage. He noted that Sheriff Tanner had also supported a condensed version of House Bill H.3121. Mr. Kopf shared with the Committee facts, statistics, and research concerning distractions created by texting while driving and talking on cell phones that resulted in accidents and deaths. He reviewed the City of Beaufort Ordinance, but noted that Sheriff Tanner had issues with the Ordinance, which he outlined. The background and content of House Bill H.3121 was detailed; however, he stated for Hilton Head Island needs, a reduced version of the Bill had been suggested by Sheriff Tanner.

Mr. Kopf's recommendations included:

- consider banning texting now for motorist driving, but do not ban cell phone usage at this time;
- review the Ordinance of the City of Beaufort, but consider a shorter version of H.3121 for Hilton Head Island; and
- don't wait for the State to enact legislation so that action can be taken before the tourists come to the Island.

Mr. Harkins expressed concerns that while on an intuitive level, texting is something that should not be permitted, the hard data that could create a cogent argument against it is not there. He posed the unanswered question as to whether Hilton Head Island should pass an Ordinance that may not be truly enforceable if not done countywide or statewide.

Greg DeLoach, Assistant Town Manager, updated the Committee on the status of H.3121 that remains in the House Judiciary Committee, and is unlikely to be adopted this session according to the Municipal Association. He noted, however, that it will certainly be re-considered in next year's legislative session.

Brian Hulbert, Staff Attorney, briefed the Committee on the memo and materials he provided as a part of the agenda packet to assist in their consideration of a ban to allow text messaging on hand-held devices while driving or the use of cell phones while driving. He outlined the differences in the Ordinances already passed by the City of Beaufort, Clemson, and Columbia, noting each assess a civil penalty and not a misdemeanor charge. Referencing House Bill H.3121, which is generating the most interest, he noted the felony component for great bodily injury or death resulting from a serious accident. He pointed out there are other bills pending in the House and Senate, and he outlined differences in those from H.3121.

Mr. Hulbert suggested the Committee fully consider and discuss the effect of such a ban, whether it should be age related, whether it should include texting and/or phone usage, and how enforceable and effective it would be. He noted the pros and cons listed in his memo and other materials provided in the agenda packet that should be part of the consideration, as well.

Mr. Hulbert pointed out that Staff does not have a recommendation as to whether or not Town Council should pass an Ordinance to ban texting or the use of cell phones within the Town, but he noted that any Ordinance passed is likely to be pre-empted by State law. He expressed his opinion that if there is a prohibition, with a misdemeanor or crime attached, it should be uniform and statewide rather than being done on a local basis. He reminded the Committee that with the large number of tourists coming from areas having differing laws on such use, education and enforcement will be difficult.

Mr. DeLoach added that the logic behind patterning a local Ordinance along the lines of H.3121 is that if a texting ban is adopted in the State, the local Ordinance would not need to be changed as much. Another component he mentioned was that in the event Council adopts a texting ban, a strategy should be established to work with the schools, parents, and organizations for on-going education about such a ban, and Mr. Hulbert agreed that research indicates that continuing education would be needed.

Lee Edwards, Council Member, inquired about the status of the state legislation, and Mr. Hulbert explained that while it did not pass in this legislative term, it could be taken up again in the next session starting in January, 2014.

In response to Chairman Grant's inquiry about problems in enforcement of the City of Beaufort Ordinance, Mr. Hulbert advised that they are in the education and warning phase now, but no numbers are available since the City of Beaufort has its own Police Department.

Mr. McCann noted the importance of this issue and the fact that the State may not pass such legislation for several years. Therefore, he felt the Committee should vote to move it on to the full Town Council for discussion and action. A motion was made by Mr. McCann that the Committee move this issue forward to the full Town Council for consideration of an Ordinance banning texting only. Chairman Grant and Mr. Hulbert clarified that a proposed Ordinance should be patterned after House Bill H.3121 rather than the City of Beaufort, Clemson, or Columbia Ordinances to make any violation a misdemeanor rather than a civil penalty or infraction.

A discussion followed concerning problems associated with enforceability of such an Ordinance, the use of education on an on-going basis instead of legal enforcement, and whether regulations without enforcement work.

Mr. Harkins seconded the motion.

Kim Likins, Council Member, spoke before the Committee as a mother of a teenager. She encouraged the Committee to bring this matter before the Town Council for further discussion and receipt of input from the community. Recognizing that enforcement would always be an issue, she stated that should not prevent Council from doing the right thing for the citizens of our community.

Mr. McCann reiterated his motion to recommend that the texting issue only be brought before Town Council for discussion of an Ordinance modeled after House Bill H.3121. Mr. Harkins seconded. The motion was passed by a vote of 3-0.

Proposals for modeling a proposed ordinance after H.3121 and procedural matters were discussed among the Committee members, Mr. Hulbert, and Mr. DeLoach. Chairman Grant will report on the Committee's recommendation at the Town Council Meeting to be held tomorrow, and depending on Council's direction, a draft Ordinance could be presented for first reading at the May 21st Town Council meeting.

b. 1st Quarter 2013 Crime Statistics – Capt. Toby McSwain

Capt. Toby McSwain from the Beaufort County Sheriff’s Office presented the 1st Quarter 2013 Crime Statistics. Looking at the overall statistics, he noted no significant events that had occurred over the first quarter of 2013.

Capt. McSwain reported on the status of the Town’s contract calling for a total of 39 officers, with 3 openings that were filled with officers currently in training in Beaufort for 6 to 8 weeks, and 1 remaining vacancy.

He noted that Spring Break created some calls for loud music and drunken and disorderly charges, but peaceful for the most part with not as many incidents as past years. No murders were reported for the first quarter, and although aggravated assaults saw an increase from last year, there were no significant changes.

Statistics on property crimes showed a decrease in larcenies and burglaries, and he noted court cases in the 4th quarter of 2012 resulting in convictions that may have affected those numbers, with other cases pending that may affect next quarter. An increase in vehicle collisions was reported from last year, but generally averaging the same as seen in the past year. He detailed the vehicle fatalities that had occurred. Traffic tickets this quarter he noted were down from last year, but he explained this also fluctuates as accidents take away time from the traffic team.

He reported the volunteer and reserve deputies logged 222 hours of reserve time over the last quarter and almost 830 hours of volunteer staff working at the Hilton Head Island office.

Chairman Grant asked for community concerns to be expressed. Bob Buterbaugh, a resident of Spanish Pointe, appeared before the Committee, explained his concerns about open burning of yard debris, and asked for consideration of a ban on such open burning. Karen Buterbaugh mentioned that a website had been set up to garner support from the community, and she read a letter from a resident who recently moved to the area from California who expressed her concerns about open burning. Gregg Clements reported on Ordinances in Myrtle Beach, Seabrook, and Kiawah Island that ban the open burning of yard debris, as well as other States that have taken such steps. He requested that positive action be taken and an Ordinance be brought forward to Town Council.

Adjournment

At 11:03 a.m. Mr. Grant moved to adjourn the meeting and Mr. McCann seconded. Chairman Grant declared the motion approved.

Respectfully submitted:

Lynn W. Buchman
Administrative Assistant

Approved by:

Marc A. Grant, Chairman

MEMORANDUM

TO: Public Safety Committee
FROM: Staff Attorney

Via: Stephen G. Riley, ICMA-CM, Town Manager
Gregory D. DeLoach, Esquire, Assistant Town Manager

RE: Proposed Ordinance Number 2013-07, Prohibiting the composition, reviewing, or sending of electronic messages while operating a motor vehicle in the Town of Hilton Head Island

DATE: May 9, 2013

Recommendation: Staff has no recommendation pertaining to the attached proposed Ordinance. The Greater Island Council of Hilton Head Island and Bluffton has made a recommendation that Town Council consider passing an Ordinance prohibiting the composition, reviewing, or sending of electronic messages while operating a motor vehicle in the Town of Hilton Head Island, and recommended that it be modeled after House Bill 3121, which is currently pending before the South Carolina Legislature.

Staff has drafted the attached Proposed Ordinance Number 2013-07, adding Section 611 to Chapter 1 to Title 12 of the Municipal Code (Text Messaging While Operating a Motor Vehicle), as recommended by the Town Council Public Safety Committee. This ordinance is modeled, in part, after House Bill 3121.

Summary: This Ordinance adds Section 611 to Chapter 1 to Title 12 of the Municipal Code and prohibits the composition, reviewing, or sending of electronic messages while operating a motor vehicle in the Town of Hilton Head Island. This proposed Ordinance will not prohibit the use of a hands free device to compose, review, or send an electronic message while operating a motor vehicle.

Background: At a recent Town Council meeting, Council requested that the Town Manager review a Beaufort City text messaging and cellphone ordinance and have a general discussion on the matter at a Public Safety Committee meeting. At its May 6, 2013 meeting, the Public Safety Committee had a general discussion related to whether to ban text messaging while operating a motor vehicle in Hilton Head Island and recommended Town Council have a general discussion concerning an Ordinance to ban text messaging while driving.

On September 11, 2012 the Beaufort City Council passed an ordinance banning all drivers from texting while driving and drivers under age 18 from using a cellphone while behind the wheels of a motor vehicle within city limits. The ban does not apply to GPS and similar devices. To date, Beaufort is the only municipality in the county to pass such an ordinance.

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND

PROPOSED ORDINANCE NO.: 2013-07

ORDINANCE NO.: 2013-

AN ORDINANCE TO AMEND THE MUNICIPAL CODE OF THE TOWN OF HILTON HEAD ISLAND BY ADDING ARTICLE 6 SECTION 12-1-611 TO CHAPTER 1 OF TITLE 12, ESTABLISHING A REGULATION PROHIBITING THE USE OF A HANDHELD ELECTRONIC COMMUNICATION DEVICE FOR THE REVIEWING, DRAFTING, OR SENDING OF ELECTRONIC COMMUNICATIONS WHILE OPERATING A MOTOR VEHICLE IN THE TOWN OF HILTON HEAD ISLAND; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, studies have shown that drivers attempting to compose, send, or review electronic messages on handheld electronic communication devices while operating a motor vehicle pose a special danger to themselves, other vehicles, bicycles, and pedestrians on the roadway; and

WHEREAS, Town Council finds that it is in the best interests of the vehicle operators and other vehicles to prohibit the use of handheld electronic communication devices to compose, send, or review electronic messages while operating a motor vehicle within the Town; and

WHEREAS, Town Council declares that the purpose of this ordinance is to protect the health and safety of the residents and visitors of Hilton Head Island; and

WHEREAS, Town Council now desires to prohibit the use of handheld electronic communication devices to compose, send, or review electronic messages while operating a motor vehicle within the Town in the manner provided for in this ordinance.

NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA; AND IT IS HEREBY ORDERED ORDAINED BY AND UNDER THE AUTHORITY OF THE SAID TOWN COUNCIL, AS FOLLOWS:

NOTE: Underlined and bold-face typed portions indicate additions to the Municipal Code. ~~Stricken~~ portions indicate deletions to the Municipal Code.

That Chapter 1 of Title 12 of the Municipal Code of the Town of Hilton Head Island, South Carolina, is hereby amended by adding Article 6 Section 12-1-611:

Article 6. TEXT MESSAGING

“Section 12-1-611. Electronic Communications While Operating a Motor Vehicle.

(a) **Definitions:**

“Electronic communications device” means an electronic device used for the purpose of composing, reading, or sending an electronic message, but does not include a global positioning system or navigation system or a device that is physically or electronically integrated into the motor vehicle.

“Electronic message” means a self-contained piece of digital communication that is designed or intended to be transmitted between physical devices. “Electronic message” includes , but is not limited to, electronic mail, a text message, an instant message, or a command or request to access an internet site.

- (b) **It shall be unlawful for a person to use an electronic communication device to compose, read, or send an electronic message while operating a motor vehicle on the streets and roads within the Town.**
- (c) **Exceptions. This section shall not apply to a person operating a motor vehicle while:**
- (1) off the traveled portion of a roadway;**
 - (2) using an electronic communication device in a hands free, voice-activated, or voice-operated mode that allows the driver to review, prepare and transmit an electronic message without the use of either hand except to activate, deactivate, or initiate a feature or function;**
 - (3) summoning medical or other emergency assistance; or**
 - (4) using a citizens band radio, commercial two-way radio communication device, in-vehicle security, or amateur or ham radio device.**
- (d) **Penalty. A person who violates this section is guilty of misdemeanor distracted driving and, upon conviction, shall be fined one hundred dollars for a first offense, two hundred dollars for a second offense, and three hundred dollars for a third or subsequent offense. This fine is subject to all applicable court costs, assessments, and surcharges.**

Section 2. Severability. If any provision, clause, sentence or paragraph of this Ordinance or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

Section 3. Effective Date. Ordinance shall become effective upon adoption by the Town Council of the Town of Hilton Head Island, South Carolina.

PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND ON THIS _____ DAY OF _____, 2013

**By: _____
Drew A. Laughlin, Mayor**

ATTEST:

**By: _____
Esther Coulson, Town Clerk**

**First Reading: _____
Second Reading: _____**

APPROVED AS TO FORM:

Gregory M. Alford, Town Attorney

Introduced by Council Member: _____

MEMORANDUM

TO: Public Safety Committee

FROM: Lavarn Lucas, Fire Chief 

Via: Stephen G. Riley, ICMA-CM, Town Manager
Gregory D. DeLoach, Esquire, Assistant Town Manager

RE: Proposed Ordinance Number 2013-08, Prohibiting the open burning of yard debris in the Town of Hilton Head Island

DATE: June 4, 2013

Recommendation: The Town of Hilton Head Island should adopt an ordinance to prohibit residential open burning of yard debris in order to reduce the risk of wildland fires and provide a healthier environment to our citizens.

Staff has drafted the attached Proposed Ordinance Number 2013-08, repealing Title 9, Chapter 7 of the Municipal Code (Open Burning) and reenacting a new Title 9, Chapter 7.

Summary: This Ordinance prohibits the open burning of yard debris. This proposed Ordinance will not prohibit recreational burning in an approved container or with a permit issued by Fire & Rescue.

The recommendation to prohibit open burning is based upon the following:

1. The open burning of yard debris does not coincide with at least two of the Town's *Destination 2028 Guiding Principles* which are:
 - Living in Harmony with Nature, Protecting the Natural Beauty, and Creating a Unique Sense of Place
 - Providing a Serene, Safe, and Healthy Living Environment for Residents, Guests and Visitors
2. The open burning of yard debris does not coincide with at least two of the Town's *Town of Hilton Head Island 2018: Our Goals* which are:
 - Enrich Lives of Residents and Guests
 - Pre-eminence for Environmental Stewardship
3. The Fire & Rescue 2013 Strategic plan contains a recommendation (BFP-07) which reads, *Fire & Rescue should increase enforcement of current open burning regulation and evaluate the need for a ban on open burning of yard debris.* It is clear that enforcing the existing regulation will not eliminate the unwanted and unwarranted smoke intrusion into peoples' homes.
4. The Town's effort to "go green" is not compatible with open burning.
5. The Town's effort to create an island-wide recycling program should include increased emphasis on composting instead of burning.

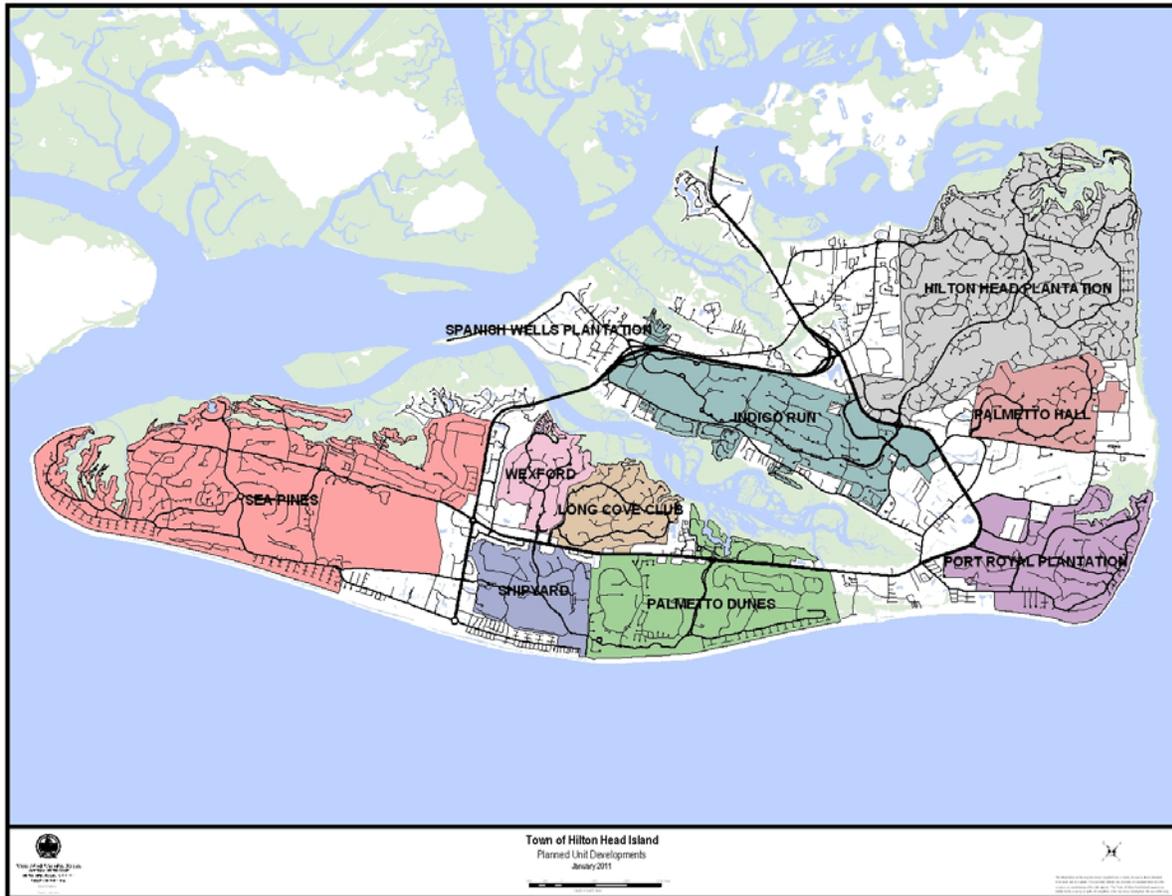
6. The Town passed an ordinance prohibiting smoking in public buildings effective May 1, 2007 to ensure that residents and visitors are not exposed to second-hand smoke. The penalty for violating the Hilton Head Island ban is a fine of as much as \$500.
7. Due to the wildland urban interface environment created by the development of the Town, dangers from out of control fires are more likely to endanger homes than in past years.
8. Open burning creates by-products of combustion that are toxic, thus endangering the health of citizens that are allergic or sensitive to smoke and other by-products of combustion.
9. Open burning fires create smoke that contaminates the interior of residences through open windows and through open doors as citizens enter and exit their dwellings or through their HVAC system.
10. The open burning rules are for the most part self-policing. A significant number of permitted open burning fires do not have adequate means in place to extinguish small fires, the pile size is too large, the wrong materials are being burned, or they are left unattended.
11. Many times calls for service are generated due to smoke in the area. Open burning fires generate citizen calls to the 911 center to report what they feel to be out of control fires.
12. 911 calls reporting smoke and fires require an emergency response fire apparatus placing both the emergency responders and public at greater risk.
13. Investigating open burning fires result in fire engines and ambulances being out of service while the investigation is taking place requiring units from further away to respond to real emergencies increasing response times.

Burning within the Town of Hilton Head Island is not an island wide occurrence. The major PUDs already forbid open burning either by covenants, by-laws, or just routine practice. PUD's that do not allow opening burning include:

- Hilton Head Plantation
- Indigo Run Plantation
- Long Cove Plantation
- Palmetto Dunes Resort
- Palmetto Hall
- Port Royal Plantation
- Sea Pines Plantation
- Shipyard Plantation
- Wexford Plantation

While this ordinance will apply Island wide, it only changes the existing practices to a limited portion of the Town and only single family dwellings. Multi-family locations are already restricted. The total number of single family residential units affected by the ordinance is 3,189 or only 21.6%.

Considering that the Town consists of slightly more than 20K acres, this ordinance affects only 6,645.3 additional acres or only 31.0% of the Town:



This proposed ordinance does not change any existing restrictions on commercial burning which is already banned. The ordinance refines the language for and continues to allow recreational burning such as camp fires. The ordinance also allows under very limited circumstances the possibility of the open burning of yard debris during significant weather events that may litter Hilton Head Island with unexpected levels of debris.

Background: Unlike in the past, open burning on an Island lot is now surrounded by multi-home subdivisions. The residents of these subdivisions are then subjected to smoke within their homes. This is especially true during times of temperature inversions when smoke won't dissipate. Temperature inversions occur when the air near the ground is cooler than the air above. This prevents upward air movement, therefore keeping the smoke at a lower level.

Open burning is hazardous to the health of residents and visitors to the island when the smoke won't dissipate and enters people's homes. Wood smoke poses a special threat to people with asthma and COPD and should be actively avoided by those with lung disease. Wood burning generates dangerous toxins including dioxin, arsenic and formaldehyde. Burning wood emits harmful toxins and fine particles in the air that can worsen breathing problems.

On April 1, 2007 an ordinance went into effect to ensure that residents and visitors are not exposed to second-hand cigarette smoke. The Town has stopped smoking in public places because it affects the health of others. The same concept should apply to the open burning of yard debris. Non-smokers could have simply gone to a less smoke filled restaurant. Homeowners who do not wish to breathe second-hand smoke for the open yard of yard debris should not be expected to isolate themselves inside their homes or move to a different neighborhood.

The current regulations which were enacted June 15, 1999 are a compromise reached to allow burning under very controlled situations. As the Town has grown, more and more homes are located closer and closer together. Hilton Head Island is not a rural community any longer and open burning of yard debris should be prohibited. Most of the Town's PUDs do not allow burning at all.

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND

ORDINANCE NO. 2013-

PROPOSED ORDINANCE NO. 2013- 08

AN ORDINANCE TO REPEAL CHAPTER 7 OF TITLE 9 OF THE MUNICIPAL CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA AND TO REENACT A NEW CHAPTER 7 OF TITLE 9, OPEN BURNING; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Hilton Head Island, South Carolina previously adopted Ordinance 99-18, Chapter 7 of Title 9 entitled “Open Burning” on June 15, 1999; and

WHEREAS, the Town Council now desires to amend various sections of Chapter 7 of Title 9 for the purpose of providing for the health and welfare of the residents and visitors of the Town; and

WHEREAS, smoke from outdoor burning in populated areas can present serious health hazards to individuals with respiratory ailments; and

WHEREAS, smoke from outdoor burning is a common cause of nuisance complaints between neighbors and is often a public nuisance impacting not only residents but visitors of the Town; and

WHEREAS, outdoor burning causing nuisance complaints places demands on resources of the Town of Hilton Head Island Fire & Rescue; and

WHEREAS, Forestry Commission firefighters respond to more than 3,000 wildland fires burning about 20,000 acres per year; 98% of the wildland fires are caused by human activities. Fire departments respond to more than 20,000 grass, brush, woods, or rubbish fires per year; and

WHEREAS, the Town Council now desires to reenact a new Chapter 7 of Title 9, Open Burning.

NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA; AND IT IS HEREBY ORDERED ORDAINED BY AND UNDER THE AUTHORITY OF THE SAID TOWN COUNCIL, AS FOLLOWS:

NOTE: Underlined and bold-face typed portions indicate additions to the Municipal Code. ~~Stricken~~ portions indicate deletions to the Municipal Code.

Section 1. Amendment.

- A. That Chapter 7 of Title 9 (Open Burning) of the Municipal Code of the Town of Hilton Head Island, South Carolina, is hereby repealed.
- B. A new Chapter 7 of Title 9 (Open Burning) of the Municipal Code of the Town of Hilton Head Island, South Carolina, is hereby adopted; see Attachment “A” for language of new ordinance.

Section 2. Severability. If any section, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 3. Effective Date. This Ordinance shall be effective immediately upon its adoption by the Town Council of the Town of Hilton Head Island, South Carolina.

PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND ON THIS ____ DAY OF _____, 2013.

Drew A. Laughlin, Mayor

ATTEST:

Esther Coulson, Town Clerk

First Reading:

Second Reading:

Approved as to form: _____
Gregory M. Alford, Town Attorney

Introduced by Council Member:

Attachment "A"

Chapter 7 OPEN BURNING

Sec. 9-7-10. Definitions.

- (a) Applicant(s). Individual(s) seeking a recreational fire permit
- (b) Approved container - Approved containers must be located at least 15 feet from any structure or combustible material and are limited to metal fire rings, commercially manufactured units for open flame type burning (Chimenea, outdoor fireplace, fire pits) or constructed fire pits at least 18 inches deep AND completely enclosed by a non-combustible material such as steel, brick, masonry or stone lining the perimeter. The internal dimension of the fire pit cannot exceed five feet in diameter.
- (c) Campfire. An outdoor fire not contained in a pit, barrel, or other non-combustible enclosure intended for recreation or cooking. A campfire shall not include a fire intended for disposal of wood, pine straw, leaves, grass or refuse.
- (d) Commercial burn. Burning performed for the purpose of commercial profit, land clearing, and all other burning not classified as residential burning or recreational fire.
- (e) Fire Chief. The individual in charge of Fire & Rescue. For the purpose of this chapter, the Fire Chief may designate members of Fire & Rescue as his designee.
- (f) Fire-extinguishing equipment. A garden hose connected to a water supply or other approved equipment.
- (g) Natural vegetation. Including but not limited to grass, pine straw, pine cones, tree limbs, branches, leaves and similar items of yard waste.
- (h) Open burning. Burning natural vegetation, outdoors, not contained within an incinerator, outdoor fireplace, barbecue grill, or barbecue pit.
- (i) Permit. A legal document issued by the Fire Chief on behalf of the Town granting temporary permission to conduct a fire.
- (j) Recreational fire. A fire contained within a pit, barrel, or other non-combustible enclosure for the purpose of pleasure, religious, ceremonial, or other similar purposes not including a fire intended for disposal of waste wood, pine straw, leaves, grass or refuse.
- (k) Rubbish. All waste material not defined as natural vegetation.

Sec. 9-7-20. Open Burning Prohibited.

No individual or group of individuals shall be allowed to kindle or maintain any open burn, or to authorize or to allow any such fire to be kindled or maintained. Open burning is prohibited except for the following:

- (a) Outdoor Cooking. This ordinance shall not apply to outdoor fixed and portable barbecues, food smoking units, and outdoor cooking stoves.

- (b) Recreational Fires. Rrecreational fires when contained within an approved container as defined in section 9-7-10(b) for the purpose of pleasure, religious, ceremonial, or other similar purposes. Approval for the container must be obtained from the Fire Chief. Prior to burning in the approved container the automated burn permit line shall be called to determine if burning is allowed on that day. The Fire Chief shall be allowed access to inspect the property on which any approved recreational fire container is located. The Fire Chief is authorized to revoke an approval for any recreational fire that is determined to be a public safety or health hazard.
- (c) Outdoor fireplaces which receive a Town issued Building Permit.
- (d) Campfires as permitted in Section 9-7-30
- (e) Burning by special permit as described in section 9-7-50.

Sec. 9-7-30. Permit Required

- (a) Applicant(s) are required to obtain a campfire permit if the fire is not in an approved container.
 - (1) Campfire permits are valid for the day of burning between the hours of 9:00 a.m. and midnight. All campfires shall be fully extinguished by midnight. Fires that illuminate the beach shall be extinguished by 10:00 p.m. from May 1st to October 31st.
 - (2) Campfire permits may be applied for any day of the week at any Town fire station between the hours of 8:00 a.m. and 5:00 p.m. Any individual, who obtains a campfire permit prior to the actual fire day, shall call Fire & Rescue's automated burning permit telephone line on the day they intend to burn to determine if burning is allowed on that day.
- (b) The Fire Chief shall be allowed access to inspect the property on which any campfire permit issued. The Fire Chief is authorized to revoke a campfire permit for any campfire that is determined to be a public safety hazard or health hazard.
- (c) Campfire restrictions.
 - (1) The individual performing the campfire fire shall have an approved permit in their possession at the site.
 - (2) Attendance by a competent adult who is capable of controlling the fire, taking emergency action, and calling for assistance is required at the site at all times.
 - (3) The individual performing the campfire shall maintain a garden hose connected to a water supply where water is available. If water is not available, then on-site fire extinguishing equipment shall be on-hand to control and extinguish the burn/fire.

- (4) Campfires are restricted to burning natural vegetation, commercially prepared fireplace logs, and charcoal, but shall not include the burning of rubbish or items of yard waste including but not limited to pine straw, leaves, grass.
- (5) Campfires shall not be conducted within 50 feet of any structure or stored combustible material.
- (6) A campfire permit shall not be issued for a total fire area greater than three feet in diameter and two feet in height. Only one pile may burn at a time.

Sec. 9-7-40. Commercial burning.

Commercial burning is prohibited except for:

- (a) *Storm debris.* Debris in the form of natural vegetation generated as a result of severe windstorms, hurricanes, tornadoes, or other natural disasters may be burned at approved sites in accordance with the Town's Debris Management Plan and with a permit issued by the Fire Chief and all other appropriate permitting agencies. All man-made materials and processed natural materials shall be disposed of in accordance with Federal Environmental Protection Agency and State Department of Health and Environmental Control Regulations.
- (b) *Bonfires, ceremonial.* Local schools may be issued special permits to conduct a bonfire. Items that may be burned in a bonfire are untreated wood/lumber and natural unprocessed forest products. The fuel area size limitations are not applicable to this burn. Inspections by the Fire Chief are required prior to and during the construction of the bonfire.
- (c) *Recreational Fires at commercial businesses.* Commercial businesses may conduct recreational fires when contained within an approved container as defined in section 9-7-10(b) for the purpose of pleasure, religious, ceremonial, or other similar purposes or campfires as permitted in Section 9-7-30. Approval for the container must be obtained from the Fire Chief . Prior to burning in the approved container the automated burn permit line shall be called to determine if burning is allowed on that day. The Fire Chief shall be allowed access to inspect the property on which any approved recreational fire container is located. The Fire Chief is authorized to revoke an approval for any recreational fire that is determined to be a public safety or health hazard.
- (d) *Exceptional Circumstances – Debris* in the form of natural vegetation generated at the site of a one or two family dwellings as a result of severe windstorms, hurricanes, tornadoes, or other natural disasters may be burned with approval of the Town Manager and the Fire Chief for a specific and limited timeframe. A permit is required to be obtained and the following regulations would apply.

- (1) Burning may occur on the dates listed on the permit between the hours of 9:00 a.m. and 6:00 p.m. or sunset, whichever occurs first. All open burning fires shall be fully extinguished by 6:00 p.m. or sunset, whichever occurs first.
- (2) The individual performing the burning shall have an approved permit in their possession at the site.
- (3) Attendance by a competent adult who is capable of controlling the fire, taking emergency action, and calling for assistance is required at the site at all times.
- (4) The individual performing the burning shall maintain a garden hose connected to a water supply where water is available. If water is not available, then on-site fire extinguishing equipment shall be on-hand to control and extinguish the burn/fire.
- (5) Burning is restricted to burning natural vegetation generated at the site and does not include rubbish.
- (6) Burning shall not be conducted within 50 feet of any structure or stored combustible material.
- (7) The total fire area shall not be greater than three feet in diameter and two feet in height. Only one pile may burn at a time.
- (8) The Fire Chief shall cause to be published in a newspaper of general circulation, a public notice of the dates that will be authorized for burning by special permit.
- (9) The Fire Chief shall cause to be published in a newspaper of general circulation, within the Town of Hilton Head Island, a public notice of revocation and dates in which burning by special permit was authorized.

Sec. 9-7-50. Extraordinary fire hazards.

- (a) The Fire Chief shall have the authority to declare the existence of an extraordinary fire hazard when, due to climatic, meteorological or other conditions, the forest, grass, woods, wild lands, fields, or marshes within the Town of Hilton Head Island become so dry or parched as to create a fire hazard endangering life and property. The declaration and restrictions for burning shall remain in effect until such time as the Fire Chief determines that the extraordinary conditions which threaten life and property no longer exist.
 - (1) The Fire Chief shall cause to be published in a newspaper of general circulation, a public notice of declaration of an extraordinary hazard.
 - (2) The Fire Chief shall cause to be published in a newspaper of general circulation, within the Town of Hilton Head Island, a public notice of revocation of the declared extraordinary fire hazard.

- (3) **During a declared extraordinary fire hazard, burning of any kind shall not be allowed.**

Sec. 9-7-60 Violations

- (a) **The Fire Chief are authorized to order the extinguishment of any fire that violates the provisions of this chapter or creates a public safety hazard, public nuisance or a public health hazard.**
- (b) **Any individual(s) violating any provision of this chapter shall be subject to the penalties set forth in section 1-5-10 of this Code. Each day's continued violation constitutes a separate offense.**