



## Legislation Text

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File #: 120655, Version: 1

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### 120655 SUBSTITUTE 1

ALD. WITKOWSKI

A substitute ordinance relating to the regulation of fire pits.

80-6.3 cr

214-9-1-a am

214-9-1-b am

214-9-1-d cr

This ordinance provides new regulations related to open burning and finds that open burning in violation of fire code restrictions constitutes a nuisance. The ordinance provides that, upon notice by a city official that open burning is in violation of the fire code, the open burning must be immediately extinguished by the party responsible for the fire or a by a party having control of the premises.

A citation for an open burning violation may be issued by an authorized city official with direct knowledge of the violation or upon the written complaint of a private party who has direct knowledge of the violation.

A violation may be cited under the building code as is currently provided or may be cited and fined as a nuisance under the new subsection. Class E penalties including a fine of not less than \$50 nor more than \$500 are provided for a first offense in a calendar year and Class O penalties including a fine of not less than \$300 nor more than \$1500 for a second or subsequent offense in a calendar year.

Furthermore, under this ordinance the minimum distance that open burning may be conducted from a flammable structure is increased from 15 to 50 feet.

The ordinance also clarifies that the exception for open flame cooking devices applies only to the operation of such devices for cooking with suitable cooking fuel.

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 80-6.3 of the code is created to read:

**80-6.3. Open Burning. 1. OPEN BURNING A NUISANCE.** Open burning occurring or conducted in violation of s. 214-9 is found to be a nuisance.

**2. NOTICE TO EXTINGUISH.** Notwithstanding the notice requirements of s. 80-8, upon oral or written notice by the commissioner, or any inspector, police officer or other person authorized by the commissioner, any open burning conducted in violation of s. 214-9 shall be immediately extinguished by any party responsible for the open burning or otherwise having control of the premises upon which open burning is found.

**3. PROSECUTION BY COMMISSIONER.** The commissioner may commence prosecution of any person believed to be responsible for an open burning nuisance violation upon observation by a police officer, department inspector or other person authorized by the commissioner to investigate or initiate prosecution under this section, upon direct evidence of open burning in violation of s. 214-9.

**4. COMPLAINT BY MEMBER OF THE PUBLIC.** As an alternative to commencement of prosecution based upon the direct observation of a police officer, department inspector, police officer or other person authorized by the commissioner to investigate or initiate prosecution under this section, the chief of police or commissioner may commence prosecution upon receipt of a complaint submitted by a member of the public that complies with the requirements of sub. 5 and that alleges conduct that is in violation of s. 214-9.

**5. INFORMATION CONTAINED IN COMPLAINT.** A complaint by a member of the public, sufficient to authorize the commencement of an open burning nuisance prosecution shall include relevant information relating to the date, time and place of the alleged open burning nuisance, the nature of the open burning, and shall identify the person or persons causing the open burning, or otherwise allowing the open burning, or alternatively, shall include information leading to the identification of the person or persons by police, a department inspector or other person authorized by the commissioner to investigate or initiate prosecution under this section. Information included in the complaint shall also identify one or more persons who witnessed or were affected by the open burning, at least one of whom shall be an adult available to testify in court.

**6. TESTIMONY REQUIRED.** No person shall be convicted under this procedure except upon testimony of at least one adult witness.

**7. PENALTIES.** As an alternative to penalties provided in s. 200-19 for violation of the restrictions on open burning in s. 214-9, conviction under this subsection of an open burning nuisance violation shall be punishable as provided in s. 80-90 for the first offense in a calendar year, and shall be punishable as a Class O offense upon conviction of a second or subsequent offense in a calendar year as provided in s. 61-21.

Part 2. Section 214-9-1-a and b of the code is amended to read:

**214-9. Responsibility to Eliminate Fire Hazards.**

**1. CONTAINERS FOR OPEN BURNING.** a. Open burning shall be conducted only in an approved and listed container or a substantial burner built of metal, concrete or brick, well covered or screened to prevent the escape of sparking and burning embers. >>All other open burning, including burning in earth pits or upon flat stone, concrete or other paved surfaces, is prohibited.<<

b. A burner shall not be operated within ~~[[45]]~~>>50<< feet of any combustible construction. Open flame cooking devices, including charcoal burners and LP gas burners, are exempt from this requirement for one and 2-family dwellings >> but only while operated for purposes of cooking using suitable cooking fuel<<.

Part 3. Section 214-9-1-d of the code is created to read:

d. Violations of this subsection may be punished as provided in s. 200-19 or as a public nuisance under s. 80-6.3-7.

APPROVED AS TO FORM

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Legislative Reference Bureau

Date: \_\_\_\_\_

IT IS OUR OPINION THAT THE ORDINANCE  
IS LEGAL AND ENFORCEABLE

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Office of the City Attorney

Date: \_\_\_\_\_

LRB142522-2.0

Richard L. Withers

5/21/2013