

Proposed by:	Administration
Attorney Review:	03/15/2014
Public Safety Review:	03/26/2014
First Reading:	04/03/2014
Second Reading:	04/17/2014
Vote:	6 Aye      0 Nay      0 Absent

**MUNICIPALITY OF SKAGWAY, ALASKA  
ORDINANCE NO. 14-05**

**AN ORDINANCE OF THE MUNICIPALITY OF SKAGWAY, ALASKA AMENDING TITLE 15 BUILDINGS AND CONSTRUCTION BY AMENDING CHAPTER 15.08 FIRE PREVENTION CODE TO PROVIDE THAT VIOLATIONS OF THIS CHAPTER ARE SUBJECT TO A CIVIL FINE; AND ESTABLISHING AN ADMINISTRATIVE APPEAL PROCESS FOR VIOLATIONS OF THIS CHAPTER.**

**NOW THEREFORE BE IT ORDAINED AND ENACTED BY THE MUNICIPALITY OF SKAGWAY, ALASKA AS FOLLOWS:**

**Section 1. Classification.** This ordinance is of a general and permanent nature and shall become a part of the Skagway Municipal Code.

**Section 2. Purpose.** To amend Chapter 15.08 Fire Prevention Code to provide that violations of this chapter are subject to a civil fine; and establishing an administrative appeal process for violations of this chapter.

**Section 3. Amendment.** The Skagway Municipal Code is hereby amended; (~~strike through~~) indicates text to be deleted from and (**bold underscore**) indicates text added to the current code. Chapter 15.08 Fire Prevention Code is hereby amended as follows:

Chapter 15.08

FIRE PREVENTION CODE

Sections:

15.08.010 Fire Prevention Code adopted.

**15.08.015 Definitions.**

15.08.020 Enforcement.

15.08.025 Urbanized area

15.08.030 Prohibited materials storage.

15.08.040 Minimum fire protection requirements for buildings in the urbanized area.

15.08.050 Exemptions and modifications.

15.08.055 Open Burning.

15.08.060 Penalties **Administrative appeal.**

**15.08.015 Definitions.**

**A. "False alarm" means an alarm which sends a prerecorded message or transmits a signal or message to the emergency services dispatch; devices that produce an audible or visible signal which is intended to alert the police or some other person that an emergency exists and requires assistance; that the fire chief or his/her designated representative determine is caused by a reason other than what the alarm is designed or intended to detect.**

**B. "Responsible party" is an individual assigned by the building owner to serve as a contact for alarm notifications and emergency situations.**

15.08.040 Minimum fire protection requirements for buildings in the urbanized area.

A. The following minimum fire protection requirements are in addition to those provided in the International Fire Code and shall apply to buildings within the urbanized area, as defined in subsection A of Section 15.08.025.

1. All commercial and mixed occupancy buildings in excess of five hundred (500) square feet in total floor area in existence on January 1, 1991, shall have installed by January 1, 1992 an automatic alarm notification system connected to municipal dispatch center in accordance with the National Fire Protection Association standards 71, 72A and 72E (2006 Edition). Commercial and mixed occupancy buildings permitted for construction subsequent to January 1, 1991 shall have such systems installed prior to occupancy.

2. **Building owner responsibilities:**

a. Building owner(s) are responsible for the continued operation and maintenance of the fire protection system requirements as stated within these codes. **Failure to maintain fire protection systems in full working order, including but not limited to** ~~Unauthorized disconnection and/or delinquent accounts which may include water, telephone and electric utilities will be charged a separate daily fee of one hundred dollars (\$100.00) until reconnected.~~ **will be subject to a civil fine established by resolution for each day that the fire protection system is out of service or necessary utilities are disconnected.**

b. **Building owners must maintain with the emergency services dispatch a current list of contact information of persons who are responsible for the building's fire protection systems. At least one responsible party must be available and respond within thirty (30) minutes to any alarm or issue that may arise with the fire protection system. Building owners must notify the emergency services dispatch center within five (5) days of any change to this list. Building owners who fail to maintain current contact information will be subject to a civil penalty established by resolution for every incident that occurs at their building when a responsible party fails to respond or is unable to be contacted.**

3. Exemptions or modifications to the requirements of this section shall be allowed only by issuance of a written exemption or modification to the owner of those buildings which, as determined in writing by the permitting official, meet one of the following conditions:

a. Commercial and mixed occupancy buildings of less than five hundred (500) square feet in total floor area.

b. Buildings in which there is an automatic fire extinguishing system installed in conformance with NFPA Standard 13, provided the system is in operation year-round with the extinguishing system alarm connected to the fire department alarm panel.

c. ~~Buildings that are unused, secure from unauthorized entry and with no electrical service from the electrical pole to the building.~~

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~~"Unused" shall mean any building not serviced by utilities and protected from unauthorized entry for the previous twelve (12) months. Reconnection of the automatic alarm notification system to municipal dispatch center shall be charged for at the rate of three hundred dollars (\$300.00).~~

~~dc.~~ Buildings used as one (1) or two (2) family dwellings.

~~ed.~~ Private garages accessory to one (1) or two (2) family dwellings.

B. **Temporary disconnection and deactivation:**

1. ~~Alarm notification systems may be temporarily disconnected~~ **deactivated for a period of time less than twenty-four (24) hours,** only under the following conditions:

1. ~~a.~~ When the alarm system is undergoing maintenance.

2. ~~b.~~ The fire department **emergency services dispatch center** shall be notified prior to disconnection of an alarm system and upon restoration of alarm system functions.

2. **Any disconnection or deactivation of alarm notification systems that is expected to last for a period of time greater than twenty-four (24) hours must be authorized in writing by the fire chief or a designated representative.**

C. Continued use of commercial and mixed occupancy buildings in excess of five hundred (500) square feet of total floor area within the urbanized area without a fully operable electronic fire warning system in conformance with published standards shall be deemed a violation of this code section; and the building owner, ~~upon conviction,~~ shall be subject to the penalty provisions of this chapter. Each separate building may give rise to a separate violation, and each day during which a building remains in use without a fully conforming electronic fire warning system shall be a separate violation.

D. Extinguishing Systems. Automatic fire-extinguishing systems shall be installed in accordance with National Fire Protection Association Standard Number 13 in all new construction in excess of five hundred (500) square feet in total floor area. For the purpose of this section, "new construction" shall include additions in excess of five hundred (500) square feet in total floor area to existing buildings. Such additions, if required to be protected by fire-extinguishing systems, shall not impose a requirement to install fire-extinguishing systems in the existing building. Fire-extinguishing systems shall not be required when an existing building is altered or repaired, unless such alteration results in an increase in total floor area in excess of five hundred (500) square feet.

E. Commercial structures in excess of 500 square feet in the business historic district shall be protected by automatic fire-extinguishing systems in conformance with National Fire Protection Association Standard Number 13 before the end of fiscal year 2015.

F. The borough manager shall under policies and guidelines adopted by the borough assembly establish a grant program for the installation of new automatic fire-extinguishing systems and the maintenance and/or replacement of existing automatic fire-extinguishing systems. This program shall be administered by the borough manager.

1. The borough assembly may fund this program with up to one-hundred-fifty-thousand (\$150,000.00) of sales tax revenue for each fiscal year. Funds will be available to private businesses within the business historic district. Funding will be through a grant of municipal money to install or maintain

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automatic fire-extinguishing systems in accordance with National Fire Protection Association Standard Number 13. The grant will be funded as follows:

- a. Seventy percent (70%) in fiscal year 2014;
  - b. Sixty percent (60%) in fiscal year 2015;
  - c. Fifty percent (50%) in fiscal year 2016;
  - d. Forty percent (40%) in fiscal year 2017;
  - e. Thirty percent (30%) in fiscal year 2018;
  - f. Twenty percent (20%) in fiscal year 2019; and
  - g. Ten percent (10%) in fiscal year 2020.
2. The merit to fund grant applications submitted under this program shall be in the following order:
    - a. In order of receipt, pending review and approval of applications by the Public Safety Committee, fire chief and permitting official;
    - b. Other merit may be given to requirements by the State Fire Marshal, or other fire safety needs as determined by the borough assembly.
  3. Final approval for grants shall be by borough assembly resolution.
  4. Subsection F of this section shall sunset at the end of fiscal year 2020.

**G. Penalties.**

1. **Violations of this code are subject to a civil fine. Civil fines may be imposed for intentional and/or repetitive alarm signals in excess of five (5) within the calendar year which are false due to negligence of the owner/operator or caused by the owner/operator or his tenants or employees. Identified false alarms shall be listed cumulatively by location during the calendar year. At the conclusion of the year incident logs shall be closed and a new list of false alarms shall be initiated as needed.**
2. **The borough assembly shall establish a fine schedule by resolution for violations related to fire protection system maintenance and upkeep.**

- H. Failure to contact the Skagway Police Department within five (5) days of the date of the notice of violation and arrange a payment schedule for the fine acceptable to the Police Department, or to pay the fine for a violation within five (5) days of the date of the notice of violation, or to file an appeal of a notice of violation within ten (10) days of the date of the notice of violation, will result in an additional fee in the amount of the civil fine.**

15.08.050 Exemptions and modifications.

- A. The fire chief is authorized to grant temporary exemptions from or modifications to provisions of the International Fire Code in individual instances, provided the applicant **demonstrates in writing with supporting documentation** shows (and the fire chief determines) that:
  1. There are practical difficulties in complying with the strict letter of the Code; and
  2. If the specific exemption or modification is granted, there will nevertheless be substantial compliance with the Code **and**; the public safety will be protected, ~~and substantial justice done.~~
- B. When an exemption or modification is granted or denied, the fire chief's decision and his reasons shall be entered upon the department's records, and a signed

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copy furnished to the applicant and permitting official. The denial of an application for a temporary exemption ~~The fire chief's decision~~ is subject to appeal to the borough assembly manager within thirty (30) days after issuance of the fire chief's decision. The appeal shall be limited to the written record upon which the fire chief made the decision. The Assembly borough manager shall give due deference to the decision of the fire chief.

15.08.055

Open burning.

A.

Definitions.

1. "Burn" is defined as causing, initiating and/or maintaining flaming combustion of solid or liquid fuels, whether in an enclosed incinerator, in a burn barrel or in an unenclosed pile.
2. "Open burning" is defined as the burning of material which results in the products of combustion being emitted directly into the ambient air without passing through a stack or flue.
3. "Burn permit" is defined as permission to burn, obtained from the fire department administrative office.
4. "Municipal burn ban" is defined as a ban against burning in the Municipality due to dry or unsafe conditions; this ban can be implemented by the fire chief, fire marshal or designee. Such bans may be established Municipality wide or may be modified for specific open burning activities as fire conditions dictate.
5. "Smolder" means to burn and smoke without flames.
6. "Putrescible garbage" is described as material that can decompose and cause obnoxious odors.

B.

General requirements.

A person conducting open burning must insure that:

1. The material is kept as dry as possible through the use of a cover or dry storage;
2. Before igniting the burn, noncombustibles are separated to the greatest extent practicable;
3. Natural or induced draft is present;
4. To the greatest extent practicable, combustibles are separated from grass or peat layer;
5. Combustibles are not allowed to smolder or emit excessive smoke.

C.

Restrictions.

1. No person may engage in the open burning of any material except as authorized by a valid open burning permit. There is no right to open burning. Open burning permits may be issued by the fire chief or the fire chief's designee upon application.
2. It is unlawful to conduct open burning during a "municipal burn ban", unless the open burn activities are done in accordance with any modifications to the ban in effect.
3. Open burning which creates a danger to public health or safety shall will not be allowed.
4. Open burning activities must be limited to ordinary combustibles such as paper, wood debris, or natural fibers.

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5. No person may cause or allow the open burning of: Asphalt, rubber, plastic, tar, wire insulation, petroleum products, petroleum-based products, petroleum-treated products, automobile parts, treated lumber, oily waste, contaminated oil clean up material, putrescible garbage, animal carcasses or any other materials that may produce black smoke.
6. It is unlawful to conduct the open burning of trash, waste, rubbish, refuse, slash, construction scraps, grass or weeds within the Municipality unless the person attending the burn complies with the rules set forth in the burn permit application and the following requirements:
  - a. The attendant has obtained a Municipal burn permit;
  - b. The attendant has notified the Police Department before the burn starts;
  - c. The attendant must burn according to permit conditions;
  - d. The attendant must observe all burning restrictions;
  - e. The attendant is over the age of fourteen years old;
  - f. The attendant watches the open burn until it ceases to flame;
  - g. The attendant must be able bodied enough to endure the strenuous activities involved with trying to control the fire while suppression forces arrive in case of an emergency;
  - h. The attendant must not be under the influence of alcohol or drugs;
  - i. The attendant must be able to call for assistance in the event of a problem;
  - j. The open burn is no closer than ten feet to any structure;
  - k. The attendant prevents the spread of fire to any other structure or property;
  - l. The attendant has a sufficient water supply to extinguish the open burn; or is equipped with a firefighting tool such as a shovel, heavy duty rake, wet gunny sack, hose.
- D. Permit. The permit, if issued, shall only be valid during the calendar year in which it was obtained; shall have a specified location and expiration date. The fire chief may refuse issuance to any applicant at any time.
- E. Liability. The Municipality, or the fire chief, shall be **indemnified and** saved harmless and free from all liabilities, claims, demands, suits, judgments and actions of any **kind and any** nature whatsoever arising out of issuing the burning permit. The property owner **shall** ~~will~~ be liable for any **and all personal and property** damages, **including death**, resulting from the open burn.
- F. Enforcement. When complaints regarding open burning are received by the Police Department or the Fire Department, the Police Department will be sent out to investigate the complaint. If the Police Department finds the open burn to be in violation of the Municipal Code or burn permit, the Police Department will ask that the fire be extinguished or the Fire Department will be called to extinguish it. A ~~citation may be issued to the violator in accordance with SMC 15.08.060 (A).~~ **In addition to any civil penalty incurred,** the fire chief or his designee may, at their discretion, revoke the right to obtain a burn permit for up to one calendar year as a result of infractions or violations to this code.
- G. Exceptions.
  1. Open burning of structures is allowed for the purpose of firefighter training, provided that the fire department has acquired the requisite Alaska Department of Environmental Conservation approval and made all the proper notifications and modifications.

2. Special burn permits may be issued by the fire chief, fire marshal or designee.

**H. Civil fines.**

1. **Open burning violations shall be subject to a civil fine. The borough assembly shall establish an open burning fine schedule by resolution.**

- I. **Failure to contact the Skagway Police Department within five (5) days of the date of the notice of violation and arrange a payment schedule for the fine acceptable to the Police Department, or to pay the fine for a violation within five (5) days of the date of the notice of violation, or to file an appeal of a notice of violation within ten (10) days of the date of the notice of violation, will result in an additional fee in the amount of the civil fine.**

15.08.060 Penalties **Administrative appeal.**

- ~~A. False alarms, as determined in writing by the fire chief or a designated representative, or violations of SMC 15.08.055 Open Burning shall be charged for as follows:~~

First offense:	\$ 50.00
Second offense:	100.00
Third and subsequent offenses:	200.00

- ~~B. Penalties may be imposed by the fire chief for malicious and/or repetitive alarm signals which are false due to negligence of the owner/operator or caused by the owner/operator or his tenants or employees. Identified false alarms shall be listed cumulatively by location during the calendar year. At the conclusion of the year incident logs shall be closed and a new list of false alarms shall be initiated as needed.~~

- A. Right to Appeal and Time for Appeal. Any persons who have been issued a notice of violation may appeal the notice of violation by filing an appeal with the borough manager within ten (10) days of the date of the notice of violation. The borough manager shall prepare appeal forms which the appellant may use.**

- B. Hearing Officer. The borough manager or such person(s) as the borough manager may designate shall serve as hearing officer for notice of violation appeals and shall have authority to decide such appeals.**

- C. Contents of Appeal. An appeal must be in writing and contain the following information:**

1. **Name and mailing address of the appellant;**
2. **Number or other sufficient identification of the notice of violation;**
3. **Statement of the reasons for the appeal;**
4. **Any facts, documents, photographs, witness statements, or other evidence supporting the appeal; and**
5. **Statement as to whether the appellant requests a hearing before a hearing officer, or whether the appeal can be decided without a hearing. If the appellant waives hearing, the hearing officer may decide the appeal based on the written statements of the appellant, the issuing officers and any witnesses' statements.**

- D. Administrative Hearing Procedures.**

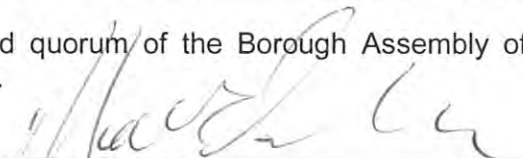
1. **Date of Hearing. Unless otherwise agreed to by the appellant and the hearing officer, a hearing requested under this section shall be held no later than fifteen (15) business days from the date the written notice of appeal is filed with the borough manager.**

2. Procedure. The hearing shall be conducted informally and may be governed by such rules as the hearing officer may choose to establish, except that:
  - a. Parties may appear in person or through counsel;
  - b. Parties may present witnesses and evidence on their own behalf and witnesses may be cross-examined;
  - c. The hearing is not governed by the formal rules of evidence. The hearing officer may consider evidence that the officer reasonably deems to be both relevant and material to the contested issues;
  - d. All hearings shall be open to the public;
  - e. The hearing shall be memorialized by electronic recording or stenographic record;
  - f. Failure of the appellant to appear at a hearing requested by the appellant shall waive all right to a hearing and shall render the amount of the fine due and owing.
3. Scope of Review. The hearing officer's decision shall be based on the law and facts applicable to the case. The hearing officer may affirm, modify, or dismiss the notice of violation.
4. Decision. No later than ten (10) business days following the hearing, the hearing officer shall issue a written decision setting out the hearing officer's findings and conclusions. The decision shall also include the following statement: "This is the final decision of the Municipality of Skagway and a party disputing this decision has thirty (30) days from the date this decision was mailed or distributed to file an appeal with the Superior Court for the State of Alaska, First Judicial District at Juneau, Alaska, in accordance with the Alaska Rules of Appellate Procedure." The decision shall be mailed or otherwise distributed to all parties to the appeal.
5. Judicial Appeal. The decision of the hearing officer may be appealed to the Superior Court for the State of Alaska, First Judicial District at Juneau, Alaska, in accordance with the Alaska Rules of Appellate Procedure.

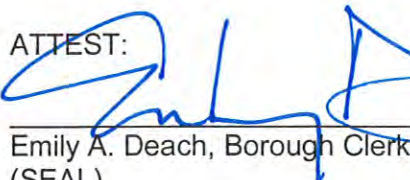
**Section 4. Severability.** If any provision of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

**Section 5. Effective Date.** This ordinance shall become effective immediately upon adoption.

**PASSED AND APPROVED** by a duly constituted quorum of the Borough Assembly of the Municipality of Skagway this 17<sup>th</sup> day of April, 2014.

  
\_\_\_\_\_  
Mark Schaefer, Mayor

ATTEST:

  
\_\_\_\_\_  
Emily A. Deach, Borough Clerk  
(SEAL)

