

ORDINANCE NO. 150

FIRST RESTATED BURNING ORDINANCE

AN ORDINANCE TO REGULATE OPEN BURNING IN LAKETOWN TOWNSHIP, TO PROHIBIT OPEN BURNING WITHIN CERTAIN AREAS OF THE TOWNSHIP, TO AUTHORIZE THE ISSUANCE OF BURNING PERMITS, TO PROHIBIT CERTAIN ACTS AND PRACTICES RELATING TO BURNING AND TO PROVIDE FOR PENALTIES FOR VIOLATIONS OF THIS ORDINANCE AND CERTAIN ADMINISTRATIVE PROVISIONS.

THE TOWNSHIP OF LAKETOWN, COUNTY OF ALLEGAN, AND STATE OF MICHIGAN ORDAINS:

Section 1. Purpose. The Township of Laketown finds that Persons in the Township have historically engaged in a practice of Open Burning, which practice, when conducted within certain areas of the Township, has negatively affected the health and welfare of some Township residents and other Persons. In addition, the Township has found that unregulated Open Burning increases the risk of property damage caused by uncontrolled fires, and threatens the safety and wellbeing of the Township's residents and other Persons. As a result of these determinations, the Township has adopted this Ordinance to regulate Open Burning throughout the Township and to prohibit Open Burning in those areas of the Township where Open Burning negatively affects the health and welfare of the Township's residents and other Persons.

Section 2. Definitions. For the purpose of their use in this Ordinance, the following words and terms are defined. Any word or term not defined below shall be considered to be defined in accordance with its common or standard definition.

- (a) "Fire Chief" means the Fire Chief of the Graafschap Fire Department, or the Fire Chief's designee.
- (b) "Flammable Material" means any substance that will burn, including, but not limited to, refuse, debris, waste, brush, stumps, logs, rubbish, fallen timber, grass, stubble, leaves, fallow land, slash, crops or crop residue.
- (c) "Lake Michigan Shore and Dune Area" means the area depicted in Attachment A.
- (d) "Open Burning" means a fire from which the combustion emissions pass directly into the open air without first passing through a stack or chimney.
- (e) "Person" means an individual, cooperative, public or private corporation, partnership, joint venture, association, personal representative, receiver, trustee, any unit or agency of government, or any equivalent entity, or any combination of them, or any officer, employee or agent of any of the foregoing.

- (f) "Populated Area" means the area of the Township that is zoned R-2 Residential or has a similar development density to areas zoned R-2 Residential.
- (g) "Roadway," "Sidewalk," "Street," "Vehicle" and "Motor Vehicle" shall have the definitions given to them in the Michigan Vehicle Code, being Michigan Act 300 of 1949, as amended.
- (h) "Supervising Adult" means a Person who is at least 18 years of age and who is responsible to supervise a fire.
- (i) "Township" means the Township of Laketown, Allegan County, Michigan.

Section 3. Regulation of Burning:

- (a) Open Burning shall be constantly attended until the fire is extinguished. A minimum of one portable fire extinguisher with a minimum 4-A rating or other approved on-site fire extinguishing equipment, such as dirt, sand, water barrel, garden hose or water truck, shall be available for immediate utilization.
- (b) Open Burning is prohibited after sunset and before sunrise, unless specifically approved by the Fire Chief.
- (c) Open Burning is prohibited within 15 feet of any structure, fencing or woodpiles, and within 15 feet of any public or private property line.
- (d) Persons living in Populated Areas may be issued permits to engage in Open Burning only on odd numbered days.
- (e) Open Burning in the Lake Michigan Shore and Dune Area is prohibited.
- (f) Charcoal burners and other Open Burning cooking devices shall not be operated on or within 10 feet of Flammable Materials, except on a lot with a single-family or two-family dwelling or except on a lot where each building is protected by an automatic sprinkler system.
- (g) Liquefied-Petroleum-gas fueled cooking devices with an LP gas container having a water capacity greater than 2.5 pounds (1.14kg) shall not be operated on or within 10 feet of Flammable Materials, except on a lot with a single-family or two-family dwelling.
- (h) No Person shall cause or permit any Open Burning within the Township, except as otherwise specifically allowed in this Ordinance.
- (i) No Person shall conduct a salvage operation by Open Burning within the Township.

- (j) The prohibition contained in this Section shall not apply to the following types of Open Burning (however, nothing in this Ordinance shall allow Open Burning in violation of burning bans imposed by the State of Michigan, or any other prohibitions enacted by the State of Michigan, the County of Allegan or the Township; such as the Laketown Township Park Regulation Ordinance, Ordinance No. 21, or any amendment or successor thereto, which prohibits Open Burning in public parks or places of recreation).
 - (1) Salamanders or other recognized trade devices used for heating by construction workers, provided no nuisance is created;
 - (2) Open charcoal or wood fires used for cooking of food, provided no nuisance is created;
 - (3) Fires set for the instruction of public fire fighters if the purpose of the fire is for fire fighting training; and
 - (4) Open fires used for destroying household paper (i.e. waste paper which normally and customarily is produced by the normal and customary operations of a household), provided that such household paper is in fact produced by the household located on the lot or parcel of land on which the burning takes place, provided that such lot or parcel of land is contained within the Agricultural District or the Rural Estate District established by the Laketown Township Zoning Ordinance and Map, provided that no nuisance is created, and provided that any such burning is accomplished within an approved burning barrel or other such container able to safely contain the fire and prevent it from spreading.
- (k) The Open Burning of grass, leaves, brush, stumps, logs, fallen timber, tree trimmings, stubble, fallow land, slash, crops or crop residue at a specific time and/or date and for a specific purpose is permissible, provided that the Person conducting the Open Burning obtains a burning permit from the Township prior to any such Open Burning.
- (l) Except as prohibited in subsection (e) above, which prohibits Open Burning in the Lake Michigan Shore and Dune Area, open fires for recreational purposes, such as campfires, are allowed, if a burning permit has been issued for them in accordance with Section 4. Furthermore, Open Fires for recreational purposes may not exceed five feet in width; they may not create a nuisance; a supervising adult must be present at all times until the fire is totally extinguished; and burning may occur only in an approved container which includes a spark arresting screen with no opening larger than .75 inch.

Section 4. Burning Permits. The issuance of burning permits shall be subject to the following regulations.

- (a) A Person shall make application by telephone, email or personally for a burning permit to the Fire Chief on forms prescribed by the Township. The permit

application forms shall contain such information as the Township determines is necessary for the Township to evaluate the permit application, including, but not limited to, the name, address, and telephone number of the applicant, the date(s) and time(s) of the proposed burning, the type of material to be burned, and the approximate quantity of material to be burned.

- (b) The Fire Chief shall, consistent with the provisions of this Ordinance, advise the Township Office of the times and conditions under which burning may be permitted and when the Township Office may issue burning permits on behalf of the Fire Chief. In determining such times and conditions, the Fire Chief shall consider the amount of rainfall in recent weeks, wind velocity, temperature, humidity, any burning standards or burning index promulgated by the Michigan Department of Natural Resources or any other State agency, and any other factors likely to increase the possibility of a dangerous or uncontrollable fire. In addition, the Fire Chief shall advise the Township Office, on request, as to whether a specific application for a burning permit should be granted and, if granted, whether any times or conditions should be included as part of the permit. No burning permit shall be issued which is inconsistent with the instructions of the Fire Chief.
- (c) A burning permit may be issued subject to the burning being conducted at certain times or under certain conditions or both. The times or conditions shall be stated verbally when a burning permit is issued. Any burning done in violation of the terms of a burning permit constitutes a violation of this Ordinance.
- (d) The Fire Chief shall investigate the origin of fires which violate this Ordinance, and shall actively endeavor with the cooperation of the Township Deputies, the Allegan County Sheriff's Department, the Michigan State Police and any other involved law enforcement agency to secure the conviction of Persons violating this Ordinance.
- (e) Any Person who is denied a burning permit or who is issued a burning permit with terms requiring that the burning be conducted at certain times or under certain conditions, and who feels aggrieved by the denial or the imposition of such terms, shall have the right to appeal to the Township Board by filing a written notice of appeal with the Township Clerk. The written notice of appeal must be filed within 10 days after the Person is denied a burning permit or issued a burning permit which contains terms the Person finds objectionable. The Township Board shall hold a hearing within 60 days after the notice of appeal is filed with the Township Clerk. The Township Clerk shall send the appellant written notice of the date and time of the hearing, by first class mail, postage prepaid, at the address shown on appellant's application, at least 10 days prior to the day of the hearing. The Township Board may reverse, affirm or modify the initial decision concerning the appellant's burning permit application. The Township Board's decision will be final.

Section 5. Prohibited Acts. No Person shall:

- (a) Set on fire or cause to be set on fire any Flammable Material located on a Roadway, Sidewalk, bicycle path, or any improved portion of a Street;
- (b) Dispose of a lighted match, cigarette, cigar, ashes, or other flaming or glowing substance, or any other substance or thing that is likely to ignite a forest, brush, or grass fire, or throw or drop from a moving Vehicle any such objects or substances;
- (c) Set on fire or cause to be set on fire any Flammable Material without taking reasonable precautions, both before and at all times after lighting the fire, to prevent the fire from spreading;
- (d) Leave a fire before it is extinguished, if the Person is the Supervising Adult;
- (e) Set a backfire or cause a backfire to be set, except under the direct supervision of the Fire Chief;
- (f) Use or operate a welding torch, tar pot, or any other device which may cause a fire outside of a building, without clearing Flammable Material surrounding the operation and without taking such other reasonable precautions necessary to insure against the starting and spreading of fire;
- (g) Operate or cause to be operated any engine, machinery, or Motor Vehicle not equipped with spark arresters or other suitable devices to prevent the escape of fire or sparks;
- (h) Discharge or cause to be discharged a gun firing flares, incendiary or tracer bullets or tracer charge onto or across any forest or grassland;
- (i) Engage in Open Burning except in compliance with this Ordinance;
- (j) As a Supervising Adult, allow a fire to smolder;
- (k) As a Supervising Adult, allow a fire to remain burning when wind velocity is unsafe for burning; or
- (l) Engage in any other activity which is prohibited by the terms of this Ordinance.

Section 6. Penalties. Any person who violates a provision of this Ordinance or fails to comply with any of its requirements shall be responsible for a municipal civil infraction subject to enforcement procedures as set forth in the Municipal Civil Infraction Ordinance adopted by the Township. Each day during which any violation continues shall be deemed a separate offense. Increased civil fines may be imposed for repeat violations of this Ordinance; a repeat violation means a municipal civil infraction violation committed by a person within any twelve month period for which a person admits responsibility or is determined to be responsible. The increased civil fine for repeat violations shall be as follows:

- (a) The fine for any offense which is a first repeat offense shall be \$250.00, plus costs and other sanctions; and
- (b) The fine for any offense which is a second repeat offense or any subsequent repeat offense shall be \$500.00, plus costs and other sanctions.

Any Allegan County Deputy Sheriff assigned to the Township pursuant to an agreement between the Township and Allegan County and the Allegan County Sheriff, as well as the Township Manager, are designated as the authorized Township Officials to issue municipal civil infraction citations (directing alleged violators to appear in Court) or municipal civil infraction notices (directing alleged violators to appear at the Laketown Township Municipal Ordinance Violations Bureau).

Section 7. Severability and Captions. This Ordinance and the various parts, sections, subsections, sentences, phrases and clauses thereof are declared to be severable. If any part, section, subsection, sentence, phrase, or clause is adjudged unconstitutional or invalid, the remainder of this Ordinance shall not be affected. The captions included at the beginning of each Section are for convenience only and shall not be considered a part of this Ordinance.

Section 8. Administrative Liability. No officer, agent, employee or member of the Township Board shall be rendered personally liable for any damage that may accrue to any Person or property as a result of any act or decision performed in the discharge of duties and responsibilities pursuant to this Ordinance. Notwithstanding any provision in this Ordinance or any other Township ordinance to the contrary, any Person who is issued a permit under this Ordinance who violates the terms of this Ordinance or the terms or conditions of the permit issued under this Ordinance, and who thereby causes damage to another Person or another Person's property, shall indemnify and hold the Township harmless from any liability arising out of the violation.

Section 9. Repeal. All resolutions, ordinances, orders or parts thereof in conflict in whole or in part with any provision of this Ordinance are, to the extent of such conflict, repealed.

Section 10. Effective Date. This Ordinance was approved and adopted by the Township Board of the Township of Laketown, Allegan County, Michigan, on May 14, 2008, and it is ordered to take effect 30 days after publication of the Ordinance or a summary in the *Holland Sentinel*, a newspaper with general circulation in the Township, pursuant to the provisions of Act No. 191 of the Public Acts of 1939, as amended.

Terry Hofmeyer, Township Supervisor

Wendy Van Huis, Township Clerk

CERTIFICATE

I, Wendy VanHuis, Clerk for the Township of Laketown, Allegan County, Michigan, certify that the foregoing First Restated Burning Ordinance was adopted at a regular meeting of the Laketown Township Board held on May 14, 2008. The following members of the Township Board were present at that meeting: Hofmeyer, Van Huis, Dewey, Stielstra and Scanlan. The following members of the Township Board were absent: none. The Ordinance was adopted by the Township Board with members of the Board Hofmeyer, Van Huis, Dewey, Stielstra and Scanlan voting in favor and no members of the Board voting in opposition. The Ordinance was published in the *Holland Sentinel* on May 21, 2008.

Wendy VanHuis, Clerk

RB080733

ATTACHMENT A

[Insert Lake Michigan Shore and Dune Area]

all area west of 66th Street