

**GAINES CHARTER TOWNSHIP
KENT COUNTY, MICHIGAN**

Ordinance No. 2017-Oct-01-BD

At a regular meeting of the Township Board for Gaines Charter Township held at the Township offices within the Township on October 9, 2017, at 7:00 p.m., the following Ordinance/amending ordinance was offered for adoption by Township Board Member Burnside and was seconded by Township Board Member Haagsma:

AMENDMENTS TO THE GAINES CHARTER TOWNSHIP CODE OF ORDINANCES REGARDING THE OPEN BURNING OF LEAVES, YARD CLIPPINGS, AND OTHER COMBUSTIBLE MATERIAL THROUGHOUT THE TOWNSHIP.

Article 1. Article VI. Burning, Sec.20-149 through Sec. 20-155, as contained in Chapter 20 Fire Prevention and Protection, of the Code of Ordinances of Gaines Charter Township, 93-DC-01-2L, is hereby amended by the repeal and replacement of said Sections. As hereby amended, Article VI of Chapter 20 shall read in its entirety as follows:

**Chapter 20 Fire Prevention and Protection
ARTICLE VI. - BURNING**

Sec. 20-149. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Burning permit means a permission to burn, issued verbally or by written permit by the appropriate fire department chief or his designated personnel.

Fire department means one of two township fire departments which respond to different areas of the township:

1. The Cutlerville fire department services the area west of Kalamazoo Avenue between 60th Street and 76th Street and west of Eastern Avenue between 60th Street and 108th Street.
2. The Dutton fire department services the area east of Kalamazoo between 60th Street and 108th Street as well as the area between 76th Street and 108th Street east of Eastern Avenue.

Brush. Combustible woody vegetation with a diameter of less than two inches and generally consisting of small trees, bushes and tree branches and twigs.

Legal non-conforming use. A zoning term used to classify a land use that was legal at the time it was created but which has since become impermissible because of a subsequent modification or adoption of a zoning ordinance. This is sometimes referred to as a “grandfathered” use.

Open burning. Open burning means the outdoor burning of any materials wherein through flame, or smoldering fire, products of combustion including heat, smoke and/or odor are emitted directly into the ambient air without passing through a stack or chimney from an enclosed chamber, except a “recreational fire” as defined herein. Utilization of mobile or stationary outdoor open flame cooking devices such as manufactured hibachis, charcoal grills, wood smokers, and propane or natural gas devices are not defined as “open burning.”

Open Flame cooking devices. Open Flame cooking devices include mobile or stationary cooking devices such as manufactured hibachis, charcoal grills, and smokers, including those utilizing propane or natural gas or other distilled petroleum fuel product.

Recurrent open burning. Open burning occurring repeatedly in the same location on the same premises on seasonal, annual or perennial basis.

Yard clippings. Yard clippings include leaves, grass clippings, weeds, vegetable, or other garden debris, shrubbery, brush or tree trimmings, less than 4 feet in length and 2 inches in diameter.

Approved fire pit or ring. Approved fire pit or ring means a pit or ring that is no larger than 3 feet by 3 feet in diameter and constructed of noncombustible material.

Recreational Fire. Recreational fire means an outdoor fire for the burning of material other than rubbish, leaves, and yard clippings, wet or unseasoned wood or other restricted materials as defined herein, where the fire being burned is contained in an approved “recreational fire site” as determined by compliance with the requirements of this ordinance.

Recreational Fire Site. Recreational Fire Site is an area of noncombustible and non-smoke or odor producing material, either of natural rock, cement, brick, tile or blocks, or metal, which may be depressed below ground, on the ground, or on a raised bed. Included are permanent outdoor wood burning fireplaces and mobile or stationary cooking devices. Burning barrels are not a “recreation fire site” as defined herein.

Prohibited materials. Prohibited materials include, commercial or industrial waste, food waste, oils, petro fuels, rubber, plastics, chemically treated materials, or other materials which produce excessive or noxious smoke such as tires, railroad ties, treated, painted or glued wood composite, carpeting, shingles, tar paper, insulation, composition board, sheet rock, wiring, paint or paint fillers, rags, cloth, bedding, leather, or any material classified as construction and demolition debris.

Restricted combustible waste. Restricted combustible waste materials include but are not limited to rubbish such as paper, cardboard, cartons, boxes, leaves, grass and other yard clippings and unseasoned or wet wood including but not limited to tree limbs; timber; logs; and stumps or other wood material which may produce excessive or noxious smoke due to high moisture content.

Restricted Burning Area. Restricted Burning Area means any lot or parcel of land within any platted or condominium subdivision development, apartment or multi-family condominium complex, manufactured home community and any land having a C-1, C-2,O-S,I-1, 1-2 Zoning designation or equivalent PUD zoning designation authorizing commercial, office-service or industrial land uses located in any part of the Township, along with any other lot or parcel of land located within the south ½ and the NE ¼ of Section 2, the south ½ of Section 3, the north ½ of Section 10, except the east 300 feet of the south 500 feet thereof, and all of Sections 1, 4, 5, 6, 7, 8, 9, 11, 17 and 18, as delineated on the Township map contained in Attachment "A" of this Ordinance.

Wood, seasoned. "Seasoned wood" means dry, clean wood such as twigs, branches, limbs, "presto logs," charcoal, cord wood or untreated dimensional lumber. The term does not include wood that is green with leaves or needles, rotten wet, oil soaked, or treated with paint, glue or preservatives. Clean wood lumber may be used for recreational fire when cut into lengths not exceeding the interior design dimension of an approved fire pit or ring.

Sec. 20-150. - Open burning of leaves and grass clippings in restricted areas; generally; Off-site burning; Prohibited open burn items.

1. Open burning of leaves and grass clippings.

- a. *Restricted burning area.* The open burning of leaves or grass clippings is prohibited at all times within the restricted burning area (see definition and attached Appendix A map)
- b. *Generally.* The open burning of leaves and grass clippings is permitted on a single family and two family residential premises that is not be located within a restricted burning area (ref. Sec. 20-151 and Appendix A) under the following circumstances:
 - i. The leaves or grass being burned must originate from the premises where the burn is occurring;
 - ii. The burning shall not be conducted upon any street, curb, gutter or sidewalk or on the ice of a lake, pond, stream or other waterbody.
 - iii. The burning must be conducted in a safe, supervised, manner when weather conditions minimize adverse effects and do not create a health hazard or a visibility hazard on roadways or pathways.
- c. *Off-site burning of leaves and grass clippings.* The open burning of leaves, grass or other yard clippings generated and collected from off-site is prohibited and is not eligible for open burning under the permitting provisions of SEC 20-154.

2. Prohibited open burn items. In no event whatsoever shall any person utilize open burning to burn any food waste, garbage, styrofoam, construction and demolition debris, chemically treated lumber, synthetic material, rubber or rubber-based material (such as, but not limited to, rubber tires) or other hazardous materials in the township, regardless of the method used for burning.

Sec. 20-151. Restricted burning areas, Limitations on burning (Ref. def. and Sec. Appendix A).
Within a restricted burning area the following special and general burning restrictions shall apply:

1. The burning of leaves and grass clippings is at all times prohibited.
2. Recreational fires and the use open flame cooking devices on single and two family residential properties are permitted in accordance with Sec. 20-152.
3. The open burning (non-recreational fires) is prohibited during the months of September, October and November. At all other times of the year non-recreational open burning may be authorized by the appropriate Fire Official under the provisions of Sec 20-153.
4. Except as may be permitted under the provisions of Sec. 20-152 as part of a site clearing and development process, open burning is prohibited on property zoned for commercial or industrial purposes.

Sec. 20-152. - Recreational Fires and open flame cooking devices; Single and two family properties; Multi-family residential properties.

1. **Single and two family residences.** *Recreational fires* and open flame cooking devices are permitted when the following conditions are met:
 - a. Recreational fire sites including fire pits and outdoor fireplaces must be located at least 25 feet from all structures, on dirt or another noncombustible surface, and all combustible material must be cleared at least five feet from the outermost edge of the fire pit or outdoor fireplace; provided, however, that a portable outdoor fireplace may be stored elsewhere when not in use.
 - b. The combustion area of a fire pit or outdoor fireplace may not be larger than three feet by three feet. Fire pits must include a fire-retaining ring at least 12 inches in height, and outdoor fireplaces must be enclosed on all sides with a protective screen or other noncombustible material.
 - c. Recreational fires must be clean burning and built only from dry wood material, cut no longer than 28 inches and not larger than a 4 inches in diameter or thickness.
 - d. No garbage, leaves, yard waste, trash or other prohibited or restricted material may be burned (ref. Sec. 20-149).
 - e. A person at least 18 years of age must supervise a recreational fire at all times.
 - f. An extinguishing agent must be kept within 10 feet of a recreational fire. Suitable extinguishing agents include a fire extinguisher with a minimum 4-A rating, an operable garden hose, or a pile of sand capable of extinguishing the recreational fire.
 - g. Recreational fires must be extinguished by midnight.
 - h. The Fire Department may extinguish or order the extinguishment of a recreational fire that it determines is a potential fire or safety hazard.

2. Multi-family Residential.

- a. Recreational fires on any premises supporting multi-family residences are prohibited.
- b. Open flame cooking devices utilizing charcoal, wood or commercial fire log products are prohibited unless the building, balcony or deck in or on which the device is located is protected by an automatic sprinkler system.
- c. LP- Gas cooking devices are limited to a gas container size of 1 pound (LP-gas capacity).

Sec. 20-153 Lawful Open Burning on large tracts. It shall be lawful for a person to conduct open burning as defined herein *only under the following circumstances:*

- a. When first authorized by a burning permit issued by the Cutlerville Fire Department or Dutton Fire Department, as appropriate (ref. Section 20-154).
- b. The premises is of such size or so situated that the burning will:
 - i. take place less 300 feet or more from a property line or public or private street or highway,
 - ii. take place less than 500 feet from a building owned or occupied by any other person,
 - iii. take place less than 100 feet from any building located on the premises;
- c. If located in a restricted burning area, no burning permits shall be issued during the months of September, October and November.
- d. Burning is prohibited if wind exceeds 15 mph and open burning may not be conducted on days when the Department of Environmental Quality has declared an "air quality action day" or during dry periods or drought when the fire danger rating is high or a burning ban applicable to Kent County has been imposed. Open burning shall otherwise be conducted in a safe, nuisance-free manner, when weather conditions minimize adverse effects and do not create a health hazard or a visibility hazard on roadways, railroads or airfields
- e. No materials may be burned upon any street, curb, gutter or sidewalk or on the ice of a lake, pond, stream or waterbody.
- f. The burning of limbs, logs, brush, and stumps must be in a single pile that is less than fifteen (15) feet in diameter and less than eight (8) feet high.
- g. A perimeter around the fire of at least fifteen (15) feet must be clear of combustible ground cover.
- h. Open burning shall be constantly attended and supervised by a competent person of at least eighteen (18) years of age until the fire is extinguished and is cold. Fire extinguishing equipment as may be necessary for the total control of the fire shall be readily available and at a minimum shall include a fire extinguisher with a minimum 4-A rating, an operable garden hose, or a pile of sand capable of extinguishing the fire.

Depending on the size and circumstances of the burn, additional fire control measures may be required as conditions to the issuance of a burning permit.

Sec 20-154. Burning permits for open burning; certain burning accepted without a burning permit.

1. **Permits Required.** No person shall start or maintain any open burning without a burning permit issued by the Cutlerville Fire Department or the Dutton Fire Department as applicable. There are two types of open burning permits that may be issued depending upon the circumstances of the applicant and the premises involved and subject to the provisions of Sec. 20-153. This Section shall not be construed to prohibit or regulate recreational fires and open flame cooking devices as defined herein and more specifically regulated by the provisions of Sec. 20-152.
 - a. Residential/backyard open burning. Residential/backyard open burning permits may be issued by the Fire Department, either verbally or in writing. Note; open burning conducted on a residential premises (premises occupied by a residential dwelling) may not involve material originating from another premises.
 - b. Recurrent Open Burning.
 - i. The permit may only be issued for property located in a residential or agricultural zoning district
 - ii. The permit may only be issued for a premises supporting an agricultural use, institutional use, an existing legal non-conforming landscaping business, or a landscaping business, agricultural rural enterprise, agricultural service business or other use if first authorized by a special use permit issued by the Gaines Township Planning Commission.
 - iii. The burning may only involve seasoned wood material. The burning of brush consisting of seasoned wood from small trees, bushes and tree branches, is permitted (ref. distinguishing definitions of “brush” and “yard clippings”)
 - iv. There shall be no burning of prohibited material or restricted material as defined herein, including leaves, grass clippings, vegetable or other garden debris.
 - v. The open burning of material generated off-site is permissible.
 - vi. No fire is to be commenced before dawn.
 - vii. No new fire may be ignited after noon on any authorized burn day and no new material may be added to a burning pile after 3 PM.
 - viii. No open burning shall occur on any Sunday or Federal holiday.
 - ix. If the principle use of the premises is classified as legally non-conforming, open burning must be a documented ancillary practice having occurred in essentially the same location on the same premises on a recurrent basis within at least 2 of the 5 years preceding adoption of this ordinance and at least once in the last two years preceding the permit request.

- x. If a use of the premises has been authorized as a special land use by the Gaines Township Planning Commission, open burning shall have been specifically authorized as an approved ancillary use associated with the special use, or it must be found by the zoning administrator to be an minor ancillary use that does not constitute a material expansion or change to the operation as authorized by the Planning Commission. If based on a lack of documented evidence the zoning administrator is unable to make that finding, the applicant will be required to obtain zoning approval from the planning commission to conduct open burning by way of an amendment to the applicable special use permit.
 - xi. Burning permits authorizing recurrent open burning on the same premises shall be issued in writing. The permit shall specify the location of the open burn, show compliance with the standards of this section, and indicate the time and date of the first burn, and the approximate annual number and scheduling of the open burns.
 - xii. The authorization of all subsequent burns shall be conditioned upon continued compliance with this ordinance and any additional conditions included on the written permit. The applicant shall provide verbal or written notification to the appropriate Fire Department of the date and time for each subsequent burn a minimum of 24 hours prior to each burn. Verbal or written approval by the fire department is required prior to ignition of each subsequent open burn and the approval shall be documented by the approving fire official.
- c. Any burning permit issued by the Fire Department may specify additional safety, monitoring and time restrictions as deemed appropriate by the fire official, based upon rules and guidelines published in advance by the appropriate department.
2. **Burning accepted without a burning permit.** The use of approved gaseous or liquid fired salamanders commonly employed in conjunction with building and construction operations as well as roofers, plumbers, tanners or other mechanics pursuing a business requiring the use of fire, or for the purpose of boiling tar, pitch or oil used in the course of a business or trade will be permitted when done in accordance with accepted safety standards.

Sec. 20-155. –General Exceptions.

The following are exceptions from the rules of this article prohibiting open burning:

- 1. County parks in which fires are permitted by the rules governing the parks; and
- 2. Fires authorized for the training of firefighters or other controlled burnings approved by the appropriate fire chief.
- 3. This ordinance shall not be construed to prohibit or regulate the open burning of combustible waste material by bona fide agricultural operations under state regulations such as the Right to Farm Act.

Sec. 20-156. - Violation a municipal civil infraction.

1. Any person violating this article is responsible for a municipal civil infraction, punishable as provided in Sec. 1-11.
2. In the event that fire personnel are called out on a violation of this article, all expenses incurred by the response call shall be paid by the land owner(s). The township may have a lien placed upon land, lots or parcels for such expense. Charges will be assessed as currently established or as hereafter adopted by resolution of the township board from time to time.

Sec. 20-157. - Enforcement.

The fire chief, township supervisor, or their designated agents, the officers of the county sheriff's department or any authorized law enforcement officer may cause complaint to be made for the violation of the provisions of this article.

Sec. 20-158 Cost Recovery; Imposition of lien: Other Remedies.

1. Cost Recovery. Any person who burns or allows burning in violation of this Ordinance, or any condition imposed on any permit issued pursuant to this Ordinance ("responsible party"), shall reimburse the Township for the expenses of suppressing such fire. Expenses incurred by the Township may include, but are not limited to, hourly charges for Fire Department equipment as established from time to time by the Township Board; the wages, salaries, fringe benefits, and insurance of fire fighters responding to the fire, and the costs of billing and collecting such expenses, including actual attorney fees. The appropriate Fire Chief shall submit to the Township Board a detailed listing of all expenses incurred by the Department in suppressing such a fire. The Township Board, by motion, may direct that an invoice for such expenses, or any portion thereof, be forwarded to the responsible party. The responsible party shall pay such invoice within 30 days of its receipt. For any amounts due that remain unpaid after 90 days, the Township may place the invoiced amount, including a late charge of one percent per month, or fraction thereof, as a lien on property owned by the responsible party. The lien shall be placed on the Township's next tax roll.
2. Other Remedies. In addition to the cost recovery provided for in subsection (a), the Township may take any other appropriate action to collect expenses imposed under this Ordinance. Recovery of such expenses does not otherwise limit the liability of a responsible party under local ordinance or state or federal law, rule, or regulation.

Secs. 20-159 Sample List of Materials Which Are NOT Legal To Burn.

It is not legal to burn most household items. The number listed after the materials below refers to the legal explanations of why the item may not be burned.)

- plastic milk jug 1,5; urethane foam pad 1,2; asphalt sealant 1
- plastic soda bottles 1,2; treated lumber 3; plastic food wrap 1
- magazines/catalogues 5; plywood 6; insulated electrical wire 1
- plastic pipe 1; osb/composite board 6; rubber hose 1

- food waste /garbage 4; plastic weed barrier 1; tires 1
- wooden furniture 3; water softener salt bag 1; plastic siding 1 1,2
- plastic garbage bags 1 ; aluminum foil, packaging, beer cans and 5 ; waste oil 4
- asphalt shingles 1 ; nylon carpet 1,2; painted siding 3
- polystyrene plates 1,2 ; plastic vapor barrier 1; tar paper 1
- plastic toys 1; nylon upholstery fabric 1,2; old building 7
- polystyrene foam packaging 1,2

Explanations & Alternatives:

1. All plastic, rubber and asphalt materials are prohibited from open burning under state law.
2. This synthetic material is a plastic and may not be burned.
3. Wood that is painted or chemically treated may not be burned under state law.
4. These materials are specifically prohibited from open burning under state law.
5. These materials should be recycled. They do not burn.
6. These materials contain resins and glues making them unsuitable for burning. They are not considered an unpainted, untreated wood as referenced and legally burned.
7. Individuals or businesses may not burn a building. The only exception is that a building may be burned by the fire department for training purposes after notification to DNR and removal of illegal materials.

Secs. 20-160-20-178. - Reserved.

Article 2. The Remainder of the Gaines Charter Township Code of Ordinances is Unaffected. Except as expressly amended by this Ordinance/ordinance amendment, the rest of the Gaines Charter Township Code of Ordinances remains unchanged and in full force and effect.

Article 3. Severability. Should a court of competent jurisdiction determine that any portion of this Ordinance/ordinance amendment is invalid or unconstitutional, that shall not affect the balance of this Ordinance/ordinance amendment, which shall remain in full force and effect.

Article 4. Effective Date. This Ordinance/ordinance amendment shall become effective upon the expiration of seven (7) days after this Ordinance/ordinance amendment or a summary thereof appears in the newspaper as provided by law.

The vote to adopt this Ordinance/ordinance amendment was as follows:

