

**GAINES TOWNSHIP
ORDINANCE NUMBER 100**

GAINES TOWNSHIP OPEN BURNING ORDINANCE

AN ORDINANCE to rescind Ordinance No. 77 in its entirety and to replace it with this ordinance, known as the Gaines Township Open Burning Ordinance, an ordinance to prohibit open burning and to regulate the setting of fires, to establish limited conditions therefore, and to require a burning permit for same; to prescribe the information to be disclosed in an application for a burning permit; to regulate permitted open burning; to provide for the collection of expenses incurred by the township in extinguishing fires caused by the failure to conform with the requirements of this ordinance; and to provide for penalties for the violation hereof.

The Gaines Township Board Hereby Ordains:

SECTION 1. SHORT TITLE.

This ordinance shall be known and be cited as the "Gaines Township Open Burning Ordinance".

SECTION 2. PURPOSE.

This ordinance is adopted in the interest of public safety, and is intended to promote the general peace, health, safety and welfare of the residents of Gaines Township and their property. This ordinance provides for the control of fires, open burning of trash and rubbish, obtaining of burning permits, hours within which fires may be set, and the prevention of damage or injury to persons and property caused by open burning.

SECTION 3. APPLICABILITY.

This ordinance is to apply to all persons, partnerships, firms, associations, corporations and other entities of any type, except that it shall not apply to organized and proper actions of the Gaines Township Fire Department.

SECTION 4. DEFINITIONS.

- A. "Agriculture fire" shall mean the burning of brush and other vegetation along fence lines and for the clearing of land in preparation for agricultural use.
- B. "Burning permit" shall mean the burning permit described in Section 7.
- C. "Fire" as used herein shall mean any common definition of such, and shall include the burning of wood or any wood products, trees, grass, leaves, paper, trash, garbage, refuse or any other item or substance.
 - 1. This definition shall not include the burning of charcoal or petroleum gas in a metal container made for the sole purpose of preparing food over such a contained heat area.

2. This definition shall not apply where the fire is a "campfire" such that the height of the fire, including flames, does not exceed twenty four inches (24") in height from the surrounding ground and where there is a defined fire pit not exceeding forty eight inches (48") in diameter. Such a fire pit shall be a depression below the grade of the ground or, if at ground level, shall be ringed by suitably large stones.
- D. "Open fire" or "open burning" as used herein shall mean any fire upon any woodlands, lots, subdivisions, grasslands, field, inside or outside a building or structure or public right-of-way within the Township of Gaines not wholly contained within an incinerator, outside fireplace, grill or other receptacle constructed for and suitable to the purpose of combustibles. It shall also mean a fire from which the products of combustion are emitted directly into the open air without passing through a stack or chimney.
- E. "Person" as used herein shall mean any natural person, partnership, firm, association, corporation or other entity of any type.

SECTION 5. PROHIBITIONS OF OPEN BURNING.

- A. Except as otherwise expressly provided herein, open burning of any material of any type is hereby declared to be unlawful and is expressly prohibited.
- B. Specifically, the following instances of open burning are expressly prohibited:
1. Any open fire upon any woodlands, lots, subdivisions, grasslands, fields, or public right-of-way within Gaines Township whenever there be danger of such fire spreading beyond the control of the person(s) so starting or having such open fire so as to injure, damage or imperil the life, limb or property of another;
 2. Any open burning which violates the provisions of the Michigan Air Pollution Act, as amended from time to time (and the rules promulgated thereunder);
 3. The open burning of household or other refuse at a private residence, multiple dwelling, or commercial or industrial site;
 4. The open burning of refuse or other waste materials inside a building or structure, unless said refuse or waste materials are burned in a stove, furnace, fireplace or incinerator which has a smoke pipe connected to a chimney which extends above the roof of the building or structure;
 5. The open burning of automobiles or parts thereof, including tires, rubber, plastics and other materials, and the burning of building demolition debris and excess construction material;
 6. The open burning at a time or place when wind conditions pose, or are reasonably apt to pose, a nuisance or danger to any person or property in the vicinity or close proximity thereof;

SECTION 6. LAWFUL OPEN BURNING; NECESSITY OF BURNING PERMIT.

- A. Fires for outdoor cooking and fires purposely set for the actual instruction and training of public and industrial fire-fighting personnel in Gaines Township are lawful and are allowed at any time without the need to secure a burning permit.
- B. Agricultural fires are lawful and are allowed at any time, only after, however, the person intending to set or start an agricultural fire has first secured a burning permit issued therefore by the Gaines Township Fire Chief or his designee.
- C. The open burning of trees, logs, leaves, brush and stumps in rural areas or for the purpose of clearing farmland, for farming purposes, may be allowed under such conditions as are specified in writing by the Gaines Township Fire Chief, or their designee, and attached to the required burning permit, but tires, plastics, highly flammable, toxic or explosive materials shall not be burned in such fires.
- D. Nothing in this ordinance shall be deemed to prohibit the burning of wood in stoves or furnaces used for heating residences or for cooking food, and nothing herein shall be deemed to prohibit the use of wood in fireplaces for decorative fires or for heating residences. Campfires and fires in cooking grills are expressly allowed and no burning permit is required where the purpose of said fires is outdoor cooking or other recreational activities.

SECTION 7. BURNING PERMITS.

- A. Any person wishing to set or start a fire or engage in open burning, must first apply for a burning permit, hereafter defined as a "burning permit," in the Gaines Township offices. Such burning permit shall be subject to approval or authorization by the Gaines Township Fire Chief. The application for such burning permit shall be on a form; and in such manner as is set forth by the Fire Chief, with Board approval, and shall include the following information:
 - 1. the name and address of the applicant;
 - 2. the location of the land and premises where the fire or burning is to be set or done, including the street address of the property where such fire is to be started;
 - 3. the identity of the owner of the property on which the fire is to be set;
 - 4. the type of material to be burned;
 - 5. the quantity of material to be burned;
 - 6. the estimated length of time needed to burn the materials;
 - 7. the time contemplated for starting such fire;
 - 8. the identity of a mature person who will be responsible for attending the fire; and
 - 9. such other or further information as may be deemed relevant by the Fire Chief.
- B. The Gaines Township Fire Chief, or his designee, may do a pre-inspection of the proposed burning site any time before such fire is to be allowed, and where it is deemed appropriate, additional conditions may be imposed, or the burning permit canceled.
- C. A fee for securing a burning permit may be charged in an amount to be established by the Gaines Township Board. Said fee will be established by resolution of the Township

Board.

- D. If such burning permit application is approved, the requested burning permit shall be issued.
- E. Any person denied a burning permit for a fire, or seeking any other relief pursuant to the terms of this ordinance, may appeal to the Gaines Township Board of Appeals following the method and procedure set forth in Ordinance 101-96, Article XX. No burning permit shall issue, nor any fire started, pending approval or review of the denial before the said Appeal Board, and in no case shall the desired fire be started until that Board has determined that the requested burning permit shall be issued.

SECTION 8. REGULATION OF LAWFUL OPEN BURNING.

Every fire or open burning for which a burning permit has been issued shall conform to all of the following requirements:

- A. Occur only at the time posted on the burning permit;
- B. Not be located within fifty feet (50) of any structures, combustible material or woodlots, and not be closer than twenty five feet (25) to any property boundary lines;
- C. Not include burning of building demolition or excess construction materials;
- D. Not be started, come into contact with and/or encroach upon any sidewalk, parkway, street, highway, alley, park or other public way or place, except as expressly authorized by the Fire Chief or his designee;
- E. Not be started or carried on upon any woodland, lot, subdivision, grassland, field or public right-of-way within Gaines Township before sunrise or later than one-half hour after sunset, except that the Fire Chief or his designee may authorize fires or open burnings at night for special occasions or under special conditions; and
- F. Comply with all conditions stated on the burning permit.

A burning permit holder shall be fully responsible for containing such fire or open burning, and shall further assume any and all civil and/or criminal liability which may result from a failure to contain such open fire.

SECTION 9. LIMITATIONS ON ISSUANCE OF BURNING PERMITS; DISCRETION OF FIRECHIEF TO RESTRICT OR REVOKE BURNING PERMIT

- A. At such times and under such conditions as may be deemed necessary by the Gaines Township Fire Chief, and to protect the safety, health, and welfare of the residents of Gaines Township, the Fire Chief, or his designee, may limit, restrict or totally prohibit any fire or open burning.
- B. The Fire Chief, or his designee, may prohibit any fire or open burning when atmospheric

conditions or local circumstances make such fires hazardous.

- C. The Fire Chief, in exercising the discretion herein, delegated to him, shall be guided by the environmental control guidelines applicable to open burning set forth in Act No. 348 of the Public Acts of the State of Michigan, 1965, commonly known as the Michigan Air Pollution Act, and is amended from time to time.
- D. The Fire Chief, or his designee, may revoke any burning permit issued hereunder when atmospheric conditions or other local circumstances make the contemplated fire hazardous or when the fire is or could be objectionable due to smoke or odor emissions. The Fire Chief, or his designee, shall order the extinguishment, by the burning permit holder or the fire department, of any fire or open burning which creates or adds to a hazardous or objectionable situation.

SECTION 10. CONTROL OF FIRES;

- A. Any person who causes a fire to be started shall be present at all times while the fire is burning, and such person shall not be out of sight, nor more than fifty feet (50) from any fire until such time as the heat from all material in the fire is completely extinguished.
- B. No item shall be placed in the fire that shall cause, or could cause, danger, damage or injury to persons or property, including environmental damage.
- C. No fire shall be set so as to cause any damage to any structure or any item or property, real or personal, that is not intended to be burned pursuant to the burning permit obtained therefor.
- D. No person(s) shall start any fire or engage in any open burning upon any woodland, tot, subdivision, grassland, field or public right-of-way within Gaines Township whenever there is danger of such fire spreading beyond the control of the person(s) starting or having such fire so as to damage, injure, or imperil the life, limb or property of another.

SECTION 11. ENFORCEMENT.

The Gaines Township Fire Chief, the Assistant Fire Chief, and any other person(s) designated by the Township Board pursuant to lawful authority, shall act as enforcement officers of this ordinance, and shall be charged with the duty of implementing its provisions.

SECTION 12. VIOLATION; ASSESSMENT OF COSTS AND EXPENSES.

- A. Any person, partnership, firm, association, corporation or other entity who ignites an open fire which causes the Gaines Township Fire Department, and/or any other fire department, to respond to an alarm or other call for assistance in controlling, containing or extinguishing of such illegal fire or other fire contrary to the provisions of this ordinance shall be required to reimburse said fire department(s) for all costs, expenses and charges reasonably or necessarily incurred as a consequence of the actions taken by such department(s) in response thereto, in an amount not less than Five Hundred Dollars (\$500.00).

- B. Further, the Gaines Township Fire Department, and/or any other fire department(s) which has responded to such a request or call for assistance in controlling, containing or extinguishing an open fire, set contrary to the provisions herein, may initiate civil proceedings against said person, partnership, firm, association, corporation or other entity, to recover all costs and expenses reasonably or necessarily incurred thereby, in an amount not less than Five Hundred Dollars (\$500.00).
- C. An owner or occupier of any property within Gaines Township who causes the Gaines Township Fire Department to be called or requested, on two (2) or more occasions within a twelve (12) month period, to respond for assistance in extinguishing any unregulated and unauthorized, or non-permitted fire, shall be liable to Gaines Township, upon demand made by the Fire Chief, for the sum of not less than Five Hundred Dollars (\$500.00). After each such response, the Fire Chief shall cause to be sent, to the person responsible for the unauthorized or non-permitted fire a notice advising them as to the cost, and the provisions of this ordinance.

SECTION 13. PRIMA FACIE NEGLIGENCE.

If a fire prohibited or regulated by this ordinance burns out of control, or spreads beyond its intended size or scope, and thereby causes damage or injury to person or property, the person(s) responsible for selling and/or overseeing such fire and the person(s) in control of the premises from which the fire originated, shall be deemed to have been prima facie negligent.

SECTION 14. NUISANCE.

It shall be unlawful and a nuisance for any person(s) to burn, or allow to be burned at any time or place, any materials of any kind which emit obnoxious or offensive odors. It shall further be unlawful and a nuisance for any person(s) to burn, or allow to be burned, at any time or place, any materials which emit sparks or burning embers upon adjoining, adjacent, neighboring or nearby premises or building structures.

SECTION 15. PENALTIES.

Any person who violates the provisions of this ordinance shall be responsible for violation of a municipal civil infraction, and upon entering a plea of responsibility, shall be subject to a fine of not more than Five Hundred Dollars (\$500.00).

SECTION 16. SEVERABILITY.

If any section, paragraph, clause or provision of this ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such section, paragraph, clause or provision shall not affect any of the remaining portions of this ordinance.

SECTION 17. REPEALING ORDINANCE NO. 77.

Ordinance No. 77, adopted in January 2005, is hereby repealed in its entirety.

SECTION 18. EFFECTIVE DATE.

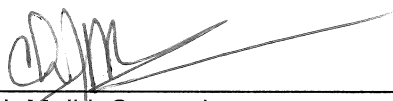
This ordinance shall become effective thirty (30) days upon passage and publication hereof.

At a regular meeting of the Board of Trustees for the Township of Gaines held on the 7th day of August, 2013 Chuck Melki moved for adoption of the foregoing ordinance and Lee Purdy supported the motion.

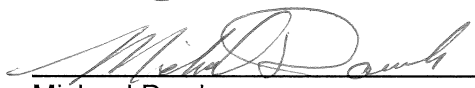
Voting for: Dowler, Hyrman, Melki, Purdy, Timmons.

Voting against: None.

The Supervisor declared the ordinance adopted.



Chuck Melki, Supervisor



Michael Dowler
Township Clerk

Certification

I, Michael Dowler, Gaines Township Clerk, hereby certify that the foregoing is a true copy of Ordinance No. 100 which was enacted by the Board of Trustees of Gaines Township at a regular meeting held on August 7, 2013.



Michael Dowler, Township Clerk