

ORDINANCE NO. 168-B

**OUTDOOR AND OPEN BURNING ORDINANCE**

AN ORDINANCE TO AMEND ORDINANCE 168 AND 168-A, KIMBALL TOWNSHIP BURNING ORDINANCE, AND TO ADOPT ORDINANCE 168-B, OUTDOOR AND OPEN BURNING ORDINANCE, FOR THE TOWNSHIP OF KIMBALL, MICHIGAN.

SECTION 1. PURPOSE

This ordinance is intended to promote the public health, safety and welfare and to safeguard the health, comfort, living conditions, safety and welfare of the citizens of the Township of Kimball by regulating the air pollution and the fire hazards of open burning and outdoor burning.

SECTION 2. APPLICABILITY

This ordinance applies to all outdoor burning and open burning within the Township of Kimball.

- 2.1. This ordinance does not apply to grilling or cooking food using charcoal, wood, propane or natural gas in cooking or grilling appliances.
- 2.2. This ordinance does not apply to burning for the purpose of generating heat in a stove, furnace, fireplace or other heating device within a building used for human or animal habitation.
- 2.3. This ordinance does not apply to the use of propane, acetylene, natural gas, gasoline or kerosene in a device intended for heating, construction or maintenance activities.

SECTION 3. SEVERABILITY

Should any portion of this ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected.

SECTION 4. DEFINITIONS

- 4.1. “Campfire” means a small outdoor fire intended for recreation or cooking but not including a fire intended for disposal of waste wood or refuse. Size limited to four foot by four foot by four foot. (4’ wide x 4’ deep x 4’ tall).
- 4.2. “Clean Wood” means natural wood which has not been painted, varnished or coated with a similar material; has not been pressure treated with

preservatives; and does not contain resins or glues as in plywood or other composite wood products.

- 4.3. “Construction and Demolition Waste” means building waste materials, including but not limited to waste shingles, insulation, lumber, treated wood, painted wood, wiring, plastics, packaging, and rubble that results from construction, remodeling, repair, and demolition operations on a house, commercial or industrial building, or other structure.
- 4.4. “Fire Chief” means the Chief of the Kimball Township Fire Department or other person designated by the Fire Chief.
- 4.5. “Municipality” means a county, township, city, or village.
- 4.6. “Outdoor Burning” means open burning or burning in an outdoor wood-fired boiler or patio wood burning unit.
- 4.7. “Open Burning” means kindling or maintaining a fire where the products of combustion are emitted directly into the ambient air without passing through a stack or a chimney. This includes burning in a burn barrel.
- 4.8. “Outdoor Wood-fired Boiler” means a wood-fired boiler, stove or furnace that is not located within a building intended for habitation by humans or domestic animals.
- 4.9. “Patio Wood-burning Unit” means a chimney, patio warmer, or other portable wood-burning device used for outdoor recreation and/or heating.
- 4.10. “Refuse” means any waste material except trees, logs, brush, stumps, leaves, grass clippings, and other vegetative matter.

#### SECTION 5. GENERAL PROHIBITION ON OUTDOOR BURNING AND OPEN BURNING

Open burning and outdoor burning are prohibited in the Township of Kimball unless the burning is specifically permitted by this ordinance.

- 5.1. **There shall be no open burning allowed on October 30<sup>th</sup> or 31<sup>st</sup>.**
- 5.2. **There shall be no open burning within one thousand feet (1,000’) of any school while school is in session.**

#### SECTION 6. OPEN BURNING OF REFUSE

- 6.1. Open burning of refuse from a commercial or industrial establishment is prohibited.

- 6.2. Open burning of refuse from and at a one or two family dwelling is allowed if all the following conditions are met:
  - 6.2.1. The burning does not create a nuisance. No materials shall be burned that create a foul or offensive odor or that cause smoke emissions that are a nuisance to surrounding properties.
  - 6.2.2. The burning is conducted in a container constructed of metal or masonry that has a metal covering devise that does not have an opening larger that  $\frac{3}{4}$  inch.
  - 6.2.3. The material being burned is not prohibited under subsection 6.3.
  - 6.2.4. A permit issued in accordance with Section 13 of this ordinance has been obtained.

6.3. Open burning of the following materials is prohibited:

- 6.3.1. Construction and demolition waste.
- 6.3.2. Hazardous substances including but not limited to batteries, household chemicals, pesticides, used oil, gasoline, paints, varnishes, and solvents.
- 6.3.3. Furniture and appliances.
- 6.3.4. Tires.
- 6.3.5. Any plastic materials including but not limited to nylon, PVC, ABS, polystyrene or urethane foam, and synthetic fabrics, plastic films and plastic containers.
- 6.3.6. Treated or painted wood including but not limited to plywood, composite wood products or other wood products that are painted, varnished or treated with preservatives.

SECTION 7. OPEN BURNING OF TREES, LOGS, BRUSH, STUMPS, LEAVES, AND GRASS CLIPPINGS

- 7.1. Open burning of trees, logs, brush, stumps, leaves, and grass clippings is allowed only in accordance with all of the following provisions:
  - 7.1.1. Except for campfires, a permit issued in accordance with Section 13 of this ordinance must be obtained prior to open burning under this section when the ground is not snow covered.

- 7.1.2. Open burning of trees, logs, brush, and stumps must be conducted at least 1,400 feet from an incorporated city or village limit.
- 7.1.3. Except for barbecue, gas, and charcoal grills, no open burning shall be undertaken during periods when the Governor of Michigan, Department of Environmental Quality or Department of Natural Resources has issued a burning ban applicable to the area.
- 7.1.4. All allowed open burning shall be conducted in a safe, nuisance-free manner, when wind and weather conditions minimize adverse effects and do not create a health hazard or a visibility hazard on roadways, railroads or airfields. Open burning shall be conducted in conformance with all local and state fire protection regulations.
- 7.1.5. Open burning shall be conducted only on the property on which the materials were generated.
- 7.1.6. Outdoor campfires and small bonfires for cooking, ceremonies, or recreation are allowed provided they do not cause a nuisance.
- 7.1.7. Open burning under this section shall only be conducted at a location at least one hundred feet (100') from the nearest building which is not on the same property.
- 7.1.8. Except for campfires, open burning shall only be conducted **during daylight hours and shall be completely extinguished prior to sunset.**
- 7.1.9. 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. The person shall have readily available for such fire extinguishing equipment as may be necessary for the total control of the fire.
- 7.1.10. No materials may be burned upon any street, curb, gutter or sidewalk or on the ice of a lake, pond, stream or waterbody.
- 7.1.11. Except for barbecue, gas, and charcoal grills, no burning shall be undertaken within twenty-five feet (25') from any combustible material, combustible wall or partition, exterior window opening, exit access or exit unless authorized by the Fire Chief.
- 7.1.12. No open burning may be conducted on days when the Department of Environmental Quality has declared an "air quality action day" applicable to the Township of Kimball.

## SECTION 8. AGRICULTURAL BURNING

Open burning of weeds, brush, and crop stubble on agricultural lands is allowed if conducted in accordance with other applicable provisions of this ordinance.

## SECTION 9. PRESCRIBED BURNS

- 9.1. “Prescribed Burn” means the burning, in compliance with a prescription and to meet planned fire or land management objectives, of a continuous cover of fuels. A “prescription” means a written plan establishing the criteria necessary for starting, controlling, and extinguishing a burn.
- 9.2. Fires set for forest, prairie, and wildlife habitat management are allowed only if conducted in accordance with Part 515 of the Natural Resources and Environmental Protection Act, MCL 324.51501 et seq.

## SECTION 10. OUTDOOR WOOD-FIRED BOILERS

An outdoor wood-fired boiler may be installed and used in the Township of Kimball only in accordance with all of the following provisions:

- 10.1. The outdoor wood-fired boiler shall not be used to burn refuse.
- 10.2. The outdoor wood-fired boiler shall be located at least one hundred-fifty feet (150’) from the nearest building which is not on the same property as the outdoor wood-fired boiler.
- 10.3. The outdoor wood-fired boiler shall have a chimney that extends at least fifteen feet (15’) above the ground surface. If there are any residences within two hundred fifty feet (250’) the chimney shall also extend at least as high above the ground surface as the height of the roofs of all such residences. The Fire Chief may approve a lesser height on a case-by-case basis if necessary to comply with manufacturer’s recommendations.
- 10.4. The owner of the outdoor wood-fired boiler shall obtain an annual permit from the Fire Chief in accordance with Section 13 of this ordinance.
- 10.5. Wood-Fired Boilers installed prior to the adoption of this ordinance may be exempt from 10.2 and 10.3.

## SECTION 11. PATIO WOOD-BURNING UNITS

A patio wood-burning unit may be installed and used in the Township of Kimball only in accordance with all of the following provisions:

- 11.1. The patio wood-burning unit shall not be used to burn refuse.

- 11.2. The patio wood-burning unit shall burn only clean wood.
- 11.3. The patio wood-burning unit shall be located at least fifty feet (50') from the nearest structure which is not on the same property as the patio wood-burning unit.
- 11.4. The patio wood-burning unit shall not cause a nuisance to neighbors.

## SECTION 12. FIRE SUPPRESSION TRAINING

Notwithstanding Sections 5 and 6 of this ordinance, structures and other materials may be burned for fire prevention training only in accordance with all of the following provisions.

- 12.1. The burn must be exclusively for fire prevention training. The burning shall not be used as a means to dispose of waste material including tires and other hazardous materials.
- 12.2. All ash shall be disposed of in an approved landfill or at an alternate location approved by Michigan Department of Environmental Quality.
- 12.3. Asphalt shingles and asphalt or plastic siding shall be removed prior to the practice burn unless the Fire Chief determines that they are necessary for the fire practice.
- 12.4. At least 48 hours before a planned practice burn, residents within one thousand feet (1,000') of the site of the proposed burn shall be notified.
- 12.5. All fire suppression training should conform to the guidelines established by the National Fire Protection Association (NFPA) Standard on Live Training Evolutions (NFPA 1403).

## SECTION 13. BURNING PERMITS – NON CONFORMING FIRES

Campfires in any licensed or regulated campground shall not have to obtain permits but shall adhere to size limitations in Section 4, Definition 4.1.

- 13.1. No person shall start or maintain any outdoor burning or open burning covered under this section without a burning permit issued by the Kimball Township Fire Department or its designee, the Township of Kimball.
- 13.2. Any person responsible for burning leaves, brush, clean wood or other vegetative debris under Section 7 of this ordinance shall obtain a yearly burning permit before starting the fire. The fee for each yearly burning permit shall be fifteen dollars (\$15.00).

- 13.3. An outdoor campfire does not require a permit provided that the fire complies with all other applicable provisions of this ordinance.
- 13.4. The owner or occupant of the property shall obtain an annual burning permit for each **outdoor wood-fired boiler** before using. The fee for each annual burning permit shall be fifteen dollars (\$15.00). An annual permit expires **March 1<sup>st</sup>** of each year.
- 13.5. When weather conditions warrant, the Fire Chief may temporarily suspend issuing burning permits and may temporarily suspend previously issued burning permits for open burning.
- 13.6. A burning permit issued under this section shall require compliance with all applicable provisions of this ordinance and any additional special restrictions deemed necessary to protect public health and safety.
- 13.7. Any violation of the conditions of a burning permit shall be deemed a violation of this ordinance. Any violation of this ordinance or the burning permit shall void the permit.

#### SECTION 14. LIABILITY

Owners of all property utilizing or maintaining an outdoor fire shall be responsible for all fire suppression costs and any other liability resulting from damage caused by the fire.

#### SECTION 15. RIGHT OF ENTRY AND INSPECTION

The Fire Chief or his designee, representing the Township of Kimball who presents credentials may inspect any property for the purpose of ascertaining compliance with the provisions of this ordinance.

#### SECTION 16. ENFORCEMENT AND PENALTIES

- 16.1. The Fire Chief and the Kimball Township Fire Department are authorized to enforce the provisions of this ordinance.
- 16.2. Any person, firm, association, partnership, corporation, or governmental entity who violates any of the provisions of this ordinance or fails to comply with a duly authorized order issued pursuant to this ordinance shall be deemed to be responsible for a municipal civil infraction as defined by Michigan Statute which shall be punishable by civil fine determined in accordance with the following schedule:

<u>Fine</u>	<u>Minimum Fine</u>	<u>Maximum</u>
1 <sup>st</sup> Offense	\$250.00	\$500.00
2 <sup>nd</sup> Offense within 3-year period*	\$250.00	\$500.00
3 <sup>rd</sup> Offense within 3-year period*	\$500.00	\$500.00
4 <sup>th</sup> or more Offense within 3-year period*	\$500.00	\$500.00

\*Determined on the basis of the date of commission of the offense(s).

16.3. The violator shall pay costs which may include all expenses, direct and indirect, which the Township of Kimball has incurred in connection with the municipal infraction. In no case, however, shall costs of less than \$250.00 nor more than \$500.00 be ordered. In addition, the Township of Kimball shall have the right to proceed in any court of competent jurisdiction for the purpose of obtaining an injunction, restraining order, or other appropriate remedy to compel compliance with this ordinance. Each day that a violation of this ordinance exists shall constitute a separate violation of this ordinance.

**SECTION 17. REPEAL CLAUSE**

All ordinances in conflict with the provision of this are, to the extent of such conflict, hereby repealed.

**SECTION 18. EFFECTIVE DATE**

This Ordinance shall be effective 30 days after publication.

The foregoing Ordinance was offered by Member Riehl and supported by Member Usakowski.

Vote on this Ordinance, 6 members being present was as follows:

AYES: Riehl, Usakowski, Shaffer, Dease, Jackson

NAYS: Barrett

ABSENT: Hyde

ORDINANCE DECLARED ADOPTED.

**CERTIFICATION**

I, Joyce Shaffer, Clerk of the Township of Kimball, County of St. Clair, State of Michigan, do hereby certify that Ordinance No. 168-B was adopted by the Kimball Township Board at a regular meeting of the Township Board held on the 18th day of

August, 2009. I further certify that said Ordinance No.168-B adopted by the Kimball Township Board was published as provided by law, once in the Times Herald, a paper published in the County of St. Clair and circulated in the Township of Kimball, on the 26<sup>th</sup> day of August, 2009, this being the first and final day of publication of this ordinance.

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Joyce Shaffer, Clerk  
Kimball Township

Published Wednesday, August 26, 2009  
Effective Date: September 24, 2009