

## Benzonia Village

### Ordinance. No. 2020-06

#### OUTDOOR BURNING ORDINANCE

Purpose: An ordinance to amend in part the Ordinance. Entitled "Village of Benzonia Zoning Ordinance, Adopted October 2, 1997 Amended", to repeal and replace Ordinance No. 2013-02 'Open Burning Ordinance for the Village of Benzonia'.

Benzonia Village HEREBY ORDAINS

#### 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 Village of Benzonia by regulating the air pollution and fire hazards of outdoor burning.

#### SECTION 2. APPLICABILITY

This ordinance applies to all outdoor burning within the Village of Benzonia.

**Section 2.1.** This ordinance does not apply to grilling or cooking food using charcoal, wood, propane or natural gas in cooking or grilling appliances.

**Section 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.

**Section 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. DEFINITIONS

**Section 3.1.** This section contains many commonly used terms found within this Article of the Ordinance. In addition to the definitions listed herein, all definitions from the Village Zoning Ordinance shall also apply, Additional definitions will include the following:

- A. **Campfire:** means a small outdoor fire intended for recreation or cooking but not including a fire intended for disposal of waste wood or refuse.
- B. **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.
- C. **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.
- D. **Fire Chief:** means the Chief of the Benzonia Township Fire Department or other person designated by the Fire Chief.
- E. **Nuisance:** means no materials shall be burned that create a foul or offensive odor or that, because smoke emissions, are reasonably offensive to occupants of surrounding property.
- F. **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.
- G. **Open Fire Pit:** Must meet the size and fire retardant characteristics as described in Section 7 herein, and is subject to inspection by the Fire Chief, Michigan DNR and/or the Village Zoning Administrator or Village representative at any time.
- H. **Outdoor Burning:** means open burning or burning in an outdoor wood furnace or patio wood-burning unit.

- I. **Outdoor Wood Furnace:** also known as an outdoor wood-fired boiler, outdoor woodburning appliance, or hydronic heater, means a fuel-burning device that is designed to burn clean wood or other approved solid fuels and is not located within a building intended for habitation by humans or domestic animals; and heats building space and/or water through the distribution, typically through pipes, of a fluid heated in the device, typically water or a mixture of water and antifreeze.
- J. **Patio Wood-Burning Unit:** means a chimnea, patio warmer, or other portable wood burning device used for outdoor recreation and/or heating.
- K. **Refuse:** means any waste material except trees, logs, brush, stumps, leaves, and grass clippings.

#### **SECTION 4. PROHIBITED BURNING.**

**Section 4.1.** Open burning, outdoor burning, and refuse burning are prohibited unless specifically permitted therein. Materials that may NOT be burned:

- A. Construction and demolition waste.
- B. Hazardous substances, included, but not limited to, batteries, household chemicals, pesticides, used oil, gasoline, paints, varnishes, and solvents.
- C. Furniture and appliances.
- D. Rubber, including tires, and synthetic rubber-like products.
- E. Any plastic materials, including, but not limited to, nylon, PVC, ABS, polystyrene, or urethane foam, and synthetic fabrics, plastic films and plastic containers.
- F. Newspaper.
- G. Corrugated cardboard, container board, office paper.
- H. 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.
- I. Asphalt and products containing asphalt.
- J. Rubbish or garbage, including, but not limited to, food wastes, food wraps, packaging, animal carcasses, paint or painted materials, furniture, composite shingles, construction or demolition debris, or other household or business waste.
- K. Tree, logs (other than as permitted below), brush, stumps, leaves, and grass clippings.

#### **SECTION 5. PERMITTED BURNING.**

**Section 5.1.** Burning under the following conditions shall be permitted:

- A. Fire places;
- B. Patio Wood Burning Unit;
- C. Controlled fires for training firefighters;
- D. Personal use of smoking materials;
- E. Use of matches for lighting authorized fires;
- F. Burning of charcoal when used for the exclusive preparation of food for human consumption;
- G. Burning of fire wood and commercially produced fuel projects in connection with indoor fires and stoves or fireplaces designed for food preparation, heating or decorative purposes;
- H. Outdoor cooking fires that are confined to a barbecue grill, barbecue pit or other fire proof structure.
- I. Open Fire Pit: Burning of logs, charcoal and other similar materials for the purposes of food preparation or recreation in an open fire pit, that meets the requirements Section 7 herein, and is located on private property.

**Section 5.2.** Any fire 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 use such fire extinguishing equipment as may be necessary for the total control of the fire.

**Section 5.3.** Any burning bans issued by the Michigan Department of Natural Resources apply to and preclude any open fires.

**Section 5.4.** If the use of any of the devices identified above creates a nuisance or other objectionable situation, prompting an official complaint filed with the Benzie County Sheriff, the Benzonia Township Fire Department, and/or the Village Zoning Administrator, the fire may be subject to immediate extinguishment.

## SECTION 6: PATIO WOOD-BURNING UNITS

**Section 6.1.** A patio wood-burning unit may be installed and used in the Village of Benzonia only in accordance with all of the following provisions:

- A. The patio wood-burning unit shall not be used to burn refuse.
- B. The patio wood-burning unit shall burn only clean wood.
- C. The patio wood-burning unit shall be located at least 30 feet from the nearest structure which is not on the same property as the patio wood burning unit.
- D. The patio wood-burning unit shall not cause a nuisance to neighbors.
- E. It is also the responsibility of the patio wood burning unit's user to use the unit in accordance with its factory instructions.

## SECTION 7. OPEN FIRE PITS.

**Section 7.1.** Open fire pits must meet the following:

- A. Be excavated a minimum of two (2) foot into the ground with fire retardant sides a minimum of one (1) foot high above non disturbed ground and a diameter of not more than three (3) feet.
- B. Material allowed to burn must be in its natural form.
- C. Burning of grass clippings, leaves, household, construction or demolition waste is prohibited.
- D. Such fires shall not be within 25 feet of any structure or within 25 feet of any Village right of way or public place or within 50 feet from the nearest structure which is not on the same property as the open fire pit.

## SECTION 8. LIABILITY

A person 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 9. RIGHT OF ENTRY AND INSPECTION

The Fire Chief or his designated officer, an agent of the Michigan Department of Natural Resources or Department of Environmental Quality, or any authorized officer, agent, employee or representative of the Village of Benzonia, who presents proper identification credentials may inspect any property for the purpose of ascertaining compliance with the provisions of this ordinance.

## SECTION 10. ENFORCEMENT AND PENALTIES

**Section 10.1.** The Fire Chief and/or designated municipal officials by the Village Council are authorized to enforce the provisions of this ordinance.

**Section 10.2.** Any person, firm, association, partnership, corporation, or governmental entity who violates any of the provisions of this ordinance and fails to cease or desist with a verbal or written warning or direction to put out a fire from an authorized person may be deemed to be in violation of this ordinance and shall be subject to the penalties and sanctions provided in Section 10.3, below.

**Section 10.3.** 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:

<b>Offense</b>	<b>Minimum Fine</b>	<b>Maximum Fine</b>
1st Offense within 3-year period*	\$75.00	\$500.00
2nd Offense within 3-year period*	\$150.00	\$500.00
3rd Offense within 3-year period*	\$325.00	\$500.00
4th or More offenses within 3-year period*	\$500.00	\$500.00

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

**Section 10.4.** The violator shall pay costs which may include all expenses, direct and indirect, which the Village of Benzonia has incurred in connection with the municipal infraction. In no case, however, shall costs of the offense be less than \$75.00 nor more than \$500.00. In addition, the Village 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 11. 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 12. REPEAL**

All ordinances or parts of ordinances in conflict with this ordinance herewith are hereby repealed.

#### **SECTION 13. EFFECTIVE DATE**

This Ordinance shall become effective upon the publication in accordance with law.

At a regular meeting of the Village Council for Benzonia Village held on the 2<sup>nd</sup> day of November, 2020, Trustee French, moved for the adoption of the foregoing ordinance and Trustee Bair supported the motion.

Voting For: Heyn, Misner, French, Bair, Cook, Flynn

Voting Against:

The Village President declared the ordinance adopted.

Timothy Flynn,

Village President.

#### **CERTIFICATION**

The foregoing is a true copy of Ordinance No. 2020\_06, which was enacted by the Village Council for the Benzonia Village at a regular meeting held on November 2, 2020.

Maridee Cutler,

Village Clerk