

Village Ordinance No. 43

**VILLAGE OF ELBERTA
BURN ORDINANCE**

AN ORDINANCE PURSUANT TO ACT 3 OF THE PUBLIC ACTS OF 1895, AS AMENDED, TO PROTECT THE HEALTH, SAFETY, AND GENERAL WELFARE OF THE PERSONS AND PROPERTY WITHIN THE VILLAGE OF ELBERTA BY REGULATING OPEN BURNING, TO PROVIDE PENALTIES FOR VIOLATIONS OF THE ORDINANCE, AND TO REPEAL THE CURRENT VILLAGE BURN ORDINANCE (No. 17).

THE VILLAGE OF ELBERTA, BENZIE COUNTY,
ORDAINS:

SECTION 1. NAME. This Ordinance shall be known as the Village of Elberta Burn Ordinance.

SECTION 2. PURPOSE. The purpose of this Ordinance is to protect the people and property within the Village against health and safety hazards caused by the open burning of combustible material near public roads, streets, and other public places, and near buildings and structures, both public and private, and to promote the health and general welfare of the community by regulating the methods of and permitted areas in which open burning will be allowed.

SECTION 3. DEFINITIONS. As used in this Ordinance,

“Fire pit” means a noncombustible metal or masonry enclosure around a pit excavated a minimum of two (2) feet into the ground with fire retardant sides a minimum of one (1) foot high above undisturbed ground and a diameter of not more than three (3) feet.

“Burn permit” means written authorization from the Fire Chief or Village Official to conduct open burning as specified in this Ordinance.

“Permitted fire” means a fire whose combustible material consists of wood or wood byproducts, including branches, logs, and other non-treated and non-painted wood materials, used for outdoor cooking and other recreational purposes or ceremonial occasions.

“Commercial waste” means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, including but not limited to solid waste from multiple residences, hotels and motels, campgrounds, picnic grounds, and day-use recreation areas.

“Construction and demolition waste” means waste building materials, packaging, and rubble that results from construction, remodeling, repair, and demolition operations on houses, commercial or industrial buildings, and other structures, including trees and stumps which are more than four (4) feet in length and two (2) inches in diameter and which are removed from property during construction, maintenance, or repair. Construction and demolition waste, however, does not include any of the following, even if it results from the construction, remodeling, repair, and demolition of structures: (i) asbestos waste; (ii) household waste; (iii) corrugated containerboard; (iv) appliances; (v) drums and containers; (vi) any aboveground or underground tank and associated piping, except septic tanks; (vii) solid waste that results from any processing technique which renders individual waste components unrecognizable, such as pulverizing or shredding, unless the type and origin of such waste is known not to contain the wastes listed in paragraphs (i) to (vi) of this definition.

“Fire Chief” means the Frankfort–Elberta Fire Chief.

“Village Official” means the Village Code Enforcement Officer, Village DPW Superintendent, or other official designated by resolution of the Elberta Village Council.

“Household waste” means any solid waste that is derived from single households, but that does not include any of the following: (i) commercial waste; (ii) industrial waste; (iii) construction and demolition waste; (iv) plastic; (v) metal; (vi) rubber; (vii) silicone.

“Industrial waste” means solid waste which is generated by manufacturing or industrial processes or originates from an industrial site.

“Nuisance” means any open burning that because of dense smoke, noxious odors, sparks that enter adjacent properties, or other factors that naturally tend to create danger to persons or property or naturally tend to disturb the comfort of, or inflict injury on, a reasonable person of normal sensitivities.

“Open burning” means a fire from which the products of combustion are emitted directly into the outer air without passing through a stack or chimney.

“Person” means an individual, firm, corporation, association, partnership, limited liability company, or other legal entity.

SECTION 4. BURNING PERMIT REQUIRED; FEE; REGULATIONS.

(a) Except as authorized by Section 5 below, no person shall start or maintain a fire that results in open burning without first obtaining a burning permit from the Fire Chief or a Village Official and paying the required fee, which shall be set from time to time by resolution of the Village Council.

(b) No person shall continue to maintain any open burning after being requested to extinguish that open burning by the Fire Chief/Village Official.

(c) A person who starts or maintains a fire that results in open burning, either with or without a burning permit, shall comply with all the following regulations:

- (1) No commercial waste, construction and demolition waste, or industrial waste shall be used as combustible material in the open burning.
- (2) No tires, plastics, paints, treated lumber, rubber, silicone, metal, coated paper, cardboard, packaging material, or similar materials shall be used as combustible material in the open burning.
- (3) No open burning shall occur under any of the following circumstances:
 - (i) Within twenty (20) feet of any building or structure;
 - (ii) Within twenty (20) feet of an adjoining property line;
 - (iii) Within twenty (20) feet of any public right-of-way;
 - (iv) Within twenty (20) feet of any lake, river, or stream.

- (4) No open burning of any nature shall occur when a ban on open burning is in effect as provided in Section 7 below.
- (5) All open burning shall be supervised and attended by a person over the age of 18 years in such a manner as to ensure that the open burning is maintained fully under control and in compliance with this Ordinance.
- (6) No person shall install, alter, operate, or construct a commercial or industrial incinerator or any other refuse burning equipment without first obtaining a permit from the Air Quality Division of the Michigan Department of Environmental Quality.
- (7) A water hose or operable fire extinguisher must be on site during open burning.

SECTION 5. AUTHORIZED OUTDOOR BURNING WITHOUT A BURNING PERMIT. Except when a total ban on open burning is in effect as provided in Section 7 below, a person may start and maintain a fire that results in open burning without a burning permit in the following circumstances and as provided herein:

- (a) Open burning that is purposely set by the Fire Chief or by a member of the fire department under the supervision of the Fire Chief for the sole purpose of fire extinguishment and prevention training.
- (b) Outdoor cooking fires that are confined to a barbecue grill, barbecue pit, or other enclosed fireproof structure.
- (c) Fires in portable outdoor fireplaces such as chimineas.

SECTION 6. ISSUANCE OF BURNING PERMIT; TIME LIMITATION FOR A BURNING PERMIT; RECORD OF BURNING PERMITS ISSUED.

(a) The Fire Chief or Village Official shall issue a burning permit to a person making a request for a burning permit if upon inspection he/she finds that all the following standards have been met:

- (1) The person requesting the burning permit is the owner of the property on which the open burning will occur, or the owner of the property has given written consent for the open burning to occur on his or her property.
- (2) The proposed open burning will occur in an approved fire pit and all the requirements of the Ordinance are satisfied.
- (3) A total ban on open burning is not in effect as provided in Section 7 below.

(b) A burning permit issued under this Ordinance shall authorize open burning for one year from the date the permit is issued. If the Fire Chief/Village Official believes that a fire pit/open burning no longer complies with the standards for issuing the permit as provided in Section 6(a) above, the Fire Chief/Village Official shall provide written notice to the person to whom the burning permit was issued specifying the facts upon which his or her belief is based and shall provide a written notice of a hearing before the Village Council (to be held no less than 21 days from the

service of the notice) concerning whether the burning permit should be revoked. If the Village Council finds after the hearing that the burning permit no longer complies with the standards for issuing a permit, it may revoke the burning permit. A person whose burning permit is revoked pursuant to this subsection shall not be eligible for a new burning permit for a period of two (2) years from the date the burning permit is revoked.

(c) The Village Official/Village Office shall maintain a written record of all burning permits issued under this Ordinance. The written record shall include the name and address of the person requesting the burning permit, the name and address of the owner of the property on which the open burning will occur, the authorized date(s) of the open burning, the location of the property on which the open burning will occur, and a general description of the open burning.

SECTION 7. BAN ON OPEN BURNING; SUSPENSION OF ISSUED BURNING PERMITS.

(a) Whenever the Fire Chief/Village Official or the DNR finds that conditions of extreme fire hazard exist and that it is necessary in the public interest and for the preservation of the public peace, health, and safety, the Fire Chief/Village Official or the DNR may declare a ban on open burning within the Village. The declaration shall be in full force and effect 24 hours after notice of the ban is given by the Fire Chief/Village Official utilizing means calculated to provide reasonable notice to the public including but not limited to publication on the Village website or posting of a notice in no less than three (3) conspicuous, public locations within the Village or by the DNR on its official website.

(b) Any burning permits issued and remaining in effect at the time a ban on open burning is declared shall be suspended during the period of the ban.

SECTION 8. INSPECTION; EXIGENT CIRCUMSTANCES.

(a) The Fire Chief/Village Official shall have the right to inspect the property on which a burning permit has been issued to determine violations of or compliance with this Ordinance. The Fire Chief/Village Official may exercise this right to inspection by consent of the person having the right to possession of the property or by administrative search warrant.

(b) If the Fire Chief/Village Official personally observes that open burning is occurring on the property in violation of this Ordinance or that the open burning is resulting in a nuisance, as defined in this Ordinance, and the Fire Chief/Village Official determines that immediate action is necessary to prevent the spread of the fire or to protect the health, safety, and welfare of neighboring property owners, then the Fire Chief/Village Official may enter the property for the sole purpose of extinguishing the fire.

SECTION 9. VIOLATIONS AND PENALTIES.

(a) Any person who violates any provision of this Ordinance, except Section 4(b), shall be responsible for a municipal civil infraction as defined in Public Act 12 of 1994, amending Public Act 236 of 1961, being Sections 600.101-600.9939 of Michigan Compiled Laws, and shall be subject to the following fines:

(1) For a first offense, the offender shall pay a fine of One Hundred and 00/100 (\$100.00) Dollars.

(2) For a second offense within two (2) years of the date on which the person was found

responsible for the first violation, the offender shall pay a fine of Two Hundred Fifty and 00/100 (\$250.00) Dollars.

(3) For a third or subsequent offense within two (2) years of the date on which the person was found responsible for the first violation, the offender shall pay a fine of Five Hundred and 00/100 (\$500.00) Dollars.

(b) Any person who knowingly violates Section 4(b) of this Ordinance shall be guilty of a misdemeanor punishable by a fine of not more than Five Hundred and 00/100 Dollars (\$500) and/or by imprisonment in the county jail for not more than ninety (90) days.

(c) Each day this Ordinance is violated shall be considered a separate violation.

(d) Violations of this Ordinance may be reported to the Village Office, Village Official, and/or the Frankfort–Elberta Fire Chief.

SECTION 10. ENFORCEMENT OFFICIALS. The Frankfort–Elberta Fire Chief, Village Code Enforcement Officer, Village DPW Superintendent, or other Village officials named by the Village Council are hereby designated as the authorized officials to issue municipal civil infraction citations directing alleged violators of this Ordinance to appear in court.

SECTION 11. NUISANCE PER SE. A violation of this Ordinance is hereby declared to be a nuisance per se and is declared to be offensive to the public health, safety, and welfare.

SECTION 12. SEPARATE COURT ACTION. In addition to enforcing this Ordinance through the use of a municipal civil infraction proceeding or a criminal prosecution, the Village may initiate proceedings in the Circuit Court to abate or eliminate the nuisance per se or any other violation of this Ordinance.

SECTION 13. SEVERABILITY. If any section, provision or clause of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any remaining portions or application of this Ordinance, which can be given effect without the invalid portion or application.

SECTION 14. PUBLICATION. The Village Clerk/Treasurer shall certify to the adoption of this ordinance and cause the same to be published as required by law.

SECTION 15. EFFECTIVE DATE. This Ordinance shall become effective twenty (20) days after being published in a newspaper of general circulation within the Village. All ordinances or parts of ordinances in conflict with any of the provisions of the Ordinance are hereby repealed.

Ordinance No. 43 of 2023 was adopted on the 20th day of April 2023

by the Elberta Village Council as follows:

Motion by: Jennifer Wilkins

Seconded by: Ryan Fiebing

Yeas: 4 Ryan Fiebing, Ken Holmes, Emily Votruba, Jennifer Wilkins

Nays: 0

Absent: 0

Vacancy: 1

Jennifer Wilkins, President

Norma Corwin, Clerk/Treasurer

I certify that this is a true copy of Ordinance No. 43 of 2023 that was adopted at a regular meeting of the Elberta Village Council on April 20, 2023 and published in the *Benzie County Record Patriot* on _____ 2023.

Dated: _____, 2023

Norma Corwin, Clerk/Treasurer