

CHAPTER 4
AIR POLLUTION PREVENTION AND CONTROL*

Sec 4-1. Purpose.

This ordinance is intended to promote the public health, safety and welfare of the citizens of the city of Benton Harbor, in the regulation of air pollution and fire hazards of outdoor burning.

Sec. 4-2. Applicability.

- a. This ordinance does not apply to the grilling or cooking of food using charcoal, wood, electricity, propane or natural gas in cooking or grilling appliances.
- b. This ordinance does not apply to burning for the purpose of generating heat in a furnace, fireplace or other heating device within a building used for human habitation.
- c. This ordinance does not apply to the utilization of portable fire pits, chiminea, patio warmers, or any other portable controlled device used for outdoor recreational purposes.

Sec. 4-3. 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.

Sec. 4-4. Definitions.

- a. "Open burning" is the burning of unwanted materials such as paper, trees, brush, leaves, grass, and other debris where smoke and other emissions are released directly into the air. During open burning, air pollutants do not pass through a chimney or stack and/or combustion of solid waste is not adequately controlled. This includes burning in a burn barrel.
- b. "Refuse" means any waste of trash, garbage, or rubbish generated from human consumption. This includes all materials with the exception of natural rubbish and construction material.
- c. "Natural waste" includes but is not limited to, grass clippings, leaves, trees, limbs, branches, brush, logs, stumps, roots, or any other kind of vegetative matter.
- d. "Construction material" is any material which is used for residential or commercial construction or demolition purposes. Construction and demolition waste includes but not limited to waste shingles, insulation, lumber, treated wood, painted wood, wiring, plastics, packaging, concrete, and rubble that results from construction, remodeling, repair, and demolition operations on a residential building, a commercial, an industrial building, or any other structure.

Sec. 4-5. General prohibition on open and outdoor burning.

Outdoor burning of any kind is prohibited in the city of Benton Harbor unless otherwise stated in this ordinance.

Sec. 4-6. Open burning of refuse.

Open burning of refuse is prohibited within the city of Benton Harbor.

Sec. 4-7. Open burning of construction material.

Open burning of construction and demolition waste is strictly prohibited in the city of Benton Harbor

Sec. 4-8. Open burning of natural waste.

The open burning of natural wastes is prohibited in the city of Benton Harbor.

Sec. 4-9. Open campfires.

The burning of campfires is prohibited in the city of Benton Harbor.

Sec. 4-10. Substantial injury to property or annoyance to persons prohibited. (existing 4-3)

No person shall create or produce smoke of a density which causes substantial injury to the property of another or produces material annoyance or inconvenience to the occupants of adjacent dwellings or which defiles carpets, curtains, linen or other household furnishings in adjacent dwellings. (Gen. Code 1946, Ch. 3, § 116.3)

Sec. 4-11. Liability.

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

Sec. 4-12. Right of entry and inspection.

The Fire Chief or designee may inspect any property for the purpose of ascertaining compliance with the provisions of this ordinance.

Sec. 4-13. Enforcement and penalties.

The Fire Chief and the Chief Code Compliance Officer or designee are authorized to enforce the provisions of this ordinance.

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:

- (a) For a first offense within a 3-year period, a warning by the judge or magistrate.
- (b) For a second offense within a 3-year period, a civil fine of not more than \$75.00.

- (c) For a third offense within a 3-year period, a civil fine of not more than \$150.00.
- (d) For a fourth or subsequent offense within a 3-year period, a civil fine of not more than \$300.00.

The violator shall pay costs which may include all expenses, direct and indirect, which the city has incurred in connection with the municipal infraction. In addition, the city 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.