

**TOWN OF FLEMING
LOCAL LAW 2020-3**

**A Local Law Amending the Town of Fleming Zoning Law to
Regulate Open Burning**

WHEREAS, pursuant to authority vested in the Town of Fleming ("Town") by the Municipal Home Rule Law of the State of New York, the General Municipal Law of the State of New York and the Town Zoning Law ("Zoning Law") of the Town of Fleming, the Town Board may from time to time amend its Zoning Law as needed to clarify, supplement, reconcile, amend or correct provisions in that Law; and

WHEREAS, in consultation with Special Counsel, the Town Board has considered the amendment of its Zoning Law to address open burning, and has proposed such amendment to be the subject of a local law for enactment in accordance with its lawful authority; and

WHEREAS, Pursuant to General Municipal Law Sections 239(l) and (m), the proposed local law has been referred to the Cayuga County Department of Planning and Economic Development for review and comment, which Department has rendered comments that were duly considered and addressed by the Town Board and its professionals; and

WHEREAS, the Town of Fleming Planning Board has reviewed and considered the contents of the proposed local law, and has transmitted its recommendations on the law to the Town Board for the Board's consideration; and

WHEREAS, upon due notice, at regular meetings of the Town Board held on 9/14/2020 and 10/14/2020, the Town Board conducted a duly noticed public hearing to hear and consider public comments on the proposed local law; and

WHEREAS, the Town Board also addressed the project's environmental impacts pursuant to the State Environmental Quality Review Act ("SEQRA") on 10/14/2020, declaring and identifying the action as an Unlisted Action and declaring a Negative Declaration under SEQRA for the project, stating that no significant environmental impacts were identified for it, which Negative Declaration was approved by a vote of 5; and

WHEREAS, upon due notice, at a regular meeting of the Town Board for the Town of Fleming held on 10/14/2020 at 6:30 p.m., the Town Board approved the enactment of the proposed local law amending the Zoning Law by a vote of 5; and

NOW, THEREFORE, BE IT RESOLVED,

that the Town of Fleming Town Board hereby enacts Local Law 2020-3 to amend the Zoning Law, the content of which is as follows:

Don des Oly *Kamela Lee*
Jane Elamy *David MacDonald*
Russ Bell *VIA ZOOM*

1. The foregoing recitals are incorporated herein as if set forth at length.
2. A new Article XVI shall be added to the Zoning Law, reading as follows:

Article XVI – Open Burning

16-1 Intent.

The purpose of this section shall be to protect and promote the health, safety and welfare of the people of the Town of Fleming insofar as they may be adversely affected by smoke and odors from the uncontrolled open burning of wood, paper, plastic and other materials. Such materials can generate toxic compounds that are hazardous to health if ingested; in addition, unregulated open burning is the leading cause of wildfires in New York State.

16-2 Applicability.

All properties within the Town of Fleming, whether improved or vacant, shall be subject to the requirements and prohibitions of this section.

16-3 Open Burning of Certain Materials is Generally Prohibited.

No person shall burn or allow or permit to be burned any brush, grass, weeds, leaves, garbage, litter, refuse, rubbish, nuisance materials (as defined in the Property Maintenance Requirements to include such items as furniture, cookware, building materials [in the absence of an active building permit], scrap lumber, appliances, clothing/fabric, tires, empty barrels, any materials that could contribute to harborage of rodents, mosquitoes and other vectors, unregistered motor vehicles or vehicle parts, and abandoned, discarded, wholly or partially dismantled mobile homes), wood, lumber, paper products, plastic, chemicals, pesticides, noxious substances or other related items in the Town of Fleming.

16-4 Exceptions for Certain Types of Burning.

The following types of burning are excepted from the general prohibition against open burning in Section 16-3, provided it is done in accordance with state open burning calendar restrictions, and in a safe, nuisance-free manner, when wind and weather conditions are such to minimize adverse effects and not create a health hazard or a visibility hazard on roadways or neighboring properties:

- a. Outdoor grills or fireplaces for the preparation of food, using gas, charcoal or clean, unpainted and untreated wood.
- b. The burning of clean paper in an enclosed incinerator.

- c. Small recreational fires not exceeding three (3) feet in height and four (4) feet in length, width or diameter and no closer than fifteen (15) feet to any structure, provided that only untreated wood is used and that the fire is confined by a control device or structure such as a barrel, fire ring or fire pit. In the (L) Lakeshore District, recreational fires shall not be conducted less than ten (10) feet from the water level of Owasco Lake and shall be contained in a manner which prevents the leaching of ashes and other materials into the lake. All ashes shall be properly disposed of on a regular basis.
- d. Outdoor wood-fired furnaces, as addressed in Section 16-5 below.
- e. Ceremonial bonfires, with reasonable advance notice provided to the Town Codes Officer.
- f. Certain agricultural practices, including (1) the burning of organic agricultural wastes on-site where they are grown or generated, provided they are located on contiguous agriculturally-zoned land larger than five (5) acres and the materials can be fully burned within 24 hours; (2) the use of petroleum-filled smudge pots to prevent frost damage to crops; (3) individual open fires to control plant and animal disease outbreaks are allowed as approved on a case-by-case basis by the New York State Department of Environmental Conservation (NYSDEC), upon the request by the Commissioner of Agriculture and Markets; and (4) prescribed burns in accordance with NYSDEC regulations.
- g. Fire training burning activities, in accordance with state laws and regulations.

16-5 Outdoor wood-fired furnaces.

- a. An outdoor wood-fired furnace shall be defined as any accessory device designed and intended to heat a building and/or the building's hot water system through the burning of wood, located outside the building and/or water system it is intended to heat.
- b. No person shall install, use or maintain an outdoor wood-fired furnace in the (R-1) Neighborhood Transitional, (R-2) Residential, (L) Lakeshore, (WD) Waterfront Development or (H) Hamlet Districts as defined in the Zoning Law.
- c. Outdoor wood-fired furnaces may be installed and used in the (A) Agricultural and (C) Commercial Districts only in accordance with the following provisions: (1) the outdoor wood-fired furnace shall not be used to burn any prohibited materials listed in Section 16-3 – only natural,

untreated wood shall be burned in the outdoor wood-fired furnace; (2) the furnace shall be located on a minimum five (5) acre lot, at least 100 feet from the nearest property line and no less than 200 feet from existing structures located on adjacent lots; (3) the furnace shall be installed, operated and maintained in strict compliance with the manufacturer's specifications pertaining to installation, operation and maintenance, and a permit shall be obtained from the Town of Fleming prior to the installation of the outdoor wood-fired furnace; and (4) the furnace must be tested and demonstrated to meet the current United States Environmental Protection Agency (EPA) emission standards for such a device, and certification of approval from the EPA must be provided to the Town of Fleming.

16-6 Enforcement.

- a. Any person violating any of the provisions of this section shall be subject to the provisions of Zoning Law Article IV with regard to enforcement, remedies, fines and penalties.
- b. The imposition of penalties for any violation of this section shall not excuse the violation nor permit it to continue. The expenses of the Town in enforcing this section, including legal fees, may be chargeable to a violator in addition to any criminal and civil penalties.