

ORDINANCE NO. 2015-02

Open Burning

AN ORDINANCE OF PENN TOWNSHIP, CUMBERLAND COUNTY, COMMONWEALTH OF PENNSYLVANIA FOR THE PREVENTION AND CONTROL OF AIR POLLUTION; DEFINING CERTAIN TERMS USED HEREIN; PROVIDING FOR REGULATIONS, EXCEPTIONS, ENFORCEMENT ORDERS, RESPONSIBILITY OF OWNERS AND OPERATORS, PENALTIES, UNLAWFUL CONDUCT, PUBLIC NUISANCES, REPEALING PREVIOUS ORDINANCE 2004-5 AND VALIDITY.

SECTION I. Title

This ordinance shall be known and may be cited as the PENN TOWNSHIP, CUMBERLAND COUNTY OPEN BURNING ORDINANCE OF 2015

SECTION II. Authority

BE IT HEREBY ORDAINED AND ENACTED by the Board of Supervisors of the Township of Penn, County of Cumberland, by authority of and pursuant to the provisions of Articles VI through X of Act No. 247 of the General Assembly of the Commonwealth of Pennsylvania, approved July 31, 1968, known and cited as the "Pennsylvania Municipalities Planning Code," and any amendments and supplements thereto, as follows:

SECTION III. Policy

Whereas the Board of Supervisors of Penn Township, Cumberland County, has determined that air pollution from open burning may be detrimental to the health, comfort, living conditions, welfare, and safety of the citizens of Penn Township, Cumberland County, it is hereby declared to be the policy of Penn Township, Cumberland County, to safeguard the citizens of Penn Township, Cumberland County, from such air pollution.

SECTION IV. Definitions

The following words, terms, and phrases, when used in this ordinance, unless the context clearly indicates otherwise, shall have the following meanings ascribed to them:

- (1) **Burning** – The act of consuming by fire; to flame, char, scorch, or blaze. As used in this ordinance, smoldering shall have the same meaning as burning and any smoldering shall be deemed a burning.
- (2) **Clearing and grubbing wastes** – Trees, shrubs, and other native vegetation which are cleared from land during or prior to the process of construction. The term does not include demolition wastes and dirt laden roots.
- (3) **Composting** – The process by which organic solid waste is biologically decomposed under controlled anaerobic or aerobic conditions to yield a humus-like product.
- (4) **Board** – Township Board of Supervisors.

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- (5) **Duly Authorized Agent** - A supervisor, codes officer, zoning officer, or any other Township official authorized to enforce the provisions of this ordinance.
- (6) **Domestic refuse** - Waste which is generated from the normal occupancy of a structure occupied solely as a dwelling by two families or less. The term does not include appliances, demolition waste, furniture, mattresses or box springs, paint, putrescible waste, solvents, tires, carpet, or treated wood.
- (7) **Municipality** - A public body created under State law having jurisdiction over the disposal of sewage, industrial wastes, or other wastes.
- (8) **Open burning** - A fire, the air contaminants from which are emitted directly into the outdoor atmosphere and not directed thereto through a flue.
- (9) **Person** - Any individual, public or private corporation for profit or not for profit, association, partnership, firm, trust, estate, department, board, bureau or agency of the Commonwealth or the Federal Government, political subdivision, municipality, subject of rights and duties.
- (10) **Yard waste** - Leaves, grass clippings, garden residue, tree trimmings, chipped shrubbery, and other vegetative material.

SECTION V. Regulations

No person may permit the open burning of material with the exception of the following:

- (1) A fire set to prevent or abate a fire hazard, when approved by the Department of Environmental Protection's Regional Air Quality Program office and set by or under the supervision of a public officer.
- (2) Any fire set for the purpose of instructing personnel in fire fighting, when approved by the Department of Environmental Protection's Regional Air Quality Program office.
- (3) A fire set for the prevention and control of disease or pests, when approved by the Department of Environmental Protection's Regional Air Quality Program office.
- (4) A fire set for the purpose of burning clearing and grubbing waste. A fire set in conjunction with the production of agricultural commodities in their unmanufactured state on the premises of the farm operation.
- (5) A fire set for the purpose of burning that amount of domestic refuse generated from one dwelling, when the fire is on the premises of a structure occupied solely as a dwelling by two families or less and when the refuse results from the normal occupancy of said structure.
- (6) A fire set for the purpose of burning that amount of yard waste generated from the premises of a structure occupied solely as a dwelling by two families or less (except where composting is mandatory), when the fire is on the premises of said structure.
- (7) A fire set solely for cooking food.
- (8) A fire set solely for recreational or ceremonial purposes.
- (9) A fire set by a commercial landscaping or lawn maintenance company which disposes of otherwise lawful materials generated in the course of their business even if the work occurred beyond the boundary of Penn Township, Cumberland County. Said burning must comply in all other respects to this Ordinance as well as

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regulations of the Department of Environmental Protection of the Commonwealth of Pennsylvania.

Safe Distances

- (1) It shall be unlawful to allow any fire, except cooking grills, within a twenty (20) foot distance from a building or property line.
- (2) No fire shall be set, started, fed permitted to burn or maintained where such fire may, in the opinion of a Duly Authorized Agent, endanger any building or property, except where such building or property is used by the fire company for training purposes.

Control of Burning and Unattended Fires

- (1) Fires may be able to burn under the supervision of a responsible individual
- (2) No fires shall be permitted to burn whenever a ban on burning has been placed into effect by the Commonwealth of Pennsylvania of Penn Township, Cumberland County
- (3) No fire shall be set that results in uncontrolled burning of vegetation (field fire) except for fires of leaves, brush and/or natural untreated wood that grew on the property where it is to be burned and where the location of the fire is at least 300 feet from any residence on adjoining properties.
- (4) Out-of-doors fires shall be confined in a non-combustible container that is in good repair, covered with a wire screen of ½ inch or smaller mesh, except for fires of leaves, brush, and/or natural, untreated wood.

Extinguishing Unsafe Fires

It is a violation of this Ordinance for any person to allow any fire to burn under adverse weather conditions or unsupervised, or otherwise in an unsafe manner. Any such fire may be extinguished by a Duly Authorized Agent immediately.

Hours

- (1) No person shall burn or cause to be burned any substance or material of any kind out-of-doors, anywhere in Penn Township, Cumberland County, between sunset and sunrise.
- (2) Recreational fires using natural, untreated wood are permitted at any time so long as they comply with all other provisions of this Ordinance.
- (3) No burning shall be permitted on Sunday or the holidays of Memorial Day, July 4th, or Labor Day.
- (4) All fires, except otherwise permitted in the Ordinance, must be entirely extinguished and not permitted to smolder after sunset. No fire shall emit noxious smoke over another property.

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Special Circumstances

In the event that it is necessary to have an unconstrained fire of any size and/or at times other than permitted under this Ordinance, special permission must be obtained in advance from the Fire Chief of Penn Township Volunteer Fire Company or his designee. Notice of all unconstrained burning shall be give to the Cumberland County Communications Control Center at (717) 243-4121 prior to the ignition the fire, and when such burning has been completed.

Unlawful Substances

- (1) Burning of plastics, byproducts of manufacturing, tires, rubber, materials containing petroleum based products such as shingles and roll roofing, etc. and hazardous wastes from off site commercial operations is strictly prohibited.
- (2) Nothing herein shall be construed to permit or encourage the burning of any substance determined by the Commonwealth of Pennsylvania or the United States Environmental Protection Agency to be a hazardous substance; nor shall any fire be permitted to burn by any person if such burning is in violation of the Air Pollution Control Act or other legislation of the Commonwealth of Pennsylvania or the United States of America or any other competent body.
- (3) Fires shall be used only to burn readily combustible materials.

SECTION VI. Enforcement Orders

- (1) Duly Authorized Agents shall have the power and duty to enforce the provisions of this ordinance.
- (2) Penn Township, Cumberland County, may issue such orders as are necessary to aid in the enforcement of the provisions of this ordinance. These orders shall include, but shall not be limited to: orders requiring persons to cease unlawful open burning which, in the course of its occurrence, is in violation of any provision of this ordinance; orders to take corrective action or to abate a public nuisance; orders requiring the testing, sampling, or monitoring of any open burning; or orders requiring production of information. Such an order may be issued if Penn Township, Cumberland County, finds that any condition existing in or on the facility or source involved is causing or contributing to open burning or if Penn Township, Cumberland County, finds that any person is in violation of any provision of this ordinance.
- (3) Penn Township, Cumberland County, may, in its order, require compliance with such conditions as are necessary to prevent or abate open burning or affect the purposes of this ordinance.
- (4) An appeal to the Board of Supervisors of the Penn Township, Cumberland County's order shall not act as a supersedeas, provided, however, that, upon application and for cause shown; the Board of Supervisors may issue such a supersedeas under rules established by the Board of Supervisors.

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- (5) The authority of Penn Township, Cumberland County, to issue an order under this section is in addition to any remedy or penalty which may be imposed pursuant to this ordinance. The failure to comply with any such order is hereby declared to be a public nuisance.

SECTION VII. Responsibility of Owners and Operators

- (1) Whenever a Duly Authorized Agent finds that open burning is occurring in the Penn Township, Cumberland County, other than those exceptions noted in Section V above, the duly authorized agent may order the owner or operator to take corrective action in a manner satisfactory to Penn Township, Cumberland County, or the duly authorized agent may order the owner or operator to allow access to the land by a third party to take such action.
- (2) For purposes of collecting or recovering the costs involved in taking corrective action or pursuing a cost recovery action pursuant to an order or recovering the cost of litigation, oversight, monitoring, sampling, testing, and investigation related to a corrective action, Penn Township, Cumberland County, may collect the amount in the same manner as civil penalties are assessed and collected following the process for assessment and collection of a civil penalty contained in Section IX of this ordinance.

SECTION VIII. Criminal Penalties

- (1) Any person who burns unlawful substances, or violates any order of the Penn Township, Cumberland County, issued pursuant to this ordinance commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not less (\$1,000.00) for each separate offense and, in default of the payment of such fine,
- (2) Any person who violates any other provision of the Ordinance shall be subject to the Alternative Dispute Resolution Ordinance of Penn Township, Cumberland County,

SECTION IX. Civil Penalties

- (1) In addition to proceeding under any other remedy available at law or in equity for a violation of a provision of this ordinance or any order issued pursuant to this ordinance, Penn Township, Cumberland County, may assess a civil penalty for the violation. The penalty may be assessed whether or not the violation was willful. The civil penalty so assessed shall not exceed ten thousand dollars (\$10,000.00) per day for each violation. In determining the amount of the penalty, Penn Township, Cumberland County, shall consider the willfulness of the violation; damage to air, soil, water, or other natural resources of the Penn Township, Cumberland County, or their uses; financial benefit to the person in consequence of the violation; deterrence of future violations; cost to Penn Township, Cumberland County;; the size of the source or facility; the compliance history of the source; the severity and duration of the violation; degree of cooperation in resolving the violation; the speed with which compliance is ultimately achieved; whether the violation was voluntarily

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reported; other factors unique to the owners or operators of the source or facility; and other relevant factors.

- (2) When Penn Township, Cumberland County, proposes to assess a civil penalty, it shall inform the person of the proposed amount of the penalty. The person charged with the penalty shall then have thirty (30) days to pay the proposed penalty in full; or if the person wishes to contest the amount of the penalty or the fact of the violation to the extent not already established, the person shall forward the proposed amount of the penalty to the (quasi judicial body) within the thirty (30) day period for placement in an escrow account with the State Treasurer or any Commonwealth bank or post an appeal bond to the (quasi judicial body) within thirty (30) days in the amount of the proposed penalty, provided that such bond is executed by a surety licensed to do business in the Commonwealth and is satisfactory to the Penn Township, Cumberland County,. If, through administrative or final judicial review of the proposed penalty, it is determined that no violation occurred or that the amount of the penalty shall be reduced, the (quasi judicial body) shall, within thirty (30) days, remit the appropriate amount to the person with any interest accumulated by the escrow deposit. Failure to forward the money or the appeal bond at the time of the appeal shall result in a waiver of all legal rights to contest the violation or the amount of the civil penalty unless the appellant alleges financial inability to prepay the penalty or to post the appeal bond. The (quasi judicial body) shall conduct a hearing to consider the appellant's alleged inability to pay within thirty (30) days of the date of the appeal. The (quasi judicial body) may waive the requirement to prepay the civil penalty or to post an appeal bond if the appellant demonstrates and the (quasi judicial body) finds that the appellant is financially unable to pay. The (quasi judicial body) shall issue an order within thirty (30) days of the date of the hearing to consider the appellant's alleged inability to pay. The amount assessed after administrative hearing or after waiver of administrative hearing shall be payable to the Penn Township, Cumberland County, and shall be collectible in any manner provided by law for the collection of debts, including the collection of interest on the penalty amount computed in accordance with section 6621(a)(2) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.) from the date of assessment of the penalty. If any person liable to pay any such penalty neglects or refuses to pay the same after demand, the amount, together with interest and any costs that may accrue shall constitute a debt of such person, as may be appropriate, to the Penn Township, Cumberland County,. The debt shall constitute a lien on all property owned by said person when a notice of lien incorporating a description of the property of the person subject to the action is duly filed with the prothonotary of the court of common pleas where the property is located. The prothonotary shall promptly enter upon the civil judgment or order docket, at no cost to the Penn Township, Cumberland County,, the name and address of the person, as may be appropriate, and the amount of the lien as set forth in the notice of lien. Upon entry by the prothonotary, the lien shall attach to the revenues and all real and personal property of the person, whether or not the person is solvent. The notice of lien, filed pursuant to this Section, which affects the property of the person shall create a lien with priority over all subsequent claims or liens which are filed against the person, but it shall not affect any valid lien, right, or

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interest in the property filed in accordance with established procedure prior to the filing of a notice of lien under this section. [Note to the municipality: The penalties and remedies available to the municipality are those set forth in the Air Pollution Control Act (APCA), as amended, 35 P.S. 4012, Sections 9, 9.1, and 12(g). Each municipality may tailor the penalty provisions to reflect the municipality's preferred penalty policy, within the legal limits of the APCA.]

SECTION X. Unlawful Conduct

It shall be unlawful to fail to comply with or to cause or assist in the violation of any of the provisions of this ordinance or to fail to comply with any order or other requirement of the Penn Township, Cumberland County; or to cause a public nuisance; or to cause air, soil, or water pollution resulting from an open burning incident; or to hinder, obstruct, prevent, or interfere with the Penn Township, Cumberland County, or its personnel in their performance of any duty hereunder, provisions of 18 Pa. C.S. § 4903 (relating to false swearing) or 4904 (relating to unsworn falsification to authorities) in regard to papers required to be submitted under this ordinance. The owner or operator of an open burning source shall not allow pollution of the air, water, or other natural resources of the Penn Township, Cumberland County, to result from the source.

SECTION XI. Public Nuisances

A violation of this ordinance or of any order issued by the Penn Township, Cumberland County, under this ordinance shall constitute a public nuisance. The Penn Township, Cumberland County, shall have the authority to order any person causing a public nuisance to abate the public nuisance. In addition, when abating a public nuisance, the Penn Township, Cumberland County, may recover the expenses of abatement following the process for assessment and collection of a civil penalty contained in Section IX. Whenever the nuisance is maintained or continued contrary to this ordinance or any order issued pursuant to this ordinance, the nuisance may nuisance shall be liable for the cost of abatement.

SECTION XII. Repealer

Ordinance 2004-5 previously enacted is hereby repealed. All other ordinances or parts thereof which are in conflict with this ordinance are hereby repealed.

SECTION XIII. Validity

The provisions of this ordinance are severable, and if any section, clause, sentence, part, or provision thereof shall be held illegal, invalid, or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect or impair the remaining sections, clauses, sentences, parts, or provisions of this ordinance.

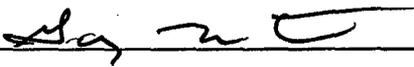
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It is hereby declared to be the intent of the Board of Supervisors that this ordinance would have been adopted if such illegal, invalid, or unconstitutional section, clause, sentence, part, or provision had not been included herein.

DULY ENACTED and ORDAINED THIS 5th DAY OF JANUARY, 2015,

By the Supervisors of Penn Township in public session duly assembled

PENN TOWNSHIP



GARY MARTIN, CHAIRMAN



KENNETH SHEAFFER, VICE CHAIRMAN



AMOS SEIDERS, SUPERVISOR

ATTEST: 

VICKI KNEPP, SECRETARY