

CHAPTER 78. OUTDOOR BURNING

§ 78-1. Purpose.

The purpose of this chapter is to protect the safety of the general public by establishing controls and restrictions for all outdoor and open burning. This chapter will further control and restrict smoke and emissions from such fires from adversely affecting the general public and adjoining or surrounding properties. It is hereby declared that this chapter is necessary for the protection, benefit and preservation of the health, safety and welfare of residents of the Township.

§ 78-2. Definitions.

Unless otherwise expressly stated, the following terms shall, for the purpose of this chapter, have the meanings in this section. Terms not defined in this section shall have the ordinarily accepted meanings such as the context may imply.

AGENT — Any person who shall have charge, care or control of any property, or as executor, executrix, administrator, trustee or guardian of the estate of the owner of the property. Any such person representing the actual owner shall be bound to comply with the provisions of this chapter as if that person were the owner.

BONFIRE — An outdoor fire used for ceremonial purposes.

Btu (BRITISH THERMAL UNIT) — The amount of thermal energy necessary to raise the temperature of 1 pound of pure liquid water by 1° F at the temperature at which water has its greatest density (39° F).

BUILDING — Any structure, built or constructed, used or intended for supporting or sheltering any occupancy or use, including a structure the use of which is incidental to that of the main building or buildings on a property.

CLEAN WOOD — The term includes the following:

- A. Wood that contains no paint, stains, or other types of coatings.
- B. Wood that has not been treated with preservatives or chemicals, including copper, chromium arsenate, creosote, and pentachlorophenol.

COMMONWEALTH — The Commonwealth of Pennsylvania.

DEP — The Pennsylvania Department of Environmental Protection.

DWELLING — A building providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

EMISSIONS — Air contaminants emitted into the atmosphere.

EPA — United States Environmental Protection Agency.

EXPLOSIVE — A chemical or mechanical mixture that is commonly used or intended for the purpose of producing an explosion, that contains any oxidizing and combustible units or other ingredients in such proportions, quantities or packing that an ignition by fire, by friction, by concussion, by percussion or by detonation of any part of the compound or mixture causes such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life and limb.

EXTINGUISHMENT — The putting out or quenching of a fire, to and including the complete cooling of ashes or residue of the fire such that rekindling by and of itself is not possible and that any smoke or emissions have ceased from the ashes, residue or area of the fire.

LEAF WASTE – Leaves, garden residue, chipped shrubbery, tree trimmings and similar material, but not including grass clippings.

OPEN BURNING — The burning of any materials wherein products of combustion are emitted directly into the ambient air without passing through a stack, chimney or screen from an enclosed chamber or approved container. For purposes of this definition, a chamber shall be regarded as enclosed when, during the time combustion takes place, only apertures, ducts, stacks, flues or chimneys necessary to provide combustion air and to permit the escape of exhaust gases are open. Approved containers are described in § 78-5 of this chapter.

OUTDOOR WOOD-FIRED BOILER —

A. A fuel-burning device that:

- (1) Is designed to burn, or is capable of burning, clean wood or other fuels listed under § 78-6.F (relating to outdoor wood-fired boilers).
- (2) Has a rated thermal output of less than 350,000 Btu per hour.
- (3) The manufacturer designs or specifies for outdoor installation or installation in structures not normally intended for habitation by humans or domestic animals, including structures like garages and sheds.
- (4) Heats building space or fluid, or both, through the distribution, typically through pipes, of a fluid heated in the device, typically water or a mixture of water and antifreeze.

B. The fuel-burning device may also be known as an:

- (1) Outdoor wood-fired furnace.
- (2) Outdoor wood-burning appliance.
- (3) Outdoor hydronic heater.

OUTDOOR WOOD-FIRED BOILER, NEW-PHASE 2 — A Phase 2 outdoor wood-fired boiler that is installed on or after October 2, 2010.

OUTDOOR WOOD-FIRED BOILER, NON-PHASE 2 — An outdoor wood-fired boiler that has not been certified or qualified by the EPA as meeting a particulate matter emission limit of 0.32 pounds per million Btu output or lower and is labeled accordingly.

OUTDOOR WOOD-FIRED BOILER, PHASE 2 — An outdoor wood-fired boiler that has been certified or qualified by the EPA as meeting a particulate matter emission limit of 0.32 pounds per million Btu output or lower and is labeled accordingly.

OWNER — Any person who, alone, jointly or severally with others, shall have legal title to any building, structure, premises or property, with or without accompanying actual possession thereof, and shall include the duly authorized agent or attorney, a purchaser, devisee, fiduciary and any person having a vested or contingent interest in the property in question.

PERSON — Includes a corporation, firm, partnership, association, organization and any other group acting as a unit, as well as individuals. It shall include, also, an executor, administrator, trustee, receiver or other representative appointed according to law.

RECREATIONAL FIRE — An outdoor fire which is used to cook food for human consumption.

§ 78-3. General restrictions on all outdoor burning.

- A. Under no circumstances shall any person perform or cause any outdoor burning of any material which is explosive or which, when burned, may cause noxious or toxic emissions or smoke; such as, but not limited to, garbage, rubber, roofing shingles or other asphalt roof coverings, tires and other similar material.
- B. No person shall perform or cause any outdoor burning of any of the following recyclable materials:
 - (1) Newspaper, cardboard, magazines, and other paper products.
 - (2) Glass materials.
 - (3) Plastic materials.
 - (4) Steel cans.

- (5) Aluminum cans.
 - (6) Leaves.
 - (7) Styrofoam materials.
 - (8) Leaf waste.
- C. No person shall cause or permit the outdoor burning of any material in such a manner that emissions are or may be deleterious to human or animal health.
 - D. No person shall cause or permit the burning of any material that will cause damage to ground cover or vegetation in excess of 10 feet of the fire, or cause damage to any live or standing trees and shrubbery on the property upon which the burning is taking place or any vegetation, trees or shrubs on adjoining property.
 - E. No person shall ignite, burn, or set fire to any material on the public right-of-way of any street or alley, except as permitted in § 78-4.B.(1) and (2) of this chapter.
 - F. No person shall ignite, burn, or set fire to any material on any right-of-way that may endanger or cause damage to any public or private utility structure or equipment including, but not limited to, stormwater facilities, such as piping, catch basins or outlet structures; or utility poles, electric, telephone, signal, television, gas, oil or fuel equipment lines or piping, and sewer or water utility structures or piping.
 - G. No person shall ignite, burn, set or maintain any outdoor fire without having obtained, when applicable or required, a permit or authorization from the Pennsylvania Department of Environmental Protection or the United States Environmental Protection Agency.
 - H. No person shall ignite, burn, set or maintain any outdoor fire that will threaten or cause damage to any building or structure, unless specifically authorized in § 78-4.B.(5) of this chapter.
 - I. No person shall conduct any open burning or outdoor burning, whether in an approved container or outdoor fireplace, except as those types are permitted in § 78-4.B.(1) through (6), and approved bonfires, § 78-4.C.(4), on Sundays or Mondays and the following designated holidays: Christmas, Thanksgiving, July 4, Memorial Day and Labor Day.
 - J. No person shall conduct or allow outdoor open burning or outdoor burning in an approved container unless the fire is attended by a competent person or persons who are equipped to control the fire.
 - K. All outdoor open burning or outdoor burning in an approved container, except those types of allowable outdoor open burning as in § 78-4.B.(1) through (5), and approved bonfires as in § 78-4.C.(4), shall be done only during hours of daylight, from sunrise to sunset.

- L. When any U.S. government, Commonwealth of Pennsylvania, Township of Derry or other government or jurisdictional agency thereof shall issue more stringent rules or regulations, whether permanent, temporary, general or specific to Derry Township, or sections thereof, those rules and regulations shall apply. When said jurisdiction or agencies have less stringent rules and regulations than contained in this chapter, this chapter shall apply.

§ 78-4. Outdoor open burning.

- A. General. A person or agent shall not cause or allow to take place any open burning except as provided for in this section.
- B. Open burning without special written authorization. The types of allowable open burning listed herein are so allowed, but it shall not be construed to mean that such burning shall take place in a careless, reckless or unsafe manner, to cause danger to life and property. Special care or precautions may have to be taken when there is such burning necessitated in areas where there are hazardous, highly flammable, combustible or explosive materials in place, used or stored. When any allowable open burning is taking place, the person, persons or agents who are performing or controlling such burning shall have adequate equipment to control such burning, as may be required by the special application of such burning:
 - (1) Highway safety flares and similar occupational safety and highway marking devices.
 - (2) Open flames used in construction, construction repair or similar uses.
 - (3) Recreational fires.
 - (4) Fireworks and lighting devices as prescribed by the Pennsylvania Fireworks Law, Act of May 15, 1939, P.L. 134, No. 65, as amended, 35 P.S. § 1271 et seq.
 - (5) Fires set for the purpose of instructing personnel in fire fighting, when approved by DEP.
 - (6) Any fire set conjunction with the production of agricultural commodities in their unmanufactured state, including tree trimmings and bush, when such burning takes place 150 feet or more from any adjoining, separately owned, contiguous property and buildings on the property where the burning is taking place; and 300 feet from any occupiable dwelling off the property. The emissions from such fires must not be visible at any time at the point that such emissions pass outside the separately owned contiguous property where the burning is taking place. This allowable burning may only take place during the hours from sunrise to sunset and must be attended at all times by a person or persons who are equipped to control the fire.
- C. Open burning requiring special written authorization from the Township Code Enforcement Officer or other official, as designated by the Township Manager.

- (1) A property owner, person or agent may request permission for open burning by telephone or in writing, at least three working days prior to the date or dates for which the open burning is requested, to the Code Enforcement Officer, designated official or authorized representative. The request received must include:
 - (a) The name and address of the requesting party.
 - (b) The name and address of the responsible person or agent who will be conducting said burning, if different from the requesting party.
 - (c) The address or location of proposed open burning.
 - (d) General statement of intent of reason for the open burning request, and description of material or materials to be burned.
- (2) The property owner, person or agent making the request in § 78-4.C.(1) shall be responsible for insuring that the Township's written authorization is picked up, received by or in hand by the persons or agents who will be conducting the open burning at least one working day prior to the day the proposed open burning is to take place.
- (3) Minimum requirements for authorized open burning.
 - (a) All those requirements listed in "general restrictions" (§ 78-3).
 - (b) The person or agent conducting the open burning must notify the Hershey Fire Department and Derry Township Police Department prior to beginning or lighting of the proposed open fires.
 - (c) No authorized open burning shall take place less than 50 feet from an adjoining property.
 - (d) No authorized open burning shall take place within 100 feet of a building or structure on the property on which the burning is to take place, and unoccupiable buildings or structures on adjoining property.
 - (e) No authorized open burning shall be conducted within 150 feet of a habitable or occupied dwelling on an adjoining property.
- (4) Special requirements for bonfires.
 - (a) Requests for conducting bonfires must be in writing and be received by the Township at least 10 working days prior to the date of the proposed bonfire.
 - (b) Bonfires shall be exempted from Subsections I and K of § 78-3, with regard to hours and days as may be contained in written authorization from the Township.

- (c) A bonfire shall be no more than five feet by five feet in dimension, and shall burn no more than three hours. Fuel for a bonfire shall consist only of seasoned dry firewood and be ignited with a small quantity of paper. The fire shall not be used for waste disposal purposes.
 - (d) The authorization shall be issued only when it can be reasonably demonstrated that such fires and spectators will be controlled by responsible persons or officials.
- (5) The Code Enforcement Officer may place additional restrictions or conditions on the authorization for a bonfire or authorized open burning, as may be warranted by any special circumstances for the proposed fires.
- (6) It shall be the responsibility of the person or agent conducting any authorized open burning to be knowledgeable of the requirements of this chapter, DEP rules and regulations, EPA rules and regulations and any other applicable rules and regulations, and so comply.
- (7) Any request for authorized outdoor open burning which is denied by the Code Enforcement Officer, or designated official, or for special requests which cannot comply with provisions of this chapter, may be appealed in writing to the Board of Supervisors.

§ 78-5. Outdoor burning in approved containers or outdoor fireplaces.

- A. All burning in approved containers shall conform to all the "general restrictions" in § 78-3.
- B. All approved containers and outdoor fireplaces, except outdoor fireplaces using only propane or natural gas as fuel, shall be located, when used for burning, at least 10 feet from a separately owned adjoining property, 25 feet from any structure on the property on which the burning is to take place, or nondwelling structure on adjoining property, and 50 feet from a habitable dwelling on an adjoining property.
- C. Approved containers.
 - (1) An appliance or device, other than an outdoor wood-fired boiler, used for outdoor burning approved by and listed by a recognized testing agency, which is installed and used in accordance with the listing and manufacturer's instructions. The use of such appliances is limited to residential or small commercial use not requiring a building permit for installation and approvals or permits of other state and federal agencies, the installation of which will be subject to applicable codes and regulations.
 - (2) A metal or masonry barrel, pipe or container which is no more than three feet in diameter or any horizontal distance, and no more than five feet total, vertically. There shall be no individual opening on the sides of these containers, except for opening for drainage, ventilation or combustion air, no greater than three inches in

diameter and closable doors or openings intended for use for loading or igniting a fire. These closable openings shall be kept closed and only be opened during burning for loading, igniting or extinguishing the fire. All such containers shall have an opening in the top covered with a metal grating or mesh wire of not more than 3/8 inch opening in any dimension. This mesh or grating shall be removed only for igniting, loading or extinguishing any fire in the container. Any material being burned must be contained entirely inside the container.

- (3) Outdoor fireplaces. Outdoor fireplaces constructed and generally intended for recreational use as defined in this chapter for residences and small commercial application may be considered as approved for contained burning under this section. Such fireplaces shall have an essentially contained fire chamber in which all burning takes place, and a flue or chimney through which exhaust, gas, smoke and emissions escape. The flue or chimney must have a spark arrester or screen covering, if said chimney or flue is of insufficient length or such construction as to prevent the emissions of sparks and ash. A screen covering will be required over any fire chamber which has an open top surface which may allow spark and ash emission.

§ 78-6 Outdoor wood-fired boilers.

- A. Applicability. As of the effective date of this ordinance, this section applies to the following:
 - (1) A person, manufacturer, supplier or distributor who sells, offers for sale, leases, or distributes an outdoor wood-fired boiler for use in the Commonwealth.
 - (2) A person who installs an outdoor wood-fired boiler in the Commonwealth.
 - (3) A person who purchases, receives, leases, owns, uses, or operates an outdoor wood-fired boiler in the Commonwealth.
- B. Exemptions. Any Non-Phase 2 outdoor wood-fired boiler in existence prior the adoption of this ordinance shall be permitted to remain, provided that the owner registers the device with the Code Enforcement Officer within 60 days of the effective date of this ordinance. Upon registration, the Code Enforcement Officer shall issue the owner a certificate of use to operate the existing Non-Phase 2 outdoor wood-fired boiler.
 - (1) If the owner of an existing Non-Phase 2 outdoor wood-fired boiler does not register the device with the Code Enforcement Officer within 60 days of the effective date of this ordinance, or within 30 days of notification by the Code Enforcement Officer, the Non-Phase 2 outdoor wood-fired boiler shall be removed.
- C. Restrictions on Phase 2 outdoor wood-fired boilers:
 - (1) A person may not sell, offer for sale, distribute, or install an outdoor wood-fired boiler for use unless it is a Phase 2 outdoor wood-fired boiler.

- (2) A person may not purchase, lease, or receive an outdoor wood-fired boiler for use unless it is a Phase 2 outdoor wood-fired boiler.
- D. Setback requirements for New-Phase 2 outdoor wood-fired boilers. A person may not install a New-Phase 2 outdoor wood-fired boiler unless the following setbacks are met:
- (1) The Phase 2 outdoor wood-fired boiler shall be located at least 75 feet from any property line.
 - (2) The Phase 2 outdoor wood-fired boiler shall be located at least 150 feet from any adjoining dwellings or habitable space.
 - (3) The Phase 2 outdoor wood-fired boiler shall be located at least 500 feet from the occupied building of a hospital, school, or nursing home, or from the boundary of a municipal park.
 - (4) If the Phase 2 outdoor wood-fired boiler is located within 300 feet of any dwellings or habitable space not served by the Phase 2 outdoor wood-fired boiler, the chimney/stack shall be at least 2 feet higher than the peak of that dwelling or habitable space.
- E. Stack height requirements for New-Phase 2 outdoor wood-fired boilers. A person may not install, use, or operate a New-Phase 2 outdoor wood-fired boiler unless the boiler has a permanently attached stack. The stack must meet both of the following requirements except as modified by §78-6.D.(4):
- (1) Extend a minimum of 10 feet above the ground.
 - (2) Be installed according to the manufacturer's specifications.
- F. Allowed fuels and materials. A person who owns, leases, uses, or operates an outdoor wood-fired boiler in the Commonwealth shall use one or more of the following fuels and materials:
- (1) Clean wood.
 - (2) Wood pellets made from clean wood.
 - (3) Home heating oil, natural gas, or propane that:
 - (a) Complies with all applicable sulfur limits.
 - (b) Is used as a starter or supplemental fuel for dual-fired outdoor wood-fired boilers.
 - (4) Other types of fuel approved in writing by DEP upon receipt of a written request.

- G. Prohibited fuels. A person who owns, leases, uses, or operates an outdoor wood-fired boiler may not burn a fuel or material in that outdoor wood-fired boiler other than those fuels and materials listed under §78-6.F.
- H. Applicable laws and regulatory requirements. A person may not use or operate an outdoor wood-fired boiler unless it complies with applicable Commonwealth, County, and local laws and regulations adopted thereunder.

§ 78-7. Extinguishment.

- A. Any outdoor or open fire which, for any reason, is in violation, should be extinguished immediately by the person or agent in attendance or responsible for the fire.
- B. The Code Enforcement Officer, Zoning Officer, Township Manager, police officer, Fire Chief or other designated official may order the immediate extinguishment of any outdoor or open fire which is in violation of any provision of this chapter, or which is creating a hazard to life and take any prudent action to extinguish or cause the extinguishment of any outdoor fire in order to protect life and property. The failure of any person or agent to take action to extinguish a fire, when so ordered by a legally designated official, shall constitute a distinct and separate violation of this chapter, regardless of any other violation which may exist.

§ 78-8. Violations and penalties.

Any person, firm, or corporation who shall violate any provision of this chapter, upon conviction thereof in an action brought before a district justice in the manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure, shall be sentenced to pay a fine of not less than \$100 nor more than \$1,000 for each separate offense and, in default of the payment of such fine, may be sentenced to imprisonment for 90 days, or to the extent allowed by law for the punishment of summary offenses. Each day that a violation of this chapter continues or each section of this chapter which shall be found to have been violated shall constitute a separate offense.