

DRAFT June 15, 2016

AN ORDINANCE OF ELDRED TOWNSHIP, MONROE COUNTY, PENNSYLVANIA, TO PROMOTE THE PUBLIC HEALTH, SAFETY AND WELFARE AND TO SAFEGUARD THE HEALTH, SAFETY AND WELFARE OF THE CITIZENS OF THE TOWNSHIP BY REGULATING THE AIR POLLUTION AND THE FIRE HAZARDS OF OPEN BURNING AND OUTDOOR BURNING, PROVIDING PENALTIES FOR THE VIOLATION THEREOF, AND REPEALING ALL ORDINANCES OR SECTIONS OF ORDINANCES INCONSISTENT HEREWITH.

Be it Ordained and Enacted by the Supervisors of Edlred Township and hereby Ordained and Enacted by the Authority of the Same:

TITLE

This Ordinance shall be known and cited as the
Eldred Township Open Burning Ordinance

SECTION 1: PURPOSE

Open burning of materials can pose a threat to life and property in Eldred Township if not properly controlled. Such burning can cause air pollution which can have detrimental effects on the health of the residents. Such burning can spread and cause damage and possible loss of life to other properties and their owners. It is the purpose of the Ordinance to prevent and control air pollution, promote public health, safety and welfare and to safeguard the health, comfort, living conditions, safety, and welfare of the citizens of Eldred Township by regulating the air pollution and fire hazards of open burning and outdoor burning.

SECTION 2: APPLICABILITY

This Ordinance applies to all outdoor burning and open burning within Eldred Township except as follows:

This Ordinance does not apply to burning for the purpose of generating heat in a stove, furnace, fireplace or other heating device within a building used for human or animal habitation.

This Ordinance does not apply to the use of propane, acetylene, natural gas, gasoline or kerosene in a device intended for heating, construction or maintenance activities

This Ordinance does not apply to indoor or outdoor cooking activities, outdoor campfires and small bonfires for ceremonies or recreation, provided that reasonable safeguards are maintained and provided that they do not cause a nuisance.

SECTION 3: 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:

Burning: the act of consuming by fire; to flame, char, scorch or blaze

Campfire: a small outdoor fire intended for recreation or cooking but not including a fire intended for disposal of waste wood or refuse.

Clearing and Grubbing Waste: trees, shrubs and other native vegetation which are cleared from land during or prior to the process of construction, not including demolition waste and dirt laden roots.

Construction and Demolition Waste: building waste materials including but not limited to waste shingles, insulation, lumber, treated wood, painted wood, wiring, plastics, or packaging and rubble that results from construction, remodeling, repair and demolition operations on a house, commercial or industrial building or other structure.

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, carpets, demolition waste (insulation, shingles, siding, etc) furniture, mattresses or box springs, paint, putrescible waste, solvents, tires or treated wood.

Enforcement Officer: The Eldred Township Zoning and Codes Officer shall be the Ordinance Enforcement Officer or other entity designated by the Eldred Township Board of Supervisors.

Garbage: all putrescible (decaying) animal and vegetable matter resulting from the handling, preparation, cooking and consumption of food.

Leaf Waste: leaves from trees, bushes and other plants, garden residue, shrubbery and tree trimmings and similar material, but not including grass clippings.

Municipal Waste: any garbage, refuse, industrial, lunchroom or office waste and other materials, including solid, liquid, semisolid or contained gaseous material, resulting from operation of residential, municipal, commercial or institutional establishments, or from community activities and which are not classified as residual or hazardous waste, except farm produced manure, other agricultural waste and food processing waste used on land where such materials will improve the condition of the soil, the growth of crops or the restoration of the land for the same purposes, and any sludge not meeting the definition of "residual or hazardous waste", as defined in Commonwealth of Pennsylvania Solid Waste Management Act. The term does not include source-separated recyclable materials or leaf waste.

Municipality: a city, incorporated town, township, borough, county municipal authority, or other public body created under State law having jurisdiction over the disposal of sewage, industrial wastes or other wastes.

Open Burning: kindling or maintaining a fire where the products of combustion are emitted directly into the ambient air without passing through a stack or chimney. This includes burning in a barrel.

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, district authority, or any other legal entity whatsoever which is recognized by law as subject of rights and duties. In any provisions of this Ordinance prescribing a fine, imprisonment or penalty, or any combination of the foregoing, the term "person" shall include the officers and directors of any corporation or other legal entity having officers and directors.

Responsible Adult: an individual 16 years or older who is not under the influence of drugs or alcohol or suffering from any other disability which would impair his or her ability to properly supervise a fire.

Refuse: garbage, rubbish, and trade waste.

Streets: the inclusive term for streets, alleys, avenues, highways, courts, lanes and any other public property opened to passage by vehicle or pedestrian traffic.

Township: Eldred Township, Monroe County, Pennsylvania

Waste: a material whose original purpose has been completed and which is directed to a disposal or processing facility or is to be disposed of. The term does not include source-separated recyclable materials, leaf waste or material approved by the Commonwealth of Pennsylvania, Department of Environmental Protection for beneficial use.

SECTION 4: OPEN BURNING

It shall be unlawful to burn, ignite, incinerate, maintain or permit to burn any materials whatsoever, of whatever nature, without complying with this Ordinance.

SECTION 5: UNLAWFUL SUBSTANCES

(1) It shall be and is hereby declared unlawful for any person or entity to burn or permit to be burned any unlawful materials for which the burning is regulated by some state or federal law, statutes or regulations, and in addition, as set forth, the following:

(a) Construction debris, plastics, tires, rubber, fiberglass materials, aerosol containers

(b) By-products of manufacturing and processing operations and wastes from commercial operations.

(c) Garbage, domestic waste or offal

(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 a 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.

SECTION 6: LOCATION/CONTROL OF OPEN BURNING

Open burning shall be permitted only on lots of one-half acre or more.

All permitted open burning shall be conducted in a safe, nuisance free manner, when wind and weather conditions minimize adverse effects and do not create a health hazard or a visibility hazard on roadways, railroads or airfields.

No fire shall be set, started, fed, permitted to burn or maintained where such fire may endanger any building or property, except where such building or property is used by the fire company for training

purpose.

Open burning shall be confined in a non-combustible container, covered with a wire screen of one-half inch or smaller mesh, except for the burning of leaves, brush and/or natural untreated wood

Leaves, brush and untreated wood generated by the property on which they are burned may be burned without being confined in a non-combustible container or covered with a wire screen. However, under no circumstances shall such materials be brought from other premises to be burned.

Open burning in a noncombustible container shall take place at least twenty-five (25) feet from a building, property line or road line.

Open burning in a noncombustible container shall be attended by a responsible adult with an unobstructed view of the container containing the fire. That person shall have readily available for use such fire extinguishing equipment as may be necessary for the total control of the fire.

Burn barrels and other noncombustible containers used to contain fires shall be cleaned regularly to prevent smoldering.

Open burning of leaves, brush and/or natural/untreated wood not confined in a non-combustible container shall take place at least fifty (50) feet from a building, property line or road line.

Open burning of leaves, brush and/or natural/untreated wood which that is not contained in a noncombustible container shall be attended by a responsible adult who is immediately adjacent to the fire and have readily available for use at the burn site such fire extinguishing equipment as may be necessary for the total control of the fire that shall include a pressurized hose or a fire extinguisher.

No fire shall be set that results in uncontrolled burning of vegetation (field fire).

Open burning shall be conducted in conformance with all local and state fire protection regulations

If a resident has concerns about the safety of any intended open burn, or if he or she is unsure whether that burn will comply with this ordinance or any other relevant law, he or she may contact the local fire department through the Township Office during its normal business hours to request that it be on site for the duration of the burn, at the resident's expense.

SECTION 7: OPEN BURNING IN PUBLIC AREAS

No person shall set, start, feed, permit to burn or maintain any fire upon any of the streets, sidewalks, alleys or other public grounds in Eldred Township, except where a designated area has been set aside or reserved for this purpose and an appropriate container has been provided to contain such a fire.

SECTION 8: 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 an official of the Township or a designee of the Kunkletown Volunteer Fire Company or be extinguished immediately upon request of such official. Any costs to the Fire Company or Township as a result of extinguishing any such fire shall be reimbursed by the person or persons responsible for setting the fire.

SECTION 9: EXEMPT FIRES

The following types of fires which do not burn unlawful materials are permitted provided the following conditions are met and that open burning of materials does not create a safety hazard or nuisance.

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

Any fire set for the purpose of instructing personnel in firefighting, when approved by the Department of Environmental Protection's Regional Air Quality Program office.

A fire set for the prevention and control of disease or pests, approved by the Department of Environmental Protection's Regional Air Quality Program office.

A fire set for the purpose of burning, clearing and grubbing waste approved by the Department of Environmental Protection's Regional Air Quality Program office.

A fire set in conjunction with the production of agricultural commodities in their unaltered state on the premises of a farm operation.

A fire set for the purpose of burning that amount of leaf waste generated from the premises of a structure occupied solely as a dwelling by two families or less, when a fire is on the premises of said structure.

Persons responsible for any large fires are encouraged to contact Monroe County Control Center and provide the time and location of the fire.

SECTION 10: FIRE BAN EMERGENCY

The Board of Supervisors of Eldred Township may declare a fire ban emergency in Eldred Township following consultation with the Fire Chief of the Kunkletown Volunteer Fire Company during periods of drought or other periods of high fire risk to woodlands or property within Eldred Township.

SECTION 11: RESPONSIBILITY OF OWNERS AND OPERATORS

Whenever the enforcing officer finds that an open burning is occurring in the Township or has occurred, other than those exceptions noted in SECTION 9 above, the enforcing officer may enter the property and order the owner or operator to take corrective action in a manner satisfactory to the Township or the enforcing officer may order the owner or operator to allow access to the land by the enforcing officer or a third party to take such action.

SECTION 12: 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 township; 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 Township or its personnel in the performance of any duty hereunder, including denying the enforcing officer access to the source or facility; or to violate the provisions of 18Pa.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 section. The owner or operator of an open burning source shall not allow pollution of the air, water or other natural resources of the Township to result from the source.

SECTION 13: SPECIAL CIRCUMSTANCES

In the event that it is necessary to have an uncontained fire of any size and/or at time other than permitted under this Ordinance, special permission must be obtained, in writing, in advance of setting said fire, from the Eldred Township Board of Supervisors.

SECTION 14: REPEALER

All other Ordinances or parts thereof which are in conflict with this Ordinance are hereby repealed.

Section 15: VIOLATIONS AND PENALTIES

Any person who violated or permits a violation of this Ordinance shall be given a warning. If, having received the warning, the person violates or permits a violation of this Ordinance a second time, a summary proceeding may be brought by the Township. Upon conviction in a summary proceeding brought before a District Justice under the Pennsylvania Rules of Criminal Procedure, that person shall be guilty of a summary offence and shall be punishable by a fine of not more than \$300.00 per day plus the costs of prosecution and additional costs as described in Section 18 below. In default of payment thereof, the defendant may be sentenced to imprisonment for a term not exceeding 90 days. Each day or portion thereof that such a violation continues or is permitted to continue shall constitute a separate offence, and each section of this Ordinance that is violated shall also constitute a separate offence. The provisions of this Ordinance shall be enforced by the Zoning and Codes Officer under § 1204-2, duties and power from the Eldred Township Zoning Ordinance.

Note: penalties to be reviewed by solicitor

SECTION 16: ASSESSMENT OF ADDITIONAL COSTS

In the event any Fire Company (firefighters and equipment) is required to respond to a fire which violated the provisions of the Ordinance and upon conviction of any violation of this Ordinance, the violator shall also pay charges in order to cover the fire-fighting costs. Charges shall be assessed for use of fire-fighting equipment and labor charge based upon an hourly rate for all firemen engaged in extinguishing said fire.

The Board of Supervisors shall determine by resolution, a reasonable schedule of costs, based upon charges calculated by the Fire chief and his designee including, but not limited to: mileage, operating costs and fire-fighting equipment and man-hours of participants. These charges shall be in addition to and not in lieu of any penalties provided elsewhere.

SECTION 17: LIABILITY

The Township of Eldred and its agents, officials and representatives, shall not, under any circumstances, be liable or responsible for damages caused to any person or property by reason of the provisions of this Ordinance, or by reason of the conduct of any burning activity in compliance with the terms and provisions of this Ordinance. The individual person or party responsible for any such fire shall bear sole liability for any damages caused as a result thereof.

SECTION 18: EFFECTIVE DATE

This Ordinance shall become effective five (5) days from the date of enactment. ORDAINED AND ENACTED at a regular meeting of the Township of Eldred, Monroe County, Pennsylvania this _____ day of _____, 2016.

Attest:

Eldred Township Board of Supervisors
