

ORDINANCE NO. 2008-02

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF ROCKLAND TOWNSHIP, BERKS COUNTY, PENNSYLVANIA, REGULATING THE OPEN BURNING WITHIN THE TOWNSHIP, PRESCRIBING PENALTIES FOR VIOLATORS AND REPEALING PREVIOUS ORDINANCES.

WHEREAS, the Board of Supervisors of Rockland Township have determined that the open burning and air pollution may be detrimental to the health, safety and welfare of the citizens of Rockland Township and at times places an unnecessary burden and risk upon the Township's volunteer fire services personnel and, therefore, are desirous of protecting its citizens and volunteer personnel from unrestricted open burning and air pollution; and

WHEREAS, after careful review, the Board of Supervisors of Rockland Township are desirous of established regulations to protect its citizenry and volunteer fire personnel from potential dangers and damages as a result of open burning; and

NOW THEREFORE, the Board of Supervisors of Rockland Township, Berks County, hereby ordain as follows:

Section 1. This Ordinance shall be known as the Rockland Township Burning Ordinance.

Section 2. The following words and phrases when used in this Ordinance shall have the meanings given to them in this section unless the context clearly indicates otherwise:

Approved container. A container used for the purpose of open burning consisting of a metal barrel with a 55-gallon capacity or less which meets the specifications attached hereto, made part hereof and marked as Exhibit "A" or similar approved container.

Bonfire. A large fire built outside a containment structure upon the ground for recreational or ceremonial purposes-limited to a size of generally no greater than five (5) feet long, five (5) feet wide and five (5) feet in height.

Burn Container Cover. A metal screen with spaces not more than one-quarter square inch apart that covers the entire open area above the approved container and meets the specifications attached hereto as Exhibit "A". The screen shall be maintained in good order so as to prevent larger particles from escaping from the approved container during operation.

Burning. The act of consuming by fire, including but not limited to, flaming, charring, scorching or blazing. As used in this Ordinance, the term "smoldering" shall have the same meaning as burning, and any smoldering shall be considered burning.

Campfire. A small wood fire generally built in an iron ring or similar device outside of a structure for cooking or to create warmth generally limited to a size not exceeding a fuel supply of greater than three (3) feet in diameter and two (2) feet in height.

Clearing and Grubbing Waste. Trees, shrubs and other native vegetation which are cleared from land. The term "clearing and grubbing waste" does not include demolition waste or dirt-laid roots.

Domestic Refuse. Waste generated from a dwelling occupied by two families or less. The term "domestic refuse" does not include household hazardous waste, source separated waste from recyclables, appliances, carpets, demolition waste (insulation, shingles, plaster, siding, etc.), furniture, mattresses, box springs, paint, plastics, petroleum products, rubber products, solvents, tires, treated wood, wire or putrescible waste.

Code Enforcement Officer. The Township's Code Enforcement Officer is herein referred to as Code Official and is so designated as such by the Township.

Fire. Any fire set or maintained outside of a building.

Fire Department. Shall refer to the applicable fire department for a certain area of the Township and includes the Lyons Fire Department, the Ruscombmanor Fire Department, the Topton Fire Department, and/or the Oley Fire Department.

Household Hazardous Waste. Waste considered hazardous within the meaning of the Solid Waste Management Act, 35 P.S. §6018.101 *et seq.*, except that it is produced in lesser quantities than that regulated under the Solid Waste Management Act, or is generated by persons not considered hazardous waste generators within the meaning of the Solid Waste Management Act.

Open Burning. A fire, not directed through a flue, which emits air contaminants directly into the outdoor atmosphere.

Person. Any individual, partnership, corporation, association, institution or cooperative enterprise.

Recreational or Ceremonial Burning. Open burning which occurs for pleasure, religious, ceremonial, cooking, warmth or other similar purposes, including but not limited to, bonfires or campfires.

Source Separated Recyclable Materials. Materials that are separated from municipal waste at the point or origin for the purpose of recycling.

Structure. Any house, dwelling, garage, shed, shelter or other building as that term is defined by the Zoning Ordinance of Rockland Township.

Township. The Township of Rockland, Berks County, Pennsylvania.

Yard Waste. Leaves, grass clippings, garden residue, tree trimmings, chipped shrubbery, other vegetative material.

Section 3. No person shall conduct or perform any open burning, ignite or feed any open fire, or aid or abet, allow, permit, maintain or cause any open burning or open fire within the Township unless and in accordance with the provisions of this Ordinance.

Section 4. Open burning shall be permitted as follows:

- A. A fire to prevent or abate a fire hazard when in accordance with Pennsylvania Department of Environmental Protection (“DEP”) Regulations.
- B. A fire to instruct personnel in firefighting, when in accordance with DEP regulations which is under the direct supervision of the Chief of the Fire Company or his/her designee.
- C. A fire to prevent and/or control disease or pests when in accordance with DEP regulations.
- D. A fire, other than a campfire, solely to cook or prepare food.

RESIDENTIAL APPLICATIONS

The following sections shall apply to Residential fires, but shall not be limited to residential applications when Commercial enterprises are applicable.

Section 5. Open Burning shall be permitted pursuant to the standards included below:

- A. Domestic refuse generated from one (1) dwelling, when the fire is on the premises of a structure solely occupied as a dwelling by a single family or less and then the refuse results from the normal occupancy of said structure provided:
 - 1. The open burning is conducted in an approved container (see attached Exhibit “A”).
 - 2. The approved container conforming with the Township’s requirements is placed a minimum of fifty (50) feet from any property line or structure and fifty (50) feet from the center of any roadway;
 - 3. The open burning is attended to at all times;
 - 4. The open burning does not take place either before the sunrise or after the sunset;
 - 5. The open burning is completely extinguished, including smoldering, by sunset;

6. Precautions are taken to regulate, control and extinguish the open burning through the use of fire extinguishers, water hoses, dirt, sand or other fire extinguishing equipment which shall be readily available at the site of the open burning for immediate utilization.
- B. A fire set in conjunction with the production of agricultural commodities in their unmanufactured state on the premises of a farm operation pursuant to the standards below:
1. The open burning is attended to at all times;
 2. The open burning does not take place either before sunrise or after sunset;
 3. The open burning is completely extinguished, including smoldering, by sunset;
 4. Precautions are taken to regulate, control and extinguish the open burning through the use of fire extinguishers, water hoses, dirt, sand or other fire extinguishing equipment which shall be readily available at the site of the open burning for immediate utilization; and
- C. A fire set for purposes of burning, clearing and grubbing waste provided:
1. The open burning is at least fifty (50) feet from a structure or property line and fifty (50) feet from the center of any roadway;
 2. The open burning is attended to at all times;
 3. The open burning does not take place either before sunrise or after sunset;
 4. The open burning is completely extinguished, including smoldering, by sunset;
 5. Precautions are taken to regulate, control and extinguish the open burning through the use of fire extinguishers, water hoses, dirt, sand or other fire extinguishing equipment which shall be readily available at the site of the open burning for immediate utilization; and
- D. Yard waste generated from the premises of the structure occupied solely as a dwelling by a single family or less, where the fire is on the premises of the said structure provided:
1. The yard waste being burned is dry material and occupies a space that is not more than five (5) feet long, by five (5) feet wide, by five (5) feet in height;

2. The open burning is at least fifty (50) feet from any structure or property line and fifty (50) feet from the center of any roadway;
 3. The open burning is to be attended at all times;
 4. The open burning does not take place either before sunrise or after sunset;
 5. The open burning is completely extinguished, including smoldering, by sunset;
 6. Precautions are taken to regulate, control and extinguish the open burning through the use of fire extinguishers, water hoses, dirt, sand or other fire extinguishing equipment which shall be readily available at the site of the open burning for immediate utilization; and
- E. A fire set solely for ceremonial or recreational purposes provided the following conditions are met:

BONFIRES:

1. The bonfire shall be at least fifty (50) feet from any property line or structure and fifty (50) feet from the center of any roadway;
2. The bonfire shall not be placed under any overhead wires, trees or similar vegetation, and all brush, leaves, branches or other combustible materials shall be cleared within twenty-five (25) feet of the diameter of the bonfire;
3. The bonfire is attended at all times;
4. The bonfire is completely extinguished, including smoldering, before it is left unattended; and
5. Precautions are taken to regulate, control and extinguish the bonfire through the use of fire extinguishers, water hoses, dirt, sand or other fire extinguishing equipment which shall be readily available at the site of the bonfire for immediate utilization.

Section 6. Notwithstanding anything in this Ordinance, no open burning of any materials generated by a commercial, industrial or other similar non-residential use is permitted, including but not limited to, any materials from the salvaging, construction and/or demolition of any structure unless said burning is undertaken in compliance with Section 9 of this Ordinance.

Section 7. The following additional standards apply to all open burning:

- A. All open burning shall be attended by a person eighteen (18) years of age or older.

- B. No open burning shall produce malodorous fumes detectible beyond the property line which adversely affects the reasonable health, safety, use, occupancy and/or welfare of others.
- C. There shall be no open burning of any toxic or household hazardous waste, including but not limited to, tires, plastics, petroleum-based products, paint, batteries, pressure treated wood or furniture.
- D. All items burned shall be readily combustible, and the application of any accelerant used to ignite the fire shall be done in accordance with the recommendations of its manufacturer for safe and proper use.
- E. The use of gasoline, motor oil or other similar petroleum-based products, as accelerants, for a fire is prohibited.
- F. The provisions of the most current edition of the International Fire Code, Section 307 Open Burning, are incorporated herein and must be complied with by any person conducting open burning. To the extent that those provisions conflict with any provisions contained in this Ordinance or other approved regulations, the stricter provision shall apply.
- G. No open burning shall be permitted within any street right-of-way, gutter or swale except for open burning pursuant to paragraph 4(A), (B) or (C).

Section 8. If because of weather, atmospheric or other conditions, any open burning would be in the judgment of the Board of Supervisors of the Township to constitute a general danger or threat to property or persons in the Township, the Board of Supervisors of the Township may prohibit any open burning until such danger, in their opinion is no longer present. The Township shall notify the public of the prohibition on open burning through the newspapers, posting at the Township Municipal Building and at the local fire companies, and/or through the use of other publications.

A ban on open burning may also be declared by the Township Supervisors, the County of Berks, the Commonwealth of Pennsylvania and/or the United States Government. To the extent that such a fire ban emergency is declared by these entities, it shall supercede the provisions of this Ordinance.

COMMERCIAL APPLICATIONS

The following sections shall apply to Commercial fires, but shall also apply to Residential applications where appropriate.

Section 9. Open burning shall be allowed for recognized silvicultural or range or wildlife management practices, prevention or control of disease or pests, providing heat for out workers and a bonfire. Open burning shall be permitted, provided that any conditions are followed for:

1. Disposal of hazardous or toxic material where DEP determines that there is no practical alternative method of disposal.

2. Instruction in methods of fire fighting or for research in control of fires, in emergency or other extraordinary circumstances for any purpose determined to be necessary by the DEP.
3. Disposal of landscape waste, except residential and agricultural waste.
4. Recognized agricultural or horticultural management purposes to maintain or increase the quantity or quality of agricultural or horticultural production.

Where required by state or local law or regulations, open burning shall only be permitted with prior approval from the state or local air and water quality management authority, provided that all conditions specified in the authorization are followed. Where the jurisdictional DEP written permission is not applicable, the Code Official shall ensure that approved fire safety requirements and emission standards will be met.

UNIFORMLY APPLICABLE ENFORCEMENT PROCEDURES

Section 10. The Rockland Township Zoning Officer shall have the power and duty to enforce the provisions of this Ordinance.

The Township of Rockland 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 the Township of Rockland finds that any condition existing in or on the facility or source involved is causing or contributing to open burning or if the Township of Rockland finds that any person is in violation of any provision of this ordinance.

The Township of Rockland may, in its order, require compliance with such ordinances as are necessary to prevent or abate open burning or effect the purposes of this ordinance.

An order issued under this section shall take effect upon notice, unless the order specifies otherwise.

The authority of the Supervisors of Rockland Township 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 11. Responsibility of Owners and Operators. Whenever the Township Zoning Officer finds that open burning is occurring in the Township of Rockland, the Township Zoning Officer may order the owner or operator to take corrective action in a manner satisfactory to the Township of Rockland, or the Township Zoning Officer may order the owner or operator to allow access to the land by the Township Zoning Officer or a third party to take such action.

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, the Township of Rockland 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 13 of this ordinance.

Section 12. Criminal Penalties. Any person who violates any provision of this ordinance or any order of the Township of Rockland issued pursuant to this ordinance commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not less than one hundred dollars (\$100.00) nor more than two thousand five hundred dollars (\$2,500.00) for each separate offense and, in default of the payment of such fine, may be sentenced to imprisonment for ninety (90) days for each separate offense. Employees of the Township of Rockland authorized to conduct inspections or investigations are hereby declared to be law enforcement officers authorized to issue or file citations for summary violations under this ordinance, and the Solicitor for the Township of Rockland is hereby authorized to prosecute these offenses. For purpose of this section, a summary offense may be prosecuted before any district justice having jurisdiction. There is no accelerated rehabilitative disposition authorized for a summary offense.

Section 13. Civil Penalties. 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, the Township of Rockland 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, the Township of Rockland shall consider the willfulness of the violation; damage to air, soil, water or other natural resources of the Township of Rockland or their uses; financial benefit to the person in consequence of the violation; deterrence of future violations; cost to the Township of Rockland; 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 reported; other factors unique to the owners or operators of the source or facility; and other relevant factors.

When the Township 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 district justice having jurisdiction 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 district justice having jurisdiction 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 Township of Rockland. 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 district justice having jurisdiction 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 district justice having jurisdiction shall conduct a hearing to consider the appellant's alleged inability to pay within thirty (30) days of the date of the appeal. The district justice having jurisdiction may waive the requirement to prepay the civil penalty or to post an

appeal bond if the appellant demonstrates and the district justice finds that the appellant is financially unable to pay. The district justice having jurisdiction 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 Township of Rockland 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 Township of Rockland. 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 Township of Rockland, 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 interest in the property filed in accordance with established procedure prior to the filing of a notice of lien under this section.

Section 14. 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 of Rockland; 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 of Rockland or its personnel in their performance of any duty hereunder, including denying the Township Zoning Officer access to the source or facility; or to violate the 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 Township of Rockland to result from the source.

Section 15. Public Nuisances. A violation of this ordinance or of any order issued by the Township of Rockland under this ordinance shall constitute a public nuisance. The Township of Rockland 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 Township of Rockland may recover the expenses of abatement following the process for assessment and collection of a civil penalty contained in Section 13 of this ordinance. Whenever the nuisance is maintained or continued contrary to this ordinance or any order issued pursuant to this ordinance, the nuisance may be abatable in the manner provided by this ordinance. Any person who causes the public nuisance shall be liable for the cost of abatement.

Section 16. Repealer. Ordinance No. 1996-05 previously enacted is hereby repealed. All other ordinances or parts thereof which are in conflict with this ordinance are hereby repealed.

Section 17. 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. It is hereby declared to be the intent of the Supervisors of Rockland Township that this ordinance would have been adopted if such illegal, invalid or unconstitutional section, clause, sentence, part or provision had not been included herein.

Section 17. Effective Date. This ordinance shall become effective on March 12, 2008.

ENACTED AND ORDAINED BY THE BOARD OF SUPERVISORS THIS 11TH
DAY OF MARCH, 2008.

**BOARD OF SUPERVISORS OF
ROCKLAND TOWNSHIP**

Russell W. Coffin

Harold K. Meadway

Terry L. Fegley

Attest:

Karen K. Krall, Secretary

MINIMUM REQUIREMENTS FOR YOUR SAFETY AND PROTECTION

BURN IN A SAFE INCINERATOR
(SHOWN BELOW IS A BARREL TYPE INCINERATOR)

① METAL BARREL
IN GOOD CONDITION.

② HEAVY SCREEN MESH
NOT LESS THAN 14-GAUGE WIRE
WITH HOLES NOT LARGER THAN
1/4 INCH.

③ HELP COMBUSTION &
CLEAN BURNING
PUNCH HOLES AND SHOVE STEEL
RODS OR PIPES THROUGH BAR-
REL. THIS WILL HOLD BURNING
MATERIAL UP AND GIVE A
CLEAN FAST BURN.

④ DRAFT HOLES
NEAR THE BOTTOM NOT LARGER
THAN ONE INCH IN DIAMETER.

⑤ GROUND CLEARED
AND MAINTAINED AT LEAST 5
SQUARE FEET AROUND INCIN-
ERATOR OF ALL MATERIAL THAT
COULD CAUSE YOUR FIRE TO
ESCAPE. MORE CLEARANCE MAY
BE REQUIRED.

⑥ SCREEN HINGED
& WEIGHTED
TO PREVENT FROM FALLING
OR BLOWING OFF YOUR INCIN-
ERATOR.

