

**TOWNSHIP OF UPPER BERN
COUNTY OF BERKS
COMMONWEALTH OF PENNSYLVANIA**

ORDINANCE NO.: 107-2010

**AN ORDINANCE OF UPPER BERN TOWNSHIP, BERKS COUNTY, PENNSYLVANIA, BY
REGULATING OPEN BURNING, OUTDOOR FIRES, INCINERATORS, WOOD-FIRED
BROILERS, HANDLING OF COMBUSTIBLE RUBBISH AND PROVIDING ENFORCEMENT
REMEDIES, WHILE CONSIDERING THE HEALTH, SAFETY AND GENERAL WELFARE
OF THE COMMUNITY. THIS ORDINANCE SHALL ALSO BE REFERENCED AS THE
“OPEN FIRE AND BURNING ORDINANCE”.**

BE IT ORDAINED, that the Board of Supervisors of the Township of Upper Bern does hereby enact and ordain the following:

Section 1: Purpose and Objective.

- (A) To provide safeguards and regulatory provisions that applies to open fires and open burning activities while considering the health, safety and general welfare of the community.
- (B) To provide safeguards and regulatory provisions that applies to outdoor furnaces and outdoor wood-fired boilers while considering the health, safety and general welfare of the community.
- (C) To provide safeguards and regulatory provisions in order to minimize air pollution, environmental problems and fire hazards from open fires and burning.

Section 2: Definitions.

For the purposes of this Ordinance, the following terms shall be defined as set forth below, unless a different meaning is plainly required by the context.

Board of Supervisors: The Upper Bern Township Board of Supervisors, Berks County, Pennsylvania.

Clean Substances: Materials that may be burned or utilized as to ignite or maintain a combustible energy source, as specified by the manufacturer of a permitted outdoor furnace or incinerator.

Clean Wood: Wood that has no paint, stains, or other types of coatings and wood that has not been treated with substances, including but not limited to, cooper arsenate, creosote, or pentachlorophenol, and wood pellets made from clean wood.

Garbage or Refuse: All organic and putresible materials from vegetation or animal sources that has been wasted as a result of the handling, preparation, cooking and consumption of food.

Incinerator: A device specifically designed for the reduction or destruction of approved materials through the burning of approved combustible materials. An incinerator may include a steel drum, cinder block containment area, masonry or metal enclosure, or an earthen pit, which shall be designed to allow for proper containment, air exchange, drainage, maintenance and reclamation.

Non-Organic Material: Material derived or formed from inanimate objects, such as tin cans, glass crockery, metals, plastic and similar materials.

Open Fire or Open Burning: Burning any material in the open atmosphere, including burning within steel drums, outdoor fireplaces, confined earthen pits or other approved containers.

Organic Material: Material derived from living organisms, such as wood, paper, agricultural products, and/or yard waste, such as bushes, shrubs, thickets, tree trimmings, hedge clippings and small trees.

Outdoor Furnace: An enclosed device specifically designed for the burning of materials for the production of heat, as permitted by all pertinent codes. All such furnaces shall be installed and operated in accordance with the manufactures specifications. Also refer to "wood-fired boiler".

Outdoor Wood-Fired Boiler: An alternative energy facility designed to burn clean wood or other permitted solid fuels, which transfers heated air or liquid through a piping or ventilation system. All such systems are generally contained within an accessory structure that is not intended for habitation by humans or animals. An outdoor wood-fired boiler may also be known as outdoor wood-fired furnaces, outdoor wood-burning appliances, outdoor hydraulic heaters and/or water stoves

Person: Any individual, partnership, company, firm, organization, trust, association, corporation or other entity recognized by law.

Recyclable Materials: Any material that has the ability to be recycled or is required to be recycled by Upper Bern Township under the provisions of Pennsylvania Act 101.

Rubbish: Solids not considered highly combustible, flammable or explosive, including rags, clothes, leather, rubber, textiles, wood, paper, yard waste, furniture, masonry, and other similar materials that has the abilities of being incinerated to reduce the volume of waste.

Salvage Operation: Any business, trade or industry engaged in whole or in part, the salvaging or reclaiming of any product or materials, including metals, chemicals, wood, paper products, or other similar salvaged materials.

Trade Waste: All solid or liquid materials or other rubbish from construction, building activities or normal business operations that may result from a permitted use or approved activity within Upper Bern Township.

Zoning Officer: The Upper Bern Township Zoning Officer, Berks County, Pennsylvania.

Zoning Permit: A document issued by the Zoning Officer to allow a specific use or activity to occur or continue, as specified on the zoning permit.

Section 3: Contained Burning, Incineration and Waste Reduction Requirements.

The following provisions shall specifically apply to contain burning, incineration and waste reduction activities within Upper Bern Township:

- (A) No person shall ignite or feed an open fire for the reduction or destruction of garbage, refuse, rubbish, trade waste, organic materials and/or inorganic materials, unless it conforms to the provisions of this Ordinance, or as specified other applicable state or federal laws.
- (B) Unless otherwise permitted by Upper Bern Township, contained open fires and burning within an approved incinerator shall only be permitted if such activities comply with the provisions of this Ordinance.
- (C) Contained open fires and burning shall be permitted within an incinerator or metal barrel meeting the following specifications:
 - (1) The incinerator or metal barrel shall be in good condition and capable of containing the waste to be destroyed or reduced;
 - (2) The top of the incinerator or metal barrel shall be covered by a screen of not less than fourteen (14) gauge wire with holes not larger than one (1) inch. The screen shall be hinged and/or weighted so that it is secure and capable of withstanding inclement weather conditions;
 - (3) The bottom of the incinerator or metal barrel shall contain a screen of not less than fourteen (14) gauge wire with holes not larger than one (1) inch. The screen shall be inserted at least six (6) inches from the bottom of the incinerator or metal barrel to provide an unoccupied area for drainage and air exchange; and
 - (4) Draft and drainage holes of not more than one (1) inch in diameter shall be located near the bottom to allow air and water to pass through.
- (D) Contained open fires and burning within the Agricultural Preservation (AP), Blue Mountain Preserve (BMP), Highway Commercial (HC), Resort Commercial (RC), General Industrial (GI) and Agricultural Industrial (AI) Zoning Districts shall be permitted, provided that the approved incinerator or metal barrel is located in a manner to comply with the following isolation and dimensional requirements:
 - (1) The incinerator or metal barrel shall be located at least ten (10) feet from any unoccupied or accessory building.
 - (2) The incinerator or metal barrel shall be located at least twenty-five (25) feet from any occupied building utilized for a residential, commercial, industrial, recreational or institutional use.
 - (3) The incinerator or metal barrel shall be located at least fifty (50) feet from a legal street right-of-way line.

- (4) The incinerator or metal barrel shall be located at least twenty-five (25) feet from all other property lines.
- (E) Contained open fires and burning within the Medium Density Residential (MDR) and Shartlesville Village (SV) Zoning Districts shall be permitted, provided that the approved incinerator or metal barrel is located in a manner to comply with the following isolation and dimensional requirements:
- (1) The incinerator or metal barrel shall be located at least ten (10) feet from any unoccupied or accessory building;
 - (2) The incinerator or metal barrel shall be located at least twenty (20) feet away from an occupied building utilized for a residential, commercial, industrial, recreational or institutional use;
 - (3) The incinerator or metal barrel shall not be located within the front yard. All contained burning activities shall be located behind the front façade of the principal use; and
 - (4) The incinerator or metal barrel shall be located at least ten (10) feet from the side and rear property lines.
- (F) All contained open fires and burning activities within an approved incinerator shall be continuously monitored by the owner or tenant of the property to which the incineration is being conducted or by an authorized representative of the owner or tenant.
- (G) The materials that may be burned within an approved incinerator or metal barrel shall be limited to the following items:
- (1) Organic materials such as leaves, branches and other similar yard waste;
 - (2) Garbage, refuse, and rubbish, provided that such materials are combustible and do not create a hazardous condition and/or poses a health risk to neighboring properties, as determined by the Upper Bern Township Zoning Officer or other designated municipal officials; and
 - (3) Combustible materials that aid with the reduction of solid waster materials.
- (H) The following materials shall be specifically prohibited to be burned within an approved incinerator or metal container:
- (1) Non-organic materials that are not combustible or can not be further reduced in volume after incineration;
 - (2) Recyclable materials;
 - (3) Gas, oil and similar petroleum products;

- (4) Rubber and leather products;
 - (5) Hazardous waste, as defined by local, state or federal agencies;
 - (6) Infectious waste, as defined by local, state or federal agencies;
 - (7) Medical waste, as defined by local, state and federal agencies;
 - (8) Pathological waste, as defined by local, state or federal agencies;
 - (9) Dead animals; and
 - (10) Other waste or discarded materials, which pose a health risk to neighboring property owners, as determined by Upper Bern Township Zoning Officer or other designated municipal officials.
- (I) Where required to consider the public health, safety or general welfare of the residents and property owner of Upper Bern Township, the Board of Supervisors may include additional or optional requirements to enforce the provisions of this Ordinance.

Section 4: Controlled Open Fires and Burning Requirements.

The following provisions shall specifically apply to controlled open fires and burning activities within Upper Bern Township:

- (A) Controlled open fires and burning may be permitted within a confined earthen pit, subject to the following provisions:
- (1) Only organic materials that are considered combustible from agricultural, conservation and municipal uses as well as contractors at active construction sites may consider this alternative;
 - (2) All such materials shall not be considered as hazardous, infectious, pathological and/or poses a healthy risk to neighboring property owners, as determined by the Upper Bern Township Zoning Officer or other designated municipal officials;
 - (3) All such controlled open fires and burning activities shall be conducted on the premises from which the materials originated and shall be located at least one hundred (100') feet from any building, structure and/or street right-of-way;
 - (4) All such controlled open fires and burning activities shall be continuously monitored by the owner or tenant of the property; and
 - (5) The owner or tenant shall notify Upper Bern Township and the Shartlesville Fire Company at least 48 hours prior to the commencement of the controlled open fire or burning activities.

- (B) Controlled open fires and burning may be permitted to eliminate or reduce small piles of brush, yard waste or similar organic debris, subject to the following provisions:
- (1) Only brush, yard waste or similar organic materials that are collected may be burned on the property from which the materials originated;
 - (2) All such materials shall not be considered as hazardous, infectious, pathological and/or poses a healthy risk to neighboring property owners, as determined by the Upper Bern Township Zoning Officer or other designated municipal officials;
 - (3) Unless the materials are confined within an earthen pit or an approved incinerator, the maximum dimensions of the debris pile shall not exceed sixty (60') square feet in surface area and shall not exceed five (5') feet in height;
 - (4) All such controlled open fires and burning activities shall be located at least one hundred (100') feet from any building, structure and/or street right-of-way; and
 - (5) The owner or tenant of the property shall continuously monitor all such controlled open fires and burning activities.
- (C) Controlled, open, enclosed or contained burns for fire training purposes may be permitted provided that such activities are supervised by the Shartlesville Fire Company and provided that such activities involving the controlled burn are approved by the Upper Bern Township Board of Supervisors.
- (D) Campfires and bonfires, may be permitted subject to the following provisions:
- (1) Individual or group campfires may be permitted within an existing commercial campground or resort, provided that the manager or owner of such facility has obtained an annual zoning permit prior to the commencement of activities for that season. Further, the manager or owner shall be responsible for distributing literature concerning campfire management and safety to all occupants;
 - (2) Community bonfires shall only be permitted for a special or seasonal event, as considered appropriate by the Board of Supervisors and Shartlesville Fire Company. If approved, a zoning permit shall be issued to the applicant outlining the appropriate controls, limitations and other regulations that may apply to the activities associated with the community bonfire; and
 - (3) Private residential campfires may be permitted provided that such campfires are located at least twenty (20') feet away from an occupied building or property line. All such private residential campfires shall not exceed twelve (12') square feet in surface area and shall be extinguished when the campfire is not supervised.

- (E) Chimeneas, fire pits, fire places or other ornamental heating devices, whether they are a permanent, temporary or portable structure shall be located to comply with the building setback requirements of the Zoning District on which the permitted use is located.
- (F) Unless otherwise permitted by the Upper Bern Township Board of Supervisors, the following controlled or contained burns are specifically prohibited by Upper Bern Township:
 - (1) All open fire or burning activities that are not permitted under the provisions of this Ordinance;
 - (2) All temporary or permanent open fire or burning activities that are prohibited by local, county, state or federal laws;
 - (3) Bonfires and campfires, which do not comply with the provisions of this Ordinance or have not been approved by the Upper Bern Township Board of Supervisors and Shartlesville Fire Company;
 - (4) Open fire or burning activities that are intentionally set for the prevention and/or control of disease from pests, rats, snake, insects or other pests, unless otherwise approved by the Upper Bern Township Board of Supervisors and Shartlesville Fire Company; and
 - (5) When smoke, ash or other emissions are hazardous, offensive and/or detrimental to the health of humans or animals, as determined by the Upper Bern Township Zoning Officer or other designated municipal officials.
- (G) Unless otherwise permitted by Upper Bern Township, controlled open fires and burning shall only be permitted if such activities comply with the provisions of this Ordinance.
- (H) At the discretion of the Upper Bern Township Board of Supervisors, open burning and fires shall be prohibited during extreme dry conditions or seasonal drought. The limitations and specifications for such a ban shall be announced at a public meeting.
- (I) The disposal of dead animals shall be conducted in accordance with state and federal laws.
- (J) Where required to consider the public health, safety or general welfare of the residents and property owner of Upper Bern Township, the Board of Supervisors may include additional or optional requirements to enforce the provisions of this Ordinance.

Section 5: Outdoor Furnaces and Outdoor Wood-Fired Boilers.

The following provisions shall specifically apply to outdoor furnaces and outdoor wood-fired boilers:

- (A) Outdoor furnaces and outdoor wood-fired boilers shall be permitted as an accessory use by right within the Agricultural Preservation (AP), Blue Mountain Preserve

(BMP), Highway Commercial (HC), Resort Commercial (RC), General Industrial (GI) and Agricultural Industrial (AI) Zoning Districts.

- (B) Outdoor furnaces and outdoor wood-fired boilers designed as a freestanding alternative energy facility shall not exceed twenty (20) feet in height and shall be located at least one hundred (100) feet from a property line. All such systems shall comply with the building and lot coverage requirements of the zoning district on which it is located.
- (C) Outdoor furnaces and outdoor wood-fired boilers shall be located behind the front façade of the building occupying the permitted use. No structural components of the wood-fired boiler shall be permitted in the front yard of the lot on which it is located.
- (D) Outdoor furnaces and outdoor wood-fired boilers shall be designed and located in order to minimize smoke and odor that is emitted and directed towards a residential use.
- (E) The only substance that may be burned in an outdoor furnace or outdoor wood-fired boiler shall be clean wood or clean substances, which are specified by the manufacturer of the unit.
- (F) The following substances are specifically prohibited to be incinerated within a outdoor furnace or outdoor wood-fired boiler: any wood that does not meet the definition of clean wood; tires; lawn clippings or yard waste; materials containing plastic, rubber or leather; petroleum products; paints and paint thinners; any type of paper; construction and demolition debris; plywood; particleboard; salt water driftwood; manure; bio-solids; animal carcasses; asphalt products; used cooking oils; and other similar materials that are not intended to be incinerated within a outdoor furnace or outdoor wood-fired boiler.
- (G) Outdoor furnaces and outdoor wood-fired boilers shall be located, designed and installed as per the manufacturer's specifications as well as all zoning, building code and utility requirements.
- (H) The outdoor furnace or outdoor wood-fired boiler shall be maintained and operated in compliance with all emissions of air quality standards promulgated by the U.S. Environmental Protection Agency or other relevant state and federal agency having jurisdiction.
- (I) Outdoor furnaces and outdoor wood-fired boilers may be located on a lot provided that it is located, designed and installed considering the health, safety and general welfare of the adjacent property owners.

Section 6: Enforcement and Penalties.

The following enforcement and penalty provisions shall apply to violations pertaining to this municipal ordinance:

- (A) Any person who violates or permits the violation of any provision of this Ordinance shall, upon conviction thereof in a summary proceeding brought before a District Justice under the Pennsylvania Rules of Criminal Procedure, be guilty of a summary offense, and shall be subject to the payment of a fine of not less than \$100 and not more than \$1,000, plus the costs of prosecution, including attorneys fees.
- (B) Each section of this Ordinance violated shall constitute a separate offense, and each day or portion thereof in which a violation of this ordinance is found to exist shall constitute a separate offense each of which violations shall be punishable by a separate fine imposed by the District Justice of not less than \$100 and not more than \$1,000, plus the costs of prosecution, including attorneys fees, or upon default of payment thereof, the defendant may be sentenced to imprisonment in the county prison for a term of not more than thirty (30) days.
- (C) All fines and penalties collected for the violation of this Ordinance shall be paid to Upper Bern Township.

Section 7: Repealer. All Ordinances or Resolutions, or parts of Ordinances or Resolutions, insofar as they are inconsistent herewith, shall be in the same or hereby repealed.

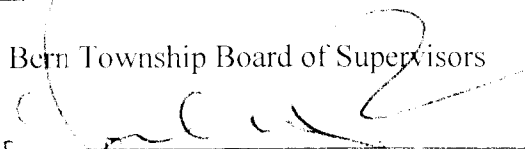
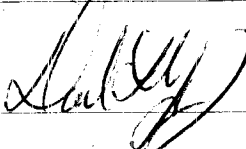
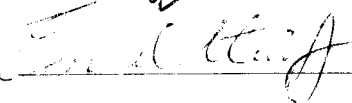
Section 8: Validity. If any Section or part of a Section of this Ordinance shall be declared invalid, such invalidity shall not affect the remaining parts or Sections of this Ordinance. It is hereby declared to be the legislative intent that this Ordinance would have been enacted as if such invalid Section or portion thereof had not been included therein.

Section 9: Effective Date. This Ordinance shall become effective upon adoption.

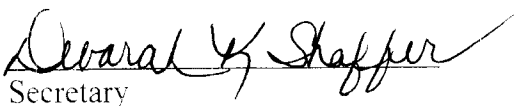
ORDAINED AND ENACTED this 8th day of September, 2010, by a vote of 3 Yes
0 No — Abstained — Absent.

Upper Bern Township Board of Supervisors

By:

Attest:


Secretary