

ORDINANCE NO. 2016 - 01

AIR POLLUTION CONTROL ORDINANCE

OPEN BURNING

AN ORDINANCE OF MONROE 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 2007-05, AND VALIDITY.

SECTION I. Title

This ordinance shall be known and may be cited as the Monroe Township Air Pollution Control Ordinance of 2016.

SECTION II. Authority

The Board of Supervisors of Monroe Township, under, and by virtue of and pursuant to the authority granted by The Second Class Township Code Act of May 1, 1933, P.L. 103, No. 69 enacted and amended November 6, 1996, P.L. 350, No. 60 (53 P.S. Section 65101, et seq.), do hereby enact and ordain this ordinance.

SECTION III. Policy

Whereas the Board of Supervisors of Monroe Township has determined that air pollution from open burning may be detrimental to the health, comfort, living conditions, welfare, and safety of the citizens of Monroe Township, it is hereby declared to be the policy of Monroe Township to safeguard the citizens of Monroe Township 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) Air basin - A geographic area of this Commonwealth as delineated from time to time by the Board of Supervisors by resolution or as promulgated by the Commonwealth of Pennsylvania, Department of Environmental Resources.
- (2) Air curtain destructor – A mechanical device which forcefully projects a curtain of air across a pit in which open burning is being conducted so that combustion efficiency is increased and smoke and other particulate matter are contained.
- (3) Board – The Monroe Township Board of Supervisors.
- (4) 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.
- (5) Burning container – a 55-gallon drum or brick/block fireplace with a mesh cover/lid, having openings of not less than one square inch, or any commercially available portable fireplace, permanent outdoor fireplace or any container approved for burning by Monroe Township or the Enforcement officer.
- (6) 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.
- (7) Composting – The process by which organic solid waste is biologically decomposed under controlled anaerobic or aerobic conditions to yield a humus-like product.
- (8) 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, treated wood, insulating coating on wire, automobiles, automotive parts, batteries, PVC products, waste oil, petroleum products and plastics.
- (9) Enforcement Officer – The Fire Marshall and/or his designee. A designee of the Fire Marshall shall be a firefighter who is an active volunteer with the Monroe Township Fire Company.
- (10) Fire Company – Monroe Township Volunteer Fire Company.
- (11) Fire Marshall – The Fire Marshall as appointed annually by the Monroe Township Board of Supervisors.

- (12) 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.
- (13) Open burning – A fire, the air contaminants from which are emitted directly into the outdoor atmosphere and not directed thereto through a flue.
- (14) Permit – A permit issued pursuant to Section V, B(5) which shall be issued at the discretion of the Enforcement Officer and shall be effective for a period of 30 days from the date issued. The terms and conditions of the permit can be changed by the Township Supervisors from time to time by Resolution.
- (15) 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, district, authority, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.
- (16) Prohibited Waste – Waste including but not limited to appliances, carpets, demolition waste (insulation, shingles, siding, etc.), furniture, mattresses or box springs, paint, putrescible waste, solvents, tires, treated wood, insulating coating on wire, automobiles, automotive parts, batteries, PVC products, waste oil, petroleum products and plastics.
- (17) Responsible Adult – An individual eighteen (18) 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.
- (18) Township – Monroe Township, Cumberland County, Pennsylvania. A township of the second class.
- (19) Yard waste – Leaves, grass clippings, garden residue, tree trimmings, chipped shrubbery, and other vegetative material.

SECTION V. Regulations

Exceptions to the prohibition against open burning

- A. 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 firefighting, 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. If within an air basin an air curtain destructor must be used and must be approved by the Department of Environmental Protection's Regional Air Quality Program office.

(5) 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 when the fire is on the premises of said structure.

(6) A fire set solely for cooking food.

(7) A fire set solely for recreational or ceremonial purposes.

B. The following restrictions shall apply to the exceptions to the prohibition against open burning:

(1) No person shall permit the burning of any material for monetary gain, profit, like kind exchange, or as a commercial activity, whether for profit or not.

(2) No burning is allowed or permitted within fifty (50) feet of any building or structure, whether or not occupied, nor within fifty (50) feet of any property line.

(3) All fires or burning must be completely extinguished and not permitted to smolder when not supervised by a responsible adult.

(4) All fires must be kept under supervision at all times by a competent and responsible adult individual who shall be physically present and located with twenty-five (25) feet, with a clear line of sight, of the fire or burning.

(5) All burning must take place in a burning container unless a permit is issued by Monroe Township. For purposes of this subsection, the Board of Supervisors of Monroe Township may, from time to time, by resolution or by ordinance, define a burning container.

(6) No fire shall be permitted to burn whenever drought or extreme weather conditions exist or when a ban on burning has been placed into effect by the Commonwealth of Pennsylvania or other competent governmental body. The Board of Supervisors may prohibit any and all outdoor fires when atmospheric conditions or local circumstances make such fires hazardous.

C. Other than a fire set solely for cooking in a burning container, no burning is allowed or permitted in the Conservation Zone (C) and in other specific zones or areas, all as defined and delineated in Exhibit "A", which is attached hereto and incorporated herein. For purposes of this subsection, the Board of Supervisors of Monroe Township may, from time to time, by resolution or by ordinance, define and delineate areas in which burning is prohibited.

D. The burning of prohibited waste is not permitted under and circumstances.

SECTION VI. Enforcement Orders

(1) The Enforcement Officer shall have the power and duty to enforce the provisions of this ordinance.

(2) The Enforcement Officer 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 Enforcement Officer finds that any condition existing in or on the facility or source involved is causing or contributing to open burning or if Enforcement Officer finds that any person is in violation of any provision of this ordinance. The Enforcement Officer may revoke a previously issued permit or refuse to issue a permit for good cause including the failure to adhere to the conditions of a current permit or a previously issued permit.

(3) The Enforcement Officer may, in its order, require compliance with such conditions as are necessary to prevent or abate open burning or effect the purposes of this ordinance.

(4) An order issued under this section shall take effect upon notice, unless the order specifies otherwise. An appeal of the Township's order shall not act as a supersedeas, provided, however, that the Court of Common Pleas of Cumberland County, Pennsylvania may issue such a supersedeas.

(5) The authority of the Township or Enforcement Officer 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 the Enforcement officer finds that open burning is occurring in the Township, other than those exceptions noted in Section V above, the Enforcement officer may order the owner or operator to take corrective action in a manner satisfactory to the Township, or the Enforcement officer may order the owner or operator to allow access to the land by the Enforcement officer, the Fire Company or 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, investigation and assets expended by the Fire Company related to a corrective action, Monroe Township 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

Any person who violates any provision of this ordinance or any order of the Enforcement Officer issued pursuant to this ordinance commits a summary offense shall, upon conviction in summary proceedings before the District Justice, be sentenced to pay a fine of not less than Three Hundred Dollars (\$300.00) nor more than One Thousand Dollars (\$1,000.00) and costs of prosecution. In default of the payment of the fine and costs, the defendant may be sentenced to the county jail for a period not exceeding ninety (90) days. This penalty section is enacted pursuant to the Second Class Township Code, 53 P.S. 66601 (c. 1) (2), for health, fire and safety and for air and water pollution purposes. Each violation shall constitute a separate offense, for which a summary conviction may be sought. The Township Solicitor is authorized to prosecute these offenses. For purposes of this section, a summary offense may be prosecuted before any District Justice.

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, Monroe Township and/or the Enforcement Officer 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 shall consider the willfulness of the violation; damage to air, soil, water or other natural resources of the Township or their uses; financial benefit to the person in consequence of the violation; deterrence of future violations; cost to the Township; 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 facility; and other relevant factors.

(2) 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. If said penalty is not paid to the Township, the Township shall initiate civil enforcement proceedings before the District Justice. Civil proceedings shall be initiated by a complaint or by other means as may be provided by the Pennsylvania Rules of Civil Procedure. If the violator is found to be liable for the violation, the violator shall be liable for the penalty imposed, including additional daily penalties for continuing violations, plus court costs and reasonable attorney fees incurred by the Township as a result of the enforcement proceedings.

SECTION X. Public Nuisances

A violation this ordinance or of any order issued by the Township under this ordinance shall constitute a public nuisance. The Township 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 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 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 XI. Repealer

Ordinance 2007-5 previously enacted is hereby repealed. All other ordinances or parts thereof which are in conflict with this ordinance are hereby repealed.

SECTION XII. 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

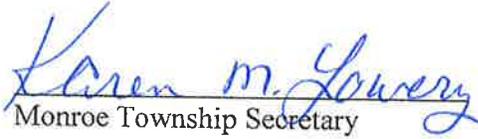
to be the intent of the Board that this ordinance would have been adopted if such illegal, invalid, or unconstitutional section, clause, sentence, part, or provision had not been included herein.

SECTION XIII. Effective Date

This ordinance shall become effective in five (5) days after adoption.

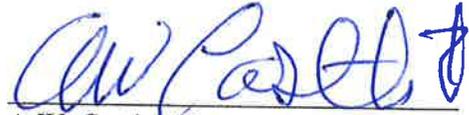
ATTEST:

MONROE TOWNSHIP
BOARD OF SUPERVISORS

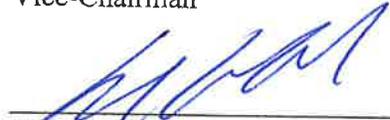

Monroe Township Secretary



Philip F. Kehoe,
Chairman



A.W. Castle, III,
Vice-Chairman



Carl Kuhl,
Supervisor



MONROE TOWNSHIP
 CUMBERLAND COUNTY, PA

LEGEND

 BURNING PROHIBITED

EXHIBIT "A"