

BOROUGH OF MILLERSBURG
DAUPHIN COUNTY, PENNSYLVANIA

ORDINANCE NO. 5-19

AN ORDINANCE PROVIDING FOR THE PREVENTION AND CONTROL OF AIR POLLUTION AND REMEDIATION OF FIRE HAZARDS; DEFINING CERTAIN TERMS USED HEREIN; PROVIDING FOR REGULATIONS, EXCEPTIONS, ENFORCEMENT ORDERS, RESPONSIBILITY OF OWNERS AND OPERATORS, PENALTIES, UNLAWFUL CONDUCT, PUBLIC NUISANCES; REPEALING PREVIOUS ORDINANCE CHAPTER 7, PART 1; AND VALIDITY

SECTION I. – Title

This ordinance shall be known and may be cited as the Millersburg Borough Open Burning Ordinance.

SECTION II. – Authority

The Millersburg Borough Council under, and by virtue of and pursuant to the authority granted by the Borough Code of the Commonwealth of Pennsylvania do hereby enact and ordain this ordinance.

SECTION III. – Policy

Whereas the Millersburg Borough Council has determined that air pollution and fire hazards from open burning may be detrimental to the health, comfort, living conditions, welfare, and safety of the citizens of Millersburg Borough, it is hereby declared to be the policy of the Borough to safeguard the citizens of the Borough from such air pollution and fire hazards. It is the intent of the Borough Council that any allowable fires only be used to burn bona fide fire wood and charcoal rather than garbage, construction materials and other types of debris.

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:

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.

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.

Composting – The process by which organic solid waste is biologically decomposed under controlled anaerobic or aerobic conditions to yield a humus-like product.

Domestic refuse – Waste which is generated from the normal occupancy of a structure. The term includes appliances, carpets, demolition waste (insulation, shingles, siding, etc.), furniture, mattresses or box springs, paint, putrescible waste, solvents, tires, food waste, feces, cardboard, treated lumber or painted/stained/sealed wood.

Municipality – The Borough of Millersburg, Dauphin County, Pennsylvania.

Open burning – A fire, the air contaminants from which are emitted directly into the outdoor atmosphere and not directed thereto through a flue.

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.

Yard waste – Leaves, grass clippings, garden residue, tree trimmings, chipped shrubbery, woody or leaf material from any poisonous plant, and other vegetative material that is damp, wet, or uncured resulting in excessive smoke. This term does not include firewood and material used as tinder or kindling to ignite a fire allowed under Section V.

SECTION V. Regulations

After the effective date no person may permit the open burning of material, including domestic refuse and yard waste, 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. Such fires shall be in compliance with laws of the Commonwealth and regulations of the Department of Environmental Protection.
- (5) A fire set solely for cooking food, including charcoal and gas grills.
- (6) A fire set solely for recreational or ceremonial purposes.

(7) A fire set for the production of ceramics, pottery, and similar artwork.

Fires shall not be set on bare ground. Such fires shall not be set within five feet of any property line; upon any public right of way; or in any location that could ignite any tree, vegetation, structure or personal property. Fires set for the purposes stated in subsections (5), (6) and (7) must be contained within a commercially available fire pit or grill or a similar fire containment structure. A circle of rocks, stones, bricks, cinder blocks or similar materials is not sufficient to meet the containment structure requirement. Domestic refuse and yard waste (as defined herein) may not be burned or otherwise used as fuel for the purposes stated in subsections (5), (6) and (7).

All fires set for any purpose outlined herein shall be attended by a responsible person. Adequate means of dousing a fire shall be readily available at the location of the fire for the entire duration of the burning event.

SECTION VI. – Enforcement Orders

(1) The Millersburg Borough Police Department shall have the power and duty to enforce the provisions of this ordinance.

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

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

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

(5) The authority of the Borough 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 Police Officer finds that open burning is occurring in the Borough, other than those exceptions noted in Section V above, the Officer may order the owner or operator to take corrective action in a manner satisfactory to the Borough or the Officer may order the owner or operator to allow access to the land by the Borough or a third party to take such action.

(2) Any cost to the Borough in the remediation of violations of this ordinance may be charged against the real estate upon which the structure is located and shall be a lien upon such real estate and may be collected by any other legal resource.

SECTION VIII. – Criminal Penalties

Any person who violates any provision of this ordinance or any order of the Borough 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 Borough 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 Police Department is hereby authorized to prosecute these offenses. For purposes of this section, a summary offense may be prosecuted before the Magisterial District Judge responsible for Millersburg Borough. There is no accelerated rehabilitative disposition authorized for a summary offense.

SECTION IX. – 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 Borough; 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 Borough or its personnel in their performance of any duty hereunder, including denying the Police 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 Borough to result from the source.

SECTION X. – Public Nuisances

A violation of this ordinance or of any order issued by the Borough under this ordinance shall constitute a public nuisance. The Borough 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 Borough may recover the expenses of abatement following the process for assessment. 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

Millersburg Borough Code, Chapter 7, Part 1 previously enacted is hereby repealed. All other ordinances or parts thereof which are in conflict with this ordinance are hereby repealed. The

exemption to this Section shall be Borough Ordinance No. 03-08 (as amended). Where the language conflicts, the wording of Borough Ordinance No. 03-08 (as amended) shall prevail.

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 Borough Council 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 immediate upon approval by the Millersburg Borough Council.

ENACTED AND ORDAINED this 9th day of October, 2019.

MILLERSBURG BOROUGH
DAUPHIN COUNTY, PENNSYLVANIA

ATTEST:

Ann Bowman Jackson
Secretary

Cheryl C. Ditz
President

Richard D. Hilbertson
Mayor

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