

ORDINANCE NO. 407 of 2016

AN ORDINANCE OF DUNCANNON BOROUGH, PERRY COUNTY, COMMONWEALTH OF PENNSYLVANIA, FOR THE PREVENTION AND CONTROL OF AIR POLLUTION; DEFINING CERTAIN TERMS USED HEREIN; PROVIDING FOR REGULATIONS, EXCEPTION, ENFORCEMENT ORDERS, RESPONSIBILITY OF OWNERS AND OPERATORS, PENALTIES, UNLAWFUL CONDUCT, PUBLIC NUISANCES AND VALIDITY.

BE IT ENACTED AND ORDAINED by the Borough Council of Duncannon:

SECTION 1: Chapter 94, of the Code of the Borough of Duncannon is repealed and the following adopted and enacted in its stead:

§ 94-1. Purpose.

It is against public policy to permit uncontrolled, unrestricted outdoor burning. The purpose of this chapter is to prevent needless public damage to life and property because of public and private nuisances caused by outdoor fires deliberately or carelessly set and improperly maintained and to protect the citizens from air pollution caused by unregulated open burning.

§ 94-2. Definitions.

For purposes of this chapter, the following words and terms shall have the meaning ascribed to them herein:

BURNING

The act of consuming by fire; to flame, char, scorch, or blaze. As used in this chapter, "smoldering" shall have the same meaning as "burning," and any smoldering shall be deemed a burning.

CONTAINED FIRE

Any fire contained in an incinerator, fireplace, cooking grill or other contained enclosure designed for outdoor cooking or a fireproof container. Such enclosure must be equipped with a screen or lid to prevent the spread of embers or sparks.

GARBAGE

Animal, vegetable or organic waste, cans and plastics from the handling, preparation, cooking and consumption of food, to include all Styrofoam and any other packaging.

GRUBBING WASTES

Trees, shrubs and other native vegetation that are cleared from land during or prior to the process of construction. The term does not include demolition wastes and dirt-laden roots.

OPEN BURNING

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

RECYCLABLES

Glass, aluminum cans, newspaper, recyclable plastics, tires or similar recyclable materials.

RESPONSIBLE ADULT

An individual 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.

YARD WASTE

Leaves and tree trimmings of two inches (2") or less in diameter.

§ 94-3. Compliance required; permitted burning; prohibited acts.

- A. Compliance with chapter. It shall be unlawful to burn, ignite, incinerate, maintain or permit to burn any materials whatsoever, of whatever nature, without complying with this chapter.
- B. Permitting open burning. The following types of open burning are permitted so long as such burning is in compliance with the general prohibitions and conditions listed below:
All fires must be under the supervision of a Responsible Adult who must have a method of fire extinguishment readily available such as a working garden hose or a fire extinguisher with at least a 2A rating.
 - 1. A fire set to prevent or abate a fire hazard, when approved by the Department of Environmental Protection 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 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 Regional Air Quality Program office.
 - 4. A fire set for the purpose of burning grubbing waste. An air curtain destructor must be used and must be approved by the Department of Environmental Protection 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, provided that said yard waste is dry and reasonably free of surface moisture.
 - 6. A fire set solely for cooking food.
 - 7. Ceremonial fires are permitted with a permit which may be issued by the Borough's Codes Enforcement Officer, Zoning Officer or by the Chief of the Duncannon Fire Company or his designated surrogate. A bond to guarantee cleanup and/or restoration of the fire area may be required as part of any permit approval.

8. Contained recreational fires provided they are contained in a fire pit, fireplace or chiminea built or manufactured as a fire containment appliance.
- C. General prohibitions. The below-listed prohibitions shall apply throughout the Borough:
1. Public roads and public properties. No person shall set, start, feed, permit to burn or maintain any fire upon any of the streets and/or rights-of-way, sidewalks, alleys or public grounds in Duncannon Borough, except where a designated area has been set aside and reserved for this purpose by the Borough.
 2. Control of burning and unattended fires. No fire shall be allowed to burn unattended without a responsible adult being present at all times and without readily available fire-extinguishing apparatus. No fire shall be set that results in uncontrolled burning of vegetation (field fires).
 3. Drought/extreme weather. No fire shall be permitted to burn whenever drought or extreme weather conditions exist or when a ban on open burning has been placed into effect by the Commonwealth of Pennsylvania or other competent governmental body. The Borough may prohibit any and all outdoor fires when atmospheric conditions or local circumstances make such fires hazardous.
 4. Garbage and Recyclables. Burning of garbage and/or recyclables, including plastics, glass, newspaper, aluminum cans, tires or similar recyclable materials or anything that produces and/or emits toxic fumes is prohibited.
 5. Notice. Prior to a planned open burn of yard waste, a person must notify the Borough or the Fire Department in person or by telephone. The Borough or the Fire Department shall in turn notify the Perry County dispatch center.
 6. All fires must be a minimum of 10 feet away from any structure or fence constructed with combustible materials, as well from any vehicles.
 7. Portable fireplaces, fire pits, chimineas and grills may not be used on porches or decks unless the porch or deck is constructed from non-flammable materials and is not covered by any roof or other structure.
 8. All fires must be completely extinguished if not attended by a responsible adult. No unattended fire may be left to smolder.
 9. Hours. No person shall burn or cause to be burned any material of any kind outdoors, anywhere in the Borough, between sunset and sunrise, excepting ceremonial fires, fires burning wood only in a fireplace, fire pit, or chiminea, or fires set solely for cooking food.

§ 94-4. Extinguishing unsafe fires

Any fire set or allowed to burn in violation of this chapter may be extinguished by the Duncannon Fire Company or other authorized body, without prior notice to

the landowner. In the event that a fire company is required to respond to a fire that violates this chapter, a service fee may be levied by the responding fire company.

§ 94-5. Enforcement: violations and penalties.

- A. Prevention. Duncannon Borough may issue such orders as are necessary to aid in the enforcement of the provisions of this chapter. An order issued under this section shall take effect upon notice.
- B. Criminal penalties. Any person who violates any provision of this chapter or any order of Duncannon Borough issued pursuant to this chapter commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not less than \$100 nor more than \$1,000 for each separate offense and, in default of the payment of such fine, may be sentenced to imprisonment for 30 days for each separate offense. Employees of Duncannon Borough authorized to conduct inspections or investigations are hereby declared to be lawful enforcement officers authorized to issue or file citations for summary violations under this chapter, and the Duncannon Borough Council is hereby authorized to prosecute these offenses. For purposes of this section, a summary offense may be prosecuted before any Magisterial District Judge.
- C. Civil penalties. In addition to proceeding under any other remedy available at law or in equity for a violation of a provision of this chapter or any order issued pursuant to this chapter, Duncannon Borough 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 \$8,000 per day for each violation. In determining the amount of the penalty, Duncannon Borough shall consider the willfulness of the violation; deterrence of future violations; cost to Duncannon Borough to enforce this chapter or order of the Duncannon Borough Council; the size of the source; 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. In any case where a civil penalty for violation has not been timely paid and the person upon whom the penalty was imposed is found to have been liable therefor in civil proceedings, the violator shall be liable for the penalty imposed, including additional daily penalties for continuing violations, plus court costs and reasonable attorneys' fees incurred by the Borough in the enforcement proceedings.
- D. Equitable and other remedies. No penalties herein shall prevent the Borough from enforcing this chapter by equitable, injunctive and other remedies.
- E. Liability. Duncannon Borough 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 chapter, or by reason of the conduct of any burning activity in compliance with the terms and provisions of this chapter. The individual person or party responsible for any such fire shall bear sole liability for any damages caused as a result thereof.

SECTION 2. 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 Council that this ordinance would have been adopted if such illegal, invalid, or unconstitutional section, clause, sentence, part or provision had not been included here.

SECTION 3: EFFECTIVE DATE

This Ordinance shall become effective immediately upon enactment.

ENACTED AND ORDAINED this ____ day of _____, 20____, by the Borough of Duncannon, Perry County, Pennsylvania, in lawful session duly assembled.

ATTEST:

DUNCANNON BOROUGH COUNCIL

Secretary

President of Council

Examined and approved this ____ day of _____, 2016.

Mayor