

ORDINANCE NO. 36
Borough of Mill Village
Erie County, Pennsylvania

AN ORDINANCE OF THE BOROUGH OF MILL VILLAGE, ERIE COUNTY, PENNSYLVANIA, PROVIDING FOR AND REGULATING AIR POLLUTION AND THE USE OF OPEN FIRES AND BURNING BY THE ESTABLISHMENT OF SPECIFIC REGULATIONS, EXCEPTIONS, AND DEFINITIONS, DESIGNATING ENFORCEMENT PROVISIONS AND PRESCRIBING PENALTIES FOR VIOLATION.

IT IS HEREBY ENACTED AND ORDAINED by the Borough Council of the Borough of Mill Village, Erie County, Pennsylvania, as follows:

SECTION 1. TITLE. This Ordinance shall be known and may be cited as the “Mill Village Borough Open Burning Ordinance.”

SECTION 2. AUTHORITY. This Ordinance is enacted pursuant to Section 12 of the Air Pollution Control Act, as amended, 35 P.S. § 4012(a), and the Pennsylvania Borough Code, as amended, 53 P.S. § 45101, et seq.

SECTION 3. DECLARATION OF POLICY. It is hereby declared to be the policy of the Borough of Mill Village as a matter of public health and safety to regulate fires and open burning in the Borough of Mill Village for the purposes of controlling air pollution and protecting building, housing, property, and the well-being of its citizens and residents.

SECTION 4. DEFINITIONS. The following words, terms and phrases, when used in this Ordinance, unless the context clearly indicates otherwise, shall have the following meanings described and assigned to them:

- A. **BOROUGH** – The Borough of Mill Village, Erie County, Commonwealth of Pennsylvania.
- B. **BOROUGH COUNCIL** – The Borough Council of the Borough of Mill Village, Erie County, Commonwealth of Pennsylvania.
- C. **CONTAINED FIRE** – Any fire contained in an incinerator, fireplace or other contained enclosure designed for outdoor cooking, or a fireproof container.
- D. **FURNACE** – Any enclosed device specifically designed for the burning of any materials for the production of heat.
- E. **GARBAGE** – All putrescible animal and vegetable matter resulting from the handling, preparation, cooking and consumption of food.
- F. **INCINERATOR** – Any device or non-combustible container specifically designed for the destruction by burning of refuse, sewage sludge, or any other combustible material.
- G. **OPEN BURNING or OPEN FIRE** – Any fire in which any material is burned outside of an enclosed structure or building, or any burning of materials in the open outside of an enclosed structure or building, other than a furnace or incinerator.
- H. **PERSON** – Any individual, partnership, association, syndicate, company, corporation, limited liability company, firm, trust, department, bureau, agency or other legal entity recognized by law as the subject of rights and duties.
- I. **REFUSE** – Garbage, rubbish and trade waste.
- J. **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.

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- K. **RIGHT OF WAY** – The total width of any land reserved or dedicated for the public use of vehicular or pedestrian traffic, including streets, avenues, boulevards, roads, highways, interstates, freeways, lanes, alleys, alley viaducts, sidewalks, marginal access ways and any other ways used for vehicular and pedestrian traffic which are dedicated to public use or to the use of residents in a land development or subdivision.
- L. **RUBBISH** – All solids not considered to be highly flammable or explosive, including but not limited to, rags, old clothes, leather, rubber, carpets, excelsior, ashes, furniture, tin cans, glass, crockery, masonry, plastics, recyclable items, and other similar items.
- M. **SALVAGE OPERATIONS** – Any business, trade or industry engaged in whole or in part in salvaging or reclaiming any product or material, including but not limited to, metals, chemicals, shipping containers or drums.
- N. **TRADE WASTE** – All solid or liquid material or rubbish resulting from construction, building operations, or the prosecution of any business, trade or industry, including but not limited to, plastic products, cartons, paint, grease, oil, and other petroleum products, chemicals, cinders and other forms of solid or liquid waste materials; provided, that “trade waste” shall not include any coal refuse associated with mining or preparation of coal.

SECTION 5. OPEN FIRES AND OPEN BURNING PROHIBITED. The following types of fires and burning are prohibited:

- A. It shall be unlawful for any person to ignite or feed any open fire or conduct any open fires or burning or garbage, refuse, rubbish and trade waste in the Borough.
- B. The open fires or burning of construction debris, aerosol cans, by-products of manufacturing and processing operations, by-products of salvage operations, garbage, refuse, rubbish and trade wastes from commercial operations is strictly prohibited.
- C. Nothing herein shall be construed to permit or encourage the open fires or burning of any substance determined by the Commonwealth of Pennsylvania or the United States Environmental Protection Agency to be a “hazardous substance”; nor shall any fire be permitted to burn by any persons if such burning is in violation of the Air Pollution Control Act or other acts, ordinances, regulations or legislation by the County of Erie, the Commonwealth of Pennsylvania or the United States of America or any of their legislative agencies.

SECTION 6. OPEN FIRES AND OPEN BURNING EXEMPTED REGULATIONS.

The following types of fires and burning are permitted subject to the specific and general regulations contained herein:

- A. Open fires and open burning of wood and leaves, which is not a contained fire, may only be set and conducted when attended by a responsible adult, with readily available means of extinguishing the fire.
- B. No hazardous or other objectionable condition will be created by such open burning or open fire.
- C. No burning is allowed during a fire ban emergency, as proclaimed by the Erie County Emergency Management or the Borough of Mill Village.
- D. No open fire or open burning shall be permitted before the hour of 7:00 a.m. and it shall be extinguished completely by 6:00 p.m., except that the time to extinguish such fire or burning is extended to 8:00 p.m. from April 15 to October 15.
- E. No open fires or open burning shall be permitted in a right-of-way.

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- F. No open fire or open burning shall be conducted closer than 25 feet from a building located on the property of the person conducting the fire or burning, and no closer than 35 feet from a building or the land or another person.
- G. All fires must be extinguished thoroughly with no smoldering.
- H. All open fire and open burning shall be conducted only on the premises owned by the person responsible for such fire, provided, however, that the term “premises” shall not include the area within any right-of-way or any similar street.

SECTION 7. FIRE BAN EMERGENCY. Notwithstanding anything in this Ordinance to the contrary, the Borough Council may declare a fire ban emergency in the Borough of Mill Village with or without consultation with the fire chiefs of the volunteer fire companies operating within the Borough during any period of drought, or any other periods of high fire risk to woodlands or property within the Borough of Mill Village.

Upon the Borough Council declaring a fire ban emergency, all outdoor burning or fires, including open fires and open burning, shall be prohibited until the ban is lifted by the Borough Council. The Borough shall publish a notice of the fire ban emergency and the termination of the fire ban at least once in a local newspaper of general circulation. In addition, the Borough may issue news releases to all communication media, including radio, television, website or internet access and newspapers.

SECTION 8. ENFORCEMENT. The Borough Council shall appoint, and hereby does appoint, the Borough Fire Chief, Borough Assistant Chiefs, the Borough Code Enforcement Officer, the Borough Secretary or such other duly authorized agent of the Borough, who shall have the power and duty to enforce the provisions of this Ordinance.

SECTION 9. PENALTIES. It shall be unlawful to burn, ignite, incinerate, maintain or otherwise permit the burning of any materials whatsoever without complying with the requirements of this Ordinance. Any person who shall violate any of the provisions of this Ordinance shall, upon conviction in a summary proceeding before any district justice or magistrate brought in the name of the Borough, in the same manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure, be sentenced to pay a fine of not less than Three Hundred Dollars (\$300.00) nor more that One Thousand Dollars (\$1000.00), plus all costs of prosecution, and in default of payment of the fines and any costs, such person may be sentenced to imprisonment for a term not to exceed ninety (90) days. Each day a violation exists of any of the provisions of this Ordinance and each violation of any of the provisions of this Ordinance shall constitute a separate offense.

SECTION 10. ADDITIONAL COSTS.

- A. In the case of a fire requiring fire fighters and/or equipment and upon conviction of any violation of this Ordinance, the violator shall also pay charges in order to cover the fire fighting costs. Charges shall be assessed for use of the following fire fighting equipment.
- B. The Borough Council shall determine by resolution a reasonable schedule of costs based upon mileage, operating costs and fire fighting equipment. These charges shall be in addition to and not in lieu of any penalties provided elsewhere in this Ordinance.

SECTION 11. REPEALER. Any ordinances, rules or resolutions, or parts of ordinances, rules or resolutions, in conflict herein, including without limitation, Ordinance No. 738, shall be, and the same are hereby, repealed.

SECTION 12. SEVERABILITY. The provisions of this Ordinance are severable. If any sentence, clause, section, or part of this ordinance is for any reason found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Ordinance. It is hereby declared as the intent of the Borough Council that this Ordinance would have been adopted had such unconstitutional, illegal, invalid sentence, clause, section or part thereof not been included herein.

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SECTION 13. **MUNICIPAL LIABILITY.** The Borough Council, 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 conduct of any burning activity in compliance or noncompliance with the terms and provisions hereof. The person, persons, company or companies responsible for any such fire shall bear sole liability for any damages caused as a result thereof.

SECTION 14. **EFFECTIVE DATE.**

This Ordinance shall take effect immediately upon adoption and enactment thereof.

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ORDAINED AND ENACTED this 1st day of February, 2006.

ATTEST:

Selma H. Peters
Borough Secretary

Cris E. Peters
President or Borough Council

APPROVED this 1st day of February, 2006.

Joseph E. Sam
Mayor

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