

## Memo

To: Hellam Township Planning Commission

From: Hellam Township Environmental Advisory Council

Re: Proposed revision Township Open Burn Ordinance

The EAC offers you a revised version of Chapter 159 of the Township's ordinances, presenting the rules and regulations for open burning. We decided to approach this issue after a resident attended an EAC meeting to lodge a complaint about open burn practices in the township and near his property, in particular. He came armed with information about the highly toxic, often carcinogenic chemicals that are produced by the burning of household waste. It arrested our attention.

All members of the EAC were aware of open burning that involves the incineration of materials that produce highly toxic emissions in the Township. We've seen the burn piles with mattresses, vinyl siding and more. We've experienced unsavory smoke crossing our property lines. But this resident's complaint "lit a fire," as it were, motivating us to take action.

A bit of inquiry revealed concerning statistics about air quality in York County. The American Lung Association reports that, although there has been some improvement since the early years of the 21st century, York County still receives a failing grade for particle air pollution.

When we looked at the current open burn ordinance, we could see that it prohibited many of the practices we'd witnessed and about which the resident had complained. It prohibits the burning of materials that produce the worst toxic emissions. But the organization and emphasis of the ordinance as it is currently composed weakens the power of its prohibitions. If someone turned to the ordinance for guidance, they'd likely get bored before they got to the meat of its regulations. So we decided to revise it—and to add some teeth.

After reviewing open burn ordinances from several townships in Lancaster and York Counties, we made the following changes (highlighted in the document):

- Re-worded and re-ordered the ordinance—clarified and foregrounded what can and cannot be burned
- Proposed fines for infractions.
- Added a paragraph prohibiting burning that causes a nuisance to neighbors and exposes neighbors to unhealthful smoke.
- Suggested that the Planning Commission propose a permit requirement and a fee for large open burns.
- Set rules for burning distances from property lines and buildings, etc.
- Made recommendations for alternatives to burning yard waste.

We did not change anything in 159-6 through 159-10.

We think that this version of the ordinance has considerably greater force than the current ordinance, and it might do some good for the air we all breathe.

The EAC appreciates the Planning Commission's attention to this matter. We hope to reduce, if not eliminate, the burning of toxic materials in the township and encourage residents to consider their neighbors before they strike a match.

Sincerely,  
EAC

# Chapter 159 BURNING, OPEN

§ 159-1.	Title.	§ 159-7.	Criminal penalties.
§ 159-2.	Authority.	§ 159-8.	Civil penalties.
§ 159-3.	Definitions.	§ 159-9.	Unlawful conduct.
§ 159-4.	Regulations.	§ 159-10.	Public nuisances.
§ 159-5.	Enforcement orders.	§ 159-11.	Repealer
§ 159-6.	Responsibility of owners and operators; recovery of costs.	§ 159-12.	Severability.

**[HISTORY: Adopted by the Board of Supervisors of the Township of Hellam 5-16-2013 by Ord. No. 2013-02.<sup>1</sup> Amendments noted where applicable.]**

## GENERAL INFORMATION

Grass and weeds — See Ch. 245.

Parks and recreation areas — See Ch. 335.

Solid waste— See Ch. 389.

### § 159-1. Title.

This chapter shall be known and may be cited as the "Hellam Township Air Pollution Control and Regulation of Open Burning Ordinance."

## § 159-2. Authority.

The Board of Supervisors of the Township of Hellam, under and by virtue of and pursuant to the authority granted by Sections 1527 and 1529 of the Second Class Township Code,<sup>2</sup> does hereby enact and ordain this chapter.

## § 159-3. APPLICABILITY

This ordinance applies to all outdoor burning within Hellam Township.

This ordinance does not apply to:

- A. Grilling or cooking food using charcoal, wood, propane or natural gas cooking over a campfire or in a grilling appliance.
- B. Burning for the purpose of generating heat in a stove, furnace, fireplace or other heating device within a building used for human or animal habitation.
- C. The use of propane, acetylene, natural gas, gasoline or kerosene in a device intended for heating, construction or maintenance activities.

## § 159-4. Definitions

The following words, terms, and phrases, when used in this chapter, 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 chapter, "smoldering" shall have the same meaning as "burning," and any smoldering shall be deemed a burning.

**CLEARING AND GRUBBING WASTE** — 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 waste 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 occupied solely as a residential dwelling such as paper products and organic matter. The term does not include any items expressly prohibited from burning under the regulations<sup>[SH1]</sup>.

**HABITAT PILES** — Brush piles made up of woody debris and loose leaf litter stacked together<sup>[SH2]</sup>.

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

**PERSON** — The word "person", or "persons", shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country<sup>[SH3]</sup>.

**TOWNSHIP** — The Township of Hellam, York County, Pennsylvania.

**YARD WASTE** — Leaves, grass clippings, garden residue, tree trimmings, chipped shrubbery, and other vegetative materials.

## § 159-5. Regulations.

- A. It shall be unlawful for any person to open burn the following material at any time in any location within the Township. Pressure-treated lumber, drywall, plastic products, insulation material, aerosol cans upholstered furniture, garbage, dead animals, human and animal excrement, human and animal hair, rubber products including tires, non-fuel hydrocarbon products, asphalt or tar shingles or roofing materials, bedding, foam rubber, nylon, rayon, cotton, wool, polyester or other synthetic material, insulation from copper or other wiring, solid waste and/or construction waste as defined by the Pennsylvania Solid Waste Management Act and 25 PA Code 271.1, as well as any similar items.
- B. After the effective date of this chapter, only the following kinds of open burning are permitted.
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 training and instructing authorized personnel in firefighting, and training of people in the use of portable fire extinguishers.
  3. Any fire set for the prevention and/or control of disease of pests, rats, snakes, bees, etc. when approved by the Department of Environmental Protection's Regional Air Quality Program office.
  4. A fire set in conjunction with the production of agricultural commodities in their unmanufactured state on the premises of the farm operation.
  5. A fire set for the purpose of burning domestic refuse generated from one residential dwelling which is burned on the same property as that dwelling unit. Such fires shall only occur from dawn to dusk. As an option to burning, the Township recommends the use of composting. Those items subject to recycling regulations<sup>[SH4]</sup> should be deposited at appropriate locations, not burned.
  6. A fire set for the purpose of burning that amount of yard waste generated from the premises of a structure occupied solely as a single residential dwelling (except where composting is mandatory), when the fire is on the premises of said structure. Such fires shall only occur from dawn to dusk. ***The Township encourages the development of habitat brush piles to reduce the burning of yard waste.***
  7. The burning of ONLY brush, exclusively for agricultural management and conservation practices & protection, and provided burning is located 100 feet

or more from any building or structure. Brush must originate from the same property.

8. Any recreational campfire or bon-fire solely for recreational or ceremonial purposes. Limited to scrap lumber (not pressure treated), skids, and dried firewood

9. Any fire set to keep people warm at a building construction site, public gathering or other outdoor function

C. It shall be unlawful for any person to open burn during a ban on open burning. A ban on open burning shall be determined when prevailing conditions and the interests of public safety mandate a restriction on open burning. The Township Manager shall have the authority to impose a ban on open burning after consultation with the Fire Chiefs of those fire companies providing fire protection service to the Township. Notice of the imposition of any such ban on all open burning shall be announced by the Township via notification to radio, television and newspaper media and by posting on the Township's website. Removal of the ban shall be made by the Township Manager, and notice of the removal of the ban shall also be announced in the same manner as the imposition of the ban, after notification to the Fire Chiefs of those fire companies providing fire protection service to the Township. For purposes of this section, it shall be presumed that the record or legal owner and/or legal occupant of said land has set such fire or has permitted it to continue to burn where permission or consent is given or steps are not taken to extinguish the fire immediately upon learning about the fire.

D. In addition to the above, it shall also be unlawful to burn:

(1) Within 100 feet of any structure.

(2) On any public street, alley, road or other public lands.

(3) Within 100 feet of domesticated animals and/or livestock or animal enclosures.

(4) Unless supervised by a responsible adult, being an individual 18 years of age or older not under the influence of drugs or alcohol or suffering from any other disability which would impair the ability to properly supervise a fire, who shall remain in proximate attendance until such fire is completely extinguished, and who shall have a garden hose connected to a water supply or other suitable extinguishing equipment or materials readily available for use. This provision does not apply to agricultural fires. [Amended 3-16-2017 by Ord. No. 2017-03]

(5) Without notifying York County Emergency Services (E911) prior to starting a controlled burn permitted by § 159-4A, except for Subsection A(7), which may be done without notification. [Amended 3-16-2017 by Ord. No. 2017-03]

E. For any fire not specifically mentioned in § 159-5 or for any fire that deviates from the requirements of § 159-5, notification must be given to the Township. [Added 3-16-2017 by Ord. No. 2017-03]

F. For large open burns (for piles greater than 40 sq. ft and higher than 4 ft.), the Township requires a permit for a fee of \$50.

[SH7]

3. Editor's Note: Former Subsection C(3), regarding burning between dusk and dawn, was repealed 3-16-2017 by Ord. No. 2017-03.

## **§ 159-6. Enforcement orders.**

A. The Hellam Township Board of Supervisors, police officers, Zoning Officer, or any other duly authorized agent shall have the power and duty to enforce the provisions of this chapter.

B. The Township may issue such orders as are necessary to aid in the enforcement of the provisions of this chapter. 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 chapter; 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 Township finds that any condition existing in or on the facility or source involved is causing or contributing to open burning or if the Township finds that any person is in violation of any provision of this chapter.

C. The Township may, in its order, require compliance with such conditions as are necessary to prevent or abate open burning or effect the purposes of this chapter.

D. An order issued under this section shall take effect upon notice, unless the order specifies otherwise. An appeal to the Board of Supervisors of the Township's order shall not act as a supersedeas; provided, however, that, upon application, and for cause shown, the Board of Supervisors may issue such a supersedeas under rules established by the Board of Supervisors.

E. The authority of Hellam Township to issue an order under this section is in addition to any remedy or penalty which may be imposed pursuant to this chapter. The failure to comply with any such order is hereby declared to be a public nuisance.

## **§ 159-7. Responsibility of owners and operators; recovery of costs.**

A. Whenever any enforcing officer finds that open burning is occurring in Hellam Township, other than those exceptions noted in § 159-5 above, the enforcing officer may order the owner or operator to take corrective action in a manner satisfactory

to the Township, or the enforcing officer may order the owner or operator to allow access to the land by the enforcing officer or a third party to take such action.

B. 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, and investigation related to a corrective action, the 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 § 159-9 of this chapter.

## **§ 159-8. Criminal penalties.**

Any person who violates any provision of this chapter or any order of the Township issued pursuant to this chapter commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not less than \$ 500 nor more than \$1,000 for each separate offense and, in default of the payment of such fine, may be sentenced to imprisonment for 90 days for each separate offense. Employees of the Township 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 chapter, and the Board of Supervisors is hereby authorized to prosecute these offenses. For purposes of this section, a summary offense may be prosecuted before any District Justice in this Township. There is no accelerated rehabilitative disposition authorized for a summary offense.

## **§ 159-9. Civil penalties.**

A. 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, the Township 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 \$600 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 or facility; and other relevant factors.

B. 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 30 days to pay the proposed penalty in full; and if the civil penalty is not voluntarily paid to the Township, the Township shall initiate a civil enforcement proceeding before a Magisterial District Judge in accordance with and subject to the provision of Section 1601(c.1)(1) of the Second Class Township Code.

## § 159-10. 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 chapter or to fail to comply with any order or other requirement of the Township; 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 Township or its personnel in their performance of any duty hereunder, including denying the enforcing officer access to the source or facility; or to violate the provisions of 18 Pa.C.S.A. § 4903 (relating to false swearing) or 18 Pa.C.S.A. § 4904 (relating to unsworn falsification to authorities) in regard to papers required to be submitted under this chapter. The owner or operator of an open burning source shall not allow pollution of the air, water, or other natural resources of the Township to result from the source.

## § 159-11. Public nuisances.

A violation of this chapter or of any order issued by the Township under this chapter 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 § 159-9. Whenever the nuisance is maintained or continued contrary to this chapter or any order issued pursuant to this chapter, the nuisance may be abatable in the manner provided by this chapter. Any person who causes the public nuisance shall be liable for the cost of abatement.

Outdoor burning permitted in accordance with § 159-5 shall comply with all of the following regulations:

(1) No person shall cause, suffer or permit the burning of any material in a manner that:

(a) The emissions are visible, at any time, at the point such emissions pass outside the property line of the person on whose land the burning is being conducted.

(b) Malodorous air contaminants from the burning are detectable outside the property of the person on whose land the open burning is being conducted.

(c) The emissions cause damage to vegetation or property.

(d) The emissions are or may be deleterious to human or animal health.

Any person violating any provision of this article shall, upon conviction thereof, in summary proceeding, be sentenced for each violation to pay a fine of not less than \$100 and not more than \$1,000 and costs of prosecution and, in default of the payment of such fine and costs, to undergo imprisonment for not more than 90 days. Each violate of any provision of this article, and each day that such a violation shall exist, shall constitute a separate violation and offence.

The terms of this article may be enforced by any representative of the Township hereafter appointed as a code enforcement official.

## **§ 159-12. Repealer.**

All other ordinances or parts thereof which are in conflict with this chapter are hereby repealed.

## **§ 159-13. Severability.**

The provisions of this chapter 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 chapter. It is hereby declared to be the intent of the Board that this chapter would have been adopted if such illegal, invalid, or unconstitutional section, clause, sentence, part, or provision had not been included herein.

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