

ORDINANCE NO. 03 – 2021

TOWNSHIP OF EAST BRADFORD
CHESTER COUNTY, PENNSYLVANIA

AN ORDINANCE OF EAST BRADFORD TOWNSHIP, CHESTER COUNTY, PENNSYLVANIA, AMENDING CHAPTER 76 OF THE CODE OF EAST BRADFORD TOWNSHIP, TITLED "OPEN BURNING", REGULATING OPEN BURNING FOR THE PREVENTION AND CONTROL OF AIR POLLUTION; DEFINING CERTAIN TERMS; PROVIDING REGULATIONS, EXCEPTIONS, ENFORCEMENT ORDERS, RESPONSIBILITY OF OWNERS AND OPERATORS, PENALTIES, UNLAWFUL CONDUCT, PUBLIC NUISANCES, REPEALING PREVIOUS OPEN BURNING ORDINANCE (CHAPTER 76), AND VALIDITY

BE IT ENACTED AND ORDAINED, by authority of the Board of Supervisors of East Bradford Township, that the Code of East Bradford Township, Chapter 76 "Open Burning", is amended to repeal and replace the Township's existing open burning regulations with new open burning regulations for the prevention and control of air pollution, as follows:

Section 1. Chapter 76, Section 76-1 through Section 76-9, of the Code of East Bradford Township, as adopted by the Board of Supervisors of the Township of East Bradford on December 13, 2006, by Ordinance No. 8-2006, shall be repealed in its entirety, while maintaining its "Open Burning" title.

Section 2. Chapter 76, Section 76-1 through Section 76-9, of the Code of East Bradford Township, shall be replaced with the following:

§ 76-1. Policy.

Whereas the Board of Supervisors of East Bradford Township has determined that air pollution from certain burning activities may be detrimental to the health, comfort, living conditions, welfare, and safety of the citizens of East Bradford Township, it is hereby declared to be the policy of East Bradford Township to safeguard the citizens of the Township from such air pollution.

§76-2. Definitions.

As used in this Chapter, the following words, terms, and phrases, shall have the following meanings ascribed to them:

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.

Board – the Board of Supervisors of East Bradford Township.

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 Wastes – trees, shrubs, and other 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.

Controlled Fire – a fire kindled for the purpose of recognized silviculture, range or wildlife management or the control of disease and/or pests.

Fire Code Official – a Township Fire Marshal, Township Code Enforcement Officer or Township Zoning Officer, entrusted with the enforcement of the Code of the Township of East Bradford, as well as, but not limited to, any firefighter, police officer, or other Township personnel as may be designated and/or deputized by the Township Board of Supervisors.

Open Burning – the Burning of materials wherein products of combustion are emitted directly into the ambient air without passing through a stack or chimney from an enclosed chamber. Open Burning does not include: (i) road flares; (ii) smudge-pots and similar devices associated with safety or occupational uses typically considered open flames; or (iii) Recreational Fires or use of portable outdoor fireplaces. For the purpose of this definition, a chamber shall be regarded as enclosed when, during the time combustion occurs, only apertures, ducts, stacks, flues or chimneys necessary to provide combustion air and permit the escape of exhaust gas are open.

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.

Portable Outdoor Fireplace – A portable, outdoor, solid-fuel-burning fireplace that may be constructed of steel, concrete, clay or other noncombustible material. A portable outdoor fireplace may be open in design, or may be equipped with a small hearth opening and a short chimney or chimney opening in the top.

Recreational Fire – An outdoor fire Burning materials other than Rubbish where the fuel being burned is not contained in an incinerator, outdoor fireplace, portable outdoor fireplace, barbeque grill or barbeque pit, and has a total fuel area of three (3) feet or less in diameter and two (2) feet or less in height, for pleasure, religious, ceremonial, cooking, warmth or similar purposes.

Rubbish – waste material; refuse or litter. This definition shall include, but not be limited to, garbage, tires, tar products, and Yard Waste.

Yard Waste – leaves, grass clippings, garden residue, tree trimmings, chipped shrubbery, and other vegetative material.

§76-3. Regulations.

- 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 fire-fighting, 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, and when advanced notification is provided to and acknowledged by the Township.
 - (4) A fire set for the purpose of Clearing and Grubbing Wastes. An Air Curtain Destructor must be used and must be approved by the Department of Environmental Protection's Regional Air Quality Program office, and advanced notification must be provided to and acknowledged by the Township.
 - (5) A fire set in conjunction with the production of agricultural commodities in their unmanufactured state on the premises of the farm operation, with advanced notification is provided to and acknowledged by the Township.
 - (6) A fire set solely for pleasure, religious, ceremonial, cooking, warmth or similar purposes, upon meeting the criteria and definition of a Recreational Fire or contained within a Portable Outdoor Fireplace.
- B. Permitted Open Burning (as identified and set forth immediately above), except Recreational Fires and fires contained within Portable Outdoor Fireplaces, shall be performed only in compliance with the following conditions:
- (1) The Open Burning shall be located at least 50 feet from any and all boundary lines, buildings, structures of any kind, public roads, curbs, sidewalks, utility poles, trees, shrubs and other combustible materials.

- (2) The Open Burning shall be performed only between the hours of sunrise and sunset.
 - (3) A responsible adult, 18 years of age or older, shall be in attendance during the entire duration of the Open Burning.
 - (4) A connected hose or other ample water supply capable of extinguishing the fire is present.
 - (5) There is an area cleared of all combustible material of a radius of 15 feet.
 - (6) Open Burning shall be prohibited when atmospheric conditions or local circumstances make such fires hazardous.
 - (7) The Chester County 911 Center is notified prior to ignition.
- C. Permitted Recreational Fires and fires contained within Portable Outdoor Fireplaces are subject to the regulations contained in the International Fire Code in accordance with Chapter 45 of the Township Code.
- D. Permission required. It shall be unlawful to light or otherwise kindle fire upon the land of another without the permission of the owner thereof, which permission, except in the case of a family member or employee, shall be in writing.
- E. Fires during drought. It shall be unlawful for any Person to light or attempt to light or to cause, permit or authorize another to light or attempt to light or otherwise kindle any outdoor fire when a ban on such fires has been publicly announced by the Board of Supervisors or their authorized representatives or designees in a time of a drought.
- F. Permit required.
- (1) A Burning permit shall be required for the Open Burning activities enumerated in 76-3.A(1) through (5) above.
 - (i) Application for a Burning permit shall be according to the rules and procedures set forth by the Township, as administered and coordinated by Township Fire Code Officials.
 - (ii) Application for such approval shall only be presented by and permits issued to the owner of the land upon which the fire is to be kindled.

§76-4. Enforcement.

- A. General Enforcement.

- (1) The Township shall have the power and duty to enforce the provisions of this Chapter.
- (2) 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 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 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 Burning or if the Township finds that any Person is in violation of any provision of this Chapter.
- (3) The Township may, in its order, require compliance with such conditions as are necessary to prevent or abate Burning or effect the purposes of this Chapter.
- (4) The authority of the 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.

B. Extinguishment of dangerous or nuisance Burning.

- (1) Any fire on public or private property may be extinguished by the local fire department having jurisdiction, either with or without the consent of the landowner or Person in charge, if, in the opinion of a Fire Code Official or Township Supervisor, such fire constitutes a danger to Persons or property.
- (2) Any Burning generating sufficient complaints from the public may be declared a nuisance fire by a Fire Code Official, and ordered to be extinguished by the homeowner or a fire department having jurisdiction.

C. 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 criminal or civil penalties are assessed and collected following the process for assessment and collection of a criminal or civil penalty, as contained in § 76-5.A. and § 76-5.B. of this Chapter, respectively.

§76-5. Violations and penalties.

A. Criminal and civil penalties.

- (1) Criminal penalties. Any Person who violates any provision of this Ordinance or any order of the Township 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 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 Ordinance, and Township Counsel 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.
- (2) Civil penalties.
 - (i) 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, 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 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 or facility; and other relevant factors.
 - (ii) When the Township proposes to assess a civil penalty, it shall inform the Person of the proposed amount of the penalty.
- (3) The penalties, remedies, and procedures available to the Township and Person alleged to have violated this Ordinance are set forth in the Air Pollution Control Act (“APCA”), 35 P.S. § 4012, Sections 9, 9.1, and 12(g), and are incorporated herein.

B. 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 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 an enforcing 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 Township to result from the source.

§76-6. Public Nuisances.

A violation of 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. The public nuisance may be enforced by the Township under this Chapter (Chapter 76 “Open Burning”) and/or Chapter 73 (“Nuisances”). 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 § 76-5.B. of this Ordinance. 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 3. Severability. If any sentence, clause, section or part of this Chapter 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 hereof. It is hereby declared as the intent of Board of Supervisors of East Bradford Township that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included therein.

Section 4. Repealer. All Ordinances or parts of Ordinances conflicting with any provision of this Ordinance are hereby repealed insofar as the same effects this Ordinance.

Section 5. Renumbering. The location and numerical designation of this Chapter and the Sections included herein shall be delegated to the discretion of the General Code Publishers, which may format and number this Chapter and Sections as necessary to accommodate this amendment.

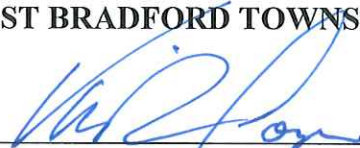
Section 6. Effective Date. This Ordinance shall become effective upon enactment as provided by law.

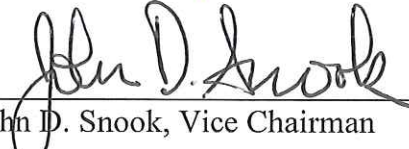
ENACTED AND ORDAINED THIS 10 DAY OF August, 2021.

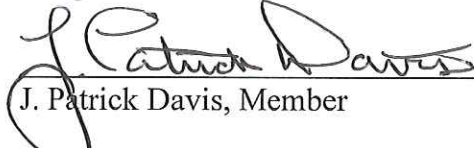
ATTEST:


Mandie Cantlin, Township Manager

EAST BRADFORD TOWNSHIP

By: 
Vincent M. Pompo, Esq., Chairman

By: 
John D. Snook, Vice Chairman

By: 
J. Patrick Davis, Member