

ORDINANCE NO. 122004

AN ORDINANCE OF LEHMAN TOWNSHIP RESTRICTING OPEN FIRES AND BURNING AND REGULATING AND CONTROLLING FIRE HAZARDS BY ESTABLISHING SPECIFIC REGULATIONS, EXCEPTIONS, AND DEFINITIONS, AND PROVIDING FOR POWERS AND PROCEDURES OF ENFORCEMENT, AND PENALTIES FOR VIOLATIONS.

NOW, THEREFORE, IT IS HEREBY ENACTED AND ORDAINED by the Board of Supervisors of Lehman Township, Luzerne County, Pennsylvania, as follows:

SECTION I Title: This Ordinance will be known and cited as the Lehman Township Burn Ordinance.

SECTION II Policy: WHEREAS, the Boards of Supervisors of Lehman Township have determined that open burning may be detrimental to the health, comfort, living conditions, welfare and safety of the citizens of Lehman Township, and therefore, it is hereby declared to be the policy of Lehman Township to safeguard the citizens of Lehman Township from unrestricted open burning and air pollution.

SECTION III Definitions: The following definitions will apply to the interpretation and enforcement of this ordinance, unless the context clearly indicates otherwise. Where terms are not defined herein, the term shall have its ordinary accepted meaning such as the context implies.

- (1) 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.
- (2) Approved Container- Any container used for the purpose of burning materials as authorized herein; constructed of masonry, metal, or other non-combustible rigid materials; containing a bottom, sides, and a burn container cover as defined herein. Any container that has deteriorated to the point where they contain holes or missing surface in the structure shall not be considered an approved container. If metal drums are being used, they shall be free from holes in the sides and/or bottom, except that they may contain drain or vent holes in the bottom of the drum.
- (3) Burn Container Cover - A metal screen or other comparable material that covers the entire open area above the approved container opening. Such screens shall be maintained in good order as to prevent large particles from escaping from the approved container during operation. The cover shall not be permitted to deteriorate to any point whereby it loses its maximum efficiency.
- (4) Burning - The acts 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.
- (5) Domestic refuse - Waste that is generated from the normal occupancy of a structure occupied solely as a dwelling by two families or less. The term does not include household hazardous waste, glass, aluminum, steel, bimetallic cans, plastics, appliances, carpets, demolition waste (insulation, shingles, plaster, siding, etc.), food waste, furniture, mattresses or box springs, paint, petroleum products, putrescible (liable to become putrid) waste, rubber products, solvents, tires, treated wood or wire.
- (6) 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.
- (7) Hazardous Waste - The term includes garbage, refuse, sludge from an industrial or other wastewater treatment plant, sludge from a water supply treatment plant or air pollution control facility, and other discarded material including solid, liquid, semi-solid, or contained gaseous material resulting from municipal, commercial, industrial, institutional, mining, or agricultural operations, and from community activities, or a combination of these factors, which because of its quantity, concentration, or physical, chemical, or infectious characteristic, may:
 - (a) Cause or significantly contribute to an increase in mortality or morbidity in either an individual or the total population; or,
 - (b) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

(8) Open Burning or Open Fire - A fire, the air contaminants from which are emitted directly into the outdoor atmosphere and not directed thereto through a flue.

(9) 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.

(10) Recreational or ceremonial purposes - Open burning where the fuel being burned is not contained in an approved container and the burning occurs for pleasure, religious, ceremonial, cooking, warmth, or other similar purposes. An example includes, but is not limited to bon-fires and other such fires.

(11) Structure - Any house, dwelling, garage, shed or shelter constructed, fabricated or built of materials that may burn.

(12) Yard waste - Leaves, grass clippings, garden residue, tree trimmings, chipped shrubbery and other vegetative material.

SECTION IV Regulations:

No person shall burn, ignite, or feed any open fire or allow, permit, maintain or cause any open burning of any material within the limits of Lehman Township, unless otherwise permitted with the exception of those outlined and regulated in SECTION V.

SECTION V Exceptions:

Open burning is permitted under the following circumstances:

(1) A fire set to prevent or abate a fire hazard, when approved by the Department of Environmental Protection (DEP's Regional Air Quality Program Office).

(2) Any fire set for the purpose of instructing personnel in fire fighting, when approved by the Department of Environmental Protection (DEP's Regional Air Quality Program Office), and approved, and under the direct supervision of the Township Fire Department or its designee.

(3) A fire set for the prevention and control of disease or pests, when approved by the Department of Environmental Protection (DEP's Regional Air Quality Program Office), and approved, under the direct supervision of the Township Fire Department or its designee.

(4) A fire set in conjunction with the production of agricultural commodities in their un-manufactured state on the premises of the farm operation.

(5) A fire set solely for cooking food in:

a) Devices designed solely for that purpose.

b) Charcoal and gas cooking units, except charcoal and gas cooking units shall not be located on balconies, decks or porches exceeding one (1) story in height of multi-unit buildings or apartment, whether residential or mixed uses.

(6) Highway safety flares, smudge pots, tar pots and similar occupational uses.

(7) A fire set for the purpose of burning that amount of domestic refuse generated from one dwelling, when the fire is on the premises of a structure occupied solely as a dwelling by two families or less and when the refuse results from the normal occupancy of said structure, and subject to the following restrictions:

a) Must be burned in an approved container.

b) Container shall be a minimum of twenty-five feet 25' from a structure or property line.

- c) Must be attended at all times.
- d) Must take place between the hours of 8 AM and 10 PM and shall not exceed One (1) hour in duration.
- e) A fire extinguisher or some other approved on-site fire extinguishing equipment, such as dirt, sand, water barrel, garden hose, or water truck, shall be available for immediate utilization.

Burning of domestic refuse is not permitted, and would be just cause for extinguishment under the following conditions:

- a) The emissions are visible, at any time, at the point such emissions pass outside the property of the person on whose land the domestic burning is being conducted.
- b) Malodorous (bad) odor contaminants from the burning are detectable outside the property of the person on whose land the burning is being conducted.
- c) The emissions interfere with the reasonable enjoyment of life and property.
- d) The emissions cause damage to vegetation or property.
- e) The emissions are or may be deleterious (having harmful effect) to human or animal health.
- f) Any Order by the Lehman Township Board of Supervisors or other Governmental Body that bans burning due to drought or other extreme weather conditions.

(8) A fire set for the purpose of burning that amount of yard waste generated from one dwelling, when the fire is on the premises of a structure occupied solely as a dwelling by two families or less and when the refuse results from the normal occupancy of said structure, and subject to the following restrictions:

- a) The yard waste shall not be more than five feet (5') by five feet (5') by five feet (5') in dimension.
- b) Open burning shall not be less than twenty feet (25') from a structure or property line, and provisions shall be made to prevent the fire from spreading to within twenty feet (25') of any structure or property line.
- c) Fuel shall consist only of yard waste and shall be ignited with a small quantity of paper, using no accelerants, to minimize the generation of air contaminants.
- e) Burning must take place during daylight hours for a maximum time of three (3) hours.
- f) Fire must be attended at all times.
- g) A fire extinguisher or some other approved on-site fire extinguishing equipment, such as dirt, sand, water barrel, garden hose, or water truck, shall be available for immediate utilization.

Burning of yard waste is not permitted, and would be just cause for extinguishment under the following conditions:

- a) The emissions are visible, at any time, at the point such emissions pass outside the property of the person on whose land the domestic burning is being conducted.
- b) Malodorous (bad) odor contaminants from the burning are detectable outside the property of the person on whose land the burning is being conducted.
- c) The emissions interfere with the reasonable enjoyment of life and property.
- d) The emissions cause damage to vegetation or property.
- e) The emissions are or may be deleterious (having a harmful effect) to human or animal health.
- f) Any Order by the Lehman Township Board of Supervisors or other Governmental Body that bans burning due to drought or other extreme weather conditions.

(9) A fire set solely for recreational or ceremonial purposes. Any such fires shall be governed by any conditions, in the discretion of the Township Police as are required to ensure the safety of the participants, the Township residents, and/or the public, which shall include, but are not limited to, the following restrictions:

- a) Fuel shall consist only of seasoned dry firewood, with no accelerants, and shall be ignited with a small quantity of paper and chosen to minimize the generation of air contaminants.
- c) Shall not be utilized for waste disposal purposes.
- d) Must be attended at all times.
- e) A fire extinguisher or some other approved on-site fire extinguishing equipment, such as dirt, sand, water barrel, garden hose, or water truck, shall be available for immediate utilization.
- f) The Fire Department must be present for fires larger than five (5) feet by five (5) feet by five (5) feet.

Recreational and Ceremonial Fires are not permitted, and would be just cause for extinguishment under the following conditions:

- a) The emissions are visible, at any time, at the point such emissions pass outside the property of the person on whose land the domestic burning is being conducted.
- b) Malodorous (bad) odor contaminants from the burning are detectable outside the property of the person on whose land the burning is being conducted.
- c) The emissions interfere with the reasonable enjoyment of life and property.
- d) The emissions cause damage to vegetation or property.
- e) The emissions are or may be deleterious (having a harmful effect) to human or animal health.
- f) Any Order by the Lehman Township Board of Supervisors or other Governmental Body that bans burning due to drought or other extreme weather conditions.

(10) Clearing and grubbing wastes may be burned subject to the following requirements:

- a) Air curtain destructors shall be used when burning clearing and grubbing wastes.
- (b) Fire must be attended at all times.
- c) A fire extinguisher or some other approved on-site fire extinguishing equipment, such as dirt, sand, water barrel, garden hose, or water truck, shall be available for immediate utilization.
- d) When approved by the Department of Environmental Protection (DEP's Regional Air Quality Program Office), and under their guidelines.

Clearing and Grubbing Fires are not permitted, and would be just cause for extinguishment under the following conditions:

- a) The emissions are visible, at any time, at the point such emissions pass outside the property of the person on whose land the domestic burning is being conducted.
- b) Malodorous (bad) odor contaminants from the burning are detectable outside the property of the person on whose land the burning is being conducted.
- c) The emissions interfere with the reasonable enjoyment of life and property.
- d) The emissions cause damage to vegetation or property.
- e) The emissions are or may be deleterious (having a harmful effect) to human or animal health.

f) Any Order by the Lehman Township Board of Supervisors or other Governmental Body that bans burning due to drought or other extreme weather conditions.

SECTION VI Enforcement: It shall be the duty of the Township Police to enforce the provisions of this Ordinance and the Rules and Regulations contained therein and his powers, rights, and duties shall include, but are not limited to the following:

- (1) The Township Police shall have the right to enter upon and inspect any building, property, premise or place for the purpose of investigating an actual or suspected source of open burning or for the purpose of ascertaining the compliance with any regulation, approved application, and/or the enforcement of this Ordinance.
- (2) The Township Police shall have the right to receive and initiate complaints and/or violations of this Ordinance.
- (3) The Township Police shall have the power and discretion to initiate enforcement proceedings by sending a written enforcement notice in accordance with the law and/or institute criminal proceedings.
- (4) The Township Police shall have the authority to issue such Orders, either orally or in writing, as are necessary to aid in the enforcement of the provisions of this Ordinance, including, but not limited to: Orders requiring persons to cease unlawful burning which, in the course of its occurrence, is in violation of any provision of this Ordinance; Orders requiring the monitoring of any open burning; or Orders prohibiting all open burning during drought or extreme weather conditions where atmospheric conditions or local weather circumstances make open fires hazardous.
- (6) The Township Police shall keep records of complaints received, complaints initiated, enforcement notices, reports, orders, citations, any other pertinent records necessary for the enforcement of this Ordinance. Such records shall be maintained in the Township building.

SECTION VII Criminal Penalties: Any person who violates any provision of this Ordinance, any Order from the Township Police, or any written term or condition directed by the Township Police shall, upon conviction, be sentenced to pay a fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00) for each separate offense and/or may be sentenced to imprisonment not to exceed ninety (90) days for each separate offense. The Township Police are authorized to issue or file non-traffic citations with the District Justice with jurisdiction for any violations of this Ordinance and, the Solicitor for Lehman Township is hereby authorized to prosecute these offenses.

SECTION VIII Civil Penalties: 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 or municipal approved application issued pursuant to this Ordinance, Lehman 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, Lehman Township shall consider the willfulness of the violation; damage to air, soil, water, or other natural resources of Lehman Township or their uses; financial detriment to the person as a result of the violation; deterrence of future violations; cost to the Lehman Township; the size of the source or facility; the compliance history of the source; the severity and duration of the violation; the 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 any other relevant factors. When the Lehman 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 thirty (30) days to pay the proposed penalty in full; or if the person wishes to contest the amount of the penalty or the existence of the violation, if not already established, the person shall forward the proposed amount of the penalty to the Luzerne County Court of Common Pleas or a body or entity appointed by the Luzerne County Court of Common Pleas to hear such disputes within the thirty (30) day period for placement in an escrow account with the State Treasurer or any Commonwealth Bank or post an appeal bond to the quasi-judicial body within thirty (30) days in the amount of the proposed penalty, provided that such bond is executed by a surety licensed to do business in the Commonwealth and is satisfactory to Lehman Township. If, through administrative or final judicial review of the proposed penalty, it is determined that no violation occurred or that the amount of the penalty shall be reduced, the quasi-judicial body shall, within thirty (30) days, remit the appropriate amount to the person with any interest accumulated by the escrow deposit. Failure to forward the money or the appeal bond at the time of the appeal shall result in a waiver of all legal rights to contest the violation or the amount of the civil penalty unless the Appellant alleges financial inability to prepay the penalty or to post the appeal bond. The quasi-judicial body shall conduct a hearing to consider the Appellant's alleged inability to pay within thirty (30) days of the date of the appeal. The quasi-judicial body may waive the requirement to prepay the civil penalty or to post an appeal bond if the Appellant demonstrates and the quasi-judicial body finds that the

Appellant is financially unable to pay. The quasi-judicial body shall issue an order within thirty (30) days of the date of the hearing to consider the Appellant's alleged inability to pay. The amount assessed after administrative hearing or after waiver of administrative hearing shall be payable to Lehman Township and shall be collectible in any manner provided by law for the collection of debts, including the collection of interest on the penalty amount computed in accordance with Section 6621 (a) (2) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C.1 et seq.) from the date of assessment of the penalty. If any person liable to pay any such penalty neglects or refuses to pay the same after demand, the amount, together with interest and any costs that may accrue, shall constitute a debt of such person, as may be appropriate, to Lehman Township. The debt shall constitute a lien on all property owned by said person when a notice of lien incorporating a description of the property of the person subject to the action is duly filed with the Prothonotary of the Court of Common Pleas where the property is located. The Prothonotary shall promptly enter upon the civil judgment or order docket, at no cost to Lehman Township, the name and address of the person, as may be appropriate, and the amount of the lien as set forth in the notice of lien. Upon entry by the Prothonotary, the lien shall attach to the revenues and all real and personal property of the person, whether or not the person is solvent. The notice of lien, filed pursuant to this Section, which affects the property of the person shall create a lien with priority over all subsequent claims or liens which are filed against the person, but it shall not affect any valid lien, right, or interest in the property filed in accordance with established procedure prior to the filing of a notice of lien under this section.

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 Lehman 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 Lehman Township or its personnel in their performance of any duty hereunder, including denying Lehman Township access to the source or facility. The owner or operator of an open burning source shall not allow pollution of the air, water, or other natural resources of Lehman Township to result from open burning.

SECTION X Public Nuisances: A violation of this Ordinance or of any order issued by Lehman Township under this Ordinance shall constitute a public nuisance. Lehman 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, Lehman Township may recover the expense of abatement. Whenever the nuisance is maintained or continued contrary to this Ordinance or any order or approved application, the nuisance may be abatable. Any person who causes the public nuisance shall be liable for the cost of abatement.

SECTION XI Severability: The provisions of this ordinance shall be severable and if any provision hereof shall be declared unconstitutional, illegal or invalid, such decision shall not affect the validity of any of the remaining provisions of this Ordinance. It is hereby declared as a legislative intent to the Township that this Ordinance would have been amended as if such unconstitutional, illegal or invalid provision or provisions had been included herein.

SECTION XII Repealer: All Ordinances or parts of Ordinances conflicting or inconsistent with the provisions of this Ordinance hereby adopted are hereby repealed.

SECTION XIII Effective Date: This Ordinance shall become effective immediately upon adoption by the Lehman Township Board of Supervisors.

ORDAINED and ENACTED into an Ordinance at the regular meeting of the Board of Supervisors of Lehman Township, Luzerne County, Pennsylvania, this 20 day of Dec., 2004.


Attest


Chairman