

ORDINANCE 10 - 11 OPEN BURNING ORDINANCE

An ordinance of the Borough of Mercersburg, Franklin County, Commonwealth of Pennsylvania for the prevention and control of air pollution; defining certain terms used herein; providing for regulations, exceptions, enforcement orders, responsibility of owners and operators, penalties, unlawful conduct, public nuisances, and validity.

SECTION I. Title

This ordinance shall be known and may be cited as the Mercersburg Borough Air Pollution Control Ordinance of 2005.

SECTION II. Authority

The Borough Council of the Borough of Mercersburg, under, and by virtue of and pursuant to the authority granted by the Borough Code do hereby enact and ordain this ordinance.

SECTION III. Policy

Whereas the Borough Council of the Borough of Mercersburg has determined that air pollution from open burning may be detrimental to the health, comfort, living conditions, welfare, and safety of the citizens of Mercersburg Borough, it is hereby declared to be the policy of Mercersburg Borough to safeguard the citizens of Mercersburg Borough from such air pollution.

SECTION IV. Definitions

The following words, terms, and phrases, when used in this ordinance, unless the context clearly indicates otherwise, shall have the following meanings ascribed to them:

- (1) Air basin – A geographic area of this Commonwealth as delimited in attachment A.
- (2) 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.
- (3) Burning – The act 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.
- (4) 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.
- (5) Competent Individual - A person who is at least thirteen (13) years of age and is not under the influence of drugs or alcohol or suffering from any disability which would impair the individual's ability to properly supervise a fire.
- (6) Composting – The process by which organic solid waste is biologically decomposed under controlled anaerobic or aerobic conditions to yield a humus-like product.
- (7) Contained Burning - Burning which takes place in a fireproof masonry fireplace or metal container.
- (8) Council – Borough Council.

- (9) Domestic refuse – Waste which is generated from the normal occupancy of a structure occupied solely as a dwelling by two families or less. The term does not include appliances, carpets, demolition waste (insulation, shingles, siding, etc.), furniture, mattresses or box springs, paint, putrescible waste, solvents, tires, or treated wood.
- (10) Municipality – A city, incorporated town, township, borough, county, municipal authority, or other public body created under State law having jurisdiction over the disposal of sewage, industrial wastes, or other wastes.
- (11) Open burning – A fire, the air contaminants from which are emitted directly into the outdoor atmosphere and not directed thereto through a flue.
- (12) 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.
- (13) Yard waste – Leaves, grass clippings, garden residue, tree trimmings, chipped shrubbery, and other vegetative material.

SECTION V. Regulations

After January 1, 2006 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.
- (4) A fire set for the purpose of burning clearing and grubbing waste. If within an air basin an air curtain destructor must be used and must be approved by the Department of Environmental Protection's Regional Air Quality Program office.

All open burning for the purpose of clearing and grubbing waste shall be:

1. Approved only with a permit.
2. Attended by a competent individual at all times with readily available means of extinguishing the flames.
3. In small, manageable piles.
4. Consisting of only uncoated paper, uncoated cardboard, dry leaves, brush and clean untreated or un-painted lumber. Items that shall not be burned such as but not limited to; treated lumber, painted lumber, coated cardboard, coated paper, Styrofoam, plastics, oil base products, rubber products, tar products, chemicals, hazardous materials, metal foils or any

other household garbage that may be recyclable or transported in the regular refuse pick up.

5. Allowed only from September 15 through May 15th or as the Borough Council shall designate by resolution, except for clearing lots for new building construction and agricultural purposes.

6. Started only after sunrise.

7. Extinguished and emitting no smoke after 9:00 P.M.

8. At least fifteen feet (15') from the edge of any road.

9. At least fifteen feet (15') from any structure including but not limited to fencing, woodpiles, shed, out buildings and utility poles.

10. At least one hundred feet (100') from any school building and after 4:00 PM while school is in session.

11. At least five feet (5') from any public or private property lines.

12. Prohibited during and twenty-four (24) hours prior to Trick-or-Treat hours and the Halloween Parade. The Borough Council may prohibit burning during and twenty-four (24) hours prior to any other event by publishing notice of the prohibition at least once in a local newspaper of general circulation.

13. Prohibited if determined by the Borough and/or fire chief that conditions are such that burning would be hazardous to health, safety, and general welfare of persons or property in the community.

In addition, ash or waste from any fire shall not be deposited in the storm gutters adjoining or within the public streets and highways within the Borough.

(5) A fire set in conjunction with the production of agricultural commodities in their unmanufactured state on the premises of the farm operation.

All open burning for the purpose of agricultural operation shall be:

1. Approved only with a permit.

2. Attended by a competent individual at all times.

3. In manageable piles as approved by Borough or Fire Chief.

4. Allowed year round.

5. Consisting of only uncoated paper, uncoated cardboard, dry leaves, brush and clean untreated or un-painted lumber. Items that shall not be burned such as but not limited to; treated lumber, painted lumber, coated cardboard, coated paper, Styrofoam, plastics, oil base products, rubber products, tar products, chemicals, hazardous materials, metal foils or any other household garbage that may be recyclable or transported in the regular refuse pick up.

6. Started only after sunrise.

7. Extinguished and emitting no smoke after 9:00 P.M.

8. At least fifteen feet (15') from the edge of any road.

9. At least fifteen feet (15') from any structure including but not limited to fencing, woodpiles, shed, out buildings and utility poles.

10. At least one hundred feet (100') from any school building and after 4:00 PM while school is in session.
11. At least five feet (5') from any public or private property lines.
12. Prohibited during and twenty-four (24) hours prior to Trick-or-Treat hours and the Halloween Parade. The Borough Council may prohibit burning during and twenty-four (24) hours prior to any other event by publishing notice of the prohibition at least once in a local newspaper of general circulation.
13. Prohibited if determined by the Borough and/or fire chief that conditions are such that burning would be hazardous to health, safety, and general welfare of persons or property in the community.

In addition, ash or waste from any fire shall not be deposited in the storm gutters adjoining or within the public streets and highways within the Borough.

(6) 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.

Burning of domestic refuse shall be contained burning. Contained burning shall not require a permit. All out-of-doors contained burning shall be:

1. Conducted within a fireproof masonry or metal burner containing an approved spark arrester that has no larger than a 3/4 spacing. (If metal drums are being used, they shall not have contained toxic, flammable, or other hazardous materials)
2. Consisting of only uncoated paper, uncoated cardboard, dry leaves, brush and clean untreated or un-painted lumber. Items that shall not be burned such as but not limited to; treated lumber, painted lumber, coated cardboard, coated paper, Styrofoam, plastics, oil base products, rubber products, tar products, chemicals, hazardous materials, metal foils or any other household garbage that may be recyclable or transported in the regular refuse pick up.
3. Started only after sunrise.
4. Extinguished and emitting no smoke after 9:00 P.M.
5. At least fifteen feet (15') from the edge of any road.
6. At least ten feet (10') from any structure including but not limited to fencing, woodpiles, shed, out buildings and utility poles.
7. At least one hundred feet (100') from any school building and after 4:00 PM while school is in session.
8. At least five feet (5') from any public or private property lines.
9. Prohibited during and twenty-four (24) hours prior to Trick-or-Treat hours and the Halloween Parade. The Borough Council may prohibit burning during and twenty-four (24) hours prior to any other event by

publishing notice of the prohibition at least once in a local newspaper of general circulation.

10. Prohibited if determined by the Borough and/or fire chief that conditions are such that burning would be hazardous to health, safety, and general welfare of persons or property in the community.

In addition, ash or waste from any fire shall not be deposited in the storm gutters adjoining or within the public streets and highways within the Borough.

(7) 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 (except where composting is mandatory), when the fire is on the premises of said structure.

A. All open burning of yard waste, shall be:

1. Approved only with a permit.
2. Attended by a competent individual at all times with readily available means of extinguishing the flames.
3. In small, manageable piles.
4. Consisting of only uncoated paper, uncoated cardboard, dry leaves, brush and clean untreated or un-painted lumber. Items that shall not be burned such as but not limited to; treated lumber, painted lumber, coated cardboard, coated paper, Styrofoam, plastics, oil base products, rubber products, tar products, chemicals, hazardous materials, metal foils or any other household garbage that may be recyclable or transported in the regular refuse pick up.
5. Allowed only from September 15th through May 15th or as the Borough Council shall designate by resolution, except for clearing lots for new building construction and agricultural purposes.
6. Started only after sunrise.
7. Extinguished and emitting no smoke after 9:00 P.M.
8. At least fifteen feet (15') from the edge of any road.
9. At least fifteen feet (15') from any structure including but not limited to fencing, woodpiles, shed, out buildings and utility poles.
10. At least one hundred feet (100') from any school building and after 4:00 PM while school is in session.
11. At least five feet (5') from any public or private property lines.
12. Prohibited during and twenty-four (24) hours prior to Trick-or-Treat hours and the Halloween Parade. The Borough Council may prohibit burning during and twenty-four (24) hours prior to any other event by publishing notice of the prohibition at least once in a local newspaper of general circulation.
13. Prohibited if determined by the Borough and/or fire chief that conditions are such that burning would be hazardous to health, safety, and general welfare of persons or property in the community.

In addition, ash or waste from any fire shall not be deposited in the storm gutters adjoining or within the public streets and highways within the Borough.

(8) A fire set solely for cooking food.

An open fire set solely for cooking food shall be:

1. No smaller than 16 inches in diameter and no more than 48 inches in diameter.
2. Constructed with an 8-inch minimum depression in the ground ringed with stone, brick, concrete or concrete blocks, or other non-combustible material.
3. Cleared of all burnable materials outside of the fire ring at a minimum surrounding area of 36 inches.
4. Allowed only with fire in the fire pit or campfire.
5. Supervised at all times by a competent individual with readily available means of extinguishing the flames.
6. Extinguished upon completion of the event or activity.
7. Reviewed and approved before construction by the Borough, if permanent.
8. Prohibited if determined by the Borough and/or fire chief that conditions are such that burning would be hazardous to health, safety, and general welfare of persons or property in the community.
9. Allowed year round.

(9) A fire set solely for recreational or ceremonial purposes.

A. Bonfires

All recreational bonfires shall be:

1. Approved only with a permit.
2. Attended by a competent individual at all times with readily available means of extinguishing the flames.
3. Allowed year round.
4. In manageable piles as approved by Borough Manager or Fire Chief.
5. Consisting of only uncoated paper, uncoated cardboard, dry leaves, brush and clean untreated or un-painted lumber. Items that shall not be burned such as but not limited to; treated lumber, painted lumber, coated cardboard, coated paper, Styrofoam, plastics, oil base products, rubber products, tar products, chemicals, hazardous materials, metal foils or any other household garbage that may be recyclable or transported in the regular refuse pick up.
6. Started only after sunrise.
7. Extinguished and emitting no smoke after event completion.
8. At least fifteen feet (15') from the edge of any road.
9. At least fifteen feet (15') from any structure including but not limited to fencing, woodpiles, shed, out buildings and utility poles.

10. At least five feet (5') from any public or private property lines.
11. Prohibited if determined by the Borough and/or fire chief that conditions are such that burning would be hazardous to health, safety, and general welfare of persons or property in the community.

In addition, ash or waste from any fire shall not be deposited in the storm gutters adjoining or within the public streets and highways within the Borough.

B. Firepits, campfires, and patio fireplaces

1. All fire pits and campfires shall be:

- a. No smaller than 16 inches in diameter and no more than 48 inches in diameter.
- b. Constructed with an 8-inch minimum depression in the ground ringed with stone, brick, concrete or concrete blocks, or other non-combustible material.
- c. Cleared of all burnable materials outside of the fire ring at a minimum surrounding area of 36 inches.
- d. Allowed only with fire in the fire pit or campfire.
- e. Supervised at all times by a competent individual with readily available means of extinguishing the flames.
- f. Extinguished upon completion of the event or activity.
- g. Reviewed and approved before construction by the Borough, if permanent.
- h. Prohibited if determined by the Borough and/or fire chief that conditions are such that burning would be hazardous to health, safety, and general welfare of persons or property in the community.
- i. Allowed year round.

2. All patio Fireplaces shall be:

- a. Allowed only with fire in the designated fire box or fire containment area.
- b. Supervised at all times by a competent individual with readily available means of extinguishing the flames.
- c. Extinguished upon completion of the event or activity.
- d. Reviewed and approved before construction by the Borough, if permanent.
- e. Set up on a level, flat, and stable surface area and shall not be set up under an overhanging roof area.
- f. Set up on a non-combustible surface area, such as patio block, concrete, dirt or have a non-combustible matt installed beneath the fireplace.
- g. Cleared of all burnable materials outside of the fire ring at a minimum surrounding area of 36 inches
- h. At least fifteen feet (15') from any structure including but not limited to fencing, woodpiles, shed, out buildings and utility poles.

i. Prohibited if determined by the Borough and/or fire chief that conditions are such that burning would be hazardous to health, safety, and general welfare of persons or property in the community.

j. Allowed year round

SECTION VI. Enforcement Orders

(1) The Borough of Mercersburg's Zoning Officer shall have the power and duty to enforce the provisions of this ordinance.

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

(3) The Borough of Mercersburg may, in its order, require compliance with such conditions as are necessary to prevent or abate open burning or effect the purposes of this ordinance.

(4) An order issued under this section shall take effect upon notice, unless the order specifies otherwise. An appeal to the Borough Council of the Borough of Mercersburg's order shall not act as a supersedeas, provided, however, that, upon application and for cause shown, the Borough Council may issue such a supersedeas under rules established by the Borough Council.

(5) The authority of the Borough of Mercersburg to issue an order under this section is in addition to any remedy or penalty which may be imposed pursuant to this ordinance. The failure to comply with any such order is hereby declared to be a public nuisance.

SECTION VII. Responsibility of Owners and Operators

(1) Whenever the Zoning Officer finds that open burning is occurring in the Borough of Mercersburg, other than those exceptions noted in Section V above, the Zoning Officer may order the owner or operator to take corrective action in a manner satisfactory to the Borough of Mercersburg, or the Zoning Officer may order the owner or operator to allow access to the land by the Zoning Officer or a third party to take such action.

(2) 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 Borough of Mercersburg may collect the amount in the same manner as criminal penalties are assessed and collected following the process for assessment and collection contained in Section VIII. of this ordinance.

SECTION VIII. Criminal Penalties

Any person who violates any provision of this ordinance or any order of the Borough of Mercersburg 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 one thousand dollars (\$1,000) 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 Borough of Mercersburg 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 the Borough Solicitor is hereby authorized to prosecute these offenses. For purposes of this section, a summary offense may be prosecuted before any district justice in this Borough. There is no accelerated rehabilitative disposition authorized for a summary offense.

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 Borough of Mercersburg; 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 Borough of Mercersburg or its personnel in their performance of any duty hereunder, including denying the Zoning 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 Borough of Mercersburg to result from the source.

SECTION X. Public Nuisances

A violation of this ordinance or of any order issued by the Borough of Mercersburg under this ordinance shall constitute a public nuisance. The Borough of Mercersburg 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 Borough of Mercersburg may recover the expenses of abatement following the process for assessment and collection of a criminal penalty contained in Section VII. 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 XI. Permits

All required permits issued by the Mercersburg Borough shall be:

1. Written for a maximum of a four (4) day burning period.
2. Retained by the Borough for a period of no less than six (6) months.
3. Consisting of the date issued, date of expiration, name, address and phone number of person requesting permit, location of fire, and the material to be burned.

4. Issued by the Borough Manager, in written form, be numerically identified and recorded in the Borough office.

SECTION XII. Repealer

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

SECTION XIII. Validity

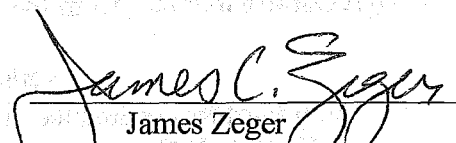
The provisions of this ordinance are severable, and if any section, clause, sentence, part, or provision thereof shall be held illegal, invalid, or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect or impair the remaining sections, clauses, sentences, 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 herein.

SECTION XIV. Effective Date

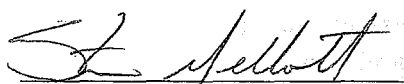
This ordinance shall become effective on the first (1st) day of January, 2006.

ENACTED AND ORDINANED this tenth of October 2005 by the Mercersburg Borough Council of the Borough of Mercersburg, Franklin County, Pennsylvania in lawful session, duly assembled.


Joshua Meyers
Council President
Borough of Mercersburg


James Zeger
Honorable Mayor
Borough of Mercersburg

Attest:


Steve Mellott
Borough secretary
Borough of Mercersburg

(SEAL)