

BOROUGH OF EDINBORO
Erie County, Pennsylvania
Ordinance No. 633

OPEN BURNING AND AIR POLLUTION CONTROL

AN ORDINANCE OF HOME RULE BOROUGH OF EDINBORO, ERIE COUNTY, COMMONWEALTH OF PENNSYLVANIA FOR THE PREVENTION AND CONTROL OF OPEN BURNING AND AIR POLLUTION TO BE KNOWN AS THE “HOME RULE BOROUGH OF EDINBORO OPEN BURNING AND AIR POLLUTION CONTROL ORDINANCE”; PROVIDING FOR RECITALS; TITLE; DEFINITIONS; REGULATIONS; EXCEPTIONS; ENFORCEMENT ORDERS; RESPONSIBILITY OF OWNERS AND OPERATORS OF AN OPEN BURNING SOURCE; PENALTIES; UNLAWFUL CONDUCT; PUBLIC NUISANCES, AND VALIDITY; AND PROVIDING FOR A REPEALER, SEVERABILITY, BOROUGH MANAGER FILING INSTRUCTIONS, AND AN EFFECTIVE DATE.

WHEREAS, the Home Rule Borough of Edinboro (hereinafter “Borough”) is authorized by the Home Rule Charter § 501 (2) adopted May 21, 1974, to adopt, amend and repeal ordinances and resolutions as may be required; and

WHEREAS, the Borough Council (hereinafter “Council”) of the Borough believes that unchecked open burning can impose hazards to the residents, citizens, visitors, real and the personal properties owned by the residents, citizens and visitors of the Borough; and

WHEREAS, open burning not only causes the possibility of destructive fires but also diminishes the air quality, thereby potentially causing residents, citizens and visitors to suffer breathing difficulties or exasperation of existing medical conditions; and

WHEREAS, the Council of the Borough desires to adopt an open burn ordinance to combat air pollution in the Borough but also to safeguard from destructive fires; and

WHEREAS, the Pennsylvania Department of Environmental Protection has encouraged municipalities to adopt open burning and air pollution measures; and

WHEREAS, the Council of the Borough has determined that adoption of such an ordinance is in the best interest of the comfort, living conditions, health, safety, and welfare of the citizens, residents and visitors of the Borough of Edinboro.

NOW THEREFORE, on this 12th day of February, 2024, the Borough Council of the Home Rule Borough of Edinboro, Erie County, Pennsylvania hereby ordains and enacts the following:

Section 1. **Recitals**

That the above recitals are incorporated as if more fully set forth herein.

Section 2. **Title**

This ordinance shall be known and may be cited as the Home Rule Borough of Edinboro Open Burning and Air Pollution Control Ordinance.

Section 3. **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:

Borough – Home Rule Borough of Edinboro.

Building Code Department -- The Building Code Department of the Home Rule Borough of Edinboro.

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.

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.

Combustible refuse – Cardboard, paper and untreated wood not exceeding thirty-six (36) inches in length.

Composting – The process by which organic solid waste is biologically decomposed under controlled anaerobic or aerobic conditions to yield a humus-like product.

Council- – Borough Council of the Home Rule Borough of Edinboro.

Garbage – Any waste other than combustible refuse, composting materials or recyclable materials, as defined in Chapter 20, Solid Waste, of the Borough of Edinboro codified ordinances, to include waste generated by residential activities, commercial or industrial activities, and construction or demolition activities.

Open burning – A fire, the air contaminants from which are emitted directly into the outdoor atmosphere and not directed thereto through a flue.

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.

Police Department – Borough of Edinboro Police Department.

Residential Recreational Campfire – A cone-shaped wood fire in a yard having a base diameter no greater than three (3) feet and material height no greater than two (2) feet.

Proper burning container – A steel drum with combustion air holes near the bottom.

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

Section 4. **Regulations**

No person may permit or conduct open burning of any 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 firefighting, 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.
5. A fire set in conjunction with the production of agricultural commodities in their unmanufactured state on the premises of the farm operation.
6. A fire set solely for cooking food.
7. A fire set solely for recreational or ceremonial purposes.
8. A fire set in a proper burning container to dispose of combustible refuse, not to exceed a flame height of four (4) feet.

All permitted open burning shall comply with the following:

1. Burning of garbage and yard waste is prohibited.
2. All permitted burning shall be attended and no person shall cause, suffer, allow or permit any unattended burning.
3. No person shall cause, suffer, allow or permit burning within twelve (12) feet of any building, street or alley in all Borough zoning districts with the exception of chimeneas or grills.
4. All permitted burning shall occur between the hours of 7:00 a.m. and 8:00 p.m., with the exception of chimeneas, grills, ceremonial or recreational fires.
5. It shall be unlawful to create a smoke or burning odor nuisance to adjoining properties.

Section 5. Enforcement Orders

(A) The Borough Building Code Department or a member of the Police Department shall have the power and duty to enforce the provisions of this ordinance.

(B) The Borough 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 finds that any condition existing in or on the facility or source involved is causing or contributing to open burning or if the Borough finds that any person is in violation of any provision of this ordinance.

(C) The Borough 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.

(D) An order issued under this section shall take effect upon notice, unless the order specifies otherwise. An appeal or hearing before the Magisterial District Judge on the Borough order shall not act as a supersedeas.

(E) The authority of the Borough 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 6. Responsibility of Owners and Operators of an Open Burning Source

(A) Whenever the Building Code Department or member of the Police Department finds that open burning is occurring in the Borough, other than those exceptions noted in Section 4 above, the Building Code Department or member of the Police Department may order the owner or operator of an open burning source to take corrective action in a manner satisfactory to the Borough, the Building Code Department or Police Department. A member of the Police Department may order the owner or operator of an open burning source to allow access to the land by the Building Code Department, member of the Police Department 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 Borough 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 Section 8 of this Ordinance.

Section 7. Public Nuisances

A violation of this ordinance or of any order issued by the Borough under this Ordinance shall constitute a public nuisance. The Borough 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 may recover the expenses of abatement following the process for assessment and collection of a civil penalty contained in Section 8. 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 8. Penalties

Any person who violates any provision of this Ordinance or any order of the Borough 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 Borough 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 Solicitor is hereby authorized to prosecute these offenses. For purposes of this section, a summary offense may be prosecuted before any Magisterial District Judge in the Borough. There is no accelerated rehabilitative disposition authorized for a summary offense. Each day that a violation of this Ordinance continues or each section of this Ordinance which shall be found to have been violated, constitutes a separate offense.

Section 9. 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; 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 or its personnel in their performance of any duty hereunder, including denying the Building Code Department or member of the Police Department access to the source or facility; or to violate the provisions of 18 Pa.C.S.A § 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 to result from the source.

Section 10. Validity

The provisions of this Ordinance are severable, and if any section, subsection, clause, sentence, term, part, or provision thereof shall be held illegal, invalid, or unconstitutional by any court or tribunal of competent jurisdiction, such decision of the court or tribunal shall not affect or impair the remaining sections, subsections, clauses, sentences, terms, parts, or provisions of this Ordinance. It is hereby declared to be the intent of the Borough Council that this Ordinance would have been adopted if such illegal, invalid, or unconstitutional section, subsection, clause, sentence, term, part, or provision had not been included herein.

Section 11. Repealer

Any ordinances, rules or resolutions, or parts of ordinances, rules, or resolutions, in conflict herewith shall be, and the same are hereby repealed.

Section 12. Severability

The provisions of this Ordinance are severable. If any provision, sentence, clause, section, subsection, term or part of this Ordinance is for any reason found to be unconstitutional, illegal, or invalid, by a court or tribunal of competent jurisdiction, 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, or invalid provision, sentence, clause, section, subsection, term or part thereof not been included herein.

Section 13. Directions to Borough Manager

The Borough Manager is hereby directed to affix the Borough Seal upon this Ordinance, insert the date of enactment upon the same, record the Ordinance in the Borough Ordinance Book and take all such actions as are required by the Home Rule Charter of the Borough and to amend the Borough Code as may be necessary.

Section 14. Effective Date.

This Ordinance shall be effective on the tenth (10th) day following the enactment of this Ordinance, as indicated below.

ORDAINED AND ENACTED by the BOROUGH COUNCIL OF THE HOME RULE BOROUGH OF EDINBORO on the date first indicated above.

ATTEST:

BOROUGH OF EDINBORO

Jason Spangenberg, Borough Manager

Aaron Gast, Mayor

CERTIFICATION

I hereby certify that the above is a true copy of the Borough of Edinboro Ordinance No. 633 adopted by a roll call vote signifying the majority vote of the members present of the Borough Council of the Borough of Edinboro on February 12, 2024, the same being advertised in the Meadville Tribune and recorded in the Borough Ordinance Book.

Secretary Jason Spangenberg