

**BOROUGH OF VANDERGRIFT
BURNING ORDINANCE**

ORDINANCE NO. 2 OF 2021

AN ORDINANCE OF THE BOROUGH OF VANDERGRIFT, COUNTY OF WESTMORELAND, COMMONWEALTH OF PENNSYLVANIA, PROVIDING FOR AND REGULATING THE USE OF OPEN FIRES AND BURNING BY THE ESTABLISHMENT OF SPECIFIC REGULATIONS, EXCEPTIONS AND DEFINITIONS, DESIGNATING AN ENFORCEMENT OFFICER AND PRESCRIBING PENALTIES FOR VIOLATION.

I. SHORT TITLE

This Ordinance shall be known as the "Burning Ordinance."

II. AUTHORITY

This Ordinance is enacted pursuant to Section 12 of the Air Pollution Control Act, as amended, 35 P.S. 4012(a).

III. DECLARATION OF PUBLIC POLICY

It is hereby declared to be a matter of public health and safety to regulate open burning in the BOROUGH OF VANDERGRIFT for the following purposes:

1. Air pollution control;
2. Protection of buildings, housing and property; and
3. Protection of health and public safety.

IV. DEFINITIONS

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

1. *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 as burning.

2. *Domestic Refuse.* Waste which is generated from the normal occupancy of a structure occupied solely as a dwelling.

3. *Open Burning.* A fire, the air contaminants from which are emitted directly into the outdoor atmosphere and not directed through a flue.

4. *Persons.* Any individual, partnership, organization, association, agency, firm, state or corporation and any other legal or commercial entity.

5. *Responsible Adult.* An individual eighteen (18) years or older who is not under the influence of drugs or alcohol or suffering from any other disability which would impair his or her ability to properly supervise a fire.

6. *Yard Waste.* Leaves, grass clippings, garden residue, tree trimmings, chipped shrubbery and any other vegetative materials.

V. PROHIBITION ON BURNING

1. *Burning Prohibited.* It shall be unlawful to burn, ignite, incinerate, maintain or permit to burn any materials whatsoever, of any nature, within this Borough.

2. *Exceptions.* The following types of burning are permitted so long as such burning is in compliance with the general limitations listed below.

- a. 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;
- b. Any fire set for the purpose of instructing fire fighting personnel, when approved by the Department of Environmental Protection's Regional Air Quality Program Office;
- c. 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
- d. Fire used for food preparation purposes, fueled by wood, charcoal or gas and confined in a metal or masonry appliance designed specifically for such use, provided that (1) the fire is supervised; (2) the size of fire does not present a fire spread danger; and (3) the fire is expressly for the preparation for non-commercial human food consumption.

3. *General Limitations.*

- a. **Control of Burning and Unattended Fires.** No permitted fires shall be allowed to burn unattended without a responsible adult being present at all times and without readily available fire extinguishing apparatus.
- b. **Time for Burning.** There shall be no burning of any type, kind or sort for any reason between the hours of 11:00 p.m. and 6:00 a.m. Any fires or burning shall be promptly extinguished by 11:00 p.m.
- c. **Drought/Extreme Weather.** Burning permitted pursuant to this Ordinance shall not be permitted whenever drought or extreme weather conditions exist or when a ban on open burning has been placed into effect by the Commonwealth of Pennsylvania or any other competent governmental body. The Emergency Management Coordinator may prohibit any and all outdoor fires when atmospheric conditions or local circumstances make sure fires hazardous.
- d. **Yard Waste and Domestic Refuse.** Burning of yard waste and domestic refuse is strictly prohibited.
- e. **Unlawful Substances.** Burning of construction debris, plastics, by-products of manufacturing and processing operations, waste from commercial operations and any other non permitted item is strictly prohibited.
- f. **Burning in Enclosed Structure or Area.** Burning in an enclosed structure or area is strictly prohibited.
- g. **Public Celebration.** Any bonfires or burning of any kind for purposes of public celebration or at public events shall be unlawful unless prior approval by the Fire Chief and permission is obtained from Borough Council at a regular meeting.

VI. EXTINGUISHING UNSAFE FIRE

Any fire set or allowed to burn in violation of this Ordinance may be extinguished by the BOROUGH OF VANDERGRIFT Volunteer Fire Departments or other authorized body, without prior notice to the landowner or occupant. If a fire company is required to respond to a fire which violates this Ordinance, a service fee shall be levied against the property owner or responsible person or persons by the responding fire company as established by Resolution of the Council of the Borough of Vandergrift.

VII. ENFORCEMENT

1. The Borough of Vandergrift, the Vandergrift Borough Police and/or any agent of the aforementioned, shall have the power and duty to enforce the provisions of this Ordinance.
2. The Borough of Vandergrift may issue such orders as are necessary to aid in the enforcement of the provisions of this Ordinances. 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 Vandergrift 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 Vandergrift finds that any person is in violation of any provision of this Ordinance.
3. The Borough of Vandergrift 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.
5. The Borough of Vandergrift Police or any other police agency responding to a complaint involving alleged nuisance burning shall have the authority to extinguish such fire or burning immediately, should the same be considered a nuisance, unsafe or fail to comply with the terms and requirements of this Ordinance.
6. The authority of the Borough of Vandergrift 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.

VIII. RESPONSIBILITY OF OWNERS AND OPERATORS

1. Whenever there is a finding that open burning is occurring in the Borough of Vandergrift, other than those exceptions noted hereinabove, an order may be issued to the owner or operator to take corrective action in a manner satisfactory to the Borough of Vandergrift, or the order may direct a third party to access the land to take such remedial 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 Vandergrift may collect the amount in the same manner as civil penalties are assessed and collected.

IX. CRIMINAL PENALTIES

Any person who violates any provision of this ordinance or any order of the Borough of Vandergrift issued pursuant to this Ordinance commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not less than Three Hundred Dollars (\$300.00) nor more than One Thousand Dollars (\$1,000.00) 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.

X. CIVIL PENALTIES

1. 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 Borough of Vandergrift 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 Borough of Vandergrift shall consider the willfulness of the violation; damage to air, soil, water or other natural resources of the Borough of Vandergrift or their uses; financial benefit to the person in consequence of the violation; deterrence of future violations; cost to the Borough of Vandergrift; 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.
2. When the Borough of Vandergrift 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.

XI. 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 Vandergrift; 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 Vandergrift 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. Section 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 source of the Borough of Vandergrift to result from the source.

XII. PUBLIC NUISANCES

A violation of this Ordinance or of any order issued by the Borough of Vandergrift under this Ordinance shall constitute a public nuisance. The Borough of Vandergrift 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 Vandergrift may recover the expenses of abatement following the process for assessment and collection of a civil penalty. Whenever the nuisance is maintained or continued contrary to the is 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.

XIII. SEVERABILITY

If any sentence, clause, section or part of this Ordinance 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 of this Ordinance. It hereby declared as the intent of BOROUGH OF VANDERGRIFT Council that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

XIV. REPEALER

All Ordinance or parts of Ordinances which are inconsistent and/or conflicting herewith are hereby repealed.

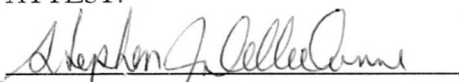
XV. EFFECTIVE DATE

This Ordinance shall become effective on the date set for below.

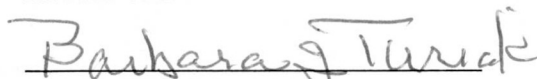
ORDAINED AND ENACTED THIS 4th DAY OF JANUARY, 2021.


KATHLEEN CHVALA, President

ATTEST:


STEVEN J. DELLEDONNE,
Borough Secretary

APPROVED:


BARBARA TURIK, Mayor