

**FALLOWFIELD TOWNSHIP
WASHINGTON COUNTY, PENNSYLVANIA
ORDINANCE NO. 216**

AN ORDINANCE OF FALLOWFIELD TOWNSHIP, WASHINGTON COUNTY, COMMONWEALTH OF PENNSYLVANIA REGULATING ALL NEW AND EXISTING OUTDOOR WOOD-FIRED BURNERS/FURNACES; REQUIRING PERMITS FOR USE OF ALL NEW AND EXISTING OUTDOOR WOOD-FIRED BURNERS/FURNACES; ALLOWING FOR THE SUSPENSION OF PERMITS DUE TO MISUSE; REGULATING REPLACEMENT OF ALL NEW AND EXISTING OUTDOOR WOOD-FIRED BURNERS/FURNACES; ALLOWING FOR THE BURNING OF CERTAIN MATERIALS; DISALLOWING THE BURNING OF CERTAIN MATERIALS; ALLOWING FOR OPERATION ALL YEAR LONG; ALLOWING FOR ENFORCEMENT OF THE INSTANT ORDINANCE BY THE ENFORCEMENT OFFICER; GIVING THE ENFORCEMENT OFFICER THE ABILITY TO INSPECT ALL NEW AND EXISTING OUTDOOR WOOD-FIRED BURNERS/FURNACES; PROVIDING FOR NOTICES OF VIOLATION OF THE INSTANT ORDINANCE; GIVING THE ENFORCEMENT OFFICER RIGHTS IN EMERGENCY CASES; PROVIDING FOR A HEARING AND APPEAL PROCESS FOR NOTICES OF VIOLATION OF THE INSTANT ORDINANCE; PROVIDING FOR REMEDIES AND PENALTIES FOR VIOLATIONS OF THE INSTANT ORDINANCE; EXEMPTING THE TOWNSHIP FROM LIABILITY FOR DAMAGES IF BURNING IS DONE IN COMPLIANCE WITH THIS ORDINANCE; ALLOWING THE BOARD OF SUPERVISORS TO AMEND FEES AND FINES BY RESOLUTION; REPEALING INCONSISTENT ORDINANCES AND/OR PORTIONS OF INCONSISTENT ORDINANCES; PROVIDING A SAVINGS CLAUSE, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of Supervisors of Fallowfield Township has the power to promote the public health, safety, and welfare of its residents pursuant to the Second Class Township Code, as amended, (53 P.S. § 65101, et seq.); and

WHEREAS, in furtherance of said power, the Board of Supervisors of Fallowfield Township wishes to regulate the emission of smoke from outdoor wood-fired burners/furnaces, including those outdoor wood-fired burners/furnaces housed in structures not normally occupied by humans; and

WHEREAS, the Board of Supervisors of Fallowfield Township has determined that regulating the use of outdoor, wood-fired burners/furnaces will promote the public health, safety and welfare of the residents of Fallowfield Township.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Board of Supervisors of Fallowfield Township, County of Washington, and the Commonwealth of Pennsylvania, and it is hereby ordained and enacted as follows:

SECTION 1. TITLE.

This Ordinance shall be known as the "Fallowfield Township Outdoor Wood-Fired Burner/Furnace Ordinance."

SECTION 2. LEGISLATIVE INTENT.

Although outdoor wood-fired burners/furnaces may provide an economical alternative to conventional heating systems, concerns have been raised regarding the safety and environmental impacts of these heating devices, particularly the production of offensive odors and potential health effects of uncontrolled emissions. This Ordinance is intended to ensure that outdoor wood-fired burners/furnaces are utilized in a manner that does not create a nuisance and is not detrimental to the health, safety and general welfare of the residents of Fallowfield Township.

SECTION 3. AUTHORITY.

This Ordinance is ordained, enacted, and authorized pursuant to the general powers permitted by the Second Class Township Code Sections 1601 and 1529, (53 P.S. § 66601 - Ordinances) and (53 P.S. § 66529 - Nuisances).

SECTION 4. APPLICABILITY.

1. This Ordinance applies to the installation and use of all outdoor wood-fired burners/furnaces within Fallowfield Township.
2. This Ordinance does not apply to:
 - (a) Grilling or cooking using charcoal, wood, propane or natural gas in cooking or grilling appliances.
 - (b) Burning in a stove, furnace, fireplace or other heating device within a building used for human or animal habitation.
 - (c) The use of propane, acetylene, natural gas, gasoline or kerosene in a device intended for heating, construction or maintenance activities.

SECTION 5. DEFINITIONS.

(a) **CLEAN WOOD:** wood that does not have paint, stains, or other types of coatings, and wood that has not been treated with substances, including but not limited to, copper arsenate, creosote, or pentachlorophenol, and, also, wood pellets made from clean wood.

(b) **ENFORCEMENT OFFICER:** The Zoning Officer/Code Enforcement Officer or other person appointed by Board of Supervisors of Fallowfield Township to administer and enforce

this Ordinance whose duties shall include responding to resident questions and complaints and performing other tasks as the Board of Supervisors of Fallowfield Township may assign.

(c) **EXISTING OUTDOOR WOOD-FIRED BURNER/FURNACE:** An outdoor wood-fired burner/furnace that was purchased and installed prior to the effective date of this Ordinance.

(d) **OUTDOOR WOOD-FIRED BURNER/FURNACE:** a fuel burning device designed to (1) burn wood or other manufacturer approved fuel products (i.e. corn and coal); (2) that the manufacturer specifies for outdoor installation or installation in structures not normally occupied by humans (e.g., garages); and (3) heats building space and/or water via the distribution, typically through pipes, of a fluid heated in the device, typically water or a water/antifreeze mixture.

(e) **PERSON:** any individual, firm, partnership, corporation, association, institution, cooperative enterprise, municipality, municipal authority, governmental entity or agency, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

(f) **STACK OR CHIMNEY:** any vertical structure enclosing a flue or flues that carry off smoke or exhaust from a solid fuel-fired heating device or structure, including that part of the structure extending above a roof.

SECTION 6. PERMIT REQUIRED.

(a) **Installation Permit:**

Any person desiring to install an outdoor wood-fired burner/furnace within Fallowfield Township shall obtain a permit prior to installation from the enforcement officer and shall pay a permit fee set by the Board of Supervisors of Fallowfield Township by resolution, which will be incorporated by reference herein.

(b) **Uniform Construction Code Permit:**

The applicant must obtain a Uniform Construction Code permit prior to installation of the outdoor wood-fired burner/furnace and its connection to the mechanical system of the structure it will serve.

(c) **Yearly Renewal:**

Commencing upon the effective day of this Ordinance, prior to January 1st of each calendar year the owner of the lot upon which an outdoor wood-fired burner/furnace is located shall apply for an operating permit which shall be valid for the period from January 1st through December 31st of the end of the calendar year. The owner shall pay all fees imposed by Fallowfield Township for the application for such operating permit and the inspection of the outdoor wood-fired burner/furnace to determine compliance with this part.

SECTION 7. SUSPENSION OF PERMIT.

A permit issued pursuant to this Ordinance may be suspended as the enforcement officer or other person appointed by the Board of Supervisors of Fallowfield Township to administer and enforce this Ordinance may determine to be necessary to protect the public health, safety and welfare of the residents of Fallowfield Township if any of the following conditions occur:

- (a) Malodorous air contaminants from the outdoor wood-fired burner/furnace are detectable outside the property of the person on whose land the outdoor wood-fired burner/furnace is located.
- (b) The emissions from the outdoor wood-fired burner/furnace interfere with the reasonable enjoyment of life on neighboring property.
- (c) The emissions from the outdoor wood-fired burner/furnace cause damage to vegetation on neighboring property.
- (d) The emissions from the outdoor wood-fired burner/furnace are or may be harmful to human or animal health.
- (e) The burning of any material referenced in Section 11.2 of this Ordinance.

A suspended permit may be reinstated once the condition which resulted in suspension is remedied and reasonable assurances are given that such condition will not recur. Recurrence of a condition, which has previously resulted in suspension of a permit, shall be considered a violation of this Ordinance subject to the penalties provided within this Ordinance.

SECTION 8. EXISTING OUTDOOR WOOD-FIRED BURNER/FURNACE.

Any outdoor wood-fired burner/furnace in existence on the effective date of this Ordinance shall be permitted to remain, provided that the owner(s), within forty-five (45) days of the effective date of this Ordinance modify, if necessary, their outdoor wood-fired burner/furnace to comply with the provisions of this Ordinance as set forth in Sections Nine (9)(d) and 9(i) and Eleven (11) of this Ordinance. Also, within forty-five (45) days of the enactment of this Ordinance, the owner(s) must obtain a permit at no cost to the owner(s) that identifies the location of the existing outdoor wood-fired burner/furnace. If the owner of an existing outdoor wood-fired burner/furnace does not comply with the requirements of this Ordinance, the outdoor wood-fired burner/furnace shall be removed and the owner(s) will have to comply with the regulations for installation of a new outdoor wood-fired, burner/furnace, including procurement of all necessary permits.

SECTION 9. INSTALLATION OF OUTDOOR WOOD-FIRED BURNERS/ FURNACES.

Any person desiring to install an outdoor wood-fired burner/furnace within Fallowfield Township shall obtain a permit from the enforcement officer. The applicant for such a permit shall meet the following requirements:

(a) Present a plan showing all property lines, the locations and distances of all dwellings or occupied buildings on adjoining properties, and the proposed location of the outdoor wood-fired burner/furnace.

(b) Locate the outdoor wood-fired burner/furnace at least 250 feet (250') from any occupied structure not located on the lot on which the outdoor wood-fired burner/furnace will be located.

(c) Locate the outdoor wood-fired burner/furnace at least 200 feet (200') from all property lines.

(d) The outdoor wood-fired burner/furnace shall have a stack or chimney that extends to a minimum height of the residential structure roof peak of which the outdoor wood-fired burner/furnace is servicing plus any additional height required by the manufacturer's specifications and/or the international residential code, which ever calls for a taller height. If there are any residential structures within 250 feet, the stack or chimney shall extend at least as high above the ground surface as the height of the roof peaks of all such residences plus two (2) feet. The maximum height of the outdoor wood-fired burner/furnace stack or chimney shall not exceed fifty (50) feet and shall not exceed the maximum height requirement in that specific zoning district.

Should a new residential structure be built, or an existing residential structure be modified within the 250 foot radius, the outdoor wood-fired burner/furnace stack or chimney height shall be raised to match the height of the new or modified structure, up to the maximum height indicated above.

(e) Present evidence that the applicant has obtained a Uniform Construction Code permit for the installation of the outdoor wood-fired burner/ordinance and its connection to the mechanical system of the structure it will serve.

(f) Provide a copy of the manufacturer's specification and instructions, which the applicant agrees to comply with and not alter at any time. Where the manufacturer's specifications and instructions conflict with this terms of this Ordinance, the more restrictive of the two shall apply.

(g) Provide proof that the outdoor wood-fired burner/furnace has been laboratory tested and listed to comply with appropriate safety standards such as UL (Underwriters Laboratories) or ANSI (American National Standards Institute) standards.

(h) All outdoor wood-fired burner/furnace shall be equipped with properly functioning spark arrestors.

(i) The outdoor wood-fired burner/furnace shall comply with all federal, state and local requirements.

The application shall be signed by all owners of the lot on which the outdoor wood-fired burner/furnace will be located and the contractor installing the outdoor wood-fired burner/furnace.

SECTION 10. REPLACEMENTS.

If an outdoor wood-fired burner/furnace is replaced or upgraded, a permit shall be required pursuant to Section 6 of this Ordinance and the replacement shall comply with all Sections of this Ordinance.

SECTION 11. USE OF OUTDOOR WOOD-FIRED BURNER/FURNACE.

1. No person that operates a new or existing outdoor wood-fired burner/furnace, as defined herein, shall use a fuel other than the following:
 - (a) Clean wood.
 - (b) Wood pellets made from clean wood.
 - (c) Anthracite coal.
 - (d) Home heating oil, natural gas, or propane that complies with all applicable sulfur limits and is used as a starter or supplemental fuel for dual-fired outdoor wood-fired burner/furnace.
 - (e) All materials listed as acceptable by the manufacturer of the outdoor wood-fired burner/furnace not listed in Section 11.2.

2. No person that operates a new or existing outdoor wood-fired burner/furnace, as defined herein, shall use the following fuels:
 - (a) Any material not listed in Section 11.1.
 - (b) Any wood that does not meet the definition of clean wood, including, but not limited to, treated or painted wood.
 - (c) Furniture.
 - (d) Rubbish or garbage, including, but not limited to, food wastes, food packaging, or food wraps.
 - (e) Tires.
 - (f) Lawn clippings or yard waste.
 - (g) Material containing plastic.
 - (h) Material containing rubber.
 - (i) Waste petroleum products.
 - (j) Paint and paint thinners.
 - (k) Chemicals.
 - (l) Any hazardous waste.
 - (m) Non-anthracite coal.
 - (n) Glossy colored paper.
 - (o) Construction and demolition debris (such as shingles).

- (p) Plywood or other composite wood products.
- (q) Particleboard.
- (r) Salt water driftwood.
- (s) Manure.
- (t) Animal carcasses.
- (u) Asphalt products.
- (v) Used cooking oils.

3. The outdoor wood-fired burner/furnace shall at all times be operated and maintained in accordance with the manufacturer's specifications.
4. The outdoor wood-fired burner/furnace shall be maintained and operated in compliance with all federal, state and local requirements, including, but not limited to, compliance with all emissions and air quality standards promulgated by the United States Environmental Protection Agency, the Pennsylvania Department of Environmental Protection or other relevant state or federal agency.
5. Any ash or other by-products from the operation of this outdoor wood-fired burner/furnace shall be disposed of in accordance with federal, state and local requirements.

SECTION 12. OPERATION SCHEDULE.

Outdoor wood-fired burners/furnaces may be operated all year long.

SECTION 13. ENFORCEMENT PROVISIONS.

1. Enforcement Officer.

The Board of Supervisors of Fallowfield Township shall appoint an individual, agency or firm to serve as the enforcement officer who shall be responsible for enforcing the terms of this Ordinance.

2. Duties of Enforcement Officer.

- (a) Inspection: The enforcement officer, and any other individual representing the Township whose presence is necessary to complete the inspection, may inspect any premises, building or structure in accordance with Section 14 of this Ordinance to determine whether or not a violation of this Ordinance exists.
- (b) Action: Whenever an inspection discloses a violation of this Ordinance, the enforcement officer shall prepare a report detailing the violation and a recommendation regarding how the violation can be corrected. The enforcement officer, upon authorization by the Board of Supervisors of Fallowfield Township, shall issue a written notice to the owner and/or

occupant of the premises as set forth in Section 15 along with a copy of the report.

- (c) Hearing Appearance: The enforcement officer shall appear at all hearings conducted in accordance with Section 17 and testify as to the violation.

SECTION 14. PERMISSION TO INSPECT.

The enforcement officer, and any other agent so authorized by the Board of Supervisors, may inspect any premises to determine whether any violations of this Ordinance exist. Prior to entering upon any property to conduct an inspection, the enforcement officer shall obtain the permission of the owner or occupant of the property to conduct the inspection. If after due diligence, the enforcement officer is unable to obtain such permission, the enforcement officer shall have the authority to conduct the necessary inspection in accordance with this Ordinance and the applicable laws of the Commonwealth, and, if necessary, petition a competent court with jurisdiction for a court order authorizing the inspection. If a court orders the inspection, the defendant named in the order shall reimburse the Township for the costs of filing the petition and reasonable attorney's fees.

SECTION 15. NOTICE OF VIOLATION.

Whenever an inspection discloses that a violation of this Ordinance exists, the enforcement officer shall issue a Notice of Violation to the owner and/or occupant of the premises. The Notice shall:

- (a) Be in writing.
- (b) Include a statement of the reasons why the Notice is being issued.
- (c) Contain a copy of the enforcement officer's inspection report that details the conditions constituting the violation, contain an outline of the remedial action required to come into compliance with the Ordinance and state a reasonable time to rectify the violation.
- (d) Inform the owner of the right to request a hearing before the Board of Supervisors as set forth in Section 17.
- (e) Inform the owner/occupant that should there be a failure to comply with the Notice or request a hearing, the individual(s) will be subject to the penalties set forth in Section 18 of the Ordinance, and the costs and expenses, including attorney's fees, of enforcing this Ordinance.

Except in emergency cases, the Notice shall be sent by registered mail or by certificate of mailing, or personally delivered to the owner and/or occupant of the premises upon which the violation exists. Where the owner is absent from the Township, all notices shall be deemed to be properly served if a copy of the Notice is served upon the owner personally, a copy of the Notice is sent by registered mail or by certificate of mailing to the last known address of the owner,

regardless of proof of receipt, and is posted in a conspicuous place on or about the premises affected by the Notice or the owner is served with such Notice by any other method authorized under the laws of the Commonwealth of Pennsylvania.

SECTION 16. EMERGENCY CASES.

Whenever the enforcement officer finds that an emergency exists which requires immediate action to protect the public health, safety and welfare, he/she may, without notice or hearing, issue an order reciting the existence of such an emergency and requiring that such action be taken as is necessary to correct the violation and eliminate the emergency. Notwithstanding the other provisions of this Ordinance, such order shall be effective immediately.

SECTION 17. HEARINGS.

- (a) Right to Hearing – Any person affected by any Notice which has been issued in accordance with the enforcement of any provision of this Ordinance may request and shall be granted a hearing on the matter before the Board of Supervisors provided that such person files a written request for the hearing within ten (10) days after service of the Notice. The request shall contain a brief statement regarding the reasons for the request.
- (b) Scheduling and Conduct of the Hearing – Upon receipt of a request for a hearing, a time and place for the hearing shall be scheduled and advertised in accordance with applicable municipal requirements. All hearings shall be conducted in accordance with the Local Agency Act. The hearing shall be scheduled no later than sixty (60) days after the day on which the request was received. At the hearing, the person requesting the hearing shall be given the opportunity to be heard and show cause why the violation described in the Notice should not be abated.
- (c) Board of Supervisors Action – After such hearing, the Board of Supervisors shall issue a written decision sustaining the Notice; modifying the Notice and attaching conditions, or withdrawing the Notice. If the Board of Supervisors sustains the Notice, it shall be deemed to be a final order effective immediately.
- (d) Right to Appeal – Any aggrieved party may appeal the final order to the Court of Common Pleas of Washington County in accordance with the provisions of the Local Agency Act. Such appeal shall not constitute a stay from the requirements of the final order unless an order to that effect is obtained from the Court.
- (e) Fees – The person requesting the hearing shall pay the fee for such hearing as established by resolution of the Board of Supervisors, which will be incorporated by reference herein.

SECTION 18. REMEDIES AND PENALITIES.

Any person who has violated or permitted the violation of any provisions of this Ordinance shall upon judgment thereof by any Magistrate District Judge 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 day the violation exists after notice from the Township, together with the costs of suit, and/or shall be committed to the Washington County prison for a period not to exceed thirty (30) days. Each day of violation shall be considered a separate offense, for which a separate conviction may be sought. All judgments, costs, interests and attorney's fees collected for a violation of this Ordinance shall be paid over to Fallowfield Township.

In addition to the fines, judgments, costs and/or imprisonment remedies set forth above, the Township reserves the right to pursue all other available remedies at law or in equity under the laws of the Commonwealth of Pennsylvania.

The enforcement officer is hereby authorized to commence and to prosecute any violations in the court of appropriate jurisdiction and to utilize the services of the Township solicitor in so doing.

SECTION 19. MUNICIPALITY EXEMPT FROM LIABILITY.

Fallowfield Township, and its agents, officials, and representatives, shall not, under any circumstances, be liable or responsible for damages caused to any person or property by reason of the issuance of any permit under the provisions of this Ordinance, or by reason of the conduct of any burning activity in compliance with the terms and provisions of this Ordinance. The person or party responsible for any such burning activity shall bear sole liability of any damages caused as a result thereof.

SECTION 20. POWERS BY RESOLUTION.

The Board of Supervisors may, at any time by way of resolution, amend this Ordinance to set and/or change fees, including permit fees, and change the amount of fines and penalties.

SECTION 21. REPEALER.

Any and all prior Ordinances and/or any and all portions of prior Ordinances that are in conflict with this Ordinance are hereby repealed to the extent of such conflict. The remaining prior Ordinances and/or portions of prior Ordinances, not modified herein, shall remain the same.

SECTION 22. SAVINGS CLAUSE.

Should any provision or other part of this Ordinance be finally declared to be illegal, unenforceable, void and/or unconstitutional, such shall not affect the remainder of this Ordinance which shall nonetheless be fully valid, binding and enforceable.

It is declared to be the intention of the Board of Supervisors of Fallowfield Township that this Ordinance would have been adopted if such invalid or unconstitutional provision had not been included.

SECTION 23. EFFECTIVE DATE.

ORDAINED AND ENACTED as an Ordinance of Fallowfield Township by the Board of Supervisors of Fallowfield Township this 17th day of December, 2014.

ATTEST:

FALLOWFIELD TOWNSHIP

Karen Falbert
Secretary

By: Wilbur N. Salschall Jr.
Chairman, Board of Supervisors

