

ORDINANCE NO. 259

AN ORDINANCE OF TINICUM TOWNSHIP, BUCKS COUNTY, COMMONWEALTH OF PENNSYLVANIA, AMENDING ORDINANCE 204 FOR THE PREVENTION AND CONTROL OF AIR POLLUTION FROM THE USE OF OUTDOOR WOOD-FIRED BOILERS, ALSO KNOWN AS OUTDOOR WOOD-FIRED FURNACES, OUTDOOR WOOD-BURNING APPLIANCES, OR OUTDOOR HYDRONIC HEATERS; DEFINING CERTAIN TERMS USED HEREIN; PROVIDING FOR REGULATIONS, EXCEPTIONS, ENFORCEMENT ORDERS, RESPONSIBILITY OF OWNERS AND OPERATORS, PENALTIES, UNLAWFUL CONDUCT AND PUBLIC NUISANCES.

BACKGROUND:

WHEREAS, Section 1601 of the Second Class Township Code provides that the Board of Supervisors may adopt ordinances in which general or specific powers of the Township may be exercised, and, by the enactment of subsequent ordinances, the Board of Supervisors may amend, repeal, or revise existing ordinances (53 P.S. Section 66601);

WHEREAS, Section 12 of the Air Pollution Control Act, 35 P.S. §4012 gives municipalities the authority to enact ordinances that regulate outdoor food-fired boilers;

WHEREAS, the Board of Supervisors finds it is in the interest of the Township and its citizens to repeal Ordinance 199 and to allow the installation and operation of outdoor wood-fired boilers throughout the Township subject to the regulations contained herein; and

WHEREAS, this Ordinance is intended to promote the public health, safety and welfare and to safeguard the health, comfort, living conditions of the citizens of Tinicum Township by regulating the air pollution and fire hazards caused by outdoor burning and providing for identifying approved units, regulation of the installation and operation of these devices, definition of the responsibility of owners and operators, unlawful conduct, penalties, unlawful conduct.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED, and it is hereby **ENACTED AND ORDAINED** by the Board of Supervisors of Tinicum Township, Bucks County, Pennsylvania, after public hearing, duly advertised and held on the 15th day of November, 2022, as follows:

Section 1. Applicability

This Ordinance applies to the installation and use of all outdoor wood-fired boilers within Tincum Township.

(a) This Ordinance does not apply to grilling or cooking using charcoal, wood, propane or natural gas in cooking or grilling appliances.

(b) This Ordinance does not apply to a stove, furnace, fireplace or other heating device within a building used for human or animal habitation.

(c) This Ordinance does not apply to the use of propane, acetylene, natural gas, gasoline, heating oil or kerosene in a device intended for heating, construction or maintenance activities.

Section 2. 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:

(a) **Air Pollution Control Act**, 35 P.S. §4001, et seq.

(b) **Clean Wood** means natural wood which has not been painted, varnished or coated with a similar material; has not been pressure treated with preservatives; and does not contain resins or glues as in plywood or other composite wood products.

(c) **Construction and Demolition Waste** means building waste material, including, but not limited to, waste shingles, insulation, lumber, treated wood, painted wood, wiring, plastics, packaging and rubble that results from construction, remodeling, repair and demolition operations on a residential, commercial or industrial building or other structure.

(d) **Outdoor Wood-Fired Boiler**

(1) **A Fuel-Burning Device** – Also known as outdoor wood-fired furnaces, outdoor wood-burning appliances, or outdoor hydronic heaters, water stoves, etc.:

(i) Which is designed to burn wood or other approved solid fuels;

(ii) That the manufacturer specifies for outdoor installation or for installation in structures not normally intended for habitation by humans or domestic animals, including structures such as garages and sheds; and

(iii) Which heats building space and/or water.

(2) **Approved Outdoor Wood-Fired Boiler Models** – EPA Phase 2 as described by the EPA List of Outdoor Hydronic Heaters (“OHH”), shall be the only units approved for operation in the Township other than those existing as of the date of enactment of this Ordinance.

(e) **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.

(f) **Prohibited Fuels** – No person shall burn any of the following items in an outdoor wood boiler:

(1) Any wood that is not Clean Wood which has been painted, varnished or coated with a similar material, has been pressure treated with preservatives and contains resins or glues as in plywood or other composite wood products;

(2) Garbage;

(3) Tires;

(4) Lawn clippings or yard waste;

(5) Materials containing plastic;

(6) Materials containing rubber;

(7) Waste petroleum products;

(8) Paints and paint thinners;

(9) Chemicals;

(10) Glossy or colored papers;

(11) Construction and demolition debris;

(12) Manure;

(13) Animal carcasses;

(14) Asphalt products;

(15) Materials containing asbestos;

(16) Materials containing lead, mercury, heavy metals or toxic compounds; and

(17) Coal, unless the outdoor wood boiler is specifically designed to burn coal.

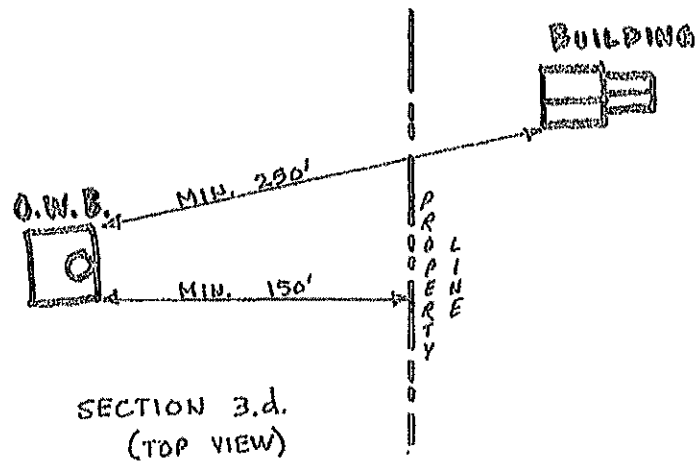
(g) **Refuse** means any waste material except trees, logs, brush and stumps.

Section 3. Permits

A permit shall be obtained prior to installing an Outdoor Wood-Fired Boiler. All outdoor wood-fired boilers other than those defined as Approved Outdoor Wood-Fired Boilers in Section 2.(d)(2) above, are prohibited.

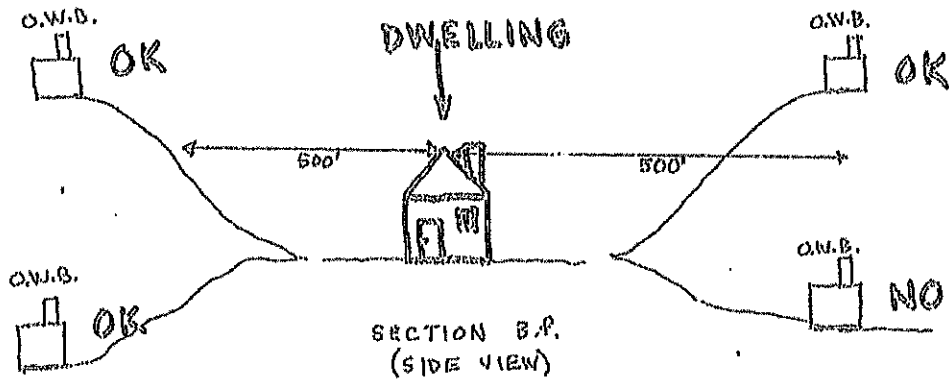
The permit shall require and be subject to the following conditions:

- (a) An Outdoor Wood-Fired Boiler shall only be operated from October 1st to May 1st.
- (b) An Outdoor Wood-Fired Boiler shall not be used to burn anything other than clean wood, wood pellets made from clean wood, 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 OHHs or other fuels as approved by the Pennsylvania Environmental Commissioner through rules adopted pursuant to RSA 541-A.
- (c) No refuse or construction or demolition waste or Prohibited Fuels shall be burned at any time.
- (d) An Outdoor Wood-Fired Boiler shall be located at least 150 feet from the adjoining property and 250 feet from the nearest building on an adjoining property.

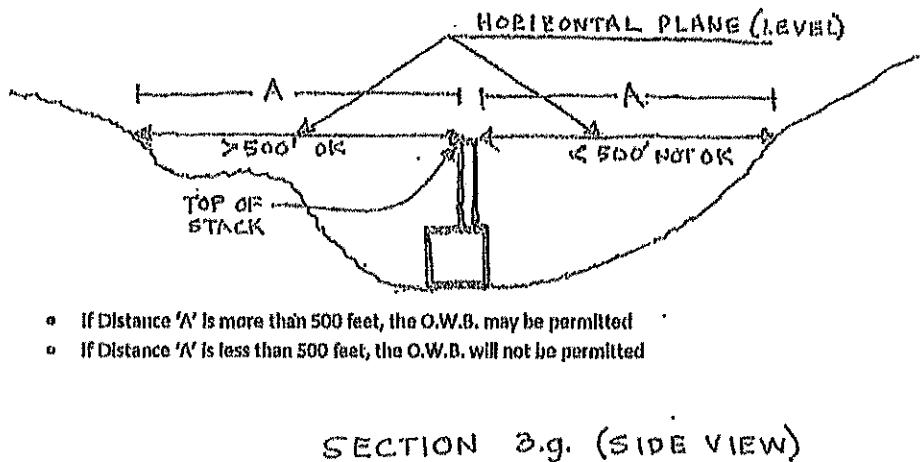


- (e) The installation of the Outdoor Wood-Fired Boiler shall be according to manufacturer's standards.

(f) The boiler stack shall be at least two feet above the peak of all residential buildings within 500 feet of the Outdoor Wood-Fired Boiler.



(g) Outdoor Wood-Fired Boilers shall not be permitted where the "horizontal plane" above the boiler stack intersects the ground within 500 feet.



(h) The person or persons using the Outdoor Wood-Fired Boiler shall show knowledge of the approved operating practices to an appointed Township official.

(i) After installation, but before the Outdoor Wood-Fired Boiler is put into service, the installer of the Outdoor Wood-Fired Boiler shall demonstrate that its operation meets all current EPA standards governing Outdoor Wood-Fired Boilers. Where EPA standards conflict with requirement and conditions herein, the stricter standards shall apply.

(j) A fee for the permit shall be paid according to the Township fee schedule.

(k) A permit shall be valid for one year and shall be subject to renewal pursuant to Section 4 hereof.

(l) A permit for an Outdoor Wood-Fired Boiler shall expire upon a change of occupancy of the building being heated. The new occupant shall be required to obtain a new permit before occupying the building being heated.

Section 4. Renewal of Permits

The permit for an Outdoor Wood-Fired Boiler shall be automatically renewed from year to year unless:

(a) The heater has had more than three (3) minor violations for pollution in the previous year, i.e. opacity greater than 20%, or excess smoke, odor violation as determined by a Township official during the previous season.

(b) The heater has had a major violation, i.e. burning prohibited fuels in the Outdoor Wood-Fired Boiler. In addition to not renewing the permit automatically when there has been a major violation, the appointed Township official may issue an immediate cease and desist order and pursue civil or criminal penalties for a major violation.

Section 5. Right of Entry and Inspection

The Township may appoint an authorized agent to inspect any property for the purpose of ascertaining compliance with the provisions of this Ordinance.

Section 6. Enforcement Orders

(a) The Tincum Township Code Enforcement Officer or other Officer appointed by the Township pursuant to Section 5 shall have the power and duty to enforce the provisions of this Ordinance.

(b) Tincum Township 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 use of outdoor wood-fired boilers, which are in violation of any provision of this Ordinance; orders to take corrective action or to abate a public nuisance; or orders requiring production of information. Such an order may be issued if Tincum Township finds that any person is in violation of any provision of this Ordinance.

(c) Tincum Township may, in its order, require compliance with this Ordinance.

(d) An order issued under this section shall take effect upon notice, unless the order specifies otherwise.

(e) The authority of Tincum Township to issue an order under this section is in addition to any remedy or penalty that may be imposed pursuant to this Ordinance. The failure to comply with any such order is hereby declared to be a public nuisance.

Section 7. Responsibility of Owners and Operators

(a) Whenever the appointed Township Officer finds that illegal operation of an outdoor wood-fired boiler is occurring in Tincum Township, in contravention of the requirements of Section 3 above, the appointed Township Officer may order the owner or operator to take corrective action in a manner satisfactory to Tincum Township, or the appointed Township Officer may order the owner or operator to allow access to the land by the Code Enforcement Officer or a third party appointed by the Township to take such action.

(b) The owner and/or operator of an illegal outdoor wood-fired boiler shall reimburse the Township for the costs involved in taking corrective action, including the cost of litigation, attorneys fees, oversight, monitoring, sampling, testing, and investigation related to a corrective action. The costs may be collected by placing a municipal lien on the property.

Section 8. Criminal Penalties

Any person who violates any provision of this Ordinance or any order of Tincum Township 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 Tincum Township 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 Township Solicitor is hereby authorized to prosecute these offenses. For purposes of this section, a summary offense may be prosecuted before any district justice in Tincum Township. There is no accelerated rehabilitative disposition authorized for a summary 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 Tincum Township; or to cause a public nuisance; or to hinder, obstruct, prevent, or interfere with Tincum Township or its personnel in their performance of any duty hereunder, including denying the appointed Township Officer access to the source or facility.

Section 10. Public Nuisances

A violation of this Ordinance or of any order issued by Tincum Township under this Ordinance shall constitute a public nuisance. Tincum 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, Tincum Township may recover the expenses of abatement as set forth in Section 7(b) hereof. 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 11. Severability

Should any provision of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected.

Section 12. Repealer

All inconsistent provisions of other ordinances or resolutions are repealed to the extent of the inconsistency. All other provisions of the Ordinances of Tincum Township shall remain in full force and effect.

Section 13. Validity

The provisions of this Ordinance are declared to be severable. If any provision of this Ordinance is declared to be invalid or unconstitutional by a court of competent jurisdiction, such determination shall have no effect on the remaining provisions of this Ordinance.

Section 14. Effective Date

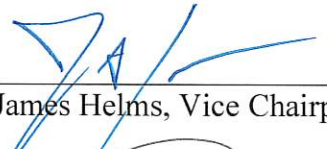
This Ordinance shall be effective five (5) days after adoption by the Tincum Township Board of Supervisors.

ORDAINED and ENACTED this 15th day of *November*, A.D., 2022.

TINICUM TOWNSHIP
BOARD OF SUPERVISORS



Richard Rosamilia, Chairperson

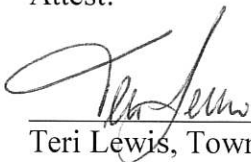


James Helms, Vice Chairperson



Eleanor Breslin, Member

Attest:



Teri Lewis, Township Manager