

CHAPTER 7

FIRE PREVENTION AND FIRE PROTECTION

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Part 1

Open Burning

§101. Definitions. As used in this Part 1, the following term shall have the meanings indicated, unless a different meaning clearly appears from the context:

BOROUGH COUNCIL - the Borough Council of the Borough of Everett.

FURNACE - any enclosed device specifically designed for burning any material for the production of heat.

GARBAGE - all putrescible animal and vegetable matter resulting from the handling, preparation, cooking and consumption of food.

INCINERATOR - any device specifically designed for the destruction by burning of refuse, sewage sludge, or any other combustible material.

OPEN FIRE - a fire in which any material is burned in the open or in a receptacle other than a furnace or incinerator.

PERSON - any individual, partnership, association, corporation, department, bureau, agency or other legal entity.

REFUSE - garbage, rubbish and trade waste.

RUBBISH - solids not considered to be highly flammable or explosive including but not limited to rags, old clothes, leather, rubber, carpets, wood, excelsior, paper, ashes, tree branches, tree leaves, yard trimmings, furniture, tin cans, glass, crockery, masonry and other similar materials.

SALVAGE OPERATION - any business, trade or industry engaged in whole or in part in salvaging or reclaiming any product or material, including but not limited to, metals, chemicals, shipping containers or drums.

TRADE WASTE - all solid or liquid material or rubbish resulting from construction, building operations, or the prosecution of any business, trade or industry including but not limited to, plastic products, cartons, paint, grease, oil and other petroleum products, chemicals, cinders and other forms of solid or liquid waste materials,; provided, that "trade waste" shall not include any coal refuse associated with the mining or preparation of coal. (Ord. 5/6/30; as revised by Ord. 271, 6/8/1992)

§102. Enforcement. The Borough Council shall have the power and duty to enforce the provisions of this Part 1. (Ord. 5/6/30; as revised by Ord. 271, 6/8/1992)

§103. Regulations. With the Borough limits, no person shall:

1. Ignite or feed an open fire for the destruction of refuse or in the conduct of a salvage operation in any public or private place outside any building, or

2. Cause, suffer, allow, or permit the maintenance of any open fire for the destruction of refuse, or in the conduct of a salvage operation on any property under his control outside of any building.

Exceptions:

1. Open fires may be set in the performance of an official duty of any public officer if the fire is necessary for:

A The prevention of a fire hazard which cannot be abated by other means: or

B. The protection of public health.

2. Open fires may be set with approval of the authorized enforcement agent of this Part, provided,

A. Leaves, branches and other non-putrescible vegetable matter only are burned,

B. There is no practical available alternative method for disposal of the material to be burned,

C. No hazardous or other objectionable condition will be created by such burning,

D. No such burning is allowed on any street or sidewalk within the Borough, and

E. All such burning takes place between the hours of 9:00 AM and 9:00 PM. (Ord. 5/6/30; as revised by Ord. 271, 6/8/1992)

§104. Penalties. Any person who shall violate any provision of this Part shall, upon conviction thereof, shall be sentenced to pay a fine of not more than six hundred dollars (\$600.00) and costs, or in default of payment thereof, shall be subject to imprisonment for a term not to exceed thirty (30) days. Each day that a violation of this Chapter continues shall constitute a separate offense. (Ord. 5/6/30; as revised by Ord. 271, 6/8/1992)

Part 2

Outdoor Wood-Fired Boilers

§201. Definitions. Unless the context specifically and clearly indicates otherwise, the meaning of terms and phrases used in this Ordinance shall be as follows:

1. "Outdoor wood-fired boiler" shall mean any stove, furnace, equipment, device or apparatus kept or operated out-of-doors (meaning outside of any residential or commercial structure located within the Borough) fired with wood or any other material, matter, substance, refuse, or thing, including but not limited to any outdoor wood-fired hydronic heater(s) or furnace, which may generate heat for indoor heating or cooling purposes, including hot water heating, or to any accessory uses or structures, including but not limited to residences, businesses, garages, warehouses, greenhouses, swimming pools, or spas, and/or which may be utilized to burn wood or any other material, matter, substance, refuse, garbage, or thing and usually having a smokestack, pipe, chimney, or other apparatus so as to emit smoke or particulate ash or other by-product of combustion into the air and surrounding environment.

2. "Borough" shall mean the Borough of Everett, Bedford County, Pennsylvania, a political subdivision of the Commonwealth, acting by and through its Borough Council or, in appropriate cases, acting by and through its authorized representatives.

3. The term "person" as used herein shall mean any natural person, corporation, partnership, or business entity of whatsoever nature or kind.

§202. Prohibition Against Use of Outdoor Wood-Fired Boilers Within Everett Borough. It shall be unlawful for any person to utilize or attempt to utilize any wood-fired boiler within the Borough and/or the limits of the Borough at any time.

§203. Grandfather Clause. This Ordinance shall not be construed to be retroactive and shall not require the removal of any external fuel burning device in existence and installed with the Borough at the effective date of this Ordinance. All outdoor wood-fired boilers which are subject to this grandfather clause, however, shall be further subject to the provisions of Section 204 below.

§204. Permitting and Regulation of Grandfathered Boilers. The owner of an outdoor wood-fired boiler which is grandfathered pursuant to Section 203 above shall obtain a permit for the boiler from the Borough office within sixty (60) days after the effective date of this Ordinance. The permit shall allow continued use of the boiler subject to the following provisions:

1. It shall be used in a manner that complies with all manufacturer's specifications.

2. It shall not be used to burn rubbish, garbage, treated, or painted wood, plastic, rubber or any material not recommended for burning by the manufacturer of the boiler.

3. It shall be used in a manner so as to assure that smoke, fumes, or odors are not dispensed to other properties or public streets.

4. It shall not be moved without written approval from the Borough unless it is being permanently removed from the Borough.

5. It shall be cleaned and maintained to assure that it is in proper operating condition. In the event the boiler is damaged more than fifty (50%) percent or it is physically destroyed or decayed, it must be torn down and removed from the property.

6. Ashes and waste shall be disposed of promptly, in a lawful manner so as to comply with all applicable Federal, State, and local laws, rules, codes, and regulations, and shall be not permitted to accumulate on the property.

7. Acceptance of a permit shall be deemed consent by the property owner for any authorized officer, agent, or representative of the Borough to enter the property for the purpose of inspecting the outdoor wood-fired boiler to assure compliance with the terms of the permit.

§205. Penalties. Any person who shall violate any of the provisions of this Ordinance shall be guilty of an offense, and upon conviction thereof, shall be punished by a fine not exceeding One Thousand (\$1,000.00) Dollars, and/or imprisonment not exceeding thirty (30) days for each violation. The Borough shall initiate an enforcement proceeding by an action brought before a District Justice in the same manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure. This Ordinance may also be enforced by the Borough through an action seeking injunctive or equitable relief brought in the Court of Common Pleas of the county where the Borough is situated.

§206. Separate Offenses. Each day's continuance of anything prohibited by this Ordinance shall be a separate offense hereunder.

§207. Abatement of Violations. In the event that any person is found to be in violation of this Ordinance in so far as use or attempted use of any outdoor wood-fired boiler within the Borough and/or its limits, the Borough Council and/or its authorized representative(s) may take such steps and measures to abate such use or attempted use, including removal and destruction of any such device. All costs and expenses incurred by the Borough in relation to any abatement activity shall be assessed to the person(s) found in violation of this Ordinance. Any costs and expenses assessed hereunder shall be paid by the owner(s) or other person against whom the same are assessed within thirty (30) days of service of notice of any such violation by the Borough. Failure to pay the costs and expenses incurred by the Borough within the time period set forth in this Ordinance shall also constitute a violation of this Ordinance subject to the penalties set forth in Section 203 above.

§208. Severability Clause. If any section or provision of this Ordinance shall be held void or unconstitutional, all other sections and all other provisions of the Ordinance which are not so held void or unconstitutional shall continue in full force and effect.

Part 3

Certain Fire Losses - Rehabilitation Cost Recovery

§301. Use of Fire Insurance Proceeds.

1. No insurance company, association or exchange (hereinafter "insurer") doing business in the Commonwealth of Pennsylvania shall pay a claim of a named insured for fire damage to a structure located within the Borough of Everett where the amount recoverable for the fire loss to the structure under all policies exceeds \$7,500.00, unless the insurer is furnished by the Borough Treasurer with a certificate pursuant to 40 P.S. §638 (the "Act") and unless there is compliance with the procedures set forth in the Act.

2. Where there are delinquent taxes, assessments, penalties or user charges against the property ("municipal claims"), or there are expenses which the Borough has insured as a cost for the removal, repair or securing of a building or other structure on the property (collectively "municipal expenses"), the Treasurer of the Borough shall immediately render a bill for such work, if he has not already done so. Upon written request of the named insured specifying the tax description of the property, the name and address of the insurer and the date of receipt by the insurer of a loss report of the claim, the Treasurer shall furnish a certificate within fourteen (14) working days after the request, to the insurer, either:

A. Stating that there are no unpaid municipal claims or municipal expenses against the property; or

B. Specifying the nature and amounts of such claims or expenses, accompanied by a bill for such amounts.

Taxes, assessments, penalties and user charges shall be deemed delinquent for this purpose if a lien could have been filed for such claims under applicable law. Upon receipt of a certificate and bill pursuant to subsection (A) of this Section, the insurer shall transfer to the Treasurer an amount from the insurance proceeds sufficient to pay such sums prior to making payment to the named insured, subject to the provision of subsection (3) hereof.

3. When all municipal claims and municipal expenses have been paid pursuant to subsection (2) of this Section, or where the Treasurer has issued a certificate described in subsection (2)(A) indicating that there are no municipal claims or municipal expenses against the property, the insurer shall pay the claim of the named insured; provided, however, that if the loss agreed upon by the named insured and the insurer equals or exceeds 60% of the aggregate limits of liability on all fire policies covering the building or structure, the following procedures must be followed:

A. The insurer shall transfer from the insurance proceeds to the Treasurer, in the aggregate, \$2,000 for each \$15,000 of such claim or fraction thereof.

B. If at the time a loss report is submitted by the insured, such insured has submitted to the insurer, with a copy

to the Borough, a contractor's signed estimate of the cost of removing, repairing or securing the building or other structure in an amount less than the amount calculated under the foregoing transfer formula, the insurer shall transfer to the Treasurer from the insurance proceeds the amount specified in the estimate. If there is more than one insurer, the transfer of proceeds shall be on a pro rata basis by all insurers insuring the building or other structure.

C. Upon receipt of the above-described portion of the insurance proceeds, the Treasurer shall do the following:

(1) Place the proceeds in a separate fund to be used solely as security against the total municipal expenses anticipated by the Borough to be required in removing, repairing or securing the building or structure as required by this ordinance. Such costs shall include, without limitation, any engineering, legal or administrative costs incurred by the Borough in connection with such removal, repair or securing or any proceedings related thereto; and

(2) Mail to the named insured, at the address received from the insurer, a notice that the proceeds have been received by the Borough and that the procedures under this subsection shall be followed.

(3) After the transfer, the named insured may submit to the Borough a contractor's signed estimate of the cost of removing, repairing or securing the building or other structure, in which event the Treasurer shall, if such estimate is deemed by the Treasurer to be reasonable, return to the insured the amount of the funds transferred to the Borough in excess of that required to pay the municipal expenses; provided, the Borough has not commenced to remove, repair or secure the building or other structure, in which case the Borough will complete the work.

(4) Pay to the Treasurer, for reimbursement to the Borough general fund, the amount of the municipal expenses paid by the Borough.

(5) Pay the remaining balance in the fund (without interest) to the named insured upon receipt of a certificate issued by the Borough Manager that the repair, removal or securing of the building or other structure has been completed in accordance with all applicable codes and regulations of the Borough.

(6) Nothing in this Section shall be construed to limit the ability of the Borough to recover any deficiency in the amount of municipal claims or municipal expenses recovered pursuant to this ordinance, or to insurance proceeds, by an action at law or in equity to enforce the codes of the Borough.

§302. Limits of Liability. Nothing in this ordinance shall be construed to make an insurance company, association or exchange liable

for any amount in excess of proceeds payable under its insurance policy or for any other act performed pursuant to this ordinance or to make this Borough, any Borough official, a municipality or public official an insured under a policy of insurance or to create an obligation to pay delinquent property taxes or unpaid removal liens or expenses other than as provided in the ordinance.

§303. Insurance Company Rights Reserved. An insurance company, association or exchange making payments of policy proceeds under this ordinance for delinquent taxes or structure removal liens or removal expenses incurred by the Borough shall have a full benefit of such payment including all rights of subrogation and of assignment.

§304. Agreements with Property Owners. The Borough Manager or Borough Council shall be authorized to enter into an agreement with the named insured which provides for a disposition of the insurance proceeds in a manner other than as provided in this ordinance. Such an agreement shall not be deemed as a waiver of any of the rights of the Borough to file subsequent municipal liens or claims, or to proceed against the named insured or property owner at law or in equity.

§305. Construction. This ordinance shall be liberally construed to accomplish its purpose to deter the commission of arson and related crimes, to discourage the abandonment of property and to prevent urban blight and deterioration.

§306. Notification of Pennsylvania Department of Community and Economic Development. The Secretary of the Borough shall transmit a certified copy of this ordinance promptly to the Pennsylvania Department of Community and Economic Development.

§307. Penalty. Any owner of property, any named insured or insurer who violates the provision of the ordinance or who shall fail to comply with any of the requirements hereof shall be sentenced, upon conviction thereof, to a fine of not more than \$1,000 plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed thirty (30) days. Each day on which an offense shall continue shall be deemed a separate offense.

§308. Saving Clause. The provisions of this ordinance, so far as they are the same as those of ordinances endorsed immediately prior to the enactment of this ordinance are intended as a continuation of such ordinances and not as new enactments. The provisions of this ordinance shall not affect any act done or liability incurred, nor shall it affect any suit or prosecution pending or to be instituted to enforce any right or penalty or to punish any offense under the authority of any ordinance repealed by this ordinance.

§309. Severability. The provisions of this ordinance are severable. If any sentence, clause or section of this ordinance is for any reason found to be unconstitutional, illegal or invalid, such decision shall not affect the validity of any of the remaining provisions of this ordinance. It is hereby declared as a legislative intent that this ordinance would have been adopted had such unconstitutional, illegal or invalid provision been included herein.

§310. Effective Date. This Ordinance shall take effect in accordance with law.

§311. Repealer. All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.
(Ord. 2006-07-01, 07/10/2006)