

**ORDINANCE 2018-2**

**An Ordinance To Replace the Existing Burning Code**

WHEREAS, the Supervisors of Millcreek Township, Erie County, Pennsylvania, under the powers vested in them by the "Second Class Township Code" of Pennsylvania, as well as other laws of the Commonwealth of Pennsylvania, do hereby enact and ordain the following amendments to the text of Article V Open Burning of the Conduct Chapter of the Millcreek Township Code; and

WHEREAS the Board of Supervisors has determined that the existing provisions of the Open Burning Article are outdated and need to be updated; and

WHEREAS the Board of Supervisors has determined that these amendments relating open burning within the Township are necessary to protect the public health, safety and welfare of the Township and its residents;

IT IS HEREBY ORDAINED AND ENACTED by the Board of Supervisors of the Township of Millcreek, Erie County, Pennsylvania as follows:

1. Existing Sections 40-32 through 40-41 are hereby deleted in their entirety and replaced by the following:

**§40-32** Applicability/Definitions

A. **Applicability.** The provisions of this chapter apply to the following types of outdoor burning: any Open Burning, Bonfires, Cooking Fires, Recreational Fires, Fires using a Portable Outdoor Fireplace and burning of Prohibited Materials.

**B. Definitions**

APPROVED. Acceptable to the *Fire Code Official*.

BONFIRE. An outdoor fire for any purpose which has a total fuel area exceeding 3 feet (914 mm) in diameter and 2 feet (610 mm) in height.

COOKING FIRE The outdoor burning of materials, other than prohibited materials, not exceeding 3 ft (0.9 m) in diameter and 2 ft (0.6 m) in height, in which the fuel burned is contained in an outdoor fireplace, a barbecue grill, or a barbecue pit for the purpose of cooking food.

FIRE CODE OFFICIAL. The designated authority charged with the administration and enforcement of the fire code, or their designee.

FUEL LOAD. The total amount of combustible material in a defined space

OPEN BURNING. The outdoor burning of materials wherein products of combustion are emitted directly into the ambient air without passing through a

stack or chimney from an enclosed chamber. Open burning does not include road flares, smudge-pots and similar devices associated with safety or occupational uses typically considered open flames, *Recreational Fires* are excluded from the definition of Open Burning. For the purpose of this definition, a chamber shall be regarded as enclosed when, during the time combustion occurs, only apertures, ducts, stacks, flues or chimneys necessary to provide combustion air and permit the escape of exhaust gas are open.

**PERSON.** Any natural person, partnership, firm, association, corporation, trust, estate, public or private association (whether incorporated or not), municipal governments and authorities, public or private schools/school districts or other entity.

**PORTABLE OUTDOOR FIREPLACE.** A portable, outdoor, solid-fuel-burning fireplace that may be constructed of steel, concrete, clay or other noncombustible material. A portable outdoor fireplace may be open in design, or may be equipped with a small hearth opening and a short chimney or chimney opening in the top.

**PROHIBITED MATERIALS.** Any garbage, food waste, refuse or other material classified under federal law, Pennsylvania law, the Millcreek Township Code or otherwise so defined by the Board of Supervisors as "solid waste", "municipal waste", "recyclable materials" or leaf waste.

**RECREATIONAL FIRE.** An outdoor fire burning materials other than Prohibited Materials where the fuel being burned is not contained in an incinerator, outdoor fireplace, portable outdoor fireplace, barbeque grill or barbeque pit and has a total fuel area of 3 feet (914 mm) or less in diameter and 2 feet (610 mm) or less in height for pleasure, religious, ceremonial, cooking, warmth or similar purposes.

**§40-33 General.** A Person shall not ignite or maintain or authorize to be ignited or maintained any fire to which this Article applies unless conducted and approved in accordance with Sections §40-33a through §40-40.

- A. **Attendance.** Any fire permitted under this section shall be constantly attended to and monitored by a competent person of at least 16 years of age.
- B. **Extinguishment.** Any person attending a permitted fire shall have immediately available appropriate extinguishing agent of sufficient quantity to completely extinguish such fire. Appropriate extinguishing agents include, but are not limited to; sufficient amounts of water, sand and/or fire extinguisher(s).
- C. **Temporary Burn Ban.** When deemed necessary, the Fire Code Official shall be authorized to impose temporary bans on all outdoor burning or fires, which bans shall operate to prohibit outdoor fires and burning otherwise authorized by this Article. It shall be unlawful for any Person to burn or cause or allow to be burned any materials during the term of a burning ban.

**Exception:** Prescribed burning for the purpose of reducing the impact of wildland fire when authorized by the Fire Code Official.

**§40-34 Prohibited burning.** It shall be unlawful for any Person to burn or cause to be burned outdoors: :

- A. Any materials of any nature whatsoever upon any public street or road in Millcreek

Township;

- B. Any Prohibited Materials upon any land, public or private and including private roadways and drives, and public utility right of ways in Millcreek Township.
- C. Any Prohibited Materials in Recreational Fires, Portable Outdoor Fireplaces, Cooking Fires or Bonfires.

**§40-35 Burning activities authorized without a permit.** Subject to the foregoing prohibitions, the burning of clean, dry and seasoned wood is allowed except as provided for in §40.36b limited to the following:

- A. **Recreational Fires.** Recreational Fires shall be contained in a fire ring or pit.
- B. **Portable outdoor fireplaces.** Portable Outdoor Fireplaces shall be used in accordance with the manufacturer's instructions and shall not be operated within 15 feet (3048 mm) of a structure.
- C. **Cooking fires.** Cooking fires shall be in an approved container and shall meet the requirements set forth in §§40-33A, 40-33B. Cooking Fires shall not be permitted on balconies/porches of multi-residential structures, unless such balconies/decks and structures are protected by an automatic sprinkler system..
- D. **Fuel load.** Except as permitted under §40-37 At no time shall the *fuel load* of a fire permitted under this section exceed a space measuring 3 feet (914 mm) in diameter and 2 feet (609 mm) in height.
- E. **Location.** Unless otherwise specified in this Article, or directed by the Department of Code Enforcement, the location for burning shall be not less than:
  - i. **Distance from structures** 15 feet (3048 mm) from any structure, and provisions shall be made to prevent the fire from spreading to within 15 feet (3048 mm) of any structure.
  - ii. **Distance from property line** 15 feet (4572 mm) from any property line and provisions made to prevent the fire from spreading to within 15 feet (4572 mm) of any property line.

**§40-36 Bonfires.** This Article shall not be construed so as to prohibit *Bonfires* conducted by schools, community organizations or neighborhood sponsored activities provided such Bonfire meets all of the following:

- A. A proper permit has been obtained from the Fire Code Official;
- B. Meets requirement set forth in §§40-33A, 40-33B;
- C. Utilizes only clean, dry and seasoned wood.
- D. The Bonfire is not within 50 feet of any property line, except that Bonfires may be closer than 50 feet to a property line provided written permission is obtained from all adjacent property owners.
- E. The Bonfire is not within 75 feet of any building or structure
- F. The Bonfire is conducted upon property owned by person/organization issued the permit or such person/organization has written permission from the owner of the land on which the Bonfire is being held.

**§40-37 Burning Activities Requiring a Permit.** All outdoor burning activities covered by this Article that are not prohibited by §40-34 and which are not exempted from the

permit requirements by §40-35 shall require a permit prior to ignition. Outdoor burning activities of the Township are exempt from the procedural requirements of obtaining a permit, but such activities shall not create any of the conditions contained by §40-37C(ii).

**A. Contents of Application for open burning.** The application for an Outdoor Burning Permit shall be on a form, and in a format, as prescribed by the Township and shall be submitted only by the property owner or a Person having written authorization from their property owner. At a minimum, this form shall contain the following information:

- i. A copy of the applicant's driver's license;
- ii. The name, address, telephone number, and e-mail of the property owner where the open burning is to occur;
- iii. The name, address telephone number, and e-mail of the person who will be present and in charge of the open burning on the day of the event and be the emergency contact for the open burning;
- iv. A brief narrative specifying the nature and/or purpose of the outdoor burning;
- v. The date and estimated starting and ending times of the outdoor burn;
- vi. The location of the outdoor burning, including a description of its boundaries;
- vii. A map and/or diagram of the proposed site of the outdoor burn which includes distances to any structure, hazards or property lines;

**B. Application Fee.** At the time the applicant submits the Outdoor Burning Permit application, the applicant shall pay any nonrefundable fees in accordance with the schedule of fees determined by the Board of Supervisors by resolution for Outdoor Burning Permits to defray the administrative costs of the Township in reviewing the application and issuing/denying any permit. Provided, however, that the permit fees outlined in this Section may be waived for governmental organizations such as school districts, fire departments and local, county, state, or federal agencies.

**C. Grounds for approval/denial of application.** The Township shall approve an application for an Outdoor Burning Permit, unless it is determined from a consideration of the application or other pertinent information that:

- i. The Outdoor Burning Permit application is not administratively complete. For purposes of this section, the Outdoor Burning Permit application will be determined to be not administratively complete for any of the following reasons:
  1. Information contained in the application or supplemental information requested from the application is found to be false in any material detail; or
  2. Information required by §40-37A is missing from the application
  3. Application fee as specified in §40-37B is not paid.
- ii. The outdoor burning;
  1. will substantially interrupt the safe and orderly movement of traffic within the Township so as to create a real and present danger to the health, safety, and welfare of the residents of the Township;
  2. will likely create a real and present danger to the health, safety, and welfare of the citizens of the Township;

3. is reasonably likely to cause injury to persons or property or to provoke disorderly conduct or to create an unreasonable disturbance;
4. will cause undue hardship to adjacent businesses or residents or require the diversion of an inordinate number of public employees that allowing the outdoor burning to proceed would unreasonably deny service to the remainder of the Township;
5. will violate federal, state, or local law, including the Township Code and zoning requirements; or
6. will unduly interfere with the peace and quiet of the residents in the neighborhood where the open burning will occur.

**D. Outdoor Burning Permit Revocation.** A permit may be revoked at any time by the Township Supervisors and/or their designees including the OEM, Department of Code Enforcement, the Police Chief, or other member of the Township Police Department for good cause including, but not limited to in response to acts or threatened acts of vandalism, violence, rowdiness, or other unlawfulness, or upon threats to the health, safety, and welfare of the Township, its residents, or its visitors.

**§40-38 Additional authorizations.** Where required by state or local law or regulations, outdoor burning shall only be permitted with prior approval from the state or local air and water quality management authority, provided that all conditions specified in the authorization are followed.

**§40-39 Extinguishment authority.** If in the sole opinion of the Fire Code Official outdoor burning creates or adds to a hazardous situation, or a required permit for has not been obtained, the fire code official is authorized to order the extinguishment of the burning material, or take measures to extinguish the burning material.

**§40-40 Effect on other provisions; liability of Township.**

This Article shall not be construed so as to amend Article II, Nuisances, of this Chapter, and other ordinances, including but not limited to the Millcreek Township Fire Code, regulating conduct which may affect the health, safety and welfare of the Township and others, or Chapter 110, Article I, Municipal Waste and Recycling, of the Code of the Township of Millcreek, as may in the future be amended, subject to the following:

- A. If this Article prohibits an activity which is allowed under any other ordinance, the prohibition in this Article shall control over the regulation in the other ordinance.
- B. If this Article allows an activity which is prohibited under another ordinance, the prohibition in such other ordinance shall control.
- C. This Article shall not be construed so as to suggest any liability of and by Millcreek Township for acts or omissions of private persons and entities regardless if a permit was issued for a specific activity.

**§40-41 Enforcement; violations and penalties.**

**A. Enforcement**

- i. Any Person who violates any provision of this Article shall be liable to

proceedings for enforcement of this article in accordance with Chapter 48, Enforcement and Collection Activities, of the Code of the Township of Millcreek (Ordinance Nos. 96-9 and 2007-6), as the same may be amended, and the Pennsylvania Rules of Criminal Procedure governing enforcement of summary offenses.

- ii. The Millcreek Township Department of Code Enforcement, Millcreek Township Police Department and other code enforcement personnel designated by the Board of Supervisors shall have authority to investigate alleged violations and enforce the provisions of this article.
- iii. Upon a determination by the investigating authority that a violation of this article has occurred, a citation shall be personally handed to or otherwise served upon the violator(s) and an action for enforcement of this Article shall be instituted in the Magisterial District Court having appropriate jurisdiction in accordance with the Pennsylvania Rules of Criminal Procedure governing summary violations.
- iv. Upon entry of judgment in favor of the Township and or the Commonwealth in such enforcement action, said judgment shall include the criminal action fine prescribed for the violation in §40-41B of this Article, plus all court costs and all attorney fees incurred by Millcreek Township in such matter, pursuant to Chapter 48, Enforcement and Collection Activities, of the Code of the Township of Millcreek, as the same have been or may in the future be amended.
- v. A Person found to have violated this Article shall be responsible for payment of all attorney fees incurred in the matter by Millcreek Township, including all appeals taken by the violator.
- vi. The Board of Supervisors does not prescribe imprisonment for punishment of violations of this article.
- vii. Each violation of this article, and each day a violation continues, shall constitute a separate offense.

**B. Violations and penalties.**


Any Person violating this Article shall pay the fines prescribed for such violation in this section. The following fines are hereby prescribed for violation of this article:


Violation	Prescribed Fine
§§ 40-33A and 40-34A (all violations)	\$500
First violation of §§ 40-34B, 40-35B, 40-35C and 40-35E	\$200
Second and subsequent violations of §§ 40-34B and 40-35E	\$500
§§40-33C, 40-36 and 40-37	\$1000

2. Effective Date. This Ordinance shall be effective 5 days after the date on which this Ordinance is enacted.

**BE IT ENACTED** this 27th day of February, 2018.

**MILLCREEK TOWNSHIP SUPERVISORS**

  
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John H. Groh

  
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John E. Morgan

  
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James S. Bock