

Upon motion by Brian P. McGrath, seconded by Richard P. Figaski, the following Ordinance was duly enacted, 3 voting in favor of enactment, 0 voting against enactment.

**ORDINANCE NO. 2013-3**

**An Ordinance of the Township of Millcreek, Erie County, Pennsylvania, establishing regulations governing use of outdoor wood-fired boilers within the Township; defining certain terms; establishing responsibility of owners and operators; defining violations of the Ordinance and providing for enforcement and for imposition of fines for violation; and containing severability and repealor clauses.**

**WHEREAS**, the Pennsylvania Department of Environmental Protection ("PaDEP") has established regulations now at 25 Pa. Code Section 123.14 governing the manufacture, sale, lease and use of outdoor wood-fired boilers, also known as outdoor wood-fired furnaces, outdoor wood-burning appliances and/or outdoor hydronic heaters; and

**WHEREAS**, said PaDEP regulations at 25 Pa. Code Sections 121.1 and 123.14 include definition of certain terms, the requirement that Phase 2 boilers be sold, leased, shipped and used on and after October 2, 2010 and include regulations governing required setbacks, required stacks, allowed and prohibited fuels and other pertinent matters; and authorize enactment of local laws and regulations consistent with said PaDEP regulations; and

**WHEREAS**, the Board of Supervisors finds that disregard of PaDEP regulations will harm the environment, potentially cause injury or harm to other persons and property and jeopardize the public health and safety, and that municipalities may be better positioned than is the PaDEP to enforce those regulations directly addressing use of authorized boilers, furnaces and appliances.

**IT IS HEREBY ORDAINED AND ENACTED** by the Board of Supervisors of the Township of Millcreek, Erie County, Pennsylvania, and it is ordained and enacted, as follows:

1.01 **Title.** This Ordinance shall be known and may be cited as the Millcreek Township Outdoor Wood-Fired Boiler Ordinance.

1.02 **Applicability.** Except as otherwise provided below, this Ordinance applies to the installation and use of all outdoor wood-fired boilers, outdoor wood-fired furnaces and outdoor wood-burning appliances within the Township of Millcreek.

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

1.02.2 This Ordinance does not apply to burning in a stove, furnace, fireplace or other heating device within a building used for human or animal habitation.

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

1.03 Purpose and Scope. As the Board of Supervisors has determined that outdoor wood-fired boilers may be detrimental to the health, comfort, welfare, safety and living conditions of the citizens of Millcreek Township, it is hereby declared to be the policy of Millcreek Township to safeguard the citizens of the Township from such air pollution.

1.04 Definitions.

- 1.04.1 Where not defined in this Ordinance or in the statute and ordinances referenced in Section 2.02 or in other applicable Pennsylvania statutes or Township ordinances, terms shall be given their common or ordinary meaning.
- 1.04.2 When used in this Ordinance, the following words, terms and phrases shall have the following meanings ascribed to them, unless the context clearly indicates otherwise:

*Allowed Fuels* - shall mean and include only (i) clean wood; (ii) wood pellets made from clean wood; (iii) 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 boilers; and (iv) other types of fuel approved by PaDEP in writing upon receipt of a written request.

*Clean wood* - shall mean and include wood that has no paint, stains or other types of coatings and natural wood that has not been treated with chemicals, including but not limited to copper chromium arsenate, creosote and/or pentachlorophenol.

*Height* - shall be defined as per Section 2.04 of the Millcreek Township Zoning Ordinance (Unless otherwise provided, the vertical distance measured from ground level to the highest point of a building, structure or other object, including all appurtenances thereto or thereon. With respect to buildings, structures and/or towers of any type, height includes highest point, including antennas, facilities or structures of any type which are mounted on the building, structure, facility or tower.)

*Non-Phase 2 outdoor wood-fired boiler* - an outdoor wood-fired boiler which has not been certified or qualified by USEPA as meeting a particulate matter emission limit of 0.32 pounds per million Btu output or lower and is labeled accordingly.

*Outdoor wood-fired boiler* - also known and/or referred to as an outdoor wood-fired furnace, an outdoor wood-burning appliance, an outdoor hydronic heater, a water stove, etc., a fuel-burning device which:

- (a) Is designed to burn clean wood or other approved solid fuels;

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- (b) 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
- (c) Heats building space and/or water through the distribution, typically through pipes, of a fluid heated in the device, typically water or a mixture of water and antifreeze.

*Person* - any individual, public or private corporation for profit or not for profit, limited liability company, limited liability partnership, association, partnership, firm, trust, estate, department, board, bureau or agency of the Commonwealth, the Federal government, political subdivision, municipality, district, authority or any other legal entity which is recognized by law as the subject of rights and duties.

*Phase 2 outdoor wood-fired boiler* - an outdoor wood-fired boiler which has been certified or qualified by USEPA as meeting a particulate matter emission limit of 0.32 pounds per million Btu output or lower and is labeled accordingly.

*Stack* - any vertical structure enclosing a flue or flues that carry off smoke or exhaust from a furnace, especially that part of a structure extending above a roof.

*USEPA* - the United States Environmental Protection Agency.

1.04.3 Those definitions set forth at 25 Pa. Code Section 121.1, as applicable to the subject matter of this Ordinance, are incorporated herein by reference.

1.05 Responsibility of Owner and Operator. The owner and operator of an outdoor wood-fired boiler shall be responsible for the proper installation, maintenance and use of the item. Any person contending that his, her or its outdoor wood-fired boiler meets Phase 2 standards as set forth in 25 Pa. Code Section 121.1 and Section 1.04 of this Ordinance shall bear the responsibility of establishing such compliance and shall, upon reasonable request by the enforcement officer, provide written confirmation of such compliance. Any person contending that his, her or its outdoor wood-fired boiler is authorized to burn any fuel not expressly included within the term "allowed fuels" under Section 1.04 of this Ordinance shall be obligated to provide to the enforcement office the original or a true copy of the PaDEP written approval of such fuel.

1.06 Unlawful Acts. It shall be unlawful and a violation of this Ordinance for any person to violate or fail to meet any or all of the following requirements:

1.06.1 Non-Phase 2 Outdoor Wood-Fired Boilers. A non-Phase 2 outdoor wood-fired boiler must be installed not less than 150 feet from the nearest property line and have a permanently attached stack that is installed according to the manufacturer's instructions and extends a minimum of 10 feet above the ground and that also extends at least 2 feet above the highest peak of any residence located less than 250 feet from the outdoor wood-fired boiler.

1.06.2 Phase 2 Outdoor Wood-Fired Boilers. A Phase 2 outdoor wood-fired boiler

must be installed not less than 50 feet from the nearest property line and have a permanently attached stack that is installed according to the manufacturer's instructions and extends a minimum of 10 feet above the ground and that also extends at least 2 feet above the highest peak of any residence located less than 150 feet from the outdoor wood-fired boiler.

- 1.06.3 Allowed Fuels. Only "allowed fuels" as defined in Section 1.04.2 of this Ordinance shall be used in any outdoor wood-fired boiler. No person may burn a fuel or material in an outdoor wood-fired boiler other than those fuels listed within the definition of "allowed fuels" in Section 1.04.2. As none of the fuels allowed within that term would create dark smoke, existence of black or other dark smoke shall be deemed a violation of this subsection.
- 1.06.4 Prohibition of Operation. No person shall use or operate any outdoor wood-fired boiler between the dates of May 1 and September 30 of any calendar year.
- 1.06.5 Separate and Continuing Violations. Each day any violation of this Ordinance occurs shall constitute a separate violation. Each violation of any provision of this Ordinance shall constitute a separate violation.

1.07 Enforcement. The Millcreek Police Department shall have primary responsibility for enforcement of this Ordinance and the Code Administrator shall have secondary authority to enforce this Ordinance. The Board of Supervisors is authorized to establish specific regulations as to enforcement. The Township may issue such orders as are necessary to aid in enforcement of the provisions of this Ordinance, including but not limited to orders requiring persons to cease unlawful use of outdoor wood-fired boilers and/or any use which is in violation of any provision of this Ordinance; orders to take corrective action or abate a nuisance; or orders requiring production of information. Enforcement generally shall comply with provisions governing those ordinances enforced under the Rules of Criminal Procedure governing summary offenses as set forth in Ordinance 2007-6, as may be amended.

- 1.07.1 Should the enforcement officer find that an illegal operation of an outdoor wood-fired boiler is occurring within Millcreek Township in contravention of the requirements of Section 1.06, above, said enforcement officer may order the owner and/or operator to take corrective action so as to remedy the violation(s) in a manner satisfactory to the Township, or the enforcement officer may order the owner or operator to allow access to the land by the enforcement officer, representative of PaDEP or other third party to take action.
- 1.07.2 Where an outdoor wood-fired boiler is installed so as to violate setback and/or stack requirements under Section 1.06, the enforcement officer shall have authority to direct that operation of such boiler be terminated until such time as it is relocated or its stack installed or corrected so as to comply with regulations.

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1.07.3 Enforcement shall also be pursuant to provisions of Section 1601(c.1)(2) of the Second Class Township Code and Ordinance Nos. 2007-6 (enforcement of ordinances) and 98-9 (attorneys' fees and costs in enforcement actions), both as may be amended.

1.08 Penalties for Violation.

1.08.1 Any person or entity committing any act(s) prohibited herein shall violate this ordinance and commit a summary offense.

1.08.2 With respect to violations of Section 1.06.4, a fine in the sum of \$100.00 is prescribed for a first violation and a fine in a sum not less than \$500.00 per day and not more than \$1,000.00 per day is prescribed for any second and subsequent violation.

1.08.3 With respect to violations of Section 1.06.3, a fine in the sum of \$400.00 is prescribed for a first violation and a fine in a sum not less than \$600.00 and not more than \$1,000.00 is prescribed for any second and subsequent violation.

1.08.4 With respect to violations of Section 1.06.1 and/or Section 1.06.2, a fine in the sum of \$600.00 is prescribed for a first violation of either Section and a fine in a sum not less than \$750.00 and not more than \$1,000.00 is prescribed for any second and subsequent violation of either Section.


1.08.5 Upon conviction, any person violating any provision of this Ordinance shall be sentenced to pay fines as prescribed above in this Section, plus costs and with all attorneys' fees incurred by the Township in the proceeding.

1.08.6 All fines shall be paid over to the Millcreek Township Treasurer.

1.09 Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance or its application to any person, property or circumstances is for any reason held invalid or unconstitutional by any court, such holding shall not be construed to affect the validity of any of the remaining provisions of this Ordinance or its application, for such portion shall be deemed as a separate, distinct and independent provision from the remaining provisions which shall be and remain in full force and effect. It is hereby declared the legislative intent that this Ordinance would have been adopted had such valid or unconstitutional provision of its application not been included herein.

1.10 Repealor. All Ordinances or parts of any Ordinances inconsistent herewith are hereby repealed.

**BE IT ENACTED** this 19th day of March, 2013.

  
Richard P. Figaski, Secretary