

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

ORDINANCE NO. 2011-7

An Ordinance to amend, restate and consolidate regulations governing outside burning activities on public and private property; prohibiting burning within 75 feet of any building or structure and/or 50 feet of any property line and on any day but Saturdays; prohibiting the burning of recyclable and other materials; setting forth recognized exceptions; addressing application of these regulations to those in other ordinances; establishing penalties for violation and including severability and repealor clauses.

WHEREAS, Millcreek Township Ordinance No. 19, enacted June 4, 1951 and commonly known as the Burning Ordinance, has established regulations governing outside burning of materials in the Township and prohibited specified actions and omissions; and

WHEREAS, Ordinance No. 19 has been amended by Ordinance Nos. 66-18, 73-15 and 91-20, these ordinances repealed by Ordinance No. 2000-1, since been amended by Ordinance No. 2001-14; and

WHEREAS, increased development of Millcreek Township, the creation of programs to recycle materials, regard for environmental concerns and the public health, safety and welfare of the Township requires proper regulation of outside burning with appropriate regard for the interests of residents having larger parcels where outside burning may not affect others so directly; and

WHEREAS, the Board of Supervisors determines that it is necessary and appropriate to consolidate all applicable regulations in a restated ordinance and address misunderstanding as to the intended application of these regulations to those in other ordinances.

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

1.01. It shall be unlawful for any person, corporation, partnership, association or other entity to burn or cause to be burned upon any land in Millcreek Township, public or private and including private roadways and drives:

1.01.1 Any materials of any nature whatsoever upon any public street or road in Millcreek Township;

1.01.2 Any garbage, food waste, refuse or other material classified by the Board of Supervisors as "solid waste" or "municipal waste" under Township ordinances governing the collection, transportation and disposal of municipal and solid waste; or

1.01.3 Any materials designated by the Board of Supervisors as "recyclable materials" or leaf waste under Township ordinances governing the collection, transportation and recycling of municipal waste, recyclable materials and leaf waste.

1.02. The prohibitions against burning set forth above in Section 1.01.1, 1.01.2 and 1.01.3 shall be absolute, and without regard to any burning allowed under this Ordinance.

1.03. It shall be unlawful for any person, corporation, partnership, association or other entity to burn or cause to be burned, within or upon any land in Millcreek Township, public or private and including private roadways and drives:

1.03.1 Within 50 feet of any property line and/or within 75 feet of any building or structure upon any lot;

1.03.2 Without a person sixteen (16) years of age or older attending to and monitoring such burning and fire at all times;

1.03.3 Which is not within the confines of the premises owned, leased or rented by the person(s), corporation, partnership, association or other entity doing the burning or causing it to be done; and

1.03.4 Which is not expressly authorized in Sections 1.04, 1.05 and/or 1.06 of this Ordinance.

1.04. Subject to the foregoing prohibitions, the burning of wood and yard waste only in conjunction with the occupancy of a parcel of land for single-family or two-family residential use is permitted, limited to the following:

1.04.1 Such burning shall take place only on Saturdays between the hours of 8:00 a.m. and 6 p.m.; and

1.04.2 It shall be unlawful for any person, corporation, partnership or other entity to burn wood and yard waste except in conjunction with occupancy of a parcel for such residential use and/or on days or at times not permitted herein; and

1.04.3 "Yard waste" as used in this Ordinance shall not include "leaf waste" as defined in Ordinance 2006-11, as the same may in the future be amended.

1.05. This Ordinance shall not be construed so as to prohibit burning in a suitable container or pit for the sole and express purpose of cooking or barbequing food. The plain words of this Section shall control.

1.06. This Ordinance shall not be construed so as to prohibit bonfires at school and community organization or neighborhood-sponsored activities, so long as such bonfire is:

1.06.1 Not within 50 feet of any property line; and

1.06.2 Not within 75 feet of any building or structure; and

1.06.3 Conducted upon property owned by the school, organization or a person giving prior permission to such bonfire; and

1.06.4 Attended to and monitored at all times by a person 16 years of age or older; and

1.06.5 Not upon any public street or road in Millcreek Township.

It shall be unlawful for any person, corporation, partnership, association or other entity to create or cause the creation of a bonfire except in strict conformity with the conditions established in this Section.

1.07. This Ordinance shall not be construed so as to amend the Millcreek Township Nuisance Ordinance 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 the Millcreek Township Municipal Waste and Recycling Ordinance, No. 2006-11, as may in the future be amended, subject to the following:

1.07.1 If this Ordinance prohibits an activity which is allowed under any other ordinance, the prohibition in this Ordinance shall control over the regulation in the other ordinance.

1.07.2 If this Ordinance allows an activity which is prohibited under another ordinance, the prohibition in such other ordinance shall control.

1.07.3 Violations of any other ordinance must be enforced under such other ordinance and violations of this Ordinance must be enforced under this Ordinance. Violations of the regulations under another ordinance shall not be enforced as if violations of this ordinance, and violations of this ordinance shall not be enforced as if violations of another ordinance. Actions which constitute violations of this and any other ordinance may be enforced under either of the applicable ordinances.

1.07.4 This Ordinance shall not be construed so as to suggest any liability of and by Millcreek Township for acts or omissions of private persons and entities.

1.08. Any person, corporation, partnership, association or other entity who/ which violates any provision of this Ordinance shall be liable to proceedings for enforcement of this Ordinance in accordance with Millcreek Township Ordinances 2007-6 and 96-9, as the same may be amended, and the Pennsylvania Rules of Criminal Procedure governing enforcement of summary offenses. The 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 Ordinance. Upon a determination by the Police Department or other designated code enforcement personnel that a violation of this Ordinance has occurred, a citation shall be given to or served upon the violator(s) and an action for enforcement of this Ordinance instituted in the District Justice Court having appropriate jurisdiction in accordance with the Pennsylvania Rules of Criminal Procedure governing summary violations. 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 Section 1.10 of this Ordinance, plus all court costs and plus all attorney fees incurred by Millcreek Township in such matter, pursuant to Ordinances 2007-6 and 96-9, as the same have been or may in the future be amended. A person found to have violated this Ordinance shall be responsible for payment of all attorney fees incurred in the matter by Millcreek Township, including all appeals taken by the violator. The Board of Supervisors does not prescribe imprisonment for punishment of violations of this Ordinance. Each violation of this Ordinance, and each day a violation continues, shall constitute a separate offense.

1.09. When deemed necessary due to climatic conditions, the Millcreek Township Fire Prevention Officer shall be authorized to impose temporary bans on all outdoor burning or fires. which bans shall operate to prohibit outside fires and burning otherwise authorized by this Ordinance. It shall be unlawful for any person, corporation, partnership, association or other entity to burn or cause or allow

to be burned any materials during the term of a burning ban.

1.10. Any person, corporation, partnership, association or other entity violating this Ordinance shall pay the fines prescribed for such violation in this Section. The following fines are hereby prescribed for violation of this Ordinance:

<u>Violation</u>	<u>Prescribed Fine</u>
1.10.1 Sections 1.01.1 and 1.03.3 (all violations)	\$300.00
1.10.2 First violation of: Sections 1.01.2, 1.01.3, 1.03.1, 1.03.2, 103.4, 1.04 and/or 1.06	\$100.00
1.10.3 Second and subsequent violations of: Sections 1.01.2, 1.01.3, 1.03.1, 1.03.2, 103.4, 1.04 and/or 1.06	\$300.00
1.10.4 Section 1.09	\$500.00

1.11. Upon the effective date of this Ordinance, Millcreek Township Ordinance Nos. 2000-1 and 2001-14 are expressly repealed and superseded by this restated Ordinance.

1.12. 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.

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

BE IT ENACTED this 9th day of August, 2011.


 Richard P. Figaski, Secretary

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