

Tri-County Regional Planning Commission
OUTDOOR FUEL BURNING APPLIANCES
MODEL ORDINANCE

Introduction

The emissions, health effects and the nuisance factor created by the use of outdoor fuel burning appliances can be a concern to municipal residents and property owners adjacent to and surrounding such appliances.

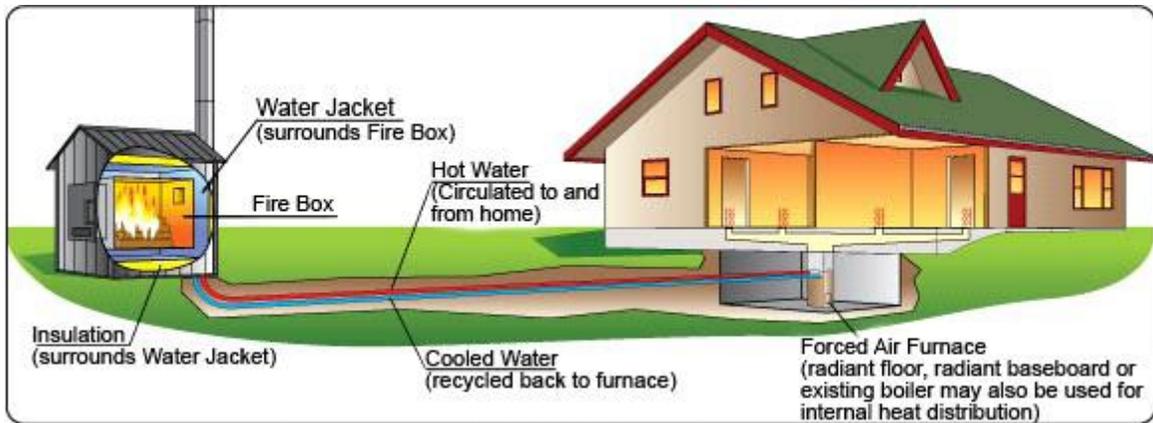
A model ordinance has been created to regulate the installation, operation and use of these appliances within a municipality. The model ordinance is based on a PA DEP model ordinance and ordinances used in other municipalities.

Outdoor fuel burning appliance regulations may be adopted as part of a zoning ordinance or the general code of a municipality. In this model ordinance it is noted where different regulations will need to apply, depending upon which part of a municipal code is used.

This model ordinance is an “all-inclusive” ordinance. A municipality may adopt the model ordinance in whole or in part, as applicable, depending upon the needs and intended scope determined by the municipality. A municipality may make changes to the model ordinance; however, the only constraint is that a municipality may not enact an ordinance that is less stringent than state or federal law. This ordinance is intended to be advisory only and is not intended to be relied upon as legal advice. A municipality is not required to adopt this ordinance. Municipalities are urged to seek legal advice before enacting such an ordinance.

What is an outdoor fuel burning appliance?

Outdoor fuel burning appliance, also referred to as outdoor wood-fired boilers, outdoor wood burning appliances or outdoor hydronic heaters, are free-standing, fuel burning devices designed: (1) to burn clean wood or other approved solid fuels; (2) specifically for outdoor installation or installation in structures not normally intended for habitation by humans or domestic animals (e.g., garages); and (3) to heat building spaces and/or water via distribution, typically through pipes, of a fluid heated in the device, typically water or a water/antifreeze mixture. They resemble a small shed or mini-barn with a short smokestack on top. Outdoor fuel burning appliances are being sold to heat homes and buildings, produce domestic hot water, heat swimming pools or hot tubs, and provide heat to agricultural operations such as greenhouses and dairies.¹



Source: Hearth, Patio and Barbeque Association. (from United States Environmental Protection Agency and New Hampshire website)

Outdoor fuel burning appliances are much larger and different in design, operations and emissions produced from smaller indoor wood stoves, pellet stoves, fireplaces and barbecue pits. Following are some concerns that are unique to the operation of outdoor fuel burning appliances.ⁱⁱ The model ordinance contains regulations to prohibit or minimize these concerns.

- **Smoke** – Older model outdoor fuel burning appliances often employ a very primitive combustion technology that allows the unit to operate in “idle” for long periods of time. This type of operation causes very poor combustion and continuous, heavy smoke.
- **Short Stack Height** – Outdoor fuel burning appliances are typically equipped with a very short smoke stack, This short stack and reduced draft fail to disperse emissions adequately and can cause smoky conditions at or near ground level.
- **Emissions** –The Northeast States for Coordinated Air Use Management has conducted stack tests on outdoor wood-fired boilers. Bases on the test results, the average fine particulate emissions from one outdoor wood-fired boiler are equivalent to the emissions from 205 oil furnaces or as many as 8,000 natural gas furnaces. Cumulatively, the smallest outdoor wood-fired boiler has the potential to emit almost one and one-half tons of particulate matter every year.

Particulate matter emissions cause a host of health problems ranging from short-term health harms such as eye, nose, throat and lung irritations, coughing and shortness of breath to long-term health problems including asthma, bronchitis, emphysema, pneumonia, heart disease and increased cancer risk. Other uncontrolled emissions from outdoor fuel burning appliances include carbon monoxide, hydrogen chloride, hydrogen cyanide, benzene, styrene, formaldehyde, arsenic, lead, chromium, dioxins, furans, PCBs and polycyclic aromatic hydrocarbons.

- **Fuel Choices** – Because outdoor fuel burning appliances are designed with a large firebox and are located outdoors, some owners use them to burn household garbage, tires

and other wastes, including hazardous waste. Burning these other substances in an outdoor fuel burning appliance produces additional toxic and hazardous air pollutants.

- **Year-Round Operation** -Outdoor fuel burning appliances are used to heat houses, shops, domestic hot water, swimming pools, greenhouses, driveways and spas. This means that smoke may be emitted year round, even in the summer when owners and neighbors want to enjoy the outdoors.

PA DEP Regulations

Outdoor fuel burning appliances are becoming increasingly popular for heating homes and water for domestic use and swimming pools. These exterior furnaces are designed to burn clean wood or other solid fuels. The units are not always popular with neighboring homeowners, however. In fact, the PA Department of Environmental Protection, responding to numerous complaints about smoke and other problems with the furnaces, recently published a new rule regulating their use. These regulations became effective upon the publication in the PA Bulletin on October 2, 2010. The final regulations include provisions below. The regulations will ensure that only the cleanest burning units will be sold in the commonwealth, cutting down on harmful emissions and protecting air quality. The DEP rule applies to anyone who sells, leases or distributes an outdoor wood burning appliance for use in Pennsylvania; anyone who installs such a device in the state, and anyone who purchases, receives, leases, owns, uses, or operates an outdoor furnace in the commonwealth. The regulations state what kind of appliances can be sold in the state, where they can be installed, and what can be burned in them.

The rule requires that outdoor furnaces sold in Pennsylvania after May 31, 2011, must be EPA qualified Phase 2 units, which burn 90 percent cleaner than older units. They must also be:

- at least 50 feet from the nearest property line.
- equipped with a permanently attached smokestack that extend a minimum of 10 feet above the ground and installed according to manufacturer's instructions.

The rule also dictates what fuels may be used, including clean wood, wood pellets, and home heating oil, natural gas, or propane that is used as a supplemental starter fuel.

Non-Phase 2 furnaces purchased up to May 31, 2011 must be installed a minimum of 150 feet from the nearest property line and have a smokestack that extends at least 10 feet above ground and is installed according to manufacturer's instructions.

A municipality may impose restrictions that are more stringent than DEP's, however, a municipality cannot be less restrictive than the state regulations.

Ordinance Considerations.

Municipalities have the authority to enact ordinances to regulate outdoor fuel burning appliances. Following are some consideration for enacting such an ordinance.

- **Definitions** – Include appropriate definitions to clarify unique terminology. Definitions are particularly important to the ability to enforce an ordinance.
- **Zoning Districts** – If included in the zoning provisions of a municipality, a municipality needs to decide in which zoning districts to permit outdoor fuel burning appliances. It needs to decide if they will be permitted by right, by conditional use, or by special exception. It needs to decide if they will be considered as accessory uses. Generally, outdoor fuel burning appliances are permitted in zoning districts with lower densities and larger lot sizes as an accessory use.
- **Types of Outdoor Fuel Burning Appliances Permitted** – Include PA DEP standards for which type are permitted in Pennsylvania.
- **Number of Appliances** – Include number of outdoor fuel burning appliances permitted per property.
- **Locations/Setbacks** – Specify where on property the outdoor fuel burning appliance shall be permitted. Where no zoning or required setbacks, decide if should be permitted between front of principal building and front property line. Where there are setback requirements, decide if should be permitted within required yard setbacks.
- **Stack Height** – Include PA DEP standard for stack heights.
- **Types of Fuels Permitted/Prohibited** – Include PA DEP standards for types of permitted and prohibited fuels.
- **Use of Starter Fuels** – Include PA DEP standards for types of permitted starter fuels.
- **Safety** – Include shall be permitted with a properly functioning spark arrestor.
- **Period of Operation** – Need to decide if should permit year-round or prohibit during certain months.
- **Nuisance** – Include operation of an outdoor fuel burning appliance shall not cause a nuisance to other properties
- **Administration** – Need to decide if a permit will be required. If require a permit, need to include the process.
- **Enforcement** – If included in a zoning ordinance, the enforcement provisions of the PA Municipalities Planning Code will apply. If includes within a municipality’s general code provisions, need to include how the ordinance will be enforced, who will enforce it and what are the penalties for violations.

**OUTDOOR FUEL BURNING APPLIANCES
MODEL ORDINANCE**

ORDINANCE NO __ - __

AN ORDINANCE OF [MUNICIPALITY], PENNSYLVANIA, FOR THE REGULATION OF OUTDOOR FUEL BURNING APPLIANCES, DEFINING CERTAIN TERMS USED HEREIN, PROVIDING FOR REGULATIONS, ENFORCEMENT, CRIMINAL PENALTIES, CIVIL PENALTIES, UNLAWFUL CONDUCT, PUBLIC NUISANCES, MUNICIPAL EXEMPTION FROM LIABILITY, REPEALER, SEVERABILITY & EFFECTIVE DATE.

SECTION 1. TITLE

This ordinance shall be known and may be cited as the Outdoor Fuel Burning Appliance Ordinance.

SECTION 2. AUTHORITY

The [Council – Board] of [municipality], under, and by virtue of and pursuant to the authority granted by [enabling authority/code] does hereby enact and ordain this ordinance as authorized by Act 247, Municipalities Planning Code; [or when not in zoning, in accordance with the rules and regulations of the Pennsylvania Department of Environmental Protection].

SECTION 3. APPLICABILITY

This ordinance applies to the installation, operation and use of all outdoor fuel burning appliances within [municipality].

- (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 burning in 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 or kerosene in a device intended for temporary use during construction or maintenance activities.
- (D) This ordinance does not apply to patio wood burning units.

SECTION 4. PURPOSE AND SCOPE

- (A) Research has indicated that outdoor fuel burning appliances cause emission problems that cross property lines. Smoke that stays close to the ground can easily be reached by humans

working or playing outdoors. It penetrates neighboring buildings and also can cause problems with smoke visibility. An outdoor fuel burning appliance that supplies heat and/or hot water to residences are of special concern when compared to other outdoor burning and other transient sources of smoke. Outdoor fuel burning appliances operate 8 to 9 months of the year, and in some cases throughout the entire year. The fine particulates in smoke have been recognized as a particular health concern because they lodge deep in the lungs and cannot easily be expelled. Health studies have shown a significant association between exposure to fine particulates and cardiovascular problems such as angina, irritated eyes and lungs, trigger headaches, and worsen respiratory diseases such as asthma, emphysema and bronchitis and in the worse case can cause premature mortality. The most recent research has demonstrated that the health impacts of fine particulates are worse than previously realized. U.S. EPA sets the National Air Quality Standard (NAAQS) for a certain number of particulates for a 24-hour average per cubic meter. It is the purpose of [municipality] to regulate the installation, maintenance and operation of outdoor fuel burning appliances within [municipality] so that U.S EPA air quality standards can reasonable be met.

(B) The Pennsylvania Code, Title 25, Chapter 21, prohibits air pollution. This ordinance is specifically intended to prohibit any person within [municipality] from operating an outdoor fuel burning appliance in a manner that the emissions are visible, malodorous or where air contaminants are detectable outside the property of the person owning the appliance.

(C) This ordinance provides regulations for the installation, replacement and operation of any outdoor fuel burning appliance whose primary purpose is to convert combustible fuel into a heat or energy source for interior spaces.

(D) This ordinance does not apply to:

- (1) Grilling or cooking using charcoal, wood, propane or natural gas in cooking or grilling appliances.
- (2) Burning in a stove, furnace, fireplace or other heating device that is located within a building or structure used for human or animal habitation.
- (3) The use of propane, acetylene, natural gas, fuel oil, gasoline kerosene, etc. used in a device that is intended for temporary use during construction or maintenance activities.
- (4) Patio fuel burning units.

SECTION 5. 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:

APCA - Air Pollution Control Board

Chimney – Any vertical masonry structure enclosing a flue or flues that carry off smoke or exhaust from a furnace, especially that part of such structure extending above a roof.

Clean Wood – Natural wood that has no paint, stains, varnish or other types of coatings. Natural wood has not been treated with, including but not limited to, copper chromium arsenate, creosote, or pentachlorophenol or other wood life extending preservative. Natural wood does not contain resins or glues as in plywood or other composite wood products.

EPA – United States Environmental Protection Agency.

EPA Certified – An appliance for which the manufacturer has supplied a certificate of compliance, or other proof of compliance, with EPA promulgated emission standards for that particular appliance type and model. The certification shall be in accordance with approved EPA procedures and test methods and be conducted by an EPA approved laboratory.

Existing Appliance – An appliance that is fully installed and operational at the intended location of use on the enactment date of this ordinance.

NAAQS – National Ambient Air Quality Standards as set forth with the Code of Federal Regulations (40 CFR Part 50) by the EPA, which designates pollutants considered harmful to public health and the environment.

New Appliance – An appliance that is neither fully installed nor operational at the intended location of use as of the enactment date of this ordinance.

Outdoor Fuel Burning Appliance – An outdoor fuel burning appliance is located outside a living space ordinarily used for human or animal habitation, and is designed to provide heat and/or domestic hot water to spaces or appliances within the residence or to a separate structure. Most commonly the appliances are located as a standalone unit, in a shed or other outbuilding and the heat is transferred by water through a system of insulated piping or insulated duct work to the residence or other structure.

Patio Fuel Burning Unit – A chimnea, patio warmer or other portable temporary fuel burning device used for outdoor recreation and/or heating.

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 of Pennsylvania 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.

Spark Arrestor – A device (located at the top of the chimney) to prevent sparks, embers, or other lighted material above a given size from being expelled into the atmosphere.

Stack –A flue system for an outdoor multi-fuel burning appliance that comprises a stainless steel flue pipe extending from a lower anchor plate at the appliance upwardly and at the top of the flue

pipe a control assemblage including an upper rain cover. The size and construction of the stack shall be in accordance with the manufacturer's specifications.

Supersedeas – A writ that suspends the authority of a trial court to issue an execution on a judgement that has been appealed. It is a process designed to stop enforcement of a trial court judgement brought up for review. The term is often used interchangeably with a stay of proceeding.

Verified Complaint – A verbal or written complaint from a [municipality] resident which is mailed, tendered or delivered to a representative of [municipality], which is subsequently verified to be valid through observation by a [municipality] or other governmental representative within 24 hours of receipt of the complaint. In the event of a verbal complaint, the resident will be requested to place the complaint in writing and submit it to a [municipality] representative. All written complaints shall be dated and signed to be the basis of a verified complaint.

SECTION 6. REGULATIONS

If alternative 1 is selected, skip to Section 7. Enforcement.

(Alternative 1) On or after [effective date] no person shall install, use, operate or maintain an outdoor fuel burning appliance in [municipality].

(Alternative 2) On or after [effective date] an outdoor fuel burning appliance may be installed, used or operated in [municipality] only in accordance with the following provisions:

Sec. 6.1. Zoning Requirements for Outdoor Fuel Burning Appliances (optional)

No Person shall install an outdoor fuel burning appliance except in the following area(s) zoned for its use: [Specify areas and if permitted by right, conditional use or special exception and if considered an accessory use. Specify if permitted in front, side or rear required setbacks].

Sec. 6.2. Designed for Specific Usage

No outdoor fuel burning appliance shall be installed or operated in a structure that is used for human or animal habitation unless designed and manufactured specifically for that type of use.

Sec. 6.3. Meet EPA Emission Standards

All outdoor fuel burning appliances are required to meet emission standards currently required by the Environmental Protection Agency (EPA). Emission standards currently required by EPA are hereby adopted by reference together with any amendments or modifications made to them in the future.

Sec. 6.4. EPA Declared “Air Quality Action Day”

No outdoor fuel burning appliance shall be operated on days when the EPA has declared an “air quality action day” applicable to [municipality] or Dauphin County.

Sec. 6.5. Compliance With Manufacturer’s Specifications

Outdoor fuel burning appliances shall at all times be installed, operated and maintained in accordance with the manufacturer’s specifications and the regulations promulgated herein. In the event of a conflict, the regulations promulgated herein shall apply unless the manufacturer’s instructions are stricter, in which case the manufacturer’s instructions shall apply.

Sec. 6.6. Homemade Outdoor Fuel Burning Appliances

No homemade outdoor fuel burning appliances shall be allowed to be installed, operated or maintained in [municipality].

Sec. 6.7. Setback Requirements for New Outdoor Fuel Burning Appliances

In accordance with PA DEP rules, after May 31, 2011, only Phase 2 EPA qualified outdoor fuel burning appliance shall be sold in Pennsylvania. They shall be installed a minimum of 50 feet from the nearest property line. Non-Phase 2 appliances purchased up to May 31, 2011 shall be installed a minimum of 150 feet from the nearest property line.

[Note: Regarding setback distances, municipalities may impose restrictions that are more, but not less, stringent than PA DEP.]

Outdoor fuel burning appliances shall not be located between the front of a principal building and the front property line.

Sec. 6.8. Stack Requirements for New Outdoor Fuel Burning Appliances

In accordance with PA DEP rules, after May 31, 2011 only Phase 2 EPA qualified outdoor fuel burning appliances shall be sold in Pennsylvania and they shall be equipped with a permanently attached smokestack that extends a minimum of 10 feet above the ground and installed according to manufacturer’s instructions. Non-Phase 2 appliances purchased up to May 31, 2011 shall have a smokestack that extends at least 10 feet above ground and is installed according to the manufacturer’s instructions. Should manufacture’s specifications require a greater height, the manufacturer’s specifications shall prevail.

[Note: Municipalities may impose restrictions that are more, but not less, stringent than PA DEP.]

The stack shall be reinforced or guyed so as not to pose a threat to the public or surrounding structures during high winds. All reinforcement or guying of the stack shall be located on the property the outdoor fuel burning appliance serves.

Sec. 6.9. Storage of Fuels

All storage of materials to be burned in an outdoor fuel burning appliance shall be kept a minimum of five (5) feet away from the appliance.

Sec. 6.10. Fuel Requirements for New and Existing Outdoor Fuel Burning Appliances

No person that operates a new or existing outdoor fuel burning appliance shall use fuel other than the following:

- (A) Clean dry wood
- (B) Wood pellets made from clean wood
- (C) Certain home heating oil, natural gas, propane fuel; or other fuel approved by PA DEP that complies with all applicable sulfur limits and is used as a starter or supplemental fuel for dual-fired outdoor fuel burning appliances.

Sec. 6.11 Prohibited Fuels for New and Existing Outdoor Fuel Burning Appliances

The owner shall only burn fuels in the appliance permitted above, for which the appliance was designed to burn and which are approved by the manufacturer. Although no list of materials not allowed to be burned can be all inclusive, no person shall burn any of the following fuels or materials in any appliance under any circumstances:

- (a) Any materials not listed in Sec. 6.10.
- (b) Any wood that does not meet the definition of “clean wood”
- (c) Furniture
- (d) Rubbish or garbage, including but not limited to food wastes, food packaging or food wraps
- (e) Tires and/or other tire products
- (f) Leaves or wet soggy wood, lawn clippings & other vegetative matter or yard waste
- (g) Materials containing plastic
- (h) Materials containing rubber
- (i) Waste petroleum products
- (j) Paints and paint thinners
- (k) Chemicals
- (l) Any hazardous waste
- (m) Coal
- (n) Paper or cardboard
- (o) Construction and demolition debris
- (p) Plywood or other composite wood products
- (q) Particleboard
- (r) Salt water driftwood
- (s) Manure
- (t) Animal carcasses and/or other animal by-products
- (u) Asphalt products

- (v) Wire and cable insulation
- (w) Household trash, newspapers
- (x) Recyclable material
- (y) Batteries
- (z) Fiberglass or asbestos products
- (aa) Bio-hazard waste, bandages, wound dressings, syringes, etc.
- (bb) Human waste
- (cc) Materials that create a foul or offensive odor or that cause smoke emissions that are reasonably offensive to occupants of the surrounding properties
- (dd) Railroad ties
- (ee) Laminated wood
- (ff) Used cooking oils
- (gg) Any other item not specifically permitted in writing by the manufacturer

Sec. 6.12 Number of Appliances

There shall be no more than one (1) outdoor fuel burning appliance per property.

Sec. 6.13. Contract With Licensed Waste Hauler

During the entire period of use, every owner and user of an outdoor fuel burning appliance shall have a current contract with a licensed solid waste hauler and shall use its services for disposal of all household solid waste including, but not limited to trash, debris and garbage. Upon request, every owner and user of an outdoor fuel burning appliance shall present proof of a current waste disposal contract to [municipality].

Sec. 6.14 Compliance With Ash/By-Products Disposal Laws

(A) Any ash or other by-products from the operation of an outdoor fuel burning appliance shall be disposed of in accordance with all applicable laws.

(B) Prior to disposal, ash or other by-products from the operation of an outdoor fuel burning appliance shall be stored in a sealed container.

(C) Ashes or waste shall not be accumulated in a large area on the owner's property. Any accumulation of ashes or waste shall be disposed of weekly.

Sec. 6.15. Prohibited Starters

Lighter fluids, gasoline and chemicals to start outdoor fuel burning appliances are prohibited.

Sec. 6.16. Spark Arrestors

Outdoor fuel burning appliances shall be equipped with a properly functioning spark arrestor, installed according to manufacturer's specifications.

Sec. 6.17. Dates of Use Limitations

Use shall be limited to September 1 to May 31 unless outdoor temperatures drop below 50 degrees Fahrenheit, except that any outdoor fuel burning appliance located on lots of 20 acres or more may be operated throughout the calendar year.

Sec. 6.18. Permits for New and Existing Outdoor Fuel Burning Appliances

(A) No person shall install, replace, upgrade or operate a new or existing outdoor fuel burning appliance unless a permit is obtained from [municipality]. The applicant for such a permit shall meet the following requirements:

- (1) Present a plan showing all property lines and the proposed location of the outdoor fuel burning appliance.
- (2) Present evidence that the applicant has obtained a Uniform Construction Code compliant permit for the installation of the outdoor fuel burning appliance and its connection to the mechanical system of the structure it will serve.
- (3) Provide a copy of the manufacture's specifications and instructions, which the applicant agrees to comply with and not alter at any time. This information shall be kept on file at the municipal offices along with a copy of the permit.
- (4) Demonstrate that the outdoor fuel burning appliance has been laboratory tested and listed to comply with appropriate safety standards such as UL (Underwriters Laboratory) or ANSI (American National Standards Institute) standards.
- (5) Provide proof that the outdoor fuel burning appliance is certified to meet applicable EPA emission standards; unless the appliance is considered by EPA to be exempt from certification due to generally recognized low emissions. This proof, or proof of exemption, shall be kept on file at the [municipality] office.
- (6) If an existing stack or chimney is to be utilized, a statement from the appointed inspectors stating that the stack or chimney has been inspected and is suitable for use with the manufacturer's recommended fuels shall be submitted. If a new stack or chimney is to be constructed, a construction permit shall be required.
- (7) The application shall be signed by all owners of the lot on which the outdoor fuel burning appliance will be located and the contractor installing the outdoor fuel burning appliance.

(B) A permit to install, replace, upgrade or operate a new or existing outdoor fuel burning appliance shall remain in effect for three (3) years from the date of issuance, unless revoked for any reason. A new permit shall then be applied for and the outdoor fuel burning appliance shall be re-inspected for compliance with the manufacturer's, [municipality's] and EPA specifications on file in the [municipality's] office.

(C) Upon any violation of this ordinance, [municipality] may suspend or void a permit. If suspended or voided, once the condition which resulted in the suspension or voidance is remedied and reasonable assurances are given that such condition will not recur, the suspension or voidance may be lifted.

(D) A permit issued pursuant to this ordinance may be suspended by [municipality] when necessary to protect public health, safety and welfare of the residents of [municipality] if any of the following conditions occur:

- (i) Malodorous air contaminants from the outdoor fuel burning appliance are detectable outside of the property of the person on whose land the outdoor fuel burning appliance is located.
- (ii) The emissions for the outdoor fuel burning appliance interferes with the reasonable enjoyment of life on neighboring property.
- (iii) The emissions from the outdoor fuel burning appliance cause damage to vegetation on neighboring property.
- (iv) The emissions from the outdoor fuel burning appliance are or may be harmful to human or animal health.
- (v) The burning of any material prohibited by this ordinance.
- (vi) Any other condition which constitutes a public nuisance.

(E) Any outdoor fuel burning appliance legally in existence on the effective date of this ordinance shall be permitted to remain, provided the owner applies for and receives a permit from [municipality] within 1 year of the effective date of this ordinance. If the owner of an existing outdoor fuel burning appliance does not receive a permit within 1 year of the effective date of this ordinance, the outdoor fuel burning appliance shall be removed and is subject to the regulations provided for in this ordinance.

(F) A violation of a permit or a failure to obtain a permit shall constitute a violation of this ordinance.

Sec. 6.19. Inspection Required

No outdoor fuel burning appliance shall be operated until inspected and approved for use by an authorized inspector or third-party representative appointed by the [municipality] [Council – Board]. It is recognized that improper use, improper fuels, modifying or tampering with any appliance may cause an increase in emissions, such that it may become necessary to conduct site inspections to determine compliance. If a verified complaint is received by [municipality], it may conduct an inspection to determine if the outdoor fuel burning appliance is being operated in accordance with the manufacturer's recommended operating parameters and approved fuels. In

the event the owner has received updated recommendations from the manufacturer, the same shall be utilized to determine compliance. The owner shall be required to correct any deviations found as a result of the inspection. Failure to correct the deviations within thirty (30) days shall constitute a violation of this ordinance. The owner's refusal to allow the inspection shall result in immediate permit revocation.

Sec. 6.20. Liability

(A) The owner of the property utilizing or maintaining an outdoor fuel burning appliance shall be responsible for all fire suppression costs and any other liability resulting from damage caused by fire.

(B) The owner of the property utilizing or maintaining an outdoor fuel burning appliance shall be responsible for any damage or other cost to neighboring properties associated with the installation, maintenance and operation of an outdoor fuel burning appliance.

Sec. 6.21. Compliance With Other Laws, Regulations and Guidelines

Installation, use and operation of an outdoor fuel burning appliance shall comply with all applicable local, state (including PA DEP) and/or federal laws, regulations and guidelines as well as applicable building and other codes of [municipality].

SECTION 7. ENFORCEMENT

Note: If included as amendment to zoning ordinance, enforcement provisions of zoning ordinance shall be made applicable instead of those listed below.

*Note: If **not** included as amendment to zoning ordinance, the following provisions shall be made applicable:*

(A) The [municipality] [responsible official] shall have the power and duty to enforce the provision of this ordinance.

(B) [Municipality] 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 an outdoor fuel burning appliances which is in violation of any provisions 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 [municipality] finds that any person is in violation of any provision of this ordinance.

(C) [Municipality] 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. An appeal to the [quasi judicial body] of [municipality's] order shall not act as a supersedeas, provided however, that upon application and for cause shown, the [quasi judicial body] may issue such a supersedeas under rules established by the [quasi judicial body].

(E) The authority of [municipality] 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.

(F) Whenever the [municipality] [responsible official] finds that illegal operation of an outdoor fuel burning appliance is occurring in [municipality] in contravention of the requirements of this ordinance, the [responsible official] may order the owner or operator to take corrective action in a manner satisfactory to [municipality] or the [responsible official] may order the owner or operator to allow access to the land by the [responsible official] or a third party to take such action.

(G) For purposes of collecting or recovering the costs involved in taking corrective action or pursuing a cost recovery action pursuant to an order or recovering the cost of litigation, oversight, monitoring, sampling, testing, and investigation related to corrective action, [municipality] may collect the amount in the same manner as civil penalties are assessed and collected following the process for assessment and collection of a civil penalty contained in this ordinance.

SECTION 8. CRIMINAL PENALTIES (Use when *not* part of a zoning ordinance. When *in* zoning ordinance, zoning provision of the PA Municipalities Planning Code shall apply.)

Any person who violates any provisions of this ordinance or any order of [municipality] 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) 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 [municipality] 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 [municipality] Counsel is hereby authorized to prosecute these offenses. For purposes of this section, a summary offense may be prosecuted before any district justice in [municipality]. There is no accelerated rehabilitative disposition authorized for a summary offense.

SECTION 9. CIVIL PENALTIES (Use when *not* part of a zoning ordinance. When *in* zoning ordinance, zoning provision of the PA Municipalities Planning Code shall apply.)

(A) In addition to proceeding under any other remedy available at law or in equity for violation of a provision of this ordinance or any order issued pursuant to this ordinance, [municipality] may assess a civil penalty for the violation. The penalty may be assessed whether or not the violation was willful. The civil penalty so assessed shall not exceed twenty-five thousand dollars (\$25,000) per day for each violation. In determining the amount of the penalty, [municipality] shall consider the willfulness of the violation; damage to air, soil, water, other natural resources of [municipality] or their uses; financial benefit to the person in consequence of the violation; deterrence of future violations; cost to [municipality]; the size of the source or facility; the compliance history of the source; the severity and duration of the

violation; degree of cooperation in resolving the violation; speed with which compliance is ultimately achieved; whether the violation was voluntarily reported; other factors unique to the owners or operators of the appliance; and other relevant factors.

(B) When [municipality] proposed to assess a civil penalty, it shall inform the person of the proposed amount of the penalty. The person charged with the penalty shall then have thirty (30) days to pay the proposed penalty in full; or if the person wishes to contest the amount of the penalty or the fact of the violation to the extent not already established, the person shall forward the proposed amount of the penalty to the [quasi-judicial body] within the thirty (30) day period for placement in an escrow account with the State Treasurer or any Commonwealth bank, or post an appeal bond to the [quasi judicial body] within the thirty (30) days in the amount of the proposed penalty, provided that such bond is executed by a surety licensed to do business in the Commonwealth and is satisfactory to {municipality}. If, through administrative or final judicial review of the proposed penalty, it is determined that no violation occurred or that the amount of the penalty shall be reduced, the [quasi judicial body] shall, within thirty (30) days, remit the appropriate amount to the person with any interest accumulated by the escrow deposit. Failure to forward the money or the appeal bond at the time of the appeal shall result in a waiver of all legal rights to contest the violation or the amount of the civil penalty unless the appellant alleges financial inability to prepay the penalty or to post the appeal bond. The [quasi judicial body] shall conduct a hearing to consider the appellant's alleged inability to pay within thirty (30) days of the appeal. The [quasi judicial body] may waive the requirement to prepay the civil penalty or to post an appeal bond if the appellant demonstrates and the [quasi judicial body] finds that the appellant is financially unable to pay. The [quasi judicial body] shall issue an order within thirty (30) days of the hearing to consider the appellant's alleged inability to pay. The amount assessed after the administrative hearing or after waiver of administrative hearing shall be payable to [municipality] and shall be collectible in any manner provided by law for the collection of debts, including the collection of interest on the penalty amount computed in accordance with Section 6621(a)(2) of the Internal Revenue Code of 1986 (Public Law 99-514, 26U.S.C. § 1 et seq.) from the date of assessment of the penalty. If any person liable to lay any such penalty neglects or refuses to pay the same after demand, the amount together with interest and any costs that may accrue, shall constitute a debt of such person, as may be appropriate, to [municipality]. The debt shall constitute a lien on all property owned by said person when a notice of lien incorporating a description of the property of the person subject to the action is duly filed with the prothonotary of the court of common pleas where the property is located. The prothonotary shall promptly enter upon the civil judgement or order docket, at no cost to [municipality], the name and address of the person, as may be appropriate, and the amount of the lien as set forth in the notice of lien. Upon entry by the prothonotary, the lien shall attach to the revenues and all real and personal property of the person, whether or not the person is solvent. The notice of lien, filed pursuant to this Section, which affects the property of the person shall create a lien with priority over all subsequent claims or liens which are filed against the person, but it shall not affect any valid lien, right, or interest in the property filed in accordance to established procedure prior to the filing of a notice of lien under this Section.

SECTION 10. UNLAWFUL CONDUCT (Use when *not* part of a zoning ordinance).

It shall be unlawful to fail to comply with or to cause to assist in the violation of any of the provisions of this ordinance or to fail to comply with any order or other requirement of [municipality]; or to cause a public nuisance; or to hinder, obstruct, prevent, or interfere with [municipality] or its personnel in their performance of any duty hereunder, including, denying the [responsible official] access to the appliance or facility.

SECTION 11. PUBLIC NUISANCES (Use when *not* part of a zoning ordinance)

A violation of this ordinance or any order issued by [municipality] under this ordinance shall constitute a public nuisance, [Municipality] shall have the authority to order any person causing a public nuisance to abate the public nuisance. In addition, when abating a public nuisance, [municipality] may recover the expenses of abatement following the process for assessment and collection of a civil penalty contained in this ordinance. 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 12. MUNICIPAL EXEMPTION FROM LIABILITY

[Municipality] and its agents, officials and representatives shall not under any circumstances be liable or responsible for damages caused to any person or property by reason of the issuance of any permit under the provisions of this ordinance, or by reason of the conduct of any burning activity in compliance with the terms of this ordinance. The person or party responsible for any such burning activity shall bear the sole liability of any damages caused as a result thereof.

SECTION 13. REPEALER

All other ordinances or parts thereof which are in conflict with this ordinance are hereby repealed.

SECTION 14. SEVERABILITY

The provisions of this ordinance are severable, and if any section, clause, sentence, part, or provision thereof shall be held illegal, invalid, or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect or impair the remaining sections, clauses, sentences, parts, of provisions of this ordinance. It is hereby declared to be the intent of the [Council-Board] that this ordinance would have been adopted if such illegal, invalid, or unconstitutional section, clause, sentence, or provision had not been included herein.

SECTION 14. EFFECTIVE DATE

This ordinance shall become effective on the ____ day of _____, 20__.

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- i Pennsylvania Department of Environmental Protection (PA DEP) Model Ordinance fro Outdoor Wood-fired Boilers (Introduction)
 - ii Pennsylvania Department of Environmental Protection Fact Sheet for Outdoor Wood-Fired Boilers, March 2009.