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ORDINANCE NO. 2006- 1

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**AN ORDINANCE OF THE BOARD OF SUPERVISORS OF  
MAXATAWNY TOWNSHIP, BERKS COUNTY, PENNSYLVANIA,  
REGULATING THE OPEN BURNING WITHIN THE TOWNSHIP,  
PROVIDING THE ISSUANCE OF LICENSES UNDER PRESCRIBED  
CONDITIONS, PRESCRIBING PENALTIES FOR VIOLATORS AND  
REPEALING PREVIOUS ORDINANCES.**

WHEREAS, the Board of Supervisors of Maxatawny Township have determined that the open burning and air pollution may be detrimental to the health, safety and welfare of the citizens of Maxatawny Township and at times and places an unnecessary burden and risk upon the Township's volunteer fire services personnel and, therefore, are desirous of protecting its citizens and volunteer personnel from unrestricted open burning and air pollution; and

WHEREAS, after careful review, the Board of Supervisors of Maxatawny Township are desirous of establishing regulations to protect its citizenry and volunteer fire personnel from potential dangers and damages as a result of open burning; and

NOW THEREFORE, the Board of Supervisors of Maxatawny Township, Berks County, hereby ordain as follows:

Section 1. This Ordinance shall be known as the "Maxatawny Township Burning Ordinance".

Section 2. The following words and phrases when used in this Ordinance shall have the meanings given to them in this section unless the context clearly indicates otherwise:

Approved container. A container used for the purpose of open burning consisting of a metal barrel with a 55-gallon capacity or less which meets the specifications attached hereto, made part hereof and marked as Exhibit "A" or similar container approved by the Fire Chief or Municipal Code Enforcement Officer.

Bonfire. A large fire built outside an approved container upon the ground for recreational or ceremonial purposes limited to a size of generally no greater than five

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(5) feet long, five (5) feet wide and five (5) feet in height.

Burn Container Cover. A metal screen with spaces not more than one-quarter square inch apart that covers the entire open area above the approved container and meets the specifications attached hereto as Exhibit "A". The screen shall be maintained in good order so as to prevent larger particles from escaping from the approved container during operation.

Burning. The act of consuming by fire, including but not limited to, flaming, charring, scorching or blazing. Also see "Smoldering"

Campfire. A small wood fire generally built in an iron ring or similar device outside of a structure for cooking or to create warmth generally limited to a size not exceeding a fuel supply of greater than three (3) feet in diameter and two (2) feet in height.

Clearing and Grubbing Waste. Trees, shrubs and other native vegetation which are cleared from land. The term "clearing and grubbing waste" does not include building demolition waste.

Domestic Refuse. Waste generated from a residential dwelling. The term "domestic refuse" does not include household hazardous waste, source separated waste from recyclables, appliances, carpets, demolition waste (insulation, shingles, plaster, siding, etc.), furniture, mattresses, box springs, paint, plastics, petroleum products, rubber products, solvents, tires, treated wood, wire or putrescible waste.

Code Official. The Code Official is herein referred to as Township's Code Enforcement Officer and is so designated as such by the Township. As well as the Fire Official, Fire Marshal, Fire Chief or Officer in charge.

Fire. Any fire set or maintained outside of a building.

Fire Department. Shall refer to the applicable fire department for a certain area of the Township and includes the Topton Fire Department, the Kutztown Fire Department and/or the Lyons Fire Department.

Household Hazardous Waste. Waste considered hazardous within the meaning of the Solid Waste Management act, 35 P.S. §6018.101 *et seq.*, except that it is produced in lesser quantities than that regulated under the Solid Waste Management Act, or is generated by persons not considered hazardous waste generators within the meaning of the Solid Waste Management Act.

Open Burning. A fire, not directed through a flue, which emits air contaminants directly into the outdoor atmosphere.

Person. Any individual, partnership, corporation, association, institution or cooperative enterprise.

Premises. A tract of land, lot or grounds with or without a building.

Recreational or Ceremonial Burning. Open burning which occurs for pleasure, religious, ceremonial, cooking, warmth or other similar purposes, including but not limited to, bonfires or campfires. Also see "Bonfire and Campfire"

Smoldering. Burning without a visible flame and often with smoke. "Smolder" shall have the same meaning as burning, and any smoldering shall be considered burning.

Source Separated Recyclable Materials. Materials that are separated from municipal waste at the point of origin for the purpose of recycling.

Structure. Any house, dwelling, garage, shed, shelter, or other building as that term is defined by the Zoning Ordinance of Maxatawny Township.

Township. The Township of Maxatawny, Berks County, Pennsylvania.

Yard Waste. Leaves, grass clippings, garden residue, tree trimmings, branches, chipped shrubbery, other vegetative material, and organics occurring naturally within the premises.

Section 3. No person shall conduct or perform any open burning, ignite or feed any open fire, or aid and abet, allow, permit, maintain or cause any open burning or open fire within the Township unless and in accordance with the provisions of this Ordinance.

Section 4. Open burning shall be permitted as follows:

A. A fire to prevent or abate a fire hazard when in accordance with Pennsylvania Department of Environmental Protection ("DEP") Regulations, with prior written notification to the Township Code Enforcement Officer and the Chief of the Fire Company of the district in which the burn is to be conducted.

B. A fire to instruct personnel in firefighting, when in accordance with DEP regulations which is under the direct supervision of the Chief of the Fire Company or his/her designee.

C. A fire to prevent and/or control disease or pests when in accordance with DEP regulations, with prior notification to the Township Code Enforcement Officer and the Chief of the Fire Company of the district in which the burn is to be conducted.

D. A fire, other than a campfire, solely to cook or prepare food.

Section 5. Residential Open Burning shall be permitted pursuant to the standards included below: (Note: call the Township Code Enforcement Official to obtain the proper fire department and phone number to contact.)

A. Domestic refuse originating on the premise and generated from one (1) residential dwelling, when the fire is on the premises of a structure solely occupied as a residential dwelling by a single family or less and then the refuse results from the normal occupancy of said structure provided:

1. The open burning is conducted in an approved container (similar to attached Exhibit "A");
2. The approved container conforming with the Township's requirements is placed a minimum of fifty (50) feet from any property line or structure, overhead wires or tree canopy and fifty (50) feet from the public right-of-way of any roadway;
3. The open burning is attended to at all times;
4. The open burning does not take place either before the sunrise or after the sunset;
5. The open burning is completely extinguished, including smoldering, by sunset;
6. Precautions are taken to regulate, control and extinguish the open burning through the use of fire extinguishers, water hoses, dirt, sand or other fire extinguishing equipment which shall be readily available at the site of the open burning for immediate utilization; and
7. The open burning is not conducted on Sunday or any holiday recognized by the Township at its annual reorganization meeting.

B. A fire set in conjunction with the production of agricultural commodities excluding animals carcass, originating in their unmanufactured state on the premises of a farm operation pursuant to the standards below:

1. The open burning is attended to at all times;

2. The open burning does not take place either before sunrise or after sunset;
3. The open burning is at least fifty (50) feet from a overhead wires, tree canopy or property line and two hundred (200) feet from any structure and fifty (50) feet from the public right-of-way of any roadway;
4. The open burning is completely extinguished, including smoldering, by sunset;
5. Precautions are taken to regulate, control and extinguish the open burning through the use of fire extinguishers, water hoses, dirt, sand or other fire extinguishing equipment which shall be readily available at the site of the open burning for immediate utilization; and
6. The open burning is not conducted on Sunday or any holiday recognized by the Township at its annual reorganization meeting.

C. A fire set for purposes of burning, clearing and grubbing waste originating on the premises provided:

1. The person conducting the open burning must notify the Township and the applicable Fire Department, in writing, at least twenty four (24) hours before the open burning commences;
2. The open burning is at least fifty (50) feet from a overhead wires, tree canopy or property line and two hundred (200) feet from any structure and fifty (50) feet from the public right-of-way of any roadway;
3. The open burning is attended to at all times;
4. The open burning does not take place either before sunrise or after sunset;
5. The open burning is completely extinguished, including smoldering, by sunset. However smoldering may continue under certain conditions;

6. Precautions are taken to regulate, control and extinguish the open burning through the use of fire extinguishers, water hoses, dirt, sand or other fire extinguishing equipment which shall be readily available at the site of the open burning for immediate utilization; and
7. The open burning is not conducted on Sunday or any holiday recognized by the Township at its annual reorganization meeting.

D. Yard waste originating and generated from the premises of the structure occupied solely as a residential dwelling by a single family or less, where the fire is on the premises of the said structure provided:

1. The yard waste being burned is dry material and occupies a space that is not more than five (5) feet long, by five (5) feet wide, by five (5) feet in height;
2. The person conducting the open burning must notify the Township and the applicable Fire Department, in writing, twenty four (24) hours in advance of the open burning;
3. The open burning is at least fifty (50) feet from any structure, overhead wire, tree canopy or property line and fifty (50) feet from the public right-of-way of any roadway;
4. The open burning is to be attended at all times;
5. The open burning does not take place either before sunrise or after sunset;
6. The open burning is completely extinguished, including smoldering, by sunset;
7. Precautions are taken to regulate, control and extinguish the open burning through the use of fire extinguishers, water hoses, dirt, sand or other fire extinguishing equipment which shall be readily available at the site of the open burning for immediate utilization; and
8. The open burning is not conducted on Sunday or any holiday recognized by the Township at its annual reorganization meeting.

E. A fire set solely for ceremonial or recreational purposes provided the following conditions are met:

1. A written notification is submitted at least ten (10) days in advance of the proposed fire to the Township and the applicable Fire Department, accompanied by a site plan of the property depicting all structures on the premises and the location of the proposed fire;
2. The fire shall be at least fifty (50) feet from any property line or structure and fifty (50) feet from the public right-of-way of any roadway;
3. The fire shall not be placed under any overhead wires, trees or similar vegetation, and all brush, leaves, branches or other combustible materials shall be cleared within twenty-five (25) feet of the diameter of the fire;
4. The fire is attended at all times;
5. The fire is completely extinguished, including smoldering, before it is left unattended; and
6. Precautions are taken to regulate, control and extinguish the fire through the use of fire extinguishers, water hoses, dirt, sand or other fire extinguishing equipment which shall be readily available at the site of the fire for immediate utilization.

Section 6. Construction Site Burning. Notwithstanding the provisions of Section 7, nonhazardous waste at construction sites which are generated on the premises may be disposed of by burning in accordance with the provisions herein. The contractor/resident shall provide written notification to the Code Official and the appropriate Fire Department at least forty eight (48) hours prior to intended burning. (Note: call the Township Code Enforcement Official to obtain the proper fire department and phone number to contact.) All authorized burning shall be performed at the construction site, be commenced after 7:00 a.m. and be extinguished by 3:00 p.m. Burning shall not be permitted under windy conditions which might result in spreading of fire. Contractors/residents shall notify the Code Official of the burning in writing and present evidence of notification upon request of the Code Official, Fire Marshal, Fire Chief or any law enforcement or any official in charge of the Fire Department. The contractor/resident shall extinguish the burning whenever requested to do so by the

Code Official, Fire Marshal, Fire Chief or any law enforcement officer or any official in charge of the Fire Department.

The contractor/resident must adhere to the following minimum guidelines:

1. The open burning is at least fifty (50) feet from any structure, overhead wire, tree canopy or property line and fifty (50) feet from the public right-of-way of any roadway;
2. The open burning is to be attended at all times;
3. The open burning does not take place either before sunrise or after sunset;
4. The open burning is completely extinguished, including smoldering, by sunset;
5. Precautions are taken to regulate, control and extinguish the open burning through the use of fire extinguishers, water hoses, dirt, sand or other fire extinguishing equipment which shall be readily available at the site of the open burning for immediate utilization; and
6. The open burning is not conducted on Sunday or any holiday recognized by the Township at its annual reorganization meeting.

Section 7. Notwithstanding anything in this Ordinance, no open burning of any materials generated by a commercial, industrial or other similar non-residential use is permitted, including but not limited to, any materials from the salvaging, construction and/or demolition of any structure unless said burning is undertaken in compliance with Section 8 of this Ordinance, and originating on the premise.

Section 8. Open burning by commercial operations shall be allowed after submitting written notification to the Code Official and the appropriate Fire Department or other designated authority for recognized silvicultural or range or wildlife management practices, prevention or control of disease or pests, providing heat for out workers and a bonfire. (Note: call the Township Code Enforcement Official to obtain the proper fire department and phone number to contact.)

A. Authorization. Open burning by commercial operations shall be permitted with prior notification to the Code Official and upon receipt of written permission from the Fire Marshal or Chief of the Fire Department, and DEP (if

necessary). Open burning shall be permitted provided that any conditions specified in the permission are followed.

B. Notification. Notification of open burning shall be submitted to the Code Official and Fire Department in writing at least one (1) week before the commercial operation and/or owner, manager or employee desires to commence burning and shall be in such form and contain such information as may be required by the Fire Marshal or Chief of the Fire Department. Such notification shall contain, at a minimum, information regarding the purpose of the proposed burning, the nature and quantities of material to be burned, the date when such burning will take place and the location of the burning site. The Code Enforcement Officer may prohibit burning in accordance with the standards and criteria of this Part.

C. Conditions. In addition to the conditions found in Section 6, open burning by commercial operations include:

1. Disposal of yard waste and landscape waste originating and generated from the premises , except residential and agricultural waste.
2. Recognized agricultural or horticultural management purposes to maintain or increase the quantity or quality of agricultural or horticultural production.
3. Instruction in methods of fire fighting or for research in control of fires, in emergency or other extraordinary circumstances for any purpose as determined to be necessary by the DEP.
4. Disposal of hazardous or toxic material where DEP determines that there is no practical alternative method of disposal.

Where the jurisdictional DEP written permission is not applicable, the Code Official shall give permission provided that approved fire safety requirements and emission standards will be met.

Section 9. The following additional standards apply to all open burning:

- A. All open burning shall be attended by a person eighteen (18) years of age or older.
- B. No open burning shall produce malodorous fumes detectible beyond the property line which adversely affects the reasonable health, safety, use, occupancy and/or welfare of others.

- C. There shall be no open burning of any toxic or household hazardous waste, including but not limited to, household trash, books, magazines, newspapers, cardboard and/or any items required to be recycled in the Township, drywall, plastic products including buckets, etc., insulation material, upholstered furniture, garbage, dead animals, humans and animal excrement, human and animal hair, rubber products including tires, hydrocarbon products or flammable liquids, asphalt or tar shingles or roofing materials, foam rubber, nylon, rayon, cotton, wool, polyester or other synthetic material and insulation from copper or other wiring, and solid waste and/or construction/demolition waste as defined by the Pennsylvania Solid Waste Management Act and 25 PA Code, Chapter 217.1, or any other open burning of any material or in any manner which is prohibited by the statutes and/or regulations of the Commonwealth of Pennsylvania.
- D. All items burned shall be readily combustible, and the application of any accelerant used to ignite the fire shall be done in accordance with the recommendations of its manufacturer for safe and proper use.
- E. The use of gasoline, motor oil or other similar petroleum-based products, as accelerants, for a fire are prohibited.
- F. The provisions of the most current edition of the International Fire Code, Section 307 Open Burning, are incorporated herein and must be complied with by any person conducting open burning. To the extent that those provisions conflict with any provisions contained in this Ordinance or other approved regulations, the stricter provision shall apply.
- G. No open burning shall be permitted within any street right-of-way, gutter, or swale except for open burning pursuant to paragraph 4(A), (B) or (C).

Section 10. If because of weather, atmospheric or other conditions, any open burning would be in the judgment of the Board of Supervisors of the Township to constitute a general danger or threat to property or persons in the Township, the Board of Supervisors of the Township may prohibit any open burning until such danger, in their opinion is no longer present. The Township shall notify the public of the prohibition on open burning through the newspapers, posting at the Township Municipal Building and at the local fire companies, and/or through the use of other publications.

A ban on open burning may also be declared by the Township Supervisors, the County of Berks, the Commonwealth of Pennsylvania and/or the United States Government. To the extent that such a fire ban emergency is declared by these entities, it shall supercede the provisions of this Ordinance.

Section 11. Enforcement. The Code Official and any municipal police officer shall have the power to enforce any provision of this Part. The Township specifically authorizes the Code Official to issue citations to enforce this Ordinance in accordance with the Township Civil/Criminal Enforcement Ordinance. The Code Official has the authority to order extinguishment.

Section 12. Penalties and Remedies.

- A. Any person who violates any provisions of this Ordinance shall, upon conviction thereof by summary proceedings, be sentenced to pay all fines as provided by the Township's Civil/Criminal Enforcement Ordinance.
- B. No penalty herein shall prevent the Township from enforcing this Ordinance by equitable, injunctive and other remedies.

Section 13. All other sections, parts and provisions of this Ordinance shall remain in full force and effect as previously enacted and amended.

Section 14. In the event any provision, section, sentence, clause, or part of this Ordinance shall be held to be invalid, illegal, or unconstitutional by a court of competent jurisdiction, such invalidity, illegality, or unconstitutionality shall not affect or impair the remaining provisions, sections, sentences, clauses, or parts of this Ordinance, it being the intent of the Township that the remainder of the Ordinance shall be and shall remain in full force and effect.

Section 15. This Ordinance shall take effect and be in force from and after its enactment as provided by law.

DULY ORDAINED AND ENACTED this 3<sup>RD</sup> day of MAY

ATTORNEYS AT LAW

**ORWIG LAW OFFICES**  
A PROFESSIONAL CORPORATION

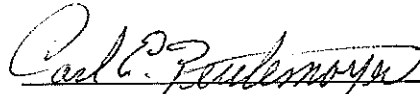
1940 N. 13th Street  
Suite 215  
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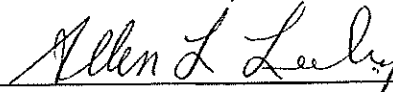
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2006, by the Board of Supervisors of the Township of Maxatawny, Berks County, Pennsylvania, in lawful session duly assembled and shall be effective five days hereof.

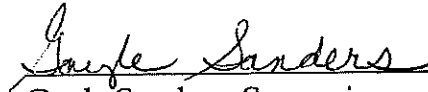
BOARD OF SUPERVISORS OF MAXATAWNY  
TOWNSHIP, BERKS COUNTY, PA



Carl E. Zettlemoyer, Chairman



Allen L. Leiby, Supervisor



Gayle Sanders, Supervisor

Attest:



Township Secretary

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# MINIMUM REQUIREMENTS FOR YOUR SAFETY AND PROTECTION

BURN IN A SAFE INCINERATOR  
(SHOWN BELOW IS A BARREL TYPE INCINERATOR)

① **METAL BARREL**  
IN GOOD CONDITION.

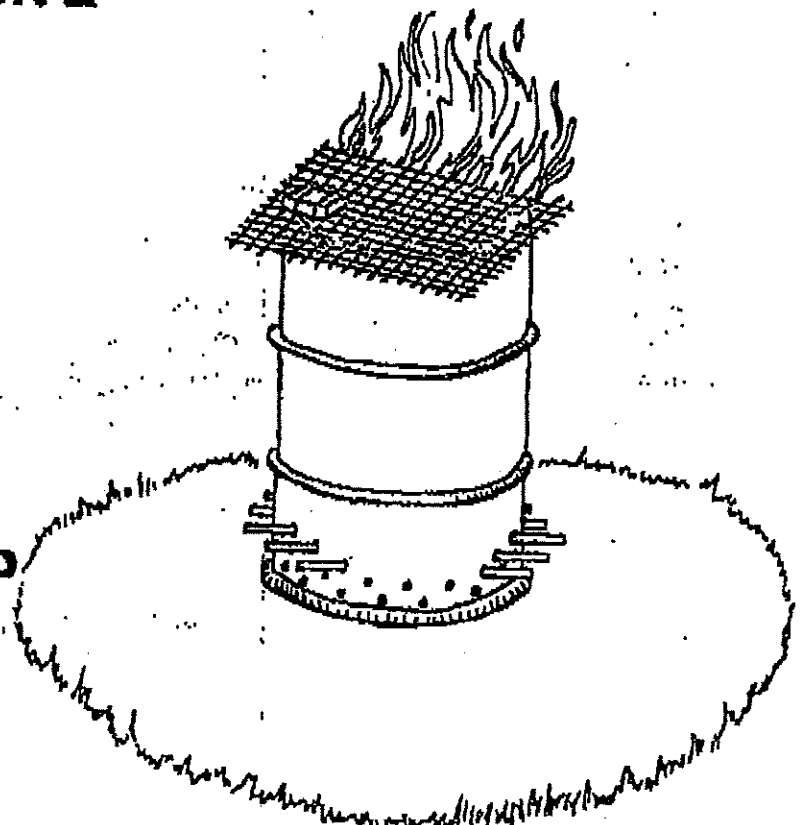
② **HEAVY SCREEN MESH**  
NOT LESS THAN 14-GAUGE WIRE  
WITH HOLES NOT LARGER THAN  
1/4 INCH.

③ **HELP COMBUSTION &  
CLEAN BURNING**  
PUNCH HOLES AND SHOVE STEEL  
RODS OR PIPES THROUGH BAR-  
REL. THIS WILL HOLD BURNING  
MATERIAL UP AND GIVE A  
CLEAN FAST BURN.

④ **DRAFT HOLES**  
NEAR THE BOTTOM NOT LARGER  
THAN ONE INCH IN DIAMETER.

⑤ **GROUND CLEARED**  
AND MAINTAINED AT LEAST 5  
SQUARE FEET AROUND INCIN-  
ERATOR OF ALL MATERIAL THAT  
COULD CAUSE YOUR FIRE TO  
ESCAPE. MORE CLEARANCE MAY  
BE REQUIRED.

⑥ **SCREEN**  
**WEIGHTED**  
TO PREVENT FROM FALLING  
OR BLOWING OFF YOUR INCIN-  
ERATOR.



**EXHIBIT**  
"A"