

ORDINANCE NO. XX 2010-2

AN ORDINANCE AMENDING THE ZONING CODE OF LYKENS TOWNSHIP, COUNTY OF DAUPHIN, COMMONWEALTH OF PENNSYLVANIA, AMENDING SECTION 1903 BY ADDING REGULATIONS FOR OUTSIDE FUEL BURNING APPLIANCES, AMENDING DEFINITIONS, ESTABLISHING PERMIT REQUIREMENTS; REGULATING THE OPERATION, INSTALLATION AND MAINTENANCE OF THE APPLIANCES; ESTABLISHING THE PENALTIES FOR VIOLATIONS OF THE ORDINANCE; ESTABLISHING A RIGHT OF ORDINANCE SEVERABILITY AND SETTING FORTH AN ORDINANCE DATE OF EFFECT.

BE IT ENACTED AND ORDAINED BY LYKENS TOWNSHIP, COUNTY OF DAUPHIN, PENNSYLVANIA, AND IT IS HEREBY ENACTED AND ORDAINED BY THE AUTHORITY OF THE SAME AS FOLLOWS:

**Section 1.** The Code of the Township of Lykens Dauphin County, Article 2, Section 203, List of Definitions is amended to add the following definitions:

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

**Clean Wood** – Wood without paint, or other coating and wood that has not been treated with, including but not limited to, cooper chromium arsenate, creosote pentachlorophenol or other wood life extending preservative.

**Downwind** – The prevailing winds for central Pennsylvania are westerly, therefore, downwind for Lykens Township is defined as lying eastward from a reference point, such as the center of a circular furnace stack.

**EPA-Certified** – A furnace or appliance for which the manufacture has supplied a certificate of compliance, or other proof of compliance, with EPA promulgated emission standards for that particular furnace or appliance type and model. The certification must be in accordance with EPA approved 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 as of the enactment date of this ordinance. The same meaning for “existing” is retained if applied to the OFBA, etc.

**Fine Particulates** – Particles less than 2.5 microns in size present in the emissions from furnaces.

**Firewood** – Trunks and branches of trees and bushes, not including leaves, needles, and vines or brush less than three inches in diameter.

**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.

**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.

**Obstructed** – A solid structure, which may be a dwelling or building, which blocks the wind from blowing directly upon a particular dwelling or building. Trees and bushes do not constitute an obstruction. In addition, partial obstructions, such as fences or portions of buildings, shall also be deemed insufficient to be considered an obstruction.

**Opacity** – The degree to which emissions, other than water, reduce the transmission of light and obscure the view of an object in the background.

**Outside Fuel Burning Appliance (OFBA)** - An outside fuel burning appliance is located outside 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.

**Prohibited Fuels** - The owner shall only burn fuels in the appliance for which the appliance was designed to burn and which are approved by the manufacturer. Although no list of non-burnable materials can be all inclusive, no person shall burn any of the following fuels or materials in any appliance under any circumstances:

- A. Any wood that does not meet the definition of “clean wood”.
- B. Garbage.
- C. Tires and other tire products.
- D. Waste petroleum products.
- E. Paint and paint thinners.
- F. Construction and demolition debris.
- G. Plywood.
- H. Manure.
- I. Asphalt products.
- J. Animal carcasses or other animal by-products.
- K. Plastic, rubber products, wire and cable insulation.
- L. Household trash, newspapers.

- M. Leaves or wet & soggy wood, grass clippings & other vegetative matter.
- N. Recyclable material.
- O. Batteries.
- P. Fiberglass or asbestos products.
- Q. Bio-hazardous waste, bandages, wound dressings, syringes, etc.
- R. Human waste.
- S. Materials that create a foul or offensive odor or that cause smoke emissions that are reasonably offensive to occupants of the surrounding properties.

**Spark Arrester** - A device (located at the top of a chimney) to prevent sparks, embers, or other ignited material above a given size from being expelled to the atmosphere.

**Stack** - A flue system for an outside multi-fuel burning stove that comprises a stainless steel flue pipe extending from a lower anchor plate at the wood burning stove 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.

**Substantiated Complaint** – A written complaint from a resident of the township, which is supported by at least two (2) additional, written complaints from other township residents, not members of the same household, and which relates to the same occurrence within a twenty four (24) hour period. An “occurrence” shall be emissions that affect the same or different properties. All written complaints must be dated and signed to be the basis of a substantiated complaint. Upon establishment of a substantiated complaint the property owner shall be subject to the requirements of **Section 2203.C.6**.

**Verified Complaint** – A verbal or written complaint from a township residence which is mailed, tendered or delivered to a representative of the township, which is subsequently verified to be valid through observation by a township 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 township representative. All written complaints must be dated and signed to be the basis of a verified complaint. Upon establishment of a verified complaint the property owner where the Outside Fuel Burning Appliance (OFBA) is located shall be subject to **Sections 2203.C.6**

**Wood Burning Appliance** – A wood burning furnace, heater, stove or other appliance primarily intended for providing continuous or near continuous heat and hot water to a dwelling or other building.

**Section 2.** The Code of the Township of Lykens Dauphin County, Article 19, General Regulations, Section 1903, Accessory Uses and Structures, Subsection U, is added to read as follows:

**U. Outdoor Fuel Burning Appliances (OFBA)**

**Subsection 1903.U.1 - Purpose, Scope and Applicability:**

- A. Research has indicated that Outdoor Fuel Burning Appliances (OFBA) 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 OFBA 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. OFBAs 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 be easily 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 worst case can cause premature mortality. The most recent research has demonstrated that the health impacts of fine particulates are worse than previously realized, prompting the U.S. EPA, in September, 2006, to lower the National Ambient Air Quality Standard (NAAQS) for 2.5-micron particulates to a maximum 24-hour average of 35 micrograms per cubic meter.<sup>1</sup> It is the intent of the township to regulate the installation, maintenance and operation of OFBAs within the municipality so this air quality standard can be reasonably met.
- B. The Pennsylvania Code, Title 25, Chapter 121, also prohibits air pollution. This ordinance is specifically intended to prohibit any person within the township from operating any OFBA 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 section shall provide regulations for the installation, replacement and operation of any exterior fuel burning appliance whose primary purpose is to convert combustible fuel into a heat or energy source for interior spaces.
- D. This section 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. This ordinance does not apply to patio wood burning units.

**Subsection 1903.U.2 - Regulations for New Outdoor Fuel Burning Appliances:**

- A. All new OFBAs shall be installed not less than twenty-five (25 feet) feet from the nearest dwelling.
- B. The stack shall be at least 12 feet higher than the peak of the unit.
- C. No OFBA may 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.
- D. All OFBAs are required to meet emission standards currently required by the Environmental Protection Agency (EPA). Emission standards currently required by the EPA are hereby adopted by reference together with any amendments or modifications made to them in the future.
- E. All OFBAs shall be installed, operated and maintained in strict conformance 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.
- F. No homemade OFBAs will be allowed to operate in the township.
- G. Only clean wood, coal, heating oil, natural gas, propane, kerosene or other fuel specifically permitted by the manufacturer in writing may be burned in an OFBA. The burning in an OFBA of processed wood products and non-wood products, household or other garbage, recyclable materials, rubber tires, railroad ties, leaves, laminated wood, wet or soggy wood, painted or treated wood and any item not specifically and in writing permitted by the manufacturer is prohibited.
- H. No OFBA shall be operated until inspected and approved for use by an authorized third-party representative appointed by the township supervisors.

- I. No person shall install or operate a new Outside Fuel Burning Appliance in the township without first obtaining a permit.
- J. Ashes or waste cannot be accumulated in a large area on the property. Any accumulation of ashes or waste must be disposed of weekly with your trash.
- K. No OFBA may be operated on days when the EPA has declared an “air quality action day” applicable to the township or Dauphin County.
- L. All storage of materials to be burned in the OFBA shall be kept five (5) feet away from the unit.
- M. The stack or chimney shall be reinforced or guyed so as not to pose a threat to the public or surrounding structures during high winds.
- N. All reinforcement or guying of the stack must be located on the property the OFBA serves.

**Subsection 1903.U.3 – Regulations for Existing Outdoor Fuel Burning Appliances:**

**\*\*\* Note:** All existing OFBAs are grandfathered for one year from the effective date of this ordinance.

- A. All OFBAs are required to meet emission standards currently required by the Environmental Protection Agency (EPA). Emission standards currently required by the EPA are hereby adopted by reference together with any amendments or modifications made to them in the future.
- B. All OFBAs shall be operated and maintained in strict conformance with the manufacturer’s instructions 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.
- C. By the end of the grandfathered period all stacks must be at least 12 feet from the peak of the unit.
- D. Only clean wood, coal, heating oil, natural gas, propane, kerosene or other fuel specifically permitted by the manufacturer in writing may be burned in an OFBA. The burning in an OFBA of processed wood products and non-wood products, household or other garbage, recyclable materials, rubber tires, railroad ties, leaves, laminated wood, wet or soggy wood, painted or treated wood and any item not specifically and in writing permitted by the manufacturer is prohibited.

- E. No OFBA may be operated on days when the EPA has declared an “air quality action day” applicable to the township or Dauphin County.
- F. If an OFBA is more than fifty (50%) percent torn down, physically deteriorated or decayed, the appliance must be removed and/or replaced with a new unit and the new unit must comply with all of the regulations listed in **Section 3** of this ordinance.
- G. Ashes or waste cannot be accumulated in a large area on the property. Any accumulation of ashes or waste must be disposed of weekly with your trash.
- H. All storage of materials to be burned in the OFBA shall be kept five (5) feet away from the unit.
- I. An authorized representative appointed by the township supervisors shall inspect all OFBAs in existence at the effective date of this ordinance for compliance with this ordinance.

**Section 3.** The Zoning Code of the Township of Lykens Dauphin County, Article 22, Administration and Enforcement, Section 2202, Zoning Permits, Subsection A, is amended to add the following:

- 8. No person shall install, replace or operate a new or existing OFBA in the township without first obtaining a permit.

**Section 4.** The Zoning Code of the Township of Lykens Dauphin County, Article 22, Administration and Enforcement, Section 2202, Zoning Permits, Subsection C, Issuance of Permits is amended after the first unnumbered paragraph to add the following:

A permit to install, replace or operate an OFBA shall remain in effect for three (3) years from the time of issuance, unless revoked by the township for any reason. A new permit must then be applied for and the OFBA must be re-inspected for compliance with manufacturers', township and EPA specifications on file in the township office.

**Section 5.** The Zoning Code of the Township of Lykens Dauphin County, Article 22, Administration and Enforcement, Section 2203, Inspection by the Zoning Officer, is amended to add the following:

- C. The following procedure shall be followed when applying for an OFBA permit:
  - 1. Anyone who desires to install, replace or operate a new or existing OFBA upon their property in the township, must complete a zoning application and submit it to the township zoning officer along with

the requisite application fee, at least thirty (30) days prior to the desired date of installation, replacement or operation.

2. Proof that the wood-burning appliance is certified to meet applicable EPA emission standards must be submitted with the application, unless the appliance is considered by EPA to be exempt from certification due to generally recognized low emissions. As of the date of this ordinance, the following wood-burning appliances are generally recognized by EPA to not need certification due to low emissions: (a) masonry stoves, and (b) pellet stoves, provided the air-fuel ratio is greater than 35:1. For all other uncertified wood-burning appliances, proof of emissions lower than required for EPA-certified non-catalytic indoor stoves must be submitted in lieu of proof of certification. The owner of the wood-burning appliance shall also be required to submit with the proof of low emissions, a copy of the manufacturer's recommended operating parameters and fuels necessary to achieve the low emissions. This information shall be kept on file at the township office along with copies of the permit, and proof of certification, or other proof of low emissions.
3. If an existing chimney is to be utilized, a statement from the appointed inspectors, stating that the chimney has been inspected and is suitable for use with manufacturer's recommended fuels, shall be submitted with the Application. If a new chimney is to be constructed, a construction permit will be required.
4. Should the applicant desire to appeal a denial, written notice of the request for appeal shall be forwarded to the township secretary within thirty (30) days of the date of denial along with the requisite appeal fee.
5. Upon receipt of an appeal, a hearing shall be scheduled before the zoning hearing board within sixty (60) days and shall be held at the township building, or other designated location within the township. Notice of the hearing shall be posted at the township building and other appropriate location as determined by township supervisors; and shall be served by the township via United States Certified Mail, or by hand delivery, upon the applicant and all property owners having an adjoining property line.
6. All inspections shall be conducted by a certified inspector or third party appointed by the supervisors. 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 the township, the township may conduct an inspection to determine if the OFBA is being operated in



accordance with the manufacturer's recommended operating parameters and approved fuels from the manufacturer's materials on file at the township office. 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.

**Section 6.** The Zoning Code of the Township of Lykens Dauphin County, Article 22, Administration and Enforcement, Section 2207, Violations, subsection A, Notice of Violation is amended as follows:

4. Every day that a violation of this ordinance continues, it shall constitute a separate offense.
5. In the event a violation of **subsections U.2.(J) and U.3.(F)** of this ordinance is found, the penalties set forth by resolution shall be doubled.
6. Failure of the owner to pay the costs and/or any fine within sixty (60) days shall result in permanent revocation of their permit.

**Section 7.** The Zoning Code of the Township of Lykens Dauphin County, Article 22, Administration and Enforcement, Section 2207, Violations, is amended to add the following:

D. Liability

1. The owner of the property utilizing or maintaining an OFBA shall be responsible for all fire suppression costs and any other liability resulting from damage caused by a fire.
2. The owner of the property utilizing or maintaining an OFBA shall be responsible for any damage or other cost to neighboring properties associated with the installation, maintenance and operation of an OFBA.

**Section 8.** Severability .If any sentence, clause, section or part of this ordinance is for any reason be found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this ordinance. It is hereby declared as the intent of Lykens Township that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

**Section 9.** Repealer. All other ordinances or parts thereof, which are in conflict with this ordinance, are hereby repealed.

**Section 10.** – Effective Dates

1. This ordinance shall take effect immediately upon enactment for all new Outside Fuel Burning Appliances installations,
2. This ordinance shall take effect seven (7) days from the date of enactment for all Outside Fuel Burning Appliances currently under construction,
3. Exceptions: For township residences who have existing Outdoor Fuel Burning Appliances in place that do not conform to **subsection U.3** that portion of this ordinance will take effect one year from date of enactment.

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*I EPA, Fact Sheet: Regulatory Impact Analysis of EPA's Final Revisions to the NAAQS for Particle Pollution. Accessed on-line: 2/17/07 @ <http://epa.gov/pm/fs20061006.html>.*