

**BOROUGH OF TOWANDA
ORDINANCE NO. 2017-1**

**AN ORDINANCE REGULATING THE CONDUCT OF OPEN
BURNING AND EMISSION OF SMOKE WITHIN THE
BOROUGH OF TOWANDA**

The Borough Council of Towanda Borough, Bradford County, Pennsylvania hereby enacts and ordains as follows:

SECTION 1. PURPOSE: The purpose of this ordinance is to regulate open burning and the emission of smoke within the Borough of Towanda, in order to protect the public health, safety, and welfare of its inhabitants, to minimize air pollution and other deleterious environmental conditions resulting from open burning, and to abate public nuisances associated with open burning.

SECTION 2. CHAPTER 253, ARTICLE I., SECTION 253-7 of the Towanda Borough Code is hereby repealed in its entirety and replaced with the following:

SECTION 253-7, OPEN BURNING:

A. DEFINITIONS: For purposes of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

BOROUGH: The Borough of Towanda, Bradford County, Pennsylvania

OPEN BURNING: The burning of any matter outdoors if the resulting combustion by-products are emitted directly into the atmosphere, except a recreational or camp fire as defined herein. Fires contained within mobile cooking or heating devices such as charcoal grills, wood smokers, manufactured hibachis, and propane or natural gas cooking or heating devices are not considered to be open burning.

OWNER: The person who, alone or jointly or severally with others is the owner of record of a property as filed with the Bradford County Recorder of Deeds. In the case where an owner is represented by an agent, including but not limited to a manager, executor, administrator, guardian of the estate, trustee or other fiduciary, such person so representing the actual owner shall be bound to comply with the provisions of this section to the same extent as if he or she were the owner.

PERSON: Any individual, partnership, association, syndicate, corporation, company, or legal entity subject to law.

PROPERTY: A piece, parcel, lot or tract of land.

RECREATIONAL FIRE: A fire, set with an approved starter fuel, no more than three feet in height, contained within a recreational fire site: using dry, clean wood; producing little detectable smoke, odor, or soot beyond the property line; conducted with an adult tending the fire at all times; for recreational, ceremonial, or social purposes or food preparation; extinguished

completely before quitting the occasion; and respecting weather conditions, neighbors, burning bans, and air quality requirements so that nuisance, health, or safety hazards will not be created. A campfire is a type of recreational fire. No more than one recreational fire is allowed on any property at one time.

RECREATIONAL FIRE SITE: An area of no more than a three foot diameter circle (as measured from the inside of the fire ring or border): completely surrounded by non-combustible and non-smoke or odor-producing material, either natural rock, cement, brick, tile, blocks, or ferrous metal. Burning barrels including fifty-five gallon drums and similar containers are not a recreational fire site. Recreational fire sites shall not be located closer than twenty-five feet to any structure made of combustible material.

SECTION: This section 253-7 of the Towanda Borough Code.

STARTER FUELS: Dry, untreated, or unpainted kindling, branches, or charcoal fire starter. Paraffin candles and alcohols are permitted as starter fuels and as aids to ignition only. Propane gas torches or other clean gas burning devices causing minimal pollution may be used to start an open burn. Gasoline, kerosene and other explosive or highly volatile petroleum or chemical based substances are not approved starter fuels.

WOOD: Dry, clean fuels, such as twigs, branches, limbs, manufactured fireplace logs, charcoal, cord wood, or untreated dimensional lumber. "Wood" does not include wood that is green with leaves or needles, rotten, wet, oil-soaked, or treated with paint, glue, or preservatives. Clean wood pallets may be used for recreational fires when cut into less than three-foot lengths.

B. NUISANCES DECLARED; RESPONSIBILITY; VIOLATION:

1. Any open burning which does not comply with the provisions with this section is hereby declared to be a public nuisance.

2. Any open burning which does not comply with the provisions with this section shall be deemed to be in violation of this section. The property owner of the premises upon which such violation is occurring, as well as the person engaging in such violation, shall be subject to the penalties and remedies prescribed herein.

C. PROHIBITED MATERIALS:

1. No person shall conduct, cause, or permit the open burning of oils, petroleum fuels, rubber, plastic, metals, chemically based or treated materials, or other materials that produce excessive or noxious fumes, smoke, soot, ash or other airborne emissions or combustion by-products such as, but not limited to: tires; railroad ties; treated, painted or glued wood; composite shingles; tar paper; insulation; composition board; sheet rock; wiring; furniture; appliances; mattresses; box springs; bedding; diapers; and batteries.

2. No person shall conduct, cause, or permit the open burning of: hazardous waste or materials from salvage operations; solid waste generated from an industrial or manufacturing process; materials from a service or commercial establishment; building materials generated from construction or demolition of commercial, industrial or residential structures.

3. No person shall conduct, cause, or permit the open burning of discarded materials resulting from the handling, processing, storage, preparation, serving, or consumption of food, or

the slaughter, handling or processing of animals.

4. No person shall conduct, cause, or permit the open burning of any leaves, weeds or grass clippings.

5. No person shall conduct, cause or permit the open burning of any materials accepted for curbside recycling pickup at no cost under a recycling service provided by or contracted for by the Borough, such as, but not limited to: office paper; magazines; newsprint; corrugated paper, cardboard; aluminum, steel or by-metallic cans; glass; plastic containers.

D. PERMITTED OPEN BURNING; SPECIAL CIRCUMSTANCES:

1. Open burning may be conducted for the following purposes when necessary to eliminate a health or safety hazard that cannot be abated by other practical means.

2. No person shall conduct, cause or permit open burning under this subsection D. without first having obtained any license, permit or other written authorization required under any applicable federal, state or local law, rule or regulation including, but not limited to the Pennsylvania Air Pollution Control Act, 35 P.S. § 4001 et seq., the federal Clean Air Act, 42 U.S.C. § 7401 et seq., and the rules and regulations of the Pennsylvania Department of Environmental Protection and United States Environmental Protection Agency, all of which are incorporated in this section by reference.

E. ENFORCEMENT; COMPLIANCE; VIOLATIONS AND PENALTIES; OTHER REMEDIES; ACTION TO ABATE:

1. This section shall be enforced by the Borough Code Enforcement Officer. This section shall also be enforced by any officer of the Borough Police Department or the Pennsylvania State Police.

2. Failure to comply with any provision of this section, and/or failure to comply with an order to abate a nuisance, shall constitute a violation of this section.

3. This section shall be enforced by action brought before a District Magisterial Judge in the same manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure. Any person who violates or permits a violation of the provisions of this section shall, upon conviction in a summary proceeding, pay a fine of not less than \$100.00 nor more than \$1,000.00 per violation for a first offense, not less than \$200.00 nor more than \$1,000.00 per violation for a second offense, and not less than \$300.00 nor more than \$1,000.00 per violation for a third offense, plus all court costs and reasonable attorney's fees incurred by the Borough in the enforcement proceedings, and/or be imprisoned to the extent allowed by law for the punishment of summary offenses. Each day or portion thereof that a violation exists or continues shall constitute a separate violation. Each provision of this section that is violated shall also constitute a separate violation. Further, the appropriate officers or agents of the Borough are hereby authorized to seek equitable relief, including injunction, to enforce compliance with this section.

4. Except as otherwise required by law, all fines, penalties, costs and reasonable attorney's fees collected for the violation of this ordinance shall be paid to the Borough for its general use.

5. In addition to the fines, judgments and/or imprisonment remedies of subsection E.3. above, the Borough may pursue independent and cumulative remedies at law or equity including a demand for reimbursement of all court costs and reasonable attorney's fees.

6. In addition, if the owner or person in control of any property at which an act or condition constituting a violation of this section is occurring, fails to respond to an order of compliance, the Borough Code Enforcement Officer and/or officer of the Borough Police Department or the Pennsylvania State Police shall be empowered to cause compliance to be commenced or completed by the Borough, and Borough may enter a municipal lien upon the premises to recover the cost and expense thereof.

F. REPEALER: All ordinances or parts of ordinances which are inconsistent with this ordinance or hereby repealed. Without limiting the foregoing, Ordinance No. 5-1996, Ordinance No. 3-2000 and Ordinance No. 2010-6 specifically are hereby repealed.

G. SEVERABILITY: If any sentence, clause, section or part of this ordinance is for any reason found to be unconstitutional, illegal or invalid, all remaining provisions, sentences, clauses, sections or parts of this ordinance shall remain in effect. It is hereby declared as the intent of the Borough that this ordinance would have been adopted if such unconstitutional, illegal or invalid sentence, clause, section or part had not been included herein.

H. MUNICIPAL LIABILITY: The Borough and its agents, officials, and representatives shall not under any circumstances be liable or legally responsible for activities or conditions which constitute a nuisance under the terms of this ordinance. Any liability or damages resulting from activities or conditions constituting a nuisance are the sole responsibility of the owner of the property and/or the person or persons responsible for such activity or condition. The failure to enforce the terms of this ordinance shall not constitute a cause of action against the Borough or its agents, officials or representatives.

I. EFFECTIVE DATE: This Ordinance shall be effective immediately and shall remain in force until modified, amended or rescinded by the Borough of Towanda, Bradford County, Pennsylvania.

ENACTED AND ADOPTED by the Council this 3rd day of April, 2017.

ATTEST: COUNCIL OF THE BOROUGH OF TOWANDA

By: _____
Diane M. Kulick
Borough of Towanda Secretary

By: _____
Mr. Paul S. Sweitzer
Council President

APPROVED, this 3rd day of April, 2017, by the Council President Borough of Towanda.