

**ORDINANCE NO. 57**

**BENNER TOWNSHIP**

**AN ORDINANCE REGULATING OPEN BURNING**

BE IT ENACTED AND ORDAINED, AND IT IS HEREBY ENACTED OF AND ORDAINED, THE BOARD OF SUPERVISORS OF THE TOWNSHIP BENNER AS FOLLOWS:

**Section 1. Title.** This Ordinance shall be known and may be cited as the Benner Township Open Burning Ordinance.

**Section 2. Authority.** This Ordinance is enacted pursuant to Section 12 of the Air Pollution Control Act, as amended, 35 P.X. 4012(a); and Section 702, clauses XXIX, XXXII, XLI, XLVII, and LXII of the Second Class Township Code, 53 P.S. 65729, 65732, 65741, 65747, and 65762.

**Section 3. Declaration.** It is hereby declared to be a matter of public health and safety to regulate fires and open burning in the Township of Benner for the following purposes:

- a. air pollution control;
- b. protection of buildings, housing, and property;
- c. protection of health, fire, and public safety.

**Section 4. 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:

**OPEN FIRE:** Any fire which is burned outside of an enclosed structure or building; same as OPEN BURNING.

**PERSON:** Any individual, partnership, association, syndicate, company, firm, trust, corporation, department, bureau, agency, or other entity recognized by law as the subject of rights and duties.

**RIGHT OF WAY:** The total width of any land reserved or dedicated for the public use of vehicular or pedestrian traffic; including street, avenue, boulevard, road, highway, freeway, parkway, lane, alley viaduct, sidewalk, and any other ways used for vehicular and pedestrian traffic which are dedicated to public use or to the use of residents in a land development or subdivision.

**VEGETATIVE MATTER:** Tree leaves, grass clippings, cuttings of plants, and limbs of trees up to two inches (2") in diameter except for wood and wood products.

**WOOD AND WOOD PRODUCTS:** Trunks of trees and limbs of trees exceeding two inches (2") in diameter, and products made wholly from trees, except for tree leaves.

**Section 5. Open Fires Prohibited.** It shall be unlawful for any person to ignite or feed any open fire whatsoever in Benner Township except for certain types of fires which are:

- a. Permitted according to the regulations contained in this Ordinance; or
- b. Which are exempted from regulation by the terms of this Ordinance.

**Section 6. Open Fires Permitted Subject to Regulations:** The following types of fires are permitted subject to the specific and general regulations contained herein:

A. Burning of Wood and Wood Products: Open burning of wood and wood products is permitted subject to the following regulations:

1. Permit Required for Open Burning to Clear Land: A landowner may obtain a one-time permit for burning trees and vegetation on a lot for the purpose of clearing the land for agriculture or construction of buildings. Said permit shall be applied for in advance to the Code Enforcement Officer.
2. No Permit Required: All other burning of wood and wood products is permitted without the necessity of applying for a permit, subject to the following regulations:
  - a. All open fires shall be in a container such as a masonry fire place or metal container for fires.
  - b. No metal container shall be larger than a 55 gallon drum.
  - c. All containers for fires shall be covered by a screen or wire mesh to prevent sparks from flying while burning.
  - d. All open fires shall be attended at all times by the person igniting the fire or such other person who shall be responsible to prevent the spread of the fire or hazardous conditions.
  - e. All open fires shall be conducted only on premises owned by the person responsible for such fire provided, however, that the term premises shall not include the area within the right of way of any street.

B. Vegetative Matter: Open burning of vegetative matter is permitted without the necessity of applying for a permit subject to the following regulations:

1. The fire must be attended at all times;
  2. The site of the fire shall be controlled so that it does not endanger property.
- C. Burning of Fields for Weed or Brush Control or for Farm Purposes. The burning of fields for weed or brush control or for farm purposes shall be permitted without the necessity of applying for a permit subject to the following regulations:
1. The person desiring to burn a field for weed or brush control shall first notify the fire department which serves his or her area.
  2. The fire shall be attended at all times.
  3. The person burning shall have sufficient fire suppression equipment and personnel present at all times to maintain control of the fire.
- D. General Regulations. Any fire permitted pursuant to subsection A, B, or C of this section, shall be subject to the following General Regulations:
1. No open fire shall be permitted between the hours of 7:00 p.m. and 7:00 a.m. All open fires shall be extinguished completely by 7:00 p.m.
  2. No open fires shall be permitted in a right-of-way.
  3. No open fire shall be conducted closer than 15 feet from a building located on the property of the person conducting the fire, and no closer than 30 feet from a building on the land of another.

**Section 7. Open Fires Exempted.** The following types of fires, provided that such fires are of wood and wood products only, are exempted from the regulations set forth in this Ordinance:

- A. Fires solely for the cooking of food for immediate consumption.
- B. Camp fires for warmth, fellowship, food preparation or ceremonial purposes by bona fide groups of individuals such as hunting camps or public organizations such as Boy Scouts or Girl Scouts.
- C. Fires set in the performance of public duty by any fireman or public official for official purposes.

**Section 8. Penalties for Violations of Section 5: Air Pollution Control.** Any person who suffers or permits on the property controlled by such person, or who conducts, any open fire of any materials other than wood or wood products, vegetative

matter or for weed or brush control, in violation of Section 5 of this Ordinance, shall, for each offense, be subject to the provisions of Section 12(f) of the Air Pollution Control Act, Act of 1960, January 8, P.L. (1959) 2119, as amended, 35 P.S. 4012 (h), as such now is or may in the future be amended, providing for prosecutions, costs, civil penalties, civil contempt, collection, lien and assessment of civil penalties under other provisions of the Air Pollution Control Act. Each day upon which a violation continues or occurs shall constitute a separate offense.

**Section 9. Penalties and Violations of Section 6.** Any person violating any of the provisions of Sections 6 of this Ordinance shall, upon conviction thereof before any Justice of the Peace or District Magistrate, in a summary proceeding, be sentenced to pay a fine or penalty of not more than One thousand dollars (\$ 1,000) plus costs, and in default of the payment of the fine and costs, the defendant may be sentenced to the county jail for a period not exceeding thirty (30) days. This penalty section is enacted pursuant to Section 702, cl. XLI, of the Section Class Township Code, 53 P.S. Section 65741, for health, fire and safety and for air and water pollution purposes.

**Section 10. Severability.** If any provision of this Ordinance is declared invalid, illegal or unconstitutional, such invalidity, illegality or unconstitutionality shall not affect the remainder of the Ordinance, it being the intent of the Board of Supervisors that the remainder of the Ordinance would have been enacted without such provision.

ENACTED AND ORDAINED BY THE BOARD OF SUPERVISORS OF BENNER TOWNSHIP on the 17th day of November A.D. 1992.

Board of Supervisors of Benner Township

by: \_\_\_\_\_  
Michael Kelleher, Chairman

ATTEST:

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Sharon Royer, Secretary

TOWNSHIP SEAL