

EAST GREENVILLE BOROUGH
MONTGOMERY COUNTY, PENNSYLVANIA

ORDINANCE NO. 2009- 07

ADDING TO THE CODE OF ORDINANCES OF THE BOROUGH OF EAST GREENVILLE ARTICLE II OF CHAPTER 58, ENTITLED OUTDOOR WOOD-FIRED BURNERS/FURNACES DESIGNED TO CONTROL AND PREVENT AIR POLLUTION FROM THE USE OF OUTDOOR WOOD-FIRED BOILERS, ALSO KNOWN AS OUTDOOR WOOD-FIRED FURNACES, OUTDOOR WOOD-BURNING APPLIANCES, OR OUTDOOR HYDRONIC HEATERS; DEFINING CERTAIN TERMS USED HEREIN; PROVIDING FOR REGULATIONS, EXCEPTIONS, ENFORCEMENT ORDERS, RESPONSIBILITY OF OWNERS AND OPERATORS, PENALTIES, UNLAWFUL CONDUCT AND PUBLIC NUISANCES.

SECTION 1. There is hereby added to the Code of Ordinances of the Borough of East Greenville a new article, Article II, to Chapter 58 and titled "Outdoor Wood-Fired Burners/Furnaces".

SECTION 2. The aforesaid Chapter shall read as follows:

§ 58-11. – Legislative Intent.

Although outdoor wood-fired burners/furnaces may provide an economic alternative to conventional heating systems, concerns have been raised regarding the safety and environmental impacts of these heating devices, particularly the production of offensive odors and potential health effects of uncontrolled emissions. This Ordinance is intended to ensure that outdoor wood-fired burners/furnaces are utilized in a manner that does not create a nuisance and is not detrimental to the health, safety and general welfare of the residents of East Greenville Borough.

§ 58-12. – Applicability.

This Ordinance applies to the installation and use of all outdoor wood-fired boilers within East Greenville Borough. This Ordinance does not apply to burning which does not create a nuisance or a fire hazard and which is attended by a responsible person at all times until completely extinguished and is done for the following purposes:

A. Outdoor grilling or cooking using charcoal, wood, propane or natural gas in cooking or grilling appliances;

B. Burning in a stove, fireplace and those furnaces not regulated herein; unless the material being burned includes refuse as defined herein;

C. The use of propane, acetylene, natural gas, heating oil, gasoline or kerosene in a device intended for heating, construction, manufacturing or maintenance activities.

§ 58-13. – Definitions and Word Usage.

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:

CLEAN WOOD – Wood that does not have paint, stains or other types of coatings, and wood that has not been treated with substances, including, but not limited to, copper arsenate, creosote or pentachlorophenol, and wood pellets made from clean wood.

CODE ENFORCEMENT OFFICER – The Zoning Officer or other person appointed by East Greenville Borough to administer and enforce this Ordinance whose duties shall include responding to resident questions and complaints and performing other tasks as Borough Council may assign.

EPA OWHH PHASE 1 PROGRAM – EPA OWHH (Outdoor Wood-Fired Hydronic Heater Program) Phase 1 Program administered by the United States Environmental Protection Agency.

EPA OWHH Phase 1 Program Qualified Model: An Outdoor Wood-Fired Hydronic Heater that has been EPA OWHH Phase 1 Program qualified. The model has met the EPA OWHH Phase 1 emission level and has the proper qualifying label and hangtag.

EXISTING OUTDOOR WOOD-FIRED BURNER/FURNACE – An Outdoor Wood-Fired Burner or Boiler/Furnace that was purchased and installed prior to the effective date of this Ordinance.

OUTDOOR WOOD-FIRED BURNERS/FURNACES – A fuel burning device designed to:

A. Burn clean wood or other manufacturer approved fuel products (i.e., corn and coal);

B. That the manufacturer specifies for outdoor installation or installation in structures not normally occupied by humans (e.g. garages); and

C. Heats building space and/or water via the distribution, typically through pipes, of a fluid heated in the device, typically water or a water/antifreeze mixture. Outdoor wood-fired boilers are also known as outdoor wood-fired furnaces, outdoor wood-burning appliances, or outdoor hydronic heaters, etc.

NEW OUTDOOR WOOD-FIRED BURNER/FURNACE – An outdoor furnace that is installed, established or constructed after the effective date of this Ordinance.

NUISANCE – Nuisance shall be defined as conduct tending to cause danger, discomfort or undue annoyance or undue unpleasantness to persons.

STACK or CHIMNEY – Any vertical structure enclosing a flue or flues that carry off smoke or exhaust from a solid fuel fired heating device or structure, including that part of the structure extending above a roof.

§ 58-14. – Permits Required.

A. Any person desiring to install an outdoor wood-fired burner/furnace in East Greenville Borough shall obtain a permit from the Code Enforcement Officer and pay the permit fee set by resolution of East Greenville Borough Council.

B. Prior to February 1st of each calendar year, the owner of a lot upon which an outdoor wood-fired burner/furnace is located shall apply for an operating permit, which shall be valid for the period from March 1st of the year of application through March 1st of the following calendar year. The owner shall pay all fees imposed by the Borough of East Greenville for such operating permit application and the inspection of the outdoor wood-fired burner/furnace to determine compliance with this chapter.

§ 58-15. – Suspension of Permit.

A permit issued pursuant to this Ordinance may be suspended if the Code Enforcement Officer or other person appointed by Borough Council to enforce this Ordinance determines such to be necessary to protect the public health, safety and welfare of the residents of East Greenville if any of the following conditions occur:

A. Malodorous air contaminants from the Outdoor Wood-Fired Burner/Furnace are detectable outside the property of the person on whose land the Outdoor Wood-Fired Burner is located;

B. The emission from the Outdoor Wood-Fired Burner/Furnace interferes with the reasonable enjoyment of life on neighboring property;

C. The emissions from the Outdoor Wood-Fired Burner/Furnace cause damage to vegetation on neighboring property;

D. The emissions from the Outdoor Wood-Fired Burner/Furnace are or may be harmful to human or animal health;

E. The burning of any material referenced in § 58-20 of this chapter. A suspended permit may be reinstated once the condition which resulted in suspension is remedied and reasonable assurances are given that such condition will not recur. Recurrence of a condition which has previously resulted in suspension of a permit shall be considered a violation of this Ordinance subject to the penalties provided within this Ordinance.

§ 58-16. – Existing Outdoor Wood-Fired Burners/Furnaces.

Any Outdoor Wood-Fired Burners/Furnaces in existence on the effective date of this Ordinance shall be permitted to remain, provided that the owner applies for and receives a permit from the Code Enforcement Officer within one (1) year of the effective date of this Ordinance. If the owner of an existing Outdoor Wood-Fired Burner/Furnace does not receive a permit within one (1) year of the effective date of this Ordinance, the Outdoor Wood-Fired Burner/Furnace shall be removed and is subject to the regulations provided for in § 58-18 of this chapter.

§ 58-17. – New Outdoor Wood-Fired Burner/Furnace.

A. No person shall, from the effective date of this Ordinance, construct, install, establish, operate or maintain an outdoor furnace other than in compliance with the applicable sections of this Ordinance.

B. No person shall, from the effective date of this Ordinance, operate an outdoor furnace unless such operation complies with requirements of this local law regarding fuels that may be burned in an outdoor furnace as set forth in § 58-18H of this chapter and chimney height as set forth in § 58-18J of this Chapter.

C. All outdoor furnaces shall be constructed, established, installed, operated and maintained in conformance with the manufacturer's instructions and the requirements of this Ordinance. In the event of a conflict, the requirements of this Ordinance shall apply unless the manufacturer's instructions are more strict, in which case the manufacturer's instructions shall apply.

D. The owner of any outdoor furnace shall produce the manufacturer's owner's manual or installation instructions to the Code Enforcement Officer for his review prior to installation.

E. All outdoor furnaces shall be laboratory tested and listed to appropriate safety standards, such as UL, CAN/CSA, ANSI or other applicable safety standards.

F. If an existing outdoor furnace is, through the course of a proper investigation by local authorities, found to be creating a verifiable nuisance, as defined by the Borough's ordinance or state laws, the Borough may issue a cease and desist order stopping operation of the furnace until reasonable steps can be taken to terminate the nuisance.

G. Absent an emergency situation the Code Enforcement Officer shall, following an investigation that reveals a verifiable nuisance, serve upon the owner of property on which an outdoor furnace is located his notice of intent to issue a cease and desist from operation of said furnace until reasonable steps can be taken to make sure the wood furnace will not be a nuisance.

H. Following the issuance of a notice of intent to cease and desist, the home owner shall have five (5) days to file for a hearing before the Borough Council to determine if a cease and desist order should be enforced. If the homeowner fails to file an Appeal or fails to have the Code Enforcement Officer lift the intent to issue a cease and desist order, the homeowner shall stop using the furnace.

I. In the event that the Borough issues a cease and desist order as outlined above, the owner shall be allowed to make modifications to the unit that eliminate the nuisance. For example, extending the chimney or relocating the outdoor furnace.

J. Outdoor furnaces shall not be operated during the months of June, July, August and September, unless specifically authorized by Resolution of Borough Council adopted in light of emergency situations.

K. All existing outdoor furnaces which are located within East Greenville Borough on the effective date of this Ordinance shall, upon application, be granted a permit. The permit shall be issued without fee and shall be proof that the outdoor furnace predated the Ordinance. Owners and/or operators of existing outdoor furnaces shall not be required to abide by the provisions of this Ordinance concerning installation and location. All existing outdoor furnaces shall, however, comply with the same terms and conditions imposed upon new installations in regard to the type of fuel used or prohibited, seasons of operation and quality of operation as it effects the community.

L. In the event that an outdoor furnace, a wood furnace or existing outdoor furnace is determined to be 50% torn down, physically deteriorated, rusted or decayed, the appliance must be removed and/or replaced with a new unit. In the event that such a unit is replaced, all the requirements of § 58-18 must be followed.

§ 58-18. – Installation of Outdoor Wood-Fired Burners/Furnace.

Any person desiring to install an Outdoor Wood-Fired Burner/Furnace within East Greenville Borough shall obtain a permit from the Code Enforcement Officer. The applicant for such a permit shall meet the following conditions:

- A. Present a plan showing all property lines, the locations and distances of all dwellings or occupied buildings on adjoining properties, and the proposed locations of the Outdoor Wood-Fired Burner/Furnace.
- B. Present evidence that the applicant has obtained a PA UCC Mechanical Uniform Construction Code permit for the installation of the Outdoor Wood-Fired Burner/Furnace and its connection to the mechanical system of the structure it will serve.
- C. Provide a copy of the manufacturer's specification and instructions, which the applicant agrees to comply with and not alter at any time.
- D. Provide evidence that the Outdoor Wood-Fired Burner/Furnace has been laboratory tested and found to comply with appropriate safety standards such as UL (Underwriter's Laboratories) or ANSI (American National Standard Institute) standards.
- E. All Outdoor Wood-Fired Burners/Furnaces shall be equipped with properly functioning spark arrestors.
- F. The permittee shall not be permitted to have more than two cords of firewood at any one time on the property. Any cutting and splitting of firewood shall comply with those provisions of the Code of Ordinances of the Borough of East Greenville, as amended, which deal with Noise Control. All firewood shall be stacked neatly in a pile in the rear of the principle structure only. No firewood shall be stacked within the accessory yard setbacks of the property.
- G. The application shall be signed by all owners of the lot on which the Outdoor Wood-Fired Burner/Furnace will be located and the contractor installing the Outdoor Wood-Fired Burner/Furnace.
- H. Fuel burned in any new or existing outdoor furnace shall be only natural untreated wood, wood pellets, coal, corn products, biomass pellets or other listed fuels specifically permitted by the manufacturer's instruction.
- I. The following fuels are strictly prohibited in new or existing outdoor furnaces:
 1. Wood that has been painted, varnished or coated with similar materials and/or has been pressure treated with preservatives and contains resins or glues as in plywood or other composite wood products, including, but not limited to, particleboard.

2. Rubbish or garbage, including, but not limited to, food wastes, food packaging and food wraps.

3. Any plastic materials, including, but not limited to, nylon, PVC, ABS, polystyrene or urethane foam and synthetic fabrics, plastic films and plastic containers. This provision is in addition to all other provisions of this section.

4. Rubber, including tires or other synthetic rubber-like products.

5. Newspapers, cardboard or any paper with ink or dye products.

6. Paints or paint solvents.

J. Setbacks for new outdoor furnaces (models not EPA OWHH Phase 1 Program Qualified:

1. All outdoor furnaces shall have a chimney that extends at least nine (9) feet above ground level. An outdoor furnace in existence on the effective date of this Ordinance shall, within one hundred twenty (120) days of the adoption of this Ordinance, install a chimney that extends at least nine (9) feet in height above the ground surface. The chimney heights of new outdoor furnaces shall be determined by the distance from the nearest residence. The outdoor furnace shall be located with due consideration to the prevailing wind direction.

2. Outdoor furnaces shall be located no less than one hundred (100) feet from any residence that is not served by the outdoor furnace and no less than seventy-five (75) feet from any vacant lot property lines.

3. If the outdoor furnace is located between one hundred (100) feet and three hundred (300) feet of any residence not served by it, the stack shall be at least two (2) feet higher than the peak of the residence not being served by the outdoor furnace.

4. All outdoor furnaces shall be equipped with properly functioning spark arresters to be in conformity with manufacturer's specifications with regard to the release of sparks.

5. Installation shall be in accordance with specifications attached hereto as Exhibit "A" and incorporated by reference thereto.

§ 58-19. – Replacements.

If an Outdoor Wood-Fired Burner/Furnace is replaced or upgraded, a permit shall be required pursuant to § 58-14 of this Chapter.

§ 58-20. – Use of Outdoor Wood-Fired Burner/Furnace.

A. The only substance that may be burned in an Outdoor Wood-Fired Burner/Furnace is clean wood (see definition, Section 3 of this Ordinance).

B. No person shall burn any of the following in an Outdoor Wood-Fired Burner/Furnace:

1. Any wood that does not meet the definition of clean wood.
2. Tires.
3. Lawn clippings and yard waste.
4. Rubbish or garbage, including, but not limited to, food waste, food packaging or food wraps.
5. Materials containing plastic.
6. Materials containing rubber.
7. Waste petroleum products.
8. Paint and paint thinners.
9. Any type of paper/cardboard.
10. Construction and demolition debris (such as shingles).
11. Plywood or other composite wood products.
12. Particleboard.
13. Manure.
14. Animal carcasses.
15. Asphalt products.
16. Used cooking oils.

C. The Outdoor Wood-Fired Burner/Furnace shall at all times be operated and maintained in accordance with the manufacturer's specifications.

D. The Outdoor Wood-Fired Burner/Furnace shall be maintained and operated in compliance with all emissions and air quality standards promulgated by the United States Environmental Protection Agency, the Pennsylvania Department of Environmental Protection or other relevant state or federal agencies.

E. Any ash or other by-products from the operation of the Outdoor Wood-Fired Burner/Furnace shall be disposed of in accordance with all applicable laws.

§ 58-21. – Operation Schedule.

Outdoor Wood-Fired Burners/Furnaces shall be operated only between October 1st and June 1st, except that an Outdoor Wood-Fired Burner/Furnace located on a lot twenty (20) acres or more in size may be operated throughout the calendar year.

§ 58-22. – Appeals/Variations.

A. Any decision of the Code Enforcement Officer in regard to the enforcement of the provisions of this Chapter, which shall include, but not be limited to, the denial of a permit to install an outdoor furnace, may be appealed to Borough Council by the filing of a Notice of Appeal with the Borough Secretary. Appeals must be filed within thirty (30) days of notice of violation or decision of the Code Enforcement Officer, except for appeals of a cease and desist order, which must be appealed within five (5) days pursuant to Section 7. No such appeal shall be considered as having been made unless and until the appellant has paid the appeal fee as established by Resolution of Borough Council.

B. If a decision of the Code Enforcement Officer is appealed to Borough Council, the Borough Council shall schedule a hearing as soon as practically possible and render a decision. A hearing before Borough Council shall be governed by the Local Agency Act. A ruling of the Borough Council may be appealed to the Court of Common Pleas within thirty (30) days after the grieved party has received a copy of a decision pursuant to the Local Agency Act.

C. In the event that a party appeals to the Court of Common Pleas, the Court of Common Pleas shall have jurisdiction over the use of the outdoor furnace during the pendency of the Appeal. The Court may allow the homeowner to utilize the outdoor furnace or set restrictions or prohibit its use during the pendency of the Appeal.

§ 58-23. – Permits, Violations, Hearings and Penalties.

A. No person shall cause, allow or maintain the use of an outdoor furnace within East Greenville Borough without first having obtained a permit from the Code Enforcement Officer, excepting however, that all operators or owners with outdoor furnaces shall have ninety (90) days from the effective date of this chapter to obtain a permit conforming to the regulations herein stated. Permit fees shall be established by Borough Council.

B. The Borough Manager, Police Chief and Code Enforcement Officer may, upon presentation of his credentials, inspect any property for the purpose of ascertaining compliance with the provisions of this Chapter.

C. Enforcement and penalties:

1. The Borough Manager, Police Chief and/or Code Enforcement Officer are authorized to enforce this Chapter.

2. Any person, firm, association, partnership, corporate or governmental entity who violates any of the provisions of this Chapter or fails to comply with a duly authorized order issued pursuant hereto shall be deemed to have committed a municipal civil infraction, which shall be punishable by civil fines determined in accordance with the following schedule:

<u>Offense</u>	<u>Minimum Fine</u>	<u>Maximum Fine</u>
1 st Offense within 3 yr. period	\$ 75.00	\$ 500.00
2 nd Offense within 3 yr. period	\$ 150.00	\$ 500.00
3 rd Offense within 3 yr. period	\$ 325.00	\$ 500.00
4 th (or more) Offense within 3 yr. period	\$ 500.00	\$ 500.00

3. The violator shall pay costs, which may include all expenses, direct and/or indirect, which the Borough has incurred in connection with the infraction. In no case, however, shall costs of less than \$10.00 or more than \$500.00 be ordered. In addition, the Borough shall have the right to proceed in any court of competent jurisdiction for the purpose of obtaining an injunction, restraining order or other appropriate remedy to compel compliance with the provisions of this Chapter. Each day that a violation continues shall be a separate violation.

D. Notice of Violation.

Whenever an inspection discloses that a violation of this Chapter exists, the Code Enforcement Officer shall, upon authorization from Borough Council, issue a Notice of Violation to the owner and/or occupant of the premises. The Notice shall:

1. Be in writing.
2. Include a statement of the reasons why the Notice is being issued.
3. Contain a copy of the Code Enforcement Officer's inspection report detailing the conditions constituting the violation, contain an outline of the remedial action required to come into compliance with all the provisions of this Chapter and set forth a reasonable time to rectify the violation.

4. Inform the owner of his or her right to request a hearing before the Borough Council as set forth in § 58-23H.

5. Inform the owner/occupant that should there be a failure to comply with the Notice or request a hearing, they will be subject to the penalties set forth in Section 13C. of this Chapter and the costs and expenses, including attorney's fees, of enforcing the terms hereof. Except in emergency cases, the Notice shall be sent by registered mail or by certificate of mailing, or personally delivered to the owner and/or occupant of the premises upon which the alleged violation exists. If the owner is absent from the Borough, all notices shall be deemed to be properly served if a copy of the Notice is sent by registered mail or by certificate of mailing to the last known address of the owner, regardless of proof of receipt, and is posted in a conspicuous place on or about the premises affected by the Notice; or the owner is served with such Notice by any other method authorized by the laws of the Commonwealth of Pennsylvania.

E. Emergency Cases.

Whenever the Code Enforcement Officer finds that an emergency exists which requires immediate action to protect the public health, safety and welfare, he may, without notice or hearing, issue an order reciting such emergency and requiring that such action as is necessary be taken to correct the violation and eliminate the emergency. Notwithstanding any other provision hereof, such order shall be effective immediately.

F. Emission.

A permit issued pursuant to this Chapter may be suspended as the Borough Manager, Chief of Police or Code Enforcement Officer may determine necessary to protect the public health, safety and welfare of the residents of East Greenville Borough, if any of the following conditions occur:

1. The emissions from the outdoor furnace interfere with the reasonable enjoyment of life, safety or property.
2. The emissions from the outdoor furnace cause damage to vegetation or property
3. The emissions from the outdoor furnace are unreasonably malodorous.

G. Reinstatement of Permit.

A suspended permit may be reinstated once the condition that resulted in suspension is remedied and reasonable assurances are given that such condition will not recur. Recurrence of a condition which has previously resulted in suspension of a permit shall be considered a violation subject to the penalties provided herein.

H. Hearings.

1. Right to Hearing – Any person affected by any Notice issued in accordance with the enforcement of any provision of this Chapter may request and shall be granted a hearing before Borough Council, provided that such person file a written request for the hearing within ten (10) days of service of the Notice. The request shall contain a brief statement of the reasons for the request.

2. Scheduling and Conduct of Hearing – Upon receipt of a request for a hearing, a time and place for the hearing shall be scheduled and advertised in accordance with applicable municipal requirements. The hearing shall be scheduled no later than sixty (60) days after the day on which the request was received. At the hearing, the person requesting the hearing shall be given the opportunity to be heard and show cause why the violation described in the Notice should not be abated.

3. Borough Council Action – After such a hearing, the Borough Council shall issue a written decision sustaining the Notice, modifying the Notice and attaching conditions or withdrawing the Notice. If Borough Council sustains the Notice, it shall be deemed a final order effective immediately.

4. Right to Appeal – Any aggrieved party may appeal the final order to the Court of Common Pleas of Montgomery County in accordance with the provisions of the Local Agency Act. Such appeal shall not constitute a stay from the requirements of the final order unless an order to that effect issues from the Court.

5. Fees – The person requesting a hearing shall pay the fee for such hearing as established by resolution of Borough Council.

§ 58-24. – Municipality Exempt from Liability.

East Greenville Borough, its agents, officers, employees 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 Chapter, or by reason of the conduct of any burning activity in compliance with the terms and provisions of this Chapter. The person or party responsible for any such burning activity shall bear sole liability for any damages caused thereby.

SECTION 3 – Severability.

The provisions of this Ordinance are severable. If any sentence, clause or section is for any reason found to be unconstitutional, illegal or invalid, such decision shall not affect the validity of any of the remaining provisions of the Ordinance. It is hereby declared as the legislative intent that this Ordinance would have been adopted had such unconstitutional, illegal or invalid provisions not have been included.


SECTION 4 – Repealer.

All ordinances or parts of ordinances in conflict herewith shall be and the same are hereby repealed.

SECTION 5 – Effective Date.

This Ordinance shall take effect five (5) days after the date of its enactment.

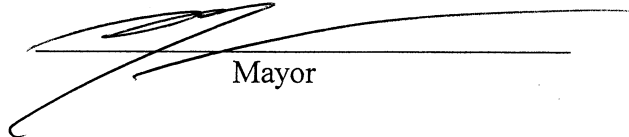
ENACTED AND ORDAINED by the said Borough this 7TH day of DECEMBER, 2009.


VICE-President of Council

ATTEST:


Secretary

APPROVED this 8TH day of DECEMBER, 2009.


Mayor