

BOROUGH OF WEST MIDDLETOWN  
WASHINGTON COUNTY, PENNSYLVANIA

ORDINANCE NO. 11-2018

An ordinance of the Borough of West Middletown, Washington County, Pennsylvania, for the prevention and control of air pollution from the use of outdoor wood-fired boilers, also known as outdoor wood-fired boilers, also known as outdoor wood-burning appliances, or outdoor hydronic heaters; defining certain terms used herein; and providing for regulations, and penalties for violation thereof.

WHEREAS, it is the desire of the Council of West Middletown Borough to provide for the regulation of the use of outdoor wood-fired boilers, outdoor wood-fired furnaces, outdoor wood-burning appliances, and outdoor hydronic heaters, to prevent and control the detrimental impact of air pollution which causes injury, damage, harm, inconvenience, annoyance or discomfort to others in the legitimate enjoyment of their rights of person or property;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the council of West Middletown Borough, Washington County, Pennsylvania, and it is hereby ordained and enacted by the authority of the same:

**Section 1: Title.** This ordinance shall be known and may be cited as the "West Middletown Borough Outdoor Wood-Fired Boiler Ordinance".

**Section 2. Applicability.** Except as otherwise provided herein, this ordinance applies to the installation and use of all outdoor wood-fired boilers within West Middletown Borough.

- a. This ordinance does not apply to grilling or cooking using charcoal, wood, propane or natural gas in cooking or grilling appliances.
- b. This ordinance does not apply to burning in a stove, furnace, fireplace or other heating device within a building used for human or animal habitation, unless the heating device is an outdoor wood-fired boiler installed indoors.
- c. This ordinance does not apply to the use of propane, acetylene, natural gas, gasoline or kerosene in a device intended for heating, construction or maintenance activities.

**Section 3: Purpose and Scope.** Whereas the council of West Middletown Borough has determined that air pollution from outdoor wood-fired boilers may be detrimental to the health, comfort, living conditions, welfare, and safety of the citizens of West Middletown Borough, it is hereby declared to be the policy of West Middletown Borough to safeguard the citizens of West Middletown Borough from such air pollution.

**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:

**APCA - Air Pollution Control Act.**

**Clean wood** - Natural wood that has no paint, stains, or other types of coatings, and natural wood that has not been treated with, including but not limited to, copper chromium arsenate, creosote, or pentachlorophenol.

**EPA** - United States Environmental Protection Agency

**Board** – Council of West Middletown.

**Municipality** - Borough of West Middletown, Washington County, Pennsylvania

**Nuisance** - as defined by other Borough Ordinances and emission of air contaminants into atmosphere of such quantity, characteristic or duration that may be injurious to human, plant or animal life or to property, or that unreasonably interferes with the comfortable enjoyment of life or property, including opacity.

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

**Outdoor wood-fired boiler** - Also known as outdoor wood-fired furnaces, outdoor wood-burning appliances, or outdoor hydronic heaters, water stoves, etc. A fuel burning device:

- (1) Designed to burn clean wood or other approved solid fuels;
- (2) That the manufacturer specifies for outdoor installation or for installation in structures not normally intended for habitation by humans or domestic animals, including structures such as garages and sheds; and
- (3) Which heats building space and/or water through the distribution, typically through pipes, of a fluid heated in the device, typically water or a mixture of water and antifreeze.

**Phase 2 outdoor wood-fired boiler** - an outdoor wood-fired boiler that has been certified or qualified by the Environmental Protection Agency as meeting a particulate matter emission limit of 0.32 pounds per million British Thermal Units output and is labeled accordingly.

**Person** - Any individual, public or private corporation for profit or not for profit, association, partnership, firm, trust, estate, department, board, bureau or agency of the Commonwealth or the Federal Government, political subdivision, municipality, district, authority, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

**Responsible Official** - Person designated by the municipality to be responsible for the administration and enforcement of this ordinance, including, but not limited to, the Code Enforcement Officer.

**Stack** - Any vertical structure enclosing a flue or flues that carry off smoke or exhaust from a furnace, especially that part of a structure extending above a roof.

**Section 5: Regulations.** On or after the effective date of this ordinance, an outdoor wood fired boiler may be installed, used or operated in West Middletown Borough only in accordance with the following provisions.

- a. **Zoning Requirements for New Outdoor Wood-Fired Boilers.** New Outdoor Wood-Fired Boilers shall be permitted for residential use only.
- b. **Particulate Standard Requirements for New Outdoor Wood-Fired Boilers.** No person shall install an outdoor wood-fired boiler that is not a Phase 2 Outdoor Wood-fired Boiler or outdoor wood-fired boiler manufactured to more restrictive or stringent standards established by a federal or state agency.
- c. **Setback Requirements for New Outdoor Wood-fired Boilers.** No person shall install an outdoor wood-fired boiler unless it is installed at least 150 feet from the nearest property line.
- d. **Stack Height Requirements for New Outdoor Wood-fired boilers.** The outdoor wood-fired boiler shall have a stack or chimney that extends to a minimum height of the occupied structure roof peak of which the outdoor woodfired boiler is servicing plus two (2) feet. If there are any occupied structures within 200 feet of the new outdoor wood-fired boiler, the stack or chimney shall extend at least as high above the ground surface as the height of the roof peaks of all such occupied structures plus two (2) feet. The maximum height of the outdoor wood-fired boiler stack or chimney shall not exceed the maximum building height in that specific zoning district plus two (2) feet.
- e. **Minimum Setback Exclusion.** Any new outdoor wood-fired boiler installed a minimum of 500 feet from all property lines shall be excluded from the stack height requirements.
- f. **Stack Height Requirements for Existing Outdoor Wood-fired boilers.** Should a new occupied structure be built, or the building height of an existing occupied structure be increased within 250 feet of an outdoor wood-fired boiler, the outdoor wood-fired boiler stack or chimney height shall be raised to match the height of the new or modified structure plus two (2) feet, up to the maximum building height plus two (2) feet indicated above. However, if the existing outdoor wood-fired boiler is a Phase 2 outdoor wood-fired boiler, Subsection d above will apply.

- g. Fuel Requirements for New and Existing Outdoor Wood-fired Boilers.** No person that operates a new or existing outdoor wood-fired boiler shall use a fuel other than the following:
- Clean wood
  - Wood pellets made from clean wood
  - Home heating oil, natural gas, propane or other manufacturer-approved fuel that complies with all applicable sulfur limits and is used as a starter or supplemental fuel for dual-fired outdoor wood-fired boilers resulting in emissions in compliance with this and does not cause a nuisance in accordance with this ordinance or other Borough Ordinance.

- h. Prohibited Fuels for New and Existing Outdoor Wood-fired Boilers.** No person shall burn any of the following items in an outdoor wood-fired boiler:
- Any material not listed in Subsection g above.
  - Treated or painted wood
  - Furniture
  - Garbage
  - Tires
  - Lawn clippings or yard waste
  - Material containing plastic
  - Material containing rubber
  - Waste petroleum products
  - Paints and paint thinners
  - Chemicals
  - Any hazardous waste
  - Coal
  - Glossy colored paper
  - Construction and demolition debris
  - Plywood
  - Particleboard
  - Salt water driftwood
  - Manure
  - Animal carcasses
  - Asphalt products

- i. Prohibition of Operation for New and Existing Outdoor Wood-fired Boilers.** No person shall use or operate a new or existing outdoor wood-fired boiler between the dates of May 15 and the following September 15.

**j. Regulatory Requirements for New and Existing Outdoor Wood-fired Boilers.**

No person shall use or operate a new or existing outdoor wood-fired boiler unless it complies with all applicable existing and future federal, state and local regulations. Some regulations of this Commonwealth that could apply include:

- 25 Pa. Code Section 121.7 - Prohibition of Air Pollution
- 25 Pa. Code Section 123.1 - Fugitive Emissions
- 25 Pa. Code Section 123.31 - Odor Emissions
- 25 Pa. Code Section 123.41 - Visible Emissions
- Section 8 of the APCA, 35 P.S. Section 4008 - Unlawful Conduct
- Section 13 of the APCA, 35 P.S. Section 4013 - Public Nuisances
- All outdoor wood-fired boilers shall be equipped with properly functioning spark arrestors and shall be located on the property in compliance with manufacturer's recommendations, specifications or requirements for clearance to combustible materials.

**k. Permits for New and Existing Outdoor Wood-fired Boilers.** No person shall use or operate an outdoor wood-fired boiler unless a permit is obtained from the Responsible Official.

The application shall be signed by an owner(s) of the lot on which the outdoor wood-fired boiler will be located and the applicant if not a property owner.

- (1) Permits must be acquired prior to installation.
- (2) Present evidence that the applicant has obtained building permits for the installation of the outdoor wood-fired boiler and its connection to the mechanical system of the structure it will serve, if applicable.
- (3) The cost of the permit shall be paid as outlined in the West Middletown Borough Fee Schedule.
- (4) The penalty for not obtaining permit is outlined in Section 9.
- (5) West Middletown Borough reserves the ability to suspend permits if weather conditions warrant in the sole discretion of the council of West Middletown Borough.
- (6) Violation of permit conditions is a violation of this ordinance.
- (7) Any violation of the ordinance or permit conditions shall void the permit

**Section 6. Existing Outdoor Wood-Fired Boiler.** Any outdoor wood-fired boiler 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 Responsible Official within one (1) year of the effective date of this ordinance. If the owner of an existing outdoor wood-fired boiler does not receive a permit within one (1) year of the effective date of this Ordinance, the outdoor wood-fired boiler shall be removed, and owner will be subject to the regulations in Section 8 of this Ordinance. If an outdoor wood-fired boiler in existence on the effective date of this Ordinance is causing a nuisance as determined by the Responsible Official, the following steps shall be taken by the owner:



- a. Modifications approved by the unit's manufacturer shall be made to the unit to eliminate the nuisance such as extending the chimney or relocating the outdoor woodfired boiler or both.
- b. Cease and desist operating the unit until a remedy can be taken to ensure that the use of the outdoor wood-fired boiler will not be a nuisance.

#### **Section 7. Enforcement Orders.**

- a. The Responsible Official shall have the power and duty to enforce the provisions of this ordinance.
- b. The Responsible Official may issue such orders as are necessary to aid in the enforcement of the provisions of this ordinance. These orders shall include, but shall not be limited to: orders requiring persons to cease unlawful use of outdoor woodfired boilers, which is in violation of any provision of this ordinance; orders to take corrective action or to abate a public nuisance; or orders requiring production of information. Such an order may be issued if the Responsible Official finds that any person is in violation of any provision of this ordinance.
- c. The Responsible Official may, in an order, require compliance with this ordinance.
- d. An order issued under this section shall take effect upon notice, unless the order specifies otherwise. An appeal to the council of West Middletown Borough order shall not act as a supersedeas, provided, however, that, upon application and for cause shown, the council of West Middletown may issue such a supersedeas.
- e. The authority of the Responsible Official to issue an order under this section is in addition to any remedy or penalty that may be imposed pursuant to this ordinance. The failure to comply with any such order is hereby declared to be a public nuisance.
- f. The applicant and/or property owner authorizes the Responsible Official to perform inspections related to the application and the permit as deemed necessary regarding proper operation of the outdoor wood-fired boiler. The applicant and/or property owner understands and agrees to comply with this ordinance and all other applicable laws and regulations.

#### **Section 8. Responsibility of Owners and Operators**

- a. Whenever the Responsible Official finds that illegal operation of an outdoor woodfired boiler is occurring in West Middletown Borough, in contravention of the requirements of this ordinance, the Responsible Official may order the owner or operator to take corrective action in a manner satisfactory to meet the regulations of this ordinance, or the Responsible Official may order the owner or operator to allow access to the land by the Responsible Official or a third party to take such action.

- b. For purposes of collecting or recovering the costs involved in taking corrective action or pursuing a cost recovery action pursuant to an order or recovering the cost of litigation, oversight, monitoring, sampling, testing, and investigation related to a corrective action, West Middletown Borough may collect the amount in the same manner as civil penalties are assessed and collected following the process for assessment and collection of a civil penalty contained in Section 9 of this ordinance.
- c. Any person desiring to install an outdoor wood-fired boiler within West Middletown Borough shall obtain all applicable permits and shall pay a permit fee set by the Council of West Middletown by resolution. Homemade outdoor wood-fired boilers are not permitted. Failure of a person to operate or maintain an outdoor wood-fired boiler in accordance with manufacturer instructions or requirements or this ordinance may result in permit suspension or revocation and/ or other remedies allowed by law.
- d. The outdoor wood-fired boiler 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 agency. Notwithstanding compliance with applicable emissions and air quality standards, no outdoor wood-fired boiler shall be operated to cause a nuisance by noxious or hazardous particulate, fume, gas, mist, odor, smoke, vapor, toxic, or deleterious emission, either alone or in combination with others.
- e. Any waste material, ash or other by-products from the operation of the outdoor wood-fired boiler shall be disposed of in accordance with all applicable laws and shall not be permitted to be stockpiled on the owner's property for more than ninety (90) days

**Section 9. Violations and Penalties.**

- a. No person shall violate any portion of this Ordinance.
- b. Prosecution under this Ordinance shall be instituted by the Responsible Official, or any other borough or law enforcement official authorized by the Council of West Middletown Borough, and shall be filed in the name of West Middletown Borough of Washington County, Pennsylvania.
- c. Enforcement shall be by an action brought before a Magisterial District Judge in the same manner as provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure. The borough solicitor may assume charge of the prosecution without the consent of the District Attorney as required under Pennsylvania Rule of Criminal Procedure No. 454(c) (relating to trial in summary cases).

- d. Any person violating any of the provisions of this Ordinance shall, upon conviction thereof by a Magisterial District Judge, be guilty of a summary offense, and shall be sentenced to pay a fine of not less than two hundred fifty (\$250.00) dollars nor more than one thousand (\$1,000.00) dollars, together with costs, for the first violation, not less than five hundred (\$500.00) dollars nor more than one thousand (\$1,000.00) dollars, together with costs, for the second, and up to one thousand (\$1,000.00) dollars, together with costs, for subsequent violations. Each day that a violation exists shall constitute a separate offense. In default in the payment of any fine imposed hereunder, the defendant shall be sentenced to undergo imprisonment for a period not exceeding thirty (30) days.
- e. All fines and penalties collected for any violation of this Ordinance shall be paid to the borough treasurer.
- f. In addition to or in lieu of an enforcement action before a District Justice, the borough may enforce this ordinance in equity. In the event an abatement notice has been issued, which is being violated, or in any other appropriate circumstance, the Responsible Official, or any other borough official, is hereby authorized on behalf of the borough to institute an action in equity for an injunction to enforce compliance herewith and/ or to restrain continuous violations of this Ordinance.

**Section 10. Unlawful Conduct.** It shall be unlawful to fail to comply with or to cause or assist in the violation of any of the provisions of this ordinance or to fail to comply with any order or other requirement of West Middletown Borough; or to cause a public nuisance; or to hinder, obstruct, prevent, or interfere with West Middletown Borough or its personnel in their performance of any duty hereunder, including denying the Responsible Official access to the source or facility.

**Section 11. Public Nuisances.** A violation of this ordinance or of any order issued by the Responsible Official under this ordinance shall constitute a public nuisance. The Responsible Official shall have the authority to order any person causing a public nuisance to abate the public nuisance. In addition, when abating a public nuisance, the Responsible Official may recover the expenses of abatement following the process for assessment and collection of any civil penalty due hereunder. Whenever the nuisance is maintained or continued contrary to this ordinance or any order issued pursuant to this ordinance, the nuisance may be abatable in the manner provided by this ordinance. Any person who causes the public nuisance shall be liable for the cost of abatement.

**Section 12. Challenges and appeals.**

- a. Any person aggrieved by any action of a representative of the Borough may appeal to the Council of West Middletown Borough within 30 days of that actions



b. Any person aggrieved by any action of the council of West Middletown Borough may appeal to Washington County Court of Common Pleas within 30 days of that action.

**Section 13. Repealer.** All other ordinances or parts thereof which are in conflict with this Ordinance are hereby repealed.

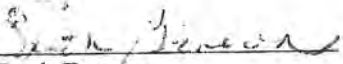
**Section 14. Validity.** The provisions of this ordinance are severable, and if any section, clause, sentence, part, or provision thereof shall be held illegal, invalid, or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect or impair the remaining sections, clauses, sentences, parts, or provisions of this ordinance. It is hereby declared to be the intent of the Council of West Middletown Borough that this ordinance would have been adopted if such illegal, invalid, or unconstitutional section, clause, sentence, pm l, or provision had not been included herein.

**Section 15. Effective Date.** This Ordinance shall become effective five (5) days after its Enactment.

**ORDAINED AND ENACTED** into an Ordinance and passed by the Council of West Middletown Borough on this 12<sup>TH</sup> day of November 2018.

ATTEST:

COUNCIL OF WEST MIDDLETOWN BOROUGH

  
Ruth Brown  
West Middletown Secretary

  
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John M. Opal  
Council President