

BOROUGH OF NESQUEHONING
ORDINANCE NO. 2018-1

**AN ORDINANCE OF THE COUNCIL OF THE BOROUGH OF NESQUEHONING, CARBON COUNTY,
PENNSYLVANIA, AMENDING THE CODE OF ORDINANCES OF THE BOROUGH OF NESQUEHONING,
SPECIFICALLY CHAPTER 7, SECTION 501 ET. SEQ., AND PROVIDING FOR REGULATING BURNING WITHIN
THE BOROUGH OF NESQUEHONING AND PROVIDING PENALTIES FOR ANY VIOLATION OF SAID
BURNING REGULATIONS.**

BE IT ORDAINED AND ENACTED, by the Council of the Borough of Nesquehoning, Carbon County, Pennsylvania and it is hereby Ordained and Enacted by authority of the same as follows:

ARTICLE 1. PURPOSE

This ordinance is enacted in the interest of the health, safety and welfare of the residents of the Borough of Nesquehoning for the prevention of fires and to eliminate nuisances caused by smoke, cinders and ashes.

ARTICLE 2. DEFINITIONS

As used in this ordinance, the following terms shall have the meanings indicated, unless a different meaning clearly appears from the context:

1. **Bonfire** - Any outdoor fire utilized for ceremonial purposes;
2. **Council** - The Council of the Borough of Nesquehoning;
3. **Fire Pit** - Either a portable device that is commercially manufactured for the purpose of building a recreational fire, such as a chimenea or above-ground fire pit, or a permanent, constructed fire chamber that is completely lined with noncombustible material such as brick, rock or concrete;
4. **Fuel** - Seasoned untreated dry hardwood;
5. **Furnace** - Any enclosed device specifically designed for burning any material for the production of heat, except an Outdoor Furnace as defined herein;
6. **Garbage** - All putrescible, animal and vegetable matter resulting from the handling, preparation, cooking and consumption of food;
7. **Incinerator** - Any device specifically designed for the destruction by burning of refuse, sewage sludge or any other combustible material;
8. **Open Burning** - The burning of materials wherein products of combustion are emitted directly into the ambient air without passing through a stack or a chimney from an enclosed chamber. Open burning does not include road flares, smudge pots and similar devices associated with safety or occupational uses typically considered open flames or recreational fires. For purpose of this definition, a chamber shall be regarded as enclosed when, during the time combustion occurs, only apertures, ducts, stacks, flues or chimneys necessary to provide combustion air and permit the escape of exhaust gas are open. Small quantities of paper or cardboard may be used in conjunction with kindling to start a wood burning fire. The use of hydrocarbon fuels to start or maintain a flame and accelerate the burning process is prohibited. Exception would be limited to igniting charcoal in a cooking grill designed for

burning charcoal where it is permissible to use a limited amount of specific charcoal lighting fluid or propane only to provide ignition of said fuel;

9. **Open Fire** - A fire in which any material is burned in the open or in a receptacle other than a furnace, fire pit or incinerator;

10. **Operator** - Any person who has charge, care or control of a structure or premises which is let or offered for occupancy;

11. **Outdoor Furnace** - Any equipment, device, apparatus or structure or any part thereof which is installed, affixed or situated outdoors for the purpose of combustion of any type of fuel to produce heat or energy used as a component of a heating system providing heat for an interior space or water source;

12. **Owner** - Any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court;

13. **Person** - Any individual, partnership, association, corporation, department, bureau, agency or other legal entity acting individually or as a unit;

14. **Portable Outdoor Fireplace** - A portable, outdoor solid-fuel burning fireplace that maybe constructed of steel, concrete or clay;

15. **Premises** - A lot, plot, or parcel of land, easement or public way, including any structures thereon;

16. **Public Way** - Any street, alley or similar parcel of land essentially unobstructed from the ground to the sky, which is deeded, dedicated or otherwise permanently appropriated to the public for public use;

17. **Recreation Fire** - An outdoor fire burning materials other than rubbish where the fuel being burned is not contained in an incinerator, outdoor fireplace, barbecue grill or barbecue pit and has a total fuel area of three (3) feet (914mm) or less in diameter and two (2) feet (610 mm) or less in height for pleasure, religious, ceremonial, cooking, warmth or similar purpose. Only 1 recreational fire will be permitted per property owner who conforms to requirements listed in this ordinance;

18. **Refuse** - Garbage, rubbish and trade waste;

19. **Rubbish** - Solids not considered to be highly flammable or explosive, including but not limited to rags, old clothes, leather, rubber, carpets, wood, excelsior, paper, ashes, tree branches, tree leaves, yard trimmings, furniture, tin cans, glass, crockery, masonry, and other similar materials;

20. **Salvage Operation** - Any business, trade or industry engaged in whole or in part in salvaging or reclaiming any product or material, including but not limited to metals, chemicals, shipping containers or drums;

21. **Trade Waste** - All solid or liquid material or rubbish resulting from construction, building operations or the prosecution of any business, trade or industry, including but not limited to plastic products, carbons, paint, grease, oil and other petroleum products, chemicals, cinders and other forms of solid or liquid waste materials, provided that "Trade Waste" shall not include any coal refuse associated with the mining or preparation of coal.

ARTICLE 3. PROHIBITED OPEN BURNING

Open burning which produces smoke or odor emissions or when atmospheric conditions or local circumstances make such fires hazardous shall be prohibited. It shall be unlawful for any person, partnership, company or corporation to burn any type of rubbish anywhere in the borough. This section shall not prohibit the use of indoor fire for cooking or recreation. A person shall not kindle or maintain or authorize to be kindled or maintained any open burning unless conducted and approved in accordance with this ordinance.

ARTICLE 4. FIRES IN PUBLIC AREAS

No person or persons shall set or maintain any fire upon any of the streets, public alleys, sidewalks or public grounds in the Borough of Nesquehoning, except that nothing herein shall prohibit the use of fireplaces and other cooking facilities placed in any public park by the borough for the purposes for which such facilities are intended.

ARTICLE 5. FIRE ON PRIVATE PROPERTY

Outdoor fires shall only be permitted upon private property within the Borough, provided that the following regulations and restrictions are strictly followed:

A. Fires are permitted in an outdoor fire pit if contained within a non-combustible container in accordance with the setbacks specified below. Every outdoor fire pit shall be built in and confined to a non-combustible container covered with a screen of one-half inch, or smaller mesh, or with other non-combustible covering and shall be no more than three (3) feet wide by three (3) feet wide by three (3) feet high. It is expressly prohibited for anyone to ignite, light or maintain any fire in a container or vessel similar to a gallon drum regardless of material used for construction of the gallon drum;

B. No such fire shall be closer than twenty (20) feet to any dwelling, twenty (20) feet from any other structure than a dwelling, twenty (20) feet from a public or private right-of-way or ten (10) feet from any property line;

C. Fire in fire pits shall be able to be kindled or maintained during any day of the week during the period between Memorial Day and Labor Day, between the hours of 6:00 p.m. and 11:00 p.m. At all other times of the year, fires in fire pits may only be kindled on holidays, Fridays, Saturdays, and Sundays between the hours of 5:00 p.m. and 10:00 p.m. All fires must be tended to at all times until the fire is out;

- (1) Recreational fire pits shall be constantly attended by a person knowledgeable in the use of fire extinguishing equipment required by this ordinance hereunder. An attendant shall be at least eighteen (18) years of age in order to assume responsibility for the use of these appliances and shall supervise a recreational fire until such time as the fire is out or another equally qualified person shall assume responsibility for supervision of said recreational fire;

(2) Factory built fireplaces shall be listed and labeled and shall be installed in accordance with the conditions of the listing. Factory built fireplaces shall be tested in accordance with UL127.

D. The burning of garbage, vegetable waste, rubber, plastics, furniture, glass, metals, crocking, car products or any other materials which will create a nauseous or noxious fumes, smoke, toxic chemicals or excessive fly ash is specifically prohibited;

E. No "leaf waste" as that phrase is defined by the Municipal Waste Planning, Recycling and Waste Reduction Act, 53 P.S. Section 4000.101 et, seq. may be burned anywhere within the borough. Any "leaf waste", as that phrase is defined by the Municipal Waste Planning, Recycling and Waste Reduction Act, supra, shall be disposed of in strict accordance with the Act;

F. No newspaper or other material which is required to be recycled may be burned anywhere within the borough;

G. Each property or parcel shall be allowed to have one wood burning fire and one cooking fire limited to charcoal or gas fuel. This limitation shall also encompass contiguous or adjoining properties owned, managed or operate by the same person, partnership, company, association, estate or agent. Any property owner, manager, agent or operator looking to have any fire burning in excess of two (2) as herein stated above, at any one time must make written request to the borough council and appear before council to specify the nature of their request and why more than one fire burning at a time is needed before any exception shall be granted. No petroleum or hydro fuel products may be used to start or maintain any type of fires with the exception of cooking grill designed to use charcoal and which requires a limited amount of lighter fluid to help ignite bit not to maintain;

H. Fireplaces within a private residence are permitted for the purpose of providing heat or for use as a barbecue, but in no event shall garbage, rubbish or trash be burned in a fireplace;

I. No person shall ignite or feed an open fire for the destruction of refuse or in the conduct of a salvage operation in any public or private place outside of any building;

J. Maintenance:

(1) Recreational fire pits shall be maintained in good condition at all times;

(2) Fire extinguishing equipment such as buckets, shovels or garden hoses shall be readily available for use at recreational fires.

K. Under no circumstances shall any open fire be ignited, lit or maintained by any person or person on any porch, deck or similar structure attached to the main housing unit with or without a roof over the porch, deck or attached structure to the housing unit;

L. Bonfires or recreational fires shall be constantly attended to until the fire is extinguished. A minimum of one portable fire extinguisher with a minimum 4A rating or other approved on-site fire extinguishing equipment such as dirt, sand, water barrel, garden hose or water truck, shall be available for immediate utilization for a recreational fire. No fire shall be allowed to smolder, all fires must be totally extinguished by 11:00 p.m. Bonfires shall require the presence of a Nesquehoning Fire Department on site at all times and cost associated with the presence shall be paid for by the person or organization conducting the bonfire. A bonfire shall not be conducted within fifty (50) feet of a structure or combustible material unless the fire is contained in a barbecue pit as approved by a Nesquehoning Fire Department. Conditions which could cause a fire to spread within fifty (50) feet of the proposed bonfire shall be eliminated prior to ignition. Bonfires will require a permit and prior approval of a Fire Chief or Line Officer;

M. No person shall burn rubbish anywhere indoors in the borough except in incinerators that are listed and labeled in accordance with UL791 and shall be installed in accordance with the manufacturer's installation instructions;

N. Masonry fireplaces shall be constructed in accordance with the International Building Code;

O. Charcoal burners and other open-flame cooking devices shall not be operated on combustible balconies or within ten (10) feet of combustible construction except where buildings, balconies and decks are protected by an automatic sprinkler system or where done in a one or two family dwelling unit;

P. Clearance between ignition sources, such as luminaries, heater, flame-producing devices and combustible materials, shall be maintained in an approved manner or as stated herein;

Q. Portable outdoor fireplaces will be permitted only when in conformance with the following requirements or the manufacturer's instruction in any instance where those instructions are more restrictive:

- (1) Portable outdoor fireplaces shall be completely enclosed (solid material or heavy duty screening or both) with or without a stack of chimney, but those burning combustible materials shall have a screen at the top to prevent large embers that may cause a fire from escaping into the atmosphere. All materials shall be in good repair and safe condition;
- (2) Portable outdoor fireplaces designed to burn combustible materials shall use an appropriate type of fuel such as non-pressure treated wood, fireplace logs or seasoned hard wood. Propane units shall use only propane. No waste material or any material that is likely to cause excessive smoke or noxious odors shall be used. The amount of fuel shall not exceed the safe capacity of the device;

- (3) Portable outdoor fireplaces shall be at least twenty (20) feet from a structure, including decks and balconies. Their placement shall be stable and reasonably level so as to make tipping unlikely. They shall not be used on a deck, within any tent, or on or under any roof. Furthermore, outdoor fireplaces must be twenty (20) feet from any public right-of-way of pedestrian traffic or parked vehicles;
- (4) Portable outdoor fireplaces shall be constantly attended to until the fire is extinguished;
- (5) Portable outdoor fireplaces, for purpose of this ordinance, constitutes one (1) wood burning fire and this section is to be interpreted in conjunction with other sections of this ordinance including but not limited to Article 5(g) and is not to be construed as an additional allowance or subject to different terms in the number allowed.

R. Masonry fireplaces shall be constructed in accordance with the International building Code;

S. Factory built fireplaces shall be listed and labeled and shall be installed in accordance with the conditions of the listing. Factory built fireplaces shall be tested in accordance with UL127;

T. Factory build barbecue appliances shall be of an approved type and shall be installed in accordance with the manufacturer's installation instruction, this ordinance and Chapters 3, 5, 7 and 8 of the International Fuel Gas Code;

U. Liquefied-petroleum gas-filled cooking devices or LP burners having an LP container with a water capacity greater than 2.5 pounds (normal 1 pound [.0454kg] LP gas capacity) shall not be located on combustible balconies or within ten (10) feet of combustible construction;

V. Open-flame decorative devices shall comply with all of the following restrictions:

- (1) Class I and Class II liquids and LP gas shall not be used;
- (2) Liquid or solid fueled devices containing more than 8 ounces (237ml) of fuel must self-extinguish and not leak fuel at a rate of more than 0.25 teaspoons per minute (1.26, l per minute) if tipped over;
- (3) The device or holder shall be constructed to prevent the spillage of liquid fuel or wax at the rate of more than 0.25 teaspoons per minute (1.26 ml per minute) when the device or holder is not in an upright position;
- (4) The device or holder shall be designed so that it will return to the upright position after being tilted to an angle of 45 degrees from vertical;
- (5) The flame shall be enclosed except where openings on the side are not more than 0.375 inch diameter or where openings are on the top and the distance to the top is such that a piece of tissue paper placed on the top will not ignite in ten (10) seconds;
- (6) Chimneys shall be made of non-combustible materials and securely attached to the open flame device except that a chimney is not required to be attached to any open flame device that will self-extinguish if the device is tipped over;
- (7) Fuel canisters shall be safely sealed for storage;

- (8) Storage and handling of combustible liquids shall be in accordance with NFPA 30 current edition 2018
- (9) Shades, where used shall be made of non-combustible materials and securely attached to the open flame device holder or chimney;
- (10) Candelabras with open-lighted candles shall be securely fastened in place to prevent overturning and shall be located away from occupants using the area and away from possible contact with drapes, curtains or other combustibles.

ARTICLE 6. EXCEPTIONS

A. Open fires may be set in the performance of an official duty of any public officer, if the fire is necessary for:

- (1) The prevention of a fire hazard which cannot be abated by other means;
- (2) The protection of the public health;
- (3) Abatement of a fire hazard and set by or under the supervision of a public officer;
- (4) The purpose of instructing personnel in firefighting;
- (5) For the prevention and control of disease or pests.

B. Ceremonial fires including but not limited to Boy Scouts Flag disposal or Church Services or similar ceremonial proceedings are permissible provided provisions are made to safely contain the burning matter and a fire extinguisher or hose or buckets of water are present to put out the fire upon completion of the ceremony.

ARTICLE 7. ENFORCEMENT

The Council of the Borough of Nesquehoning hereby directs that it shall be the duty of any Nesquehoning Police Officers, any Fire Chiefs or their designee of the Fire Companies of the Borough of Nesquehoning, to enforce the provisions of this ordinance. In the discharge of such duty, he or she may enter upon or into any private lane, alley, vacant lot, backyard or any other portion of the private property of any person within the Borough of Nesquehoning.

ARTICLE 8. EXTINGUISHMENT AUTHORITY

The fire code official is authorized to order the extinguishment by the occupant, any person responsible or the fire department of any open burning that in the opinion of the fire code official, creates or adds to a hazardous situation. All costs associated with the extinguishment and mitigation of the scene shall be billed to the property owner, occupant, operator or person responsible for management or maintenance of the property.

ARTICLE 9. LIABILITY

Anyone within the Borough of Nesquehoning who burns and any property owner in the Borough of Nesquehoning who allows burning on his or her property, shall be jointly and severally liable for any and all damages incurred as a result of any burning including but not limited to any damages which may be caused to a neighbor either through smoke or fire.

ARTICLE 10. REQUIRED CLEAN-UP

Anyone who burns within the Borough of Nesquehoning and any property owner in the Borough of Nesquehoning who allows burning on his or her property shall clean up and remove any and all residue from the burning within ten (10) working days from the date of burning. Hot ashes, cinders, smoldering coals or greasy or oily materials subject to spontaneous ignition shall not be deposited in a non-combustible receptacle or within ten (10) feet of other combustibles.

ARTICLE 11. NOTIFICATION

In the event anyone is engaged in illegal burning under the provisions of this ordinance, any Fire Chief or their designee of the Fire Companies of the Borough of Nesquehoning or any member of the Nesquehoning Police Department shall notify said person that he or she is in violation of this ordinance and said person shall immediately extinguish the fire.

ARTICLE 12. VIOLATION AND PENALTIES

Any person who violates any of the provisions of this ordinance shall upon conviction thereof be fined in an amount of fifty (\$50.00) dollars for a first offense, one hundred fifty (\$150.00) dollars for a second offense and a fine not to exceed five hundred (\$500.00) dollars for a third or subsequent offense plus the costs of extinguishment or mitigation of the fire. In default of payment of said fine and costs, shall be sentenced to undergo imprisonment for a period not to exceed thirty (30) days.

ARTICLE 13. REPEALER

All existing ordinances of the Borough of Nesquehoning, or parts thereof, inconsistent with this ordinance or any part thereof, are hereby repealed or amended to the extent specified herein.

ARTICLE 14. EFFECTIVE DATE

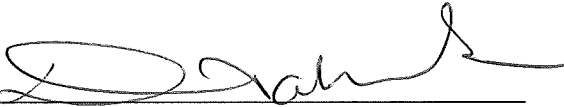
This ordinance shall become effective upon adoption hereof.

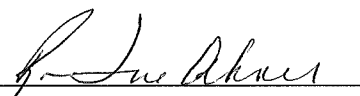
ARTICLE 15. EFFECT OF COUNTY OR STATE BURN BAN

If there is a Burn ban in effect within the Borough of Nesquehoning instituted either by the County or the State then the Burn Ban will supersede any of the allowable burning within the Borough of Nesquehoning and no burning will be allowed until the Ban is lifted.

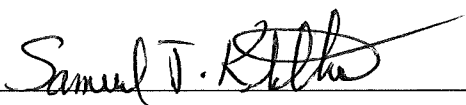
ORDAINED AND ENACTED by the Council of the Borough of Nesquehoning this 28th
day of March, 2018.

BOROUGH OF NESQUEHONING

By: 
Council President

ATTEST: 
Secretary

Examined and Approved, this 28th day of March, 2018.


Mayor