

**EAST MARLBOROUGH TOWNSHIP  
CHESTER COUNTY, PENNSYLVANIA**

**ORDINANCE NO. 2019 - \_\_\_\_\_**

**AN ORDINANCE CREATING SECTION \_\_\_\_ OF THE EAST MARLBOROUGH ORDINANCE, TITLED "OPEN, OUTDOOR BURNING" TO CREATE NEW BURNING REGULATIONS WITHIN THE TOWNSHIP.**

**UNDER AND BY VIRTUE OF THE AUTHORITY OF THE SECOND CLASS TOWNSHIP CODE, INCLUDING, BUT NOT LIMITED TO SECTIONS 1506, 1527 AND 1601 OF THE SECOND CLASS TOWNSHIP CODE, THE BOARD OF SUPERVISORS OF EAST MARLBOROUGH TOWNSHIP DOES HEREBY ENACT AND ORDAIN AS FOLLOWS:**

Section \_\_\_\_\_ shall state the following:

**SECTION 1. OPEN, OUTDOOR BURNING**

**A. Scope; Applicability**

This Section shall apply to all properties within the Township.

**B. Purpose.**

To regulate the types of outdoor and open burning within the Township to further promote the public health, safety and general welfare of the citizens of the Township.

**C. Definitions.**

As used in this Ordinance, the following terms shall have the meanings indicated:

**CONTROL FIRE** means:

- a. A fire kindled for the purpose of recognized silviculture, range or wildlife management, or control of disease or pests;
- b. Any fire set for the purpose of instructing personnel in firefighting, when approved by the Department of Environmental Protection's Regional Air Quality Program office;
- c. A fire set in conjunction with the production of agricultural commodities in their unmanufactured state on the premises of the farm operation.

**FUEL AREA** means the space where materials are being burned.

**LEAF WASTE** means leaves, garden residues, shrubbery and tree trimmings, and similar material, but not including grass clippings.

MUNICIPAL WASTE means any garbage, refuse, industrial lunchroom or office waste and other material, including, but not limited to, solid, liquid, semisolid or gaseous material, resulting from the operations of residential, municipal, commercial or institutional establishments or from community activities. It also includes any sludge not meeting the definition of residential or hazardous waste in the Solid Waste Management Act, of July 7 1980, P.L. 380, No. 97, as amended, 35 P.S. § 6018.101 et seq., from a municipal, commercial or institutional water supply treatment plant, wastewater treatment plant or air pollution control facility. The term does not include source-separated recyclable materials, leaf waste, chipped material, brush, shrub or tree trimmings, vegetative waste associated with farm or forestry operations, or household hazardous waste.

PERSON includes both male and female; the plural as well as the singular; and any association, partnership, corporation, firm, joint venture or any other entity whatsoever.

RECREATIONAL FIRE means an outdoor open fire fueled by wood, twigs, branches, or charcoal, but in no case municipal waste or recyclable materials, which is used to cook food for human consumption, or for recreational or ceremonial purposes.

RECYCLABLE MATERIALS means those materials specified by East Marlborough Township for collection in accordance with this Code and recycling regulations which may be promulgated from time to time. Such material may include, but shall not be limited to, food and beverage containers of aluminum, metal or bi-metal, clear and colored glass, plastic, phone books, magazines, high-grade office paper, mixed paper, newspaper and corrugated cardboard.

RESPONSIBLE PERSON means the landowner on whose property the burning occurs or the person engaged in burning with the landowner's permission.

D. Prohibited burning.

1. In accordance with Act 101 of 1988, as amended, 53 P.S. §§ 4000.101, et. seq., and except as provided in this Section, it shall be unlawful for any person to openly burn any material, including the following, at any time within the Township: municipal waste, leaf waste, grass clippings, recyclable materials, plastics, rubber, oil-based materials, noncombustible materials, hydrocarbon products or flammable liquids, construction and demolition waste as defined by the Pennsylvania Solid Waste Management Act and 25 Pa. Code § 271.1, dead animals, human and animal excrement, human and animal hair, asphalt or tar shingles or roofing materials, bedding, foam rubber, nylon, rayon, cotton, wool, polyester or other synthetic material, insulation from copper or other wiring, or any material which when burned emits noxious, offensive or harmful smoke, odor or fumes.
2. It shall be unlawful for any person to burn or light any fire anywhere in the Township except to the extent specifically permitted by this section. Recreational Fires, Control Fires and fires burning brush, shrub or tree trimmings, vegetative waste, wooden fence posts and rails and other waste wood and organic materials

associated with farm or forestry operations are expressly permitted provided that they comport with the conditions set forth in Section 1.E. of this Ordinance.

E. Conditions.

All outdoor burning not expressly prohibited in this section shall be performed only in compliance with the following conditions unless prior approval of the Township is obtained:

1. The burning shall be located at least 50 feet from any and all property boundary lines, buildings, structures of any kind, public roads, curbs, sidewalks, utility poles and other combustible materials.
2. The burning shall be performed only between the hours of sunrise and 11 pm.
3. A responsible adult, 18 years of age or older, shall be in attendance during the entire duration of the burning.
4. A connected hose or other ample water supply capable of extinguishing the fire is present, or the fire is placed within a wet area at least 50 feet from a property line or building.
5. There is an area cleared of all combustible material of a radius of 15 feet.
6. The burning does not cause excessive smoke or air pollution to travel onto any neighboring property.

F. Recreational fires.

1. Recreational fires shall not have a fuel area greater than ten feet in diameter except that larger fires are permitted if they are 100 feet from any property line or building.
2. Recreational fires shall not be conducted within 25 feet of a structure, property boundary or combustible material.

G. Fires in Partially Enclosed Devices Exempt

Recreational fires contained in any partially enclosed fireplace, firepit, grill or similar device constructed of metal, stone, masonry or similar non-flammable material and that is designed for the purpose of housing wood or charcoal fires are not subject to this Ordinance.

H. Permission of property owner required.

It shall be unlawful to light or otherwise kindle fire upon the land of another without the permission of the owner thereof, which permission, except in the case of a family member or employee, shall be in writing.

I. Fires during drought.

It shall be unlawful for any person to light or attempt to light or to cause, permit or authorize another to light or attempt to light or otherwise kindle any outdoor fire subject to this Ordinance when a ban on such fires has been publicly announced by the Commonwealth of Pennsylvania, Chester County or Township Supervisors or their authorized representatives in a time of drought.

J. Extinguishment of dangerous or nuisance fires.

Any fire on public or private property shall be promptly extinguished by the landowner or if necessary, the local fire company having jurisdiction, either with or without the consent of the landowner or person in charge, if, in the opinion of a police officer, fire personnel, fire marshal or the Codes Enforcement Officer or his or her designee, such fire constitutes a danger or a nuisance to persons or property.

K. Violations and penalties.

Any person who violates or permits the violation of any provision of this section shall, upon being found liable therefore before the magisterial district judge, shall be subject to the following penalties:

a. First Offense. A person cited for a violation of this Ordinance for the first time shall receive a written warning. If the citation is contested, and the person is convicted of the first offense in a civil enforcement proceeding, the person shall pay all applicable court costs and reasonable attorney's fees.

b. Second and Additional Offenses. A person convicted of second or additional offense in a civil enforcement proceeding, shall pay a fine of not more than \$500 nor less than \$100, together with court costs and reasonable attorney's fees. Each day of violation shall constitute a separate violation.

c. Enhanced Penalties. In the event that any violation, including a first offense, of any provision of this Ordinance: (i) requires the dispatch of a Fire Department to control and extinguish a fire because the fire cannot be controlled and extinguished by the Responsible Person, or (ii) causes material damage to property other than that of the landowner on whose property the violation occurred, the person shall, upon being found liable therefore in a criminal enforcement proceeding, pay a fine of not more than \$1,000 and not less than \$500, together with court costs and reasonable attorney's fees, and may be incarcerated for a period not exceeding 90 days. Such fine, costs, attorneys fees and incarceration, after being reduced to a final, unappealed judgment, shall be enforced by the Township pursuant to the applicable rules of criminal procedure. Each day of violation shall constitute a separate violation. The mere dispatch of a

Fire Department shall not constitute an offense warranting enhanced penalties under this subsection.

L. Approval for Fires that do not comply with this ordinance.

Any person who desires to engage in open, outdoor burning that does not comply with any provision of this Ordinance shall submit a written request to the Township stating, at a minimum, the purpose, nature, scope and proposed date of such burning. The request shall also describe all precautions the applicant will take to conduct the burning in a controlled and safe fashion. The Township may request any additional information it deems necessary and may impose as a condition to approval of any such request, reasonable terms and conditions, including approval by the Fire Department.

**SECTION 2.** The provisions of this Ordinance shall be severable, and if any provision or phrase shall be held to be unconstitutional or otherwise invalid, such portion shall be deemed a separate, distinct, and independent provision and shall not affect the validity of any of the remaining provisions or phrases hereof, it being the express intention of the Supervisors to enact and adopt each section independently of every other section.

**SECTION 3.** All ordinances or parts of ordinances are hereby repealed insofar as they may be inconsistent herewith.

**SECTION 4.** This Ordinance shall become effective five (5) days after the adoption and enactment hereof.

**ENACTED AND ORDAINED** this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**BOARD OF SUPERVISORS  
EAST MARLBOROUGH TOWNSHIP**

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Attest:

\_\_\_\_\_  
Secretary