

**Borough of Northumberland
Ordinance No. 2011-3**

An ordinance of the Borough of Northumberland, Northumberland County, Commonwealth of Pennsylvania, for the prevention and control of 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, public nuisances, repealing previous ordinances, and validity.

SECTION I. Title

This ordinance shall be known and may be cited as the Borough of Northumberland Outdoor Wood-Fired Boiler Ordinance of 2011.

SECTION II. Authority

The Council of the Borough of Northumberland, under, and by virtue of and pursuant to the authority granted by 35 P.S. §4012 and 53 P.S. 46202 do hereby enact and ordain this ordinance.

SECTION III. Applicability

Except as otherwise provided, this ordinance applies to the installation and use of all outdoor wood-fired boilers within the Borough of Northumberland.

III.1. This ordinance does not apply to grilling or cooking using charcoal, wood, propane or natural gas in cooking or grilling appliances.

III.2. 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.

III.3. 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 IV. Purpose and Scope

Whereas the Borough Council of the Borough of Northumberland 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 the Borough of Northumberland it is hereby declared to be the policy of the Borough of Northumberland to safeguard the citizens of the Borough of Northumberland from such air pollution.

SECTION V. 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

Council – Borough Council of the Borough of Northumberland.

Borough – Borough of Northumberland.

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 EPA as meeting a particulate matter emission limit of 0.32 pounds per million British Thermal Units output and is labeled accordingly. Phase 2 outdoor wood-fired boiler models will be identified with a white hang tag.

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.

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 VI. Regulations

(1) On or after May 1, 2011, no person shall install an outdoor wood-fired boiler in the Borough;

(2) On or after May 1, 2011, only outdoor wood-fired boiler previously installed may be used or operated in the Borough and must be used and operated in accordance with the following provisions:

VI.1. Particulate Standard Requirements for New Outdoor Wood-Fired Boilers

No person shall use or operate an outdoor wood-fired boiler that is not a Phase 2 Outdoor Wood-fired Boiler.

VI.2. Setback Requirements for New Outdoor Wood-fired Boilers

No person shall use or operate an outdoor wood-fired boiler unless it is installed at least 150 feet from the nearest property line.

VI.3. Stack Height Requirements for Existing Outdoor Wood-fired boilers

No person shall use or operate an outdoor wood-fired boiler that was installed before May 1, 2011 unless it has a permanently attached stack with a minimum stack height of

10 feet above the ground that also extends at least two feet above the highest peak of any residence located less than 500 feet from the outdoor wood-fired boiler. However, if the existing outdoor wood-fired boiler is a Phase 2 outdoor wood-fired boiler, it may be located closer than 500 feet, but no less than 150 feet from any residence.

VI.4. Reconstruction of Existing Outdoor Wood-fired boilers

If an outdoor wood-fired boiler that was installed prior to May 1, 2011 becomes more than fifty percent (50%) tore down, physically deteriorated, decayed or inoperable, it shall not be rebuilt or restored and must be disconnected from all structures. If the condition of the outdoor wood-fired boiler violates any other ordinance of the Borough, the Borough may order its removal from the property in accordance with the applicable ordinance.

VI.5. Fuel Requirements for Outdoor Wood-fired Boilers

No person that uses or operates an 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 fuel that complies with all applicable sulfur limits and is used as a starter or supplemental fuel for dual-fired outdoor wood-fired boilers

VI.6. Prohibited Fuels for Outdoor Wood-fired Boilers

No person shall burn any of the following items in an outdoor wood-fired boiler:

- Any material not listed in VI.6
- 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
- Any material that causes a noxious odor or a condition that creates a nuisance

VI.7. Prohibition of Operation for Outdoor Wood-fired Boilers

No person shall use or operate an outdoor wood-fired boiler between the dates of May 1 and September 30. VI.8. Regulatory Requirements for Outdoor Wood-fired Boilers. No person shall use or operate an outdoor wood-fired boiler unless it complies with all existing state and local regulations. The following is a list of some, but not all, 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

VI.9. Permits for Outdoor Wood-fired Boilers

No person shall use or operate an outdoor wood-fired boiler unless a permit is obtained from the Responsible Official. Any person who desires to use or operate an outdoor wood-fired boiler must submit an application for a permit to use or operate an outdoor wood-fired boiler with the Responsible Official within ninety (90) days of the enactment of this ordinance. The application shall include the specifications for the wood-fired boiler, a sketch of the proposed location of the wood-fired boiler and the date of installation. The sketch shall accurately depict the distances between the wood-fired boiler and any building and property line. The person desiring a permit to use or operate on outdoor wood-fired boiler must also submit a non-refundable permit application fee to the Responsible Official. The Council may from to time set or amend, by Resolution, the permit application fee. The Responsible Official, upon receipt of an application for the use and operation of an outdoor wood-fired boiler (including specifications and sketch) and the appropriate permit application fee, shall review the permit to determine if the proposed wood-fired boiler is in compliance with this ordinance. If the application and proposed wood-fired boiler are in compliance with this ordinance, the Responsible Official shall issue the permit for the use and operation of a wood-fired boiler in accordance with the information provided in the application and the provisions of this ordinance. No permit shall be issued for a wood-fired boiler that was not installed on or before June 7, 2011. The Borough reserves the right to temporarily suspend a permit if weather conditions make the operation of the wood-fired boiler dangerous or a nuisance. The failure to obtain a permit or the failure to comply with the conditions of a permit, shall be considered violations of this ordinance. Any violation of the ordinance or permit conditions shall void the permit. Failure to obtain a permit or to comply with the conditions of a permit, shall be subject to the penalties listed in Section VII, VIII, IX and X of this ordinance.

SECTION VII. Enforcement Orders

- (1) The Borough and the Responsible Official shall have the power and duty to enforce the provisions of this ordinance.
- (2) The Borough 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 wood-fired boilers, which is in violation of any provision of production of information. Such an order may be issued if the Borough finds that any person in violation of any provision of this ordinance.
- (3) The Borough may, in its order, require compliance with this ordinance.
- (4) An order issued under this section shall take effect upon notice, unless the order specifies otherwise. An appeal to the Council of the Borough's order shall not act as a

supersedes, provided, however, that, upon application and for cause shown, the Council may issue such a supersedes under rules established by the Council.

(5) The authority of the Borough 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.

SECTION VIII. Responsibility of Owners and Operators

(1) Whenever the Responsible Official finds that illegal operation of an outdoor wood-fired boiler is occurring in the Borough, in contravention of the requirements of Section VI above, the Responsible Official may order the owner or operator to take corrective action in a manner satisfactory to the Borough, 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.

(2) 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, the 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 X of this ordinance.

SECTION IX. Criminal Penalties

Any person who violates any provision of this ordinance or any order of the Borough issued pursuant to this ordinance commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not less than one hundred dollars (\$100.00) nor more than two thousand five hundred dollars (\$2,500.00) for each separate offense and, in default of the payment of such fine, may be sentenced to imprisonment for ninety (90) days for each separate offense. Employees of the Borough authorized to conduct inspections or investigations are hereby declared to be law enforcement officers authorized to issue or file citations for summary violations under this ordinance, and the code officer and/or solicitor are hereby authorized to prosecute these offenses. For purposes of this section, a summary offense may be prosecuted before any district justice in this Borough. There is no accelerated rehabilitative disposition authorized for a summary offense.

SECTION X. Civil Penalties

(1) In addition to proceeding under any other remedy available at law or in equity for a violation of a provision of this ordinance or any order issued pursuant to this ordinance, the Borough may assess a civil penalty for the violation. The penalty may be assessed whether or not the violation was willful. The civil penalty so assessed shall not exceed twenty-five thousand dollars (\$25,000.00) per day for each violation. In determining the amount of the penalty, the Borough shall consider the willfulness of the violation; damage to air, soil, water, or other natural resources of the Borough or their uses; financial benefit to the person in consequence of the violation; deterrence of future violations; cost to the Borough; the size of the source or facility; the compliance history of the source; the severity and duration of the violation; degree of cooperation in resolving the violation; the speed with which compliance is ultimately achieved; whether the violation was voluntarily reported; other factors unique to the owners or operators of the source or facility; and other relevant factors.

(2) When the Borough proposes to assess a civil penalty, it shall inform the person of the proposed amount of the penalty. The person charged with the penalty shall then have thirty (30)

days to pay the proposed penalty in full; or if the person wishes to contest the amount of the penalty or the fact of the violation to the extent not already established, the person shall forward the proposed amount of the penalty to the Council within the thirty (30) day period for placement in an escrow account with the State Treasurer or any Commonwealth bank, or post an appeal bond to the Council within thirty (30) days in the amount of the proposed penalty, provided that such bond is executed by a surety licensed to do business in the Commonwealth and is satisfactory to the Borough. If, through administrative or final judicial review of the proposed penalty, it is determined that no violation occurred or that the amount of the penalty shall be reduced, the Council shall, within thirty (30) days, remit the appropriate amount to the person with any interest accumulated by the escrow deposit. Failure to forward the money or the appeal bond at the time of the appeal shall result in a waiver of all legal rights to contest the violation or the amount of the civil penalty unless the appellant alleges financial inability to prepay the penalty or to post the appeal bond. The Council shall conduct a hearing to consider the appellant's alleged inability to pay within thirty (30) days of the date of the appeal. The Council may waive the requirement to prepay the civil penalty or to post an appeal bond if the appellant demonstrates and the Council finds that the appellant is financially unable to pay. The Council shall issue an order within thirty (30) days of the date of the hearing to consider the appellant's alleged inability to pay. The amount assessed after administrative hearing or after waiver of administrative hearing shall be payable to the Borough and shall be collectible in any manner provided by law for the collection of debts, including the collection of interest on the penalty amount computed in accordance with section 6621(a)(2) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.) from the date of assessment of the penalty. If any person liable to pay any such penalty neglects or refuses to pay the same after demand, the amount, together with interest and any costs that may accrue, shall constitute a debt of such person, as may be appropriate, to the Borough. The debt shall constitute a lien on all property owned by said person when a notice of lien incorporating a description of the property of the person subject to the action is duly filed with the prothonotary of the court of common pleas where the property is located. The prothonotary shall promptly enter upon the civil judgment or order docket, at no cost to the Borough, the name and address of the person, as may be appropriate, and the amount of the lien as set forth in the notice of lien. Upon entry by the prothonotary, the lien shall attach to the revenues and all real and personal property of the person, whether or not the person is solvent. The notice of lien, filed pursuant to this Section, which affects the property of the person shall create a lien with priority over all subsequent claims or liens which are filed against the person, but it shall not affect any valid lien, right, or interest in the property filed in accordance with established procedure prior to the filing of a notice of lien under this section.

SECTION XI. 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 the Borough; or to cause a public nuisance; or to hinder, obstruct, prevent, or interfere with the Borough or its personnel in their performance of any duty hereunder, including denying the Responsible Official access to the source or facility.

SECTION XII. Public Nuisances

A violation of this ordinance or of any order issued by the Borough under this ordinance shall constitute a public nuisance. The Borough 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 Borough may recover the expenses of abatement following the process for assessment and

collection of a civil penalty contained in Section X. 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 XIII. Repealer

All prior ordinances or parts thereof which are in conflict with this ordinance are hereby repealed.

SECTION XIV. 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 that this ordinance would have been adopted if such illegal, invalid, or unconstitutional section, clause, sentence, part, or provision had not been included herein.

SECTION XV. Effective Date. This ordinance shall become effective on the 1st day of May, 2011.

DULY ENACTED AND ORDAINED this 7th day of June, 2011, by the Borough Council of the Borough of Northumberland, Northumberland County, Pennsylvania in lawful session duly assembled.

ATTEST: BOROUGH OF NORTHUMBERLAND

By: _____
Janice Bowman, Borough Secretary

By: _____
Greg Carl, Council President

APPROVED this _____ day of _____, 2011.

By: _____
Gretchen Brosius, Mayor