

ORDINANCE 1-2022

**CHAPTER 97
BURNING, OUTDOOR**

AN ORDINANCE OF THE BOROUGH OF PORT CARBON, SCHUYLKILL COUNTY, PENNSYLVANIA, AMENDING THE PORT CARBON BOROUGH CODE TO CREATE REGULATIONS RELATING TO OUTDOOR FIRES AND TYPES OF BURNING AND TO DESIGNATE TYPES OF AUTHORIZED AND UNAUTHORIZED BURNING, CREATE A PERMIT SYSTEM FOR CERTAIN BURNING ACTIVITIES AND TO PROVIDE FOR ENFORCEMENT AND PENALTIES FOR VIOLATIONS THEREOF

WHEREAS, Port Carbon Borough Council possesses the statutory authority to protect the health safety, and welfare of its residents; and

WHEREAS, Port Carbon Borough Council during recodification process enacted Chapter 97 regarding outdoor burning for purposes of regulating outdoor fires; and

WHEREAS, following recodification process, Port Carbon Borough Council recognized that Chapter 97 failed in prohibiting: and regulating certain outdoor burning that place both people and property in danger, and, as such, the health, safety and welfare of the residents was not protected by Chapter 97; and

WHEREAS, Port Carbon Borough Council drafted the within Ordinance following review of several citizen complaints as to the conduct of outdoor burning placing people and property in danger as well as other activities that disturbed the general peace of residents; and

WHEREAS, Port Carbon Borough Council intends the foregoing Ordinance to better protect the health, safety and welfare of its residents as well as protect the peace and general well-being of its residents through enactment of a more specific Ordinance; and

WHEREAS, Port Carbon Borough Council enacted the within Ordinance following publication in the Pottsville Republican and Evening Herald as required by the Commonwealth Borough Code; and

WHEREAS, Port Carbon Borough Council enacted the within Ordinance at a duly advertised and convened meeting open to the general public for attendance as mandated by the Pennsylvania open meetings law.

NOW THEREFORE, it is hereby ordained that Chapter 97 in its present state shall be repealed and the foregoing shall amend Chapter 97 in its entirety, and read as follows:

ARTICLE I PURPOSE

This ordinance is intended to promote the public health, safety and welfare and to safeguard the health, comfort, living conditions, safety and welfare of the citizens of the Borough of Port Carbon due to the air pollution and fire hazards of open burning, outdoor burning and refuse burning.

ARTICLE II DEFINITIONS

§ 97-1 Definitions.

APPROVED - Acceptable to the Fire Inspector, or other designated Enforcement Officer, or as otherwise approved by Underwriters' Laboratory or other similar testing organization.

BUILDING - Any structure or part thereof used or intended for supporting or sheltering any occupancy.

ENFORCEMENT OFFICIAL - The Borough of Port Carbon Fire Inspector, Fire Chief, a member of the Port Carbon Police Department, Code Official, or other designated authority charged with the administration and enforcement of the Borough Building, Fire, Property Maintenance Codes or the Port Carbon Code of Ordinances, or Commonwealth Borough Code.

TEMPORARY FIRE PIT - A free standing outdoor fireplace that extends below grade. The fire pit shall be constructed of non-combustible materials such as brick, steel, or masonry. It shall not extend below grade deeper than four (4) inches. The bottom shall be constructed of crushed stone. The sides shall not be higher than twenty-four (24) inches. The diameter shall not exceed thirty-six (36) inches and the fuel pile height shall not exceed eighteen (18) inches. All fire pits must have a spark arrestor in use while the fire pit is being utilized.

PERMANENT OUTDOOR FIRE PIT OR FIREPLACE - An approved fireplace or fire pit must be constructed of metal, concrete, clay, stone or other noncombustible material(s) that is fueled with wood, charcoal, propane, or natural gas. A permanent outdoor fire pit or fireplace that is above ground and purchased or constructed in a manner that attaches the component to a deck, patio or ground such that it is not portable. The term also includes a structure placed on the ground lacks foundations, slabs, piers, or poles, and that can be moved through disassembly into its component parts or by techniques commonly used in house moving. A permanent outdoor fire pit or fireplace shall be constructed to meet the Uniform Construction Code with a properly secured permit. The firebox shall not exceed thirty-six (36) inches in diameter or square and the fuel pile shall not exceed eighteen (18) inches in height. All outdoor fire pits or fireplaces must be equipped with a spark arrestor, located further than five (5) feet from a property line and ten (10) feet from a structure or combustible material.

PERSON- Any individual, partnership, limited liability partnership, firm, company, limited liability company, corporation, association, or any other legal entity and with respect to each its agents, servants, and employees.

PORTABLE OUTDOOR FIREPLACE - A portable, outdoor, solid-fuel or gas-burning fireplace with an Underwriters' Laboratories (UL) listing, or with another nationally recognized testing organization's listing that may be constructed of steel, concrete, clay, or other noncombustible material. A portable outdoor fireplace may be open in design, or may be equipped with a small hearth opening and a short chimney or chimney opening at the top equipped with a spark arrestor. The fire box shall not exceed thirty-six (36) inches in diameter or square and the fuel pile shall not exceed eighteen (18) inches in height. If the device is gas or electrically fueled, the fire box shall meet the previously stated requirements forty-eight (48) inches in length and twelve (12) inches in width.

CEREMONIAL FIRE - An outdoor fire burning materials other than rubbish where the fuel being burned is not contained in an outdoor fireplace, portable outdoor fireplace, or cooking appliance (such as a gas or charcoal grille or smoker) and is used for pleasure, religious, ceremonial, or similar purposes.

CLEAN WOOD - Natural wood which has not been painted, varnished or coated with a similar material; has not been pressure-treated with preservatives; and does not contain resins or glues as in plywood or other composite wood products.

REFUSE - Any waste material, garbage, animal carcasses, plastics, and trash or household materials, except trees, logs, brush, stumps, leaves, and other vegetative matter.

CONSTRUCTION AND DEMOLITION WASTE- Building waste materials, including, but not limited to, waste shingles, insulation, lumber, treated wood, painted wood, wiring, plastics, packaging, and rubble that results from construction, remodeling, repair, and demolition operations on a house, commercial or industrial building, or other structure.

FIRE CHIEF - The Chief of the Borough of Port Carbon Fire Department and/or other persons designated by the Fire Chief.

OPEN BURNING - Kindling or maintaining a fire where the products of combustion are emitted directly into the ambient air without passing through a stack or a chimney from an enclosed chimney.

PATIO WOOD-BURNING UNIT- A chimney, patio warmer, or other portable wood-burning device used for outdoor recreation and/or heating.

Words and phrases not defined herein shall be defined in accordance with the BOCA National Fire Prevention Code, Eleventh Edition, 1999, as published by the Building Officials and Code Administrators International, Incorporated. If not defined in the BOCA National Fire Prevention Code, Eleventh Edition, then such words or phrases shall be as defined in the Merriam Webster's Collegiate Dictionary, 11th Edition.

**ARTICLE II
PROHIBITED FIRES**

§ 97-2 Outdoor fires and cooking prohibited.

- A. Except as otherwise set forth in Section 3, below, no person within the municipal limits of the Borough, shall kindle, set, start, ignite, maintain or permit the kindling, setting, starting, ignition or maintenance of any open burning outside of any building for any purpose at all, including by way of example and not by way of limitation any junk fire, refuse fire, open fire, a fire ignited to burn brush, grass, wood, leaves, paper, boxes, rubbish, garbage, construction materials, waste oil, asphalt, treated or painted lumber, plastic, rubber, or burn or cause to be burned any substance or material of any kind out of doors anywhere within the Borough of Port Carbon.
- B. The Mayor may ban open burning within the Borough when atmospheric conditions result in the potential for wildfires that may spread from their source due to dry vegetation or plant conditions.
- C. The use of barrels, whether vertical or horizontal or any other type of material not listed herein is prohibited.
- D. No persons shall allow or maintain a fire which creates excessive smoke, excessive odor or malodorous emissions. Any Police Officer, Code Enforcement Officer, the Fire Chief or his designated representative may, upon investigation, make a determination, in his or her sole judgment, that the permitted fire is emitting excessive smoke, excessive odor, or malodorous emissions.

**ARTICLE III
EXCEPTIONS**

§ 97-3 Exceptions.

- A. Approved outdoor cooking appliances used solely for cooking, used with the manufacturer's recommended fuel and operating instructions, and located at least five (5) feet from combustable construction and building opening and/or according to the manufacturer's instructions and its listings. Grade-level decks associated with detached single-family dwellings shall not be considered combustable construction. In any circumstance, cooking shall not be permitted on decks or porches of multiple-occupancy dwellings.
- B. UL listed electric-powered cooking appliance used in accordance with the manufacturer's instructions.

- C. Portable outdoor fireplaces and fire pits shall be permitted when used in accordance with the manufacturer's instructions and shall not be operated within five (5) feet of a property line. Only seasoned, untreated wood may be used for fuel. However, portable outdoor wood burning fireplaces shall be no less than ten (10) feet from any structure or combustible material, including but not limited to houses, sheds, outbuildings, fences and garages. Wood burning portable outdoor fireplaces shall not be operated on any type of combustible deck/porch or in any circumstance where there is no clear overhead space.

C.1. Portable outdoor gas-fired or electric fireplaces are permitted on decks if allowed in the Manufacturer's instructions and listing. Any gas or electric fireplace shall be a minimum of five (5) feet from any combustible material. No type of portable outdoor fireplace shall be used on above ground decks/patios/porches of multiple-occupancy dwellings.

- D. Permanent outdoor fireplaces shall only be installed after a permit has been issued by the Building Code Official. Existing outdoor fireplaces may remain if covered by an approved burn screen and if the container meets the firebox and pile sizes noted above. Newly established permanent outdoor fireplaces shall meet the requirements of subsection 3.C, above. An existing permanent outdoor fireplace shall be permitted only per the following requirements.

(1) It meets manufacturer's instructions and its listing; or

(2) The requirements of the Borough permit that was originally obtained to construct the fireplace are satisfied.

- E. Temporary fire pits shall be permitted if constructed in accordance with the definition of this ordinance and shall not be operated within five (5) feet of a property line or ten (10) feet from any structure or combustible material including but not limited to houses, sheds, outbuildings, fences and garages. Temporary fire pits shall not be operated on any, in any circumstance where there is no clear overhead space. Only seasoned, untreated wood may be used for fuel.
- F. Portable outdoor fireplaces and permanent outdoor fireplaces shall only be used when fitted with an approved metal burn screen. The screen shall cover all openings designed for the exhausting of fire gases. The burn screen shall have openings no larger than half (1/2) inch in any direction and be maintained in good condition so as to prevent the issuance of larger burn particles. Gas-fire outdoor fireplaces shall not require a burn screen unless the appliance is required to have one by its UL listing.
- G. Additional exceptions may be authorized by the Fire Chief and issuance of a permit when Council considers the situation falls within the intent of this Part and will not create a nuisance or fire hazard. The Borough Fire Department may be required to stand by during any special burning. A person requesting a permit shall also be responsible for all

fees, costs and expenses incurred by the Borough or the Fire Department in excess of the applicable permit fee.

- H. All outdoor fires may be burned between 9 a.m. and 12 midnight. All recreational fires must be extinguished by twelve (12) Midnight unless granted an exception by the Borough Council as noted by Part 3.G. of this ordinance.
- I. 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.

ARTICLE IV RULES AND REGULATIONS

§ 97-4 Permits required.

- A. Fees for permits shall be established by resolution of Council.
- B. Permit application procedures shall follow that which is established for obtaining building or other permits within the Borough.
- C. Permit applications shall be available only for the following activities.
 - (1) Erection of a permanent fire place;
 - (2) Having or maintaining a ceremonial fire;
 - (3) As authorized under Section 3.G. above.

§ 97-5 Attendance.

- A. Burning in compliance with this Part shall be attended at all times by an individual eighteen (18) years of age or older until such times as the fire is extinguished and is cold. The open burning, bonfires or recreational fires shall be constantly attended until the fire is extinguished. A minimum of one portable fire extinguisher with a minimum 4-A 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 and in a sufficient amount to properly extinguish the fire.
- B. The person utilizing or maintaining an outdoor fire shall be responsible for all fire suppression costs and any other liability resulting from damage caused by the fire.

§ 97-6 Enforcement.

- A. Any authorized officer, agent, employee or representative of the Borough of Port Carbon, including the Fire Chief or his designated representative, may inspect any property for the purpose of ascertaining compliance with the provisions of this Ordinance.
- B. An enforcement official shall have the authority to order the immediate extinguishment of any fire deemed to create a hazard or nuisance. Extinguishment can be either by the person(s) present or fire personnel.
- C. An enforcement official shall report all complaints or nuisance investigations to the Fire Chief or Mayor.
- D. An enforcement official may request the Fire Chief or Police Department to issue a Cease and Desist Order if persistent complaints and/or violations occur. Such order may prohibit the subject from future use of the device in question and/or forfeiture of their annual wood burning permit. Prior to issuance of such order, the Fire Chief or Police Department shall review the facts and circumstances and present the same to the Council for final approval.
- E. If an enforcement official shall determine that there has occurred, or that there is occurring, a violation of this Ordinance, the Fire Chief or Police Department, or other designated representative shall have the authority to issue a notice of violation and seek penalties as provided for in this Section 6 and Section 7.

§ 97-7 Penalties.

- A. Any authorized officer, agent, employee or representative of the Borough of Port Carbon, including the Fire Chief or his designated representative is authorized to enforce any provisions of this chapter.
- B. Any person who violates or permits a violation of this chapter shall, upon conviction in a summary proceeding under the Pennsylvania Rules of Criminal Procedure, be guilty of a summary offense and shall be punishable by a fine of not more than \$1,000.00, plus court costs and reasonable attorneys' fees incurred by the Borough in the enforcement proceedings. Upon judgement against any person by summary conviction, or proceedings by summons on default of the payment of the fine or penalty imposed and the costs, the defendant may be sentenced to imprisonment for a period not to exceed 30 days. Each day that such violation exists shall constitute a separate offense. Additionally, thereto, Borough of Port Carbon may enforce this ordinance through any and all procedures as permitted by law.

§ 97-8 Effective Date.

This Ordinance shall become effective upon enactment as required by the Commonwealth Borough Code.

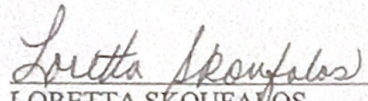
§ 97-9 Severability.

Should any portion of this ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected.

ADOPTED this 6 day of June, 2023.

PORT CARBON BOROUGH

ATTEST:




LORETTA SKOUFALOS
Borough Secretary
(Seal)

BY: 

SCOTT KRATER, Council President

APPROVED on the date above written.



HAROLD HERNDON, Mayor

