

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

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 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, or Property Maintenance Codes.

“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 4”. The bottom shall be constructed of crushed stone. The sides shall not be higher than 24”. The diameter shall not exceed 36” and the fuel pile height shall not exceed 18”. All fire pits must have a spark arrestor in use while the Fire Pit is being utilized.

“Outdoor fireplace”- An approved fireplace, with an Underwriters’ Laboratories (UL) listing, constructed of steel, concrete, stone, metal, or other noncombustible material that is fueled with the recommended combustible substance such as wood, charcoal, propane, or natural gas. An

outdoor fireplace shall be constructed to meet the International Residential Code with a properly secured permit. The firebox shall not exceed 36 inches in diameter or square and the fuel pile shall not exceed 18 inches in height. All outdoor fireplaces must be equipped with a spark arrestor.

“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 36 inches in diameter or square and the fuel pile shall not exceed 18 inches in height. If the device is gas or electrically fueled, the fire box shall meet the previously stated requirements of 48 inches in length and 12 inches in width.

“Recreational 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.

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.

“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 no 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.

ARTICLE II

Outdoor fires and cooking prohibited

§ 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. 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.
- B. The use of barrels, whether vertical or horizontal or any other type of material not listed herein is prohibited.

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 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 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 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 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. 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 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.
- F. 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.

- G. All outdoor fires may be burned between 9 a.m. and 12 midnight. All recreational fires must be extinguished by 12 Midnight unless granted an exception by the Borough Council as noted by Part 3.f. of this ordinance.
- H. 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 recreational fire;
 - (3) The use of a portable outdoor wood burning fireplaces;
 - (4) As authorized under Section 3.f. 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 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 shall have the authority to issue a notice of violation and seek penalties as provided for in this Section 3 and Section 4.

§ 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.
- A. 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.

§ 97-8 Effective Date.

§ 97-9 Protanto Repeal.

Unless otherwise specifically stated in this Ordinance, all ordinances in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

§ 97-10 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 __?__ day of __?__, 2021.

PORT CARBON BOROUGH

ATTEST:

Borough Secretary
(Seal)

BY: _____
SCOTT KRATER, Council President

APPROVED on the date above written.

HAROLD HERNDON, Mayor