

**ORDINANCE No. 02-2023****AIR POLLUTION AND OPEN BURNING ORDINANCE**

**AN ORDINANCE OF CONOY TOWNSHIP, LANCASTER COUNTY, COMMONWEALTH OF PENNSYLVANIA FOR THE PREVENTION AND CONTROL OF AIR POLLUTION; PROVIDING REGULATIONS FOR OPEN BURNING; DEFINING CERTAIN TERMS USED HEREIN; PROVIDING FOR REGULATIONS, EXCEPTIONS, ENFORCEMENT ORDERS, RESPONSIBILITY OF OWNERS AND OPERATORS, PENALTIES, UNLAWFUL CONDUCT, PUBLIC NUISANCES, REPEALING PREVIOUS ORDINANCE 2001-1 AND 1-12-8-2011 AMENDMENT, AND VALIDITY.**

**SECTION I. Title**

This ordinance shall be known and may be cited as the Conoy Township Air Pollution/Open Burning Ordinance.

**SECTION II. Authority**

The Board of Supervisors of Conoy Township, under, and by virtue of and pursuant to the authority granted by The Second Class Township Code Act of May 1, 1933, P.L. 103, No. 69 enacted and amended November 6, 1996, P.L. 350, No. 60 (53 P.S. Section 65101, et seq.), do hereby enact and ordain this ordinance.

**SECTION III. Policy**

Whereas the Board of Supervisors of Conoy Township has determined that air pollution from open burning may be detrimental to the health, comfort, living conditions, welfare, and safety of the citizens of Conoy Township, it is hereby declared to be the policy of Conoy Township to safeguard the citizens of Conoy Township from such air pollution.

**SECTION IV. 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:

(1) Air Pollution -- The presence in the outdoor atmosphere of any form of contaminant, including, but not limited to, the discharging from stacks, chimneys, openings, buildings, structures, open fires, vehicles, processes or any other source of any soot, smoke, dust cinders, dirt, noxious or obnoxious acids, fumes, oxides, gases, vapors, odors, toxic, hazardous or radioactive substances, waste or any other matter in such place, manner or concentration unfavorable or which may be detrimental to human, plant or animal life or to property or which unreasonably interferes with the comfortable enjoyment of life or property.

- (2) Board – The Conoy Township Board of Supervisors.
- (3) Burning – The act of consuming by fire; to flame, char, scorch or blaze. As used in this ordinance, smoldering shall have the same meaning as burning and any smoldering shall be deemed a burning.
- (4) Burning container – Any container used for the purpose of burning materials as authorized herein; constructed of masonry, metal or other non-combustible rigid material containing a bottom, sides and a mesh cover/lid or any commercially available portable fireplace, permanent outdoor fireplace or fire pit. Burning containers shall not be allowed to deteriorate to the point where they contain holes or missing surface in the structure.
- (5) Clearing and grubbing wastes – Trees, shrubs, and other native vegetation which are cleared from land during or prior to the process of construction. The term does not include demolition wastes and dirt laden roots.
- (6) Composting – The process by which organic solid waste is biologically decomposed under controlled anaerobic or aerobic conditions to yield a humus-like product.
- (7) Cooking Fire – Any fire contained in a fireplace, grill, pit or other suitable container using wood, charcoal, gas (natural or propane) or other similar fuel, for the sole purpose of cooking, grilling, barbecuing or similar food preparation for human consumption.
- (8) Domestic refuse/garbage – Waste which is generated from the normal occupancy of a structure occupied solely as a dwelling by two families or less. The term does not include appliances, carpets, demolition waste (insulations, shingles, siding, etc.), furniture, mattresses or box springs, paint, putrescible waste, solvents, tires, treated wood, insulating coating on wire, automobiles, automotive parts, batteries, PVC products, waste oil, petroleum products and plastics.
- (9) Enforcement Officer – The Township Manager/Secretary, the Zoning Officer and/or the Susquehanna Regional Police Department.
- (10) Municipality – A city, incorporated town, township, borough, county, municipal authority, or other public body created under State law having jurisdiction over the disposal of sewage, industrial wastes and other wastes.
- (11) Open Burning – Any fire, flame, char, blaze or smolder from which any air emissions are released directly into the outdoor atmosphere rather than being directed thereto through a flue, duct, pipe, stack or chimney.
- (12) 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.

- (13) Prohibited Waste – Waste including but not limited to appliances, carpets, demolition waste (insulation, shingles, siding, etc.), furniture, mattresses or box springs, paint, putrescible waste, solvents, tires, treated wood, insulating coating on wire, automobiles, automotive parts, batteries, PVC product, waste oil, petroleum products and plastics.
- (14) Property Line – The legal boundary separating one parcel of property from another parcel.
- (15) Recreational Fire – An outdoor fire set solely for cooking, aesthetics, recreational, ceremonial and/or social gathering purposes, and not for the purpose of disposing of yard waste, which burns in an outdoor fire place, wood stove, chimneys, patio heater, fire pit, permanent or temporary fire ring with a defined barrier or similar fire proof structure intended to prevent the spread of fire.
- (16) Responsible Adult – An individual eighteen (18) years or older who is not under the influence of drugs or alcohol or suffering from any other disability which would impair his or her ability to properly supervise a fire.
- (17) Township – Conoy Township, Lancaster County, Pennsylvania. A township of the second class.
- (18) Yard Waste – Leaves, grass, clippings, garden residue, tree trimmings, chipped shrubbery and other vegetative material.

#### SECTION V. Regulations

A. Exceptions to the prohibition against open burning. No person may permit the open burning of material with the exception of the following:

- (1) A fire set to prevent or abate a fire hazard, when approved by the Department of Environmental Protection's Regional Air Quality Program office and set by or under the supervision of a public officer.
- (2) 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.
- (3) A fire set for the prevention and control of disease or pests, when approved by the Department of Environmental Protection's Regional Air Quality Program office.
- (4) A fire set for the purpose of burning that amount of domestic refuse/garbage generated from one dwelling, when the fire is on the premises and when the refuse/garbage results from the normal occupancy of said structure.
- (5) A fire set for the purpose of burning that amount of yard waste generated from the premises of a structure occupied solely as a dwelling by two families or less when the fire is on the premises of said structure.
- (6) A fire set solely for cooking food.
- (7) A fire set solely for recreational or ceremonial purposes.

B. The following restrictions shall apply to the exceptions to the prohibition against open burning:

(1) No person shall permit the burning of any material for monetary gain, profit, like kind exchange, or as a commercial activity, whether for profit or not.

(2) No burning is allowed or permitted within fifty (50) feet of any building or structure, whether or not occupied, nor within fifty (50) feet of any property line.

(3) All fires or burning must be completely extinguished and not permitted to smolder when not supervised by a responsible adult.

(4) All fires must be kept under supervision at all times by a competent and responsible adult individual who shall be physically present and located within twenty-five (25) feet, with a clear line of sight, of the fire or burning.

(5) With the exception of the burning of yard waste on lots greater than two (2) acres, or 87,120 square feet, and located within the Agricultural (A), Conservation (C), Rural (R) or Industrial (I) zoning districts, all burning must take place in a burning container.

(6) No fire shall be permitted to burn whenever drought or extreme weather conditions exist or when a ban on burning has been placed into effect by the Commonwealth of Pennsylvania or other competent governmental body. The Board of Supervisors may prohibit any and all outdoor fires when atmospheric conditions or local circumstances make such fires hazardous.

(7) No outdoor fire shall be permitted to burn or smolder between sunset and sunrise on any day.

(8) The provisions of this section of this chapter shall not apply to any fire set solely for recreational or ceremonial purposes, or solely for cooking food.

C. No burning of domestic refuse/garbage is allowed or permitted in the Village Center (VC), Suburban Residential (R-1), High Density Residential (R-2), or Local Commercial (LC) zoning districts.

D. The burning of prohibited waste is not permitted anywhere in the Township under any circumstances.

#### SECTION VI. Enforcement Orders

(1) The Enforcement Officer shall have the power and duty to enforce the provisions of this ordinance.

(2) The Enforcement Officer 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 open burning which, in the course of its occurrence, is in violation of any provision of this ordinance; orders to take corrective action or to abate a public

nuisance; orders requiring the testing, sampling, or monitoring of any open burning; or orders requiring production of information. Such an order may be issued if Enforcement Officer finds that any condition existing in or on the facility or source involved is causing or contributing to open burning or if Enforcement Officer finds that any person is in violation of any provision of this ordinance.

(3) The Enforcement Officer may, in its order, require compliance with such conditions as are necessary to prevent or abate open burning or effect the purposes of this ordinance.

(4) An order issued under this section shall take effect upon notice, unless the order specifies otherwise. An appeal of the Township's order shall not act as a supersedeas, provided, however, that the Court of Common Pleas of Lancaster County, Pennsylvania may issue such a supersedeas.

(5) The authority of the Township or Enforcement Officer to issue an order under this section is in addition to any remedy or penalty which may be imposed pursuant to this ordinance. The failure to comply with any such order is hereby declared to be a public nuisance.

#### SECTION VII. Responsibility of Owners and Operators

(1) Whenever the Enforcement Officer finds that open burning is occurring in the Township, other than those exceptions noted in Section V above, the Enforcement Officer may order the owner or operator to take corrective action in a manner satisfactory to the Township, or the Enforcement Officer may order the owner or operator to allow access to the land by the Enforcement Officer, 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 Township 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 IX of this ordinance.

#### SECTION VIII. Criminal Penalties

Any person who violates any provision of this ordinance or any order of the Enforcement Officer issued pursuant to this ordinance commits a summary offense shall, upon conviction in summary proceedings before the District Justice, be sentenced to pay a fine of not less than Three Hundred Dollars (\$300.00) nor more than One Thousand Dollars (\$1,000.00) and costs of prosecution. In default of the payment of the fine and costs, the defendant may be sentenced to the county jail for a period not exceeding ninety (90) days. This penalty section is enacted pursuant to the Second Class Township Code, 53 P.S. 66601 (c. 1) (2), for health, fire and safety and for air and water pollution purposes. Each violation shall constitute a separate offense, for which a summary conviction may be sought. The Township Solicitor is authorized to prosecute these offenses. For purposes of this section, a summary offense may be prosecuted before any District Justice.

#### SECTION IX. 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, Conoy

Township and/or the Enforcement Officer 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 Thousand Dollars (\$20,000.00) per day for each violation. In determining the amount of the penalty, the Township shall consider the willfulness of the violation; damage to air, soil, water or other natural resources of the Township or their uses; financial benefit to the person in consequence of the violation; deterrence of future violations; cost to the Township; 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 facility; and other relevant factors.

(2) When the Township 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. If said penalty is not paid to the Township, the Township shall initiate civil enforcement proceeding before the District Justice. Civil proceedings shall be initiated by a complaint or by other means as may be provided by the Pennsylvania Rules of Civil Procedure. If the violator is found to be liable for the violation, the violator shall be liable for the penalty imposed, including additional daily penalties for continuing violations, plus court costs and reasonable attorney fees incurred by the Township as a result of the enforcement proceedings.

#### SECTION X. 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 Township; or to cause a public nuisance; or to cause air, soil, or water pollution resulting from an open burning incident; or to hinder, obstruct, prevent or interfere with the Township or its personnel in their performance of any duty hereunder, including denying the Enforcement Officer access to the source or facility; or to violate the provisions of 18 Pa.C.S. § 4903 (relating to false swearing) or 4904 (relating to unsworn falsification to authorities) in regard to papers required to be submitted under this ordinance. The owner or operator of an open burning source shall not allow pollution of the air, water, or other natural resources of the Township to result from the source.

#### SECTION XI. Public Nuisances

A violation of this ordinance or of any order issued by the Township under this ordinance shall constitute a public nuisance. The Township 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 Township may recover the expenses of abatement following the process for assessment and collection of a civil penalty contained in Section IX. 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 XII. Exemption

All activities of the Lancaster County Solid Waste Authority are exempt from the provisions of this Ordinance.

SECTION XIII. Repealer

Ordinance 2001-1 and the 1-12-8-2011 Amendment thereto previously enacted is hereby repealed. All other ordinances or parts thereof which are in conflict with this ordinance are hereby repealed.

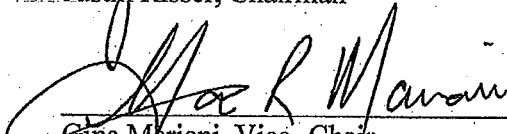
SECTION XIV. Validity

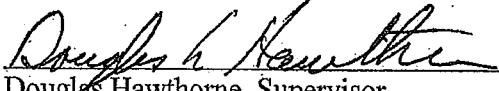
The provisions of this ordinance are severable, and if any section, clause, sentence, part or provision thereof shall be held illegal, invalid, or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect or impair the remaining sections, clauses, sentences, parts, or provisions of this ordinance. It is hereby declared to be the intent of the Board that this ordinance would have been adopted if such illegal, invalid, or unconstitutional section, clause, sentence, part or provision had not been included herein.


ORDAINED and ENACTED as an Ordinance by the Board of Supervisors of the Township of Conoy, Lancaster County, Pennsylvania, in lawful session duly assembled this 13<sup>th</sup> day of April, 2023.

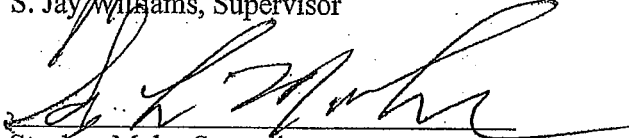
BOARD OF SUPERVISORS OF CONOY TOWNSHIP, LANCASTER COUNTY, PA

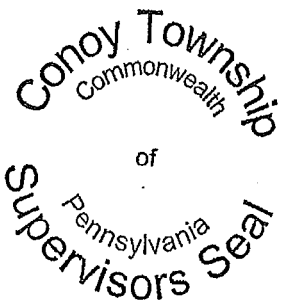
  
Justin Risser, Chairman

  
Gina Mariani, Vice- Chair

  
Douglas Hawthorne, Supervisor

  
S. Jay Williams, Supervisor

  
Stephen Mohr, Supervisor



Attest:   
Conoy Township Secretary

