

ORDINANCE NO. 207,2012

AN ORDINANCE OF THE TOWNSHIP OF TILDEN, BERKS COUNTY, PENNSYLVANIA, AMENDING CHAPTER VI, ENTITLED "CODE ENFORCEMENT" OF THE TOWNSHIP OF TILDEN CODE OF ORDINANCES TO ADD A NEW PART 4, ENTITLED "OUTDOOR WOOD-FIRED BOILERS" TO ESTABLISH REGULATIONS FOR THE INSTALLATION AND USE OF ALL OUTDOOR WOOD-FIRED BOILERS; TO PROVIDE FOR A TITLE AND AUTHORITY; AND TO ESTABLISH DEFINITIONS, PROCEDURES FOR APPLICATIONS AND PERMITS, FEES, REGULATIONS FOR OUTDOOR WOOD-FIRED BOILERS, REGULATIONS FOR EXISTING OUTDOOR WOOD-FIRED BOILERS, TESTING AND INSPECTIONS, APPEALS BOARD, VARIANCE PROCEDURES, ENFORCEMENT ORDERS, PENALTIES, AND PUBLIC NUISANCES

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Board of Supervisors of the Township of Tilden, Berks County, Pennsylvania, and it is hereby ENACTED AND ORDAINED by the authority of the same as follows:

SECTION 1. Chapter VI, entitled "Code Enforcement", of the Code of Ordinances of the Township of Tilden is hereby amended by adding thereto the following new Part 4:

"Part 4

Outdoor Wood-Fired Boilers

Section 401. Title. This Part shall be known and may be cited as the "Tilden Township Outdoor Wood-Fired Boiler Ordinance".

Section 402. Authority. The Board of Supervisors of Tilden Township, under and by virtue of and pursuant to the authority granted by the Second Class Township Code, and Section 12 of the Air Pollution Control Act (35 P.S. § 4012), do hereby enact and ordain this Part.

Section 403. Applicability. This Part applies to the installation and use of all Outdoor Wood-Fired Boilers within the Township.

(a) This Part does not apply to grilling or cooking using charcoal, wood, propane or natural gas in cooking or grilling appliances.

(b) This Part does not apply to burning in a stove, furnace, fireplace or other heating device within a building used for human or animal habitation.

(c) This Part 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 404. Purpose and Scope. The Board of Supervisors of Tilden Township has determined that air pollution from outdoor wood-fired boilers may be detrimental to the health, comfort, living conditions, welfare, and safety of the residents of Tilden Township. It is hereby declared to be the policy of Tilden Township to safeguard the citizens of Tilden Township from such air pollution.

Section 405. Definitions. The following words, terms and phrases, when used in this Part, unless the context clearly indicates otherwise, shall have the following meanings ascribed to them;

AIR POLLUTION CONTROL ACT - 35 P.S. §4000 *et seq.* as amended

APPEALS BOARD - The Township of Tilden Code Appeals Board.

BOARD OF SUPERVISORS - Board of Supervisors of the Township of Tilden.

CHIMNEY — 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.

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

CODE ENFORCEMENT OFFICER - A person designated by the Township to be responsible for the administration and enforcement of this Part.

DEP - The Pennsylvania Department of Environmental Protection or such successor agency.

EPA - Environmental Protection Agency or such successor agency.

EPA-CERTIFIED - An Outdoor Wood-Fired Boiler for which the manufacturer has supplied a Certificate of Compliance, or other proof of compliance, with EPA recommendations and/or promulgated emission standards for that particular furnace or appliance type and model.

**EXISTING OUTDOOR WOOD-FIRED BOILERS** - An Outdoor Wood-Fired Boiler that is fully installed and/or Operational in the Township as of the enactment date of this Part.

**OUTDOOR WOOD-FIRED BOILER** - A fuel-burning device designed:

- (1) to burn clean wood or other approved solid fuels;
- (2) by the manufacturer specifically for outdoor installation or installation in structures not normally intended for habitation by humans or domestic animals (e.g., garages); and,
- (3) to heat building space and/or water via distribution, typically through pipes, of a fluid heated in the device, typically water or a water/antifreeze mixture. Outdoor Wood-Fired Boilers are also known as outdoor wood-fired furnaces, outdoor wood-burning appliances or outdoor hydronic heaters, etc.

**PHASE 1 OUTDOOR WOOD-FIRED BOILER** - Has been certified or qualified by the EPA's meeting a particulate matter emission limit of 0.60 pounds particulates per million British Thermal Unit output and is labeled accordingly. Phase 1 Outdoor Wood-Fired Boiler models will be identified with an orange hang tag.

**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.

**TOWNSHIP** - The Township of Tilden, Berks County, Pennsylvania.

**YARD WASTE** - Leaves, grass clippings, garden residue, tree trimmings, chipped shrubbery and other vegetative material.

Section 406. Applications and Permits. After the effective date hereof, no Outdoor

Wood-Fired Boiler shall be maintained, installed or operated in the Township without the owner first submitting an Application in accordance with the terms contained herein. The Application and Permit process is as follows:

(a) Any person who desires to install, maintain or operate an Outdoor Wood-Fired Boiler, (hereinafter referred to as "Applicant") after the effective date hereof, upon their property in the Township, must complete an Application, in writing, and submit it to the Tilden Township Office, along with the requisite Application fee, at least thirty (30) days prior to the desired date of installation or operation. Permit Application forms shall be available at the Township Office during regular business hours.

(b) The Applicant must provide proof that the Outdoor Wood-Fired Boiler to be installed, maintained or Operated within the Township limits, is certified to meet applicable EPA and DEP emission recommendations as amended; said standards must be submitted with the Application, unless the Outdoor Wood-Fired Boiler is considered by the EPA and DEP to be exempt from certification.

(c) The Applicant shall submit, with proof of low emissions, a copy of the manufacturer's recommended operating parameters, and all applicable information related to fuels necessary to achieve low emissions. This information, together with any amendments or modifications that may be forthcoming, shall be kept on file at the Township Office, along with copies of the Application, Permit, proof of certification and all other necessary documents.

(d) If an existing chimney is to be utilized, a written statement from the local Building Code Enforcement Officer stating that the chimney has been inspected and is suitable for use with appropriate fuels, shall be submitted with the Application. If a new chimney is to be constructed, a building permit shall be required.

(e) Within twenty (20) business days of receipt of a complete Application, and other required documents as described herein and, if necessary, after a site inspection, a written decision shall be forwarded to the Applicant from the Code Enforcement Officer, which either grants or denies a Permit to install, operate or maintain the Outdoor Wood-Fired Boiler.

(f) The Applicant may appeal a denial to the Appeals Board in accordance with Section 411 hereof. Written notice of the request for Appeal shall be filed in the Township Office within ten (10) calendar days of the date of denial, along with all appropriate fees.

(g) If the Code Enforcement Officer of the Township, determines that all

the provisions of this Part and the Application process have been met, a Permit shall be issued to the Applicant to install, operate or maintain the Outdoor Wood-Fired Boiler in accordance herewith.

(h) If the Code Enforcement Officer of the Township, determines that any person, company or organization is violating a provision or provisions of this Part, their Permit may be revoked and/or a Cease and Desist Order may be charged against any offending person, company or organization.

(i) In the event that an Application is denied, a Permit is revoked or a Cease and Desist Order is issued, notice shall be given to the Applicant, permittee or offending person, company or organization. The notice shall:

- (1) Be in writing.
- (2) Include a description of the property sufficient for identification.
- (3) Include a statement of the reason or reasons why the notice is being issued.
- (4) Include a correction order allowing a reasonable time (not to exceed ten (10) calendar days) for changes and/or corrections to be made to bring the Outdoor Wood-Fired Boiler into compliance with the provisions of this Part.

Section 407. Fees. Application, permit, inspection, variance and Appeal fees shall be set by Resolution of the Board of Supervisors from time to time.

Section 408. Regulations For Outdoor Wood-Fired Boilers.

(a) No person shall install an Outdoor Wood-Fired Boiler that is not a Phase 2 Outdoor Wood-Fired Boiler unless a cleaner burning Outdoor Wood-Fired Boiler is recommended by either the EPA or DEP. It shall be permissible to operate a Phase 1 Outdoor Wood-Fired Boiler provided that such unit was installed on the property prior to the enactment of this Ordinance.

(b) All Outdoor Wood-Fired Boilers must meet applicable regulations and recommendations of the EPA and DEP. All Outdoor Wood-Fired Boilers shall meet emission certification requirements unless expressly exempted otherwise. The Applicant shall have the burden of proving that the Outdoor Wood-Fired Boiler they desire to install, operate and maintain meets all existing laws, regulations and certifications.

(c) The Outdoor Wood Fired Boiler shall be located at least one hundred fifty feet (150') from the nearest building that is not on the same property as the Outdoor Wood-Fired Boiler, and the Outdoor Wood-Fired Boiler shall be located at least one hundred (100) feet from the property line.

(d) All non-catalytic Outdoor Wood-Fired Boilers must be certified not to exceed EPA particulate matter emission standards. All catalytic Outdoor Wood-Fired Boilers must be certified not to exceed EPA particulate matter emission standards. If the EPA or other agency should promulgate stricter standards, the stricter standards shall apply.

(e) The Outdoor Wood-Fired Boiler shall have a permanent chimney that extends at least fifteen (15) feet from roof ridge of the furnace and shall also extend at least two (2) feet above the highest peak of any building located less than one hundred fifty (150) feet from the Outdoor Wood-Fired Boiler.

(f) Outdoor Wood-Fired Boilers may only burn fuels for which the same were designed to burn and which are approved by the manufacturer. None of the following fuels or materials may be burned in any Outdoor Wood-Fired Boilers under any circumstances:

- (1) Any material that does not meet the definition of clean wood.
- (2) Furniture.
- (3) Garbage.
- (4) Tires.
- (5) Lawn clippings or yard waste.
- (6) Material containing plastic.
- (7) Material containing rubber.
- (8) Waste petroleum products.
- (9) Paints and paint thinners.
- (10) Chemicals.
- (11) Any hazardous waste.

- (12) Coal.
- (13) Glossy colored paper.
- (14) Construction and demolition debris.
- (15) Plywood.
- (16) Particleboard.
- (17) Salt water driftwood.
- (18) Manure.
- (19) Animal carcasses.
- (20) Asphalt products.

(g) Ashes or residue shall not be accumulated upon any property. Ashes and residue may not be dispersed on any property. Any accumulation of ashes or residue must be disposed of appropriately in approved containers. It is the responsibility of the owner to ensure that no live coals or embers are present in any ashes or residue in such a manner as to constitute a fire hazard.

(h) All wood and materials that are to be burned shall be neatly stacked and stored under cover.

(i) No Outdoor Wood-Fired Boiler shall be altered or modified such that the applicable certification emission tests would be invalidated. Any antipollution device installed by the manufacturer, or required by this Part or otherwise, shall not be disconnected or rendered inoperative. Operation of the Outdoor Wood Fired Boiler shall be in accordance with the manufacturer's written instructions. This shall include, if applicable, periodic inspection and replacement of catalytic combustors.

(j) All Outdoor Wood-Fired Boilers shall be installed, operated and maintained in strict conformance with the manufacturer's instructions, the provisions of this Part, applicable building codes, and all applicable local, State and Federal laws and regulations. In the event of a conflict, this Part shall apply unless the manufacturer's instructions or regulations are more strict, in which case the manufacturer's instructions or regulations shall apply. A copy of the manufacturer's installation and/or operating instructions shall be filed with the Township Office, by the Applicant, together with any subsequent amendments or

modifications.

(k) For all Outdoor Wood-Fired Boilers, the chimney must be secured against high winds, and be constructed, installed and maintained in such a manner that it does not constitute a safety hazard. All chimneys shall be constructed in accordance with all rules and regulations of the Township and Commonwealth of Pennsylvania, and shall be constructed in accordance with the manufacturer's instructions.

(l) Outdoor Wood-Fired Boilers shall not be allowed to operate whenever drought or extreme weather conditions exist or when a ban on burning has been put into effect by the Commonwealth of Pennsylvania, the County of Berks or the Township without any further action by the Board of Supervisors. Any Permit issued shall be automatically temporarily suspended until such conditions have elapsed. Operation of an Outdoor Wood-Fired Boiler under these circumstances shall be cause for automatic and immediate revocation of the Permit.

#### Section 409. Regulations For Existing Outdoor Wood-Fired Boilers.

(a) Outdoor Wood-Fired Boilers that exist within the Township limits on the date this Part takes effect shall be subject to the terms and conditions of this Part.

(b) In order to continue to maintain and operate an existing Outdoor Wood-Fired Boiler, the owner must submit an Application for a Permit to operate their existing Outdoor Wood-Fired Boiler in accordance with Section 406 hereof. Said Application must be submitted within thirty (30) days of the effective date hereof.

(c) An Application submitted under this Section shall act as a Temporary Permit to operate and maintain the existing Outdoor Wood-Fired Boiler so that the Applicant has time to comply with the Application process and meet the terms and conditions of this Part.

(d) A Temporary Permit under this Section is only effective for sixty (60) days from the date the Application is submitted. This provision does not apply to new installations; this only applies to Outdoor Wood-Fired Boilers existing within the Township on the date this Part is enacted.

(e) An owner who fails to file such an Application, or is denied a Permit for reasons contained herein, shall not be permitted to maintain and operate the existing Outdoor Wood-Fired Boiler within the Township.

(f) In the event that an Outdoor Wood-Fired Boiler is determined to be



fifty percent (50%) torn down, physically deteriorated, rusted or decayed, the Outdoor Wood-Fired Boiler must be removed and/or replaced with a new unit meeting the then recommended particulate matter emissions limit output as recommended by the EPA or DEP, whichever is more stringent. In the event a unit needs to be replaced, a new Application must be submitted, and all other provisions hereof must be followed.

(g) No person shall use or operate an existing Outdoor Wood-Fired Boilers unless it shall have a permanent chimney that extends at least fifteen (15) feet from roof ridge of the furnace and shall also extend at least two (2) feet above the highest peak of any residence located less than five hundred (500) feet from the Outdoor Wood-Fired Boiler. If the existing Outdoor Wood-Fired Boiler is a phase two (2) boiler, the Outdoor Wood-Fired Boiler shall have a permanent chimney that extends at least fifteen (15) feet from roof ridge of the furnace and shall also extend at least two (2) feet above the highest peak of any residence located less than one hundred fifty (150) feet from the Outdoor Wood-Fired Boiler.

#### Section 410. Testing and Inspections.

(a) If a complaint is received by the Township, or if the Code Enforcement Officer determines that there is a violation of this Part, the Township shall conduct an inspection to determine if the Outdoor Wood-Fired Boiler is being operated and maintained in accordance with this Part, EPA and DEP Regulations, or the manufacturer's recommended operating parameters. If it is determined that the owner/operator is violating a provision hereof, the Township may impose an inspection fee in addition to other enforcement remedies contained herein.

(b) In the event the owner has received updated recommendations from the manufacturer, the same shall be utilized to determine compliance. The owner shall be required to correct any deviations found as a result of the inspection. Failure to correct the deviations within thirty (30) calendar days shall constitute a violation of this Part. The owner's refusal to allow the inspection shall result in immediate Permit revocation.

(c) If, at the sole discretion of the Code Enforcement Officer, an inspection is required as part of the Application process as a condition of receiving a Permit, an inspection fee may be imposed in accordance with Section 407 hereof.

#### Section 411. Appeals Board.

(a) Any Applicant, permittee or person affected by a decision of the Code Enforcement Officer of the Township, may appeal, for the reasons set forth in Section 411(b) hereof, to the Appeals Board provided that a written Application For

Appeal is submitted. The Notice of Appeal shall:

- (1) Be in writing.
- (2) Be submitted with applicable Appeal Application fee.
- (3) Be submitted within ten (10) calendar days of the Decision being appealed.
- (4) State the reasons for the Appeal, with reasonable particularity, including, but not limited to, the Sections of the Part that are applicable.

(b) The Appeals Board shall have jurisdiction to hear Appeals related to the following:

- (1) Appeal of Denial of Application.
- (2) Appeal of Denial of Permit.
- (3) Appeal of Denial or Revocation of Permit.
- (4) Appeal of Cease and Desist Order.
- (5) Appeal for a variance of the terms of this Part.

(c) Upon receipt of an appeal, a hearing shall be scheduled before the Appeals Board within sixty (60) calendar days, or in a manner to allow for appropriate advertising, and shall be held at the Township Office, or other designated location within the Township. Notice of the hearing shall be appropriately advertised and posted at the Township Office, and shall be served by the Township, via United States First Class Mail, or by hand delivery, upon the Applicant.

(d) The burden shall be on the Appellant to supply all necessary testimony, exhibits and information that the Appeals Board needs to make a decision.

(e) The Appeals Board may dismiss the case sui sponte if it determines, inter alia, that the Appellant has not complied with the appeal process or provided necessary information. The Township Solicitor may be present at this hearing, and the Appellant may be represented by counsel.

(f) The Appeals Board shall issue a written decision within thirty (30)

days of the last hearing for a given appeal. The Board may grant or deny an Appeal, in full or in part, or provide for conditional approval where appropriate. The decision shall be forwarded to the Appellant by hand delivery or regular mail. A copy of the decision shall be available at the Township Offices. The Appeals Board may impose additional conditions or restrictions upon the Appellant as it deems appropriate. The decision of the Appeals Board shall be final.

Section 412. Enforcement Orders.

(a) The Code Enforcement Officer shall have the power and duty to enforce the provisions of this Part and, in such event the Code Enforcement Officer, pursuant to statutory or otherwise authorized police powers, shall have the right and power to enter upon the property for enforcement purposes.

(b) The Code Enforcement Officer may issue such orders as are necessary to aid in the enforcement of the provisions of this Part. 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 this Part; orders to take corrective action or to abate a public nuisance; or orders requiring production of information. Such an order may be issued if the Code Enforcement Officer finds that any person is in violation of any provision of this Part.

(c) The Code Enforcement Officer may, in its order, require compliance with this Part.

(d) An order issued under this Section shall take effect upon notice, unless the order specifies otherwise. An Appeal to the Appeals Board of the Code Enforcement Officer's order shall not act as a supersedeas; provided, however, that, upon application and for cause shown, the Appeals Board may issue such a supersedeas under rules established by the Appeals Board.

(e) The Code Enforcement Officer may commence civil and/or criminal proceedings against any offending Person. The offending Person shall pay the costs of such measures, including, but not limited to, the costs of any equipment, reimbursement of wages for Township employees or agents, and reasonable counsel fees.

Section 413. Criminal Penalties. Any person who violates any provision of this Ordinance or any order of the Township of Tilden 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) no more than One Thousand Dollars (\$1,000.00) for each separate offense and, in default of the payment of such fine, may be sentenced to imprisonment for thirty (30) days for each separate offense. Employees of Tilden

Township 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 Tilden Township Board of Supervisors is hereby authorized to prosecute these offense. For purposes of this section, a summary offense may be prosecuted before any district justice in Tilden Township. There is no accelerated rehabilitative disposition authorized for a summary offense.

Section 414. Unlawful Conduct. It shall be unlawful to fail to comply with or to cause or assist in the violation of any of the provision of this Ordinance or to fail to comply with any order or other requirement of Tilden Township; or to cause a public nuisance; or to hinder, obstruct, prevent, or interfere with Tilden Township or its personnel in their performance of any duty hereunder, including denying the Code Enforcement Officer access to the source or facility.

Section 415. Public Nuisances. A violation of this Part or of any order issued by the Township under this Part 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. Whenever the nuisance is maintained or continued contrary to this Part or any order issued pursuant to this Part, the nuisance may be abatable in the manner provided by this Part. Any person who causes the public nuisance shall be liable for the cost of abatement."

SECTION 2. If any sentence, clause, section or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Ordinance. It is hereby declared as the intent of the Board of Supervisors of the Township that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

SECTION 3. All ordinances or parts of ordinances conflicting with the provisions of this Ordinance are hereby repealed insofar as they are inconsistent with this Ordinance.

SECTION 4. This Ordinance shall become effective in accordance with the law.

SECTION 5. The Code of Ordinances of the Township of Tilden, Berks County, Pennsylvania, as amended, shall be and remain unchanged and in full force and effect except as amended, supplemented and modified by this Ordinance. This Ordinance shall become a part of the code of Ordinances of the Township of Tilden, Berks County, Pennsylvania, as amended, upon adoption.

SECTION 6. It is declared that enactment of this Ordinance is necessary for the

protection, benefit and preservation of the health, safety and welfare of the inhabitants of this Township.

DULY ENACTED AND ORDAINED this 4th day of February, 2012.

TOWNSHIP OF TILDEN  
BOARD OF SUPERVISORS

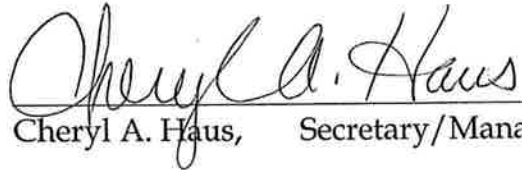
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Judy E Romig  
David L. Schappell

Attest: Sheryl A. Haus  
Secretary

MUNICIPAL CERTIFICATION

I, CHERYL A. HAUS, Secretary/Manager of the TOWNSHIP OF TILDEN, BERKS COUNTY, PENNSYLVANIA, do hereby certify that the foregoing Ordinance 207,2012 was advertised in the Reading Eagle, a daily newspaper of general circulation in Tilden Township, on Jan. 25, 2012, and was duly enacted and approved as set forth at a Regular Meeting of the Board of Supervisors held on the 4th day of February, 2012.

(SEAL)

  
Cheryl A. Haus, Secretary/Manager

Date: February 4, 2012