

**OFFICIAL
BOROUGH OF FRANKLIN PARK
ORDINANCE NO. 608-2013**

AN ORDINANCE OF THE BOROUGH OF FRANKLIN PARK, COUNTY OF ALLEGHENY, COMMONWEALTH OF PENNSYLVANIA, ESTABLISHING REGULATIONS AND RESTRICTIONS ON OPEN FIRES AND OPEN BURNING AND PROVIDING FINES AND PENALTIES FOR VIOLATIONS THEREOF.

WHEREAS, the Pennsylvania Air Pollution Control Act, 35 P.S. § 4001, *et seq.*, states: "Nothing in this act shall prevent counties, cities, towns, townships or boroughs from enacting ordinances with respect to air pollution which will not be less stringent than the provisions of this act, the Clean Air Act or the rules and regulations promulgated under either this act or the Clean Air Act." 35 P.S. § 4012 (a); and

WHEREAS, the Allegheny County Health Department has enacted clean air regulations which expressly state: "Notwithstanding any other provision of this Article the prohibitions of this Section may be enforced by any municipal or local government unit having jurisdiction over the place where the burning occurs. Such enforcement shall be in accordance with the laws governing such municipal or local government unit and the Pa. Air Pollution Control Act." Article XXI, Subpart 5, Section 2105.50 (e); and

WHEREAS, the Pennsylvania Borough Code provides the Borough of Franklin Park with the specific powers for health and cleanliness regulations, smoke regulations, and the prohibition of fire producing devices and smoking. 53 P.S. § 46202 (5), (11), and (16); and

WHEREAS, the Borough intends to regulate open fires and open burning in accordance with these statutes and regulations; and

WHEREAS, the Borough does not intend to regulate portable grills/barbeques fired by propane or charcoal and designed for food preparation except to the extent that the Ordinance regulates the location of such portable grills/barbeques in Section 4(B).

NOW, THEREFORE, be it ordained and enacted by the Borough Council of the Borough of Franklin Park, and it is hereby ordained and enacted by and with the authority of the same:

Section 1. Definitions.

"Person"- shall mean any individual, heirs, executors, administrators or assigns, and also includes a firm, partnership or corporation, its or their successors or assigns, or the agent of any of the aforesaid.

"Owner"- shall mean a corporation, firm, partnership, association, organization, trust, and any other group acting as a unit, or a person who has legal title to any structure or premises with or without accompanying actual possession thereof, and shall include the duly authorized agent or attorney, a purchaser, devisee, fiduciary and any person having a vested or contingent interest in the premises in question.

"Open Burning"- shall mean the burning of materials wherein products of combustion are emitted directly into the ambient air without passing through a stack or chimney from an

enclosed chamber. Open burning does not include road flares, smudgepots and similar devices associated with safety or occupational uses typically considered open flames, recreational fires or use of portable outdoor fireplaces. For the purpose of this definition, a chamber shall be regarded as enclosed when, during the time combustion occurs, only apertures, ducts, stacks, flues, or chimneys necessary to provide combustion air and permit the escape of exhaust gas are open.

“Bonfire”- shall mean an outdoor fire utilized for ceremonial purposes.

“Portable Outdoor Fireplace”- shall mean a portable, outdoor, solid-fuel-burning fireplace 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.

“Recreational Fire”- shall mean an outdoor fire burning materials other than rubbish where the fuel being burned is not contained in an incinerator, outdoor fireplace, portable outdoor fireplace, barbeque grill or barbeque pit and has a total fuel area of three (3') feet or less in diameter and two (2') feet or less in height for pleasure, religious, ceremonial, cooking, warmth or similar purposes.

Section 2. General Prohibition Prohibiting Fires and Burning without Permit.

No person shall burn any material of any kind in the Borough, except as authorized by the Ordinance or as authorized pursuant to a valid permit issued by Allegheny County Health Department pursuant to County Ordinances and regulations.

Section 3. Open Fires Authorized; Permit Requirements.

A. Subject to this Ordinance, an adult property owner or other adult authorized by the property owner may conduct or allow an open burn on his or her property, solely for the following purposes:

1. warmth of outdoor workers (only at temperatures below 40°F); or
2. non-commercial preparation of food for human consumption, light, ornament, or recreation.

B. Permit Requirements: Except for portable grills/barbeques, before a property owner may allow open burning on his or her property, the property owner shall apply to have the proposed site inspected and approved by the Fire Official or Assistant Fire Official. A person must allow at least ten (10) days for the application to be reviewed and the site inspected. Upon verification that the proposed device and location comply with this Ordinance, the Fire Official shall approve the application. The Fire Official shall provide written explanation for denying an application.

1. Upon approval of the application, the person is free to obtain from the Borough Fire Official, at a cost of ten dollars (\$10.00) at least three (3) days in advance, an Open Burn Permit generally authorizing the use of the proposed fire pit or other non-combustible receptacle, containment, or device. The Fire Official shall maintain a Register/Log of all Open Fire Permits issued under this Ordinance, reflecting the

Property address, date of issuance, type of device, and the location on the property for which it was approved.

2. A new application and site inspection shall be required if the device or location on the property is changed. All Permits are also subject to future Ordinance amendments. No vested or "grandfathered" rights shall be conferred in any use/location/device approved or permitted hereunder, and any Permits used hereunder shall automatically expire if the permitted location, device or the open burning becomes non-compliant or prohibited under any future Federal, State, County or local law, regulation or ordinance including any duly enacted amendments hereto.

Section 4. Rules and Regulations Regarding Open Burning Authorized Without Permit.

A. Acceptable Receptacles/Containers:

1. For warmth of outdoor work crews: Open fires for outdoor work crews (allowed only at temperatures below 40°F) may be conducted in non-combustible containers no larger than a 55 gallon drum, with all combustible material and the flame itself at all times completely confined within the container and with only one open fire per work crew.

2. Other Authorized Open Fires: All other open fires authorized under this Ordinance must be contained within one of the following Authorized Containers; in a grill, barbeque, fireplace, or chiminea. All authorized containers herein must include a lid or chimney to be exempt from requiring a permit.

B. Acceptable Locations:

1. Portable grills/barbeques designed for and used strictly for cooking only shall, while in use, be no less than five (5) feet from a house, structure, and/or combustible material, as well as twenty-five (25) feet from a roadway, utility, and/or property line unless otherwise approved by the Fire Official or Assistant Fire Official. No Permit is required for portable grills/barbeques.

2. Permanently constructed (non-portable) outdoor stoves, ovens, grills, barbeques and fireplaces used for strictly for cooking shall be no less than five (5) feet from a house, structure, and/or combustible material, as well as twenty-five (25) feet from a roadway, utility, and/or property line unless otherwise approved by Fire Official or Assistant Fire Official.

3. Other open burning shall be maintained only in an authorized container which, unless otherwise approved by the Fire Official, shall be located not less than twenty-five (25) feet from the nearest house, structure, roadway, property line, utility, tree, and/or other combustible material.

C. Acceptable and Prohibited Materials:

1. Acceptable Materials: All open burning authorized by this Ordinance shall be conducted using only charcoal; natural gas or other clean burning fuel; dry, clean

logs, twigs; or other untreated wood products. Only smokeless fuels or small kindling such as sticks and newspaper may be used to start a fire.

2. Prohibited Materials: The use of any of the following material(s) to start or maintain a fire is strictly prohibited: paints; painted or chemically treated woods; railroad ties; telephone poles; plastics; cardboard boxes, paper or paper products; garbage or any other household or residential wastes; oil; grease; gasoline; asphalt products or any other petroleum products; rubber; tires; tar or tar paper; dead animals; animal or human waste; pathogenic waste; insulated wire; toxic or noxious materials; cloth; leaves; green yard waste; or any other materials that tend to cause excessive smoke or malodorous emissions or excessive smoke.

D. Maximum Size: In all cases, the fire shall be of such size that the combustible material and flame are contained completely within the perimeter of the authorized containment receptacle, and in no case may the combustible material and flame be greater than nine (9) square feet (3'x3') in area or in excess of two (2') feet in height above the receptacle.

E. No Excessive Smoke, Odor or Malodorous Emissions: No person shall allow or maintain a fire which creates excessive smoke, excessive odor, or malodorous emissions. Smoke and odors shall be considered excessive if they contribute more than negligible amounts of air contaminants perceptible beyond the property line of the source of the fire.

F. Adult Supervision, Control, and Extinguishment: Only an adult property owner or other adult authorized by the property owner shall authorize or conduct an open burn. The adult property owner or other adult authorized by the property owner to conduct such a fire shall, at all times, be present and shall tend to the fire from the time it is lit through the time of total extinguishment. Adequate means to control and extinguish the open burn shall be readily available at all times during any burning. Suitable covering or means of disposal of ashes shall be provided to prevent them from becoming air-borne. The adult property owner or other authorized adult supervising the fire shall be responsible to assure that all aspects of the fire comply with this Ordinance and shall assure that the fire is completely extinguished before that person leaves the site. Immediately upon the discovery of an unauthorized or non-compliant fire or burning, the property owner or other person responsible for the property on which such burning occurs shall immediately extinguish, or cause the extinguishment of, such burning. Proof that the defendant in any enforcement action owns or controls the property on which open burning occurs shall be prima facie evidence that such person has conducted, or allowed to be conducted, such open burning.

Section 5. Authorization to Order Immediate Extinguishment, Abatement or Correction of Fires.

A Police Officer, Fire Official, Assistant Fire Official, Code Enforcement Officer, or other duly authorized law or code enforcement officer of the Borough of Franklin Park may, upon investigation, order that any fire be immediately extinguished, abated, diminished, or corrected (in his or her sole discretion) if, in the officer's sole judgment, the fire:

1. is emitting excessive smoke, excessive odor or malodorous emissions;
2. contains prohibited materials or is using prohibited materials or inadequate containment device or mechanism;

3. is in a prohibited location or of a prohibited size;
4. is emitting sparks or hot ashes that may pose a threat to nearby structures, trees, other combustible materials, or to the safety of persons or property; or
5. where its size, materials, containment, location, emissions, proximity to structures, trees, other combustible materials, conduct of participants, weather conditions (including but not limited to wind, drought, dry or other conditions) or air quality, or other circumstances, are such that continuation of the fire poses a risk of harm to persons or property.

Section 6. Prohibited Acts.

A. No person shall allow, authorize, conduct, or participate in any open burning except in compliance with this Ordinance.

B. No person shall refuse to comply immediately and fully with any order of a Franklin Park Borough Police Officer, Fire Official, Assistant Fire Official, or other duly authorized law enforcement officer or code official to contain, control, correct, or extinguish any fire or open burn.

Section 7. Enforcement.

A. Any and all Borough Police Officers are hereby charged with the responsibility of issuing warnings or citations, as merited, for all violations of this Ordinance.

B. Enforcement shall be by action brought before a magisterial district judge in the same manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure.

C. A separate offense shall arise for each day or portion of a day in which a violation is found to exist or for each section of the Ordinance which is found to have been violated. In the event that such claims for fines and penalties exceed the monetary jurisdiction of a magisterial district judge as set forth in 42 Pa.C.S. § 1515(a) (relating to jurisdiction and venue), exclusive of interest, costs or other fees, the Borough may bring such action in the Allegheny County Court of Common Pleas or may, pursuant to 42 Pa.C.S. § 1515(a), waive that portion of fines or penalties that exceed the monetary jurisdictional limits so as to bring the matter within the monetary jurisdiction of the magisterial district judge.

D. In addition to or in lieu of enforcement of this Ordinance as a summary offense, the Borough may enforce this Ordinance through an action in equity brought in the Allegheny County Court of Common Plea.

Section 8. Penalties.

Any person who shall violate any provision of this Ordinance shall, upon conviction thereof, be sentenced to pay a fine of no more than one thousand dollars (\$1,000.00) or the maximum amount per offense permitted under law, and may be sentenced to a term of imprisonment not to exceed thirty (30) days. Any person found guilty of violating the Ordinance shall be assessed court costs and reasonable attorney fees incurred by the Borough.

Section 9. Severability.

In the event that any section or sections of this Ordinance, or parts of the same, shall be declared to be invalid by any Court of competent authority, the remaining provisions of this Ordinance shall continue in full force and effect notwithstanding.

Section 10. Repealer.

Any other Ordinance or part(s) of any Ordinance(s) which conflicts with the terms and provisions of this Ordinance are hereby repealed insofar as the same affects this Ordinance.

Section 11. Effective Date.

This Ordinance shall be effective immediately.

ORDAINED AND ENACTED into law by Borough Council of the Borough of Franklin Park, Allegheny County, Pennsylvania, at its meeting held on the _____ day of _____, 2013.

ATTEST:

BOROUGH OF FRANKLIN PARK

Secretary

By: _____
President

Approved by me this _____ day of _____, 2013.

Mayor