

ORDINANCE NUMBER 2018-19

CALLERY BOROUGH, BUTLER COUNTY, PENNSYLVANIA

**AN ORDINANCE REGULATING AND GOVERNING OPEN BURNING
WITHIN THE BOROUGH, AND PROVIDING FOR REGULATIONS,
EXEMPTIONS, AND ENFORCEMENT, AND IMPOSING CONDITIONS
ON EXEMPTIONS, AND PRESCRIBING PENALTIES FOR VIOLATIONS**

WHEREAS, Callery Borough, is a duly authorized and incorporated political subdivision of the Commonwealth of Pennsylvania;

WHEREAS, Borough council is desirous of providing for the health, welfare, comfort, and safety of Borough residents;

WHEREAS, council believes that the smoke, fumes, odors, and air pollution created by open burning is detrimental to the health, welfare, comfort, and safety of the residents of the Borough; and

WHEREAS, in order to protect the health, welfare, comfort, and safety of the residents, council believes that it is in the best interests of the residents to implement certain regulations governing open burning within the Borough.

NOW, THEREFORE, IT IS HEREBY ORDAINED AND ENACTED, pursuant to the authority vested by the Borough Code, that Chapter 57, Open Burning, of the Code of the Borough of Callery is hereby amended by the addition of the following:

**CHAPTER 57
OPEN BURNING**

**ARTICLE 1
RULES AND REGULATIONS**

§57-101. SHORT TITLE.

This Article shall be known and may be cited as the "Callery Borough Open Burning Ordinance."

§57-102. PURPOSE.

The purpose of this Article is to promote and protect the health, welfare, comfort, and safety of Borough residents by regulating and governing the open burning, ignition, and/or combustion of garbage, refuse, rubbish, trade waste, and other non-burnable materials within the Borough.

§57-103. DEFINITIONS.

As used in this Article, the following words, terms, and phrases shall have the following meanings ascribed to them, unless the context clearly indicates otherwise:

BOROUGH - Callery Borough, Butler County, Pennsylvania.

BURN CONTAINER - A structurally sound container used for the purpose of burning burnable materials; constructed of masonry, metal or other non-combustible rigid material; containing a bottom, and sides.

Outdoor fireplaces and fire pits shall be considered as "Burn Containers" for the purpose of this Article.

Portable outdoor grills, fired by propane or charcoal, and designed for food preparation, are excluded from this definition.

BURN CONTAINER COVER (Screen) — A structurally sound metal screen with spaces not more than one-half (1/2) square inch, or other comparable material, which covers the entire open area above the burn container opening. To be considered structurally sound, the cover (screen) must be maintained so as to effectively screen emissions by preventing large particles from escaping from the burn container and into the air during operation.

CLEARING AND GRUBBING WASTE - 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, dirt laden roots, or poisonous leaves, branches, shrubs, trees or other plant matter.

COUNCIL - The Borough Council of Callery Borough.

GARBAGE - All putrescible animal and vegetable matter or other food substances, both liquid and solid, which result from the handling, preparation, cooking, serving, and consumption of food and food containers.

OPEN BURNING (Open Fire) - A fire in which material is burned in the open or in a receptacle, the air contaminants from which are emitted directly into the outdoor atmosphere and not directed through a flue, except for such fires as are incidental to the use of any recreational barbeque pit, charcoal and/or gas grill. Smoldering shall have the same meaning as burning and any smoldering shall be deemed a burning.

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.

REFUSE - Garbage, rubbish and trade waste.

RUBBISH - Solids not considered to be highly flammable or explosive including but not limited to appliances, demolition waste (insulation, shingles, siding, etc.), mattresses or box springs, paint, solvents, tires, treated wood, plastic, rags, old clothes, canvas, leather, rubber, carpets, fiberglass, vinyl, furniture, tin cans, glass, crockery, masonry and other similar materials.

SALVAGE OPERATION - Any business, trade or industry engaged in whole or in part in salvaging, demolishing, recycling, or reclaiming any product or material, including but not limited to, metals, chemicals, shipping containers, wood, drums, vehicles, or electronics.

TRADE WASTE - All solid or liquid material or rubbish resulting from construction, demolition, building operations, or the prosecution of any business, trade or industry including but not limited to, plastic products, cartons, shingles, paint, grease, oil and other petroleum products, chemicals, cinders and other forms of solid or liquid waste materials.

YARD WASTE - Leaves, branches grass clippings, garden residue, tree trimmings, chipped shrubbery, and other vegetative material. The term does not include dirt laden roots, or poisonous leaves, branches, shrubs, brush, trees or other plant matter.

§57-104. REGULATIONS.

After the effective date of this Article it shall be unlawful for any person to allow, permit, ignite, or feed an open fire:

- (1) For the burning of garbage, refuse, rubbish, or trade waste; or
- (2) In conducting a salvage operation; or
- (3) For the burning of any material or substance causing hazardous, noxious, nauseous, or offensive fumes, odors, or smoke or which cause a public nuisance or air, soil, or water pollution as a result of the burning; or
- (4) On any street, alley, or sidewalk; or
- (5) All day Thursday through Tuesday and between the hours of 12:01 A.M. through 5:00 P.M. and 9:00 P.M. and midnight, prevailing time, on Wednesdays.

§57-105. EXEMPTIONS.

The following open fires are exempt from the regulations promulgated by §57-104, above:

- (1) A fire set solely for cooking food, or incidental to the use of any recreational barbeque pit, charcoal, and/or gas grill.
- (2) A fire set for burning that amount of Yard Waste generated on the premises.
- (3) A fire set for Clearing and Grubbing Waste generated on the premises.

- (4) A fire set on residentially zoned property for burning paper products and/or untreated wood generated on the premises.
- (5) A fire set in conjunction with the production of agricultural commodities in their unmanufactured state on the premises of the farm operation.
- (6) 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.
- (7) A fire set for the purpose of instructing personnel in fire-fighting, when approved by the Department of Environmental Protection's Regional Air Quality Program office.
- (8) 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.

§57-106. CONDITIONS IMPOSED ON EXEMPTIONS.

The exemptions granted by Section §57-105 (1)-(5), above, shall be subject to the following conditions:

- (1) No open fire may be set or maintained unless the:
 - (a) Location is more than fifty (50) feet from any structure and adequate provisions are made to prevent the fire from spreading; or
 - (b) Fire is contained in a covered Burn Container located at least fifteen (15) feet from any structure, property line, street, alley, or public sidewalk.
- (2) All open fires shall be constantly attended by at least one adult until the fire is completely extinguished.
- (3) The fire is located on the premises of a structure occupied solely as a dwelling unit.
- (4) Open fires are not permitted during adverse wind and/or weather conditions.
- (5) Open burning is permitted on Wednesdays only between the hours of 5:00 P.M. and 9:00 P.M., prevailing time, except Wednesdays when a federal holiday is being observed.
- (6) Open fires shall not be permitted to smolder and must be completely extinguished no later than 9:00 P.M.
- (7) Open fires set solely for cooking food, or incidental to the use of any recreational barbeque pit, charcoal, and/or gas grill are not subject to Section §57-106 (1)-(6), above.

- (8) If a metal drum is being used as a Burn Container, it shall not have contained toxic or flammable or other regulated materials or liquids. Metal drums shall have a cover (screen) and be free from holes in the sides and/or bottom, except that it may contain drain or vent holes in the bottom of the drum no larger than two (2) square inches each.
- (9) Any open fire deemed unsafe by the Borough or in violation of any provision of this Article shall be extinguished immediately upon the demand of a Borough official.

§57-107. LIABILITY.

The Borough and its agents, officials, and representatives shall not, under any circumstances be liable or responsible for damages caused to any person, property, or waterway by reason of the provisions of this Article, or by reason of the conduct of burning activity in compliance or non-compliance with the terms and provisions of this Article. The person or party responsible for any such fire shall be solely responsible for any and all claims, damages, and/or pollution caused as a result or consequence of the fire.

§57-108. PENALTIES.

A. It shall be unlawful for any person to be in conflict with or in violation of any of the provisions of this Article.

B. The Borough shall have the power and duty to enforce the provisions of this Article.

C. Enforcement as a Summary Offense. This Article regulates health, fire, public safety, and air pollution. As such, enforcement of this Article shall be by action brought before a magisterial district justice in the same manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure. The Borough solicitor may assume charge of the prosecution without the consent of the District Attorney as permitted under the Pennsylvania Rules of Criminal Procedure No. 83(c) (relating to trial in summary cases).

D. Any person who violates any provision of this Article or any amendment thereto, upon conviction thereof in a summary offense proceeding before a magisterial district justice, shall pay a fine of not less than One Hundred Dollars (\$100) and not more than Five Hundred Dollars (\$500) per violation. A separate offense shall arise for each day or portion thereof in which a violation is found to exist or for each section of this Article which is found to have been violated. In addition, the court may award the Borough its court costs and reasonable attorney fees incurred in the enforcement proceedings. All fines and penalties collected shall be paid over to the Borough treasurer.

E. Enforcement in Equity. In addition to or in lieu of other remedies, the Borough, by means of a complaint in equity, may take such other lawful action as is necessary to prevent or remedy any violation, or bring an action to enjoin any violation of this Article in the Court of Common Pleas of Butler County.

§57-109. CONFLICTS WITH OTHER LAWS.

Any regulations of the Commonwealth of Pennsylvania or the government of the United States of America pertaining to burning of any materials shall supersede the rules and regulations of this Article where such rules and regulations are more stringent than the rules and regulations of this Article.

§57-110. REPEALER.

Ordinance Number 58, adopted August 8, 1968, is hereby repealed. All other ordinances or parts thereof which are in conflict with this Article are hereby repealed.

§57-111. SEVERABILITY.

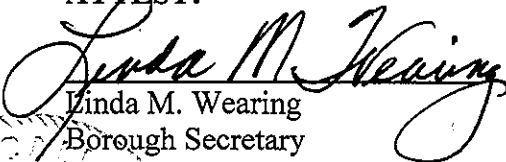
The provisions of this Article are severable, and if any clause, sentence, subsection, section, article or part thereof shall be adjudged by any court of competent jurisdiction to be illegal, invalid or unconstitutional, such judgment or decision shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation and application to the clause, sentence, subsection, section, article or part thereof rendered. It is hereby declared to be the intent of the council that this Article would have been adopted if such illegal, invalid or unconstitutional clause, sentence, subsection, section, article or part thereof had not been included therein.

§57-112. EFFECTIVE DATE.

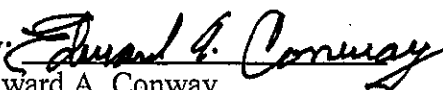
This Article shall become effective five (5) days after enactment.

ENACTED AND ORDAINED, this the 10th day of September 2018, by Callery Borough council in public session duly assembled.


ATTEST:


Linda M. Wearing
Borough Secretary

CALLERY BOROUGH

By: 
Edward A. Conway
Council President

APPROVED

By: 
Ed Ashley
Mayor

Date: September 10, 2018

