

AVOCA BOROUGH

ORDINANCE NO. 5 OF 2014

AN ORDINANCE OF THE BOROUGH OF AVOCA, LUZERNE COUNTY, PENNSYLVANIA, REGULATING AND PROHIBITING BURNING WITHIN THE BOROUGH OF AVOCA, WITH CERTAIN SPECIFIC CONTROLLED EXCEPTIONS; AND PRESCRIBING PENALTIES FOR VIOLATION.

Enacted On:

Effective On:

**WHEREAS**, the Borough of Avoca is a duly authorized political subdivision of the Commonwealth of Pennsylvania; and

**WHEREAS**, the Council of the Borough of Avoca is desirous of providing for the health, welfare and safety of Borough residents pursuant to §§1202(6) (16) and (21) of the Pennsylvania Borough Code; and

**WHEREAS**, the Borough Council believes that pollution of the air by open burning and otherwise is detrimental to the health, comfort, living conditions, welfare and safety of the citizens of the Borough; and that it is in the best interests of the residents of the Borough to implement certain regulations governing and regulating outdoor fires and burning within the Borough in order to protect the health, welfare and safety of the residents.

**NOW, THEREFORE, BE AND IT IS HEREBY ORDAINED AND ENACTED** by the Council of the Borough of Avoca, Luzerne County, Pennsylvania, as follows:

I. TITLE:

This Ordinance may be cited as the "Avoca Borough Burning Ordinance".

II. PURPOSE:

The purpose of Avoca Borough in adopting this Ordinance is to regulate and prohibit the burning, ignition and combustion of rubbish, garbage or any other materials within the Borough of Avoca, with certain specific controlled exceptions; and to promote and protect the health, safety and welfare of its residents.

### III. DEFINITIONS:

A. **Borough** - the Borough of Avoca, Luzerne County, Pennsylvania, a duly authorized and incorporated political subdivision of the Commonwealth of Pennsylvania.

B. **Borough Council** - the members of the Borough Council of the Borough of Avoca, Luzerne County, Pennsylvania.

C. **Building** - a man/made structure, whether it is permanent or temporary, utilized for sheltering people, animals, property or business activity. The term "building" and the term "structure" are used interchangeably in this Ordinance.

D. **Burn** - to ignite or set on fire any material for the purposes of disposing/reducing such material, creating heat or creating light.

E. **Fire Department** - any chartered or volunteer fire department located within the Borough of Avoca, Luzerne County, Pennsylvania.

F. **Fire Pit** - a controlled fire area made from stones, masonry or metal, not to exceed in size three (3) feet in length and two (2) feet in height, or a commercially purchased kit to control fire used in cooking or for providing warmth.

G. **Garbage** - any putrescible animal or vegetable matter, fruit, meat or other food substances, both liquid and solid, which are subject to decay, which result from the handling, preparation, cooking, serving or consumption of food and food containers.

H. **Grill** - a grated utensil used for cooking/grilling food over a fire.

I. **Nauseous or Noxious fumes** - gases, smoke or fumes resulting from burning which are harmful or injurious to the health or physical well-being of persons, or that cause sickness in persons.

J. **Person** - any natural person, partnership, firm company or corporation.

K. **Police Department** - the Police Department and its officers of the Borough of Avoca, Luzerne County, Pennsylvania.

L. **Refuse** - garbage, rubbish and trade waste.

M. **Responsible Adult** - any individual person over the age of eighteen (18 years of age who is mentally competent.

N. **Rubbish** - any solid, discarded waste materials, including but not limited to scrap, metal, furniture, windows, boxes, crockery or paper, tires, rubber, plastics, rags, clothing leather, carpets, excelsior, ashes, tree leaves, yard trimmings, brush, tin cans, glass, masonry and other similar items.

O. **Trade Waste** - all solid or liquid material or rubbish resulting from construction, building operations or the prosecution of any business, trade or industry, including but not limited to plastic products, cartons, paint, grease oil, and other petroleum products, chemicals, cinders and other forms of solid or liquid waste materials.

P. **Wood** - the hard fibrous material that forms the main substance of the trunk or branches of a tree or shrub, including but not limited to tree branches, timber, tree logs, kindling, charcoal and other similar items.

#### IV. BURNING PROHIBITED:

A. It shall be unlawful for any person to burn, ignite or cause to be burned any material within the Borough, except as provided otherwise hereinafter.

B. Any person who shall violate any of the rules and regulations of this Ordinance shall be guilty of creating and/or maintaining a nuisance.

#### V. ENUMERATION OF PROHIBITED ACTS:

A. No person shall burn, ignite or cause to be burned any rubbish, garbage or any other material within the right-of-way of any public street, alley, road or public way.

B. No person shall burn, ignite or cause to be burned any garbage, rubbish, refuse or trade waste, including construction debris such as painted, treated or stained boards or items capable of producing obnoxious fumes, or yard waste/leaves, on any private land or public land within the Borough of Avoca, except as otherwise set forth herein.

C. No person shall burn, ignite or cause to be burned any wood or wood products on any private land or public land within the Borough of Avoca, outside the confines of a building, except as otherwise set forth herein.

D. No non-residential business or operation, including but not limited to commercial, institutional, or industrial establishments, shall burn, ignite or cause to be burned any materials, whether the materials are garbage, refuse, wood, trade waste or rubbish, or whether it is inside or outside the confines of a building, unless such an establishment has a permit from the Pennsylvania Department of Environmental Protection, or any successor agency, to burn such materials.

VI. EXCEPTIONS:

A. Nothing contained in §§IV and V herein shall be construed to apply to the use of any standard, commercially designed, non-combustible grill or fire pit kit commercially purchased, used for the non-commercial preparation of food to be consumed on the premises; or any fire pit within the Borough. Also §§IV and V herein shall not apply to commercially purchased fireplaces, chimaeas, or controlled fire pit devices. The only permitted burning material for either of these uses shall be either properly seasoned cord wood, charcoal, or commercially controlled propane gas for the grill only.

B. Any fire pit, as defined in §A above within the Borough shall be constructed and operated in a safe manner, and shall not be located closer than twenty (20) feet to any building, structure or property line. There shall be no distance requirement for commercially defined grills; however, they shall not be covered by any roof area. Further, any use of a grill or file pit as set forth above shall be used in compliance with the manufacturer's recommendations.

C. In the event there is a question as to the safety of the operations or construction of any grill or fire pit within the Borough, the Chief of the local fire department shall be consulted to inspect said structure; and in their professional discretion approve or disapprove such apparatus.

VII. FIRES FOR REMOVAL OF STRUCTURES:

No person shall deliberately set a fire for the purpose of removing, razing or tearing down an existing building or structure.

VIII. ENFORCEMENT:

The enforcement of the rules and regulations of this Ordinance shall be carried out by the Police Department and/or Code Enforcement Officer of the Borough of Avoca, in conjunction with and in coordination with the fire department. The appropriate parties shall be authorized to issue a warning for the first violation within the discretion of the aforesaid officer.

IX. ABATEMENT OF NUISANCES:

A. Any person who has ignited a fire contrary to the rules and regulations set forth herein, shall upon notice by an officer of the Police Department or officer of the Fire Department or Code Enforcement Officer, immediately extinguish the fire.

B. Person(s) who do not immediately discontinue the violation of this Ordinance, or who are repeat violators shall be issued a citation by an officer of the Police Department.

X. REPEAT VIOLATORS:

Persons who have been given a warning notice on one (1) or more occasion with respect to violations described in the Ordinance may, at the discretion of the officers of the Police Department, be issued a citation for violating the Ordinance.

XI. CONFLICTS WITH OTHER LAWS:

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

XII. FIRE TRAINING:

Any fire training conducted by the Borough Fire Department or another recognized public fire-fighting organization shall not be bound by the rules and regulations of this Ordinance when such organization is conducting fire-fighting training.

XIII. VIOLATION AND PENALTY:

Any person who violates, or permits a violation of this Ordinance, upon being convicted before a Magisterial District Justice, shall pay a fine of not less than One Hundred (\$100.00) Dollars and not exceeding Six Hundred (\$600.00) Dollars for the first citation; and a fine of not less than Six Hundred (\$600.00) Dollars and not exceeding One Thousand (\$1,000.00) Dollars for the second citation, and any costs incurred by the Borough of Avoca; and in default of payment of the fine and costs, shall be subject to imprisonment for a period not exceeding thirty (30) days. Each day of the violation shall be considered a separate violation and offense.

XIV. SEVERABILITY:

The provisions of this Ordinance are severable. If any section, clause, sentence, part or provision of this Ordinance shall be determined to be illegal or invalid by any court of competent Jurisdiction, such decision shall not impair or affect the remaining terms, sections and clauses of this Ordinance.

XV. EFFECTIVE DATE:

This Ordinance shall take effect ten (10) days following the date of enactment.

DULY ENACTED AND ORDAINED BY THE BOROUGH COUNCIL OF  
AVOCA BOROUGH this 10<sup>th</sup> day of July, 2014.

AVOCA BOROUGH COUNCIL

BY: Joseph Satkowski  
JOSEPH SATKOWSKI  
President of Council

ATTEST:

Sandra Loftus  
Secretary

(SEAL)

THE FOREGOING ORDINANCE is hereby approved by the Mayor of the Borough of  
Avoca, this 10<sup>th</sup> day of July, 2014.

BY: Robert Mullen  
ROBERT MULLEN, Mayor