

**BOROUGH OF WEST EASTON**

**ORDINANCE NO. 2023 - 06**

**AN ORDINANCE OF THE BOROUGH OF WEST EASTON, NORTHAMPTON COUNTY, PENNSYLVANIA, DEFINING OPEN BURNING, DEFINING DENSE SMOKE, PROVIDING FOR THE REMOVAL AND ABATEMENT OF BURNING VIOLATIONS, PROVIDING FOR THE USE OF MANUFACTURED FIRE PITS, AND PRESCRIBING PENALTIES FOR VIOLATIONS.**

**WHEREAS**, Section 1202(11) of the Borough Code empowers Boroughs to regulate the emission of smoke from chimneys, smokestacks and other sources to the extent the regulation is not otherwise prohibited by applicable Federal or State law; and

**WHEREAS**, Section 1202(5) of the Borough Code empowers Boroughs to make regulations as may be necessary for the health, safety, morals, general welfare and cleanliness and beauty, convenience, comfort and safety of the Borough; and

**WHEREAS**, the Federal Clean Air Act enables states and municipalities to regulate air quality more strictly than provided for by Federal law; and

**WHEREAS**, Section 4102 of the Pennsylvania Air Pollution Control Act (“the Act”) enables municipalities to enact ordinances with respect to air pollution which are equally or more stringent than the provisions of the Act; and

**WHEREAS**, dense smoke and unrestricted burning threatens the health, safety, general welfare, cleanliness and beauty of the Borough of West Easton;

**NOW THEREFORE**, the Borough Council of the Borough of West Easton does hereby ordain as follows:

**SECTION 1. Title.** This Ordinance shall be known and may be referred to as the “Borough of West Easton Open Burning And Dense Smoke Ordinance of 2023.”

**SECTION 2. Definitions.** The following words, terms and phrases, when used in this ordinance, shall have the following meanings ascribed to them unless the context clearly indicates otherwise:

**ADULT** – A person of at least 18 years of age.

**BOROUGH** – The Borough of West Easton.

**BURNING** – A fire, the air contaminants from which are emitted directly into the outdoor atmosphere and not directed thereto through a flue.

**COUNCIL** – West Easton Borough Council.

**DENSE SMOKE** – Smoke of a density equal to or greater than No. 3 on the Ringelmann chart.

**FIRE** – Any fire set or maintained outside a building.

**FURNACE** – Any enclosed device specifically designed for the burning of any material for the production of heat.

**FIRE PIT** – Any open device manufactured for the purpose of personal enjoyment of a small, controlled open fire.

**GARBAGE** – All putrescible animal and vegetable matter resulting from the handling, preparation, cooking and consumption of food.

**OFFENSIVE ODOR** – An odor that is objectionable to a person of ordinary sensibilities and interferes with the comfortable enjoyment of life or property.

**OPEN FIRE** – A fire in which any material or fuel is burned outdoors or in a receptacle other than a furnace or incinerator.

**PERSON** – Any individual, partnership, association, syndicate, company, firm, trust, corporation, department, bureau, agency or other entity recognized by law as the subject of rights and duties.

**REFUSE** – Garbage, leaves, vegetation, treated wood, particle board, paneling, and riff-raff.

**RUBBISH** – Solids not considered to be highly flammable or explosive, including but not limited to rags, old clothes, leather, rubber, carpets, painted or stained wood, excelsior, paper, cardboard, ashes, tree branches, tree leaves, yard trimmings, furniture, tin cans, glass, crockery, masonry and other similar materials.

**SALVAGE GOODS** – Any salvaged or reclaimed product or material, including but not limited to metals, chemicals, shipping containers, or drums.

**SCREEN** – A covering component made of metal with openings no larger than ½” in diameter.

**SMOLDER** – Burning sluggishly with little or no flame.

**STACK** – Any chimney, smokestack, or other structure, whether of brick, metal, or other material, intended for the emission of smoke.

**TRADE WASTE** – All solid or liquid materials or rubbish resulting from repair, construction, building operations or the prosecution of any business, trade, 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; provided, however, that “trade waste” shall not include any charcoal associated with the grilling of food.

**SECTION 3. Smoke Density Standard.** For the purpose of grading the density of smoke, the Ringelmann Smoke Chart, as published and used by the Federal Bureau of Mines, shall be the standard of comparison.

**SECTION 4. Emission of Dense Smoke Prohibited.**

Except as otherwise provided in this ordinance, the emission of dense smoke from the smokestack of any stationary engine or from the smokestack, chimney, fire pit or fireplace of property within the Borough of West Easton is prohibited and deemed to constitute a public nuisance.

**SECTION 5. Emission of Dense Smoke.**

Except as hereinafter provided, no owner, lessee or occupant of any property and the employee, engineer or any other person having charge or control of any furnace, fireplace, fire pit or stationary engine shall cause, permit or allow dense smoke to issue or be emitted from any smokestack, fireplace, fire pit or chimney of any property within the Borough of West Easton, and the same is declared to constitute a public nuisance.

**SECTION 6. Emission of Soot, Cinders, or Steam.**

Except as hereinafter provided, no owner, lessee or occupant of any property within the Borough of West Easton or any other person having charge or control thereof shall cause, permit or allow, or cause to be permitted or allowed, the discharge or escape into the open air of large quantities of soot, cinders, dust, gas, or steam in such manner as to violate any state or federal law or regulation. Any such violation shall constitute a public nuisance, and a violation of this ordinance, punishable in accordance with the penalties set forth herein, which shall be in addition to any penalty under state or federal law.

**SECTION 7. Emission of Offensive Odor.**

No owner, lessee or occupant of any property within the Borough of West Easton, or any person having charge or control thereof shall cause, permit or allow, or cause to be permitted or allowed, the discharge or escape into the open air in such manner or in such quantity as to cause or have a natural tendency to cause injury or detriment to the public in the vicinity of such residence or business or to endanger the health, safety or comforts of the public, or in such manner as to cause or have a natural tendency to cause injury or damage to property or business, shall be deemed and held guilty of creating a public nuisance and of violating the provisions of this ordinance.

**SECTION 8. Cleaning Firebox or Building New Fire.**

The emission of dense smoke within the Borough of West Easton from the smokestack, steamroller, steam derrick, steam pile driver, tar kettle or other similar machine or contrivance or from the smokestack or chimney of any building or premises or approved fire pit for a period or periods not to exceed six (6) minutes aggregate in any one (1) hour, during which period or periods the firebox is being cleaned or a new fire is being built therein, shall not constitute a nuisance.

**SECTION 9. Abatement of Nuisance by Borough.**

Any nuisance specified in this article may be abated by the Borough of West Easton, or its appointed designee(s) and the Borough shall collect the costs of such abatement from the owner of said property in addition to any fine assessed hereunder.

**SECTION 10. Enforcement.** The Borough of West Easton Police Department, or other Borough designee(s) appointed by Council shall have the power and duty to enforce the provisions of this ordinance.

**SECTION 11. Burning Restrictions and Requirements.**

(1) After the adoption date of this ordinance no person shall:

(a) Ignite or feed an open fire for the burning of refuse, rubbish, salvage goods, or trade waste; or

(b) Cause, allow or permit the maintenance of any open fire for the destruction of refuse, rubbish, salvage goods, or trade waste.

(2) All fires shall be constantly attended by at least one adult person until they are completely extinguished.

(3) Any fire, contained or uncontained, permitted to burn in an unsafe manner under adverse weather conditions, or unsupervised, or determined unsafe by the West Easton Enforcement Official, shall be extinguished immediately upon demand by such official.

(4) With the exception of charcoal, gas or propane grills in use for the cooking of food, any and all open fires are prohibited during burn bans as declared by the Commonwealth of Pennsylvania, Northampton County, or the Borough, unless such bans include exceptions to specific open fires, such as gas or propane fire pits.

**SECTION 12. Exceptions.**

(1) Any public officer or employee may burn an open fire in the performance of their official duties if the fire is necessary for:

(a) The prevention of a fire hazard which cannot be abated by other means.

(b) The protection of public health.

(2) A person may burn an open fire for the purposes of disposing of rubbish, upon the written approval of any public safety official who finds that there is no practical alternate method available for the disposal of the material, and no condition will be created by such burning which would be inimical to the health, safety, or general welfare of the Borough.

**SECTION 13. Fire Pits.**

(1) Open fires may be set in manufactured fire pits constructed of metal or clay type material, provided that:

(a) The fire pit burn box area is no wider than 24" in diameter and 18" in height. The height shall include a required metal screen when resting at the top and in complete contact with the fire pit burn box when in use. For Adobe style fire pits with chimneys, the burn box area shall not exceed the 24" diameter and 18" height dimensions. A metal screen shall cover the opening of the chimney;

(b) An adult shall monitor and attend the fire pit when burning is in progress, and ensure it is fully extinguished and is not smoldering when left unattended by an adult.

(2) For wood burning fire pits the minimum distance from any structure or dwelling shall be 25'. For gas or propane fire pits the minimum distance from any neighboring property's structure or dwelling shall be 10'. The distance to their own structure or dwelling for the owner of the gas or propane fire pit will be no less than that set forth in the safe operating instructions manual provided by the manufacturer of the fire pit.

(3) The fire pit shall not be constructed or placed in such a manner as to have any burn box area below ground level.

(4) Only dry wood of a length and size that does not extend above or beyond the maximum size dimensions allowed for fire pits shall be burned. It shall be a violation of this ordinance to burn rubbish, salvage goods, or trade waste in a fire pit.

(5) The fire pit shall not produce Dense Smoke as defined in this ordinance.

#### **SECTION 14. Fire Pit Permit Required.**

Annually, owners of fire pits desiring to use them in accordance with Section 12 shall obtain and submit a "Fire Pit Permit" application with the Borough of West Easton. The Borough shall be entitled to enter the applicant's property and inspect the fire pit and location before approving the permit. If no inspection is performed within ten (10) business days of the application date, the application shall be deemed approved, but shall remain subject to inspection upon any written complaint to the Borough.

#### **SECTION 15. Exceptions to Fire Pit Specifications, Rules and Permit Requirements.**

The following shall be exempt from the requirements of Sections 12 and 13 herein:

(a) Permanent outside structures pre-existing the enactment of this ordinance, burning charcoal, natural gas, or propane as fuel, and built and used solely for outdoor cooking;

(b) Portable grills using charcoal, natural gas, or propane as fuel for the purpose of outdoor cooking.

#### **SECTION 16. Violations and Penalties.**

In addition to any penalties available under state and federal law, any person violating any of the provisions of this article shall, upon conviction thereof, be punishable for each offense by a fine of not more than Three Hundred Dollars (\$300) and costs of prosecution or, upon default in payment of the fine and costs, by imprisonment in the county jail for a period not to exceed thirty (30) days. Each day that a violation of this ordinance continues shall constitute a separate offense.

**SECTION 17. Severability.** If any section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The West Easton Borough Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause,

or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

**SECTION 18. Effective Date.** This ordinance shall take effect and be in full force and effect five (5) business days after its final passage and adoption.

**DULY ORDAINED AND ENACTED** this 13<sup>th</sup> day of February, 2023 by the Council in lawful session duly assembled.


ATTEST:

THE BOROUGH OF WEST EASTON

  
Joan Heebner, Borough Manager

  
Paul James, Borough Council President

Approved this 13<sup>th</sup> day of February, 2023.

  
Daniel DePaul, Mayor