

CARROLL VALLEY BOROUGH
ADAMS COUNTY, PENNSYLVANIA

Ordinance No. 6-2008

AN ORDINANCE OF THE BOROUGH OF CARROLL VALLEY CREATING CHAPTER 19 OF THE BOROUGH OF CARROLL VALLEY CODE OF ORDINANCES FOR THE PREVENTION AND CONTROL OF AIR POLLUTION; DEFINING CERTAIN TERMS USED HEREIN; PROVIDING FOR REGULATIONS, EXCEPTIONS, ENFORCEMENT ORDERS, RESPONSIBILITY OF OWNERS AND OPERATORS, PENALTIES, UNLAWFUL CONDUCT, PUBLIC NUISANCES, AND VALIDITY.

The Borough of Carroll Valley hereby ordains:

SECTION 1. MODIFICATION OF CHAPTER 20 OF THE BOROUGH OF CARROLL VALLEY CODE OF ORDINANCES.

§20-106. Burning Prohibited.

Open burning of any construction/demolition waste, garbage or food tins or containers, or municipal waste on any premises is prohibited. Burning of leaf and yard waste is permitted only in accordance with the provisions of Chapter 19 of the Carroll Valley Code of Ordinances, the International Fire Code, latest edition, and 25 Pa.Code §129.14. This Section may be enforced by the Borough Code Enforcement Officer or the Borough Police Department.(*Ord 7-92, 9/14/1992, §106; as amended by Ord. 10-98, 12/14/1998; by Ord. 4-00, 5/8/2000; and by A.O.*)

SECTION 2. CREATION OF CHAPTER 19, OPEN BURNING, OF THE BOROUGH OF CARROLL VALLEY CODE OF ORDINANCES.

§ 19-100. Title

This ordinance shall be known and may be cited as the Carroll Valley Borough Open Burning Ordinance.

§ 19-101. Authority

The Council of the Borough of Carroll Valley, under, and by virtue of and pursuant to the authority granted by the Borough Code, does hereby enact and ordain this ordinance.

§ 19-102. Policy

Whereas the Council of the Borough of Carroll Valley has determined that air pollution from open burning may be detrimental to the health, comfort, living conditions, welfare, and safety of the citizens of the Borough of Carroll Valley, it is hereby declared to be the policy of the Borough of Carroll Valley to safeguard the citizens of the Borough of Carroll Valley from such air pollution. The open outdoor burning of leaves, grass, and wood creates hazardous byproducts that can irritate eyes and lungs, obscure visibility, soil nearby surfaces, create odors, increase fire hazards and risks, such as woodland/vegetation,

and pose other health threats. Open burning can also substantially increase the discomfort of people who suffer from asthma, chronic bronchitis, and other respiratory ailments. The purpose of this ordinance is to reduce the negative impacts of open burning of leaves, yard clippings, and other landscape debris throughout the borough and to promote public health, safety, and welfare and prevent property damage within the Borough of Carroll Valley

§ 19-103. Definitions

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

- 1 Burning – The act of consuming by fire; to flame, char, scorch, or blaze. As used in this ordinance, smoldering shall have the same meaning as burning and any smoldering shall be deemed a burning.
- 2 Clearing and grubbing wastes – 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 and dirt laden roots.
- 3 Composting – The process by which organic solid waste is biologically decomposed under controlled anaerobic or aerobic conditions to yield a humus-like product.
- 4 Contained (incinerator) fire - an outdoor fire that is contained within a non combustible metal container that meets the specifications listed below. See attachment A.
- 5 Contractor - A company, corporation partnership, etc., public or private, for profit or not for profit, that provides services, such as land clearing, construction/demolition of buildings, etc.
- 6 Council– the Carroll Valley Borough Council
- 7 Domestic refuse – Waste which is generated from the normal occupancy of a structure occupied solely as a dwelling by two families or less. The term does not include appliances, carpets, demolition waste (insulation, shingles, siding, etc.), furniture, mattresses or box springs, paint, putrescible waste, solvents, tires, or treated wood.
- 8 Fire pit or ring - a pit or ring that is no larger than 3 feet by 3 feet in diameter and constructed of noncombustible material.
- 9 Municipality – A city, incorporated town, township, borough, county, municipal authority, or other public body created under State law having jurisdiction over the disposal of sewage, industrial wastes, or other wastes.
- 10 Open burning - the outdoor burning of any materials wherein products of combustion are emitted directly into the ambient air without passing through a stack or chimney from an enclosed chamber. For the purpose of this chapter, open burning shall include burn barrels and other similar vessels.
- 11 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.

- 12 Recreational fire - an outdoor (open burn) fire or the burning of material other than rubbish, leaves, and yard clippings where the fire being burned is contained in a fire pit or ring.
- 13 Yard waste – leaves, grass clippings, weeds, vegetable, or other garden debris, but does not include shrubbery, brush, tree branches, or tree trimmings.

§ 19-104. Regulations

After the effective date of this ordinance no person may permit the open burning of material with the exception of the following:

- (1). 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.
- (2). Any fire set for the purpose of instructing personnel in firefighting, when approved by the Department of Environmental Protection's Regional Air Quality Program office.
- (3). 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.
- (4). A fire set in conjunction with the production of agricultural commodities in their un-manufactured state on the premises of the farm operation.
- (5). A fire set solely for cooking food.
- (6). A fire set solely for recreational or ceremonial purposes.
- (7). Open Burning

The following regulations shall control the burning of yard clippings, shrubbery, brush, tree branches, and tree trimmings (less than six inches in diameter) on all properties in Carroll Valley Borough. The following provisions do not prohibit recreational and/or incinerator burn fires in the Borough of Carroll Valley.

- (A) Open burning of yard clippings, leaves, shrubbery, brush, tree branches, and tree trimmings (less than six inches in diameter) may occur within Carroll Valley Borough subject to the following conditions:
 - i. The open burning event takes place from dawn to dusk.;
 - ii. The property owner (or his/her agent) assures Carroll Valley Borough that the proposed fire is on their residential property and will remain on their premises, with constant supervision and control, for the duration of the open burning event; and
 - iii. No open burning event shall occur within 50 feet of an existing building or any paved portion of a public right-of-way.
- (B) A person shall not burn any garbage, plastic, Styrofoam, skid, chemically treated lumber, synthetic material, cardboard boxes, or other hazardous or potentially hazardous materials, nor shall any rubber or rubber-based material (such as, but not limited to, rubber tires) be burned in the Borough.

- (C) No persons or persons, corporations, partnership or association shall burn, or permit to be burned, a structure of any size, or burn or permit to be burned, any material outside of a container with an approved cover, within Adams County, Pennsylvania, unless first receiving a permit from the Adams County Department of Emergency Services. They can be contacted at (717) 334-8101.

(8). Recreational Fires

Recreational fires are allowed in the borough of Carroll Valley subject to the following conditions:

- (A). No recreational fire shall exceed a size of 3 feet by 3 feet on the ground, and 4 feet in height.
- (B). No yard clippings or leaves shall be burned in any recreational fire.
- (C). Recreational fires must be contained within a fire pit or ring or in an outdoor fireplace.

(9). Contained Incinerator Burn

Contained Incinerator Burning (Burn Barrel) is allowed within the Borough of Carroll Valley subject to the following conditions:

- (A). The non-combustible metal container (burn barrel) is situated within a 10' circumference clear of any combustible materials such as trees, yard debris, etc.
- (B). The burn barrel is provided with draft holes 1" maximum at the bottom portion of the barrel.
- (C). The burn-barrel is provided with punched holes directly above the draft holes with steel rods or pipe driven through which will hold burning material up and give a clean fast burn.
- (D). The burn-barrel is provided with a heavy mesh screen no less than 14 gauge wire with holes no larger than 1/4" and weighted or hinged to prevent falling or blowing off.
- (E). The burn barrel is in good condition with no burn failures evident in the bottom or any side of the burn barrel.

(11). Construction Burning

- (A). No burning of any type of construction materials shall occur within the Borough of Carroll Valley.
- (B). If land is being cleared for a housing development or the construction of a house, the burning of trees or timber, which is cut down on site, is not permitted.
- (C). The burning of clearing and grubbing waste associated with any land development activity within the borough is strictly prohibited. This includes trees, shrubs, or other woody materials and their root systems. This applies to all primary structure construction and accessory structure or use construction activities.

(12). Supervision of (Open Burn) fires.

- (A). The property owner (or his/her agent) must personally supervise any and all fires, which occur on the property owner's land. Anyone supervising a fire must be at least 18 years of age or older.
 - (B). The property owner (or his/her agent) must be present outdoors on the property at the fire at all times when smoke or flames are present.
 - (C). No smoke is allowed to occur after dusk.
 - (D). No accelerants can be utilized to start a fire. Such prohibited accelerants include, but are not limited to, gasoline, diesel fuel, or any other type of flammable fluid.
 - (E). All (Open Burn) fires must have at a minimum of one portable fire extinguisher with a minimum 4-A rating or other onsite fire-extinguishing equipment, such as dirt, sand, water barrel, garden hose or water truck, in appropriate quantities needed for immediate utilization.
-

§ 19-105. Enforcement Orders

- (1) The Borough of Carroll Valley (manager, codes officer, zoning officer, police officer, or any other duly authorized agent) shall have the power and duty to enforce the provisions of this ordinance.
- (2) The Borough of Carroll Valley may issue such orders as are necessary to aid in the enforcement of the provisions of this ordinance. These orders shall include, but shall not be limited to:
 - a) orders requiring persons to cease unlawful open burning which, in the course of its occurrence, is in violation of any provision of this ordinance;
 - b) orders to take corrective action or to abate a public nuisance;
 - c) orders requiring the testing, sampling, or monitoring of any open burning;
 - d) orders requiring production of information.

Such an order may be issued if the Borough of Carroll Valley finds that any condition existing in or on the facility or source involved is causing or contributing to open burning or if the Borough of Carroll Valley finds that any person is in violation of any provision of this ordinance.

- (3) The Borough of Carroll Valley may, in its order, require compliance with such conditions as are necessary to prevent or abate open burning or affect the purposes of this ordinance.
- (4) An order issued under this section shall take effect upon notice, unless the order specifies otherwise. An appeal to the Borough Council of the order shall not act as a supersedeas, provided, however, that, upon application and for cause shown; the Borough Council may issue such a supersedeas under rules established by the Borough Council.
- (5) The authority of the Borough of Carroll Valley to issue an order under this section is in addition to any remedy or penalty which may be imposed pursuant to this ordinance. The failure to comply with any such order is hereby declared to be a public nuisance.

§ 19-106. Responsibility of Owners and Operators

- (1) Whenever the (enforcing officer) finds that open burning is occurring in the Borough of Carroll Valley, other than those exceptions noted in Section V above, the (enforcing officer) may order the owner or operator to take corrective action in a manner satisfactory to the Borough of Carroll Valley, or the (enforcing officer) may order the owner or operator to allow access to the land by the (enforcing officer) or a third party to take such action.
- (2) For purposes of collecting or recovering the costs involved in taking corrective action or pursuing a cost recovery action pursuant to an order or recovering the cost of litigation, oversight, monitoring, sampling, testing, and investigation related to a corrective action, the Borough of Carroll Valley may collect the amount in the same manner as civil penalties are assessed and collected following the process for assessment and collection of a civil penalty contained in Section IX of this ordinance.

§ 19-107. Criminal Penalties

- (1) Any person who violates any provision of this ordinance or any order of the Borough of Carroll Valley 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) nor more than two thousand five hundred dollars (\$2,500.00) for each separate offense and, in default of the payment of such fine, may be sentenced to imprisonment for ninety (90) days for each separate offense. Employees of the Borough of Carroll Valley 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 (municipal) Counsel is hereby authorized to prosecute these offenses. For purposes of this section, a summary offense may be prosecuted before any district justice in this the Borough of Carroll Valley. There is no accelerated rehabilitative disposition authorized for a summary offense.
- (2) Any person found responsible for a violation of any offense pursuant to this Ordinance shall have their burning privileges suspended for 60 days for any and all properties, which they own within Carroll Valley Borough, unless the Carroll Valley Borough Manager or his/her designee waives all or part of that suspension for good cause shown.

§ 19-108. Civil Penalties

- (1) In addition to proceeding under any other remedy available at law or in equity for a violation of a provision of this ordinance or any order issued pursuant to this ordinance, the Borough of Carroll Valley may assess a civil penalty for the violation. The penalty may be assessed whether or not the violation was willful. The civil penalty so assessed shall not exceed twenty-five thousand dollars (\$25,000.00) per day for each violation. In determining the amount of the penalty, the Borough of Carroll Valley shall consider the willfulness of the violation; damage to air, soil, water, or other natural resources of the Borough of Carroll Valley or their uses; financial benefit to the person in consequence of the violation; deterrence of future violations; cost to the Borough of Carroll Valley; the size of the source or facility; the compliance history of the source; the severity and duration of the violation; degree of cooperation in resolving the violation; the speed with which compliance is ultimately achieved; whether the violation was voluntarily reported; other factors unique to the

owners or operators of the source or facility; and other relevant factors.

- (2) When the Borough of Carroll Valley proposes to assess a civil penalty, it shall inform the person of the proposed amount of the penalty. The person charged with the penalty shall then have thirty (30) days to pay the proposed penalty in full; or if the person wishes to contest the amount of the penalty or the fact of the violation to the extent not already established, the person shall forward the proposed amount of the penalty to the (quasi judicial body) within the thirty (30) day period for placement in an escrow account with the State Treasurer or any Commonwealth bank or post an appeal bond to the (quasi judicial body) within thirty (30) days in the amount of the proposed penalty, provided that such bond is executed by a surety licensed to do business in the Commonwealth and is satisfactory to the Borough of Carroll Valley. If, through administrative or final judicial review of the proposed penalty, it is determined that no violation occurred or that the amount of the penalty shall be reduced, the (quasi judicial body) shall, within thirty (30) days, remit the appropriate amount to the person with any interest accumulated by the escrow deposit. Failure to forward the money or the appeal bond at the time of the appeal shall result in a waiver of all legal rights to contest the violation or the amount of the civil penalty unless the appellant alleges financial inability to prepay the penalty or to post the appeal bond. The (quasi judicial body) shall conduct a hearing to consider the appellant's alleged inability to pay within thirty (30) days of the date of the appeal. The (quasi judicial body) may waive the requirement to prepay the civil penalty or to post an appeal bond if the appellant demonstrates and the (quasi judicial body) finds that the appellant is financially unable to pay. The (quasi judicial body) shall issue an order within thirty (30) days of the date of the hearing to consider the appellant's alleged inability to pay. The amount assessed after administrative hearing or after waiver of administrative hearing shall be payable to the the Borough of Carroll Valley and shall be collectible in any manner provided by law for the collection of debts, including the collection of interest on the penalty amount computed in accordance with section 6621(a)(2) of the Internal Revenue Code of 1986 (Public Law 99514, 26 U.S.C. § 1 et seq.) from the date of assessment of the penalty. If any person liable to pay any such penalty neglects or refuses to pay the same after demand, the amount, together with interest and any costs that may accrue shall constitute a debt of such person, as may be appropriate, to the Borough of Carroll Valley. The debt shall constitute a lien on all property owned by said person when a notice of lien incorporating a description of the property of the person subject to the action is duly filed with the prothonotary of the court of common pleas where the property is located. The prothonotary shall promptly enter upon the civil judgment or order docket, at no cost to the Borough of Carroll Valley, the name and address of the person, as may be appropriate, and the amount of the lien as set forth in the notice of lien. Upon entry by the prothonotary, the lien shall attach to the revenues and all real and personal property of the person, whether or not the person is solvent. The notice of lien, filed pursuant to this Section, which affects the property of the person shall create a lien with priority over all subsequent claims or liens which are filed against the person, but it shall not affect any valid lien, right, or interest in the property filed in accordance with established procedure prior to the filing of a notice of lien under this section. [Note to the municipality: The penalties and remedies available to the municipality are those set forth in the Air Pollution Control Act (APCA), as amended, 35 P.S. 4012, Sections 9, 9.1, and 12(g). Each municipality may tailor the penalty provisions to reflect the municipality's preferred penalty policy, within the legal limits of the APCA.]

§ 19-109. Unlawful Conduct

It shall be unlawful to fail to comply with or to cause or assist in the violation of any of the provisions of this ordinance or to fail to comply with any order or other requirement of the Borough of Carroll Valley; or to cause a public nuisance; or to cause air, soil, or water pollution resulting from an open burning incident; or to hinder, obstruct, prevent, or interfere with the Borough of Carroll Valley or its personnel in their performance of any duty hereunder, including denying the (enforcing officer) access to the source or facility; or to violate the provisions of 18 Pa.C.S. § 4903 (relating to false swearing) or 4904 (relating to unsworn falsification to authorities) in regard to papers required to be submitted under this ordinance. The owner or operator of an open burning source shall not allow pollution of the air, water, or other natural resources of the Borough of Carroll Valley to result from the source.

§ 19-110. Public Nuisances

A violation of this ordinance or of any order issued by the Borough of Carroll Valley under this ordinance shall constitute a public nuisance. The Borough of Carroll Valley 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 Borough of Carroll Valley may recover the expenses of abatement following the process for assessment and collection of a civil penalty contained in Section IX. Whenever the nuisance is maintained or continued contrary to this ordinance or any order issued pursuant to this ordinance, the nuisance may be abatable in the manner provided by this ordinance. Any person who causes the public nuisance shall be liable for the cost of abatement.

SECTION 3. REPEALER.

All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed insofar as same affects this Ordinance.

SECTION 4. SEVERABILITY.

In 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 Carroll Valley Borough Council that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall become effective upon the earliest date provided by law. ORDAINED AND ENACTED as an Ordinance of the Borough of Carroll Valley this 14th day of October, 2008.

ATTEST:

CARROLL VALLEY BOROUGH COUNCIL

Barbara M. Hertz
Secretary

October 14, 2008
Date

By: [Signature]
Council President

APPROVED:
By: Ronald J. Harris
Mayor

CERTIFICATION OF ADOPTION

I hereby certify that the foregoing ordinance was advertised in Gettysburg Times, a newspaper of general circulation in the municipality, on September 14, 2008, and was duly enacted and approved as set forth at a regular meeting of the Borough Council of the Borough of Carroll Valley on October 14, 2008.

Barbara M. Hertz
Borough Secretary