

## ORDINANCE 2009-04

### AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF LOWER ALLEN TOWNSHIP, CUMBERLAND COUNTY, PENNSYLVANIA FOR THE PREVENTION AND CONTROL OF AIR POLLUTION FROM THE USE OF OUTDOOR HYDRONIC HEATERS; DEFINING CERTAIN TERMS USED HEREIN; PROVIDING FOR REGULATIONS, EXCEPTIONS, ENFORCEMENT ORDERS, RESPONSIBILITY OF OWNERS AND OPERATORS, PENALTIES, UNLAWFUL CONDUCT, PUBLIC NUISANCES AND VALIDITY.

**BE IT ENACTED AND ORDAINED** by the Board of Commissioners (“Board”) of Lower Allen Township (“Township”), Cumberland County, Pennsylvania, by virtue of the power and authority vested in said Board of Commissioners as follows:

#### **SECTION I. Title**

This ordinance shall be known and may be cited as the Lower Allen Township Outdoor Hydronic Heater Ordinance of 2009.

#### **SECTION II. Authority**

The Board of Commissioners of Lower Allen Township, under, and by virtue of and pursuant to the authority granted by the Air Pollution Control Act, 35 P.S. §4012 and the First Class Township Code Section 1502 (29) 53 P.S. Section 56529 Smoke Regulation do hereby enact and ordain this ordinance.

#### **SECTION III. Purpose and Scope**

Whereas the Board of Commissioners of Lower Allen Township has determined that air pollution from outdoor hydronic heaters may be detrimental to the health, comfort, living conditions, welfare, and safety of the citizens of Lower Allen Township, it is hereby declared to be the policy of Lower Allen Township to safeguard the citizens of Lower Allen Township from such air pollution.

#### **SECTION IV. 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:

*Board* – Lower Allen Township Board of Commissioners.

*Clean wood* – Natural wood that has been seasoned to reduce its water content and provide more efficient combustion, that has not been: (1) coated with paint, stain, oil, resin or any other preservative, fire retardant or decorative materials; (2) impregnated with preservatives or fire retardants; (3) exposed to salt water; and (4) manufactured with the use of adhesives, polymers or resins, such as strand, particle and veneer lumber and recycled lumber.

*Code Enforcement Official* – Person designated by the municipality to be responsible for the administration and enforcement of this ordinance.

*Outdoor hydronic heater* – A fuel-burning device designed: (1) to burn clean wood or other fuels specifically tested and listed for use by the manufacturer; (2) by the manufacturer specifically for outdoor installation or installation in structures not normally intended for habitation by humans or domestic animals (e.g., garages); and (3) to heat building space and/or water via distribution, typically through pipes, of a fluid heated in the device, typically water or a water/antifreeze mixture. Outdoor hydronic heaters are also known as outdoor wood-fired boilers, outdoor wood-fired furnaces, and outdoor wood-burning appliances.

*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.

*Startup period* - The time period beginning with flame stability after first charge of wood fuel and is no longer than a two hour duration. This definition only includes initial startup where no previous bed coal bed exists, and does not include refueling.

## **SECTION V. Regulations**

After enactment, an outdoor hydronic heater may be installed or used in Lower Allen Township only in accordance with all of the following provisions:

V. 1. The outdoor hydronic heater shall be installed, operated and maintained in accordance with the manufacturer's instructions.

V. 2. The outdoor hydronic heater shall not be used to burn any material that does not meet the definition of clean wood, with the following exceptions: (1) wood pellets made from clean wood, if the device has been tested and listed to utilize this fuel; and (2) home heating oil meeting applicable sulfur content limit, propane or natural gas, when used as auxiliary starter fuels for devices tested and listed as dual-fired outdoor hydronic heaters.

V. 3. The outdoor hydronic heater shall have been tested, listed and tagged as being compliant with the US Environmental Protection Agency (EPA) voluntary program to reduce outdoor hydronic heater emissions. Phase I qualified devices (orange tag) shall not exceed the EPA limit of 0.6 pounds of fine particle emissions per million BTU heat output. Phase 2 qualified devices (white tag) shall not exceed the EPA limit of 0.32 pounds of fine particle emissions per million BTU heat output.

V. 4. The outdoor hydronic heater shall be located at least 100 feet from the nearest property line or 120 feet from the nearest occupied dwelling, whichever is more stringent, if the device is EPA Phase 1 qualified (orange tag). The outdoor hydronic heater shall be located at least 50 feet from a property line or 70 feet from the nearest occupied building, whichever is more stringent, if the device is EPA Phase 2 qualified (white tag). Phase I units are 70 % cleaner than unqualified units, and Phase 2 units are 90 % cleaner than unqualified units.

V. 5. The owner or operator of the outdoor hydronic heater shall obtain a permit from the Department of Community Development prior to installation of the device. The permit applicant shall demonstrate compliance with applicable building and zoning regulations contained in the Code of the Township of Lower Allen, in addition to compliance with this ordinance.

V. 6. No person shall cause or allow the emission of a smoke plume from any outdoor hydronic heater to exceed an average of 20 percent opacity for 6 consecutive minutes in any one-hour period, except during the startup period, when visible emissions may not exceed 40 percent opacity for 20 consecutive minutes.

#### **SECTION VI. Enforcement Orders**

(1) The Lower Allen Township Code Enforcement Officer shall have the power and duty to enforce the provisions of this ordinance.

(2) Lower Allen Township 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: orders requiring persons to cease unlawful use of outdoor wood-fired boilers, which is in violation of any provision of this ordinance; orders to take corrective action or to abate a public nuisance; or orders requiring production of information. Such an order may be issued if Lower Allen Township finds that any person is in violation of any provision of this ordinance.

(3) The Lower Allen Township may, in its order, require compliance with this ordinance.

(4) An order issued under this section shall take effect upon notice, unless the order specifies otherwise. An appeal to the Lower Allen Township Regional Code Appeals of the Lower Allen Township order shall not act as a supersedeas, provided, however, that, upon application and for cause shown, the Lower Allen Township Regional Code Appeals may issue such a supersedeas under rules established by the Lower Allen Township Regional Code Appeals.

(5) The authority of the Lower Allen Township to issue an order under this section is in addition to any remedy or penalty that may be imposed pursuant to this ordinance. The failure to comply with any such order is hereby declared to be a public nuisance.

#### **SECTION VII. Responsibility of Owners and Operators**

(1) Whenever the Code Enforcement Official finds that illegal operation of an outdoor wood-fired boiler is occurring in the Lower Allen Township, in contravention of the requirements of Section VI above, the Code Enforcement Official may order the owner or operator to take corrective action in a manner satisfactory to the Lower Allen Township, or the Code Enforcement Official may order the owner or operator to allow access to the land by the Code Enforcement Official 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 Lower Allen Township 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 X of this ordinance.

### **SECTION VIII. Criminal Penalties**

Any person who violates any provision of this ordinance or any order of the Township 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 Township 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 Township Solicitor is hereby authorized to prosecute these offenses. For purposes of this section, a summary offense may be prosecuted before any district justice in this Township. There is no accelerated rehabilitative disposition authorized for a summary offense.

### **SECTION IX. 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 Township 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 Township shall consider the willfulness of the violation; damage to air, soil, water, or other natural resources of the Township or their uses; financial benefit to the person in consequence of the violation; deterrence of future violations; cost to the Township; 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 Township 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 Township 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 Township 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 Township. 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 Township 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 Township shall conduct a hearing to consider the appellant's alleged inability to

pay within thirty (30) days of the date of the appeal. The Township may waive the requirement to prepay the civil penalty or to post an appeal bond if the appellant demonstrates and the Township finds that the appellant is financially unable to pay. The Township 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 Township 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 99-514, 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 Township. 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 Township, 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.

#### **SECTION X. 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 Township; or to cause a public nuisance; or to hinder, obstruct, prevent, or interfere with the Township or its personnel in their performance of any duty hereunder, including denying the Code Enforcement Official access to the source or facility.

#### **SECTION XI. Public Nuisances**

A violation of this ordinance or of any order issued by the Township under this ordinance shall constitute a public nuisance. The Township 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 Township may recover the expenses of abatement following the process for assessment and collection of a civil penalty contained in Section X. 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 XII. Repealer**

The provisions of this Ordinance, as far as they are the same as those of ordinances in force immediately prior to the enactment of this Ordinance, are intended as a continuation of such ordinances and not as new enactments. The provisions of this Ordinance shall not affect any such suit or prosecution pending or to be instituted to enforce any right or penalty or to punish any offense under the authority of any ordinance repealed by this Ordinance.

**SECTION XIII. Severability**

The provisions of this Ordinance are severable, and if any of its provisions shall be held to be unconstitutional, illegal, or invalid, such decision shall not affect the validity of any of the remaining provisions of this Ordinance. It is hereby declared as a legislative intent that this Ordinance would have been adopted had such unconstitutional, illegal or invalid provision not been included herein.

**SECTION XIV. Effective Date**

This ordinance shall become effective immediately.

*ENACTED AND ORDAINED* into an Ordinance this 23rd day of February 2009.

**ATTEST  
(Corporate Seal)**

**BOARD OF COMMISSIONERS  
LOWER ALLEN TOWNSHIP**

\_\_\_\_\_  
(Assistant) Secretary

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(Vice) President