ORDINANCE NO. 7 of 2022

AMENDMENT TO CHAPTER 69, OPEN BURNING, OF THE FOSTER TOWNSHIP CODE OF ORDINANCES

AN ORDINANCE OF FOSTER TOWNSHIP, LUZERNE COUNTY, PENNSYLVANIA, AMENDING CHAPTER 69, OPEN BURNING, SECTIONS 69-1 DEFINTIONS THROUGH 69.11, ENFORCEMENT

BE IT ENACTED AND ORDAINED by the Foster Township Board of Supervisors, and it is hereby enacted and ordained by the authority of the same, the following amendments:

§69-1. Definitions.

As used in this chapter, the following terms shall have the meanings indicated, unless a different meaning clearly appears form the context:

BOARD OF SUPERVISORS – The Board of Supervisors of Foster Township.

BUILDING- Any roofed structure intended for shelter, housing or enclosure of persons, animals, or property.

CAMPFIRE OR RECREATIONAL FIRE- An outdoor contained fire for the purposes of pleasure, religious, ceremonial, cooking, warmth, or similar purposes but not including a fire intended for disposal of waste wood, refuse, garbage, trash, or a bon fire.

CODE ENFORCEMENT OFFICER- The person appointed by the Board of Supervisors to administer and enforce the Code of Ordinances of Foster Township, including this ordinance.

FIRE COMPANY – The Fearnots Volunteer Fire Company.

FIRE CHIEF- The Chief of the Fearnots Volunteer Fire Company or any other member of the Fearnots Volunteer Fire Company designated by the Fire Chief to enforce this ordinance.

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

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

INCINERATOR – Any device specifically designed for the destruction by burning of refuse, sewage sludge or any other combustible material.

LANDOWNER- The legal or beneficial owner or owners of land including the holder of an option or contract to purchase (whether or not such option or contract is subject to any condition), a lessee authorized under a lease to exercise the rights of the landowner, or other person having a proprietary interest in land.

OPEN FIRE – A fire in which any material is burned in the open or in a receptacle other than a furnace or incinerator.

OUTDOOR FIREPLACE- A chiminea, patio warmer, or other portable wood-burning device used for outdoor recreation or heating.

OUTDOOR WOOD FIRED BURNER- A fuel burning device:

A. Designed to burn wood or other approved solid fuels;

B. That the manufacturer specifies for outdoor installation or installation in structures not normally occupied by humans (e.g., garages); and

C. Heats building space or water via the distribution, typically through pipes, of a fluid heated in the device, typically water or a water/antifreeze mixture.

PERSON - Any individual, partnership, association, corporation, department, bureau, agency or other legal entity.

REFUSE – Garbage, rubbish and trade waste.

RUBBISH – Solids not considered to be highly flammable or explosive, including, but not limited to, rags, old clothes, leather, rubber, carpets, wood, excelsior, paper, ashes, tree branches, tree leaves, yard trimmings, 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 or reclaiming any product or material including, but not limited to, metals, chemicals, shipping containers or drums.

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; provided that trade waste shall not include any coal refuse associated with the mining or preparation of coal.

§69-2. Prohibited Acts.

Within the Foster Township limits, no person shall:

A. Ignite or feed an open fire for the destruction of refuse or in the conduct of a salvage operation in any public or private place outside any building.

B. Cause, suffer, allow or permit the maintenance of any open fire for the destruction of refuse, or in the conduct of a salvage operation on a property under his control outside of any building.

C. Ignite or feed an open fire upon any public property or any private property without the consent of the landowner.

D. The use of accelerants to ignite or feed an open fire such as gasoline is prohibited.

§69-3. Exceptions.

Subject to the following exceptions:

A. Open fires may be set in the performance of an official duty of any public officer if the fire is necessary for:

1. The prevention of a fire hazard which cannot be abated by other means.
2. The protection of public health.

B. An open recreational fire or camp fire provided that:

1. Fires shall not be more than 3 feet in diameter and no more than 2 feet in height.
2. Fires shall be at least 25 feet from any structure, and combustible material, except for propane pits or pellet fueled devices shall be set back 10 feet.
3. No refuse (trash), recyclables, construction materials, leaves or trimmings may be burned.
4. Only dried seasoned wood may be burned.
5. Fires shall be in a pit or contained by a protective barrier.
6. Fires shall be constantly attended until the fire is extinguished.
7. A portable fire extinguisher with a minimum 4-A rating or a garden hose shall be readily available for immediate use.
8. Recreational fires shall be completely extinguished no later than 11 p.m.

C. A properly zoned outdoor wood fire burner.

D. A portable outdoor wood or gas fireplace provided that:

1. Portable outdoor fireplaces shall be used in accordance with the manufacturer's instructions.
2. Fires shall be at least 10 feet from any structure, and combustible material.

3. No refuse (trash), recyclables, construction materials, leaves or trimmings may be burned.
4. Only dried seasoned wood or charcoal, wood pellets, or propane gas may be burned.
5. Fires shall be constantly attended until the fire is extinguished.
6. A portable fire extinguisher with a minimum 4-A rating. Dry chemical extinguisher (propane gas) or a garden hose shall be readily available for immediate use.
7. Portable outdoor fireplaces, fires shall be completely extinguished no later than 11 p.m.

C. Open fires may be set by a person, provided that:

1. Paper, wood, yard trimmings, leaves, branches and other non-putrescible vegetable matter only are burned.
2. There is no practical available alternative method for disposal of the material to be burned.
3. No hazardous or other objectionable condition will be created by such burning.
4. No such burning is allowed on any street or sidewalk within Foster Township.
5. All such burning takes place between the hours of 7:00 a.m. and 7:00 p.m., Monday through Saturday. No burning is allowed on Sunday or on state and federal holidays.
6. Fires shall be at least 50 feet from any structure, property line, and combustible material.
7. Fires shall be constantly attended until the fire is extinguished.
8. A portable fire extinguisher with a minimum 4-A rating or a garden hose shall be readily available for immediate use.

§69-4. Responsibility for fire; Offensive or Objectionable Burning.

A. All fires shall be attended to at all times by a responsible adult with readily available means of extinguishing the fire to ensure that the fire cannot spread and can be easily extinguished in case of an emergency.

B. Any burning which is offensive or objectionable because of smoke or odor emissions or when atmospheric conditions or local circumstances make any such fire (open burning of by-products, or recreational) hazardous shall be prohibited and that the fire will be extinguished by order of the agency that was summoned to the complaint.

§69-5. Deadline to Extinguish fire.

Fires, except for recreational fires, must be extinguished completely with no smoldering by 7:00 p.m. Recreational fires shall be extinguished completely with no smoldering by 11:00 p.m.

§69-6. Ban on burning.

No burning is allowed during a fire ban emergency as proclaimed by Luzerne County Emergency Management or Foster Township Board of Supervisors.

§69-7. Unlawful substances.

A. Burning of refuse, garbage, rubbish, including but not limited to construction debris, aerosol cans, by-products of manufacturing and processing operation and wastes from commercial operations, is strictly prohibited.

B. Nothing herein shall be construed to permit or encourage the burning of any substance determined by the Commonwealth of Pennsylvania or the United States Environmental Protection Agency to be a hazardous substance, nor shall any fire be permitted to burn by any person if such burning is in violation of the Air Pollution Control Act or other legislation by the Commonwealth of Pennsylvania or the United States of America or any of their legislative agencies.

C. Fires shall be used only to burn readily combustible materials.

§69-8. Fire ban emergency.

The Board of Supervisors may declare a fire ban emergency in Foster Township with or without consultation with the Fire Chief of the Fire Company operating within the Township during periods of drought or other periods of high fire risk to woodlands or property within Foster Township. Upon the Board of Supervisors declaring a fire ban emergency, all outdoor burning or fires shall be prohibited until the ban is lifted by the Board of Supervisors. The Township shall publish a notice of the fire ban emergency at least once in a local newspaper of general circulation. In addition, the Township may issue news releases to all communication media, including radio, television and newspapers.

§69-9. Additional costs.

A. In the case of a fire requiring fire fighter or equipment and upon conviction of any violation of this Chapter, the violator shall also pay charges in order to cover the fire-fighting costs. Charges shall be assessed for use of the fire-fighting equipment as established by resolution of Foster Township, as the same may be amended from time to time.

B. These charges shall be in addition to and not in lieu of any penalties provided elsewhere in this chapter.

§69-10. Enforcement.

A. The Foster Township Code Enforcement Officer, the Foster Township Fire Chief, or any police officer shall have the power to enforce the provisions of this Chapter.

B. Upon receiving a written complaint that an open fire is set in violation of the terms of this Chapter, the Foster Township Code Enforcement Officer or the Foster Township Fire Chief shall make an investigation, and if a complaint is found to be true, a summary citation prepared in accordance with the rules of Criminal Procedure shall be issued against the responsible party. All complainants must join in the filing of the summary citation and appear as a witness at a subsequent hearing.

§69-11. Violations and Penalties.

A. Any person who violates any provision of this ordinance shall, upon conviction thereof, be subject to a civil proceeding or summary offense and payment of a summary fine or civil penalty of:

VERBAL WARNING	**First Offense**
WRITTEN WARNING	**Second Offense**
$300.00	**Third Offense**
$600.00	**Fourth and Subsequent Offenses**

In addition to the fines, the defendant or violator shall be responsible for court costs and reasonable attorney fees. In default of payment in a summary proceeding, a defendant may also be subject to imprisonment for a term not to exceed 30 days. A separate violation shall arise for each day of a violation and each applicable section of the ordinance.

B. In the event that a burning ban is declared under Section 69-6 and 69-8 of this ordinance, the fines for a violation of this ordinance shall increase so that any person who ignites, feeds or maintains an open fire during a burning ban shall, upon conviction thereof, be subject to the payment of a summary fine or civil penalty of:

$300.00	**First Offense**
$600.00	**Second and Subsequent Offense**

In addition to the fines, the defendant or violator shall be responsible for court costs and reasonable attorney fees. In default of payment in a summary proceeding, a defendant may

also be subject to imprisonment for a term not to exceed 30 days. A separate violation shall arise for each day of a violation and each applicable section of the ordinance.

§69-12. Severability.

If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate and distance and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

§69-13. Repealer.

All ordinances or parts thereof which are inconsistent with this ordinance are hereby repealed to the extent of their inconsistencies.

§69-14. Effective Date.

This ordinance shall become effective immediately following its adoption.

ENACTED AND ORDAINED this 25th day of October, 2022 by the Foster Township Board of Supervisors.

ATTEST:

Secretary/Treasurer

FOSTER TOWNSHIP BOARD OF SUPERVISORS:

Chairperson

Vice-Chairperson

Secretary/Treasurer