

**NEW BEAVER BOROUGH
NOTICE OF PROPOSED ORDINANCE**

Notice is hereby given that the New Beaver Borough Council will consider at its monthly meeting to be held on October 14, at 7:00 p.m. at the New Beaver Borough Municipal Building, 778 Wampum-New Galilee Road, New Galilee, Pennsylvania, 16141, along with such other general business matters as may come before the Council, a Proposed Ordinance which provides a procedure for establishing general and specific standards relating to open burning.

Section 1 provides for Title; Section 2 provides for Authority; Section 3 provides for Policy; Section 4 provides for Definitions; Section 5 provides for Regulations; Section 6 provides for Enforcement Orders; Section 7 provides for Responsibility of Owners and Operators; Section 8 provides for Criminal Penalties; Section 9 provides for Civil Penalties; Section 10 provides for Unlawful Conduct; Section 11 provides for Public Nuisances; Section 12 provides for Repealer; Section 13 provides for Validity; and Section 14 provides for Effective Date.

The full text of the Ordinance as proposed may be examined by any citizen during normal business hours and days at the office of the Borough Secretary, 778 Wampum-New Galilee Road, New Galilee, Pennsylvania, 16141.

Ryan C. Long
Leymarie Clark Long, P.C.

**PROPOSED ORDINANCE
NEW BEAVER BOROUGH
Open Burning Ordinance
Ordinance 2 of 2024**

An ordinance of New Beaver Borough, Lawrence County, Commonwealth of Pennsylvania for the control of open burning; defining certain terms used herein; providing for regulations, exceptions, enforcement orders, responsibility of owners and operators, penalties, unlawful conduct, public nuisances, and repealing previous ordinance 1 of 1999.

SECTION I. Title

This ordinance shall be known and may be cited as the New Beaver Borough Open Burning Ordinance 3 of 2024.

SECTION II. Authority

The Council of New Beaver Borough, under, and by virtue of and pursuant to the authority granted by 25 PA Code Section 129.14 Open Burning Operations do hereby enact and ordain this ordinance.

SECTION III. Policy

Whereas the Council of New Beaver Borough has determined that open burning may be detrimental to the health, comfort, living conditions, welfare, and safety of the citizens of New Beaver Borough, it is hereby declared to be the policy of New Beaver Borough to safeguard the citizens of New Beaver Borough 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:

- (1) Upper Beaver Valley Air Basin - The following political subdivisions in Lawrence County: Bessemer Borough, Ellport Borough, Ellwood City Borough, Enon Valley Borough, Little Beaver Township, New Beaver Borough, City of New Castle, North Beaver Township, Shenango Township, South New Castle Borough, Taylor Township, Wampum Borough, and Wayne Township.
- (2) Air curtain destructor - A mechanical device which forcefully projects a curtain of air across a pit in which open burning is being conducted so that combustion efficiency is increased and smoke and other particulate matter are contained.
- (3) 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.
- (4) Clearing and grubbing wastes - Trees, shrubs, and other 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.
- (5) 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.

- (6) Open burning - A fire, the air contaminants from which are emitted directly into the outdoor atmosphere and not directed thereto through a flue.
- (7) 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.
- (8) Public Nuisance - A public nuisance is an activity or conduct that threatens the public health, safety or welfare, or does damage to community or public resources.
- (9) Yard waste - Leaves, grass clippings, garden residue, tree trimmings, chipped shrubbery, and other vegetative material.

SECTION V. Regulations

After the effective date, 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 for the purpose of burning clearing and grubbing waste. If within an air basin an air curtain destructor must be used and must be approved by the Department of Environmental Protection's Regional Air Quality Program office.
- (5) A fire set in conjunction with the production of agricultural commodities in their unmanufactured state on the premises of the farm operation.
- (6) A fire set for the purpose of burning that amount of domestic refuse generated from one dwelling, when the fire is on the premises of a structure occupied solely as a dwelling by two families or less and when the refuse results from the normal occupancy of said structure.
- (7) A fire set for the purpose of burning that amount of yard waste generated from the premises of a structure occupied solely as a dwelling by two families or less when the fire is on the premises of said structure.
- (8) All fires set as described in Regulations 6 & 7 shall only take place between the hours of 8:00 AM and 7:00 PM prevailing time, on any day except Sundays and National Holidays. No burning nor smoldering permitted other than at the times given above.
- (9) A fire set solely for cooking food.
- (10) A fire set solely for recreational or ceremonial purposes.

SECTION VI. Enforcement Orders

- (1) The codes officer, police, or any other duly authorized agent shall have the power and duty to enforce the provisions of this ordinance.
- (2) Council 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 open burning which, in the course of its occurrence, is in violation of any provision of this ordinance; orders to take corrective action or to abate a public nuisance; orders requiring the testing, sampling, or monitoring of any open burning; or orders requiring production of information. Such an order may be issued if the Council finds that any condition existing in or on the facility or source involved is causing or contributing to open burning or if the Council finds that any person is in violation of any provision of this ordinance.
- (3) Council may, in its order, require compliance with such conditions as are necessary to prevent or abate open burning or effect 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 Council's order shall not act as a supersedeas, provided, however, that, upon application and for cause shown, the Council may issue such a supersedeas under rules established by the Council.
- (5) The authority of Council 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.

SECTION VII. Responsibility of Owners and Operators

- (1) Whenever the enforcing agent finds that open burning is occurring in New Beaver Borough, other than those exceptions noted in Section V above, enforcing agent may order the owner or operator to take corrective action in a manner satisfactory to the Council, or the enforcing agent may order the owner or operator to allow access to the land by the enforcing agent.
- (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 Council 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.

SECTION VIII. Criminal Penalties

Any person who violates any provision of this ordinance or any order of the Council 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 New Beaver Borough 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 New Beaver Borough Solicitor is hereby authorized to prosecute these offenses. For purposes of this section, a summary offense may be prosecuted before any district justice that has jurisdiction.

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 Council may assess a civil penalty for the violation. The penalty may be assessed whether or not the violation was willful. The civil penalty assessed shall not exceed ten thousand dollars—per day for each violation. In determining the amount of the penalty, the Council shall consider the willfulness of the violation; damage to air, soil, water, or other natural resources of New Beaver Borough or their uses; financial benefit to the violator in consequence of the violation; deterrence of future violations; cost to New Beaver Borough; 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 Council 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 Council 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 Council 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 Council. 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 Council 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 Council shall conduct a hearing to consider the appellant's alleged inability to pay within thirty (30) days of the date of the appeal. Council may waive the requirement to prepay the civil penalty or to post an appeal bond if the appellant demonstrates and the Council find that the appellant is financially unable to pay. The Council 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 New Beaver Borough 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 New Beaver Borough. 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 New Beaver Borough, 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 Council;

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 Council or its personnel in their performance of any duty hereunder, including denying the enforcing agent 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 New Beaver Borough to result from the source.

SECTION XI. Public Nuisances

A violation of this ordinance or of any order issued by the Council under this ordinance shall constitute a public nuisance. The Council 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 Council 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 XII. Repealer

Ordinance 1-1999 previously enacted is hereby repealed. All other ordinances or parts thereof which are in conflict with this ordinance are hereby repealed.

SECTION XIII. Validity

The provisions of this ordinance are severable, and if any section, clause, sentence, part, or provision thereof shall be held illegal, invalid, or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect or impair the remaining sections, clauses, sentences, parts, or provisions of this ordinance. It is hereby declared to be the intent of the Council that this ordinance would have been adopted if such illegal, invalid, or unconstitutional section, clause, sentence, part, or provision had not been included herein.

SECTION XIV. Effective Date

This Ordinance shall take effect seven (7) days after adoption

ENACTED AND ORDAINED on this ____ day of _____, 2024.

ATTEST:

NEW BEAVER BOROUGH

Secretary

President of Council
(SEAL)

Mayor