

## NOTICE

**PLEASE TAKE NOTICE THAT THE COUNCIL OF THE BOROUGH OF BERLIN WILL CONSIDER THE ADOPTION OF THE FOLLOWING ORDINANCE AT ITS REGULAR MEETING ON FEBRUARY 6, 2025, AT 4:30 P.M., IN THE COUNCIL CHAMBERS OF THE BERLIN BOROUGH MUNICIPAL BUILDING LOCATED AT 700 NORTH STREET, BERLIN, PENNSYLVANIA, 15530. THE TITLE OF THE ORDINANCE AND ITS PROVISIONS ARE AS FOLLOWS:**

**ORDINANCE OF THE BOROUGH OF BERLIN, COUNTY OF SOMERSET, COMMONWEALTH OF PENNSYLVANIA, 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 Ordinance provides for the regulation of Open Burning within the Borough of Berlin. Open Burning is defined as a "fire, the air contaminants from which are emitted directly into the outdoor atmosphere and not directed thereto through a flue." Exceptions include fires for cooking, recreational or ceremonial purposes, agricultural activities, firefighter training, disease or pest prevention, and limited domestic refuse or yard waste burning under specific conditions. Any person who violates this ordinance commits a summary offense and is subject to fines of \$100 to \$2,500 per offense. Each day a violation exists constitutes a separate offense. Additionally, an individual may be sentenced to imprisonment for up to 90 days for each separate offense.

The Ordinance may be reviewed in its entirety in the Berlin Borough Municipal Building located at 700 North Street, Berlin, PA 15530, during normal business hours of 8:00 a.m. to 4:00 p.m., Monday through Friday.

**FIKE, CASCIO & BOOSE**  
Borough Solicitors

ORDINANCE No. 365

AN ORDINANCE PROVIDING FOR THE PREVENTION AND CONTROL OF AIR POLLUTION IN THE BOROUGH OF BERLIN

An Ordinance of the Borough of Berlin, County of Somerset, Commonwealth of Pennsylvania, 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.

BE IT ORDAINED AND ENACTED by the Borough of Berlin (hereinafter referred to as "Berlin Borough") as follows:

SECTION I. TITLE

This Ordinance shall be known and may be cited as the Berlin Borough Air Pollution Control Ordinance of 2024.

SECTION II. AUTHORITY

The Council of Berlin Borough under, and by virtue of pursuant to the authority granted by 8 Pa. Stat. Ann. § 3301.1 et seq., does hereby enact and ordain this Ordinance.

SECTION III. POLICY

Whereas, the Council of Berlin Borough as determined that air pollution from open burning may be detrimental to the health, comfort, living conditions, welfare and safety of the citizens of Berlin Borough, and it is hereby declared to be the policy of Berlin Borough to safeguard the citizens of Berlin 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) Agricultural Commodity- As defined in 3 P.S. § 952.
- (2) Air Basin – A geographic area of this Commonwealth as delineated in 25 Pa. Code 121.1. Definitions.
- (3) 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 particular matter are contained.

(4) 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.

(5) 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.

(6) Composting – The process by which organic solid waste is biologically decomposed under controlled anaerobic or aerobic conditions to yield a humus-like product.

(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) 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.

(9) Open Burning – A fire, the air contaminants from which are emitted directly into the outdoor atmosphere and not directed thereto through a flue.

(10) 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.

(11) Yard Waste – Leaves, grass clippings, garden residue, tree trimmings, chipped shrubbery and other vegetative material.

## SECTION V. REGULATIONS

After the date of enactment 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 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 an Agricultural Commodity 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 (except where composting is mandatory), when the fire is on the premises of said structure.
- (8) A fire set solely for cooking food.
- (9) A fire set solely for recreational or ceremonial purposes.
- (10) A fire set for the purpose of Burning associated with an operational business permitted by the Pennsylvania Department of Environmental Resources or the U.S. Department of Environmental Resources.

#### SECTION VI. ENFORCEMENT ORDERS

- (1) Berlin Borough Council hereby designates the Berlin Borough Police Department with the power and duty to enforce the provisions of this Ordinance.
- (2) Berlin Borough 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 Berlin Borough finds that any condition existing in or on the facility or source involved is causing or contributing to Open Burning or if Berlin Borough finds that any person is in violation of any provision of this Ordinance.
- (3) Berlin Borough 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 of Berlin Borough's order shall not act as a supersedeas, provided, however, that, upon application and for cause shown, the local Magisterial District Judge or

Court having jurisdiction over such matter may issue such a supersedeas under such rules established by the Commonwealth of Pennsylvania.

(5) The authority of Berlin Borough 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 Berlin Borough Police Department finds that Open Burning is occurring in Berlin Borough, other than those exceptions noted in Section V above, the Berlin Borough Police Department may order the owner or operator to take corrective action in a manner satisfactory to Berlin Borough, or the Berlin Borough Police Department may order the owner or operator to allow access to the land by Berlin Borough employees, agents and/or representatives for 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, Berlin Borough 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 Berlin Borough 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 (\$100.00) nor more than Two Thousand Five Hundred (\$2,500.00), for each separate offense together with the costs and, in default of payment of such fine, may be sentenced to imprisonment for ninety (90) days for each separate offense. Each day a violation exists shall constitute a separate offense. Employees of Berlin 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 Berlin Borough Council is hereby authorized to prosecute these offenses. For purpose of this section, a summary offense may be prosecuted before any district justice in Berlin Borough. 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, Berlin Borough 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, Berlin Borough shall consider the willfulness of the violation; damage to air, soil, water, or other natural resources of Berlin Borough or their uses; financial benefit to the person in

consequence of the violation; deterrence of future violations; cost to Berlin 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 Berlin Borough 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 Magisterial District Judge having jurisdiction over the matter within the thirty (30) day period for placement in an escrow account within the State Treasurer or any Commonwealth bank or post an appeal bond to the Magisterial District Judge having jurisdiction over the matter 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 Berlin Borough. 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 Magisterial District Judge 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 Magisterial District Judge shall conduct a hearing to consider the appellant's alleged inability to pay within thirty (30) days of the date of the appeal. The Magisterial District Judge may waive the requirement to prepay the civil penalty or to post an appeal bond if the appellant demonstrates and the Magisterial District Judge finds that the appellant is financially unable to pay. The Magisterial District Judge 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 Berlin 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 Berlin 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 Berlin 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 Berlin Borough; 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 Berlin Borough or its personnel in their performance of any duty hereunder, including denying the Berlin Borough Police Department and/or employees, agents, representative of Berlin Borough 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 Berlin Borough to result from the source.

## SECTION XI. PUBLIC NUISANCE

A violation of this Ordinance or of any order issued by Berlin Borough under this Ordinance shall constitute a public nuisance. Berlin Borough shall have the authority to order any person causing a public nuisance to abate the public nuisance. In addition, when abating a public nuisance, Berlin Borough 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

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 Board of Supervisors 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 IV. EFFECTIVE DATE

This Ordinance shall become effective on the \_\_\_\_\_ day of \_\_\_\_\_, 2025.

ATTEST

BERLIN BOROUGH

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Traci Horning, Secretary

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Michael Lottig, President

APPROVED BY THE BERLIN BOROUGH MAYOR

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Joseph Krause