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TOWNSHIP OF LOWER, COUNTY OF CAPE MAY, STATE OF NEW JERSEY

ORDINANCE #2012-02

AN ORDINANCE AMENDING CHAPTER 400 OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF LOWER 2004

(Prohibiting Outdoor Wood-Burning Furnaces as a Permitted Use)

Section 1. Section 400 of the Revised General Ordinances of the Township of Lower is hereby amended as follows:

[New Section]

§ 400-57(G) Outdoor Wood-Burning Furnaces Not a Permitted Use in Township of Lower

§ 400-57(G)(1) Authority; enforcement.

1. This article is adopted pursuant to the authority of the Mayor and Council of the Township of Lower.
2. The Township of Lower Code Enforcement Officer, or any other person who may hereafter be designated by resolution is hereby authorized in the name and on behalf of the Township of Lower to undertake and prosecute any proceedings necessary or appropriate to enforce compliance with this article.

§ 400-57(G)(2) Purpose.

It is generally recognized that the types of fuel used, and the sale and duration of burning by outdoor wood-burning furnaces, creates noxious and hazardous smoke, soot, fumes, odors and air pollution, can be detrimental to citizens' health, and can deprive neighboring residents of the enjoyment of their property or premises. Therefore, with the adoption of this article, it is the intention of the Township of Lower to establish and impose restrictions upon the construction and operation of outdoor wood-burning furnaces within the limits of the Township of Lower for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare and prosperity of the Township and its inhabitants.

§ 400-57(G)(3) Definitions.

As used in this article, the following terms shall have the meanings indicated:

FIREWOOD

Trunks and branches of trees and bushes, but does not include leaves, needles, and vines or brush smaller than three inches in diameter.

OUTDOOR FURNACE

Any equipment, device or apparatus, or any part thereof, which is installed, affixed or situated outdoors for the primary purpose of combustion of fuel to produce heat or energy used as a component of a heating system providing heat for any interior space.

OUTDOOR WOOD-BURNING FURNACE

An accessory structure, equipment or facility designed and intended, through the burning of wood or any solid fuel, for the purpose of heating the principal structure or any other site, building or structure on the premises. This does not include fireplaces, fire pits, barbecues or similar structures not designed to heat a structure.

### **UNTREATED LUMBER**

Dry wood which has been milled and dried but which has not been treated or combined with any petroleum product, chemical, preservative, glue, adhesive, stain, paint or other substance.

### **VIOLATOR OR ANY PERSON WHO VIOLATES ANY PROVISION OF THIS ARTICLE**

Any person who owns or occupies the property at the time the outdoor wood-burning furnace has been installed and/or operated.

#### **§ 400-57(G)(4)Construction and operation prohibited.**

The construction and operation of outdoor wood-burning furnaces are hereby prohibited within the Township of Lower.

#### **§ 400-57(G)(5)Penalties for offenses.**

1. Any owner, lessee, occupant, builder or other person who shall construct, alter, repair, convert, maintain or use any building, structure or premises in violation of any provision of this article or who shall in any manner violate any such provision shall, upon conviction, be subject for each such offense by imprisonment not to exceed 90 days or by a fine not to exceed \$500 per day, or both.
2. Compliance with this article may also be compelled and violations restrained by injunction of a court of competent jurisdiction. Any person who violates any provision of this article shall also be subject to a civil penalty of not more than \$500, to be recovered by the Township of Lower, in a civil action. Each week's continued violation shall be, for this purpose, a separate and distinct violation.
3. In the event the Township of Lower is required to take legal action to enforce this article, the violator will be responsible for any and all necessary costs incurred by the Township relative thereto, including attorneys' fees, and such amount shall be determined and assessed by the court. If such expense is not paid in full within 30 days from the date it is determined and assessed by the court, such expense shall be charged to the property so affected by including such expense in the next annual Township tax levy against the property.

#### **§ 400-57(G)(6)Nonconforming uses.**

- a. Except as hereinafter provided, the lawful use of any outdoor wood-burning furnace existing at the time of the adoption of this article may be continued, although such use does not conform with the provisions of this article.
- b. The only fuels allowed shall be those listed fuels recommended by the manufacturer. The following are prohibited: trash, plastics, gasoline, rubber, naphtha, and household garbage, material treated with petroleum products (particle board, railroad ties and pressure-treated wood), leaves, paper products and cardboard.
- c. Users must following the manufacturer's written instructions for recommended loading times and amounts.
- d. Lighter fluids, gasoline or chemicals to start the furnace are prohibited.
- e. No outdoor wood-burning furnace existing at the time of the adoption of this article shall thereafter be extended or enlarged.
- f. Any outdoor existing wood-burning furnace which is abandoned or discontinued for a period of seven consecutive months shall not be permitted to be reestablished as a nonconforming use, and must be immediately removed by the property owner from the subject premises.
  - i. If the property owner fails to remove the outdoor wood-burning furnace by the end of said seven-consecutive-month period, the Township of Lower Enforcement Officer shall give written notice by certified mail or personal service to the owner of the property upon which the outdoor wood-burning furnace is located. Such notice shall provide that said owner shall remove the outdoor wood-burning furnace within 15 days of the date the notice is either postmarked or personally served upon the owner.
  - ii. Should the outdoor wood-burning furnace not be removed within the time specified, the Code Enforcement Officer shall take reasonable steps to effect its removal.

iii. The costs incurred by the Township to effectuate said removal (including any attorney fees incurred by the Township to effect the removal), plus an amount equal to 50% of said costs of removal, shall be charged to the owner of said premises. Said expense shall be paid by the owner of the property so affected within 30 days from the date said costs are presented to the owner. If said expense is not paid within said thirty-day time frame, then said expense shall be charged as a municipal charge to the property so affected by including such expense in the next annual Township tax levy against the property.

§ 400-57(G)(7) **Damage to Units.** No existing outdoor wood-burning furnace which has been damaged by any reason to the extent of more than 50% of its assessed value for the Township of Lower tax purposes shall be permitted to be repaired or rebuilt.

Section 2. All Ordinances or parts of Ordinances inconsistent with this Ordinance, to the extent of such inconsistencies only, be and the same are hereby repealed.

Section 3. The Township Clerk shall effectuate all notices required for modification of the Township Zoning Ordinance.

Section 4. This Ordinance shall take effect after final passage and publication as provided by law.

No  
Thomas Conrad, Councilmember

Will Gray  
Walt Craig, Councilmember

Glenn Douglass  
Glenn Douglass, Councilmember

No  
Kevin Lare, Councilmember

Michael E Beck  
Michael E. Beck, Mayor

Attest: Claudia R Kammer

Adopted: Feb. 22, 2012