

ORDINANCE NO. 485

AN ORDINANCE OF SOUTHMONT BOROUGH, CAMBRIA COUNTY, PENNSYLVANIA, REGULATING THE INSTALLATION AND USE OF OUTDOOR FURNACES, REGULATING THE EMISSION OF SMOKE FROM SAME AND PROVIDING PENALTIES FOR VIOLATION OF THE REGULATIONS.

WHEREAS, the Council of the Borough of Southmont, Cambria County, Pennsylvania (“Borough”) finds that it is in the interests of the health and safety of the citizenry and their property to provide an Ordinance regulating the installation and use of outdoor furnaces in order to prevent nuisances within the Borough related to same.

WHEREAS, the Borough is concerned that installation and use of outdoor furnaces by persons of the Borough will result in emission of smoke and gases near ground level causing nuisances to neighbors and the general public.

WHEREAS, the Borough is additionally concerned that residents of the Borough will be subject to adverse effects to their health and well-being from the use of outdoor furnaces.

WHEREAS, the Air Pollution Control Act (“APCA”) authorizes local government bodies to enact ordinances regulating the use of Outdoor Furnaces.

WHEREFORE, BE IT ORDAINED and ENACTED by the Council of the Borough of Southmont, Cambria County, Pennsylvania, and it is so ordained and enacted by the authority of same, as follows:

Section 1. Authority

The Borough is authorized pursuant to the APCA, 35 P.S. §4001 et seq., to enact and ordain this ordinance.

Section 2. Purpose and Findings

The purpose of this Ordinance is to establish and impose restrictions upon the construction, installation and operation of Outdoor Furnaces within the limits of the Borough in order to prevent Borough residents from being exposed to unwanted nuisances associated with outdoor furnaces. By establishing this Ordinance, the Borough is seeking to prevent the adverse effects of Outdoor Furnaces on its citizenry.

Because the citizenry of the Borough lives and works in close proximity with one another, the Borough finds that prohibiting the construction, installation and operation of Outdoor Furnaces is necessary and required to promote the health, comfort, safety, welfare and prosperity of the Borough and its citizenry.

Section 3. Definitions

Outdoor Furnace: Also known as outdoor wood-fired furnaces, outdoor wood-burning appliances or outdoor hydronic heaters, water stoves, etc. A fuel-burning device:

- (1) designed, manufactured and/or constructed to burn oil, wood, coal or other fuels;
- (2) specified for outdoor installation or for installation in structures not normally intended for habitation by humans or domestic animals, including structures such as garages and sheds; and
- (3) which heats building space and/or water.

Person: "Person" shall mean any individual, business, partnership, corporation, association, firm, trust, estate, department, board, bureau, agency or any legal entity.

Section 3. Regulations

All Outdoor Furnaces are hereby prohibited within the Borough limits. It shall be unlawful for any Person to construct, install or operate any Outdoor Furnace.

Section 4. Enforcement Provisions

A. The Borough and/or its agent(s) shall have the power and duty to enforce the provisions of this ordinance.

B. The Borough and/or its agent(s) may issue orders as are necessary to aid in the enforcement of the provisions of this ordinance. Examples shall include, but not be limited to: cease and desist orders, corrective action orders, orders to produce documents and/or information.

C. Employees of the Borough and/or its agent(s) authorized to conduct inspections or investigations are hereby authorized to issue or file citations for summary violations under this ordinance and the Borough's solicitor and/or its agent is hereby authorized to prosecute these offenses.

Section 5. Violations and Penalties

A. Criminal Penalties: Any Person violating any provision of this Ordinance or any order of the Borough or its agent(s) commits a summary offense and shall, upon conviction thereof, be sentenced to pay a fine of not more than three hundred dollars (\$300) and costs of prosecution, or imprisoned for not more than 90 days, or both, for each offense thereof. Every day that a violation continues shall constitute a separate offense.

B. Civil Penalties: In addition to the above criminal penalties, any person that violates any provision of this Ordinance may be enjoined by appropriate injunctive proceedings. Additionally, the Borough shall have the right to impose and/or assess a civil penalty for the violation. The penalty may be assessed whether or not the violation was willful. The civil penalty shall not exceed twenty-five thousand dollars (\$25,000) per day for each violation. In determining the amount of the penalty, the Borough shall consider the factors set forth in 35 P.S. §4009.1(a) (the same factors the Department of Environmental Protection uses).

Additionally, the Borough hereby adopts 35 P.S. §4009.1(b) in its entirety regarding the procedure for assessing and collecting the civil penalty. The word "Borough" shall replace the word "department" when reading 35 P.S. §4009.1(b). T

Section 5. Severability

If any sentence, clause, section or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Ordinance. It is hereby declared as the intent of the Borough that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof had not been included herein.

Section 6. Repeal

All ordinances inconsistent with this action are hereby repealed.

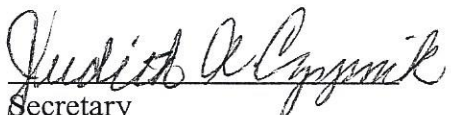
Section 7. Effective Date

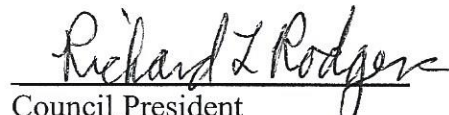
This Ordinance shall become effective immediately.

Ordained and Enacted this 21st day of March, 2011, by Council of the Borough of Southmont.

Attest:

SOUTHMONT BOROUGH


Secretary


Council President

Approved this 21st day of March, 2011.


Mayor