

BERNARDSVILLE BOROUGH  
ORDINANCE 2017-1737

AN ORDINANCE REGULATING OPEN AIR BURNING AND RECREATIONAL FIRES  
AND SUPPLEMENTING AND AMENDING CHAPTER XV OF THE BOROUGH CODE  
ENTITLED "FIRE PREVENTION"

WHEREAS, the Borough Fire Marshal, the Bureau of Fire Prevention and the  
Bernardsville Fire Department have recommended adoption of an Ordinance regulating open air  
burning and recreational fires;

NOW THEREFORE, BE IT ORDAINED by the Council of the Borough of  
Bernardsville in the County of Somerset, State of New Jersey that Chapter XV of the Borough  
Code Entitled "Fire Prevention" is hereby supplemented and amended as follows:

Section 1. There is hereby created a new Section 15-17 entitled "Open Air Burning and  
Recreational Fires" which reads as follows:

15-17 Open Air Burning and Recreational Fires

A. Open Air Burning:

1. Open air burning is prohibited within the Borough of Bernardsville unless in conformance with the regulations and standards established herein.
2. Except as provided in Section B, below, it shall be unlawful for any person, organization or entity to:
  - a. burn, attempt to burn, or permit the burning of any wood, leaves, debris, branches, brush, grass, refuse, paper, cardboard, garbage, waste, rubbish, or liquid, or
  - b. use open-flame decorative devices such as torches, combustible bags containing an open flame (such as luminaries), or elevated combustible containers (such as kites) containing an open flame on any lot, woods, field, street, alley, private open lands, public lands or grounds unless written permits to do so have been first obtained from the New Jersey Forest Fire Service and the Bernardsville Fire Prevention Bureau.

B. Exceptions to Open Air Burning Prohibition:

1. Outdoor fires utilized solely for cooking on privately-owned residential properties are allowed without a permit when contained in a movable commercially-manufactured metal grill or other similar device intended for such use, and such device is a minimum of five (5) feet from combustible construction. Only fuels specifically approved for cooking by the manufacturer of the device shall be used.
2. Outdoor fires utilized for recreational purposes on privately-owned residential properties are allowed without a permit when either contained in an elevated commercially-manufactured device designed for such purpose and utilized strictly in accordance with the manufacturer's requirements or, alternatively, in a properly-constructed fire pit or fireplace consisting of noncombustible stone, cement, brick, tile or metal, subject to the following restrictions and requirements:
  - a. Fire pits shall not have horizontal dimensions greater than 3 feet by 3 feet.
  - b. Fires in moveable commercially-manufactured devices (other than barbecue grills) must be a minimum of fifteen (15) feet from combustible construction, materials and/or vegetation.
  - c. Fires in constructed fire pits or fireplaces (constructed after the effective date of this ordinance) -must be a minimum of twenty-five (25) feet from combustible construction, materials and/or vegetation.
  - d. Fire pits and fireplaces shall be constructed so as to safely contain fire and prevent its spread outside of the pit or fireplace.
  - e. Fire pits shall be excavated to the depth of the mineral soil
  - f. Fire pits, fireplaces and manufactured devices shall be set back not less than 10 feet from the nearest neighboring lot line
  - g. A fully-functioning fire extinguisher with a minimum UL rating of 4A, or other approved on-site fire-extinguishing equipment (such as dirt, sand, water barrel, garden hose or water truck) must be available for fire extinguishment purposes during any outside burning.
  - h. Fireplaces shall be constructed in accordance with all applicable local, state and/or federal statutes, ordinances, permits, regulations and construction codes. If any provision of this Chapter differs from a provision of any other applicable law, ordinance, rule or regulation, both the provision of this Chapter and the differing provision shall apply if possible. If the two (2) provisions are in conflict, then the provision establishing the higher or stricter standard shall apply.
3. Open-flame Decorative Devices: Open-flame decorative devices such as torches and combustible bags containing an open flame are permitted on privately-owned residential properties without a permit only when meeting the requirements and/or limitations of N.J.A.C. 5:70-3, Section 308.3.2 through 308.3.4.

Candle luminaries:

A “Candle Luminary” is a lantern consisting of a candle inside of a paper bag or other holder.

Candle luminaries are allowed without a permit provided they comply with the following:

- i. Paper bags or other holders must be filled with sand or other weighted non-flammable material so as not to blow away or tip over
  - ii. Candles may not exceed one-half inch (½”) in height or one and a half inches (1 ½”) in diameter
  - iii. An area at least eighteen inches (18”) in diameter around the luminary must be cleared of all flammable material, including leaves and vegetation
  - iv. Lighted luminaries must be supervised by a competent adult at all times when children and pets are present, and when alcohol is being served
  - v. Luminaries are prohibited inside any dwelling, structure, or tent
  - vi. Luminaries may not be placed on any flammable surface
  - vii. Luminaries must be at least three feet (3’) away from dwellings, structures, tents, flammable materials and planting beds
  - viii. Luminaries must be extinguished at the end of the event
4. Fires directly on the ground (camp fires): A fire may only be made directly on the ground if:
- a. A permit has first been issued by the New Jersey Forest Fire Service, and
  - b. A permit has been issued by the Bernardsville Fire Prevention Bureau pursuant to Section C (below).
5. Permitted fuel: Only firewood and untreated lumber are permitted to be burned. Burning of any and all other materials, including but not limited to garbage, rubber, plastics, charcoal and yard waste at any location within the Borough is prohibited.
6. Flames from any fire addressed by this Chapter may not exceed two feet in height at any time. If sparks, embers or sustained smoke blow into a neighboring dwelling or property, said fire must be extinguished immediately.
7. The Fire Marshal and/or Fire Chief are authorized to require that any outdoor fire be immediately extinguished if he or she determines that said fire constitutes a hazardous condition, including an air quality hazard.
8. Agricultural Burning: Agricultural burning may be conducted only if:
- a. An Agricultural Burning Permit has first been issued by the New Jersey Forest Fire Service, and

- b. A permit has been issued by the Bernardsville Fire Prevention Bureau pursuant to Section C (below).
9. All outdoor fires must be attended at all times by a competent adult owner or legal resident of the property from the time said fire is commenced through the time said fire is completely extinguished.
10. Wildfire Danger Level: Regardless of whether open burning is permitted by this Chapter, or whether a permit has been issued, no open burning of any kind shall take place when the New Jersey Forest Fire Service has issued a Fire Danger Warning of High, Very High or Extreme, or if the National Weather Service has issued a “Red Flag” warning. It shall be the joint responsibility of the person conducting the open burning and the property owner (if different) to ascertain the current Wildfire Danger Level, or the existence of a Red Flag warning, prior to initiating a fire.

C. Permit Process:

- 1. A written permit shall be obtained for all open burning not specifically allowed by Section B of this Chapter.
- 2. Application for a permit shall be made to the Bureau of Fire Prevention at least fourteen (14) business days prior to the date requested and shall include:
  - i. Applicant’s name, address and contact information
  - ii. Property address and owner information, if different
  - iii. Type of open air burning requested, as well as the date and time of the burning
  - iv. Description of the materials to be burned
  - v. Description of emergency procedures in place
  - vi. Submittal of \$50.00 permit fee, payable to the Bernardsville Fire Prevention Bureau
  - vii. A copy of the New Jersey Forest Fire Service Permit issued for the date requested.
- 3. The Fire Prevention Bureau shall provide preprinted application forms which shall be available to applicants.
- 4. Permits shall be valid for one hundred and twenty (120) days from the date of issuance.
- 5. Conditions and requirements may be placed on permits issued by the Fire Prevention Bureau.
- 6. Revocation or Suspension of Permit: A permit issued pursuant to this Chapter may be suspended or revoked at any time by the Fire Marshal.

D. Enforcement, Violations and Penalties:

1. This Chapter shall be enforced by the Bernardsville Fire Prevention Bureau.
  2. The Bernardsville Fire Marshal and his designees are hereby authorized and directed to enter upon private and public lands for purposes of investigating and enforcing this Chapter whenever there are reasonable grounds to believe that there has been a violation of any provision of this Chapter. This section does not convey any right or authority to enter any dwelling or building.
  3. Whenever the Fire Marshal determines that there are reasonable grounds to believe that there has been a violation of any provision of this section, he is authorized, at his option, to issue a Summons to appear in Municipal Court to the party(ies) responsible for the burning, and also to the owner of the property on which the burning took place.
  4. Any individual, organization or entity who violates the terms of this section may be subject to fines and penalties not to exceed \$500.00 per violation, per day.
  5. Any individual, organization or entity who violates the terms of this section shall, upon conviction, be liable to the penalties stated in Chapter I, Section 1-5 of this Code.
  
  6. Property Owner Not Present During Violation: The owner of a property upon which a violation of this Chapter takes place shall be subject to the same fines and penalties as the person(s) conducting the burning, even if that owner was not present, if that owner knew, or should reasonably have known, that the burning was being conducted and failed to prevent it.
- E. Effect of Other Laws and Regulations:
1. Nothing contained herein shall authorize or allow burning which is prohibited by codes, laws, rules or regulations promulgated by the United States Environmental Protection Agency, New Jersey Department of Environmental Protection, the New Jersey Forest Fire Service, the New Jersey Uniform Fire Code, New Jersey Uniform Construction Code, or other federal, state, regional or local agencies or codes.
  2. Indoor and outdoor burning devices shall be installed, operated and maintained in conformity with the manufacturer's specifications and any and all local, state and federal codes, law, rules and regulations.
  3. In case of any conflict between any provisions of this Chapter and any applicable federal, state or local ordinances, codes, laws, rules or regulations, the more restrictive or stringent provision or requirement shall prevail.

Section 2. Any or all other ordinances or parts thereof in conflict or inconsistent with any of the terms hereof are hereby repealed to such extent as they are so in conflict or inconsistent.

Section 3. In case any article, section or provision of this ordinance shall be held invalid in any court of competent jurisdiction, the same shall not affect any other article, section or provision of this ordinance except insofar as the article, section or provision so declared invalid shall be inseparable from the remainder or any portion thereof.

Section 4. This ordinance shall become effective immediately upon final passage and publication as required by law.

COUNCIL OF THE BOROUGH OF  
BERNARDSVILLE IN THE COUNTY  
OF SOMERSET

ATTEST:

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Sandra G. Jones, Borough Clerk

By: \_\_\_\_\_  
Kevin Sooy, Mayor

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Introduction: \_\_\_\_\_

1st Publication: \_\_\_\_\_

Public Hearing and Adoption: \_\_\_\_\_

2nd Publication: \_\_\_\_\_