

**Chapter 49**  
**BURNING, OUTDOOR**

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[HISTORY: Adopted by the Borough Council of the Borough of Delmont by Ord. No. 97-8, as amended through 2000. Subsequent amendments noted where applicable.]

**GENERAL REFERENCES**

Fire prevention and building construction — See Ch. 58.

Property maintenance — See Ch. 93.

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**§ 49-1. Purpose.**

The purpose of this chapter is for the regulation and restriction of waste and refuse, including but not limited to the manner and method of eliminating the waste and refuse. These rules and regulations apply to the use of outdoor fires or indoor fires and the burying of refuse or waste within the Borough of Delmont. This chapter prescribes penalties for violations of this chapter.

**§ 49-2. Requirements for waste elimination and/or processing.**

- A. Burning. The borough permits small indoor or outdoor fires within the borough, providing they meet the following rules and regulations and written notice is provided to the borough:
- (1) All fires must be built within appropriate BOCA Code approved or fire containing structures or appropriately designed units complying with BOCA Codes. Small outdoor fires may be built in fire containment units that are noncombustible and do not cover an area greater than six square feet.
  - (2) Outdoor fires must be more than 30 feet away from any structure, building or other combustible materials.
  - (3) Said fire must be personally and physically attended to at all times by a person 18 years of age or older.
  - (4) Burning shall occur between 9:00 a.m. (prevailing time) until 7:00 p.m. (prevailing time), or darkness, whichever occurs first. Upon darkness, the fire and/or burning process must be completely extinguished. It is the property owner's responsibility to have sufficient extinguishing materials present on scene to ensure that the fire is

extinguished as per the times set forth herein. Failure to have the appropriate extinguishing agents applied and complete the process of extinguishment as per the times required by this Subsection A(4) shall be a violation. Burning after hours shall only occur for community activities or ceremonies. Calling the Fire Department is considered a method of complying with this subsection.

- (5) No burning shall occur on Sundays, Mondays and/or legal holidays.
- (6) The burning of paint cans, gasoline cans, vinyls, plastics, chemicals, aerosols, tires, siding, construction or roofing materials, or any petroleum based products or any other toxic, combustible or hazardous materials is strictly prohibited. This prohibition also applies to the burning of organic materials and/or radiological materials.
- (7) Burning shall not occur during environmental conditions, including temperature inversions, fogs, low cloud ceilings, high wind conditions, dry weather conditions and/or events of dry weather warnings as issued by the County Emergency Management Agency, Pennsylvania Emergency Management Agency or the Pennsylvania Department of Environmental Protection or its agencies.
- (8) All burning of leaves and/or green unseasoned wood (less than one year of age) is prohibited.
- (9) No burning by business owners/operators, contractors/owners of construction materials generated on site or off site.
- (10) Any fire used for Fire Department training or other emergency services activities.
- (11) The owner, operator or developer shall not permit pollution of air, water or soils within the borough.
- (12) The extinguishment of a fire (any fire) shall occur when directed to by the Borough Fire Marshal/Fire Chief, borough police and/or Zoning Officer under the following conditions:
  - (a) An unreasonable risk of a fire spread hazard;
  - (b) Burning that causes smoke or fumes that affect other persons or property or creates a verbalized or an unreasonable nuisance to other persons or property;
  - (c) Burning that causes an unreasonable risk of explosion;
  - (d) Burning that creates a risk of harm to person's and/or the community's health;
  - (e) Upon discovery that a fire is not attended by a person physically who is over 18 years of age;
  - (f) The burning violates other state, county, borough and/or federal burning laws.

**§ 49-3. Specific burning.**

A. Burning within the borough is prohibited with exception of the following:

- (1) Fire or burning set to prevent or abate a fire hazard providing said fire is under the direction and supervision of the Borough Fire Chief.

- (2) A fire required by the Fire Department for training or other Fire Department operations.
  - (3) A fire set for the prevention and control of disease or pests when approved by the Pennsylvania Department of Environmental Protection, Regional Air Quality Program Office.
  - (4) A fire set in conjunction with the production of agricultural commodities in their unmanufactured state on the premises of a farm, business or operation.
  - (5) A fire or burning for the purpose of cooking food where said food is consumed.
  - (6) A fire set solely for recreation or ceremonial purposes using only seasoned wood and done so with notice to the borough and Borough Fire Chief. Said notice shall be made five days prior and shall be in writing.
  - (7) Indoor fireplace burning seasoned wood.
- B. To the extent that any rules or regulations of the Department of Environmental Protection of the Commonwealth of Pennsylvania have more stringent or restrictive regulations or codes or statutes, said Pennsylvania requirements shall supersede this chapter.

**§ 49-4. Specific burying.**

- A. It shall be prohibited for the burying or the spreading upon soil surfaces or subsoil surfaces any items that are prohibited from burning found in Section 100 A. and its subparagraphs or prohibited by the Commonwealth of Pennsylvania, County of Westmoreland, or Federal Government.
- (1) Excepted: Mulched products are exempted.
- B. Any burying of any materials within the borough may only occur with five days' written notice to the Pennsylvania Department of Environmental Protection and the borough.

**§ 49-5. Enforcement.**

- A. The borough police and any other citizens or persons shall have the power and the duty to enforce provisions of this chapter.
- B. Persons referred to in Subsection A are empowered to issue orders relating to the activities outlined by this chapter. These powers and authority to issue orders shall be, but are not limited to:
- (1) Orders requiring persons to cease unlawful burning which may be in violation of the provisions of this chapter.
  - (2) Provide orders to take corrective action or abate a public nuisance.
  - (3) Orders requiring the testing, sampling and/or monitoring of any open burning or burying, orders required production of information relating to activities of burying or burning or the materials that are being burned or buried.

- (4) Any order issued under this section shall take effect upon notice, verbal or written, unless the order specifies otherwise.
- C. Failure to comply with orders issued shall be deemed a public nuisance until judicially determined otherwise.

**§ 49-6. Responsibility of property owners and/or developers or persons acting on their behalf.**

- A. Whenever burning or burying occurs within the municipality, an order to the property owner or the person on site on behalf of the owner or developer is deemed notice to the person burning at the site, persons who have directed or instructed said person to burn and is the responsibility of the property owner by allowing access to the land for purposes of said action.
- B. The owners, operators and/or persons physically operating the burn or burying shall be responsible for costs involved in and including the monitoring, suppression activities, corrective actions, including, but not limited to, costs of litigation, oversight, monitoring, sampling, testing and all related costs of investigation related to a corrective action or suppression.
- C. The municipality may collect the amounts in the same manner as civil penalties in addition to other civil penalties or criminal penalties as assessed.

**§ 49-7. Violations and penalties.**

Any person who violates this chapter, in addition to being charged with any state violations, may be charged with the penalties set forth herein as follows:

- A. Any person who shall violate any provisions of this chapter (§§ 49-1 through 49-6) shall receive a notice of violation issued by the borough police and/or a complaint filed with the District Justice for the borough. Violation of this chapter shall result in a fine of not less than \$100, plus costs of prosecution, attorney's fees, consultant fees and/or any Volunteer Fire Department fees referred to and/or permitted by this chapter. **[Amended 6-12-2001 by Ord. No. 2001-3]**
- B. A second or more offenses of this chapter by an owner and/or by a person and/or property owner or as a result of an agent acting on behalf of any particular person or entity shall be subject to a fine of not less than \$200 nor more than \$600, plus those same costs referred to in Subsection A hereof. **[Amended 6-12-2001 by Ord. No. 2001-3]**
- C. Each day of a continuing violation shall be a new violation to be interpreted as per this chapter.
- D. In addition to any criminal penalties or proceedings, the borough is permitted to take any and all other civil remedies at law or in equity.
- E. The municipality may seek any other penalties or remedies available to the municipality as found in the Air Pollution Control Act, as amended (35 P.S. § 4012), which may also be pursued in addition to those outlined by this chapter.

**§ 49-8. Authorization to enforce ordinance.**

Any person within the borough limits may enforce the provisions of this Burning Ordinance. This includes residents of the borough, members of the Fire Department and nonresidents.