

CHAPTER BH-VII

AIR POLLUTION CONTROL CODE*

BH:7-1 Policy.

BH:7-1.1 *Title.* This chapter shall be known, and may be cited, as the Air Pollution Control Code of the Borough of Little Silver.

BH:7-1.2 *Findings.* It is hereby declared that pollution of the atmosphere by smoke, cinders, soot, fly ash, gases fumes, vapors, odors, dust and other contaminants is a menace to the health, welfare, and comfort of the residents of Little Silver and a cause of substantial damage to property. For the purpose of controlling and reducing atmospheric pollution, it is hereby declared to be the policy of the board of health to minimize air pollution as herein defined and prohibit excessive emission of the same, to establish standards governing the installation, maintenance, and operation of equipment and appurtenances relating to combustion which are a source or potential source of air pollution, and in furtherance of this purpose to cooperate and coordinate these efforts with the State Department of Health Air Pollution Control Program.

BH:7-2 Definitions.

The following terms as used in this chapter shall have the respective meanings assigned to them unless a different meaning clearly appears from the context.

BH:7-2.1 *Air Pollution.* The presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as are, or tend to be, injurious to human health or welfare, to animal or plant life, or to property, or would unreasonably interfere with the enjoyment of life or property throughout the borough as shall be affected thereby, but excluding all aspects of employer-employee relationship as to health and safety hazards.

BH:7-2.2 *Economic Poisons.* Those chemicals used as insecticides, rodenticides, fungicides, herbicides, nematocides, or defoliants.

BH:7-2.3 *Fuel Burning Equipment.* Any furnace, boiler, water heater, device, mechanism, stoker, burner, stack, oven, stove, kiln, still, or other apparatus, or a group or collections of such units in the process of

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fuel burning for the generation of heat or power. Refuse burning equipment shall be considered incinerators as herein defined and not as fuel burning equipment. Ovens, stoves, or ranges used exclusively for domestic cooking purposes are not included herein.

BH:7-2.4 *Incinerator.* Any device, apparatus, equipment, or structure used for destroying, reducing, or salvaging by fire and material or substance, including but not limited to refuse, rubbish, garbage, debris, or scrap or facilities for cremating human or animal remains.

BH:7-2.5 *Odor.* A property of a substance which affects the sense of smell.

BH:7-2.6 *Open Burning.* Any fire wherein the products of combustion are emitted into the open air and are not directed thereto through a stack or chimney.

BH:7-2.7 *Operator.* Any person who has care, custody, or control of a building or premises, or portion thereof, whether with or without knowledge of the owner thereof.

BH:7-2.8 *Owner.* Any person who, alone or jointly or severally with others shall have legal or equitable title to any premises, with or without accompanying actual possession thereof; or who shall have charge, care, or control of any premises or part thereof including but not limited to a dwelling or dwelling unit, as owner or agent of the owner, or as a fiduciary, including but not limited to: executor, administrator, trustee, receiver, guardian, or as a mortgagee in possession regardless of how such possession was obtained. Any person who is a lessee or sublessee of all or any part of any premises, including but not limited to a dwelling or dwelling unit, shall be deemed to be a co-owner with the lessor and shall have joint responsibility with the owner over the premises or portion thereof so leased or subleased.

BH:7-2.9 *Refuse.* All putrescible and nonputrescible wastes (except body wastes), shall include but not be limited to garbage, rubbish, yard trimmings, leaves, ashes, street cleanings, dead animals, abandoned automobiles, and solid market and industrial wastes.

BH:7-2.10 *Ringelmann Smoke Chart.* Ringelmann's Scale for Grading the Density of Smoke, published by the United States Bureau of Mines, or any chart, recorder, indicator, or device for the measurement of smoke

density which is approved by the State Department of Health of the State of New Jersey, as the equivalent of the Ringelmann's Scale.

BH:7-2.11 Rubbish. Solids not considered to be highly flammable or explosive, and shall include but not be limited to rags, old clothes, leather, rubber, carpets, wood, excelsior, paper, ashes, tree branches, yard trimmings, furniture, tin cans, glass, crockery, masonry, and other similar materials.

BH:7-2.12 Salvage Operations. Any business, trade, or industry engaged in whole or in part in salvaging or reclaiming any product or material, including but not limited to metals, chemicals, shipping containers, or drums.

BH:7-2.13 Smoke. Small gasborne and airborne particles arising from a process of combustion in sufficient number to be observable.

BH:7-2.14 Trade Waste. All solid or liquid material or rubbish resulting from construction building operations, or the prosecution of any business, trade, or industry, and shall include but not be limited to plastic products, cartons, paint, grease, oil and other petroleum products, chemicals, cinders and other forms of solid or liquid waste materials.

BH:7-3 Prohibition of Open Air Burning.

No person shall cause, suffer, allow, or permit, open burning of refuse or plant life nor conduct a salvage operation by open burning, except as provided below and except by special permit of the board of health.

The open burning of trade waste is not prohibited where no other known method of disposal can be used without hazard to health or property and the required affidavit has been filed with and approved by the Commissioner of the New Jersey State Department of Health in accordance with Chapter II, Section 1.4 of the New Jersey Air Pollution Control Code.

BH:7-4 Smoke Emissions from Fuel Burning Equipment.

No person shall cause, suffer, allow or permit, smoke from any fuelburning equipment, the shade or appearance of which is darker than No. 1 of the Ringelmann Smoke Chart, to be emitted into the open air.

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The provisions of this section shall not apply to smoke emitted during the cleaning of a fire box or the building of a new fire, the shade or appearance of which is not darker than No. 2 of the Ringelmann Smoke Chart, for a period or periods aggregating no more than three minutes in any 15 consecutive minutes.

BH:7-5 Incinerator Regulations.

BH:7-5.1 *Smoke Emissions.* No person shall cause, suffer, allow, or permit, smoke from any incinerator, the shade or appearance of which is darker than No. 1 of the Ringelmann Smoke Chart, to be emitted into the open air; or emissions of such opacity within a stack or chimney, or exclusive of water vapor, of such opacity leaving a stack or chimney to a degree greater than the emission designated as No. 1 of the Ringelmann Smoke Chart.

BH:7-5.2 *New Fires.* The provisions of subsection BH:7-5.1 shall not apply to smoke emitted during the building of a new fire, the shade or appearance of which is not darker than No. 2 of the Ringelmann Smoke Chart, for a period of no longer than three consecutive minutes; or to emissions of such opacity within a stack or chimney or exclusive of water vapor, of such opacity leaving a stack or chimney to a degree which is not greater than the emissions designated as No. 2 of the Ringelmann Smoke Chart, for a period no longer than three consecutive minutes.

BH:7-5.3 *Visible Particles.* No person shall cause, suffer, allow, or permit the emission of particles of unburned waste or ash from any incinerator which are individually large enough to be visible while suspended in the atmosphere.

BH:7-5.4 *Odors.* No person shall construct, install, use or cause to be used, any incinerator which will result in odors being detectible by sense of smell in any area of human use or occupancy.

BH:7-5.5 *Limitation on Time of Operation.* No person shall operate, and no owner or operator of any building in the borough shall permit the operation of an incinerator prior to 7:00 a.m. or after 5:00 p.m. of any day and all operation shall be completely terminated by 5:00 p.m. of any day including complete extinction of the fire and removal of material in a safe manner from the firebox to a noncombustible container; provided that by special permit, the board of health may, because of exceptional

circumstances, permit different hours of operation under such conditions as it shall deem necessary for the health, safety and welfare of the public or persons in the vicinity.

BH:7-6 Prohibition of Air Pollution.

No person or owner of property, and no person having possession or control of property, shall cause, suffer, allow or permit, to be emitted into the open air substances in such quantities as shall result in air pollution. The provisions of this section shall not apply to the use of economic poisons.

BH:7-7 Inspections and Right of Entry.

BH:7-7.1 Inspections. All buildings and premises subject to this code are subject to inspection from time to time by the health officer or his duly authorized representatives. All rooms and areas in the building shall be available and accessible for such inspection which shall be made during usual business hours if the premises are used for nonresidential purposes; provided that inspections may be made at other times if the premises are not available during the foregoing hours for inspection; or there is reason to believe that violations are occurring on the premises which can only be apprehended and proved by inspection during other than the prescribed hours; or there is reason to believe a violation exists of a character which is an immediate threat to health or safety requiring inspection and abatement without delay.

BH:7-7.2 Emergency Inspections. Emergency inspections may be authorized without warrant if the health officer has reason to believe that a condition exists which poses an immediate threat to life, health, or safety. Such procedure shall take place only where the time required to apply for and secure the issuance of a warrant would render ineffective the immediate action necessary to abate the condition. Emergency inspections may also be authorized by the governor in times of air pollution emergencies in accordance with R.S. 26:2C-32. Where the health officer or his duly authorized representative is refused entry or access or is otherwise impeded or prevented by the owner, occupant, or operator from conducting an inspection of the premises, such person shall be in violation of this code and subject to the penalties hereunder.

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BH:7-7.3 *Search Warrant or Access Warrant.* The health officer may upon affidavit, apply to the judge of the municipal court of the borough for a search warrant setting forth factually the actual conditions and circumstances that provide a reasonable basis for believing that a nuisance or violation of the code may exist on the premises, including one or more of the following:

a. That the premises require inspection according to the cycle established by the health officer for periodic inspections of premises of the type involved.

b. That observation of external conditions (for example, smoke, ash, soot, odors) of the premises and its public areas has resulted in the belief that violations of this code exist.

c. Circumstances such as age and design of fuel burning equipment or system, types of incinerator, particular use of premises or other factor which renders systematic inspections of such buildings necessary in the interest of public health and safety.

If the judge of the municipal court of the borough is satisfied as to the matters set forth in the affidavit, he shall authorize the issuance of a search warrant permitting access to and inspection of that part of the premises on which the nuisance or violation may exist.