

FURNACE – OUTDOOR WOOD BURNING

LOCAL LAW NO. 11 OF THE YEAR 2006

A Local Law of the Town of Kirkwood Regulating the Use of Outdoor Wood Furnaces

Adopted August 1, 2006

Be it enacted by the Town Board of the Town of Kirkwood as follows:

SECTION 1. Statutory Authority; Title

This Local Law is adopted pursuant to the authority of Section 10 of the Municipal Home Rule Law of the State of New York and shall be known as the “Outdoor Wood Burning Furnaces Law of the Town of Kirkwood”.

SECTION 2. Legislative Intent

This Local Law is intended to ensure that outdoor furnaces are utilized in a manner that does not create a nuisance by reason of the production of offensive odors and potential adverse health impacts and are not detrimental to the health, safety and general welfare of the residents of the Town of Kirkwood (the “Town”).

SECTION 3. Definitions

Outdoor furnace shall mean any equipment, device or apparatus, or any part thereof, which is installed indoors, or affixed or situated outdoors for the primary purpose of providing heat for any interior space by combustion of fuel to produce heat or energy used as a component of heating system providing heat and or hot water for any indoor space. Swimming pool heaters using wood as fuel are included in this definition. Stoves located indoors used for heating or cooking purposes are exempt from this definition. Swimming pool heaters using natural gas, propane or oil and outdoor furnaces burning anthracite (hard) coal are exempt from this definition.

Untreated lumber shall mean 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.

Firewood shall mean any product that is suitable for use with any wood burning equipment and is free of petroleum products, chemicals, preservatives, stain, paint, toxic substances and rubbish.

SECTION 4. Regulations

A. Permit required.

No person shall cause, allow or maintain the use of an outdoor furnace on property which he/she owns within the Town without first having obtained a permit from the Town Code Enforcement Office. All property owners with outdoor furnaces,

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preexisting at the adoption of this Local Law, shall have one year from the date of receipt of notice hereof by first class mail to obtain a permit conforming to the regulations stated herein other than setbacks. If, after the issuance of a permit, a new building is constructed on neighboring property immediately adjacent or directly opposite the property on which the outdoor furnace is located, which building is within one hundred fifty (150) feet of the outdoor furnace, the permit holder shall have one year from the issuance of a certificate of occupancy for the new building to increase the stack height as required by this Local Law or to obtain a variance as permitted by Section 6 of this Local Law.

B. Permitted Fuel.

Only firewood and untreated lumber are permitted to be burned in any outdoor furnace. Burning of any and all other materials such as rubbish, garbage, paint, furniture, composite shingles, construction debris, waste oil, products containing asphalt, treated, painted or stained wood, railroad ties, utility poles, plywood, composite shingles, construction debris, waste oil, products containing asphalt, treated, painted or stained wood, plywood, composite wood products, plastics, synthetic fabrics, foam, rubber including tires, newspaper, corrugated cardboard, office paper, and container board in an outdoor furnace is strictly prohibited.

C. Smoke Stack/Chimney.

All outdoor furnaces shall have a smoke stack or chimney that:

- 1) is double stainless steel wall insulated by metalbestos, or similar product
- 2) extends a minimum of seventeen (17) feet above ground level of the outdoor furnace, and
- 3) extends above the peak of any building on neighboring property immediately adjacent or directly opposite the property on which the outdoor furnace is located, which building is within one hundred fifty (150) feet of the outdoor furnace, and
- 4) is stabilized by a metal pole, wood pole or guy wire approved by the Code Enforcement Office fastened to the smoke stack/chimney to prevent it from falling.

D. Setbacks.

Outdoor furnaces shall be set back a minimum of a least fifty (50) feet from the nearest property line and sixty (60) feet from the nearest public road.

E. Transmission.

The pipe carrying the hot water produced by the outdoor furnace to the adjacent structure must be located at least forty-eight (48) inches below ground level.

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F. Period of Operation.

The outdoor furnace can only be operated between September 15 and May 15.

SECTION 5. Permit

A. The Town Board may, at the recommendation of the Code Enforcement Officer, in its discretion revoke any permit previously issued after a public hearing at which the applicant shall have an opportunity to be heard, if the Town Board determines it to be necessary to protect the public health, safety and welfare of the residents of the Town if any of the following conditions occur:

1. The emissions from the outdoor furnace interfere with the reasonable enjoyment of life, health, safety or property, or
2. The emissions from the outdoor furnace cause damage to vegetation or property, or
3. The emissions from the outdoor furnace are unreasonably malodorous.

B. Reinstatement of Permit

A revoked permit may be reinstated once the condition which resulted in revocation is remedied and reasonable assurances are given that such condition will not recur. Recurrence of a condition, which has previously resulted in revocation of a permit, shall be considered a violation of this Local Law subject to the penalties provided below.

SECTION 6. Variance Procedure

A. Appeals Board:

1. The Zoning Board of Appeals as established by the Town Board shall hear and decide requests for variances from the requirements of this Local Law.
2. Those aggrieved by the decision of the Zoning Board of Appeals may appeal such decision to the State Supreme Court pursuant to article 78 of the Civil Practice Law and Rules.
3. In passing upon such applications, the Zoning Board of Appeals shall consider all technical evaluations, all relevant factors, standards specified in other sections of this Local Law and

A. Whether the emissions from the outdoor furnace may cause:

1. lack of enjoyment of life, health, safety or property, or
2. damage to vegetation or property, or

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3. are unreasonably malodorous

and the effect of such factors on neighboring property owners.

B. The availability of alternative locations on the applicant's property

C. The expected prevailing wind direction

D. Whether the request is substantial

E. Whether the situation is unique

4. Upon consideration of the above factors and the purposes of this Local Law, the Zoning Board of Appeals may attach such reasonable conditions to the granting of variances as it deems necessary to further the purposes of this Local Law.

5. The Code Enforcement Officer shall maintain the records of all appeal actions including technical information.

SECTION 7. Penalties for Violation

A. Failure to comply with any of the provisions of this Local Law shall be a violation and, upon conviction thereof, shall be punishable by a fine or not more than \$500 or imprisonment for a period of not more than ten (10) days, or both, for the first offense.

B. Any subsequent offense shall be punishable by a fine of not more than \$1,000 or imprisonment for a period of not more than thirty (30) days, or both and shall result in the discontinuance of use of the outdoor furnace by the violator.

C. In addition, any permit issued pursuant to this Local Law shall be permanently revoked upon conviction of a second offense and the subject outdoor furnace shall not be eligible for another permit.

D. Each day that a violation occurs shall constitute a separate offense. The owners of premises upon which prohibited acts occur shall be jointly and severally liable for violations of this Local Law.

E. Any fine imposed hereunder shall constitute a lien upon the real property where the outdoor furnace is located until paid.

F. The Town Board may, in the alternative, maintain an action or proceeding in the name of the Town in a court of competent jurisdiction to compel compliance with

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this Local Law by injunction, abatement or otherwise compel cessation of each violation, and obtain restitution to the Town for costs incurred by the Town in remedying each violation, including but not limited to reasonable attorney's fees.

SECTION 8. Separability

The provisions of this Local Law are separable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid, unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words, or parts of this Local Law or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this Local Law would have been adopted if such illegal, invalid, or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and as if such person or circumstance, to which the Local Law or part thereof is held inapplicable, had been specifically exempt therefrom.

SECTION 9. Repealer

All Ordinances, Local Laws and parts thereof inconsistent with the Local Law are hereby repealed.

SECTION 10. Effective Date

This Local Law shall take effect immediately upon filing with the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.