

OUTDOOR WOOD BOILERS

LOCAL LAW NO. 6 OF THE YEAR 2011

A Local Law of the Town of Kirkwood Regulating Outdoor Wood Burning Wood Boilers

Adopted October 4, 2011

Amended November 1, 2011 by LL No. 7-2011

(Supersedes LL #11-2006 adopted August 1, 2006
regulating the use of outdoor wood furnaces)

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 Boiler 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

A. ‘Clean wood’. Wood that has not been painted, stained, or treated with any other coatings, glues or preservatives, including, but not limited to, chromated copper arsenate, creosote, alkaline copper quaternary, copper azole or pentachlorophenol.

B. ‘New outdoor wood boiler’. An outdoor wood boiler that commences operation on or after April 15, 2011.

C. ‘Old outdoor wood boiler’. An outdoor wood boiler that has commenced operation before April 15, 2011.

D. ‘Outdoor wood boiler’. A fuel burning device that (a) is designed to burn wood or other fuels; (b) is specified by the manufacturer for outdoor installation or installation in structures not normally occupied by humans; and (c) is used to heat building space and/or water via the distribution, typically through pipes, of a gas or liquid (e.g., water or water/antifreeze mixture) heated in the device.

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Section 4. Regulations

A. No person shall operate a New outdoor wood boiler that does not meet the requirements set forth in Title 247 of the New York State Department of Environment Conservation (DEC") Rules and Regulations.

B. Permit required. No person shall cause, allow or maintain the use of an Old outdoor wood boiler 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 Old outdoor wood boilers, shall have one year from the effective date hereof to obtain a permit conforming to the regulations stated herein other than setbacks.

C. Approved Fuels. A person who operates on Old outdoor wood boiler may only burn the following fuels in such outdoor wood boiler:

(1) seasoned clean wood;

(2) wood pellets made from clean wood;

(3) heating oil in compliance with Subpart 225-1 of Title 247 of the DEC Rules and Regulations, L.P. gas or natural gas may be used as starter fuels for dual fuel-fired outdoor wood boilers;

(4) non-glossy, non-colored papers, including newspaper, may be used only to start an outdoor wood boiler; and

(5) other fuels approved by DEC certification requirements of Section 247.8 of the DEC Rules and Regulations.

D. Prohibited fuels. No person shall burn any of the following items in an Old outdoor wood boiler:

(1) wood that does not meet the definition of clean wood;

(2) unseasoned wood;

(3) garbage;

(4) tires;

(5) yard waste, including lawn clippings;

(6) materials containing plastic;

(7) materials containing rubber;

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- (8) waste petroleum products;
- (9) paints or paint thinners;
- (10) household or laboratory chemicals;
- (11) coal;
- (12) paper except as described in paragraph 247.4(a)(4) of this Part;
- (13) construction and demolition debris.
- (14) plywood;
- (15) particleboard;
- (16) fiberboard;
- (17) oriented strand board;
- (18) manure;
- (19) animal carcasses;
- (20) asphalt products
- (21) salt water driftwood; or
- (22) any other fuel that is not recognized as an approved fuel pursuant to Section 247.4 of the New York State Department of Environment Conservation Rules and Regulations.

E. Smoke Stack/Chimney. All Old outdoor wood boilers shall have a smoke stack or chimney that:

- (1) is double-wall insulated by metalbestos; and
- (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 fastened to the smoke stack/chimney to prevent it from falling.

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(5) 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.

F. Setbacks. Old outdoor wood boilers shall be set back a minimum of at least fifty (50) feet from the nearest property line and fifty (50) feet from the nearest public road.

G. 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.

H. Period of Operation. The outdoor furnace can only be operated between September 30 and April 15.

Section 5. Prohibitions.

A. No person shall cause or allow emissions of air contaminants from an Old outdoor wood boiler to the outdoor atmosphere of a quantity, characteristic or duration which is injurious to human, plant or animal life or to property, or which unreasonably interferes with the comfortable enjoyment of life or property. This prohibition applies, but is not limited to, the following conditions:

- (1) activating smoke detectors in neighboring structures;
- (2) impairing visibility on a public highway; or
- (3) causing a visible plume migrating from an outdoor wood boiler and contacting a building on an adjacent property.

The prohibition further applies to any particulate, fume, gas, mist odor, smoke, vapor, toxic or deleterious emission, either alone or in combination with others, emitted from an outdoor wood boiler that results in the conditions or circumstances listed in this subdivision notwithstanding the existence of specific air quality standards or emission limits.

B. No person shall operate an outdoor wood boiler in such a manner as to create a smoke plume with an opacity of 20 percent or greater (six minute mean) as determined using EPA Reference Method 9 (or equivalent) (see Table 1, Section 200.9 of the DEC Rules and Regulations).

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Section 6. Permit

A. The Town Board of the Town 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 there is a violation of Section 5 of this Local Law.

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 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 of 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 Old 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 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 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

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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.