

**VILLAGE OF FORT JOHNSON
OUTDOOR WOOD BURNING FURNACES LAW**

LOCAL LAW NO 1 OF THE YEAR 20 10

**A Local Law of the Village of Fort Johnson
Regulating the Use of Outdoor Wood Furnaces**

Adopted _____

Be it enacted by the Village Board of the Village of Fort Johnson 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 Village of Fort Johnson”.

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 Village of Fort Johnson (the “Village”).

The Environmental Protection Agency has launched a voluntary emission reduction program for the outdoor wood furnace industry. This program encourages manufacturers to make cleaner and more efficient Outdoor Furnaces which produce less particulate emissions. Outdoor Furnaces which are EPA Hydronic Heater (HH) Phase 1 Program Qualified are 70% cleaner than conventional models and emit less than 0.6 lbs/million Btu. Outdoor Furnaces which are EPA HH Phase 2 Program Qualified are 90% cleaner than conventional models and emit less than 0.32 lbs/million Btu. In order to protect the air quality of our community, the Village of Fort Johnson only permits installation of EPA HH Phase 2 or better models, rather than conventional or EPA HH Phase 1 furnaces which produce much greater emissions.

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SECTION 3. Definitions

Outdoor furnace - Shall mean any equipment, device or apparatus, or any part thereof, which is installed, 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 are exempt from this definition. An Outdoor Wood Furnace may also be referred to as an Outdoor Wood Boiler, Outdoor Woodfired Hydronic Heater or Outdoor Hydronic Heater.

EPA HH Phase 1 Program – EPA HH (Outdoor Wood-fired Hydronic Heater) Phase 1 Program administered by the United States Environmental Protection Agency and that has a particulate matter emission limit of 0.60 pounds per million British Thermal Units input and is labeled accordingly.

EPA HH Phase 1 Program Qualified Model – An Outdoor Wood-fired Hydronic Heater that has been EPA HH Phase 1 Program qualified. The model has met the EPA HH Phase 1 emission level and is labeled accordingly.

EPA HH Phase 2 Program – EPA HH (Outdoor Hydronic Heater) Phase 2 Program administered by the United States Environmental Protection Agency and that has a particulate matter emission limit of 0.32 pounds per million British Thermal Units output and is labeled accordingly.

EPA HH Phase 2 Program Qualified Model – An Outdoor Hydronic Heater that has been EPA HH Phase 2 Program qualified. The model has met the EPA HH Phase 2 emission level and is labeled accordingly.

Existing Outdoor Wood Furnace: An Outdoor Wood Furnace that was purchased and installed prior to the effective date of this local law.

New Outdoor Wood Furnace: An Outdoor Wood Furnace that is first installed, established or constructed after the effective date of this local law.

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.

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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 Village without first having obtained a permit from the Village Clerk. The owner of any new Outdoor Furnace shall produce the manufacturer's manual or installation instructions for the Village Code Enforcement Officer to review prior to installation.

Permits expire when property is sold or transferred.

All property owners with outdoor furnaces preexisting at the adoption of this Local Law, shall have thirty (30) days from the date of receipt of notice hereof by first class mail to apply for a permit. After the issuance of a permit, the owners will have a period not exceeding sixty (60) days to comply with all provisions of this local law with the exception of setback requirements. The permit issued for these preexisting furnaces shall expire when the property is sold or transferred and can never be renewed. If the furnace is being replaced, a new permit must be applied for, and the new unit must meet all provisions of this local law including setback requirements.

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. Required Setbacks

Installation of new Outdoor Furnaces shall meet the following setbacks:

1.) A new EPA HH Phase 2 Program Qualified furnace shall be setback no less than fifty (50) feet from any property line and sixty (60) feet from the nearest public road.

D. Minimum Chimney Height

The chimney of any new outdoor furnace shall be installed per manufacturer's recommendations and be a minimum of two (2) feet higher than the roof peak of the residence served. In addition:

1.) The chimney of any outdoor furnace with particulate emission levels greater than or equal to 0.6 lbs/million Btu, or with no EPA certification, shall extend at least two (2) feet above the roof peak of any occupied building which is not served by the furnace and is located within five hundred (500) feet.

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2.) The chimney of any EPA HH Phase 2 Program Qualified furnace shall extend at least two (2) feet above the roof peak of any occupied building which is not served by the furnace and is located within one hundred (100) feet.

E. Seasonal Limitation

No person shall cause, allow or permit the operation of an Outdoor Furnace between June 1st and September 1st.

F. Spark Arrestors

All Outdoor Furnaces shall be equipped with properly functioning spark arrestors or be in conformity with manufacturer's specifications with regard to the release of sparks.

G. Installation

All Outdoor Furnaces shall be installed per the manufacturer's specifications and shall be UL listed and approved. The perimeter ground surface around the Outdoor Furnace structure shall be a non-combustible surface such as gravel, sand or a concrete pad for a distance of not less than ten (10) feet.

H. Suspension of Permit:

A permit issued pursuant to this Local Law may be reviewed, suspended or revoked by the Village Code Enforcement Officer in order to protect the public health, safety and welfare of the residents of the Village of Fort Johnson if any of the following conditions occurs:

- A.) Malodorous air contaminants from the Outdoor Furnace are detectable outside the property of the person on whose land the Outdoor Furnace is located;
- B.) The emissions from the Outdoor Furnace interfere with the reasonable enjoyment of life or property;
- C.) The emissions from the Outdoor Furnace cause damage to vegetation or property; or
- D.) The emissions from the Outdoor Furnace are or may be harmful to human or animal health.
- E.) Violation of 6 NYCRR 227-1.3(b) opacity. Emissions from the Outdoor Furnace exhibit greater than twenty percent (20%) opacity (six minute average), except for one continuous six-minute period per hour of not more than twenty-seven percent (27%) opacity.

A suspended permit may be reinstated once the condition which resulted in suspension is remedied and reasonable assurances are given that such condition will not recur. Recurrence of a condition which has previously resulted in suspension of a permit shall be considered a violation subject to the penalties provided in Section 6 hereof.

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SECTION 5. Variance Procedure

A. Appeals Board:

- 1) The Zoning Board of Appeals as established by the Village 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
 3. are unreasonably malodorousand 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 Village Clerk shall maintain the records of all appeal actions including technical information.

SECTION 6. 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.

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- 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 Village Board may, in the alternative, maintain an action or proceeding in the name of the Village 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 Village for costs incurred by the Village in remedying each violation, including but not limited to reasonable attorney's fees.
- G. In the event the Village is required to take legal action to enforce this article, the violator will be responsible for any and all necessary costs incurred by the Village relative thereto, including attorney's fees, and such amount shall be determined and assessed by the court. If such expense is not paid in full within 30 days from the date it is determined and assessed by the Court, such expense shall be charged to the property so affected by including such expense in the next annual Village tax levy against the property.

SECTION 7. 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 8. Repealer

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

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SECTION 9. Effect of Other Regulations

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 York State Department of Environmental Conservation, or any other federal, state, regional or local agency. Outdoor Furnaces, and any electrical, plumbing or other apparatus or device used in connection with an Outdoor Furnace, shall be installed, operated and maintained in conformity with the manufacturer's specifications and any and all local, State and Federal codes, laws, rules and regulations. In case of a conflict between any provision of this Local Law and any applicable Federal, State or local ordinances, codes, laws, rules or regulations, the more restrictive or stringent provision or requirement shall prevail.

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.