

Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE
41 STATE STREET, ALBANY, NY 12231

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

~~COUNTY~~

~~CITY~~

Town

of _____ PERTH _____

~~VILLAGE~~

Local Law No. _____ 1 _____ of the year 2010

A local law Regulating the Use of Outdoor Wood Furnaces in the Town of Perth
(Insert Title)

Be it enacted by the _____ Town Board _____ of the
(Name of Legislative Body)

~~COUNTY~~

~~CITY~~

Town

of _____ PERTH _____ as follows:

~~VILLAGE~~

The text of this Local Law is annexed hereto.

OUTDOOR WOOD FURNACES (Referred to as: OUTDOOR WOOD BOILERS OR OUTDOOR WOOD-FIRED HYDRONIC HEATERS OR OUTDOOR HYDRONIC HEATERS)

- § -1 Definitions
- § -2 Regulations for Outdoor Wood Furnaces
- § -3 Substantive Requirements
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§ -1 Definitions

- A. Outdoor Wood Furnace: Any equipment, device, appliance or apparatus, or any part thereof, which is installed, affixed or situated outdoors and is primarily hand-loaded for the purpose of combustion of fuel to produce heat or energy used as a component of a heating system providing heat for any interior space or water source. An Outdoor Wood Furnace may also be referred to as an Outdoor Wood Boiler, Outdoor Wood-fired Hydronic Heater or Outdoor Hydronic Heater.
- B. Outdoor Wood-Pellet Furnace: An outdoor wood-pellet furnace that is specifically designed to burn wood pellet fuel, corn or other biomass pellets with metered fuel and air feed and controlled combustion engineering, which burns only wood pellets, corn or other biomass pellets.
- C. Chimney: Flue or flues that carries off exhaust from an Outdoor Wood Furnace firebox or burn chamber.
- D. EPA OWHH Phase 1 Program - EPA OWHH (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.
- E. EPA OWHH Phase 1 Program Qualified Model - An Outdoor Wood-fired Hydronic Heater that has been EPA OWHH Phase 1 Program qualified. The model has met the EPA OWHH Phase 1 emission level and is labeled accordingly.
- F. EPA OHH Phase 2 Program - EPA OHH (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.
- G. EPA OHH Phase 2 Program Qualified Model - An Outdoor Hydronic Heater that has been EPA OHH Phase 2 Program qualified. The model has met the EPA OHH Phase 2 emission level and is labeled accordingly.
- H. Existing Outdoor Wood Furnace: An Outdoor Wood Furnace that was purchased and installed prior to the effective date of this local law.
- I. New Outdoor Wood Furnace: An Outdoor Wood Furnace that is first installed, established or constructed after the effective date of this local law.
- J. Natural Wood: Wood, which has not been painted, varnished or coated with a similar material, has not been pressure treated with preservatives and does not contain resins or glues as in plywood or other composite wood products.

§ -2 Regulations for Outdoor Wood Furnaces

- A. No person shall, from the effective date of this local law, construct, install, establish, operate or maintain an Outdoor Wood Furnace other than in compliance with the applicable sections of this local law.
- B. No person shall, from the effective date of this local law, operate an existing Outdoor Wood Furnace unless such operation conforms with the manufacturer's instructions regarding such operation and the requirements of this local law regarding fuels that may be burned in an Outdoor Wood Furnace as set forth in Sections 3.A and 3.B of this local law.
- C. All new Outdoor Wood Furnaces shall be constructed, established, installed, operated and maintained in conformance with the manufacturer's instructions and the requirements of this local law. In the event of a conflict, the requirements of this local law shall apply unless the manufacturer's instructions are stricter, in which case the manufacturer's instructions shall apply.
- D. The owner of any new Outdoor Wood Furnace shall produce the manufacturer's owner's manual or installation instructions to the Town of Perth Code Enforcement Officer to review prior to installation.
- E. All new Outdoor Wood Furnaces shall be laboratory tested and listed to appropriate safety standards such as UL, CAN/CSA, ANSI or other applicable safety standards.
- F. If an existing Outdoor Wood Furnace is, through the course of a proper investigation by local authorities, creating a verifiable nuisance, as defined by local or state law, the following steps may be taken by the owner and the Town of Perth Code Enforcement Office or other appropriate department having jurisdiction:
 - (1) Modifications made to the unit to eliminate the nuisance, such as extending the chimney or relocating the Outdoor Wood Furnace, or both.
 - (2) Cease and desist operating the unit until reasonable steps can be taken to ensure that the Outdoor Wood Furnace will not be a nuisance.

§ -3 Substantive Requirements

Outdoor Wood Furnaces shall be constructed, established, installed, operated and maintained pursuant to the following conditions:

- A. Fuel burned in any new or existing Outdoor Wood Furnace shall be only natural untreated wood, wood pellets, corn products, biomass pellets or other listed fuels specifically permitted by the manufacturer's instructions, such as fuel oil, natural gas or propane backup.
- B. The following fuels are strictly prohibited in new and existing Outdoor Wood Furnaces:
 - (1) Wood that has been painted, varnished or coated with similar material and/or has been pressure treated with preservatives and contains resins or glues, as in plywood or other composite wood products.
 - (2) Rubbish or garbage, including but not limited to food wastes, food packaging, food wraps.
 - (3) Any plastic materials, including but not limited to nylon, PVC, ABS, polystyrene or urethane foam, and synthetic fabrics, plastic films and plastic containers.
 - (4) Rubber, including tires or other synthetic rubber-like products.
 - (5) Newspaper, cardboard or any paper with ink or dye products.

- (6). Any other items not specifically allowed by the manufacturer or this provision.

C. Setbacks for any new Outdoor Wood Furnace model not EPA OWHH Phase 1 Program Qualified:

- (1). The Outdoor Wood Furnace shall be located at least 50 feet from the property line.
- (2). The Outdoor Wood Furnace shall be located at least 100 feet from any residence that is not served by the Outdoor Wood Furnace.
- (3). The Outdoor Wood Furnace shall be located on the property in compliance with manufacturer's recommendations and or testing and listing requirements for clearance to combustible materials.

D. Chimney heights for any Outdoor Wood Furnace model that is not EPA OWHH Program Qualified:

- (1). The chimney of any new Outdoor Wood Furnace shall extend at least 2 feet above the peak of any residence not served by the Outdoor Wood Furnace located within 300 feet of such Outdoor Wood Furnace.

E. Setbacks for EPA OWHH Phase 1 Program qualified models (0.60 lbs/million Btu heat input):

- (1). The Outdoor Wood Furnace shall be located at least 25 feet from the property line.
- (2). The Outdoor Wood Furnace shall be located at least 100 feet from any residence that is not served by the Outdoor Wood Furnace.
- (3). The Outdoor Wood Furnace shall be located on the property in compliance with manufacturer's recommendations and/or testing and listing requirements for clearance to combustible materials.

F. Chimney heights for any Outdoor Wood Furnace model that is EPA OWHH Phase 1 Program Qualified:

- (1). The chimney of any new Outdoor Wood Furnace shall extend at least 2 feet above the peak of any residence not served by the Outdoor Wood Furnace located within 300 feet of such Outdoor Wood Furnace.

G. Setbacks for EPA OHH Phase 2 Program qualified models (0.32 lbs/million BTU heat output):

- (1). The Outdoor Wood Furnace shall be located at least 25 feet from the property line.
- (2). The Outdoor Wood Furnace shall be located at least 50 feet from any residence that is not served by the Outdoor Wood Furnace.
- (3). The Outdoor Wood Furnace shall be located on the property in compliance with manufacturer's recommendations and/or testing and listing requirements for clearance to combustible materials.

H. Chimney heights for EPA OHH Phase 2 Program qualified models:

- (1). If there are residences not served by the furnace within 100 feet, the chimney shall be 2 feet higher than the peak of the residence served or not served, whichever is greater. Additionally, the EPA OHH Phase 2 Program qualified model chimney shall extend at least 2 feet above the peak of the residence for which it serves if neighboring residences not served by the furnace are located within 100 to 300 feet.

- I. Outdoor Wood-Pellet Furnaces that are specifically designed to burn wood pellet fuel, corn, or other biomass pellets with metered fuel and air feed and controlled combustion engineering shall be installed per the manufacturer's recommendations.

§ -4 Appeals/Variances

Appeals from any actions, decisions or rulings of the Town of Perth Code Enforcement Officer or for a variance from the strict application of the specific requirements in Section 2 or 3 of this local law may be made to the Town of Perth Zoning Board of Appeals. Requests for all appeals shall be made in writing to the said Board of Appeals not later than 30 days of the act, decision or ruling from which relief is sought.

- A. **Appeals Fees:** Appeals fees shall be established by the Perth Town Board by resolution.
- B. **Public Hearing:** Within 60 days after receiving the written request, the said Zoning Board of Appeals shall hold a public hearing on the appeal, with prior notice published in a newspaper of general circulation in the Town at least 30 days before the date of the hearing and specifying the date, place, time and purpose of the hearing.
- C. **Decision of Zoning Board of Appeals:** Within 60 days of the final adjournment of a public hearing, the Zoning Board of Appeals shall affirm, modify or deny the action, decision or ruling of the Code Enforcement Officer or correct any omission by the Code Enforcement Officer, or approve, approve with conditions or disapprove the application. The decision of the Zoning Board of Appeals shall be in writing and shall contain findings and the factual basis for each finding from the record of the hearing, which shall support the decision of the Zoning Board of Appeals. As part of any decision, the Zoning Board of Appeals shall direct the Officer to issue any appropriate permit in conformity with its ruling and shall state a time by which such permit shall be issued, in conformity with this local law.
- D. **Criteria for Variances:** In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighted against the detriment of the neighborhood or community by such grant. In making such determination, the Board shall also consider:
 - (1) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the variance;
 - (2) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance;
 - (3) Whether the requested variance is substantial; and
 - (4) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the variance.

§ -5 Violations and Penalties

Any person who shall violate any provision of this local law shall be guilty of a

violation as defined in the New York State Penal Law and shall upon conviction be subject to a fine of not more than Two Hundred Fifty (\$250.00) Dollars. Each week's continued violation shall constitute a separate and distinct offense.

§ -6 Civil Proceedings

Compliance with this local law may also be compelled and violations restrained by order or by injunction of a Court of competent jurisdiction. Any person who violates any provision of this local law shall also be subject to a civil penalty of not more than Two Hundred Fifty (\$250.00) Dollars, to be recovered by the Town in a civil action, and each week's continued violation shall be for this purpose a separate and distinct violation. In the event the Town is required to take legal action to enforce this local law, the violator may be responsible for any and all necessary costs relative thereto, including attorney's fees, and such expense shall be charged to the property so affected by including such expense in the next annual tax levy against the property.

§ -7 Ban on Use/Waiver

- A. Notwithstanding any of the foregoing provisions to the contrary, no outdoor wood furnace or outdoor wood-pellet furnace, each as hereinabove defined, shall be operated in any manner whatsoever within the corporate boundaries of the Town of Perth during the period commencing with Memorial Day and ending with Labor Day in each year after this local law shall have become effective. A ban on such operation is hereby imposed during each such period.
- B. Any person or entity who or which may be aggrieved by such ban may apply to the Town of Perth Code Enforcement Officer for a waiver of such ban during such period. The application for such waiver shall be made in writing at least sixty (60) days prior to Memorial Day in the year in which such waiver is sought. Written notice of any application for a waiver hereunder shall be given by the applicant to the owners or residents of all residences located within five hundred (500) feet of the location for which a waiver is sought. Such written notice shall be given by postage paid, certified mail, return receipt requested, at least sixty (60) days prior to Memorial Day in the year in which such application for a waiver is made, and proof of such mailing shall be presented to the Town of Perth Code Enforcement Officer along with the written application for such waiver.
- C. The criteria for the granting of a waiver under this Section of this local law shall be the same as the criteria set forth for a variance as contained in Section 4 (D) hereof, except that no fee shall be required of the applicant as set forth in Section 4 (A) hereof. A waiver of the ban imposed hereunder, if granted, shall be made in writing, and shall remain in full force and effect unless revoked for just cause. Any person or entity who or which is denied a waiver of the ban imposed hereunder may take an appeal to the Town of Perth Zoning Board of Appeals in the same manner as set forth in Section 4 hereof pertaining to variances, in which event all of the provisions contained in Section 4 hereof shall apply, including the payment of a fee by the applicant.

§ -8 SEVERABILITY

The provisions of this local law are severable and the invalidity of a particular provision shall not invalidate any other provisions.

§ -9 Effective Date

This local law shall be effective upon filing with the New York Secretary of State.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 1 of 2010 of the ~~XXXXXX~~ (Town) ~~Village~~ of Perth was duly passed by the Perth Town Board on May 6, 2010, in accordance with the applicable provisions of law.
(Name of Legislative Body)

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of _____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 19____, and was (approved)(not disapproved)(repassed after disapproval) by the _____ and was deemed duly adopted on _____ in accordance with the applicable provisions of law.
(Name of Legislative Body) (Elective Chief Executive Officer*)

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of _____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 19____, and was (approved)(not disapproved)(repassed after disapproval) by the _____ on _____ 19____. Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 19____, in accordance with the applicable provisions of law.
(Name of Legislative Body) (Elective Chief Executive Officer*)

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of _____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 19____, and was (approved)(not disapproved)(repassed after disapproval) by the _____ on _____ 19____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ in accordance with the applicable provisions of law.
(Name of Legislative Body) (Elective Chief Executive Officer*)

*Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairman of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of _____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of _____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph _____, above.

Judith English
Clerk of the County legislative body, City, Town or Village Clerk
or officer designated by local legislative body

(Seal)

Date: May 6, 2010

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK
COUNTY OF FULTON

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Carmel J. Greco
Signature

Town Attorney

Title

~~XXXXXX~~
~~XXXX~~
Town
~~XXXXXX~~

of Perth

Date: May 6, 2010