

# VILLAGE OF COHOCTON

Local Law Numbered 1 of the year 2008

A Local Law Concerning Outdoor Furnaces

Be It enacted by the Board of Trustees of the Village of Cohocton, as follows:

## **SECTION 1. TITLE AND AUTHORITY**

This Local Law shall be known as the Village of Cohocton Outdoor Furnace Local Law. It is adopted pursuant to Municipal Home Rule Law §10.

## **SECTION 2. LEGISLATIVE INTENT**

Although outdoor furnaces may provide an economical alternative to conventional heating systems, concerns have been raised regarding the safety and environmental impacts of these heating devices, particularly the production of offensive odors and potential health effects of uncontrolled emissions. This Local Law is intended to ensure that outdoor furnaces are utilized in a manner that does not create a nuisance and is not detrimental to the health, safety and general welfare of the residents of the Village.

## **SECTION 3. DEFINITIONS**

"Outdoor Furnace" means any equipment, device or apparatus, or any part thereof, which is installed, affixed or situated outdoors for the primary purpose of combustion of fuel to produce heat or energy used as a component of a heating system providing heat for any interior space.

"Untreated Lumber" means 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" means trunks and branches of trees and bushes but does not include leaves, needles, vines or brush smaller than three (3) inches in diameter.

"CEO" means the Code Enforcement Officer of the Village of Cohocton.

"Village" means the Village of Cohocton, New York.

"Board of Trustees" means the Village Board of the Village of Cohocton, New York.

"Existing" or "in existence" means that the outdoor furnace is in place on the site.

"ZBA" means Village of Cohocton Zoning Board of Appeals.

**SECTION 4. PERMIT REQUIRED**

No person shall cause, allow or maintain the use of an outdoor furnace within the Village of Cohocton without first having obtained a permit from the CEO. Application for a permit shall be made to the CEO on the forms provided.

**SECTION 5. EXISTING OUTDOOR FURNACES**

Any outdoor furnace in existence on the effective date of this Local Law shall be permitted to remain provided that the owner applies for and receives a permit from the CEO within sixty (60) days of such effective date; provided, however, that upon the effective date of this Local Law all the provisions of this Local Law shall immediately apply to existing outdoor furnaces. All the provisions of this Local Law shall continue to apply to existing outdoor furnaces which receive permits. If the owner of an existing outdoor furnace does not receive a permit within sixty (60) days of the effective date of this Local Law, the outdoor furnace shall be removed.

**SECTION 6. SPECIFIC REQUIREMENTS**

- A. Permitted Fuel - Only firewood, untreated lumber, fossil fuels, corn, coal, fuel oil, gasoline, kerosene or other combustible material are permitted to be burned in any outdoor furnace. Burning of any and all other materials in an outdoor furnace is prohibited. No outdoor furnace shall be utilized as a waste or garbage incinerator.
  
- B. Set Backs - Outdoor furnaces shall follow the minimum setbacks of the applicable zoning district within the Village.
  
- C. Chimney Height - The chimney height of any outdoor furnace located fifty (50) feet or less to any residence not served by the outdoor furnace, shall be at least two (2) feet higher than the eave line of the unserved residence. The chimney height of any outdoor furnace located more than fifty (50) feet but less than one hundred (100) feet to any residence not served by the outdoor furnace shall be at least seventy five percent (75%) of the height of the eave line of the unserved residence, plus an additional two (2) feet. The chimney height of any outdoor furnace located more than one hundred (100) feet but less than one hundred fifty feet (150) to any residence not served by the outdoor furnace shall be at least fifty percent (50%) of the height of the eave line of the unserved residence, plus an additional two (2) feet. The chimney height of any outdoor furnace located more than one hundred fifty feet (150) but less than two hundred feet (200) to any residence not served by the outdoor furnace shall be at least twenty five percent (25%) of the height of the eave line of the unserved residence, plus an additional two (2) feet. The chimney height of any outdoor furnace located more than two hundred feet (200) feet from any residence not served by the outdoor furnace shall be a minimum of eight (8) feet.
  
- D. Replacements - If an outdoor furnace is replaced or upgraded, a permit shall be required pursuant to this Local Law and shall comply with all sections of this Local Law.

- E. Spark Arrestors - All outdoor furnaces shall be equipped with properly functioning spark arrestors.

### **SECTION 7. SUSPENSION OF PERMIT**

A permit issued pursuant to this Local Law may be suspended as the CEO may determine to be necessary to protect the public health, safety and welfare of the residents if any of the following conditions occurs:

- a. 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, which shall be determined as provided in 6 NYCRR 227-1.3(b);
- b. Malodorous air contaminants from the outdoor furnace are detectable outside the property of the person on whose land the outdoor furnace is located;
- c. The emissions from the outdoor furnace interfere with the reasonable enjoyment of life or property;
- d. The emissions from the outdoor furnace cause damage to vegetation or property;  
or
- e. The emissions from the outdoor furnace are or may be harmful to human or animal health.

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 of this Local Law subject to the penalties provided in paragraph 9 hereof.

### **SECTION 8. WAIVERS; BOARD OF TRUSTEES RATIFICATION**

Where the Board of Trustees, acting as a local board of health, finds that extraordinary and unnecessary hardships may result from strict compliance with this Local Law, it may vary the regulations so that substantial justice may be done and the public interest secured, provided that such variations will not have the effect of nullifying the intent and purpose of this Local Law or of jeopardizing the health, safety or welfare of the public. In varying any regulations, the Board of Trustees may impose such conditions and requirements as it deems reasonable and prudent. The Board of Trustees may, at its discretion, hold a public hearing as part of its review. If the Board of Trustees grants the waiver, a permit shall be issued for the outdoor furnace. If the Board of Trustees denies the waiver, the outdoor furnace must either be brought into compliance with this Local Law or removed. If the Board of Trustees does not take any action with respect to the waiver within sixty (60) days from its receipt of an application for waiver, the waiver shall be deemed denied.

## **SECTION 9. APPEALS**

Appeals from any actions, decisions, or rulings of the CEO or for a variance from the strict application of the specific requirements in Section 6 of this Local Law may be made to the Village ZBA. Requests for all appeals shall be made in writing to the ZBA not later than thirty (30) days of the act, decision, or ruling from which relief is sought.

- A. Appeals Fees - Appeals fees shall be established by Board of Trustees resolution.
- B. Public Hearing - Within sixty two (62) days after receiving the written request, the ZBA shall hold a public hearing on the appeal, with prior notice published in a newspaper of general circulation in the Village at least ten (10) days before the date of the hearing and specifying the date, place, time, and purpose of the hearing.
- C. Decision of ZBA - Within sixty two (62) days of the final adjournment of a public hearing, the ZBA shall affirm, modify, or deny the action, decision, or ruling of the zoning officer or correct any omission by him, or approve, approve with conditions, or disapprove the application. The decision of the ZBA 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 ZBA. As part of any decision, the ZBA shall direct the zoning 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 ZBA shall take into consideration the benefit to the applicant if the variance is granted, as weighted against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the ZBA 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;
  - 4. whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood; and
  - 5. whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the ZBA, but shall not necessarily preclude the granting of the variance.

**SECTION 10. ENFORCEMENT; REVOCATION OF PERMIT**

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 Five Hundred Dollars (\$500.00) or imprisonment for a period of not more than ten (10) days, or both, for the first offense. Any subsequent offense shall be punishable by a fine of not more than One Thousand Dollars (\$1,000.00) or imprisonment for a period of not more than thirty (30) days, or both. In addition, any permit issued pursuant to this Local Law shall be revoked upon conviction of a second offense and the subject outdoor furnace shall not be eligible for another permit. Each week 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. Any fine imposed hereunder shall constitute a lien upon the real property where the outdoor furnace is located and shall be charged to said property so affected by including such fine in the next annual tax levy against the property.

**SECTION 11. CIVIL PROCEEDINGS**

Compliance with this 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 Five Hundred Dollars (\$500.00), to be recovered by the Village in a civil action and each week's continued violation shall be for this purpose a separate and distinct violation. In the event the Village is required to take legal action to enforce this local law, the violator will be responsible for any and all necessary costs relative thereto, including attorneys' 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.

**SECTION 12. 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, Adirondack Park Agency, Lake George Park Commission 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 the 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 13. SEVERABILITY**

The invalidity of any clause, sentence, paragraph or provision of this Local Law shall not invalidate any other clause, sentence, paragraph or part thereof.

**SECTION 14. REPEALER**

All Local laws or ordinances or parts of local laws or ordinances in conflict with any part of this Local law are hereby repealed.

**SECTION 15. EFFECTIVE DATE**

This Local Law shall take effect upon filing in the office of the New York State Secretary of State or as otherwise provided by law.

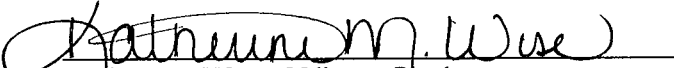
**CERTIFICATION**

I hereby certify that the local law annexed hereto, designated as Local Law No. 1 of 2008 of the Village of Cohocton was duly passed by the Board of Trustees on September 17, 2008 in accordance with the applicable provisions of law.

I further certify that I have compared the attached 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 local law, and was finally adopted in the manner indicated in the preceding paragraph.

Dated: September 17, 2008

(Seal)

  
Katherine Wise, Village Clerk

**CERTIFICATION**

I 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.

Dated: September 30, 2008

  
John F. Leyden  
Village Attorney  
Village of Cohocton