

TOWN OF ROSENDALE TOWN BOARD

LOCAL LAW NO. 2 OF 2009

A LOCAL LAW ADDING CHAPTER 43 “HYDRONIC HEATER AND OTHER HEATING APPLIANCES” TO THE TOWN OF ROSENDALE CODE IN ORDER TO REGULATE THE INSTALLATION AND OPERATION OF SAME

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

§ 43-1. Title; authority.

This chapter is enacted pursuant to Municipal Home Rule Law of the State of New York and pursuant to the powers granted to the Town by virtue of Article IX, § 2(c) of the New York State Constitution and shall be known as the Town of Rosendale "Hydronic Heater and Other Heating Appliances."

§ 43-2. Legislative intent.

Outdoor hydronic heaters, also known as outdoor wood-burning boilers (OWB), originally intended and designed for use on farms, are increasingly being used as an alternative to conventional heating systems in residential areas. The New York State Office of the Attorney General, the New York State Department of Environmental Conservation, and the Northeastern States for Coordinated Air Use Management (NESCAUM) have determined that unregulated hydronic heaters pose significant health and environmental risks due to high particulate emissions and emissions of other toxic pollutants, even when clean seasoned wood is burned. Regular exposure to smoke can cause long-term human health problems, including cardiovascular disease, chronic lung conditions, and premature death. Short-term effects of exposure include eye, nose, throat, and lung irritation, coughing and shortness of breath, and asthma attacks. The pollution problem associated with hydronic heaters is further aggravated by the burning of wet, damp, or green wood, processed wood, or garbage. Hydronic heaters are also one of the less economical modes of heating, with high initial costs and lower heating efficiencies relative to conventional heating systems (NYS Office of the Attorney General, “Smoke Gets in Your Lungs: Outdoor Wood Boilers in New York State,” Revised March 2008).

Hydronic heaters may pose a public health risk and may deprive neighboring residents of the enjoyment of their property and/or use of their premises. Similar risks and detrimental effects also result from other heating appliances, including, but not limited to, wood-burning, coal-burning and pellet-burning stoves, furnaces and boilers. The hilly topography of Rosendale is particularly ill-suited to the rapid dispersion of smoke and pollutants, since air currents in valley areas can be slow-moving and subject to down drafts. Since neither federal nor New York State laws currently regulate the emissions of hydronic heaters, these Town of Rosendale regulations shall impose reasonable performance standards so that hydronic heaters and other heating appliances do not

endanger the health, safety, comfort, and general welfare of the residents and inhabitants of the Town of Rosendale.

In addition to the local hydronic heater regulations here cited, all federal, state and local regulations already in place which govern wood stoves, pellet stoves, coal stoves, and all indoor heating appliances, boilers and furnaces, shall be strictly enforced and adhered to. These regulations are not intended to supplant such other federal, state and local regulations.

§ 43-3. Definitions.

A. Clean wood – Wood that is dry, has no paint, stains, or other types of coatings, and wood that has not been treated with, including but not limited to chromated copper arsenic, creosote, or pentachlorophenol.

B. Commercial-size hydronic heater– A boiler with a rated thermal output greater than 350,000 Btu/hr as rated by the EPA Method 28 OWHH Test Method.

C. Installed Units – Any unit purchased, installed, and/or operational in accordance with applicable laws at the intended location of use, prior to the effective date of these regulations.

D. Opacity – The degree to which emissions other than water reduce the transmission of light and obscure the view of an object in the background.

E. Hydronic Heater –A solid fuel burning device (1) designed to burn wood or other approved fuels; (2) that the manufacturer specifies for indoor or outdoor installation; and (3) heats building space and/or water via the distribution, typically through pipes, of a fluid heated in the device, typically water or a water/antifreeze mixture. Outdoor wood boilers are also known as “outdoor wood hydronic heaters,” which is the term used by the U.S. Environmental Protection Agency and the Northeast States for Coordinated Air Use Management. For the purpose of these regulations, all hydronic heaters or boilers, regardless of the type of fuel burned, shall be subject to these rules.

F. Heating Appliance – Any unit designed to heat a dwelling, business, garage, outbuilding, or any structure normally occupied. This shall include, but not be limited to, Indoor and Outdoor Hydronic Heaters; Gas, Oil, Coal, Pellet and Wood Furnaces; Wood stoves; Pellet stoves; and Coal stoves.

G. Particulate matter or PM – Total particulate matter including PM10 (defined as particulates smaller than or equal to a nominal 10 micrometers in diameter) and PM2.5 (defined as particulates smaller than or equal to 2.5 micrometer in diameter).

H. Residential-size outdoor wood-burning boiler – A boiler with a rated thermal output of 350,000 Btu/hr or less as rated by the EPA Method 28 OWHH Test Method.

I. Startup period – The time period beginning with flame stability after first charge of fuel and is no longer than a two-hour duration. This definition only includes initial startup where no previous coal bed exists. This does not include refueling.

§ 43-4. Permit required.

A. Installation permit required. Upon adoption of this chapter, no person shall cause, install, allow or maintain the use of any heating appliance within the Town of Rosendale without first having obtained an installation permit from the Town Building Department. The choice of hydronic heater shall be verified by the Town Building Department to comply with the emissions standards as set forth in Sections 6 and 7 of this chapter. A copy of the original receipt for any new heating appliance, showing the vendor information, product description and model, purchase date, the manufacturer's specifications, and emissions information for the unit, shall be provided to the Town Building Department. It shall remain on file with the Town for the duration of the life and use of the heating unit.

B. Inspections. A final inspection by the Town Building Department is required before operation of the heating appliance. All previously installed heating appliances are subject to inspection by the Town Building Department as set forth by these regulations. Any inspection undertaken by the Town Building Department shall be documented by the Department. The occupant/owner of the property shall be notified and provided a copy of said documentation.

C. Fee. The fee specified in or determined in accordance with the provisions set forth in Section 27-16, Fees, of Chapter 27 must be paid at the time of submission of an application for a permit.

D. Revocation or suspension of permit. An installation permit issued under this chapter constitutes a requirement to comply with all provisions of this chapter and any additional restrictions deemed necessary by federal, state or local agencies or officials to protect public health and safety.

(1) **Suspension.** The Town Building Department may suspend a permit issued pursuant to this chapter if it is determined to be necessary to protect the public health, safety, and welfare of the residents of the Town of Rosendale including, but not limited to, the power to suspend a permit until there is a correction of any violation which causes the operation of a heating appliance that threatens the health and safety of neighbors, and/or neighbors' enjoyment and use of their property.

(2) **Revocation.** A permit may be permanently revoked under the following conditions, as documented by the Town of Rosendale Building Department:

(a) Owner(s) of a heating appliance has/have violated the provisions of these regulations more than three (3) times;

(b) There has been a failure to correct a violation or defect within a reasonable time frame, as specified by the Town of Rosendale Building Department;

(c) There has been a failure to pay any levied fine as set by the local court.

§ 43-5. Prohibitions on hydronic heaters.

A. Residential-size hydronic heater. As of the date of the adoption of this local law, no hydronic heater shall be installed that does not meet Phase II emission standards of the NESCAUM Model Regulation for Outdoor Hydronic Heaters (January 2007). These standards require that the outdoor hydronic heater meets a particulate matter emission limit of 0.32 pounds per million British thermal units (lb/MMBtu) heat output as well as a limit of 18 grams per hour of particulate matter over the course of an individual test run, within each of the burn-rate categories. The model's emissions levels shall be certified by the U.S. Environmental Protection Agency (EPA) as rated by the EPA Method 28 OWHH Test Method. The Town Building Department shall make available to residents, upon request, an up-to-date list of available models that meet the latest emission standards. This list shall be drawn from the list of cleaner models certified by, and available from, the U.S. Environmental Protection Agency.

B. Commercial-size hydronic heaters. Commercial size hydronic heaters are prohibited in the town of Rosendale due to higher levels of particulate emissions proportionate to their larger size.

§ 43-6. Restrictions on hydronic heaters.

A. Residential Hydronic Heaters Installed on or after the Effective Date of regulations created by this Local Law.

(1) In accordance with Phase II emissions standards set forth in the 2007 NESCAUM Model Regulation, residential hydronic heaters shall not exceed a particulate matter emission limit of 0.32 lb/MMBtu heat output as well as a limit of 18 grams per hour of particulate matter over the course of an individual test run, within each of the burn-rate categories. The model's emissions levels shall be certified by the U.S. Environmental Protection Agency (EPA) as rated by the EPA Method 28 OWHH Test Method.

(2) Hydronic heaters shall be equipped with a permanent stack extending two feet higher than the peak of any residential or commercial roof structure, or any structure that is normally occupied by persons, pets or other animals, located within one hundred and fifty (150) feet of the outdoor hydronic heater, unless the stack height exceeds safety standards set forth in the Town Code. A unit that does not comply with the stack height requirement shall not be installed because neighbors will be inadequately protected from the unit's emissions. This provision shall not apply to the building that the hydronic heater is servicing.

(3) All hydronic heaters shall be located at least one hundred and fifty (150) feet from any property line, street or road.

(4) All units shall be purchased new and installed according to the provisions of this chapter as well as to manufacturer's guidelines. In instances in which manufacturer's guidelines conflict with the provisions of this chapter, the provisions of this chapter supersede those guidelines.

B. Residential Hydronic Heaters Installed Prior to the Effective Date of this Local Law.

(1) Installed outdoor hydronic heaters are required to meet all provisions of these regulations except for those in Section 6.A.

(2) Installed hydronic heaters shall be equipped with a stack that extends two feet higher than the peak of any roof structure located within 150 feet of the outdoor hydronic heater, only if safety standards for stack height can be met. If, for reasons of safety, a stack cannot be elevated to this level, then stack height shall come as close as possible to this level, provided it meets safety standards and protects the health of neighbors as well as possible, and reduces the risk of liability for the owner(s) of the hydronic heater.

(3) Prior to the completion or consummation of a sale or transfer of any real property on or after the effective date of these regulations, any installed hydronic heater on such transferred property that does not meet the latest emission standards as defined in Sections 5 and 6.A of these regulations, shall be replaced, removed, or rendered permanently inoperable. If the hydronic heaters do meet the latest emissions standards, then they shall be inspected and shall be required to meet all regulations for newly installed hydronic heaters, including, but not limited to, set backs, stack height, and opacity standards.

(4) If federal, state, or other assistance programs become available to fully offset the costs to owners for transitioning to cleaner-burning technologies, then previously installed units that do not meet emissions standards as set forth in Sections 6 and 7 shall be replaced, removed, or rendered permanently inoperable. A grace period of one year from the date of initiation of such programs shall be provided for removal of under-performing units.

C. Uninstalled Residential Hydronic Heaters that Received a Building Permit Prior to the Date of Adoption of this Local Law.

Persons granted a building permit for a hydronic heater that have not ordered and/or purchased the hydronic boiler unit by the date of adoption of this local law shall be required to meet all provisions of this chapter, including Phase II emissions standards as set forth in Sections 5 and 6.A of this chapter. A copy of the proof of purchase and installation that includes the dates of purchase and installation must be provided to the Town Building Department and a new permit obtained in accordance with Section 4 of this chapter. Any permit holder shall retain the right to appeal such requirement to meet

all provisions through the established protocol, including, but not limited to, the Building department and the Zoning Board of Appeals.

§ 43-7. Fuel requirements for hydronic heaters.

A. No person that operates a hydronic heater shall use a fuel other than the following:

- (1) Clean, dry wood;
- (2) Wood pellets made from clean wood;
- (3) Home heating oil in compliance with the applicable sulfur content limit or natural gas may be used as starter fuels for dual-fired hydronic heaters; and
- (4) Other fuels as approved by the manufacturer and the Town of Rosendale Building Department.

B. The owners of hydronic heaters shall provide continuous, sufficient, and substantial cover for permitted fuel to ensure the integrity of the fuel.

§ 43-8. Standards for new and installed heating appliances.

A. Visible Emission Standard.

(1) Standard. No person shall cause or allow the emission of a smoke plume from any heating appliance to exceed an average of 20 percent opacity for six consecutive minutes in any one-hour period.

(2) Exception. The start-up period is exempted from the standard in Section 8.A(1), however, visible emissions shall not exceed 40 percent opacity for 20 consecutive minutes during the startup period of a new fire. This only includes initial firing of the unit where no coal bed exists. This exception does not apply to refueling.

(3) Opacity Measurement. The Town of Rosendale shall maintain a list of at least two (2) persons trained and certified by an accredited smoke school to measure opacity for the purpose of enforcing visible emissions standards, including the Code Enforcement Officer and any other persons designated by the Town.

B. Operating Season. No person shall operate a hydronic heater, with the exception of traditional fuel oil and gas, from April 1 through October 31, unless such operating season is extended after appeal to the Rosendale Building Department, and only in the case of proven hardship during an unusually long and severe heating season. The maximum period for any such extension shall be two weeks prior to the start of the designated use period herein, and/or two weeks after the end of such designated use period.

C. Prohibited Fuels. No person shall burn any of the following items in any heating appliance:

- (1) Any wood that does not meet the definition of clean wood;
- (2) garbage;
- (3) tires;
- (4) lawn clippings or yard waste;
- (5) materials containing plastic;
- (6) materials containing rubber;
- (7) waste petroleum products;
- (8) paints and paint thinners;
- (9) chemicals;
- (10) glossy or colored papers;
- (11) construction and demolition debris;
- (12) plywood;
- (13) particleboard;
- (14) salt water driftwood;
- (15) manure;
- (16) animal carcasses;
- (17) asphalt products; and
- (18) any fuels not recommended by the manufacturer.

D. All heating appliances shall comply with all applicable laws, including but not limited to local regulations.

E. Operators shall comply with manufacturer's guidelines for operation of all heating appliances, except in circumstances in which those guidelines are superceded by this local law.

F. No person shall operate any heating appliance in such a manner as to create a hazard to the health, safety or enjoyment of personal property of any individual. The Town of Rosendale Building Department may enforce this provision in accordance with its general enforcement authority as provided in Section 43-10 of this chapter.

§ 43-9. Unused, abandoned, or damaged heating appliances.

A. Heating Appliances. Any heating appliance that has been unused, abandoned, or discontinued for a period of one year shall be thoroughly inspected by the Town of Rosendale Building Department, and by a certified professional in the field of heating appliances, and shall be fully repaired, refurbished and tested, before it may be approved for use. Any heating appliance that does meet the approval of both the Town of Rosendale Building Department and the certified heating appliance professional shall be immediately removed by the property owner from the subject premises.

B. Hydronic Heaters. If any hydronic heater is unusable, abandoned or discontinued for a period of one year, or if the Town of Rosendale Building Department determines that a unit has become unable to be operated efficiently due to age of equipment, or has become substantially damaged, said unit shall not be allowed to be repaired, enlarged, restored, or rebuilt. In addition, any hydronic heater, upon meeting the above status, shall be immediately removed by the property owner from the subject premises.

C. Failure to remove appliance.

(1) Notice to remove. If the property owner fails to remove any unusable heating appliance by the end of the aforesaid one-year period, the Town of Rosendale Building Department shall serve notice on the owner to remove the appliance within 30 days of the date of the said notice. This written notice shall be sent by certified mail or by personal service to the owner of the property upon which the appliance is located. Should the appliance not be removed within the time specified by the Town of Rosendale Building Department, the Town shall take all reasonable steps to effect its removal in accordance with the Town's enforcement authority as set forth in New York State Law.

(2) Remedies. The costs incurred by the Town to effect the aforesaid removal (including any attorney's fees incurred by the Town to effect the removal) shall be charged to the owner of said premises. Said expense shall be paid by the owner of the property so affected within 90 days from the date said costs are presented to the owner. If said expense is not paid within said 90 days, then said expense shall be charged to the property so affected by including such expense in the next annual Town tax levy against the property.

§ 43-10. Enforcement; penalties for offenses.

A. Enforcement. The Town of Rosendale Building Inspector and Code Enforcement Officer or any inspection and/or enforcement official in the Town of Rosendale Building Department are hereby authorized to undertake and prosecute any proceedings necessary or appropriate to inspect, permit and approve the installation and operation of heating appliances, and to enforce compliance with these regulations in accordance with the procedures set forth in Chapter 27 of the Rosendale Code.

B. Penalties and remedies for noncompliance. The owner(s) of premises upon which a violation of this chapter has or is occurring shall be jointly and severally liable for such violation. Any person(s) who violate any of the provisions of this chapter shall be bound by the regulations set forth in Chapter 27, Section 27, A through D, which describes "Penalties for offenses." The imposition of one penalty for any violation shall not excuse the violation nor permit it to continue; and owner(s) shall be required to correct or remedy such violation or defects within a reasonable time as specified. If such reasonable time is exceeded by the owner(s), each day that a violation occurs shall constitute a separate offense.

§ 43-11. Effect of other regulations.

Nothing contained herein shall authorize or allow burning which is prohibited by laws, rules or regulations promulgated by the United States Environmental Protection Agency, New York State Department of Environmental Conservation, any other federal, state, regional, or local agency. Heating appliances and any electrical, plumbing or other apparatus or device used in connection with a heating appliance 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.

§ 43-12. Severability.

If any part or provision of this local law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part of the provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances, and the Town Board of the Town of Rosendale hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

§ 43-13. Repealer.

All Local Laws or ordinances, or parts of Local Laws or ordinances, which are in conflict with any part of this Chapter, are hereby repealed.

§ 43-15. Effective date.

This Local Law, creating hydronic heater and other heating appliance regulations, shall take effect immediately upon filing with the office of the New York State Secretary of State.