

**State of Rhode Island and Providence Plantations
Town of Tiverton, RI**

**An Ordinance of the Town Council
Regulating Outdoor Hydronic Heaters
*Adopted August 14, 2012***

Outdoor Hydronic Heaters

Section 1. Purpose.

- A. The town recognizes and finds that although Outdoor Hydronic Heaters or Outdoor Wood Boilers (hereafter collectively referred to as "OHH") may represent an economical alternative to conventional heating systems, these systems shall not be used as the primary source of heat and hot water and should not be located or used in such a manner as to compromise the health, safety and welfare of the citizens of the Town of Tiverton. Such outdoor furnaces can cause harmful emissions, offensive odors, smoke, soot, fumes, ash and other conditions that may constitute a public nuisance.

Section 2. Definitions.

- A. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
1. Allowable Fuels:
 - a. Clean wood;
 - b. Untreated lumber;
 - c. Wood pellets made from clean wood;
 - d. Manufacturer approved fuels, provided that no fuel shall be in conflict with Section 2.A 8. of this Article, Prohibited Fuels;
 - e. Home heating oil in compliance with the applicable sulfur content limit of natural gas may be used as starter fuels for dual-fired outdoor hydronic heaters.
 2. Clean wood means wood that has no paint, stains, or other types of coating, and wood that has not been treated with, including but not limited to, copper chromium arsenate, creosote, or pentachlorophenol.
 3. Existing Unit or Existing OHH means an outdoor hydronic heater that has been purchased, installed and/or operated at the intended location of use prior to the adoption of this ordinance on August 1, 2012.
 4. New Unit or New OHH means an outdoor hydronic heater that is not an Existing OHH.
 5. Nuisance means an activity which substantially interferes with the right to use and enjoy property.
 6. Outdoor Hydronic Heater or Outdoor Wood Boiler (OHH) means a freestanding accessory structure housing a wood-burning furnace, with a smoke stack, used to provide heat or hot water to a building or accessory structure fuel burning device designed to:
 - a. Burn wood or other approved fuels;
 - b. Be in compliance with manufacturer specifications for outdoor installation or installation in structures not normally occupied by humans (e.g. garages);
 - c. Heat building space and/or water via the distribution, typically through pipes, of a fluid heater in the device, typically water or a water/antifreeze mixture. This includes without limitation any structure, equipment, device or apparatus, or any part thereof, which is installed, affixed, constructed or located outdoors for the primary purpose of combustion of solid fuel, including but not limited to wood, to produce heat or energy used as a component of a heating system.
 - d. Commercial Size Heater means a heater with a rated thermal output of greater than 350,000 Btus (British thermal units) per hour.
 - e. Residential Size Heater means a heater with a rated thermal output of 350,000 Btus per hour or less.

7. Prohibited Fuels include but are not limited to:
 - a. Any wood that does not meet the definition of clean wood;
 - b. Garbage including but not limited to food wastes, food and beverage packaging, or food wraps;
 - c. Tires;
 - d. Lawn clippings, leaves, brush, trimmings or general yard waste;
 - e. Materials containing plastic;
 - f. Materials containing rubber;
 - g. Waste petroleum products;
 - h. Paints and paint thinners;
 - i. Chemicals;
 - j. Coal;
 - k. Paper of any type or cardboard;
 - l. Construction and demolition debris;
 - m. Plywood or other composite wood products;
 - n. Particleboard;
 - o. Salt water driftwood;
 - p. Manure;
 - q. Animal carcasses;
 - r. Asphalt products;
 - s. Any material prohibited for combustion by state or federal law or regulation;
 - t. Lighter fluids, gasoline or chemicals to start the flames are prohibited;
 - u. Pressure treated lumber.
8. Untreated lumber means dry wood that has been milled and dried but that has not been treated or combined with any petroleum product, chemical, preservative, glue, adhesive, stain, paint or other substance.

Section 3. Permit(s) required.

- A. No person shall construct, install, use, operate or permit to be operated on their property an OHH without first having obtained the proper permit(s) from the Building/Zoning Official. Installation of all new units requires an initial application for permit following the effective date of this ordinance. Two sets of plans for the location and installation of the Outdoor Hydronic Heater shall bear the stamp of a Rhode Island Licensed Professional Land Surveyor and shall be drawn at a suitable scale. The drawing shall show the proposed location of the unit on the property as well as any and all other structures within 300 feet of the proposed location whether on said property or adjoining property or properties including all setbacks. In addition, the application shall include an 8" x 10" color photograph of the entire unit showing the manufacturer's name and model number. The serial number shall also be provided. All units, new or used shall carry a tag that identifies the OHH complies with the EPA Phase II Emission standard, or higher as defined by the EPA and RIDEM's *Air Pollution Control Regulation No. 48 Outdoor Wood Boilers*, whichever is more stringent.
- B. An application fee shall apply, based on the current fee schedules and inspections for compliance with this ordinance and all applicable building, plumbing, mechanical, electrical, fire and other laws as deemed necessary by the Building/Zoning Official.

Section 4. Restriction on Location, Operation and Use.

- A. Location:
 1. Residential Size OHHs shall be no closer than:
 - a. 275 feet from any lot line;

- b. 50 feet from the dwelling unit it services or any other occupied structure on the subject parcel;
 - c. Has a clear radius of 50 feet, which must be maintained between the OHH and any trees or vegetation of a height greater than the height of the top of the fuel door;
 - d. The OHH shall not be located in the front yard (as defined by the Tiverton Zoning Ordinance);
 - e. Reductions of setbacks due to nonconformity are not applicable.
2. Commercial Size OHHs shall be no closer than:
- a. 500 feet from any lot line;
 - b. 50 feet from the structure it services or any other occupied structure on the subject parcel;
 - c. Has a clear radius of 50 feet, which must be maintained between the OHH and any trees or vegetation of a height greater than the height of the top of the fuel door;
 - d. The OHH must be located in the rear yard (as defined by the Tiverton Zoning Ordinance);
 - e. Reductions of setbacks due to nonconformity are not applicable.
- B. Operation and Use:
- 1. No person that operates an OHH shall cause, suffer, allow or permit the use of a fuel other than Allowable Fuels as defined in Section 2. No person shall cause, suffer, allow or permit the burning of any Prohibited Fuels as defined in Section 2.
 - 2. OHHs shall, as a minimum standard, be operated in compliance with the operating manual and standards of the manufacturer of the unit, including, but not limited to, the manufacturer's recommended loading times and amounts.
 - 3. The permanently attached stack or chimney extending from an OHH shall be a minimum of 18 feet in height or manufacturer's specifications, whichever is more restrictive, for any new installations, following the effective date of this ordinance. Rain caps shall not be allowed on stacks.
 - 4. The by-products of burning wood in the unit such as ash or wood remnants must be disposed of in a manner that does not create a nuisance or adversely impact ground water supplies or wetland resources and in compliance with all applicable laws.
- C. Particulate Emission Standards for New Units:
- 1. All new units, as defined in this article, shall comply, as of the effective date of this ordinance, with the EPA Phase II Emission standard or the best available control technology, as defined by the EPA and here and RIDEM's *Air Pollution Control Regulation No. 48 Outdoor Wood Boilers*, whichever is more stringent.
 - 2. No person shall purchase, operate, install or allow for installation an OHH for use in the town unless it has been certified to meet a particulate matter emission limit of 0.32lb/MMBtu (million British thermal unit) heat output and satisfies the current USEPA emission standard at the time of permitting.

Section 5. Existing Units.

- A. All provisions of this ordinance shall immediately become effective as to existing units in use and operation before the adoption of this ordinance with the following exceptions:
 - 1. Setbacks under Section 4. A.
 - 2. Particulate Emission Standards under Section 4. C.
- B. Any existing OHH, as defined herein that is to be replaced shall meet all provisions set forth in the ordinance except as specified herein.
- C. Compliance with this ordinance shall not exempt the owner of an OHH from the provisions of Section 6. B - Nuisance or Other Condition, below.

Section 6. Applicability of Other Regulations and Laws.

A. Compliance With Law

1. Outdoor furnaces shall be manufactured, constructed, installed, operated and located in conformance with any other applicable state or federal law or regulation, including but not limited to those of the USEPA and RIDEM. In the event of any conflict among state, federal and local ordinance, the more restrictive law or regulation shall apply. All other provisions of the building, electrical, plumbing, mechanical or other applicable laws and/or codes shall also apply.

B. Nuisance or Other Condition

1. It is prohibited to use, maintain or operate an OHH, or use its ash or residue that creates a nuisance or an interference with the health, safety and welfare of the town or of any person. Compliance with this ordinance shall not otherwise exempt the owner of a furnace for the creation of nuisance or other interference with the public health, safety and welfare, and it is intended that the town and its citizens shall have preserved any public or private right of action in nuisance or otherwise resulting from the operation of such furnace, either under this ordinance, or under any other town ordinance, state or federal law or regulation, or the common law.

Section 7. Penalties.

- A. Failure to comply with any provision of this article shall be a violation of the Tiverton Town Code. Any person or corporation, whether as principal, agent, employee or otherwise, who violates any of the provisions of this ordinance, shall be fined not exceeding \$500.00 for each offense. Each day of the existence of any violation shall be deemed a separate offense. The remedy provided for herein shall be cumulative and not exclusive, and shall be in addition to any other remedies provided by law.
- B. The Town Council or designee shall be responsible for the enforcement of this ordinance.
- C. Any person or entity in violation of the terms of this ordinance shall, in addition to the above sanctions, be liable to the town for the costs of any remediation actions reasonably necessitated by the actions of the violator(s), and for the costs (including reasonable attorney fees) of any action brought for equitable or legal action against the violator, which costs and fees shall constitute a lien against the property on which the furnace is located.

Section 8. Suspension of Operation.

- A. Any OHH may be suspended immediately from operation, at the discretion of the Tiverton Town Council or designee, should the Town Council determine that a nuisance is or has been caused by the use and operation of the furnace, as a result of any condition, including, without limitation, malodorous air contaminants detectable on land other than that of the owner; emissions that interfere with the reasonable enjoyment of the life or property of that other than the owner; the emissions cause damage to the environment, vegetation or property of another, or for any other violation of the terms of this ordinance.
- B. An OHH may be reinstated by the Tiverton Town Council, or designee, once it has been determined that compliance has been established and the offending condition has been remedied.