

**LOCAL LAW #3-2010 THE TOWN OF ROCHESTER HEREBY ENACTS NEW
CHAPTER 102 OF THE TOWN CODE OF THE TOWN OF ROCHESTER: OUTDOOR
FURNACES**

Resolution # 112-2010:

A Motion was made by Councilwoman Archer and seconded by Councilwoman Michailescu that, the Town of Rochester hereby enacts new Chapter 102 of the Town Code of the Town of Rochester: Outdoor Furnaces with the amendment of the typo of section 102-5 (A) removing the words “which includes”,

**BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF ROCHESTER
AS FOLLOWS:**

Section 1 - The Town of Rochester hereby enacts new Chapter 102 of the Town Code of the Town of Rochester to read as follows:

OUTDOOR FURNACES

§ 102-1. Legislative Intent and Purpose.

Although outdoor furnaces may provide an economical alternative to conventional heating systems, concerns have been raised regarding the safety and environmental impact of these heating devices, particularly the emission of offensive odors and potential health effects of uncontrolled emissions. This chapter 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 Town.

It is very strongly recommended that residents interested in purchasing and installing an outside furnace check with the Code Enforcement Officer before actually purchasing and installing a new system in order to avoid unnecessary expenses.

§102-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

EPA APPROVED

An outdoor wood-burning furnace device that has been tested and demonstrated to meet current United States Environmental Protection Agency (EPA) emission standards for such device and has received certification of approval from EPA.

FIREWOOD

Trunks and branches of trees and bushes, but does not include leaves, needles, vines or brush.

OUTDOOR FURNACE/OUTDOOR SOLID FUEL HEATING DEVICE

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

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.

STACK or CHIMNEY — Any vertical structure enclosing a flue or flues that carry off smoke or exhaust from a solid fuel fired heating device or structure, including that part of the structure extending above a roof.

§ 102-3 Permit Required; Fee.

No person shall cause, allow or maintain the use of an outdoor furnace within the Town of Rochester without first having obtained a permit from the Building Inspector/Code Enforcement Officer and a copy of the regulations from the Town of Rochester. The permit fees will be established from time to time by the Town Board. Application for permit shall be made to the Building Inspector/Code Enforcement Officer on the forms provided.

§102-4 Existing Outdoor Furnaces.

Any outdoor furnace in existence on the effective date of this chapter shall be permitted to remain, provided that the owner applies for and receives a permit from the Town Building Inspector/Code Enforcement Officer within 90 days of such effective date; provided, however, that upon the effective date of this chapter, all provisions hereof, except §102-5(C),(J) shall immediately apply to existing outdoor furnaces. All of the provisions of this chapter shall continue to apply to existing outdoor furnaces which receive permits except §102-5(C),(J). If the owner of an existing outdoor furnace does not receive a permit within 90 days of the effective date of this chapter, the outdoor furnace shall be removed. "Existing" or "In Existence" means that the outdoor furnace is in place on the site.

§102-5 Specific Requirements.

A. Permitted fuel. Only firewood, untreated lumber, and solid fuels as prescribed by the manufacturer are permitted to be burned in any outdoor furnace. Burning of any and all other materials in an outdoor furnace is prohibited.

B. Permitted zones. Outdoor furnaces shall be permitted in any Zoning District as shown on the Town's Zoning Map.

C. Minimum lot size. Outdoor furnaces shall be permitted only on lots of one acre or more.

D. Setbacks. Outdoor furnaces shall be set back not less than 75 feet from the property line and shall not be located in the front of the lot or less than 25 feet from the structure to be heated. The distance of the setback from a structure to be heated used for agricultural purposes in an Agricultural District do not apply.

E. All outdoor furnaces shall be equipped with properly functioning spark arrestors or chimney caps as recommended by the manufacturer.

F. Chimney height and location.

(1) If located 50 feet or less to any residence not served by the furnace, the stack must be at least two feet higher than the eave line of that residence.

(2) If located more than 50 feet but no more than 100 feet to any residence not served by the furnace, the stack must be at least 75% of the height of the eave line of that residence, plus an additional five feet.

(3) If located more than 100 feet but no more than 150 feet to any residence not served by the furnace, the stack must be at least 50% of the eave line of that residence, plus an additional five feet.

(4) If located more than 150 feet but no more than 200 feet to any residence not served by the furnace, the stack must be at least 25% of the height of the eave line of that residence, plus an additional five feet.

(5) Notwithstanding, **§102-5(F)(1) – (4)** herein, the Building Inspector/Code Enforcement Officer upon inspection of any outdoor furnace may alter the appropriate chimney/stack height for an individual furnace, if circumstances dictate that such alteration is necessary in the interest of public safety.

G. The minimum stack height for any solid fuel-fired heating device shall meet or exceed the manufacturer's guidelines.

H. Any existing non-complying stack shall be removed, replaced or modified within a period of 60 days from the receipt of a notice generated from the Building Inspector/Code Enforcement Officer.

I. All stacks or chimneys must be so constructed to withstand high winds or other related elements.

J. Outdoor furnaces must be EPA approved.

§102-6 Suspension of Permit.

A. A permit issued pursuant to this chapter may be suspended as the Building Inspector/Code Enforcement Officer may determine to be necessary to protect the public health, safety and welfare of the residents of the Town of Rochester if any of the following conditions occur;

(1) The emissions from the outdoor furnace interfere with the reasonable enjoyment of life or property;

(2) The emissions from the outdoor furnace cause damage to vegetation or property;

B. A suspended permit may be reinstated once the condition which resulted in suspension is remedied and reasonable assurance is 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 chapter subject to the penalties provided in § 102-7 hereof.

§102-7 Penalties for Offense.

A. Violations. A violation of this chapter is hereby declared to be an offense, punishable by a fine not exceeding \$350 or imprisonment for a period not to exceed six months, or both, for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of five years, punishable by a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both; and upon conviction for a third or subsequent offense, all of which were committed within a period of five years, punishable by a fine not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both. However, for the purpose of conferring jurisdiction upon courts, provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation. The owners or occupants of premises upon which prohibited acts occur shall be jointly and severally liable for violations of this chapter. Any fine imposed hereunder shall, until paid, constitute a lien upon the real property where the outdoor furnace is located.

B. Appropriate Town actions. In case any outdoor furnace is erected, constructed, altered, converted or maintained or any outdoor furnace is used in violation of this chapter or of any ordinance or other regulation made under authority conferred thereby, the proper local authorities of the Town, in addition to other remedies, may institute any appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use of an outdoor furnace(s) to restrain, correct or abate such violation; to prevent the use of an outdoor furnace(s); or to prevent any illegal act, conduct, business or use, in or about such outdoor furnace(s); and upon the failure or refusal of the proper local officer, board or body of the Town to institute any such appropriate action or proceeding for a period of 10 days after written request by a resident taxpayer of the Town so to proceed, any taxpayers of the Town residing in the district wherein such violation exists, who are jointly or severally aggrieved by such violation, may institute such appropriate action or proceeding in like manner as such local officer, board or body of the Town is authorized to do.

§102-8 Effect on 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 conflict between any provision of this chapter and any applicable federal, state or local ordinances, codes, laws, rules or regulations, the more restrictive or stringent provision or requirement shall prevail. Outdoor furnaces must conform to all other applicable regulations of the Town's Zoning.

Section 2 – This law shall become effective upon filing in the Office of the New York State Secretary of State.

Roll Call:

Councilwoman Archer: aye
Councilman Cilenti: nay
Councilwoman Michalescu: aye
Supervisor Chipman: aye

3-1, motion carried
Spano- Absent