

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE TO REGULATE INSTALLATION, MAINTENANCE, AND OPERATION OF OUTDOOR SOLID FUEL HEATING DEVICES**

**WHEREAS**, outdoor furnaces may provide an economical alternative to conventional heating systems; and

**WHEREAS**, the Town Board is aware of concerns with regard to the safety and environmental impacts of outdoor furnaces, particularly with regard to the production of offensive odors and the potential health effects of uncontrolled emissions; and

**WHEREAS**, the Town Board recognizes that some of the major components of wood smoke in the National Ambient Air Quality Standards established by the Environmental Protection Agency (“EPA”) include ozone, carbon monoxide, nitrous oxide, particulate matter, and sulfur dioxide, which are associated with the operation of outdoor furnaces; and

**WHEREAS**, these six criteria pollutants were singled out by the EPA because of the negative effects they have on the health of people, which include coughing, breathing problems, respiratory illness, eye and nose irritation, hospitalization for diseases of the heart or lungs, and premature death; and

**WHEREAS**, the Town Board finds that it is in the best interest of the health, safety and welfare of the Town of Eagle and its residents to regulate the installation and use of any new or additional Outdoor Solid Fuel Heating Devices and to limit future installation of any new or additional Outdoor Solid Fuel Heating Devices to properties that are 3 acres or more in size; and

**WHEREAS**, The Town Board finds that it is the best interest of the health, safety, and welfare of the Town of Eagle and its residents to regulate the use of any Outdoor Solid Fuel Heating Devices that have been installed prior to the effective date of this Ordinance, and

**WHEREAS**, the Town Board has been granted the authority of village boards under Wis. Stat. § 60.22(3) and, therefore, the Town Board has authority under Wis. Stat. §§ 60.22(3) and 61.34 to enact ordinances to promote the health, safety, welfare and convenience of the public; and

**WHEREAS**, Wis. Stat. § 823.01 permits the Town to maintain an action to recover damages and/or abate a public nuisance from which injuries peculiar to the complainant are suffered, so far as necessary to protect the complainant's rights and to obtain an injunction to prevent the same; and

**WHEREAS**, the Town Board of the Town of Eagle desires to protect the health and human comfort of the residents of the Town of Eagle and the public through the enactment of the regulations set forth in this Ordinance, and

**WHEREAS**, the Town Board of the Town of Eagle, having determined that all procedural and notice requirements have been satisfied, having given the matter due consideration, and having based its determination on the effect of the Ordinance set forth herein on the health, safety, and welfare of the community,

NOW, THEREFORE, the Town Board of the Town of Eagle, Waukesha County, Wisconsin, DO ORDAIN AS FOLLOWS:

SECTION 1: The Town of Eagle Ordinance To Regulate Installation, Maintenance, and Operation of Outdoor Solid Fuel Heating Devices is hereby created to read as follows:

**Installation, Maintenance, and Operation of Outdoor Solid Fuel Heating Devices**

1. DEFINITIONS.

- A. OUTDOOR SOLID FUEL HEATING DEVICE. An outdoor device, structure, building or apparatus in which combustion of solid fuel takes place and such combustion supplies (either directly or indirectly) heat, hot water, or both for the interior of another building.
- B. EXISTING OUTDOOR SOLID FUEL HEATING DEVICE. An outdoor solid fuel heating device that was installed and operating on the subject property in the Town of Eagle prior to the effective date of this Ordinance.
- C. CLEAN WOOD. Natural wood that has not been painted, stained, or coated with a similar material, has not been pressure treated with preservatives, and does not contain resins or glues (such as in plywood or other composite wood products), cementing agents, or other types of coatings, and wood that has not been treated with any substance(s), including but not limited to, copper chromium arsenate, creosote, or pentachlorophenol. Clean wood also includes wood pellets made from clean wood.

2. INSTALLATION OF OUTDOOR SOLID FUEL HEATING DEVICES, MODIFICATION OF EXISTING OUTDOOR SOLID FUEL HEATING DEVICES.

- A. All existing outdoor solid fuel heating devices and all outdoor solid fuel heating devices installed after the effective date of this Ordinance shall have a permanent stack extending five feet (5') higher than the peak of the roof of any building used as a residential dwelling that is not serviced by the unit and that is located within one hundred fifty feet (150') from any property line. The provisions of this section shall apply irrespective of whether such building was erected before or after the installation of the outdoor solid fuel heating device provided, however, that the owner of the outdoor solid fuel heating device shall

have three (3) months from the date of occupancy of any newly constructed or structurally altered roof to come into compliance with this section.

B. An outdoor solid fuel heating device installed after the effective date of this Ordinance shall meet all of the following requirements:

1. HVAC Permit. An HVAC permit shall be obtained from the Building Inspector prior to the installation of any outdoor solid fuel heating device provided, however, that no such permit shall be issued for the installation of an outdoor solid fuel heating device on any lot less than three (3) acres in size.
2. Certification. An outdoor solid fuel heating device shall be certified by a recognized product testing company such as, for example Underwriters Laboratory (“UL”).
3. EPA Qualifications. Only outdoor solid fuel heating devices having an EPA qualification of “Phase 1” (bearing an orange tag), or “Phase 2” (bearing a white tag) may be installed in the Town of Eagle after the effective date of this ordinance.
4. Setback Requirements:
  - a. EPA Phase 1 qualified: installed not less than one hundred feet (100’) from any property line.
  - b. EPA Phase 2 qualified: installed not less than fifty feet (50’) from any property line.
5. Rear yard location. An outdoor solid fuel heating device may only be installed in the rear yard (i.e. the open area between the rear of the principal building and the rear lot line) of the lot on which the building being served by such outdoor solid fuel heating device is located.

3. OPERATION OF OUTDOOR SOLID FUEL HEATING DEVICES. The owner and/or operator of an outdoor solid fuel heating device in the Town of Eagle shall be responsible for compliance with all of the following restrictions:

- A. An outdoor solid fuel heating device in the Town of Eagle may only be operated from October 1<sup>st</sup> until April 30<sup>th</sup> unless such outdoor solid fuel heating device is the sole means of providing heat to the principal structure located on the subject property. Notwithstanding any provision of this section to the contrary, an outdoor solid fuel heating device certified as “Phase 2” qualified by the environmental Protection Agency may be operated throughout the year.
- B. No outdoor solid fuel heating device shall be operated except in strict compliance with the manufacturer’s instructions and specifications.
- C. An outdoor solid fuel heating device within the Town of Eagle shall be maintained and operated by the owner and/or operator of such device in compliance with all applicable laws and ordinances including, but not limited to, all emissions and air quality standards promulgated from time-to-time by the

Environmental Protection Agency, the Wisconsin Department of Natural Resources, and any other relevant state or federal agency.

- D. Only clean wood, or other solid fuel specifically permitted by the manufacturer of the outdoor solid fuel heating device such as corn or other pellets specifically designed for the specific outdoor solid fuel heating device may be burned in any outdoor solid fuel heating device in the Town of Eagle.
  - E. No person may burn, or allow to be burned, any of the following substances in an outdoor solid fuel heating device within the Town of Eagle:
    - 1. Rubbish or garbage including, but not limited to food waste, food wrapping, packaging, animal carcasses, paint or painted materials, furniture, composite shingles, construction or demolition debris, or other household waste.
    - 2. Waste oil or other oily waste.
    - 3. Asphalt and products containing asphalt;
    - 4. Treated or painted wood including, but not limited to plywood, composite wood products or other wood products that are painted varnished or treated with preservatives.
    - 5. Any plastic material including but not limited to nylon, PVC, ABS, polystyrene or urethane foam, and synthetic fabrics, plastic films and plastic containers.
    - 6. Rubber including tires and synthetic rubber-like products.
    - 7. Newspaper, corrugated cardboard, container board, office paper, and other materials that must be recycled in accordance with recycling ordinances, provided, however, that small amounts of paper and/or cardboard may be used for purposes of starter fuel if reasonably necessary to ignite an existing solid fuel heating device.
  - F. All ash or other by-products from the operation of an Outdoor Solid Fuel Heating Device shall be disposed of by the owner and/or operator in accordance with all applicable laws, ordinances and regulations.
4. STORAGE OF COMBUSTIBLE MATERIALS.
- A. All combustible materials shall be stored/maintained at a distance from the outdoor solid fuel heating device consistent with applicable standards of the National Fire Protection Agency.
  - B. Stockpiles of combustible materials may not be maintained in the same building or structure used to house any outdoor solid fuel heating device.
  - C. Stockpiles of combustible materials shall be no closer than twenty-five feet (25') to any property line or within the building setback, whichever is greater. No stockpile of combustible materials shall be maintained in any front yard.

D. Corn, or other similar food stuffs, stored for use as fuel for an outdoor solid fuel heating device shall be maintained in vermin-proof container(s).

5. INSPECTION OF OUTDOOR SOLID FUEL HEATING DEVICES.

The Fire Chief, or his or her designee, Building Inspector, law enforcement officer, or other designated Town official who presents credentials may inspect any property within the Town of Eagle for the purpose of determining compliance with the provisions with this ordinance.

6. VIOLATIONS.

A. Any person who has violated or permitted the violation of any provisions of this Ordinance may be issued a citation by a law enforcement officer in his or her discretion or at the request of the Fire Chief or his designee, Building Inspector, or other designated official. The issuance of a citation under this Ordinance, however, shall not preclude the Town from proceeding under any other section of this ordinance or under any applicable state or federal law or regulation relating to the same or any other matter shall not preclude the commencement of any action in the Circuit Court to abate any violation of this subsection.

B. If any outdoor solid fuel heating device becomes hazardous, harmful, noxious, offensive or a nuisance to the surrounding neighborhood as determined by the Fire Chief or his or her designee, Building Inspector, law enforcement officer, or other designated Town of Eagle official, the owner shall be directed to immediately correct or abate the nuisance using whatever means are necessary. If the nuisance cannot be abated, then operation of the device shall be discontinued until a solution acceptable to the Building Inspector and Fire Chief can be found and implemented.

7. PUBLIC NUISANCE DECLARED.

The installation, operation, or maintenance of any outdoor solid fuel heating device in violation of this Ordinance is hereby declared to constitute a public nuisance.

8. COST OF ABATEMENT.

In addition to any other penalty imposed by this ordinance for the installation, contrivance, creation, continuance or maintenance of a public nuisance, the cost of abating a public nuisance by the Town shall be collected as a debt from the owner, occupant or person causing, permitting or maintaining the nuisance and, if notice to abate the nuisance has been given to the owner, such cost shall be assessed against the real estate as a special charge.

9. PENALTY.

Except as otherwise provided in this chapter, any person who shall violate any provision of this ordinance or any regulation, rule or order made hereunder, or permit or cause a public nuisance shall be subject to a forfeiture of not less than \$100 nor more than \$1,000 plus the costs of prosecution. Each day of each violation shall constitute a separate offense.

SECTION 2: SEVERABILITY.

The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions, sections, or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinances whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

SECTION 3: EFFECTIVE DATE.

This ordinance shall take effect immediately upon passage and posting or publication as provided by law.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

TOWN OF EAGLE

\_\_\_\_\_  
Robert Kwiatkowski, Town Chair

ATTEST: \_\_\_\_\_  
Lynn M. Pepper, Town Clerk

Published and posted this \_\_\_\_\_ day of \_\_\_\_\_, 2011.