

ORDINANCE

The Town of Smithfield hereby ordains:

Chapter 258

OUTDOOR HYDRONIC HEATERS OUTDOOR WOOD BOILERS

Section 258-1. Purpose

The Town Council recognizes and finds that although Outdoor Hydronic Heaters and Outdoor Wood Boilers may represent an economical alternative to conventional heating systems, such systems 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 Smithfield. Such outdoor furnaces can cause harmful emissions, offensive odors, smoke, soot, fumes, ash and other conditions that may constitute a public nuisance.

This Ordinance seeks to regulate the location, use, construction and operation of outdoor furnaces so that they do not become a public nuisance.

Section 258-2. Definitions

The following definitions shall apply to this Ordinance:

ALLOWABLE FUELS –

1. Clean wood;
2. Wood pellets made from clean wood;
3. Manufacturer approved fuels, provided they are not Prohibited Fuels; and
4. Home heating oil that complies with the applicable sulfur content limit or natural gas may be used as starter fuels for dual-fired outdoor hydronic heaters.

CLEAN WOOD – wood that has no paint, stains, or other types of coatings, and wood that has not been treated with, including but not limited to, sealants, copper chromium arsenate, creosote, or pentachlorophenol.

COMMERCIAL-SIZE HEATER – A heater with a rated thermal output greater than 350,000 Btu/hr.

EXISTING UNIT OR EXISTING OHH – An outdoor hydronic heater that has been installed prior to the effective date of this Ordinance.

HEATING SEASON – Period beginning October 1st and ending May 1st, inclusive.

NEW OHH – An outdoor hydronic heater that is installed after the effective date of this Ordinance.

NUISANCE – An activity which substantially interferes with the right to use and enjoy property.

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

OUTDOOR HYDRONIC HEATER or OUTDOOR WOOD BOILER (sometimes referred to herein as **OHH**) - A free standing accessory structure, as defined in the Zoning Ordinance, housing a wood-burning furnace, with a smoke stack, used to provide heat or hot water to a building, or accessory structure designed to:

- (a) burn wood or other approved solid fuels;
- (b) that the manufacturer specifies for outdoor installation or installation in structures not normally occupied by humans (e.g., garages); and
- (c) heat 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. 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.

PROHIBITED FUELS –

- 1. Any wood that does not meet the definition of clean wood;
- 2. Rubbish or garbage, including but not limited to food wastes, food and beverage packaging, or food wraps;
- 3. Tires;
- 4. Lawn clippings, leaves, brush trimmings, or general yard waste;
- 5. Materials containing plastic;
- 6. Materials containing rubber;
- 7. Waste petroleum products;
- 8. Paints and paint thinners;
- 9. Chemicals;
- 10. Coal;
- 11. Any type of paper/cardboard;
- 12. Construction and demolition debris;
- 13. Plywood or other composite wood products;
- 14. Particleboard;
- 15. Salt water driftwood;
- 16. Manure;
- 17. Animal carcasses;
- 18. Asphalt products;
- 19. Any material prohibited for combustion by state or federal law or regulation; and
- 20. Lighter fluids, gasoline or chemicals to start the flames are prohibited.

RESIDENTIAL SIZE HEATER – a heater with a rated thermal output of 350,000 Btu/hr or less as rated by the test method identified in this Ordinance.

UNTREATED LUMBER – 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 258-3. Permit Requirements

No person or entity shall construct, install, use, operate, or permit to be operated on their property an outdoor hydronic heater or outdoor wood boiler without first obtaining a permit from the Building/Zoning Official. Installation of all new units requires an initial permit application following the effective date of this Ordinance. Said application shall include a survey showing all property lines, the locations and distances of all dwellings or occupied buildings on adjoining properties within three hundred (300) feet of the property line, and the proposed location of the OHH. All units, new or used, shall carry a tag certifying that the OHH complies with the EPA Phase II

Emission standard, or higher as defined by the EPA, which standard is herein incorporated by reference.

Any OHH in existence on the effective date of this Ordinance which was installed with proper permits and inspections shall be permitted to remain, provided that the owner complies with all conditions of this Ordinance within three (3) months of the effective date of this Ordinance. If the owner does not comply with all of the conditions of this Ordinance within three (3) months of the effective date of this Ordinance, the OHH shall be removed.

Any existing OHH that has been installed without the issuance of proper permits and/or inspections shall be removed.

An application fee of \$100 shall be charged for the initial application for new units. This fee shall be in addition to all other fees for inspections for compliance with all applicable building, plumbing, electrical, fire and other laws as deemed necessary by the Building/Zoning Official.

The owner of the lot upon which an OHH is located shall apply for an annual operating permit. This permit is required each calendar year after the initial installation of the OHH. The permit shall be valid for the period from October 1st through May 1st. The owner shall pay all fees imposed for the application for such operating permit as well as inspection fees to determine if the OHH complies with this Ordinance and all other applicable Codes and Ordinances.

A permit issued pursuant to this Ordinance may be suspended by the Building/Zoning Official to protect the public health, safety and welfare of the residents of the Town of Smithfield for the following reasons:

1. Malodorous air contaminants from the OHH are detectable outside the property of the person on whose land the OHH is located;
2. The emissions from the OHH interfere with reasonable enjoyment of life on neighboring property;
3. The emissions from the OHH cause damage to vegetation on neighboring property;
4. The emissions from the OHH are or may be harmful to human or animal health;
5. The burning of any prohibited fuels.

Section 258-4. Restrictions

OHHs that meet the requirements of this Ordinance may be permitted in R-80 and R-200 zoning districts only if the subject lot contains a minimum of 80,000 square feet. OHHs are prohibited in all other zoning districts within the Town of Smithfield.

The OHH must be a minimum of three hundred (300) feet from any building not served by the OHH.

The OHH must be located a minimum of one hundred (100) feet from any lot line.

The height of the chimney shall exceed the height of the roof peaks of buildings located within three hundred (300) feet of the OHH and are not served by the OHH, provided further, that in no event shall the height of the chimney be less than sixteen (16) feet or more than thirty-five (35) feet from ground level.

Thirty (30) feet from any structure that it services, or such greater distance as shall be advised by the manufacturer.

The OHH shall be located in the rear yard only as defined in the Smithfield Zoning Ordinance. The location of any OHH in any side yard or front yard as defined in the Smithfield Zoning Ordinance is expressly prohibited.

All OHHs may be in operation from October 1st to and including May 1st only.

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.

No person or entity operating an OHH shall cause, suffer, allow or permit the use of a fuel other than Allowable Fuels as here defined. No person or entity operating an OHH shall cause, suffer, allow or permit the burning of any Prohibited Fuels as herein defined.

Manufacturers Standards – All OHHs shall, as a minimum standard, operate in compliance with the operating manual and standards of the manufacturer of the unit, including, but not limited to, the manufacturer recommended loading times and amounts.

Only one (1) OHH is permitted for each property.

Particulate Emission Standards for New Units

1. All new units, as defined in this Ordinance, shall comply, as of the effective date of this Ordinance, with the EPA Phase II Emission standard, as defined by the EPA, which standard is incorporated herein by reference.
2. No person or entity shall purchase, operate, install or allow installation of an OHH for use in the Town of Smithfield unless it has been certified to meet a particulate matter emission limit of 0.32 lb/MMBtu heat output and satisfies the 2010 USEPA standard for same (the commonly called Phase II Emission standard).

Section 258-5. Existing Units

- A. All provisions of this Ordinance shall become effective three (3) months after passage with respect to all existing units in use and operation before the effective passage of this Ordinance.
- B. Any existing unit as defined herein that is to be replaced shall meet all provisions set forth in this Ordinance except as specified herein.
- C. Compliance with this Ordinance shall not exonerate or insulate the owner of an OHH from the provisions of Section 258-6 below.

Section 258-6. Applicability of Other Regulations and Laws

- A. Compliance with Law

All OHHs shall be manufactured, constructed, installed, operated and located in conformance with any other applicable state or federal laws or regulations, including but not limited to those of the US EPA and RIDEM. In the event of any conflict among state, federal and local ordinances, the more restrictive law or regulation shall apply. All other provisions of the building code, electrical code or any other applicable codes shall also apply, as well as applicable subdivision and zoning regulations.

B. Nuisance or Other Condition

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

Section 258-7. Suspension of Operation

A. The Building/Zoning Official, or his designee, may issue an order requiring the immediate suspension of operation of an OHH should he determine that a nuisance is or has been caused by the use and operation of the OHH, as a result of any condition, including, without limitation, malodorous air contaminants detectable on land other than that of the OHH owner; emissions that interfere with the reasonable enjoyment of the life or property of any person; emissions that cause damage to the environment, vegetation or property of another; or for any other violation of the terms of this Ordinance.

B. The use of an OHH may be reinstated by the Building/Zoning Official, or his designee, once he determines that compliance has been established and the offending condition has been remedied.

Section 258-8. Penalties

Failure to comply with any provision of this Ordinance shall be a violation, and a first offense shall be punishable by a written warning. Each offense thereafter shall be punishable by a fine of \$100.00 per day. Each day of each offense shall constitute a separate violation.

The Building/Zoning Official, or his designee, shall be responsible for the enforcement of this Ordinance. The Building/Zoning Official shall have the discretion to forego a warning for a first violation, if, in his reasonable discretion, he is of the belief that the violation is unintentional and can be corrected in less than ten (10) days. Should the owner abate the violation within the time established by the Building/Zoning Official, it shall not constitute a first offense.

Any person or entity in violation of the terms of this Ordinance shall, in addition to the above sanctions, be liable to the Town of Smithfield for all costs of remediation actions necessitated by the actions of the violator, and for the costs (including reasonable attorney fees) of any action brought for equitable or legal relief against the violator, which costs and fees shall constitute a lien against the property on which the OHH is located.

THIS ORDINANCE SHALL BECOME EFFECTIVE ON FEBRUARY 20, 2009.