

# VILLAGE OF HOBART, NEW YORK

## A LOCAL LAW REGULATING EXTERNAL FUEL BURNING DEVICES

Local Law #    /    of 2009

Be it enacted by the Village Board of the Village of Hobart, New York, in the County of Delaware, as follows:

### Section 1. Purpose and scope.

- A. Residences and commercial establishments situated within the Village of Hobart are entitled to clean air and environmental circumstances free of unreasonable dust, obnoxious odors, noxious fumes and smells, as well as an environment free of stored debris and storage of combustible fuels in adjacent or exposed exterior areas.
- B. This regulation shall provide for the requirements and limitations of the installation of any exterior furnace or burning device, the primary purpose of which is to convert combustible fuel into a heat or energy source for interior spaces.

### Section 2 Definitions.

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

EXTERIOR FURNACE – Any device, contrivance or apparatus or any part thereof which is installed, affixed or situated out-of-doors for the primary purpose of the combustion of fuel from which heat or energy is derived and intended to be directed there from by conduit or other mechanism into any interior space for the supply of heat or energy.

FURNACE DEVICE, EXTERIOR – Any contrivance, apparatus or part thereof, including a boiler, fire box, exchanger, grate, fuel gun, fuel nozzle, chimney, smoke pipe, exhaust conduit and like devices used for the burning of combustible fuels for the creation of heat or energy from an exterior location into an interior location.

### Section 3. Permitted locations; installation standards; fuel limitations.

- A. Standards for the installation of any exterior furnace or furnace device, exterior, in addition to any manufacturer's recommended installation requirements, shall also require the following:
  - (1) Installation upon a nominal six-inch thick permanent, reinforced cement pad in such dimension so as to allow a minimum of six inches of exposed surface area along the perimeter of the pad.
  - (2) Installation of a smokestack to a minimum height of fifteen feet in elevation from the ground. The location of any exterior furnace in relation to minimum smokestack height shall also be as follows:
    - a. If the exterior furnace is located less than 75 feet from a residence or commercial establishment not served by the furnace, the smokestack height shall be at least two feet higher than the eave of that residence/commercial establishment;

b. If the exterior furnace is located 75 to 150 feet from a residence or commercial establishment not served by the furnace, the smokestack height shall be at least 75 percent of that eave's height, plus an additional two feet.

c. If the exterior furnace is located 150 to 250 feet from a residence or commercial establishment not served by the furnace, the smokestack height shall be at least 50 percent of that eave's height, plus an additional two feet.

d. If the exterior furnace is located more than 250 feet from a residence or commercial establishment not served by the furnace, the smokestack height shall be at least 25 percent of that eave's height, plus an additional two feet.

e. The location of the exterior furnace must comply with all setback regulations from all property lines and comply with all separation distances from other structures on the premises as may be imposed by the Zoning Code of the Village of Hobart and the Building Code of the State of New York.

(3) Installation of any electrical or plumbing apparatus or device used in connection with operation of an exterior furnace shall be in conformity with all applicable electrical and plumbing codes and, in the absence of such code, in conformity with the manufacturer's installation specifications.

(4) Any exterior furnace or furnace device, exterior, installation abutting premises in residential/commercial use shall maintain a setback greater than 15 feet distant from the residential use property line.

(5) Any exterior furnace or furnace device installation must be EPA Phase 2 Qualified.

B. Fuel substances permitted for combustion in an exterior furnace installation shall be limited to the following:

(1) Natural gas, propane, home heating oil, fuel pellets, coal, corn, rice and untreated wood.

C. Fuel substances prohibited for combustion in an exterior furnace installation shall include the following:

(1) Industrial waste, rubber, plastic, used motor oil, toxic chemicals, contaminated waste, yard waste, household garbage, cardboard and wastepaper, animal waste and any material prohibited for combustion by federal or state statute.

(2) Lighter fluids, gasoline or chemicals to start the furnace shall be prohibited.

D. No exterior furnace shall be utilized in any manner as a waste incinerator.

E. No external furnace or furnace device shall begin operation until the unit is inspected and approved by the Village Code Enforcement Officer.

#### **Section 4. Nonconforming uses.**

A. Except as hereinafter provided, the lawful use of any external fuel burning device existing at the time of the adoption of this article may be continued, although such use does not conform with the provisions of this article.

B. No external fuel burning device existing at the time of the adoption of this article shall thereafter be extended or enlarged.

- C. Any existing external fuel burning device which is abandoned or discontinued for a period of twelve consecutive months shall not be permitted to be reestablished as a nonconforming use, and must be immediately removed by the property owner from the subject premises.
- (1) If the property owner fails to remove the external fuel burning device by the end of said twelve-consecutive-month period, the Village of Hobart Code Enforcement Officer shall give written notice by certified mail or personal service to the owner of the property upon which the external fuel burning device is located. Such notice shall provide that said owner shall remove the external fuel burning device within 15 days of the date the notice is either postmarked or personally served upon the owner.
  - (2) Should the external fuel burning device not be removed within the time specified, the Code Enforcement Officer shall take reasonable steps to effect its removal.
  - (3) The cost incurred by the Village to effect said removal (including any attorneys fees incurred by the Village to effect the removal), plus an amount equal to 50% of said costs of removal, shall be charged to the owner of said premises. Said expense shall be paid by the owner of the property so affected within 30 days from the date said costs are presented to the owner. If said expense is not paid within the thirty-day time frame, then said expense shall be charged to the property so affected by including such expense in the next annual Village tax levy against the property.

#### **Section 5. Permit required.**

No person shall cause, allow or maintain the use of an external fuel burning device within the Village of Hobart without first having obtained a permit from the Village of Hobart Code Enforcement Officer. Application for permit shall be made to the Code Enforcement Officer on the forms provided. All nonconforming users must obtain a permit from the Hobart Village Code Enforcement Officer within six (6) months from the date of adoption of this statute.

#### **Section 6. Suspension of permit.**

- A. A permit issued pursuant to this chapter may be suspended as the Code Enforcement Officer may determine to be necessary to protect the public health, safety and welfare of the residents of the Village of Hobart if any of the following conditions occurs:
- (1) The emissions from the external fuel burning device interfere with the reasonable enjoyment of life or property;
  - (2) The emissions from the external fuel burning device cause damage to vegetation or property; or
  - (3) The emission from the externally fuel burning device are or may be harmful to human or animal health.

#### **Section 7. Penalties for offenses.**

- A. Any person or entity illegally installing, maintaining or operating a device or apparatus regulated by this chapter shall, upon being found guilty of such offense, be liable for a monetary fine not to exceed \$250. Each day a violation exists shall constitute a separate and distinct violation.

- B. Any person or entity found in violation of the provisions of this article shall, in addition to any fine imposed, be liable to the municipality for any costs of any civil proceedings that may be brought by the municipality against the offender with respect to removal of the conditions of violation thereof, plus actual disbursements and reasonable attorney fees incurred by the municipality in such action.

### **Section 8. Waivers.**

Where the Village of Hobart Board finds that extraordinary and unnecessary hardships may result from strict compliance with this chapter, it may vary the regulations so that substantial justice may be done and the public interest secured, provided that such variations will not have the effect of nullifying the intent and purpose of this chapter or of jeopardizing the health, safety or welfare of the public. In varying any regulations, the Village of Hobart Board may impose such conditions and requirements as it deems reasonable and prudent. The Village of Hobart Board may, at its discretion, hold a public hearing as part of its review. If the Village of Hobart Board grants the waiver, a permit shall be issued for the external fuel burning device. If the Village of Hobart Board denies the waiver, the external fuel burning device must either be brought into compliance with this chapter or removed. If the Village of Hobart Board does not take any action with respect to the waiver within 60 days from its receipt of an application for waiver, the waiver shall be deemed denied.

### **Section 9. Authority; enforcement.**

- A. This article is adopted pursuant to the authority of Article 2, § 10 of the New York State Municipal Home Rule Law, and Article 4, § 4-412 of the New York State Village Law.
- B. The Village of Hobart Code Enforcement Officer, or any other person who may hereafter be designated by resolution of the Village Board of Trustees, is hereby authorized in the name and on behalf of the Village of Hobart to undertake and prosecute any proceedings necessary or appropriate to enforce compliance with this article.

### **Section 10. Severability.**

In the event that any individual section or provision within this article shall be found invalid, the invalidity shall pertain only to the specific section, and all other aspects of this article shall remain in full force and effect.

### **Section 11. Fees.**

A fee schedule shall be established by resolution of the Village Board. Such fee schedule may thereafter be amended from time to time by like resolution.

### **Section 12. Effect on other regulations.**

Nothing contained herein shall authorize or permit burning which is prohibited by codes, laws rules or regulation promulgated by the United States Environmental Protection Agency, New York State Dept. of Environmental Conservation, or any other federal, state regional or local agency. Exterior furnaces, and exterior fuel burning devices, and any electrical, plumbing or other apparatus or device used in connection with same shall be installed, operated and maintained in conformity with the manufacturer's specifications and any and all applicable local, state, and federal codes, laws, rules and regulations. In the event a conflict arises

between any provision of this section and any applicable federal, state, or local ordinance code, rule or regulation, the more restrictive or stringent provision or requirement shall apply.

### **Section 13. Further Rules**

1. Complaints – Any village resident who has secured a permit to install an exterior furnace or device in doing so acknowledges and authorizes the Village Code Enforcement Officer or any other person designated by the village to inspect the exterior furnace or device in the event a written complaint is filed relative to a violation of this Local Law.
2. Seasonal Use – Exterior furnaces and exterior furnace devices may only be used from September 1<sup>st</sup> through and including May 31<sup>st</sup> of the year.
3. Amendments – The Village reserves the right to amend the Local law as the devices mentioned herein become improved and more efficient.

### **Section 14. Effective date.**

This Local law shall take effect immediately upon filing in the office of the New York State Secretary of State in accordance with section 27 of the Municipal Home Rule Law.