

Local Law # _____ of 2009

A Local Law Amending Local Law #6 of 2008 Regulating Outdoor Wood Boilers

§1. Title; statutory authority.

A. This local law shall be known as the "Town of Peru Outdoor Wood Boiler Local Law."

B. It is adopted pursuant to Municipal Home Rule Law, 10.

§2. Legislative intent.

Due to their design, outdoor wood boiler devices produce excessive smoke, which may have serious environmental and health impacts. While outdoor wood-burning devices are intended to burn only natural wood, homeowners sometimes add inappropriate materials such as yard waste, packing materials, construction debris and even household garbage. Burning these waste materials in an outdoor wood-burning device can produce additional toxic air pollutants. Even when used in accordance with manufacturer's recommendations, these devices frequently cause nuisance conditions. Therefore, the purpose of this act is to ensure the proper siting, operation and performance of outdoor wood-burning devices in order to protect public health and environment.

§3. Definitions

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

FIREWOOD – Trunks and branches of trees and bushes, but does not include leaves, needles, vines or brush smaller than two inches in diameter.

UNTREATED LUMBER – Wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Untreated lumber does not include wood products that have been painted, pigmented-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

OUTDOOR WOOD BOILER – Any equipment, device or apparatus, or any part thereof, which is designed to be installed, affixed or situated outdoors for the primary purpose of combustion of firewood or untreated lumber to produce heat or energy used as a component of a heating system providing heat for any interior space, swimming pool, hot tub or other hot water uses. Outdoor wood boilers do not include fire pits, wood-fired barbeques or any equipment, device or apparatus designed to combust corn or wood pellets.

GROUND LEVEL: Base of unit.

§4. Permit required.

No person shall cause, allow or maintain the use of an outdoor wood boiler within the Town of Peru without first having obtained a permit from the Town Building Inspector. Application for permit shall be made to the Building Inspector on the forms provided. Prior to the issuance of a building permit, a site plan shall be approved by the Town of Peru Planning Board as per Article IV, Section 401 of the Town of Peru Zoning Ordinance.

§5. Prohibitions.

Outdoor wood boilers shall not be allowed:

- A. Within, or within 750 feet of, any of the following zoning districts:
 - 1) H-C;
 - 2) H-3;
 - 3) H-4 or
 - 4) COM-1 if contiguous with an H-C or H-3 or H-4 zone.
- B. If they emit more than an annual average 0.44 pounds fine particulate matter (PM 2.5) per million British thermal units (0.44lb/MMBtu) of heat input;
- C. If they emit more than 10.0 grams/hour of fine particulate matter (PM2.5);_or
- D. Within 750 feet of parks maintained or operated by the Town of Peru or any schools. This shall not include foot or bicycle paths unless the same are wholly located within a park maintained or operated by the Town of Peru.

§6. Requirements.

A. Unless otherwise prohibited herein, any persons who apply for a building permit for an outdoor wood boiler shall be issued the same provided the following requirements are met:

- 1. It is equipped with a permanent chimney stack no less than two (2) feet higher than the peak of any roof structure of any residence not served by the OWB located within 150 feet of the unit.
- 2. The outdoor wood boiler is equipped with a properly functioning spark arrester unless the use of a spark arrester is contrary to the outdoor wood boiler manufacturer's standard, written instructions or recommendations which accompany all of their outdoor wood boilers of the model in question;;
- 3. The outdoor wood boiler (excluding the chimney stack) is sufficiently

screened so that the same is substantially invisible when viewing the property from the road or roads to which the property is adjacent;

4. The location of the outdoor wood boiler is no less than one hundred and fifty (150) feet from any lot line of the lot upon which the outdoor wood boiler is located; and
5. The outdoor wood boiler is located in the rear yard or portion of the lot upon which the outdoor wood boiler is located;

Notwithstanding any of the above, in no event shall the emissions of the outdoor wood boiler exceed any mandatory emissions standard promulgated by any agency, division, department or office of the Federal or New York State Government;

B. Notwithstanding §6(A) above, and unless otherwise prohibited herein, any persons who apply for a building permit for an outdoor wood boiler which emits an annual average of 0.32 pounds per million British thermal units (0.32lb/MMBtu) heat output of fine particulate matter (PM 2.5) or less shall be issued the same provided the following requirements are met:

1. It is equipped with a permanent chimney stack no less than fifteen (15) feet above ground level;
2. The outdoor wood boiler is equipped with a properly functioning spark arrester unless the use of a spark arrester is contrary to the outdoor wood boiler manufacturer's standard, written instructions or recommendations which accompany all of their outdoor wood boilers of the model in question;
3. The outdoor wood boiler (excluding the chimney stack) is sufficiently screened so that the same is substantially invisible when viewing the property from the road or roads to which the property is adjacent;
4. The outdoor wood boiler is located no less than seventy (70) feet from any lot line of the lot upon which the outdoor wood boiler is located; and
5. The outdoor wood boiler is located in the rear yard or portion of the lot upon which the outdoor wood boiler is located;

Notwithstanding any of the above, in no event shall the emissions of the outdoor wood boiler exceed any mandatory emissions standard promulgated by any agency, division, department or office of the Federal or New York State Government;

C. Notwithstanding §5, §6(A) or §6(B) above, any persons who apply for a building permit and who establish that the outdoor wood boiler was installed in its current location prior

to March 12, 2007 shall be issued the same provided the following requirements are met;

1. The chimney height is no less than fifteen (15) feet above ground level.
 2. The outdoor wood boiler is equipped with a properly functioning spark arrester unless the use of a spark arrester is contrary to the outdoor wood boiler manufacturer's standard, written instructions or recommendations which accompany all of their outdoor wood boilers of the model in question;
 3. The outdoor wood boiler is sufficiently screened so that the same is substantially invisible when viewing the property from the road or roads to which the property is adjacent;
 4. The outdoor wood boiler is not located within, or within 750 feet of, any of the following zoning districts:
 - a) H-C;
 - b) H-3;
 - c) H-4 or
 - d) COM-1 if contiguous with an H-C or H-3 or H-4 zone.
 5. The outdoor wood boiler is not located within 750 feet of parks maintained or operated by the Town of Peru or any schools. This shall not include foot or bicycle paths unless the same are wholly located within a park maintained or operated by the Town of Peru; and
 6. The application for the building permit is made within ninety (90) days of the effective date of this local law.
- D. In establishing that the outdoor wood boiler was installed in its current location prior to March 12, 2007 pursuant to section 6(C) above the applicant may submit to the code enforcement officer receipts, bills of sale, sworn statements or other documentary evidence. The code enforcement officer shall determine, based upon the documentary evidence submitted, site inspections, his personal knowledge, interviews with the applicant or any other persons, or any other information he reasonably considers to be relevant, whether the applicant has met this requirement. The code enforcement officer's determination shall be reasonable considering all of the facts and circumstances known to him at the time the determination is made.
- E. Any person that had obtained a building permit under §6(C) of Local Law #6 of 2008 prior to the effective date of this law shall not be required to obtain another building permit under §6(C) of this law and shall be deemed to have been issued a building permit under §6(C) of this law. Any person who had pending a fully complete application for a building permit under §6(C) of Local Law #6 of 2008 on the effective date of this law shall be deemed to have an application pending under §6(C)

of this law.

- F. In meeting any of the particulate emissions standards herein the applicant shall provide proof of same from an accredited independent laboratory according to EPA method 28 OWHH. The "Orange Tag" which accompanied the unit issued pursuant to the U.S. Environmental Protection Agency 2007 Outdoor Wood-Fired Hydronic Heater Program shall be acceptable proof of the unit's particulate emissions. However proof that an Orange Tag accompanied the unit is not, by itself, proof that the unit meets the particulate emissions standards herein.

§7. Expiration of permits issued under §6(C).

Any building permit issued pursuant to §6(C) above will expire on May 31, 2023 after which it shall be necessary to obtain a new building permit pursuant to the applicable laws as they exist at that time. It shall be a violation, subject to the penalties outlined in §11 below, for any person to operate an outdoor wood boiler for which a building permit has expired under this section.

§8. Permitted Fuel.

Permitted fuel. Only firewood, untreated lumber, wood pellets, corn or cherry pits are permitted to be burned in any outdoor wood boiler. Burning of any and all other materials in an outdoor wood boiler is prohibited.

§9. Suspension of permit.

A. A permit issued pursuant to this local law may be suspended as the Building Inspector may determine to be necessary to protect the public health, safety and welfare of the residents of the Town of Peru if:

- 1) Emissions from the outdoor wood boiler exhibit greater than 20% opacity (six-minute average), except for one continuous six-minute period per hour of not more than 27% opacity, which shall be determined as provided in 6 NYCRR 227-1.3(b); or
- 2) Emissions from the outdoor wood boiler exceed the emissions standards under which a building permit was originally issued; or
- 3) The outdoor wood boiler creates a nuisance or otherwise violates an applicable local (including county), state or federal law, ordinance, statute, rule or regulation.

- B. A suspended permit may be reinstated once the condition which resulted in

suspension is remedied and reasonable assurances are 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 local law subject to the penalties provided in §11 hereof.

§10. Permitting Process.

All procedures of Article IV, Section 401 of the Town of Peru Zoning Ordinance (Site Plan Review) shall be met. Upon approval of the site plan by the Planning Board, a building permit may be issued for an outdoor wood boiler by the Building Inspector. In reviewing a site plan for an outdoor wood boiler, the Planning Board may request additional information to be placed on the site plan. The Planning Board may approve, approve with conditions, or disapprove a site plan for an outdoor wood boiler. The Planning Board may impose such reasonable restrictions to protect the health, safety and general welfare of the Town as a condition of approval.

§11. Penalties for offenses.

A. Violations. A violation of this local law is hereby declared to be an offense punishable by a fine not exceeding \$500.00 or imprisonment for a period of not to exceed six months, or both, and suspension of permit 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 \$500.00 nor more than \$750.00 or imprisonment for a period not to exceed six months, or both and suspension of permit; 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 \$750.00 nor more than \$1000.00 or imprisonment for a period not to exceed six months, or both and the revocation of permit. However, for the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this local law shall be deemed misdemeanors and, for such purpose only, all 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 local law. Any fine imposed hereunder shall until paid, constitute a lien upon the real property where the outdoor wood boiler is located.

B. Appropriate Town actions. In the event that any outdoor wood boiler is erected, constructed, reconstructed, altered, converted or maintained or any outdoor wood boiler is used in violation of this local law 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 action or proceeding to restrain, correct or abate such violation, to prevent the use of an outdoor wood boiler(s), or to prevent any illegal act, conduct, business or use, in or about such outdoor wood boiler(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 ten (10) days after written request by a resident taxpayer of the Town so to proceed, any three 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.

§12. 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 wood boilers, and any electrical, plumbing or other apparatus or device used in connection with an outdoor wood boiler, 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 a conflict between any provision of this local law and any applicable federal, state or local ordinances, codes, laws, rules or regulations, the more restrictive or stringent provision or requirement shall prevail.

§13. Severability.

If any section or specific part of provision or standard of this local law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this local law or the application thereof to other persons or circumstances, and the Town Board hereby declares that it would have enacted this chapter of the remainder thereof had the invalidity of such provision or application thereof been apparent. If any section of this local law is found by a court to be invalid for any reason, the decision of the court shall not affect the validity of any other section, provision, or standard of these regulations except the provision in question. The other portions of these regulations not affected by the decision of the court shall remain in full force and effect.

§14. Rescission of Local Laws #3,#5 and #6 of 2008

Upon the effective date of this local law, local laws #3, #5 and #6 of 2008 of the Town of Peru shall be rescinded in their entirety.

§15. Effective Date

This local law shall take effect immediately upon filing in the office of the Secretary of State.

Adopted by Town Board on this ____ day of _____, 2009.