

**TOWN OF CEDARBURG
ORDINANCE NO. 2009-3**

**An Ordinance to Create Chapter 112 of the Town of Cedarburg Code of Ordinances,
Ozaukee County, Wisconsin, Regarding the Regulation of Outdoor Wood-Fired Furnaces.**

- WHEREAS,** the Town of Cedarburg is a municipal body corporate and politic within Ozaukee County;
- WHEREAS,** the Town of Cedarburg possesses village powers under Ch. 61, Wis. Stats;
- WHEREAS,** the Town Board recognizes that health officials have only recently started to understand the health effects on people who regularly live or work around wood fires;
- WHEREAS,** the Town Board further recognizes that some of the major components of wood smoke are listed as "criteria pollutants" by the U.S. Environmental Protection Agency (EPA) in the National Ambient Air Quality Standards, which include ozone, carbon monoxide, nitrous oxides, particulate matter, and sulfur dioxide;
- 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;
- WHEREAS,** the EPA has a voluntary program to rate outdoor wood-fired furnaces (also known as hydronic heaters) to meet stricter guidelines and create less pollutants to reduce health risks; and
- WHEREAS,** the Town Board believes it is in the best interest of the health, safety and welfare of the Town and its residents to regulate the use of Outdoor Wood-Fired Furnaces based upon the EPA's rating program,

NOW, THEREFORE, BE IT ORDAINED by the Town Board of the Town of Cedarburg, Ozaukee County, Wisconsin, that the following Chapter 112 of the Town of Cedarburg Code of Ordinances be created to read as follows:

Chapter 112

OUTDOOR WOOD-FIRED FURNANCES

§112-1. Title.

This Ordinance shall be known as the Town of Cedarburg Outdoor Wood-Fired Furnace Ordinance.

§112-2. Legislative Intent.

Although outdoor wood-fired furnaces may provide an economical alternative to conventional heating systems, concerns have been raised regarding the safety and environmental impacts of these heating devices, particularly the production of offensive odors and potential health effects of uncontrolled emissions. This Ordinance is intended to ensure that outdoor wood-fired 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 of Cedarburg. By the enactment of this Ordinance, the Town intends to remediate and control the effects of outdoor wood-fired furnaces within the Town starting on the day after its enactment. To accomplish that end, the Town intends this Ordinance to have retroactive effect to the extent reasonably necessary to accomplish its intended purposes, including the modification, replacement, or restriction of all existing Outdoor Wood-Fired Furnaces located in the Town as necessary to bring them into compliance with the requirements of this Ordinance.

§112-3. Authority.

This chapter is adopted under the authority granted to the Town Board by §60.22, Wis. Stats., and its exercise of village powers under Ch. 61, Wis. Stats.

§112-4. Definitions and Word Usage.

As used in this Chapter, the following terms, shall have the meaning indicated:

CLEAN WOOD – wood that does not have paint, stains, cementing agents, or other types of coatings, and wood that has not been treated with substances, including but not limited to, copper arsenate, creosote, or pentachlorophenol, and wood pellets made from clean wood.

CODE ENFORCEMENT OFFICER – The Building Inspector, Constable, or other person authorized by the Town Board of the Town of Cedarburg to administer and enforce this Ordinance whose duties shall include responding to resident questions and complaints and performing other tasks as the Town Board may assign.

EXISTING OUTDOOR WOOD-FIRED FURNACE – An Outdoor Wood-Fired Furnace that was installed prior to the effective date of this Ordinance.

OUTDOOR WOOD-FIRED FURNACE – A fuel burning furnace, stove, boiler, or device designed to (1) burn wood or other manufacturer approved fuel products; (2) that the manufacturer specifies for outdoor installation or installation in structures not intended for habitation by humans or domestic animals; and (3) heats 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. An Outdoor Wood-Fired Furnace may also be referred to as an Outdoor Wood Boiler or Outdoor Wood-Fired Hydronic Heater.

PHASE 1 UNIT– Any Outdoor Wood-Fired Furnace that meets EPA Phase 1 qualified level on a particulate matter emission limit of 0.60 lb/MMBtu heat output. Emission levels are annual averages unless qualified for heating season use only. The unit has met the EPA Fired Hydronic Heater (EPA OWHH) Phase 1 emission level and has the proper qualifying label and hangtag.

PHASE 2 UNIT– Any Outdoor Wood-Fired Furnace that meets a particulate matter emission limit of 0.32 lb/MMBtu heat output (weighted average representing the range of burn rates expected in a year) and a maximum individual test run of 18.0 grams per hour. The unit has met the EPA OWHH Phase 2 emission level and has the proper qualifying label and hangtag.

Phase 2 Qualified units are cleaner and pollute less than those units that have not met this emission level.

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.

UNREGULATED OUTDOOR WOOD-FIRED FURNACE – Any wood-fired furnace that does not meet United States Environmental Protection Agency Phase 1 or Phase 2 qualified standards.

EXISTING OUTDOOR WOOD-FIRED FURNACE - Existing or in existence means that the Outdoor Wood-Fired Furnace is installed on the site prior to the effective date of this Ordinance.

§112-5. Permit Required.

No person may install or operate an Outdoor Wood-Fired Furnace within the Town of Cedarburg without obtaining a permit from the Building Inspector indicating that the unit meets the requirements of this Ordinance and the owner shall pay any permit fee according to the Annual Fee Schedule established by the Town Board.

§112-6. Existing Outdoor Wood-Fired Furnaces.

Any existing Outdoor Wood-Fired Furnace that does not conform to the requirements of this Ordinance, shall, upon the Town's receipt of a written verified complaint by an adjacent neighboring resident, be modified or replaced to meet the requirements of this Ordinance and receive a permit within 30 days of the notice of noncompliance from the Code Enforcement Officer. If the owner of an existing Outdoor Wood-Fired Furnace does not receive a permit within such time period then the operation of the Outdoor Wood-Fired Furnace shall be discontinued until such time it is modified or replaced to meet the requirements of this Ordinance. Any existing Outdoor Wood-Fired Furnace that remains inoperable without a permit for a period longer than twelve (12) consecutive months shall be removed. If an Outdoor Wood Fired-Furnace is located within a permitted accessory building and the unit is required to be removed; the accessory building may remain on the property.

§112-7. Installation of Outdoor Wood-Fired Furnaces.

- A. Any person desiring to install or operate an Outdoor Wood-Fired Furnace within the Town shall obtain a permit from the Building Inspector according to this Ordinance. The applicant for such a permit shall meet the following requirements:
 - (1) Present a plan showing all property lines, the locations and distances of all residences, dwellings or occupied buildings on adjoining properties, and the proposed or existing location of the Outdoor Wood-Fired Furnace.
 - (2) Any existing unregulated Outdoor Wood-Fired Furnace or existing Phase 1 Outdoor Wood-Fired Furnace shall be located at least 500 feet from any neighboring residence. These furnaces shall have a stack or chimney that extends to a minimum height of the residential structure roof peak of which the Outdoor Wood-Fired Furnace is servicing plus two (2) feet. If new residences are built within 500 feet, the current furnace is allowed to remain; however, the stack must be two (2) feet higher than the highest of the residences. The maximum height of the Outdoor Wood-Fired Furnace stack or chimney shall not exceed fifty

(50) feet and shall not exceed the maximum height requirement in that specific zoning district.

- (3) Locate all Phase 2 Outdoor Wood-Fired Furnaces at least 100 feet from any neighboring residence. These furnaces shall have a stack or chimney that extends to a minimum height of the roof peaks of the highest residence (that which it is serving, or that of an adjacent residence, whichever is higher) plus two (2) feet; if new residences are constructed on adjacent properties, the stack must be two (2) feet higher than the highest of the residences. The maximum height of the outdoor wood-fired furnace stack or chimney shall not exceed fifty (50) feet and shall not exceed the maximum height requirement in that specific zoning district.
- (4) If applicable, provide a copy of the EPA's qualifying label and hangtag for the unit.
- (5) Outdoor Wood-Fired Furnaces are prohibited in all business and industrial zoning districts.
- (6) Present evidence that the applicant has obtained all applicable building permits for the installation of the Outdoor Wood-Fired Furnace and its connection to the mechanical system of the structure it will serve.
- (7) Provide a copy of the manufacturer's specification and instructions, which the applicant shall comply with and not alter at any time.
- (8) Demonstrate that the Outdoor Wood-Fired Furnace has been laboratory tested and listed to comply with appropriate safety standards such as UL (Underwriters Laboratories) or ANSI (American National Standards Institute) standards.
- (9) All Outdoor Wood-Fired Furnaces shall be equipped with properly functioning spark arrestors.
- (10) The application shall be signed by all owners of the lot on which the Outdoor Wood-Fired Furnace will be located and the contractor installing the Outdoor Wood-Fired Furnace.

§112-8. New Units and Replacement Units.

If an Outdoor Wood-Fired Furnace is replaced or upgraded, a permit shall be required pursuant to Subsection 112-5 of this Ordinance and shall comply with all sections of this Ordinance. All new, replacement and upgraded furnaces will meet the requirements of the Phase 2 unit.

§112-9. Use of Outdoor Wood-Fired Furnace.

- A. The only substance that may be burned in any new or existing Outdoor Wood-Fired Furnace is clean wood, wood pellets, corn products, biomass pellets or other listed fuels specifically permitted by the manufacturer's instructions such as fuel oil, natural gas or propane backup.
- B. No person shall burn any of the following in an Outdoor Wood-Fired Furnace:
 - (1) Any wood that does not meet the definition of clean wood.

- (2) Tires.
 - (3) Lawn clippings or yard waste.
 - (4) Rubbish or garbage, including but not limited to food wastes, food packaging, or food wraps.
 - (5) Materials containing plastic.
 - (6) Materials containing rubber.
 - (7) Waste petroleum products.
 - (8) Paint and paint thinners.
 - (9) Any type of paper/cardboard.
 - (10) Construction and demolition debris (such as shingles).
 - (11) Plywood or other composite wood products.
 - (12) Particleboard.
 - (13) Manure.
 - (14) Animal carcasses.
 - (15) Asphalt products.
 - (16) Used cooking oils.
- C. The Outdoor Wood-Fired Furnace shall at all times be operated and maintained in accordance with the manufacturer's specifications.
- D. The Outdoor Wood-Fired Furnace shall be maintained and operated in compliance with all emissions and air quality standards promulgated by the United States Environmental Protection Agency, the Wisconsin Department of Natural Resources, or other relevant state or federal agency.
- E. Any ash or other by-products from the operation of the Outdoor Wood-Fired Furnace shall be disposed of in accordance with all applicable laws.

§112-10. Variance.

The Town Board shall have the following power: to authorize upon appeal in specific cases such variance from the terms of this Ordinance as will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions of the Ordinance will result in unnecessary hardship, and so that the spirit of the Ordinance shall be observed and substantial justice done. In varying any regulations, the Town Board may impose such conditions and requirements as it deems reasonable and prudent. The Town Board shall hold a public hearing as a part of its review. The owners of record in whole or in part as listed in the office of the Ozaukee County Register of Deeds and who are situated within 1,000 feet of the boundaries of the properties affected shall be sent a notice postmarked at least 10 days prior to the date of consideration by the Town Board. Upon submission of the variance request, the applicant shall pay a variance review fee according to the Annual Fee Schedule established by the Town Board.

§112-11. Nuisance.

The regulation and enforcement of outdoor wood-fired furnaces through this ordinance shall not preclude the Town from proceedings related to the same under Chapter 223: Nuisances.

§112-12. Enforcement and Penalties.

The Town Building Inspector, Constable, or other person appointed by the Town Board of the Town of Cedarburg shall serve as the Enforcement Officer who shall be responsible for enforcing the terms of this Ordinance.

A. Duties of Enforcement Officer.

- (1) Inspection – The Enforcement Officer, and any other individual representing the Town of Cedarburg whose presence is necessary to complete the inspection, may inspect any premises, building or structure in accordance with Subsection 112-12.B., of this Ordinance to determine whether or not a violation of this Ordinance exists.
- (2) Action – Whenever an inspection discloses a violation of this ordinance, the Enforcement Officer shall prepare a report detailing the violation and a recommendation regarding how the violation can be corrected. The Enforcement Officer, upon authorization by the Town Administrator, shall issue a written notice to the owner and/or the occupant of the premises as set forth in Subsection 112-12.C., along with a copy of the report.
- (3) Hearing Appearance – The Enforcement Officer shall appear at all hearings conducted in accordance with Subsection 112-12.E., and testify as to the violation.

B. Inspections; Permission.

The Enforcement Officer or any authorized officer, agent, employee or representative of the Town of Cedarburg may inspect any property for the purposes of ascertaining compliance with the provision of this Ordinance. Prior to entering upon any property to conduct an inspection, the Enforcement Officer or authorized Town representative of the Town shall obtain the permission of the owner or occupant of the property to conduct the inspection. If after due diligence, the Enforcement Officer or authorized Town representative is unable to obtain such permission, the Enforcement Officer shall have the authority to conduct the necessary inspection in accordance with this Ordinance and the applicable laws of the State, and, if necessary, obtain a special inspection warrant in accordance with sections 66.122 and 66.123, Wis. Stats. If a court orders the inspection, the defendant named in the order shall reimburse the Town of Cedarburg for the costs of filing the petition and reasonable attorney's fees.

C. Notice of Violation.

Whenever an inspection discloses that a violation of this Ordinance exists, the Enforcement Officer shall, upon authorization by the Town Administrator, issue a Notice of Violation to the owner and/or occupant of the premises. The Notice shall:

- (1) Be in writing.
- (2) Include a statement of the reasons why the Notice is being issued.
- (3) Contain a copy of the Enforcement Officer's inspection report detailing the conditions constituting the violation, contain an outline of the remedial action required to come into compliance with the Ordinance and state a reasonable time to rectify the violation.
- (4) Inform the owner of the right to request a hearing before the Town Board as set forth in Subsection 112-12.E.
- (5) Inform the owner/occupant that should there be a failure to comply with the Notice or request a hearing; the individual(s) will be subject to the penalties set forth in Subsection 112-12.F of the Ordinance, and the costs and expenses, including attorney's fees, of enforcing the terms of the Ordinance.

- (6) Except in emergency cases, the Notice shall be sent by registered mail or by certificate of mailing, or personally delivered to the owner and/or occupant of the premises upon which the violation exists.
- (7) Where the owner is absent from the Town of Cedarburg, all notices shall be deemed to be properly served if a copy of the Notice is served upon the owner personally, a copy of the Notice is sent by registered mail or by certificate of mailing to the last known address of the owner, regardless of proof of receipt, and is posted in a conspicuous place on or about the premises affected by the Notice or the owner is served with such Notice by any other method authorized under the laws of the State of Wisconsin.

D. Emergency Cases.

Whenever the Enforcement Officer finds that an emergency exists which requires immediate action to protect the public health, safety and welfare, the Enforcement Officer may, without notice or hearing, issue an order reciting the existence of such an emergency and requiring that such action be taken as is necessary to correct the violation and eliminate the emergency. Notwithstanding the other provisions of this Ordinance, such order shall be effective immediately.

E. Hearings.

- (1) Right To Hearing – Any person affected by any Notice which has been issued in accordance with the enforcement of any provision of this Ordinance, may request and shall be granted a hearing on the matter before the Town Board provided that such person file a written request for the hearing within ten (10) days after service of the Notice. The request shall contain a brief statement regarding the reasons for the request.
- (2) Scheduling and Conduct of the Hearing – Upon receipt of a request for a hearing, a time and place for the hearing shall be scheduled and posted in accordance with applicable open meeting requirements. The hearing shall be scheduled no later than sixty (60) days after the day on which the request was received. At the hearing, the person requesting the hearing shall be given the opportunity to be heard and show cause why the violation described in the Notice should not be abated.
- (3) Town Board Action – After such hearing the Town Board shall issue a written decision sustaining the Notice, modifying the Notice and attaching conditions or withdrawing the Notice. If the Town Board sustains the Notice, it shall be deemed to be a final order effective immediately.
- (4) Review by Court of Record – Any person or person aggrieved by a decision of the Town Board may present to a court of record a petition, duly verified, setting forth that such decision is illegal and specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing of the decision in office of the Town Clerk. Such petition shall not constitute a stay from the requirements of the final order unless an order to that effect is obtained from the court.

F. Remedies and Penalties.

Any person who has violated or permitted the violation of any provisions of this Ordinance may be issued a citation by the Enforcement Officer, Town Constable, or Town Administrator at its discretion to collect forfeitures. The issuance of a citation shall not preclude proceeding under any other ordinance or law relating to the same or any

other matter shall not preclude the issuance of a citation under this subsection. Any person who violates any of the terms of this Ordinance and is found guilty thereof shall be subject to a penalty as provided in Chapter 1, § 1-3.

§112-13. Municipality Exempt from Liability.

The Town of Cedarburg and its agents, officials and representatives, shall not, under any circumstances, be liable or responsible for damages caused to any person or property by reason of the issuance of any permit under the provisions of this Ordinance, or by reason of the conduct of any burning activity in compliance with the terms and provisions of this Ordinance. The person or party responsible for any such burning activity shall bear sole liability of any damages caused as a result thereof.

§112-14. Severability.

The provisions of this Ordinance are severable. If any sentence, clause or section is for any reason found to be unconstitutional, illegal or invalid, such decision shall not affect the validity of any of the remaining provisions of this Ordinance. It is hereby declared as the legislative intent that this Ordinance would have been adopted had such unconstitutional, illegal or invalid provisions not been included herein.


§112-15. Repealer.

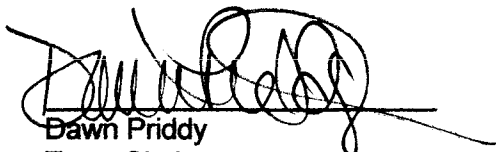
All ordinances or parts of ordinances in conflict herewith shall be and the same are hereby repealed.

§112-16. Effective Date.

This Ordinance shall be in full force and effect upon its passage and posting as provided by law.

PASSED AND ADOPTED by the Town Board of the Town of Cedarburg, Ozaukee County, Wisconsin, this 4th day of February, 2009.


David M. Valentine
Town Chairman


Dawn Priddy
Town Clerk