

Reopened Public Hearings were held at the Town Hall on Feb. 12, 2007, 6:00 PM

Presiding: Supervisor Michael Shultis

Attending: Councilwoman Kate Hyman, Councilwoman Barbara Zell, Councilwoman Janet Briggs, and 8 members of the public and press.

Supervisor Shultis reopened two Public Hearing by explaining that the Town Board wanted to permit the public continued opportunity to voice their opinions about the use of outdoor wood-burning boilers (Local Law #1 of 2007, and an amendment to the wording of the Ethics Law (Local Law #3, of 2006)*****

TOWN OF HURLEY LOCAL LAW #1 - 2007 (Revised 1/16/2007)

OUTDOOR WOOD-BURNING BOILERS

1. Title and Authority- This Local Law shall be known as the Town of Hurley "Outdoor Wood-burning Boiler Law". It is adopted pursuant to Home Rule. This Local Law is enacted pursuant to the powers granted to the Town by virtue of Article IX.2 (c) (5) of the New York State Constitution.

2. Authority; Enforcement - The Town of Hurley Code Enforcement Officer or any person who may hereafter be designated by resolution of the Town Board of the Town of Hurley is hereby authorized to undertake and prosecute any proceedings necessary or appropriate to enforce compliance with this local law.

3. Legislative Intent - While Outdoor Wood-burning Boilers (OWB'S) are advertised as an economical alternative to conventional heating systems, the New York State Attorney General's Office and the Department of Environmental Conservation found that OWB's may be among the dirtiest and least economical modes of heating. OWB's produce offensive odors and fine particulate matter pollution that has both short-term and long-term health effects detrimental to citizen's health. OWB's also deprive neighboring residents of the enjoyment of their property and/or use of their premises. Since neither federal nor New York State regulations address the proper use of, or limit the pollution from OWB's this Town of Hurley local law will impose limits and performance standards on OWB's to ensure that OWB's are utilized in a manner that does not endanger the health, safety, comfort, and general welfare of the residents of the Town and its inhabitants.

4. Definitions - "Outdoor Wood-burning Boilers" (OWB'S) means any equipment, device or apparatus, or any part thereof, which is installed, affixed or situated outdoors for the primary purpose of combustion of fuel to produce heat or energy used as a component of a heating system providing heat to the principal structure or any other site, building, or structure on the premises, or for any interior space or object such as a pool or hot tub.

a. "Violator" means any person or entity owning the property at the time the outdoor wood-burning boiler has been installed and/or operating or occupying the property and utilizing such outdoor wood-burning boiler.

b. "Untreated Lumber" means dry natural wood which has been milled and dried but which has not been painted, varnished or coated with a similar material; treated or combined with any petroleum product, chemical, preservative, glue, adhesive, stain, paint, or other substance; has not been pressure treated with preservatives and does not contain resins or glues as in plywood or other composite wood products.

c. "Firewood" means trunks and branches of trees and bushes but does not include leaves, needles, vines, or brush smaller than three inches (3") in diameter.

5. Permit Required - No person shall cause, allow or maintain the use of an Outdoor Wood-burning Boiler within the Town of Hurley without first having obtained a permit from the Town Code Enforcement Officer. Application for permit shall be made to the Town of Hurley Building Department. The fee for the burning permit is set by a resolution of the Town Board of Hurley and the board has the authority to alter the fee periodically. A burning permit issued under this Local Law constitutes a requirement to comply with all provisions of this Local Law and any additional special restrictions deemed necessary to protect public health and safety. The Town of Hurley Authority as defined above may suspend a permit issued pursuant to this Local Law if it is determined to be necessary to protect the public health, safety, and welfare of the residents of the Town of Hurley.

6. Existing Outdoor Wood-burning Boilers - "Existing" or "in existence" means that the OWB is in place on the site.

A. Any OWB'S in existence on the effective date of this Local Law shall be permitted to remain provided that the owner applies for and receives a permit from the Town of Hurley Building Department within two (2) months of such effective date. Upon the effective date of the Local Law all the provisions hereof except paragraphs 7 (C), (D), and (E) shall immediately apply to existing OWB's. All of the provisions of this Local Law shall continue to apply to existing OWB's which receive permits except paragraphs 7 (C), (D), and (E). If the owner of an existing OWB'S does not receive a permit within two (2) months of the effective date of this Local Law, the owner shall not be allowed to continue the OWB's use. Continued use of the OWB'S without a permit will be considered a violation of this Local Law and thereby constitute penalties of a fine of not more than \$100 a day and/or imprisonment for a period of not more than thirty (30) days or both. If the fines are not paid, then said fines shall be charged to the property so affected by including such expense in the next annual Town tax levy against the property.

B. Any existing OWB'S which is currently on any parcel or location outside of the A-2.5 or A-4 Zoning District, as shown on the Town of Hurley Zoning Map, Section 210-7, Chapter 210 of the Hurley Town Code, as of the date of enactment of this local law; and which has been damaged by any reason to the extent of more than 75% of its assessed value for Town of Hurley tax purposes shall not be allowed to be repaired, enlarged, restored, or rebuilt. In addition, any existing OWB'S which is currently on any parcel or location outside of the A-2.5 or A-4 Zoning District, as shown on the Town of Hurley Zoning Map, which is unused, abandoned or discontinued for a period of one year shall not be permitted to be reestablished, and must be immediately removed by the property owner from the subject premises.

1. If the property owner fails to remove the OWB'S by the end of said one year period, the Town

of Hurley Authority as defined above in paragraph 2 shall give written notice by certified mail or personal service to the owner of the property upon which the OWB'S is located. Such notice shall provide that said owner shall remove the OWB'S within 15 days of the date the notice is either postmarked or personally served upon the owner.

2. Should the OWB'S not be removed with the time specified the Town of Hurley Authority, as defined above, shall take reasonable steps to effect its removal.

3. The costs incurred by the Town to effect said removal (including any attorneys fees incurred by the Town to effect the removal), plus an amount equal to 50% of said cost 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 said thirty-day time frame, then said expense shall be charged to the property so affected by including such expense in the next annual Town tax levy against the property.

7. Specific Requirements

A. Permitted Fuel- Only Firewood and Untreated Lumber are permitted to be burned in any OWB'S. Burning of any and all other materials in an OWB'S is prohibited. The foregoing fuels are strictly prohibited:

1. Any wood that does meet the definition of "untreated Lumber" above.
2. The burning of processed wood products and other non-wood products.
3. Kerosene
4. Garbage
5. Painted wood and/or treated wood
6. Plastic
7. Any other item not specifically allowed by the manufacturer or this provision

If a violation is found to involve or contain any of the aforesaid strictly prohibited fuels, then the punishment for such violation shall be \$500. per day and/or imprisonment for a period of not more than thirty (30) days or both.

B. Continuous Cover- The owners of the OWB's must provide continuous, sufficient, and substantial cover for permitted fuel to ensure the integrity of the fuel is not jeopardized by being exposed to moisture.

C. Permitted Zones - OWB's shall be permitted only in the A-4 zoning district or any zoning district where the setback requirements can be met, as described in section D & E as depicted on the Town of Hurley Official Zoning Map, Section 210-7, Chapter 210 of the Hurley Town Code.

D. Minimum Lot Size - Shall be 4 acres.

E. Setbacks - OWB's shall be set back not less than 300 feet from the nearest dwelling not on

same property.

F. Months of Operations - OWB's shall be operated only between October 1 through May 1.

G. Spark Arrestors - All OWB's shall be equipped with properly functioning spark arrestors.

H. Smokestack - All OWB's must be equipped with a permanent smokestack which shall be 2 feet above the peak of the neighboring home(s) if the OWB is located within 300 feet from said neighboring home, but in no case be less than 12 feet.

8. Suspension of Permit - Town of Hurley Authority as defined above in paragraph 2 may suspend a permit issued pursuant to this Local Law if it is determined to be necessary to protect the public health, safety, and welfare of the residents of the Town of Hurley if any of the following conditions occurs:

A. Emissions from the OWB'S exhibit greater than 20 percent (20%) capacity (six minute average), except for one continuous six-minute period per hour of not more than 27 percent (20%) opacity, which shall be determined as provided by 6 NYCRR 227-1.3(b);

B. Malodorous air contaminants from the OWB'S are detectable outside the property boundaries of the person on whose land the OWB'S is located;

C. The emissions from the OWB'S interfere with the reasonable enjoyment of life or property;

D. The emissions from the OWB'S cause damage to vegetation or property; or

E. The emissions from the OWB'S are or may be harmful to human or animal health.

F. The owners of the OWB'S burn other than permitted fuel.

G. The owners of the OWB'S fail to provide continuous, sufficient, and substantial cover for the permitted

fuel thereby jeopardizing the fuels integrity due to being exposed to moisture.

9. Waivers; Town Board Ratification - Where the Town Board finds that extraordinary and unnecessary hardships may result from strict compliance with this Local Law, 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 Local Law or of jeopardizing the health, safety, or welfare of the public. In varying any regulations, the Town Board may impose such conditions and requirements as it deems reasonable and prudent. The Town Board may, at its discretion, hold a public hearing as part of its review. If the Town Board grants the waiver, a permit shall be issued for the OWB'S. If the Town Board denies the waiver, the OWB'S must either be brought into compliance with the Local Law or removed. If the Town Board does not take any action with respect to the waiver within sixty (60) days from its receipt of an application for waiver, the waiver shall be deemed denied.

10. Enforcement; Revocation of Permit - The owners and occupants of premises upon which prohibited acts occur shall be jointly and severally liable for violations of this Local Law. Failure

to comply with any of the provisions of this Local Law shall severally for each and every violation be guilty of a misdemeanor, and shall be punishable by a fine of not more than \$100 per day of violation or imprisonment for a period of not more than 1 year, or both. The imposition of one penalty for any violation shall not excuse the violation nor permit it to continue; and all such owners shall be required to correct or remedy such violation or defects within a reasonable time as specified, and each day that a violation occurs shall constitute a separate offense. In addition, if owners continually fail to correct such violations or defects, the Town of Hurley Authority as defined above in paragraph 2 may revoke any permit issued pursuant to this Local Law and the subject OWB'S shall not be eligible for another permit. Any fine imposed hereunder shall be charged to the property so affected by including such expense in the next annual Town tax levy against the property.

11. Effect of 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, any other federal, state, regional, or local agency. OWB'S and any electrical, plumbing or other apparatus or device used in connection with an OWB'S 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.

12. Severability - The invalidity of any clause, sentence, paragraph or provision of this Local Law shall not invalidate any other clause, sentence, paragraph, or part thereof.

13. Repealer - All Local Laws or ordinances or parts of Local Laws or ordinances in conflict with any part of this Local Law are hereby repealed.

14. Effective Date - This Local Law shall take effect upon filing in the office of the New York Secretary of State or as otherwise provided by law.

Comments from the Town Board and public:

- Councilwoman Briggs read a letter from **M/M Camunas**, (471 Dug Hill Rd.) opposed outdoor wood-burning stoves and the resulting smoke.
- **Pat Davis** (Max's Place) challenged the revised law stating that the 300' distance was reduced from the original 500 feet.
- **Andrew Kothe** has invested \$8,000 in an OWB. His property is less than an acre and he has had no complaints from his neighbor when using the OWB.
- **Bob Kothe** (716 Stone Rd.) invested \$11,000 in his OWB a year ago. He has not spent any money on oil this year.
- **James Craven** stated that (1) the proposed law does not address multiple residences on the same property, (2) does not provide for the replacement of a small OWB with a larger model in the future (3) does not explain what happens if an owner has a legal OWB and then someone (in

the future) builds a house within 200' of the OWB.

- **Carol Grech** (Max's Place) had said that her asthma has not been aggravated by her neighbors OWB smoke. She is 165' away from her neighbors house and has a 10' high stack.

- **Chris Salatalamachia** (419 Dug Hill Rd.) bothers nobody because he has 7 acres, lives 450' from his nearest neighbor and load his OWB twice daily.

- **Brad Mallett** (Max's Place) questioned some of the Local Law's wording. Eg. In 6-B-1 - why stipulate a 1 year time period? In 6-B-3 - why is there an additional 50%. In #3 -why use the word "MAY" (it either is or isn't). He also questioned the size limitation in #7.

- **Mark Emig** (431 Dug Hill Rd) said he gets a strong creosote odor from his neighbors OWB, which is 500' away.

- **Bruce Fiore** (Zandhoek Rd) asked if the Board also intended to regulate fireplaces.

Motion to adjourn was made by Supervisor Shultis, seconded by Councilman Gill and all voted aye.

Karin Horner, Town Clerk