

FINANCE & ADMINISTRATION COMMITTEE MEETING

Monday, October 29, 2012

5:30 p.m.

Hampden Town Office

1. Minutes of 10/15/2012 meeting
2. Review & Sign Warrants
3. Old Business
 - a. Town Charter Article II
 - b. Victualer's License & Outdoor Wood Boiler Ordinances –
Proposed language changes
4. New Business
5. Public Comment
6. Committee Member comments

without Voter referendum approval, it was suggested that Council Rules be amended to reflect this idea in order to see how well or poorly it worked before submitting it to referendum.

- b. Community Survey – The Town Manager presented a list of the fourteen topics identified through Committee meeting work and how six of the seven Council members had prioritized them for use in the upcoming Resident Survey to be done in January. The Manager is to develop draft questions for the survey and bring them back to the Finance Committee for consideration.
 - c. Victualer's License Law Information – The Town Manager presented information on changes to State Law that has made one provision of the local Victualer's Office obsolete. That provision relates to food inspection which communities can no longer do without delegation of authority from the State. It was the consensus of the Committee to support changes to the ordinance that would require a public hearing and Council approval for the first Victualer's License issued to any establishment and to allow Code Enforcement to issue subsequent licenses, unless there are citizen complaints or failure to meet licensing criteria. In addition, Committee members asked that similar changes be made to the Outdoor Wood boiler Ordinance so that the first license required a public hearing and Council approval but that renewals would be done by the Code Officer unless there were citizen complaints or violations. The Town Manager will bring back suggested language to support these changes for Committee consideration.
5. New Business - None
 6. Public Comment - None
 7. Committee Member comments – None

The meeting was adjourned at 6:55 p.m.

Respectfully submitted,

Susan Lessard
Town Manager

ARTICLE I
POWERS OF TOWN

Sec. 101 Powers of the Town - The town shall have all powers possible for a municipality to have the Constitution and laws of Maine.

Sec. 102 Construction - The powers of the town under this charter shall be construed liberally in favor of the town, and the specific mention of particular powers in the charter shall not be construed as limiting in any way the general power stated in this Article.

Sec. 103 Intergovernmental Relations - The town may exercise any of its powers or perform any of its functions and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with any one or more states or civil divisions or agencies thereof, or of the United States or any agency thereof.

ARTICLE II
TOWN COUNCIL

Sec. 201 Composition and Term of Office

(a) *Composition* - There shall be a town council of seven (7) members, four (4) of whom shall be district councilors and three (3) of whom shall be at large councilors.

(b) *Term of Office* - The term of office for councilors elected on or after the regular municipal election held in 2005 shall be three (3) years. Provided, however, that any councilor elected to fill a vacancy shall serve the unexpired term of that position. *(Amended: November 2, 2004)*

Sec. 202 Eligibility - Only registered voters who reside in the town shall be eligible to hold office as councilors at large. Only a registered voter and a resident of a district may be elected as councilor for the district. Any registered voter seeking office must be a resident of the town for at least one year. *(Amended: June 8, 1982)*

Sec. 203 Compensation - The Town Council may determine the annual salary of the chairman and councilors by ordinance, but no ordinance increasing such salary shall become effective until the commencement of the terms of councilors elected at the next regular election. Salaries of councilors shall be paid on a quarterly basis for services performed in the preceding quarter. Councilors elected in a special election shall be paid on a pro rata basis for the time they shall actually serve. Initially annual salaries shall be twenty dollars (\$20.00) per meeting for each councilor and town counselor and twenty-five dollars (\$25.00) per meeting for council mayor. *(Amended: June 8, 1982)*

Sec. 204 Mayor and Deputy Mayor - At the first council meeting in January of each year the town's attorney shall, after the swearing of council members, preside over the town council's election of one of its members as mayor for the ensuing year. The mayor shall preside at the meetings of the council and may vote on all matters that come before the council. The mayor shall represent the interests of his/her constituency in all matters before the council. The mayor shall be recognized as the head of the town government for all ceremonial purposes and by the Governor for the purposes of military law, but shall have no regular administrative duties. A newly elected mayor's first official act shall be to preside over the council's election of one of its members as a deputy mayor for the ensuing year. The deputy mayor shall exercise all the powers of the mayor during the temporary absence or temporary disability of the mayor. The mayor and/or the deputy mayor may resign, with or without explanation and with or without the consent of the council, their respective positions at any time. Should the office of mayor become vacant at any time other than as prescribed above, the town's attorney shall, as the next order of council business preside over the election of a mayor. Should the deputy mayor become vacant, the mayor shall,

as the next order of council business preside over the election of a deputy mayor. *(Amended: November 5, 1985, November 6, 1990, Amended: November 6, 2007)*

Sec. 205 Powers and Duties - Except as otherwise provided by state statute or this charter, all powers of the town shall be vested in the town council, which shall be the general legislative body of the town. The town council shall be the municipal officers of the Town of Hampden.

Sec. 206 Prohibitions - Except where authorized by state statute no councilor shall hold any other town office or town employment during the term for which that person was elected to the town council. Neither the council nor any of its members shall, in any manner, dictate the appointment or removal of any administrative officials or employees whom the manager or any subordinates are empowered to appoint, but the council may express its views and fully and freely discuss with the manager anything pertaining to appointment and removal of such officials and employees.

Except for the purpose of inquiry, the council and its members shall deal with the administrative services solely through the manager and neither the council nor any member, thereof shall give orders to any subordinates of the manager, either publicly or privately. *(Amended: November 6, 1990)*

Sec. 207 Vacancies; Forfeiture of Office; Filling of Vacancies

(a) *Vacancies* - The office of councilor shall become vacant upon nonacceptance, resignation, abandonment, death, permanent disability, permanent incompetency, failure to qualify for the office within 10 days after written demand by the council, forfeiture of office, or failure of the municipality to elect a person for the office. *(Amended: November 6, 1990)*

(b) *Forfeiture of Office* - A councilor shall forfeit that person's office if that person (1) lacks at any time during that person's term of office any qualification for the office prescribed by this charter or by law, (2) violates any express prohibition of this charter, (3) is convicted of a crime or offense which is, during that person's term, reasonably related to that person's ability to serve as councilor, or (4) fails to attend three (3) consecutive regular meetings or misses more than a maximum of six (6) regular meetings per year of the council without being excused by the council. *(Amended: November 5, 1985, November 6, 1990)*

(c) *Filling of Vacancies* - If a seat on the town council becomes vacant more than 6 months prior to the next regular municipal election, the council shall call a special election to fill the unexpired term within 60 days from the date that the vacancy occurred. If a seat on the council becomes vacant less than 6 months prior to the next regular municipal election, the council may call a special election. *(Amended: November 2, 2004)*

Sec. 208 Council to Judge Qualifications of Its Members - The town council shall be the judge of the election and qualifications of its members and for such purposes shall have power to subpoena witnesses and require productions of records, but the decision of the council in any such case shall be subject to review by the courts.

Sec. 209 Induction of Council Into Office - The town council shall meet at the usual time and place for holding meetings on the first regularly scheduled meeting in January and at said meeting councilors-elect shall be sworn to the faithful discharge of their duties by the town clerk or by the town counselor. For any person elected at a special election to fill a vacancy, the councilor-elect shall be sworn to the faithful discharge of the councilor-elect's duties by the town clerk or by the town counselor at the first regularly scheduled meeting of the town council after certification of the election results. *(Amended: June 8, 1982, November 6, 2007)*

Sec. 210 Investigations - The council may make investigations into the affairs of the town and the conduct of any town department, office or agency and for this purpose may enact an ordinance providing

for the compulsory attendance of witnesses, the administering of oaths, the taking of testimony and the compulsory production of evidence.

Sec. 211 Procedure –

- (a) *Meetings* - The council shall meet regularly at least once in every month at such times and places as the council may prescribe by rule. Special meetings may be held on the call of the mayor or of five (5) or more members by causing a notification to be given or left at the usual dwelling place of each council member. If practicable, such notice shall be given not less than twelve hours before the special meeting and shall be published in a paper having general circulation in the town. All meetings shall be public; however, the council may recess for the purpose of discussing in a closed or executive session limited to its own membership, town manager and to other persons the council votes to admit, any matter which would tend to defame or prejudice the character or reputation of any person, provided that the precise subject matter for consideration is expressed in the motion calling for such session and that final action thereon shall not be taken by the council until the matter is placed on the agenda. The foregoing action shall be governed by state law, MRSA, Title I, §405, as amended. Any citizen at the meeting shall have the opportunity to speak upon any subject before the council. *(Amended: June 8, 1982)*
- (b) *Rules and Journal* - The council shall determine its own rules.
- (c) *Secretary* - The town clerk shall act as secretary of the town council and shall keep a record of all council proceedings including all roll call votes. The Town Clerk or designee shall act as recording secretary at town council meetings. *(Amended: December 5, 1977)*
- (d) *Voting* - The ayes and nays of any vote taken by the town council shall be entered in the record of the proceedings of the council by the Town Clerk, or designee. Five members of the council shall constitute a quorum, but a smaller number may meet from time to time and may compel the attendance of absent members prescribed by the rules of the council. No action of the council shall be binding or valid unless adopted by the majority vote of those present. *(Amended: June 8, 1982, November 6, 2007)*
- (e) *Agenda* - Any subject may be placed on the agenda for a council meeting by a councilor, the town manager or at the request of any citizen. Any subject presented by a citizen must be received at the town office at least 5 calendar days prior to the council meeting. The agenda shall be prepared and posted in the town office at least one business day prior to a scheduled council meeting.

Sec. 212 Action Requiring an Ordinance - In addition to other acts required by law or by specific provision of this charter to be done by ordinance, those acts of council shall be by ordinance which:

- (1) Adopt or amend an administrative code, or establish, alter or abolish any town department, office or agency;
- (2) Provide for a fine or other penalty or establish a rule or regulation for violation of which a fine or other penalty is imposed;
- (3) Grant, renew or extend a franchise;
- (4) Regulate the rate charged for its services by a public utility;
- (5) Authorize the borrowing of money other than tax anticipation notes;
- (6) Convey or lease or authorize the conveyance or lease of any lands of the town;

- (7) Amend or repeal any ordinance previously adopted;
- (8) Amend or establish town fees; and

Acts other than those referred to in the preceding sentence may be done by ordinance, by order or by resolution. *(Amended: June 8, 1982)*

Sec. 213 Ordinances In General

- (a) *Form* - Every proposed ordinance shall be introduced in writing and in the form required for final adoption. No ordinance shall contain more than one subject which shall be clearly expressed in its title. The enacting clause shall be "The Town of Hampden hereby ordains...." Any ordinance which repeals or amends an existing ordinance or part of the Hampden Code shall set out in full the ordinance sections or subsections to be repealed or amended and shall indicate matter to be omitted by enclosing it in brackets or by strikeout type and shall indicate new matter by underscoring or by italics.
- (b) *Procedure* - An ordinance may be submitted as an agenda item by any member of the council at any regular or special meeting. Copies of the proposed ordinance are to be included with the council packet. After council discussion, the proposed ordinance may be introduced as submitted or amended for public hearing. A reasonable number of copies of said ordinance shall be filed in the town clerk's office and such other public places as the council may designate, and a notice setting out the time and place for a public hearing on same shall be published. The public hearing shall follow the publications at least seven (7) days, may be held separately or in conjunction with a regular or special council meeting and may be adjourned from time to time; all persons interested shall have a reasonable opportunity to be heard. After the hearing the council may adopt the ordinance with or without amendment or may reject it; but if it is amended as to any matter of substance, the council may not adopt it until the ordinance or its amended sections have been subjected to all the procedures hereinbefore required in the case of a new ordinance. As soon as practicable after adoption of any ordinance, the town clerk shall publish a notice of its adoption. (11) *(Amended: June 8, 1982)*
- (c) *Effective Date* - Except as otherwise provided in this charter every adopted ordinance shall become effective at the expiration of 30 days after adoption or at any later date as specified therein.
- (d) *"Publish" Defined* - As used in this section, the term "publish" means to print in one or more newspapers of general circulation in the town; (1) the ordinance or a brief summary thereof, and (2) the place where copies of the complete text have been filed and the time when they are available for public inspection. *(Amended: June 8, 1982)*

Sec. 214 Emergency Ordinances - To meet a public emergency affecting life, health, property or the public peace, the council may adopt one or more emergency ordinances; but said ordinances may not grant, renew or extend a franchise, regulate the rate charged by a public utility for its services or authorize the borrowing of money except where any emergency notes or renewals thereof are paid within twenty-four months of the adoption of said ordinances. An emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally, except that it shall be plainly designated as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing it in clear and specific terms. An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced, but the affirmative vote of at least all members present shall be required for adoption. After its adoption the ordinance shall be published and printed as prescribed for other adopted ordinances. It shall become effective upon adoption or at such

later time as it may specify. Every emergency ordinance except one authorizing the issuance of emergency notes shall automatically stand repealed as of the 61st day following the date on which it was adopted, but this shall not prevent re-enactment of the ordinance in the manner specified in this section if the emergency still exists. An emergency ordinance may also be repealed by adoption of a repealing ordinance in the same manner specified in this section for adoption of emergency ordinances.

Sec. 215 Authentication and Recording; Codification; and Printing

- (a) *Authentication* - All ordinances and resolutions adopted by the council shall be authenticated by the signature of the secretary of the council and recorded in full by the town clerk in a properly indexed book kept for that purpose.
- (b) *Codification* - Within three years after adoption of this charter and at least every ten years thereafter, the council shall provide for the preparation of a general codification of all ordinances and resolutions having the force and effect of law. The general codification shall be adopted by the council by ordinance and shall be printed promptly in bound or loose-leaf form, together with this charter and any amendments thereto, pertinent provisions of the Constitution and other laws of the State of Maine and such codes of technical regulations and other rules and regulations as the council may specify. Any codification ordinance may be published by title. This compilation shall be known as the Hampden Code. Copies of the code shall be furnished to officials, placed in libraries and public offices for free public reference and made available for purchase by the public at a reasonable price fixed by the council.
- (c) *Printing of Ordinances and Resolutions* - The council shall cause each ordinance and resolution having the force and effect of law and each amendment to this charter to be printed promptly following its adoption, and the printed ordinances, resolutions and charter amendments shall be distributed or sold to the public at reasonable prices to be fixed by the council. Following publication of the first Hampden Code and at all times thereafter, the ordinances, resolutions and charter amendments shall be printed in substantially the same style as the code currently in effect and shall be suitable in form for integration therein. The council shall make such further arrangements as it deems desirable with respect to reproduction and distribution of any current changes in or additions to the provisions of the Constitution and other laws of the State of Maine, or the codes of technical regulations and other rules and regulations included in the code.

ARTICLE III
ADMINISTRATIVE OFFICIALS AND EMPLOYEES

Sec. 301 Titles and Appointment - The following officials and boards shall be appointed by a majority vote of the members of the town council: Town Manager, board of assessment review, planning board, board of appeals and other boards or officials when such appointment is required by state statute or municipal ordinance. The council may, where appropriate, and where not prohibited by law, vest in the town manager all or part of the duties of any office. *(Amended: November 6, 2007)*

The town manager shall appoint the town clerk, treasurer, tax collector, town assessor and department heads subject to the confirmation of the town council, and shall have the power to remove such appointees when necessary. The town manager shall appoint and remove when necessary all other administrative officials and town employees, except as the manager may authorize the head of a department or office and except as otherwise provided in this charter. *(Amended: November 6, 1990)*

Sec. 302 Creation of Department - The town council, by ordinance, may establish, change and abolish town departments, offices or agencies other than those created by this charter and may prescribe the functions of all departments, offices and agencies, except that no functions assigned by this charter to a

**TOWN OF HAMPDEN, MAINE
VICTUALERS ORDINANCE**

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ADOPTED: Hampden Town Council April 20, 1998
Effective: May 19, 1998

AMENDED: Hampden Town Council November 17, 2003
Effective: December 17, 2003

AMENDED: Hampden Town Council May 16, 2005
Effective: June 15, 2005

The Town of Hampden hereby ordains that this Ordinance be amended as follows (deletions ~~stricken~~ and additions underlined):

TOWN OF HAMPDEN, MAINE
VICTUALERS ORDINANCE

Section 1. Purpose. The purpose of this Ordinance is to regulate the sale of prepared food for consumption on or off the premises.

Section 2. License. Any person who owns or operates a place where food is prepared and served to the public as a profit-making venture for consumption on or off the premises, including but not limited to a restaurant, motel and hotel, deli, movie theater, soda fountain, bakery, sandwich shop, convenience store, or outdoor facility, shall be licensed annually as a victualer in order to operate within the Town. ~~(For those licenses in effect upon passage of this Ordinance, the license will renew in the month the last license was issued).~~

At the time of application for a license or license renewal applicant shall pay a fee in accordance with the Town of Hampden Fees Ordinance. *(Amended: 11-17-03) (Amended: 05-16-05)*

Section 3 Exceptions. A public or private school, public service organization, private club, church organization, fire department or any other non-profit organization selling food or drink to raise money for a charitable cause shall be exempt from the requirements of this Ordinance. Grocery stores, except those selling food items prepared on the premises, shall also be exempt. Establishments selling food and drink only through vending machines shall also be exempt.

The Hampden Town Council shall have the authority to decide if an establishment is exempt or not. *(Amended: 05-16-05)*

Section 4. Compliance

- A. All establishments must be inspected by the code enforcement officer and the fire inspector to determine if they are in compliance with all municipal ordinances, including zoning, state life safety, ~~food~~ and liquor regulations. Failure to be in compliance with any of the foregoing shall be grounds for denial of the application. In addition, failure to allow the code enforcement officer and the fire inspector to inspect the establishment shall be grounds for denial of the application.
- B. The treasurer and tax collector must certify that all sewer user fees and personal property taxes are paid in full, as of the date of the application. Failure to meet these requirements shall be grounds for denial of the application.

Section 5. Application. *(Amended: 05-16-05)*

- A. Application forms for a victualer's license or renewal shall be on a form designed for that purpose by the Town. Victualer applications, except for renewal applications under Subsection B below, shall be advertised by publishing notices in a local newspaper and by posting notices in at least two public places, at least seven (7) days prior to the meeting. The council shall conduct a public hearing on the applications at the next scheduled council meeting, and shall make a decision within 30 days following the public hearing. Written notice of the decision shall be provided to the applicant. *(Amended: 05-16-05)*

- B. ~~*Waiver of Public Hearing Requirement.* Notwithstanding the provisions of this section those seeking license renewal may request a waiver of the public hearing provision if their business has been licensed for five consecutive years and no violations of this article are known. The decision to grant the waiver for the public hearing is expressly granted to the Town Manager. (Amended: 05-16-05)~~

As long as there are no unresolved complaints or violations, licenses for renewal applications for the same owner and the same place of business may be issued by the code enforcement officer, after consultation with the fire inspector, treasurer and tax collector, upon determination of compliance with the provisions of this Ordinance. If the code enforcement officer determines that there are unresolved complaints or violations, the application shall be processed in accordance with Subsection A above.

- C. A new license, when granted, shall be valid for one year and renewed annually in the month in which the license was issued. An establishment shall at all times display its current victualer license in a place within the establishment where it can be readily viewed by any member of the public.

Section 6. Penalty.

- A. Any person found guilty of violating any provisions of this article shall be subject to a civil penalty.
- B. In addition to a civil penalty, the Town may enjoin or abate any violation of this article by appropriate action, and may also proceed to revoke the victualer's license, after a hearing on the matter.
- C. Any person operating as a victualer within the Town without a victualer's license shall be subject to a civil penalty of \$100.00 per day for all days of operation without the required license. (Amended: 05-16-05)

Section 7. Suspension or Revocation of License.

- A. *Applicability of State Regulations; Effect of Suspension or Revocation of State License.* All victualers shall be subject to all state regulations of food service establishments, such regulations being enforced by state agencies. It is not the intent of this article to establish for the town a food service regulation scheme apart from that provided under state law. Accordingly, any suspension or revocation of a state license shall be considered as a suspension or revocation, as the case may be, of the victualer's license issued under this article on the same terms as imposed by the state. (Amended: 05-16-05)
- B. *Local Suspension or Revocation of License.* The Town Council, upon notice and hearing, for cause, may at any time suspend or revoke a victualer's license issued pursuant to this article. Cause shall mean the violation of any license provision or any provision of this article, or any condition constituting a threat to the public health, safety, or welfare, including but not necessarily limited to neighborhood disruption, disorderly customers, and excessively loud or unnecessary noise that initiates complaints to or requires a response from police, fire, or other town regulatory bodies or employees. (Amended: 05-16-05)

Section 8. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Ordinance.

TOWN OF HAMPDEN, MAINE
OUTDOOR WOOD BOILER ANNUAL LICENSING ORDINANCE

ADOPTED: Hampden Town Council, March 19, 2007
Effective Date: April 18, 2007

AMENDED: Hampden Town Council, December 21, 2009
Effective Date: January 20, 2009

CERTIFIED BY: Denise Hodsdon
Name

Town Clerk
Title Affix Seal

OUTDOOR WOOD BOILER ANNUAL LICENSING ORDINANCE
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The Town of Hampden hereby ordains that this Ordinance be amended as follows (deletions ~~stricken~~ and additions underlined):

TOWN OF HAMPDEN, MAINE
OUTDOOR WOOD BOILER ANNUAL LICENSING ORDINANCE

ARTICLE 1
TITLE AND PURPOSE

1.1. Title. This ~~chapter~~ Ordinance shall be known as the "Town of Hampden, Maine Outdoor Wood Boiler Annual Licensing Ordinance." *Amended: 12-21-09 (Note: The term "outdoor wood-fired boiler" has been changed to "outdoor wood boiler" throughout to be consistent with Chapter 150).*

1.2. Home Rule Authority. It is adopted pursuant to Municipal Home Rule Law.

1.3. Purpose. Although outdoor wood boilers 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 boilers 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. Furthermore, this ordinance is intended to comply with the minimum standards contained in DEP Chapter 150, Control of Emissions From Outdoor Wood Boilers.

ARTICLE 2
DEFINITIONS

2.1. Definitions. As used in this ~~chapter~~ Ordinance, the following terms shall have the meanings indicated:

"Commercial outdoor wood boiler" means any outdoor wood boiler used to service a commercial establishment. *Amended: 12-21-09*

"Outdoor pellet boiler" means an outdoor wood boiler designed and warranted by the manufacturer specifically to burn pellet fuel with metered fuel and air feed and controlled combustion engineering, which is operated according to the manufacturer's specifications and burns only pellet fuel. *Amended: 12-21-09*

"Outdoor wood boiler" (also known as outdoor wood-fired hydronic heater, water stove or outdoor wood furnace) means a fuel burning device designed to (1) burn wood or other approved solid fuels; (2) that the manufacturer specifies for outdoor installation or installation in structures not normally occupied by humans (e.g., garages); 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. *Amended: 12-21-09*

"Outdoor wood boiler Emission Rating" means the EPA's rating system for OWBs which rate the emissions in pounds per million BTU' or lbs/MMBtu. *Amended: 12-21-09*

"EPA Phase-One Qualified OWB" means an OWB that has received certification pursuant to the EPA Outdoor Wood-Fired Hydronic Heater Program, or such alternative certification program as may be approved by the Maine Department of Environmental Protection, that the OWB meets a particulate matter emission limit of 0.60 lbs/MMBtu heat input. *Amended: 12-21-09*

“EPA Phase-Two Qualified OWB” means an OWB that has received certification pursuant to the EPA Outdoor Wood-Fired Hydronic Heater Program, or such alternative certification program as may be approved by the Maine Department of Environmental Protection, that the OWB meets a particulate matter emission limit of 0.32 lbs/MMBtu heat input. *Amended: 12-21-09*

“Phase-Three Qualified OWB” means an OWB (or outdoor pellet boiler if the Town chooses to go with the DEP approach) that has received certification pursuant to the EPA Outdoor Wood-Fired Hydronic Heater Program, or such alternative certification program as may be approved by the Maine Department of Environmental Protection, that the OWB meets a particulate matter emission limit of 0.06 lbs/MMBtu heat input. *Amended: 12-21-09*

“Non-EPA Qualified OWB” means an OWB that has received certification pursuant to the EPA Outdoor Wood-Fired Hydronic Heater Program, or such alternative certification program as may be approved by the Maine Department of Environmental Protection, that the OWB meets a particulate matter emission limits greater than 0.60 lbs/MMBtu heat input or with no certification. *Amended: 12-21-09*

“DEP Qualified OWB” means that the manufacturer of the OWB has voluntarily submitted their product for emission rating to a government other than the US government or other testing bodies as deemed acceptable by the DEP and based on the OWB’s emission report the Maine Department of Environmental Protection classifies the OWB to the corresponding EPA standard. For purposes of this ordinance applicants must provide written documentation from the DEP to show evidence that the OWB is in fact DEP qualified. *Amended: 12-21-09*

“Neighboring Residence Setback” means the minimum linear distance that an outdoor wood boiler must be sited away from the nearest dwelling that is not on the same property as the boiler. *Amended: 12-21-09*

“Nuisance” means any odor, emission, or event that prevents the reasonable use and enjoyment of one’s property. For purposes of this ordinance, an OWB shall constitute a nuisance following three or more verified complaints within any 30 day period.

“Firewood” means trunks and branches of trees and bushes, but does not include leaves, needles, vines or brush smaller than three inches in diameter.

“Setback” means the minimum linear distance that an outdoor wood boiler must be sited away from a prescribed physical location on the ground. *Amended: 12-21-09*

“Untreated lumber” means dry wood which has been milled and dried but which has not been treated or combined with any petroleum product, chemical, preservative, glue, adhesive, stain, paint or other substance.

ARTICLE 3 ANNUAL LICENSE REQUIRED

3.1. Annual license required. In addition to any permit required under the Town’s Fire Prevention Code, no person shall cause, allow or maintain the use of an outdoor wood boiler within the Town of Hampden, Maine without first having obtained an initial annual license from the Hampden Town Council, and an annual renewal license from the Town Council or the code official responsible for enforcement of the Fire Prevention Code. Applications for ~~annual~~ licenses shall be made to the Town Clerk on the forms provided.

3.2. Standards for initial license. The Town Council shall issue an initial license for an outdoor wood boiler if it determines that:

3.2.1 A permit has been issued for the proposed outdoor wood boiler under the Fire Prevention Code; and

3.2.2 The proposed outdoor wood boiler complies with the requirements of Sections 4.2, 4.3, 4.4 and 4.6 of this Ordinance.

3.2.3 The Town of Hampden shall not issue an initial license for a non-EPA qualified OWB or non-Maine Department of Environmental Protection alternative certified OWB after the effective date of this amendment. *Amended: 12-21-09*

3.3. Standards for renewal license. The Town Council, except as provided in Section 3.4, shall issue a renewal license for an outdoor wood boiler if it determines that:

3.3.1. The code official responsible for enforcement of the Fire Prevention Code provides written documentation to the effect that the outdoor wood boiler is in compliance with the applicable provisions of that Code;

3.3.2 The outdoor wood boiler is in compliance with the requirements of Sections 4.2, 4.3, 4.4, and 4.6 of this Ordinance;

3.3.3. The outdoor wood boiler was operated in compliance with the requirements of Sections 4.1 and 4.5 of this Ordinance during the preceding year; and

3.3.4 None of the conditions set forth in Sections 5.1.1, 5.1.2, 5.1.3, 5.1.4, or 5.1.5 of this Ordinance occurred during the preceding year.

3.4. Annual renewal licenses issued by code official. As long as there are no unresolved complaints or violations, annual renewal licenses for an outdoor wood boiler may be issued by the code official responsible for enforcement of the Fire Prevention Code upon determination of compliance with the standards of Section 3.3. If the code official determines that there are unresolved complaints or violations, the application for the annual renewal license shall be processed by the Town Council in accordance with Section 3.3

~~3.4~~ 3.5. Existing outdoor wood boilers. Any outdoor wood boiler that was installed, connected, and operating as of the effective date of this Ordinance shall be permitted to remain, provided that the owner applies for and receives an annual license from the Town Council within 120 days of such effective date. Provided, however, that upon the effective date of this Ordinance all the provisions of this Ordinance, except Sections 4.2 *Permitted Zones*, 4.3 *Minimum Lot Size*, and 4.4 *Setbacks* in the event and to the extent that the existing outdoor wood boiler in question does not comply with the same, shall immediately apply to any existing outdoor wood boiler. Any existing outdoor wood boiler that is not in compliance with Sections 4.3 and 4.4 shall not be made more nonconforming. If the owner of an existing outdoor wood boiler does not receive a permit within one year of the effective date of this Ordinance, the outdoor wood boiler shall be removed.

ARTICLE 4
SPECIFIC REQUIREMENTS

4.1. Permitted fuel. Only firewood and untreated lumber are permitted to be burned in any outdoor wood boiler. Burning of any and all other materials in an outdoor wood boiler is prohibited.

4.2. Permitted zones. Outdoor wood boilers shall be permitted in all zoning districts except the Resource Protection District as shown on the Town's Zoning Map.

4.3. Minimum lot size Outdoor wood boilers shall be permitted only on lots in accordance with the following minimum lot size: *Amended: 12-21-09*

	Minimum Lot Size
Existing Non-EPA Qualified Outdoor Wood Boilers Only	3 Acres
EPA Phase-One Qualified Outdoor Wood Boilers	1 Acre
EPA Phase-Two Qualified Outdoor Wood Boilers	0.5 Acre
Phase-Three Qualified Outdoor Wood Boilers (pellet)	0.25 Acre

The applicant for a permit under this Ordinance shall demonstrate that the Commercial outdoor wood boiler or Outdoor Wood Boiler with a thermal rating greater than 350,000 Btu/hr shall be installed and operated in accordance with Chapter 150 of the Rules of the Maine Department of Environmental Protection, "Control of Emissions from Outdoor Wood Boilers," as the same may be amended from time to time.

4.4. Setbacks and Stack Height. Outdoor wood boilers shall be set back from property lines according to the following standards: *Amended: 12-21-09*

4.4.1. Property Line Setback	Minimum
Existing Non-EPA Qualified Outdoor Wood Boilers Only	150 Feet
EPA Phase-One Qualified Outdoor Wood Boilers	100 Feet
EPA Phase-Two Qualified Outdoor Wood Boilers	50 Feet
Phase-Three Qualified Outdoor Wood Boilers (pellet)	20 Feet

Additionally, outdoor wood boilers shall be set back from neighboring residences according to the following standards: *Amended: 12-21-09*

4.4.2. Neighboring Residence Setback	Minimum
Existing Non-EPA Qualified Outdoor Wood Boilers Only	200 Feet
EPA Phase-One Qualified Outdoor Wood Boilers	120 Feet
EPA Phase-Two Qualified Outdoor Wood Boilers	70 Feet
Phase-Three Qualified Outdoor Wood Boilers (pellet)	40 Feet

4.4.3. Stack Height Requirements for New Outdoor Wood Boilers and Outdoor Pellet Boilers
Amended: 12-21-09

Existing Non-EPA Qualified Outdoor Wood Boilers are not subject to this requirement. *Amended: 12-21-09*

EPA Phase-One Qualified Outdoor Wood Boilers. No person shall install or allow the installation of any EPA Phase-One Qualified Outdoor Wood Boiler unless the outdoor wood

boiler or outdoor pellet boiler: (1) has an attached stack with a minimum stack height of 10 feet above ground level; or (2) has an attached stack extending two feet higher than the peak of the roof of the structure being served by the outdoor wood boiler or outdoor pellet boiler, if a neighboring residence is located less than 300 feet from the outdoor wood boiler or outdoor pellet boiler. *Amended: 12-21-09*

EPA Phase-One Qualified Outdoor Wood Boilers. No person shall operate any EPA Phase-One Qualified Outdoor Wood Boiler if a neighboring residence is located less than 300 feet from the outdoor wood boiler or outdoor pellet boiler, unless the outdoor wood boiler or outdoor pellet boiler has an attached stack extending two feet higher than the peak of the roof of the structure being served by the outdoor wood boiler or outdoor pellet boiler. *Amended: 12-21-09*

EPA Phase-Two Qualified Outdoor Wood Boilers. No person shall install or allow the installation of any EPA Phase-Two Qualified Outdoor Wood Boiler unless the outdoor wood boiler or pellet boiler: (1) has an attached stack with a minimum stack height of 10 feet above ground level; or (2) has an attached stack extending two feet higher than the peak of the roof of the structure being served by the outdoor wood boiler or outdoor pellet boiler, if a neighboring residence is located less than 300 feet from the outdoor wood boiler or outdoor pellet boiler. *Amended: 12-21-09*

EPA Phase-Two Qualified Outdoor Wood Boilers. No person shall operate any EPA Phase-Two Qualified Outdoor Wood Boiler, if a neighboring residence is located less than 300 feet from the outdoor wood boiler or outdoor pellet boiler, unless the outdoor wood boiler or outdoor pellet boiler has an attached stack extending two feet higher than the peak of the roof of the structure being served by the outdoor wood boiler or outdoor pellet boiler. *Amended: 12-21-09*

Phase-Three Qualified Outdoor Wood Boilers. No person shall install or allow the installation of any Phase-Three Qualified Outdoor Wood Boilers, unless the outdoor pellet boiler: (1) has an attached stack with a minimum stack height of 10 feet above ground level; or (2) has an attached stack extending two feet higher than the peak of the roof of the structure being served by the outdoor pellet boiler, if a neighboring residence is located less than 100 feet from the outdoor pellet boiler. *Amended: 12-21-09*

Phase-Three Qualified Outdoor Wood Boilers No person shall operate any Phase-Three Qualified Outdoor Wood Boilers, if a neighboring residence is located less than 100 feet from the outdoor pellet boiler, unless the outdoor pellet boiler has an attached stack extending two feet higher than the peak of the roof of the structure being served by the outdoor pellet boiler. *Amended: 12-21-09*

The applicant for a permit under this Ordinance shall demonstrate that the Commercial outdoor wood boiler or Outdoor Wood Boiler with a thermal rating greater than 350,000 Btu/hr shall be installed and operated in accordance with Chapter 150 of the Rules of the Maine Department of Environmental Protection, "Control of Emissions from Outdoor Wood Boilers," as the same may be amended from time to time. *Amended: 12-21-09*

4.5. Months of operation. Outdoor wood boilers shall be prohibited from operation between the dates of May 1 and October 1.

4.6. Spark arrestors and rain caps. All outdoor wood boilers shall be equipped with properly functioning spark arrestors. Use of a rain cap on the stack of an OWB is prohibited unless required by the manufacturer specifications. *Amended: 12-21-09*

4.7. Continued compliance required. If an outdoor wood boiler is installed in compliance with Sections 4.3 and 4.4, the outdoor wood boiler may not be used if the lot on which it is situated is altered so that the minimum lot size or setback(s) are no longer met.

ARTICLE 5
REVOCATION OF LICENSE

5.1. Revocation of license. A license issued pursuant to this Ordinance may, after notice and hearing, be revoked as the Town Council may determine to be necessary to protect the public health, safety and welfare of the residents of the Town of Hampden if any of the following conditions occur:

5.1.1. Emissions from the outdoor wood boiler exhibit opacity that obscures or partially obscures clear view of structures and trees that lay behind the smoke and haze on either the property where the outdoor wood boiler is located or on adjoining properties. This may be evidenced by photographs that are time dated;

5.1.2. Malodorous air contaminants from the outdoor wood boiler are detectable outside the property boundaries of the land on which the outdoor wood boiler is located. This may be evidenced by Town Public Safety Officials;

5.1.3. The emissions from the outdoor wood boiler interfere with the reasonable enjoyment of life or property;

5.1.4. The emissions from the outdoor wood boiler cause damage to vegetation or property; or

5.1.5. The emissions from the outdoor wood boiler are or may be harmful to human or animal health.

5.2. Prohibited use after revocation. If a license is revoked, the outdoor wood boiler in question shall not used or operated.

5.3. Reinstatement of license. A revoked license may be reinstated once the condition which resulted in revocation is remedied and reasonable assurances are given that such condition will not recur. Recurrence of a condition which has previously resulted in revocation of a license shall be considered a violation of this Ordinance subject to the penalties provided in *Section 7.1 Penalties for offenses* hereof.

ARTICLE 6
WAIVERS

6.1. Waivers. Where the Town Council finds that extraordinary and unnecessary hardships may result from strict compliance with this Ordinance, 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 Ordinance or of jeopardizing the health, safety or welfare of the public. In varying any regulations, the Town Council may impose such conditions and requirements as it deems reasonable and prudent. The Town Council may, at its discretion, hold a public hearing as part of its review. If the Town Council grants the waiver, a license shall be issued for the outdoor wood boiler. If the Town Council denies the waiver, the outdoor wood boiler must either be brought into compliance with this Ordinance or removed. If the Town Council 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.

ARTICLE 7
PENALTIES

7.1. Penalties for offenses. Failure to comply with any of the provisions of this Ordinance shall be a violation and, upon conviction thereof, shall be subject to a civil penalty in accordance with Title 30-A M.R.S. §4452. In addition, any license issued pursuant to this Ordinance shall be revoked upon conviction of a second offense and the subject outdoor wood boiler shall not be eligible for another license. Each day that a violation occurs shall constitute a separate offense. All penalties shall inure to the benefit of the Town of Hampden. The owners of premises upon which prohibited acts occur shall be jointly and severally liable for violations of this Ordinance. Violators shall also be responsible for any and all court fees, expert witness fees, costs, and reasonable attorney fees if the Town is the prevailing party in an enforcement action.

ARTICLE 8
EFFECT ON OTHER REGULATIONS

8.1. 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, Maine Department of Environmental Protection 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 boilers, shall be installed, operated and maintained in conformity with the manufacturer's specifications and instructions and any and all local, state and federal codes, laws, rules and regulations. In case of a conflict between any provision of this Ordinance and any applicable federal, state or local ordinances, codes, laws, rules or regulations, the more restrictive or stringent provision or requirement shall prevail.

ARTICLE 9
SEVERABILITY

9.1. Severability. Should any provision of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected.

ARTICLE 10
EFFECTIVE DATE

10.1. Effective Date. The effective date of this Ordinance shall be 30 days from the date of adoption by the Town Council.