

**TOWN OF HAMPDEN, MAINE
OUTDOOR WOOD BOILER ANNUAL LICENSING ORDINANCE**

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CERTIFIED BY: Denise Hodsdon
Denise Hodsdon
Town Clerk

Affix Seal

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CONTENTS**

ARTICLE	PAGE
1. TITLE AND PURPOSE.....	2
2. DEFINITIONS.....	2
3. ANNUAL LICENSE REQUIRED.....	3
4. SPECIFIC REQUIREMENTS.....	5
5. REVOCATION OF LICENSE.....	7
6. WAIVERS.....	7
7. PENALTIES.....	8
8. EFFECT ON OTHER REGULATIONS.....	8
9. SEVERABILITY.....	8
10. EFFECTIVE DATE.....	8

**TOWN OF HAMPDEN, MAINE
OUTDOOR WOOD BOILER ANNUAL LICENSING ORDINANCE**

The Town of Hampden hereby ordains:

**ARTICLE 1
TITLE AND PURPOSE**

1.1. Title. This Ordinance shall be known as the "Town of Hampden, Maine Outdoor Wood Boiler Annual Licensing Ordinance." (*Amended: 12-21-09; 1-22-13*) (*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 Ordinance, the following terms shall have the meanings indicated: (*Amended: 1-22-13*)

"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 licenses shall be made to the Town Clerk on the forms provided.
(Amended: 1-22-13)

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: (Amended: 1-22-13)

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 (Added 1-22-13)

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
REVOCAION 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.