

OUTDOOR BURNING

Chapter 35

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(HISTORY: Adopted by the Attica Village Board 12-18-1997 by L.L. No. 5-1997. Amendments noted where applicable.)

35-1 Burning of combustible material

It shall be unlawful for any person or persons to burn trash, lumber, leaves, straw or other combustible material within the village limits of the Village of Attica, except for training exercises conducted by the Fire Department with the proper Department of Environmental conservation permits. This section shall not prohibit the use of recreational fires, provided that the fire is in an approved container only. This section excludes open fire pits for chicken barbecues and/or pig/ox roasts used for fund raisers for not-for-profit organizations.

35-2 Notification of Fire Department training exercises; permit required.

The Fire Department shall notify the Wyoming County Fire Coordinator of the date and time of any controlled burn pursuant to 1191.2(c) of the New York State Uniform Fire Prevention and Building Code. A demolition permit shall be obtained from the Bureau of Code Enforcement and Fire Prevention prior to the use of a structure or building of such training exercise.

35-3 Definitions

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

APPROVED CONTAINER - Shall consist of a gas, propane or a charcoal grill used for cooking or a permanently constructed masonry fireplace with a chimney.

GUIDE WIRE - A length of one-eighth-inch twisted cable that is used to steady and/or secure an item such as a furnace stack.

OUTDOOR HEATING DEVICE - Any device that is installed or constructed outside of a residence for the purpose of heating a household, pool or any other structures located on any lot or parcel of land in the Village of Attica.

35-4 Outdoor Heating Devices/furnace; requirements

An Outdoor Heating Devices/furnace will have a welded one-piece solid steel or one-piece masonry stack with a minimum height of 12 feet above the heating/furnace unit, and the stack shall be permanently anchored by no less than three guide wires positioned no closer than six (6) feet from the center of the stack or chimney. Only home heating fuel shall be burned in such units.

SECTION 1. TITLE. This modifies Section 35-4 of Local Law Chapter 35

SECTION 2. PURPOSE

The purpose of this local law is to amend the Code of the Village of Attica to amend the existing local law regulating the installation, operation and maintenance of outdoor furnaces within the Village of Attica. Although outdoor furnaces may provide an economical alternative to conventional heating systems, concerns have been raised concerning the safety and environmental impacts of these devices, particularly the production of offensive odors and potential health effects of uncontrolled emissions. This Local Law is intended to insure that outdoor 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 Village.

SECTION 3. DEFINITIONS

Outdoor Furnace. "Outdoor Furnace" means any equipment, device or apparatus, or any part there of including a shelter or enclosure, 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 or hot water.

Untreated lumber. "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.

Firewood. "Firewood" means dry seasoned trunks and branches of trees and bushes, but does not include leaves, needles, vines, or brush smaller than one inch in diameter.

Existing or in Existence, “Existing” or “In Existence” when used with “Outdoor Furnace” means that the Outdoor Furnace is already in place on the site at the time when the local law takes effect.

Prohibited Fuels, shall include, but are not limited to, Rail Road Ties, Oil Products and By Products, and unseasoned firewood or lumber.

SECTION 4. PERMIT REQUIRED. No person shall cause, allow or maintain the use of an Outdoor Furnace within the Village of Attica without first having obtained a permit from the Village of Attica except as specified in Section 5 hereafter. Application for permit shall be made on the forms provided and include a site plan. The cost of a permit application shall be as set forth on the Fee Schedule of the Village, as amended from time to time. The Village shall have the right to inspect the installation for the safety and or other code violations and to ensure the unit is installed per manufacturer’s recommendations.

SECTION 5. EXISTING OUTDOOR FURNACES. Any Outdoor furnace in existence on the effective date of this Local Law shall be permitted to remain in operation and shall not require any additional permits until such time as a valid written complaint (see section 8(b)) is received, reviewed, and determined to be a legitimate complaint by the Village code enforcement officer. The Outdoor furnace owner shall be advised of the complaint, supplied with operation recommendations, and directed to make adjustments as required to correct the problem. All of the provisions of this Local Law shall apply to existing Outdoor Furnaces with the exception of Section 6. b. and c. below.

SECTION 6. SPECIFIC REQUIREMENTS.

- a. **PERMITTED FUEL.** Only firewood, Untreated Lumber and manufacturers recommended and governmentally approved fuels are permitted to be burned in an Outdoor Furnace. Burning of prohibited materials in a Outdoor Furnace is unlawful.
- b. **MINIMUM LOT SIZE.** Outdoor Furnaces shall be permitted only on lots of one acre or more. Outdoor furnace permit applicants shall be provided a copy of this Local Law.
- c. **SETBACKS.** Outdoor Furnaces shall be set back not less than one hundred fifty feet from the nearest dwelling location off the lot serviced by that Outdoor Furnaces and not less than fifty feet from the property line.

SECTION 7. REVIEW OF PERMIT. A permit issued pursuant to this local law may be reviewed, suspended, or revoked via the enforcement procedure of Section 8 in effect to protect the public health, safety and welfare of the residents of the Village of Attica, if the Code Enforcement Officer observes and determines that any of the following conditions could have occurred or are occurring.

- a. Malodorous air contaminants from the Outdoor Furnaces are detectable outside the property of the person on whose lot the Outdoor Furnaces is located.
- b. The emissions from the Outdoor Furnaces interfere with the reasonable enjoyment of life or property.
- c. The emissions from the outdoor furnace are or may be harmful to human or animal health.
- d. The emissions from the Outdoor Furnaces cause damage to vegetation or property.
- e. Violation of 6-NYCRR 227-1.3(b) Opacity – No person shall operate a stationary combustion installation which exhibits greater than 20 percent opacity (six minute average), except for one six-minute period per hour of not more than 27 percent opacity.

SECTION 8. ENFORCEMENT PROCEDURE. The Code Enforcement Officer shall adhere to the following sequence of procedures.

- a. Informal call to the Village or observation by Village official – Village Code Enforcement Officer checks out area to see if valid problem or a short term aberration. Notifies property owner there could be a possible problem and leaves operation checklist.
- b. Formal Written Complaint – Code Enforcement Officer checks out if complaint is valid by observing complainant location relative to unit, proper fuel supply, poor maintenance or other obvious signs of unacceptable performance including photographic evidence. CEO informs property owner of formal valid complaint, offers suggestions and review checklist.
- c. 2nd Formal Complaint within 12 months of First Complaint – CEO determines if valid and notifies property owner of 2nd complaint, informs property owner that a third complaint will result in suspension of operation permit, inspects site for problems and recommends course of action. Property owner must have service call by manufacturer's representative and provide CEO with signed documentation. CEO inspects all corrective actions.
- d. 3rd Formal Complaint within 12 months of First Complaint – CEO determines if valid and notifies property owner. CEO orders formal test (referenced in 6-NYCRR 227-1.3(b)) and or suspends operation permit. Necessary corrections must be implemented and inspected before permit is reinstated.
- e. 4th Formal Complaint within 12 months of first complaint – Operation permit is suspended pending review by Village Board members for permanent revocation. If operating permit is revoked unit must be removed at owner's expense.

SECTION 9. VARIANCES. If a property owner is denied a permit because such owner cannot comply with the requirements of this local Law with respect to the distance requirements from the side lot line or from the nearest dwelling location off the lot, such property owner may apply to the Zoning Board of Appeals for an area variance.

SECTION 10. ENFORCEMENT/REVOCATION OF PERMIT. Failure to comply with any of the provisions of this local law shall be a violation and, upon conviction thereof, shall be punishable by a fine of not more than \$500.00 or imprisonment for a period of not more than ten days, or both. If any permit issued pursuant to this Local Law is revoked per Section 8(e) the subject Outdoor Furnaces property owner and/or operator shall not be eligible for another permit. Each day a violation occurs shall constitute a separate offense. The owners of premises upon which prohibited acts occur shall be jointly and severally liable for violations of this Local law. Any fine imposed hereunder shall constitute a lien upon the real property where the Outdoor Furnace is located and may be added to the next Village tax bill for that property if unpaid at the time such Village tax is levied.

SECTION 11. 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.

SECTION 12. EFFECTIVE DATE. This local law shall take effect upon filing in the Office of the NYS Secretary of State or as otherwise provided by law.

35-5 Compliance required

No outdoor heating device and/or furnace shall hereafter be installed or constructed except in compliance with the aforementioned regulations and requirements, and all existing outdoor heating devices an/or furnaces shall, within six months after the effective date of this chapter, comply with the aforementioned regulations and requirements.

35-6 Outdoor heating device/furnace permit required

No outdoor heating device and/or furnace shall be installed or constructed without first having applied for and obtained a permit from the Village of Attica.

35-7 Penalties for offenses

Any person convicted for violation any provision of this chapter shall be guilty of a violation punishable by a fine not exceeding \$250 or my imprisonment for a term not exceeding 15 days, or both such fine and imprisonment.