

# Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

~~County~~  
~~City~~ of  
Town  
~~Village~~

MORIAH

Local Law No. 2 of the year 2009

A local law FOR THE REGULATION OF OUTDOOR WOOD FURNACES  
*(Insert Title)*

Be it enacted by the TOWN BOARD of the  
*(Name of Legislative Body)*

~~County~~  
~~City~~ of  
Town  
~~Village~~

MORIAH

as follows:

(If additional space is needed, attach pages the same size as this sheet, and number each.)

## Town of Moriah

### LOCAL LAW NO. 2 OF 2009 "OUTDOOR WOOD FURNACE/BOLIER REGULATIONS"

A LOCAL LAW TO AMEND the Code of the (town, of Moriah) in, County of Essex, \_\_\_\_\_ in (New York) by adding a new chapter, to be entitled Outdoor Wood Furnaces, which chapter provides for the same.

Be it enacted by the (town, of Moriah -Council or Board) of the (town, of Moriah) as follows:

The Code of the (town, of Moriah) is hereby amended by adding thereto a new chapter, to be Chapter 1, Outdoor Wood Furnace, to read as follows:

#### OUTDOOR WOOD FURNACES (Referred to as: OUTDOOR WOOD BOILERS OR OUTDOOR WOOD-FIRED HYDRONIC HEATERS)

- § -1 Definitions
- § -2 Regulations for Outdoor Wood Furnaces
- § -3 Substantive Requirements
- § -4 Appeals/Variances
- § -5 Violations and penalties
- § -6 Civil Proceedings
- § -7 Severability
- § -8 Effective Date

#### § - 1 Definitions

- A. Outdoor Wood Furnace: Any equipment, device, appliance 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 for any interior space or water source. An Outdoor Wood Furnace may also be referred to as an Outdoor Wood Boiler or Outdoor Wood-fired Hydronic Heater.
- B. Chimney: Flue or flues that carries off exhaust from an Outdoor Wood Furnace firebox or burn chamber.
- C. EPA OWHH Phase 1 Program - EPA OWHH (Outdoor Wood-fired Hydronic Heater Program) Phase 1 Program administered by the United States Environmental Protection Agency.
- D. EPA OWHH Phase 1 Program Qualified Model- An Outdoor Wood-fired Hydronic Heater that has been EPA OWHH Phase 1 Program qualified. The model has met the EPA OWHH Phase 1 emission level and has the proper qualifying label and hangtag.

- E. Existing Outdoor Wood Furnace: An Outdoor Wood Furnace that was purchased and installed prior to the effective date of this local law.
- F. Natural Wood: Wood, which has not been painted, varnished or coated with a similar material, has not been pressure treated with preservatives and does not contain resins or glues as in plywood or other composite wood products.
- G. New Outdoor Wood Furnace: An Outdoor Wood Furnace that is first installed, established or constructed after the effective date of this local law.

§ -2 Regulations for Outdoor Wood Furnaces

- A. No person shall, from the effective date of this local law, construct, install, establish, operate or maintain an Outdoor Wood Furnace other than in compliance with the applicable sections of this local law.
- B. No person shall, from the effective date of this local law operate an Outdoor Wood Furnace unless such operation conforms with the manufacturer's instructions regarding such operation and the requirements of this local law regarding fuels that may be burned in an Outdoor Wood Furnace as set forth in Sections 3.A and 3.B of this local law and chimney height as set forth in Section 3.D and 3.F of this local law.
- C. All new Outdoor Wood Furnaces shall be constructed, established, installed, operated and maintained in conformance with the manufacturer's instructions and the requirements of this local law. In the event of a conflict, the requirements of this local law shall apply unless the manufacturer's instructions are stricter, in which case the manufacturer's instructions shall apply.
- D. The owner of any new Outdoor Wood Furnace shall produce the manufacturer's owner's manual or installation instructions to the (appropriate department) to review prior to installation.
- E. All new Outdoor Wood Furnaces shall be laboratory tested and listed to appropriate safety standards such as UL, CAN/CSA, ANSI or other applicable safety standards.
- F. If an existing Outdoor Wood Furnace is, through the course of a proper investigation by local authorities, creating a verifiable nuisance, as defined by local or state law, the following steps may be taken by the owner and the (appropriate department) having jurisdiction:
  - (1). Modifications made to the unit to eliminate the nuisance such as extending the chimney, or relocating the Outdoor Wood Furnace or both.

- (2). Cease and desist operating the unit until reasonable steps can be taken to ensure that the Outdoor Wood Furnace will not be a nuisance.

§ -3 Substantive Requirements

Outdoor Wood Furnaces shall be constructed, established, installed, operated and maintained pursuant to the following conditions:

- A. Fuel burned in any new or existing Outdoor Wood Furnace shall be only natural untreated wood, wood pellets, corn products, biomass pellets or other listed fuels specifically permitted by the manufacturer's instructions such as fuel oil, natural gas or propane backup
  - (1) No burning of outdoor wood furnaces or wood fired appliances .from May 15<sup>th</sup> to Sept. 15<sup>th</sup>.

[ Exception] Unless you are in a sparsely populated area with no neighbors within 500 ft, or a signed notarized affidavit from your neighbor that they do not protest the use of the device. Also if you use the this device to heat your pool or hot water, you may burn once a week except holidays and weekends between the above dates. Or if the temperature drops below 35 degrees.

- B. The following fuels are strictly prohibited in new or existing Outdoor Wood Furnaces:

- (1). Wood that has been painted, varnished or coated with similar material and/or has been pressure-treated with preservatives and contains resins or glues as in plywood or other composite wood products.
- (2). Rubbish or garbage, including but not limited to food wastes, food packaging, food wraps
- (3). Any plastic materials including but not limited to nylon, PVC, ABS, polystyrene or urethane foam, and synthetic fabrics, plastic films and plastic containers.
- (4). Rubber including tires or other synthetic rubber-like products.
- (5). Newspaper, cardboard, or any paper with ink or dye products.
- (6). Any other items not specifically allowed by the manufacturer or this provision.

- C. Setbacks for any new Outdoor Wood Furnace (models not EPA OWHH Phase 1 Program Qualified):

- (1). The Outdoor Wood Furnace shall be located at least 50 feet from the property line.
- (2). The Outdoor Wood Furnace shall be located on the property in compliance with manufacturer's recommendations and or testing and listing requirements for clearance to combustible materials.
- (3). The Outdoor Wood Furnace shall be located at least 100 feet from any residence that is not served by the Outdoor Wood Furnace.

D. Chimney heights for new and existing Outdoor Wood Furnaces.

- (1). The chimney of any new Outdoor Wood Furnace shall extend at least 2 feet above the peak of any residence not served by the Outdoor Wood Furnace located within 300 feet of such Outdoor Wood Furnace.
- (2). If there is an existing Outdoor Wood Furnace already installed and there is new construction of a residence not served by the Outdoor Wood Furnace within 300 feet of such Outdoor Wood Furnace then the owner of such Outdoor Wood Furnace shall conform to the stack height requirements of this regulation within 30 days of the date such construction is complete and upon written notice from the (appropriate department).

E. Setbacks for EPA OWHH Phase 1 Program qualified models.

- (1). The Outdoor Wood Furnace shall be located at least 50 feet from the property line.
- (2). The Outdoor Wood Furnace shall be located on the property in compliance with manufacturer's recommendations and or testing and listing requirements for clearance to combustible materials.

F. Chimney heights for EPA OWHH Phase 1 Program qualified models.

- (1). The EPA OWHH Phase 1 Program qualified model chimney shall extend at least 2 feet above the peak of the residence for which it serves if neighboring residences not served by the furnace are located within 300 feet or the chimney shall extend at least 2 feet above the peak of any residence not served by the furnace within 100 feet, whichever is greater.

G. Outdoor Furnaces that use corn, wood pellets or other palletized biomass shall meet the same setback and stack height requirements as EPA OWHH Phase 1 Program Qualified models.

§ --4 Appeals

Appeals from any actions, decisions, or rulings of the (Building Codes Department) or for a variance from the strict application of the specific requirements in Section 2 or 3 of this local law may be made to the (town of Moriah) (Moriah Town Board). Requests for all appeals shall be made in writing to the (Moriah Town Board) not later than 10 days of the act, decision, or ruling from which relief is sought.

A. Appeals Fees: Appeals fees shall be established by (appropriate department) resolution.

- B. Public Hearing: Within 60 days after receiving the written request, the (Moriah Town Board) shall hold a public hearing on the appeal, with prior notice published in a newspaper of general circulation in the (Town of Moriah) at least 60 days before the date of the hearing and specifying the date, place, time, and purpose of the hearing.
- C. Decision of (Moriah Town Board). Within 60 days of the final adjournment of a public hearing, the (Moriah Town Board) shall affirm, modify, or deny the action, decision, or ruling of the (Building Codes Department) or correct any omission by the (inspector), or approve, approve with conditions, or disapprove the application. The decision of the (Moriah Town Board) shall be in writing and shall contain findings and the factual basis for each finding from the record of the hearing, which shall support the decision of the (Moriah Town Board). As part of any decision, the (Moriah Town Board) shall direct the officer to issue any appropriate permit in conformity with its ruling and shall state a time by which such permit shall be issued, in conformity with this local law.
- D. Criteria for Variances. In making its determination, the (appropriate Board of Appeals) shall take into consideration the benefit to the applicant if the variance is granted, as weighted against the detriment of the neighborhood or community by such grant. In making such determination the board shall also consider:
- (1). Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the variance;
  - (2). Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance;
  - (3). Whether the requested variance is substantial;
  - (4). Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the variance.

§ -5 Violations and penalties.

Any person who shall violate any provision of this local law shall be guilty of a violation as defined in Section 3, and shall upon conviction be subject to a fine of not more than \$200 dollars. Each week's continued violation shall constitute a separate and distinct offense.

§ -6 Civil Proceedings.

Compliance with this law may also be compelled and violations restrained by order or by injunction of a court of competent jurisdiction. Any person who violates any provision of this law shall also be subject to a civil penalty of not more than \$200 dollars, to be recovered by the (Town of Moriah) in a civil action, and each week's continued violation shall be for this purpose a separate and distinct violation. In the event the (Town of Moriah) is required to take legal action to enforce this local law, the violator may be responsible for any and all necessary costs relative thereto, including attorneys' fees, and such expense shall be charged to the property so affected by including such expense in the next annual tax levy against the property.

§ -7 Severability.

The provisions of this local law are severable and the invalidity of a particular provision shall not invalidate any other provisions.

§ -8 Effective date.

This law shall be effective upon filing with the Secretary of State

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

**1. (Final adoption by local legislative body only.)**

I hereby certify that the local law annexed hereto, designated as local law No. 2 of 20 09 of the ~~(County)(City)(Town)(Village)~~ of MORIAH was duly passed by the TOWN BOARD on JUNE 23 20 09, in accordance with the applicable provisions of law.

**2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_, and was (approved)(not approved) (repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted on \_\_\_\_\_ 20 \_\_\_\_\_, in accordance with the applicable provisions of law.

**3. (Final adoption by referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_, and was (approved)(not approved) (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_. Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general) (special)(annual) election held on \_\_\_\_\_ 20 \_\_\_\_\_, in accordance with the applicable provisions of law.

**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_, and was (approved)(not approved) (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 20 \_\_\_\_\_, in accordance with the applicable provisions of law.

\* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.



5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_ 20\_\_\_\_\_, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_\_ of the County of \_\_\_\_\_ State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 20\_\_\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph \_\_\_\_\_, above.

Elaine C. Adkins  
Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body  
**ELAINE ADKINS,**  
**Town Clerk**

Date: June 24, 2009

(Seal)

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK  
COUNTY OF NEW YORK

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

William J. Potkowski  
Signature **WILLIAM J. POTSKOWSKI**

Attorney

Title

~~COUNTY~~ of Moriah  
~~CITY~~  
Town  
~~VILLAGE~~

Date: 6-24-09