

# **Ipswich Board of Health Outdoor Hydronic Heater (OHH) Regulation**

## **SECTION 1 - AUTHORITY**

This regulation is enacted under authority granted by, but not limited to, Massachusetts General Laws, Chapter 111, sections 31, 31C, 122, and Department of Environmental Protection Regulations, 310 CMR 7.00, 310 CMR 7.09, 310 CMR 7.52 and 310 CMR 11.02. Board of Health regulations are an exercise of the police power under which the various levels of government hold responsibility for protection of the public health, safety, and welfare.

This regulation shall be effective upon approval by the Massachusetts Department of Environmental Protection and publication in accordance with M.G.L. Ch. 111, Section 31C, and remain in effect until modified or amended by the Ipswich Board of Health.

## **SECTION 2 – PURPOSE**

This regulation has been enacted by the Board of Health for the purpose of minimizing the human health hazards resulting from the smoke, particulate matter and noxious fumes emitted by Outdoor Hydronic Heaters and preventing nuisance to members of the town and detriment to public comfort and convenience.

## **SECTION 3 – APPLICABILITY**

This regulation shall apply to each Outdoor Hydronic Heater (OHH) installed on or after the effective date of this regulation as well as any OHH installed and/or in use prior to the effective date of this regulation. An OHH installed and/or in use prior to the effective date of this regulation is not exempt from this regulation and shall fully comply with this regulation.

## **SECTION 4 – DEFINITIONS**

Outdoor Hydronic Heater (OHH) or Heater or Outdoor Wood Boiler (OWB) means a fuel burning device:

- (a) designated to burn wood or other approved solid fuels;
- (b) that the manufacturer specifies for outdoor installation or installation in structures not normally occupied by humans (e.g., garages); and
- (c) 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.

All other definitions set forth in 310 CMR 7.26 (51) shall apply in this regulation.

## **SECTION 5 - REQUIREMENTS**

1. On and after the effective date of this regulation no person shall:
  - a. Site, install, allow the installation of, or operate an OHH unless it is installed at least 500 feet from any building owned by another party and the permanent stack of the OHH extends at least 2 feet higher than the peak of any roof structure located within 150 feet of the OHH. The permanent stack shall be a minimum of 18 feet in height.
  - b. Site, install, allow the installation of, or operate an OHH unless it has been permitted by the Board of Health.
2. The manufacturer's specifications for the installation and use of the OHH shall be complied with except where they are in conflict with this regulation; and in such event, the more restrictive specification or requirement shall apply.
3. The OHH shall be installed by licensed contractors once the appropriate approvals or permits have been obtained. Said approvals or permits may need to be obtained from the following entities; Zoning Board of Appeals, Building Department, Inspector of Wires, Plumbing Inspector and Conservation Agent or Commission.
4. No person shall operate an OHH unless it has been approved by all appropriate authorities.
5. An OHH installed and/or in use prior to the effective date of this regulation shall fully comply with this regulation by February 28, 2013.

## **SECTION 6 – PERMITS AND WRITTEN PLANS**

1. An OHH Permit shall be obtained from the Board of Health prior to the installation of an OHH. The permitting process shall include the submission of an application, a detailed site plan prepared and stamped by a Massachusetts Professional Registered Engineer, the manufacturer's owner manual, a copy of the certification that the particular unit chosen meets the appropriate emission standard and the permit fee. The fee shall be determined by the current Board of Health Fee Schedule.
2. The detailed site plan shall be of suitable scale (one inch = 40 feet or fewer) and shall include depiction of:
  - a. the street number and the tax map number and lot number;
  - b. the legal boundaries of the applicant's property and all streets adjacent to it;
  - c. the proposed location and dimensions of the OHH;
  - d. distances from the OHH to the applicant's property lines;

- e. the location of all building(s) existing within 500 feet of the proposed location of the OHH and the distances to said building(s);
  - f. identification of all building(s) to be served by the OHH and the associated exterior plumbing to the OHH;
  - g. the location of water lines, private wells and subsurface sewage disposal systems within 500 feet of the proposed location of the OHH;
  - h. current zoning of the adjacent properties;
  - i. the elevation of the highest peak of all roof structures located within 150 feet of the OHH; and
  - j. the proposed elevation of the top of the OHH's permanent stack.
3. The manufacturer's owner manual including operation and maintenance instructions for the OHH. The application shall identify which model is being proposed.

## **SECTION 7 – VARIANCES**

1. Every request for a variance shall be in writing and shall make reference to the specific provision of this regulation for which a variance is sought.
2. No application for a variance shall be complete until the applicant has notified all occupants and owners of all building(s) existing within 500 feet of the proposed location of the OHH and the board of health of the adjacent municipality if the unit is within 500 feet of an adjacent municipality, by certified mail at his/her own expense at least ten days before the Board of Health meeting at which the variance request will be on the agenda. The notification shall reference the specific provisions of this regulation from which a variance is sought and the date, time and place where the application will be discussed. A copy of the notice and proof of certified mail delivery shall be given to the Board of Health prior to the hearing.
3. When a request is received a hearing shall be scheduled at the next regularly scheduled Board of Health meeting.
4. The Board of Health may vary the application of any provision of this regulation when, in its opinion:
  - a. the enforcement thereof would be manifestly unjust, considering all the relevant facts and circumstances of the individual case;
  - b. the granting of the variance shall not in any way impair the public and/or interfere with the right of parties-in-interest to peaceful enjoyment of his or her home or property; and
  - c. the same degree of public health protection can be achieved without strict application of the specific provision of this regulation for which a variance is sought.

5. Any variance granted shall be in writing. Any denial of a variance shall also be in writing and shall contain a brief statement of the reasons for the denial. A copy of each variance shall be available to the public at all reasonable hours in the Health Office.
6. The Board of Health may issue variances subject to such conditions as it deems necessary to protect public health and the environment.

## **SECTION 8 – ENFORCEMENT**

1. If an OHH is installed or operated in violation of this regulation, the Board of Health or its agent is authorized to issue notices of violation, cease and desist orders, other administrative enforcement orders, and take any other legal action to compel compliance with this Regulation.
2. If an OHH is operated in a manner that constitutes a potential threat to public health, safety and welfare, or is a nuisance, the Board or its agent shall issue an order to cease operation of the OHH.
3. The Board or its agent may take enforcement action deemed appropriate and lawful, including but not limited to, non-criminal disposition, civil action for injunctive relief, and/or monetary damages.
4. A party aggrieved by an order shall have the right to request a hearing before the Board of Health. Said request must be in writing and received by Health office within seven (7) days of receipt of the order. At said hearing, the aggrieved party shall have the right to be represented by an attorney and present witnesses and documentary evidence as to why the order should be modified or withdrawn.

## **SECTION 9 – PENALTIES**

Whoever violates any order, rule or regulation promulgated or adopted under the provisions of Massachusetts General Laws, Chapter 111, sections 31C shall be punished, for the first offense, by a fine of not less than one thousand nor more than five thousand dollars and for a subsequent offense, by a fine of not less than five thousand nor more than ten thousand dollars. Each day or part thereof of violation of such an order, rule or regulation whether such violation be continuous or intermittent, shall be construed as a separate and succeeding offense.

## **SECTION 10 – SEVERABILITY**

In the event that any section or provision of this regulation is found to be invalid or unconstitutional, the remaining sections shall not be affected and shall remain in full force and effect.

Hearing Notices Published: June 14, 2012 and June 21, 2012

Regulation Adopted: July 9, 2012

Regulation Effective: August 10, 2012

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Susan C. Hubbard, Chairperson

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Dr. Spencer Amesbury, Board Member

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Charles Hill, Board Member