

Ord. No. 547 - OUTDOOR FURNANCES Adopted: June 8, 2009

An ordinance to amend the Ordinances of the Township, as codified, by adding a new Ordinance, Outdoor Furnaces; to protect the public health, safety and general welfare from excessive smoke pollution; soot contamination, other toxic air pollutants and offensive odors emanating from outdoor furnaces fueled by wood, corn, and certain other types of fuels; to prohibit any new outdoor furnaces except as allowed in the ordinance; to impose restrictions on such furnaces that exist in the Township; to provide penalties or sanctions for the violation of the ordinance provisions, to repeal any ordinances or parts of ordinances in conflict herewith and to provide for an effective date.

THE CHARTER TOWNSHIP OF KALAMAZOO, KALAMAZOO COUNTY, MICHIGAN ORDAINS:

547.001 - Title and purpose.

This Ordinance shall be known and cited as the "Charter Township of Kalamazoo Outdoor Furnace Ordinance" and shall be codified as Ordinance 547 of the Code of Ordinances of the Charter Township of Kalamazoo.

The purpose of this Ordinance is to protect the public health, safety and general welfare of the residents of the Charter Township of Kalamazoo from excessive smoke, pollution, soot contamination and other toxic air pollutants and offensive odors emanating from outdoor furnaces and to regulate the location and use of same.

547.002 - Definition.

Firewood means trunks and branches of trees and bushes.

Front Plane means the exterior wall of the principal building and/or the dwelling on the premises facing the abutting street or streets, either public or private.

Outdoor furnace means a fuel-fired boiler or furnace, fueled by wood, corn or other types of fuel, located outside the structure it is used to heat, with the designated purpose of providing indoor heat for water and/or air for a residence or other structure. The provisions of this Ordinance do not apply to boilers or furnaces fueled by natural gas, propane or fuel oil, if the boiler or furnace has been inspected and approved by the Township Mechanical Inspector.

Permitted Fuel means only firewood, wood pellets, untreated lumber, and untreated agricultural products such as corn pellets or seeds.

Spark Arrester means a device designed to keep sparks from escaping, as at a chimney opening.

Untreated Lumber means any 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.

547.003 - Restrictions.

A. Outdoor furnaces are prohibited in the Charter Township of Kalamazoo, except as specifically authorized in this Ordinance.

B. An owner or person in control of an outdoor furnace which exists in the Township as of the effective date of this Ordinance may operate the outdoor furnace, and the outdoor furnace may remain in place, only if the owner or person in control applies for an outdoor furnace permit within 60 days of the effective date of this Ordinance. Upon application, the Township's Construction Code Enforcing Agency shall inspect the outdoor furnace, and shall issue a permit for the outdoor furnace conditioned upon bringing the outdoor furnace into compliance with the following standards and requirements within one year of the effective date of this Ordinance:

1. No outdoor furnace shall be located on a parcel less than three (3) acres in area and outdoor furnaces are prohibited from being located in any area that is part of a condominium subdivision or platted subdivision within the Township.
2. Every outdoor furnace shall be located at least 300 feet from any dwelling owned by another, in existence on the effective date of this Ordinance.
3. Every outdoor furnace shall be located at least 50 feet from any property line and shall have a chimney (also referred to as a "stack") that extends at least 15 feet above the grade plane and at least two (2) feet higher than the height of the highest roof peak of any dwelling (owned by one other than the owner of the outdoor furnace in existence on the effective date of this Ordinance) located within 500 feet. For purposes of this Ordinance, "grade plane" means the average level of the finished grade at the structure within which the outdoor furnace is located, with four (4) or more corner points utilized for determining the average.
4. Chimneys shall be equipped with an approved spark arrester on the top.
5. The outdoor furnace shall comply with the provisions of Local and State Building and Fire Codes, the Mechanical Code, the Zoning Ordinance, and all other applicable statutes, regulations and ordinances.

Failure by the owner of the outdoor furnace or the person who owns or is in control of the property upon which it is located to apply for the permit required by this Ordinance; or to bring the outdoor furnace into compliance with the requirements of the ordinance within the time frame required; or failure or refusal to comply with the conditions of any variance granted under this Ordinance shall constitute a violation of this Ordinance.

C. Every owner or person in control of an outdoor furnace to which this Ordinance applies and which exists in the Township as of the effective date of this Ordinance shall comply with the following requirements and standards immediately:

1. Outdoor furnaces must meet all specifications provided by the manufacturer. In addition, outdoor furnaces must conform to any state construction code provisions that apply, and to the Township Fire Code ordinance. All outdoor furnaces must be UL (Underwriters Laboratories, Inc.) listed or certified, or approved by another recognized product safety certification organization.
2. Only permitted fuels shall be burned.
3. Outdoor furnaces shall not be used to burn any fuel other than a fuel listed by the manufacturer as a fuel it has been designed to handle.
4. No outdoor furnace shall be used from April 15 through October 15, inclusive, in any year.
5. No more than one outdoor furnace shall be permitted on any parcel.
6. A clear area of not less than 20 feet shall be maintained around the outdoor furnace. This shall include brush, weeds, vegetation, except grass not greater than four (4) inches in length, and other combustible materials.
7. On-site storage of permitted fuel shall be in accordance with Ordinance No. 350 [Section 129.000] of the Charter Township of Kalamazoo.
8. The outdoor furnace shall not be located forward of the "front plane" of the residence or principal building upon the premises.

Failure to comply with any of these requirements shall constitute a violation of this Ordinance.

D. An owner or person in control of property on which an outdoor furnace is newly installed subsequent to the effective date of this Ordinance may operate the outdoor furnace, and the outdoor furnace may remain in place, only if the owner or person in control complies with all the provisions of above paragraphs (B) and (C) of this Section III [109.003]. Additionally, any outdoor furnace newly installed subsequent to the effective date of this Ordinance shall be a model identified as a "Phase 2 White Tag Model" on the Environmental Protection Agency's "List of

Cleaner Hydronic Heaters" (see Reference List on website:
<http://www.epa.gov/owhh/models.htm>).

E. All outdoor furnaces shall be subject to periodic inspection by the Township's Construction Code Enforcing Agency and by the Fire Chief or his designee to assure that all provisions of this Ordinance have been, and continue to be, satisfied.

F. The fee for an outdoor furnace permit shall be determined by resolution of the Township Board to cover anticipated reasonable costs of inspections and administration of this Ordinance.

G. A request for a variance from the strict application of the minimum parcel size requirement, from the setback requirement or from the chimney (stack) height requirement of this Ordinance may be made to the Kalamazoo Charter Township Zoning Board of Appeals. The request shall be made in writing, submitted to the Township Clerk. The application fee for the variance shall be established by Resolution of the Township Board.

The Zoning Board of Appeals shall deny the variance, approve the variance or approve the variance with conditions necessary to carry out the intent of this Ordinance. In considering a variance request, the Zoning Board of Appeals shall consider the following:

1. Actions the applicant has taken or proposes to take to eliminate the negative impacts from the use of the outdoor furnace upon the neighborhood, including, but not limited to, changes in the position, design, amount of use, type of fuel or other aspects of the use of the outdoor furnace;
2. Conditions (including, but not limited to, limits on the use of the outdoor furnace) that would reduce negative impacts from the grant of the variance;
3. Whether particular features of topography unique to the parcel on which the outdoor furnace is located make it impractical or impossible to comply with the chimney (stack) height requirements of the ordinance.
4. Whether particular features of an installed outdoor furnace make it impossible or impractical to comply with the chimney (stack) height requirements of the ordinance. Manufacturer's instructions and/or installation recommendations can be considered by the Zoning Board of Appeals when making a determination as to whether to grant a variance to the chimney (stack) height requirement of the Ordinance.
5. Whether a variance can be granted in a form (with or without conditions) that will accomplish the purpose of this Ordinance. The decision of the Zoning Board of Appeals on a variance request shall be in writing, and shall include reasons for the decision.

H. Nuisance provisions and temporary suspension of permit.

1. An outdoor furnace use and permit shall be suspended by the order of the Township's Construction Code Enforcing Agency or the Township Fire Marshal in order to protect the public health, safety and welfare of the residents of Kalamazoo Township if any of the following conditions occurs:
 - a. Emissions from the outdoor furnace exhibit black or dark grey smoke for any continuous six-minute period;
 - b. Malodorous air contaminants from the outdoor furnace are detectable outside the property of the person on whose land the outdoor furnace is located;
 - c. The emissions from the outdoor furnace cause damage to vegetation or property;
 - d. The emissions from the outdoor furnace are or may be harmful to human or animal health.
2. A suspended use and permit may be reinstated by the Township's Construction Code Enforcing Agency or Township Fire Marshal once the condition which resulted in suspension is remedied and reasonable assurances are given that such condition will not recur.
3. Recurrence of a condition which has previously resulted in suspension of a permit shall be considered a violation of this Ordinance subject to the penalties provided herein.

(Ord. No. 566, § IV, 9-10-12)

547.004 - Severability.

The provisions of this Ordinance are hereby declared to be severable and if any clause, sentence, word, section, or provision is declared void or unenforceable for any reason, by any court of competent jurisdiction, it shall not affect any portion of the ordinance other than said part or portion thereof.

547.005 - Sanctions.

Any person, firm, association, partnership, corporation or entity that violates any of the provisions of this Ordinance shall be deemed responsible for a municipal civil infraction as defined by Michigan Statutes which shall be punishable by a civil fine determined in accordance with the following schedule:

	Minimum Fine	Maximum Fine
1st Offense within 3-year period*	\$75.00	\$500.00
2nd Offense within 3-year period*	\$150.00	\$500.00
3rd Offense within 3-year period*	\$325.00	\$500.00
4th or More Offense within 3-year period*	\$500.00	\$500.00

* Determined on the basis of the date of commission of the offense(s).

Additionally, the violator shall pay costs, which may include all expenses, direct and indirect, to which Kalamazoo Charter Township has been put in connection with the municipal civil infraction. In no case, however, shall costs of less than \$9.00 be ordered. In addition, the Township shall have the right to proceed in any court of competent jurisdiction for the purpose of obtaining an injunction, restraining order, or other appropriate remedy to compel compliance with this Ordinance and said Code. Each day that violation of this Ordinance or Code continues to exist shall constitute a separate violation of this Ordinance.

547.006 - Effective date and repeal of any ordinances.

This Ordinance shall take effect 30 days after the publication following its adoption. All ordinances or parts of ordinances in conflict herewith are hereby repealed.