

ORDINANCE #4-2006

**PROVIDING FOR: Creation of Millinocket Town Code Chapter 86,
Outdoor Wood Boilers**

**BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF
MILLINOCKET, IN TOWN COUNCIL ASSEMBLED,** that Chapter 86, Outdoor
Wood Boilers, is hereby created, as follows:

MILLINOCKET CODE, PROPOSED CHAPTER 86

OUTDOOR WOOD BOILERS

86-01. TITLE. This ordinance shall be known as the Outdoor Wood Boilers Ordinance.

86-02. STATEMENT OF PURPOSE. The purposes of this ordinance are to ensure that outdoor wood boilers are operated in a manner that limit particulate discharges, create no nuisance to neighbors, and protect members of the community from harmful levels of smoke and other emissions.

86-03. LEGISLATIVE INTENT AND FINDINGS.

- A. Outdoor wood boilers are alternative sources for heat and hot water production and when operated improperly create significant amounts of particulate and smoke discharges that threaten public health, welfare, and safety.
- B. Outdoor wood boilers are becoming more common, but government at the federal and state levels has not yet addressed their emissions issues, although the U. S. Environmental Protection Agency is currently considering regulations for outdoor wood boilers.
- C. Most people in Millinocket live within a tight compact area where significant emissions from outdoor wood boilers have very negative effects or potential effects on the personal health and enjoyment of property of residents.
- D. It is the intent of this chapter to serve the Town's compelling interest to promote, protect, and improve the health, safety, and welfare of the citizens of Millinocket by regulating outdoor wood boilers within its borders.
- E. Authority for this Ordinance is found in Article 8, Part 2, §1 of the State of Maine Constitution, also known as the "Home Rule" provision, and the Millinocket Town Charter.

86-04. PERMIT REQUIRED. No person shall install, use, or maintain an outdoor wood boiler within the Town of Millinocket without first having obtained a permit from the Code Enforcement Officer. Application for such permit shall be made to the Code Enforcement Officer on forms provided. The permit fee shall be \$50.00 and this fee may be adjusted by Council Order. Owners of outdoor wood boilers at the time this Ordinance takes effect shall be exempt from the permit fee, but will still be required to submit a permit application.

86-05. EXISTING OUTDOOR WOOD BOILERS. Any outdoor wood boiler in existence, installed, and operating/operable on the effective date of this ordinance shall be allowed to remain provided that the owner applies for and receives a permit from the Code Enforcement Officer within sixty (60) days of such effective date, provided, however, that upon the effective date of this ordinance all the provisions hereof, except for those found in Section 86-06, Paragraph B below, shall immediately apply to existing outdoor wood boilers. All of the provisions of the ordinance shall continue to apply to existing outdoor wood boilers which receive permits, except in Section 86-06, Paragraph B. If the owner of an outdoor wood boiler does not receive a permit within sixty (60) days of the effective date of this ordinance, the owner shall immediately cease operations of the boiler until such time as the conditions for a permit are met. "Existing" or "in existence" means that the outdoor wood boiler is in place on site.

86-06. SPECIFIC REQUIREMENTS.

- A. Permitted Fuel. Only seasoned firewood and untreated lumber are permitted to be burned in an outdoor wood boiler. Burning of any and all other materials in an outdoor wood boiler is expressly prohibited.
- B. Distance Requirement. No outdoor wood boiler shall be installed less than 50 feet from a neighboring residence. On lots of three (3) or more acres, a property owner shall install a boiler no less than 100 feet from any lot line.
- C. Emissions maximum. Particulate discharges shall be no greater than 27.4 grams per 100,000 British Thermal Units (BTU) per hour, as rated by a certified testing laboratory for the outdoor wood boiler unit. Should the U. S. Environmental Protection Agency or the Maine Department of Environmental Protection adopt a stricter emissions standard, that stricter standard shall be automatically considered as adopted by this Chapter. The outdoor boiler shall be required to display a listing plate on the unit that certifies that the unit is in compliance with the appropriate emissions standard, as determined by a qualified testing facility using appropriate and applicable Underwriter Laboratories standards.
- D. Certification. Any outdoor wood boiler located in Millinocket shall be certified to Standard 391 of Underwriters Laboratories (UL).
- E. Stack Height. The stack height of an outdoor wood boiler will be at least 24 inches above the roof line of the closest neighbor's residence abutting the property where the boiler is installed. On lots of three (3) or more acres, a property owner shall install a stack of no less than twelve (12) feet high.

- F. Months of Operation. Outdoor wood boilers may be operated only between October 15 and April 15 of each year.
- G. Replacements. If an outdoor wood boiler is replaced or upgraded, a permit shall be required pursuant to Section 86-04 above and shall comply with all Sections of this ordinance.

86-07. SUSPENSION OF PERMIT. A permit issued pursuant to this ordinance may be suspended as the Code Enforcement Officer deems necessary to protect the public health, safety, and welfare of the residents of the Town of Millinocket. Grounds for suspension of the permit shall include, but not be limited to, malodorous air contaminants caused by the burning of non-permitted materials in the outdoor wood boiler or by the operation of the outdoor wood boiler that are detectable on the property of neighbors of the person on whose land the boiler is located. A suspended permit may be reinstated once the condition that caused the suspension is remedied and reasonable assurances are given that such condition will not recur. Recurrence of a condition, which has previously resulted in suspension of a permit, shall be considered a violation of this chapter and be subject to the penalties provided in Section 86-09 below.

86-08. APPEALS AND WAIVERS.

- A. Appeals. An outdoor wood boiler owner may appeal, in writing, the Code Enforcement Officer's denial or suspension of a permit to the Millinocket Town Council. The Council will consider such appeals in open session and may include, at its discretion, testimony by the property owner, testimony by the Code Enforcement Officer, witnesses, and members of the general public. Any appeals upheld by the Council must find, at a minimum, that the Code Enforcement Officer substantially deviated from the conditions detailed in this chapter and state specifically what those deviations were as part of its decision. If the decision of the Code Enforcement Officer is upheld, the suspension of the permit will continue until such time as the boiler is brought into compliance with this chapter or discontinued from use. During the appeal process, however, the outdoor wood boiler shall not be used in order to protect the health, safety, and welfare of the neighborhood.
- B. Waivers. The Town Council shall retain the authority to grant waivers under this chapter due to extraordinary and undue hardship, upon written request of an affected property owner to the Council. The Council shall consider the waiver request in open session and may include, at its discretion, testimony of the property owner, the Code Enforcement Officer, and members of the general public. Any waiver granted shall not have the effect of nullifying the intent and purposes of this chapter and the Council may impose such conditions and requirements as it deems reasonable and prudent. If the Council denies the waiver request, the outdoor wood boiler in question must be brought into full compliance with this chapter or its use be discontinued immediately.

86.09. PENALTIES. Violations of this chapter shall be deemed a civil infraction and violators may be summonsed by the Code Enforcement Officer to Maine District

Court or other court of competent jurisdiction. The owner of an offending outdoor wood boiler shall be assessed a penalty of \$100.00 and each day the violation continues may be considered as a separate offense. The maximum accumulated penalty for such offenses shall not exceed \$1,000.00. For a third or subsequent violation, the property owner's permit shall be revoked in addition to any monetary penalty. The owner shall not be eligible for another permit. Should the services of the Town Attorney be required, however, the Town shall also be eligible to receive reasonable legal fees in addition to any penalties imposed under this section.

86.10. DEFINITIONS. The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them hereunder, except where the context clearly indicates a different meaning:

FIREWOOD means trunks and branches of trees and bushes, but does not include leaves, needles, or vines.

OUTDOOR WOOD BOILER means any equipment, device, or apparatus, or any part thereof, that is installed, affixed, or situated outdoors for the purpose of combustion of fuel to produce heat or energy used as a component of a heating system providing heat for any swimming pool, Jacuzzi, or interior space.

SEASONED FIREWOOD means wood of any species that has been sufficiently dried so as to contain 25% or less moisture by weight.

UNTREATED LUMBER means dry wood that has been milled and dried, but has not been treated or combined with any petroleum product, chemical, preservative, glue, adhesive, stain, paint, or other substance. It may not contain nails, screws, or other similar attachments that, when burned, could create a threat to public health, safety, or welfare.

86-11. SEVERABILITY. Should any section, sub-section, paragraph, or other provision of this chapter be held to be invalid by any court of competent jurisdiction, such decision shall not affect the validity of the chapter as a whole, or of any part thereof, other than the part held to be invalid.

This Ordinance was adopted by the Millinocket Town Council on October 26, 2006 and became effective on November 26, 2006.

BE IT FURTHER ORDAINED that the Town Clerk make copies of this chapter and distribute it to all parties known to have a copy of the Millinocket Code.

FIRST READING: 9/28/2006

SECOND READING: 10/12/2006

Extended Consideration: 10/26/2006
(as amended on 10/12/06)

Passed by the Council: 10/26/2006
(as amended on 10/26/06)

Effective Date: 11/26/2006

Attest: _____