

ORDINANCE NUMBER 338

AN ORDINANCE REGULATING THE INSTALLATION AND OPERATION OF OUTDOOR WOOD-FIRED FURNACES

THE CITY OF BESSEMER ORDAINS:

SECTION I DEFINITIONS AND WORD USAGE

CLEAN WOOD – wood that does not have paint, stains, or other types of coatings, and wood that has not been treated with substances, including but not limited to, copper arsenate, creosote, or pentachlorophenol, and wood pellets made from clean wood.

CODE ENFORCEMENT OFFICER – The Building Inspector, City Manager or other person appointed by the City Council to administer and enforce this Ordinance whose duties shall include responding to resident questions and complaints and performing other tasks as the City Council may assign.

EXISTING OUTDOOR WOOD-FIRED FURNACE – An outdoor Wood-Fired Furnace that was purchased and installed prior to the effective date of this Ordinance.

OUTDOOR WOOD-FIRED FURNACES – a fuel burning device designed to (1) burn wood or other manufacturer approved fuel products (i.e. corn and coal); (2) that the manufacturer specifies for outdoor installation or installation in structures not normally occupied by humans (e.g., garages); and (3) heats building space and/or water via the distribution, typically through pipes, of a fluid heated in the device, typically water or water/antifreeze mixture.

PERSON – Any individual, firm, partnership, corporation, association, institution, cooperative, enterprise, municipality, municipal authority, governmental entity or agency, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

STACK OR CHIMNEY - Any vertical structure enclosing a flue or flues that carry off smoke or exhaust from a solid fuel fired heating device or structure, including that part of the structure extending above a roof.

SECTION II PERMIT REQUIRED

Any person desiring to install a new outdoor wood-fired furnace within the City of Bessemer shall obtain a permit from the Building Inspector and shall pay the requisite fee.

SECTION III SUSPENSION OF PERMIT

A permit issued pursuant to this Ordinance may be suspended as the Building Inspector or other person appointed by the City Council to administer and enforce this Ordinance may determine to be necessary to protect the public health, safety and welfare of the residents of the City if any of the following conditions occur:

- A. Malodorous air contaminants from the Outdoor Wood-Fire Furnace are detectable outside the property of the person on whose land the Outdoor Wood-Fired Furnace is located;
- B. The emission from the Outdoor Wood-Fired Furnace interferes with the reasonable enjoyment of life on neighboring property.
- C. The emissions from the Outdoor Wood-Fired Furnace cause damage to vegetation or structures and/or personal property on neighboring property.
- D. The emissions from the Outdoor Wood-Fired Furnace are or may be harmful to human or animal health.
- E. The burning of any prohibited material.

A suspended permit may be reinstated once the condition which resulted in 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 Ordinance subject to the penalties provided within this Ordinance.

SECTION IV EXISTING OUTDOOR WOOD-FIRED FURNACES

Any Outdoor Wood-Fired Furnaces in existence on the effective date of this Ordinance shall be permitted to remain, provided that the owner applies for and receives a permit from the Building Inspector within ninety (90) days of the effective date of this ordinance. If the owner of an existing Outdoor Wood-Fired Furnace does not receive a permit within ninety (90) days of the effective date of this Ordinance, the Outdoor Wood-Fired Furnace shall be removed.

- A. If there is an existing Outdoor Wood-Fired Furnace already installed and there is a residence not served by Outdoor Wood-Fired Furnace within 225 feet of such Outdoor Wood-Fired Furnace, then the owner of such Outdoor Wood-Fired Furnace shall conform to the stack height requirement of this Ordinance within ninety (90) days following written notice of same from the City's enforcement officer.

SECTION V INSTALLATION OF OUTDOOR WOOD-FIRED FURNACES

Any person desiring to install an outdoor wood-fired furnace within the municipality shall obtain a permit from the Building Inspector. The applicant for such a permit shall meet the following requirements.

1. Present a plan showing all property lines, the locations and distances of all dwellings or occupied buildings on adjoining properties, and the proposed location of the outdoor wood-fired furnace.
2. Locate the outdoor wood-fired furnace at least 225 feet (225') from any occupied structure not located on the lot on which the outdoor wood-fire furnace will be located
3. The outdoor wood-fired furnace shall have a stack or chimney that extends a minimum height of sixteen feet (16') from ground level if there are any residential structures within 225 feet. The maximum height of the outdoor wood-fire furnace stack or chimney shall not exceed fifty (50) feet and shall not exceed the maximum height requirement in that specific zoning district. Should a new residential structure be built, or an existing residential structure be modified within the 225 foot radius, the Outdoor Wood-Fire Furnace stack or chimney height shall be raised to the minimum height indicated above.
4. Present evidence that the applicant has obtained a permit for the installation of the Outdoor Wood-Fired Furnace and its connection to the mechanical system of the structure it will serve.
5. Provide a copy of the manufacturer's specification and instructions, which the applicant agrees to comply with and not alter at any time.
6. Demonstrate that the Outdoor Wood-Fired Furnace has been laboratory tested and listed to comply with appropriate safety standards such as UL (Underwriters Laboratories) or ANSI (American National Standards Institute) standards and EPA Phase I Standards.

The application shall be signed by all owners of the lot on which the Outdoor Wood-Fired Furnace will be located and the contractor installing the Outdoor Wood-Fired Furnace.

SECTION VI REPLACEMENTS

If an Outdoor Wood-Fire Furnace is replaced or upgraded, a permit shall be required and the replacement unit shall meet location, stack height and siting of the original unit.

SECTION VII SITING REQUIREMENTS

New Outdoor Wood-Fired Furnaces shall meet the following minimum siting requirements:

1. Distance from structure or property: Outdoor Wood-Fired Furnaces shall be situated within 20 feet of the primary structure it serves, or according to the manufacturer's recommendation.
2. Setbacks from adjoining lots: Outdoor Wood-Fired Furnaces shall be set back not less than 10 feet from the nearest lot line and shall be centered in the required rear yard.
3. The Outdoor Wood-Fired Furnace must be located with due consideration to the prevailing wind direction.
4. Outdoor Wood-Fired Furnaces shall be located in a required rear yard.

SECTION VIII USE OF OUTDOOR WOOD-FIRED FURNACE

1. The only substance that may be burned in an Outdoor Wood-Fired Furnace is clean wood.
2. No person shall burn any of the following in an Outdoor Wood-Fired Furnace:
 - a. Any wood that does not meet the definition of clean wood.
 - b. Tires.
 - c. Lawn clippings or yard waste.
 - d. Rubbish or garbage, including but not limited to food wastes, food packaging, or food wraps.
 - e. Materials containing plastic.
 - f. Materials containing rubber.
 - g. Waste petroleum products.
 - h. Paint and paint thinners.
 - i. Any type of paper/cardboard.
 - j. Construction and demolition debris (such as shingles).
 - k. Plywood or other composite wood products.
 - l. Particleboard.
3. All Outdoor Wood-Fired Furnaces shall be restricted to seasonal use extending from September 1 through May 15 annually.

4. Any use of an outdoor wood-fired furnace in violation of this section shall constitute a nuisance per se, as that term is defined in Ordinance 320, City of Bessemer, Title IX, Chapter III, Sec. 2, subjecting the person in violation of said nuisance code to the procedures and penalties of Sec. 6 of Chapter 111, of Section 10 of this ordinance.

SECTION IX NOTICE OF ABATEMENT AND ENFORCEMENT

1. Enforcement: When the whole or any part of any Outdoor Wood-Fired Furnace is found to be in a condition contrary to the provisions set forth herein, the City Council or the Code Enforcement Officer may issue a notice citing the violation.
2. Notice to Owner: Such notice shall be directed to each owner of the building, in whose name the property appears on the City tax records, any known mortgagee and the occupant of the building, if any.
3. Contents: The notice shall specify the time and place of a hearing before the City Council at which time and place the person to whom the notice is directed shall have the opportunity to show cause why the Outdoor Wood-Fired Furnace should not be ordered to be removed or otherwise brought to compliance.
5. Method of Service: All notices shall be in writing and shall be served upon the person to whom they are directed personally, or in lieu of personal service, may be mailed by certified mail, return receipt requested, addressed to such owner or party in interest at the address shown on the tax records, at least ten (10) days before the date of the hearing described in the notice. If any person to whom a notice is directed is not personally served, in addition to mailing the notice, a copy thereof shall be posted upon a conspicuous part of the building or structure.

SECTION X ENFORCEMENT PROCEEDINGS

Hearing; Order; Costs:

1. The City Council shall take testimony of the enforcing officers, the owner of the property and any interested party, and shall order its decision either closing the proceedings or ordering the Outdoor Wood-Fired Furnace to be removed or brought into compliance.
2. If it is determined by the Council that the Outdoor Wood-Fired Furnace should be removed or otherwise made compliant, it shall so order, fixing a time in the order for the owner, agent or lessee to comply therewith.

3. If the owner, agent or lessee fails to appear or neglects or refuses to comply with the order, the City Council may direct the City Manager to take the necessary action to remove the Outdoor Wood-Fired Furnace or bring it to compliance. A copy of the findings and order of the City Council shall be served on the owner, agent or lessee in the manner previously prescribed.
4. The cost of the removal and compliance activities shall be a lien against the real property and shall be reported to the City Assessor who shall assess the cost against the property on which the Outdoor Wood-Fired Furnace is located.
5. The owner or party of interest in whose name the property appears on the last local tax assessment records shall be notified of the amount of such cost in the manner noted above. If he fails to pay the same within thirty (30) days after mailing by the Assessor of the amount thereof, the Assessor shall add the same to the next tax roll of the City and the same shall be collected in the same manner in all respects as provided by law for the collection of taxes by the City.

SECTION XI APPEALS

1. The City Council may grant new and existing outdoor wood-fired furnace owners a variance from the requirements and provisions set forth herein.
2. Judicial Review: An owner aggrieved by any final decision or order of the City Council may appeal the decision or order to the Circuit Court by filing a petition of an order of superintending control within twenty (20) days from the date of the decision.

SECTION XII EFFECTIVE DATE

This ordinance becomes effective fifteen (15) days after the date of its enactment.

Ordained and Enacted into an Ordinance at a regular meeting of the City Council of the City of Bessemer this _____ day of _____, 2009.

Public Hearing:
First Reading:
Second Reading:

ATTEST:

James K. Trudgeon, City Clerk