

AN ORDINANCE TO PROHIBIT NUISANCES FROM SOLID FUEL-FIRED HEATING DEVICE OPERATION

I. ADMINISTRATIVE PROVISIONS

- A. **PURPOSE.** Model Community adopts the regulations in this ordinance controlling the use, installation and operation of outdoor wood or other solid fuel-fired heating devices (SFHDs) to achieve the following purposes:
1. **Health.** To protect the health of citizens from fine particles in emissions generated by SFHDs. The Clean Air Act (CAA) required the U.S. Environmental Protection Agency (EPA) to establish standards for particulate matter. EPA's daily and annual fine particle National Ambient Air Quality Standards (NAAQS) were developed to protect the public from adverse health effects associated with exposure to fine particle pollution exposure. Sensitive populations protected by the CAA include persons who already have heart or lung diseases, children, and older adults. They experience serious health effects such as heart attacks, strokes, acute and chronic bronchitis, asthma episodes, reduced lung function, and other respiratory illnesses as a result of inhaling fine particle smoke which imbeds in their respiratory and circulatory systems. In addition to health effects, scientific studies show inhalation results in increased hospital and emergency room visits, lost work and school days, and in rare cases, premature death.
 2. **Fire safety.** To protect citizens and structures from fire safety risks from SFHDs that are not properly installed, do not have proper safety equipment such as spark arresters, or are installed in close proximity to other buildings.
 3. **Welfare.** To ensure the welfare of citizens and value of neighboring property are protected from negative effects of SFHDs.
 4. **Education.** To educate citizens about the proper use, installation, and operation of SFHDs, and assist property owners and managers in maintaining compliance with these regulations.
- B. **STATUTORY AUTHORITY.** Model Community has the legal authority to adopt regulations protecting the health, safety and welfare of citizens and preventing public nuisances. This legal authority exists in common law and in statute for statutory cities, [Minn. Stat. § 412.221](#), subd. 23 (public nuisances), and subd. 32 (general welfare).
- C. **DEFINITIONS.** For this ordinance, words not defined have the main meaning found at [www.m-w.com](#). These words and phrases are defined as listed here:
1. **Clean wood.** Wood that has no paint, stains, varnish, or other types of coatings; that has not been pressure treated with preservatives, including but not limited to, copper chromium arsenate, creosote, or pentachlorophenol; that does not contain laminate, glue, or bonding agents; or is not co-burned with any prohibited fuels listed in Section I.C.16.
 2. **Code official.** The officer or other designated authority charged with the administration and enforcement of this ordinance or a duly authorized representative.

3. **Dual-fuel.** An SFHD which is designed to burn another fuel in addition to wood.
4. **EPA.** The U.S. Environmental Protection Agency.
5. **Existing SFHD.** An SFHD that is installed and has been operating at its current location within Model Community within the year prior to the effective date of this ordinance.
6. **Heating degree day season.** The time period during which the outdoor ambient temperature on an average daily basis falls below 65 degrees Fahrenheit.
7. **Manufactured.** Built and operational, and subsequently ready for shipment whether packaged or not.
8. **Manufacturer.** Any person who constructs or imports into the United States an SFHD.
9. **New SFHD.** An SFHD installed after the effective date of this ordinance.
10. **NSPS.** EPA's Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces, published in the Federal Register March 16, 2015 (<http://www.gpo.gov/fdsys/search/citation.result.FR.action?federalRegister.volume=2015&federalRegister.page=13715&publication=FR>) and codified at 40 CFR 60 Subpart QQQQ.
11. **Nuisance.** The creation of a public health, safety, fire, or private danger or interference by constructing or installing an unsafe structure whose operation is potentially injurious to human, plant, or animal life or to property, or that unreasonably interferes with the comfortable enjoyment of life and use of private or public property.
12. **Particulate matter or "PM".** Total particulate matter including coarse PM10 or larger and fine PM2.5, as defined in <https://www.revisor.mn.gov/rules/?id=7005.0100>.
13. **Pellets.** Refined and densified wood shaped into small pellets or briquettes that are uniform in size, shape, moisture, density, and energy content.
14. **Permit.** An official document or certificate issued by Model Community which authorizes performance of a specified activity under specified conditions.
15. **Person.** An individual, partnership, corporation, company, or other association.
16. **Prohibited fuels.** Animal carcasses; asphalt products; coal; chemicals; composition board; construction and demolition debris; food wastes; furniture; garbage; glossy or colored papers; hazardous solid waste; industrial solid waste; lawn clippings, yard waste, or other vegetative matter; manure; materials containing plastic; materials containing synthetic or natural rubber; newsprint; packaging; paints and paint thinners; particleboard; plywood; sheetrock; tires; waste petroleum products; wiring; wood products that are painted, varnished, or treated with preservatives, and any wood that does not fit the definition of clean wood.
17. **Prohibited nuisance operation.** The act of operating an SFHD in a manner so as to:
 - a. Create a public health, safety, fire, or private nuisance by causing or allowing emissions of air contaminants to the indoor or outdoor atmosphere of such quantity, characteristic or duration that are injurious to human, plant or animal life or to property, or that unreasonably interfere with the comfortable enjoyment of life and use of private or public property.
 - b. Obscure, obstruct, or render dangerous for passage any alley, street, highway, park or square, railroad right-of-way, railroad car, motor vehicle, water body, excavation, construction site, lot, grounds, or other property within Model Community.

- c. Notwithstanding the existence of specific air quality standards or emission limits, create dense smoke, gas, mist, noxious fumes, odor, particulates, soot or cinders in unreasonable quantities, or toxic or deleterious emission, either alone or in combination with others.
- d. Burn solid fuels other than those for which the SFHD was designed by the manufacturer or burn prohibited fuels.
- e. Operate an outdoor SFHD manufactured after May 15, 2015 that is not certified by the EPA, as defined in Section I.C.10. above.

18. **Seasoned wood.** Wood with a moisture content of 20% or less.

19. **SFHD.** A Solid Fuel-Fired Heating Device.

20. **Solid.** A material that has a melting point, decomposes, or sublimates at a temperature greater than 68° Fahrenheit (20 ° Centigrade).

21. **Solid Fuel-Fired Heating Device (SFHD).** A solid fuel-burning device manufactured or used to burn wood and designed to create heat on a continual basis, by sending heat through water, antifreeze or steam into interconnected piping. An SFHD may also be called by other names, such as: outdoor wood furnace; outdoor wood boiler; outdoor wood burner; closed combustion solid-fuel-burning appliance; accessory boiler; alternative fuel-burning device; or outdoor wood-fired hydronic heater.

22. **Spark arrester.** Any device which prevents the emission of flammable debris from SFHDs, fireplaces, and wood burning stoves.

23. **The U.S. Environmental Protection Agency.** The U.S. government agency responsible for setting standards for administering federal environmental law, including setting standards, and enforcement.

D. PERSONS AND EQUIPMENT COVERED BY THIS ORDINANCE.

- 1. **Persons covered.** All persons who install, operate, or own an SFHD must comply with the provisions in this ordinance.
- 2. **Types of fuels SFHDs covered in this ordinance.** The provisions of this ordinance apply to SFHDs that are manufactured or used to burn any of the following:
 - a. Wood
 - b. Wood pellets
 - c. Wood and another fuel (a dual-fuel SFHD)
- 3. **SFHD equipment covered.** The provisions of this ordinance apply to all outdoor SFHDs, whether a primary, supplemental, residential, or commercial/industrial heat source, which include the following components:
 - a. SFHDs and their piping, chimney stacks, flues, and/or fans
 - b. any other equipment, device, appliance or apparatus, or parts thereof, which are intended to be used as part of an SFHD
- 4. **Surrounding structure covered.** Any accessory structure designed to surround the SFHD must meet the provisions of this ordinance. Accessory structures are also regulated by Model Community's zoning and subdivision ordinances.

- E. EQUIPMENT AND ACTIVITIES NOT COVERED BY THIS ORDINANCE.** This ordinance does not apply to:
1. **Outdoor grills.** Outdoor devices, equipment, appliance and/or apparatus used to grill or cook food using charcoal, wood, propane, or natural gas.
 2. **Fireplaces.** Natural gas-fired fireplaces or traditional wood-burning fireplaces in the interior of a residential dwelling.
 3. **Non-SFHD heaters.** Indoor heating devices which are not SFHDs, such as wood stoves.
 4. **Liquid fuel devices.** Industrial gas or liquid petroleum fuel devices used on site of temporary construction, demolition, or maintenance activities.
 5. **Recreational fires.** Recreational fires within the limits set by the Minnesota State Fire Code (Minn. R. 7511.0307) and campfires as defined in Minn. Stat. Chapter 88.01 Subp. 25 (<https://www.revisor.mn.gov/statutes/?id=88.01>);
 6. **Fire training and open burning sites.** Fire training or permanent tree and brush open burning sites permitted under Minn. Stat. Chapter 88.17 Subp. 3 (<https://www.revisor.mn.gov/statutes/?id=88.17>);
 7. **Forced air furnaces.** Forced air furnaces designed to burn wood or wood pellet fuel that warm spaces other than the space where the furnace is located, by the distribution of air heated by the furnace through ducts; and
 8. **Masonry heaters.** Masonry heaters, either site built or factory built wood-burning devices, in which the heat from intermittent fires burned rapidly in the firebox is stored in the refractory mass for slow release to building spaces. Masonry heaters typically have a firebox and heat exchange channels built from refractory components, through which flue gases are routed.
- F. EFFECT OF A COURT HOLDING.**
1. **Severability.** If a court holds that any portion of this ordinance is unconstitutional, inoperative, or void, that holding will not affect the remaining portions of this ordinance.
 2. **Applicability.** If a court holds that any portion of this ordinance does not apply to any person, group of persons, property or kind of property, or circumstances or set of circumstances, that holding will not affect the application of this ordinance to any other person, property or circumstance.
 3. **Intent remains.** The intent of Model Community in adopting this ordinance will remain in effect for all portions and all circumstances of this ordinance not affected by a court holding.

- G. INCORPORATION OF DOCUMENTS BY REFERENCE.** This ordinance references emissions standards, emissions levels, or requirements in other documents or other laws created and maintained by other entities. When referenced in this ordinance, the requirements in the referenced document or law will become a requirement of this ordinance as provided for under [Minn. Stat. § 471.62](#). The referenced document or law may be revised in the future by the entity that created and maintains the document or law. Any such revisions will also become a requirement of this ordinance.

II. PERFORMANCE INDICATORS FOR SFHDs

The following are indicators of poor operational performance or poor physical condition of SFHDs, leading to prohibited nuisance operation defined in Section **I.C.17**. Operation of the SFHD must cease if a code official observes failure on any of these indicators, until the failure is corrected to the satisfaction of the code official.

A. POOR OPERATIONAL PERFORMANCE INDICATORS.

1. **Clean wood.** The SFHD is burning wood which is not clean wood.
2. **Seasoned wood.** The SFHD is burning wood which is not seasoned wood and has a moisture content higher than 20%.
3. **Outside the heating degree day season.** The SFHD is burning wood outside the heating degree season.
4. **Prohibited fuels.** The SFHD is burning a prohibited fuel along with wood or instead of wood.
5. **Spark arrester.** The SFHD is being operated without an attached spark arrester in good working order if an arrester is required by manufacturer's specifications.
6. **Prohibited nuisance operation.** The SFHD is being operated in a manner which results in it being a prohibited nuisance of the types listed in Section **I.C.17**.
7. **Prohibited permit/certificate violation.** The SFHD is being operated in a way which violates the terms of a building, mechanical, plumbing, or zoning permit or certificate issued by Model Community.

B. POOR PHYSICAL CONDITION PERFORMANCE INDICATORS.

1. **Damage to the SFHD chimney stack or structure.** The SFHD has damage to its chimney stack or structure sufficient to justify a finding that its operation is impaired.
2. **Chimney stack.** The chimney is not constructed, established, installed, or maintained according to the specifications of the manufacturer of the SFHD or the requirements of Section **II.** and **III.** The SFHD has damage to its chimney stack or structure sufficient to justify a finding that its operation is impaired.
3. **Closure devices.** One or more of the lids, caps, hinges or other closure devices is not of sufficient strength and construction to remain closed between uses, leaks, or is installed in a manner that damages the container.

C. INADEQUATE FUEL STORAGE AND ASHES.

1. **Fuel cover.** The wood or wood pellets fuel is not covered with a secure cover, such as a tarp, to prevent water from soaking the fuel.
2. **Fuel storage structure.** The fuel storage structure designed to contain or store fuel for SFHDs is not constructed as required by the zoning regulations for the district in which it is located.
3. **Fuel distance.** Fuel for the SFHD is being stored closer than 36 inches from the exterior of the SFHD or the areas surrounding the SFHD is not being kept clear of combustibles, wood chips, bark, and debris.
4. **Ashes.** Ashes are not placed in a metal container equipped with a lid or cover and covered immediately after removal from an SFHD.

III. EPA REQUIREMENTS FOR NEW RESIDENTIAL SFHDs

Installation and operation of a new SFHD in Model Community must meet the EPA NSPS referenced in Section I.C.10. Failure to do so will be considered a violation of this ordinance.

IV. OTHER REGULATORY REQUIREMENTS FOR PERSONS OPERATING SFHDs

Any landowner or operator of an SFHD in Model Community must operate it in a manner which complies with Sections I.C.17. and II., and with applicable laws, regulations, rules, ordinances, codes, and permit conditions of Model Community or other levels of government concerning building, construction, installation, or zoning of any SFHD, regardless of whether or not the SFHD is a residential one.

V. ENFORCEMENT

- A. **RIGHT OF ENFORCEMENT.** Model Community's code official is authorized to enforce the provisions of this ordinance, render interpretations of this ordinance, and adopt policies, procedures, rules, and regulations in order to clarify the ordinance provisions. Such interpretations, policies, procedures, rules and regulations must comply with the intent and purpose of this Code and not have the effect of waiving requirements specifically provided for in this Code. A representative of a local or community board of health may also enforce this provision according to its general authority to inspect nuisance conditions granted under [Minn. Stat. § 145A.04](#), subd. 7 and subd. 10.
- B. **RIGHT OF ENTRY.** The code official is authorized to enter the property on which the SFHD is located to inspect or perform the duties if the code official makes an inspection to enforce the provisions of this ordinance, or has reasonable cause to believe that an SFHD on a premise is violating this ordinance, imposed by this ordinance. The code official must present credentials and request entry to the property. If entry to the property is refused, the code official can use every legal remedy to secure entry.

- C. **RIGHT OF INSPECTION.** The Model Community's code official designated to review applications and issue operating permits regulated by this ordinance, can inspect the SFHD for which the permits have been issued to enforce compliance with the provisions of this ordinance, not already regulated by the Minnesota building, mechanical, and fire codes.
- D. **PROCEDURE FOR PERMIT REVOCATION.** If the Model Community determines that an SFHD on a premise is violating the requirements of any individual or combined certificate or permit issued by Model Community, Model Community can revoke the permit after a hearing is held by the governing body, upon 30 days' written notice is given to the permit holder, landowner, or operator.

VI. PENALTIES

A person who violates this ordinance is guilty of a misdemeanor as defined in [Minn. Stat. § 609.2](#), subd. 3. Each day of operation is considered a separate violation of this ordinance.

- A. **ADMINISTRATIVE PENALTY OPTION.** Model Community can issue an administrative penalty order to any person who violates a provision of this ordinance. Administrative penalty procedures are informal, cost effective, and expeditious alternatives to traditional criminal charges for violations. The procedures are voluntary for persons who have been charged with violations, and the person charged can withdraw at any time from participation. If the person charged does not pay the monetary penalty that Model Community imposes, Model Community can seek to collect costs of administrative penalty procedures as part of a subsequent criminal sentence, if the person is charged and is found guilty of the criminal violation. The amount payable must be determined according to the schedule adopted by resolution of Model Community governing body periodically, and paid directly to Model Community.
- B. **CRIMINAL CHARGES.** A landowner or operator who violates or has a permit revoked, or does not meet the requirements of Sections II.-IV, is guilty of a violation of this ordinance until the cause of the violation is corrected to the satisfaction of the code official. Each day of violation is considered a separate violation of this ordinance. The penalty for each violation shall be a misdemeanor as defined in [Minn. Stat. § 609.02](#), subd. 3, and subject to the maximum penalty of 90 days in jail and/or a \$1000 fine, plus the costs of prosecution.
- C. **INJUNCTIVE AND OTHER FORMS OF RELIEF.** If Sections VI.A. or VI.B. do not produce a halting of the nuisance violation, Model Community may seek injunctive or other forms of relief to obtain compliance with this ordinance.
- D. **HEALTH BOARD CHARGES.** The local or community board of health may also impose penalties for violation of this Section according to its general authority to enforce nuisance conditions granted under [Minn. Stat. § 145A.04](#), subd. 8 and subd. 9.