

**TOWN OF CLAYTON
ORDINANCE # 2017-005**

**A Resolution Rescinding the Town's Outdoor Wood-Fired Furnaces,
Open Burning, and Refuse Burning Ordinance, and Re-establishing
the Town's revised Outdoor Wood-Fired Furnaces, Open Burning,
and Refuse Burning Ordinance**

**Chapter 3—Public Safety
3.5 Outdoor Burning**

Whereas, The Town of Clayton, County of Winnebago has an existing Outdoor Wood-Fired Furnaces, Open Burning, and Refuse Burning Ordinance Chapter 3—Public Safety, 3.5 Outdoor Burning, regulating outdoor burning in the Town of Clayton, and

Whereas, The Plan Commission for the Town of Clayton, County of Winnebago has reviewed the Town's Outdoor Wood-Fired Furnaces, Open Burning, and Refuse Burning Ordinance Chapter 3—Public Safety, 3.5 Outdoor Burning; and

Whereas, The Plan Commission for the Town of Clayton, County of Winnebago has recommended that the Town's Outdoor Wood-Fired Furnaces, Open Burning, and Refuse Burning Ordinance Chapter 3—Public Safety, 3.5 Outdoor Burning be updated; and

Whereas, The Plan Commission for the Town of Clayton, County of Winnebago has revised the Town's Outdoor Wood-Fired Furnaces, Open Burning, and Refuse Burning Ordinance Chapter 3—Public Safety, 3.5 Outdoor Burning; and

Whereas, The Plan Commission for the Town of Clayton has reviewed and held a Public Hearing and The Town Board for the Town of Clayton held two readings of the Town's revised Outdoor Wood-Fired Furnaces, Open Burning, and Refuse Burning Ordinance Chapter 3—Public Safety, 3.5 Outdoor Burning; and

NOW THEREFORE BE IT ORDAINED that the Town Board of the Town of Clayton, Winnebago County, does hereby Rescind the Town's Outdoor Wood-Fired Furnaces, Open Burning, and Refuse Burning Ordinance Chapter 3—Public Safety, 3.5 Outdoor Burning, and Enact the Town's revised Outdoor Wood-Fired Furnaces, Open Burning, and Refuse Burning Ordinance Chapter 3—Public Safety, 3.5 Outdoor Burning.

Adopted this 5th, day of July, 2017



Russell D. Geise, Town Chair

Attest:



Richard Johnston, Administrator/Clerk

TOWN OF CLAYTON OUTDOOR WOOD-FIRED FURNACES, OPEN BURNING, AND REFUSE BURNING ORDINANCE

Chapter 3—Public Safety 3.5 Outdoor Burning

SECTION 1: PURPOSE

1.00: This ordinance is intended to promote the public health, public safety, and public welfare of the citizens of the Town of Clayton, and to protect them from the air pollution and fire hazards of open burning, outdoor burning and refuse burning.

SECTION 2: APPLICABILITY

2.00: This ordinance applies to all outdoor burning and refuse burning within the Town of Clayton.

2.01: This ordinance does not apply to the following:

- 2.01(a):** grilling or cooking using charcoal, wood, propane or natural gas in cooking or grilling appliances.
- 2.01(b):** to the use of recreational and decorative outdoor burning devices commercially sold for use by the public, however, these devices must be used a minimum of 10 feet from any structure.
- 2.01(c):** to burning in a stove, furnace, fireplace or other heating device within a building used for human or animal habitation unless the material being burned includes refuse as defined in Section 4 of this ordinance.
- 2.01(d):** to the use of propane, acetylene, natural gas, gasoline or kerosene in a device intended for heating, construction or maintenance activities.

SECTION 3: SEVERABILITY

3.00: Should any portion of this ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected.

SECTION 4: DEFINITIONS

4.00: Definitions.

- 4.01:** "Campfire" means a small outdoor fire intended for recreation or cooking not including a fire intended for disposal of waste wood or refuse.
- 4.02:** "Clean Wood" means natural wood which has not been painted, varnished or coated with a similar material, has not been pressure treated with preservatives and does not contain resins or glues as in plywood or other composite wood products.
- 4.03:** "Fire Chief" means the Chief of Clayton Fire Rescue or other person authorized by the Fire Chief.
- 4.04:** "Outdoor Burning" means open burning or burning in an outdoor wood-fired furnace.
- 4.05:** "Open Burning" means kindling or maintaining a fire where the products of combustion are emitted directly into the ambient air without passing through a stack or a chimney.

- 4.06:** "Refuse," means any waste material except clean wood.
- 4.07:** "Solid Fuel Fired Outdoor Heating Device" means any equipment, device or apparatus, or any part thereof, which is installed, affixed or situated outside of a dwelling for the primary purpose of combustion of fuel to produce heat or energy used as a component of a heating system providing heat for any interior space or water source.
- 4.08:** "Stacks or Chimneys" means any vertical structure enclosing a flue or flues that carry off smoke or exhaust from a solid fuel fired heating devices; especially that part of such structures extending above a roof.
- 4.09:** "Pelletized Fuel or Corn Burning Unit" means any unit that uses as a heat source any fuel that is manufactured pelletized material or corn, and used in accordance with the manufacturer's specifications.
- 4.10:** "Yard, Street" means a yard extending across the full width of the lot, the depth of which shall be the minimum horizontal distance between the street line and a line parallel thereto through the nearest point of the principal structure.
- 4.11:** "Yard, Side" means a yard extending from the street yard setback line to the rear yard setback line, the width of which shall be the minimum horizontal distance between the side lot line and a line parallel thereto through the nearest point of the principal structure.
- 4.12:** "Platted Subdivision" means a subdivision; as defined in the Town of Clayton Subdivision Ordinance or the Winnebago County Subdivision Ordinance where a final plat has been recorded with the Winnebago County Register of Deeds Office.

SECTION 5: GENERAL PROHIBITION ON OPEN BURNING, OUTDOOR BURNING AND REFUSE BURNING

5.00: General prohibition on outdoor burning and refuse burning.

Open burning, outdoor burning and refuse burning are prohibited in the Town of Clayton unless the burning is specifically permitted by this ordinance.

SECTION 6: MATERIALS THAT MAY NOT BE BURNED

6.00: Materials that may not be burned.

6.01: Unless a specific written approval has been obtained from the Department of Natural Resources, the following materials may not be burned in an open fire, incinerator, burn barrel, furnace, stove or any other indoor or outdoor incineration or heating device in the Town of Clayton. The Town of Clayton will not issue a permit for burning any of the following materials without air pollution control devices and a written copy of an approval by the Department of Natural Resources.

6.01(a): Rubbish or garbage including but not limited to food wastes, food wraps, packaging, animal carcasses, paint or painted materials, furniture, composite shingles, construction or demolition debris or other household or business wastes.

6.01(b): Waste oil or other oily wastes except used oil burned in a heating device for energy recovery subject to the restrictions in Chapter NR 590, Wisconsin Administrative Code.

6.01(c): Asphalt and products containing asphalt.

- 6.01(d):** Treated or painted wood including but not limited to plywood, composite wood products or other wood products that are painted, varnished or treated with preservatives.
- 6.01(e):** Any plastic material including but not limited to nylon, PVC, ABS, polystyrene or urethane foam, and synthetic fabrics, plastic films and plastic containers.
- 6.01(f):** Rubber including tires and synthetic rubber-like products.
- 6.01(g):** Newspaper, corrugated cardboard, container board, office paper and other materials that must be recycled in accordance with the recycling ordinance.

SECTION 7: OPEN BURNING OF LEAVES, BRUSH, CLEAN WOOD AND OTHER VEGETATIVE DEBRIS

7.00: Burning leaves, brush, clean wood and other vegetative debris in the Town of Clayton.

Open burning of leaves, weeds, brush, stumps, clean wood, trees and other vegetative debris is allowed in the Town of Clayton in accordance with Sections 7.01 and 7.02 and the following provisions which shall apply to all burning in the Town of Clayton:

- 7.01:** All allowed open burning shall be conducted in a safe nuisance free manner, when wind and weather conditions are such as to minimize adverse effects and not create a health hazard or a visibility hazard on roadways, railroads or airfields. Open burning shall be conducted in conformance with all local and state fire protection regulations.
- 7.02:** Except for barbecue, gas and charcoal grills, no open burning shall be undertaken during periods when either the Fire Chief or the Wisconsin Department of Natural Resources has issued a burning ban applicable to the area.
- 7.03:** Unless explicitly allowed elsewhere in this Ordinance, a commercial enterprise other than an agricultural or silvicultural operation may open burn only at a facility approved by and in accordance with provisions established by the Department of Natural Resources and the Fire Chief.
- 7.04:** Fires set for forest, prairie or wildlife habitat management are allowed with the approval of the Department of Natural Resources.
- 7.05:** Outdoor campfires and small bonfires for cooking, ceremonies or recreation are allowed provided that the fire is confined by a control device or structure such as a barrel, fire ring, or fire pit. Bonfires are allowed only if approved by and in accordance with provisions established by the Fire Chief.
- 7.06:** Open burning shall be constantly attended and supervised by a competent person of at least eighteen (18) years of age until the fire is extinguished and is cold. The person shall have readily available for use such fire extinguishing equipment as may be necessary for the total control of the fire.
- 7.07:** No materials may be burned upon any street, curb, gutter, ditch or sidewalk or on the ice of a pond, stream or body of water.
- 7.08:** Except for barbecue, gas and charcoal grills, no burning shall be undertaken within 25 feet from any combustible material, combustible wall or partition, exterior window opening, exit access or exit unless authorized by the Fire Chief.
- 7.09:** Open burning of leaves, weeds, brush, stumps, clean wood other vegetative debris shall only be conducted at a location at least 75 feet from the nearest building which is not on the same property.

SECTION 8: BURN BARRELS

8.00 Burn barrels.

A burn barrel may be used in the Town of Clayton only in accordance with the following provisions:

- 8.01:** The burn barrel shall not be used to burn any of the prohibited materials listed in Section 6 of this ordinance and may only be used in accordance with the provisions of Section 7 of this ordinance.
- 8.02:** The burn barrel shall be located at least 75 feet from the nearest building that is not on the same property as the burn barrel.
- 8.03:** The burn barrel shall have vent holes above the ash line for combustion air and shall be covered with a heavy wire screen.
- 8.04:** The burn barrel shall not serve a commercial enterprise.

SECTION 9: OUTDOOR WOOD-FIRED FURNACES.

9.00: Outdoor wood-fired furnaces:

An outdoor wood-fired furnace may be installed and used in the Town of Clayton only in accordance with the following provisions:

- 9.01:** All solid fuel fired outdoor heating devices shall be installed, operated and maintained in strict conformance with the manufacturer's instructions and regulations and all other applicable local, state and federal standards.
- 9.02:** All solid fuel fired outdoor heating devices shall, in addition, be operated and maintained as follows:
 - 9.02(a):** Fuel shall be only natural untreated wood, or other solid fuel specifically permitted by the manufacturer, such as corn, or other pellets specifically designed for the solid fuel fired outdoor heating device.
 - 9.02(b):** The following fuels are prohibited: engineered, painted or treated wood; petroleum in any form; rubber, plastic, garbage or waste of any kind; and any other item not specifically allowed or recommended by the manufacturer.
 - 9.02(c):** The solid fuel fired outdoor heating device shall have a chimney that extends at least 10 feet above the highest part of the device. The chimney shall also extend at least 2 feet higher above the ground surface than the height of the roofs of any adjacent residence within 400 feet of the device.
 - 9.02(d):** All chimneys greater than 15 feet shall require documentation from the manufacturer of the device specifying that the device will properly function with the chimney height, and shall require documentation that the chimney is properly supported.
- 9.03:** Location: All solid fuel fired outdoor heating devices shall be located as follows:
 - 9.03(a):** No solid fuel fired outdoor heating device shall be located on a lot within a recorded subdivision plat.
 - 9.03(b):** No solid fuel fired outdoor heating device shall be located in the front yard or side yard of any lot, tract or parcel of land.
 - 9.03(c):** No solid fuel fired outdoor heating device shall be located on any lot, tract or parcel of land which is less than one acre in size.
 - 9.03(d):** No solid fuel fired outdoor heating device shall be located within 75 feet of any property line for any lot, tract or parcel of land which is one acre

or greater in size. All solid fuel fired outdoor heating devices shall be so located to maximize distances between the device and any property line.

9.03(e): The Town Board may authorize, upon appeal, in specific cases, a variance from the setback requirements where, owing to special conditions, a literal enforcement of the setback requirement will result in practical difficulty or unnecessary hardship. The concurring vote of four members of the Town Board shall be necessary to grant a variance. The Town Board may impose conditions on the grant. The Town Board shall hold a public hearing and publish a Class 2 Notice pursuant to Chapter 985, Wisconsin Statutes. Appeal and variance fees shall be established by Town Board resolution.

9.04: Permits and Installation: All solid fuel fired outdoor heating devices shall be permitted and installed as follows:

9.04(a): The Town of Clayton Building Inspector or Town designee shall inspect the installation of all solid fuel fired outdoor heating devices.

9.04(b): No solid fuel fired outdoor heating device shall be installed without first obtaining a permit from the Town of Clayton. Permit fees shall be established by Town Board resolution.

9.04(c): A permit application shall be submitted which includes the following information:

9.04(d)(1): The manufacturer of the device and the date of manufacture, along with operation and installation instructions.

9.04(e)(2): A plot plan drawn reasonably to scale containing the following information: (1) size and dimensions of the lot or parcel of land; (2) existing and proposed buildings on the lot or parcel; (3) proposed location of the solid fuel fired outdoor heating device with setbacks from property lines and buildings; and (4) all residences within 400 feet of the device.

9.05: Nonconforming Devices. Any solid fuel fired outdoor heating device which was installed prior to the effective date of this ordinance, which does not meet the chimney height requirements for an adjacent residence in Section 3.1(c) and the location requirements of Section 3.2 of this ordinance, may be used and replaced subject to conformance with all other requirements of this ordinance, provided the owner registers the device with the Town of Clayton within one year of the effective date of this ordinance.

9.06: Nuisance Operation: In the event that any solid fuel fired outdoor heating device permitted under this ordinance becomes hazardous, harmful, noxious, offensive, or a nuisance to the surrounding neighborhood, as determined by the Building Inspector or Town designee, the owner shall correct, improve and abate the nuisance using whatever means are necessary. If the nuisance cannot be abated, the operation of the device shall be discontinued by order of the Building Inspector or Town designee, until a solution to the nuisance can be found.

9.07: Appeal: An order of the Building Inspector or Town designee may be appealed in writing to the Town Board within 30 days. The appeal shall specify the basis or grounds for the appeal. The Town Board shall provide a hearing on the appeal within 45 days of the receipt of the appeal. The Town shall serve the appellant

with notice of the hearing by mail or personal service not less than 10 days before such hearing. Within 14 days after the hearing, the Town Board shall render a written determination stating the reasons therefor. The written determination shall be final, and shall be mailed or delivered to the appellant.

SECTION 10: FIRE DEPARTMENT PRACTICE BURNS

10.00: Fire department practice burns.

Notwithstanding sections 5 and 6 of this ordinance, Clayton Fire Rescue may burn a standing building if necessary for fire-fighting practice if the practice burn complies with the requirements of the Department of Natural Resources.

SECTION 11: BURNING PERMITS

11.00: Burning Permits.

- 11.01:** No person shall start or maintain any open burn without first notifying, by telephone, the Winnebago County Dispatch Center.
- 11.02:** When weather conditions warrant, the Fire Chief or the Department of Natural Resources may declare a burning moratorium on all open burning and temporarily suspend open burning in the Town of Clayton.
- 11.03:** A burning permit issued under this section shall require compliance with all applicable provisions of this ordinance and any additional special restrictions deemed necessary to protect public health and safety.
- 11.04:** Any violation of the conditions of a burning permit shall be deemed a violation of this ordinance. Any violation of this ordinance or the burning permit shall void the permit.

SECTION 12: LIABILITY

12.00: Liability.

A person utilizing or maintaining an outdoor fire shall be responsible for all fire suppression costs and any other liability resulting from damage caused by the fire.

SECTION 13: RIGHT OF ENTRY AND INSPECTION

13.00: Right of entry and inspection.

The Fire Chief or any authorized officer, agent, employee or representative of the Town of Clayton who presents credentials may inspect any property for the purpose of ascertaining compliance with the provisions of this ordinance. Note: If the owner or occupant of the premises denies access to the property for this purpose, a special inspection warrant may be obtained in accordance with Sections 66.122 and 66.123, Wisconsin Statutes.

SECTION 14: ENFORCEMENT AND PENALTIES

14.00 Enforcement and penalties

- 14.01:** The Fire Chief, the Fire Chief's designee, Winnebago County Sheriff's Department the Town Administrator, and the Town Administrator's designee are authorized to enforce the provisions of this ordinance.
- 14.02:** The penalty for a first-time violation of any portion of this ordinance shall be a warning. Any subsequent violations of any portion of this ordinance shall be a forfeiture of not less than Two Hundred Dollars (\$200.00) or more than One

Thousand Dollars (\$1,000.00) plus the cost of prosecution. Penalties are doubled for third and subsequent offenses.

14.03: Any person, firm, or corporation who violates any provision of **SECTION 9 (OUTDOOR WOOD-FIRED FURNACES)** of this ordinance shall, upon conviction, forfeit not less than \$300.00 plus the cost of prosecution. Each day of violation shall constitute a separate offense.

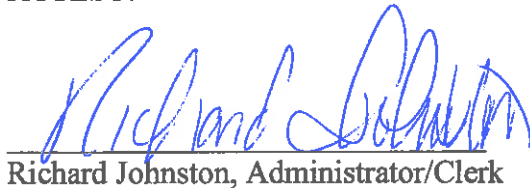
Adopted this 5th day of July, 2017.

TOWN OF CLAYTON

A handwritten signature in black ink, appearing to read "Russell D. Geise", written over a horizontal line.

Russell D. Geise, Town Chair

ATTEST:

A handwritten signature in blue ink, appearing to read "Richard Johnston", written over a horizontal line.

Richard Johnston, Administrator/Clerk