

**TOWN OF ROSENDALE TOWN BOARD**

**LOCAL LAW NO. 1 OF 2011**

A LOCAL LAW REVISING CHAPTER 37 “FIRE PREVENTION” OF THE TOWN OF ROSENDALE CODE SO THAT THE FIRE PREVENTION REGULATIONS COMPLY WITH THE EXISTING STATE LAW AND REGULATIONS ON OPEN FIRES AND ARE CONSISTENT WITH THE TOWN’S INTENTIONS CONCERNING FIRE PREVENTION, CONTROL AND SAFETY

Be it enacted by the Town Board of the Town of Rosendale as follows:

**SECTION 1. PURPOSE**

The purpose of these revisions is to update Chapter 37 “Fire Prevention” of the Rosendale Code in accordance with new open fire regulations adopted by New York State on September 14, 2009 and effective October 14, 2009. The Town intends to continue to encourage, support and provide fire prevention, fire safety, fire control and fire education within the Town of Rosendale.

**SECTION 2. REPEAL**

Sections 37-5 “Definitions,” 37-6 “Code interpretation,” 37-7 “Appeals,” and 37-8 “Penalties for offenses” of the Town Code of the Town of Rosendale are hereby repealed.

**SECTION 3.**

Sections 37-5 “Definitions,” 37-6 “Code interpretation,” 37-7 “Appeals” and 37-8 “Penalties for offenses” of Chapter 37 of the Town Code of the Town of Rosendale are hereby replaced with the following provisions:

**Section 37-5. Definitions.**

As used in this Chapter and Code, the following terms shall have the meanings indicated:

**ACQUIRED STRUCTURE** – A structure donated or loaned from a property owner for the purpose of conducting fire training.

**AGRICULTURAL LAND** - The land and on-farm buildings, equipment, manure processing and handling facilities, and practices that contribute to the production, preparation and marketing of

crops, livestock and livestock products as a commercial enterprise, including a “commercial horse boarding operation” and “timber processing.” Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.

**AGRICULTURAL WASTE** – Any waste from naturally grown products such as vines, trees and branches from orchards, leaves and stubble. In addition, any fully organic waste either grown or generated on the premises including, but not limited to, paper feed bags, wood shavings used for livestock bedding, bailing twine, and other non-plastic materials. “Agricultural waste” does not include pesticide containers, fertilizer bags, large plastic storage bags (including bags commonly known as “Ag bags”), offal, tires, plastic feed bags, and other plastic or synthetic materials.

**BUILDING INSPECTOR** – Town of Rosendale Building Inspector who is known by New York State as a Code Enforcement Officer.

**CAMP FIRE** – A camp fire or any other outdoor open fire less than two feet in height, and less than two feet in length and width or diameter.

**CHIEF OF THE BUREAU OF FIRE PROTECTION** – The Fire Marshall or “Marshal.”

**CORPORATION COUNSEL** – The Town attorney or attorney for the Town.

**MUNICIPALITY** – The Town of Rosendale.

**ON-SITE BURNING** – The burning of material, grown or generated on a particular property, in an open fire on the same property. For purposes of this definition, the same property shall include only property that is geographically contiguous and under the control or ownership of the same person.

**OPEN FIRE** – Any outdoor fire or outdoor smoke producing process from which air contaminants are emitted directly into the outdoor atmosphere. “Open fires” include burning in barrels or modified barrels. “Open fires” do not include burning in outdoor furnaces or boilers that are used to heat buildings when the devices are actually used for such purpose.

**UNTREATED WOOD** – For the purposes of this Chapter, “untreated wood” includes any wood or lumber which is not chemically treated, coated, stained, sealed, glued or otherwise adulterated. “Untreated wood” does not include such materials as pressure treated lumber, plywood, particle board, fiberboard, and oriented strand board.

### **Section 37-6. Prohibitions.**

Except as allowed by Sections 37-7 and 37-8 of this Chapter, no person shall burn, cause, suffer, allow or permit the burning of any materials in an open fire.

### **Section 37-7. Exceptions and restricted burning.**

Burning in an open fire, provided it is not contrary to other law or regulation, shall be allowed as follows with the permit required by Section 37-8 of this Chapter:

- A. On-site burning within the Town of downed limbs and branches (including branches with attached leaves or needles) less than six inches in diameter and eight feet in length between May 15<sup>th</sup> and the following March 15<sup>th</sup>.
- B. Barbeque grills, maple sugar arches and similar outdoor cooking devices when actually used for cooking and processing food.
- C. Small fires used for cooking and camp fires provided that only charcoal or untreated wood is used as fuel, the fire is not left unattended until extinguished and the fire is less than two feet in height and less than two feet in length and width or diameter.
- D. On-site burning of agricultural wastes as part of a valid agricultural operation on contiguous agricultural lands larger than five acres actively devoted to agricultural or horticultural use, provided such waste is actually grown or generated on those lands and such waste is capable of being fully burned within a 24-hour period.
- E. The use of liquid petroleum fueled smudge pots to prevent frost damage to crops.
- F. Ceremonial or celebratory bonfires where not otherwise prohibited by law, provided that only untreated wood or other agricultural products are used as fuel and the fire is not left unattended until extinguished.
- G. Small fires that are used to dispose of a flag or religious item, and small fires or other smoke producing process where not otherwise prohibited by law that are used in connection with a religious ceremony.
- H. Burning on an emergency basis of explosive or other dangerous or contraband materials by police or other public safety organization.
- I. Prescribed burns performed according to Part 194 of the New York State Department of Environmental Conservation's regulations.
- J. Fire training, including firefighting, fire rescue, and fire/arson investigation training, performed under applicable rules and guidelines of the New York State Department of State's Office of Fire Prevention and Control. For fire training performed on acquired structures, the structures must be emptied and stripped of any material that is toxic, hazardous or likely to emit toxic smoke (such as asbestos, asphalt shingles and vinyl siding or other vinyl products) prior to burning and must be at least 300 feet from other occupied structures. No more than one structure per lot or within a 300 foot radius (whichever is bigger) may be burned in a training exercise.

- K. Individual open fires as approved by the Director of the Division of Air Resources as may be required in response to an outbreak of a plant or animal disease upon request by the Commissioner of the New York State Department of Agriculture and Markets, or for the destruction of invasive plant and insect species.
- L. Individual open fires that are otherwise authorized under the New York State Environmental Conservation Law, or by rule or regulation of the New York State Department of Environmental Conservation.

**Section 37-8. Permits; conditions.**

- A. Permit. No person shall prepare or start an open fire falling within one or more of the exceptions set forth in Section 37-7(A), (D), (E) and (H) through (L) of this Chapter without applying for and obtaining a permit from the Town of Rosendale Fire Marshall or one of his deputies as set forth herein. A permit application must be completed for the exception set forth in Section 37-7(F) as the Town of Rosendale Fire Marshall may exercise his discretion and require a permit for such open fire. Permit applications must be accompanied by a permit fee of \$15.00 payable to the Town of Rosendale. Exceptions set forth in Section 37-7(B), (C) and (G) do not require a permit.
- B. Conditions for open fires with permits.
  - 1. No permit shall be issued and no open fire shall be started until the Rosendale Fire Marshall or one of his deputies has conducted an inspection of the site proposed for the open fire.
  - 2. Open fires must be set back a minimum distance of 25 feet from any structure. This condition is not meant to and does not supersede greater setbacks required by this Chapter.
  - 3. No person shall burn treated paper and paper products, treated wood construction and demolition debris, rubber, plastics, paints, varnishes, metals, oil, oil by-products or any materials containing such materials. Tires, fuel oil or similar materials which cause visible emissions shall not be used to ignite or sustain an open fire.
  - 4. The permit holder shall notify the Ulster County 9-1-1 Center prior to starting any open fire and when the open fire has been extinguished.
  - 5. An open fire shall only be started or occur on the days set forth in the permit and must occur between May 15<sup>th</sup> and the following March 15<sup>th</sup>. No open fire shall be started or occur before 6:00AM or after 6:00PM or take place on any federal or state holiday or any Sunday. Exceptions can be made to this condition but they must be made in writing by the Rosendale Fire Marshall or one of his deputies.
  - 6. The permit shall only be issued to the owner(s) of the real property on which the open fire shall occur or to the owner(s)' designated agent. The permit is only valid for the location and real property specified in the permit, which must be within the boundaries of the Town of Rosendale.

7. The permit must be at the location of the open fire while the burning is occurring and must be shown on request to any Town of Rosendale fire or police official.
8. The permit holder or his designated agent must be at the location of the open fire while the burning is occurring. No open fire shall be left while it is active or until it is completely and entirely extinguished. Any burned debris that continues to emit smoke is considered an active fire.
9. For each permit issued pursuant to this Chapter, only one pile of burnable material may be ignited and burned at any time and shall be of an appropriate size that can be managed properly.
10. A permit issued pursuant to this Chapter may only be used when prevailing winds are light and the transmission of smoke is away from populated areas. The permit holder must immediately and completely extinguish the open fire if prevailing winds change direction, or increase in intensity, to a point that jeopardizes the ability of the permit holder to control the fire or directs smoke to the surrounding population. An open fire shall not cause a contravention of any applicable air quality standards and shall not cause emissions of air contaminants to the outdoor atmosphere of such quality, characteristic or duration which are injurious to human, plant or animal life or to property, or which unreasonably interferes with the comfortable enjoyment of life or property.
11. Any permit issued pursuant to this Chapter shall be suspended during any period of air pollution episode as determined by the New York State Department of Environmental Conservation. Any permit issued pursuant to this Chapter shall also be suspended during any period of "high fire danger" as announced by the New York State Department of Environmental Conservation for and applicable to Ulster County or as determined by Rosendale Fire Marshall or one of his deputies. The permit shall be suspended until such time as the period of air pollution episode or "high fire danger" no longer exists as determined by the New York State Department of Environmental Conservation and/or the Rosendale Fire Marshall or one of his deputies.
12. The permit holder shall have sufficient means to control or extinguish the fire at all times. Heavy equipment capable of constructing an adequate fire lane or a working garden hose, sufficient means to deliver water, brooms and hand tools such as shovels and rakes and hoes are considered necessary control measures at the site of any open fire. Sufficient personnel must be present at the site at all times to control the fire.
13. Material to be burned in the open fire will be isolated to prevent the fire from moving beyond or escaping the pile created for the open fire. No fire shall be lit until all flammable material has been removed from the fire's perimeter as is necessary to prevent its spread. The pile of material to be burned shall be small enough to maintain control at all times.

14. New York State Department of Environmental Conservation forest rangers or officers or Town of Rosendale, Tillson, Cottekill or High Falls Fire Companies or Bloomington Fire Department officers or Town of Rosendale police officers or the building inspector, acting pursuant to his or her regular or special duties, may extinguish an open fire or order the permit holder to immediately extinguish any open fire whenever the conditions of any permit issued pursuant to this Chapter are violated or when a period of “high fire danger” or air pollution episode exists. When an open fire has been extinguished pursuant to this condition, no further burning is authorized or permitted pursuant to the permit without the written approval of the Rosendale Fire Marshall or one of his deputies after 48 hours has passed. The Rosendale Fire Marshall or one of his deputies may suspend or revoke the permit for any permit violation and failure to comply with its conditions.
15. The permit holder shall be liable for any and all damage to the property of another, or injury to any person, resulting directly or indirectly from any fires ignited or conducted pursuant to this Chapter and any smoke resulting therefrom. Should it become necessary to extinguish an open fire permitted pursuant to this Chapter, the permit holder may be held civilly or criminally liable for any and all suppression costs and/or damages resulting therefrom. The permit holder shall be liable for the full and entire amount of any suppression costs incurred by any and all fire companies and/or departments responding to a call to suppress, control or extinguish the aforesaid open fire.
16. In placing his or her signature on any permit issued pursuant to this Chapter, a permit holder agrees to indemnify and save and hold harmless the Town of Rosendale and all of its officers, agents, employees and volunteers from and against any and all liability of any type whatsoever including, but not limited to, any and all damages, expenses, causes of action, lawsuits, claims, penalties, fines, assessments or judgments related thereto, arising out of or occurring in connection with the aforesaid permit.
17. Permits issued pursuant to this Chapter are not transferable or assignable.

**Section 37-9. Open fire enforcement; penalties for offenses.**

- A. Inspection. In order to determine compliance with any open fire permits issued pursuant to this Chapter, the Rosendale Fire Marshall or one of his deputies is authorized to enter, inspect and examine any real property upon which the fire is proposed.
- B. Enforcement. The provisions of this Chapter shall be enforced by the Rosendale Fire Marshall or one of his deputies. Failure to obtain a permit or follow the conditions set forth in Section 37-7 of this Chapter is a violation of law. Conducting an open fire during a suspension or revocation of a permit issued under this Chapter is considered burning without a permit and is punishable by law. The Rosendale Fire Marshall shall have the authority to issue an appearance ticket under the New York State Penal Law

with respect to any violations of this Chapter. The Rosendale Fire Marshall shall also have the authority, with the permission of the Town Board, to initiate a civil action to recover all Town suppression costs and/or damages resulting therefrom and/or to obtain injunctive relief to prevent further violations of this Chapter. The Rosendale Fire Marshall may, in his discretion, initiate both criminal and civil proceedings in response to the same violation(s).

- C. Penalties. Any person who shall violate any open fire provision of this Chapter or any permit or permit conditions issued pursuant to this Chapter shall, upon conviction thereof, be guilty of a unclassified misdemeanor pursuant to the Penal Law of the State of New York, punishable by a fine of not less than \$250 nor more than \$1,500 for each offense, or imprisonment not exceeding 6 months, or both. In addition, any person who violates any open fire provision of this Chapter or who fails to do any act required thereby shall, for each and every such violation, pay a civil penalty of not more than \$250 to be imposed in a civil proceeding upon proof of a violation of this Chapter. Each day that a violation continues shall be a separate offense.

**Section 37-10. Other enforcement; penalties for offenses.**

- A. Any person who shall violate any provisions of the New York State Uniform Fire Prevention and Building Code or provisions of the Rosendale Code within the enforcement jurisdiction of the Fire Marshall or any of his deputies, other than those provisions concerning open fires, or fail to comply therewith; or who shall violate or fail to comply with any order made there under; or who shall build in violation of any detailed statement of specifications or plans submitted and approved there under, or any certificate or permit issued there under and from which no appeal has been taken; or who shall fail to comply with order as affirmed or modified by the Town Board or a court of competent jurisdiction, within the time fixed herein, shall severally for each and every violation and noncompliance, respectively be guilty of a misdemeanor, punishable by a fine of not less than \$100 nor more than \$500 or by imprisonment for not more than one year or by both such fine and imprisonment.
- B. The application of the above penalty shall not be held to prevent the forced removal of prohibited conditions pursuant to a civil action instituted by the Fire Marshall or the Town Board.

**Section 37-11. Interpretation; appeals.**

- A. Interpretation. The New York State Uniform Fire Prevention and Building Code is interpreted by the New York State Department of State, Code Division. The Rosendale Code is interpreted by the Rosendale Building Inspector.

- B. Appeals. Appeals associated with a State interpretation of the New York State Uniform Fire Prevention and Building Code may be filed with the New York State Department of State, Code Division. Appeals associated with a Rosendale Building Inspector interpretation may be filed with the Rosendale Zoning Board of Appeals in accordance with the procedures set forth in Chapter 75 of the Rosendale Code.

#### SECTION 4. SEVERABILITY

If any part or provision of this Local Law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part of the provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances, and the Town Board of the Town of Rosendale hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

#### SECTION 5. REPEALER

All ordinances, local laws, and parts thereof inconsistent with this Local Law, are hereby repealed.

#### SECTION 6. EFFECTIVE DATE

This local law shall take effect immediately upon filing with the Secretary of State.