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REVISED

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

*Farimah Faiz*

CITY ATTORNEY

ORDINANCE No. 12671 C.M.S.

**AN ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE ADDING CHAPTER 8.19.010, WOOD BURNING APPLICANCES, TO REGULATE THE INSTALLATION, REPAIR, AND OPERATION OF WOOD BURNING APPLIANCES SUCH AS WOOD-BURNING FIREPLACES, WOOD HEATERS, AND PELLET HEATERS.**

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**WHEREAS**, the State Air Resources Board (ARB) adopted a particulate matter (PM10) Ambient Air Quality Standard (AAQS) in December, 1982, and levels of PM10 AAQS were selected pursuant to California Code of Regulations Title 17 Section 70200 to protect the health of people who are sensitive to fine particulates; and

**WHEREAS**, research indicates that woodsmoke is a significant contributor to PM10 levels that pose significant health risks; and

**WHEREAS**, the City of Oakland desires to lessen the risk to life and property from air pollution from woodburning appliances; and

**WHEREAS**, the City of Oakland finds that the proposed regulation will significantly reduce the levels of fine particulates from woodburning appliances; and

**WHEREAS**, the City of Oakland recognizes that education is an important part of the reduction of fine particulates from existing woodburning appliances which may remain in operation for many years; and

**WHEREAS**, the City of Oakland the proposed regulation will require educational materials be distributed to those applying for permits to install wood burning appliances and recommends that anyone burning wood in the City of Oakland avail themselves of the abundant information provided by the Bay Area Air Quality Management District (BAAQMD) and additional material provided by their council representative; and

**WHEREAS**, the City Council subsequently conducted a duly noticed public hearing on April 12, 2005;

**Now, therefore, the Council of the City of Oakland does ordain as follows:**

**SECTION 1.** The City Council finds and determines the forgoing recitals to be true and correct and hereby makes them a part of this ordinance.

**SECTION 2.** The City Council finds and determines, that the adoption of this Ordinance is exempt from CEQA under Sections 15061(b)(3) of the State CEQA Guidelines and authorizes the filing of a Notice of Exemption with the Alameda County Clerk.

**SECTION 3.** Section 8.19.010 Wood-Burning Appliances and Devices is added to the Oakland Building Code to read as follows:

**Section 8.19.010 Wood-Burning Appliances**

**A. Purpose**

The purpose of this section is to reduce the health risks from airborne particulates and other pollutants deriving from the products of combustion of wood and similar cellulose and lignin-based substances under the climatic conditions applicable to Oakland and the San Francisco Bay Area air basin.

**B. Definitions**

For purposes of this section the following terms shall be defined as set forth below:

1. **EPA** is the United States Environmental Protection Agency.
2. **EPA Certified** is any wood-burning appliance or device that is listed and labeled “EPA Certified” in accordance with the standards in Title 40, Part 60, Subpart AAA, of the Code of Federal Regulations in effect at the time the appliance is installed.
3. **Wood** is the tough, fibrous cellular substance constituting the xylem of trees and shrubs consisting largely of cellulose and lignin.
4. **Wood-burning** is an enclosed appliance means that burns wood or any wood-based solid fuel, including but not limited to wood pellets and charcoal.
5. **Wood Heater** is an enclosed, wood burning appliance capable and intended for space heating or domestic water heating that meets the criteria in Title 40, Part 60, Subpart AAA, Section 60.531 of the Code of Federal Regulations amended October 17, 2000.
6. **Pellet heater** is a wood heater that burns pellet fuel exclusively and is either EPA-certified or exempted under EPA requirements set forth in Part 60, Title 40, Subpart AAA, of the Code of Federal Regulations, February 26, 1988.
7. **Wood-burning Fireplace** is in site-build masonry construction or factory-built, either open or with doors in front of the combustion chamber, which is neither a Wood Heater as defined in Title 40, Part 60, Subsection .531 of the Code of Federal Regulations nor a Wood Burning Cooking Stove as defined herein.

**C. Applicability**

1. This ordinance shall apply within the limits of the City of Oakland.
2. All wood-burning appliances installed in new residential units or wood-burning appliances being added to or replacing wood-burning appliances with the exception of wood-burning fireplaces in existing residential units shall comply with this ordinance.

3. All wood burning appliances installed in new commercial occupancies or wood-burning appliances being added to or replacing wood-burning appliances in existing commercial occupancies shall comply with this ordinance.
4. Exemptions: Gas fireplaces shall be exempt from this Ordinance, however, the conversion of a gas fireplace to burn wood shall constitute the installation of a woodburning appliance and shall be subject to the requirements of this ordinance. A pellet-fueled wood heater is not subject to this ordinance.

The one to one replacement or reconstruction of residential fireplaces in residential units and secondary units constructed prior to the adoption of this ordinance with new woodburning fireplaces that otherwise meet building codes, shall be exempt from Sections 8.19.010(D and E). Replacement fireplaces and the operation of such fireplaces shall meet Sections 8.19.010 (G), (H), (I), and (J).

Historic buildings are exempt from the requirements of this Ordinance. "Historical buildings" means those buildings designated as historic resources in the General Plan, buildings on any other City-adopted listing of historic resources, buildings which have been identified after appropriate analysis as being eligible for the State or National Register of Historic Places, or buildings recognized by the Landmark Preservation Board.

#### **D. Installations**

All new Wood-Burning installations shall be EPA certified, whenever such certification exists.

#### **E. Repairs**

Existing masonry fireplaces may be repaired in accordance with the applicable codes in effect at the time of the proposed repair and shall be limited to resurfacing the combustion chamber, replacement of dampers, installation or replacement of spark arrestors, and repair to flue pipe or chamber. Repair of the fireplace that may alter its drafting capabilities, including but limited to reduction of the overall length of flue, is not permitted. Repairs to the combustion chamber must, in any case, be in accordance with Title 40, Part 60, Subsection .531 of the Code of Federal Regulations.

#### **F. Mechanical Permits**

As a condition for issuing a mechanical permit for a Wood-Burning installation or a Wood-Burning Fireplace repair, the applicant shall provide approved documentation that the appliance, device, or method of repair conforms to the requirements of this section.

#### **G. Fuels**

Fuel used in Wood-Burning installations shall be limited to dry and seasoned wood and wood based products manufactured for such use. Garbage, plastic, treated wood, similarly adulterated wood and wood based products (pressure-treated, painted, stained, creosoted, etc.), coal, paint solvents, glossy paper, rubber products, particle board, waste petroleum products, and salt water drift wood shall be not be used as fuel.

**H. Airborne Particulates**

Wood-Burning installations shall not be used at any time the San Francisco Bar Area Air Quality District (BAAQMD) has declared a moratorium on burning or a no-burn day with the exception of an existing woodburning appliance that is the only source of heat.

**I. Education**

All citizens burning wood are encouraged to learn how to minimize air pollution. Educational materials will be available in City Council offices and through the BAAQMD offices. Upon the application for a building permit for installing a woodburning appliance, Building Services shall provide an informational handout outlining ways minimize pollution from woodburning appliances.

**J. Enforcement**

The City Administrator, or his or her designated representative, is empowered to enforce the provisions of this section. The provisions as set forth in Chapter 15.08 and Chapter 1.28 of this code shall apply to any such abatement. Fees, charges, penalties, and interest assessed for any abatement action performed by or on behalf of the City including shall be recovered by the City in accordance with the provisions set forth in Chapter 15.08 of this code.

**SECTION 7.** If any section, subsection, phrase, word or provision of this ordinance or the application thereof to any person or circumstances is held invalid, the remainder of this ordinance and the application of such provisions to other persons or circumstances shall not be affected thereby.

IN COUNCIL, OAKLAND, CALIFORNIA,

**JUN 07 2005**


**PASSED BY THE FOLLOWING VOTE:**

AYES-Brooks, Brunner, Chang, Nadel, Quan, Reid, ~~and~~ President De La Fuente,   
 AND KERNIGHAN - 8

NOES- 0

ABSENT- 0

ABSTENTION- 0

ATTEST:   
LATONDA SIMMONS  
City Clerk and Clerk of the Council  
Of the City of Oakland, California