

BOARD OF COUNTY COMMISSIONERS

KLAMATH COUNTY, OREGON

IN THE MATTER OF REPEALING THE CURRENT )  
 CHAPTER 406 AND ADOPTING A NEW CHAPTER )  
 406, KLAMATH COUNTY CLEAN AIR ORDINANCE, ) ORDINANCE NO. 63.05  
 OF THE KLAMATH COUNTY CODE )  
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WHEREAS, Klamath County passed the Clean Air Ordinance on July 31, 1991, in order to meet the standards of the 1990 Federal Clean Air Act; and

WHEREAS, the United States Environmental Protection Agency adopted new standards for ambient air quality particulate matter (PM-2.5) in December 2006; and

WHEREAS, Klamath County desires to revise the Klamath County Clean Air Ordinance to require the removal of non-certified wood stoves from building at the time of sale, eliminate the use of burn barrels within the Air Quality Zone, reduce the length of the Open Burning Windows within the Air Quality Zone and establish a volunteer Air Quality Advisory Committee; and

NOW, THEREFORE, the Board of County Commissioners ordains that the current Chapter 406 is repealed in its entirety and a new Chapter 406, Klamath County Clean Air Ordinance, of the Klamath County Code is adopted and will read as follows:

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**CHAPTER 406**  
**KLAMATH COUNTY CLEAN AIR ORDINANCE**

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**Exhibits:**

Exhibit A ..... Air Quality Zone

Exhibit B ..... Ringlemann Smoke Chart

*Ordinance No. 63.00 - 07/31/91*

*Ordinance No. 63.01 - 06/25/97*

*Ordinance No. 63.02 - 12/23/97*

*Ordinance No. 63.03 - 08/23/2001*

*Ordinance No. 63.04 - 10/05/2004*

*Ordinance No. 63.05*

## CHAPTER 406

# KLAMATH COUNTY CLEAN AIR ORDINANCE

### 406.001 Policy and Purpose

To control and address air quality problems and identify the Air Quality Zone, so that Klamath County will have clean air for the benefit of its citizens' health and welfare; to be in compliance with requirements of the Federal Clean Air Act of 1990 and applicable revisions or updates, and not exceed the National Ambient Air Quality Standard for particulate matter; and to improve economic development opportunities.

### 406.005 Definitions

Except where the context otherwise requires, the definitions given in this section govern the construction of this Chapter.

- (1) **AIR QUALITY ADVISORY** - A means, declared and provided by the Klamath County Environmental Health Division based on the Air Quality Forecast, to inform area residents of what the air quality is or potentially will be. The advisories shall be:
  - (a) **Red Advisory Period** - A period of time when an Air Quality Forecast predicts that particulate matter concentrations have the potential to exceed or are exceeding an estimate of 150  $\mu\text{g}/\text{m}^3$  of PM-10 or 30  $\mu\text{g}/\text{m}^3$  for PM-2.5 for a 24-hour average. Such pollution concentrations have a high probability of being unhealthy.
  - (b) **Yellow Advisory Period** - A period of time when the Air Quality Forecast predicts that particulate matter concentrations are less than what would be considered for the Red Advisory Period, but would likely exceed estimates of 80  $\mu\text{g}/\text{m}^3$  of PM-10 or 16  $\mu\text{g}/\text{m}^3$  of PM-2.5 for a 24-hour average. Such pollution concentrations have a high probability of impacting public health.
  - (c) **Green Advisory Period** - A period of time when an Air Quality Forecast predicts daily particulate matter concentrations for a 24-hour average will not exceed 80  $\mu\text{g}/\text{m}^3$  of PM-10; or 16  $\mu\text{g}/\text{m}^3$  of PM-2.5.
- (2) **AIR QUALITY FORECAST** - A method of using available data including, but not limited to, local weather conditions, current and anticipated particulate levels, and weather forecasts to determine the PM-10 and PM-2.5 particulate matter concentrations.
- (3) **AIR QUALITY INSPECTOR** - Air Quality Inspectors may be staff of the Klamath County Environmental Health Division, the Klamath County Code Compliance Office, the Code Enforcement Office of the City of Klamath Falls, or the County Fire Districts who will act within their scope of authority. The primary role of an Air Quality Inspector is to observe and document violations of Chapter 406 and to educate the public with respect to this Chapter and the documented violation.
- (4) **AIR QUALITY ZONE** An area within the County as depicted on the map and legal description in Exhibit A.
- (5) **AGRICULTURAL OPERATION** - An activity including an irrigation operation on land currently used, or intended to be used primarily for the purpose of obtaining a profit by raising, harvesting and selling crops, or by raising and selling livestock and/or poultry, or the products thereof. Agricultural operation also means activities conducted by not-for-profit agricultural research organizations, which activities are necessary to serve that purpose. It does not include the

construction and use of dwellings customarily provided in conjunction with the agricultural operation.

- (6) BUILDING - All residential or commercial structures including manufactured homes.
- (7) BURN-DOWN TIME - A period of time allowed for fires in solid fuel-fired appliances and open/outdoor burning, to die down prior to the beginning of enforcement activities. Such burn-down time applies to Red or Yellow Advisory Period.
- (8) CERTIFICATE OF EXEMPTION - A written approval issued by the Klamath County Environmental Health Division to use a solid fuel-fired appliance in a manner normally in violation of the requirements of this Chapter.
- (9) CERTIFICATE OF VARIANCE - A written approval issued to a person by the Klamath County Environmental Health Division to open or outdoor burn in a manner normally in violation of the requirements of this Chapter.
- (10) CERTIFICATE OF WAIVER - A written approval issued by the Klamath County Environmental Health Division to allow open/outdoor burning in a manner normally in violation of the requirements of this Chapter.
- (11) CERTIFIED WOODSTOVE OR FIREPLACE INSERT - A solid fuel-fired space heating appliance that has been certified by the Oregon Department of Environmental Quality (DEQ) or bears an Environmental Protection Agency certification label indicating that the model is built in accordance with EPA emission certification.
- (12) COOK STOVE - A wood burning stove installed in the kitchen, which is primarily designed for cooking and has a stovetop and an oven. It may also be equipped with gas burners or electric heat elements.
- (13) EXEMPT SOLID-FUEL FIRED APPLIANCE - A solid fuel-fired appliance that is exempt from the Oregon Department of Environmental Quality (DEQ) or the United States Environmental Protection Agency (EPA) requirements for certification for its installation. Exempt stoves are pellet stoves, antique stoves (built before 1940 with ornate construction and a substantially higher current market value), open masonry fireplaces, cook stoves, or other stoves that have a valid letter of exemption from DEQ, or do not meet the definition of a "woodstove" or "wood heater" as defined in DEQ's Oregon Administrative Rules for Residential Wood Heating.
- (14) FIRE DEPARTMENT - The unit of municipal government or county approved Local Fire District having the authority and responsibility to extinguish unintended fires and to promote fire safety.
- (15) FIREPLACE - A framed opening made in a chimney to hold an open fire.
- (16) KLAMATH COUNTY AIR QUALITY ADVISORY COMMITTEE - A volunteer committee appointed by the Klamath County Board of Commissioners. The purpose of the Air Quality Advisory Committee is to evaluate relevant air quality data, identify significant contributing emission sources, recommend appropriate emission reduction strategies and recommend action to the Board of County Commissioners.
- (17) LOW INCOME PERSON - A person or family who demonstrates economic need by certifying through proof that their total household income is less than the very low-income guidelines established by the United States Department of Housing and Urban Development.
- (18) NON-CERTIFIED WOOD STOVE OR FIREPLACE INSERT - A solid fuel-fired residential space heating device that has not been certified by either the Oregon Department of Environmental Quality or the Environmental Protection Agency (EPA) as complying with smoke

emission standards. "Non-certified wood stove or fireplace insert" does not include fireplaces, nor devices exempt from certification requirements as defined in Section 406.005(13).

- (19) NOTICE OF NONCOMPLIANCE - A letter notifying a violator of this Chapter of the specific violation and the corrective action necessary.
- (20) OPEN/OUTDOOR BURNING – This section refers to all open or outdoor fires intended for heating or the combustion of waste, and those included in the definition of "Open Burning" in Oregon Administrative Rule Chapter 340 Division 264. Outdoor cooking fires are not included.
- (21) PARTICULATE MATTER TEN MICRONS AND LESS (PM-10) - Airborne particulate matter with an aerodynamic diameter of ten (10) microns in size or less. PM-10 is normally measured by weight per unit volume of air in micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ). The National Ambient Air Quality Standard is 150  $\mu\text{g}/\text{m}^3$  for a 24-hour period beginning at 12:01 AM.
- (22) PARTICULATE MATTER TWO AND ONE-HALF MICRONS OR LESS (PM-2.5) - Airborne particulate matter with an aerodynamic diameter of two-point-five (2.5) microns in size or less. PM-2.5 is normally measured by weight per unit volume of air in micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ). The National Ambient Air Quality Standards are 35  $\mu\text{g}/\text{m}^3$  for a 24-hour period beginning at 12:01 AM, with a 15  $\mu\text{g}/\text{m}^3$  annual average.
- (23) PELLET STOVE – A wood burning heating appliance which uses wood pellets as its primary source of fuel.
- (24) PERSON - Any individual, partnership, corporation, company or other association.
- (25) PROHIBITED MATERIALS - Any combustible material as defined by the State's prohibited materials open burning rule which include wet garbage, plastic, wire insulation, automobile parts, asphalt, petroleum product, petroleum treated material, rubber products, or animal or vegetable matter resulting from the handling, preparation, cooking or service of food that normally results in dense or noxious smoke when burned. Also included are coal and any open burned materials that cause a public or private nuisance or a hazard to public safety.
- (26) RESPONSIBLE PERSON – A person eighteen (18) years of age or older, authorized by the property owner to attend an open burning event and who is capable of and has the necessary equipment to extinguish the fire.
- (27) SALE OF REAL PROPERTY - Any transaction whereby the ownership of a building as defined by the Klamath County Development Code, or the real property upon which a building is located, is transferred by an agreement for the sale and purchase of the building or the real property.
- (28) SOLE SOURCE OF HEAT - One or more residential solid fuel-fired appliances that constitute the only source of space heat in a private residence. No residential solid fuel-fired appliance or devices shall be considered to be the sole source of heat if the private residence is equipped with a permanently installed working system such as: oil, natural gas, electric, geothermal, solar or propane heating system, whether connected or disconnected from its source.
- (29) SOLID FUEL-FIRED APPLIANCE - A device designed for solid fuel combustion, including cordwood stoves (wood stoves and fireplace stove inserts), fireplaces, solid fuel-fired cook stoves and combination fuel furnaces or boilers, which burn solid fuels.
- (30) URBAN GROWTH BOUNDARY (UGB) - An area of the county surrounding and including the City of Klamath Falls which has been designated by the Klamath County Board of Commissioners and the City of Klamath Falls as an area of potential growth which may impact both governmental bodies.

(31) WASTE

- (a) Agricultural Waste - Any waste materials generated or used by an agricultural operation.
- (b) Commercial Waste – Waste Materials from offices, warehouses, restaurants, mobile home parks, dwellings (apartments) containing more than four (4) family units, hotels, motels, schools, or wholesale or retail yards.
- (c) Construction Waste - Any waste material produced by a building or construction project. Examples of construction waste are wood, lumber, paper, wood pallets, crating and packing materials used during construction, materials left after completion of construction and materials collected during cleanup of a construction site.
- (d) Demolition Waste - Any material produced by the complete or partial destruction, or tearing down, of any man-made structure the clearing of any site for land improvement; or cleanup such as the removal of trees, brush or stumps, excluding agricultural waste, Section 406.005(31)(a), or domestic waste, Section 406.005(31)(e).
- (e) Domestic Waste - Household materials including paper, cardboard, clothing, yard debris, Section 406.005(31)(h), or other material generated in or around a dwelling of four (4) or less family units, or on the real property adjacent to the dwelling. Once domestic waste is removed from the property of origin it becomes commercial waste.
- (f) Forest Slash - Forest debris or woody vegetation related to the management of forestlands, used for the growing and harvesting of timber.
- (g) Industrial Waste - Any materials (including process wastes) produced as a direct result of any manufacturing or industrial process.
- (h) Yard Debris - Wood, needle or leaf material from trees, shrubs, or plants on real property adjacent to a dwelling of not more than four (4) family dwelling units. Once yard debris is removed from the property of origin, it becomes commercial waste, Section 406.005(31)(b) .

(32) WOODSTOVE/WOODHEATER – An enclosed, wood burning appliance capable of and intended for space heating or domestic water heating that meets all of the following:

- (a) An air-to-fuel ratio in combustion chamber averaging less than 35-1 as determined by the test procedure prescribed in federal regulations, 40 CFR Part 60, Subpart AAA, Section 60.534 performed at an accredited laboratory;
- (b) A usable firebox volume of less than 20 cubic feet;
- (c) A minimum burn rate less than 5 kg/hr as determined by the test procedure prescribed in federal regulation, 40 CFR, Part 60, Subpart AAA, Section 60.534 performed at an accredited laboratory; and
- (d) A maximum weight of 800 kg (1,760 lb). In determining the weight of an appliance for these purposes, fixtures and devices that are normally sold separately, such as flue pipe, chimney, heat distribution ducting, and masonry components that are not an integral part of the appliance or heat distribution ducting, shall not be included.

**406.100 County Wide Air Quality Pollution Control Requirements**

- (1) AIR QUALITY ADVISORIES - The Klamath County Environmental Health Division shall determine and issue Air Quality Advisories at least daily during the winter heating season and at other times of the year as needed according to the definitions provided in Section 406.005(1). Air Quality Advisories will be provided to the public.

- (2) PUBLIC RESPONSIBILITIES - Each person that burns outdoors or in a solid fuel-fired-appliance in Klamath County is required to comply with the requirements of this Chapter.
- (3) SOLID FUEL-FIRED APPLIANCES
- (a) Appliance Resale and Installation:
    - (i) The resale or installation of a non-certified solid fuel-fired appliance or any appliance not meeting the requirements of Section 406.005(31) is prohibited.
    - (ii) The resale, or installation of an exempt solid fuel-fired appliance, is allowed in accordance with state and local requirements.
    - (iii) A Klamath County Building Division permit is required for the installation of a solid fuel-fired appliance.
  - (b) Disclosure of Solid Fuel-Fired Appliances upon the Sale of Real Property - The presence of all solid fuel-fired appliances including wood stoves, fireplace inserts, fireplaces, and pellet stoves in the building shall be disclosed by the seller to the buyer as part of the sale and purchase of any building. The disclosure shall state whether any solid fuel-fired appliances are certified, non-certified, exempt or pellet.
  - (c) Removal of Non-Certified Woodstoves and Fireplace Inserts upon the Sale of Real Property - Non-certified wood stoves and fireplace inserts must be removed from building upon sale of any building containing them. The removal shall be accomplished prior to the closing of any real estate transaction involving the building containing the non-certified wood stove(s) or fireplace insert(s).
  - (d) Sole Heating Source - It shall be unlawful for a solid fuel-fired appliance to be the sole source of heat in any non-owner (tenant) occupied dwelling unit within Klamath County.
  - (e) Solid Fuel-fired Appliance Fuel - Only dry, seasoned cordwood, pressed sawdust logs, organic charcoal or pellets specifically manufactured for the appliance may be burned in a solid fuel-fired appliance.
  - (f) Prohibited Materials - Prohibited materials as defined in Section 406.005(25) and Oregon Administrative Rule 340-264-0060(3), shall not be burned in fireplaces, solid fuel-fired appliances, pellet stoves or cook stoves within Klamath County. An exception is the burning of re-refined used oil in an approved oil-burning device.
- (4) OPEN/OUTDOOR BURNING REQUIREMENTS - This section pertains to burning as defined in Section 406.005(20).
- (a) All open burning is prohibited during Red or Yellow Advisory Periods within Klamath County unless a Certificate of Variance has been issued by the Klamath County Environmental Health Division in accordance with Section 406.250.
  - (b) Open Burning Hours:
    - (i) Open burning fires are not to be started until one hour after sunrise and must be completely out one hour before sunset, unless otherwise directed by the local fire department.
    - (ii) Burning conducted for forest or ecosystem management, for example slash fires, are not required to be out by sunset.
  - (c) Local Fire Permit Required - Persons burning, shall adhere to all municipal, local Fire Department, State Fire Marshal or Oregon Department of Forestry or DEQ rules, ordinances, or restrictions.

- (d) Responsible Person:
  - (i) A responsible person, as defined in Section 406.005(26), must constantly attend all open burning.
  - (ii) This person must also completely extinguish the fire before leaving it.
- (e) Prohibited Materials – Burning of Prohibited materials as defined in Section 406.005(25) and Oregon Administrative Rule 340-264-0060(3), in outdoor or open fires is prohibited.

**406.150 Air Quality Pollution Requirements Applying Within the Air Quality Zone.**

In addition to the requirements in Section 406.100 the following requirements apply:

- (1) **SOLID FUEL-FIRED APPLIANCES** - This section applies to the use of solid fuel-fired appliances for residential and commercial heating **within the Air Quality Zone**.
  - (a) During a Red Advisory Period, no person shall operate any solid fuel-fired appliance except a pellet stove.
  - (b) During a Yellow Advisory Period, no person shall operate an non-certified wood stove, non-certified wood stove insert, or fireplace. Only certified solid fuel-fired appliances and pellet stoves may be operated.
  - (c) During a Green Advisory Period, non-certified wood stoves, non-certified wood stove inserts, fireplaces, certified wood stoves, certified wood stove inserts and pellet stoves may be used for indoor heating.
  - (d) **Visible Air Contaminant Emissions.** No person operating a solid fuel-fired appliance within the Air Quality Zone shall allow smoke of an opacity of greater than 20%, or comparable to that described in the Ringelmann Smoke Chart (Exhibit B), to be vented to the atmosphere for more than three (3) minutes in any one (1) hour period. Emissions created during a ten (10) minute start-up period are exempt.
  - (e) **Burn-down time.** A Burn-down time, not to exceed three (3) hours, will be given on Red or Yellow Advisory Periods. No enforcement action described in Section 406.300 will take place for visible air contaminant emissions emitted during the burn-down time.
  - (f) **Emergency Conditions.** An exemption to Section 406.150 may be issued by the Klamath County Environmental Health Division to allow the use of normally prohibited solid fuel-burning appliances within the Air Quality Zone, during periods when:
    - (i) utility suppliers declare energy shortages;
    - (ii) electric power or outages occur;
    - (iii) interruptions occur of natural gas supplies; or
    - (iv) temporary failure occurs of a resident's heating system when there is an immediate need to operate a solid fuel space-heating device to protect family/individual health and welfare.
- (2) **OPEN BURNING** - Except as specified in this section or allowed by Section 406.250, open burning is prohibited within the Air Quality Zone.
  - (a) **Open Burning Window:** The Klamath County Environmental Health Division Manager, in consultation with the Board of County Commissioners, the City of Klamath Falls Code Compliance Officer and Fire Districts No. 1 and No. 4 may declare two specific fifteen (15) day periods a year during which times the open burning of residential yard debris, as defined