

ORDINANCE NO. 2981

An ordinance regulating wood stoves and fireplaces,
providing exemptions for sole source heating, penalties for violation,
authorizing incentives and grants
to eliminate existing devices, creating a wood stove incentive replacement fund, and
restricting burning on certain days.

Table of Contents.

1. Air quality, declaration of policy
2. Definitions
3. Regulation of new solid fuel burning devices-approved stoves only
4. No burning during High Pollution Days
5. Elimination of nonconforming wood stoves
6. Entry in order to inspect
7. Administrative Appeals
8. Exemptions--sole source of heat
9. Severability
10. Nuisance, injunction
11. Penalty
12. No duty created
13. Wood Stove Incentive Replacement fund.

Section 1. **Air quality, declaration of policy.** The City Council hereby finds and declares:

Air quality is an important part of the health, safety and welfare of the community. City Council desires to protect and improve air quality in and around the City, not only for the health, safety and general welfare of its citizens, but also because air pollution resulting from the use of wood stoves hurts the aesthetic and economic welfare of the community. Present levels of air pollution which occur during winter inversions in the Grand Valley are unacceptable. The Grand Valley Air Quality Planning Committee has studied and made recommendations concerning local efforts which can protect the air quality in the Grand Valley. The City Council endorses such efforts.

To assist in maintaining existing air quality levels and to improve air quality in the City, and its environs, the City Council endorses:

- (a) The continuation of City support of the voluntary “no burn” program presently being implemented by the Mesa County Health Department;
- (b) In the City, a mandatory “no burn” requirement prohibiting the use of uncertified solid fuel burning devices on days of high pollution.
- (c) Provisions to require that only certified wood burning devices or gas devices be installed
in

the future;

- (d) Provisions which “grandfather” existing devices until the transfer of ownership of the property as provided below;
- (e) Programs, either by local governments or others, or combinations, which provide financial incentives to reduce the use of wood stoves and fireplaces.

It is to these stated ends that this ordinance is enacted.

Section 2. **Definitions.** As used in this ordinance, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:

- (a) *Approved Non-solid Fuel Burning Device*: any device that operates exclusively with non-solid fuel, *i.e.*, gas or liquid, and is installed in accordance with City ordinances and resolutions and State regulations, including a properly installed fire box, flues, and gas log apparatus. Hereinafter an approved non-solid fuel burning device is referred to as “gas stove”.
- (b) *Approved Solid Fuel Burning Device*: a solid fuel burning device (*e.g.*, wood stove, pellet stove, masonry heater) which meets the standards set forth, or referred to, in Regulation No. 4 (5 CCR 1001-6). Hereinafter an approved solid fuel burning device is referred to as “clean stove”.
- (c) *Building Inspector*: such person as is designated by the City Manager, *e.g.*, the City’s Code Enforcement personnel.
- (d) *Dwelling Unit*: as defined by the City’s Zoning and Development Code (hereinafter referred to as “home”). Work shops, garages, and other accessory areas are not included within the definition of “home” or “dwelling unit” for purposes of this ordinance.
- (e) *High pollution day*: for any area within the City, that period of time or days declared by the Mesa County Health Department, or other person or agency designated by the City Council, to be a high pollution day or “no burn” day. The County Health Department, or other designated person or agency, may make such declaration when monitoring indicates violations within the City of air quality standards established by the City, the United States Environmental Protection Agency, or the State Department of Public Health and Environment, or when meteorological conditions warrant.
- (f) *Operate a wood stove or a fireplace*: to burn any solid material, including but not limited to wood, in a wood stove or fireplace.
- (g) *Regulation No. 4*: regulations adopted by the State of Colorado concerning wood stoves and wood burning appliances, or any replacement or amended regulation; presently

found at 5 CCR 1001-6.

- (h) *Sole source of heat:* one or more wood stoves which constitute the only source of space heating in a home.
- (i) *Solid Fuel Burning Device:* any stove, masonry heater, pellet stove, firebox or device intended or used for the purpose of burning wood, pulp, paper or other non-liquid or non-gaseous fuel. Hereinafter a solid fuel burning device is referred to as “wood stove”. “Solid fuel burning device” and “Wood burning stove” are also defined in Regulation No. 4. Natural gas devices and solid fuel barbecue devices are excluded from this definition as are devices used by the City in the provision of City services.
- (j) *Transfer of ownership:* any conveyance of any interest in the property upon or in which a wood stove is installed or used. Conveyance by devise, descent, distribution, succession, gift, foreclosure or operation of law is not included within the term “transfer of ownership.” Conveyance, whether by quit claim or by warranty or otherwise, of interests less than the fee such as conveyance of an easement, a lease or a mortgage are not included within the term “transfer of ownership.”

Section 3. Regulation of new solid fuel burning devices-clean stoves only.

No wood stove shall be installed within any structure, mobile home, building or home within the City unless it is a clean stove. No fireplace shall be installed within any structure, mobile home, building or home within the City unless it complies with Regulation No. 4. See, 5 CCR 1006 (VIII (A)(1-6).

Section 4. Solid Fuel Burning During High Pollution Days--Prohibited.

It shall be unlawful for any person to operate a wood stove or a fireplace during a high pollution day unless an exemption has been granted pursuant to this ordinance or unless such wood stove is a clean stove or it meets the requirements of 5 CCR 1006 (VIII)(A)(1 through 6). It shall be the duty of all persons owning or operating a wood stove or a fireplace to be aware of any declaration of a high pollution day by the Mesa County Health Department or other person or agency designated by the City Council. Any such declaration shall constitute constructive notice of the existence of a high pollution day and of the applicability of the prohibition of this section. Each time a high pollution day or period is declared, four hours shall be allowed for the burn down of existing fires in solid fuel burning devices or fireplaces prior to the initiation of enforcement. Prior to prosecution for the first allegation of a violation of this section, a written warning shall be delivered to the person or posted conspicuously on the premises on which such person has, in violation hereof, operated a wood stove or a fireplace. If a written warning has been issued during the preceeding 365 days, a prosecution may be initiated if probable cause exists to believe that a second instance of violation of this section has occurred.

Section 5. Elimination of nonconforming wood stoves.

For each transfer of ownership of property which occurs after September 1, 1997 on which is installed or used a wood stove which is not a clean stove other than an exempt wood stove, the transferor, grantor or seller shall prior to any transfer of ownership: (a) replace such wood stove with a clean stove; (b) replace such wood stove with a gas stove; or (c) remove such wood stove.

Section 6. Entry in order to inspect.

(a) The Building Inspector may enter onto property in order to inspect: if a wood stove is located upon the property or installed in a structure in compliance with this ordinance or operated in violation of this ordinance; if a fireplace or wood stove is being operated in violation of this ordinance. If an owner or occupant refuses to consent to such inspection, the Building Inspector may apply for an appropriate court order from the Municipal Court or other appropriate court.

(b) When the Building Inspector has reasonable grounds based upon his or her investigation or upon complaints sufficiently demonstrating reasonable grounds that a person has violated this ordinance, the Building Inspector shall issue a Notice and Order setting forth the alleged violations and the corrective action that needs to be taken. The Notice shall be served personally, by certified mail, or by posting in a conspicuous place on the property, or in any other manner provided by law for the service of process and shall allow thirty days for the person to take necessary actions to comply with this ordinance and any regulations adopted to implement or interpret this ordinance. Compliance with this section (6) is not a prerequisite to the filing, or prosecution, of a violation pursuant to section 11 hereof. Compliance with this subsection (b) is not a condition precedent to the filing of a complaint, or the prosecution of a violation of, concerning burning in violation of the provisions of subsection 4 hereof.

Section 7. Appeals.

An appeal of the Building Inspector's order to comply may be filed with the City Clerk in writing no later than ten (10) days from the date of the Building Inspector's Order. This section 7 shall not apply to a violation of section 4 hereof.

Upon receipt of a timely filed Notice of Appeal, the City Clerk shall set a hearing date before the Board of Appeals to review the order of the Building Inspector. The Building Inspector shall present information which he or she believes shows a violation of this ordinance, or the adopted regulations, and the appellant shall be given the opportunity to respond.

The Board of Appeals may affirm, modify, rescind or delay an Order, if any one or more of the following criteria are established by the applicant by clear and convincing evidence:

- (a) Owing to exceptional and extraordinary circumstances, literal enforcement of this ordinance or adopted regulations will result in extreme hardship. Such circumstances may include, but are not limited to, structural conditions which would impose extraordinary costs in order to comply with the provisions of this ordinance or adopted regulations.
- (b) Compliance with the requirements of this ordinance or adopted regulations would create a threat to the health and safety of an owner or occupant.
- (c) There is imminent planned termination of operations or replacement of a non-complying wood stove with a gas stove or a clean stove. The Board shall take such steps as are necessary to ensure compliance with such termination or replacement.

The Order of the Board of Appeals shall determine whether the ordinance was violated and shall state the time for compliance with the Order.

Section 8. Exemptions--economic need and sole source of heat.

- (a) The Building Inspector shall issue an exemption from the no burn requirement or the requirement to remove or replace a wood stove to the owner of a wood stove if such owner makes application to the Building Inspector and takes an oath or affirms that such owner is a person whose sole source of heat for the home is a wood stove(s).
- (b) Each person who has received an exemption under this section shall display a decal issued by the Building Inspector in a manner and place on the property so as to be clearly visible from a place of public access on high pollution days.
- (c) An exemption granted pursuant to this section shall be valid only so long as the owner of the exempt wood stove continues to qualify as provided in 8(a), above.

Section 9. Severability.

The provisions of this ordinance are severable. If any provision of this ordinance or its application to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this ordinance which can be given effect, without the invalid provisions or application.

Section 10. Nuisance, injunction.

Any violation of any provision of this ordinance, or any regulation implementing or interpreting this ordinance, is declared to be a nuisance. In addition to any other relief provided by this ordinance, the City's attorney may apply to a court of competent jurisdiction, including the municipal court, for an injunction to prohibit the continuation of any violation of this

ordinance or any such regulation. Such application for relief may include seeking a temporary restraining order, temporary injunction and permanent injunction.

Section 11. Penalty.

(a) Any person, firm or corporation violating any provision of this ordinance shall be fined not more than one thousand dollars (\$1,000) and/or ten (10) days in jail for each offense. A separate offense shall be deemed committed on each day, or portion thereof, during or on which a violation occurs or continues. Notwithstanding the foregoing, a realtor, closer, or inspector involved in a transfer of ownership shall not be deemed to have violated this ordinance in the event that a transfer of ownership occurs in violation of this ordinance, unless such realtor, closer or inspector is the transferor, grantor or seller. For the first conviction of Section 4, a person, firm or corporation the maximum fine shall not exceed \$100.00 and no jail time shall be imposed.

(b) Unless otherwise authorized, the operation of a wood stove or fireplace on a high pollution, "no burn" day is found and declared to be a nuisance against both the public and private individuals. It is the intent and the purpose of the City Council that private individuals aggrieved or injured by the unauthorized operation of a wood stove or fireplace on a high pollution, "no burn" day or days may cite a violation of this ordinance or any regulation implementing this ordinance as evidence of nuisance *per se* in support of any claim for damages and/or injunctive or other relief before a court of competent jurisdiction, including the municipal court. It is therefore found and declared that any written evidence of a violation of this ordinance or any regulation implementing this ordinance issued by an authorized agent for the City of Grand Junction, and served on any individual as required by law, shall constitute *prima facie* evidence of the violation of this ordinance and/or any applicable regulation implementing this ordinance, as well as *prima facie* evidence of a nuisance *per se*.

(c) This section shall not confer a private right for an action against the City of Grand Junction for the endorsement of this ordinance or for the enforcement of any regulation implementing this ordinance.

Section 12. No duty created.

The provisions of this ordinance shall not be construed to create any duty, other than as explicitly provided, of any realtor, inspector, closer or appraiser to ensure that the provisions of this ordinance are satisfied, unless such realtor, inspector, closer or appraiser is the owner of the affected property.

Section 13. Wood Stove Incentive Replacement fund.

A wood stove replacement incentive fund is hereby created, in accordance with the Resolution of the City Council.

Introduced on first reading this 5th day of February, 1997.

PASSED AND ADOPTED on second reading this 19th day of February, 1997.

/s/ Linda Afman

Mayor

Attest:

/s/ Stephanie Nye

City Clerk