

ORDINANCE NO. 851

**AN ORDINANCE PROHIBITING THE USE OF SOLID FUEL BURNING DEVICES WITHIN THE TOWN OF LAKEVIEW; PROVIDING CERTAIN EXEMPTIONS THEREFROM; ESTABLISHING CONTROLS FOR THE ENFORCEMENT OF THIS ORDINANCE; PROVIDING PENALTIES FOR VIOLATIONS HEREOF; REPEALING ORDINANCE NO. 748 IN ITS ENTIRETY AND DECLARING AN EMERGENCY.**

WHEREAS, the health, safety and welfare of the citizens of the Town of Lakeview are adversely affected by deteriorating air quality within the Town boundaries; and

WHEREAS, wood combustion for space heating produces particulate matter and other pollutants which are injurious to the public health, and are a primary cause of deteriorated air quality within the Town of Lakeview; and

WHEREAS, a mandatory wood burning curtailment ordinance is essential to comply with the provisions of the Federal Clean Air Act and to insure healthful air quality; now, therefore,

THE COUNCIL OF THE TOWN OF LAKEVIEW ORDAINS AS FOLLOWS:

**Section 1. - Definitions:** As used in this Ordinance, the following words, except where the context clearly indicates otherwise, mean:

(a) Air Pollution Alert. A 24 hour period commencing at noon after the designation by the Town of Lakeview of a Yellow Day or Red Day Air Quality Advisory.

(b) Air Quality Advisory. A public announcement to inform Town of Lakeview residents of forecasted air quality.

(c) Alternative Heat Source. A heat source other than a Solid Fuel Burning Device, with such heat source being capable of heating a residence in accordance with Oregon Building Code standards.

- (d) Commercial Structure. Any non residential building primarily used for business or commercial purposes.
- (e) Green Day. An Air Quality Advisory provided by the Town of Lakeview which forecasts acceptable air quality for the following 24 hour period.
- (f) Yellow Day. An Air Quality Advisory provided by the Town of Lakeview which forecasts increased PM2.5 concentrations over the following 24 hour period. A Yellow Day forecast signifies that average PM2.5 concentrations are expected to approach the 24 hour national ambient air quality particulate health standard of 30 ug/m<sup>3</sup>.
- (g) Red Day. An Air Quality Advisory provided by the Town of Lakeview which forecasts average PM2.5 concentrations at levels which are at risk of reaching and/or exceeding 30 ug/m<sup>3</sup>.
- (h) Person. Any individual, partnership, corporation, company, association or other business entity.
- (i) New Solid Fuel Burning Device. A Solid Fuel Burning Device as defined by OAR 340-262-0450(16) and which has been certified by either the Oregon Department of Environmental Quality pursuant to OAR 340-262-0500 or by the United States Environmental Protection Agency pursuant to 40 CFR part 60, sub-part AAA as in effect on July 1, 2010.
- (j) Residence. Any building used as a home, dwelling or place of abode, including a condominium or rental unit.
- (k) Sole Source of Heat. One or more Solid Fuel Burning Devices which constitutes the only source of heat in a Residence. A Sole Source of Heat is one which provides heat to the main living space of the Residence but does not include ancillary heating units in bed and bathroom areas.

(l) Solid Fuel Burning Device. A wood stove or any other device that burns wood, coal or other nongaseous or non-liquid fuels for aesthetic, space heating or water heating purposes in a Residence or Commercial structure and that has a heat output of less than one million British thermal units per hour. Solid fuel burning devices do not include fireplaces, antique stoves, pellet stoves, masonry heaters, central wood fire furnaces, wood cook stoves or New Solid Fuel Burning Devices as those terms are defined by OAR 340-262-0450.

**Section 2. - Operation of Solid Fuel Burning Device Prohibition:**

(a) The operation of a Solid Fuel Burning Device within the Town of Lakeview in a Commercial Structure during an Air Pollution Alert Period is prohibited as of the effective date hereof. The operation of a Solid Fuel Burning Device within the Town of Lakeview in a Residence during an Air Pollution Alert Period shall be prohibited unless an exemption has been granted by the Town of Lakeview pursuant to Section 4 below. A rebuttable presumption of a violation of this Ordinance shall exist if smoke is being discharged through a flue or chimney at any time during an Air Pollution Alert period. The owner, renter or the primary occupant residing in the premises who is over the age of 18 shall be presumed to be the violator unless rebutted by contrary evidence.

(b) Visible smoke emissions created during a ten (10) minute start up period and ten (10) minutes after refueling are exempt but such refueling shall be limited to once every four (4) hours.

**Section 3. - Alternative Heat Source Requirement:** On or after one year from the effective date of this Ordinance, no property owner shall rent or lease a Residence or Commercial Structure unless the same is equipped with an Alternative Heat Source. Liability for a violation of this Section shall be entirely with owner of the Residence or Commercial Structure.

**Section 4. - Exemptions from Prohibition:** It shall be permissible for a Residence to operate a Solid Fuel Burning Device during a Red or Yellow Day when the head of that household has previously obtained from the Town of Lakeview Air Quality Office an exemption to operate the same. Exemption availability shall be limited to the following circumstances:

(a) Sole Source. An exemption may be issued to the heads of households who sign a sworn statement declaring their reliance on a Solid Fuel Burning Device as the sole device providing heat for the main living space of their Residence. The availability of this exemption shall permanently expire after one year from the effective date of this Ordinance.

(b) Economic Need. An exemption for economic need to operate a Solid Fuel Burning Device may be granted to heads of households if the head of household can establish that the total family income is less than 80% of the median income level for the Town of Lakeview as established by the Federal Department of Housing and Urban Development (<http://www.huduser.org/portal/datasets/il.htm/>). Exemptions granted based upon economic shall expire annually on September 30<sup>th</sup>, must be reapplied for annually and shall not require an exemption fee.

(c) New Solid Fuel Burning Devices. An exemption may be issued to the heads of household for the operation of a New Solid Fuel Burning Device in a Residence during a Yellow Day Air Quality Advisory. However, the availability of this exemption is strictly contingent upon the New Solid Fuel Burning Device producing no visible smoke. The operation of a new Solid Fuel Burning Stove shall be prohibited during a Red Day Air Quality Advisory, unless some other applicable exemption has been granted.

**Section 5. - Immediate Expiration of Exemption:** If an exemption pursuant to Section 4 above is granted to a Residence and the Residence is subsequently transferred whether by sale, gift, descent and distribution, or otherwise, then the exemption as granted shall immediately expire and the Residence may or may not be eligible for a future exemption unless new economic need is established pursuant to Section 4(b) above.

**Section 6. - Enforcement and Penalties:** A first violation of Section 2 of this Ordinance shall result in the violator receiving a written warning from the Town specifying the nature of the violation. Such written notice shall be sent by both registered and first class mail and shall contain penalty and enforcement information for subsequent violations.

Subsequent violations of Section 2 of this Ordinance, after issuance of a written warning, may be commenced by the issuance of a citation and shall be prosecuted in the Lake County Circuit Court as a Class A Violation pursuant to the provisions of ORS Chapter 153 as now in effect or as may be amended from time to time. A violation of Section 3 of this Ordinance shall be prosecuted as a Class B Violation.

If subsequent violations of this Ordinance occur, and in lieu of or in addition to the above penalties, the Town may, after notice and right to hearing, remove and destroy, without legal liability or compensation to the owner, any New Solid Fuel Burning Device or Solid Fuel Burning Device being operated in violation of this Ordinance. The Town's Police Chief, or his designee, will have primary responsibility for the enforcement of this Ordinance.

**Section 7. - Severability:** If any section, subsection, sentence or clause, or any portion of this Ordinance is, for any reason, held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portion thereof.

**Section 8. - Emergency and Effective Date:** This Ordinance and its purposes being necessary for the preservation of public peace, health and safety of the Town of Lakeview and its inhabitants, an emergency is hereby declared to exist and this Ordinance shall take effect immediately upon its adoption by the Town Council.

A motion was made to read this Ordinance by title only and such motion passed unanimously. Thereafter, the Ordinance was read by title only and was adopted as indicated below.

Passed by the Town Council by a vote as follows:

4 In Favor

1 Opposed

Adopted this 14 day of ~~September~~<sup>October</sup>, 2014.

  
Mike Patrick, Mayor

Attest:

  
Amy Havel, Town Recorder