ORDINANCE NO. 354

AN ORDINANCE OF THE CITY OF PORTOLA, COUNTY OF PLUMAS
AMENDING CHAPTER 15.10 OF THE CITY OF PORTOLA MUNICIPAL CODE
PROVIDING FOR REGULATION OF WOOD STOVES AND FIREPLACES AND THE
PROHIBITION OF THE OPEN BURNING OF YARD WASTE

The Council of the City of Portola, California, does ordain as follows:

Section 1. Chapter 15.10 of the Portola Municipal Code is hereby amended to read as follows:

Title 15- BUILDINGS AND CONSTRUCTION

Chapter 15.10- WOOD STOVE AND FIREPLACE ORDINANCE AND THE PROHIBITION OF THE OPEN BURNING OF YARD WASTE

Sections:

15.10.010 Purpose.
15.10.020 Definitions.
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15.10.040 Requirements for Existing Wood Burning Devices.
15.10.050 Permitted Fuels in Wood Burning Devices, Wood Burning Fireplaces, Wood-Fired Cookstoves, Wood-Fired Fire Pits.
15.10.060 Mandatory Curtailment of Wood Burning Heaters, Wood Burning Fireplaces, Wood-Fired Fire Pits and Wood-Fired Cookstoves During Stagnant Conditions.
15.10.070 Outdoor Wood-Fired Boiler Installation Prohibited.
15.10.080 Wood Stove Retailers/Contractors Required to Provide Educational Materials.
15.10.090 Violations.
15.10.100 Continuing Violations- Each day being a separate violation.

15.10.010 Purpose.

A. This chapter shall be cited as the "Wood Burning Device and Open Burning Ordinance"
B. This chapter is enacted for the purpose of improving the air quality within the City limits and protecting the general welfare of the citizens and residents of Portola. The EPA officially designated the Greater Portola area as federal nonattainment for the federal annual standard for PM 2.5 (Particulate Matter with an aerodynamic diameter of 2.5 microns or less), on April 15, 2015. High PM2.5 levels are mostly due to impacts from residential wood burning. The City Council finds there is a need to regulate and reduce harmful emissions of exhaust gases from wood-burning heaters and fireplaces, and that an appropriate method of regulation is a wood burning device ordinance.

15.10.020 Definitions.

As used in this chapter:

1. “Air District” means the Northern Sierra Air Quality Management District.
2. “Building” means any residence, mobile home, commercial property or other structure.
3. “Certificate of Compliance” means a document issued by the Control Officer certifying that a building has no more than two wood burning heaters which are EPA-certified and no uncertified wood burning heaters.
4. “City” means the City of Portola.
5. "Control officer" means the official designated by the City Manager.
6. “Debris” means wastes resulting from land clearing operations. Debris include but are not limited to stumps, wood, brush, leaves, soil and road spoils.
7. ” EPA" shall mean the United States Environmental Protection Agency.
8. “EPA - Certified" means any wood burning heater with a Phase II certification or a more stringent certification as currently enforced in the NSPS.
9. “EPA-Qualified Fireplace” means any fireplace model or retrofit device that has been qualified by EPA under EPA’s Voluntary Fireplace Program as emitting no more than 5.1. g/kg.
10. “Fireplace” means any permanently installed indoor or outdoor masonry or factory-built device used for aesthetic or space-heating purposed and designed to operate with an air to fuel ratio greater than or equal to 35 to 1.
11. “New Construction” means any single or multi-family housing unit, for which construction began on or after the effective date of this ordinance. Construction is deemed to occur when the foundation for the structure is installed.
12. “Notice of Exemption” means a document issued by the Control Officer certifying that a building has no wood burning heaters.
13. “NSPS” means New Source Performance Standard. For purposes of this rule the NSPS is the Code of Federal Regulations, Title 40, Part 60, Subpart AAA.
14. “Open Burning” The burning of combustible material of any types outdoors in the open, not in any enclosure, where the products of combustion are not directed through the flue.
15. “Outdoor Wood-fired Boiler” or “Hydronic Heater” means a fuel burning device designed: (1) to burn primarily wood or wood pellet fuel; (2) not to be located inside structures ordinarily occupied by humans; and (3) to heat spaces or water by the distribution through pipes of a fluid, typically water or water and antifreeze mixture, heated in the device.
16. "Pellet Fueled Wood Heater" means a pellet-fueled heater, comprising a forced draft heater with an automatic feed which supplies appropriately sized feed material or compressed pellets of wood, corn, or other biomass material to the firebox.
17. "Permanently Inoperable" means modified in such a way that the wood burning heater can no longer function as a wood burning heater or easily be remodified to function as a wood burning heater. Conversion to other fuels, such as propane, is permitted.
18. “Recreational Fire” means an outdoor fire burning dry, seasoned wood, manufactured logs, or charcoal briquettes where the fuel being burned is not contained in an incinerator, outdoor fireplace, portable outdoor fireplace, barbeque grill or barbeque pit and has a total fuel area of 3 feet (914mm) or less in diameter and 2 feet (610 mm) or less in height for pleasure, religious, ceremonial, cooking, warmth or similar purposes. These fires must be at least 25 feet from any structure or other combustible fuel source. Burning of yard waste (branches, shrubbery, or wet wood) is not allowed.

19. "Wood Burning Device" means any wood burning heater or fireplace. Wood burning devices do not include wood-fired residential or commercial barbecue devices, wood-fired fire pits, or wood-fired cookstoves.
20. "Uncertified Wood Burning Device" means any wood burning device that does not meet the performance and emissions standards of a Phase II certification or a more stringent certification as currently enforced in the NSPS. Uncertified wood burning devices do not include wood-fired residential or commercial barbecue devices, wood-fired fire pits, or wood-fired cookstoves.
21. "Wood-Fired Cookstove" means a wood-fired appliance that is designed primarily for cooking food and that has the following characteristics:
    a. An oven, with a volume of 0.028 cubic meters (1 cubic foot) or greater,
    b. A device for measuring temperatures,
    c. A flame path that is routed around the oven,
    d. A shaker grate,
    e. An ash pan,
    f. An ash clean-out door below the oven, and
    g. The absence of a fan or heat channels to dissipate heat from the appliance.
22. "Wood Burning Heater" means an enclosed wood-burning device capable of and intended for space heating such as a wood stove, pellet-fueled wood heater, or wood-burning fireplace insert.
23. "Yard waste" means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs that come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.

15.10.025 Prohibition of the Open Burning of Yard Waste.

A. All open burning of yard waste and debris, except as otherwise authorized in Section 15.10.026 shall be banned within the city limits of the City of Portola.

15.10.026 Exceptions for Prohibition of Open Burning

A. Nothing in this rule shall be construed as prohibiting open outdoor fires used only for cooking food for human consumption or for recreational fires.
B. Training Burns: Fire Department training burns may be permitted with the prior written approval of the Fire Chief and the Northern Sierra Air Quality Management District.
C. Special Permits: The Fire Chief and the Northern Sierra Air Quality Management District may issue special burn permits to authorize the burning of combustibles for the health and safety of the public.

15.10.030 Requirements for New Wood Burning Devices.

A. Installation of Wood Burning Devices.
    1. Wood Burning Heaters: No person shall advertise, sell, offer for sale, supply, transfer or install in any residence or other structure any wood burning heater within the City limits unless it is an EPA certified wood burning heater at the time of sale or transfer.
        a. No local government authority within the City limits may issue a building permit to any person to install an uncertified wood burning heater; and

b. Certified devices shall have a label permanently affixed to them from the United States Environmental Protection Agency (USEPA) which states that the stove is certified to comply with the NSPS standards.

2. Wood Burning Fireplaces: No local government authority within the City limits may issue a building permit to any person to install a wood burning fireplace unless it is an EPA-qualified fireplace or EPA-certified fireplace.

B. Limitation on Number of Wood Burning Devices in New Construction and Remodels.

1. The number of EPA certified wood burning heaters installed on any residential or non-residential property for which a building permit is required shall not exceed one per individual dwelling unit; and
2. The number of EPA-qualified fireplaces installed on any residential or non-residential property for a which a building permit is required shall not exceed one per individual dwelling unit; and
3. No local government authority within the City limits may issue a building permit to any person to install a wood burning device in new construction or remodel, unless it is an EPA-qualified fireplace or EPA certified fireplace or wood heater certified to the level of the current NSPS; and
4. Wood burning devices shall not be considered the sole source of heat in any new construction within the City limits; and
5. The above limitations do not apply to devices that are defined as low emitting:
   a. EPA-certified pellet fueled wood heater;
   b. Devices that are exclusively gaseous- or liquid-fueled; and
   c. EPA-certified wood burning devices that meet a certified emission rate of 1 gram/hour or less of particulate matter.

15.10.040 Requirements for Existing Wood Burning Devices.

A. Existing Wood Burning Heaters and Change of Ownership.

1. In order to complete any escrow transaction, on any residential or commercial property, the current property within the City limits owner must obtain either a 1) Certificate of Compliance or a 2) Notice of Exemption.
2. It is prohibited for any person to complete, or allow the completion of any Escrow transaction upon any residence or mobile home, or other parcel containing a building within the City limits unless each building on the parcel has been issued a Certificate of Compliance by the Control Officer as having no more than two wood burning heaters which are EPA-Certified and no uncertified wood burning heaters.
3. A Certificates of Compliance or Notice of Exemption shall be issued by the Control Officer only upon physical inspection or documentary evidence that reliably establishes compliance with this section.
4. A Certificate of Compliance shall identify all of the following:
   a. Owner's name.
   b. Model number and manufacturer for each wood burning heater in the building.
   c. The street address, Assessor's parcel number, or legal description of the parcel of real property where the building is located.
   d. The location of the building and the specific location in the building where the wood burning heater is located.
5. A Notice of Exemption shall identify all of the following:

a. Owner's name.
b. The street address, Assessor's Parcel number, or legal description of the parcel of real property where the building is located.
c. The location of the building and whether a space heat source is exclusively utilized, and if so, what heat source is exclusively utilized.

6. The buyer and seller of any real property within the City limits shall observe this section and any disclosure statements supplied by the real estate agents relating to the requirement under this regulation for the inspection of any wood burning heater installed in a building on the property.
7. If the disclosure report indicates that a wood burning heater on the property within the City limits is uncertified, the wood burning heater must be removed from the property and destroyed/recycled at an approved facility or agency. Re-inspection and a copy of documentation from the destroying/recycling facility or agency is required by the Control Officer prior to issuance of a Certificate of Compliance.
8. The Control Officer may issue a Certificate of Compliance for a residence within the City limits without conducting a physical inspection if a person provides evidence that the EPA-certified wood burning heater has been installed in compliance with all applicable building, fire and other codes. This documentation shall include a receipt or invoice from the installation or purchase that includes the manufacturer and model name of the wood burning device.
9. A Certificate of Compliance issued pursuant to this section:
    a. Remains valid until the residential or commercial property is transferred or conveyed to a new owner or for nine months, whichever comes sooner.
    b. Does not constitute a warranty or guarantee by the Control Officer that the wood burning heater within the residence or commercial property meets any other standards of operation, efficiency or safety, except the certification standards contained in these regulations.
10. If a residential or commercial property within the City limits is to be sold and does not contain any wood burning heaters, a form approved by the Control Officer, containing the signatures of both the buyer and seller, attesting to that fact, may be accepted in lieu of an inspection, and the Control Officer may issue a Notice of Exemption. The completed form shall be submitted to the Control Officer within ten days of close of escrow. If the residential or commercial property contains an uncertified wood burning heater which must be removed, the form must not be executed by either the buyer or seller until the removal has been completed. On any subsequent sale, a new Notice of Exemption is required.
11. Upon a change of ownership, no more than two EPA Certified wood burning heaters per building may remain in any property within the City limits, except for the low emitting devices outlined in 15.10.030(B)(5).
12. Upon a change of ownership, no uncertified wood-burning heater may remain in any property within the City limits.
13. The Control Officer may conduct audits after properties have closed escrow and have been recorded under the new owner's name in order to determine compliance with this ordinance. If the Control Officer finds that there is an uncertified wood burning heater in the building, the Control Officer shall require that the uncertified wood burning heater be destroyed/recycled at an approved scrappage/recycling facility or agency within 30 days

of notifying the current property owner. A financial penalty may be assessed if noncompliance has been identified or if the current property owner fails to destroy/recycle the heater within the time prescribed in the notice.

B. Existing individual dwelling units with two or more existing EPA Certified Wood Burning Heaters.

Existing individual dwelling units with two or more existing EPA Certified Wood Burning Heaters may not install additional Wood Burning Heaters (certified or uncertified). The above limitation does not apply to heaters that are defined as low emitting, including without limitation the following:

1. EPA certified pellet fueled wood heaters;
2. Devices that are exclusively gaseous- or liquid fueled; and
3. EPA certified wood burning heaters that meet a certified emission rate of 1 gram/hour or less of particulate matter.

15.10.050 Permitted Fuels in Wood Burning Devices, Wood Burning Fireplaces, Wood-Fired Cookstoves, Wood-Fired Fire Pits.

Burning of any fuels or materials in a Wood Burning Device other than the following fuels within City limits shall be in violation of this ordinance:

A. Seasoned wood (less than 20% moisture content).
B. Uncolored paper.
C. Manufactured logs, pellets, and similar manufactured products (i.e., processed fire starters).

15.10.060 Mandatory Curtailment of Wood Burning Heaters, Wood Burning Fireplaces, Wood-Fired Fire Pits and Wood-Fired Cookstoves During Stagnant Conditions.

A. Episodic Wood Burning Curtailment Requirements.

1. Effective January 1, 2021, the requirements of this section shall be in effect during the months of January, February, November, and December. The Air District shall determine when a mandatory curtailment of solid fuel combustion in the City is necessary, notify the community that mandatory curtailment is required, and make such other determinations as are necessary to carry out the objectives of this chapter.
2. No person shall operate a wood burning heater, wood burning fireplace, wood-fired fire pit or wood-fired cookstove within the City limits when a mandatory curtailment is in effect unless the device is an approved and currently registered EPA-Certified Wood Burning Heater.
3. The approved and currently registered EPA-Certified Wood Burning Heater will be maintained and operated according to manufacturer instructions.
4. The Air District will declare a mandatory curtailment whenever it determines that the 24-hour average PM2.5 concentration may exceed 30 ug/m3 AND when adverse meteorological conditions are expected to persist.
5. The criteria for issuing a mandatory curtailment is as follows:
    a. The Air District will analyze the available air monitoring data and determine whether a trend is continuing; and
    b. The Air District will contact the National Weather Service located in either Reno or Sacramento to request a specific meteorological forecast specific for the Portola area; and

c. If the National Weather Service forecasts adverse meteorological conditions to persist and the Air District ascertains that there is a marked trend of continuing high concentrations of PM2.5 possible, then the Air District will declare a mandatory curtailment.

6. Upon determination that mandatory curtailment is required, the Air District shall notify the public through one or more of the following methods:
   a. A recorded telephone message.
   b. Messages posted on the Air District website.
   c. Electronic mail messages to persons or entities that have requested such notice.
   d. Notifying broadcast, print or social media operating within the boundaries of the City of Portola.
   e. Any additional method that the Air District determines is appropriate.

Registration of EPA-Certified Devices.

1. Eligibility Requirements – Any EPA-Certified Wood Burning Heater is eligible to be registered with the Air District.
2. Registration Process – Effective July 1, 2020, persons applying to register a Wood Burning Heater shall submit a completed application and supplemental documentation demonstrating compliance with the eligibility requirements to the District. Supplemental documentation shall include the following:
   a. Receipt or invoice from the installation or purchase that includes the manufacturer and model name of the Wood Burning Heater, or
   b. A certification from the Air District verifying that the Wood Burning Heater meets the eligibility requirements.
3. Administrative Requirements – The person who registers the Wood Burning Heater shall retain a copy of the Air District issued registration and make it available upon request.

B. Penalties – Any person that violates the provisions of 15.10.060 is subject to the following
   1. First time violators: a Notice to Comply or Warning will be issued. The Notice to Comply will require that any EPA-Certified Wood Burning Heater be registered within 30 days.
   2. Second time violators: Completion of a wood smoke awareness course that has been approved by the Air District, or payment of a penalty of $50, or submission of proof of replacement of non-certified device with an EPA-Certified Wood Burning Heater or exclusively gaseous- or liquid-fueled heater.
   3. Third time violators: payment of a penalty of $150 or submission of proof of replacement of non-certified device with an EPA-Certified Wood Burning Heater or exclusively gaseous- or liquid-fueled heater.
   4. Fourth time violators: payment of a penalty of $500 or submission of proof of replacement of non-certified device with an EPA-Certified Wood Burning Heater or exclusively gaseous- or liquid-fueled heater.

15.10.070 Within 60 days of (1) an U.S. EPA finding that the Plumas County PM2.5 Nonattainment Area ~~area~~ has failed to attain the 2012 PM2.5 annual National Ambient Air Quality Standard (NAAQS) of 12 ug/m3 ~~annual PM2.5~~ standard by the attainment date, and/or (2) an U.S. EPA finding that the area has failed to meet any reasonable further progress (RFP) requirement or quantitative milestone requirement in the Portola Fine Particulate Matter (PM2.5) Attainment Plan ~~plan~~, and/or (3) an U.S. EPA finding that ~~the State/District~~California ~~have~~has failed to submit a required quantitative milestone report for the 2012 PM2.5 annual

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NAAQS. ~~the effective date of U.S. EPA publishing a finding that Plumas County PM2.5 Nonattainment Area (Nonattainment Area) has failed to attain the 12 ug/m3 annual PM2.5 standard by the attainment date,~~ all provisions of section 15.10.060 will continue to be in effect, except for the duration of curtailment season (Section 15.10.60 A.1) and curtailment level (Section 15.10.60 A.4) revised as follows:

List of curtailment months in Section 15.10.60 A.1 expands to include months of January, February, March, April, September, October, November, and December.

A. Curtailment level described in Section 15.10.60 A.4 is lowered from 30 ug/m3 to 20 ug/m3.

B. During the months of January, February, March, April, September, October, November, and December, the Air District will declare a mandatory curtailment whenever it determines that the 24-hour average PM2.5 concentration may exceed 20 ug/m3 AND when adverse meteorological conditions are expected to persist.

C. Section 15.10.070 will remain in effect until the Air District submits a new SIP to U.S. EPA addressing the 12 ug/m3 annual PM2.5 standard and/or satisfies the RFP and quantitative milestone requirements.

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15.10.080 Outdoor Wood-Fired Boiler Installation Prohibited.

All outdoor wood-fired boilers are prohibited from installation within the City of Portola.

15.10.090 Wood Stove Retailers/Contractors Required to Provide Educational Materials.

Retailers or Contractors selling or offering for sale new Wood Burning Devices within the City limits shall supply public awareness information with each sale of a Wood Burning Device in the form of pamphlets, brochures, or fact sheets on the following topics:

A. Proper installation, operation, and maintenance of the Wood Burning Device.
B. Proper fuel selection and use.
C. Health effects from wood smoke
D. Weatherization methods for the home,
E. Proper sizing of Wood Burning Devices.
F. Episodic Wood Burning Curtailment levels as defined in Section 15.10.060.

15.10.100 Violations.

Any person who violates any of the requirements of this chapter, or who falsely attests as to information as part of compliance with this chapter, is subject to penalties and punishments as set forth in[HYPERLINK "https://www.municode.com/library/"] of this Municipal Code, may be subjected to the applicable penalties and punishments prescribed by law for perjury, and may have any license or permit issued by the City be revoked, including but not limited to a building permit or certificate of occupancy.

15.10.110 - Continuing violations—Each day being a separate violation.

After any person who is responsible for a violation of any provision in this chapter has been given notice of the violation, and such person does not comply or otherwise correct the violation within the time prescribed in the notice, then from that day forward, the continuing violation shall be deemed to be a separate offense on each and every day that the violation persists. A person who knowingly commits or suffers the continuing violation shall be guilty of a separate offense each and every day that the violation persists.

Section 2. Approval. The City of Portola Wood Stove and Fireplace Ordinance concerns revisions to wood stove regulations and the Prohibition of Open Burning of Yard Waste. The text changes reflecting the Amendment are incorporated by reference as if fully set forth herein into Title 15 of the Portola Municipal Code, and are hereby approved.

Section 3. CEQA. The City Council finds the approval of this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Alternatively, the City Council finds the approval of this ordinance is not a project under CEQA Regulation Section 15061(b)(3) because it has no potential for causing a significant effect on the environment.

Section 4. Enactment. The City of Portola Wood Stove and Fireplace Ordinance Amendment and the Prohibition of Open Burning of Yard Waste shall be effective 30 days from the date of its approval by the City Council.

Section 5. Summary Publication and Posting. Within thirty (30) days after final adoption of this Ordinance, the City Clerk shall have a summary of this ordinance prepared by the City Attorney and published as required by the California Government Code. Within fifteen (15) days after final adoption of this ordinance, the City Clerk shall have it posted in three (3) public places.

This ordinance was introduced, read and the second reading was waived at a Regular Meeting of the City Council of the City of Portola duly held on July 10, 2019. The ordinance was finally passed and adopted at the Regular Meeting of the City Council of the City of Portola duly held on July 24, 2019, by the following vote:

AYES:	Mayor Cooley	NOES:	None
	Mayor Pro Tem Oels	ABSTAIN:	None
	Councilmember Morton	ABSENT:	None
	Councilmember Peiler		
	Councilmember Powers		

_____
MAYOR, Tom Cooley

ATTEST:

_____
CITY CLERK, Melissa Klundby

I, City Clerk of the City of Portola, do hereby certify that the foregoing Ordinance was duly and regularly passed by the City Council of the City of Portola at a Regular Meeting held on July 24, 2019.

CITY CLERK, Melissa Klundby