

City Ordinance § 9-5

PART 4: WOODBURNING

§ 9-5-4-1 SHORT TITLE AND LEGISLATIVE INTENT.

(A) Sections [9-5-4-1](#) et seq. shall be known and may be cited as the "Woodburning Ordinance."

(B) It is the intent of the City Council that enactment of §§ [9-5-4-1](#) et seq. will protect residents from adverse health effects associated with woodburning.

('74 Code, § 6-6-1) (Ord. 49-1988)

§ 9-5-4-2 DEFINITIONS.

For the purpose of §§ [9-5-4-1](#) et seq., the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BURN DOWN. That period of time, not to exceed three hours, after declaring a no burn period required for the cessation of combustion within any solid fuel heating device by withholding fuel or increasing the air-to-fuel ratio.

DIRECTOR. The Director of the Environmental Health Department or a designated representative(s).

PERSON. Any individual, household, firm, partnership, corporation, company, society, association, and legal entity, and every officer, agent or employee thereof.

SOLE SOURCE. One or more solid fuel heating devices which constitute the only source of heat in a building for the purpose of space heating. No solid fuel heating device(s) shall be the sole source of heat if the building is equipped with a permanently installed furnace or heating system designed to heat the building that is connected or unconnected from its energy source, utilizing oil, natural gas, electricity or propane.

SOLID FUEL HEATING DEVICE. Any fireplace, wood heater, wood stove, wood fired boiler, coal fired furnace, coal stove or similar device burning any solid fuel used for aesthetic, cooking (excluding commercial cooking) or heating purposes inside a building.

WOOD HEATER. An enclosed woodburning appliance, including a fireplace insert, capable of an intended for space heating and domestic water heating that meets all of the following criteria:

(1) An air-to-fuel ratio in the combustion chamber averaging less than 35-to-1 as determined by the test procedure described in United States Environmental Protection Agency, 40 CFR Part 60.534;

(2) A useable firebox volume of less than 0.56 cubic meters;

(3) A minimum burn rate less than 5 kg/hr as determined by the test procedure described in the United States Environmental Protection Agency, 40 CFR Part 60.534; and

(4) A maximum weight, excluding devices and fixtures that are normally sold separately, such as flue pipe, chimney and masonry components that are not an integral part of the appliance or heat distribution ducting, of 800 kg.

('74 Code, § 6-6-2) (Ord. 49-1988)

§ 9-5-4-3 NO BURN PERIODS.

From October 1 through February 28, following a burn down period, no person shall operate a solid fuel heating device during a no burn period unless an exemption has been obtained or unless the device is a wood heater that has been emission certified by the United States Environmental Protection Agency. Certified wood heaters may be operated during a no burn period provided that no visible emissions are produced beyond a 20-minute start up period. No burn periods shall be declared by the Director upon review of available meteorological data and a determination that expected atmospheric conditions will not reasonably disperse wood smoke.

('74 Code, § 6-6-3) (Ord. 49-1988)

§ 9-5-4-4 NOTICE REQUIRED.

Notice of no burn periods shall be sufficient if published in a newspaper of general circulation within Bernalillo County, or if presented orally at least three times during a six-hour period by at least two radio or television stations operating within the county, or if presented to the general public in the form of a recorded telephone message, the telephone number for which is published in the telephone directory or newspaper of general circulation within the county.

('74 Code, § 6-6-4) (Ord. 49-1988)

§ 9-5-4-5 EXEMPTIONS.

(A) Exemptions may be granted by the Director if it is determined that a solid fuel heating device is the sole source of heat for the building in which it is situated. A temporary sole source exemption may be granted in the event of failure of the oil, natural gas, electricity or propane heating system. In no event,

shall an exemption be issued for more than 150 days. An exemption may be granted for economic or health reasons from §§ [9-5-4-1](#) et seq. by the Director if the Director determines that the applicant qualifies for energy assistance according to the economic guidelines established under the low income energy assistance program as administered by the Income Support Division of the New Mexico Human Services Department or if the Director determines that failure to grant an exemption would endanger the health of the applicant. Any person seeking an exemption shall do so by filling a written petition with the Director. Petition shall:

- (1) State the applicant's name and mailing address;
- (2) State the address for which the exemption is sought;
- (3) State the period of time for which the exemption is sought;
- (4) State reasons for seeking the exemption.

(B) Following receipt of the exemption request, the Director shall either grant the exemption, grant the exemption subject to conditions, or deny the exemption. Any action taken by the Director shall be by written order.

('74 Code, § 6-6-5) (Ord. 49-1988)

§ 9-5-4-6 APPEAL PROCEDURES.

(A) In the event an applicant for an exemption under this subsection is not satisfied with the Director's decision, the applicant may submit to the Director a written request for a hearing, provided the written request is received by the Director within 15 days after mailing of the Director's decision. The hearing shall be conducted within a reasonable time of receipt of the request.

(B) Hearings shall be held before the City Hearing Officer, at a time and place designated by the Hearing Officer. A written notification specifying the time, place, and the procedures governing the hearing shall be mailed to the grievant and to the Director. The grievant shall be afforded a fair hearing providing the basic safeguards of due process which shall include:

(1) Before the hearing, the grievant shall have the opportunity to examine and copy all documents, records and regulations of the Director that are relevant to the hearing. Copies shall be at the expense of the grievant. Any document not made available by the Director after written request by the grievant, may not be relied on by the Director at the hearing;

(2) The right to be represented by counsel or other persons chosen as his or her representative;

(3) The right to a private hearing unless the grievant requests a public hearing;

(4) The right to present evidence and arguments in support of his or her grievance to controvert evidence relied on by the Director, and to confront and cross-examine all witnesses on whose testimony or information on the Director relies; and

(5) A decision based solely and exclusively upon the facts presented at the hearing.

(C) The Hearing Officer may render a decision without proceeding with the hearing if the Hearing Officer determines the issue has been previously decided in another proceeding. If the grievant or the Director fails to appear at a scheduled hearing, the Hearing Officer may postpone the hearing for a period of no more than five business days or may determine that the absent party has waived his right to a hearing. Both parties shall be notified of such determination.

(D) At the hearing, the grievant must first show an entitlement to the relief sought, and the Director must then justify his act or failure to act. The hearing shall be conducted informally, but all persons present shall be orderly. Failure to comply with the directions of the Hearing Officer to obtain order may result in exclusion from the proceedings, or other appropriate action. Oral or documentary evidence pertinent to the facts and issues raised by the grievant may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings.

(E) The complainant or the grievant may arrange for a transcript of the hearing in advance and at the expense of the party making the arrangement.

(F) The Hearing Officer shall prepare a written decision together with the reasons therefor, within ten days after the hearing with copies to the grievant and the Director.

('74 Code, § 6-6-6) (Ord. 49-1988)

§ 9-5-4-99 PENALTY.

Any person who violates any of the provisions of §§ [9-5-4-1](#) et seq. shall be deemed guilty of a petty misdemeanor, and upon conviction thereof, shall be subject to the penalty provisions set forth in § [1-1-99](#) of this code of ordinances.

('74 Code, § 6-6-7) (Ord. 49-1988)