

Ordinance No.920

AN ORDINANCE AMENDING SECTION 7 OF ORDINANCE 914 AND ADOPTING NEW STANDARDS FOR THE OAKRIDGE AIR POLLUTION CONTROL PROGRAM

WHEREAS, The health, safety and welfare of the citizens of the City of Oakridge are adversely affected by the degradation of air quality and violations of federal ambient air quality standards, as measured by the Lane Regional Air Protection Agency (LRAPA), occur periodically in the City of Oakridge; and

WHEREAS, Wood and other solid fuel combustion for space heating produces particulate matter and other emissions which are physically harmful and aesthetically unpleasant, and which contribute to the degradation of air quality and the violation of federal ambient air quality standards; and

WHEREAS, The periodic restriction of the use of solid fuel burning devices will improve air quality and LRAPA has the expertise to determine when such air quality is at such a level that such restriction is necessary to preserve the health, safety and welfare of the citizens of the City of Oakridge; and

WHEREAS, The Federal Government has recently lowered the thresholds under which conditions are defined; and

WHEREAS, The City of Oakridge wishes to develop the following rules and regulations in an effort to comply with LRAPA regulations and to protect its citizens from harmful air particulates.

NOW, THEREFORE THE CITY OF OAKRIDGE ORDAINS AS FOLLOWS:

Section One. Definitions.

For the purpose of this section the following definitions apply:

- (1) "City Administrator" means City Administrator or designee, including, if the City Administrator so designates, LRAPA.
- (2) "EPA method" means 40 CFR Part 60, Subpart AAA, Sections 60.531, 60.534 and 60.535.
- (3) "Fireplace" means a solid fuel burning device with an air/fuel ratio of greater than thirty which is a permanent structural feature of a building. A fireplace is made up of a concealed masonry or metal flue, and a masonry or metal firebox enclosed in decorative masonry or other building materials. (Cannot operate on Red or Yellow Advisory days effective 10-01-2017 if attainment is not met).

- (4) "Green Advisory" means a 24 hour period beginning at 4:00 p.m. when PM 10 levels are forecast by LRAPA to be less than 100 micrograms per cubic meter and PM 2.5 levels are forecast to be less than 20 micrograms per cubic meter.
- (5) "LRAPA" means Lane Regional Air Protection Agency, a regional air quality control authority established under the provisions of, and with authority and powers derived from, Oregon Revised Statutes 468A.100 et seq.
- (6) "Opacity" means the degree to which an emission reduces transmission of light or obscures the view of an object in the background.
- (7) "Oregon method" means Oregon Department of Environmental Quality "Standard Method for Measuring the Emissions and Efficiencies of Woodstoves", Sections 1 through 8 and O.A.R. Chapter 340. Division 21 Sections 100, 130, 140, 145, 160, 161, 163, 164, 165.
- (8) "Pellet stove" means an enclosed solid fuel burning device designed and operated to burn manufactured solid fuel and having an air-to-fuel ratio greater than 35-to-1 as determined by the federal test method described in 40 CFR Part 60.534.
- (9) "Person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any charter.
- (10) "Person in Charge of Property" means an agent, occupant, lessee, tenant, contract purchase, or other person having possession or control of property.
- (11) "PM 2.5" means solid or liquid particulate matter (excluding uncombined water) with an aerodynamic diameter less than or equal to 2.5 micrometers.
- (12) "PM 10" means solid or liquid particulate matter (excluding uncombined water) with an aerodynamic diameter less than or equal to 10 micrometers.
- (13) "Red Advisory" means a 24 hour period beginning at 4:00 p.m. when PM 10 levels are forecast by LRAPA to be greater than or equal to 125 micrograms per cubic meter, or when PM 2.5 levels are forecast by LRAPA to be greater than or equal to 25 micrograms per cubic meter, within the Oakridge Area General Plan Urban Growth Boundary. (22 Micrograms effective 10-01-2017 if attainment not met).
- (14) "Seasoned wood" means wood of any species that has been sufficiently dried so as to contain twenty percent or less moisture by weight.
- (15) "Sole source of heat" means one or more solid fuel burning devices that:
 - (a) Constitutes the only source of heat in a private residence for purpose of space heating, or

- (b) Constitutes the main source of heat in a private residence where the residence is equipped with a heating system that is only minimally sufficient to keep the plumbing from freezing.
- (16) "Solid fuel burning device" means any device designed or operated to burn solid fuel for the heating of the interior of a building, including, but not limited to, solid fuel burning stove, fireplaces or wood stoves of any nature, combinations fuel furnaces or boilers used for space heating which can burn solid fuel, and solid fuel burning cooking stoves. "Solid fuel burning device" does not include natural gas fired artificial fireplaces.
- (17) "Visible Emissions" means the reduction in transmission of light or the obscuring of the view of an object in the background caused by the air pollutants emitted by the heating device. This does not include the visual distortion caused by the heated air emitted by the heating device.
- (18) "Yellow Advisory" means a 24 hour period beginning at 4:00 p.m. when PM 10 levels are forecast by LRAPA to be greater than or equal to 100 micrograms per cubic meter but less than 125 micrograms per cubic meter, or when PM 2.5 levels are forecast to be greater than or equal to 20 micrograms per cubic meter but less than 25 micrograms per cubic meter.
- (19) Wood heating advisory season can commence as early as October 1 and end as late as May 31st, as set by the City of Oakridge City Council and LRAPA Board.

Section Two. Solid Fuel Burning Devices – Prohibitions.

- (1) No person in charge of property during a Red Advisory shall operate or allow to be operated a solid fuel burning device which emits visible emissions into the air outside of the building housing the device, unless the person has been granted an exemption to use the device by the City Administrator.
- (2) Within the City, no person in charge of property shall at any time allow to be initiated or maintained in a solid fuel burning device the burning of any fuel other than seasoned wood; prohibited materials include plastics, wire insulation, petroleum by-products, petroleum-treated materials, rubber products, animal remains or animal or vegetable matter resulting from the handling, preparation, cooking or service of food, wood with a moisture content greater than twenty percent moisture by weight, or any other material which normally emits dense smoke, noxious odors, or hazardous air contaminants.
- (3) No person in charge of property shall operate or allow to be operated a solid-fuel

burning device which discharges emissions that are of an opacity greater than 20%. This provision does not apply to the emissions during the building of a new fire, for a period or periods aggregating no more than ten minutes in any 4-hour period.

Section Three. Solid Fuel Burning Devices Upon Sale of the Property.

- (1) After June 30, 2003, all un-certified solid fuel burning devices contained on Property to be sold or rented must be removed from the property or rendered permanently inoperable unless otherwise exempted by this ordinance or the person in charge of the property is granted an exemption by the City Administrator.
- (2) The following solid fuel burning devices may remain on a property to be sold:
 - (a) Woodstoves if the emissions do not exceed:
 - (i) 6.0 grams per hour weighted average when tested in conformance with the Oregon Method; or
 - (ii) 5.5 grams per hour weighted average when tested in conformance with the EPA method.
 - (b) Commercially manufactured pellet stoves that have not been tested, but were installed prior to June 30, 2003.
 - (c) Fireplaces operated in accordance with Section Two of this ordinance.
 - (d) Wood-fired, forced-air combustion furnaces that primarily heat living space, through indirect heat transfer using forced-air duct work or pressurized water systems.
- (3) Within the City, it is unlawful for any person to complete, or allow the completion of the sale, transfer or conveyance of any real property unless a Certificate of Compliance is filed with the City Recorder's Office.
- (4) Once a certificate of Compliance has been filed for a property, another certificate is not needed if the number and type of stoves on the real property matches what is on file at the City. The City shall list properties with Certificates of Compliance on the internet. A copy of the list must be available at the City for inspection.
- (5) The Certificate of Compliance must state that either:
 - (a) there are no solid fuel burning devices on the property; or
 - (b) any solid fuel burning devices on the property meet the requirements of this section.

- (6) The Certificate of Compliance must be in a format specified by the City and must be signed by the seller (s), and, if any sold fuel burning devices will remain on the property, a certified City inspector.
- (7) The Certificate of Compliance does not constitute a warranty or guarantee by the City or its agents that the Solid Fuel Burning Device on the property meets any other standards of operation, efficiency or safety, except the emission standards contained in this Ordinance.

Section Four. Solid Fuel Burning Devices Prohibited.

After December 31, 2008, a person or persons may not install or use any solid fuel burning device in any structure within the City except for certified wood stoves, certified pellet stoves with emissions that do not exceed 1.0 gram per hour, weighted average when tested in conformance with the EPA Method, or a fireplace which is not a sole source of heat, operated in accordance with Section Two of this Ordinance.

Section Five. Solid Fuel Burning Devices – Exemptions.

Notwithstanding the prohibitions set forth in this Ordinance, a person in charge of property may retain in their home or operate a solid fuel burning device during a Green, Yellow or Red Advisory, if that person has previously obtained one of the following exemptions from the City Administrator:

- (a) Sole source of heat exemption. Persons in charge of property who signs a sworn statement that their solid fuel burning device is the sole source of heat for their residence are eligible for a sole source of heat exemption. The City may inspect to verify this fact, and to insure that the solid fuel burning device is certified, in its discretion. This exemption shall expire on July 1 of each year and must be renewed annually thereafter.
- (b) Economic need exemption. Persons in charge of property who demonstrate an economic need to burn solid fuel for space-heating purposes by qualifying for energy assistance according to economic guidelines established by the U.S. Office of Management and Budget under the low income energy assistance program, as administered in Oakridge by the CDC, are eligible for an economic need permit. The City may insure that the solid fuel burning device is certified at its discretion. This exemption shall expire on July 1 of each year and must be renewed annually thereafter.

Section Six. Enforcement.

- (a) In addition to, and not in lieu of any other enforcement mechanism authorized by the Oakridge City Code, upon a determination that a person has violated this Ordinance, the City Administrator or his/her designee may impose upon the violator and any other person in charge of the property, an administrative penalty not greater than \$500.00.
- (b) Each day's violation of a provision of this Ordinance constitutes a separate offense punishable by the penalty set forth above.
- (c) The City Administrator or his/her designee is also hereby authorized to designate LRAPA to enforce and administer the provisions of this code, including LRAPA's use of administrative and hearing procedures adopted by LRAPA in its duly promulgated regulations.

Section Seven. Contingency Measures

Reserved.

Note: Oakridge does not meet federal health-based standards for fine particulate (PM_{2.5}) and was designated a non-attainment area by the Environmental Protection Agency (EPA) on October 8, 2009. An attainment plan was developed for Oakridge in 2012 containing contingency measures that would be implemented if Oakridge did not meet the PM_{2.5} standard by the EPA Clean Air Act 2014 deadline. Oakridge did not meet the PM 2.5 standard by the EPA Clean Air Act 2014 deadline and the contingency measures in the 2012 plan are incorporated into earlier sections of this ordinance.

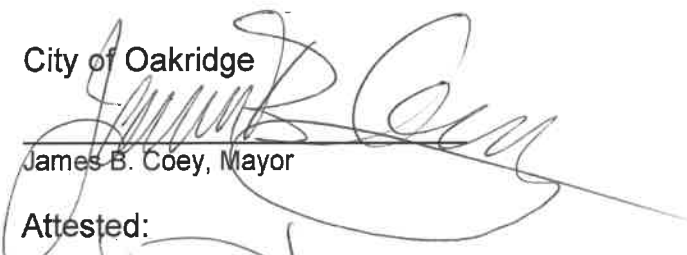
A supplemental plan with additional strategies and contingency measures was developed during 2016. If the EPA makes a finding that the Oakridge nonattainment area failed to attain the 2006 24-hour PM 2.5 standard by the applicable attainment date, the following requirements will automatically go into effect for the October 1st, 2017 Wood Heating Season.

- (1) The Red Advisory criteria in Section One (13) is reduced to forecasted PM 2.5 levels of 22 Micrograms per cubic meter; and
- (2) Fireplace use Section One (3) is prohibited during both Yellow Advisory and Red Advisory periods.


The reading of this ordinance is by title only approved on the 20th day of October, 2016.

Approved and signed by the Mayor on the 20th day of October, 2016.

City of Oakridge


James B. Coey, Mayor

Attested:


Susan LaDuke, City Recorder

Ayes: 6
Nays: 0

Exhibit A
ORDINANCE 919
**AN ORDINANCE ESTABLISHING A TAX ON THE SALE OF MARIJUANA AND
MARIJUANA-INFUSED PRODUCTS IN THE CITY OF OAKRIDGE**

WHEREAS, Section 4 of the Oakridge Charter provides:

Powers of the City. The City shall have all powers that the constitutions, statutes, and common law of the United States and of this state expressly or impliedly granted or enumerated each of those powers; and

WHEREAS, ORS 475B.345 allows the City of Oakridge to impose a local tax of up to 3% on retail sales of recreational marijuana items within the City if the local tax is approved by the voters of the City at a general election; and

WHEREAS, the City of Oakridge desires to impose a tax on the sale of recreational marijuana items by marijuana retailers in the City;

NOW THEREFORE, THE CITY OF OAKRIDGE ORDAINS AS FOLLOWS:

SECTION 1. DEFINITIONS.

The following words and phrases as used in this Ordinance shall have the following meanings:

- A. "City" means the City of Oakridge.
- B. "Tax Administrator" means the City Administrator of the City of Oakridge, the City Administrator's designee, and/or another individual or entity designated by the City to collect the tax on behalf of the City.
- C. "Consumer" means a person who purchases, acquires, owns, holds or uses marijuana items other than for the purpose of resale.
- D. "Marijuana item" means marijuana, cannabinoid products, cannabinoid concentrates and cannabinoid extracts as defined in ORS 475B.015.
- E. "Marijuana retailer" means a person licensed under ORS 475B.110 who sells marijuana items to a consumer in the State of Oregon.
- F. "Person" means individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies.

- G. "Retail sale price" means the total consideration paid to a marijuana retailer for a marijuana item by or on behalf of a consumer, excluding any tax.

SECTION 2. TAX IMPOSED.

The City of Oakridge hereby imposes a tax on each marijuana item sold to a consumer within the City of Oakridge by a marijuana retailer. The Oakridge City Council shall set the tax rate by resolution; however, the tax rate adopted by the City Council shall not exceed three percent (3%) of the retail sale price for each marijuana item sold. The tax constitutes a debt owed by the consumer to the City and shall be extinguished only by payment to the marijuana retailer or to the City.

SECTION 3. COLLECTION.

The consumer shall pay the tax to the marijuana retailer at the time of the purchase or sale of the marijuana item. Every marijuana retailer shall collect the tax from the consumer at the time of the sale of a marijuana item. The tax collected by the marijuana retailer shall be held in trust by the marijuana retailer for payment to the City. The marijuana retailer shall remit the tax to the Tax Administrator. The Tax Administrator is authorized to exercise all supervisory and administrative powers with regard to the administration, collection and enforcement of the tax authorized by this Ordinance.

SECTION 4. ACCOUNTING AND RECORDS.

- A. Every marijuana retailer must keep and preserve, in a generally accepted accounting format used for reporting revenue and taxes due on business activity, detailed records of all sales made and all taxes collected. Every marijuana retailer must keep and preserve such records for a period of six (6) years. The Tax Administrator shall have the right to inspect all such records at reasonable times.
- B. For purposes of determining the accuracy of any tax return or for the purpose of an estimate of taxes due, the Tax Administrator may examine any books, papers, records, or memoranda bearing upon the marijuana retailer's tax returns, including copies of the marijuana retailer's state and federal income tax returns and copies of the marijuana retailer's state marijuana tax returns. All books, invoices and other records shall be made available within the City for examination by the Tax Administrator during regular business hours.

SECTION 5. PENALTIES AND INTEREST

- A. Any marijuana retailer who has not been granted an extension of time for remittance of tax due and who fails to remit any tax imposed by this Ordinance prior to delinquency shall pay a penalty of ten percent of the amount of the tax due in addition to the amount of the tax.
- B. Any marijuana retailer who has not been granted an extension of time for remittance of tax due, and who fails to pay any delinquent remittance on or before a period of thirty days following the date on which the remittance first becomes delinquent shall pay a second delinquency penalty of fifteen percent of the amount of the tax due plus the amount of the tax and the ten percent penalty first imposed.
- C. If the Tax Administrator determines that the nonpayment of any remittance due under this Ordinance is due to fraud or intent to evade the provisions of this Ordinance, a penalty of twenty-five percent of the amount of the tax shall be added the amount of the remittance due, in addition to the penalties stated in subsections A and B of this section.
- D. In addition to the penalties imposed, any marijuana retailer who fails to remit any tax imposed by this Ordinance shall pay interest at the rate of one-half of one percent per month or fraction thereof, without proration for portions of a month, on the amount of the tax due, exclusive of penalties, from the date on which the remittance first becomes delinquent, until paid.
- E. Every penalty imposed and any interest that accrues under the provisions of this Ordinance shall be merged with, and become a part of, the tax required to be paid.

SECTION 6. APPEAL

- A. Any person aggrieved by any decision of the Tax Administrator may appeal to the City Recorder by filing a notice of appeal with the Tax Administrator within ten days of the date the notice of the decision is served or mailed. The Tax Administrator shall fix a time and place for hearing the appeal and shall give the appellant ten days' written notice of the time and place of the hearing.
- B. Any person aggrieved by any decision of the City Recorder under subsection A of this Section may appeal to the Council by filing a notice of appeal with the Tax Administrator within ten days of the date the City Recorder's decision is served or mailed. The Tax Administrator shall transmit the notice, together with the file of the appealed matter, to the Council, who shall fix a time and place for hearing the appeal. The Council shall give the appellant not less than ten days' written notice of the time and place of hearing the appeal.

SECTION 7. REFUND

Whenever the amount of any tax imposed under this Ordinance has been paid more than once or has been erroneously or illegally collected or received by the Tax Administrator, it may be refunded, provided a verified claim in writing therefor, stating the specific reason upon which the claim is founded, is filed with the Tax Administrator within three years from the date of payment. The claim shall be made on forms provided by the Tax Administrator. If the Tax Administrator approves the claim, the excess amount collected or paid may be refunded to, or may be credited on any amounts then due and payable from, the marijuana retailer from whom it was collected or by whom it was paid, and the balance may be refunded to the marijuana retailer or the marijuana retailer's administrators, executors or assignees.

SECTION 8. SEVERABILITY. Any provision of this Ordinance which proves to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision of this Ordinance, and the remaining provisions of this Ordinance shall remain in full force and effect.

SECTION 9. CODIFICATION. If this Ordinance becomes effective as provided by Section 10 below, the City Recorder is hereby authorized and directed to codify Sections 1 through 8 of this ordinance in an appropriate Title of the Oakridge Municipal Code and to change the word "Ordinance" to "Chapter" as appropriate when codified.

SECTION 10. EFFECTIVE DATE. If approved by a majority of the voters of the City of Oakridge at the statewide general election held on Tuesday, November 8, 2016, this ordinance shall take effect on January 1, 2017.

READ BY TITLE ONLY, PASSED AND ADOPTED by a vote of the Oakridge City Council this 21st day of July, 2016.

PASSED BY THE COUNCIL of the City of Oakridge this 21st day of July, 2016.

APPROVED AND SIGNED BY THE MAYOR of the City of Oakridge this 21st day of July, 2016.

Signed:


James B. Coey, Mayor

Attest:


Susan M. LaDuke, City Recorder

Ayes: 6

Nays: 0

Exhibit B
Explanatory Statement

If this measure is approved by the voters of the City of Oakridge, the City will impose a tax on sales of marijuana items (including marijuana flowers, marijuana concentrates, marijuana edibles and marijuana extracts) by recreational marijuana retailers licensed by the Oregon Liquor Control Commission (OLCC) and located within the City of Oakridge. If this measure is approved, the City Council will have the authority to set the amount of the city tax, but the city tax cannot exceed three percent of the retail sales price of a marijuana item.

If this measure is approved, the city tax would be collected from consumers by the recreational marijuana retailer at the point of sale. The recreational marijuana retailer would then remit the tax to the City.

The City would be able to use the revenues generated by this tax for any city purpose, including but not limited to:

- General/Non-departmental
- Administrative
- Building/Planning
- Police
- Library
- Parks
- WAC -Willamette Activity Center
- Municipal Court.

If approved, this city tax would be imposed in addition to any state marijuana taxes. This city tax would not be imposed on medical marijuana sales.