

COUNCIL BILL NO. 12-1

ORDINANCE NO. 12-1

1 AN ORDINANCE REPEALING CHAPTER 16 OF TITLE 8 OF THE BUTTE-  
2 SILVER BOW MUNICIPAL CODE ENTITLED "AIR POLLUTANTS" AND  
3 REPLACING IT WITH A NEW CHAPTER 16 TO BE ENTITLED "AIR QUALITY  
4 CONTROL", ESTABLISHING REGULATIONS FOR THE CONTROL AND  
5 MANAGEMENT OF AIR QUALITY; ESTABLISHING AN AIR POLLUTION  
6 CONTROL DISTRICT; ESTABLISHING A SOLID FUEL BURNING DEVICE AND  
7 CONTROL PROGRAM; REGULATING THE USE OF OUTDOOR WOOD FURNACES;  
8 ESTABLISHING DUST CONTROL REGULATIONS; REGULATING OPEN BURNING  
9 IN SILVER BOW COUNTY; PROVIDING FOR PERMITS; PROVIDING  
10 PENALTIES FOR VIOLATION; PROVIDING FOR SEVERABILITY; AND  
11 PROVIDING FOR AN EFFECTIVE DATE HEREIN.

12 NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF COMMISSIONERS  
13 OF THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA:

14

15 SECTION 1: 8.16.010 Intent. The purpose of this chapter is  
16 to achieve and maintain levels of air quality  
17 that will protect human health and safety and,  
18 to the greatest degree practicable, prevent  
19 injury to plant and animal life and property,

1 foster the comfort and convenience of the  
2 people, promote economic and social development,  
3 and facilitate the enjoyment of the natural  
4 attractions within Butte-Silver Bow as provided  
5 in Section 75-2-102(2) MCA.

6  
7 8.16.020 Scope. Unless otherwise indicated,  
8 this chapter applies to all persons, agencies,  
9 institutions, businesses, or government entities  
10 living or located within the Air Pollution  
11 Control District except for sources exempt from  
12 local government regulation under 75-2-301(5),  
13 MCA.

14  
15 8.16.030 Definitions: As used in this chapter,  
16 unless indicated otherwise, the following  
17 definitions apply:

18 (1) "Air Contaminant" means dust, fumes, mist,  
19 smoke, or any particulate matter vapor, gas,  
20 odorous substances, or any combination thereof

1 (2) "Air Pollution Control District" means the  
2 real property described as follows:  
3 Beginning at the northwest corner of Section 2,  
4 Township 3 North, Range 8 West; thence easterly  
5 to the northeast corner of Section 5, T3N R7W;  
6 thence southerly to the northwest corner of  
7 Section 9, T3N, R7W; thence easterly to the  
8 northeast corner of Section 10, T3N, R7W; thence  
9 southerly to the southeast corner of Section 22,  
10 T2N, R7W; thence westerly to the southwest  
11 corner of Section 19, T2N, R7W; thence northerly  
12 to the northwest corner of Section 19, T2N, R7W;  
13 thence westerly to the southwest corner of  
14 Section 14, T2N, R8W; thence northerly to the  
15 southwest corner of Section 35, T3N, R8W; thence  
16 westerly to the southwest corner of Section 34,  
17 T3N, R8W; thence northerly to the northwest  
18 corner of Section 27, T3N, R8W; thence westerly  
19 to the southwest corner of Section 20, T3N, R8W;  
20 thence northerly to the northwest corner of  
21 Section 17, T3N, R8W; thence easterly to the

1 northwest corner of Section 14, T3N, R8W; thence  
2 northerly to the point of beginning.

3 A map of the above-described geographical area  
4 is available and on file in the City-County's  
5 Clerk and Recorder's office.

6  
7 (3) "Air Quality Categories" means: "Good",  
8 "Poor", and "Alert" categories correlating with  
9 measured PM-2.5 concentrations.

10 a. "Good Air Quality" means Ambient  
11 particulate matter (PM) concentrations averaged  
12 over an eight hour period that are equal to or  
13 less than 40 percent of the most current  
14 NAAQS/MAAQS (24 hour standard).

15 b. "Poor Air Quality" means Ambient  
16 particulate matter (PM) concentrations averaged  
17 over an eight hour period that are between 40-75  
18 percent of the most current NAAQS/MAAQS (24 hour  
19 standard).

20 c. "Alert Air Quality" means Ambient  
21 particulate matter (PM) concentrations averaged

1 over an eight hour period that are equal to or  
2 greater than 75 percent of the most current  
3 NAAQS/MAAQS (24 hour standard).

4  
5 (4) "Best Available Control Technology" (BACT)  
6 means those techniques and methods of  
7 controlling emissions of pollutants from an  
8 existing or propose open burning source which  
9 limit those emissions to the maximum degree  
10 which the department determines, on a case-by-  
11 case basis, is achievable for that source,  
12 taking into account impacts on energy use, the  
13 environment, and the economy, and any other  
14 costs, including cost to the source.

15 (5) "Burn Barrel" means any metal, ceramic, or  
16 other non-combustible devices, including, but  
17 not limited to, 55 gallon drums used for  
18 burning.

19 (6) "Department" means the Butte-Silver Bow  
20 County Health Department.

- 1 (7) "DEQ" means the Montana Department of  
2 Environmental Quality.
- 3 (8) "Emission" means a release into the outdoor  
4 atmosphere of an air contaminant.
- 5 (9) "EPA" means the US Environmental Protection  
6 Agency.
- 7 (10) "EPA Federal Reference Method 9"  
8 means Title 40 CFR 60. Appendix A to Part 60.
- 9 (11) "Government" means the local government of  
10 Butte-Silver Bow.
- 11 (12) "MAAQS" means the Montana Ambient Air  
12 Quality Standards.
- 13 (13) "NAAQS" means the National Ambient Air  
14 Quality Standards.
- 15 (14) "Opacity" means a measurement of visible  
16 emissions defined as the degree expressed in  
17 percent to which emissions reduce the  
18 transmission of light and obscures the view of  
19 an object in the background.
- 20 (15) "Outdoor Wood Furnace" means A device,  
21 appliance or apparatus, or any part thereof,

1           which is installed, affixed, or situated  
2           outdoors and is primarily hand loaded for the  
3           purpose of heat or energy used as a component of  
4           a heating system providing heat for any interior  
5           space or water source, including, but not  
6           limited, to An Outdoor Wood-Fired Hydronic  
7           Heater.

8           (a) "EPA HH Phase 2 Program" means EPA HH  
9           (Hydronic Heater) Phase 2 Program  
10          administered by the U.S. Environmental  
11          Protection Agency

12          (b) "EPA HH Phase 2 Program Qualified  
13          Model" means A Hydronic Heater that has  
14          been EPA HH Phase 2 Program Qualified. The  
15          model must meet the EPA HH Phase 2  
16          particulate emission level of .32 pounds  
17          per million BTU's output and is labeled  
18          accordingly.

19          (c) "New Outdoor Wood Furnace" means An  
20          Outdoor Wood Furnace that is first  
21          installed, established, or constructed

1                   after June 2012, the effective date of this  
2                   ordinance.

3  
4                   (16) "Pellet Fuel Burning Device" means a solid  
5                   fuel     burning     device     that     burns     only  
6                   automatically fed biomass or pelletized fuels.

7                   (17) "Person" means an individual, partnership,  
8                   firm,     association,     municipality,     public     or  
9                   private corporation, the state or a subdivision  
10                  or agency of the state, trust, estate,  
11                  interstate body, federal government or an agency  
12                  of the federal government, or any other legal  
13                  entity.

14                  (18) "PM-10" means particulate matter with an  
15                  aerodynamic diameter of less than or equal to a  
16                  nominal 10 micrometers.

17                  (19) "PM-2.5" means particulate matter with an  
18                  aerodynamic diameter of less than or equal to a  
19                  nominal 2.5 micrometers.

1 (20) "Remodel" means an addition or upgrade to  
2 an existing structure which utilizes a solid  
3 fuel burning device for heating purposes.

4 (21) "Solid Fuel Burning Device" means any  
5 fireplace, fireplace insert, woodstove, pellet  
6 stove, pellet furnace, wood burning heater,  
7 wood-fired boiler, wood or coal fired furnace,  
8 coal stove, or similar device burning any solid  
9 fuel used for aesthetic, cooking, or heating  
10 purposes which has a rated capacity of less than  
11 1,000,000 BTU's per hour.

12  
13 8.16.040 Compatibility with other Regulations.

14 In any case where a provision of these  
15 regulations is found to be in conflict with a  
16 provision of any zoning, building, fire, safety,  
17 or code of Butte-Silver Bow, the provision which  
18 establishes the higher standard for the  
19 promotion and protection of the health and  
20 safety of the people shall prevail.

21

1  
2 SECTION 2: 8.16.100 Solid Fuel Burning Device Control  
3 Program.

4 (1) Operating and Emission Requirements: No  
5 person may burn any material in a solid fuel  
6 burning device except uncolored newspaper,  
7 untreated wood and lumber, and products  
8 manufactured for the sole purpose of use as a  
9 solid fuel. Products manufactured or processed  
10 for use as solid fuels must conform to any other  
11 applicable provisions of this subchapter.

12 (2) The burning of the following materials in any  
13 solid fuel burning device is prohibited at all  
14 times:

- 15 a. any waste moved from the premises from  
16 where it was generated;
- 17 b. food wastes;
- 18 c. styrofoam and other plastics;
- 19 d. wastes generating noxious odor;
- 20 e. wood or wood by-products that have been  
21 treated, coated, painted, stained, or  
22 contaminated by a foreign material such as

1 papers, cardboard, or painted or stained  
2 wood;  
3 f. poultry litter;  
4 g. animal droppings;  
5 h. dead animals or dead animal parts;  
6 i. tires;  
7 j. rubber materials;  
8 k. asphalt shingles;  
9 l. tar paper;  
10 m. automobile or aircraft bodies or  
11 interiors and bodies or interiors of  
12 recreational vehicles and atv's;  
13 n. insulated wire;  
14 o. oil or petroleum products;  
15 p. treated lumber or timbers;  
16 q. pathogenic wastes;  
17 r. hazardous wastes as defined by 40 CFR,  
18 Part 261;  
19 s. trade wastes;  
20 t. any materials resulting from a salvage  
21 operation;

- 1 u. chemicals;
- 2 v. Christmas tree waste;
- 3 w. Asbestos or asbestos containing
- 4 materials;
- 5 x. Standing or demolished structures; and
- 6 y. Paint
- 7 z. Colored news print or magazine print;

8

9 (3) The use of coal as a fuel in a solid fuel

10 burning device is prohibited within the Air

11 Pollution Control District.

12

13 8.16.110 Liability. Neither the provisions of

14 this Chapter nor the compliance with the

15 provisions of this Chapter shall relieve any

16 person from the responsibility for damage to any

17 person or property otherwise imposed by law, nor

18 shall it impose any liability upon Butte-Silver

19 Bow for damage to any person or property.

1 SECTION 3: 8.16.200 Outdoor Wood Furnaces (Outdoor Wood  
2 Boilers, Outdoor Wood-Fired Hydronic Heaters  
3 and/or Other Outdoor Hydronic Heaters.

4 (1) This program is aimed at reducing levels of  
5 particulate matter to, or below, the current  
6 NAAQS/MAAQS.

7 (2) This program is necessary to preserve,  
8 protect, improve, achieve, and maintain such  
9 levels of air quality as will protect the health  
10 and welfare of the citizens of Butte-Silver Bow.

11 (3) This program requires that outdoor wood  
12 furnaces installed after May 18, 2012, meet the  
13 current EPA Phase 2 requirements.

14 8.16.210 Implementation: Only EPA HH Phase 2  
15 Program Qualified Model or newer Outdoor Wood  
16 Furnaces may be installed and operated in the  
17 Air Pollution Control district after May 18,  
18 2012.

19 8.16.220 Requirements: Outdoor Wood Furnaces  
20 must be constructed, established, installed,

1 operated, and maintained in conformance with the  
2 following conditions:

3 1. Only the following fuels may be burned in any  
4 new or existing Outdoor Wood Furnace: natural,  
5 untreated wood, wood pellets, corn products,  
6 biomass pellets, or other listed fuels  
7 specifically permitted in the manufacturer's  
8 instructions such as fuel oil, natural gas, or  
9 propane backup.

10 2. After May 18, 2012, any outdoor wood furnace  
11 must be located on the property in compliance  
12 with the manufacturer's setback recommendations  
13 and/or testing and listing requirements for  
14 clearance of combustible materials.

15 3. Required chimney heights for outdoor wood  
16 furnaces installed after May 12, 2012:

17 a. If located within 300 feet of any  
18 residence not served by the furnace, the  
19 chimney must be at least 2 feet higher than  
20 the peak of the residence served.

1                   the peak of the residence served or not  
2                   served, whichever is higher.

3  
4  
5                   8.16.300 Solid Fuel Burning Device

6                   1. The following regulations apply to solid fuel  
7                   burning device.

8                   (a) Within the air pollution control district,  
9                   no person owning or operating a solid fuel  
10                  burning device may caused, allow, or discharge  
11                  emissions from such device which are of any  
12                  opacity greater than twenty five (25) percent.

13                  (b) The provisions of this subsection do not  
14                  apply to emissions during the building of a new  
15                  fire, for a period or periods aggregating no  
16                  more than thirty (30) minutes in any four hour  
17                  period.

18                  (c) Within the Air Pollution Control District,  
19                  no person owning or operating a solid fuel  
20                  burning device may cause, allow, or discharge  
21                  any visible emission from such device during an

1 (c) Within the Air Pollution Control District,  
2 no person owning or operating a solid fuel  
3 burning device may cause, allow, or discharge  
4 any visible emission from such device during an  
5 Air Pollution Alert declared by the Government  
6 unless a Class I Permit or a Special Needs  
7 Permit has been issued for such device.

8 (d) Within the Air Pollution Control District,  
9 the only wood burning devices that may be  
10 installed in any home constructed or remodeled  
11 after May 18, 2012, are EPA approved, Phase I or  
12 Phase II wood burning devices.

13 (e) Within the Air Pollution Control District, no  
14 person owning or operating a solid fuel burning  
15 device for which a Class 1 or Special Needs  
16 Permit has been issued may cause, allow or  
17 discharge any emissions from such device which  
18 are of an opacity greater than ten (10) percent  
19 during an Air Pollution Alert declared by the  
20 Government. The provisions of this paragraph do  
21 not apply to emissions during the building of a

1 (f) For the purpose of this section, the  
2 Government may declare an Air Pollution Alert to  
3 be in effect whenever the ambient concentration  
4 of PM-2.5 within the Air Pollution Control  
5 District equals or exceeds 75 percent of the  
6 "NAAQS/MAAQS" averaged over any eight (8) hour  
7 period and when scientific and meteorological  
8 data indicate the average PM-2.5 concentrations  
9 will remain at or above the NAAQS/MAAQS if an  
10 Air Pollution Alert is not called.

11 g. Every person operating or in control of a  
12 solid fuel burning device within the Air  
13 Pollution Control District has a duty to know  
14 when an air pollution alert has been declared by  
15 the Government.

16  
17 SECTION 5: 8.16.400 Permits: The following permits are  
18 required for solid fuel burning devices:

19 (1) Class One Permit: The government may issue a  
20 Class I Permit for a solid fuel burning devices

1 if the emissions do not exceed the federal EPA  
2 standard of 4 grams per hour weighted average.

3 (2) Special Needs Permit: A person who  
4 demonstrates an economic need to burn solid fuel  
5 for residential space heating purposes by  
6 qualifying for energy assistance according to  
7 economic guidelines established by the U.S.  
8 Office of Management and Budget under the Low  
9 Income Energy Assistance Program (L.I.E.A.P.) as  
10 administered in the City and County of Butte-  
11 Silver Bow by the District 12 Human Resource  
12 Development Council, is eligible for a special  
13 needs permit issued by the Department. This  
14 includes a person who has been determined to be  
15 eligible for Families Achieving Independence  
16 (FAIM) or Supplemental Security Income (SSI)  
17 benefits.

18 (a) Application for a Special Needs Permit may  
19 be made to the Department at any time, and a  
20 Special Needs Permit is valid for a period of  
21 not more than one (1) year from the date it is

1 issued. A Special Needs Permit may be renewed if  
2 the applicant meets the applicable need and  
3 economic guidelines at the time of application  
4 for renewal. A Special Needs Permit is not  
5 transferable to another residence or person.

6 SECTION 6: 8.16.500 Dust Control Regulations: No person  
7 may place any sanding or chip seal material on  
8 any road, alley or commercial yard/lot which has  
9 durability as defined by the Montana Modified LA  
10 Abrasion Test, of greater than 7, and a fines  
11 content of material smaller than 200 mesh, as  
12 determined by standard wet sieving methods, that  
13 exceeds 3 percent oven dry weight.

14 8.16.510 Standards for Chemical De-Icer used on  
15 Public Streets and Public or Private Parking  
16 Lots.

17 (1) Any governmental entity, person, or private  
18 entity, including Butte-Silver Bow, shall use  
19 exclusively, on all public streets and public or  
20 private parking lots, an approved chemical de-  
21 icer plus a corrosion inhibitor for use on snow

1 packed or icy streets during winter in lieu of  
2 sanding and chip seal materials. Use of sanding  
3 and chip seal materials will be prohibited  
4 except in emergency situations or as set forth  
5 in subsection 2.

6 (2) Conventional sanding and chip seal materials  
7 may be used when the ambient temperature falls  
8 below 10°F.

9  
10 SECTION 7: 8.16.600 Open Burning: the following

11 regulations shall apply to any open burning  
12 conducted in the City-County of Butte-Silver  
13 Bow, Montana.

14 (1) Prior to open burning, a person must obtain  
15 an Open Burning Permit from the Butte Silver Bow  
16 Fire Department. Open burning must comply with  
17 sections 17.8.601 and 17.8.606 ARM.

18 (2) Open Burning must comply with "Best  
19 available control technology" (BACT)

20 (3) Open Burning is not allowed from December 1<sup>st</sup>  
21 through the last day of February.

1 (4) Open Burning may be allowed from March 1<sup>st</sup>  
2 through August 31<sup>st</sup>, if the Department determines  
3 there is proper dispersion in the Air Pollution  
4 Control District.

5 (5) Open Burning is also allowed from September  
6 1<sup>st</sup> through November 30<sup>th</sup> when the Department  
7 reports good ventilation.

8 (6) The burning of the following materials is  
9 prohibited at all times:

10 a. any waste moved from the premises from  
11 where it was generated;

12 b. food wastes;

13 c. styrofoam and other plastics;

14 d. wastes generating noxious odor;

15 e. wood or wood by-products that have been  
16 treated, coated, painted, stained, or  
17 contaminated by a foreign material such as  
18 papers, cardboard, or painted or stained  
19 wood;

20 f. poultry litter;

21 g. animal droppings;

- 1 h. dead animals or dead animal parts;
- 2 i. tires;
- 3 j. rubber materials;
- 4 k. asphalt shingles;
- 5 l. tar paper;
- 6 m. automobile or aircraft bodies or
- 7 interiors, and bodies or interiors of
- 8 recreational vehicles and atv's;
- 9 n. insulated wire;
- 10 o. oil or petroleum products;
- 11 p. treated lumber or timbers;
- 12 q. pathogenic wastes;
- 13 r. hazardous wastes as defined by 40 CFR,
- 14 Part 261;
- 15 s. trade wastes;
- 16 t. any materials resulting from a salvage
- 17 operation;
- 18 u. chemicals;
- 19 v. Christmas tree waste;
- 20 w. Asbestos or asbestos containing
- 21 materials;

1 x. Standing or demolished structures; and

2 y. Paint;

3 z. Colored news print or magazine print.

4 (7) Allowing burning stumps, grass clippings,  
5 leaves, or other similar materials that may be  
6 burned under this chapter, to smolder overnight  
7 is prohibited.

8 (8) The use of burn barrels, or other such  
9 devices, is prohibited.

10  
11 SECTION 8: 8.16.700 Enforcement: The provisions of this  
12 ordinance shall be enforced as follows:

13 (1) The Department, Butte Silver Bow Fire  
14 Department, and the appropriate law  
15 enforcement officials shall be responsible  
16 for enforcement of this ordinance.

17 (2) Class I Permits and Special Needs  
18 Permits for residential solid fuel burning  
19 devices may be issued, denied, suspended or  
20 revoked.

21

1 SECTION 9: 8.16.800 Penalties: The penalties for  
2 violations of this chapter are as follows:  
3 (1) First Violation - Written  
4 educational warning by the Department  
5 (2) Second Violation - Twenty Five  
6 Dollars (\$25.00)  
7 (3) Third Violation - Fifty Dollars  
8 (\$50.00)  
9 (4) A fourth or subsequent violation of  
10 this Ordinance constitutes a MISDEMEANOR  
11 punishable by a fine not to exceed \$500.00  
12 or imprisonment in the county jail for a  
13 term not to exceed six (6) months, or by  
14 both a fine and imprisonment.  
15 (a) No person or entity may be cited for a  
16 violation of this Ordinance more than once  
17 in any Calendar Day. However, each Calendar  
18 Day of violation may be considered a  
19 separate offense.

1 (b)Only those violations of this Ordinance  
2 by a person or entity which have occurred  
3 within one (1) year of a present offense  
4 may be considered as prior violations.

5 (c) Jurisdiction shall be in the City Court  
6 of the City-County of Butte Silver Bow,  
7 Montana.

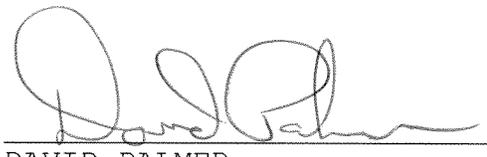
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9 SECTION 10: Severability: If any provision of this  
10 Ordinance or any section thereof, in any  
11 circumstances is held invalid, the validity  
12 of the remainder of the Ordinance and of  
13 the application of any of the other  
14 provisions or sections shall not be  
15 affected.

16  
17 SECTION 11: Repealer: All ordinances and resolutions in  
18 conflict herewith are repealed.

19 SECTTION 12: Effective Date: This Ordinance shall be in  
20 full force and effect from and after thirty  
21 (30) days after its passage and approval.

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PASSED this 18<sup>th</sup> day of April, 2012.



DAVID PALMER  
CHAIRMAN OF THE COUNCIL OF COMMISSIONERS

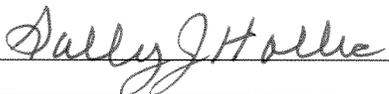
APPROVED this 18<sup>th</sup> day of April, 2012.



PAUL DAVID BABB  
CHIEF EXECUTIVE

ATTEST:

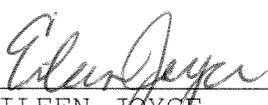
SALLY J. HOLLIS  
CLERK AND RECORDER



BY  
ITS



APPROVED AS TO FORM:



EILEEN JOYCE  
COUNTY ATTORNEY

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2 \_\_\_\_\_  
3 JOHN P. MORGAN  
4 CHAIRMAN, JUDICIARY COMMITTEE

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