

COUNCIL BILL NO. 15-17

ORDINANCE NO. 15-17

1 AN ORDINANCE AMENDING CHAPTER 16 ENTITLED "AIR QUALITY CONTROL",
2 SPECIFICALLY AMENDING SECTIONS 8.16.030, 8.16.220, 8.16.300 AND
3 PROVIDING FOR AN EFFECTIVE DATE HEREIN.

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

6

7 SECTION 1: 8.16.010 Intent. The purpose of this chapter is to
8 achieve and maintain levels of air quality that
9 will protect human health and safety and, to the
10 greatest degree practicable, prevent injury to
11 plant and animal life and property, foster the
12 comfort and convenience of the people, promote
13 economic and social development, and facilitate
14 the enjoyment of the natural
15 attractions within Butte-Silver Bow as provided in
16 Section 75-2-102(2) MCA.

17

18 8.16.020 Scope. Unless otherwise indicated, this
19 chapter applies to all persons, agencies,

1 institutions, businesses, or government entities
2 living or located within the Air Pollution Control
3 District except for sources exempt from local
4 government regulation under 75-2-301(5), MCA.

5
6 8.16.030 Definitions: As used in this chapter,
7 unless indicated otherwise, the following
8 definitions apply:

9
10 (1) "Air Contaminant" means dust, fumes, mist,
11 smoke, or any particulate matter vapor, gas,
12 odorous substances, or any combination thereof

13 (2) "Air Pollution Control District" means the
14 real property described as follows:

15 Beginning at the northwest corner of Section 2,
16 Township 3 North, Range 8 West; thence easterly to
17 the northeast corner of Section 5, T3N R7W; thence
18 southerly to the northwest corner of Section 9,
19 T3N, R7W; thence easterly to the northeast corner
20 of Section 10, T3N, R7W; thence southerly to the
21 southeast corner of Section 22, T2N, R7W; thence

1 westerly to the southwest corner of Section 19,
2 T2N, R7W; thence northerly to the northwest corner
3 of Section 19, T2N, R7W; thence westerly to the
4 southwest corner of Section 14, T2N, R8W; thence
5 northerly to the southwest corner of Section 35,
6 T3N, R8W; thence westerly to the southwest corner
7 of Section 34, T3N, R8W; thence northerly to the
8 northwest corner of Section 27, T3N, R8W; thence
9 westerly to the southwest corner of Section 20,
10 T3N, R8W; thence northerly to the northwest corner
11 of Section 17, T3N, R8W; thence easterly to the
12 northwest corner of Section 14, T3N, R8W; thence
13 northerly to the point of beginning.

14 A map of the above-described geographical area is
15 available and on file in the City-County's Clerk
16 and Recorder's office.

17
18 (3) "Air Quality Categories" means: "Good",
19 "Poor", and "Alert" categories correlating with
20 measured PM-2.5 concentrations.

1 a. "Good Air Quality" means Ambient
2 particulate matter (PM) concentrations averaged
3 over an eight hour period that are equal to or
4 less than 40 percent of the most current
5 NAAQS/MAAQS (24 hour standard).

6 b. "Poor Air Quality" means Ambient
7 particulate matter (PM) concentrations averaged
8 over an eight hour period that are between 40-75
9 percent of the most current NAAQS/MAAQS (24 hour
10 standard).

11 c. "Alert Air Quality" means Ambient
12 particulate matter (PM) concentrations averaged
13 over an eight hour period that are equal to or
14 greater than 75 percent of the most current
15 NAAQS/MAAQS (24 hour standard).

16 (4) "Best Available Control Technology" (BACT)
17 means those techniques and methods of controlling
18 emissions of pollutants from an existing or
19 proposed open burning source which limit those
20 emissions to the maximum degree which the
21 department determines, on a case-by-case basis, is

1 achievable for that source, taking into account
2 impacts on energy use, the environment, and the
3 economy, and any other costs, including cost to
4 the source.

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

8 (6) "Department" means the Butte-Silver Bow County
9 Health Department.

10 (7) "DEQ" means the Montana Department of
11 Environmental Quality.

12 (8) "Emission" means a release into the outdoor
13 atmosphere of an air contaminant.

14 (9) "EPA" means the US Environmental Protection
15 Agency.

16 (10) "EPA Federal Reference Method 9" means Title
17 40 CFR 60. Appendix A to Part 60.

18 (11) "Government" means the local government of
19 Butte-Silver Bow.

20 (12) "Federal Regulation" means the applicable
21 requirements in Title 40, part 60, subparts AAA or

1 QQQQ of the Code of Federal Regulations, as
2 codified July 1, 2015.

3 (a) For solid fuel burning devices, the
4 requirements of subpart AAA apply.

5 (b) For outdoor wood furnaces, the requirements of
6 subpart QQQQ apply.

7 (13) "MAAQS" means the Montana Ambient Air Quality
8 Standards.

9 (14) "NAAQS" means the National Ambient Air
10 Quality Standards.

11 (15) "Opacity" means a measurement of visible
12 emissions defined as the degree expressed in
13 percent to which emissions reduce the transmission
14 of light and obscures the view of an object in the
15 background.

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

19 (17) "Outdoor Wood Furnace" means a residential
20 hydronic heater or forced-air furnace as defined
21 in 40 CFR part 60, subpart QQQQ.

1 (18) "Person" means an individual, partnership,
2 firm, association, municipality, public or private
3 corporation, the state or a subdivision or agency
4 of the state, trust, estate, interstate body,
5 federal government or an agency of the federal
6 government, or any other legal entity.

7 (19) "PM-10" means particulate matter with an
8 aerodynamic diameter of less than or equal to a
9 nominal 10 micrometers.

10 (20) "PM-2.5" means particulate matter with an
11 aerodynamic diameter of less than or equal to a
12 nominal 2.5 micrometers.

13 (21) "Remodel" means an addition or upgrade to an
14 existing structure which utilizes a solid fuel
15 burning device for heating purposes.

16 (22) "Solid Fuel Burning Device" means a
17 residential wood heater as defined in 40 CFR part
18 60, subpart AAA.

19
20 8.16.040 Compatibility with other Regulations. In
21 any case where a provision of these regulations is

1 found to be in conflict with a provision of any
2 zoning, building, fire, safety, or code of Butte-
3 Silver Bow, the provision which establishes the
4 higher standard for the promotion and protection
5 of the health and safety of the people shall
6 prevail.

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9 SECTION 2: 8.16.100 Solid Fuel Burning Device Control
10 Program.

11 (1) Operating and Emission Requirements: No person
12 may burn any material in a solid fuel burning
13 device except uncolored newspaper, untreated wood
14 and lumber, and products manufactured for the
15 sole purpose of use as a solid fuel. Products
16 manufactured or processed for use as solid fuels
17 must conform to any other applicable provisions of
18 this subchapter.

19 (2) The burning of the following materials in any
20 solid fuel burning device is prohibited at all
21 times:

- 1 a. any waste moved from the premises from
2 where it was generated;
3 b. food wastes;
4 c. styrofoam and other plastics;
5 d. wastes generating noxious odor;
6 e. wood or wood by-products that have been
7 treated, coated, painted, stained, or
8 contaminated by a foreign material such as
9 papers, cardboard, or painted or stained
10 wood;
11 f. poultry litter;
12 g. animal droppings;
13 h. dead animals or dead animal parts;
14 i. tires;
15 j. rubber materials;
16 k. asphalt shingles;
17 l. tar paper;
18 m. automobile or aircraft bodies or interiors
19 and bodies or interiors of recreational
20 vehicles and atv's;
21 n. insulated wire;

- 1 o. oil or petroleum products;
- 2 p. treated lumber or timbers;
- 3 q. pathogenic wastes;
- 4 r. hazardous wastes as defined by 40 CFR,
- 5 Part 261;
- 6 s. trade wastes;
- 7 t. any materials resulting from a salvage
- 8 operation;
- 9 u. chemicals;
- 10 v. Christmas tree waste;
- 11 w. Asbestos or asbestos containing materials;
- 12 x. Standing or demolished structures; and
- 13 y. Paint
- 14 z. Colored news print or magazine print.

15
16 (3) The use of coal as a fuel in a solid fuel
17 burning device is prohibited within the Air
18 Pollution Control District.

19
20 8.16.110 Liability. Neither the provisions of
21 this Chapter nor the compliance with the

1 provisions of this Chapter shall relieve any
2 person from the responsibility for damage to any
3 person or property otherwise imposed by law, nor
4 shall it impose any liability upon Butte-Silver
5 Bow for damage to any person or property.
6

7 SECTION 3: 8.16.200 Outdoor Wood Furnaces (Outdoor Wood
8 Boilers, Outdoor Wood-Fired Hydronic Heaters
9 and/or Other Outdoor Hydronic Heaters.

10 (1) This program is aimed at reducing levels of
11 particulate matter to, or below, the current
12 NAAQS/MAAQS.

13 (2) This program is necessary to preserve,
14 protect, improve, achieve, and maintain such
15 levels of air quality as will protect the health
16 and welfare of the citizens of Butte-Silver Bow.

17 8.16.220 Requirements: Outdoor Wood Furnaces must
18 be constructed, established, installed, operated,
19 and maintained in conformance with the following
20 conditions:

1 (1) After December 31 2015, only Outdoor Wood
2 Furnaces that meet federal regulations may be
3 installed in the Air Pollution Control District.

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

11 (3) After December 31, 2015 any outdoor wood
12 furnace must be located on the property in
13 compliance with the manufacturer's setback
14 recommendations and/or testing and listing
15 requirements for clearance of combustible
16 materials.

17 (4) After December 31, 2015 required chimney
18 heights for outdoor wood furnaces installed;

19 a. If located within 300 feet of any
20 residence not served by the furnace, the

1 chimney must be at least 2 feet higher than
2 the peak of the residence served.

3 b. If located within 100 feet of any
4 residence not served by the furnace, the
5 chimney must be at least 2 feet higher than
6 the peak of the residence served or not
7 served, whichever is higher.

8
9 8.16.300 Solid Fuel Burning Devices

10 (1) The following regulations apply to solid fuel
11 burning devices:

12 a. After December 31, 2015 only wood burning
13 devices that meet federal regulations may be
14 installed in the Air Pollution Control District.

15 b. Within the air pollution control district, no
16 person owning or operating a solid fuel burning
17 device may cause, allow, or discharge emissions
18 from such device which are of any opacity greater
19 than twenty five (25) percent.

20 c. The provisions of this subsection do not apply
21 to emissions during the building of a new fire,

1 for a period or periods aggregating no more than
2 thirty (30) minutes in any four hour period.

3 d. Within the Air Pollution Control District, no
4 person owning or operating a solid fuel burning
5 device for which a Class 1 or Special Needs Permit
6 has been issued may cause, allow or discharge any
7 emissions from such device which are of an opacity
8 greater than ten (10) percent during an Air
9 Pollution Alert declared by the Government. The
10 provisions of this paragraph do not apply to
11 emissions during the building of a new fire or for
12 refueling for a period or periods aggregating no
13 more than thirty (30) minutes in any four (4) hour
14 period.

15 e. For the purpose of this section, the Government
16 may declare an Air Pollution Alert to be in effect
17 whenever the ambient concentration of PM-2.5
18 within the Air Pollution Control District equals
19 or exceeds 75 percent of the "NAAQS/MAAQS"
20 averaged over any eight (8) hour period and when
21 scientific and meteorological data indicate the

1 average PM-2.5 concentrations will remain at or
2 above the NAAQS/MAAQS if an Air Pollution Alert is
3 not called.

4 f. Every person operating or in control of a solid
5 fuel burning device within the Air Pollution
6 Control District has a duty to know when an air
7 pollution alert has been declared by the
8 Government.

9

10 SECTION 5: 8.16.400 Permits: The following permits are
11 required for solid fuel burning devices:

12 (1) Class One Permit: The government may issue a
13 Class I Permit for a solid fuel burning device if
14 the emissions do not exceed the federal EPA most
15 current standard of grams per hour weighted
16 average.

17 (2) Special Needs Permit: A person who
18 demonstrates an economic need to burn solid fuel
19 for residential space heating purposes by
20 qualifying for energy assistance according to
21 economic guidelines established by the U.S. Office

1 of Management and Budget under the Low Income
2 Energy Assistance Program (L.I.E.A.P.) as
3 administered in the City and County of Butte-
4 Silver Bow by the District 12 Human Resource
5 Development Council, is eligible for a special
6 needs permit issued by the Department. This
7 includes a person who has been determined to be
8 eligible for Families Achieving Independence
9 (FAIM) or Supplemental Security Income (SSI)
10 benefits.

11 (a) Application for a Special Needs Permit may be
12 made to the Department at any time, and a Special
13 Needs Permit is valid for a period of not more
14 than one (1) year from the date it is issued. A
15 Special Needs Permit may be renewed if the
16 applicant meets the applicable need and economic
17 guidelines at the time of application for renewal.
18 A Special Needs Permit is not transferable to
19 another residence or person.

20 SECTION 6: 8.16.500 Dust Control Regulations: No person may
21 place any sanding or chip seal material on any

1 road, alley or commercial yard/lot which has
2 durability as defined by the Montana Modified LA
3 Abrasion Test, of greater than 7, and a fines
4 content of material smaller than 200 mesh, as
5 determined by standard wet sieving methods, that
6 exceeds 3 percent oven dry weight. Add language
7 for resolution 1307 and ordinance 468 for clarity.
8

9 SECTION 7: 8.16.600 Open Burning: the following

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

13 (1) Prior to open burning, a person must obtain an
14 Open Burning Permit from the Butte Silver Bow Fire
15 Department.

16 (2) Open Burning must comply with "Best available
17 control technology" (BACT)

18 (3) Open Burning is not allowed from December 1st
19 through the last day of February.

20 (4) Open Burning may be allowed from March 1st
21 through August 31st, if the Department determines

1 there is proper dispersion in the Air Pollution
2 Control District.

3 (5) Open Burning is also allowed from September
4 1st through November 30th when the Department
5 reports good ventilation.

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

8 a. any waste moved from the premises from
9 where it was generated;

10 b. food wastes;

11 c. styrofoam and other plastics;

12 d. wastes generating noxious odor;

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

18 f. poultry litter;

19 g. animal droppings;

20 h. dead animals or dead animal parts;

21 i. tires;

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

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

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

7
8 SECTION 8: 8.16.700 Enforcement: The provisions of this
9 ordinance shall be enforced as follows:

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

14 (2) Class I Permits and Special Needs Permits
15 for residential solid fuel burning devices
16 may be issued, denied, suspended or revoked.

17
18 SECTION 9: 8.16.800 Penalties: The penalties for
19 violations of this chapter are as follows:

20 (1) First Violation - Written educational
21 warning by the Department

1 (2) Second Violation - Twenty Five Dollars
2 (\$25.00)

3 (3) Third Violation - Fifty Dollars
4 (\$50.00)

5 (4) A fourth or subsequent violation of this
6 Ordinance constitutes a MISDEMEANOR
7 punishable by a fine not to exceed \$500.00 or
8 imprisonment in the county jail for a term
9 not to exceed six (6) months, or by both a
10 fine and imprisonment.

11 (a) No person or entity may be cited for a
12 violation of this Ordinance more than once in
13 any Calendar Day. However, each Calendar Day
14 of violation may be considered a separate
15 offense.

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

1 (c) Jurisdiction shall be in the City Court
2 of the City-County of Butte Silver Bow,
3 Montana.

4
5 SECTION 10: Severability: If any provision of this
6 Ordinance or any section thereof, in any
7 circumstances is held invalid, the validity
8 of the remainder of the Ordinance and of
9 the application of any of the other
10 provisions or sections shall not be
11 affected.

12
13 SECTION 11: Repealer: All ordinances and resolutions in
14 conflict herewith are repealed.

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

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21 PASSED this _____ day of _____, 2015.

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CINDI SHAW
CHAIRMAN OF THE COUNCIL OF COMMISSIONERS

APPROVED this _____ day of _____, 2015.

MATT VINCENT
CHIEF EXECUTIVE

ATTEST:

SALLY J. HOLLIS
CLERK AND RECORDER

BY _____
ITS _____

APPROVED AS TO FORM:

EILEEN JOYCE
COUNTY ATTORNEY

DAVID WALKER
CHAIRMAN, JUDICIARY COMMITTEE