

ORDINANCE NO. 2005-06

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GILROY PERTAINING TO THE REDUCTION OF AIR POLLUTION BY THE REGULATION OF WOODBURNING APPLIANCES BY ADDING A NEW ARTICLE V TO CHAPTER 6 OF THE GILROY CITY CODE ENTITLED "REGULATION OF WOODBURNING APPLIANCES"

WHEREAS, the State Air Resources Board ("ARB") adopted a particulate matter ("PM 10") Ambient Air Quality Standard ("AAQS") in December, 1982, and levels for the PM10 AAQS were selected pursuant to the California Code of Regulations, title 17, section 70200 to protect the health of people who are sensitive to exposure to fine particles; and

WHEREAS, research indicates that woodsmoke is a significant contributor to PM10 levels that pose significant health risks; and

WHEREAS, the City Council finds that the proposed regulation may significantly reduce the increase in particulate emissions from woodburning appliances; and

WHEREAS, the City of Gilroy ("City"), through its Environmental Programs Division, will work towards establishing and maintaining an ongoing program to educate the public on the provisions of this ordinance and the health impact of wood smoke. This education program may identify the various types of smoke reduction methods, including the use of cleaner burning pellet stoves, manufactured fire logs, and gas fireplaces. The City will encourage public education on fireplace and woodstove maintenance and encourage cleaner-burning alternatives such as gas-fueled devices, pellet stoves and proper wood burning techniques to build hotter, more efficient fires.

WHEREAS, the City will endeavor to provide public notification requesting that residents curtail the burning of wood during poor air quality episodes as determined by the Bay Area Air Quality Management District. Methods to notify the public may include a written notice published in local newspapers, email notification by the Bay Area Air Quality Management District and messages on public cable access channels.

WHEREAS, the City Council finds and determines that these woodburning combustion emission regulations are necessary for public health, safety and welfare; and

WHEREAS, this ordinance is exempt from the requirements of the California Environmental Quality Act of 1970 ("CEQA"), as amended, and the guidelines promulgated thereunder, pursuant to the provisions of the California Code of Regulations, title 14, section 15038, as an action taken by a regulatory agency, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GILROY DOES HEREBY ORDAIN AS FOLLOWS:

SECTION I

Chapter 6 of the City Code entitled "Buildings" is hereby amended by adding a new Article V, entitled "Regulation of Woodburning Appliances" which shall read as follows:

ARTICLE V. REGULATION OF WOODBURNING APPLIANCES.

Sec. 6.35. Applicability of Article.

- (a) All woodburning appliances installed in new residential units. .
- (b) All woodburning appliances installed in new commercial buildings including, but not limited to, hotels and restaurants.
- (c) A woodburning appliance shall comply with this ordinance if any of the following apply: (1) it is being added to or replacing a woodburning or gas appliance in an existing residential unit or commercial building ; (2) repairs or alterations are made to the woodburning appliance that include changes to the opening size or height of a fireplace; or (3) the residential unit or commercial building in which the woodburning appliance is located is renovated or remodeled, and the renovation or remodel includes changes to the opening size or height of an existing fireplace.
- (d) Section 6.37(a) and (c) shall apply to any and all woodburning appliances.

6.36. Definitions.

- (a) *Bay Area Air Quality Management District* means the air quality agency for the San Francisco Bay Area pursuant to California Health and Safety Code section 40200.
- (b) *EPA* means United States Environmental Protection Agency.

- (c) *EPA certified wood heater* means any wood heater that meets the standards in Title 40, Part 60, Subpart AAA, Code of Federal Regulations in effect at the time of installation and is certified and labeled pursuant to those regulations.
- (d) *Fireplace* means any permanently installed masonry or factory-built woodburning appliance, except a pellet-fueled wood heater, designed to be used with an air-to-fuel ratio greater than or equal to 35 to 1.
- (e) *Garbage* means all solid, semi-solid and liquid wastes generated from residential, commercial and industrial sources, including trash, refuse, rubbish, industrial wastes, asphaltic products, manure, vegetable or animal solids and semi-solid wastes, and other discarded solid and semi-solid wastes.
- (f) *Gas fireplace* means any device designated to burn natural gas in a manner that simulates the appearance of a woodburning fireplace.
- (g) *Paints* means all exterior and interior house and trim paints, enamels, varnishes, lacquers, stains, primers, sealers, undercoatings, roof coatings, wood preservatives, shellacs, and other paints or paint-like products.
- (h) *Paints solvents* means all original solvents sold or used to thin paints or to clean up painting equipment.
- (i) *Pellet-fueled wood heater* means any woodburning appliance that operates exclusively on wood pellets.
- (j) *Solid fuel* means wood or any other non-gaseous or non-liquid fuel.
- (k) *Treated wood* means wood of any species that has been chemically impregnated, painted or similarly modified to improve resistance to insects or weathering.
- (l) *Waste petroleum products* means any petroleum product or than gaseous fuels that has been refined from crude oil, and has been used, and as a result of use, has been contaminated with physical or chemical impurities.
- (m) *Woodburning appliance* means fireplace, wood heater, or pellet-fired wood heater or any similar device burning any solid fuel used for aesthetic or space-heating purposes.

6.37. General Requirements.

It shall be unlawful to:

- (a) Use any woodburning appliance when the Bay Area Air Quality Management District issues a "Spare the Air Tonight" warning and when an alternate approved heat source is available.

(b) Install a woodburning appliance that is not one of the following: (1) a pellet-fueled wood heater, (2) an EPA certified wood heater, or (3) an EPA certified masonry fireplace should the EPA develop a masonry fireplace certification program.

(c) Use any of the following prohibited fuels in a woodburning appliance:

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|--------------------------|--------------------------|
| Garbage | Paint solvents |
| Treated Wood | Coal |
| Plastic products | Glossy or colored papers |
| Rubber products | Particle board |
| Waste petroleum products | Salt water driftwood |
| Paints | |

6.38. Exemptions.

(a) Woodburning appliances specifically designed for cooking, outdoor fireplaces, existing fireplaces, except as specifically provided in 6.35(c), gas and pellet fueled appliances, permanently installed or dedicated gas log fireplaces, shall be exempt from all provisions of this article. The Chief Building Official may approve an alternate wood burning appliance, provided the Chief building Official finds that the proposed alternate appliance meets or exceeds the standards established for an EPA certified wood heater.

(b) Historical buildings that are included or designated in the City of Gilroy's Historic Preservation Inventory.

6.39. Enforcement.

(a) Prior to installation, any person who plans to install a woodburning appliance shall submit documentation to the City of Gilroy Building Department demonstrating that the appliance is a pellet-fueled wood heater, an EPA certified wood heater, or a fireplace certified by EPA should EPA develop a fireplace certification program.

(b) Any person violating any of the provisions of this Ordinance shall be deemed guilty of a infraction and upon conviction shall be punishable as provided by law.

SECTION II

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Gilroy hereby declares that it would

have passed and adopted this ordinance, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases may be declared invalid or unconstitutional.

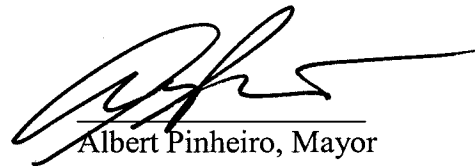
SECTION III

This Ordinance shall be in full force and effect thirty (30) days after the date of its passage and adoption.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF GILROY this 21st day of March, 2005, by the following vote:

AYES:	COUNCILMEMBERS:	CORREA, DILLON, MORALES, VELASCO, VALIQUETTE and PINHEIRO
NOES:	COUNCILMEMBERS:	GARTMAN
ABSENT:	COUNCILMEMBERS:	NONE

APPROVED:



Albert Pinheiro, Mayor


ATTEST:



Rhonda Pellin, City Clerk

I, RHONDA PELLIN, City Clerk of the City of Gilroy, do hereby certify that the attached Ordinance No. 2005-06 is an original ordinance, or a true and correct copy of a city ordinance, duly adopted by the Council of the City of Gilroy at a regular meeting of said Council held on the 21st day of March, 2005, at which meeting a quorum was present, and has been published or posted pursuant to law.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of the City of Gilroy this 31st day of March, 2005.



City Clerk of the City of Gilroy

(Seal)