

LEWIS AND CLARK COUNTY OUTDOOR CLEAN AIR ORDINANCE

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LEWIS AND CLARK COUNTY OUTDOOR CLEAN AIR ORDINANCE

CHAPTER 1 PROGRAM AUTHORITY AND ADMINISTRATION

Rule 1.101 - Title

These regulations shall be known and cited as the Lewis and Clark County Outdoor Clean Air Ordinance.

Rule 1.102 - Authority for Program

The authority to promulgate this Ordinance is provided in Article XI, Section 4(b) of the Constitution of the State of Montana and in §75-2-301, MCA.

Rule 1.103 - Intent

- (1) It is the purpose of this Ordinance to achieve and maintain such levels of air quality as will protect human health and safety in Lewis and Clark County.
- (2) The intent of this Ordinance is to maintain the level of air pollutants at or below those standards set forth in §17.8.2 and 17.8.3, ARM.
- (3) The provisions of this Ordinance do not supersede the provisions set forth in the Montana Emergency Episode Avoidance Plan.

Rule 1.104 - Scope

- (1) The provisions of this program apply to all sources of air pollution within the area defined in the attached District Map and legal description with the exception of air pollution sources over which jurisdiction is retained by the Montana Board of Environmental Review pursuant to §75-2-301 (5)(2001), MCA.

CHAPTER 2
DEFINITIONS

- (1) “Air Pollution Control District” means the area within which the rules of this Ordinance are enforced.
- (2) “Board of Health” means the Lewis and Clark City - County Board of Health.
- (3) “Health Department” means the Lewis and Clark City - County Health Department.
- (4) (a) “Incinerator” means any single- or multiple-chambered combustion device that burns combustible material, alone or with a supplemental fuel or with catalytic combustion assistance, primarily for the purpose of removal, destruction, disposal, or volume reduction of any portion of the input.
(b) Incinerator does not include:
 - (i) Safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants, or elemental phosphorus plants;
 - (ii) Space heaters that burn used oil;
 - (iii) Wood-fired boilers; or
 - (iv) Wood waste burners, such as tepee, wigwam, truncated cone, or silo burners.
- (5) “Open burning” means outdoor combustion of material with or without a receptacle, with the exception of small recreational fires burning clean wood.
- (6) “Ordinance” means the Lewis and Clark County Outdoor Clean Air Ordinance.
- (7) “Solid fuel burning device” means any fireplace, fireplace insert, wood stove, wood burning heater, wood-fired boiler or similar device burning any solid fuel used for aesthetic, cooking, or heating purposes.

CHAPTER 3
AIR QUALITY ACTION STAGES

Rule 3.101 - Prohibitions and Actions

- (1) The following ambient concentrations of particulate matter shall be used for the purpose of determining air quality:
 - (a) Good = 0 - 40 $\mu\text{g}/\text{m}^3$ (micrograms per cubic meter) averaged over a 24-hour period with good dispersion.

- (b) Watch = 40 - 75 $\mu\text{g}/\text{m}^3$ averaged over a 24-hour period.
 - (c) Poor = 60 – 75 $\mu\text{g}/\text{m}^3$ or greater averaged over a 24-hour period with moderate to poor dispersion.
- (2) When the Health Department declares a Good stage, it shall not take any action.
 - (3) When the Health Department declares a Watch stage it shall request voluntary reductions in the use of solid fuel burning device.
 - (4) When the Health Department declares a Poor stage:
 - (a) A person may not operate a solid fuel burning device unless a variance or exemption has been granted under this Ordinance.
 - (b) A person may not idle diesel or locomotive engines for over two hours in any 12-hour period.
 - (c) A person or entity may not conduct open burning.
 - (d) A person or entity may not operate an incinerator.

CHAPTER 4

PUBLIC NOTIFICATION

Rule 4.101 - Purpose and Procedure

- (1) From November 1 to March 1 of every year and at any other time of year the air quality reaches a Poor stage, to alert residents of the current air quality conditions, the Health Department shall comply with the following public notification procedure:
 - (a) Determine the current air quality stage pursuant to Rule 3.101(1) no later than 4:00 p.m. each day. Such determination shall remain in effect for a single 24-hour period, unless prevailing weather conditions change the amount of particulate in the air.
 - (b) Make available the determination of the current daily air quality stage and disseminate the same to local television and radio stations and request publication of the air quality status and instructions for calling the 24-hour air quality hot line for the latest information.
 - (c) Maintain a two-line, 24-hour air quality phone carrying a recorded message stating the current air quality stage.

- (d) If a Poor stage is declared:
 - (i) Notify area school districts and day care centers advising them of appropriate actions to minimize exposure;
 - (ii) Inform businesses operating incinerators that they are required to cease operation;
 - (iii) Inform the public that all open burning and all use of solid fuel burning devices are required to cease; and
 - (iv) Notify the trainmaster of the railroad station and owners of area truck stops and inform them that the two-hour limit of the idling of diesel-fueled engines is in effect.

CHAPTER 5 **MONITORING**

Rule 5.101 - Sampling Requirements

- (1) The monitoring season in Lewis and Clark County extends from January 1 to December 31 of each year.
- (2) The Health Department shall comply with the following operating procedures when collecting monitoring data:
 - (a) The Health Department shall collect PM-10 sampler filters once every six days pursuant to the EPA network schedule.
 - (b) The Health Department shall return exposed sampler filters to DEQ within 1 day of removal from samplers.
 - (c) The Health Department shall operate a TEOM sampler continuously throughout the year.
 - (d) The Health Department shall determine particulate concentrations based on particulate readings from the TEOM samples.

Rule 5.102 - Sampler Maintenance and Location

- (1) The Health Department shall calibrate PM-10 samplers on a quarterly basis throughout the year following the PM-10 Calibration Procedure set forth in Section 2.1.3 of the DEQ Quality Assurance Manual. Calibrated results must yield a correlation of .991 or greater, with the calculated slope between .02 and .04.

- (2) One PM-10 sampler must be co-located with one TEOM sampler. A second PM-10 sampler must be located at a different location. All samplers must be operated within the Air Pollution Control District. The Health Department shall base sampler site selection on EPA requirements. All site locations are subject to DEQ review. The DEQ may approve or deny any recommended site location.

CHAPTER 6
OPEN BURNING/SOLID FUEL BURNING DEVICES/INCINERATION

Rule 6.101 - Prohibited Burning

- (1) Within the Air Pollution Control District, a person or entity may not:
 - (a) Burn any material in a residential solid fuel burning device except regular black and white newsprint, untreated Kraft paper, untreated wood and lumber, and wood and paper products manufactured for the sole purpose of use as fuel;
 - (b) Burn coal as a solid fuel at any time unless the Health Department approves a variance.
- (2) A person or entity may not operate an incinerator in violation of the requirements of §17.8.316, ARM which are hereby adopted and incorporated by reference.

Rule 6.102 - Visible Emissions

- (1) A person owning, operating, or in control of a residential solid fuel burning device may not cause, allow, or discharge emissions that exhibit an opacity of 40% or greater averaged over 6 consecutive minutes.
 - (a) Emissions produced during the building of a new fire for a period or aggregated periods not exceeding 15 minutes in any 24-hour period are exempt from opacity requirements.
- (2) Only Health Department personnel who have successfully completed the Visual Emissions Evaluation Course and hold current certification may determine opacity.

CHAPTER 7
EXEMPTIONS/VARIANCES

Rule 7.101 - Exemptions

- (1) A person who has an economic need to burn solid fuel for residential space heating purposes may apply for a low-income exemption to burn on Poor air quality days. A person may demonstrate such a need by certifying his or her eligibility 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 by Lewis & Clark County Health and Human Services.
 - (a) The applicant must attach proof of participation in one of the following programs:

Low Income Energy Assistance Program (LIEAP)
Families Achieving Independence in Montana (FAIM)
Supplemental Security Income (SSI)
- (2) A person who has a heating system that is temporarily inoperable may apply for an exemption to burn on Poor air quality days.
 - (a) The applicant must attach proof, from a licensed heating specialist, detailing why the heating system is inoperable and the estimated length of time that the system will be inoperable.
- (3) The application for an exemption shall contain the following information:

The name and complete address of the applicant;
The reason for exemption; and
The applicant's signature and date.

Rule 7.102 - Variances

- (1) The Board of Health may grant an individual a categorical variance or partial variance if it determines:
 - (a) Compliance with the requirements from which the variance is sought would produce hardship without equal or greater benefits to the public;
and
 - (b) The emissions proposed to occur under a variance do not constitute a danger to public health or safety.

- (2) The Board of Health may not grant a variance authorizing any source to emit air pollutants in excess of standards set forth at §17.8.2 and 17.8.3, ARM.
- (3) A written request for a variance from these regulations must be made to the Board of Health.
- (4) This written request must be submitted to the Health Department at least 10 working days prior to a regularly scheduled Board of Health meeting.
- (5) After receiving a timely request, the Health Department must include the request on the Board of Health agenda for the next regularly scheduled Board of Health meeting.
- (6) The Board of Health must hold a public hearing on the variance request at that meeting.
- (7) The hearing must be conducted by a majority of the Board of Health or by a hearings officer, and any decision made must be supported by findings of fact.

CHAPTER 8

ENFORCEMENT AND PENALTIES

Rule 8.101 - Enforcement

- (1) This Ordinance shall be enforced by the Health Department.

Rule 8.102 - Penalties

- (1) The Health Department shall issue a warning upon a person or entity's first violation of this Ordinance.
- (2) The Health Department shall issue a violation notice if a person or entity violates this Ordinance within five years after being issued a warning or within five years after conviction of violating this Ordinance.
- (3) A Violation Notice must direct the person or entity to appear at a specified date and time before the Justice of the Peace for Lewis and Clark County.
- (4) A person or entity convicted of violating a regulation contained within the Ordinance shall be subject to a penalty of not more than \$50.00. For a second conviction under this Ordinance a person or entity shall be subject to a penalty of not more than \$75.00. Upon a third or subsequent conviction under this Ordinance, a person or entity shall be subject to a penalty of not more than \$100.00 per offense.

- (5) A person or entity may not be cited for a violation of this Ordinance more than once in any calendar day. However, each calendar day of violation may be considered a separate offense.

CHAPTER 9
ORDINANCE REVIEW AND REVISIONS

Rule 9.101 - Review

- (1) The Health Department shall annually review the effectiveness of this Ordinance and shall make appropriate recommendations to the Lewis and Clark County Board of County Commissioners for revisions of this Ordinance. Such review shall focus on the mean level of total suspended particulate matter measured as micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) contained in the ambient air within the Air Quality District. Such review shall also take into account the number of air inversions lasting for more than 24 hours that occur within the same annual period.

Rule 9.102 - Amendments & Revisions

- (1) The Board of County Commissioners may enact any amendments or revisions to this Ordinance that have been approved by the Montana Board of Environmental Review.
- (2) The Board of County Commissioners grants to the Board of Health the authority to establish the policies and procedures that provide for the implementation of the Clean Air Ordinance.

Reviewed and approved by the Montana Board of Environmental Review, by memorandum and order dated January 25, 2002.