

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING ASHLAND MUNICIPAL CODE  
CHAPTER 9.24 TO REQUIRE REMOVAL AND DISPOSAL OF  
NON-CERTIFIED WOODSTOVES AND FIREPLACE INSERTS  
UPON CONVEYANCE OF REAL PROPERTY, REQUIRING  
DISCLOSURE AND REMOVAL CERTIFICATION**

Annotated to show deletions and additions to the code sections being modified. Deletions are ~~lined through~~ and additions are underlined.

**THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS FOLLOWS:**

**SECTION 1.** Section 9.24.010 of the Ashland Municipal Code is amended to add the following two new definitions lettered "A" and "C" and to re-letter the remaining definitions as follows:

**9.24.010 Definitions**

For the purposes of this Chapter, the following definitions apply:

- A. "Conveyance of Real Property" means the transfer of title to real property from one person or entity to another by any transfer means whatsoever, including but not limited to a transfer by deed, land sale contract, foreclosure, inheritance, bankruptcy or other action at law. For purposes of this ordinance a long term lease of ten years or more, with or without an option to purchase, shall be considered a conveyance of real property under this ordinance. A revocable *inter vivos* (living) trust shall not be deemed a conveyance.
- B. A "High pollution period" means a period of time commencing three hours after initial designation as a red or yellow day by the Oregon Department of Environmental Quality (further referred to in this chapter as DEQ) or the Jackson County Department of Health and Human Services. In the event more than one consecutive days are designated as red or yellow, they shall all be considered a part of the same period.
- C. "Non-Certified Woodstove" or "Fireplace Insert" also referred to as "non-certified device(s)", means a residential space heating device that has not been certified by either the Oregon Department of Environmental Quality, (DEQ) or the U.S. Environmental Protection Agency (EPA) as complying with smoke emission standards, such as those referenced in the definition of Oregon Certified Stove below. For purposes of the requirements of Section 9.24.055 below, "Non-Certified Woodstove" or "Fireplace Insert" does not include:
1. Exempt Devices, meaning heating devices exempt from certification requirements under the applicable Oregon or federal rules, including but not limited to pellet stoves.
  2. Cook Stoves, meaning indoor wood burning appliances the primary purpose and design of which is to cook food.

3. Antique wood stoves, meaning a wood stove manufactured before 1940 with ornate construction and a current market value substantially higher than a common wood stove manufactured in the same time period.
4. Fireplaces not used for heating purposes.

**SECTION 2.** A new Section 9.24.055 is hereby added to the Ashland Municipal Code and shall read as follows:

**9.24.055 Removal and Disposal of Non-Certified Woodstoves and Fireplace Inserts.**

- A. PROHIBITION. It shall be unlawful and a violation of the Ashland Municipal Code, for the Conveyance of Real Property to occur for any real property located within the City of Ashland in violation of the requirements of this Section, including specifically documented compliance with the Disclosure, Removal/Disposal and Certification requirements set forth herein. Notwithstanding the fine limitations of AMC Section 1.08.020, the fine for violation of any provision of this Section shall be a minimum of \$250.00 and a maximum of \$1000.00, excluding any required state and local assessments.

DISCLOSURE. The Seller of any real property located within the City of Ashland shall disclose to potential buyers as part of the seller's written property disclosure for the Conveyance of Real Property, the existence of any and all certified or non-certified wood stoves, fireplaces and fireplace inserts. The disclosure to the buyer shall be evidenced by a Disclosure Certificate executed by the seller with receipt acknowledged by the buyer, with seller certifying under penalty of perjury and false swearing, whether any of the wood stoves or fireplace inserts present on the real property are non-certified or otherwise nonconforming as to use or applicable emission standards. The Disclosure Certificate shall be executed prior to, or concurrent with closing, regardless of the manner of closing of any real estate transaction, and prior to any transfer of title involving real property located within the City of Ashland. Seller and Buyer shall use the standard Disclosure Certificate form adopted by Resolution of the City Council, as such certificate may be amended from time to time.

- B. REMOVAL AND DISPOSAL. Except as otherwise provided for herein, all non-certified wood stoves and fireplace inserts shall be permanently removed from buildings or structures located on real property within the City of Ashland on or before the Conveyance of Real Property containing such non-certified devices. If the seller has assumed responsibility for removal, then such removal shall be completed on or before the closing date or title transfer date of the real property, whichever occurs first. If the Buyer has assumed responsibility for removal, or should the seller fail to remove the non-certified device(s), for any reason whatsoever, then buyer shall complete the removal within thirty (30) calendar days after closing or title transfer date, whichever is earlier. Proper disposal of the non-certified device(s) shall be evidenced by a receipt from a DEQ regulated landfill or a business licensed to recycle scrap metal. The removal of the non-certified device(s) shall be evidenced by a Removal Certificate executed by the buyer, with buyer certifying, under penalty of perjury and false swearing, that all non-certified devices referenced on the Disclosure Certificate have been removed and properly disposed of as required in this Section. The Removal Certificate shall be executed by buyer as early as possible after removal and disposal but in no case more than thirty (30) days after closing or transfer of title. Within thirty (30) days of the closing or transfer of title date, the buyer or buyer's

designee, shall submit a true copy of the executed and acknowledged Disclosure Certificate and Removal Certificate and receipt for disposal to:

City of Ashland Conservation Division  
Community Development Center  
51 Winburn Way  
Ashland, Oregon 97520

Buyer shall use the standard Removal Certificate form adopted by Resolution of the City Council, as such certificate may be amended from time to time.

**SECTION 3.** Severability.

If any section, provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other sections, provisions, clauses or paragraphs of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

**SECTION 4.** Codification.

Provisions of this Ordinance shall be incorporated in the Ashland Municipal Code and the word "ordinance" may be changed to "code", "article", "section", or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that Sections 3 thru 4, unincorporated "Whereas clauses" and boilerplate provisions need not be codified.

The foregoing ordinance was first read by title only in accordance with Article X, Section 2(C) of the City Charter on the \_\_\_\_\_ day of \_\_\_\_\_, 2007, and duly PASSED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Barbara Christensen, City Recorder

SIGNED and APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
John W. Morrison, Mayor

Reviewed as to form:

\_\_\_\_\_  
Michael W. Franell, City Attorney

DISCLOSURE CERTIFICATE  
NON-CERTIFIED WOOD STOVE /FIREPLACE INSERT

Real Property Address: \_\_\_\_\_

The undersigned Seller hereby discloses to the undersigned Buyer the presence of a wood stove(s) or fireplace insert(s) located on the above-described real property. The wood stove(s) or fireplace insert(s) is generally described as (make, model #):

\_\_\_\_\_ The wood stove(s) or fireplace insert(s) is:  Certified; or  Non-certified

Seller and the Buyer understand that the City of Ashland's Municipal Code Section 9.24.055 requires non-certified wood stoves or fireplace inserts be removed from buildings or structures located on the above-described real property upon Conveyance of Real Property, as defined by local ordinance; While generally in a real estate contract, the Seller will have responsibility for the removal of the non-certified wood stoves or fireplace inserts, the Seller and Buyer may agree in writing that the Buyer will assume responsibility for removal and proper disposal of the non-certified devices pursuant to local ordinance. Notwithstanding any contractual allocation of responsibility, in the event a Seller fails to remove such non-certified devices for any reason whatsoever, the undersigned Buyer shall have the ultimate responsibility to remove the non-certified devices within the time limits specified by local ordinance. The responsibility for removing any non-certified wood stoves or fireplace inserts shall be:  Responsibility of the Seller  Responsibility of the Buyer

The Seller and the Buyer also understand that this Disclosure Certificate must be executed by the Seller and acknowledged by the Buyer prior to closing or transfer and delivered to the City of Ashland with the executed Removal Certificate and receipt evidencing proper disposal. Failure to comply with the Disclosure, Removal, Disposal and Certificate requirements of AMC 9.24.055 is punishable by a fine of not less than \$250.00 and not more than \$1000 as well as Court or Administrative proceedings to enforce the removal requirement.

Under penalty of Perjury and False Swearing, the undersigned Seller represents that he/she has read the forgoing document and that the statements and certifications hereon are true and correct.

\_\_\_\_\_  
Seller Dated \_\_\_\_\_

STATE OF OREGON    )  
                                  )ss.  
County of Jackson    )

The forgoing instrument was acknowledged before me on \_\_\_\_\_, by \_\_\_\_\_, who represents that he or she is the owner of the above referenced property, or if the property is owned by an entity, represents that he or she is duly authorized by the entity to represent the entity is the owner of the property.

Notary Public for  
My Commission Expires:

The undersigned Buyer acknowledges receipt of the Disclosure Certificate and acknowledges Buyer's ultimate responsibilities for removal of non-certified devices under AMC 9.24.055.

\_\_\_\_\_  
Buyer Dated \_\_\_\_\_

**REMOVAL CERTIFICATE  
NON-CERTIFIED WOOD STOVE/FIREPLACE INSERT**

Real Property Address: \_\_\_\_\_

The undersigned Owner of the above-referenced real property hereby certifies and declares that all non-certified wood stoves and fireplace inserts, including those specifically identified on the attached Disclosure Certificate, have been permanently removed from the buildings and structures on the above-referenced real property, said devices have been properly disposed of, as evidenced by the attached disposal receipt, and such devices shall not be replaced except with Oregon certified devices.

I, \_\_\_\_\_ the undersigned Owner, hereby declare under penalty of perjury and false swearing that I have read the foregoing document and that the statements hereon are true and correct.

\_\_\_\_\_  
Owner

Dated \_\_\_\_\_

STATE OF OREGON     )  
  )ss.  
County of Jackson     )

The forgoing instrument was acknowledged before me on \_\_\_\_\_, by \_\_\_\_\_, who represents that he or she is the owner of the above referenced property, or if the property is owned by an entity, represents that he or she is duly authorized by the entity to represent the entity is the owner of the property.

Notary Public for  
My Commission Expires: