

ORDINANCE OF THE BOARD OF SUPERVISORS,)
COUNTY OF xxxxxx, STATE OF CALIFORNIA,) ORDINANCE NO. 2008-____
ESTABLISHING A NEW SECTION ENTITLED)
“KIRKWOOD AREA SOLID FUEL BURNING DEVICE IMPACT)
MITIGATION FEES”)
_____)

WHEREAS, the Final Environmental Impact Report certified for the 2003 Kirkwood Specific Plan includes the following mitigation measure:

Mitigation Measure 4.4 (a). The counties will enact an ordinance to reduce particulate emissions from wood burning within Kirkwood. The ordinance shall include the following standards:

- Incentives to eliminate or replace existing woodburning devices which do not comply with EPA Phase II Certification requirement.
- A requirement that all new residences previously approved for the installation of new woodburning devices incorporate EPA Phase II Certified requirements.
- A requirement that, upon installation of a new EPA Phase II Certified woodburning device, at least one noncompliant wood burning device be eliminated within the Kirkwood area.
- A prohibition on installation of new woodburning devices, including open hearth-style fireplaces, which do not comply with EPA Phase II Certification requirements, except that one noncompliant open hearth style fireplace will be allowed in the following locations:
 - a common lobby area located in a building containing more than four multi-family units,
 - a common lobby area located within lodges, hotels, motels, bed and breakfast accommodations, or a public recreation/meeting facility,
 - a bar/saloon or restaurant,
 - outdoors in the Village plaza area.

WHEREAS, the xxxxxx County Board of Supervisors has reviewed the EPA PM10 Emission Factors For Residential Wood Combustion table and hereby finds that future installation of solid fuel burning devices within the Kirkwood Area will substantially and adversely affect air quality, and that unless such development contributes to the cost of reducing particulate matter emissions, particulate emissions in Kirkwood will exceed mandated maximum levels for public health, and

WHEREAS, the Board of Supervisors further finds and determines that there is a reasonable and rational relationship between the use of the solid fuel burning device impact mitigation fee and the type of development projects on which the fees are imposed; and that the fees will be used to supplement the cost of removal of non certified solid fuel burning devices in Kirkwood, that are necessary for the safety, health and welfare of the residential and non-residential users of the development projects within the Kirkwood area of xxxxx County on which this solid fuel burning device mitigation fee will be levied; and

WHEREAS, the solid fuel burning device impact mitigation fees shall be used to create a solid fuel burning device removal rebate to reduce particulate matter emissions related to new development because such development results in additional particulate matter thus creating the demand for the mitigation; and

WHEREAS, establishing fees for the purpose of obtaining funds for impact mitigation is statutorily exempt from the California Environmental Quality Act (“CEQA”) pursuant to Section 15273 of the CEQA Guidelines, and

WHEREAS, the Board of Supervisors finds as follows:

1. The proposed ordinance is in conformance with the General Plan and Kirkwood Specific Plan in that it will mitigate the impacts of new solid fuel burning devices on air quality in Kirkwood that may be adversely impacted by such development.
2. The proposed ordinance is in conformance with the particulate matter reduction plan that contains the necessary elements to meet State Law and County Ordinances.
3. The proposed ordinance will not be detrimental to the health, safety, peace, morals or general welfare of the County or its people. The proposed ordinance seeks to provide funding to augment other sources of federal, state and local highway funding for the purpose of constructing roadway improvements that are needed to maintain a reasonable level of service or provide for the safety of traffic using the state highways and other major roads.

NOW THEREFORE, the Board of Supervisors of the County of XXXX, State of California, does hereby adopt the particulate matter reduction plan, together with the Capital Improvement Plan therein.

BE IT FURTHER RESOLVED, the Board of Supervisors of the County of XXXX, State of California does hereby ordain that a new section of the XXXX County Code entitled “Kirkwood Area Solid Fuel Burning Device Mitigation Fees” as described in the attached Exhibit A is enacted.

PASSED AND ADOPTED this XXth day of XXXXXX 2008 by the following vote:

Exhibit A

KIRKWOOD AREA SOLID FUEL BURNING DEVICE MITIGATION FEES

Section 1 **Purpose and Intent.**

- A. In order to implement the goals and objectives of the County's general plan, for the County to meet its requirement to mitigate significant adverse impacts as set forth in the California Environmental Quality Act, and to mitigate impacts caused by new development within the County, solid fuel burning device impact mitigation fees may be necessary. The fees will be used only to provide incentives for the removal of wood burning devices which do not meet EPA Phase II standards. This chapter accomplishes this purpose by authorizing the imposition of a wood burning device impact mitigation fee on development projects to be used to mitigate the development projects' impact on air quality.

- B. This chapter is enacted pursuant to and shall be administered in compliance with Chapters 5, 6, 7, 8, and 9 (commencing with Section 66000) of the Government Code collectively entitled the "Mitigation Fee Act."

- C. The Board of Supervisors finds and determines that:
 - 1. New development projects will cause increased particulate matter (PM-10) emissions in Kirkwood, the funds generated by the solid fuel burning device impact fee will help mitigate increased particulate matter (PM-10) emissions.
 - 2. Funds for construction and improvement of public roads used in part by traffic from new development projects are not sufficient, which will result in inadequate levels of service on regional highways and other major county roads serving the Kirkwood area. This chapter, while recognizing this problem, does not have the purpose of allowing or mandating the imposition of a wood burning device mitigation fee on those development projects which do not impact particulate matter emission and when such a fee is imposed, it may be imposed only to the extent necessary to mitigate said impact.
 - 3. The public health, safety, peace, morals, convenience, comfort, prosperity and general welfare of all County residents will be promoted by the adoption of this chapter, with the fee generating a portion of the funds necessary for incentives to reduce particulate matter emissions.

Section 2 Definitions.

Words, when used in this chapter and in resolutions adopted thereunder, shall have the following meanings:

"Development project" means any project undertaken for the purpose of development which has the potential for impacting the County's air quality through particulate matter emissions.

"Impact" means physical injury and wear and tear or reduction in level of service.

"Kirkwood area" means the following areas of portions thereof located within Alpine County: the 2003 Kirkwood Specific Plan area as approved by Alpine County; and the Special Use Permit area for the Kirkwood Mountain Resort as approved by the Eldorado National Forest.

"Non-certified solid fuel burning device" is a fireplace, wood heater, or pellet-fired heater or similar device burning solid fuel used for aesthetic or space-heating purposes that does not meet US EPA Phase II efficiency requirements

"Solid fuel burning device impact mitigation fee" means a monetary exaction, other than a tax or assessment, which is charged by the County to the development project in connection with its approval for the purpose of offsetting the impact of particulate matter (PM-10) caused by the installation of a new wood burning devices. Wood burning device impact mitigation fees are referred to herein as the "fee."

"Solid fuel device" is a fireplace, wood heater, or pellet-fired heater or similar device burning solid fuel used for aesthetic or space-heating purposes

Section 3 Prohibition on installation of solid fuel burning devices

The installation of new a solid fuel burning device in Kirkwood is prohibited unless it meets the following requirements or is an exception under Section 4 of this code:

- A) The device shall meet U.S. EPA Phase II efficiency requirements set forth in Part 60, Title 40 Subpart AAA Code of Federal Regulation
- B) The device can only be installed in a dwelling unit which is permitted to have a solid fuel burning device by the Kirkwood Specific Plan or subsequent use permit
- C) The device shall be legally installed according to the applicable local building code

Section 4 Exceptions on installations of a solid fuel burning device.

The installation of a new solid fuel burning device that does not meet U.S. EPA Phase II efficiency requirements will be allowed in the following locations:

- A) A common lobby area located in a building containing more than four multi-family units,
- B) A common lobby area located within lodges, hotels, motels, bed and breakfast accommodations, or a public recreation/meeting facility,
- C) A bar/saloon or restaurant,
- D) A outdoors in the Village plaza area.

Section 5 **Establishment of a solid fuel burning device impact fee.**

The Board of Supervisors shall establish and amend the fee by resolution which is a legislative act. Prior to approving or amending a fee, the Board of Supervisors shall hold at least one regularly scheduled public meeting at which oral or written presentations may be made. Notice of said meeting shall be given as provided in Government Code Section 66016. No new fee shall be imposed sooner than sixty (60) days following the Board's final action on the adoption of or increase in the fee [Section 66017 (a)].

Section 6 **Collection of solid fuel burning device impact fee.**

A. The fee authorized by this chapter shall be collected at the earliest time permitted by law. Except as set forth in subsection B of this section for residential development projects, that time shall be when an entitlement, such as a final subdivision map, rezoning, use permit, or building permit, is finally approved and the impact caused by the development project is known. The foregoing notwithstanding, a fee imposed on a development project at the entitlement stage does not foreclose the imposition of an additional fee if additional development is to be carried out on the site.

B. Imposition of Fees on a Development Project.

1. A fee imposed on a development project shall not be required to be paid until the earliest of the following dates: (a) when the dwelling is able to be occupied, meaning when public utility-supplied electrical power is connected to the dwelling, (b) when the final inspection is made and the certificate of occupancy is issued, or (c) a dwelling constituting all or part of the development project is occupied. "Final inspection" and "certificate of occupancy," as used in this section, have the same meaning as described in Sections 305 and 307 of the Uniform Building Code, International Conference of Building Officials, 1985 Edition, or as said code may be amended from time to time.
2. If the residential development project contains more than one single-family dwelling, the County, at the time of the imposition of the fee, may determine that the fee should be paid at an earlier date than set forth in subsection (B)(1) of this section as set forth in Government Code Section 66007.

Section 7 Solid fuel burning device mitigation fee fund.

Fees paid pursuant to this chapter shall be held by the XXXX County auditor in a separate solid fuel burning device impact mitigation fee fund to be expended for the purpose for which they were collected. The County Auditor shall retain interest accrued on fees and allocate it to the accounts for which the fees were imposed. Upon receipt of a fee the County shall deposit, invest, account for, and expend the fee pursuant to Government Code Section 66006.

Section 8 Establishment of a non certified solid fuel burning device removal rebate.

The removal of a non certified solid fuel burning device will be eligible for a cash rebate from the solid fuel burning device impact fee fund. Eligibility for a cash rebate for removal of a non certified solid fuel burning device shall be defined as meeting the following requirements as determined by the local Building Official:

- A) The non certified device is legally installed under the Building Code
- B) The non certified device is capable of burning solid fuels as installed
- C) The non certified device has been either removed or permanently disabled

The Planning Department will review and approve applications for a solid fuel burning device removal rebate. Rebates will be distributed on a first come first served basis based on meeting all the requirements outlined in this section. The Planning Department shall authorize the Auditor to make payment to the applicant upon confirmation that an application for a solid fuel burning device removal rebate has been approved.. The applicant is responsible for all building inspection fees related to the application for solid fuel burning device removal rebate.

Section 10 Solid fuel burning device impact fee- Unused funds.

If after a period of five years there have been no approved applications for a solid fuel burning device removal rebate the Planning Department shall use the remaining funds in the solid fuel burning device impact fee fund for educational programs to promote reduction of particulate matter (PM-10) in the Kirkwood area.

Section 11 Natural disaster fee exemption.

No fee shall be imposed on the reconstruction of any residential, commercial, or industrial development project that is damaged or destroyed as a result of a natural disaster as declared by the Governor of the State of California.

Section 12 Construction.

This chapter, the capital improvement plan, and any resolution adopting or amending a fee and any subsequent amendments thereto shall be construed together.

Section 13 Adjustment to or waiver of fees.

A developer of any project subject to the fee described in this chapter may apply to the Board of Supervisors for reduction or adjustment to that fee, or a waiver of that fee, following the procedures set forth in Government Code Sections 66020 and 66021.

Section 14 Severability

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have adopted the ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases may be declared invalid.

Section 15 Effective Date

This ordinance, with the names of the members of the Board of Supervisors voting for or against the same, shall become effective and in full force and effect at 12:01 a.m. on the thirtieth (30) day at passage, and before expiration of fifteen (15) days after its passage, shall be posted in a prominent location at the Board of Supervisor's chambers and remain posted thereafter for at least one week.

Emissions were calculated for each home that provided at least the category of combustion device and the amount of wood burned. If the specific type of device (e.g., noncatalytic wood stove) and the type of wood burned was also given, then the total winter season emissions were calculated directly using the amount of wood burned and U.S. Environmental Protection Agency (EPA) emission factors for residential wood combustion. The EPA emission factors are given in terms of pounds particulate matter less than ten microns in diameter (PM₁₀) per ton of wood. As shown in Table 2-1, there are different emission factors for each type of combustion device and its EPA certification status. However, in terms of their PM₁₀ emissions, all woods are treated equally on a weight (pound-per-ton) basis.

**Table 2-1
EPA PM₁₀ Emission Factors for
Residential Wood Combustion**

Combustion Device	PM ₁₀ Emission Factor (pounds per ton of wood)			
	EPA Certification			
	Uncertified	Phase I	Phase II	All
Conventional Wood Stove	30.6	--	--	30.6
Noncatalytic Wood Stove	25.8	20.0	14.6	19.6
Catalytic Wood Stove	24.2	19.6	16.2	20.4
Pellet Stove	--	--	4.2	4.2
Fireplace	34.6	--	--	34.6

Source: EPA AP-42, Sections 1.9.1 and 1.10.1.

The weight of wood was determined by multiplying the amount of wood, in cords, by the density, in tons per cord, of the wood in question. The density of various wood types was estimated based on data provided in the Air Resources Board's Woodburning Handbook (CARB 1997) (see Table 2-2).

**Table 2-2
Wood Densities**

Wood Type	Density (pounds per cord)
Pine	2300
Oak	4700
Fir	2900
Cedar	2700
Eucalyptus	3900
Other Hardwood	4300
Other Wood	2900