

1 **PROPOSED SUBSTITUTE**
2 **Nadine Winters**

By: Nadine Winters
By: John Davies
By: Luke Hopkins
Introduced: January 26, 2012

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7 **FAIRBANKS NORTH STAR BOROUGH**

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9 **ORDINANCE NO. 2012 -09**

10
11 **AN ORDINANCE AMENDING FNSB 8.21.020 TO PROVIDE FOR THE ADDITION OF**
12 **APPLIANCES TO THE QUALIFYING LIST IF THE APPLIANCE MEETS THE**
13 **EMISSIONS STANDARD OF A LISTED APPLIANCE AND ADDING A VISIBLE**
14 **EMISSIONS STANDARD TO THE PROHIBITED ACTS INCLUDING VIOLATION OF**
15 **THE STANDARD TO THE FINE SCHEDULE**
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17 **WHEREAS, in 2010 voters adopted the Home Heating Protection Act**
18 **which prohibited the borough from banning, prohibiting or fining residents for the use of**
19 **home heating devices; and**
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21 **WHEREAS, the Fairbanks North Star Borough recognizes that voluntary**
22 **compliance is better than regulated compliance, but also recognizes that a healthy**
23 **environment cannot always rely on voluntary curtailment of unhealthy smoke levels; and**
24

25 **WHEREAS, there is a need for a clear, enforceable mechanism to protect**
26 **residents' health when improperly operated solid fuel devices cause unhealthy emission**
27 **levels; and**
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29 **WHEREAS, nothing in this ordinance will impact any resident or business**
30 **using solid fuel devices of any type that uses allowable fuel sources unless they exceed**
31 **the stated opacity standards and a complaint is registered.**
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CODE AMENDMENTS ARE SHOWN IN LEGISLATIVE FORMAT
Text to be added is underlined
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33 NOW, THEREFORE, BE IT ORDAINED by the Assembly of the Fairbanks
34 North Star Borough:

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36 Section 1. This ordinance is of a general and permanent nature and shall
37 be codified.

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39 Section 2. FNSB 8.21.020 A. Emissions Limit in the Nonattainment Area,
40 is amended as follows:

41 1. No person shall install or allow the installation, within the
42 nonattainment area, of a solid fuel burning appliance unless it is listed by the borough
43 as qualifying under this chapter and the installation complies with all other requirements
44 imposed in this chapter. It shall be unlawful to install or fail to remove a solid fuel
45 burning appliance installed in violation of this section. The appliance shall be so listed
46 by the borough if:

47 a. The appliance is certified by the U.S. Environmental
48 Protection Agency as meeting the federal emissions limit standard appropriate for that
49 appliance or in the case of hydronic heaters are at least phase II qualified. For purposes
50 of this subsection, "certified" means that the solid fuel appliance meets emission
51 performance standards when tested by an accredited independent laboratory and
52 labeled according to procedures specified by the EPA in 40 CFR 60 Subpart AAA; or

53 b. The appliance is tested by an accredited independent
54 laboratory, or other qualified person or entity approved by the borough, establishing that
55 it meets the EPA emissions limit standard appropriate for that appliance or an emissions
56 limit standard equivalent to that of a listed appliance in a similar category.

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58 Section 3. FNSB 8.21.020 **Prohibited acts and requirements**, is
59 amended to add the following subsection.

60 H. Visible Emissions Standard in the Non-Attainment Area.

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61 1. Standard. No person shall cause, permit or allow the emission
62 from a solid fuel burning appliance in the non-attainment area to create opacity greater
63 than [50] 30 percent for a period or periods aggregating more than 15 minutes in any
64 hour except during the first 20 minutes after the initial firing of a cold unit.

65 2. Procedures and Enforcement. Methods and procedures specified
66 by the EPA in 40 CFR 60 Appendix A Reference Method 9 (visual determination of the
67 opacity of emissions from stationary sources) as modified and adopted by the State
68 of Alaska shall be used to determine compliance with this section. Smoke visible from
69 a chimney, flue or exhaust duct in excess of the opacity standard shall constitute prima
70 facie evidence of unlawful operation of a solid fuel appliance.

71 3. Required educational program. If the FNSB air quality division
72 determines that a person is exceeding this standard, the division shall first,
73 before taking any enforcement action, make reasonable efforts to contact and
74 advise the person, if interested, of any available assistance or other information
75 that might assist the person in reducing the emissions.

76 Section 4. FNSB 8.21.020 G. is amended as follows:

77 G. The borough shall not ban, prohibit, or fine residents for the use of home
78 heating devices except that no person shall violate the visible emissions standard in the
79 non-attainment area.
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82 Section 5. FNSB 1.04.050 Fine scheduled is amended to add the
83 following:

Code Section	Offense	Penalty/Fine	Mandatory Warning
<u>8.21.020(H)</u>	<u>Violation of visible emissions standard 1st offense</u>	<u>\$100.00</u>	<u>Yes</u>
<u>8.21.020(H)</u>	<u>Violation of visible emissions standard 2nd offense</u>	<u>\$150.00</u>	<u>No</u>

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Section 6. FNSB 8.21.050, Voluntary emissions standard and educational program, is hereby deleted:

[A. VOLUNTARY STANDARD. EACH PERSON SHALL ATTEMPT TO OPERATE THEIR SOLID FUEL BURNING APPLIANCE IN A MANNER THAT DOES NOT CAUSE, PERMIT, OR ALLOW EMISSION THAT CREATES OPACITY GREATER THAN 50 PERCENT FOR A PERIOD OR PERIODS AGGREGATING MORE THAN 15 MINUTES IN ANY HOUR EXCEPT DURING THE FIRST 20 MINUTES AFTER THE INITIAL FIRING OF A COLD UNIT.

B. STANDARD DETERMINATION METHOD. METHODS AND PROCEDURES SPECIFIED BY THE EPA IN 40 CFR 60 APPENDIX A REFERENCE METHOD 9 (VISUAL DETERMINATION OF THE OPACITY OF EMISSIONS FROM STATIONARY SOURCES) SHALL BE USED TO DETERMINE COMPLIANCE WITH THIS SECTION. SMOKE VISIBLE FROM A CHIMNEY, FLUE OR EXHAUST DUCT IN EXCESS OF THE OPACITY STANDARD SHALL CONSTITUTE PRIMA FACIE EVIDENCE OF AN IMPROPER OPERATION OF AN APPLICABLE SOLID FUEL COMBUSTION APPLIANCE.

C. EDUCATIONAL OUTREACH. IF THE FNSB AIR QUALITY DIVISION DETERMINES THAT A PERSON IS EXCEEDING THIS VOLUNTARY STANDARD, THE DIVISION SHALL MAKE REASONABLE EFFORTS TO CONTACT AND ADVISE THE PERSON, IF INTERESTED, OF ANY AVAILABLE ASSISTANCE OR OTHER INFORMATION THAT MIGHT ASSIST THE PERSON IN REDUCING THE EMISSIONS.]

Section 7. Effective Date. Section 2 shall be effective at 5:00 p.m. of the first Borough business day following its adoption. Sections 3, 4, 5 and 6 shall be effective at 5:00 p.m. on October 29, 2012.

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PASSED AND APPROVED THIS _____ DAY OF _____, 2012.

ATTEST:

Mona Lisa Drexler, MMC
Borough Municipal Clerk

Diane Hutchison
Presiding Officer

APPROVED:



A. René Broker
Borough Attorney

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