



OREGON
Fire Marshals
ASSOCIATION

OREGON FIRE CODE Joint Policy Bulletin

A collaborative service to provide consistent and concise application of Oregon's fire prevention and life safety regulations.

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Subject: Open Burning

Code References:

- 2019 Oregon Fire Code (OFC), Article 3, Section 307 Open Burning, Recreational Fire and Portable Outdoor Fireplaces
- Oregon Revised Statutes (ORS) 478.960 Burning of certain materials permitted only with permission of Fire Chief
- Oregon Revised Statutes 30.930-949 Farming and Forest Practices
- Oregon Administrative Rules 837, Division 110 Field Burning and Propaning Rules
- Oregon Administrative Rules (OAR) 340, Division 264 Rules for Open Burning

Advice: Identify and define the roles, responsibilities, and regulatory components of open burning.

Background: Due to on-going regulatory questions regarding open burning and as result of a panel put together at the Fire Prevention Workshop in February 2020, the Oregon Department of Forestry (ODF), Oregon Office of State Fire Marshal (OSFM), Oregon Department of Agriculture (ODA), Oregon Department of Environmental Quality (DEQ), and Keep Oregon Green came together to review the statutory mandates, application of, and response to open burning in Oregon.

DEFINITIONS:

OSFM/OFC (Oregon Office of State Fire Marshal/ Oregon Fire Code)

Bonfires: An outdoor fire utilized for ceremonial purposes. The Fire Code Official regulates "Bon Fires" under the OFC 307.

Field burning: The burning of any grass field, grain field, pasture, rangeland or other field by open burning or by use of mobile equipment or flaming equipment on any land or vegetation. The District Fire Chief can regulate field burning through the permit process identified in ORS 478.960 (1) and (2).

Open Burning: The burning of materials wherein products of combustion are emitted directly into the ambient air without passing through a stack or chimney from an enclosed chamber. Open burning does not include road flares, smudgepots and similar devices associated with safety or occupational uses typically considered open flames, recreational fires or use of portable outdoor fireplaces. For the purpose of this definition, a chamber shall be regarded as enclosed when, during the time combustion occurs, only apertures, ducts, stacks, flues or chimneys necessary to provide combustion air and permit the escape of exhaust gas are open. The Fire Code Official regulates “Open Burning” under the OFC 307.

Portable Outdoor Fireplaces: A portable, outdoor, solid-fuel-burning fireplace that may be constructed of steel, concrete, clay or other noncombustible material. A portable outdoor fireplace may be open in design or may be equipped with a small hearth opening and a short chimney or chimney opening in the top. The Fire Code Official regulates “Portable Outdoor Fireplaces” under the OFC 307. Exception: Private residences as defined in Oregon Revised Statute (ORS) 479.168(8).

Recreational Fire: An outdoor fire burning materials other than rubbish where the fuel being burned is not contained in an incinerator, outdoor fireplace, portable outdoor fireplace, barbeque grill or barbeque pit and has a total fuel area of 3 feet (914 mm) or less in diameter and 2 feet (610 mm) or less in height for pleasure, religious, ceremonial, cooking, warmth or similar purposes. The Fire Code Official regulates “Recreational Fires” under the OFC 307.

DEQ (Oregon Department of Environmental Quality)

Agricultural Operation OAR 340-264-0030(2): Means an activity on land currently used or intended to be used primarily for the purpose of obtaining a profit in money by raising, harvesting and selling crops or by raising and selling livestock or poultry, or the produce thereof, which activity is necessary to serve that purpose. Agricultural operation also means activities conducted by not-for-profit agricultural research organizations, which activities are necessary to serve that purpose. It does not include the construction and use of dwellings customarily provided in conjunction with the agricultural operation.

Agricultural Open Burning OAR 340-264-0030(3): Means the open burning of any agricultural waste, except as provided in OAR 340-264-0040(5).

OAR 340-264-0040(5): Open field burning, propane flaming, and stack and pile burning in the Willamette Valley between the crests of the Cascade and Coast Ranges pursuant to OAR 340 division 266, Rules for Field Burning.

Agricultural Waste OAR 340-264-0030(4): Means any waste material generated or used by an agricultural operation, excluding those materials described in OAR 340-264-0060(3).

OAR 340-264-060(3): No person may cause or allow to be initiated or maintained any open burning of any wet garbage, plastic, asbestos, wire insulation, automobile part, asphalt, petroleum product, petroleum treated material, rubber product, animal remains, or animal or vegetable matter resulting from the

handling, preparation, cooking, or service of food or of any other material which normally emits dense smoke or noxious odors.

Backyard Burn: The burning of debris in an outdoor fireplace, burn barrel, backyard incinerator, or piles of yard debris that is not in support of an agricultural operation. Campfires or recreation fires are not subject to these rules. This includes yard debris such as wood, needles, or leaves from plants grown and burned on the property of origin. DEQ regulates Backyard Burns if they are within a “Special Control Area”.

Letter Permits: A letter permit issued by DEQ on the basis of a written application for the disposal of material by burning that has been approved by DEQ (OAR 340-264-0180)).

Open Burning Control Areas: Any area in or within three miles of a boundary of a city with a population of more than 4,000 people (OAR 340-264-0078(1)).

Outside of Special Control Area: Burning may occur on any day approved by the local fire district. This includes construction waste such as lumber, crates, etc.; demolition waste which includes land-clearing debris, domestic waste which includes yard debris. DEQ does not regulate burning “Outside of Special Control Areas”.

Prohibited Materials Burning: DEQ prohibits the burning of these materials at any time: Tires (including when starting a fire), Plastics, Decomposable garbage (e.g., organic material, paper), Petroleum and petroleum-related materials, Asphalt and asphalt materials, Chemicals (pesticides, cleaners, detergents, etc.) and Material that produces black or dense smoke. DEQ regulates “Prohibited Materials Burning”.

Special Open Burning Control Areas: Around cities within the Willamette Valley of 1,000 but fewer than 45,000 people. Any area within six miles of the boundary of a city with a population of more than 45,000 people. Burning within “Special Control Areas” is allowed between March 1 through June 15 and Oct. 1 through Dec. 15 (local fire district ordinances may be more restrictive). DEQ regulates “Special Control Areas” (OAR 340-264-0078(7)).

ODA (Oregon Department of Agriculture)

Field Burning: Burning of residues associated with grass seed and cereal grain production in the Willamette Valley is a special type of agricultural burning under Oregon law. Field burning occurs between June and October of each year. Oregon Department of Agriculture regulates “Field Burning” through ORS 468A.550-.575 and 468A.992 in the Willamette Valley (Multnomah, Washington, Clackamas, Marion, Polk, Yamhill, Linn, Benton and Lane Counties).

ODF (Oregon Department of Forestry)

Fire Season: When conditions of fire hazard exist in a forest protection district or any part thereof, the State Forester may designate for that district or any part thereof the date of the beginning of a fire season for that year. The fire season shall continue for that district or part thereof until ended by order of the State Forester when conditions of fire

hazard no longer exist in that district or part thereof. ODF establishes “Fire Season” under ORS 477.505.

Prescribed Burning: The use of fire ignited as a planned management activity on forestland to meet specific objectives involving the reduction or removal of forest fuels (OAR 629, Division 48).

Slash/Prescribed Burning: Slash/Prescribed burning is the burning of debris from logging and is limited to burning on forest lands. Slash Burning is the same as Prescribed Burning. The Oregon Department of Forestry (ODF) regulates “Slash Burning” and “Prescribed Burning” on ODF protected lands.

FEDERAL LANDS, TRIBAL LANDS, RANGELANDS

BLM/USFS Land: The United States Forrest Service (USFS) and the Bureau of Land Management (BLM) are federal lands and are not under the jurisdiction of the state of Oregon with respect to backyard burning or the Oregon Fire Service. BLM/USFS burning is governed under the Code of Federal Regulations (CFRs) and the authority with burning on those lands resides with them. Where BLM/USFS land intersects with an Oregon Fire Department/District, it is strongly encouraged that the two agencies maintain open communications on open burning.

Rangeland Fire Protection Associations: Range Land Fire Protection Associations (RFPAs) operate as independent associations of landowners, which provide their own local wildfire protection. ODF typically supports the associations through administrative guidance, fire suppression training, and facilitating access to federal grants and surplus firefighting equipment. RFPAs are not a form of government and therefore have no legal jurisdiction as it relates to open burning. In addition, RFPAs are not considered “Assistants to the State Fire Marshal” and they are not a forestry protection association. RFPAs are located in “unprotected” areas of the state where there is no local fire district or forestry protection agency covering those lands.

Tribal Lands: These lands are within sovereign nations and are under the administration and management of the Bureau of Indians Affairs (BIA). These tribal lands are not under the jurisdiction of the state of Oregon with respect to backyard burning or the Oregon Fire Service. Open burning authority on those lands resides with them. Where tribal land intersects with an Oregon Fire Department/District, it is strongly encouraged that the two agencies maintain open communications on open burning.

PROCESSES:

What is the process to establish and manage “fire season” within a local Fire Agency/Fire Defense Board/County

Under ORS 478.960 (4), a Fire Chief can establish Fire Season within a Fire District when ODF, under ORS 477.505, declares Fire Season. It should be the goal of every local Fire Agency and county Fire Defense Board to work with ODF and their County

Commissioners in establishing when Fire Season takes effect and when it ends. The collaborative agreement between all these agencies should be of the highest priority. This will help ensure consistent messaging to Oregonians and to provide a common and consistent goal of protecting life and property in the state of Oregon.

A Fire Chief of a Fire District or the County itself can also be more restrictive than DEQ's daily smoke management burn regulations. Under ORS 476.380 (2) or 478.960 (2), additional restriction on the issuance of "Open Burning" permits can be applied when there is a danger to life or property of another from fire. The restriction of "Open Burning" permits can include the reduction of or the elimination of open burning.

The District Fire Chief or the County itself can be guided when to restrict "Open Burning" permits when one or more of the following conditions are present: 1) Establishment of "Fire Season", 2) Issuing of a "Red Flag Warning" forecast by the National Weather Service, 3) BLM or UFS enacts burn restrictions or 4) When two of the conditions under OAR 837-110-0090 have been met (for Willamette Valley only).

What "open burning" permits can a local Fire Agency or County issue and restrict; what is the State Fire Marshal's authority

Under ORS 478.960(1), the District Fire Chief has the authority to issue permits for "open burning" of commercial waste, demolition materials, domestic waste, industrial waste, land clearing debris, or field burning except in special control areas as defined in OAR 340-264-0100 through 340-264-0175. In addition, in 2019 OFC Article 3, Section 307.2, the "Fire Code Official" is authorized to require an "Open Burning" operational permit (2019 OFC, Article 2, Section 105.6.32) for the kindling or maintaining of an open fire or a fire on any public street, alley, road, or other public or private ground. Instructions and stipulations of the permit shall be adhered to (Exception: Recreational and Ceremonial Fires).

In addition, under ORS 476.380, No person, outside the boundaries of a rural fire protection district or a forest protection district, shall cause or permit to be initiated or maintained on the property of the person, or cause to be initiated or maintained on the property of another any open burning of commercial waste, demolition material, domestic waste, industrial waste, land clearing debris or field burning without first securing a permit from the county court or board of county commissioners.

The Fire Chief or the County itself shall prescribe conditions upon which "open burning" permission is granted and which are necessary to be observed in setting the fire and preventing it from spreading and endangering life or property or endangering the air resources of this state.

The Fire Chief or the County itself has the authority to restrict all permitted "open burning" when there is a danger to life or property of another from fire.

Under ORS 476.380 (3) or 478.960(3), the issuance of an "Open Burning" permit by the Fire Chief or the County itself does not relieve the person who the permit was issued to from responsibility for providing adequate protection to prevent injury or damage to the person or property of another. If such burning results in the escape of fire and injury or

damage to the person or property of another, such escape and damage or injury constitutes prima facie evidence that the burning was not safe.

Under ORS 476.380(2) or 478.960(2), the State Fire Marshal may refuse, revoke or postpone permission when necessary in the judgment of the State Fire Marshal to prevent danger to life or property from fire, notwithstanding any determination by the local Fire Chief.

What is the process for management of “agricultural open burning” and “field burning” within a local Fire Agency/FDB/County

Within many areas of the state, there exists agricultural operations that rely on the use of fire as an agricultural process. Under ORS 30.933 (AKA “Right to Farm”), the Legislative Assembly found that farming and forest practices are critical to the economic welfare of this state. In addition, the Legislative Assembly found that certain private rights of action and the authority of local governments and special districts to declare farming and forest practices to be nuisances or trespass must be limited because such claims for relief and local government ordinances are inconsistent with land use policies, including policies set forth in ORS 215.243 (Agricultural land use policy), and have adverse effects on the continuation of farming and forest practices and the full use of the resource base of this state. Under ORS 30.932, “nuisance” or “trespass” is defined to include but is not limited to actions or claims based on noise, vibration, odors, smoke, dust, mist from irrigation, use of pesticides and use of crop production substances.

However, under ORS 30.940, it states that the provisions of ORS 30.930 shall not impair the right of any person or governmental body to pursue any remedy authorized by law that concerns matters other than a nuisance or trespass.

The definition of “nuisance” or “trespass” under ORS 30.932 does not include fire threatening the life or property of another. As a result, the District Fire Chief or the County itself can regulate the burning of certain materials (ORS 476.340 (2) or 478.001(2)) through the permitting process identified in ORS 476.340(1) & (4) or 478.960(1) & (8). In addition, the District Fire Chief or the County itself may restrict and prohibit “open burning” and “field burning” permits when conditions exist where a fire threatens the life or property of another as identified under ORS 476.340(2) or 478.960(2) and OAR 837-110-0090.

Performing “agricultural burning” and “field burning” operations should involve a positive, collaborative working relationship between the local fire authority, the County itself and the local agricultural property owner. The Office of State Fire Marshal considers these relationship to be one of the highest priorities needed to maintain a balance between agricultural property owner’s “right to farm” and the local fire authority’s and County’s duty to protect the lives and property of Oregonians from fire.

There is a burn ban area in the counties of Clackamas, Multnomah and Washington where burning of yard debris is not allowed. Please consult DEQ’s website for the burn ban area map.

COMPLIANCE:

When any fire creates or adds to a hazardous situation, or a required permit for open burning has not been obtained, the fire code official or the County itself is authorized to order the extinguishment of the fire (OFC Section 307 Open Burning, Recreational Fires and Portable Outdoor Fireplaces, Subsection 307.3)

No one, within the boundaries of a district or the County itself, shall cause or permit to be initiated or maintained on one's own property, or cause to be initiated or maintained on the property of another, any open burning of commercial waste, demolition material, domestic waste, industrial waste, land clearing debris or field burning without first securing permission and complying with the direction of the District Fire Chief or the County itself. If a Fire District or the County itself chooses not to issue a "permission" or a "permit" to open burn, then it is assumed that open burning is prohibited with the Fire District's jurisdiction.

Local ordinance as adopted by District, City, or County.

In accordance with ORS 476.380 and 478.960 and OAR 837-110-0090, permitted field and propane burning shall be banned in areas west of the crest of the Cascade Range and south to the Douglas/Lane County lines when any two of the following criteria are present:

- (1) Temperature of 95 degrees Fahrenheit or above;
- (2) Relative humidity of 30 percent or below;
- (3) Wind speed of 15 miles per hour or higher

In accordance with ORS 478.965, a local fire district may recover costs associated with fire-fighting apparatus or personnel required to respond and be used actively or on a standby basis in connection with the extinguishment or control of a fire that has been started or allowed to spread in willful violation of ORS 478.960 (Burning of certain materials permitted only with permission of fire chief) (1) to (5).

Inspection Authority:

2019 OFC, Section 307

ORS 476.030

ORS 476.210

ORS 476.380

ORS 478.960

OAR 837, Division 110 (Field Burning)

Contacts: If you have questions or are in need of further information, contact OSFM Technical Services Unit at 503-934-8204, or osfm.ofc@osp.oregon.gov

Imbedded Links:

OSFM <https://www.oregon.gov/osp/programs/sfm/pages/default.aspx>