

CLACKAMAS FIRE DISTRICT #1  
**OPEN BURNING REGULATIONS**

**Sections of the original documents not related to Open Burning have been omitted for your convenience. You may click on the links to access the codes in their entirety.**

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# Oregon Revised Statutes

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## Chapter 468A — Air Quality

**468A.550 Definitions for ORS 468A.555 to 468A.620 and 468A.992.** As used in this section and ORS 468A.555 to 468A.620 and 468A.992:

- (1) “Field burning” and “open field burning” do not include:
  - (a) Propane flaming of mint stubble; or
  - (b) Stack or pile burning of residue from Christmas trees as defined in ORS 571.505.
- (2) “Research and development of alternatives to field burning” includes, but is not limited to, projects concerned with cultural practices for producing grass seed without field burning, environmental impacts of alternative seed production methods, straw marketing and utilization and alternative crops.
- (3) “Smoke management” means the daily control of the conducting of open field burning to such times and places and in such amounts so as to provide for the escape of smoke and particulate matter therefrom into the atmosphere with minimal intrusion into cities and minimal impact on public health and in such a manner that under existing meteorological conditions a maximum number of acres registered can be burned in a minimum number of days without substantial impairment of air quality.
- (4) “Smoke management program” means a plan or system for smoke management. A smoke management program shall include, but not be limited to, provisions for:
  - (a) Annual inventorying and registering, prior to the burning season, of agricultural fields for open field burning;
  - (b) Preparation and issuance of open field burning permits by affected governmental agencies;
  - (c) Gathering and disseminating regional and sectional meteorological conditions on a daily or hourly basis;
  - (d) Scheduling times, places and amounts of agricultural fields that may be open burned daily or hourly, based on meteorological conditions during the burning season;
  - (e) Conducting surveillance and gathering and disseminating information on a daily or more frequent basis;
  - (f) Effective communications between affected personnel during the burning season; and

**468A.555 Policy to reduce open field burning.** The Legislative Assembly declares it to be the public policy of this state to reduce the practice of open field burning while developing and providing alternative methods of field sanitization and alternative methods of utilizing and marketing crop residues.

**468A.560 Applicability of open field burning, propane flaming and stack and pile burning statutes.**

- (1) Except for the fee imposed under ORS 468A.615 (1)(c), the provisions of ORS 468A.550 to 468A.620 and 468A.992 shall apply only to open field burning, propane flaming and stack or pile burning of grass seed or cereal grain crop residues on acreage located in the counties specified in ORS 468A.595 (2).
- (2) Nothing in this section shall apply to the propane flaming of mint stubble.

**468A.575 Permits for open burning, propane flaming or stack or pile burning; rules.**

(1) Permits for open burning, propane flaming or stack or pile burning of the residue from perennial grass seed crops, annual grass seed crops and cereal grain crops are required in the counties listed in ORS 468A.595 (2) and shall be issued in accordance with rules adopted by the Environmental Quality Commission and subject to the fee prescribed in ORS 468A.615. The permit described in this section shall be issued in conjunction with permits required under ORS 476.380 or 478.960.

(2) By rule the Environmental Quality Commission may delegate to any county court, board of county commissioners, fire chief of a rural fire protection district or other responsible person the duty to deliver permits to burn acreage if the acreage has been registered under ORS 468A.615 and fees have been paid as required in ORS 468A.615. [1991 c.920 §7]

**468A.595 Commission rules to regulate burning pursuant to ORS 468A.610.** In order to regulate open field burning pursuant to ORS 468A.610:

(1) In such areas of the state and for such periods of time as it considers necessary to carry out the policy of ORS 468A.010, the Environmental Quality Commission by rule may prohibit, restrict or limit classes, types and extent and amount of burning for perennial grass seed crops, annual grass seed crops and grain crops.

**(2) In addition to but not in lieu of the provisions of ORS 468A.610 and of any other rule adopted under subsection (1) of this section, the commission shall adopt rules for Multnomah, Washington, Clackamas, Marion, Polk, Yamhill, Linn, Benton and Lane Counties, which provide for a more rapid phased reduction by certain permit areas,** depending on particular local air quality conditions and soil characteristics, the extent, type or amount of open field burning of perennial grass seed crops, annual grass seed crops and grain crops and the availability of alternative methods of field sanitation and straw utilization and disposal.

(3) Before promulgating rules pursuant to subsections (1) and (2) of this section, the commission shall consult with Oregon State University and may consult with the United States Natural Resources Conservation Service, or its successor agency, the Agricultural Stabilization Commission, the state Soil and Water Conservation Commission and other interested agencies. The Department of Environmental Quality shall advise the commission in the promulgation of such rules. The commission must review and show on the record the recommendations of the department in promulgating such rules.

(4) No regional air quality control authority shall have authority to regulate burning of perennial grass seed crops, annual grass seed crops and grain crops.

(5) Any amendments to the State Implementation Plan prepared by the state pursuant to the federal Clean Air Act, as enacted by Congress, December 31, 1970, and as amended by Congress August 7, 1977, and November 15, 1990, and Acts amendatory thereto shall be only of such sufficiency as to gain approval of the amendment by the United States Environmental Protection Agency and shall not include rules promulgated by the commission pursuant to subsection (1) of this section not necessary for attainment of national ambient air quality standards.

**468A.990 Penalties for air pollution offenses.**

(1) Violation of any rule or standard adopted or any order issued by a regional authority relating to air pollution is a Class A misdemeanor.

(2) Unless otherwise provided, each day of violation of any rule, standard or order relating to air pollution constitutes a separate offense.

(3) Violation of ORS 468A.610 or of any rule adopted pursuant to ORS 468A.595 is a Class A misdemeanor. Each day of violation constitutes a separate offense.

(4) Violation of the provisions of ORS 468A.655 is a Class A misdemeanor. [Formerly 468.995]

## **Chapter 476 — State Fire Marshal; Protection From Fire Generally**

**476.005 Definitions.** As used in this chapter, unless the context requires otherwise:

(1) “Fire protection equipment” means any apparatus, machinery or appliance intended for use by a fire service unit in fire prevention or suppression activities, excepting forest fire protection equipment.

(2) “Governmental subdivisions” means a city, county or rural fire protection district in this state whose functions include regulation of building use and occupancy and the administration of fire safety laws, ordinances and regulations

**476.010 Additional definitions.**

(1) As used in ORS 476.010 to 476.115, 476.150 to 476.170 and 476.210 to 476.270, “alterations,” “construction,” “family,” “hospital,” “occupancy” and “private residence” have the meanings given those terms in ORS 479.168.

(2) As used in ORS 476.030 and other laws relating to the duties of the State Fire Marshal, “governmental subdivision” means a city, county, municipal corporation, quasi-municipal corporation and rural fire protection district, created under the laws of Oregon.

(3) As used in ORS 476.380:

(a) “Commercial waste”:

(A) Means any waste produced in any business involving the lease or sale, including wholesale and retail, of goods or services, including but not limited to housing.

(B) Means any waste produced by a governmental, educational or charitable institution.

(C) Does not include any waste produced in a dwelling containing four living units or less.

(b) “Demolition material” means any waste resulting from the complete or partial destruction of any man-made structure, such as a house, apartment, commercial building or industrial building.

(c) “Domestic waste” means any nonputrescible waste, consisting of combustible materials, such as paper, cardboard, yard clippings, wood or similar materials, generated in a dwelling, including the real property upon which it is situated, containing four living units or less.

(d) “Field burning” means 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.

(e) “Industrial waste” means any waste resulting from any process or activity of manufacturing or construction.

(f) “Land clearing debris” means any waste generated by the removal of debris, logs, trees, brush or demolition material from any site in preparation for land improvement or construction projects.

(g) “Open burning” means any burning conducted in such a manner that combustion air is not effectively controlled and that combustion products are not vented through a stack or chimney, including but not limited to burning conducted in open outdoor fires, common burn barrels and backyard incinerators.

#### **476.060 Local officers and constables as assistants to State Fire Marshal.**

(1) All fire marshals in those governmental subdivisions having such officers, and where no such officer exists, the chief of the fire department of every city or rural fire protection district in which a fire department is established, the marshal or chief of police, officer of any city in which no fire department exists, and constables, if any, shall be, by virtue of the offices held by them, assistants to the State Fire Marshal without additional recompense, subject to the duties and obligations imposed by law, and shall be subject to the direction of the State Fire Marshal in the execution of the provisions of this section and ORS 476.070, 476.090, 476.150, 476.210 and 480.445.

(2) In addition to other duties under subsection (1) of this section, an individual designated as an assistant to the State Fire Marshal shall aid in the administration and enforcement of ORS 480.200 to 480.290 and 480.990 (6) upon the request of the State Fire Marshal

**476.110 State police to enforce fire laws.** The Department of State Police shall employ a sufficient number of state police who shall perform the duties of enforcement of criminal laws and other statutes of Oregon with reference to the suppression and punishment of arson and fraudulent claims and practices in connection with fire laws.

#### **476.380 Fire permits; limitations upon burning; records.**

(1) 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.

(2) The county court or board of county commissioners, or its designated representative, shall prescribe conditions for issuance of any permit and shall refuse, revoke or postpone issuance of permits when necessary to prevent danger to life or property or to protect the air resources of this state. The Environmental Quality Commission shall notify the State Fire Marshal of the type of and time for burning to be allowed on each day under schedules adopted pursuant to ORS 468A.570 and 468A.595. The State Fire Marshal shall cause all county courts and boards of county commissioners or their designated representatives in the affected areas to be notified of the type of and time for burning to be allowed on each day and of any revisions of such conditions during each day. The county court, board or representative shall issue permits only in accordance with schedules of the Environmental Quality Commission adopted pursuant to this section and ORS 468A.555 to 468A.620 and 468A.992, 476.990, 478.960 and 478.990 but may reduce the hours allowed for burning if necessary to prevent danger to life or property from fire. The State Fire Marshal may refuse or postpone permits when necessary in the judgment of the State Fire Marshal to prevent danger to life or property from fire, notwithstanding any determination by the county court or

board of county commissioners or its designated officer. Notwithstanding any other provision of this subsection, for a permit for the propane flaming of mint stubble, the county court or board of county commissioners, or its designated representative may only prescribe conditions necessary to prevent the spread of fire or to prevent endangering life or property and may refuse, revoke or postpone permission to conduct the propane flaming only when necessary to prevent danger to life or property from fire.

(3) Nothing in this section:

(a) Requires permission for starting a campfire in a manner otherwise lawful.

(b) Relieves a person starting a fire from responsibility for providing adequate protection to prevent injury or damage to the property of another. If such burning results in the escape of fire and injury or damage to the property of another, such escape and damage or injury constitutes prima facie evidence that the burning was not safe.

(c) Relieves a person who has obtained permission to start a fire, or the agent of the person, from legal liability for property damage resulting from the fire.

(d) Permits an act within a city or regional air quality control authority area that otherwise is unlawful pursuant to an ordinance of the city or rule, regulation or order of the regional authority.

(4) The county court or board of county commissioners shall maintain records of all permits and the conditions thereof, if any, that are issued under this section and shall submit at such times, as the Environmental Quality Commission shall require such records or summaries thereof to the commission. The Environmental Quality Commission shall provide forms for the reports required under this subsection

## Chapter 477 — Fire Protection of Forests and Vegetation

**477.001 Definitions.** As used in this chapter, unless the context otherwise requires:

(1) “Additional fire hazard” means a hazard that has been determined to exist by the forester pursuant to ORS 477.580.

(2) “Board” means the State Board of Forestry.

(3) “Campfire” means any open fire used for cooking, personal warmth, lighting, ceremonial or aesthetic purposes that is hand built and that is not associated with any debris disposal activities.

(4) “Department” means the State Forestry Department.

(5) “District” means a forest protection district organized under ORS 477.225.

(6) “Every reasonable effort” means the use of the reasonably available personnel and equipment under the supervision and control of an owner or operator, which are needed and effective to fight the fire in the judgment of the forester and which can be brought to bear on the fire in a timely fashion.

(7) “Fire season” means a period designated pursuant to ORS 477.505.

(8) “Fiscal year” means the period beginning on July 1 of any year and ending on June 30 of the next year.

(9) “Forestland” means any woodland, brushland, timberland, grazing land or clearing that, during any time of the year, contains enough forest growth, slashing or vegetation to constitute, in the judgment of the forester, a fire hazard, regardless of how the land is zoned or taxed. As used in this subsection, “clearing” means any grassland, improved area, lake, meadow, mechanically or manually cleared area, road, rocky area, stream or other similar forestland opening that is surrounded by or contiguous to forestland and that has been included in areas classified as forestland under ORS 526.305 to 526.370.

(10) “Forest patrol assessment” means the costs levied and assessed under ORS 477.270.

(11) “Forest protective association” or “association” means an association, group or agency composed of owners of forestlands, organized for the purpose of protecting such forestlands from fire.

(12) “Forest resource” means the various types of vegetation normally growing on Oregon’s forestland, the associated harvested products and the associated residue, including but not limited to brush, grass, logs, saplings, seedlings, trees and slashing.

(13) “Forester” means the State Forester or authorized representative.

(14) “Governing body” of a county means the county court or board of county commissioners.

(15) “Grazing land” is defined by ORS 477.205.

(16) “Open fire” means any outdoor fire that occurs in such a manner that combustion air is not effectively controlled and combustion products are not effectively vented through a stack or chimney.

(17) “Operation” means any industrial activity, any development or any improvement on forestland inside or within one-eighth of one mile of a forest protection district, including but not limited to the harvesting of forest tree species, the clearing of land, the use of power-driven machinery and the use of fire, excluding, however, the culture and harvesting of agricultural crops.

(18) “Operation area” means the area on which an operation is being conducted and the area on which operation activity may have resulted in the ignition of a fire.

(19) "Operation in progress" means that time when workers are on an operation area for the purpose of an operation, including the period of time when fire watches are required to be on the operation area pursuant to ORS 477.665.

(20) "Operator" means any person who, either personally or through employees, agents, representatives or contractors, is carrying on or has carried on any operation.

(21) "Owner" means an individual, a combination of individuals, a partnership, a corporation, the State of Oregon or a political subdivision thereof, or an association of any nature that holds an ownership interest in land.

(22) "Political subdivision" includes, but is not limited to, counties, cities and special districts.

(23) "Rangeland" is defined by ORS 477.315.

(24) "Routine road maintenance" is defined by ORS 477.625.

(25) "Side" means any single unit of a logging operation employing power-driven machinery.

(26) "Slashing" means the forest debris or refuse on any forestland resulting from the cutting, killing, pruning, severing or removal of brush, trees or other forest growth.

(27) "State Forester" means the person appointed State Forester pursuant to ORS 526.031 or the person serving in the position on an interim or delegated basis.

(28) "Summit of the Cascade Mountains" is considered to be a line beginning at the intersection of the northern boundary of the State of Oregon and the western boundary of Wasco County; thence southerly along the western boundaries of Wasco, Jefferson, Deschutes and Klamath Counties to the southern boundary of the State of Oregon.

(29) "Timberland" is defined by ORS 477.205.

(30) "Warden" means a fire warden appointed under ORS 477.355.

#### **477.505 State Forester may declare fire season in district.**

(1) 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.

(2) The State Forester may, during the same year and for the same district under circumstances similar to those described in subsection (1) of this section, designate one or more subsequent fire seasons.

#### **477.510 Acts prohibited during fire season.**

It is unlawful, during a fire season inside or within one-eighth of one mile of a forest protection district, to:

(1) Smoke while working in or traveling through any operation area.

(2) Use fuse and caps for blasting unless approval is granted by the forester

#### **477.515 Permits required for fires on forestlands; waiver; permit conditions; cooperative agreements for permit administration; rules.**

(1) It is unlawful to set or cause to be set an open fire inside or within one-eighth of one mile of a forest protection district, either on one's own land or on the land of another, without first securing a written permit for burning from the forester and complying with the conditions of the permit. In granting permits for burning:

(a) The forester may waive the requirement that permits be secured prior to burning, except during a fire season or when required under rules adopted pursuant to subsection (4) of this section.

(b) The forester shall prescribe conditions necessary to be observed in setting a fire and preventing it from spreading out of control.

(c) The forester may prescribe conditions necessary to be observed in maintaining air quality.

(2) Any permit obtained through willful misrepresentation is void.

(3) To avoid confusion or duplication of administration and to promote government efficiency, the forester may enter into a cooperative agreement with a county, a city or a rural fire protection district that:

(a) Allows the forester to administer the requirements of this section, in conjunction with the enforcement authority of ORS 477.980 to 477.993, on lands not otherwise subject to the requirements of this chapter; or

(b) Allows the cooperating agency to administer the burning permit requirements of ORS chapter 476 or 478, as appropriate, including applicable enforcement authority, on lands otherwise subject to the requirements of this chapter.

(4) All burning allowed under this section shall comply with applicable rules that may be adopted by the State Board of Forestry and the Department of Environmental Quality.

(5) The provisions of this section do not apply to campfires.

**477.710 Starting of campfire or other open fire restricted; exceptions.** It is unlawful for any person to start a campfire or other open fire without first clearing the area immediately around and above it of material that will carry

fire, or leave a campfire or other open fire unattended, or permit a campfire or other open fire to spread. This section does not apply to any activity conducted in compliance with ORS 477.365, 477.515, 477.625, 478.960, 526.041, 526.360 or 527.670.

**477.740 Unlawful use of fire.** A person commits the offense of unlawful use of fire if the person:

- (1) In the ignition of a fire:
  - (a) Unlawfully sets on fire, or causes to be set on fire, any grass, grain, stubble or other material being or growing on any lands within the state;
  - (b) Intentionally or negligently allows fire to escape from the person's own land, or land of which the person is in possession or control; or
  - (c) Accidentally sets any fire on the person's own land or the land of another and allows it to escape from control without extinguishing it, or making a bona fide effort to do so.
- (2) Having knowledge of a fire burning on the person's own land, or land of which the person is in possession or control, fails or neglects to make a bona fide effort to extinguish the same, regardless of whether or not the person is responsible for the starting or existence thereof.

**477.980 Enforcement policy; rules; factors considered.** The State Board of Forestry, by rule, shall establish the enforcement policy for violations prescribed in ORS 477.993. In determining the enforcement policy, the board may consider the following factors:

- (1) Prior violation of the same or similar statutes, rules or orders.
- (2) The gravity and magnitude of the violation.
- (3) Whether the violations were repeated or continuous.
- (4) Whether the cause of the violation was an unavoidable accident or a willful, malicious or negligent act.
- (5) Whether the violation directly threatened human life or caused property damage of \$10,000 or more.

**477.985 Enforcement procedure; disposition of fines and costs.**

(1) In addition to any other persons permitted to enforce violations, the State Forestry Department and the State Forester, or any employee specifically designated by the department or by the State Forester, may issue citations for violations established under ORS 477.993 in the manner provided by ORS chapter 153.

(2) All fines and court costs recovered from violations established under ORS 477.993 shall be paid to the clerk of the court involved. Such moneys shall be credited and distributed under ORS 137.290 and 137.295 as monetary obligations payable to the state.

**477.993 Penalties.**

(1) Violation of any of the provisions of ORS 477.510, 477.515, 477.535 to 477.550, 477.565, 477.615, 477.625, 477.635 to 477.670, 477.695, 477.710, 477.720 or 477.740, or any rule or order adopted pursuant thereto, is a violation punishable as follows:

- (a) For the first offense, as a Class D violation.
- (b) For the second offense, as a Class C violation.
- (c) For the third offense, as a Class A violation.

(2) Multiple violations of any single requirement of this chapter, or of any rule or order adopted pursuant thereto, in an operation area shall be considered a single violation. However, each day a violation continues shall be considered a separate violation.

(3) Notwithstanding subsection (1) of this section, violations of any of the statutes listed in subsection (1) of this section which proximately cause human injury, loss of human life or property damage of \$10,000 or more, and unauthorized entry into a fire scene secured under the authority of ORS 477.365 (1)(f), may be punishable as a Class A misdemeanor.

(4) Violations and punishments set forth in this section and ORS 477.740 are in addition to and not in lieu of the provisions of ORS 164.305 to 164.335

## **Chapter 478 — Rural Fire Protection Districts**

**478.001 Definitions.**

- (1) As used in this chapter, unless the context requires otherwise:
  - (a) "Board of directors" or "district board" means the governing body of a district.
  - (b) "County" means the county in which the district, or the greater portion of the taxable assessed value of the district, is located.
  - (c) "County board" means the county court or board of county commissioners of the county.

(d) "District" means a rural fire protection district proposed to be organized or organized under, or subject to, this chapter.

(e) "Owner" or "landowner" means a legal owner of real property or the vendee of a contract of purchase of real property, if any, to the exclusion of the vendor. The term includes a unit owner, as defined in ORS 100.005.

(2) As used in ORS 478.960:

(a) "Commercial waste" means any waste produced in any business involving the lease or sale, including wholesale and retail, of goods or services, including but not limited to housing, and means any waste produced by a governmental, educational or charitable institution; however, it does not include any waste produced in a dwelling containing four living units or less.

(b) "Demolition material" means any waste resulting from the complete or partial destruction of any man-made structure such as a house, apartment, commercial building or industrial building.

(c) "Domestic waste" means any nonputrescible waste, consisting of combustible materials, such as paper, cardboard, yard clippings, wood, or similar materials, generated in a dwelling, including the real property upon which it is situated, containing four living units or less.

(d) "Field burning" means 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.

(e) "Industrial waste" means any waste resulting from any process or activity of manufacturing or construction.

(f) "Land clearing debris" means any waste generated by the removal of debris, logs, trees, brush or demolition material from any site in preparation for land improvement or construction projects.

(g) "Open burning" means any burning conducted in such a manner that combustion air is not effectively controlled and that combustion products are not vented through a stack or chimney, including but not limited to burning conducted in open outdoor fires, common burn barrels and backyard incinerators.

**478.120 Inclusion of forestland in district.** The authority to include forestland within a rural fire protection district pursuant to ORS 478.010 (2)(c) applies to forestland within the exterior boundaries of an existing district and to forestland on which structures subject to damage by fire have been added after July 20, 1973.

**478.300 Contracting with others to provide facilities and services for fire protection or road lighting; authority over open burning and fire permits; rules.**

(1) In addition to the authority to enter into intergovernmental agreements under ORS chapter 190, a rural fire protection district or other public body as defined in ORS 174.109 may contract with any person for the purpose of affording fire fighting, protection or prevention facilities or road-lighting facilities and services, or both, to such person.

(2) When any agreement or contract is entered into pursuant to ORS chapter 190 or subsection (1) of this section to provide fire protection service, the rural fire protection district or other public body providing such service shall have authority over open burning and the issuance of fire permits in the area served, and may in accordance with this chapter make reasonable rules and regulations relating thereto.

**478.920 Scope of fire prevention code.** The fire prevention code may provide reasonable regulations relating to:

(1) Prevention and suppression of fires.

(2) Mobile fire apparatus means of approach to buildings and structures.

(3) Providing fire-fighting water supplies and fire detection and suppression apparatus adequate for the protection of buildings and structures.

(4) Storage and use of combustibles and explosives.

(5) Construction, maintenance and regulation of fire escapes.

(6) Means and adequacy of exit in case of fires and the regulation and maintenance of fire and life safety features in factories, asylums, hospitals, churches, schools, halls, theaters, amphitheaters, all buildings, except private residences, which are occupied for sleeping purposes, and all other places where large numbers of persons work, live or congregate from time to time for any purpose.

(7) Requiring the issuance of permits by the fire chief of the district before burning trash or waste materials.

(8) Providing for the inspection of premises by officers designated by the board of directors, and requiring the removal of fire hazards found on premises at such inspections.

**478.930 Violation of code; failure to remove hazards; burning waste without permit prohibited.** When a district has adopted a fire prevention code as provided in ORS 478.910:

(1) No person shall violate the provisions of the code or fail to remove hazards found on inspection within the

time set by the inspecting officer, after written notice to either the owner or occupant of the premises.

(2) No person shall burn waste materials or trash in an unguarded manner without a permit, when a permit is required by the district code or this chapter.

#### **478.960 Burning of certain materials permitted only with permission of fire chief; burning schedules and restrictions.**

(1) No one, within the boundaries of a district, 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 from the fire chief of the district and complying with the direction of the fire chief. A deputy of a fire chief has the power to perform any act or duty of the fire chief under this section.

(2) The fire chief shall prescribe conditions upon which 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 Environmental Quality Commission shall notify the State Fire Marshal of the type of and time for burning to be allowed on each day under schedules adopted pursuant to ORS 468A.570 and ORS 468A.595. The State Fire Marshal shall cause all fire chiefs and their deputies in the affected area to be notified of the type and time for burning to be allowed on each day with updating messages each day as required. A fire chief or deputy shall grant permission only in accordance with the schedule of the Environmental Quality Commission but may reduce hours to be allowed for burning if necessary to prevent danger to life or property from fire. 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 fire chief.

(3) Nothing in this section relieves a person starting a fire 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.

(4) Within a district, no person shall, during the fire season declared under ORS 477.505, operate any equipment in forest harvesting or agricultural operations powered by an internal combustion engine on or within one-eighth of one mile of forestland unless each piece of equipment is provided with a fire extinguisher of sufficient size and capacity and with such other tools and fire-fighting equipment as may be reasonably required by the fire chief of the district. The provisions of this subsection do not apply to machinery regulated by ORS chapter 477.

(5) No person shall dispose of any building or building wreckage within a district by fire without having first secured permission therefor from the fire chief. No person shall refuse to comply with any reasonable requirements of the fire chief as to the safeguarding of such fire from spreading.

(6) This section is not intended to limit the authority of a district to adopt a fire prevention code as provided in ORS 478.910 to 478.940 or to issue permits when the burning is done by mechanical burners fired by liquid petroleum gas.

(7) The fire chief shall maintain records of all permits and the conditions thereof, if any, that are issued for field burning under this section and shall submit at such times, as the Environmental Quality Commission shall require such records or summaries thereof to the commission. The Environmental Quality Commission shall provide forms for the reports required under this subsection.

(8) Notwithstanding any other provision of this section:

(a) A permit is required for field burning authorized pursuant to ORS 468A.550 to 468A.620 and 468A.992.

(b) For a permit for the propane flaming of mint stubble, the fire chief may only prescribe conditions necessary to prevent the spread of fire or to prevent endangering life or property and may refuse, revoke or postpone permission to conduct the propane flaming only when necessary to prevent danger to life or property from fire.

#### **478.965 Recovery by district of costs of suppressing unlawful fire; attorney fees.**

(1) If the fire-fighting apparatus or personnel, or either of a district, are 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 (1) to (5), the person responsible therefor shall be liable to the district furnishing such apparatus or personnel, or both, for the actual costs incurred by the district in controlling, extinguishing or patrolling the fire. Such costs may be recovered in an action prosecuted in the name of the district. The court may award reasonable attorney fees to the district if the district prevails in an action under this section. The court may award reasonable attorney fees to a defendant who prevails in an action under this section if the court determines that the district had no objectively reasonable basis for asserting the claim or no reasonable basis for

appealing an adverse decision of the trial court.

(2) An itemized statement of the actual costs incurred by the district, certified under oath by the treasurer of the district, shall be accepted as prima facie evidence of such costs in the action authorized by this section

#### **478.990 Penalties.**

(1) Violation of any provision of ORS 478.930 is a Class D violation. Each day's refusal to remove fire hazards after notice by the inspecting officer to the owner of the premises where the hazard exists is a separate offense.

(2) Burning without a permit required under ORS 478.960 (1) or in violation of a condition thereof is a misdemeanor.

(3) Violation of ORS 478.960 (4) is a misdemeanor.

(4) Subject to ORS 153.022 and 153.025, violation of any rule or regulation made by a rural fire protection district or other public body, as defined in ORS 174.109, pursuant to ORS 478.300 (2) is a misdemeanor.

## **Oregon Administrative Rules**

### **DIVISION 264**

#### **OPEN BURNING RULES; DEPARTMENT OF ENVIRONMENTAL QUALITY**

##### **340-264-0010**

##### **How to Use These Open Burning Rules**

(1) This Division classifies all open burning into one of seven classes: Agricultural; Commercial; Construction; Demolition (which includes land clearing); Domestic (which includes burning commonly called "backyard burning" and burning of yard debris); Industrial; or Slash. Except for field burning within the Willamette Valley regulated through OAR Chapter 340, Division 266 and slash burning administered by the forest practices smoke management plan of the Oregon Department of Forestry, this Division prescribes requirements for and prohibitions of open burning for every location in the state. Generally, if a class of open burning is not specifically prohibited in a given location, then it is authorized subject to OAR 340-264-0050 and 340-264-0060 and the requirements and prohibitions of local jurisdictions and the State Fire Marshal. In addition, some practices specifically mentioned in OAR 340-264-0040 are exempted from this Division.

(2) Organization of rules: (a) OAR 340-264-0020 is the Policy statement of the Environmental Quality Commission setting forth the goals of this Division;

(b) OAR 340-264-0030 contains definitions of terms that have specialized meanings within the context of this Division;

(c) OAR 340-264-0040 lists specific types of open burning and practices that are not governed by this Division;

(d) OAR 340-264-0050 lists general requirements that usually apply to any open burning governed by this Division;

(e) OAR 340-264-0060 lists general prohibitions that apply to most open burning;

(f) OAR 340-264-0070 establishes the open burning schedule based on air quality and meteorological conditions as required by ORS 468A.570;

**(g) OAR 340-264-0075 allows the delegation of some or all of the open burning authority to be administered by a local jurisdiction;**

(h) OAR 340-264-0078 contains the legal description of Open Burning Control Areas and maps that generally depict these areas;

(i) OAR 340-264-0080 indexes each county of the state to a specific rule giving specific restrictions for each class of open burning applicable in the county;

(j) OAR 340-264-0100 through 340-264-0170 are rules that give specific restrictions to open burning for each class of open burning in the counties named in each rule;

(k) OAR 340-264-0180 provides for a letter permit authorization for open burning under certain circumstances in which open burning otherwise would be prohibited;

##### **(3) Use of this Division will be made easier by the following procedure:**

(a) Read OAR 340-264-0050 and 340-264-0060 to understand general requirements and prohibitions that apply to all burning governed by this Division;

- (b) In OAR 340-264-0030 read the definitions of Agricultural, Commercial, Construction, Demolition, Domestic and Industrial open burning plus the definitions of land clearing and yard debris to determine the type of burning of concern. Also read OAR 340-264-0040 to determine if the type of burning is exempted from this Division;
- (c) Locate the rule (OAR 340-264-0100 through 340-264-0170) that governs the county in which burning is to take place. OAR 340-264-0090 is an index to the county rules;
- (d) Read the sections of the county rules that apply to the type of burning to be accomplished;
- (e) If not prohibited by this Division, obtain a fire permit from the fire district, county court or county commissioners before conducting any burning;

## **Definitions**

The definitions in OAR 340-200-0020, 340-204-0010 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020 or 340-204-0010, the definition in this rule applies to this division.

- (1) "Agricultural Burning for Disease or Pest Control" means open burning of waste infected or infested with a disease or pest for which the County Extension Service or Oregon Department of Agriculture identify as having no other practicable control.
- (2) "Agricultural Operation" 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.
- (3) "Agricultural Open Burning" means the open burning of any agricultural waste, except as provided in OAR 340-264-0040(5).
- (4) "Agricultural Waste" means any waste material generated or used by an agricultural operation, excluding those materials described in OAR 340-264-0060(3).
- (5) "Animal Disease Emergency" means the occurrence of a disease that the Oregon Department of Agriculture determines has potentially serious economic implications for the livestock industries of this state.
- (6) "Auxiliary Combustion Equipment" includes, but is not limited to, fans or air curtain incinerators.
- (7) "Combustion Promoting Materials" include, but are not limited to, propane, diesel oil, or jellied diesel.
- (8) "Commercial Open Burning" means the open burning of any commercial waste.
- (9) "Commercial Waste" means: (a) Any material except: (A) Agricultural waste; (B) Construction waste; (C) Demolition waste; (D) Domestic waste; (E) Industrial waste; and (F) Slash.
- (10) "Commission" means the Environmental Quality Commission.
- (11) "Construction Open Burning" means the open burning of any construction waste.
- (12) "Construction Waste" means any waste material generally used for, resulting from or produced by a building or construction project. Examples of construction waste are wood, lumber, paper, crating and packing materials processed for or used during construction, materials left after completion of construction, and materials collected during cleanup of a construction site.
- (13) "Daylight hours" means the time between 7:30 a.m. and two hours before sunset.
- (14) "Demolition Open Burning" means the open burning of demolition waste.
- (15) "Demolition Waste" means any material resulting from or produced by the complete or partial destruction or tearing down of any man-made structure, or the clearing of any site for land improvement or cleanup, excluding yard debris (domestic waste) and agricultural waste.
- (16) "Department" means the Department of Environmental Quality.
- (17) "Director" means the Director of the Department or delegated employee representative pursuant to ORS 468.045(3).
- (18) "Domestic Open Burning" means the open burning of any domestic waste.
- (19) "Domestic Waste" means household waste material, which includes paper, cardboard, clothing, yard debris, or other material generated in or around a dwelling of four-or-fewer-family-living units, or on the real property appurtenant to the dwelling. Such waste materials generated in or around a dwelling of more than four-family-living units are commercial wastes. Once domestic waste is removed from the property of origin, it becomes commercial waste.
- (20) "Fire Hazard" means the presence or accumulation of combustible material of such nature and in sufficient quantity that its continued existence constitutes an imminent and substantial danger to life, property, public welfare, or adjacent lands.
- (22) "Hazard to public safety" means fires that burn prohibited materials or result in smoke that substantially impairs visibility on a roadway.
- (23) "Industrial Open Burning" means the open burning of any industrial waste.

- (24) "Industrial Waste" means any waste material, including process waste, produced as the direct result of any manufacturing or industrial process.
- (25) "Land Clearing" means the removal of trees, brush, logs, stumps, debris or man-made structures for the purpose of site clean-up or site preparation. All waste material generated by land clearing is demolition waste except those materials included in the definitions of agricultural wastes, yard debris (domestic waste), and slash.
- (26) "Letter Permit" means an authorization issued pursuant to OAR 340-264-0180 to burn select materials at a defined site and under certain conditions.
- (27) "Local Jurisdiction" means:
- (a) The local fire permit issuing authority;
- (28) "Nuisance" means a substantial and unreasonable interference with another's use and enjoyment of real property, or the substantial and unreasonable invasion of a right common to members of the general public.
- (29) "Open Burning" means:
- (a) Burning in open, outdoor fires;
  - (b) Burning in burn barrels;
  - (c) Burning in incinerators that do not meet the emission limitations specified for solid and infectious waste incinerators in OAR 340-230-0100 through 340-230-0150; and
  - (d) Any other outdoor burning when combustion air is not effectively controlled and combustion products are not effectively vented through a stack or chimney.
- (30) "Open Burning Control Area" means an area established to control specific open burning practices or to maintain specific open burning standards that may be more stringent than those established for other areas of the state. Open burning control areas in the state are described in OAR 340-2640078.
- (31) "Person" means any individual, corporation, association, firm, partnership, joint stock company, public or municipal corporation, political subdivision, the state or any agency thereof, or the federal government or any agency thereof.
- (32) "Population" means the annual population estimate of incorporated cities within the State of Oregon issued by the Center for Population Research and Census, Portland State University, Portland, Oregon.
- (33) "Slash" means forest debris or woody vegetation to be burned that is related to the management of forest land used for growing and harvesting timber.
- (34) "Special Open Burning Control Area" means an area in the Willamette Valley where the Department restricts the practice of open burning. These areas are described in OAR 340-264-0078(6).
- (35) "Ventilation Index" means a number calculated by the Department relating to the ability of the atmosphere to disperse pollutants. The ventilation index is the product of the measured or estimated meteorological mixing depth in hundreds of feet and the measured or estimated average wind speed in knots through the mixed layer.
- (36) "Waste" includes any useless or discarded materials. Each waste is categorized in this Division as one of the following types: (a) Agricultural; (b) Commercial; (c) Construction; (d) Demolition; (e) Domestic; (f) Industrial; or (g) Slash.
- (37) "Yard Debris" means wood, needle or leaf materials from trees, shrubs or plants from the real property appurtenant to a dwelling of not more than four family living units so long as such debris remains on the property of origin. Once yard debris is removed from the property of origin, it becomes commercial waste. Yard debris is included in the definition of domestic waste.

### **340-264-0050**

#### **General Requirements Statewide**

This rule applies to all open burning, unless expressly limited by any other rule, regulation, permit, ordinance, order or decree of the Commission or other agency having jurisdiction:

- (2) A responsible person, or an expressly authorized agent, **must constantly attend all open burning**. This person must be capable of and have the necessary equipment for extinguishing the fire. This person also must completely extinguish the fire before leaving it.
- (4) To promote efficient burning and prevent excessive emissions of smoke, a responsible person must:
  - (a) The Department may contract with counties, rural fire protection districts, or other responsible individuals for the collection of the fees;

### **340-264-0060**

#### **General Prohibitions Statewide**

This rule applies to all open burning, unless expressly limited by any other rule, regulation, permit, ordinance, or order or decree of the Commission or other agency having jurisdiction:

- (1) The following persons are strictly liable for open burning in violation of this rule:

- (a) Each person who is in ownership, control or custody of the real property on which open burning occurs, including any tenant thereof;
  - (b) Each person who is in ownership, control or custody of the material that is burned; and
- (2) No person may cause or allow to be initiated or maintained any open burning that creates a nuisance or a hazard to public safety.
- (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.
- (4) No person may cause or allow to be initiated or maintained any open burning of any material in any part of the state on any day or at any time if the Department has notified the State Fire Marshal that such open burning is prohibited because of meteorological or air quality conditions pursuant to OAR 340-264-0070.

### **340-264-0075**

#### **Delegation of Authority**

Whenever the department finds that any city, county, fire protection district, forest protection district or state agency is capable of effectively administering the issuance and/or enforcement of permits under any or all of the open burning authority outlined within this division and is desirous of doing so, the department may delegate powers necessary for the issuance and/or enforcement of open burning permits to that entity. The department, upon finding that the entity is not effectively administering the program, may withdraw such delegation.

### **340-264-0078**

#### **Open Burning Control Areas**

Generally, areas around the more densely populated locations in the state and valleys or basins that restrict atmospheric ventilation are designated "Open Burning Control Areas". The practice of open burning may be more restrictive in open burning control areas than in other areas of the state. The specific open burning restrictions associated with these open burning control areas are listed in OAR 340-264-0100 through 340-264-0170 by county. The general locations of open burning control areas are depicted in **Figures 2** through **5**. The open burning control areas of the state are defined as follows:

- (1) All areas in or within three miles of the incorporated city limit of all cities with a population of 4,000 or more.
- (5) The boundaries of the Willamette Valley Open Burning Control Area are generally depicted in Figures 1 and 2. The area includes all of Benton, Clackamas, Linn, Marion, Multnomah, Polk, Washington and Yamhill Counties and that portion of Lane County east of Range 7 West.
- (6) "Special Open Burning Control Areas" are established around cities within the Willamette Valley Open Burning Control Area. The boundaries of these special open burning control areas are determined as follows:
  - (a) Any area in or within three miles of the boundary of any city of more than 1,000 but less than 45,000 population;
  - (b) Any area in or within six miles of the boundary of any city of 45,000 or more population;
  - (c) Any area between areas established by this rule where the boundaries are separated by three miles or less;
  - (d) Whenever two or more cities have a common boundary, the total population of these cities will determine the applicability of subsection (a) or (b) of this section and the municipal boundaries of each of the cities must be used to determine the limit of the special open burning control area.
- (7) A domestic burning ban area around the Portland metropolitan area is generally depicted in **Figure 1A**. This area encompasses parts of the special control area in Clackamas, Multnomah and Washington Counties.

#### **County Listing of Specific Open Burning Rules**

Except as otherwise provided, in addition to the general requirements and prohibitions listed in OAR 340-264-0050 and 340-264-0060, specific prohibitions of Agricultural, Commercial, Construction, Demolition, Domestic, and Industrial open burning are listed in separate rules for each county. The following list identifies the rule containing prohibitions of specific types of open burning applicable to a given county:

- (3) Clackamas County -- OAR 340-264-0120.

### **340-264-0120**

#### **Clackamas County Open Burning Requirements**

- (1) Industrial open burning is prohibited, except as provided in OAR 340-264-0180. (Letter Permit)
- (2) Agricultural open burning is allowed, subject to the requirements and prohibitions of local jurisdictions and the State Fire Marshal.

- (3) Commercial open burning is prohibited, except as may be provided by OAR 340-264-0180.
- (4) Construction and Demolition open burning is allowed outside of special open burning control areas, subject to OAR 340-264-0050, 340-264-0060 and 340-264-0070, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal. Unless authorized pursuant to OAR 340-264-0180, **Construction and Demolition open burning is prohibited within the following:**
- (a) Areas in or within six miles of the corporate city limits of Gladstone, Gresham, **Happy Valley**, Lake Oswego, **Milwaukie**, **Oregon City**, Portland, Rivergrove, Tualatin, West Linn and Wilsonville;
  - (b) **Areas in or within three miles of the corporate city limits of Canby, Estacada, Molalla and Sandy.**
  - (c) Any areas that meet the test in OAR 340-264-0078(6). (Open Burn Control Areas)
- (5) Domestic open burning is always prohibited within Open Burn Control Areas.

#### **340-264-0180**

##### **Letter Permits**

DEQ **does not** do Letter Permits within CCFD1 and has no plan to.

#### **340-264-0190**

##### **Forced Air Pit Incinerators**

Forced-air pit incineration may be approved as an alternative to open burning prohibited by this Division, provided that the following conditions are met:

- (1) The person requesting approval of forced-air pit incineration must demonstrate to the satisfaction of the Department that no feasible or practicable alternative to forced-air pit incineration exists.
- (2) The forced-air pit incineration facility must be designed, installed, and operated in such a manner that visible emissions do not exceed 40 percent opacity, as measured by EPA Method 9, for more than three minutes out of any one hour of operation following the initial 30 minute startup period.
- (3) The person requesting approval of a forced-air pit incineration facility must submit a Notice of Construction and Application for Approval pursuant to OAR 340-210-0200 through 340-210-0220 before the department will approve any facility.
- (4) A forced-air pit permit for operation of a forced-air pit incineration facility is required, based on the same conditions and requirements for letter permits in OAR 340-264-0180, except that both the term of the permit and the operation limit of the facility will be specified in the permit and must be appropriate to the purpose of the facility.

# **Oregon Fire Code**

## **SECTION 307**

### **OPEN BURNING AND RECREATIONAL FIRES**

**307.1** A person shall not kindle or maintain or authorize to be kindled or maintained any open burning unless conducted and approved in accordance with this section.

**307.1.1 Prohibited open burning.** Open burning when atmospheric conditions or local circumstances make such fires hazardous shall be prohibited.

**307.2 Permit required.** A permit shall be obtained from the fire code official prior to kindling a fire for recognized agricultural or range or wildlife management practices, prevention or control of disease or pests, or a bonfire. Application for such approval shall only be presented by and permits issued to the owner of the land upon which the fire is to be kindled.

**307.2.1 Authorization** Open burning shall only be permitted with prior approval from the state or local air and water quality management authority, provided that all conditions specified in the authorization are followed.

**307.4 Location.** The location for open burning shall not be less than 50 feet from any structure, and provisions shall be made to prevent the fire from spreading to within 50 feet of any structure.

**Exceptions:**

1. Fires in approved containers that are not less than 15 feet from a structure.
2. Minimum required distance from a structure shall be 25 feet where the pile size is 3 feet or less in diameter and 2 feet or less in height.

**307.4.8** A bonfire shall not be conducted within 50 feet of a structure or combustible material unless the fire is contained in a barbecue pit. Conditions which could cause a fire to spread within 50 feet of a structure shall be eliminated prior to ignition.

**307.4.2 Recreational fires.** Recreational fires shall not be conducted within 25 feet of a structure or combustible material. Conditions which could cause a fire to spread within 25 feet of a structure shall be eliminated prior to ignition.

**307.5 Attendance.** Open burning, bonfires or recreational fires shall be constantly attended until the fire is extinguished. A Minimum of one portable fire extinguisher with a minimum 4-A rating or other approved on site fire extinguishing equipment, such as dirt, sand, water barrel, garden hose or water truck, shall be available for immediate utilization.