

## CHAPTER 1 OPEN BURNING

### 2-1-1: ESTABLISHMENT AND PURPOSE:

- A. The purpose of this Chapter is to regulate open burning in Malheur County by requiring burning permits for certain types of burning and prohibiting certain types of burning, and to repeal existing ordinances regarding burning permits and fire usage.
- B. Consistent with the overall public welfare, it is the policy of the County:
1. To eliminate open burning disposal practices where alternative disposal methods are feasible and practicable;
  2. To encourage the development of alternative disposal methods;
  3. To emphasize resource recovery;
  4. To regulate specified types of open burning;
  5. To encourage utilization of the highest and best practicable burning methods to minimize emissions where other disposal practices are not feasible;
  6. To require specific programs and timetables for compliance with these rules;
  7. To insure proper identification of controlled and permitted burning during a time of fire danger. (1989 Code)

### 2-1-2: DEFINITIONS:

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

**AGRICULTURAL OPERATION:** 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 the raising and sale of livestock or poultry, or the produce thereof, which activity is necessary to serve that purpose; it does not include the construction and use of dwellings customarily provided in conjunction with the agricultural operation.

**AGRICULTURAL WASTE:** Any material actually generated or used by an agricultural operation.

**BLM:** Vale District Office of the Bureau of Land Management, Department of Interior, United States of America.

**BURN BARREL:** A device used for the sole purpose of burning domestic waste and covered by a mesh screen.

**BURNING PERMIT:** A burning permit issued pursuant to this Chapter.

**CLOSED SEASON:** The period of time from June 1 to September 30, unless a greater period of time is otherwise designated by the State Forester or his authorized representative.

**COMMERCIAL WASTE:** A. Any material except:

- Agricultural waste
- Construction waste
- Demolition waste
- Domestic waste
- Industrial waste

B. Examples of commercial waste are material from offices, wholesale or retail yards and outlets, warehouses, restaurants, mobile home parks, and dwellings containing more than four (4) family living units such as apartments, condominiums, hotels, motels or dormitories.

**CONSTRUCTION WASTE:** Any material actually resulting from or produced by a building or construction project. Examples of construction waste are wood, lumber, paper, crating and packing materials used during construction, materials left after completion of construction and materials collected during cleanup of a construction site.

**DEMOLITION WASTE:** Any material actually resulting from or produced by the complete or partial destruction or tearing down of any manmade structure or land clearing.

**DOMESTIC WASTE:** Household material, which includes paper, cardboard, clothing, yard debris, or other material actually generated in or around a dwelling of four (4) or fewer family living units, or on the real property appurtenant to the dwelling. Such materials actually generated in or around a dwelling of more than four (4) family living units are commercial wastes. Once domestic waste is removed from the property of origin, it becomes commercial waste.

**INDUSTRIAL WASTE:** Any material, including process waste, produced as the direct result of any manufacturing or industrial process.

**LAND CLEARING:** The removal of trees, brush, stumps, debris or manmade structures for the purpose of site clean-up or site preparation. All material generated by land clearing is demolition waste except those materials which are included in the definitions of agricultural wastes, and yard debris (domestic waste).

**OPEN BURNING:** Includes burning in:

- A. Open outdoor fires;
- B. Burn barrels;
- C. Incinerators which do not meet the emission limitations specified for refuse burning equipment in OAR 340-21-025; and

D. Any other burning which occurs in such a manner that combustion air is not effectively controlled and combustion products are not effectively vented through a stack or chimney.

**RURAL FIRE PROTECTION DISTRICT:** A rural fire protection district established pursuant to Oregon law, including, but not limited to, the Nyssa, Adrian, Ontario, Vale, Annex and Ironside Districts.

**YARD DEBRIS:** Wood, needle or leaf materials from trees, shrubs or plants from the real property appurtenant to a dwelling of not more than four (4) 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. (1989 Code)

### **2-1-3: EXCEPTIONS TO PROVISIONS:**

This Chapter shall not apply to:

- A. Fires set for traditional recreational purposes and traditional ceremonial occasions for which a fire is appropriate provided that no materials which may emit dense smoke or noxious odors are burned, except as specifically prohibited in Section 2-1-6 of this Chapter.
- B. The operation of any barbecue equipment.
- C. Fires set or permitted by any public agency when such fire is set or permitted in the performance of its official duty for the purpose of weed abatement, prevention or elimination of a fire hazard, or a hazard to public health or safety or instruction of employees in the methods of fire fighting, which in the opinion of the agency is necessary.
- D. Fires set pursuant to permit for the purpose of instruction of employees of private industrial concerns in methods of fire fighting, or for civil defense instruction. (1989 Code)

### **2-1-4: GENERAL REQUIREMENTS:**

- A. Fire Hazard: No person who owns, controls, has custody, or is a tenant on real property, or owns, controls or has custody of the material described herein, shall allow 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 to adjacent real or personal property.
- B. Open Burning:
  1. All open burning shall be constantly attended by the person responsible or an expressly authorized agent until extinguished.
  2. Each person who owns, controls, or has custody of the real property on which open burning occurs, including any tenant; or, who owns, controls, or has custody of the material which is burned, shall be considered the person responsible for the open burning. Any person who causes or allows open burning to be initiated or maintained shall also be considered a responsible person.
  3. It shall be the duty of each person responsible to promptly extinguish any burning which is in violation of this Chapter or of any permit issued by the County.

4. To promote efficient burning and prevent excessive emissions of smoke, each person responsible shall, except where inappropriate to agricultural open burning:
  - a. Assure that all combustible material is dried to the extent practicable. This action shall include covering the combustible material when practicable to protect the material from deposition from moisture in any form, including precipitation or dew.
  - b. Loosely stack or windrow the combustible material in such a manner as to eliminate dirt, rocks and other noncombustible material and promote an adequate air supply to the burning pile, and provide the necessary tools and equipment for the purpose.
  - c. Periodically restack or feed the burning pile and insure that combustion is essentially completed and smoldering fires are prevented and provide the necessary tools and equipment for the purpose.
5. Open burning in compliance with this Chapter does not exempt any person from any civil or criminal liability for consequences or damages resulting from such burning, nor does it exempt any person from complying with any other applicable law, ordinance, regulation, rule, permit, order or decree of this or any other governmental entity having jurisdiction.
6. No person shall cause or allow to be initiated or maintained any open burning which interferes unreasonably with enjoyment of life or property or which creates any of the following:
  - a. A private nuisance, except as created by agricultural open burning;
  - b. A public nuisance, except as created by agricultural open burning; or
  - c. A hazard to public safety.
7. No person shall cause or allow to be initiated or maintained any open burning of any wet garbage, plastic, 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.
8. No person shall cause or allow to be initiated or maintained any open burning of any material in any part of the County on any day or at any time if the County has been notified by the State Fire Marshal that such open burning is prohibited, and the County has given public notice thereof.
9. No person shall cause or allow to be initiated or maintained any open burning at any solid waste disposal site unless authorized by a solid waste permit issued by the State of Oregon.
10. Open burning of industrial waste is prohibited, except as allowed by the laws of the State of Oregon.
11. Open burning of commercial, construction or demolition waste is prohibited within three (3) miles of the City of Ontario.
12. Open burning of domestic waste shall take place in a common burn barrel which is used for the sole purpose of burning domestic waste and is covered by a mesh screen. Burning of domestic waste by any other means must be specifically approved and noted on the permit issued by the Environmental Health

Director pursuant to Section 2-1-5-1 of this Chapter.

- C. Hazardous Burning Conditions: Open burning should not be attempted when one or more of the following conditions exist:
1. Temperatures above one hundred degrees Fahrenheit (100°F).
  2. Wind velocity above twenty (20) miles per hour.
  3. Humidity below twenty percent (20%). (1989 Code)

### **2-1-5: BURNING PERMITS:**

- A. No person shall cause or permit to be initiated or maintained any open burning of commercial waste, construction waste, demolition waste or industrial waste without a burning permit.
- B. No person shall cause or permit to be initiated or maintained any open burning of agricultural waste during the closed season without a burning permit.
- C. A burning permit is not required for the burning of yard debris.
- D. The duration of a burning permit is:
1. Not to exceed one year in the case of commercial waste, construction waste, demolition waste or domestic waste.
  2. For the duration of the closed season, not to exceed a period of one hundred twenty (120) days, in the case of agricultural waste.
- E. All persons holding burning permits must report to the BLM and Rural Fire Protection District if the burning is located therein, prior to the commencement of burning, except those persons holding permits for the burning of domestic waste in a burn barrel. (1989 Code)

### **2-1-5-1: ISSUANCE OF BURNING PERMITS:**

- A. Issuance By Environmental Health Director: The Environmental Health Director may issue permits for open burning of construction, demolition, commercial and domestic waste by means other than a burn barrel.
1. A permit may only be issued on the basis of a written application for disposal of material by burning which has been approved by the Environmental Health Director. Each application for a permit shall contain the following:
    - a. The quantity and type of material proposed to be burned;
    - b. A listing of all alternative disposal methods and potential costs which have been identified or investigated;

- c. The expected amount of time which will be required to complete the burning;
  - d. The methods proposed to be used to insure complete and efficient combustion of the material;
  - e. The location of the proposed burning site;
  - f. A diagram showing the proposed burning site and the structures and facilities inhabited or used in the vicinity including distances thereto;
  - g. The expected frequency of the need to dispose of similar materials by burning in the future;
  - h. Any other information which the applicant considers relevant or which the County may require.
2. Upon receipt of a written application, the Environmental Health Director may approve the application if satisfied that:
- a. The applicant has demonstrated that all reasonable alternatives have been explored and no practicable alternative method for disposal of the materials exists; and
  - b. The proposed burning will not cause or contribute to significant degradation of air quality.
3. The Environmental Health Director also may deny an application for a permit or revoke or suspend an issued permit on any of the following grounds:
- a. Any material misstatement or omission in the application or a history of such misstatements or omissions by the applicant;
  - b. Any actual or projected violation of any statute, rule, regulation, order, permit, ordinance, judgment or decree.
4. In making a determination, the Environmental Health Director may consider the following:
- a. The conditions of the airshed of the proposed burning;
  - b. The other air pollution sources in the vicinity of the proposed burning;
  - c. The availability of other methods of disposal, and special circumstances or conditions which may impose a hardship on an applicant;
  - d. The frequency of the need to dispose of similar materials in the past and expected in the future;
  - e. The applicant's prior violation, if any;
  - f. The projected effect upon persons and property in the vicinity; and
  - g. Any other relevant factor.
5. Each permit issued by the Environmental Health Director shall contain the following:

- a. The location at which the burning is permitted to take place.
  - b. The number of actual calendar days on which burning is to take place, not to exceed seven (7).
  - c. The period during which the permit is valid, not to exceed a period of thirty (30) consecutive days. The actual period in the permit shall be specific to the needs of the applicant.
  - d. Equipment and methods required to be used by the applicant to insure burning is accomplished in the most efficient manner over the shortest period of time to minimize smoke production.
  - e. The limitations, if any, based on meteorological conditions required before burning may occur.
  - f. Reporting requirements for both starting the fire each day and completion of the requested burning.
- B. Issuance By County Court: The County Court or its designated representative may issue permits for open burning of agricultural or domestic waste by means of a burn barrel. The permit issued by the County Court shall contain at least the following:
1. The location at which the burning is permitted to take place.
  2. The duration of the permit.
  3. Equipment and methods required to be used by the applicant.
  4. Limitations, if any, on burning under the permit.
  5. Reporting requirements for starting the fire.
  6. Such other conditions the County considers to be desirable. (1989 Code)

### **2-1-5-2: CANCELLATION, REVOCATION OF BURNING PERMITS:**

The County Court or its designated representative may cancel or revoke any burning permit when by its determination it is necessary to prevent danger to life or property, to protect the air resources of the State, or for violation of any statute, rule, regulation, permit, order, ordinance, judgment or decree. (1989 Code)

### **2-1-6: BURNING IN OWYHEE RIVER AREA:**

- A. No person shall build, maintain or keep any fire which is fueled by other than dead and down natural vegetation, charcoal, gas or petroleum products on any land within one-quarter (1/4) of one mile of the bank of the Owyhee River from its entrance into Malheur County, Oregon to the slackwater of the Owyhee Reservoir. All fires shall be contained in a firepan or similar device of metal designed to contain said fire.
- B. Every overnight camper or overnight hiking party or person using fire or operating a motor driven vehicle or boat within the area described in subsection A of this Section, shall carry and keep reasonably accessible one bucket of at least one gallon capacity and one spade or shovel. (1989 Code)

