

CHAPTER 95: SMOKE MANAGEMENT

Section

95.01	Purpose
95.02	Definitions
95.03	Smoke Management Permits
95.04	Designated Burn Days
95.05	Haze Reduction Days
95.06	Prohibited Open Burning
95.07	Pre-Ignition Notification Requirements
95.08	General Requirements
95.09	Enforcement and Penalties
95.10	Smoke Management Committee
95.11	Severability

§ 95.01 PURPOSE

The intent of this ordinance is to protect open burning as an effective, efficient, and appropriate natural resource management tool; as well as to improve air quality over Umatilla County by considering 1) technical aspects of burning, 2) materials being burned, 3) potential particulate load generated by open fires, and 4) cost-effectiveness and efficiency of program administration and enforcement. In addition, the ordinance is intended to enhance air quality by increasing public awareness of the need to reduce smoke from all sources. Through education and information, all open burning in the county will be encouraged to be done only on designated BURN days and in a manner which both minimizes smoke generation and/or insures adequate smoke dispersal to minimize adverse effects of smoke.

Regulated Open Burning. Since open field fires and fires in orchards generate high volumes of particulate matter, this ordinance will regulate open burning of any land areas of two acres and larger as well as open burning in commercial orchards by requiring a Smoke Management Permit, by allowing open burning only on designated BURN days, and by requiring pre-ignition notification.

Open Burning Not Regulated by this Ordinance. The scope of this ordinance is not to include within its regulation the following open burning:

- A. Open burning within city limits;

- B. Open burning on State and Federal lands. The agencies managing these lands shall be encouraged to have a written smoke management program accompanied by active enforcement that the Board of Commissioners accepts as reasonably protecting air quality in Umatilla County;
- C. Open burning on lands managed by the Oregon Department of Forestry in accordance with the Oregon Smoke Management Plan;
- D. Open burning on lands within the boundaries of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR);
- E. Fires conducted by a fire district or state or federal agency for training, practice or research purposes.
- F. Smaller fires, including but not limited to burn barrels and to areas less than two acres within a fire district's boundaries (may be subject to regulation by a fire district);
- G. Smaller fires outside the incorporated cities and outside the boundaries of the fire districts (will still be subject to the County Open Burning Ordinance under Chapter 91 of the Umatilla County Code of Ordinances); and
- H. Open burning associated with commercial and industrial activity shall continue to be regulated by the Oregon Department of Environmental Quality (DEQ).

(Ord. 98-09, passed 11-4-98; Ord. 99-08, passed 10-20-99; Ord. 2006-07, passed 4-5-2006)

§ 95.02 DEFINITIONS

Board of Commissioners. Umatilla County Board of Commissioners.

Burn Day. Any day which the County has formally designated a Burn Day.

Fire District. Any fire protection district that is funded by taxes paid by those who reside within boundaries established and recorded by Umatilla County.

Open Burning. Open burning is 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 (see ORS 476.005(d, f, g)).

Person. Any individual person, corporation, limited liability company, partnership, joint venture or any other organization or institution.

Propane Flaming. Propane flaming is the use of a propane burner designed to apply fire and heat in a uniform pattern over the surface of an agricultural field for the purpose of uniformly eliminating combustible crop and other vegetative residues and/or reducing the population of plant pests and disease factors, thereby reducing the risks associated with crop pests, crop diseases, and weeds.

Smoke Management Program. The Smoke Management Ordinance, associated implementation measures, and the collective efforts of the parties and agencies that implement this ordinance.
(Ord. 98-09, passed 11-4-98; Ord. 99-08, passed 10-20-99)

§ 95.03 SMOKE MANAGEMENT PERMITS

1. A Smoke Management Permit shall be obtained prior to any of the following open burning in areas of the county outside the boundaries of a city:

- A. Persons Open Burning an area of two (2) contiguous acres or more, regardless of the material being burned;
- B. Persons burning tree prunings, stumps and limbs, or using burning devices to protect trees from frost damage in commercial orchards.

2. A Smoke Management Permit shall be valid for the current calendar year only. Except that Smoke Management Permits issued during the 1999 calendar year under this ordinance shall be valid

through December 31, 2000.

3. Application for a Smoke Management Permit shall be made with the Umatilla County Planning Department on a form approved by the Board of Commissioners. Applicants applying to burn multiple areas may submit a map with their application, including the burn location information on the map.

4. The permit fee shall be set by the Board of Commissioners and included in Chapter 39, Fee Schedules, of the Umatilla County Code of Ordinances. The Smoke Management Permit fees shall be designed to support the cost of administering the Umatilla County Smoke Management Program. Additionally, as required by ORS 468A.615, a \$4.00 fee may be collected for each acre of perennial or annual grass seed crop sanitized by open burning, if the County has entered into such a contract with the Department of Environmental Quality or its designee.

5. The Smoke Management Permit shall be available for inspection at the site of the permitted fire.

6. Upon request to the Board of Commissioners by a city, a fire district, or the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), the Smoke Management Permit may additionally serve as a burning permit within the boundaries of the city, the fire district, or the CTUIR. For those parties burning outside city limits and outside the boundaries of a fire district, the Smoke Management Permit may also serve as the County Burn Permit, if so decided by the Board of Commissioners.
(Ord. 98-09, passed 11-4-98; Ord. 99-08, passed 10-20-99)

§ 95.04 DESIGNATED BURN DAYS

1. A Smoke Management Permit holder shall conduct open burning only on days designated as BURN days.

2. Permit holders shall contact the designated Smoke Management Information Number prior to initiating a burn in order to determine the designated burn status for the day, which will be either BURN

or NO BURN. If both a morning and afternoon status report are provided, persons burning prior to 12:00 noon shall call for the morning burn status report and persons burning in the afternoon shall call for the afternoon burn status report, prior to igniting any fires after 10:00 a.m.

3. Umatilla County shall make a daily determination of designated burn status.

4. The designation of a BURN or NO BURN day shall be determined using credible scientific data concerning weather conditions that will be favorable for smoke dispersal. The Smoke Management Committee shall maintain an outline of procedures by which the burn status determination shall be made, including but not limited to (a) specific data to be used, (b) the sources of the data to be used, (c) technical justification for the choice of data, and (d) the manner in which the data shall be used to make the determination.

5. The following days shall automatically constitute NO BURN days:

- A. Air stagnation days designated by the National Weather Service or which might unreasonably impact periods of noncompliance with National Ambient Air Quality Standards for a local community, considering the meteorological and other ambient air conditions;
- B. Days on which the State Fire Marshall or designated agent has prohibited burning based on general fire safety conditions;
- C. The Pendleton Round-Up, from the Saturday preceding the Round-Up through the Sunday following the Round-Up;
- D. For the events listed below, no Open Burning shall be allowed within a radius of three miles of the event site, nor within 5 miles generally upwind of the site of the following events:
 - (1) Umatilla County Fair and Farm-City Pro Rodeo (Hermiston)
 - (2) Fort Henrietta Day Celebration (Echo)
 - (3) Hermiston Spud Festival
 - (4) OSU / USDA Experiment Station Research Field Day (Adams)

- (5) CTUIR events (to be specifically identified and applied for inclusion to the Smoke Management Committee on a yearly basis)
- (6) Caledonian Games (Athena)
- (7) Muddy-Frogwater Festival (Milton-Freewater);
- (8) Walla Walla Fair & Frontier Days (Walla Walla).

E. Additional days so designated by the Board of Commissioners due to adverse weather conditions or prolonged dry conditions.

F. A local Fire District may veto the ignition of a burn in its district on a designated Burn Day for the following reasons:

- (1) Inadequate fire district equipment and/or personnel available to fight a possible new wildfire (such as might occur if the fire district were already involved with an existing wildfire, or had not yet had time to reload their equipment following an earlier wildfire).
- (2) Inadequate fire district equipment and/or personnel available to fight a possible new wildfire.
- (3) Local wind conditions involving wind speed conditions in excess of 20 mph.
- (4) Current or predicted local wind conditions involve higher wind speeds that would potentially pose an unreasonable threat by moving a wildfire quickly toward some outdoor public event, or some significant combustible community or private asset.
- (5) Inappropriate smoke dispersal pattern from an existing burn in the area. In this instance, the local fire

district might caution the burner to ignite a smaller (40 acres, more or less) "test burn" to determine current local smoke dispersal conditions prior to igniting a larger burn.

- 6. The designation of a BURN day shall apply to all areas of the county, unless, as technology and procedures permit doing so in a reliable manner, two or more zones may be established in the county.
- 7. If the status report changes to NO BURN from an earlier status of BURN, no new fires may be ignited after the change of status.
- 8. On BURN days, no open burn shall be ignited before 7:30 A.M. or after three hours before sunset. All open flame shall be extinguished no later than one hour after sunset, including smoldering piles of materials, unless there is at least one person designated to provide ongoing fire safety watch at all times, including through the night if necessary to assure fire safety and to prevent unwarranted smoke emissions.
- 9. When a permit holder uses smudge pots, propane heaters, and/or other open burning devices to provide heat for the purpose of protecting commercial orchards from frost damage, that person shall be exempt from the requirement to burn only on a designated BURN day.

(Ord. 98-09, passed 11-4-98; Ord. 99-08, passed 10-20-99; Ord. 2006-07, passed 4-5-2006)

§ 95.05 HAZE REDUCTION DAYS

- 1. In order to protect the public health, safety, and aesthetic character of days when larger numbers of persons typically participate in outdoor activities, Open Burning shall be more strictly regulated on designated Haze Reduction Days.
- 2. The following days shall be Haze Reduction Days, requiring a higher standard for smoke dispersal before being designated with BURN day status for part or all of the county:

A. On the following national holidays,

countywide:

- (1) Memorial Day weekend (Saturday – Monday)
- (2) July 4th (Independence Day)
- (3) Labor Day weekend (Saturday – Monday)

B. On the days of the events listed below, outside a radius of three miles of the event site and beyond 5 miles generally upwind of the site:

- (1) Umatilla County Fair and Farm-City Pro Rodeo (Hermiston)
- (2) Fort Henrietta Day Celebration (Echo)
- (3) Hermiston Spud Festival
- (4) OSU / USDA Experiment Station Research Field Day (Adams)
- (5) CTUIR events (to be specifically identified and applied for inclusion to the Smoke Management Committee on a yearly basis)
- (6) Caledonian Games (Athena)
- (7) Muddy-Frogwater Festival (Milton-Freewater)
- (8) Walla Walla Fair & Frontier Days (Walla Walla)

3. The Smoke Management Committee shall establish the criteria for designation of a day as a Haze Reduction Day and on an annual basis shall review areas and events in the county that have requested designation as Haze Reduction Days. The Smoke Management Committee shall make recommendation to the Board of Commissioners for amending Haze Reduction Days.

(Ord. 98-09, passed 11-4-98; Ord. 99-08, passed 10-20-99; Ord. 2006-07, passed 4-5-2006)

§ 95.06 PROHIBITED OPEN BURNING

1. Permit Holders shall not ignite a fire if the wind speed exceeds 20 miles per hour and are discouraged from igniting fires when wind speeds exceed 15 miles per hour. Each burner shall be responsible for monitoring wind speed at the site of the fire with the understanding that designation as a BURN day is no guarantee of safe conditions for burning.

2. Tree stumps may not be open burned unless they

have first been removed from the ground and let dry, so they will burn without creating a dense smoke and without smoldering for an extended period of time.

3. No materials which are on the DEQ list of materials prohibited from open burning may be burned in Umatilla County. (See Oregon Administrative Rules (OAR) 340-264-0060(3).) (Ord. 98-09, passed 11-4-98; Ord. 99-08, passed 10-20-99; Ord. No. 2006-07, passed 4-5-2006)

§ 95.07 PRE-IGNITION NOTIFICATION REQUIREMENTS

Prior to igniting an open burn, Permit Holders shall notify Umatilla County of the Open Burning and also provide any other information requested by the County. In addition, Permit Holders will need to notify the appropriate fire protection agencies (such as a Fire District, County Dispatch, Tribal Fire Department, U.S. Forest Service, Oregon Department of Forestry, or other state or federal agencies) of the intent to burn. (Ord. 98-09, passed 11-4-98; Ord. 99-08, passed 10-20-99)

§ 95.08 GENERAL REQUIREMENTS

- 1. All open burning shall be done in a manner which
 - A. Does not unreasonably interfere with the enjoyment of life or property;
 - B. Does not create an unreasonable public or private nuisance; and
 - C. Does not pose an unreasonable hazard to public safety.
- 2. Smoke that is merely unsightly in the judgment of an individual shall not necessarily be considered a public nuisance.
- 3. Propane flaming of grass seed and cereal grain residue is allowed only after as much residue as practicable has been removed from the field, or if the field has been recently open burned. Propane flaming is allowed only on designated BURN days. This provision does not apply to the use of hand-held propane devices used for the purpose of igniting fires.

4. Open burning shall be conducted in a manner that reasonably minimizes the likelihood the smoke emitted will create unsafe driving conditions on nearby roads and highways.

5. Fire safety shall be the responsibility of each burner. Nothing in this ordinance shall relieve any permit holder or person who has started or authorized a fire, whether permitted or not, from responsibility or liability for damage or injury.

6. Reasonable efforts shall be taken to extinguish and/or minimize smoke from open burning of hay stacks, brush, and other materials that have been ignited, whether accidentally, by arson, or by natural events such as lightning. (Ord. 98-09, passed 11-4-98; Ord. 99-08, passed 10-20-99)

§ 95.09 ENFORCEMENT and PENALTIES

- 1. The following penalties shall be assessed for failure to comply with the requirements of the Smoke Management Ordinance:
 - A. The base penalty shall be not more than \$500.00 for Open Burning without first obtaining a Smoke Management Permit or for burning on a designated NO BURN day.
 - B. The base penalty shall be not more than \$100.00 for failure to properly report an intended burn to the County. The County shall not assess a penalty for this violation if a penalty is assessed by a Fire District.
 - C. The base penalty shall be not more than \$50.00 for any other violation of this ordinance.
- 2. The following procedure shall apply to violations of the Smoke Management Ordinance:
 - A. For a first violation, generally a written warning shall be given, along with information concerning open burning regulations, recommended smoke management practices, and fire safety. At the discretion of the enforcing officer, however, a citation may be given in lieu of a warning if the gravity of the violation justifies the

citation in the officer’s judgement. Regardless of whether a warning or citation is given, the offense shall be considered a “first offense” for purposes of the progressive penalties provided by this ordinance.

B. For each subsequent violation of the Smoke Management Ordinance within a 3 year time period, the penalty shall be increased as follows:

- (1) Second Offense. Penalty equal to 100 percent of the applicable maximum Base Penalty.
- (2) Third Offense. Penalty equal to 250 percent of the applicable maximum Base Penalty.
- (3) Fourth Offense. Depending upon the severity of the violations, including especially actions which jeopardize maintaining open burning as a management tool, the penalty shall be no less than 500 percent of the applicable maximum base penalty nor more than 750 percent, and the offender shall be declared an Habitual Offender.

C. A Person violating the Smoke Management Ordinance by burning without a Smoke Management Permit or burning on a NO BURN day more than 3 times in 3 calendar years shall be declared an Habitual Offender. Following convictions for 5 or more other violations of this ordinance in 3 calendar years, the court judge may, depending on the severity of the violations, also declare the violator an Habitual Offender. An Habitual Offender shall immediately forfeit their current Smoke Management Permit; and for a period of five (5) years following the date of designation as an Habitual Offender, the party shall be denied any further Smoke Management Permits.

3. Depending upon the nature of the offense, the violation may be reported to DEQ and be subject to further penalties under the DEQ Enforcement Procedures and Civil Penalties provisions (see OAR Ch 340, Div 12).

4. For purposes of this ordinance, a “Violator” shall

be considered to be:

- A. The Person who ignited the fire, and/or
- B. The Person which employs or contracts for the services of the person igniting the fire.

This regulation shall apply regardless of the organizational structure of the Person authorizing the burning. For purposes of this ordinance, an employer shall also include the Person that contracts for labor services.

5. The Person actually igniting the fire may be excused from a penalty under this ordinance if they can reasonably demonstrate that they were instructed to ignite the fire by their employer and that they were acting in accordance with their employer's instructions.

6. The Person who employs or contracts for the services of the Person igniting the fire may be excused from a penalty for violation of this ordinance only if they can reasonably demonstrate that they did not directly or by implication or by common practice authorize the fire to be ignited.

7. Any penalties assessed shall not be in lieu of any permit fees.

8. This ordinance is enforceable by any Umatilla County Sheriff’s deputy or any other law enforcement officer, or by those fire district or fire department officials authorized by the Sheriff or by city police chiefs to write citations and having jurisdiction within the boundaries of Umatilla County. Enforcement will occur by issuance of a citation in the form of a Oregon Uniform Citation and Complaint or Uniform Criminal Citation Complaint, and violators will be cited into Umatilla County Circuit Court.

(Ord. 98-09, passed 11-4-98; Ord. 99-08, passed 10-20-99)

§ 95.10 SMOKE MANAGEMENT COMMITTEE

1. The Board of Commissioners shall appoint and maintain a Smoke Management Committee (Committee) composed of no less than seven (7) members, generally representing the following:

- A. Various geographic areas of the county;
- B. Major commodities produced in the county, which rely upon burning as a significant management practice;
- C. Fire districts; and
- D. City fire departments or other fire protection agencies.

The Board of Commissioners may appoint other persons as ad hoc or advisory members to the Committee who, because of their particular expertise, interest, or involvement might significantly further the purposes of the Smoke Management Program.

2. The Committee may, with the approval of the Board of Commissioners, establish an executive committee that shall carry on the activity of the Committee between meetings of the whole committee.
3. The Committee shall remain under the direct supervision of the Board of Commissioners and shall be administered by County staff as designated by the Director of the Planning Department.
4. The Committee shall, in collaboration with the designated administrative head of the program, schedule meetings and other activities to:
 - A. Monitor the overall effectiveness of the Smoke Management Ordinance;
 - B. Develop and implement an annual Smoke Management Operating Plan, which shall be reviewed and approved by the Board of Commissioners prior to June 15 of each year, beginning in the year 2000. Once adopted by the Board of Commissioners, the annual Operating Plan shall be considered part of the Ordinance;
 - C. Following approval of the annual operating plan, conduct a public information meeting in the Hermiston area, the Pendleton area, and the Milton-Freewater area in cooperation with local fire departments and fire districts to assure that all interested parties have an opportunity to be informed concerning the current smoke management regulations;
 - D. Coordinate implementation of this ordinance with the various fire districts and city fire departments and with regional fire protection

- and control institutions, such as but not limited to, the Tribal Fire Department and the Area 9 Fire Defense Board (Umatilla, Morrow, and Gilliam Counties' mutual aid fire assistance program);
- E. Develop and recommend to the Board of Commissioners an annual operating budget for the program; and
- F. At least once annually, if appropriate, recommend improvements in the Ordinance and Operating Plan to the Board of Commissioners for possible adoption into the Ordinance.

5. The Committee shall also, if feasible, keep or cause to be kept a record of information necessary to effectively administer this ordinance, including filing any reports mandated by local, state or federal authorities, and shall at least once each year prepare and provide a report of this information to the Board of Commissioners.
6. The Committee, following review of complaints or other information that indicates or suggests a potentially significant smoke related air quality concern, may recommend to the Board of Commissioners other types of open burning that should be regulated by the Smoke Management Ordinance or amendments to the ordinance.
7. The Committee shall:
 - A. Provide to the public, or cause to be provided, information that appropriately addresses smoke management issues and practices, including the provisions of this ordinance;
 - B. Cooperate with various fire protection and air quality agencies to provide appropriate fire safety and protection information, with an emphasis on periods of increased volume of burning and increased risks associated with open burning;
 - C. Encourage landowners, tenants and operators to adopt practices that reduce smoke emissions from open burning, and where practical and economically feasible, encourage use of alternatives to burning;
 - D. Maintain a centralized automated phone system that allows the public to learn the designated burn status for the day, plus related information.

9-84

(Ord. 98-09, passed 11-4-98; Ord. 99-08, passed 10-20-99)

§ 95.11 SEVERABILITY

If any part of this ordinance or any provision adopted by reference herein is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this ordinance or any provisions adopted by reference herein.

(Ord. 98-09, passed 11-4-98; Ord. 99-08, passed 10-20-99)