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## MEMORANDUM

TO: City Council

FROM: Kelly M. Fernandez, Esq., City Attorney

DATE: September 5, 2018

RE: Open Burning

At the July 10, 2018 City Council meeting, the City Attorney's Office was directed to review the City's authority to regulate open burning. Pursuant to Section 590.02, Florida Statutes, the Florida Forest Service has the authority to authorize pile burning and land clearing debris burning. The Florida Forest Service may delegate its authority to manage the open burning of land clearing debris to a municipality if done in accordance with Section 590.125, Florida Statutes.

In order for a municipality to gain approval to exercise the authority of the Florida Forest Service, the municipality's program must:

1. Meet the requirements of Section 590.125(2) & (4) and any rules adopted under those subsections. These subsections address items such as landowner consent, firebreaks, and end times for burns.
2. Provide for obtaining and performing a burn authorization that complies with Sections 590.125(2) and (4) and any rules adopted under those subsections.
3. Provide for the enforcement of the program's requirements.
4. Provide financial, personnel, and other resources needed to carry out the program.

Lakewood Ranch  
6853 Energy Court  
Lakewood Ranch, Florida 34240

Venice  
217 Nassau Street S.  
Venice, Florida 34285

The applicable rules in the Florida Administrative Code provide further detail on items such as the burn plan required to be submitted (including number of personnel and equipment types to be involved, evaluation of anticipated impacts on smoke sensitive areas, desired weather factors, etc.) and requirements associated with the use of air curtain incinerators. Also of note, it appears that fires generally have to be ignited after sunrise and extinguished prior to sunset.

Based on the Florida Forest Service's authority over open burning, it does not appear permissible for the City to establish additional restrictions or conditions on the issuance of open burning permits without the City taking over the management of open burning from the Forest Service. Sarasota County's approach to open burning may be worth further consideration. While it does not authorize open burning in the place of the Florida Forest Service, it does have Code provisions (attached) explicitly prohibiting the creation of a nuisance from open burning and enforcement related thereto.

Attachments (pertinent provisions marked by \*):

Section 590.015, F.S. "Definitions"

Section 590.02, F.S. "Florida Forest Services; powers, authority, and duties...."

Section 590.125, F.S. "Open burning authorized by the Florida Forest Service"

Section 54-116, Sarasota County Code of Ordinances "Open burning"

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## The 2018 Florida Statutes

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Title XXXV

## AGRICULTURE, HORTICULTURE, AND ANIMAL INDUSTRY

Chapter 590

## FOREST PROTECTION

[View Entire Chapter](#)

**590.015**     **Definitions.**—As used in this chapter, the term:

- (1) “Broadcast burning” means the burning of agricultural or natural vegetation by allowing fire to move across a predetermined area of land. The term does not include the burning of vegetative debris that is piled or stacked.
- (2) “Fire management services” means presuppression fireline plowing, prescribed burning assistance, contract prescribed burning, prescribed and wildfire management training, and other activities associated with prevention, detection, and suppression of wildfires.
- (3) “Fuel reduction” means the application of techniques that reduce vegetative fuels, and may include prescribed burning, manual and mechanical clearing, and the use of herbicides.
- (4) “Open burning” means any outdoor fire or open combustion of material that produces visible emissions.
- (5) “Wildfire” means any vegetative fire that threatens to destroy life, property, or natural resources.
- (6) “Wild land” means any public or private managed or unmanaged forest, urban/interface, pasture or range land, recreation lands, or any other land at risk of wildfire.

**History.**—s. 2, ch. 99-292; s. 31, ch. 2000-308; ss. 54, 71, ch. 2011-206; s. 57, ch. 2012-7.

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## The 2018 Florida Statutes

### Title XXXV

#### AGRICULTURE, HORTICULTURE, AND ANIMAL INDUSTRY

### Chapter 590

#### FOREST PROTECTION

### [View Entire Chapter](#)

#### **590.02 Florida Forest Service; powers, authority, and duties; liability; building structures; Withlacoochee Training Center.—**

- (1) The Florida Forest Service has the following powers, authority, and duties to:
  - (a) Enforce the provisions of this chapter;
  - (b) Prevent, detect, and suppress wildfires wherever they may occur on public or private land in this state and <sup>1</sup>do all things necessary in the exercise of such powers, authority, and duties;
  - (c) Provide firefighting crews, who shall be under the control and direction of the Florida Forest Service and its designated agents;
  - (d) Appoint center managers, forest area supervisors, forestry program administrators, a forest protection bureau chief, a forest protection assistant bureau chief, a field operations bureau chief, deputy chiefs of field operations, district managers, forest operations administrators, senior forest rangers, investigators, forest rangers, firefighter rotorcraft pilots, and other employees who may, at the Florida Forest Service's discretion, be certified as forestry firefighters pursuant to s. ~~633.408~~(8). Other law notwithstanding, center managers, district managers, forest protection assistant bureau chief, and deputy chiefs of field operations have Selected Exempt Service status in the state personnel designation;
  - (e) Develop a training curriculum for forestry firefighters which must contain the basic volunteer structural fire training course approved by the Florida State Fire College of the Division of State Fire Marshal and a minimum of 250 hours of wildfire training;
  - (f) Pay the cost of the initial commercial driver license examination fee for those employees whose position requires them to operate equipment requiring a license. This paragraph is intended to be an authorization to the department to pay such costs, not an obligation;
  - (g) Provide fire management services and emergency response assistance and <sup>2</sup>set and charge reasonable fees for performance of those services. Moneys collected from such fees shall be deposited into the Incidental Trust Fund of the Florida Forest Service;
  - (h) Require all state, regional, and local government agencies operating aircraft in the vicinity of an ongoing wildfire to operate in compliance with the applicable state Wildfire Aviation Plan;
  - (i) Authorize broadcast burning, prescribed burning, pile burning, and land clearing debris burning to carry out the duties of this chapter and the rules adopted thereunder; and
  - (j) Make rules to accomplish the purposes of this chapter.
- (2) The Florida Forest Service's employees, and the firefighting crews under their control and direction, may enter upon any lands for the purpose of preventing, detecting, and suppressing wildfires and investigating smoke complaints or open burning not in compliance with authorization and to enforce the provisions of this chapter.
- (3) Employees of the Florida Forest Service and of federal, state, and local agencies, and all other persons and entities that are under contract or agreement with the Florida Forest Service to assist in firefighting operations as well as those entities, called upon by the Florida Forest Service to assist in firefighting may, in the performance of their duties, set counterfires, remove fences and other obstacles, dig trenches, cut firelines, use water from public and private sources, and carry on all other customary activities in the fighting of wildfires without incurring liability to any person or entity. The manner in which the Florida Forest Service monitors a smoldering wildfire or smoldering prescribed fire or fights any wildfire are planning level activities for which sovereign immunity applies and is not waived.
- (4)(a) The department may build structures, notwithstanding chapters 216 and 255, not to exceed a cost of \$50,000 per structure from existing resources on forest lands, federal excess property, and unneeded existing structures. These structures must meet all applicable building codes.
  - (b) Notwithstanding s. 553.80(1), the department shall exclusively enforce the Florida Building Code as it pertains to wildfire, law enforcement, and other Florida Forest Service facilities under the jurisdiction of the department.

(5) The Florida Forest Service shall organize its operational units to most effectively prevent, detect, and suppress wildfires, and to that end, may employ the necessary personnel to manage its activities in each unit. The Florida Forest Service may construct lookout towers, roads, bridges, firelines, and other facilities and may purchase or fabricate tools, supplies, and equipment for firefighting. The Florida Forest Service may reimburse the public and private entities that it engages to assist in the suppression of wildfires for their personnel and equipment, including aircraft.

(6) The Florida Forest Service shall undertake privatization alternatives for fire prevention activities including constructing fire lines and conducting prescribed burns and, where appropriate, entering into agreements or contracts with the private sector to perform such activities.

(7) The Florida Forest Service may organize, staff, equip, and operate the Withlacoochee Training Center. The center shall serve as a site where fire and forest resource managers can obtain current knowledge, techniques, skills, and theory as they relate to their respective disciplines.

(a) The center may establish cooperative efforts involving federal, state, and local entities; hire appropriate personnel; and engage others by contract or agreement with or without compensation to assist in carrying out the training and operations of the center.

(b) The center shall provide wildfire suppression training opportunities for rural fire departments, volunteer fire departments, and other local fire response units.

(c) The center shall focus on curriculum related to, but not limited to, fuel reduction, an incident management system, prescribed burning certification, multiple-use land management, water quality, forest health, environmental education, and wildfire suppression training for structural firefighters.

(d) The center may assess appropriate fees for food, lodging, travel, course materials, and supplies in order to meet its operational costs and may grant free meals, room, and scholarships to persons and other entities in exchange for instructional assistance.

(8)(a) The Cross City Work Center shall be named the L. Earl Peterson Forestry Station. This is to honor Mr. L. Earl Peterson, Florida's sixth state forester, whose distinguished career in state government has spanned 44 years, and who is a native of Dixie County.

(b) The Madison Forestry Station shall be named the Harvey Greene Sr. Forestry Station. This is to honor Mr. Harvey Greene Sr., a World War I veteran and pioneer in forestry in Madison County. In 1947, Mr. Harvey Greene Sr. offered to give the land on which the forestry station is located to the state; however, at that time, the state could not accept donations of land. Instead, Mr. Harvey Greene Sr. sold the land to the state and, with the proceeds of the sale, purchased forestry equipment to be used by the citizens of Madison County to plant trees and fight wildfires.

(9)(a) Notwithstanding ss. 273.055 and 287.16, the department may retain, transfer, warehouse, bid, destroy, scrap, or otherwise dispose of surplus equipment and vehicles that are used for wildland firefighting.

(b) All money received from the disposition of state-owned equipment and vehicles that are used for wildland firefighting shall be retained by the department. Money received pursuant to this section is appropriated for and may be disbursed for the acquisition of exchange and surplus equipment used for wildland firefighting, and for all necessary operating expenditures related to such equipment, in the same fiscal year and the fiscal year following the disposition. The department shall maintain records of the accounts into which the money is deposited.

(10)(a) Notwithstanding the provisions of s. 252.38, the Florida Forest Service has exclusive authority to require and issue authorizations for broadcast burning and agricultural and silvicultural pile burning. An agency, commission, department, county, municipality, or other political subdivision of the state may not adopt or enforce laws, regulations, rules, or policies pertaining to broadcast burning or agricultural and silvicultural pile burning.

(b) The Florida Forest Service may delegate to a county, municipality, or special district its authority:

1. As delegated by the Department of Environmental Protection pursuant to ss. 403.061(28) and 403.081, to manage and enforce regulations pertaining to the burning of yard trash in accordance with s. 590.125(6).

2. To manage the open burning of land clearing debris in accordance with s. 590.125.

**History.**—s. 14, ch. 17029, 1935; CGL 1936 Supp. 4151(10-ss); s. 1, ch. 26915, 1951; s. 1, ch. 57-55; ss. 2, 3, ch. 67-371; ss. 14, 31, 35, ch. 69-106; s. 1, ch. 77-70; s. 1, ch. 79-91; s. 142, ch. 79-190; s. 231, ch. 79-400; s. 1, ch. 80-40; s. 1, ch. 81-111; s. 2, ch. 83-178; s. 2, ch. 86-59; s. 3, ch. 88-321; s. 1, ch. 92-187; s. 8, ch. 92-290; s. 103, ch. 92-291; s. 23, ch. 96-231; s. 9, ch. 97-220; s. 3, ch. 99-292; s. 76, ch. 2000-154; s. 27, ch. 2000-197; s. 39, ch. 2002-295; s. 55, ch. 2011-206; s. 58, ch. 2012-7; s. 45, ch. 2012-190; s. 151, ch. 2013-183; s. 23, ch. 2013-226; s. 131, ch. 2014-17; s. 148, ch. 2014-150; s. 36, ch. 2017-85; s. 55, ch. 2018-84.

<sup>1</sup>Note.—The word “to” preceding the word “do” was deleted by the editors.

<sup>2</sup>Note.—The word “to” preceding the word “set” was deleted by the editors.

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## The 2018 Florida Statutes

### Title XXXV

#### AGRICULTURE, HORTICULTURE, AND ANIMAL INDUSTRY

### Chapter 590

#### FOREST PROTECTION

### [View Entire Chapter](#)

#### **590.125 Open burning authorized by the Florida Forest Service.—**

(1) **DEFINITIONS.**—As used in this section, the term:

- (a) “Certified pile burner” means an individual who successfully completes the pile burning certification program of the Florida Forest Service and possesses a valid pile burner certification number.
- (b) “Certified pile burning” means a pile burn conducted in accordance with a written pile burning plan by a certified pile burner.
- (c) “Certified prescribed burn manager” means an individual who successfully completes the certified prescribed burning program of the Florida Forest Service and possesses a valid certification number.
- (d) “Certified prescribed burning” means prescribed burning in accordance with a written prescription conducted by a certified prescribed burn manager.
- (e) “Contained” means that fire and smoldering exist entirely within established or natural firebreaks.
- (f) “Completed” means that for:
  - 1. Broadcast burning, no continued lateral movement of fire across the authorized area into entirely unburned fuels within the authorized area.
  - 2. Certified pile burning or pile burning, no visible flames exist.
  - 3. Certified pile burning or pile burning in an area designated as smoke sensitive by the Florida Forest Service, no visible flames, smoke, or emissions exist.
- (g) “Gross negligence” means conduct so reckless or wanting in care that it constitutes a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct.
- (h) “Pile burning” means the burning of silvicultural, agricultural, land-clearing, or tree-cutting debris originating onsite, which is stacked together in a round or linear fashion, including, but not limited to, a windrow. Pile burning authorized by the Florida Forest Service is a temporary procedure, which operates on the same site for 6 months or less.
- (i) “Pile burn plan” means a written plan establishing the method of conducting a certified pile burn.
- (j) “Prescribed burning” means the application of fire by broadcast burning for vegetative fuels under specified environmental conditions, while following appropriate measures to guard against the spread of fire beyond the predetermined area to accomplish the planned fire or land management objectives.
- (k) “Prescription” means a written plan establishing the conditions and methods for conducting a certified prescribed burn.
- (l) “Smoldering” means the continued consumption of fuels, which may emit flames and smoke, after a fire is contained.
- (m) “Yard trash” means vegetative matter resulting from landscaping and yard maintenance operations and other such routine property cleanup activities. The term includes materials such as leaves, shrub trimmings, grass clippings, brush, and palm fronds.



#### **(2) NONCERTIFIED BURNING.—**

- (a) Persons may be authorized to broadcast burn or pile burn pursuant to this subsection if:
  - 1. There is specific consent of the landowner or his or her designee;
  - 2. Authorization has been obtained from the Florida Forest Service or its designated agent before starting the burn;
  - 3. There are adequate firebreaks at the burn site and sufficient personnel and firefighting equipment for the containment of the fire;
  - 4. The fire remains within the boundary of the authorized area;
  - 5. The person named responsible in the burn authorization or a designee is present at the burn site until the fire is completed;
  - 6. The Florida Forest Service does not cancel the authorization; and
  - 7. The Florida Forest Service determines that air quality and fire danger are favorable for safe burning.

(b) A new authorization is not required for smoldering that occurs within the authorized burn area unless new ignitions are conducted by the person named responsible in the burn authorization or a designee.

(c) Monitoring the smoldering activity of a burn does not require an additional authorization even if flames begin to spread within the authorized burn area due to ongoing smoldering.

(d) A person who broadcast burns or pile burns in a manner that violates this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) CERTIFIED PRESCRIBED BURNING; LEGISLATIVE FINDINGS AND PURPOSE.—

(a) The application of prescribed burning is a land management tool that benefits the safety of the public, the environment, and the economy of the state. The Legislature finds that:

1. Prescribed burning reduces vegetative fuels within wild land areas. Reduction of the fuel load reduces the risk and severity of wildfire, thereby reducing the threat of loss of life and property, particularly in urban areas.

2. Most of Florida's natural communities require periodic fire for maintenance of their ecological integrity. Prescribed burning is essential to the perpetuation, restoration, and management of many plant and animal communities. Significant loss of the state's biological diversity will occur if fire is excluded from fire-dependent systems.

3. Forestland and rangeland constitute significant economic, biological, and aesthetic resources of statewide importance. Prescribed burning on forestland prepares sites for reforestation, removes undesirable competing vegetation, expedites nutrient cycling, and controls or eliminates certain forest pathogens. On rangeland, prescribed burning improves the quality and quantity of herbaceous vegetation necessary for livestock production.

4. The state purchased hundreds of thousands of acres of land for parks, preserves, wildlife management areas, forests, and other public purposes. The use of prescribed burning for management of public lands is essential to maintain the specific resource values for which these lands were acquired.

5. A public education program is necessary to make citizens and visitors aware of the public safety, resource, and economic benefits of prescribed burning.

6. Proper training in the use of prescribed burning is necessary to ensure maximum benefits and protection for the public.

7. As Florida's population continues to grow, pressures from liability issues and nuisance complaints inhibit the use of prescribed burning. Therefore, the Florida Forest Service is urged to maximize the opportunities for prescribed burning conducted during its daytime and nighttime authorization process.

(b) Certified prescribed burning pertains only to broadcast burning for purposes of silviculture, wildland fire hazard reduction, wildlife management, ecological maintenance and restoration, and agriculture. It must be conducted in accordance with this subsection and:

1. May be accomplished only when a certified prescribed burn manager is present on site with a copy of the prescription and directly supervises the certified prescribed burn until the burn is completed, after which the certified prescribed burn manager is not required to be present.

2. Requires that a written prescription be prepared before receiving authorization to burn from the Florida Forest Service.

a. A new prescription or authorization is not required for smoldering that occurs within the authorized burn area unless new ignitions are conducted by the certified prescribed burn manager.

b. Monitoring the smoldering activity of a certified prescribed burn does not require a prescription or an additional authorization even if flames begin to spread within the authorized burn area due to ongoing smoldering.

3. Requires that the specific consent of the landowner or his or her designee be obtained before requesting an authorization.

4. Requires that an authorization to burn be obtained from the Florida Forest Service before igniting the burn.

5. Requires that there be adequate firebreaks at the burn site and sufficient personnel and firefighting equipment to contain the fire within the authorized burn area.

a. Fire spreading outside the authorized burn area on the day of the certified prescribed burn ignition does not constitute conclusive proof of inadequate firebreaks, insufficient personnel, or a lack of firefighting equipment.

b. If the certified prescribed burn is contained within the authorized burn area during the authorized period, a strong rebuttable presumption shall exist that adequate firebreaks, sufficient personnel, and sufficient firefighting equipment were present.

c. Continued smoldering of a certified prescribed burn resulting in a subsequent wildfire does not by itself constitute evidence of gross negligence under this section.

6. Is considered to be in the public interest and does not constitute a public or private nuisance when conducted under applicable state air pollution statutes and rules.

7. Is considered to be a property right of the property owner if vegetative fuels are burned as required in this subsection.

(c) A property owner or leaseholder or his or her agent, contractor, or legally authorized designee is not liable pursuant to s. 590.13 for damage or injury caused by the fire, including the reignition of a smoldering, previously contained burn, or resulting smoke or considered to be in violation of subsection (2) for burns conducted in accordance with this subsection, unless gross negligence is proven. The Florida Forest Service is not liable for burns for which it issues authorizations.

(d) Any certified burner who violates this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(e) The Florida Forest Service shall adopt rules for the use of prescribed burning and for certifying and decertifying certified prescribed burn managers based on their past experience, training, and record of compliance with this section.

\* (4) CERTIFIED PILE BURNING.—

(a) Certified pile burning pertains to the disposal of piled, naturally occurring debris from agricultural, silvicultural, land-clearing, or tree-cutting debris originating onsite. Certified pile burning must be conducted in accordance with the following:

1. A certified pile burner must ensure, before ignition, that the piles are properly placed and that the content of the piles is conducive to efficient burning.

2. A certified pile burner must ensure that the authorized burn is completed no later than 1 hour after sunset. If the burn is conducted in an area designated by the Florida Forest Service as smoke sensitive, a certified pile burner must ensure that the authorized burn is completed at least 1 hour before sunset.

3. A written pile burning plan must be prepared before receiving authorization from the Florida Forest Service to burn and must be onsite and available for inspection by a department representative.

4. The specific consent of the landowner or his or her agent must be obtained before requesting authorization to burn.

5. An authorization to burn must be obtained from the Florida Forest Service or its designated agent before igniting the burn.

6. There must be adequate firebreaks and sufficient personnel and firefighting equipment at the burn site to contain the burn to the piles authorized.

(b) If a burn is conducted in accordance with paragraph (a), the property owner and his or her agent are not liable under s. 590.13 for damage or injury caused by the fire or resulting smoke, and are not in violation of subsection (2), unless gross negligence is proven.

(c) A certified pile burner who violates this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(d) The Florida Forest Service shall adopt rules regulating certified pile burning. The rules shall include procedures and criteria for certifying and decertifying certified pile burn managers based on past experience, training, and record of compliance with this section.

(5) WILDFIRE HAZARD REDUCTION TREATMENT BY THE FLORIDA FOREST SERVICE.—The Florida Forest Service may conduct fuel reduction initiatives, including, but not limited to, burning and mechanical and chemical treatment, on any area of wild land within the state which is reasonably determined to be in danger of wildfire in accordance with the following procedures:

(a) Describe the areas that will receive fuels treatment to the affected local governmental entity.

(b) Publish a treatment notice, including a description of the area to be treated, in a conspicuous manner in at least one newspaper of general circulation in the area of the treatment not less than 10 days before the treatment.

(c) Prepare and send a notice to all landowners in each area designated by the Florida Forest Service as a wildfire hazard area. The notice must describe particularly the area to be treated and the tentative date or dates of the treatment and must list the reasons for and the expected benefits from the wildfire hazard reduction.

(d) Consider any landowner objections to the fuels treatment of his or her property. The landowner may apply to the director of the Florida Forest Service for a review of alternative methods of fuel reduction on the property. If the director or his or her designee does not resolve the landowner objection, the director shall convene a panel made up of the local forestry unit manager, the fire chief of the jurisdiction, and the affected county or city manager, or any of their designees. If the panel's recommendation is not acceptable to the landowner, the landowner may request further consideration by the Commissioner of Agriculture or his or her designee and shall thereafter be entitled to an administrative hearing pursuant to the provisions of chapter 120.

(6) FLORIDA FOREST SERVICE APPROVAL OF LOCAL GOVERNMENT OPEN BURNING AUTHORIZATION PROGRAMS.—

\* (a) A county or municipality may exercise the authority of the Florida Forest Service, if delegated by the Florida Forest Service under this subsection, to issue authorizations for the burning of yard trash or debris from land-clearing operations. A county's or municipality's existing or proposed open burning authorization program must:

1. Be approved by the Florida Forest Service. The Florida Forest Service may not approve a program if it fails to meet the requirements of subsections (2) and (4) and any rules adopted under those subsections.



2. Provide by ordinance or local law the requirements for obtaining and performing a burn authorization that complies with subsections (2) and (4) and any rules adopted under those subsections.

3. Provide for the enforcement of the program's requirements.

4. Provide financial, personnel, and other resources needed to carry out the program.

(b) If the Florida Forest Service determines that a county's or municipality's open burning authorization program does not comply with subsections (2) and (4) and any rules adopted under those subsections, the Florida Forest Service shall require the county or municipality to take necessary corrective actions within 90 days after receiving notice from the Florida Forest Service of its determination.

1. If the county or municipality fails to take the necessary corrective actions within the required period, the Florida Forest Service shall resume administration of the open burning authorization program in the county or municipality and the county or municipality shall cease administration of its program.

2. Each county and municipality administering an open burning authorization program must cooperate with and assist the Florida Forest Service in carrying out the powers, duties, and functions of the Florida Forest Service.

3. A person who violates the requirements of a county's or municipality's open burning authorization program, as provided by ordinance or local law enacted pursuant to this subsection, commits a violation of this chapter, punishable as provided in s. 590.14.

(7) DUTIES OF AGENCIES.—The Department of Education shall incorporate, where feasible and appropriate, the issues of fuels treatment, including prescribed burning, into its educational materials.

History.—s. 9, ch. 99-292; s. 41, ch. 2002-295; s. 21, ch. 2005-210; s. 56, ch. 2011-206; s. 61, ch. 2012-7; s. 25, ch. 2013-226; s. 150, ch. 2014-150.

## Sec. 54-116. - Open burning.

(a) *Definitions.* As used in this section, the following words shall have the following meaning:

- (1) *Approved Fuel* shall mean Clean Wood, charcoal, commercially available fire starter logs or briquettes, liquefied petroleum gas, natural gas, or butane.
- (2) *Clean Wood* shall mean dry natural wood which has the following characteristics:
  - a. has not been painted, varnished, or coated with any material;
  - b. is not pressure treated with preservatives;
  - c. does not contain resins or glues as in plywood or composite wood products; and
  - d. has a moisture content favorable to burning and to minimize smoke.
- (3) *Grill* shall mean a device designed and used for cooking where a combustion source is elevated off the ground and food cooked over open flame or coals using an Approved Fuel.
- (4) *National Fire Protection Association (NFPA)* means the international nonprofit organization, established in 1896, whose mission is to reduce the worldwide burden of fire and other hazards to quality of life by providing and advocating consensus codes and standards, research, training, and education.
- \* (5) *Nuisance* shall mean sparks, ash, smoke, or odor emissions that:
  - a. interfere with the reasonable use and enjoyment of property, including any leasehold interest, for those persons other than that of the individual(s) conducting the Open Burn; or
  - b. create an unreasonable health hazard to persons other than that of the individual(s) conducting the Open Burn.

In deciding whether conditions constitute a nuisance, a code enforcement officer, or the Fire Chief or his or her designee shall exercise their best professional judgment based on the following factors:


- a. atmospheric conditions such as high winds, wind direction, heavy fog, inversion, and the air quality index;
  - b. size of the fire;
  - c. type of fuel used;
  - d. size of the parcel where the fire is located;
  - e. location of the fire on a parcel;
  - f. location of structures, personal property, vegetation, or other material compared to the fire;
  - g. amount of smoke, odor, and ash produced by the fire; and
  - h. the sensitivity of persons, other than those conducting the Open Burn, to sparks, ash, smoke, or odor emissions due to conditions such as but not limited to asthma, allergies, and other illness or respiratory impairments.
- (6) *Open Burning or Open Fire* shall mean any outdoor fire or outdoor smoke producing process from which air contaminants are emitted into the outdoor atmosphere. Open fires include, but are not limited to, Recreational Fires in containers or modified containers such as a Grill or a Warming Type Container.
- (7) *Recreational Fire* shall mean the noncommercial burning of Approved Fuel for pleasure, religious, ceremonial, cooking, or similar purposes, which is not contained in an incinerator, a grill, or a barbecue pit, and in which the total fuel area is not exceeding three feet in diameter and two feet in height. Recreational fires shall include fires in Warming Type Containers.
- (8) *Unsafe Fire* shall mean a fire which places structures, personal property, vegetation, or other material at immediate risk of accidental combustion. This determination shall include evaluation of the following factors when present:
  - a. atmospheric conditions such as high winds, wind direction, heavy fog, inversion, and the air quality index;
  - b. size of the fire;
  - c. type of fuel used;
  - d. size of the parcel where the fire is located;



- e. location of the fire on a parcel;
- f. location of structures, personal property, vegetation, or other material compared to the fire;
- g. amount of smoke, odor, and ash produced by the fire;
- h. availability of water or other fire extinguishing equipment and knowledge of how to use that equipment to control the fire;
- i. time of the day and duration of the fire; and
- j. possibility of hazard to roads, railroads, or airfields.

An Unsafe Fire does not include fire from a cigarette, cigar, or pipe.

- (9) *Warming Type Containers* shall mean outdoor warming fire containers such as chimineas, fire bowls or fire houses, and other similar portable devices, and immobile, permanently installed structures such as a fireplace designed for outdoor use fueled by Approved Fuel.
- (10) *Waste Pesticide Containers* shall mean any containers made of combustible materials, including but not limited to paper, plastic, or burlap, which formerly contained pesticides and which the manufacturer or formulator provided as an end user conveyance for the specified product.
- (11) *Yard Waste* shall mean vegetative matter resulting from landscaping and yard maintenance operations and other such routine property clean-up activities. It includes materials such as leaves, shrub trimmings, grass clippings, palm fronds, tree cutting debris, and brush.
- (b) *General Prohibition Against Open Burning.* It is a violation of this article for any person to ignite, cause to be ignited, permit to be ignited, or maintain any Open Fire unless specifically allowed by this section.
- (c) *Additional Prohibitions.* The following additional prohibitions or conditions shall also be applicable to open burning:
  - (1) *Disposal of Yard Waste, Commercial, or Household Wastes Prohibited.* It is a violation of this article to dispose of Yard Waste, commercial waste, and household waste through the use of open burning.
  - (2) *Disposal of Recyclable Materials Prohibited.* No recyclable materials, whether commercial or residential, may be disposed of by open burning, in accordance with Ch. 106, Art. III, Div. 3 of this Code.
  - (3) *Burning Ban.* Except for cooking fires, no open burning shall be undertaken during periods when either the Fire Chief or Florida Forest Service has issued a burning ban applicable to the area.
  - (4) *Nuisances and Unsafe Fires.* All allowed Open Burning shall be conducted in a manner to avoid causing a Nuisance or Unsafe Fire. Any person conducting allowed Open Burning shall take reasonable precautions to minimize any adverse effects therefrom.
  - (5) *Compliance with Other Laws.* Nothing in this section may be construed to allow Open Burning which violates other laws, rules, regulations, or ordinances.
- \* (d) *Exceptions.* The following operations and activities are exceptions to the general prohibition outlined in subsection (b) when conducted in a manner which is not a Nuisance or an Unsafe Fire:
  - (1) *Liquefied Petroleum Gas Devices.* Grills, camp stoves, or other devices that solely burn liquefied petroleum gas, natural gas, butane, naphthalene or other liquid fuel.
  - (2) *Cooking.* Open fires for the sole purpose of cooking food for human consumption, provided the fire:
    - a. is contained in a Grill, camping stove, or similar device designed solely for cooking food; and
    - b. only burns Approved Fuel.
  - (3) *Recreational or Ceremonial Fires by Organizations.* Fires by established organizations for recreational or ceremonial purposes, such as, but not limited to, functions for Girl or Boy Scout Troops, church groups, organized youth groups, or other similar organizations, provided the fire is contained and only burns Approved Fuel.
  - (4) *Abatement of Fire Hazard.* Fires to abate a fire hazard, providing a hazard is declared by the Fire Department or Fire District having jurisdiction.
  - (5) *Firefighter Training.* Fires for the instruction and training of firefighters, provided the burning activities are for the sole purpose of fire suppression training for liquid fires such as gasoline and jet fuel, or for structural fires. In the

case of structural fires, an inspection conducted by air program personnel must be performed prior to ignition of the structure, to ensure all toxic and/or hazardous materials have been removed.

- (6) *State Lands*. Fires within State lands, provided the burning is done in accordance with all applicable posted rules.
- (7) *County and Municipal Parks*. Fires within County or Municipal parks, provided the burning is done in accordance with all applicable posted park rules.
-  (8) *Florida Forest Service Authorized Burns*. Broadcast burning, agricultural and silvicultural pile burning, or burning of debris from land clearing operations authorized by the Florida Forest Service in accordance with and as defined in F.S. § 590.125 and Chapter 5I-2, F.A.C.
- (9) *Recreational Fires*. Recreational Fires on private property between the hours of 10:00 a.m. and 11:00 p.m. provided the fire is contained.
- (10) *NFPA Burns*. Open Burning as permitted by the Fire Chief or his or her designee in accordance with NFPA I Ch. 10.11.
- (11) *Waste Pesticide Containers*. Open Burning of Waste Pesticide Containers provided the burning is done in accordance with Chapter 62-256, F.A.C.

-  (e) *Safety*. In order to protect the health, safety, and welfare of the citizens from potential hazards the following safety precautions shall apply:
  - (1) *Authority to Extinguish Fires*. The Fire Chief or his or her designee, or code enforcement officer shall have the authority to shut down and extinguish any fire deemed a Nuisance or Unsafe Fire.
  - (2) *Separation Distance for Recreational Fires*. Recreational Fires must be located a minimum of 25 feet away from any structure or combustible material.
  - (3) *Special Separation Distance for Recreation Fires in Warming Type Containers*. Recreational fires in Warming Type Containers must be located a minimum of ten feet away from any structure or combustible material.
  - (4) *Separation Distance from Roadway*. Open Burning must be at least 50 feet from any public roadway unless permitted by the Fire Chief or his or her designee.
  - (5) *Supervision*. Open Burning shall be constantly attended and supervised by a competent person of at least 18 years of age until the fire is extinguished and is cold. The person shall have readily available for use such fire extinguishing equipment and knowledge of how to use that equipment as may be necessary for the total control of the fire. The sufficiency of the extinguishing equipment shall rest with a code enforcement officer or the Fire Chief or designee, and may include one or more of the following:
    - a. a water supply with a hose of sufficient length to reach the fire area;
    - b. heavy equipment;
    - c. water buckets;
    - d. shovels; or
    - e. any other equipment sufficient to control the fire.
-  (f) *Enforcement*. This Section may be enforced by any means allowed by law. The selection of remedies shall not be deemed mutually exclusive. The County is hereby authorized to abate Nuisances by seeking civil relief from any court of competent jurisdiction. Additionally, this section may be enforced through Code Enforcement proceedings as outlined in Ch. 2, Art. VIII of this Code. Failure to comply with an order to extinguish a fire shall be a misdemeanor and shall be prosecuted and punished as provided by general law. The amount of any fine shall be established by Board Resolution.
- (g) *Obstruction*. Obstructing a law enforcement officer, code enforcement officer, or the Fire Chief or his or her designee in the performance of their authority under this section or any other official duty shall be a misdemeanor and may be prosecuted and punished as provided by law.
- (h) *Fire Suppression Costs and Damages*. A person conducting an Open Burn in violation of this section shall be responsible for all fire suppression costs and any other liability resulting from damage caused by the fire. Sarasota County may prepare an invoice of costs for those incidents where the County fire rescue district expends funds which may be

recoverable. Allowable costs shall be those identified in the Federal Schedule of Equipment Rates as authorized under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §5121 et seq., and applicable federal rules implementing that Act. The following procedure shall apply relating to recovery of costs:

- (1) The Fire Chief or his or her designee shall present a written bill of costs to the violator within 30 days of the violation in the same manner as the notice requirements of F.S. ch. 162. A violator shall thereafter have 15 days to challenge the bill by filing a written appeal with the Fire Chief or his or her designee. If an appeal is filed, the Fire Chief or his or her designee shall present the written appeal to the Clerk of Court, Board Records, to schedule the earliest available hearing in front of a Code Enforcement Special Magistrate. In deciding the merits of the appeal, the Fire Chief or his or her designee shall have the ultimate burden of demonstrating the reasonableness of the cost recovery. The Code Enforcement Special Magistrate shall consider the following factors in deciding the reasonableness of any bill:
  - a. The amount of time expended by first responders;
  - b. The labor costs associated with providing a first response: and
  - c. Any capital costs expended by first responders.
- (2) Any uncontested bill or certified copy of an order affirming the cost recovery shall be recorded in the public records of the Clerk and thereafter shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator. Upon petition to the circuit court, the same shall be enforceable in the same manner as a court judgment by the sheriffs of this state, including execution and levy against the personal property of the violator, but such shall not be deemed a court judgment except for enforcement purposes.

(Ord. No. 94-038, § 6, 4-12-1994; Ord. No. 97-086, § 4, 9-2-1997; Ord. No. 98-065, § 6, 9-1-1998; Ord. No. 2014-105, § 2, 2-11-2015)