

ARTICLE IV REGULATION OF OPEN BURNING

Sec. 6-400 Title.

This article is known as the Albemarle County Ordinance for the Regulation of Open Burning.

(Code 1988, § 9-21; Ord. 98-A(1), 8-5-98)

Sec. 6-401 Purpose.

The purpose of this article is to protect public health, safety, and welfare by regulating open burning within Albemarle County to achieve and maintain, to the greatest extent practicable, a level of air quality that will provide comfort and convenience while promoting economic and social development:

- (a.) This Article supplements the applicable regulations promulgated by the state air pollution control board and other applicable regulations and laws.
- (b.) The Fire Official as defined in Sec. 6-201 is responsible for enforcing this Article.

(Code 1988, § 9-21.1; Ord. 98-A(1), 8-5-98)

Sec. 6-402 Adoption of Virginia State Air Pollution Control Board regulations.

The Commonwealth of Virginia State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution, Part IV, Emissions Standards for Open Burning (9VAC5, Ch. 130), in current form and as amended in the future, are hereby adopted and incorporated by reference; provided, however, any county regulation specified in this article more restrictive than such state regulations takes precedence over the state regulations. Any permits required by such state regulations may be issued by the county, if authorized by the state agency otherwise responsible.

(Code 1988, § 9-21.1; Ord. 98-A(1), 8-5-98; Ord. 18-6(1), 10-3-18)

Sec. 6-403 Definitions.

- A. For the purpose of this article and subsequent amendments or any orders issued by Albemarle County, the words or phrases have the meaning given them in this section.
 - 1. *Automobile graveyard.* The term "automobile graveyard" means any lot or place which is exposed to the weather and upon which more than five motor vehicles of any kind, incapable of being operated, and which it would not be economically practical to make operative, are placed, located or found.
 - 2. *Bonfire.* The term "bonfire" means an outdoor fire built and used for the same purposes as recreational open burning that is larger than that permitted for recreational open burning but no larger than 25 square feet in ground surface area and/or 5 feet in height.
 - 3. *Built-up area.* The term "built-up area" means any area with a substantial portion covered by industrial, commercial, or residential buildings.
 - 4. *Building.* The term "building" means any structure having a roof supported by columns or walls.

-
5. *Clean burning waste.* The term "clean burning waste" means waste that is not prohibited to be burned under this ordinance and that consists of only (i) 100 percent wood waste, (ii) 100 percent clean lumber or clean wood, (iii) 100 percent yard waste, or (iv) 100 percent mixture of only any combination of wood waste, clean lumber, clean wood or yard waste.
 6. *Clean lumber.* The term "clean lumber" means wood or wood products that have been cut or shaped and includes wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.
 7. *Clean wood.* The term "clean wood" means uncontaminated natural or untreated wood. Clean wood includes, but is not limited to, byproducts of harvesting activities conducted for forest management or commercial logging, or mill residues consisting of bark, chips, edgings, sawdust, shavings or slabs. It does not include wood that has been treated, adulterated, or chemically changed in some way; treated with glues, binders or resins; or painted, stained or coated.
 8. *Commercial waste.* The term "commercial waste" means all solid waste generated by establishments engaged in business operations other than manufacturing or construction. This category includes, but is not limited to, waste resulting from the operation of stores, markets, office buildings, restaurants and shopping centers.
 9. *Construction waste.* The term "construction waste" means solid waste which is produced or generated during construction, remodeling, or repair of pavements, houses, commercial buildings and other structures. Construction waste consists of lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids, and garbage are not construction wastes and the disposal of such materials must be in accordance with the regulations of the Virginia Waste Management Board.
 10. *Debris waste.* The term "debris waste" means waste resulting from land clearing operations. Debris wastes include but are not limited to stumps, wood, brush, leaves, soil and road spoils.
 11. *Demolition waste.* The term "demolition waste" means solid waste that is produced by the destruction of structures, or their foundations, or both, and includes the same materials as construction waste.
 12. *Garbage.* The term "garbage" means readily putrescible discarded materials composed of animal, vegetable or other organic matter.
 13. *Hazardous waste.* The term "hazardous waste" means a "hazardous waste" as described in 9VAC20-60 (Hazardous Waste Management Regulations).
 14. *Household waste.* The term "household waste" means any waste material, including garbage, trash and refuse derived from households. For purposes of this regulation, households include single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. Household waste does not include sanitary waste in septic tanks (septage) that is regulated by other state agencies.
 15. *Industrial waste.* The term "industrial waste" means any solid waste generated by manufacturing or industrial process that is not a regulated hazardous waste. Such waste may include, but is not limited to waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

-
16. *Junk*. The term "junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.
 17. *Junkyard*. The term "junkyard" means an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term includes garbage dumps and sanitary fills.
 18. *Landfill*. The term "landfill" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill. See Part 1 (9VAC20-81-10 et seq.) of 9VAC20-81 (Solid Waste Management Regulations) for further definitions of these terms.
 19. *Local landfill*. The term "local landfill" means any landfill located within the jurisdiction of a local government.
 20. *Open burning*. The term "open burning" means the combustion of solid waste without:
 - a. Control of combustion air to maintain adequate temperature for efficient combustion;
 - b. Containment of the combustion reaction in an enclosed device to produce sufficient residence time and mixing for complete combustion; and
 - c. Control of the combustion products' emission.
 21. *Open pit incinerator*. The term "open pit incinerator" means a device used to burn waste for the primary purpose of reducing volume by removing combustible matter. Such devices function by directing a curtain of air at an angle across the top of a trench or similarly enclosed space, thus reducing the amount of combustion by-products emitted into the atmosphere. The term also includes trench burners, air curtain destructors and overdraft incinerators.
 22. *Property maintenance or land/lot clearing open burning*. This term means open burning for development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, building or building areas, sanitary landfills, or any other clearing operations which must be approved in advance by the Fire Official and be subject of a permit.
 - a. Material typically consists of brush, stumps, and similar debris waste.
 23. *Recreational Open Burning*. An outdoor, controlled fire no greater than 9 square feet in ground surface area and/or 2 feet in height that is built for enjoyment, warmth, or ambiance, and used for leisure activities like camping, socializing, or relaxing outdoors:
 - a. Typically set in designated areas such as fixed or portable outdoor fireplaces, fire pits, fire rings, other contained structures.
 - b. Such fires must be made and fueled with wood, coal, or similar materials.
 - c. Such fires do not include or involve the burning of trash, rubbish, or garbage.
 24. *Residential Open Burning*. Burning yard or garden debris on private property:
 - a. Occurs in backyards, gardens, or other open areas near residential buildings and structures;
 - b. Occurs without the use of controlled or contained methods like incinerators or fire pits designed for safe burning; and
 - c. Involves yard debris and other similar organic substances, such as leaves, grass, and bush and tree branches.

-
25. *Refuse*. The term "refuse" means all solid waste products having the characteristics of solids rather than liquids and that are composed wholly or partially of materials such as garbage, trash, rubbish, litter, residues from clean up spoils or contamination or other discarded materials.
26. *Salvage operation*. The term "salvage operation" means any operation consisting of a business, trade or industry participating in salvaging or reclaiming any product or material, such as, but not limited to, reprocessing of used motor oils, metals, chemicals, shipping containers or drums, and specifically including automobile graveyards and junkyards.
27. *Sanitary landfill*. The term "sanitary landfill" means an engineered land burial facility for the disposal of household waste that is so located, designed, constructed, and operated to contain and isolate the waste so that it does not pose a substantial present or potential hazard to human health or the environment. A sanitary landfill also may receive other types of solid wastes, such as commercial solid waste, nonhazardous sludge, hazardous waste from conditionally exempt small quantity generators, construction, demolition, or debris waste and nonhazardous industrial solid waste. See Part I (9VAC20-81-10 et seq.) of 9VAC20-81 (Solid Waste Management Regulations) for further definitions of these terms.
28. *Smoke*. The term "smoke" means small gas-borne particulate matter consisting mostly, but not exclusively, of carbon, ash and other material in concentrations sufficient to form a visible plume.
29. *Special incineration device*. The term "special incineration device" means an open pit incinerator, conical or teepee burner, or any other device specifically designed to provide good combustion performance.
30. *Structure*. The term "structure" means anything constructed or erected, the use of which requires permanent location on the ground, or attachment to something having a permanent location on the ground. This includes, among other things, dwellings, buildings, barns, decks, sheds, pergolas, and arbors.
31. *Wood waste*. The term "wood waste" means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:
- a. Grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.
 - b. Construction, renovation, or demolition wastes.
 - c. Clean lumber.
32. *Yard waste*. The term "yard waste" means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs that come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands:
- a. Yard waste does not include:
 - i. Construction, renovation, and demolition waste or
 - ii. Clean wood.

(Code 1988, § 9-21.3; Ord. 98-A(1), 8-5-98; Ord. 13-6(1), 1-9-13)

Sec. 6-404 Prohibitions on open burning.

- A. No owner or other person may cause or permit open burning or the use of a special incineration device for disposal of refuse except as provided in this ordinance.

-
- B. No owner or other person may cause or permit the open burning or the use of special incineration device for the open burning of garbage, refuse, trash, rubbish and other forms of solid, liquid waste, including, but not limited to wastes resulting from residential, agricultural, commercial, industrial, trade, or construction activities.
 - C. No owner or other person may cause or permit open burning or the use of a special incineration device for disposal of rubber tires, asphaltic materials, crankcase oil, impregnated wood or other rubber or petroleum-based materials except when conducting bona fide firefighting instruction at firefighting training schools having permanent facilities.
 - D. No owner or other person may cause or permit open burning or the use of a special incineration device for disposal of hazardous waste or containers for such materials.
 - E. No owner or other person may cause or permit open burning or the use of a special incineration device for the purpose of a salvage operation or for the disposal of commercial/industrial waste.
 - F. No owner or other person may cause or permit open burning or the use of a special incineration device for disposal of household waste or garbage.
 - G. Open burning or the use of special incineration devices permitted under the provisions of this ordinance does not exempt or excuse any owner or other person from the consequences, liability, damages or injuries which may result from such conduct; nor does it excuse or exempt any owner or other person from complying with other applicable laws, ordinances, regulations and orders of the governmental entities having jurisdiction, even though the open burning is conducted in compliance with this ordinance. In this regard special attention should be directed to § 10.1-1142 of the Forest Fire Law of Virginia, the regulations of the Virginia Waste Management Board, and the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution.
 - H. Open burning is prohibited when atmospheric conditions or local circumstances make such fires hazardous as described in Chapter 70 of the Commonwealth of Virginia Regulations for the Control and Abatement of Air Pollution, Air Pollution Episode Prevention. When open burning creates or adds to a hazardous situation, creates or constitutes a nuisance, threatens the health or welfare of the public, or lacks a required permit for open burning, the Fire Marshal is authorized to order the extinguishment of the open burning operation or to otherwise cause the open burning operation to be extinguished.
 - I. The Fire Official or designee may prohibit open burning when weather, atmospheric conditions or local circumstances make such fires hazardous. The Fire Official or designee must order the owner, any other responsible person, or the fire department to extinguish any open burning which creates or adds to a hazardous situation, any open burning violating this ordinance, or any unattended open burning.

(Code 1988, § 9-22; Ord. 98-A(1), 8-5-98; Ord. 13-6(1), 1-9-13; Ord. 18-6(1), 10-3-18)
(Va. Code § 15.2-922.1)

Sec. 6-405 Exemptions.

The following activities are exempt from this Article only to the extent they are subject of and preempted by the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution:

- A. Open burning for training and instruction of government and public fire fighters who are under the supervision of the designated official, or industrial in-house firefighting personnel.
- B. Open burning for campfires or other fires that are used solely for recreational purposes, for ceremonial occasions, for outdoor noncommercial preparation of food, or for warming of outdoor workers.
- C. Open burning for the destruction of any combustible liquid or gaseous material by burning in a flare or flare stack.

-
- D. Open burning for forest management and agriculture practices approved by the State Air Pollution Control Board; and
 - E. Open burning for the destruction of classified military documents.
 - F. Forestry activities, such as prescribed burns, conducted under the supervision of State Forestry or Federal Forestry Officials.

(Code 1988, § 9-22.1; Ord. 98-A(1), 8-5-98)

Sec. 6-406 Permissible open burning.

- A. Residential open burning is allowed for the disposal of leaves and tree, yard, and garden trimmings originating from and located on the premises of private property, without a permit from the Office of the Fire Marshal, provided that the following conditions are met:
 - 1. The burning takes place on the premises of the private property;
 - 2. The location of the burning is not less than 300 feet from any neighboring building or occupied building unless the occupants have given prior written permission maintained by the property owner, other than a building located on the property on which the burning is conducted and is at least fifty (50) feet from other buildings located on the property on which the burning is conducted;
 - 3. The burning must be conducted at the greatest distance practicable from highways, public and private right-of-way;
 - 4. Prior to commencing any residential open burning, notification must be made to the Fire Official through the County Emergency Communications Center. The notification must include the name of the property owner and responsible party, contact information that allows 24-hour access to a responsible party, address where the burning is to take place, materials to be burnt, expected start date, and expected end date;
 - 5. The burning must be constantly attended by a competent adult, eighteen (18) years of age or older;
 - 6. A minimum of one 4-A rated portable fire extinguisher or other approved on-site fire extinguishing equipment, such as dirt, sand, water barrel, garden hose, or water truck must be available for immediate utilization; and
 - 7. Upon the completion of any open burning, notification must be made to the Fire Official through the County Emergency Communications Center.
- B. Recreational open burning, including campfires, cooking fires, or warming fires, where the fuel consists only of seasoned dry firewood ignited with a small quantity of paper, and are in accordance with the fire prevention code and the following are allowed without a permit from the fire official. No notification to the Fire Official is required:
 - 1. The fire must not be used for waste disposal purposes and the fuel must be chosen to minimize the generation of air contaminants. No trash, oil, tires, refuse, or similar materials may be used;
 - 2. The location of campfires, fire pits, and open container fires, such as burn barrels, must be at least 25 feet from any building or structure located on the property where the burning is conducted;
- C. Bonfires must not burn longer than three (3) hours and must be at least 50 feet from any building or structure. The size and duration of a bonfire can only be increased by the Fire Marshal when the Fire Marshal determines that fire safety requirements can be maintained strictly and an increased burn duration is reasonably warranted under a totality of the circumstances;

-
1. Prior to commencing any bonfire, notification must be made to the Fire Official through the County Emergency Communications Center. The notification must include the name of the property owner and responsible party, contact information that allows 24-hour access to a responsible party, address where the burning is to occur, materials to be burnt, expected start date, and expected end date;
 2. A bonfire must not be used for waste disposal purposes and the fuel must be chosen to minimize the generation of air contaminants. No trash, oil, tires, refuse, or similar materials may be used
 3. Upon the completion of any bonfire, notification must be made to the Fire Official through the County Emergency Communications Center;
 4. Any bonfire must be constantly attended by a competent adult, eighteen (18) years of age or older, until the fire is extinguished; and
 5. A minimum of one 4-A rated portable fire extinguisher or other approved on-site fire extinguishing equipment, such as dirt, sand, water barrel, garden hose, or water truck, must be available for immediate utilization during burning operations.
- C. Property maintenance or land/lot clearing open burning is permitted for disposal of debris waste resulting from land and site clearing for the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills, or any other clearing operations which the Fire Marshal must approve if all of the following conditions are met:
1. A permit for such burning is obtained from the Fire Official;
 2. All reasonable effort must be made to minimize the amount of material burned, with the number and size of the debris piles approved by the Fire Official;
 3. The material to be burned must only consist of debris waste, as defined in this Article, originating from the site where the clearing occurs;
 4. The open burning must be located on the site where the clearing occurs and must not include demolition material;
 5. The burning must be at least 2,000 feet from any occupied building unless the occupant of the building gives prior written permission for the burning to occur at a closer distance;
 - a. This distance can be reduced to 1,000 feet from any occupied building, unless the occupant of the building gives prior written permission for the burning to occur at a closer distance, if a special incinerator device, also known as an air curtain, is utilized at all times the open-air burning occurs;
 6. The burning must be conducted at the greatest distance practicable from highways;
 7. The burning must be conducted at least 2,500 feet from airfields, schools, and healthcare facilities;
 8. The burning must be attended at all times and conducted to ensure the best possible combustion with a minimum of smoke being produced. Open burning under this section must be constantly attended by a competent person, eighteen (18) years of age or older, until the fire is extinguished. Any permit holder found in violation of this subsection shall have his permit revoked for a period of sixty (60) days unless a court of competent jurisdiction restores the permit sooner;
 9. The burning must not be allowed to smolder beyond the minimum period of time necessary for the destruction of the materials;
 10. The burning must be conducted only between 8:00 a.m. and 8:00 p.m.;
 11. The burning must be conducted only Monday through Friday;

-
12. The burning must not be conducted during the restricted dates of February 15 through April 30 of each year; and
 13. The burning must be conducted only when the prevailing winds blow away from any city, town, or built-up area, as defined in this Article, that is located within one-half mile of the burning location.
- D. Local landfill open burning is allowed for disposal of debris waste provided that the burning does not take place on land that has been filled and covered so as to present an underground fire hazard due to the presence of methane gas if all of the following conditions are met:
1. A permit is obtained from the Fire Official;
 2. The burning must take place on the premises of a local sanitary landfill which meets the provisions of the regulations of the Virginia Waste Management Board;
 3. The burning must be attended at all times;
 4. The material to be burned must consist only of brush, tree trimmings, yard and garden trimmings, clean burning construction waste, clean burning debris waste, or clean burning demolition waste;
 5. All reasonable effort must be made to minimize the amount of material that is burned; and
 6. No material may be burned in violation of the regulations of the Virginia Waste Management Board or the State Air Pollution Control Board.

The exact site of the burning on a local landfill must be established in coordination with the regional director and the Fire Official; another site must not be used without the advance written approval of these officials. The Fire Official must be notified of the days during which the burning will occur.

(Code 1988, § 9-22.1; Ord. 98-A(1), 8-5-98; Ord. 13-6(1), 1-9-13; Ord. 18-6(1), 10-3-18)

State law reference(s)—Va. Code § 10.1-1142.

Sec. 6-407 Permits.

- A. *Permit for open burning required.* When open burning of debris waste under section 6-406(C) or open burning of debris on the site of a local landfill under section 6-406(D) is to occur within Albemarle County, the person responsible for the burning must obtain a permit from the Fire Official prior to the burning.
- B. *Application for permit.* The person responsible for the burning must submit a complete application for a permit, which must include proof of liability insurance in an amount of no less than \$1.5 million and must be issued by a company registered with the Virginia Bureau of Insurance. A written site and burn plan must also be included with any application.
- C. *Issuance of permit.* Such a permit may be granted only after confirmation by the Fire Official that the burning can and will comply with the provisions of this Article, with all other conditions which are deemed necessary to ensure that the burning will not endanger the public health and welfare, and with all applicable provisions of the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution. The permit may be issued for each occasion of burning or for a specific period of time deemed appropriate by the Fire Official and in conformance with this article.
- D. *Number of permits.* No more than three permits may be issued per year for any parcel.
- E. *Permit for use of special incineration device.* Prior to the initial installation (or reinstallation, in cases of relocation) and operation of special incineration devices, the person responsible for the burning must obtain a permit from the Fire Official, such permits to be granted only after confirmation by the Fire Official that the burning can and will comply with the applicable provisions in Regulations for the Control and Abatement of Air Pollution and that all conditions that the Fire Official deems necessary to ensure that the operation of the

devices will not endanger the public health and welfare are met. Permits granted for the use of special incineration devices must at a minimum contain the following conditions:

1. All reasonable efforts must be made to minimize the amount of material that is burned in a special incinerator device. Such efforts must include, but are not limited to, the removal of pulpwood, sawlogs, and firewood;
 2. The material to be burned must only consist of brush, stumps, and similar debris waste and must not include demolition material;
 3. The special incinerator burning must be at least 1,000 feet from any occupied building unless the occupants have given prior written permission;
 4. The special incinerator burning must be conducted at the greatest distance practicable from highways;
 5. The special incinerator burning must be conducted at least 2,500 feet from airfields, schools, and healthcare facilities. If the Fire Official or designee determines that it is necessary to protect public health and welfare, the Fire Official or designee may increase any of the distances cited in this section;
 6. The special incinerator burning must be attended at all times and conducted to ensure the best possible combustion with the minimum amount of smoke production. The burning must not be allowed to smolder beyond the minimum period of time necessary for the destruction of the materials;
 7. The special incinerator burning must be conducted only when the prevailing winds blow away from any city, town or built-up area;
 8. The use of special incineration devices must only be allowed for the disposal of debris waste, clean burning construction waste, and clean burning demolition waste; and
 9. Permits issued under this section must be limited to a specific period of time deemed appropriate by the Fire Official or designee and in conformance with this Article.
- F. *Fees.* An application for a permit under section 6-407(A) or 6-407(E) must be accompanied by a processing fee as set forth in the fee schedule maintained by the Fire Official, as may be amended from time to time. An application is not complete without payment of the processing fee.

(Code 1988, § 9-24; Ord. 98-A(1), 8-5-98; Ord. 13-6(1), 1-9-13; Ord. 18-6(1), 10-3-18)

Sec. 6-408 Penalties for violation.

- A. A violation of any ordinance under this Article is a Class 1 misdemeanor, punishable upon conviction by confinement in jail for a period not exceeding 12 months or by a fine of not more than \$2,500, either or both.
- B. Each separate incident constitutes a new violation.
- C. Any person convicted of a second offense committed within three years after a prior offense under this section shall upon conviction of the second offense be punished by a minimum fine of \$1,000. Any person convicted of a third or subsequent offense under this section committed within a three-year period shall upon conviction of the third or subsequent offense be punished by a minimum fine of \$2,500.
- D. In addition to the above penalties, any person so convicted shall be liable to the County for all expenses reasonably incurred by the County in suppressing any fire subject of the offense.

(Code 1988, § 9-25; Ord. 98-A(1), 8-5-98; Ord. 18-6(1), 10-3-18)(Virginia Code §§ 15.2-1429 and 27-100)