



Albemarle County

Legislation Text

File #: 18-243, **Version:** 1

AGENDA DATE: 4/4/2018

TITLE:

Open Air Burning Regulations for Land Clearing and Development Operations

SUBJECT/PROPOSAL/REQUEST: Direct staff to begin process for strengthening County regulations regarding open air burning

ITEM TYPE: Regular Action Item

STAFF CONTACT(S): Richardson, Walker, Kamptner, Eggleston, Oprandy, Lagomarsino

PRESENTER (S): Howard Lagomarsino

LEGAL REVIEW: Yes

REVIEWED BY: Jeffrey B. Richardson

BACKGROUND: Albemarle County regulations for open-air burning conform to applicable Federal Codes, Virginia State Code, the Statewide Fire Prevention Code, and regulations promulgated by the Virginia Air Pollution Control Board (Attachment A). Burning regulations are codified in Albemarle County Code, Chapter 6, Article IV (Attachment B) and allow open-air burning under specific circumstances. Open-air burning occurs as part of agriculture management practices, cleanup of yard waste, land maintenance, storm cleanup, and the clearing of land for development. A permit is not required for burning associated with private residence yard maintenance or land maintenance on agricultural/larger properties where owners/staff have attended the County's Certified Open Burn class. Permits are required for land clearing operations associated with construction and land development.

The Board has addressed open-air burning on a number of occasions. The Board was briefed on open-air burning associated with land clearing on July 02, 2008 (Attachment C), barring open-air burning of trash on January 09, 2013, and increasing open-air burning permit fees associated with land clearing on March 04, 2015. The Board most recently discussed open-air burning on December 06, 2017 (Attachment D). During the 12/06/17 meeting, the Board requested staff return with additional information and specific recommendations regarding open-air burning regulation.

STRATEGIC PLAN: *Natural Resources Stewardship:* Thoughtfully protect and manage Albemarle County's ecosystem and resources both in the rural and development areas to safeguard the quality of life for current and future generations. *Quality Government Operations:* Ensure the County's capacity to achieve high quality service that achieves Community priorities

DISCUSSION: The focus of open-air burning regulation in Albemarle County is fire safety and healthy air quality. Current County regulations are more stringent than federal, state, and Air Pollution Control Board regulations. In general, open-air burning is limited to untreated, clean, natural wood, vegetation, and brush though there are very limited circumstances where other items may be burned (e.g. agricultural practices dealing with land management or disease control).

Open-air burning occurs in all of areas of Albemarle County. The intensity varies from a neighbor burning a small amount of leaves and garden trimmings to the burning of large piles of debris waste (stumps, brush etc.) associated with the clearing of a large tract of land for development. Though complaints occasionally arise from the smaller burns it is the larger burns that receive the most attention. Due to the permit process, most of these burns comply with current regulations, but because of their visibility, still raise concerns amongst citizens. Tools are available within the regulations to deal with burns not in compliance. The problem arises when the burns do comply with regulations but nearby property owners still raise concerns.

Although banning open-air burning outright is an option, it may have unintended consequences. As an example, open-air burning for agricultural/land management has the dual function of increasing fire safety by eliminating fuels that can easily ignite and spread ground cover fires. The lack of municipal leaf/yard trimming removal could curtail yard maintenance or allow for accumulation of debris that adds a fire hazard and is unsightly. Some open air burning may be desirable; focusing exclusively on enhancing regulations for burning involving land clearing/development operations may address the problem.

Other options exist rather than open-air burning for land clearing/development operations such as hauling away the debris waste or grinding on site & hauling. These options, however, are not without their own concerns/issues.

- Higher cost. Contractors/developers advise the average bid for a land-clearing project using open-air burning is \$3500 an acre while the hauling and/or grinding options average \$10,000 an acre. Using these estimates, an 80 acre land clearing project will be \$280,000 for burning and \$800,000 for hauling/grinding. It is presumed that this additional cost is transferred to the per unit cost of a development thereby increasing home costs.
- Truck use and traffic. Using the same 80 acre example, contractors estimate that hauling debris away will take just over 200 trips. Concerns with this option include noise, hazards from large vehicles on roads often not designed for this type of traffic, and the carbon footprint (which may be as large or larger than a properly managed burn operation). Although grinding may reduce the number of truck trips, contractors advised it would not be by much. Some waste debris must still be removed from the site anyway (not all of it is suitable for grinding) and the ground material is most often hauled off as well.

Complaints associated with open-air burning in land clearing/development operations center around three (3) themes: Continuous “round the clock” operations, property damage, and exposure to smoke. When the issue of open-air burning was last addressed with the Board, consensus appeared to be around strengthening existing legislation to address these concerns. These issues may be addressed as follows (specific legislation changes are outlined in the staff recommendation):

- Continuous operations: Limiting the period during which open-air burning for land clearing/development operations may occur coupled with a limit to the number of permits allowed per parcel may address these concerns.
- Damage to personal property: Requiring proof of liability insurance will help ensure that damage issues are addressed.
- Smoke exposure: Increasing the distance from occupied structures requiring permission to 2000 feet, but allow a reduction to 1000 feet if an appropriate special incineration device (e.g. air curtain) and process is utilized. Requiring a site and burn operation plan outlining how the applicant will address specific issues such as adverse atmospheric conditions and pre-burn notification of nearby neighborhoods will help to ensure a clean burn as well as prepare citizens early for the impending operation (thereby reducing smoke exposure).

Any action that results in changes to the Albemarle County open-air burn regulations must receive approval from the Virginia Air Pollution Control Board and a public hearing process.

The staff recommends strengthening the Albemarle County open-air burning regulations specific to land clearing/development operations only. These recommendations are summarized in Attachment E.

BUDGET IMPACT: The budget impact varies significantly based on the degree to which the Board wishes to regulate open-air burning. The County currently assesses a fee of \$500 for a burn permit specific to land clearing. Should the Board desire to ban burning completely or limit it by district, the budget impact will be a reduction in permit revenue of approximately \$21,000 annually. Should the Board endorse staff's recommendations (see below), there will be some additional workload but significant budget impact is not anticipated at this time.

RECOMMENDATION:

Staff recommends that the Board:

1. Consider recommendations regarding changes to the County's open burning regulations specific to land clearing/development operations as indicated in Attachment E.
2. If/when satisfied, direct staff to prepare a draft ordinance to amend the County's open burning regulations for the Board's approval prior to presenting it to the Virginia Air Pollution Control for its approval.
3. Authorize a public hearing on a draft ordinance; such public hearing to be scheduled once state approval has been obtained.

ATTACHMENTS:

Attachment A: Virginia- Air Pollution Board
Attachment B: Albemarle_County_Code_Ch06_Fire_Protection
Attachment C: July 2008 Exec Summary
Attachment D: December 06, 2017 Exec Summary
Attachment E: Staff Recommendation Table