



# Albemarle County

## Legislation Text

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**File #:** 19-255, **Version:** 1

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**AGENDA DATE:** 5/1/2019

**TITLE:**

Yard/Property Maintenance Open-Air Burning

**SUBJECT/PROPOSAL/REQUEST:** Yard/Property Maintenance Open-Air Burning Work Session

**ITEM TYPE:** Regular Information Item

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

**PRESENTER (S):** H. Lagomarsino

**LEGAL REVIEW:** Yes

**REVIEWED BY:** Jeffrey B. Richardson

**BACKGROUND:**

Citizen complaints and Board of Supervisors' concerns regarding the County's open-air burning processes and laws have generated discussion and recent changes. In framing the discussion, staff has referred to three types of open-air burning: commercial open-air burning (large scale, land clearing for development), Certified Burn Program (predominantly maintenance of land involved in agricultural or farming operations), and yard maintenance open-air burning (yard maintenance materials and garden trimmings). Although State and local codes regulate these types of burning, there are differences in processes and requirements. For further description of each and their associated processes, please see Attachment A - Open-Air Burning Explained.

The Board discussed commercial open-air burning during its December 6, 2017; April 4, 2018; and June 6, 2018 meetings, and enacted changes to the County Code regarding commercial open-air burning on October 3, 2018. Throughout the conversation about commercial open-air burning, concerns and issues were raised relevant to the Certified Burn Program and yard maintenance open-air burning. A Board work session was held on January 16, 2019 (Attachment B) to discuss these two programs specifically and four items were identified for further analysis and consideration: Increase distance requirements from buildings for burn piles; eliminate the ability to obtain neighbor permission to burn less than 300 feet from a building; impose burning time constraints and/or time limits for burning; require a permit for any/all burning.

The purpose of today's work session is to review the information developed and decide whether to enact any or all of the options for changes to the Certified Burn Program and yard-maintenance open-air burning. Attachments C and D provide background on the Open-Air Burning Code and Open-Air Code respectively.

**STRATEGIC PLAN:** *Natural Resource 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:**

Each option is presented below along with any discussion, further analysis, and/or projected staff impact to implement (if any).

**Option One:** Increase the minimum distance required between open-air burn piles and structures. This option will impact more densely populated or urban areas more significantly than rural areas, as buildings and property lines tend to be closer together in urban areas. This appears to be consistent with the Board's desire, as a whole, to limit open burning in more urban areas of the County while allowing for it in areas of less density and on larger parcels or areas of agricultural operations.

Using GIS mapping, staff created an illustrative reference by shading the effective prohibited area on an Albemarle County map. No burning would be allowed within the shaded area as the area represents the minimum distance a burn pile must be from any structure, regardless of which parcel the building may be on. Distances of 300 feet (length of a football field - Attachment E) and 500 feet (100 feet shy of two football fields- Attachment F) were created.

The maps show that a 300 foot minimum distance from structures covers most of the land within the urbanized development areas of the County. A minimum of 500 feet does not appear to provide significantly more overall coverage of the urban area (the majority of which is already covered by a 300 foot minimum). Continued development and construction on open land within the urban area will increase the size of the restricted area over time as structures are added and these areas become subject to the 300 foot minimum. In the less dense rural areas of the County, increasing the minimum distance from 300 to 500 feet prohibits burning in a significantly larger area of the County. In the most rural of areas of the County where structures may be 1000 or more feet apart, an increased minimum distance of 500 feet may have the unintended consequence of pushing a legal burn closer to a neighboring property or structure.

**Option Two:** Eliminate the provision that allows property owners to burn closer to a structure on their property or others' property than what is otherwise allowed in County Code § 6-406.A.2, which is currently 300 feet. Current standards allow for neighbors to grant permission for someone to burn closer than the required separation distance from a structure (but no closer than 50 feet) and also allows for a property owner to burn within 50 feet of her own structure "by-right". This nullifies any positive results obtained through required separation distances in Option One. The GIS map from Option One informs this option but no further analysis was necessary. Implementation of Option Two is required to ensure Option One is successful.

**Option Three:** Enacting time restrictions for all open-air burning. Time restrictions provide some level of predictability and a reprieve for residents who wish to avoid exposure to smoke and the by-products of open burning. It also provides staff the ability to appropriately plan work force options, such as staffing levels on any given day. Restricting yard maintenance open-air burning to Monday through Friday, 8 am to 8 pm and prohibiting any burning during the forestry ban, February 15 through April 30, provides consistency across all types of open air burning (including commercial open air burning). Consistency makes educating the public, first responders, and staff much easier. However, prohibiting yard maintenance and Certified open air burning on weekends may be too restrictive. If the Board desires to provide for weekend open air burning, adding Saturday and/or Sunday from 8am to 8pm is recommended.

Options 1-3 cause minimal staff workload impacts in the long term. In the short term workload is anticipated to increase relative to staff and public information and education about the County Code changes and requirements. Additionally, complaints handled and responses to "illegal burns" or "burn investigations" are anticipated to increase initially until the public information and education program has reached most residents. This impact is predicted for the first 18 months to 2 years after the changes and is anticipated to be handled by existing staff.

**Option Four:** Require a permit for all open air burning. Previous discussions with the Board identified mixed opinions for requiring a permit for all open-air burning. Currently, yard maintenance open-air burning is the only

type that does not require a permit. Staff has taken a closer look at how a permitting process may function for this type of burning.

At a high level, the process (which may begin online, on the phone, or in-person) would require applicants to receive an education on proper/safe burn techniques and rules while obtaining the necessary identifying/location information of the burn for staff use and for inclusion in the public facing online burn permit locator map.

Creating and administering a permit system for yard maintenance open air burning would have staff impact as outlined below:

- Creating the system: 20 Information Technology (IT) staff hours to create an on-line permit application program which will automatically feed the public facing online burn permit locator map. This system is used for self-service online or for in-person or phone in customers.
- Public education: 8 hours initial material/program development; and 8-10 hours annually for public service announcement and similar on-going public education.
- Fire Rescue system training: Estimated 50-75 staff hours initially to provide collaborative input, training materials, program checklists, etc. to Fire Rescue System staff (volunteer and career). All personnel will have exposure to the permit system, how to determine whether or not someone has a permit, how to assist a resident in obtaining a permit, and the rules and regulations for open burning. Ongoing annual continuing education will utilize a webinar/PSA format with significantly less staff impact after the first year - estimated at 8-10 hours annually to maintain con-ed for the system.
- Processing permits: 250 permit applications are expected each year, of which half are expected to be issued through self-serve online with no staff time impact. For in-person or telephone permit requests 30 minutes per application is projected - totaling about 60 hours annually.
- Complaints/Responses: Again, complaints handled and responses to “illegal burns” or “burn investigations” are anticipated to increase initially until the public information and education program has reached most residents. This impact is predicted for the first 18 months to 2 years after the changes and is anticipated to be handled by existing staff.

Total staff impact: 173 hours first year and 80 hours annually thereafter (excluding complaint responses - no estimated workload impact provided)

Board considerations for Option 4:

- How long is a permit active? 30 days is recommended.
- Is there a fee for the permit? Staff analyzed this process from the perspective that no fee would be assessed. Collecting a fee would involve online processing and tracking of payment, finance processes, etc. If a fee is desired, more analysis is necessary.

Again, Option Four stands to impact staff resources most significantly. To ensure efficient and effective community safety, current community risk reduction programs and new initiatives currently under review inform the staff recommendation of this Executive Summary. An example of a new initiative under review is the “home stay” program, which may include a substantial staff resources impact for required annual fire safety inspections. Should the Board wish to implement Option Four, future direction from the Board on other Fire Rescue program priorities may be necessary.

#### **BUDGET IMPACT:**

As noted above, staff anticipates that the implementation of Options 1-3 would result in a short-term workload increase for staff for 18 to 24 months, with minimal staff workload impacts thereafter, all of which staff believes could be handled by existing staff. Option 4 would result in a more significant workload impact that may require the reprioritization of other Fire Rescue programs. No additional budget impact is anticipated.

**RECOMMENDATION:**

The options for Board consideration are presented in order of staff support, with little support for Option 4 in light of attempting to achieve a balance of predicted impact/success with best use of staff resources. If the Board desires to implement Option One, staff recommends establishing a 300 foot minimum distance; if the Board desires to implement Option Three, staff recommends excluding weekends.

**ATTACHMENTS:**

Attachment A - Open Air Burning Explained  
Attachment B - January 16, 2019 Executive Summary  
Attachment C - Virginia Air Pollution Control Board - Open Air Burning Code  
Attachment D - Albemarle County Code - Open-Air Code  
Attachment E - PDF of Albemarle County map showing 300 ft separation  
Attachment F - PDF of Albemarle County map showing 500 ft separation