

BEFORE THE BOARD OF COMMISSIONERS

FOR MARION COUNTY, OREGON

An ordinance regulating open burning)
within that portion of the Salem-Keizer)
Urban Growth Boundary under Marion)
County jurisdiction and declaring)
an emergency.)

ORDINANCE No. 1279

THE MARION COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

Section 1. Title.

This ordinance shall be known as the Marion County Backyard Burning Ordinance and may be so cited and pleaded.

Section 2. Purpose.

Pursuant to the authority granted by OAR 340-264-0075, the purpose of this ordinance is to regulate and control specific types of open burning on property that is located within that portion of the Salem-Keizer Urban Growth Boundary under Marion County jurisdiction. This ordinance establishes standards for burning, enforcement authority, and a process for administrative hearings. This ordinance is in addition to, and not intended to replace, the provisions contained in Division 264 of the Oregon Administrative Rules.

Section 3. Definitions.

For the purposes of this ordinance, the following terms shall have the following meanings:

(1) "Agricultural operation" means (a) an activity on land currently used or intended to be used primarily for the purpose of obtaining a profit in money by raising, harvesting and selling crops and selling livestock or poultry, or the produce thereof, and (b) activities conducted by not-for-profit agricultural research organizations.

(2) "Agricultural open burning" means the open burning of any agricultural waste, subject to the Department of Environmental Quality field burning rules for the Willamette Valley.

(3) "Agricultural waste" means any waste material generated or used by an agricultural operation, except for wet garbage, plastic, asbestos, wire insulation, automobile part, asphalt, petroleum product, petroleum-treated material, rubber product, animal remains, animal or vegetable matter resulting from the handling, preparation, cooking or service of food, or of any other material which, upon burning, normally emits dense smoke or noxious odors.

(4) "Burning for disease or pest control" means open burning of waste infected or infested with a disease or pest that the County Extension Service or the Oregon Department of Agriculture identifies as having no other practicable control.

(5) "Code enforcement officer" means any County employee duly designated as a Code Enforcement Officer or Code Enforcement Aide.

(6) "Daylight hours" means the time between 7:30 a.m. and two hours prior to sunset.

(7) "Hazard to public safety" means fires that burn prohibited materials or that result in smoke that substantially impairs visibility on a roadway.

(8) "Natural Disaster" means an event such as a fire, storm, flood or earthquake that is of significant magnitude.

(9) "Nuisance" means a substantial and unreasonable interference with another's use and enjoyment of real property, or the substantial and unreasonable invasion of a right common to members of the general public.

(10) "Open burning" means (a) open, outdoor fires; (b) burning in burn barrels; (c) burning in incinerators that do not meet emission limitations specified by the Oregon Department of Environmental Quality for solid and infectious waste incinerators; and (d) any other outdoor burning where combustion air is not effectively controlled and combustion products are not effectively vented through a stack or chimney.

(11) "Owner" means any legal owner of or any person having custody, care or control of property or premises, including tenants and permissive users thereof.

(12) "Permit" means a written authorization to burn specified materials at a defined site under certain conditions.

(13) "Person" means any public or private corporation, local governmental unit, public agency, individual, partnership, association, firm, trust, estate or any other legal entity.

(14) "Waste" includes:

- a. Any useless, discarded, abandoned or undesired materials, such as, but not limited to, wet garbage, paper, cardboard, clothing, plastic, asbestos, wire insulation, automobile part, asphalt, petroleum product, petroleum-treated material, rubber product, animal remains, or animal or vegetable matter resulting from the handling, preparation, cooking or service of food;
- b. Any material resulting from or produced by the complete or partial destruction or tearing down of any man-made structure, or the clearing of any site for land improvement or clean up;
- c. Waste materials resulting from or produced by construction projects; and
- d. Any other material, which upon burning, normally emits dense smoke or noxious odors.

(15) "Yard debris" means wood, stalk, stem, needle or leaf material from trees, shrubs, plants, and lawns.

Section 4. Prohibitions.

(1) No owner shall cause or allow the open burning of waste on the owner's property that is located within the unincorporated areas of the Salem/Keizer Urban Growth Boundary.

(2) No owner shall:

- a. Use or permit the use of burn barrels to dispose of yard debris,
- b. Cause or allow any open burning of yard debris that creates a nuisance or a hazard to public safety,
- c. Cause or allow any open burning of yard debris on days designated as non-burning days by the Oregon Department of Environmental Quality or any local fire district or department, or
- d. Cause or allow any open burning of yard debris not originating on the subject property.

Section 5. Exclusions.

The prohibition of open burning of waste or yard debris does not include:

- (1) Recreational and ceremonial fires not fueled by waste or yard debris,
- (2) Agricultural open burning by an agricultural operation, or
- (3) The operation of any barbeque equipment.

Section 6. Permitted exceptions.

The prohibition of open burning of yard debris does not include the following activities, provided that, prior to burning, a permit is issued by Marion County, and all materials to be burned conform to the requirements and/or limitations specified in the permit:

- (1) The open burning of yard debris during daylight hours on an owner's property that is more than 2 acres in size or on contiguous properties under the same ownership totaling more than 2 acres in size,
- (2) Burning during daylight hours for disease or pest control,
- (3) The open burning of yard debris during daylight hours on properties currently classified by the Marion County Assessor as specially assessed farm or timber properties, and
- (4) The open burning of yard debris during daylight hours that was created by a natural disaster.

Section 7. Enforcement responsibility and authority.

(1) This ordinance shall be enforced by Marion County Code Enforcement Officers. Enforcement shall be accomplished through procedures outlined herein.

(2) The Director of Public Works shall have the authority to establish standards and procedures for the issuance of permits.

(3) The Director of Public Works shall have the authority to designate that "natural disaster" conditions exist on County lands within the Salem-Keizer Urban Growth Boundary for the purpose of effectuating Section 6.4 of this Ordinance.

(4) The Board of Commissioners shall have the authority to establish permit and other fees associated with the implementation and enforcement of this ordinance.

Section 8. Inspection.

(1) Upon receipt of a complaint, the code enforcement officer shall conduct an inspection to determine whether prohibited open burning is occurring or has occurred.

(2) The code enforcement officer shall conduct such inspections as he or she deems necessary to insure compliance with all provisions of this ordinance and shall have right of entry upon property at any reasonable hour to investigate complaints and to ensure compliance with the ordinance. Except when an emergency exists, the enforcement officer shall obtain the consent of the owner or a court-issued warrant before entering onto private property.

(3) As used in this section, an emergency exists when there is reasonable cause to believe that the open burning activity constitutes an immediate and active danger to the public health, safety or welfare.

Section 9. Civil infraction and administrative enforcement.

(1) Civil Infraction. Violation of Section 4 of this ordinance shall be considered a civil infraction and shall be enforced through an administrative process.

(2) Notwithstanding subsection (1) of this section, the provisions of this ordinance are in addition to and not in lieu of any other procedures and remedies provided by law, including a civil suit for equitable relief and damages.

Section 10. Civil infraction citation.

(1) A code enforcement officer may issue a citation to a person for allegedly violating Section 4 of this ordinance. The citation shall consist of four parts. The required parts are:

- a. The complaint,
- b. The abstract of record,
- c. The enforcement officer's record, and
- d. The summons.

(2) Each of the parts shall contain the following information or blanks in which such information shall be entered:

- a. The name of the person alleged to have committed the civil infraction;
- b. The ordinance allegedly violated;

- c. A brief description of the alleged civil infraction in such a manner that can be readily understood by a person making a reasonable effort;
- d. The date, time, and place at which the civil infraction allegedly occurred;
- e. The date on which the citation was issued and the name of the officer;
- f. The date, time and place at which a hearing will be held regarding the alleged civil infraction; and
- g. The amount of the maximum monetary penalty for the civil infraction.

(3) The citation shall also contain:

- a. A statement that the person must appear at the hearing or will waive the right to present evidence or make argument in the matter;
- b. A statement that failure to appear at the scheduled hearing may result in an order and disposition that includes an obligation to pay entered against the person up to the maximum amount of civil penalties and imposition of fees and other costs allowed under this ordinance;
- c. A statement by the officer to the effect that he or she certifies, upon penalties of law, that he or she has reasonable grounds to believe, and does believe, that the person cited committed the civil infraction in violation of this ordinance; and
- d. A provision informing the person alleged to have committed the civil infraction that, if the person is going to be represented by counsel, the person must provide notice to Marion County Legal Counsel at least five days prior to the hearing, or an automatic continuance of the hearing for at least five days will be granted.

(4) A uniform citation conforming to these requirements may be used for alleged violations of this ordinance.

(5) Any error in the citation may be corrected at the hearing or prior to the hearing upon notice to the person cited. The citation shall be set aside by the hearings officer due to error only upon a request by the person cited made before the close of the hearing and upon a determination that the error is prejudicial to the person's defense. Failure to make a request of the hearings officer to set aside the citation before the conclusion of the hearing shall constitute a waiver, and will be an absolute bar to raising this issue at a later date. Nothing in this subsection prohibits the hearings officer from amending the citation in his or her discretion at any time.

Section 11. Service of civil infraction citation.

A civil infraction citation shall be served by personal service, substituted service or by certified mail with return receipt requested. The citation must be issued no later than six (6) months from the date upon which the civil infraction is alleged to have occurred. There shall be a rebuttable presumption that any citation sent by mail was served on the third business day following deposit with the U.S. Postal Service.

Section 12. Hearing upon civil infraction citation, appeal.

(1) Hearings shall be conducted pursuant to Marion County Hearings Officer procedural rules approved by the Marion County Board of Commissioners.

(2) After the hearing, the hearings officer shall issue an order containing findings as to whether the alleged prohibited open burn did in fact occur, and the appropriate civil penalty for the civil infraction.

(3) If, after a hearing, the hearings officer determines that an owner has committed a civil infraction through violation of this ordinance, the owner shall be required to pay to the county an amount equal to the hearing process fee approved by the board of commissioners as an administrative charge for hearing costs.

(4) The decision of the hearings officer is a final County decision. Appeal shall be only by writ of review pursuant to Chapter 34 of the Oregon Revised Statutes.

Section 13. Penalties.

(1) Except as set forth in subsections (2) and (3) below, any person who has been found by the hearings officer to have committed a civil infraction through violation of Section 4 of this ordinance shall be obligated to pay a civil penalty. The Board of Commissioners shall establish the maximum civil penalty for a violation of Section 4 of this ordinance.

(2) Any person who has been found by the hearings officer to have committed a civil infraction through violation of Section 4 of this ordinance within one year of a finding of a commission of a civil infraction under this ordinance shall be obligated to pay the maximum civil penalty established by the Board of Commissioners for a violation of Section 4 of this ordinance.

(3) Each day that this ordinance is violated shall constitute a separate civil infraction.

Section 14. Collections.

At the discretion of the Director of the Public Works Department, any civil penalty, fine or cost not paid within 60 days from the date of the hearings officer's order may be assigned to a collections agency for collection. If forwarded to a collections agency, an additional fee of up to 25% of the amount owing may be added to the amount of the debt in order to recover the cost of collection.

Section 15. Lien record filing.

(1) If not paid within 60 days after delivering or mailing of the hearings officer's order, any civil penalty, cost or fee imposed under this ordinance may be recorded with the Marion County Clerk or any other county clerk of this state as a lien in the County Lien Record. However, no penalty, cost or fee shall be recorded with a county clerk while an appeal is pending.

(2) In addition to any other remedy provided by law, recording an order in the County Lien Record pursuant to this ordinance shall have the same effect and may be enforced as provided in ORS 205.125 and 205.126.

Section 16. Severability clause.

Should any section, subsection, paragraph, sentence, clause or phrase of this ordinance be declared invalid, such declaration shall not affect the validity of any other section, subsection, paragraph, sentence, clause or phrase; and if this ordinance or any portion thereof should be held to be invalid on one ground but valid on another, it shall be construed that the valid ground is the one upon which the ordinance or such portion thereof was enacted.

Section 17. Emergency clause.

This ordinance being necessary for the immediate preservation of the public health and safety, an emergency is declared to exist and this ordinance shall take effect upon its passage.

SIGNED AND FINALIZED this 3rd day of December, 2008.

MARION COUNTY BOARD OF COMMISSIONERS

Chair (Vice) Janet Carlson

W. Kern Hueltel
Recording Secretary