

ARTICLE III. - OPEN BURNING  [122]

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Sec. 3.01. - Short title. 

This article may be referred to as the Manatee County Open Burning Code.

(Regs. of 9-29-93; Ord. No. 96-23, § I, 6-25-96)

Sec. 3.02. - Declaration of intent. 

- (a) Chapter 125, Florida Statutes, authorizes the board of county commissioners of Manatee County to promulgate and adopt an open burning code in order to protect the health, safety and welfare of the citizens of Manatee County.
- (b) It is hereby determined that uniform regulation and control of air pollution emitted by open burning throughout the entire area of Manatee County is required in order to protect the health, safety and welfare of the citizens of Manatee County. This regulation is hereby enacted pursuant to authority granted to the board under Chapter 125, Florida Statutes.
- (c) The board recognizes that the Florida Department of Environmental Protection (FDEP) and the Florida Department of Agriculture and Consumer Services, Division of Forestry (DOF), have certain concurrent jurisdiction pursuant to Chapters 403 and 590, Florida Statutes, and that such jurisdiction is implemented through Chapters 62-256 and 5I-2, Florida Administrative Code. Further, it is recognized that the local fire districts have the duty and responsibility to protect the public health, safety and welfare from uncontrolled burning. It is the intent of the board to require, in Manatee County, compliance with rules of the FDEP, the DOF, and certain stricter local standards, so as to further the policy of protecting air quality existing at the time the board adopted its standards, and of upgrading or enhancing air quality, and to cooperate and coordinate with the DOF and the local fire districts to achieve the mutual goals of the board, the DOF and the local fire districts.
- (d) It is the board's intent in adopting this regulation that it be supplemental and cumulative to any state or federal regulation governing this subject matter and there is no intent to weaken any existing regulation. In addition, this regulation is not intended to supersede the fire districts' ability to adopt and enforce their own rules and regulations with regard to public safety and the protection of property, and to immediately extinguish any fire that poses a threat to the public health, safety and welfare.

(Regs. of 9-29-93; Ord. No. 96-23, § II, 6-25-96)

Sec. 3.03. - Adoption of state rules by reference. 

- (a) Except as otherwise provided herein, the provisions of Chapter 62-256, Florida Administrative Code, and any

subsequent renumbering of Chapter divisions that does not result in a change in scope or content of that Chapter, are hereby adopted by reference, except as otherwise provided herein. References to the Department of Environmental Regulation (the department) and the secretary thereof in such regulations shall be deemed to refer to the board of county commissioners of Manatee County and the director of the county's environmental management department, respectively. The provisions of Chapter 51-2, F.A.C., are also adopted herein by reference. References to the department of agriculture and consumer services in such regulation shall be deemed to refer to the board of county commissioners of Manatee County. Table 1 provides an informational list of the authorities exercising jurisdiction over the various types of open burning in Manatee County.

TABLE 1. SUMMARY OF JURISDICTION FOR TYPES OF BURNS

Type of Burn	Applicable Rule	Agency
Agricultural	Ch. 51-2, F.A.C.	Div. of Forestry
Silvicultural	Ch. 51-2, F.A.C.	Div. of Forestry
Rural land clearing	Ch. 51-2, F.A.C.	Div. of Forestry
Range burning	Ch. 51-2, F.A.C.	Div. of Forestry
Cold/frost protection	Rule 62-256, F.A.C.	Dept of Environmental Protection
Industrial, commercial, municipal and research open burning	Ch. 62-256, F.A.C.	Dept. of Environmental Protection
Nursery	Ord. No. 96-23	County permit; notice to fire dept.
Non-rural land clearing (commercial, industrial, residential)	Ord. 96-23	County permit; notice to fire dept.
Yard trash	Ord. No. 96-23	County permit; notice to fire dept.
Fire dept. training	Ord. No. 96-23	County permit
Bonfires and other recreational or ceremonial fires	Ord. No. 96-23	County permit; notice to fire dept.
Natural disaster emergency burn	Ord. No. 96-23	EMD Director authorization; notice to fire dept.
Fires to abate a fire hazard	Ord. No. 96-23	Notice to EMD, fire dept., Div. of Forestry
Fires for control of disease/pests	Ord. No. 96-23	Approval by EMD/DOF/local law enforcement/local fire district

- (b) Agricultural and silvicultural fires shall be regulated by Chapter 51-2, Florida Administrative Code.
- (c) Burning for cold or frost protection shall be regulated by Rule 62-256.450, Florida Administrative Code. Authorization to conduct burning for these purposes shall be obtained from the Florida Department of Environmental Protection.
- (d) Open burning in connection with industrial, commercial or municipal operations is prohibited, except as authorized by the FDEP.

(Regs. of 9-29-93; Ord. No. 96-23, § III, 6-25-96)

Sec. 3.04. - Definitions.

- (a) Definitions contained in Rules 62-256.200 and 51-2.003, Florida Administrative Code, shall, to the extent applicable and as not otherwise provided herein, apply to this regulation.
- (b) The following specific definitions shall apply to this regulation:
- (1) *Agricultural burning* means the burning of vegetative material originating onsite in conjunction with the cultivation of an indefinite sized parcel of land, including fruit growing, raising of vegetables, trees, shrubs, plants or similar products. Agricultural burning shall specifically exclude nonrural types of land clearing operations described in subsection (b)(6); yard trash as described in subsection (b)(12); nursery as described in subsection (b)(9); and range burning as described in (b)(10).
 - (2) *Agriculture* means the science and art of production of plants and animals useful to man, including to a variable extent the preparation of these products for man's use and their disposal by marketing or otherwise and shall include viticulture, forestry, dairying, livestock and poultry raising, beekeeping and any and all forms of farm production and farm products.
 - (3) *Board* means the board of county commissioners of Manatee County, Florida.
 - (4) *Director* means the head of the Manatee County Environmental Management Department.
 - (5) *Local air pollution advisory* means a local warning to the public when ozone concentrations have reached unhealthful levels, as defined by national or state ambient air quality standards (NAAQS/SAAQS). Proper actions should be taken to protect human health and prevent a recurrence of unhealthful conditions. As part of this advisory, the director may impose and announce a temporary prohibition of open burning activities or take other reasonable steps to abate or alleviate the pollutant conditions.
 - (6) *Land clearing operation* means the uprooting or clearing of vegetation in connection with construction for buildings, rights-of-way, residential, commercial, or industrial development, or the initial clearing of vegetation to enhance property value. It shall not include the maintenance burning of yard trash resulting from fallen limbs, branches, or leaves, or any other routine property clean-up activities.
 - (7) *Local fire district zone* means the geographic area covered by a local fire district that has contacted the department and notified the department of its intent to conduct inspections of open burning sites.
 - (8) *Local fire districts* means areas in the county that are either: (1) units of special purpose government created by Special Act of the Florida Legislature and which are public municipal corporations having the powers and duties of fire protection and control as set forth in their individual special acts; or (2) departments created by a general purpose government to provide fire protection within the government's jurisdictional boundaries.
 - (9) *Nursery* means an area where trees, shrubs, or plants are grown for transplanting or for use as stock for budding or grafting or for sale.
 - (10) *Range burning* means the intentional burning of range or open field areas for the purpose of improving grazing or planting areas and eliminating unwanted vegetation.
 - (11) *Silviculture* means the care and cultivation of forest trees, including planting, trimming and harvesting.
 - (12) *Yard trash* means vegetative matter resulting from landscaping and yard maintenance operations, and includes materials such as tree and shrub trimmings, grass clippings, palm fronds, trees and tree stumps. Yard trash shall not include tires, rubber materials, Bunker C residual oil, asphalt, roofing materials, tar, railroad crossties and other creosoted lumber, plastics (except for polyethylene black plastic mulch used in agriculture), or garbage.

(Regs. of 9-29-93; Ord. No. 96-23, § IV, 6-25-96)

Sec. 3.05. - Prohibited acts.

- (a) All open burning is prohibited in Manatee County except as specifically allowed pursuant to this regulation. No person shall ignite, cause to be ignited, permit to be ignited, suffer, allow, burn, conduct or maintain any prohibited open burning. The DOF or any authorized local fire district empowered by law or ordinance to extinguish unlawful burning may extinguish or cause to be extinguished any fire that is unauthorized or which does not comply with this regulation. Any person responsible for unlawful open burning shall bear any

applicable costs involved in extinguishing the fire.

- (b) All prohibitions specified in Rule 62-256.300(1) through (9), F.A.C., are included by reference in this regulation.
- (c) No open burning may be conducted, whether or not previously permitted, during a National Weather Service Air Stagnation Advisory, a Florida Department of Environmental Protection Air Stagnation Advisory or a local air pollution advisory, or if the appropriate authorities determine that weather conditions are unfavorable for proper, safe, open burning.

(Regs. of 9-29-93; Ord. No. 96-23, § V, 6-25-96)

Sec. 3.06. - Open burning allowed by permit. 

- (a) Unless a person has been issued a permit pursuant to the provisions of this regulation, or is not required to receive a permit pursuant to section 3.08 of this regulation, no person shall ignite, cause to be ignited, permit to be ignited, or maintain any open fire, except as allowed herein.
- (b) To obtain an open burning permit in Manatee County, an application must be submitted to the Manatee County Environmental Management Department (EMD). The application shall include a justification for the open burning and any other necessary permit information. After application approval, an inspection of the burn site will be conducted by the director or designee to determine if the site and materials meet all the requirements of Chapter 62-256, F.A.C., and this regulation. Each local fire district may inspect and approve the open burning application and site for safety and fire department equipment access prior to permit issuance. After a department inspection or local fire district inspection (if so delegated) is conducted, a permit will be issued and reasonable fees will be charged based on the category of burn. The open burning permit must be displayed onsite or be available for verification by inspectors. Failure to have the permit available may be grounds for permit revocation.
- (c) The local fire district shall be notified by the permittee on the day the burning is to be conducted, and on every day that burning continues. Where indicated on the permit, the DOF shall also be notified in the same manner.
- (d) Nothing herein shall relieve any person from complying with other applicable laws, rules, and ordinances, including Chapter 590, Florida Statutes, and rules of the DOF.

(Regs. of 9-29-93; Ord. No. 96-23, § VI, 6-25-96)

Sec. 3.07. - Burn permits required in Manatee County. 

- (a) Table 2 lists the categories of open burns that require a department permit. Prior to EMD issuance of a permit for any burn except for a Category V burn, approval must be obtained from the appropriate local fire district. No permit will be issued where other regulations prohibit open burning.

TABLE 2. Categories of Open Burning—County Permit Required

Category	Description
I	Residential Yard Burns (Yard Trash)
II	Land Clearing, No Air Curtain
III	Land Clearing, With Air Curtain
IV	Land Clearing, Residential
V	Fire Department Training Burns
VI	Nursery Burns
VII	Others

- (1) *Category I. Residential yard burns.* To reduce yard trash only as defined in Rule 62-256.200(24), residential yard burns are allowed by permit only. Setbacks shall be as specified in Rule 62-256.700(1)(a), (b) and (c), F.A.C. The permit will be valid for three (3) months from date of issue and may be extended in three-month increments up to one year, provided that the permittee complies with

- Rule 62-256.700(1)(a) through (h), F.A.C., and provides justification for an extension. A reasonable inspection and permit fee will be charged.
- (2) *Categories II, III and IV. Land clearing.* Open burning will be allowed by permit only, provided that the burn site complies with Rule 62-256.500, F.A.C., and is approved by the local fire district. Setbacks shall be as specified in Rule 62-256.500(1)(a) and (b). The permit is valid for three (3) months from date of issue. Extensions for up to one year may be obtained, with no additional fees charged, if written justification is provided for review and consideration by the director, and approval is granted. A reasonable inspection and permit fee will be charged.
 - (3) *Category V. Fire department training burns.* A permit will be issued for fire training use only in accordance with Rule 62-256.700(5)(a) and (b), F.A.C. An inspection will be conducted by the director of his/her designee to determine compliance prior to issuing the permit. Each local fire department will be limited to three (3) structural burns per calendar quarter to minimize air pollution, except in special circumstances where additional structural burns are essential to human health and safety. In such special cases, the director may, at his/her discretion, approve burns in excess of the three (3) burns per calendar quarter specified above. No permit or inspection fees will be charged.
 - (4) *Category VI. Nursery burns.* Will be allowed by permit only, provided that the burn site and procedures are in compliance with Rule 51-2.006, F.A.C. (agricultural and silvicultural fires), specific conditions set forth in Rule 62-256.700, F.A.C, and is approved by the local fire district. The permit is valid for twelve (12) months from date of issue. The permit may contain specific conditions for types of materials burned such as chemical containers approved for destruction by open burning, strip burning, or plastic mulching and other agricultural type burning activities. Written application shall not be mandatory. A reasonable inspection and permit fee will be charged.
 - (5) *Category VII. Others.* A bonfire or other fire that is used solely for recreational purposes or for ceremonial occasions, will be allowed by permit only, provided that the burn site complies with Rule 62-256.700, F.A.C., and is approved by the local fire district. An inspection may be conducted to ensure that only approved materials are to be burned. Approved materials are in accordance with Rule 62-256.200(5), F.A.C., "Clean Dry Wood." No permit or inspection fees will be charged.

(Regs. of 9-29-93; Ord. No. 96-23, § VII, 6-25-96)

Sec. 3.08. - Open burning allowed without county permit.

- (a) Unless prohibited by other agencies exercising jurisdiction over open burning, the following types of fires are allowed in Manatee County without an open burn permit:
 - (1) A barbecue grill fire will be allowed if used solely for the preparation of food, provided that a grate is maintained over the fire, excessive visible emissions are not generated, and only approved materials (per Rule 62-256.200(5), F.A.C.) are burned.
 - (2) A camp fire will be allowed, if permitted by the local fire district exercising jurisdiction over the proposed camp fire location, for outdoor noncommercial food preparation, or on cold days for warming of outdoor workers, provided that excessive visible emissions are not generated, and only approved materials are burned.
 - (3) A natural disaster emergency burn will be approved by the director in accordance with Rule 62-256.600(1), F.A.C., when it is deemed necessary by the FDEP.
 - (4) Fires to abate a fire hazard may be allowed, providing a hazard is declared by the local fire district or DOF, and the fire could not have been classified as a fire department training burn.
 - (5) Fires for the prevention or control of disease or pests may be approved by the director or DOF, the local law enforcement agency or fire district.
 - (6) Agricultural and silvicultural fires or rural land clearing operations, including range burning, which have received a burn authorization from the DOF. The appropriate fire district shall be notified prior to initiation of burning.
- (b) For all open burning that does not require a Manatee County open burning permit, the local fire district must be notified the day the burning is to be conducted except in the case of barbecue grill fires, or a natural disaster emergency burn.

(Regs. of 9-29-93; Ord. No. 96-23, § VIII, 6-25-96)

Sec. 3.09. - Administration and enforcement.

- (a) The provisions of this regulation shall be administered by the EMD. Enforcement of this regulation shall be provided by the local enforcement agents of the county and the local fire districts. Additional enforcement authority is provided to the DOF as specified in Rule 5I-2, F.A.C. and Chapter 590, Florida Statutes.
- (b) The application for and receipt of a Manatee County permit for open burning or an authorization from the DOF constitutes consent by the landowner or leaseholder to the inspection of the burn site immediately prior to, during, and immediately following the burn as the director may deem necessary for enforcement of this regulation. Refusal to allow inspection will result in the revocation of any approval or permission to burn which has previously been issued and will be deemed a violation of this regulation.
- (c) Any person responsible for unlawful open burning shall bear any and all applicable costs involved in extinguishing the fire.
- (d) The maximum penalty for a first offense or for failure to obtain a permit shall be two hundred fifty dollars (\$250.00). Repeat violations shall be penalized at five hundred dollars (\$500.00). Additionally, repeat offenders may be denied future burn permits.
- (e) Penalties collected through this regulation shall be deposited in the Manatee County Pollution Recovery Fund, and used only for the purposes authorized by the resolution establishing such fund.
- (f) Delegation of the inspection requirements to a local fire district may be done by interlocal agreement under Section 163.01, Florida Statutes, at the sole discretion of the board. The agreement shall stipulate inspection, reporting and fee collection requirements. The board shall not delegate authority for inspection of Category V fire training burns.
- (g) Violations of this regulation are punishable under the provisions of Section 125.69, Florida Statutes. Upon approval of this program by the FDEP, the penalty provisions contained in Sections 403.141 and 403.161 of the Florida Statutes shall also be available.
- (h) Fee schedules for the issuance for all permits, inspections, permissions and authorizations shall be established by resolution of the board of county commissioners.
- (i) All fees collected as part of this regulation will be the property of the board of county commissioners of Manatee County except as otherwise stated herein.

(Regs. of 9-29-93; Ord. No. 96-23, § IX, 6-25-96)

Sec. 3.10. - Severability.

In the event that any provision of this regulation is declared by a court of competent jurisdiction to be void, unconstitutional, or unenforceable, all remaining provisions and portions of this regulation shall remain in full force and effect. All of the provisions of this regulation are severable and the legality and enforceability of any one or more of them is not contingent or dependent upon the validity of any other provision.

(Regs. of 9-29-93; Ord. No. 96-23, § X, 6-25-96)

Sec. 3.11. - Effective date.

This regulation shall take effect upon filing with the secretary of state.

(Regs. of 9-29-93; Ord. No. 96-23, § XI, 6-25-96)

FOOTNOTE(S):

⁽¹²²⁾ *Editor's note*— Ord. No. 96-23, adopted June 25, 1996, has been treated as amendatory of App. A, Art. III, §§ 3.01—3.11, at the discretion of the editor. ([Back](#))