

AN ORDINANCE BY THE PASCO COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE PASCO COUNTY CODE OF ORDINANCES, TO INCORPORATE THE CURRENT STATE LAW PROHIBITIONS CONCERNING OPEN BURNING TO ENABLE LOCAL ENFORCEMENT OF THOSE REGULATIONS; PROHIBITING THE BURNING OF THE INSULATION SURROUNDING COPPER WIRE AND PROHIBITING POSSESSION OF COPPER WIRE BEARING EVIDENCE OF BURNING BY PERSONS OTHER THAN LICENSED SECONDARY METALS RECYCLERS OR PERSONS IN POSSESSION OF VALID STATE AND FEDERAL PERMITS TO BURN SOLID WASTE; PROVIDING FOR APPLICABILITY, REPEALER, SEVERABILITY, INCLUSION INTO THE CODE, AND AN EFFECTIVE DATE.

WHEREAS, Chapter 125, Florida Statutes, authorizes the Board of County Commissioners of Pasco County to promulgate and adopt an open burning code in order to protect the health, safety and welfare of the citizens of Pasco County; and

WHEREAS, uniform regulation and control of air pollution emitted by open burning throughout the entire area of Pasco County is required in order to protect the health, safety and welfare of the citizens of Pasco County; and

WHEREAS, 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; and

WHEREAS, the Pasco County Board of County Commissioners desires to protect the public from the hazards associated with uncontrolled burning; and

WHEREAS, copper wire thieves often openly burn the insulation surrounding the wire, which emits toxic pollutants into the air. Law enforcement familiar with the millions in property damage caused by copper wire theft believe that an ordinance specifically prohibiting the burning of the insulation surrounding copper wire will, in addition to protecting air quality, assist in deterring copper wire theft or identifying those involved in the thefts.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Pasco County, Florida, as follows:

Section 1. The Pasco County Code of Ordinances, Chapter 46, is hereby amended by adding a new article, Article IV, as follows:

ARTICLE IV. OPEN BURNING*

Sec. 46-70. Declaration of intent.

(a) Chapter 125, Florida Statutes, authorizes the Board of County Commissioners of Pasco County to promulgate and adopt an open burning code in order to protect the health, safety and welfare of the citizens of Pasco County.

(b) It is hereby determined that uniform regulation and control of air pollution emitted by open burning throughout the entire area of Pasco County is required in order to protect the health, safety and welfare of the citizens of Pasco 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 Pasco County Board of County Commissioners desires to protect the public from the hazards associated with uncontrolled burning, and to deter the theft of copper wire through prohibition of burning of the insulation surrounding the wire by unauthorized persons. It is the intent of the board to require, in Pasco 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 FDEP to achieve the mutual goals of the board, the DOF and the FDEP.

(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.

Sec. 46-71. Adoption of state rules by reference.

Except as otherwise provided herein, the prohibitions against open burning contained in Chapters 5I-2 and Chapter 62-256, Florida Administrative Code, and any subsequent renumbering of these chapters that does not result in a change in scope or content of that chapter, are hereby adopted by reference.

Sec. 46-72. Definitions.

(a) Definitions contained in Rules 62-256.200 and 5I-2.003, F.A.C., 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" is the burning of vegetative material originating on site in conjunction with the cultivation of land, and including: gardening or horticulture, fruit growing, raising of vegetables, trees, shrubs, plants, pastures or rangeland.

(2) "Extinguished" means the absence of any visible flames, smoke or emissions.

(3) "Land clearing debris" is uprooted or cleared vegetation resulting from a land clearing operation, including any untreated wood generated by the land clearing operation (e.g., untreated fence posts).

(4) "Land clearing operation" means the uprooting or clearing of vegetation in connection with construction for buildings and rights-of-way; land development; or mineral operations. It does not include landscaping and yard maintenance operations or other such routine property clean-up activities.

(5) "Open burning" means the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the outdoor atmosphere without passing through a stack or chimney.

(6) "Rural Land Clearing" is any land clearing conducted in areas other than urban service areas or residential areas, incorporated or unincorporated cities or towns, or in any rural areas as designated by the Department of Environmental Protection and shall not include any land clearing operation that is associated with silvicultural or agricultural activities.

(7) "Silviculture" is that phase of forestry dealing with the establishment, development, reproduction, and care of forest flora and fauna.

(8) "Sunset" is the official time the sun will set as set forth by the U.S. Naval Observatory (tables are available at National Weather Service offices and on the internet at www.usno.navy.mil).

(9) "Trash" means materials resulting from the construction, renovation or demolition of a structure, and other debris such as paper, cardboard, packing material, cloth, glass, street sweepings, vehicle tires and other like matter. The term does not include untreated wood or vegetative debris.

(10) "Tree cutting debris" is debris consisting of trees, tree stumps, and tree limbs resulting from a tree removal or tree trimming operation.

(11) "Untreated wood" means wood (including lighter pine, tree trunks, limbs and stumps, shrubs, and lumber) which is free of paint, glue, filler, pentachlorophenol, creosote, tar, asphalt, chromated copper arsenate (CCA), and other wood preservatives or treatments.

(12) "Waste pesticide containers" means any containers made of combustible materials, including but not limited to paper, plastic, or burlap, which formerly contained pesticides and which the manufacturer or formulator provided as an end user conveyance for the specified product.

(13) "Yard waste" means vegetative matter resulting from landscaping and yard maintenance operations and other such routine property clean-up activities. It includes materials such as leaves, shrub trimmings, grass clippings, palm fronds, and brush. It does not include land clearing debris or tree cutting debris.

Sec. 46-73. Prohibited acts.

(a) Except as allowed by section 46-74, below, all open burning is prohibited in Pasco County. Open burning allowed under section 46-74, below, shall be conducted in accordance with the conditions provided for such allowed activity. Except in accordance with section 46-74, below, no person shall otherwise ignite, cause to be ignited, permit to be ignited, suffer, allow, burn, conduct or maintain open burning. Any person 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, in addition to the fines for violation of this chapter set out in the county's Uniform Fine Schedule.

(b) All prohibitions specified in Rule 62-256.300(1) through (4), F.A.C., are included by reference in this regulation.

(c) No open burning, including open burning otherwise allowed pursuant to section 46-74, below, may be conducted during a National Weather Service Air Stagnation Advisory, a Florida Department of Environmental Protection Air Stagnation Advisory, a local air pollution advisory, or if a resolution from the Board of County Commissioners instituting an emergency burn ban is in effect.

(d) Any plastic, including insulation surrounding copper wire, may not be burned in Pasco County, except as may be permitted by Rule 62-256.300(2)(b), F.A.C. Possession of copper wire that displays charring, discoloration, or other evidence that indicates the plastic or insulation surrounding the wire was burned off, unless satisfactorily explained, gives rise to an inference that the person in possession of the copper wire participated in illegal burning of the plastic and/or insulation. Possession of copper wire that displays charring, discoloration, or other evidence that indicates the plastic or insulation was burned off, is also a violation of this chapter, unless the person in possession is a licensed secondary metals recycler in compliance with all applicable state and federal regulations, or the person in possession has a state or federal permit authorizing the burning of solid waste and has complied with all relevant conditions of such permit. "An absentee landowner shall not be responsible for unlawful burning on his or her property when conducted by a trespasser without the owner's knowledge or permission."

Sec. 46-74. Open burning allowed. Open burning is allowed for the following items only if conducted in accordance with the provisions of Rule 62-256.700(1) through (10), F.A.C. and Rule 5I-2.006, F.A.C., after receiving appropriate authorizations from the state agencies with jurisdiction. Pasco County inspectors or law enforcement officers enforcing this article may require the person conducting the burn, or other person responsible for the property and/or the burn, to demonstrate this authorization. Failure to produce or demonstrate such authorization shall also be a violation of this code.

(1) Open Burning of Yard Waste.

(a) Open burning of yard waste is allowed provided:

1. The yard waste was generated on residential premises of not more than two family units;
2. The open burning is conducted on the premises where the material was generated;
3. The fire is ignited after 9:00 a.m. Eastern time and extinguished no later than one hour before sunset, provided however that no burning shall be conducted during windy conditions;
4. The fire is enclosed in a noncombustible container or is restricted to a pile no greater than eight feet in diameter built upon ground cleared of all combustible material;
5. The fire is set back at least 25 feet from any wildlands, brush, or combustible structure, 50 feet from any paved public roadway, and 150 feet from any occupied building other than that owned or leased by the individual doing the burning;
6. The fire is attended and adequate fire extinguishing equipment is readily available at all times; and
7. The moisture content and composition of material to be burned is favorable to good burning which will minimize smoke.

(b) Except as provided above and at Rules 62-256.700(8) and (9), F.A.C., any other open burning of yard waste is allowed only if such burning is conducted using a Department of Environmental Protection-permitted air curtain incinerator operated in compliance with the provisions of Rule 62-296.401, F.A.C., and any other terms of the unit's air permit.

(2) Open Burning of Tree Cutting Debris.

(a) Open burning of tree cutting debris is allowed provided:

1. The tree cutting debris was generated on residential premises of not more than two family units;
2. The open burning is restricted to the site where the tree cutting debris was generated;
3. The fire is ignited after 9:00 a.m. Eastern time and shall have no visible flame one hour before sunset or anytime thereafter, except in smoke sensitive areas as determined by the Division of Forestry, where the fire must be extinguished no later than one hour before sunset;
4. The fire is attended, and adequate fire extinguishing equipment is readily available at all times;

5. The moisture content and composition of material to be burned is favorable to good burning which will minimize smoke; and

6. Prior to conducting the open burning, the person responsible for the burn contacts the Division of Forestry regarding the planned burning activity.

(b) Except as provided above and at Rules 62-256.700(8) and (9), F.A.C., any other open burning of tree cutting debris shall be conducted using a Department of Environmental Protection-permitted air curtain incinerator operated in compliance with the provisions of Rule 62-296.401, F.A.C., and any other terms of the unit's air permit.

(3) Open Burning of Land Clearing Debris.

(a) Open burning of land clearing debris is allowed provided:

1. The open burning is restricted to the site where the land clearing debris was generated;

2. The fire is ignited after 9:00 a.m. Eastern time and shall have no visible flame one hour before sunset or anytime thereafter, except in smoke sensitive areas as determined by the Division of Forestry, where the fire must be extinguished no later than one hour before sunset;

3. The fire is attended, and adequate fire extinguishing equipment is readily available at all times;

4. The moisture content and composition of material to be burned is favorable to good burning which will minimize smoke; and

5. Prior to conducting the open burning, the person responsible for the burn contacts the Division of Forestry regarding the planned burning activity.

(b) Except as provided above, any other open burning of land clearing debris shall be conducted using an air curtain incinerator operated in compliance with the terms of the exemption from air permitting at Rule 62-210.300, F.A.C., if such exemption applies, or if such exemption does not apply, in compliance with the provisions of Rule 62-296.401, F.A.C., and any other terms of the unit's air permit.

(4) Open Burning for the Training of Firefighters.

(a) Except as provided at paragraph 62-256.700(4)(b), F.A.C., open burning is allowed for the instruction and training of organized firefighters or industrial employees under the supervision of the appropriate public fire control official provided that all such burning is conducted at a fire training center certified by the Department of Financial Services, Division of State Fire Marshal, and does not involve the burning of any asbestos-containing materials, mercury-containing devices, or hazardous waste.

(b) A structure not on the premises of a certified fire training center may be burned for the instruction and training of organized firefighters provided the following conditions are met.

1. The burning activities shall be conducted under the auspices of a certified training center or by an organized fire department recognized by the Division of State Fire Marshal. Said activities shall be supervised by a fire training instructor certified by the Division of State Fire Marshal;

2. The burning shall be conducted in accordance with the National Fire Protection Association document, "Standard on Live Fire Training Evolutions, 2002 Edition (NFPA 1403)," hereby adopted and incorporated by reference, and available from the National Fire Protection Association, P.O. Box 9101, Quincy, MA 02269-9101;

3. The burning of the structure and disposal of the waste products shall be conducted in compliance with all applicable provisions of 40 CFR Part 61, Subpart M, National Emission Standard for Asbestos, adopted and incorporated by reference at Rule 62-204.800, F.A.C.;

4. Prior to the structure being burned, all hazardous waste, mercury-containing devices, and vinyl siding shall be removed; and

5. The Division of Forestry and the Department of Environmental Protection shall be notified at least 10 business days in advance of the time and place of the burning exercise.

(5) Open Burning of Waste Pesticide Containers. Subject to all of the following conditions, waste pesticide containers may be burned in open fields by the owner of the crops, the owner's authorized employee or caretaker, or by commercial pesticide applicators hired by the owner or caretaker.

- (a) Plastic containers must be the original container provided by the pesticide manufacturer or formulator as end user conveyance for the specific product, and not reused containers designed for other products.
- (b) Containers must be classified as Group I Containers and bear label instructions stating that small quantities of the containers may be burned in open fields by the user of the pesticide when such open burning is permitted by State and local regulations.
- (c) The quantity of containers to be burned each day per parcel treated shall not exceed the amount accumulated during one day's use of pesticide. No more than 500 pounds of pesticide containers shall be burned per day at any specific location. If more than one fire is to be set in any area each specific burning location shall be at least 1,000 yards from each other location at which burning will occur concurrently.
- (d) All Group I Containers which are to be disposed by open burning shall be completely empty and free of residual material pursuant to the following criteria:
 - 1. Plastic containers including inner liners shall be triple rinsed with the same kind of solvent used to dilute the spray mixture in the field. The rinse liquids from the containers shall be added to the spray mixture in the field.
 - 2. Paper containers shall be emptied by a final shaking and tapping of the sides and bottom to remove clinging particles. All loosened particles shall be added to the spray mixture or application in the field.
- (e) The open burning shall meet the following conditions:
 - 1. The open burning is two hundred feet or more away from any farm workers or occupied buildings and is one hundred feet or more away from any public road.
 - 2. The fire is ignited after 9:00 a.m. Eastern time and is extinguished one hour before sunset of the same day.
 - 3. The person responsible for the burning is in attendance at an upwind location from the fire for the entire period of the burn (until all flame and smoke have dissipated).
 - 4. The open burning is enclosed in a noncombustible container or ground excavation covered by a metal grill.

(6) Open Burning of Animal Carcasses. Open burning of animal carcasses is allowed provided:

- (a) The Department of Agriculture and Consumer Services has determined that the need for destruction of such carcasses constitutes an emergency requiring the use of open burning; and
- (b) Such burning is conducted using an air curtain incinerator operated in compliance with the terms of the exemption from air permitting at Rule 62-210.300, F.A.C., if such exemption applies, or if such exemption does not apply, in compliance with the provisions of Rule 62-296.401, F.A.C., and any other terms of the unit's air permit.

(7) Open Burning Related to Agricultural Operations.

- (a) Open burning of the following materials used in agricultural operations related to the growing, harvesting or maintenance of crops is allowed provided such burning is conducted in accordance with the provisions of Section 403.707(2)(e), F.S.
 - 1. Polyethylene plastic mulch;
 - 2. Damaged, nonsalvageable, untreated wood pallets; and
 - 3. Packing material that cannot feasibly be recycled.
- (b) Agricultural burning conducted under the authority of the Department of Agriculture and Consumer Services is not regulated under this chapter.

(8) Open Burning of Storm-Generated Debris. Open burning of storm-generated debris consisting only of vegetative debris and untreated wood is allowed provided:

- (a) The open burning is conducted by or under the authority of county's Emergency Management Director, or other municipal or county official or employee responsible for clean-up activities following a storm;
- (b) Such burning is conducted using an air curtain incinerator operated in compliance with the terms of the exemption from air permitting at Rule 62-210.300, F.A.C., if such exemption applies, or if such exemption does not apply, in compliance with the provisions of Rule 62-296.401, F.A.C., and any other terms of the unit's air permit; or such burning is pile burning conducted under the authority of the Division of Forestry; and

(c) By no later than 10 days after the start of the open burning, the local government or its agent provides a written notice to the Department of Environmental Protection describing the general nature of the materials being burned, the location of the burning activity, the method of burning being used, and the name, address, and telephone number of the county representative to contact regarding the burning activity.

(9) Open Burning of Insect or Disease-Infested Vegetation. Open burning of insect or disease-infested vegetation is allowed provided:

(a) The Director of the Division of Forestry has determined that the need for destruction of such vegetation constitutes an emergency requiring the use of open burning; and

(b) Such burning is conducted using an air curtain incinerator operated in compliance with the terms of the exemption from air permitting at Rule 62-210.300, F.A.C., if such exemption applies, or if such exemption does not apply, in compliance with the provisions of Rule 62-296.401, F.A.C., and any other terms of the unit's air permit; or such burning is pile burning conducted under the authority of the Division of Forestry.

(10) Recreational Open Burning. Nothing in this chapter shall be construed to prohibit the open burning of vegetative debris or untreated wood:

(a) in a campfire,

(b) in a ceremonial bonfire,

(c) outdoor fireplace, or other contained outdoor heating or cooking device; or

(d) on cold days for warming of outdoor workers.

Such fires shall not be left unattended or unextinguished.

Sec. 46-75. Provisions inapplicable. The provisions of this article do not apply to barbecue grill fires used solely for the preparation of food, provided that a grate is maintained over the fire.

Sec. 46-76. Administration and enforcement.

(a) Any person responsible for unlawful open burning shall bear any and all applicable costs involved in extinguishing the fire, in addition to the fines provided in the Uniform Fine Schedule.

(b) Violations of this regulation are punishable under the provisions of Section 125.69, Florida Statutes.

Section 2. APPLICABILITY.

For purposes of jurisdictional applicability, this Ordinance shall apply in all unincorporated areas of the county. This Ordinance shall apply in a municipality within Pasco County only if the municipality expressly adopts this ordinance and repeals all ordinances inconsistent with these provisions.

Section 3. REPEALER.

Any and all ordinances in conflict herewith are hereby repealed to the extent of any conflict.

Section 4. SEVERABILITY.

It is declared to be the intent of the Board of County Commissioners of Pasco County, Florida, that if any section, subsection, sentence, clause, or provision of this ordinance is held invalid, void, unconstitutional, or unenforceable, the remainder of the ordinance shall be construed as not having contained the said section, subsection, sentence, clause, or provision and shall not be affected by such holding and 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.

Section 5. INCLUSION INTO THE CODE.

It is the intent of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Pasco County Code of Ordinances, and that the sections of this Ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," "regulation," or such other appropriate word or phrase in order to accomplish such intentions.

Section 6. EFFECTIVE DATE.

A certified copy of this ordinance shall be filed with the Department of State by the Clerk to the Board of County Commissioners within ten (10) days after adoption of this ordinance, and this ordinance shall take effect the date the ordinance is filed with the Department of State.

ADOPTED this _____ day of _____, 2008.

(SEAL)

BOARD OF COUNTY COMMISSIONERS
OF PASCO COUNTY, FLORIDA

ATTEST:

JED PITTMAN, CLERK

THEODORE J. SCHRADER, CHAIRMAN