

**CITY OF GARIBALDI
ORDINANCE NO. 305**

**AN ORDINANCE ADOPTING OPEN BURNING REGULATIONS FOR
THE CITY OF GARIBALDI, OREGON; ESTABLISHING POLICIES
AND FEES FOR APPEALS AND CALL-OUT REIMBURSEMENT**

WHEREAS, the State Fire Marshal requires localities to adopt rules and regulations relating to open burns to allow for the local Administration of Open Burning rules and regulations, with the exception of certain rules and regulations that are explicitly the domain of other State Agencies; and

WHEREAS, OAR 837-039-0015 (2)(b) allows localities to adopt a Fire Code that is consistent with state fire protection statutes, and is equal to or more stringent than, the codes promulgated by the State Fire Marshal; and

WHEREAS, the City of Garibaldi has a qualified Fire Department and contracts its services to the Garibaldi Rural Fire District for fire protection within their area of jurisdiction; and

WHEREAS, under ORS 478.300 (2), when an Open Burning Ordinance is enacted by a jurisdiction that contracts its services, its rules, regulations and standards shall automatically apply within the area of the local governmental entity whose fire service is provided by contract by another local governmental entity; and

WHEREAS, Ordinance No. 301 allows for the Fire Chief to issue burn permits pursuant to policies adopted by the City Council (codified under Garibaldi Municipal Code 2.50.040) and, whenever a fire is extinguished or attempted to be extinguished by the fire department as a result of a willful violation of ORS 478.960, the owner of the property involved in such fire shall pay for the cost of providing such fire suppression service (GMC 2.50.080); and

WHEREAS, the Oregon Department of Forestry usually declares Fire Season open within the first two weeks of June of each year; NOW, THEREFORE

THE CITY OF GARIBALDI ORDAINS AS FOLLOWS:

ARTICLE I. GENERAL PROVISIONS

Section 1.1 This Ordinance is hereby adopted and shall be in full force and effect upon adoption as an emergency is found to exist requiring immediate enforcement of the provisions, conditions and/or actions found within this Ordinance.

Section 1.2 Pursuant to ORS 478.300 (2), this Ordinance shall apply to all areas, individuals and/or legal entities within the jurisdiction of the Garibaldi Rural Fire District.

Section 1.3 A fee for Appeal as well as the fee(s) for call-out reimbursement are contained within this Ordinance.

Section 1.4 This ordinance shall be codified into the Garibaldi Municipal Code following administrative procedures.

ARTICLE II. TITLE

Section 2.1 These rules, regulations and standards adopted by this Ordinance hereafter be referred to as the "Open Burning Policy" for the City of Garibaldi, Oregon.

ARTICLE III. DEFINITIONS

Section 3.1 As used within this Ordinance, unless the context requires otherwise:

- (A) **Administration.** The inspection, enforcement and record-keeping systems used in the management of a fire prevention/investigation program.
- (B) **Agricultural Burning for Disease/Pest Control.** The open burning of waste infected or infested with a disease or pest for which the County Extension Service or Oregon Department of Agriculture identify as having no other practical control.
- (C) **Agricultural Open Burning.** The open burning of any Agricultural Waste, except as provided in OAR 340-264-0040 (5).
- (D) **Agricultural Waste.** Any waste material generated or used by an agricultural operation, excluding those materials described in OAR 340-264-0060 (3).
- (E) **Animal Disease Emergency.** The occurrence of a disease that the Oregon Department of Agriculture determines has potentially serious economic implications for the livestock industries of this state.
- (F) **Appeal.** The administrative process which is offered to an aggrieved party by the City which in response to the aggrieved party having received an order from the City and is requested by the aggrieved party.
- (G) **Assistant.** As used herein, an Assistant to the State Fire Marshal under ORS 476.060, including, but not limited to, "all fire marshals in those Governmental Subdivisions having such officers, and where no such officer exists, the chief of the fire department of every city or rural fire protection district in which a fire department is established."
- (H) **Chief.** See Fire Chief.
- (I) **Combustion Promoting Materials.** Includes, but is not limited to propane, diesel oil or jellied diesel.
- (J) **Commercial Open Burning.** The open burning of commercial waste.
- (K) **Commercial Waste.** Any material except Agricultural Waste, Construction Waste, Demolition Waste, Domestic Waste, Industrial Waste and Slash. Examples of Commercial Waste are materials from offices, wholesale or retail yards and outlets, warehouses, restaurants, mobile home parks, Domestic Waste removed from the property of origin, and dwellings containing more than four (4) family living units, such as apartments, condominiums, hotels, motels or dormitories.
- (L) **Construction Open Burning.** The Open Burning of any Construction Waste.
- (M) **Construction Waste.** Any Waste material generally used for, resulting from or produced by a building or construction project. Examples of construction waste are wood, lumber, paper, crating and packing materials processed for or used during construction, materials left after completion of construction, and materials collected during cleanup of a construction site.
- (N) **Daylight Hours.** The time between 7:30 a.m. and two (2) hours before sunset.
- (O) **District.** Means a rural fire protection district proposed to be organized or organized under, or subject to, ORS Chapter 478. In other instances, District shall mean the Garibaldi Rural Fire District.

- (P) **Demolition Open Burning.** The Open Burning of Demolition Waste.
- (Q) **Demolition Waste.** 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 cleanup, excluding Yard Debris (Domestic Waste) and Agricultural Waste.
- (R) **Domestic Open Burning.** The Open Burning of any Domestic Waste.
- (S) **Domestic Waste.** Household Waste material; which includes paper, cardboard, clothing, Yard Debris or other material generated in or around a dwelling of four (4) or fewer family-living units, or on the real property appurtenant to the dwelling. Such Waste materials generated in or around a dwelling of more than four (4) family-living units are Commercial Wastes. Once Domestic Waste is removed from the property of origin, it becomes Commercial Waste.
- (T) **Enforcement.** The investigation, inspection, citation, and/or prosecution of alleged violations of state and local fire protection laws, rules and regulations.
- (U) **Fire Chief.** An individual, appointed by the City, who is qualified and certified by the State of Oregon as a fire-fighter, who is responsible for the overall operations of the fire department, enforcement of fire protections codes where applicable, and other duties/responsibilities as proscribed by the State Fire Marshal. Chief, as used within this Ordinance, may also mean any individual of the City's Fire Department or City who is delegated responsibilities by the Fire Chief under this Ordinance.
- (V) **Fire Code.** All Oregon fire protection statutes, the administrative rules of the State Fire Marshal and local government regulations which are adopted in conformance with Division 39 of OAR 837.
- (W) **Fire Hazard.** The presence or accumulation of combustible material of such nature and in sufficient quantity that its continued existence constitutes an imminent and substantial danger to life, property, public welfare, or adjacent lands.
- (X) **Governmental Subdivision.** Means a city, county or rural fire protection district in this state whose functions include regulation of building use and occupancy and the administration of fire safety laws, ordinances and regulations.
- (Y) **Hazard to Public Safety.** Fires that burn prohibited materials or result in smoke that substantially impairs visibility on a roadway.
- (Z) **Industrial Open Burning.** The Open Burning of any Industrial Waste.
- (AA) **Industrial Waste.** Any waste material, including process waste, produced as the direct result of any manufacturing or Industrial process.
- (BB) **Land Clearing.** The removal of trees, brush, logs, stumps, debris or man-made structures for the purpose of site clean-up or site preparation. All waste material generated by Land Clearing is Demolition Waste except those materials included in the definitions of Agricultural Wastes, Yard Debris (Domestic Waste), and Slash.
- (CC) **Nuisance.** 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.
- (DD) **Open Burning.** Burning in open, outdoor fires; burning in burn barrels; burning in incinerators that do not meet the emission limitations specified for solid and infectious Waste incinerators in OAR 340-230-0100 through 340-230-0150; and any other outdoor burning when combustion air is not effectively controlled and combustion products are not effectively vented through a stack or chimney.
- (EE) **Ordinance.** Means this "Open Burning Ordinance" and includes any subsequent revisions and/or amendments, if any.

ARTICLE V. PERMIT NOT REQUIRED

Section 5.1 Exempted Materials. As specified in OAR 340-264-0040, and as otherwise specified within this Ordinance, the following are exempted from the requirement of an Open Burning Permit:

- (A) Recreational fires and ceremonial fires, for which a fire is appropriate.
- (B) The operation of any barbecue equipment.
- (C) Fires set or permitted by any public agency when such fire is set or permitted in the performance of its official duty for the purpose of weed abatement, prevention or elimination of a fire hazard, or a hazard to public health or safety, or for instruction of employees in the methods of fire fighting, which in the opinion of the public agency is necessary. Open Burning fires otherwise exempt from the requirements of this section are still subject to the requirements and prohibitions of the City of Garibaldi and the State Fire Marshal.
- (D) Agricultural Open Burning pursuant to ORS 468A.020. Agricultural burning is still subject to the requirements and prohibitions of the City of Garibaldi and the State Fire Marshal.
- (E) Slash burning on forestland or within one-eighth mile of forestland permitted under the Oregon Smoke Management Program regulated by the Oregon Department of Forestry pursuant to ORS 477.515.
- (F) Fires set pursuant to permit for the purpose of instruction of employees of private industrial concerns in methods of fire fighting, or for civil defense instruction. However, the GVFD shall be notified no less than five (5) working days prior to such burning.
- (G) Agricultural Burning for Disease or Pest Control when the fire is set or authorized in writing by the Department of Agriculture prior to such burning. A reasonable attempt shall be made to minimize or eliminate any and all smoke and/or odor caused by such burning so as to not create a nuisance on neighboring properties.
- (H) When caused by an authorized representative of the Department of Agriculture, Open Burning of carcasses of animals that have died or been destroyed because of an Animal Disease Emergency. A reasonable attempt shall be made to minimize or eliminate any and all smoke and/or odor caused by such burning so as to not create a Nuisance on neighboring properties.

ARTICLE VI. OPEN BURNING

Section 6.1 General Requirements.

- (A) This rule applies to all Open Burning, unless expressly limited by any other rule, regulation, permit, ordinance, order or decree of the City of Garibaldi or other agency having jurisdiction.
 - 1. The following Persons are considered a responsible Person for Open Burning in violation of this Ordinance:
 - a. Each Person who is in Ownership, control or custody of the real property on which Open Burning occurs, including any tenant thereof;
 - b. Each Person who is in Ownership, control or custody of the material that is burned; or

- the requirements and prohibitions of this Ordinance and the State Fire Marshal.
2. Agricultural Open Burning is allowed, subject to the requirements and prohibitions of this Ordinance and the State Fire Marshal.
 3. Commercial Open Burning is allowed, subject to the requirements and prohibitions of this Ordinance and the State Fire Marshal.
 4. Construction and Demolition Open Burning is allowed, subject to the requirements and prohibitions of this Ordinance, the State Fire Marshal, OAR 340-264-0050, 340-264-0060 and 340-264-0070.
 5. Domestic Open Burning is allowed subject to the requirements and prohibitions of this Ordinance, the State Fire Marshal, OAR 340-264-0050, 340-264-0060 and 340-264-0070.
 6. No permit will be issued for Slash burning, which is administered by the Oregon Department of Forestry.

Section 6.2 General Prohibitions. This rule applies to all Open Burning, unless expressly limited by any other rule, regulation, permit, Ordinance, order or decree of the City or other agency having jurisdiction:

- (A) The following Persons are strictly liable for Open Burning in violation of this rule:
 1. Each Person who is in Ownership or custody of the real property on which Open Burning occurs, including any tenant thereof;
 2. Each Person who is in Ownership, control or custody of the material that is burned; or
 3. Any Person who causes or allows Open Burning to be initiated or maintained.
- (B) No Person may cause or allow to be initiated or maintained any Open Burning that creates a nuisance or a hazard to public safety.
- (C) No Person, except where specifically provided for otherwise in this Ordinance, may cause or allow to be initiated or maintained any Open Burning of, but not limited to, the following:
 1. Wet garbage;
 2. Plastic;
 3. Asbestos;
 4. Wire insulation;
 5. Automobile parts;
 6. Asphalt;
 7. Petroleum products;
 8. Petroleum treated materials;
 9. Rubber products;
 10. Animal remains;
 11. Animal or vegetable matter resulting from the handling, preparation, cooking or service of food; or
 12. Any other material that normally emits dense smoke or noxious odors.
- (D) No Person may cause or allow to be initiated or maintained any Open Burning of any material in any part of the Service Area on any day or at any time if they are (or it is) aware that, or with due diligence could have been aware that the Oregon Department of Environmental Quality has notified the State Fire Marshal that such Open Burning is prohibited because of meteorological or air quality conditions pursuant to OAR 340-264-0070.

- (B) Open Burning shall only be performed when time and atmospheric conditions comply with the limits set forth in the Open Burning permit.
- (C) Open Burning shall not be conducted within fifty feet (50') of any structure or other combustible material. Conditions which could cause the fire to spread to within fifty feet (50') of a structure shall be eliminated prior to ignition. Exceptions: Clearance from structures and other combustible material is allowed to be reduced as follows:
 1. Not less than fifteen feet (15') when burning is conducted in an approved burning appliance; and
 2. Not less than twenty-five feet (25') when the pile size is three feet (3') or less in diameter and two feet (2') or less in height.
- (D) A garden hose connected to an operating water supply or other approved fire-extinguishing equipment shall be readily available for use at all Open Burning sites.
- (E) Burning material shall be constantly attended by a responsible Person, knowledgeable in the use of the fire-extinguishing equipment required by (D) above and familiar with the permit limitations which restrict Open Burning. An attendant shall supervise the burning material until the fire has been completely extinguished.
- (F) The Chief is authorized to require that Open Burning be immediately discontinued if the Chief determines that smoke emissions are offensive to occupants of surrounding property or if the Open Burning is determined by the Chief to constitute a hazardous condition.
- (G) Outdoor fires shall not be built, ignited or maintained under the following conditions:
 1. Burning at times other than during Daylight Hours;
 2. When high winds are blowing;
 3. When a Person age seventeen (17) or over is not present at all times to watch and tend such fire; or
 4. When a Person is aware that or with due diligence could have been aware that public announcement has been made that Open Burning is prohibited.
- (H) Permanent barbecues, portable barbecues, outdoor fireplaces or grills shall not be used for the disposal of rubbish, trash or combustible waste material.
- (I) Burn barrels are required to have a screen while burning. Screens should be made of heavy mesh and not less than fourteen (14) gauge wire with holes no larger than one-quarter inch (1/4").
- (J) Burning of uncut grass, brush or any standing vegetation is prohibited. All grass, brush or vegetation must be piled prior to burning.
- (K) Burning shall be done on ground cleared of all growth.
- (L) No Person shall dispose of any building or building wreckage by fire without having first secured permission from the Chief. No Person shall refuse to comply with any reasonable requirements of the Chief as to the safeguarding of such fire from spreading.

Section 6.5 Nothing within this Ordinance relieves a Person starting a fire from responsibility for providing adequate protection to prevent injury or damage to the Person or property of another. If such burning results in the escape of fire and injury or damage to the Person or property of another, such escape and damage or injury constitutes prima facie evidence that the burning was not safe (ORS 478.960 (3)).

- 1 If the fire-fighting apparatus or personnel, or either of the City, are required to respond and be used actively or on a standby basis in connection with the extinguishment or control of a fire that has been started or allowed to spread in violation of this Ordinance and/or ORS 478.960 (1) to (5), the Person responsible thereafter shall be liable to the City for the actual costs incurred by the City in controlling, extinguishing or patrolling the fire.
 - a. Such costs may be recovered in an action prosecuted in the name of the City.
 - b. The court may award reasonable attorney fees to the City if the City prevails in an action under this Section.
 - c. The court may award reasonable attorney fees to a defendant who prevails in an action under this Section if the court determines that the City had no objectively reasonable basis for asserting the claim or no reasonable basis for Appealing an adverse decision of the trial court.
 2. An itemized statement of the actual costs incurred by the City, certified under oath by the City Administrator or his/her assign of the City, shall be accepted as prima facie evidence of such costs in the action authorized by this Section.
 - a. In determining the itemized statement of actual costs, the City shall use the most up-to-date copy of the "*State Fire Service Mobilization Plan, Billing Schedules, Section III-c-1-b.*"
 - b. However, the minimum reimbursement sought shall be that listed in the City's *General Schedule of Charges and Fees*, and will be the amount determined by the City as its actual costs of initial call-out.
 - c. The actual amount of reimbursement shall be the greater of the minimum reimbursement or actual reimbursement amount as determined in subsection (a) above.
- (B) Normally, call-out reimbursement will not be assessed if a warning is issued. However, each such warning will be judged upon its own merits, conditions, circumstances and/or evidence of illegal behavior and/or activity.
- (C) Call-out reimbursement shall be assessed for all other call-outs for illegal open burns.

ARTICLE VIII. APPEALS

Section 8.1 Appeals; Generally

- (A) Excepting violations that result in criminal citations, the Common Council of the City of Garibaldi shall be designated as the Appeals Board for all Enforcement and/or other actions specified within this Ordinance. A Quorum of Council shall be sufficient to hear such Appeals. Criminal citations shall be handled by the courts of Tillamook County and/or the State of Oregon.
- (B) Any Person cited for a violation, with the exception of criminal citations, may make Appeal with the City Council of Garibaldi.

Section 8.2 Application for Appeal

- (A) A Person or Persons who wish to make an Appeal for a violation, action, issue or directive as contained within this Ordinance shall make application with the City Administrator of the City of Garibaldi within seven (7) days of the date of receipt of sanction and provide eight (8) copies of a completed application.
- (B) A complete application for Appeal shall include, at a minimum, the following:
 1. The applicant's name, physical and mailing address, and phone number;

2. The physical address, if different from above, where the alleged violation occurred;
 3. A copy of the applicant's Open Burning Permit, if one was issued;
 4. A copy of the citation, order, decree, letter or other similar instrument that details the action(s) of which applicant wishes to Appeal;
 5. The name, physical and mailing address and phone number(s) of any individuals who may have witnessed the alleged violation;
 6. A narrative statement, dated and signed by the applicant, detailing the reason(s) why the citation, order, decree, letter and/or other similar instrument should be overturned, withdrawn or otherwise Appealed; and
 7. Narrative statements, dated and signed, by any other individual who may have a direct bearing on the Appeals Hearing.
 8. Any other information as is deemed pertinent.
- (C) No application shall be deemed complete until a filing fee, as listed in the City of Garibaldi's *General Schedule of Charges and Fees*, is paid to the City of Garibaldi.
1. The filing fee shall be \$50 and may be subsequently updated by Council action.
 2. The filing fee shall not be returned to a successful appellant.
- (D) The Person aggrieved must exhaust their right to Appeal before bringing any other action against the City or any of its employees or agents in any other forum; relative to the subject matter that is the basis of Appeal.

Section 8.3 Conduct of Proceedings

- (A) The Appeal shall be conducted using such procedures as the Council shall determine to be appropriate and/or necessary.
- (B) A decision of the Garibaldi City Council as Appeals Board shall be final.

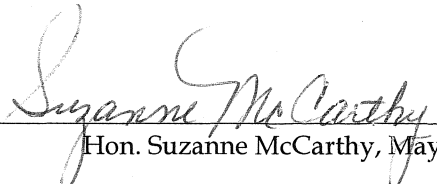
ARTICLE IX. SEVERABILITY

Section 9.1 Should any term, part, provision, condition, Section, Article or Person enacted within or authorized by this Ordinance be held to be invalid by a court of competent jurisdiction, all other terms, parts, provisions, conditions, Sections, Articles or Persons shall remain in full force and effect.


ARTICLE X. REPEAL

Section 10.1 Sections 2.50.040, Burn Permit; 2.50.050, Restriction of banning of burning; and 2.50.080, Payment of fire suppression costs of the Garibaldi Municipal Code are hereby repealed.

ADOPTED BY A READING OF TITLE TWICE ONLY on February 19th and **BY A READING OF TITLE ONCE ONLY** on March 17th by the Council and **APPROVED** by the Mayor this 17th day of March, 2008.


 Hon. Suzanne McCarthy, Mayor

ATTEST:



 Kevin M. Greenwood, Administrator