



BURN BAN FREQUENTLY ASKED QUESTIONS

ENFORCEMENT OF THE STATE FIRE MARSHAL ORDER TO BAN OPEN BURNING BY LOCAL FIRE OFFICIALS AND LAW ENFORCEMENT AGENCIES

On September 6, 2024, the State Fire Marshal (SFM) of Ohio issued an initial “Ban On Open Burning” (Order) in specific counties of the state. The Order, which is subject to periodic updates, is located [here](#). Please note: This FAQ is designed for use by local fire and law enforcement officials.

Which Ohio counties are subject to the Order?

The Order applies to all outdoor areas located in any county in Ohio identified by the National Oceanic and Atmospheric Administration (NOAA) and/or the United States Department of Agriculture (USDA) as having any portions of such county designated as being in the “Extreme Drought” or “Exceptional Drought” categories under the United States Drought Monitoring System located [here](#).

As of September 20, 2024, the Order applies to the following counties: Athens, Belmont, Carroll, Champaign, Clark, Clinton, Fairfield, Fayette, Franklin, Gallia, Green, Guernsey, Harrison, Highland, Hocking, Jackson, Jefferson, Lawrence, Licking, Logan, Madison, Meigs, Miami, Monroe, Montgomery, Morgan, Muskingum, Noble, Perry, Pickaway, Pike, Ross, Tuscarawas, Union, Vinton, Warren, and Washington.

Can a county be subject to the Order even it is not listed in the actual Order?

Yes. The SFM updates the Order weekly and makes every effort to list all affected counties in a timely manner. However, if NOAA or USDA designates a county or any portion of a county as being in the “Extreme Drought” or “Exceptional Drought” category, that county is automatically added to the list of counties where the ban is in effect – even if the Order has not yet been updated.

Does the Order apply to the entire county if only part of it is designated as being in an “Extreme Drought” or “Exceptional Drought” area?

Yes. If any part of a county is designated as being in “Extreme Drought” or “Exceptional Drought,” the entire county is impacted by this Order.

What is “open burning” under the Order?

The Ohio Fire Code (OFC) Rule 2 (link [here](#)) defines “open burning” as:

“[t]he burning of materials wherein **products of combustion are emitted directly into the ambient air without passing through a stack or chimney from an enclosed chamber**. For the purpose of this definition, a chamber shall be regarded as enclosed when, during the time combustion occurs, only apertures, ducts, stacks, flues or chimneys necessary to provide combustion air and permit the escape of exhaust gas are open. Open burning does not include road flares, smudge-pots and similar devices associated with safety or occupational uses typically considered open flames, recreational fires or use of portable outdoor fireplaces.”

The scope of the Order also includes a ban on recreational fire(s) and the use of portable outdoor fireplaces.

What are some examples of activities subject to the Order?

Examples of activities prohibited by this Order in the ban area include the following outdoor activities:

- *Very High-Risk Activities:*
 - any open burning of trash, debris, waste, combustibles, leaf piles or similar vegetation, or similar items
 - campfires
 - bonfires
 - throwing down/discarding lighted or smoldering material (including matches or cigarettes)
 - flame based (non-electric or non-liquid fueled) cooking outside a qualifying chamber, such as flame based grilling on an open charcoal type grill
 - using or discharging any type of fireworks
- *Inherently Risky Activities:*
 - live fire training events
 - flame effect(s) based displays or exhibitions (including sky lanterns and cold spark machines)
 - using spark or heat producing devices for recreational purposes

Acceptable activities include:

- indoor cooking
- outdoor cooking with electric stoves/cooking elements or propane/liquid fueled cooking as permitted in the Order
- use of non-flame based heating or electrical devices

Are there any exceptions to the Order?

- Propane/Liquid Fueled Cooking Equipment: The outdoor use of propane/liquid fueled cooking equipment within the locations subject to the Order is permitted under the following conditions, which must be implemented by both the location owner and person conducting the cooking activity:
 - Fire extinguishers: Appropriate fire extinguishers must be readily available in the area and immediately accessible to equipment users or other responsible persons at all times any propane/liquid fueled cooking equipment is in use;
 - Water: Adequate water sources for extinguishing any fire, embers, or sparks and an appropriate means for water delivery must be readily available in the area and immediately accessible to equipment users or other responsible persons at all times propane/liquid fueled cooking equipment is in use;
 - Separation from flammable or combustible materials: No flammable or combustible materials, debris, vegetation, grasses, or similar items can be located within 5 feet of the propane/liquid fueled cooking equipment; and
 - Oversight of Public Locations: For locations open to public access (such as campgrounds, parking lots, public or private parks or entertainment venues, sport venues, or similar locations), such locations must be adequately staffed with persons properly trained in emergency response procedures at all times propane/liquid fueled cooking occurs, and such locations must have appropriately trained/qualified persons regularly monitor all areas where propane/liquid fueled cooking occurs.
- Business activity: A fire code official may provide limited/temporary approvals of the usage of open flames within that official's jurisdiction for nonrecreational uses (such as blasting, welding, hot work or other employment-based uses of flames) upon written application to such officials by the person intending to conduct such activities. Such activities may be conducted only upon written approval of the activities by the fire code official with jurisdiction. Any such activities must comply with all conditions of approval established by the fire code official and all other applicable laws, rules and regulations, including the Ohio Fire Code.
- Variations: Upon application, the SFM may, in its discretion, provide limited written exceptions to the application of the Order via the Ohio Fire Code variance process. At a minimum, the applicant must demonstrate that the applicant provides an equivalent level of safety as the Order provides for the proposed activity and that the proposed open burning activities do not create any unacceptable risks to the public health, safety or welfare. The variance application link is [here](#). Be advised that variations to the Order will not be routinely granted.

Fire Officials – How do fire officials enforce the Order?

- A. Inspections: A fire chief or fire prevention officer (R.C. 505.38(B)/R.C. 737.22(A)) may inspect locations for hazards per R.C. 3737.14 (found [here](#)) and OFC 104.3.
- B. Citations: Certified Fire Safety Inspectors (CFSIs) may issue a Citation (a written Order with a right to appeal) for violations of the OFC per R.C. 3737.42.
- a. Potential R.C. sections, OFC provisions, and Order to consider as a basis for a Citation:
- i. R.C. 3737.42: (A) If, upon inspection or investigation, the fire marshal, an assistant fire marshal, **or a certified fire safety inspector believes that the state fire code or an associated order has been violated**, the fire marshal, assistant fire marshal, or certified fire safety inspector shall, with reasonable promptness, issue a citation to the responsible person. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the state fire code or associated order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation. When the citation is issued by a certified fire safety inspector or an assistant fire marshal, a copy of the citation shall be furnished to the fire marshal.
 - ii. OFC 104.5 Notices and orders. The fire code official is authorized to issue such notices or orders as are required to affect compliance with this code in accordance with paragraphs (I)(1)(109.1) and (I)(2)(109.2) of this rule.
 - iii. OFC 109.1 Unlawful acts. It shall be unlawful for a person, firm or corporation to erect, construct, alter, repair, remove, demolish or utilize a building, occupancy, premises or system regulated by this code, or cause same to be done, in conflict with or in violation of any of the provisions of this code (the OFC).
 - iv. OFC 307.1 General. A person shall not kindle or maintain or authorize to be kindled or maintained any open burning unless conducted and approved in accordance with paragraphs (G)(1)(a)(307.1.1) to (G)(5)(307.5) of this rule.

OFC 307.1.1 Prohibited open burning. Open burning shall be prohibited when atmospheric conditions or local circumstances make such fires hazardous.

OFC 307.1.2 Ban on open burning, recreational fires, and portable outdoor fireplaces. The state fire marshal, in the sole discretion of the state fire marshal, may issue a ban on open burning, recreational fires, or the use of portable outdoor fireplaces at any time when the state fire marshal determines

that atmospheric or drought or other environmental conditions necessitate such a ban. The ban may be issued state-wide or may be tailored to a specific area, region or county of the state as conditions warrant.

- (i) No open burning or recreational fires shall occur and no portable outdoor fireplaces shall be used in any area where a ban is in effect or at any time during a period when the state fire marshal has issued a ban.
- (ii) No permit authorizing open burning, recreational fires or the use of portable outdoor fireplaces shall be issued during anytime or in any area where a ban has been issued by the state fire marshal.
- (iii) Nothing in this paragraph shall prohibit a local fire code official with authority to do so from issuing a local ban on open burning, recreational fires, or the use of portable outdoor fireplaces at any time when conditions warrant, including during times when the state fire marshal has issued a ban as long as the local ban does not contradict the ban issued by the state fire marshal.

- v. OFC 307.1 General. A person shall not kindle or maintain or authorize to be kindled or maintained any open burning unless conducted and approved in accordance with paragraphs (G)(1)(a)(307.1.1) to (G)(5)(307.5) of this rule.

OFC 307.1.1 Prohibited open burning. Open burning shall be prohibited when atmospheric conditions or local circumstances make such fires hazardous.

- vi. For consumer fireworks discharges:

OFC 5626.5.3 Drought or hazardous conditions. Regardless of any other provision of this paragraph, the discharge of 1.4G fireworks is prohibited in accordance with the following:

(i) OFC 5626.5.3.1 If adverse weather conditions prevail or begin such that an unreasonable hazard to persons or property exists due to such conditions, including but not limited to high winds, precipitation or other atmospheric conditions, the discharge of 1.4G fireworks shall be postponed or discontinued until weather conditions improve the hazard has been eliminated.

(ii) OFC 5626.5.3.2 If any unsafe condition is detected, such as hazardous debris falling into a spectator area, any person

discharging 1.4G fireworks shall immediately cease the discharge of 1.4G fireworks until the unsafe condition is eliminated or corrected.

(iii) OFC 5626.5.3.3 1.4G fireworks shall not be discharged in any area where a burn ban, fire weather watch or red flag warning has been issued by a governing authority during any time such a ban, watch or warning is in effect or until such time as the issuing authority has lifted the ban, watch or warning.

vii. Reference the active SFM Burn Ban Order, link [here](#).

- b. **General Guidance:** Citations must be issued to “responsible persons”, be in writing and describe with particularity the nature of the violation, including a reference to the provision of the state fire code or associated order alleged to have been violated (see the list above).

In addition, the citation shall fix a reasonable time for the abatement of the violation, which in the case of an active fire in a burn ban area can be immediately, and provide notice of appeal rights. See R.C. 3737.42 (found [here](#)) and R.C. 3737.43 (found [here](#)).

Citations must specify one-time Civil Penalties (monetary fines) to be imposed for the initial violation(s), and any failures to post the Citation after issuance, as well as potential daily penalties for ongoing non-compliance with the Citation terms. Civil Penalties (types and reasonable amounts of penalties are described in R.C. 3737.51(B) – (H), link [here](#)).

[Here](#) is a sample citation that provides the required basic minimum legal notifications to a responsible party, references to burn ban violations, and a sample of how civil penalties are accessed.

- C. **Other Enforcement Authority:** CFSI’s can issue imminent hazard orders under R.C. 3737.44, seek injunctions under R.C. 3737.44 & R.C. 3737.46 and issue minor violation warnings under R.C. 3737.42(B). Imminent Hazards and injunctions should be discussed with the CFSI’s legal counsel. Minor violation warnings would likely not apply to burn ban violations.

Law Enforcement – How do law enforcement officers enforce the Order?

Per R.C. 3737.51(A) and R.C. 3737.99(B), it is a first-degree misdemeanor (up to 6 months in jail and/or a fine of up to \$1,000) to violate the OFC or an OFC Order. County Sheriffs, Police Officers, Peace/Law Enforcement Officers, and ODNR officers can charge offenders with violating this section within their respective jurisdictions (including arresting those that commit the violation in the officer's presence). CFSI's can also request that prosecutors or law enforcement officers charge people under these sections. Here are the key elements to review:

- R.C. 3737.51(A) (found [here](#)):
No person shall knowingly **violate any provision of the state fire code or any order** made pursuant to it.
- R.C. 3737.99(B) (found [here](#)):
- Except as a violation of section 2923.17 of the Revised Code involves subject

Except as a violation of section 2923.17 of the Revised Code involves subject matter covered by the state fire code and except as such a violation is covered by division (G) of this section, whoever violates division (A) of section 3737.51 of the Revised Code is guilty of a misdemeanor of the first degree.

- [The active SFM Burn Ban Order.](#)

Also note that R.C. 3737.62 (found [here](#)) states: “no person shall set, kindle, or cause to be set or kindled any fire, which through their negligence, spreads beyond its immediate confines to any structure, field, or wood lot” in Ohio. Per R.C. 3737.99(D) (found [here](#)), violations of this section are fourth-degree misdemeanors.

Prosecutors/Law Directors – What are the primary Ohio Fire Code enforcement provisions?

Except for criminal cases, OFC enforcement cases are predicated upon inspections and follow up enforcement actions taken by CFSIs based upon the OFC sections cited above. An enforcement flowchart is [located here](#), which references the following special OFC enforcement provisions:

- Imminent Hazards: R.C. 3737.44(A) & (C)
- Injunctions: R.C. 3737.44 and R.C. 3737.46
- Citations: R.C. 3737.42, R.C. 3737.43, R.C. 3737.51(B) – (H)
- Criminal violations: R.C. 3737.51(A) and R.C. 3737.99(B)

**** Please review the official [SFM Order](#) for the specific terms of the Open Burning prohibitions as this document is to be considered as general guidance on the Order, not a formal legal interpretation. ****