

BURNING WITHIN OKLAHOMA LAW

Oklahoma encompasses multiple fire-dependent ecosystems that rely on wildland fire effects to sustain native habitats and ecosystems. Careful application of fire enhances the vigor and resiliency of the varied ecosystems that support wildlife, agricultural grazing, hay production, wood products and water quality. Native Americans utilized fire to manage their environment for many of the same reasons to perpetuate the health of the land that sustained them. A longstanding trend of removing fire from fire-dependent ecosystems has left many areas in Oklahoma with suppressed habitat quality, change in cover type, declining environmental health and heightened risk of catastrophic wildfire.

Utilization of fire can be a powerful, cost effective land management practice when properly implemented. Improperly applied fire can be a devastating force that destroys property and, in the worst case threatens both lives and livelihoods. Oklahoma Forestry Services promotes the responsible use of lawful burning to effectively manage wildlands across Oklahoma.

Lawfully Burning in Oklahoma

Open burning laws are detailed in Oklahoma Statutes Title 2, Section 16 which is known as the Oklahoma Forestry Code. To begin with, the following must be taken into consideration:

1. You are legally entitled to burn the property as an owner, authorized tenant or agent of the owner/authorized tenant. **Statutory Reference: O.S. Title 2 § 16-24.1**
2. You shall provide adequate firelines, sufficient manpower and firefighting equipment to contain your fire to the property you are authorized to burn and stay with the fire until it is extinguished. **Statutory Reference: O.S. Title 2 § 16-28.1.A.2**
3. Oklahoma Forestry Services, as well as many fire departments, can charge for the reasonable costs of suppressing an illegal, escaped controlled or prescribed burn. **Statutory Reference: O.S. Title 2 § 16-32**

Lawfully Burning in Oklahoma with Limited Liability

Oklahoma law distinguishes a difference between a “Controlled Burn” and a “Prescribed Burn”. In Oklahoma, a controlled burn is any legally conducted burning of land cover while a prescribed burn is a legally defined controlled burn conducted within requirements following the process described in **O.S. Title 2 § 16-28.1**. Legally conducted prescribed burns by law are considered to be in the public interest and shall not constitute a public or private nuisance, and be considered a property right of the property owner if vegetative fuels are used. Limited liability burning includes more specific requirements than lawful controlled burning. Specifically, there is a notification process that needs to be completed outlined below.

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A limited liability prescribed burn is a controlled burn conducted according to the process described in O.S. Title 2 § 16-28.2 This process requires that a burner:

- Conduct their burn in a lawful manner, as described in O.S. Title 2 § 16-28.1
- Within 60 days of conducting a burn, the owner of the land to be burned shall orally or in writing notify all landowners whose lands adjoin the owners land to be burned.
- If any landowner is burning a large, consolidated tract of land in which there are multiple adjacent owners, those owners within one mile of the proposed burn must be notified. The owner shall include in the written notice or shall orally notify the adjoining landowners of the proposed date, location of the burn and phone number where the owner can be reached for information regarding the burn.
- In addition to notification of adjoining property owners, the owner of the land shall complete the Prescribed Burn Notification Plan and submit a copy to the rural fire department nearest the land to be burned. If the land to be burned is in an OFS Protection Area, the owner shall also submit a copy to the area office nearest to the land to be burned.
- Whether the land is located within or outside of an OFS Protection Area, the owner of the land to be burned shall within 48 hours of conducting a prescribed burn notify the rural fire department receiving a copy of the plan that the prescribed burn will be conducted. Within an OFS Protection Area, the owner of the land to be burned shall within 48 hours of conducting a burn notify the area office receiving a copy of the Prescribed Burn Notification Plan.

This section of the law limits liability in the event of an escaped fire to actual damages, except when the burn is found to have been conducted in a grossly negligent manner
Statutory Reference O S Title 2 § 16-28.2

A Prescribed Burning Plan template including the Notification Plan for private property can be accessed at: <https://extension.okstate.edu/fact-sheets/print-publications/nrem/burn-plan-forprescribed-burning-nrem-2893.pdf>

What about liability for the cost of suppressing an escaped fire?

Oklahoma Forestry Services, as well as many fire departments, can charge for the reasonable costs of suppressing an illegal, escaped controlled or prescribed burn.
Statutory Reference: O.S. Title 2 § 16-32

Managing Smoke While Burning Lawfully

Smoke from burning activities has potential for negative outcomes such as health concerns with air quality and visibility on roadways Smoke and air quality are regulated by the Oklahoma Department of Environmental Quality through Administrative Rules The rules for open burning are located in Oklahoma's Administrative Code at **OAC 252: 100-13** According to Administrative **OAC 252: 100-13-7-4** Open burning is allowed for the following land management and land clearing operations

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(A) Fires purposely set to forest, crop or range lands for a specific reason in the management of forests, crops or game, in accordance with practices recommended by the Oklahoma Department of Wildlife Conservation, the Oklahoma State Department of Agriculture, Food and Forestry and the United States Forest Service

(B) Fires purposely set for land clearing operations if conducted at least 500 feet upwind of any occupied residence other than those located on the property on which the burning is conducted, except that such burning must be conducted in open pit incinerators in counties or areas that are or have been designated non attainment.

According to **OAC 252: 100-13-9**:

Open burning for land management and land clearing operations may be conducted only if the following conditions and requirements are met:

- No public nuisance is or will be created
- The burning is controlled so that a visibility hazard is not created on any roadway, rail track or air field as a result of the air contaminants being emitted
- The burning is conducted so that the contaminants do not adversely affect the ambient air quality of a city or town
- The initial burning shall begin only between three hours after sunrise and three hours before sunset and additional fuel shall not be intentionally added to the fire at times outside these limits. This requirement does not apply to the open burning allowed under **OAC 252: 100-13-7 (2) (3) (4)(A) and (6)(B)**.

For more information on smoke management regulations contact the Oklahoma Department of Environmental Quality at: 1 800 869 1400, or view their rules on line at: deq.ok.gov/air_quality_division/smoke_management

Refer to the Oklahoma Forestry Services Burn Ban Map, forestry.ok.gov for restrictions in areas where air quality alerts are in effect.

Burning during a Burn Ban

In general, open burning is either restricted or prohibited when a burn ban is in effect There are two types of burn bans in Oklahoma 1 Governor's Burn Ban, and 2 County Commissioner's Burn Ban Additionally, local entities may impose stricter requirements on open burning Governor's Burn Ban Controlled burning and prescribed fire are prohibited **Statutory Reference O S Title 2 § 16-26.A.1**

County Commissioner's Burn Ban Open burning is restricted with exceptions detailed in the specific proclamation **Statutory Reference O S Title 2 § 16-26.B.1**

Agricultural producers burning cropland, rangeland, forests or pastures as a management practice can still burn provided that all of the following requirements are met **Statutory Reference O S Title 2 § 16-26.B.4**

· A written prescribed burn plan is submitted to the local fire department and, Oklahoma Forestry Services Area Office if within the Protection Area including the following information

- 1) Name and telephone number of the agricultural producer conducting the burn,
- 2) Address and legal description of the area to be burned
- 3) Objective and purpose of the burn
- 4) List of fire departments and sheriff's offices that are required to be notified

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- 5) List of adjoining landowners required to be notified pursuant to Section 16 28 2
- 6) Description of any firebreaks used to define the boundary of the prescribed burn
- 7) Statement of prescribed weather conditions
- 8) Description of any smoke management considerations
- 9) Ignition plan for the burn

Additionally, burners are required to

- Retain a copy of the written prescribed burn plan on site when conducting the prescribed burn
 - Notify the county sheriff and the dispatch center of the local fire department prior to conducting the prescribed burn
 - Comply with the notification procedures outlined in Section 16 28 2 of this title
- Fire Environment Factors into Successful Burning

There are some environmental factors that may limit your ability to burn due to overall fire danger, air quality or ongoing wildfire activity. Remember that burning on your land may have negative impact on others as well. Please consider the following before executing a burn:

- Red Flag Warnings are issued whenever critical fire weather and fuels criteria are met that will support potential for extreme burning conditions. A Red Flag Warning means that a prescribed burn may require additional precautions be taken to prevent the fire from escaping control lines. A Red Flag Warning is not a Burning Ban, although many local jurisdictions will revoke or stop issuing permits under a Red Flag Warning. In addition, any person could be considered willfully or grossly negligent if a controlled burn or prescribed fire escapes control if it is ignited during a Red Flag Warning. Red Flag Warnings are issued by the National Weather Service. (weather.gov)
- Air Quality Health Advisory Particulate matter emitted from open burning in smoke may cause unwanted health outcomes.
- Ongoing wildfire activity requiring firefighting resources to respond to wildfires may preclude your desire to burn, especially when there is elevated risk for escape. You can monitor ongoing fire activity at forestry.ok.gov.

Additional resources for burning within the law:

- Oklahoma State University Extension - extension.okstate.edu/county
- Natural Resources Conservation Service - nrcs.usda.gov/conservation-basics/conservation-by-state/oklahoma
- Oklahoma Conservation Commission - conservation.ok.gov/conservation-district-directory
- Oklahoma Prescribed Burn Association - okpba.org

