



INFORMATION MEMO

Open Burning in Cities

Understand laws that lessen fire risks to property and natural resources. Covers materials prohibited in open burning, required permits and fees, burning of leaves, burning bans, environmental concerns, and how a city official can act as a fire warden. Links to a model open burning application and permit, and model ordinances regulating and authorizing open burning, and open burning of leaves.

RELEVANT LINKS:

[Minn. Stat. § 88.01, subd. 23.](#)

See Part I-B-*Exceptions*.
[Minn. Stat. § 88.16, subd. 1.](#)

See Part III-*Local regulation*.

[Minn. Stat. § 88.17, subd. 1\(a\).](#)

See Part I-A-3-*Issuing authority*.

[Minn. Stat. § 88.17, subd. 1\(c\).](#)

I. Open burning

Open burning is defined as the burning of any matter that is not contained within a fully enclosed firebox, structure, or vehicle and from which the products of combustion (such as smoke or ash) are emitted directly to the open atmosphere without passing through a stack, duct, or chimney.

The term “open burning” includes fires such as campfires and barbecues, as well as the backyard burning of yard wastes (grass clippings, tree trimmings, leaves, etc.) and even household refuse. Subject to specific exceptions, Minnesota law generally prohibits open burning without the written permission of the commissioner of the Department of Natural Resources (DNR), a forest officer, or a local fire warden.

Local authorities, including cities, have the ability to adopt more stringent local restrictions regulating open burning as long as they do not conflict with state statutes.

A. Permits

1. Required permits

Subject to the exceptions described below, individuals intending to burn vegetative materials, such as grass, leaves, brush, and untreated lumber, are generally required first to obtain permission in one of the following forms:

- A written permit issued by a person authorized by the commissioner of the DNR or the commissioner’s agent.
- An electronic permit issued by the commissioner, an agent authorized by the commissioner, or an Internet site authorized by the commissioner.
- A general permit adopted by the county board of commissioners.

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

RELEVANT LINKS:

[Minn. Stat. § 88.17, subd. 1\(b\).](#)

[Minn. Stat. § 88.17, subd. 1\(b\).](#)

[Minn. Stat. § 88.17, subd. 1\(b\).](#)

[See Part IV-Penalties.](#)

[See Part I-B-Exceptions.](#)

[Minn. Stat. § 88.17, subd. 3\(a\).](#)

[Standard on Live Fire Training Evolutions.](#)

[Live Burn Plan.](#)

[Minn. Stat. § 299N.02, subd. 3\(2\).](#)

[Minn. Stat. § 88.17, subd. 3\(b\).](#)

The burning permit will set the time and conditions by which the approved fire may be started and burned, including a specific listing of the materials that may be burned. Permit holders must have the permit on their person and produce it for inspection when requested by a forest, conservation, or other peace officer.

Permit holders are required to remain with their fire at all times. Before leaving the burn site, it is their responsibility to ensure the fires are completely extinguished.

Fires only may be started on land owned by the permit holder, under the legal control of the permit holder, or with the written permission of the owner, lessee, or agent of the owner or lessee of the land. Violations of these provisions can result in criminal consequences.

2. Special permits

State law has established two situations where special permits are required. Special permits are issued solely by DNR forestry officers, not fire wardens or other city officials.

a. Fire training

A special permit is required for fires started for firefighter training and instruction. Open burning conducted for firefighter training must use only fuel materials as outlined in the current edition of National Fire Protection Association 1403, Standard on Live Fire Training Evolutions, and obtain the applicable live burn documents in accordance with the current edition of the Board of Firefighter Training and Education's [Live Burn Plan](#).

b. Permanent tree and brush burning sites

A special permit is also required for the operation of a permanent tree and brush open burning site. The application must contain:

- The name, address, and telephone number of all owners of the proposed permanent open burning site.
- If the intended operator of the open burning site is different than the owner(s), the operator's name, address, and telephone number.
- A general description of the materials to be burned, including the source and estimated quantity, dimensions of the site and burn pile areas, hours and dates of operation, and provisions for smoke management.
- A topographic or otherwise detailed map of the site and the surrounding area within a one-mile circumference, showing all structures that might be affected by the site's operation.

RELEVANT LINKS:

[Minn. Stat. § 88.17, subd. 3\(b\).](#)

[Minn. Stat. § 88.16, subd. 1.](#)

[Minn. Stat. § 88.17, subd. 5\(a\).](#)

[Minn. Stat. § 88.17, subd. 5\(c\).](#)

[Minn. Stat. § 88.17, subd. 5\(d\).](#)

[Minn. Stat. § 88.17, subd. 5\(d\).](#)
See [Open Burning Application and Permit](#), LMC Model Form.

Only trees, tree trimmings, or brush that otherwise cannot be disposed of through chipping, composting, or other methods may be burned at a permanent open burning site. A permanent open burning site must be located and operated in a manner that does not create a nuisance or endanger water quality. The commissioner of the DNR shall revoke permits or order actions to mitigate threats to public health, safety, and the environment in the event permit conditions are violated.

3. Issuing authority

An open burning permit may be obtained from various sources, including:

- The commissioner of the DNR.
- A DNR forestry office.
- A DNR fire warden—a volunteer commissioned by the DNR to issue open burning permits for a particular geographic area.
- City officials, such as the city fire marshal, fire chief, police chief or other official, designated as the DNR fire warden for the jurisdiction.

4. Permit fees

a. Electronic permits

The annual fees for a DNR-issued electronic burning permit are:

- \$5 for a noncommercial burning permit.
- \$5 per site permit for commercial enterprises, with a maximum of \$50 per individual business enterprise per year.

If an electronic point of sale system is used, \$1 from the \$5 fee is to be retained by the permitting agent as a commission.

b. Written permits

Fire wardens who issue written permits may charge a fee of up to \$1 for each permit issued. This fee is retained by the warden as a commission for issuing the permit.

c. Local permits

Local jurisdictions, including cities, are not restricted by statute from charging an administrative fee for issuing open burning permits within their jurisdiction. The permit fee should be established by the council and included within the city's fee schedule ordinance.

RELEVANT LINKS:

See “[Setting Municipal Fees](#),” Minnesota Cities (Apr. 2004, p.19).

[Minn. Stat. § 88.16, subd. 2\(a\).](#)
[Minn. Stat. § 88.01, subd. 26.](#)

[Minn. Stat. § 88.16, subd. 2\(b\).](#)
[Minn. Stat. § 88.01, subd. 25.](#)

[Minn. Stat. § 88.16, subd. 2\(c\).](#)

[Minn. Stat. § 88.16, subd. 2\(d\).](#)

[Minn. Stat. § 88.16, subd. 2\(d\).](#)

The issuance of permits should not, however, be considered a significant source of city revenue. Fees imposed should bear a relationship to the direct and indirect costs associated with the regulation of open burning within the city’s jurisdiction, not merely based upon what other cities charge.

B. Exceptions

An open burning permit is not, pursuant to state statute, required for:

- A fire started when the ground is snow covered. “Snow-covered” means the ground has a continuous, unbroken cover of snow, to a depth of three inches or more, surrounding the immediate area of the fire, sufficient to keep the fire from spreading.
- A campfire. “Campfire” means a fire set for cooking, warming, or ceremonial purposes, which is not more than three feet in diameter by three feet high, with all combustible materials cleared at least five feet from the base of the fire.
- A fire contained in a charcoal grill, camp stove, or other device designed for the purpose of cooking or heating.
- A fire in a DNR-approved burner.

C. Fires in DNR-approved burners

Fires in DNR-approved burners are allowed, provided:

- The burner is only used to burn dried vegetative materials and other materials allowed by statute or rule.
- The burner is of a design which has been approved by the commissioner of the DNR.
- No combustible materials are located within five feet of the base of the burner.
- When the ground is not snow-covered, the approved burner is only in use between the hours of 6 p.m. and 8 a.m. the following day.

During periods where the ground is covered with at least three inches of unbroken snow, a burner could be used outside this prescribed window of time without first obtaining an open burning permit.

An approved burner:

- Shall be constructed with non-combustible materials.
- Shall have a capacity of at least three bushels.
- Shall be maintained with a minimum burning capacity of at least two bushels.
- Shall have a cover which will remain closed during its use.

RELEVANT LINKS:

[DNR Approved Burner Plan.](#)

See Part III-A-Local ordinances.

[Minn. Stat. § 88.171.](#)

[Minn. Stat. § 116.06, subd. 11.](#)

- Shall not have any openings in its cover or sides larger than one inch.
- Shall only be used when open burning is allowed.

The DNR web site provides a detailed, illustrated model for a burner that will satisfy its minimum design requirements.

Use of an unapproved burner, burning at any hour outside of a burner, or the use of an approved burner between the hours of 8 a.m. and 6 p.m. when the ground is not “snow covered” is not allowed without first obtaining an open burning permit.

It is possible that the local jurisdiction has adopted an ordinance more restrictive than state law that requires first obtaining a local permit before using a DNR-approved burner, or bans the use of DNR-approved burners altogether.

II. Prohibited burning

Just as open burning laws provide exceptions where written permission is not required, there are also circumstances where, based upon the materials to be used or when particular environmental concerns arise, burnings are permanently or conditionally prohibited.

A. Prohibited materials

Even if an open burning permit is issued or one of the exceptions are met, individuals are generally prohibited from the open burning of:

- Rubber.
- Plastics.
- Chemically treated materials (including treated lumber).
- Tires.
- Railroad ties.
- Composite shingles.
- Tar paper.
- Insulation.
- Composition board.
- Sheetrock.
- Wiring.
- Paint or paint filters.
- Oil.
- Hazardous wastes.
- Industrial solid waste.
- Demolition debris.
- Salvage operations.
- Motor vehicles.

RELEVANT LINKS:

[Minn. Stat. § 88.171, subd. 2.](#)

This list is not specific or exclusive, but more an indication of the types of prohibited materials. The prohibition on the open burning of such materials is in effect at all times.

[Minn. Stat. § 88.171, subd. 4.](#)

However, the commissioner of the DNR may allow burning of prohibited materials when the commissioner of the Department of Health or a local health agency (typically a county health board) has made a determination that it is necessary to abate a public nuisance. In these instances, the commissioner of the DNR may provide a specific exception and allow prohibited materials to be burned. As an example, after a natural disaster (such as a tornado), the commissioner of the DNR may allow the open burning of treated or painted wood if there is no prudent alternative.

The commissioner of the DNR may authorize the burning of raw, untreated wood from an industrial or manufacturing process or from a service or commercial structure if recycling, reuse, or land disposal is not a feasible or prudent alternative.

B. Garbage

[Minn. Stat. § 88.171, subd. 8\(a\).](#)

Since 1969, the burning of household garbage generally has been prohibited in Minnesota. “Garbage” is defined as discarded material resulting from the handling, processing, storage, preparation, serving, or consumption of food.

[Minn. Stat. § 88.171, subd. 8\(b\).](#)

However, a Minnesota county may, by resolution, allow a resident to conduct open burning of the garbage generated at that resident’s household upon the county board’s determination that regularly scheduled pickup of the material is not reasonably available.

C. Farm solid waste

[Minn. Stat. § 17.135.](#)

Unless regularly scheduled waste pickup is reasonably available (as determined by resolution of a county board), a person who owns or operates land used for farming may bury, or burn and bury, solid waste generated from the person’s household or as part of the farming operation. Waste must be buried in a nuisance-free, pollution-free, and aesthetic manner on the land used for farming. This exemption will not apply to the burning (or burying) of:

[Minn. Stat. § 115A.96, subd. 1.](#)
[Minn. Stat. § 115A.03, subd. 17a.](#)

- Tires.
- Plastics (except plastic baling twine).
- Household hazardous wastes.
- Appliances.
- Household batteries.
- Used motor oil.
- Lead acid batteries from motor vehicles.

RELEVANT LINKS:

[Minn. Stat. § 88.171, subd. 9.](#)

[DNR Wildfire Information Center.](#)

[MPCA Don't Burn Your Garbage Toolkit.](#)

D. Burning bans

No person is allowed to conduct, cause, or permit open burning during a burning ban put in place by a city, county, or state department or agency. Since 1999, the DNR has adopted statewide burning restrictions each spring, typically a time with a higher degree of fire danger.

When dry conditions warrant it, the DNR or another unit of government can impose an absolute burning ban within a particular geographic area or jurisdiction. Burning bans are generally imposed in only the most severe conditions. When possible, use restrictions or the non-issuance (or revocation) of burning permits are more likely to occur.

E. Harmful effects

Whether illegal or allowed through an exception, the burning of household or other wastes raises substantial environmental and health concerns. Home or farm burnings produce low temperature fires, regardless of the device or method used (fire pits, burn barrels, wood stoves, fireplaces or other design). These fires receive little oxygen and discharge a tremendous amount of smoke. Such smoke contains various toxic substances that are released into the air very close to ground level, potentially polluting the air, soil and waters with acidic gases, heavy metals and other pollutants at levels many times greater than those discharged at municipal and county incinerators.

III. Local regulation

While state statutes provide many absolutes regarding open burning in Minnesota, from defining the circumstances when burning permits are mandatory to prohibiting the open burning of certain materials, cities have the ability to participate in the regulatory process or provide additional burning restrictions.

A. Local ordinances

Cities generally may adopt open burning ordinances that are more restrictive than state statutes, as long as those ordinances do not conflict with statutory provisions. A local jurisdiction may not waive the formal permitting process beyond the exceptions provided in statute. Likewise, a city may not allow the open burning of any materials specifically prohibited by state statute.

A city may consider:

RELEVANT LINKS:

See [Open Burning of Leaves](#), LMC Model Ordinance, and [Authorizing and Regulating Open Burning](#), LMC Model Ordinance.

See Part I-A-4-c-Local permits.

See Part II-D-Burning bans.

See Part III-B-Open burning of leaves.

See Part IV-Penalties.

[Minn. Stat. § 116.082.](#)

[Minn. Stat. § 473.121, subd. 2.](#)

- Adopting a local open burning ordinance.
- Establishing administrative fees for the costs incurred in issuing open burning permits.
- A further restriction on the hours when open burning may be lawfully conducted.
- Restrictions on the materials that may be burned.
- Restrictions on the distance recreational fires may be from homes, property lines, and streets.
- Requiring individuals to first obtain a local permit before conducting a campfire or other recreational fire.
- A prohibition on open burning when local conditions would make it particularly dangerous.
- Providing a city official (such as the fire chief, marshal, or designee) the authority to declare open burning bans when dry conditions warrant it.
- If located outside of the metropolitan area, allowing the open burning of leaves.
- Imposing a ban on the burning of leaves.
- Prohibiting the use of all burners, including DNR-approved burners.
- Providing criminal consequences for non-compliance with local regulations.

When adopting a local open burning ordinance, the city should consider the costs involved in regulation and enforcement. It is important that the provisions adopted are, in light of the city’s resources, actually enforceable.

B. Open burning of leaves

While the burning of leaves without an open burning permit issued by a DNR forestry official or one of its fire marshals is generally prohibited, there is one substantial exception in the statutes applicable to many, but not all, Minnesota cities.

A home rule charter or statutory city located outside of the Twin Cities metropolitan area may allow the open burning of dried leaves within the city’s jurisdiction. For purposes of this exception, the metropolitan area is defined as the area over which the Metropolitan Council has jurisdiction: the counties of Anoka, Carver, Dakota (excluding the city of Northfield), Hennepin (excluding the cities of Hanover and Rockford), Ramsey, Scott (excluding the city of New Prague), and Washington.

RELEVANT LINKS:

[Minn. Stat. § 116.082.](#)

To allow the open burning of leaves, non-metro cities must first adopt an ordinance and provide copies to the DNR and the Minnesota Pollution Control Agency (MPCA). The adopted ordinance shall limit leaf burning to the period between Sept. 15 and Dec. 1. Additionally, the ordinance must include any conditions necessary to minimize air pollution, fire danger, or any other hazards and nuisance concerns. The open burning of leaves is prohibited during air pollution alerts, warnings, or emergencies as declared by the MPCA.

Allowing leaf burning is an option, not a mandate, for eligible cities. A city ordinance can require a local permit for leaf burning, though permitting is not necessary pursuant to this specific statute. If a non-metro city decides the environmental, health, or nuisance concerns that accompany leaf burning outweigh the possible benefits, it can: simply not adopt such a provision (or if it has already adopted such a provision, it can revoke it); or it can adopt an ordinance that would prohibit all leaf burning within its jurisdiction.

C. Fire wardens

[Minn. Stat. § 88.18.](#)

The commissioner of the DNR appoints local government officials, authorized agents of the Minnesota Pollution Control Agency, fire chiefs, or other responsible persons to be fire wardens. Fire wardens issue open burning permits in accordance with all state and local open burning regulations within their respective districts.

[DNR Forestry Area Offices.](#)

It is common for one or more city officials to be commissioned as a fire warden and assist the DNR in issuing open burning permits. City officials interested in becoming fire wardens should contact their local forestry office. This may be particularly beneficial in cities that have adopted additional regulations or restrictions on open burning; a local official may be in a better position to ensure that state regulations, as well as any additional local regulations are satisfied when open burning permits are issued. In the absence of a fire warden that is a city official, a DNR forest officer, county official, or other appointed (but otherwise independent individual) will have the authority to issue open burning permits for that area.

D. Solid fuel-burning stoves

[MPCA Wood Burning Best Practices.](#)

Cities often ask about their ability to regulate outdoor stoves that are used for heating homes, garages, or other structures using wood, corn, or other solid fuels. As a fully-enclosed structure with a smokestack, duct, or chimney, an outdoor fuel-burning stove is not considered open burning and is not subject to these statutory regulations.

RELEVANT LINKS:

See LMC Information Memo, *Public Nuisances*.
See Handbook, *City Regulatory Functions*.

[Minn. Stat. § 88.195.](#)

[Minn. Stat. § 88.195.](#)

[Minn. Stat. § 88.16, subd. 3.](#)

[Minn. Stat. § 88.17, subd. 1\(b\).](#)

[Minn. Stat. § 412.231.](#)

State v. Phillips, 176 Minn. 472, 223 N.W. 912 (1929).

Because these stoves typically operate at ground level, can produce a substantial amount of smoke, and may constitute a nuisance activity, statutory and charter cities have the general authority to regulate their operation to protect the health, safety, and general welfare of the community.

IV. Penalties

Individuals need to be aware that they are responsible for their fires and that there are criminal and civil consequences for failing to comply with fire regulations. A person is guilty of a misdemeanor if he or she:

- Starts and fails to control or extinguish a fire.
- Has a burning permit, but fails to keep the fire contained within the area described in the permit.
- Has a burning permit, but fails to keep the fire restricted to the specified materials.
- Carelessly or negligently starts a fire that endangers or causes damage to the property of another.
- Participates in the careless or negligent use of motor vehicles, other internal combustion engines, firearms with tracers or combustible wads, fireworks, smoking materials, electric fences, torches, flares, or other burning or smoldering substances whereby a fire is started and is not immediately extinguished before the fire endangers or causes damage to the property of another person.
- Operates a vehicle in a wildfire area when the ground is not snow-covered with an open exhaust cutout, without a muffler, without a catalytic converter if required, or without a spark arrestor on the exhaust pipe, or operates a tractor, chainsaw, or other internal combustion engine not equipped to prevent fires.
- Fails to report an unauthorized fire burning upon their property, whether or not it was started by that person.
- Fails to remain with the fire at all times.
- Fails to completely extinguish a fire before leaving the burn area.
- Starts or causes a fire to be started on any land that is not owned or under their legal control without the written permission of the owner, lessee, or an agent of the owner or lessee of the land.

Violations of a local open burning ordinance may also be misdemeanor offenses.

Violation of statutory sections may be prima facie (“on its face”) evidence of negligence regarding the damages uncontrolled fires may cause to others.

RELEVANT LINKS:

[DNR-Division of Forestry](#).
Minnesota Department of
Natural Resources
Forestry Division
500 Lafayette Road
St. Paul, MN 55155-4040
(651) 259-6157
(888) 646-6367
Info.dnr@state.mn.us

[MPCA Pollution Control
Agency \(MPCA\)](#).
Minnesota Pollution Control
Agency
520 Lafayette Road
St. Paul, MN 55155-4194
(651) 296-6300
(800) 657 3864

V. Safety and assistance

Open burning regulations and restrictions, whether contained within state statutes and rules or adopted locally, attempt to regulate an inherently dangerous activity.

It is important for local officials to understand state laws and the reasons behind those provisions so they can determine how to enforce the laws and decide if additional local regulations are necessary to protect property and public safety and to avoid detrimental environmental impacts.

Additional assistance is available from the Forestry Division of the Minnesota Department of Natural Resources. Part of the forestry division's mission is to protect lives and property from wildfires. Field offices throughout the state can assist local officials with their questions and concerns.

MPCA works with Minnesotans to protect, conserve, and improve our environment and enhance our quality of life.