

ORDINANCE NO. 2006 - 04

AN ORDINANCE FOR THE PURPOSE OF REGULATING OUTDOOR BURNING IN THE PUBLIC INTEREST, HEALTH, SAFETY AND WELFARE; PROVIDING FOR THE ISSUANCE AND REGULATION OF PERMITS; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR A PENALTY OR FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000) FOR EACH OFFENSE.

WHEREAS, the City of Brazos Country is charged with regulating outdoor burning in order to protect the health, safety and welfare of its citizens; and,

WHEREAS, in accordance with applicable state laws, including, but not limited to, Texas Health and Safety Code, Chapter 382, the City seeks to implement certain regulations in protecting the health, safety, and welfare of its citizens and visitors; and,

WHEREAS, the permitting process is necessary to allow the City to properly enforce violations of this Ordinance by the imposition of civil, criminal, or administrative penalties; and,

WHEREAS, the permitting process will protect the health, safety, and welfare of its citizens and visitors;

**NOW THEREFORE, BE IT ORDAINED
BY THE CITY COUNCIL OF THE CITY OF BRAZOS COUNTRY, TEXAS:**

1. That the City of Brazos Country finds and determines that it is in the best interest of the City's residents and inhabitants to adopt rules regulating outdoor burning when the same shall be necessary to protect the health, safety and well-being of the residents, citizens and inhabitants of the City. The findings of fact, and declarations as herein set out in the Caption and Preamble of this Ordinance are adopted and carried forward in this Ordinance as if the same were repeated verbatim herein.

2. The City Council hereby adopts the following:

REGULATION OF OUTDOOR BURNING

ARTICLE I. PURPOSE AND DEFINITIONS

Section 1. Purpose.

The purpose of this ordinance is to provide administration and regulation in outdoor burning within the City. The provisions of this Ordinance are consistent with state law and supersede and repeal any laws or Ordinances in conflict with this Ordinance.

Section 2. Definitions.

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted to give them the meaning they have in common usage and to give this Ordinance its most reasonable application:

Brush means cuttings or trimmings from trees, shrubs, gardens or lawns and similar materials.

City means the City of Brazos Country, Texas, or its designated agent of the City.

Combustion Material means magazines, books, brush, pasteboard boxes, rags, paper, straw, sawdust, packing material, shavings, boxes and all other materials that will ignite through contact with flames or ordinary temperatures.

Combustion Unit mean any boiler plant, furnace, incinerator, domestic fireplace, flare, engine or other device used to oxidize solid, liquid or gaseous fuels.

Domestic Waste means garbage resulting from the function of life within a residence that can be burned and includes such things as kitchen garbage, untreated lumber, cardboard boxes, packaging (including plastics and rubber), clothing, grass, leaves, and branch trimmings. Wastes not considered domestic waste which cannot be burned include

such things as tires, non-wood construction debris, furniture, carpet, electrical wire, and appliances.

Garbage means solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking and consumption of food, including waste materials from markets, storage facilities, and handling and sale of produce and other food products.

Landclearing Operation means the uprooting, cutting or clearing of vegetation in connection with conversion for the construction of buildings, rights-of-way, residential, commercial, or industrial development, or the clearing of vegetation to enhance property value, access or production. It does not include the maintenance burning of on-site property wastes such as fallen limbs, branches, or leaves, or other wastes from routine property clean-up activities, nor does it include burning following clearing for ecological restoration.

Outdoor Burning means any fire or smoke producing process which is not conducted in a combustion unit.

Person means any individual, corporation, organization, partnership, business trust, association or any other legal entity.

Practical Alternative means an economically, technologically and logistically viable option. Practical alternatives may include recycling, composting, mechanical chipping, or mulching, landfilling, logging, or using a state registered forced air trench burner system or air curtain destructors.

Solid waste means garbage, combustible materials, ashes, street cleanings, dead animals, abandoned automobiles and all other solid waste.

Structure Containing Sensitive Receptor(s) means a man-made structure utilized for human residence or business, the containment of livestock, or the housing of sensitive live vegetation. The term "manmade structure" does not include such things as range fences, roads, bridges, hunting blinds or facilities used solely for the storage of hay or other livestock feeds. The term "sensitive live vegetation" is defined as vegetation which has potential to be damaged by smoke and heat, examples of which include, but are not limited to, nursery production, mushroom cultivation, pharmaceutical plant production, or laboratory experiments involving plants.

TCEQ means the Texas Commission on Environmental Quality or its successor agency.

Uncontrolled Outdoor Burning means any outdoor burning that is not conducted pursuant to an exemption provided in this article.

ARTICLE II. **GENERAL PROVISIONS**

Section 3. Uncontrolled Outdoor Burning.

The City Council of the City of Brazos Country hereby declares that uncontrolled outdoor burning of garbage, brush, combustible materials and all other solid waste within the city limits of Brazos Country is a nuisance that creates conditions that are detrimental to the lives, health and property of the citizens of Brazos Country and interferes with the enjoyment of property and the public peace and comfort.

No person may cause, suffer, allow or permit any uncontrolled outdoor burning of garbage, brush, combustible materials or solid waste within the city limits of Brazos Country.

Section 4. Exceptions.

Outdoor burning of trash, garbage, brush, combustible materials or solid waste shall be authorized for:

- (a) Training fire-fighting personnel when requested in writing and when authorized either verbally or in writing by the Mayor. The burning shall be authorized if notice of denial from the Mayor, is not received within ten (10) working days after the date of the postmark or date of personal delivery of the request.

- (b) Fires used solely in the noncommercial preparation of food,

- (c) Fires used solely for recreational or ceremonial purposes or used exclusively for the purpose of supplying warmth during cold weather, subject, however, to requirements of Section 6 hereof.
- (d) Domestic waste burning at a property designated for and used exclusively as a private residence, housing not more than three (3) families, when collection of domestic waste is not provided or authorized by the local governmental entity having jurisdiction and when the waste is generated only from that property. Domestic waste burning shall be done within a safe enclosure. Provision of waste collection refers to collection at the premises where the waste is generated.
- (e) Diseased animal carcass burning when burning is the most effective means of controlling the spread of disease.
- (f) Maintenance burning of on-site property wastes such as fallen limbs, branches, or leaves, or other wastes from routine property clean-up activities.
- (g) On-site burning of trees, brush, and other plant growth for right-of-way maintenance, land clearing operations, and maintenance along water canals when no practical alternative to burning exists and when the materials are generated only from that property. Structures containing sensitive receptors must not be negatively affected by the burn. Such burning shall be subject to the requirements of Section 5 and Section 6 of this article. For a single project entailing multiple days of burning, the person must not circumvent the rule for a continual burning situation established by the TCEQ.
- (h) Crop residue burning for agricultural management purposes when no practical alternative exists. Such burning shall be subject to the requirements of Section 5 and Section 6 of this article, and structures containing sensitive receptors must not be negatively affected by the burn.
- (i) Brush, trees, and other plant growth causing a detrimental public health and safety condition burned by the city or county at a site it owns upon receiving site and burn approval from the TCEQ.
- (j) Removal of fire hazards when there is no practical alternative and the burning will not contribute to a nuisance, traffic hazard or a violation of any federal or state ambient air standard. Any such burning shall be subject to the requirements of Section 5 and Section 6 of this article.
- (k) Any other outdoor burning authorized under the Texas Clean Air Act (Chapter 382 of the Health and Safety Code) and the rules adopted thereunder by the TCEQ, as such laws may be hereafter amended.

Section 5. Permit Requirements.

- (a) Any person desiring to conduct outdoor burning under Section 4 (g), (h), or (j) shall apply for and obtain a permit from the Mayor. A copy of the permit and all required paperwork shall be maintained at the burn site for the duration of the permit period. A permit period shall be commensurate with the projected time period necessary for the outdoor burning and the expiration date shall be stated on the permit.
- (b) The outdoor burning permit fees shall be \$25.00.
- (c) In cases where a person commences outdoor burning without a required permit, the Mayor shall issue an order requiring the person to stop burning and shall conduct an inspection/special investigation of the burn site prior to issuance of a permit. Additionally, charges may be filed in court for violating this article. An inspection/special investigation fee in the amount of \$50.00 shall be applied in addition to the permit fee.
- (d) A permit may be denied or revoked by the Mayor upon occurrence of any one or more of the following:
 - (1) The permittee provides false information on the permit application;
 - (2) The permittee does not comply with the requirements of this article; and/or
 - (3) The permittee adds garbage, brush, combustible material or any other solid waste to the permitted burn site for which the permit has not been issued.
 - (4) A county initiated ban on outdoor burning.

Section 6. General requirements for allowable outdoor burning.

Outdoor burning which is authorized pursuant to Section 4 of this article shall be subject to the following requirements:

- (a) Burning shall be commenced and conducted only when wind direction and other meteorological conditions are such that smoke and other pollutants will not cause adverse effects to any public road, landing strip, navigable water, or off-site structure containing sensitive receptor(s),

- (b) If at anytime the burning causes or may tend to cause smoke to blow onto or across a road or highway, it is the responsibility of the person initiating the burn to post flag-persons on affected roads in accordance with the requirements of the Texas Department of Public Safety.
- (c) Burning must be conducted downwind of or at least three hundred (300) feet (ninety (90) meters) from any structure containing sensitive receptors located on adjacent properties unless prior written approval is obtained from the adjacent occupant with possessory control.
- (d) Burning shall be conducted in compliance with the following meteorological and timing considerations:
 - (1) The initiation of burning shall commence no earlier than one hour after sunrise. Burning shall be completed on the same day not later than one hour before sunset, and shall be attended by a responsible party at all times during the active burn phase when the fire is progressing. In cases where residual fires and/or smoldering objects continue to emit smoke after this time, such areas shall be extinguished if the smoke from these areas has the potential to create a nuisance or traffic hazard condition. In no case shall the extent of the burn area be allowed to increase after this time.
 - (2) Burning shall not be commenced when surface wind speed is predicted to be less than six (6) miles per hour (mph) (five (5) knots) or greater than twenty-three (23) mph (twenty (20) knots) during the burn period.
 - (3) Burning shall not be conducted during periods of actual or predicted persistent low-level atmospheric temperature inversions or in areas covered by a current air stagnation advisory.
- (e) Electrical insulation, treated lumber, plastics, non-wood construction/demolition materials, heavy oils, asphaltic materials, potentially explosive materials, chemical wastes, and items containing natural or synthetic rubber must not be burned. No outdoor burning of any construction related material from a construction site is allowed, irregardless whether said construction is by the resident or a builder.

Section 7. Penalty for Violation.

Any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined a sum of not less than two hundred dollars (\$200.00) nor more than two thousand dollars (\$2,000) for each violation, and each day that such violation shall continue, to exist constitutes a separate offense.

Section 8. Responsibility for consequences of outdoor burning.

The authority to conduct outdoor burning under this article does not exempt or excuse any person responsible from the consequences, damages, or injuries resulting from the burning and does not exempt or excuse anyone from complying with all other applicable laws or ordinances, regulations, and orders of governmental entities having jurisdiction, even though the burning is otherwise conducted in compliance with this article.

Section 9. Recognition of a state law.

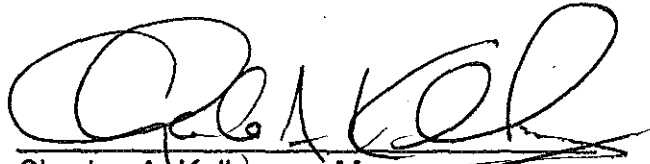
Nothing contained in this article shall be construed to either (i) permit any burning in violation of the Texas Clean Air Act or any rule, regulation or order of the TCEQ issued thereunder; (ii) make unlawful an act or condition authorized under the Texas Clean Air Act or the rules, regulations or orders of the TCEQ issued thereunder; or (iii) violate any order by the Austin County Commissioners Court.

3. The City Council does hereby find and determine that the provisions of this Ordinance are fully severable and that in the event any provision, part, phrase or Section hereof shall at any time be declared unconstitutional, unlawful or in excess of the legislative jurisdiction of the City by any court, judge, magistrate, hearing officer,

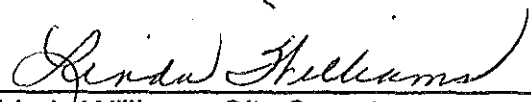
judicial body or administrative body having authority and jurisdiction thereof, the remaining parts, portions, sections, phrases and provisions not so declared unconstitutional, unlawful or in excess of the legislative jurisdiction of the City shall remain fully valid and enforceable as if the same had been readopted subsequent to any final decision by any such court, judicial body or administrative body.

PASSED and **APPROVED** on first reading the 19th day of July, 2006.

PASSED, APPROVED, and ADOPTED on second and final reading this 16th day of August, 2006.


Charles A. Kalkomey, Mayor

ATTEST:


Linda Williams, City Secretary

