

ORDINANCE NO. 2013-07-___

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS REPEALING CHAPTER 42, ARTICLE III, SECTIONS 42-56 THROUGH 42-67 OF THE CODE OF ORDINANCES OF THE CITY OF MCKINNEY, TEXAS, ENTITLED "OPEN BURNING," AND ESTABLISHING A NEW CHAPTER 42, ARTICLE III, SECTIONS 42-56 THROUGH 42-68, ENTITLED "OPEN BURNING"; ESTABLISHING A PROHIBITION OF OPEN BURNING IN THE CITY OF MCKINNEY UNLESS CONSISTENT WITH THIS ORDINANCE; ESTABLISHING VIOLATIONS AND PENALTIES; REPEALING CONFLICTING ORDINANCES; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of McKinney, Texas (the "City") is a Home Rule City possessing the full power of local self-government pursuant to Article 11, Section 5 of the Texas Constitution, Section 51.072 of the Texas Local Government Code, and the City's Home Rule Charter; and

WHEREAS, the City Council of the City of McKinney, Texas ("City Council"), deems it to be in the best interests of the citizens of the City of McKinney, Texas, to protect their health, safety and welfare by enactment of a comprehensive burn ordinance; and

WHEREAS, the City Council desires to model the provisions of such ordinance upon the 2012 International Fire Code relative to open burning, with the adoption of local modifications to address local issues; and

WHEREAS, the City Council finds that the adoption of updated provisions relative to open burning specified in this Ordinance is in the interest of the health, safety and welfare of the citizens of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, THAT:

Section 1. All of the above premises are found to be true and correct legislative determinations and are incorporated into the body of this Ordinance as if copied in their entirety.

Section 2. From and after the effective date of this Ordinance, existing Chapter 42, Article III, Sections 42-56 through 42-67 of the Code of Ordinances of the City of McKinney, Texas, entitled "Open Burning," is hereby repealed in its entirety, and a new Chapter 42, Article III, Sections 42-56 through 42-68, entitled "Open Burning," is hereby established and adopted, to hereafter read as follows:

"ARTICLE III. OPEN BURNING

Sec. 42-56. Conformance with article required.

A person shall not kindle or maintain or authorize to be kindled or maintained any open burning unless conducted and approved in accordance with this article.

Sec. 42-57. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

(a) *Open Burning.* The 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. Open burning does not include road flares, smudgepots and similar devices associated with safety or occupational uses typically considered open flames or recreational fires. 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.

(b) *Recreational Fire.* An outdoor fire, burning materials other than rubbish, where the fuel being burned is not contained in an incinerator, outdoor fireplace, barbeque grill or barbeque pit and has a total fuel area of 3 feet (914 mm) or less in diameter and 2 feet (610 mm) or less in height for pleasure, religious, ceremonial, cooking, warmth or similar purposes.

(c) *Bonfire.* An outdoor fire utilized for ceremonial purposes in excess of a total fuel area of 3 feet (914 mm) in diameter and 2 feet (610 mm) in height.

Sec. 42-58. Enforcement.

(a) The Fire Chief, or his designated representative, is hereby authorized and directed to enforce all provisions of this article. Enforcement may be by the filing of a complaint in municipal court, by legal proceedings to enjoin nuisances, or in any other manner authorized by law. An official of the Fire Department or of the Police Department is authorized to issue citations for a violation of this article.

(b) It shall be a violation of this article for any person being issued a citation for a violation of this article, to be filed in municipal court or any civil proceeding, to intentionally or knowingly fail to give the Fire Department official or Police Department official his or her true name and address or to intentionally or knowingly fail to appear in accordance with the terms of a citation issued by the Fire Department official or Police Department official. For purposes of this section, a person shall be in violation upon failure to provide the requisite identification information upon a request for identification being issued by a person known to be a Fire Department official or Police Department official.

(c) The owner, lessee or occupant of the property or structure where a violation of this article takes place shall be deemed responsible for such violation.

(d) If the individual who is to receive the citation is not present, the Fire Department official or Police Department official may send the citation to the owner of the property by certified or registered mail, return receipt requested. If said citation should come back unclaimed, the citation shall be sent regular mail. If this regular mailing does not come back unclaimed, then service shall be deemed completed.

Sec. 42-59. Permit required.

Unless otherwise specified herein, a permit shall be required in accordance with Section 105 of the 2012 International Fire Code, as amended. A permit constitutes permission to maintain, store, use or handle materials, or to conduct processes which produce conditions hazardous to life or property, or to install equipment used in connection with such activities. Such permission shall not be construed as authority to violate, cancel or set aside any of the provisions of this article. Such permit shall not take the place of any license required by law. The following provisions shall apply to permits:

(a) A permit shall be obtained from the Fire Department prior to kindling a fire for recognized silvicultural or range or wildlife management practices, prevention or control of disease or pests, or a bonfire. Application for such approval shall only be presented by and permits issued to the owner of the land upon which the fire is to be kindled. Application for permits shall be made by the Fire Department in such form and detail as prescribed by the Fire Prevention Division.

(b) Any permit required by the 2012 International Fire Code, Section 105, as amended, shall be issued only upon payment of the permit fee in an amount established, and as amended by ordinance of the City Council, or as stated herein.

(c) A permit shall continue until revoked or for such a period of time as designated therein at the time of issuance or as may be specified by this article, as it may be amended. Permits shall not be transferable. Any change in use, occupancy, operation or ownership shall require a new permit.

Sec. 42-60. Compliance with state regulations.

Open burning shall only be permitted with prior approval from the state or local air and water quality management authority, provided that all conditions specified in the authorization are followed. Open burning shall be conducted in accordance with rules promulgated by the Texas Commission on Environmental Quality, as amended, including but not limited to Chapter 111, Subchapter B, Outdoor Burning, and Chapter 106, Subchapter V, Section 106.496(d), Trench Burning, and pertinent City ordinances, including but not limited to Chapter 6 of the Code of Ordinances of the City of McKinney, entitled "Air Pollution Control," relative to permissible emissions under the direction and control of the Director of Public Works and the Air Quality Control Board. Nothing herein shall require that the City verify the existence of the requisite permits, licenses, and site visits, mandated by other agencies.

Sec. 42-61. Prohibited open burning.

(a) *General.* Open burning that is offensive or objectionable due to smoke or odor emissions when atmospheric conditions or local circumstances make such fires hazardous shall be prohibited. The Fire Department official is authorized to order the extinguishment by the permit holder, another person responsible or the fire department, of open burning which creates or adds to a hazardous or objectionable situation.

(b) *Location.* The location for open burning shall not be less than five hundred feet (500') from any structure, and provisions shall be made to prevent the fire from spreading to within five hundred feet (500') of any structure.

(c) *Exception to location:* Fires in approved containers that are not less than 15 feet (4,572 mm) from a structure.

Sec. 42-62. Bonfires.

A bonfire shall not be conducted within five hundred feet (500') of a structure or combustible material. Conditions which could cause a fire to spread within five hundred feet (500') of a structure shall be eliminated prior to ignition.

Sec. 42-63. Recreational fires.

Recreational fires shall not be conducted within fifty feet (50') of a structure or combustible material unless the fire is contained in a container

approved by the Fire Marshal. Conditions which could cause a fire to spread within fifty feet (50') of a structure shall be eliminated prior to ignition.

Sec. 42-64. Portable outdoor fireplaces.

(a) Portable outdoor fireplaces shall be used in accordance with the manufacturer's instructions and shall not be operated within 15 feet (15') of a structure or combustible material.

(b) Exception to location: Where buildings, balconies and decks are protected by an approved automatic fire sprinkler system.

Sec. 42-65. Permanent outdoor fireplaces.

Permanently installed outdoor fireplaces or firepits for recreational fire purposes shall not be installed within 10 feet (10') of a structure or combustible material.

Sec. 42-66. Trench burns.

(a) *Permit Fee.* There shall be imposed a permit fee in accordance with the fee ordinance, as amended, said permit to be in effect for no more than ten (10) consecutive days. If no fee is reflected for a particular activity in the fee ordinance, then the permit fee shall be as stated in Section 42-26 of the Code of Ordinances of the City of McKinney, as amended.

(b) *Site Visits.* The site may be inspected by the Fire Prevention Division at least once each day that the trench burn is in operation; generally, such inspections shall occur at the time of startup and the time the pit is closing down.

(c) *Location.* The trench shall be located no closer than one thousand feet (1,000') from a structure.

(d) *Devices.* All trench burns shall be required to utilize an air curtain incinerator or fire box. Trench burns shall not be operated without an approved device.

(e) *Operation.* All trench burn operations shall be in accordance with this article, the 2012 International Fire Code, the rules promulgated by the Texas Commission on Environmental Quality, and the air curtain incinerator or fire box manufacturer's specifications. At the time of permit, the dimensions of the trench burn operation shall be established. The Fire Marshal is authorized to require greater precautions when deemed necessary by the Fire Marshal in his or her discretion, under existing or anticipated circumstances, and such additional precautions shall be addressed prior to the issuance of the permit.

Sec. 42-67. Attendance.

Any open burning, as herein specified, including but not limited to bonfires, recreational fires or trench burns, shall be constantly attended until the fire is extinguished. A minimum of one portable fire extinguisher, with a minimum 4-A rating, or other approved on-site fire-extinguishing equipment, such as dirt, sand, water barrel, garden hose or water truck, shall be available for immediate utilization. The Fire Marshal is authorized to require greater precautions when deemed necessary by the Fire Marshal in his or her discretion, under existing or anticipated circumstances, and such additional precautions shall be addressed prior to the issuance of the permit.

Sec. 42-68. Violations and Penalties.

(a) *General.* Any person violating any provision of this article, upon conviction, shall be deemed guilty of a misdemeanor and fined as provided in Section 1-18 of Chapter 1 of this Code of Ordinances. A separate offense shall be deemed committed upon each day during or on which a violation occurs or continues to occur.

(b) *Mental State.* Unless otherwise specifically set forth herein, allegation and evidence of culpable mental state are not required for the proof of an offense defined by this article."

Section 3. All ordinances, orders or resolutions heretofore passed and adopted by the City Council of the City of McKinney, Texas, are hereby repealed to the extent that said ordinances, orders or resolutions, or parts thereof, are in conflict herewith.

Section 4. If any section, subsection, clause, phrase or provision of this Ordinance, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unconstitutional, the remaining sections, subsections, clauses, phrases and provisions of this Ordinance, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

Section 5. This Ordinance shall take effect and be in full force from and after its passage and publication, as provided by the Revised Civil Statutes of the State of Texas and the Home Rule Charter of the City of McKinney, Texas.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS ON THE 16th DAY OF JULY, 20YY.

CITY OF MCKINNEY, TEXAS

BRIAN LOUGHMILLER
Mayor

CORRECTLY ENROLLED:

SANDY HART, TRMC, MMC
City Secretary
BLANCA I. GARCIA
Assistant City Secretary

DATE: _____

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney