

ORDINANCE 06 - 43

AN ORDINANCE OF THE CITY OF LOCKHART, TEXAS AMENDING, CHAPTER 20, FIRE PREVENTION AND PROTECTION, OF THE CODE OF ORDINANCES, ADDING ARTICLE V REGARDING REGULATING OUTDOOR BURNING, AIR CONTAMINANTS AND AIR POLLUTION WITHIN THE CITY LIMITS, PROVIDING A REPEALER; PROVIDING FOR SEVERABILITY; PROVIDING FOR PENALTY; PROVIDING FOR PUBLICATION AND PROVIDING AN EFFECTIVE DATE:

WHEREAS, the City Council of the City of Lockhart, Texas desires to amend Chapter 20, Fire Prevention and Protection of the Code of Ordinances for the City of Lockhart.

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

Chapter 20, "Fire Prevention and Protection" of the Code of Ordinances is hereby amended by deleting, adding, and modifying certain wording, and by renumbering and renaming certain existing sections and by creating new sections, to read as follows:

I. Add:

ARTICLE V. OUTDOOR BURNING.

Sec. 20-101. Outdoor Burning.

- (a) *Purpose.* This section is adopted pursuant to regulations adopted by the Texas Commission on Environmental Quality (TCEQ) under the provisions of the Texas Clean Air Act (V.T.C.A., Health and Safety Code § 382.001 et seq.), which grant to cities certain powers to enact and enforce ordinances regulating air contaminants and air pollution, and is further adopted to promote fire prevention within the city.
- (b) *Burning prohibited* No person shall burn or cause to be burned any grass, trash, garbage, junk, rubble, rubbish, or waste within the city.

Sec. 20-102. Definitions.

For the purpose of this section, the following definitions shall apply:

- (a) *Brush* means cuttings or trimmings from trees, shrubs, gardens or lawns, or similar materials.
- (b) *Combustible material* means magazines, books, brush, pasteboard boxes, rags, paper, straw, sawdust, packing material, shavings, boxes and all rubbish and refuse that will ignite through contact with flames of ordinary temperatures.

- (c) *Combustible unit* means any boiler plant, furnace, incinerator, domestic fireplace, flare, engine or other device used to oxidize solid, liquid or gaseous fuels.
- (d) *Domestic waste* means waste normally resulting from the function of life within a residence that can be burned include such things as kitchen garbage, untreated lumber, cardboard boxes, packaging (including plastics and rubber), clothing, grass, leaves, and branch trimmings.
- (e) *Garbage* means animal and vegetable waste resulting from the handling, preparation, cooking and serving of foods and shall include all putrescent wastes, including vegetables, animal and poultry offal, and carcasses of small animals and dead fowls, and shall include all substances from all public and private establishments and from all residences.
- (f) *Junk* includes junked automobiles, used automobile tires and damaged or used household furnishings, as well as, non-wood construction debris, furniture, carpet, electrical wire, and appliances.
- (g) *Outdoor burning* means any fire or smoke producing process that is not conducted in a combustion unit.
- (h) *Person* means any individual, corporation, organization, partnership, business trust, association or any other legal entity.
- (i) *Practical alternative* means an economically, technologically, ecologically and logistically viable option. Practical alternatives may include recycling, composting, mechanical chipping or mulching, landfilling, logging, or using a state registered forced air burner system or air curtain destructor.
- (j) *Property Development* 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.
- (k) *Residential area* includes two or more occupied dwellings or buildings located within 100 feet of each other.
- (l) *Rubbish* means nonputrescible solid waste (excluding ashes), consisting of both combustible and noncombustible waste materials. Combustible rubbish includes paper, rags, cartons, food, excelsior, furniture, plastics, yard trimmings, leaves, or similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).
- (m) *Rubble* includes debris resulting from construction, reconstruction or repair of buildings, and includes all waste building materials.

- (n) *Solid waste* means garbage, rubbish, combustible materials, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste.
- (o) *Structure containing sensitive receptor(s)* means a manmade 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 that 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.
- (p) *Sunrise and Sunset* means the times when the upper edge of the disk of the Sun is on the horizon, considered unobstructed relative to the location of interest. Atmospheric conditions are assumed to be average, and the location is in a level region on the Earth's surface.
- (q) *Uncontrolled outdoor burning* means any outdoor burning that is not conducted pursuant to an exemption provided in this article.

Sec. 20-103. Declaration of nuisance.

Uncontrolled outdoor burning of rubbish, garbage, brush, combustible materials and all other solid waste within the city limits is hereby declared to be and within 5,000 feet of the city limits is a nuisance that creates conditions that are detrimental to the lives, health and property of the citizens of the city and interferes with the enjoyment of property and the public peace and comfort.

Sec. 20-104. Uncontrolled outdoor burning prohibited.

No person may cause, suffer, allow or permit any uncontrolled outdoor burning of rubbish, garbage, brush, combustible materials or solid waste within the city limits or within 5,000 feet of the city limits.

Exceptions. The provisions of this section shall not apply to the following:

- (a) Outdoor burning in connection with the preparation of food.
- (b) Campfires and fires used solely for recreational purposes or for ceremonial occasions.
- (c) Domestic burning for heat and cooking within any dwelling unit when contained in an approved fireplace. Barbeque pits, Smokers, L.P. Cookers, or similar open flame cooking equipment shall not be used within ten (10) feet of any structure.
- (d) Burning within an incinerator constructed and maintained in accordance with the most

current editions of the standards and specifications of the National Fire Protection Association. Burning for the purpose of property development or land clearing operations shall be by trench burner or air curtain operations.

- (e) Fires set for the purpose of training firefighting personnel associated with the City.
- (f) Burning for the purpose of removing fire hazards on written approval of the Fire Marshal, or burning when the Mayor of the City has issued an emergency disaster declaration.
- (g) Agricultural burning for the removal crops, grass and other vegetable matter when zoned Agricultural Open Space located more than one thousand (1,000) feet from a residential area or another location containing sensitive receptors, and upon permit from the Fire Marshal.
- (h) Burning of brush in areas that are zoned Agricultural Open Space when located more than two-hundred fifty (250) feet from a residential area or another location containing sensitive receptors, and upon permit from the Fire Marshal.

Sec. 20-105. Permit requirements.

Nothing contained in this section shall be construed as permitting any burning in violation of any rule, regulation or order of the Texas Clean Air Act or TCEQ rules and regulations.

- (a) Any person desiring to conduct outdoor burning under the preceding Section 20-104 of this section shall apply for and obtain a permit from the Lockhart Fire Marshal. Applications for outdoor burning shall be submitted to the City at least five (5) working days prior to the requested burn day. A detailed and accurate site plan shall be submitted for approval. A copy of the permit and all required paperwork shall be maintained at the burn site for the duration of the permit. Burning for personal use identified in Section 20-104(c) does not need a permit. Permits may only be used by the original applicant, and may not be assigned or otherwise transferred.
- (b) 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). Wind speed shall be a minimum of six miles per hour and a maximum of 23 miles per hour.
- (c) If at any time 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 Transportation and the Texas Department of Public Safety.
- (d) 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.

1. The initiation of burning shall commence no earlier than one (1) hour after sunrise.
2. Burning shall be completed and the fire completely extinguished on the same day not later than one (1) hour before sunset.
3. The permitted open burn shall be attended by a responsible party at all times. In no case shall the extent of the burn area be allowed to increase after this time 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.

Sec. 20-106. Outdoor Burning.

- (a) Only material derived from the burn site may be burned on that site. Materials may not be brought in from other sites to be burned.
- (b) Electrical insulation, treated lumber, plastics, non-wood construction or demolition materials, heavy oils, asphaltic materials, potentially explosive materials, chemical wastes, and items containing natural or synthetic rubber shall not be burned.
- (c) Burning of brush may be permitted provided the brush pile is no closer than fifty (50) feet from a public roadway or property line. A brush pile cannot be larger than twenty-five (25) feet in diameter and not higher than fifteen (15) feet. Piles may not be spaced closer than fifty (50) feet between piles. Only one pile may be burned at a time. At least one serviceable portable fire extinguisher with a rating of 4A:10B:C rating shall be within 30 feet of the burn pile.

Sec. 20-107. Trench Burners and Air Curtain Operations.

The city may issue a permit for trench burning (Air Curtain Incineration) during non-emergency periods provided that all regulations contained in this division are met and a valid burn permit has been secured from the city. Materials to be burned in a trench shall be limited to trees, brush and untreated lumber. Only material derived from the burn site may be burned on that site. Materials may not be brought in from other sites to be burned.

- (a) Trench Burning or Air Curtain Operations must be conducted downwind of or at least 1,000 feet from any residential area, or structure containing sensitive receptor(s) located on adjacent properties.
- (b) A trench-burning machine carrying a current burning permit issued by the state air control board shall be used. Proof of such permit shall be submitted in a manner acceptable to the city.
- (c) A site-specific permit may also be issued by the County pollution control department.

Proof of such permit shall be submitted in a manner acceptable to the city.

- (d) Operation of the equipment and burning procedures shall conform to the most restrictive provisions of the state air control board's permits and the special conditions listed in this division.
- (e) Liability insurance in the minimum amount of \$500,000.00 shall be carried by the operator of the trench burning equipment. Proof of such liability insurance must be submitted in a manner acceptable to the city.
- (f) The owner of the property on which the burning is to take place shall give written permission to the operator to conduct the trench burning on his property.
- (g) Both the property owner and the equipment operator shall agree to the conditions established by this division and by all permits.
- (h) Starting the fire. Opacity of emissions from the trench and from the operation of the blower shall not exceed 20 percent averaged over a five-minute period, except for a start-up period, which shall not exceed 20 minutes. Opacity shall be measured as outlined in Chapter 13, "Visible Emissions Evaluation" of the Commission Sampling Procedures Manual, as published in January 1983, and as subsequently revised.
 - 1. Fill pit to a level no more than two feet below bottom of manifold with small trees and brush, if possible.
 - 2. Use propane or other LPG fire torch or commercial flamethrower to ignite materials.
 - 3. Engage burner. Allow pit to completely ignite and reach operating temperature before loading more material into the pit.
- (i) Capping the pit at the end of each day shall be required. Materials shall not be added to the trench such that the materials will not be consumed by the one (1) hour before sunset time limit. The blower shall remain in the on position until all material is consumed so that any remaining material in the trench will not smoke or smolder when the blower is turned off.
 - 1. Using spoils (dirt) from pit excavation cover pit with a minimum of one foot of dirt.
 - 2. Using trackhoe compact pit cap, using more material if needed, until no visible smoke can be detected.
 - 3. Extinguish any isolated residual fires or smoldering objects that could cause a nuisance or hazard.

Sec. 20-108. General requirements for allowable outdoor burning.

Outdoor burning that is authorized pursuant to the preceding subsection (f) of this section shall be subject to the following requirements:

- (a) Burning shall not be conducted during periods of (1) Red Flag” warnings as issued by the Texas Forest Service and National Weather Service, (2) actual or predicted persistent low-level atmospheric temperature inversions or in areas covered by a current air stagnation advisory.
- (b) 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.

Sec. 20-109. Permit Revocation.

A permit shall be denied or revoked by the Fire Marshal upon occurrence of any one or more of the following:

- (a) The permittee provides false information on the permit application.
- (b) The permittee does not comply with requirements of this article.
- (c) The permittee adds garbage, rubbish, brush, combustible materials or any other solid waste to the permitted burn site for which the permit has not been issued.

Sec. 20-110. Responsibility for consequences of outdoor burning.

- (a) The authority to conduct outdoor burning under this section does not exempt, nor excuse the person who is issued the permit, from the consequences, damages, or injuries resulting from the burning. And, it does not exempt nor 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 the section.
- (b) *Cost Recovery.* Any person who conducts outdoor burning, whether permitted outdoor burning or not-permitted outdoor burning, will be liable for the recovery of costs associated with emergency responders, Police, Fire and EMS departments, or mutual aid fire departments who respond to extinguish an unwanted or out of control fire.

II. Severability: If any provision, section, clause, sentence, or phrase of this ordinance is for any reason held to be unconstitutional, void, invalid, or un-enforced, the validity of the remainder of this ordinance or its application shall not be affected, it being the intent of the City Council in adopting and of the Mayor in approving this ordinance that no portion, provision, or regulation contained herein shall become inoperative or fail by way of reasons of any unconstitutionality or invalidity or any other portion, provision or regulation.

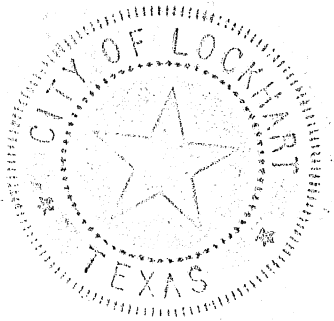
III. Repealer: That all other ordinances, sections, or parts of ordinances heretofore adopted by the City of Lockhart in conflict with the provisions set out above in this ordinance are hereby repealed or amended as indicated.

IV. Penalty: Any person who violates any provision of this ordinance shall be guilty of a misdemeanor, and upon conviction shall be fined as provided in Section 1-8 of the City Code.

V. Publication: That the City Secretary is directed to cause this ordinance caption to be published in a newspaper of general circulation according to law.

VI. Effective Date: That this ordinance shall become effective ten (10) days after passage.

PASSED, APPROVED and ADOPTED this the 5th day of DECEMBER, 2006.

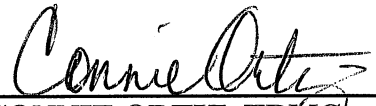


CITY OF LOCKHART



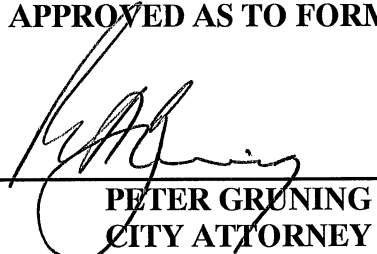
JAMES BERTRAM, MAYOR

ATTEST:



CONNIE ORTIZ, TRMC
CITY SECRETARY

APPROVED AS TO FORM:



PETER GRUNING
CITY ATTORNEY