

ORDINANCE NO. 2023-004

AN ORDINANCE OF THE CITY OF EAST BERNARD, TEXAS, PROVIDING RULES AND REGULATIONS GOVERNING OUTDOOR BURNING WITHIN THE CITY; PROVIDING EXCEPTIONS FOR OUTDOOR BURNING; PROVIDING A PENALTY; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HEREWITH; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, uncontrolled outdoor burning within the City can be hazardous to property and persons, particularly during drought conditions when the risk of wild fire is at its high;

WHEREAS, pursuant to Subchapter B of Chapter 111 of Title 30 of the Texas Administrative Code, the Texas Commission on Environmental Quality (TCEQ) prohibits outdoor burning within the corporate boundaries of municipalities, except as provided by Subchapter E of Chapter 382 of the Texas Health and Safety Code (also known as the Texas Clean Air Act);

WHEREAS, an incorporated city is authorized by subchapter E of chapter 382 of the Texas Health and Safety Code (Texas Clean Air Act) to enact ordinances which permit burning consistent with the Outdoor Burning Rule;

WHEREAS, limited authorization for outdoor burning governs fire safety and protects and promotes the public health and sanitation; and

WHEREAS, the Board of Aldermen of the City of East Bernard has determined that the regulation of fireworks in the City of East Bernard is necessary in the interest of public safety and public health, **NOW, THEREFORE**,

**BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF
EAST BERNARD, TEXAS:**

Section 1. FINDINGS

The facts, purpose, and recitations contained in the preamble of this Ordinance are found to be true and correct.

Section 2. REGULATION OF OUTDOOR BURNING

2-1. Definitions.

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

Ceremonial fire means a fire that is part of a ceremony or ritual that is prescribed by custom, ritual, protocol, or convention.

Domestic waste means the garbage and rubbish normally resulting from functions of life within a residence. Domestic waste includes garbage and yard trash. Domestic waste does not include furniture, carpet, appliances, insulation, electrical wire, tires, chemical waste, construction materials, demolition materials, or other items not included in the definition of domestic waste.

Drought conditions means the existence of a long-term deficit of moisture creating atypically severe conditions with increased wildfire occurrence as defined by the Texas Forest Service through the use of the Keetch-Byram Drought Index or, when that index is not available, through the use of a comparable measurement that takes into consideration the burning index, spread component, or ignition component for the particular area. Drought conditions are deemed to exist when the Keetch-Byrun Drought Index for the corporate limits of the City reaches a value of five hundred (500).

Fire department means the East Bernard Volunteer Fire Department.

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.

Land clearing means the uprooting, cutting, or cleaning 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 garbage, rubbish, tree and shrubbery trimmings, vegetative debris, or yard trash, 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 that is not conducted in a combustion unit.

Practical alternative means an economically, technologically, ecologically, and logistically viable alternative to air curtain incinerators.

Recreational fire means an outdoor fire that burns materials other than garbage and 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 three feet (3') or less in diameter and two feet (2') or less in height and such fire is intended to be for pleasure, religious, ceremonial, cooking, warmth or similar.

Rubbish means nonputrescible solid waste, consisting of both combustible and noncombustible waste materials. Combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials. Noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture, and like materials that will not burn at ordinary incinerator temperatures (1,600 to 1,800 degrees Fahrenheit).

Tree and shrubbery trimmings means a waste accumulation of tree branches, tree limbs, parts of trees, bushes, shrubbery, or other trimmings usually created as refuse in the case of trees and bushes.

Vegetative debris means tree and shrubbery trimmings and yard trash.

Yard trash means waste accumulation of lawn, grass, shrubbery cuttings or clippings and dry leaf rakings, free of dirt, rocks, large branches and bulky or noncombustible material.

2-2. Prohibition against outdoor burning.

- A. It shall be unlawful for any person to burn outdoors, or allow to be burned outdoors, within the City, any domestic waste, garbage, animal carcasses, rubbish, or vegetative debris, except as is stated in subsections 2-3.
- B. It shall be unlawful for any person owning or occupying, or being in charge and control of, any premises within the City, to burn or cause to be burned uncut grass, weeds, shrubbery, or trees growing on such premises.

2-3. Permissible burning; exceptions.

- A. Firefighting personnel shall be exempt from this section if the outdoor burning is solely for firefighting training and if approved by the Texas Commission on Environmental Quality.
- B. City personnel, including the Fire Department, shall be exempt if the outdoor burning is limited to brush, trees, and other plant growth that are causing a detrimental public health and safety condition and the burning takes place at a site owned by the City and the City has received approval from the Texas Commission on Environmental Quality.
- C. Recreational fires shall be allowed, but are subject to the following:
 - (1) Recreational fires may not contain electrical insulation, garbage, treated lumber, animal carcasses, rubbish, plastics, construction or demolition materials not made of wood, heavy oils, asphalt materials, potentially explosive materials, chemical waste, or items containing natural or synthetic rubber.
 - (2) Recreational fires may not burn on the ground. Instead, all recreational fires must be held in a container such as a cast iron fire pit, chiminea, cement block fire pit, or other similar container. All containers for recreational fires shall have a spark arrestor. Portable outdoor fireplaces shall be used in accordance with the manufacturer's instructions.
 - (3) Recreational fires shall be not less than twenty-five feet (25') from any structure.
 - (4) Recreational fires shall be constantly attended until the fire is extinguished. At least one portable fire extinguisher or other on-site fire-extinguishing equipment, such as dirt, sand, or garden hose, shall be available for immediate use.
 - (5) Conditions that could cause a fire to spread within twenty-five feet (25') of a structure shall be eliminated prior to ignition of a recreational fire.

- (6) No recreation fire shall occur during a time in which a county burn ban is in effect for Wharton County or drought conditions exist.
- D. Recreational fires that do not comply with the regulations in subsection (C) shall only be allowed upon written approval by the Fire Marshal.
- E. Cooking fires burning wood, charcoal, propane gas, or natural gas contained in barbeque grills, barbeque pits, and other open flame cooking devices shall be allowed, but are subject to the following:
- (1) In multi-family dwellings, barbeque grills, barbeque pits, and other open flame cooking devices shall not be operated on balconies or within fifteen feet (15') of combustible construction unless the buildings, balconies, and decks are protected by an automatic sprinkler system.
 - (2) The fires shall be constantly attended until the fire is extinguished. At least one portable fire extinguisher or other on-site fire-extinguishing equipment, such as dirt, sand, or garden hose, shall be available for immediate use.
- F. Air curtain incinerators may be allowed on property that is at least ten (10) acres.
- (1) The air curtain incinerators shall only be used to burn vegetative debris from land clearing operations or from an event that caused the mayor to proclaim a local state of disaster. If the burning is necessitated due to a local disaster, the ability to use the air curtain incinerator expires one year after the local state of disaster is terminated. This deadline may be extended by the Board of Aldermen due to extenuating circumstances.
 - (2) To apply for permission to use an air curtain incinerator, the applicant must first obtain initial approval from the State of Texas. Once the applicant receives permission from the State, the applicant must submit a written request to the Fire Marshal. The Fire Marshal or the Fire Marshal's qualified designee shall, within fourteen calendar days, make a recommendation to the Board of Aldermen to approve or deny the request. If the Fire Marshal has not made a recommendation within this time period, the applicant may submit the request directly to the Board of Aldermen.

- (3) The Board of Aldermen shall review the recommendation or review the request at its next regularly scheduled meeting.
- (4) No air curtain incinerator burning shall occur during a time in which a county burn ban is in effect for Wharton County, regardless of whether the Fire Marshal or Board of Aldermen has granted permission for the air curtain incinerator.

G. Outdoor burning of domestic waste shall be allowed on property that is at least ten (10) acres, but is subject to the following:

- (1) Domestic waste burning may not contain electrical insulation, garbage, treated lumber, animal carcasses, rubbish, plastics, construction or demolition materials not made of wood, heavy oils, asphalt materials, potentially explosive materials, chemical waste, or items containing natural or synthetic rubber.
- (2) Domestic waste may not burn on the ground. Instead, all domestic waste burning must be held in a container such as a cast iron fire pit, chiminea, cement block fire pit, or other similar container.
- (3) Domestic waste burning shall be conducted not less than twenty-five feet (25') from any structure.
- (4) Domestic waste burning fires shall be constantly attended until the fire is extinguished. At least one portable fire extinguisher or other on-site fire-extinguishing equipment, such as dirt, sand, or garden hose, shall be available for immediate use.
- (5) Conditions that could cause a fire to spread within twenty-five feet (25') of a structure shall be eliminated prior to ignition of domestic waste.
- (6) No domestic waste burning shall occur during a time in which a county burn ban is in effect for Wharton County or drought conditions exist.

2-3 Penalty.

Except as otherwise provided in this Ordinance, any person violating any provision of this Ordinance is guilty of a Class C misdemeanor punishable by a fine per day not to exceed two thousand dollars (\$2,000.00), with each day constituting a new offense. The jurisdiction for all actions pertaining to this Ordinance shall be the Municipal Court of the City of East Bernard, Texas.

Section 3. SEVERABILITY

In the event any clause phrase, provision, sentence, or part of this Ordinance or the application of this Ordinance to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and, the Board of Alderman declares that it would have passed each and every part of this Ordinance notwithstanding the omission of any such part declared to be invalid or unconstitutional, whether there be one or more parts.

Section 4. REPEALER

All ordinances or parts of ordinances inconsistent herewith or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

Section 5. EFFECTIVE DATE

This Ordinance shall become effective as of the date of adoption hereof.

PASSED AND APPROVED THIS 15th DAY OF May, 2023.


MARVIN HOLUB, MAYOR

ATTEST:



LISA PLESS, CITY SECRETARY