

City of Cottonwood Shores

ORDINANCE 5001

AN ORDINANCE OF THE CITY OF COTTONWOOD SHORES, TEXAS, PROVIDING FOR THE ESTABLISHMENT OF NOTIFICATION REQUIREMENTS FOR CONTROLLED OUTDOOR BURNING WITHIN THE CORPORATE CITY LIMITS; PROVIDING FOR FINDINGS OF FACT, PURPOSE, DEFINITIONS; PROVIDING FOR JURISDICTION; PROVIDING FOR RELATION TO OTHER ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR ENFORCEMENT INCLUDING A FINE NOT TO EXCEED \$2,000.00; PROVIDING FOR SEVERABILITY; PROVIDING FOR PROPER NOTICE AND MEETING

History: July 5, 2012 - Added adherence to County Wide Burn Ban
April 2, 2015 – Amended definitions of allowable and prohibited outdoor burns

WHEREAS, the City Council of the City of Cottonwood Shores (the "City") seeks to provide for safe and orderly outdoor burning within the corporate limits of the City; and

WHEREAS, the citizens of Cottonwood Shores from time to time have requested permission to burn rubbish, brush, vegetation and minor construction/demolition materials within the corporate limits of the City; and

WHEREAS, the Texas Commission on Environmental Quality ("TCEQ") has adopted regulations which prohibit outdoor burning within the City limits unless the City Council adopts an ordinance which permits such burning; and

WHEREAS, the City Council finds it to be in the best interest of the public safety, health and general welfare to provide for controlled outdoor burning within the corporate limits; and

WHEREAS, the City Council finds that there is no economically, technologically, ecologically and logistically viable option to prohibit controlled burning; and

WHEREAS, the City Council finds that the requirements of this Ordinance are consistent with the Texas Clean Air Act, Subchapter E, Authority of Local Governments, Texas Health and Safety Code§ 382.113; and

WHEREAS, the City Council is authorized to adopt reasonable rules related to fire safety pursuant to the City's police power, section 382.113 of the Texas Health and Safety Code, and Title 30, Section 111.201-221 of the Texas Administrative Code;

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

SECTION 1. FINDINGS OF FACT

All of the above premises are hereby found to be true and correct legislative and factual findings of the City of Cottonwood Shores, Texas and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

SECTION 2. PURPOSE

The purpose of this Ordinance is to provide for fire safety and the controlled outdoor burning within the corporate limits of the City. It is the intent that the City of Cottonwood Shores to adhere to and recognize the institution of a County Wide Burn Ban by Burnet County at the passage of a safety resolution by the Commissioner Court of Burnet County. This Ordinance is intended to comply with the requirements of the TCEQ as set out in Title 30, Section 201-221 of the Texas Administrative Code. When authorized, pursuant to this Ordinance all outdoor burning shall comply with the following requirements.

SECTION 3. AMENDMENT.

This Ordinance repeals all previously adopted City of Cottonwood Shores Code of Ordinances, relating to the outdoor burning, which shall be replaced to read as follows:

SECTION 4. CONTROLLED OUTDOOR BURNING DEFINITIONS

Words and phrases used in this Ordinance shall have the meanings set forth in this section. For the convenience of the reader, these defined words and phrases are underlined, but the absence of such indications does not imply a different meaning. Words and phrases which are not defined in this Ordinance but are stated in Title 30, Section 111.201-221 of the Texas Administrative Code shall be given the meanings set forth within Title 30, Section 111.203 of the Texas Administrative Code. Other words and phrases shall be given their common, ordinary meaning unless the context clearly requires otherwise.

Burn piles:

- a. Residential lots: Burn piles on residential lots less than ½ acre are limited in size to no greater than 5' x 5' in width and 4' in height.
- b. Open lots: Burn piles on open land more than ½ acre are limited to 10' x 10' in width And 10' in height.

Controlled burn or burn means the controlled application of fire under specified environmental conditions and confined to a predetermined area, following appropriate planning and precautionary measures and after having provided notice of the planned burn to the City of Cottonwood Shores, in the manner provided for by this Ordinance.

Extinguished means the absence of any visible flames, glowing coals or smoke.

Sensitive Receptors include, but are not limited to, inhabitants of hospitals, schools, daycare

facilities, elderly housing and convalescent facilities and greenhouse plants.

Structures Containing Sensitive Receptors means a man-made structure used for human residence or business, the containment of livestock, or the housing of sensitive live vegetation. The term "man-made 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" means vegetation that has the potential to be damaged by smoke and heat, including, but not limited to: nursery production, mushroom cultivation, pharmaceutical plant production, or laboratory experiments involving plants.

Sunrise/sunset means the official sunrise/sunset as set forth in the United States Naval Observatory tables available from National Weather Service offices.

Treated lumber means lumber or wood that has been chemically treated to extend its life, especially when outdoors or in contact with the ground.

SECTION 5. OUTDOOR BURNING PROHIBITED

No person within the corporate limits of the City may cause, suffer, allow or permit any outdoor burning, except as provided by this Ordinance.

SECTION 6. OUTDOOR BURNING

The burning of certain waste material outside of building or structure or on personal property within the City limits shall be permitted if done in accordance with the following rules:

No person shall kindle or maintain any outdoor burn or authorize any such fire to be kindled or maintained on or in private property, any public street, alley, road or other public ground without having obtained a permit from the City of Cottonwood Shores.

During minor remodeling construction or demolition of buildings or structures, no waste materials or rubbish shall be disposed of by burning on the premises or in the immediate vicinity without having obtained a permit from the City of Cottonwood Shores.

Waste that can be burned includes untreated lumber, packaging, grass, leaves, tree trimmings (no larger than 8" in diameter), natural brush and vegetation; provided that it is in an approved burn pile.

Waste that cannot be burned, include such things as household garbage, cardboard boxes, tires, treated lumber, non-wooden construction or demolition materials, furniture, carpet, electrical wire, appliances, electrical insulation, plastics, heavy oils, asphaltic materials, potentially explosive materials, chemical wastes, or items that contain natural or synthetic rubber.

SECTION 7. PROHIBITION OF FIRES

The City of Cottonwood Shores may prohibit any and all outdoor fires when atmospheric conditions or local circumstances make such fires hazardous.

SECTION 8. EXCEPTIONS

The following activities shall be exempt from the requirements and prohibitions of this Ordinance:

- a. Outdoor burning related to the training of fire-fighting personnel as authorized by state law.
- b. Outdoor burning related to recreational or ceremonial purposes or in the non-commercial preparation of food, or used exclusively for the purpose of supplying warmth during cold weather. Provided however, that such outdoor burning shall only be exempt as long as the outdoor burning does not involve the burning of any of the prohibited materials listed in this Ordinance
- c. Outdoor burning related to a permit or authorization obtained from the TCEQ.

SECTION 9. REQUIREMENTS FOR ALLOWING OUTDOOR BURNING

Outdoor burning is authorized by this article upon the following terms and conditions:

- (1) Outdoor burning shall be limited to the burning of untreated lumber, packaging, grass, leaves, branch trimmings, natural brush and vegetation; provided that it is in an approved burn pile and generated only from the property where the burn is to take place.

Household garbage, tires, treated lumber, non-wooden construction or demolition materials, cardboard boxes, furniture, carpet, electrical wire, appliances, electrical insulation, plastics, heavy oils, asphaltic materials, potentially explosive materials, chemical wastes, or items that contain natural or synthetic rubber shall not be burned.

- (2) 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).
- (3) If at any time the burning causes or may tend to cause smoke to blow onto or across a road or highway, so as to obscure the vision of motorist the fire shall be extinguished.
- (4) 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. Evidence of such written permission shall be located on the site of the burn and be available for inspection at the request of the City's fire inspector.
- (5) Burning shall be conducted in compliance with the following meteorological and timing considerations:
 - a. The initiation of burning shall commence no earlier than sunrise and be completed on the same day not later than sunset. A responsible party shall be present at all times during the active burn phase and 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

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- 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.
- b. 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.
 - c. Burning shall not be conducted during periods of actual or predicted persistent low-level atmospheric temperature inversions.
- (6) Attendance: Any open burning shall be constantly attended until the fire is extinguished. Fire extinguishing equipment shall be available for immediate use such as, but not limited to, a water hose connected to a water supply, portable fire extinguisher with a minimum 4-A rating, water barrel, dirt, sand, front end loader or water truck. The fire-extinguishing equipment that is available on site shall be comparable to the size of the fire.
- (7) Due to radiant heat the burn area must be no closer than fifty (50) feet from any structure.
- a. Residential lots: Burn piles on residential lots less than ½ acre are limited in size to no greater than 5' x 5' in width and 4' in height. No more than one pile is to be burned at one time.
 - b. Open lots: Burn piles on open land more than ½ acre are limited to 10' x 10' in width and 10' in height. No more than one pile is to be burned at one time.
 - c. Burn barrels when used within guidelines. No trash shall be burned.
 - d. Size of burn piles can be changed by special permit.
- (8) When outdoor burning bans are instituted the ban will supersede this article and outdoor burning authorized by this article will be prohibited except by special permit until the ban is lifted.
- (9) Prior to the initiation of an outdoor burn subject to the requirements of this article, any person proposing to conduct an outdoor burn shall obtain a burn permit from the City. Prior to initiation of any open burning, the burn permit must be approved. The permit application shall identify the following:
- a. The name, address and telephone number of the landowner where the burn will be conducted
 - b. Address of the site of the burn
 - c. Approximate start date and end date
 - d. Identify a responsible party who can be contacted during the burn period
- (10) If at any time the City determines that a proposed outdoor burn cannot be conducted without a risk to health, safety or property, the City shall notify the responsible person and the burn shall not be authorized. If the burn is already underway at the time of the determination, then the responsible party shall immediately extinguish the fire. If the responsible party cannot be located or refuses to extinguish the fire, the Fire Department is authorized to enter the property and extinguish the fire.
- (11) The expense of an emergency response shall be a charge against the person or property owner liable for the expense under this Ordinance.

SECTION 10: LIABILITY

A person utilizing or maintaining an outdoor fire shall be responsible for all fire suppression costs and any other liability resulting from damage caused by the fire.

SECTION 11: RIGHT OF ENTRY AND INSPECTION

The Fire Marshal or any authorized officer, agent, employee or representative of the City of Cottonwood Shores who presents credentials may inspect any property for the purpose of ascertaining compliance with the provisions of this Ordinance.

SECTION 12: ENFORCEMENT

a) Civil and Criminal Penalties

The City shall have the power to administer and enforce the provisions of this Ordinance as may be required by governing law. Any Police Officer, Fire Official, Code Enforcement Officer or City Official is authorized to enforce the provisions of this Ordinance. Any person violating any provision of this Ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this Ordinance is hereby declared to be a nuisance.

b) Criminal Prosecution

Any person violating any provision of this Ordinance shall, upon conviction, be fined a sum not exceeding two thousand dollars (\$2,000.00). Each day that a provision of this Ordinance is violated shall constitute a separate offense. An offense under this Ordinance is a Class C Misdemeanor.

c) Civil Remedies

Nothing in this Ordinance shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this Ordinance and to seek remedies as allowed by law, including, but not limited to the following.

- 1) Injunctive relief to prevent specific conduct that violates the Ordinance or to require specific conduct that is necessary for compliance with the Ordinance; and
- 2) A civil penalty up to one hundred dollars (\$100.00) a day when it is shown that the defendant was actually notified of the provisions of the Ordinance and after receiving notice committed acts in violation of the Ordinance or failed to take action necessary for compliance with the Ordinance; and
- 3) Any other available relief.

SECTION 13: JURISDICTION

The provisions of this Ordinance shall apply within the corporate limits of the City as defined by state law.

SECTION 14: EFFECTIVE DATE

This Ordinance shall take effect immediately from and after its passage and publication as may be required by governing law.

SECTION 15: NO VESTED INTEREST OR EXEMPTION FROM LIABILITY

No person shall acquire any vested interest in this Ordinance or in any specific regulations contained herein. This Ordinance and any regulation enacted hereby may be amended or repealed by the City Council in the manner provided by law. The authority to conduct outdoor burning under this Ordinance does not exempt or excuse any person responsible from the consequences, damages, liability, or injuries resulting from the burning and does not exempt or excuse anyone from complying with other applicable laws or ordinances, regulations and orders of governmental entities having jurisdiction, even though the burning is otherwise conducted in compliance with this Ordinance.

SECTION 16: SEVERABILITY

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this Ordinance be severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance, and the remainder of this Ordinance shall be enforced as written.

SECTION 17: PROPER NOTICE AND MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

AMENDED ORDINANCE PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY COTTONWOOD SHORES, TEXAS, AT A MEETING ON THE 2ND DAY OF APRIL, 2015, WITH 5 VOTES IN FAVOR, 0 VOTES AGAINST AND 0 ABSTENTIONS.



Mayor Donald Orr



test:


Sheila C. Moore

City Administrator/City Secretary