

NO. O-10-12-17(B)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NIXON, TEXAS REGULATING THE USE OF ABOVE-GROUND FUEL STORAGE TANKS WITHIN THE CITY OF NIXON; LIMITATION OF LOCATION OF ABOVE-GROUND FOSSIL FUEL STORAGE TANKS TO CITY'S INDUSTRIAL AND MIXED USE ZONING DISTRICTS; PROVIDING A PENALTY OF UP TO \$2,000.00 FOR VIOLATION; ADOPTION OF RAILROAD COMMISSION RULES AND REGULATIONS FOR THE USE OF ABOVE-GROUND FOSSIL FUEL STORAGE TANKS; PROVIDING FOR SEVERANCE, REPEAL OF CONFLICTS, AND AN EFFECTIVE DATE.

WHEREAS, containment of fossil fuels within the City of Nixon (City) poses a fire safety risk, a pollution risk and a public health and general welfare risk; and

WHEREAS, pursuant to Texas Law, a municipality may enact ordinances for the control and abatement of fire safety, pollution and public health and general welfare; and

WHEREAS, the City Council of the City is of the opinion that it is in the best interest of the citizens of the City to adopt reasonable regulations regarding above-ground fossil fuel storage tanks within the City;

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

I. FINDINGS OF FACT

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

## **II. LIMITATION OF LOCATION OF ABOVE-GROUND FOSSIL FUEL STORAGE TANKS**

### **(a) Scope**

The provisions of this Ordinance shall apply within the City Limits (i.e., incorporated municipal boundary).

### **(b) General Prohibition of Above-Ground Fossil Fuel Storage Tanks in City's Urban Neighborhood District**

Above-ground fossil fuel storage tanks shall only be allowed in the City of Nixon's Mixed Use and Industrial Use Districts as described in the City's Zoning Ordinance No. O-08-11-10 and as shown in the City of Nixon's Zoning Map as prepared by BEFCO Engineering, Inc. Above-ground fossil fuel storage tanks shall not be permitted in the City of Nixon's Urban Neighborhood District. An above-ground fossil fuel storage tank found to be in the City's Urban Neighborhood District shall be in violation of this Ordinance and the property owner shall be subject to fines and penalties as further described below.

## **III. PENALTY FOR VIOLATION OF ORDINANCE**

The penalty for violation of this ordinance carries a fine not to exceed \$2,000.00 but shall be no less than \$250.00. Each violation date is a separate offense. The Court of jurisdiction for a violation of this ordinance shall be the Nixon Municipal Court. Citations for a violation of this ordinance shall be issued by the Nixon Police Department and may be subject to a recommendation for issuance by the City's Fire Chief and/or the City Administrator.

## **IV. ADOPTION OF RAILROAD COMMISSION RULES AND REGULATIONS FOR THE USE OF ABOVE-GROUND FOSSIL FUEL STORAGE TANKS**

The City Council for the City of Nixon, Texas hereby adopts, defers and incorporates herein by reference, as if the entirety of the text was hereby included, the rules and regulations as enforced by the Texas Railroad Commission with regards to the use of above-ground fossil fuel storage tanks. Said rules and regulations are located in the Texas Administrative Code, Title 16, Part 1, Chapters 1-20. Any violation of the Rules and Regulations within the incorporated city limits of Nixon, Texas and with regards to the storage of fossil fuels in above-ground storage tanks shall be punishable by fine as discussed in Section III. above.

**V. REPEALER**

Any ordinance or parts of ordinances in conflict with this ordinance are herewith repealed to the extent that they are in conflict.

**IV. SEVERABILITY**

If any of the provisions of this ordinance shall be held void or unconstitutional, it is hereby provided that all other parts of the same which are not held void or unconstitutional shall remain in full force and effect.

**V. EFFECTIVE DATE**

This ordinance shall take effect upon its passage and publication in accordance with the law.

**VI. 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 and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act of the Texas Government Code.

PASSED AND APPROVED on this 17<sup>th</sup> day of December 2010.

CITY OF NIXON, TEXAS

By: \_\_\_\_\_  
Mayor/Mayor Pro Tem

ATTEST:

\_\_\_\_\_  
City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Eduardo "Eddie" Escobar, City Attorney



NO. O-10-12-17

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NIXON, TEXAS REGULATING OUTDOOR BURNING WITHIN THE CITY OF NIXON; REQUIRING FROM THE CITY TO ENGAGE IN LAWFUL BURNING OUTDOORS; PROVIDING A PENALTY OF UP TO \$2,000.00 FOR VIOLATION; PROVIDING FOR SEVERANCE, REPEAL OF CONFLICTS, AND AN EFFECTIVE DATE.

WHEREAS, outdoor burning within the City of Nixon (City) poses a fire safety risk and is a cause of air pollution; and

WHEREAS, pursuant to section 382.113 of the Texas Health and Safety Code a municipality may enact ordinances for the control and abatement of air pollution consistent with the Texas Clean Air Act; and

WHEREAS, the City Council of the City is of the opinion that it is in the best interest of the citizens of the City to establish reasonable regulations regarding outdoor burning within the City;

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

I. FINDINGS OF FACT

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

II. OUTDOOR BURN REGULATIONS

(a) Scope

The provisions of this Ordinance shall apply within the City Limits (i.e., incorporated municipal boundary).

**(b) General Prohibition**

Unless specifically excepted from the requirement to obtain a permit by section II.(d), no person shall cause, suffer, allow or permit any outdoor burning within the City Limits without obtaining a burn permit from the City Fire Department.

**(c) Definitions**

(1) *Acceptable cooking receptacles* shall mean cooking or barbeque devices (whether stationary or portable) such as pits, smokers or hibachis. The Fire Chief of the City Fire Department has the authority to determine whether an item which is not listed under this definition is an acceptable cooking receptacle.

(2) *Extinguished* shall mean the absence of any visible flames, glowing coals, or smoke.

(3) *Requesting party* shall mean the person requesting the burn permit and the individual who is responsible for the burn; this may also be the property owner.

(4) *Structure containing a sensitive receptor(s)* shall mean a man-made structure utilized for human residence or business, the containment of livestock, or the housing of sensitive live vegetation.

**(d) Exceptions to Burn Permit**

The following situations do not require a burn permit:

- (1) Fire Department training fires within the requirements of State Law,
- (2) fires within fireplaces,
- (3) outside noncommercial cooking fires in acceptable cooking receptacles, or
- (4) small warming fires within containers.

**(e) Permitting**

(1) A burn permit shall be requested and received prior to any outdoor burning. The burn permit shall be requested in writing from the Fire Department at least five (5) working days in advance of the requested burn date. The cost of the permit shall be \$25.00 due and payable at the City of Nixon Volunteer Fire Department and is to be applied to the Fire Department's General Fund account.

(2) The requesting party shall provide the following on their burn permit application (a sample for the required burn permit is attached to this ordinance as Exhibit "A"):

- (A) The requestor's name,
- (B) The requestor's address,
- (C) The requestor's phone number,
- (D) The property owner of the proposed burn site's name and phone number (if this is different from the requesting party's name and phone number),
- (E) The address of the proposed burn site,
- (F) The date requested for the burn, and
- (G) The time of the burn.

(3) Fire officials may inspect the site and conditions before either approving or disapproving the burn and shall notify the requesting party of their determination.

(4) If at any time the Fire Department determines that due to changing conditions or due to increased safety risks, the burn permit may be cancelled and/or order the requesting and/or responsible party to extinguish the fire. If the requesting and/or responsible party cannot be located or refuses to extinguish the fire, the Fire Department is authorized to enter the property and extinguish the fire at the owner's expense.

(5) The City Council is authorized to create and require the use of a form to facilitate requests for outdoor burning permits.

**(f) Requirements for Outdoor Burning**

(1) Fire officials may prohibit any outside fire when atmospheric and environmental conditions or local circumstances make such fires hazardous or unsafe regardless of whether a permit is required.

(2) All outdoor burning shall be limited to the burning of brush, grass, leaves, trees and vegetation that has been generated only from that property where the



burn is to occur. Items that cannot be burned include: household wastes or garbage, 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.

(3) All outdoor burning, regardless of whether a permit has been obtained, shall also 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 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 and extinguish the fire.

(C) Burning must be conducted downwind of or at least 300 feet (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:

(i) The initiation of burning shall commence no earlier than 6:00am. Burning shall be completed on the same day not later than 6:00pm and shall be attended by a responsible party at all times during the active burn. In cases where residual fires and/or smoldering objects continue to emit smoke after this time, such areas shall be extinguished by the responsible party. In no case shall the extent of the burn area be allowed to increase after this time.

(ii) Burning shall not be commenced when surface wind speed is predicted to be less than six (6) miles per hour (mph) (five knots) or greater than 23 mph (20 knots) during the burn period.

(iii) Burning shall not be conducted during periods of actual or predicted persistent low-level atmospheric temperature inversions.

(iv) A means of fire control and extinguishment must be readily available on site at all times. Fifty-five gallon drums of water may be allowed, subject to approval by the Fire Chief, if a water line is unavailable.

(v) Burning shall not endanger any other property or structure.

**(g) Responsibility for Consequences of Outdoor Burning**

(1) The authority to conduct outdoor burning under this regulation does not exempt or excuse any person responsible for 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 regulation.

(2) If the Fire Department determines that a burn is creating an unsafe condition and orders the responsible party to extinguish the burn and that party refuses to do so, the Fire Department is authorized to extinguish the burn. The fee for extinguishing that burn will be charged to the person who requested the burn permit. That fee will be calculated on a per hour basis for the cost of equipment and personnel. This fee is currently set at \$150.00 per hour and shall be calculated in no less than one-half hour increments.

**(h) Penalty for Violation**

The penalty for violation of this ordinance carries a fine not to exceed \$2,000.00 but shall be no less than \$250.00. Each violation is a separate offense. The Court of jurisdiction for a violation of this ordinance shall be the Nixon Municipal Court. Citations for a violation of this ordinance shall be issued by the Nixon Police Department and may be subject to a recommendation for issuance by the City's Fire Chief.

**III. REPEALER**

Any ordinance or parts of ordinances in conflict with this ordinance are herewith repealed to the extent that they are in conflict. This includes but is not limited to Ordinance No. O-1993-11-8.



**IV. SEVERABILITY**

If any of the provisions of this ordinance shall be held void or unconstitutional, it is hereby provided that all other parts of the same which are not held void or unconstitutional shall remain in full force and effect.

**V. EFFECTIVE DATE**

This ordinance shall take effect upon its passage and publication in accordance with the law.

**VI. 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 and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act of the Texas Government Code.

PASSED AND APPROVED on this 17<sup>th</sup> day of December 2010.

CITY OF NIXON, TEXAS

By: \_\_\_\_\_  
Mayor/Mayor Pro Tem

ATTEST:

\_\_\_\_\_  
City Secretary

APPROVED AS TO FORM:


  
Eduardo "Eddie" Escobar, City Attorney

Exhibit "A"

City of Nixon, Texas

**OUTDOOR BURN PERMIT APPLICATION**

Date: \_\_\_\_\_

Name of Requesting Party \_\_\_\_\_

Address of Requesting Party \_\_\_\_\_

Phone Number(s) of Requesting Party \_\_\_\_\_

Address/Location of Burn Site \_\_\_\_\_

(If Different from the above address)

Name of Property Owner conducting Outdoor Burn \_\_\_\_\_

(If Different from the above name)

Contact Phone Number \_\_\_\_\_

(If Different from the above number)

Date Requested for Outdoor Burn \_\_\_\_\_

(\$25.00)

Time of Outdoor Burn

Total Amount Paid for Permit \$ \_\_\_\_\_

a.m. / p.m.

Please sign below acknowledging that you have read, understand and will comply with the City of Nixon's Outdoor Burn Ordinance.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

Approved

Denied

Notes: \_\_\_\_\_  
\_\_\_\_\_

Signature (Fire Chief)

Date

THIS PAGE INTENTIONALLY LEFT BLANK.