

ORDINANCE NO 04-2024

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SMILEY, TEXAS REPEALING AND REPLACING ORDINANCE 01.12.15.11; REGULATING OUTDOOR BURNING; ESTABLISHING PROCEDURES FOR ENFORCEMENT; ESTABLISHING CRIMINAL AND CIVIL FINES AND PENALTIES IN AN AMOUNT NOT LESS THAN TWO HUNDRED FIFTY DOLLARS (\$250.00) AND NOT MORE THAN TWO THOUSAND DOLLARS (\$2000.00) PER VIOLATION; PROVIDING FOR A REPEALER; SEVERABILITY; AND AN EFFECTIVE DATE.

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

WHEREAS, pursuant to Chapter 51 of the Texas Local Government Code, the City may adopt Ordinances that the City considers proper for the government of the municipal corporation; 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; and

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

I. FINDINGS OF FACT AND SHORT TITLE

The preceding recitals 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. This Ordinance shall be known as the City of Smiley's "Outdoor Burning Ordinance."

II. OUTDOOR BURN REGULATION

(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 (Attachment A) from the City.

(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 Gonzales County Fire South 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

The following situations shall not require a burn permit from the City..

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) All outdoor burning shall be subject to the following requirements:

1. 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 of the following: public road, landing strip, navigable water, or off-site structure containing sensitive receptor(s),
2. 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 fires,
3. 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.
4. Burning shall be conducted in compliance with the following conditions:
 - a. The initiation of burning shall commence no earlier than 6:00 am. Burning shall be completed on the same day not later than 6:00 pm and shall always be attended by a responsible party during the active burn. In cases where residual fires and/or smoldering objects continue to emit smoke after 6:00 pm, such areas shall be extinguished by the responsible party. In no case shall the extent of the burn area be allowed to increase after 6:00 pm.
 - b. 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.
 - c. Burning shall not be conducted during periods of actual or predicted persistent low-level atmospheric temperature inversions.
 - d. A means of fire control and extinguishment must always be readily available on site. Fifty-five gallon drums of water may be allowed, subject to approval by the Gonzales County Fire South fire Chief, if a water line is unavailable.
 - e. Burning shall not endanger any other property or structure.

(f) 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 City or Gonzales County Fire South 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 City or Gonzales County Fire South 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 \$250.00 per hour and shall be calculated in no less than one-half-hour increments.

(g) Permit Procedures

1. Fees

The responsible party shall pay an application fee and a permit fee as established by the City.

2. Pre-Burn Inspection

The burn site shall be inspected by a City official prior to issuance of a burn permit. All materials to be burned shall be on-site and clearly visible to the City official at the time of inspection.

(h) Penalty for violation

1. The penalty for violation of the ordinance carries a fine not to exceed \$2,000.00 but shall be no less than \$250.00. Each violation is a separate offense, and each day shall be considered a separate violation. The Court of jurisdiction for a violation of this ordinance shall be the Smiley Municipal Court. Citations for a violation of this ordinance shall be issued by the City of Smiley Marshal, and may be subject to a recommendation for issuance by the Gonzales County Fire South's Fire Chief.

III. REPEALER

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

IV. SEVERABILITY

If any provision, section, paragraph, sub-paragraph, clause or phrase of this ordinance or the application of such to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications thereof which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

V. SAVINGS CLAUSE

This Ordinance shall remain in full force and effect, save and except as amended or repealed.

VI. EFFECTIVE DATE

This ordinance shall take effect upon passage, approval and publication in accordance with state law.

VII. PROPER NOTICE AND MEETING

It is hereby found and determined that the meeting at which this ordinance is passed is open to the public and that the 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 the day _____ day of _____ 2024

CITY OF SMILEY, TEXAS

By:

Lisa Benavidez
Mayor

ATTEST:

Scott Jewett
City Secretary

City of Smiley

Outdoor Burn Permit Application

Applicant _____ Phone _____

Mailing Address _____ City/State _____ Zip _____

Burn Site Address _____ City/State _____ ZIP _____

Requirements

1. Prior to igniting any permitted burn, the party performing the burn shall consult with any of the following to determine an allowable wind speed as cited in Item 7 below.
 - a. National Weather Service
 - b. AccuWeather
 - c. NOAA
2. The establishment of a(n) effective fire break(s) shall be maintained around the periphery of the burning material
3. A supply of water to control the burn shall be provided at the site throughout the burn.
4. A copy of the burn permit shall be available on site throughout the burn.

Restrictions

1. Burn permits will be issued only for burning dry leaf and grass piles, branches and limbs.
2. Kitchen garbage, house refuse, electrical insulation, treated lumber, plastics, non-wood or wood construction materials, hydrocarbon fuels, and lubricants, spaltic materials, potentially explosive materials, chemical wastes, and items containing natural or synthetic rubber shall NOT be burned,
3. A burn permit will be issued only after the application and permit fee have been paid and an authorized representative of the City inspects and approves the burn site and the materials to be burned.
4. No materials shall be transported from any other site to be burned or disposed of at a permitted burn site after the site inspection described in Item 3 above;
5. The burn site shall be a safe distance from all building structures and combustible materials that are not described in and covered by the burn permit;
6. A competent person at least 18 years of age shall be present at the burn site from the time the ignition until the fire is consumed or extinguished;
7. No burning shall be allowed on days when surface wind velocities are predicted to exceed 23 mph.
8. No burning shall be allowed on ozone alert days for the Gonzales County area, or when a ban has been issued by the Gonzales County Fire Marshall, an authorized State of Texas fire official, or the City of Smiley;
9. Burns may begin no earlier than 6:00 am and must be completely extinguished no later than 6:00 pm

VIOLATION OF THE CITY'S BURN PERMIT RULES AND REGULATIONS COULD RESULT IN THE PERMIT BEING REVOKED AND A FINE OF UP TO \$2,000 BEING ASSESSED. AUTHORIZATION TO CONDUCT OUTDOOR BURNING DOES NOT EXCUSE THE PERSON(S) RESPONSIBLE FOR SUCH BURNING FROM THE CONSEQUENCES, DAMAGES, OR INJURIES RESULTING FROM THE BURNING, OR FROM COMPLYING WITH ALL OTHER APPLICABLE ORDINANCES AND REGULATIONS THE CITY OF SMILEY DOES NOT ACCEPT RESPONSIBILITY FOR THE CONDUCT OR CONSEQUENCES OF THE BURNING, EVAN IF THE BURNING IS CONDUCTED IN TOTAL COMPLIANCE WITH THE CITY'S PERMIT RULES AND REGULATIONS.

With this signature, I certify that I have read and understand the Outdoor Burning Ordinance and requirements as set forth by the City of Smiley.

Signature

Date