

ORDINANCE NO. 11012017-01

AN ORDINANCE OF THE CITY OF POTEET, TEXAS SETTING RULES AND REGULATIONS ON OUTDOOR AND REFUSE BURNING WITHIN THE CITY LIMITS OF THE CITY OF POTEET; PROVIDING A SEVERABILITY CLAUSE; SETTING A PENALTY; REPEALING ORDINANCES AND RESOLUTIONS IN THEIR ENTIRETY; AND PROVIDING FOR AN EFFECTIVE DATE.

SECTION 1: PURPOSE

1.0. Purpose. This ordinance is intended to promote the public health, safety and welfare and to safeguard the health, comfort, living conditions, safety and welfare of the citizens of the City of Poteet due to the air pollution and fire hazards of open burning, outdoor burning and refuse burning.

SECTION 2: APPLICABILITY

2.00. Applicability. This ordinance applies to all outdoor burning and refuse burning within the City of Poteet. If a provision in a town ordinance in this county covers a provision contained in this county ordinance, the town ordinance controls.

2.01. This ordinance does not apply to grilling or cooking using charcoal, wood, propane or natural gas in cooking or grilling appliances.

2.02. This ordinance does not apply to burning in a stove, furnace, fireplace or other heating device within a building used for human or animal habitation unless the material being burned includes refuse as defined in Section 4 of this ordinance.

2.03. This ordinance does not apply to the use of propane, acetylene, natural gas, gasoline or kerosene in a device intended for heating, construction or maintenance activities.

SECTION 3: SEVERABILITY

3.00. Severability. Should any portion of this ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected.

SECTION 4: DEFINITIONS

4.00. Definitions.

4.01. "Campfire" means a small outdoor fire intended for recreation or cooking not including a fire intended for disposal of waste wood or refuse.

4.02. "Clean Wood" means natural wood which has not been painted, varnished or coated with a similar material, has not been pressure treated with preservatives and does not contain resins or glues as in plywood or other composite wood products.

4.03. "Confidential papers" means printed material containing personal identification or financial information that the owner wishes to destroy.

4.04. "Fire Inspector" means the Inspector of the City of Poteet or other person authorized by the Fire Inspector.

4.05. "Outdoor Burning" means open burning or burning in an outdoor wood-fired furnace.

4.06. "Open Burning" means kindling or maintaining a fire where the products of combustion are emitted directly into the ambient air without passing through a stack or a chimney.

4.07. "Outdoor Wood-fired Furnace" means a wood-fired furnace, stove or boiler that is not located within a building intended for habitation by humans or domestic animals.

4.08. "Refuse" means any waste material except clean wood.

SECTION 5: GENERAL PROHIBITION ON OPEN BURNING, OUTDOOR BURNING AND REFUSE BURNING

5.00 General prohibition on outdoor burning and refuse burning. Open burning, outdoor burning and refuse burning are prohibited in the City of Poteet unless the burning is specifically permitted by this ordinance.

SECTION 6: MATERIALS THAT MAY NOT BE BURNED

6.00 Materials that may not be burned.

- 6.01.** Unless a specific written approval has been obtained from the Texas Commission on Environmental Quality, the following materials may not be burned in an open fire, incinerator, burn barrel, furnace, stove or any other indoor or outdoor incineration or heating device.
- 6.02.** Rubbish or garbage including but not limited to food wastes, food wraps, packaging, animal carcasses, paint or painted materials, furniture, composite shingles, construction or demolition debris or other household or business wastes.
- 6.03.** Waste oil or other oily wastes except used oil burned in a heating device for energy recovery
- 6.04.** Asphalt and products containing asphalt.
- 6.05.** Treated or painted wood including but not limited to plywood, composite wood products or other wood products that are painted, varnished or treated with preservatives.
- 6.06.** Any plastic material including but not limited to nylon, PVC, ABS, polystyrene or urethane foam, and synthetic fabrics, plastic films and plastic containers.
- 6.07.** Rubber including tires and synthetic rubber-like products.

SECTION 7: OPEN BURNING OF LEAVES, BRUSH, CLEAN WOOD AND OTHER VEGETATIVE DEBRIS

7.00 Burning leaves, brush, clean wood and other vegetative debris.

Open burning of leaves, weeds, brush, stumps, clean wood, trees and other vegetative debris is prohibited
7.01. Unless explicitly allowed elsewhere in this ordinance, a commercial enterprise other than an agricultural operation may open burn only at a facility approved by and in accordance with provisions established by the Texas Commission on Environmental Quality and the Fire Chief.

7.02. Open burning of weeds or brush on agricultural lands is allowed if conducted in accordance with other applicable provisions of this ordinance.

7.03. Outdoor campfires and small bonfires for cooking, ceremonies or recreation are allowed by permit only provided that the fire is confined by a control device or structure such as a barrel, fire ring, or fire pit. Bonfires are allowed only if approved by and in accordance with provisions established by the Fire Chief.

7.04. In emergency situations such as natural disasters burning that would otherwise be prohibited is allowed if specifically approved by the Texas Commission on Environmental Quality.

7.05. Open burning under **this section** shall be conducted only following issuance of and in accordance with a permit issued by City of Poteet Fire inspector.

7.06. Open burning under this section shall only be conducted at a location at least 50 feet from the nearest structure.

7.07. Open burning shall be constantly attended and supervised by a competent person of at least eighteen (18) years of age until the fire is extinguished and is cold. The person shall have readily available for use such fire extinguishing equipment as may be necessary for the total control of the fire.

7.08. No materials may be burned upon any street, curb, gutter or sidewalk or on the ice of a lake, pond, stream or waterbody.

7.09. Except for barbecue, gas and charcoal grills, no burning shall be undertaken within **50 feet** from any combustible material, combustible wall or partition, exterior window opening, exit access or exit unless authorized by the Fire Inspector.

7.10. For barbecue, gas and charcoal grills, no burning shall be undertaken within **15 feet** from any combustible material, combustible wall or partition, exterior window opening, exit access or exit unless authorized by the Fire Inspector.

7.11. No open burning may be conducted on days when the Texas Commission on Environmental Quality has declared an Air Quality Watch or Air Quality Advisory for ozone or fine particle pollution applicable to the **City of Poteet**.

SECTION 8: BURN BARRELS

8.00 Burn barrels.

No person shall use or maintain a burn barrel in the **City of Poteet**

SECTION 9: OUTDOOR WOOD-FIRED FURNACES

An outdoor wood-fired furnace may be installed and used in the **City of Poteet** only in accordance with the following provisions:

9.01. The outdoor wood-fired furnace shall not be used to burn any of the prohibited materials listed in Section 6 of this ordinance.

9.02. The outdoor wood-fired furnace shall be located at least **50 feet** from the nearest structure and on hard packed non-combustible non-flammable surface at least 1.5 times the size of the wood-fired furnace.

9.03. The owner of the outdoor wood-fired furnace shall obtain an annual permit from the Fire Inspector in accordance with Section 12 of this ordinance.

SECTION 10: FIRE DEPARTMENT PRACTICE BURNS

10.00 Fire department practice burns.

Notwithstanding sections 5 and 6 of this ordinance, the **Poteet Volunteer Fire Department** may burn a standing building if necessary for firefighting practice and if the practice burn complies with the requirements of the Texas Commission on Environmental Quality.

SECTION 11: BURNING PERMITS

11.00 Burning Permits.

11.01. No person shall start or maintain any open burning without a burning permit issued by the **Fire Inspector**.

11.02. The owner or occupant of the property shall obtain an annual burning permit for an outdoor wood-fired furnace before using the outdoor wood-fired furnace. The fee for each annual burning permit shall be **no cost**. An annual permit expires on **31 December** of each year.

11.03. When weather conditions warrant, the Fire Inspector, the Texas Commission on Environmental Quality or any other qualified person (example County Fire Marshal or Texas Forestry Service) may declare a burning moratorium on all open burning and temporarily suspend previously issued burning permits for open burning.

11.04. A burning permit issued under this section shall require compliance with all applicable provisions of this ordinance and any additional special restrictions deemed necessary to protect public health and safety.

11.05. Any violation of the conditions of a burning permit shall be deemed a violation of this ordinance. Any violation of this ordinance or the burning permit shall incur a fine for every violation.

SECTION 12: LIABILITY

12.00 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 13: RIGHT OF ENTRY AND INSPECTION

13.00 **Right of entry and inspection.** The Fire Inspector or any authorized officer, agent, employee or representative of the City of Poteet who presents credentials may inspect any property for the purpose of ascertaining compliance with the provisions of this ordinance. Note: If the owner or occupant of the premises denies access to the property for this purpose, a special inspection warrant may be obtained in accordance.

SECTION 14: ENFORCEMENT AND PENALTIES

14.00 Enforcement and penalties.

14.1. The Fire Inspector or other designated municipal officials are authorized to enforce the provisions of this ordinance.

14.2. The penalty for violation of any portion of this ordinance shall be a forfeiture of not less than \$50.00 or more than \$250.00 plus the cost of prosecution. Penalties are doubled for second and subsequent offenses.

SECTION 15 REPEALING ORDINANCE OR RESOLUTION IN CONFLICT

15.00 Repealing Ordinance or Resolution in Conflict

15.1. All ordinances or parts of ordinances, resolutions, or parts of resolutions in conflict herewith are hereby repealed in their entirety.

SECTION 16 EFFECTIVE DATE

16.00 Effective Date.

16.1 The Ordinance shall be effective immediately upon the approval of the City Council.

PASSED AND APPROVED this 7TH Day of **NOVEMBER**, 2017.

By



Mayor Albert E. Trevino

Attest:

City Secretary Abigail R. Frautschi