

**ORDINANCE NO. O-2021-111**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 6, "BUILDINGS AND STRUCTURES", ARTICLE VIII, "FIRE PREVENTION", OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS, BY UPDATING AND AMENDING THE OUTDOOR BURNING PROVISIONS IN THE 2015 INTERNATIONAL FIRE CODE; ADOPTING A NEW OUTDOOR BURNING PERMIT AND FEE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, it is the intent of the City Council to protect the public health, safety and welfare; and

**WHEREAS**, municipalities may, under their police powers, enact reasonable regulations not in conflict with Federal or State law to promote the health, safety and welfare of citizens; and

**WHEREAS**, the City of Tyler is a home-rule municipality acting under its Charter adopted by the electorate pursuant to Article 11, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

**WHEREAS**, Texas Local Government Code Section 51.072(a) states that a home-rule municipality has full power of local self-government; and

**WHEREAS**, Texas Local Government Code Section 51.072(b) provides that the grant of powers to a municipality under the Texas Local Government Code does not prevent, by implication or otherwise, the municipality from exercising the authority incident to local self-government; and

**WHEREAS**, Section 1 of the Tyler City Charter states that the City of Tyler may make any and all rules and regulations by ordinances and resolutions; and

**WHEREAS**, Section 1 of the Tyler City Charter provides that the City of Tyler may define, prohibit, abate, suppress and prevent all things detrimental to the health, morals, comfort, safety, convenience and welfare of the inhabitants of the City, and all nuisances and causes thereof; and

**WHEREAS**, Section 1 of the Tyler City Charter states that the City of Tyler may make and enforce local police, sanitary, and other regulations, and may pass such ordinances as may be expedient for maintaining and promoting the peace, good government and welfare of the City, and for the performance of the functions thereof; and

**WHEREAS**, Section 1 of the Tyler City Charter provides that the City shall have all powers that now are, or hereafter may be granted to municipalities by the constitution or laws of Texas, and that all such powers, whether expressed or implied, shall be exercised and enforced, in the manner prescribed by the Charter, or when not prescribed in the Charter, in such manner as shall be provided by ordinances or resolutions of the City Council; and

**WHEREAS**, Section 2 of the Tyler City Charter states that the enumeration of particular powers by the Charter shall not be held or deemed to be exclusive, but in addition to the powers enumerated in the Charter, the City shall have, and may exercise all other powers which, under the constitution and laws of Texas, it would be competent for the Charter specifically to enumerate; and

**WHEREAS**, Section 6 of the Tyler City Charter states that pursuant to the provisions of and subject only to the limitations imposed by the State law and the Charter, all powers of the City shall be vested in an elective Council, which shall, among other duties, enact legislation; and

**WHEREAS**, Texas Local Government Code Section 51.001(1) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is for the good government, peace, or order of the municipality; and

**WHEREAS**, Texas Local Government Code Section 51.001(2) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality; and

**WHEREAS**, the 2015 International Fire Code with local amendments is currently in effect; and

**WHEREAS**, the Fire Department has reviewed and recommends adoption of proposed amendments to the outdoor burning provisions in the 2015 International Fire Code; and

**WHEREAS**, the Fire Department has also reviewed and recommends adoption of a new Outdoor Burning Permit and Fee; and

**WHEREAS**, proposed amendments to the outdoor burning provisions in the 2015 International Fire Code and the proposed Outdoor Burning Permit and Fee were presented to the Developer's Roundtable and to the Construction Board of Adjustment and Appeals;

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

**PART 1:** That Tyler City Code Chapter 6, "Buildings and Structures", Article VIII., "Fire Prevention", is hereby amended by amending Section 6-123 to read as follows:

**Sec. 6-123. Fire Code-Amendments.**

- a. through i. No changes...

j. Sections 307.1 through 307.4.3 are hereby deleted in their entireties and a new Section 307.1 is adopted to read as follows:

307.1. Outdoor burning. No person shall kindle or maintain any bonfire or rubbish fire or authorize any such fire to be kindled or maintained by upon any premises within the City limits.

Exceptions:

1. Owners who reside on individual lots two (2) acres or larger may burn trees, brush and other plant growth on said lots if for purposes of maintenance or land clearing only and not for purposes of residential or commercial development, and if materials to be burned are generated solely on such property. Other materials, including household garbage, individual piles of leaves or grass, and commercial wastes, shall not be burned. (Ord. No. O-2011-42, 5/25/11) (Ord. No. O-2018-16; 1/24/18)
2. Owners of property ten (10) acres or larger may burn trees, brush, and other plant growth on said property for predevelopment purposes, to include Right-of-Way clearing, utility installation, and mass grading. Materials to be burned must be generated solely on such property and may not include household garbage. Prior to burning, a permit must be obtained from the Fire Marshal's Office, and all requirements specified on the permit, including fees and notification, must be adhered to and met. (Ord. No. O-2021-111; 12/08/21)
3. If a violent weather condition destroys buildings, trees or other vegetation, and clean-up is of the essence, burning of storm debris in residentially zoned areas may be allowed if it can be shown that burning would substantially expedite the clean-up; and if no practical alternative exists. (Ord. No. O-2021-111; 12/08/21)
4. Any burning carried out pursuant to subsections 1., 2. or 3. above must conform to State law and to TCEQ or successor Rules. Per TCEQ rules, the Fire Department may require a property owner conducting outdoor burning to extinguish a fire if such burning causes a traffic hazard, or is deemed a nuisance for a "sensitive receptor" such as a residence, business, barn, greenhouse, etc. (Ord. No. O-2011-42, 5/25/11) (Ord. No. O-2018-16; 1/24/18) (Ord. No. O-2021-111; 12/08/21)
5. Any burning carried out pursuant to subsection 1., 2. or 3. above shall not be conducted on any Ozone Action Day designated by the TCEQ or successor, and such burning shall not be conducted on any day in which there is in effect an order issued by Smith County that prohibits outdoor burning in unincorporated areas of Smith County due to drought conditions. (Ord. No. O-2007-25; 2/28/07) (Ord. No. O-2018-16; 1/24/18) (Ord. No. O-2021-111; 12/08/21)
6. All complaints regarding outdoor burning should be forwarded to the Fire Chief or Fire Marshal's Office. (Ord. No. O-2011-42, 5/25/11) (Ord. No. O-2018-16; 1/24/18) (Ord. No. O-2021-111; 12/08/21)

Sec. 307.5 is renumbered as new Sec. 307.2 with no other changes. (Ord. No. O-2011-42, 5/25/11) (Ord. No. O-2018-16; 1/24/18)

k. through w. No changes...

(Ord. No. O-96-5, 1-24-96; Ord. No. O-96-47, 6-5-96) (Ord. No. O-2001-64, 12/5/2001) (Ord. No. O-2006-33; 3/22/06) (Ord. No. O-2007-25; 2/28/07) (Ord. No. O-2011-42, 5/25/11) (Ord. No. O-2016-17; 2/2/24/16 (Ord. No. O-2018-16; 1/24/18) (Ord. No. 0-2021-111; 12/08/21)

**PART 2:** That Tyler City Code Chapter 6, "Buildings and Structures", Article VIII., "Fire Prevention", is hereby amended by amending Section 6-127 to add a new Permit and Fee for Outdoor Burning in new subsection a.a. in the appropriate alphabetical order, with no other changes to the fees in the Chart:

**Sec. 6-127. Permits; Miscellaneous fees.**

All permits issued by the Fire Department shall be valid for a period of six (6) months from the date of issuance, except as otherwise provided in this Article.

The following fees shall be charged by the Fire Department: If work started before permit Issued, double fee

a. through z. No changes...

No changes...

aa. Outdoor burning permit

*\$1000.00 for seven (7) days. N/A*

*Additional \$150.00/day after*

*the seventh day. (Ord. No. 0-2021-111; 12/08/21)*

(Ord. 0-97-29, 6/18/97) (Ord. 0-99-59, 8/18/99) (Ord. 0-2002-38, 9/11/02) (0-2006-79; 9-13-2006) (Ord. 0-2009-103, 9/23/09) (Ord. No. 0-2017-77; 9/13/17) (Ord. No. 0-2021-111; 12/08/21)

**PART 3:** That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

**PART 4:** That any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall not become effective until after its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, or later. The effective date after publication shall be December 14, 2021.

PASSED AND APPROVED this 8th day of December, A. D., 2021.



DONALD P. WARREN, MAYOR  
OF THE CITY OF TYLER, TEXAS

ATTEST:

  
CASSANDRA BRAGER, CITY CLERK  
The seal of the City of Tyler, Texas, is circular with a double-line border. The outer ring contains the text "CITY OF TYLER" at the top and "TEXAS" at the bottom. The inner circle features a stylized tree with three leaves and the word "SEAL" in the center.

APPROVED:

  
DEBORAH G. FULLUM,  
CITY ATTORNEY