

ORDINANCE NO. 3-2010

AN ORDINANCE OF THE VILLAGE OF BONNEY, TEXAS, PROHIBITING BURNING WITHIN THE VILLAGE OF BONNEY, TEXAS DURING THE TIME IN WHICH THE COUNTY OF BRAZORIA, TEXAS INSTITUTES A TOTAL BURN BAN.

WHEREAS, the regulation, management and control of burning of liter, solid waste, garbage, trash and vegetative substances on property within the Village of Bonney, (herein "City"); Texas is essential to the public health, safety and welfare of the community, during a burn ban issued by the County of Brazoria, Texas, county-wide; and

WHEREAS, the magnitude of the potential damage and rapidity at which such a fire could escalate to major proportions constitute an imminent threat of disaster; and

WHEREAS, declaration of such a disaster authorizes the imposition of controls on activities which tend to increase the likelihood of such fires; and

WHEREAS, such controls, once implemented, have the potential of protecting lives and property by mitigating the threat of dangerous fires; and

WHEREAS, the City is authorized by the Texas Local Government Code and Section 542.008, Texas Transportation Code, to regulate and abate nuisances and to adopt regulations for the control of air pollution that are consistent with the Texas Clean Air Act;

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF ALDERMEN OF THE VILLAGE OF BONNEY, TEXAS, THAT:

Section 1. Findings. The above and foregoing recitals are hereby found to be true and correct and are incorporated herein as findings of fact. The City Council hereby further finds and determines that the rules, regulations, terms, conditions, provisions and requirements of this ordinance are reasonable and necessary to protect the public health, safety and quality of life.

Section 2. (a) Burn Ban. During periods of time in which the County of Brazoria, Texas institutes a total burn ban for the entire county, the Village of Bonney, Texas, prohibits any outdoor burning, and it shall be unlawful for any person to cause, suffer, allow or permit any outdoor burning in the City for the duration of the burn ban, except as provided in Section 2(b)(2) herein.

(b) Actions Prohibited:

- (1)** A person violates this ordinance if he burns any combustible material outside of an enclosure which serves to contain all flames and/or sparks, or orders such burning by others.
- (2)** The following exceptions to Section 2(a) and Section 2(b)(1) will apply:

- (a) Burning may be conducted for the purpose of noncommercial cooking or heating in a device designated for such a purpose by the manufacturer, which to contain all flames and/or sparks.
- (b) Burning may be permitted in a manner approved by the Fire Chief, provided a firefighter is present if required by Fire Chief and provided that the proposed outdoor burning meets all requirements for a specific exception to the prohibition on outdoor burning as allowed by Chapter 111, Title 30, Texas Administrative Code, as amended from time to time. A permit shall be required and approved safety measures shall be employed as detailed within the permit. This shall apply to bonfires and fires for ceremonial purposes not in compliance herewith.

Section 3. Smoke. It shall be unlawful for any person within the City limits, in any way, to intentionally, negligently, recklessly, or carelessly burn or cause to be burned any combustibles which causes noxious smoke of a significant quantity or quality to be released so as to inhibit the use and enjoyment of neighboring properties. Burning in violation of this section is hereby declared a nuisance and is hereby prohibited.

Section 4. Enforcement. The civil and criminal provisions of this ordinance shall be enforced by those persons or agencies designated by municipal authority. It shall be a violation of this ordinance to interfere with a firefighter in the performance of his or her duties. As soon as possible, a duly commissioned peace officer on the scene and/or the fire chief, the goal of prohibitions established by this order, the officer may, at his discretion, notify the party about the provisions of this order and request compliance with it. In such instances, an entry of this notification shall be made in his log, and notice containing the date, time and place of the warning shall be forwarded to the office of the County Judge. At the discretion of the officer and/or fire chief, second or flagrant violation of this order may be prosecuted as a misdemeanor offence punishable by a fine not to exceed \$2,000.000.

Section 5. Savings Clause. All rights and remedies of the Village of Bonney are expressly saved as to any and all violations of the provisions of any ordinances regulating burning within the City which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

Section 6. Severability. Should any section or part of this ordinance be held unconstitutional, illegal or invalid, or the application to any person or circumstance thereof ineffective or inapplicable, such unconstitutionally, illegality, invalidity, or ineffectiveness of such section or part shall in no way affect, impair, or invalidate the remaining portions thereof; but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this ordinance are declared to be severed.

Section 7. Effective Date. This ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the *Tex. Loc. Gov't. Code*.

Section 8. Open Meetings. It is hereby officially found and determined that the meeting at which this ordinance is 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, Tex. Gov't. Code.*

PASSED AND APPROVED this the 20th day of September, 2010.

VILLAGE OF BONNEY, TEXAS

Raymond Cantu, Mayor

ATTEST:

Sunday Strickler, City Secretary