

ORDINANCE No. 318-2019

AN ORDINANCE REGULATING OUTDOOR BURNING IN THE CITY OF SHEPHERD, TEXAS; PROVIDING DEFINITIONS; ESTABLISHING GENERAL PROHIBITIONS OF OUTDOOR BURNING OF RUBBISH, TRASH AND GARBAGE IN THE CITY; PROVIDING EXCEPTIONS TO SUCH BURNING PROHIBITIONS; PROVIDING ENFORCEMENT AUTHORITY AND PENALTIES; PROVIDING A SAVINGS CLAUSE IF ANY PORTION HEREOF IS DEEMED TO BE INVALID; PROVIDING A REPEALING CLAUSE; PROVIDING A TEXAS OPEN MEETINGS ACT CLAUSE; AND PROVIDING AN EFFECTIVE DATE AFTER PUBLICATION AS PROVIDED BY LAW.

WHEREAS, the City of Shepherd, Texas is a Type A general-law municipality in the State of Texas; and

WHEREAS, Section 217.002 of the Texas Local Government Code authorizes a Type A general-law municipality to define what constitutes a nuisance and to abate such nuisance that may injure or affect the public health and comfort; and

WHEREAS, Section 382.113 of the Texas Health and Safety Code authorizes a Texas municipality to abate a nuisance and to enact and enforce an ordinance for the control and abatement of air pollution; and

WHEREAS, the City Council for the City of Shepherd finds that certain outdoor burning can become a public nuisance where it may injure or negatively affect the public health and comfort of the City's residents; and

WHEREAS, it is the desire of the City Council of the City of Shepherd, Texas, to establish rules governing limited outdoor burning in the municipal limits of the City by the adoption of regulations for outdoor burning; and

WHEREAS, in the interest of the public health, safety and welfare and consistent with state regulations relative to outdoor burning, the City Council finds that outdoor burning of trash, rubbish, garbage and similar materials is a public nuisance and should be regulated for the benefit and protection of the citizens of the City of Shepherd and their property;

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

ARTICLE I IN GENERAL

SECTION 1. FINDINGS.

The facts and recitations stated in the preamble of this Ordinance are hereby found to be true and correct, and they are hereby approved and incorporated into the body of this Ordinance.

SECTION 2: DEFINITIONS.

The following definitions are provided for the purposes of this Ordinance:

(A) ***Air pollution*** means the presence in the atmosphere of one or more air contaminants or combination of air contaminants in such concentration and of such duration that:

(1) are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property; or

(2) interfere with the normal use or enjoyment of animal life, vegetation, or property.

(B) ***Garbage*** means combustible and noncombustible materials commonly discarded from residential and commercial use, such as food waste, paper, rags, cartons, rubber, plastics, glass, crockery, tin, metal, aluminum cans, tires, furniture, bedding, mattresses, rubbish and similar items commonly discarded.

(C) ***Person*** means an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

SECTION 3. GENERAL PROHIBITION; VIOLATION.

Except as otherwise allowed by this Ordinance, no person shall burn or authorize the burning of any rubbish, trash, or garbage in the City of Shepherd, Texas.

SECTION 4. EXCEPTIONS; CONDITIONS.

- (A) *Fire training.* Outdoor burning shall be authorized for training of firefighting personnel by the Shepherd, Texas Volunteer Fire Department (Shepherd VFD) when authorized and supervised by the office of the fire chief of the Shepherd VFD.
- (B) *Certain outdoor burning.* Burning of weeds, grass, leaves, dead trees and brush, tree and bush trimmings, lumber and similar yard materials are permitted, so long as the burning complies with the general requirements for burning under Section 5 of this Ordinance.
- (C) *Domestic outdoor fires.* Outdoor burning is authorized for preparation of food, recreational or ceremonial purposes, or exclusively for warmth during cold weather, provided such a fire is built in a fireproof container, such as a barbecue pit or chimney, that is made of brick, stone, metal, or other fireproof material in such a manner as to prevent fire from escaping.
- (D) *Disposal of animal remains.* Licensed veterinarians, in accordance with V.T.C.A., Occupations Code § 801.361, may dispose of animal remains by burning.
- (E) *Failure to comply.* Failure to comply with any requirement in this Ordinance shall authorize any public enforcement official to require that a fire be immediately extinguished, and may result in a citation, penalty, or other available relief allowed under Section 7 for the enforcement of this Ordinance.

SECTION 5. GENERAL REQUIREMENTS FOR BURNING

- (A) A person conducting authorized outdoor burning shall ensure that the burn site and materials to be burned do not include prohibited materials and that general requirements are being followed. The person is solely and wholly responsible for compliance with this Ordinance and applicable state and federal regulations relative to outdoor burning and the prohibition of air pollution.
- (B) Burning is permitted only if more than 50 feet from a structure, and when the wind direction and other meteorological conditions are such that the smoke and other air pollutants will not present a hazard to or have a negative effect on any building structure, or cause smoke to blow onto or across a street, roadway, or highway.

- (C) Burning shall not commence when the surface wind speed is predicted to be greater than 23 miles per hour (20 knots) during the burn period so that the fire is always controlled.
- (D) A responsible party must be present while the burn is active. Such person shall have a water hose connected to a reliable water supply or have other fire extinguishing equipment readily available for use to prevent the fire from spreading.
- (E) Any residual fires and/or smoldering objects that continue to emit smoke must be extinguished at the end of the burn.

SECTION 6. PARALLEL REQUIREMENTS.

The authorization to conduct outdoor burning under this Ordinance does not exempt or excuse the requestor/permittee from compliance with all other applicable laws or ordinances, regulations, and orders from any governmental entity having jurisdiction, even though the burning is otherwise conducted in compliance with this Ordinance.

SECTION 7. ENFORCEMENT AND PENALTIES

- (A) *Civil and criminal penalties.* The City shall have the power to administer and enforce the provisions of this Ordinance as may be required by governing law. Any person violating any provision of this Ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this Ordinance is hereby declared to be a public nuisance.
- (B) *Enforcement.* The provisions of this Ordinance shall be enforced by the City code enforcement officer or certified peace officers.
- (C) *Criminal prosecution.* Any person authorized to enforce the provisions of this Ordinance may issue immediate notice of violations to persons violating any provision herein, and such criminal violation shall be prosecuted as a Class C misdemeanor in the municipal court and/or other court of competent jurisdiction. Any person violating any provision of this Ordinance shall, upon conviction, be fined an amount not to exceed \$500.00. Each day, or part thereof, that a provision of this Ordinance is violated shall constitute a separate offense.

(D) *Culpable mental state not required.* Unless otherwise specifically set forth herein or in state law as adopted, allegation and evidence of a culpable mental state is not required for the proof of an offense defined by this Ordinance.

(E) *Civil remedies.* Nothing in this Ordinance shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this Ordinance and to seek remedies as allowed by law, including, but not limited to, the following:

- (1) Injunctive relief to prevent specific conduct that violates this Ordinance or to require specific conduct that is necessary for compliance with this Ordinance;
- (2) A civil penalty up to \$1,000.00 a day when it is shown that the defendant was actually notified of the provisions of this Ordinance and after receiving notice committed acts in violation of this Ordinance or failed to take action necessary for compliance with this Ordinance; and
- (3) Other available legal and equitable relief.

SECTION 8. SAVINGS CLAUSE: If any provision, section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity of the remaining portions of this Ordinance. It is the intent of the City in adopting this Ordinance that no portion or provision thereof shall become inoperative or fail by reason of any invalidity or unconstitutionality of any other portion or provision and to this end all provisions of this Ordinance are declared to be severable.

SECTION 9. HEADINGS: Titles and headings of the sections herein shall be read as part of the sections used in determining the meaning thereof.

SECTION 10. REPEALING CLAUSE: Any provisions in any city ordinances in conflict with the provisions of this Ordinance are hereby expressly repealed.

SECTION 11. TEXAS OPEN MEETINGS CLAUSE: It is hereby officially found and determined that the meeting at which this Ordinance was considered 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 of the Texas Government Code.

SECTION 12. EFFECTIVE DATE: This Ordinance shall become effective upon its publication as provided by law.

PASSED AND APPROVED after a second reading on this, the 9th day December 2019. Motion made by Shannon Bailey with Amanda Addison seconding. The motion passed with a unanimous vote.

CITY OF SHEPHERD, TEXAS

Charles Minton, Mayor

ATTEST:

Debra Hagler, City Secretary