

## ORDINANCE NO.

**AN ORDINANCE AMENDING CITY CODE CHAPTER 8-1, ARTICLE 7 TO CLARIFY AUTHORITY, TERMINOLOGY, AND PENALTIES RELATED TO FIRE HAZARD ACTIVITY AND SMOKING ON PARKLAND; AND DECLARING AN EMERGENCY.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**PART 1.** City Code Chapter 8-1, Article 7 of Title 8 (Parks and Recreation) of the City Code is amended to read:

**ARTICLE 7. ~~PARKS BURNING RESTRICTION~~~~S ON OUTDOOR BURNING~~.**

**§ 8-1-91 DEFINITIONS.**

In this Article:

- (A) The term “BURN” or “BURNING” means the ignition, maintenance, or use of a ~~[C]~~combustible ~~[M]~~material which could create flames or sparks that could result in a fire. This includes, but is not limited to, welding, lighting campfires or matches, use of equipment other than an approved propane-fueled ~~[grill or stove]~~ appliance to grill or bar-b-que food, and use of any tool or substance that could create a flame or spark, but does not include fireworks displays that have been properly permitted by the Fire Department and that are conducted in compliance with the terms and requirements of a permit issued by the Fire Department.
- (B) The term “COMBUSTIBLE MATERIAL” means any material that is capable of catching fire.
- (C) ~~[The term “DIRECTOR” means the Director of the Parks and Recreation Department.]~~
- ~~(D)]~~ The term “SMOKE” or “SMOKING” means lighting, inhaling, exhaling, burning, holding, carrying or discarding any lighted or incompletely extinguished cigar, cigarette, pipe, weed, or plant.

## **§ 8-1-92 [~~BURN BAN ORDER~~] PARKS BURNING RESTRICTION AUTHORITY.**

(A) The city manager or the director may issue a ~~[burn ban order]~~ parks burning restriction for ~~[City P]~~ parks and ~~[N]~~ nature ~~[P]~~ preserves when it is determined that ~~[weather conditions create]~~ a significant fire hazard or a wildfire danger exists. The city manager or the director shall determine when the ~~[burn ban]~~ parks burning restriction ends.

(B) Issuance of a parks burning restriction results in the immediate and automatic suspension of all temporary designated smoking areas for any permit for or prior authorization of a special event at a park, nature preserve, or any location, land, or facility, under the administrative control or management of the director.

(C) No exemptions related to any activity in parks for smoking, burning, or fire hazard shall be available under City Code Section 10-6-3(A)(9), 10-6-3(A)(10), or 10-6-3(A)(11) when a parks burning restriction is in effect. The only exclusions from applicability of this article during a parks burning restriction are stated in City Code Section 8-1-94(C).

## **§ 8-1-93 NOTICES.**

- (A) Notice of ~~[Order]~~ parks burning restriction. The director shall post notice of a ~~[burn ban order]~~ parks burning restriction on the city website, at public entrances, and in heavy traffic areas of each ~~[P]~~ park and ~~[N]~~ nature ~~[P]~~ preserves. In addition, the director shall issue a notice to local media.
- (B) Notice of ~~[T]~~ termination of ~~[Order]~~ parks burning restriction. The director shall post notice of the termination of a ~~[burn ban order]~~ parks burning restriction on the city website. In addition, the director shall remove the notices of the ~~[burn ban orders]~~ parks burning restriction in ~~[P]~~ parks and ~~[N]~~ nature ~~[P]~~ preserves, and shall issue a notice to local media.

## **§ 8-1-94 OFFENSE.**

- (A) A person commits an offense if the person performs any of the following activities in a ~~[P]~~ park, ~~[or N]~~ nature ~~[P]~~ preserve, or any location, land, or facility under the administrative control or management of the director while a ~~[burn ban order]~~ parks burning restriction is in effect:
- (i) ~~[S]~~ smokes.
  - (ii) ~~[B]~~ burns a ~~[C]~~ combustible ~~[M]~~ material or engages in an activity which creates a risk of flame or spark that could result in a fire.

- (B) For purposes of (A)(ii) above, a person may not [B]burn a [C]combustible [M]material in a [P]park or [N]nature [P]preserve even if the material is contained within an enclosure which is intended to contain all flames or sparks.
- (C) This ordinance does not apply to a person who [B]burns a [C]combustible [M]material if the [B]burn:
- (i) is conducted by a prescribed burn manager certified under Section 153.048, Texas Natural Resources Code, and meets the standards of Section 153.047, Texas Natural Resources Code;
  - ii) is performed by city employees, city contractors, or utility employees in the performance of their official duties; [or]
  - (iii) involves actions taken by public safety employees in the performance of their official duties that are necessary to the delivery of those services; or
  - (iv) is part of a fireworks display that has been properly permitted by the Fire Department and that is conducted in compliance with the terms and requirements of the Fire Department's permit.

#### **§ 8-1-95 PENALTY.**

- (A) A person who violates this Article commits a criminal offense. An offense under this Article is punishable by a fine ~~[not less than \$300.00 and not to exceed \$500.00. A culpable mental state is not required for a violation of this Article, and need not be proved.]~~ upon conviction not to exceed \$500 unless proof of a culpable mental state is pled, in which case the fine upon conviction shall not exceed \$2,000. Proof of a culpable mental state is expressly waived and need not be proved when a fine of \$500 or less is sought for the offense.
- (B) Each act which violates a prohibition of this chapter and each omission which violates a duty imposed by this chapter is a separate offense chargeable as [violation is] a separate violation.
- (C) This section is cumulative of other laws providing enforcement authority.

#### **PART 2. EFFECTIVE DATE.**

The Council finds that the ongoing drought conditions and wildfire danger in Central Texas constitutes an emergency. Because of this emergency, this ordinance takes

effect immediately upon its passage for the immediate preservation of the public peace, public health, and safety.

**PASSED AND APPROVED**

\_\_\_\_\_, 2012

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Lee Leffingwell  
Mayor

**APPROVED:** \_\_\_\_\_  
Karen M. Kennard  
City Attorney

**ATTEST:** \_\_\_\_\_  
Shirley A. Gentry  
City Clerk