

## ORDINANCE #005-12

**AN ORDINANCE OF THE CITY OF DE LEON, TEXAS, PROHIBITING BURNING WITHIN THE CITY OF DE LEON DURING THE TIME IN WHICH THE COUNTY OF COMANCHE, TEXAS INSTITUTES A TOTAL BURN BAN OR RED FLAG DAY.**

**WHEREAS,** the regulation, management and control of burning of litter, solid waste, garbage, trash, and vegetative substances on property within the City of De Leon (herein "City") Texas is essential to the public health, safety and welfare of the community, during a burn ban or red flag day issued by the County of Comanche, 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, one 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 CITY COUNCIL OF THE CITY OF DE LEON, 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/RED FLAG DAY** During periods of time in which the County of Comanche, Texas institutes a total burn ban or red flag day for the entire county, the City of De Leon prohibits any outdoor burning, and it shall be unlawful for any person to cause, suffer, allow, or permit any outdoor burning in the City of the duration of the burn ban or red flag day, 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 Police Chief or designee provided that the proposed outdoor burning meets all requirements for the specific exception to the prohibition on outdoor burning as allowed by Chapter 111, Title 30, Texas Administrative Code, as amended from time to time. An individual shall be required to contact Comanche County Dispatch and approved safety measures shall be employed as instructed by the authorizing agent. 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 or 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 shall be sent to the scene to investigate the nature of the fire. If, in the opinion of the officer on the scene and/or the Police 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 City Judge. At the discretion of the officer, Police Chief and/or designee, violations of this order may be prosecuted as a misdemeanor offense punishable by a fine not to exceed \$2,000.00.

**SECTION 5. SAVINGS CLAUSE** All rights and remedies of the City of De Leon 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.

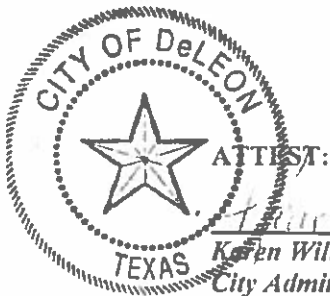
**SECTION 6. SEVERABILITY** Should any section or part of this ordinance be held unconstitutional, illegal, or invalid, or the application to any person or circumstance thereof ineffective or inapplicable, such unconstitutionally, illegality, invalidity, or ineffectiveness of such section or part shall 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 sever.

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 ON FIRST READING THIS THE 23rd DAY OF February, 2012.

PASSED AND APPROVED ON THE SECOND READING THIS THE 8<sup>th</sup> DAY OF March, 2012.



ATTEST:

*Karen Wilkerson*  
\_\_\_\_\_  
Karen Wilkerson  
City Administrator/Secretary

*Danny Owen*  
\_\_\_\_\_  
Danny Owen, Mayor