

**CITY OF JOHNSON CITY
ORDINANCE NO. _____**

AN ORDINANCE AMENDING ARTICLE 5.03 *OUTDOOR BURNING OF THE CITY OF JOHNSON CITY CODE OF ORDINANCES*; AND PROVIDING FOR AN EFFECTIVE DATE.

RECITALS

WHEREAS, the City Council of the City of Johnson City, Texas (“City”) on January 20, 2000, enacted Article 5.03 *Outdoor Burning* of the City’s Code of Ordinances regarding regulations designed to minimize fire-related accidents and losses; and

WHEREAS, the City Council desires to update and amend Article 5.03 *Outdoor Burning* to allow for exemptions to outdoor burning prohibitions within the corporate City limits; and

WHEREAS, pursuant to Texas Local Government Code Section 51.001, the City has general authority to adopt an ordinance or police regulation that is for the good government, peace or order of the City and is necessary or proper for carrying out a power granted by law to the City.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Johnson City:

ARTICLE I. FINDINGS OF FACT

The foregoing recitals are adopted as facts and are incorporated fully herein.

ARTICLE II. AMENDMENT, ADOPTION AND ENACTMENT

The City Council of the City of Johnson City, Texas hereby amends and enacts the amendments to Article 5.03 *Outdoor Burning* of the City’s Code of Ordinances, as depicted below and incorporated fully herein for all intents and purposes.

Article 5.03 is hereby revised with strikethroughs constituting deleted text and underlines as new text (excluding section headings), and to read as follows:

~~§ 5.03.001 Penalty.~~

~~Any person or entity violating any of the provisions of this article shall be fined an amount no to exceed the amount permitted by the laws of the state for the enforcement of city ordinances, as the same may be amended from time to time.~~

§ 5.03.0021 Prohibited.

~~Any outdoor fires, whether accidental or purposefully set, are hereby prohibited.~~

(a) Outdoor burning within the incorporated City Limits of Johnson City, Texas is prohibited, except as provided by authorization of the fire marshal, local authority having jurisdiction (“AHJ”), or their representative(s); or as further allowed by this section and State law.

(b) Definitions.

Extinguished—The absence of any visible flames, glowing coals, or smoke.

Practical alternative—An economically, technologically, ecologically and logistically viable option.

Sunrise/sunset—Official sunrise/sunset as set forth in the United States Naval Observatory tables available from National Weather Service offices.

(c) Permitted burning. The on-site burning of trees, brush, and other plant growth for property upkeep, right-of-way maintenance, land clearing operations, and maintenance along water canals when no practical alternative to burning exists, when the materials are generated only from that property, and when authorization is issued showing the following requirements:

- (1) Prior to the controlled burning, the local emergency dispatcher shall be contacted on their non-emergency phone line and advised of the authorized burn, location of the burn and contact phone number.
- (2) Open burning must not be conducted within 50 feet of any structure or combustible material. Conditions that would enable fire to spread within 50 feet of a structure shall be eliminated prior to ignition.
- (3) Sites permitted for open burning shall have a readily available garden hose or other reasonable method of conveying water and an adequate source or other approved fire extinguishing equipment. The burning material shall be constantly attended by a person 17 years of age or older who is knowledgeable in the use of the provide fire extinguishing equipment and familiar with the requirements and/or special conditions of the authorization.
- (4) Burning shall be commenced and conducted only when wind direction and other meteorological conditions are such that smoke and other pollutants will not cause adverse effects to any public road, landing strip, or navigable water.
- (5) If at any time the burning causes or may tend to cause smoke to blow onto or across a road or highway, it is the responsibility of the person initiating the burn to post flag-persons on affected roads.
- (6) Burning shall be conducted in compliance with the following meteorological and timing considerations:
 - a. The initiation of burning shall commence no earlier than one hour after sunrise. Burning shall be completed on the same day not later than one hour before sunset, and shall be attended by a responsible party at all times during the active burn phase when the fire is progressing. In cases where residual fires and/or smoldering objects continue to emit smoke after this time, such areas shall be extinguished if the smoke from these areas has the potential to create a nuisance or traffic hazard condition. In no case shall the extent of the burn area be allowed to increase after this time.
 - b. Burning shall not be commenced when surface wind speed is predicted to be less than six miles per hour (mph) (five knots) or greater than 23 mph (20 knots) during the burn period.
 - c. Burning shall not be conducted during periods of actual or predicted persistent low-level atmospheric temperature inversions.

- (7) Electrical insulation, lumber that has been treated, glued, laminated, pressed, varnished, stained or painted, plastics, non-wood construction/demolition materials, fiberglass, heavy oils, asphaltic materials, potentially explosive materials, chemical wastes, and items containing natural or synthetic rubber must not be burned.
- (8) The authority to conduct outdoor burning under this regulation does not exempt or excuse any person responsible from the consequences, damages, or injuries resulting from the burning and does not exempt or excuse anyone from complying with all other applicable laws or ordinances, regulations, and orders of governmental entities having jurisdiction, even though the burning is otherwise conducted in compliance with this regulation.
- (d) Permit not required. Permits for the conducting of approved outdoor burning shall not be required; however, the authorized person or entity shall comply with State or County issued burn bans or any other reasonable request, as determined by the fire marshal, local AHJ, or their representative(s).
- (e) Revocation. The fire marshal, local AHJ, or their representative(s) are authorized to revoke authorized outdoor burning and require that the open burning be immediately discontinued if:
- (1) A complaint on the fire is received and substantiated.
 - (2) On inspection of the fire, it is determined that the authorized conditions are not being met.
 - (3) It is determined that weather or other conditions not readily apparent or otherwise present at the time of authorization, have created too hazardous a condition for continued burning.
- (f) Refusal to authorize outdoor burning. In instances where the greater good or the health, safety and welfare of the public supersedes those of the individual, or in times of a State or county issued burn ban; the fire marshal, local AHJ, or their representative(s) may refuse to authorize outdoor burning even though all conditions for authorization are being met.
- (g) Allowable nonpermitted outdoor burning. Outdoor burning shall be authorized for fires used solely for recreational or ceremonial purposes, or in the preparation of food, or used exclusively for the purpose of supplying warmth during cold weather. These fires shall be no larger than two feet in height and three feet in diameter and shall be allowed without authorization or notification of the local authority.
- (h) Penalty. Any person who violates any of the provisions of this section shall be guilty of a class C misdemeanor and upon conviction thereof, shall be punished by a fine not less than \$100.00 nor greater than \$2,000.00.

§ 5.03.0032 Exceptions.

This prohibition shall not apply to outdoor burning activities related to public health and safety that are authorized by the State commission on environmental quality for:

- (1) Firefighter training.
- (2) Public utility, natural gas pipeline or mining operations.
- (3) Harvesting of agricultural crops.

ARTICLE III. REPEALER AND SEVERABILITY

REPEALER: All ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

SEVERABILITY: Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

ARTICLE IV. EFFECTIVE DATE

This Ordinance shall be effective immediately upon passage and approval.

PASSED AND APPROVED this, the _____ day of March, 2023, by a majority vote of the City Council of Johnson City, Texas.

CITY OF JOHNSON CITY, TEXAS

Rhonda Stell, Mayor

Attest:

Whitney Walston
City Secretary