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### **Who regulates outdoor burning?**

Chapter 382 of the Texas Health and Safety Code requires the Texas Commission on Environmental Quality (TCEQ) to regulate outdoor burning. Pursuant to that chapter, TCEQ has promulgated outdoor burning rules which are located in Title 30 of the Texas Administrative Code, Sections 111.201 to 111.221.

Under the rules, a city may not permit outdoor burning under circumstances in which state law does not allow it, but may adopt stricter ordinances in most cases. TEX. HEALTH & SAFETY CODE §382.113.

### **May a city prohibit all outdoor burning?**

There is generally only one instance when city prohibitions on outdoor burning may not be stricter than state law. A city may not prohibit residents from using outdoor burning to dispose of household waste if the city does not provide (on its own or through an authorized contractor) on-premises trash collection services. 30 T.A.C. §111.209. “Household waste” is defined in Section 101.1 of the Texas Administrative Code as the garbage and rubbish normally resulting from the functions of life within a residence.

### **When does state law allow outdoor burning?**

While the state outdoor burning rules prohibit most outdoor burning in Texas, there are five general categories of outdoor burning exceptions: (1) firefighter training; (2) certain disposal or land clearing activities; (3) recreation, ceremony, noncommercial cooking or warmth fires; (4) prescribed burns; and (5) pipeline breaks and oil spills.

Of particular interest to cities are the following:

- **Firefighter training:** A firefighting entity must obtain authorization from TCEQ to conduct outdoor burning for training purposes. The agency or business seeking to conduct firefighter training must send a written request to the local air pollution control agency or, if there is no such agency, the TCEQ regional office. Authorization is assumed if a denial from the local air pollution control agency is not received within ten working days after the date of postmark, or the date of personal delivery of the request. 30 T.A.C. §111.205.
- **Fires for disposal or land clearing:**
  - No notice to TCEQ is required in order to burn a diseased animal carcass, when burning is the most effective means of controlling the spread of disease. 30 T.A.C. §111.209(2).

- When a city finds brush, trees, and other plant growth are causing a detrimental public health and safety condition, they may request approval to burn the material at an off-site location owned by the city. The executive director of TCEQ must find no practicable alternative before approving an application. This exception may be used no more frequently than once every two months.
- **Ceremonial fires-** Fires for recreation, ceremonial use, noncommercial food preparation, or warmth in cold weather are allowed by state law. Unless the city has prohibited them, campfires, bonfires, and cooking fires are allowed, and do not require notice to TCEQ. 30 T.A.C. §111.207.

### **What are the requirements for allowed outdoor burning?**

A person or entity conducting a state authorized, outdoor burn must follow the seven requirements listed in Section 111.219 of the Texas Administrative Code. Some of the requirements include:

- Conducting burning only when wind direction and other meteorological conditions prevent the fire from causing adverse effects to public roads, landing strips, navigable water, or off-site structures containing any living thing that might possibly be affected by an air pollutant (which are also called “sensitive receptors”).
- If the burning causes smoke to blow onto or across a road or highway, the person initiating the burn must post a flag-person on affected roads.
- Burning must be conducted downwind of, or at least 300 feet from, any structure containing sensitive receptors located on adjacent properties unless prior written approval is obtained from the neighbor.
- The burning may begin no earlier than one hour after sunrise, and must 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.
- Burning may not begin when wind speed is predicted to be less than six miles per hour or greater than twenty-three miles per hour during the burn period, or during periods of actual or predicted persistent low-level atmospheric temperature inversions.
- Fires may not contain electrical insulation, treated lumber, plastics, non-wood construction/demolition materials, heavy oils, asphaltic materials, potentially explosive materials, chemical wastes, and items containing natural or synthetic rubber.

### **What are “practical alternatives” to outdoor burning?**

The outdoor burning rules encourage cities to consider practical alternatives to outdoor burning, such as:

- Recycling - manually or mechanically separating metals for sale at a salvage yard.
- Composting - composting wastes from landscape maintenance and paper.

- Mechanical chipping or mulching – using the mulch produced from discarded brush to enrich soil and help it retain moisture.
- Logging - converting timber into a marketable products (lumber, pulp, or firewood) when possible.
- Landfills - sending materials to landfills with recycling centers and chippers for brush.
- Trench burning - using portable devises known as trench burners or air curtain incinerators to dispose of brush or untreated lumber with minimized emissions. Trench burners are subject to rules located in Section 106.496 of the Texas Administrative Code.

The Local Government Assistance Division of the TCEQ is a good resource for more information about outdoor burning. They may be reached at 800-447-2827 or <[www.tceq.state.tx.us](http://www.tceq.state.tx.us)>.