

ORDINANCE NO. 2006-10-24-002

(revision of #2004-04-27-003)

AN ORDINANCE OF THE CITY OF KEMPNER, TEXAS, PROHIBITING BURNING WITHIN THE CITY OF KEMPNER; PROVIDING FOR EXCEPTIONS FOR BURNING; REQUIRING CLEAN-UP AND REMOVAL OF DAMAGED PROPERTY; PROVIDING FOR ENFORCEMENT AND PENALTY; PROVIDING OPEN MEETINGS AND SEVERABILITY CLAUSES; ESTABLISHING AN EFFECTIVE DATE AND OTHER RELATED MATTERS.

WHEREAS, the burning of litter, solid waste, garbage, trash, vegetative substances and other such materials impairs the quality of life and is injurious to the economic development of our community;

WHEREAS, burning of litter, solid waste, garbage, trash, vegetative substances and other such materials, together with smoke and damaged property, are a threat to the health of the community, create hazards, and otherwise detract from the quality of life in our community; and,

WHEREAS, the regulation, management and control of burning on property within the City of Kempner, (herein "City") Texas is essential to the public health, safety and welfare of the community,

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

**Section 1. Burning.** It shall be unlawful, without a burn permit, for any person within the City limits, in any way, to intentionally, knowingly or carelessly burn or cause to be burned any combustibles, including but not limited to grass, weeds, timber, rubbish, leaves, or other

natural or synthetic materials, garbage, trash, rubbish, litter, solid waste, hazardous waste or any such like substances on any street, alley, lot or premises. Such prohibited fires shall include bonfires and fires used for ceremonial purposes not in compliance herewith. The following exceptions to burning apply:

(a) Burning may be conducted for the purposes of outdoor cooking in a device designated and constructed for such a purpose in compliance with this ordinance. No burning of waste or garbage shall be permitted in cooking devices.

(b) Land clearing upon which the owner intends to clear the lot itself of selected trees, brush and other plant growth. The on-site land clearing must be conducted in compliance with state, federal and local laws and regulations. A permit shall be acquired and approved safety measures shall be employed.

**Section 2. Duty to Report.** In the event of a fire or discovery of a fire or discovery of impermissible smoke discharge caused by fire, burning or smoldering combustibles on any property, the owner, occupant or person in control of the property or person in control of the fire from which the fire or smoke is emanating shall immediately report such condition to the local fire department.

**Section 3. Smoke.** It shall be unlawful for any person within the City limits, in any way, to intentionally, knowingly 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. Such release of smoke is hereby declared a nuisance and is hereby prohibited.

(a) Any person, firm or corporation responsible for any fire or impermissible

Smoke discharge shall institute and complete all actions necessary to remedy and assist in the remedy of all effects of such fire/or smoke at no cost to the City of Kempner.

(b) Whenever any building or other structure is partially or totally burned, the owner or occupant of the property or the person in charge or control thereof, within ten (10) days after the fire, shall remove from the premises all surfaced debris, charred and partially burned lumber and material. If such building or other structure is burned to such an extent that it is rendered incapable of being repaired, the owner or occupant of the property upon which the same is located or the person in control thereof, within ten (10) days after the fire, shall remove from the premises all of the remaining portion of the building or structure that is damaged beyond repair and immediately secure the property.

(c) The Chief of Police or Police Officer may direct the owner, occupant or person in control of the property in the necessary measures to secure to premises after a fire. The owner, occupant or person in control of the property shall promptly comply with the directives of the Police Department. Failure to comply with the written directives of the Police Department within ten (10) days of the notice shall be a violation of this ordinance.

(d) When deemed necessary by the Police Department due to an imminent threat to the public safety or an attractive nuisance constituting an imminent threat, the Chief of Police may cause immediate clean-up to be initiated by the Fire Department or by an authorized individual or firm.

(e) All costs associated with such clean-up shall be borne by the owner, operator, person in control of the property or other person responsible for the fire or impermissible discharge of smoke. Failure of a person deemed responsible for a fire to pay the costs of clean-up shall be deemed a violation of the ordinance.

**Section 4. Inspection Of Premises.** Any premise emanating fire or smoke shall be subject to inspection by the Chief of Police, or his or her designee, at any reasonable hour or at any hour in cases of suspected fire or smoke discharge.

**Section 5. Approval Required.** On-site land clearing may occur only in compliance with the state and federal laws and regulations. In addition to complying with the state and federal laws and regulations, a person clearing a lot of selected trees, brush and plant growth originating on such property may only burn such vegetation cleared from the property with a permit issued by the City in compliance with any additional requirements to the state or federal laws and regulations.

**Section 6. Cooking Device.** The operator of an outdoor cooking device shall use and maintain the device in a safe and properly operating condition when intended to be used. Such devices shall not be utilized in close proximity to a building or other combustible materials. A minimum of ten (10') feet shall be maintained between any building or other combustible materials and the device, including eaves and balconies.

**Section 7. Burn Ban.** During periods of time in which the County of Lampasas, Texas institutes a total burn ban for the entire county, the City of Kempner prohibits any burning, except as provided in Section 1 (a) herein for the duration of the burn ban.

**Section 8. Enforcement.** The civil and criminal provisions of this ordinance shall be enforced by those persons or agencies designated by municipal authority. The Chief of Police, and his or her designee, are at all times granted authority to enforce this ordinance. It shall be a violation of this ordinance to interfere with or to violate any lawful verbal or written directives of the Police and/or Fire Department in the performance of his or her duties.

**Section 9. Penalty.** Any person who shall violate any of the provisions of this Ordinance, or shall fail to comply therewith, or with any of the requirements thereof, within the City limits shall be deemed guilty of an offense and shall be liable for a fine not to exceed the sum of two thousand dollars (\$2,000.00). Each day the violation(s) exists shall constitute a separate offense. Such penalty shall be in addition to all the other remedies provided herein.

**Section 10. 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 unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portion or 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 be severable.

**Section 11. 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 12. 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, *Chapt. 511, Tex. Gov't. Code*.

**PASSED AND APPROVED** this the 24<sup>TH</sup> day of October, 2006.

**Attest:**

**CITY OF KEMPNER, TEXAS**

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Frances Spinney, City Secretary

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Gene Isenhour, Mayor

(Revised 10/06)