

ORDINANCE NO. 2009-003

AN ORDINANCE OF THE CITY OF EAST BERNARD, TEXAS, PROVIDING RULES AND REGULATIONS GOVERNING OUTDOOR BURNING WITHIN THE CITY; ADOPTING PROVISIONS OF THE TEXAS CLEAN AIR ACT; PROVIDING FOR BANS ON OUTDOOR BURNING DURING DROUGHT CONDITIONS; PROVIDING OTHER MATTERS RELATING TO THE SUBJECT; PROVIDING A PENALTY OF AN AMOUNT NOT TO EXCEED \$500.00 FOR EACH DAY OF VIOLATION OF ANY PROVISION HEREOF; PROVIDING FOR SEVERABILITY; AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HEREWITH.

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WHEREAS, uncontrolled outdoor burning within the City can be hazardous to property and persons, particularly during drought conditions when the risk of wild fire is at its highest; and

WHEREAS, pursuant to Rule §111.219, Subchapter B, Chapter 111, Title 30, Texas Administrative Code, outdoor burning is prohibited within the corporate boundaries of municipalities unless authorized by the governing bodies thereof under terms and conditions consistent with the Texas Clean Air Act; and

WHEREAS, the Board of Aldermen of the City of East Bernard, Texas, desires to permit outdoor burning within the City subject to the terms and conditions contained herein; now therefore

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF EAST BERNARD, TEXAS:

Section 1. **Findings.** The facts and matters set forth in the preamble of this Ordinance are hereby found to be true and correct.

Section 2. **Prohibitions.** It shall be unlawful for any person to cause or permit outdoor burning on property owned or controlled by such person within the corporate limits of the City except in accordance with the following:

- A. **Compliance with State Standards.** No outdoor burning shall be conducted in violation of provisions of the Texas Clean Air Act, Chapter 382, Texas Health and Safety Code, or Subchapter B of Chapter 111 of Title 30, Texas Administrative Code.
- B. **Burn Ban during Drought Conditions.** Outdoor burning shall be prohibited during drought conditions. For the purposes hereof, "drought conditions" shall be

deemed to exist when the Keetch-Byrun Drought Index for the corporate limits of the City reaches a value of five hundred (500).

- C. Affirmative Defenses. It shall be an affirmative defense to prosecution for causing or permitting outdoor burning during drought conditions in violation of Section 2 B above that:
- (1) Enclosures. The outdoor burning is conducted within an enclosure that protects the spread of fire by containing all flames and/or sparks from such fire; or
 - (2) Notice. Notice of the imposition of a burn ban has not been given as provided in Section 3 below.

Section 3. Notice of Burn Ban during Drought Conditions. Notice of a burn ban during drought conditions shall be given as set forth below. Notice shall be deemed effective on the date of posting, or, where applicable, the time and date of personal notice.

- A. Posted Notice. By posting at the place or places designated by the City for posting of notices of meetings of the Board of Aldermen; and
- B. Signage. By placing signage at the corporate limit boundaries of each major thoroughfare entering the City; or
- C. Personal Notice. By personal notice.

Section 4. Determination of Drought Conditions/Notice of Burn Ban. The Mayor, or his designee, is hereby authorized and directed to provide for the giving of notice of a "burn ban," in the manner provided in Section 3 above, upon receiving evidence that "drought conditions" exist as defined in Section 2 B above. A burn ban shall remain in effect for the duration of the drought conditions. Notices of the burn ban during drought conditions shall remain posted for the duration of the burn ban.

Section 5. Penalty. Any person who shall violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount not to exceed \$500.00. Each day of violation of any provision hereof shall constitute a separate offense.

Section 6. Repealer. All ordinances or parts of ordinances inconsistent or in conflict herewith, are, to the extent of such inconsistency or conflict, hereby repealed.

Section 7. Severability. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the Board of Aldermen of the City of

East Bernard, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

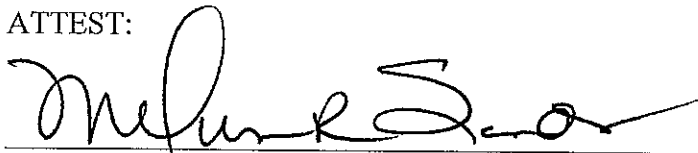
PASSED, APPROVED, AND ADOPTED this 15 day of June, 2009.



Buck Boettcher

Mayor

ATTEST:



Melvin R. Sands

City Clerk