

EMERGENCY ORDINANCE NO. 2011 - 26

AN EMERGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS ISSUING AN EXPANDED BURN BAN TO BE ENFORCED WITHIN ALL CITY PARKS AND OPEN SPACE LOCATED IN THE CITY OF BASTROP, TEXAS; PERMITTING AND REGULATION OF HOT WORK ON PRIVATE AND PUBLIC PROPERTY; IMPLEMENTING EMERGENCY FIRE PREVENTION MEASURES; ESTABLISHING ENFORCEMENT PROCEDURES AND FINES; PROVIDING FOR SEVERABILITY: AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Bastrop (“City”) and surrounding areas are experiencing severe and exceptional drought conditions which makes the City susceptible to wildfires;

WHEREAS, the City seeks to protect the health, safety and welfare of its community and its citizens by implementing measures to prevent wildfires and the massive devastation associated therewith including death, injuries, and severe property damage;

WHEREAS, as a result of the recent destruction caused by the Bastrop County Complex Wildfire in and around the City, on September 27, 2011, the City Council, declared a State of Emergency for the entire City;

WHEREAS, pursuant to Section 3.15 of the Bastrop Code of Ordinances, the City has the authority to dispense with the two (2) separate readings requirement, if the ordinance is related to the immediate preservation of the public peace, health or safety adopted as an emergency measure by a majority vote of the Council Members;

WHEREAS, in conjunction with the declaration of the State of Emergency, and in recognition of the severity of pervasive drought related conditions, the City Council has determined that an expanded “burn ban” in all City parks and Open Space is necessary for fire prevention and for the protection and preservation of the public peace, health and safety and may be adopted pursuant to Section 3.15 of the Bastrop Code of Ordinances; and

WHEREAS; the expanded “burn ban” and fire prevention measures shall become effective immediately on this Ordinance’s adoption and execution without a second consideration and shall last until specifically terminated by the City Council.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BASTROP:

Part 1: The City Council of the City of Bastrop, Texas, hereby finds that an emergency pertaining to the health, safety and welfare of the Citizens of the City of Bastrop exists, and accordingly, it should dispense with the Charter requirement that City ordinances be read at two separate meetings of the City Council.

Part 2: The City Council hereby enacts the following expanded burn ban and fire prevention Ordinance:

1. Definition of Open Space. For purposes of this Ordinance, Open Space shall be defined as any area owned or controlled by the City which consists of a substantial amount of grass, trees, shrubs, bushes, or other combustible plant material, including but not limited to City right-of-ways, road frontage, or landscaped areas around or between buildings, streets, or parking lots.
2. Declaration of unlawful conduct. The following conduct shall be considered unlawful if occurring in any City Park or Open Space:
 - a. the burning of any material, including a tobacco product, regardless of whether the burning occurs in an enclosure or type of container;
 - b. the ordering of any person to burn any material, regardless of whether the burning is to occur in an enclosure or type of container;
 - c. any activity that creates a spark or flame;
 - d. the parking or driving of an internal combustion engine on any material capable of catching fire, with the exception of the use of vehicles which are owned and operated by a utility company that is performing utility service(s) in Public Parks, Open Spaces or along public right-of-ways;
 - e. any act likely to result in the starting or continuation of a fire, including but not limited to fires or burning charcoal in any publicly or privately owned barbeque grills (that are used in City Parks or Open Spaces), pits, outdoor fireplaces or chimineas, as well as fires for cooking, warmth, ceremonies, or any other purpose;
 - f. possession of any lighted cigar, cigarette, pipe, or other device for the burning of tobacco or other plant product, and/or disposal of same; and
 - g. the discharge of any fireworks.
3. Penalty. A person violating this Ordinance shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than \$200 nor more than \$2,000. Each hour a violation occurs shall constitute a separate offense. In addition to the civil penalty set forth above, a person violating this Ordinance may be issued a criminal citation enforceable in municipal

court by any employee so authorized in writing by the Chief of Police to issue the citation, including but not limited to the Fire Chief, City Manager, or Department Director.

4. Exceptions. The prohibitions established by this Ordinance shall not apply to:
 - a. Licensed peace officers, provided that such outdoor fire activity is made in the course and scope of the peace officers' official duties.
 - b. Activities specifically permitted or expressly authorized by the Texas Commission on Environmental Quality ("TCEQ") or other state or federal agency.
 - c. Fire fighting training activities properly supervised by a firefighting authority, department or political subdivision.
 - d. Prescribed burns properly conducted, approved, and supervised by the City of Bastrop, or its authorized employee or representative.
 - e. Other exceptions may be made by the Fire Chief on a case-by-case basis when the Fire Chief determines in writing, in his sole discretion, that the proposed activity will not pose a threat to the public health, safety or welfare in consideration of weather conditions or the specific area in which the hot works or other activity is proposed.
5. Permits and Restrictions for Outdoor Hot Works Performed on Private Property, in City Parks and in Open Spaces.

Outdoor hot works operations (welding, cutting or grinding), whether done on private property or in City Parks and Open Spaces, must be specifically approved by the City, in advance of the work, as evidenced by an executed City of Bastrop "Hot Work Permit," which shall set forth all applicable safeguards for the outdoor hot work, such as (by way of example only):

- i. Area free of vegetation for at least twenty-five (25) feet in all directions;
- ii. Surfaces around hot works areas are continuously wetted down;
- iii. Each location where hot works are occurring have cellular telephone communications for emergency response;

- iv. Before performing any hot works operations, the owner, operator or other responsible party must notify the local fire department or emergency services district which serves the location where the hot works operations are to occur about the planned activities.
 - v. There is a dedicated fire watch person for the hot works operations.
 - vi. At least one (1) water pressure fire extinguisher per fire watch person is located within ten (10) feet of the location where the hot works operations are occurring.
 - vii. A total welding or hot works enclosure, or welding box or hot works box sufficiently high to control the sparks, including a fire retardant cover, is used.
6. The bans, regulations and preventative measure stated herein shall automatically apply at any time that the City Manager, or his designee, determines that the long term “Palmer Drought Severity Index” (“PDI”), [established by the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce (“NOAA”)] reflects a drought condition in the Bastrop area that is at or above the moderate drought level, and shall automatically cease to apply at the time that the City Manager, or his designee, determines that the PDI drought level in the Bastrop area is below the moderate drought level.
7. The City Council hereby authorizes the City Staff, and its manager, Michael H. Talbot, to take whatever actions are deemed necessary to periodically implement the expanded burn ban and emergency fire prevention policy and practices contained herein and to communicate the Council’s position regarding same to any and all interested or effected parties or persons, including posting notice of the ban, as is appropriate from time to time on the City’s website.

Part 3: This Emergency Expanded Burn Ban and Fire Prevention Ordinance shall become effective on its date of adoption, shown below, and shall remain in affect until such time as the Council formally acts to render it terminated.

Part 4: All other provisions of the Bastrop Code of Ordinances shall hereby remain in full force and effect.

Part 5: This Ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Bastrop, and this ordinance shall not operate to repeal or affect any of such other ordinances, except insofar as the provisions thereof might be

inconsistent or in conflict with the provisions of this Ordinance, in which event such conflicting provisions, if any in such other ordinance or ordinances are superseded.

Part 6: If any provision of this Ordinance or application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the other provisions, or application thereof, of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are hereby declared to be severable.

Part 7: The Mayor is hereby authorized to sign this Ordinance and the City Secretary to attest. This Ordinance shall become effective and be in full force and effect in accordance with the provisions of the Charter of the City of Bastrop.

PASSED AND ADOPTED as an emergency safety measure, with one reading only, at a regular meeting of the City Council of the City of Bastrop held on the 25th day of October 2011, by a majority of the Council.

Terry Orr, Mayor
On Behalf of the City Council
City of Bastrop

ATTEST:

Teresa Valdez, City Secretary
City of Bastrop