

**ORDINANCE #02-2020
OPEN BURNING**

AN ORDINANCE OF THE CITY OF COMANCHE, TEXAS ESTABLISHING OPEN BURNING PROCEDURES WITHIN THE CITY OF COMANCHE, AND PROVIDING FOR THE ADMINISTRATION, ENFORCEMENT, AND AMENDMENT THEREOF, IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND FOR THE REPEAL OF ALL PRIOR OPEN BURNING ORDINANCES AND ALL ORDINANCES IN CONFLICT HEREWITH.

WHEREAS, under the laws of the State of Texas, authority is conferred upon the City of Comanche to enact an open burning ordinance and to provide for its administration, and enforcement,

WHEREAS, the City Council deems it necessary, for the purpose of promoting the health, safety, morals, and general welfare of the City to enact such an ordinance; and

WHEREAS, the City Council, pursuant to the provisions to the State statutes, has adopted an ordinance that limits open burning except those listed exceptions allowed by the Texas Administrative Code Section 111, Subchapter B. Outdoor Burning and further allowed by this ordinance. Fires or open burning within the City Limits of the City of Comanche will only take place under one of the exceptions allowed by law and this ordinance.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COMANCHE, TEXAS

Section 1. Permits. Permits will not be issued to burn except in the case of burning under the exception for land clearing or crop residue burning covered in Section 5(d). No burning will be allowed unless the fire or open burn falls under the exceptions to burning allowed by State Statutes and this ordinance. If the burn falls under one of the allowed exceptions and meets the Texas Administrative Code General Requirements for Allowable Outdoor Burning it will be allowed. If a fire is set violating State law or this ordinance the individual or entity setting the fire face a violation of City Ordinance with a \$500 dollar fine each and every day such fire is set or burning. If any other State or of Federal law is violated at the same time as the ordinance violation all pertinent charges will be pursued.¹

Section 2. Outdoor Burning Prohibited. No person may cause, suffer, allow, or permit any outdoor burning within the City Limits of Comanche, Texas except as provided for under the laws of the State of Texas, no other fires or allowed by City Ordinance #2-2020, the ordinance also limits some burns allowed by State law but not feasible for the City of Comanche to safely control. Outdoor disposal or deposition of any material capable of igniting spontaneously, with the exception of the storage of solid fossil fuels, shall not be allowed within the City limits of Comanche. ²

Section 3. Definitions. The following terms, when used in this ordinance have the following meanings, unless the context clearly indicates otherwise.

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

¹ Texas Local Government Code Chapter 52, Texas Clean Air Act Subchapter E Authority of Local Governments, Texas Administrative Code Section 111.219, City Ordinance.

² Title 30 Texas Administrative Code Section 111. Subchapter B. Outdoor Burning and City Ordinance.

2. Land Clearing operation: The uprooting, cutting, or clearing of vegetation in connection with conversion for the construction of building, rights-of-way, residential, commercial, or industrial development, or the clearing of vegetation to enhance property value, access, or production.

It does not include the maintenance burning of on-site property wastes such as fallen limbs, branches, or leaves, or other wastes from routine property clean-up activities, nor does it include burning following clearing for ecological restoration.

3. Neighborhood: A platted subdivision or property contiguous to and within 300 feet of a platted subdivision.
4. Practical alternative: An economically, technologically, ecologically, and logistically viable option.
5. Prescribed burn: The controlled application of fire to naturally occurring vegetative fuels under specified environmental conditions and confined to a predetermined area, following appropriate planning and precautionary measures.
6. Refuse: Garbage, rubbish, paper, and other decayable and non-decayable waste, including vegetable matter and animal and fish carcasses.
7. Structure containing sensitive receptors: A man-made structure utilized for a human residence or business, the containment of livestock, or the housing of sensitive live vegetation. The term "man-made structure" does not include such things as fences, roads, bridges, hunting blinds, or facilities used solely for the storage of hay or other livestock feeds. The term "sensitive live vegetation" is defined as vegetation that has potential to be damaged by smoke and heats, examples of which includes, but are not limited to, nursery production, mushroom cultivation, pharmaceutical plant production, or laboratory experiments involving plants.
8. Sunrise/Sunset – Official sunrise/sunset as set forth in the United States Naval Observatory tables available from the National Weather Service offices.
9. Wildland – Uncultivated land other than fallow, land minimally influenced by human activity, and land maintained for biodiversity, wildlife forage production, protective plant cover, or wildlife habitat.³
10. Texas Commission on Environmental Quality – TCEQ.
11. Sensitive Receptors-Include humans and livestock, as well as "sensitive live vegetation" such as nursery plants, mushrooms under cultivation, and plants raised for pharmaceutical production or used in lab experiments.⁴

Section 4. Exception for Fire Training

1. Outdoor burning shall be authorized for training fire-fighting personnel when requested by the Comanche Volunteer Fire Department Fire Chief in writing to the Texas Commission on Environmental Quality Region 3 office. The burning shall be

³ Title 30 Texas Administrative Code Section 111.203 Definitions.

⁴ Outdoor Burning in Texas Field Operations Texas Commission on Environmental Quality page 8 item 6 2nd paragraph

authorized if notice of denial is not received within ten (10) working days after the date of the postmark or date of personnel delivery of the request.

2. The Comanche Volunteer Fire Department Fire Chief shall provide a written notification of intent of fire-fighting training with a telephone, email, or electronic facsimile notice (no less than 24 hours in advance of any scheduled training session) submitted to the Texas Commission on Environmental Quality Region 3 office. The Comanche Volunteer Fire Chief will notify Comanche County Dispatch of any training burns. The Comanche Volunteer Fire Department will provide a copy to the City of Comanche of the written notification of training submitted to TCEQ.⁵

3. Authorization to conduct outdoor burning under this provision may be revoked by the Executive Director of the Texas Commission on Environmental Quality if the authorization is used to circumvent other provisions of the Texas Administrative Code.⁶

Section 5. Exception for Fires used for Recreation, Ceremony, Cooking, and Warmth.

Outdoor burning shall be authorized or fires used solely for recreational or ceremonial purposes, or in the noncommercial preparation of food, or used exclusively for the purpose of supplying warmth during cold weather. Such burning shall be subject to the requirements of Texas Administrative Code 111.219(7) (relating to the General Requirements for Allowable Outdoor Burning).⁷

- (a) Domestic waste burning and burning of waste plant growth at a property designed for and used exclusively as a private residence is not allowed in the City of Comanche due to the City providing chipping, refuse, and trash pickup services. The only allowable burning will be allowed by the City of Comanche or under the crop residue burning exception listed below.⁸
- (b) Disposal of Animal Remains is not allowed in the City limits of Comanche.
- (c) The City of Comanche may burn the plant growth generated as a result of right-of-way maintenance, land clearing operations, and maintenance along water canals. Such burning must be consistent with the Texas Clean Air Act Chapter 282, Subchapter E, Authority of Local Governments, and the requirements of Texas Administrative Code 111.2019 (3) (4) (6) and (7).

The Public Works Director will determine when burns of this nature need to be conducted at the location the maintenance or land clearing is needed. Reporting not required to TCEQ if burned on site where generated. The Public Works Director will notify Comanche County Dispatch of burns of this type.⁹

⁵ Title 30 Texas Administrative Code Section 111.205 & Ordinance/Reporting required.

⁶ Title 30 Texas Administrative Code Section 111.205, Reporting required.

⁷ Title 30 Texas Administrative Code Section 111.207, Reporting not required.

⁸ Title 30 Texas Administrative Code Section 111.209 and Ordinance.

⁹ Title 30 Texas Administrative Code Section 111.209 Exception for Disposal Fires paragraph 4 b/Reporting not required.

The City of Comanche's designated burn site must be approved by the Texas Commission on Environmental Quality Region 3 office. TCEQ will be notified in writing with confirmation verbally.¹⁰

- (d) Land Clearing Operations or Crop Residue burning for agricultural management purposes is allowed on properties with a recorded Agricultural Tax exemption with a minimum lot size of 300 feet by 300 feet. A permit will be submitted ten (10) days prior to the scheduled burn to the City of Comanche for site approval. All other requirements of this ordinance and Texas State law apply and are the responsibility of the requestor of the permit to ensure are met prior to conducting the burn.¹¹

This ordinance requires notification to the City of Comanche ten (10) days prior to burn for site approval. The City of Comanche Code Officer will approve site plans and issue burn permits under the Agriculture management exception.

On approving the site, the Code Enforcement Officer will as a courtesy provide notification to TCEQ and Comanche County dispatch of the planned burn site and time. The burn requestor will call and advise Comanche County Dispatch the day of the burn prior to conducting the burn. The Code Enforcement Officer will provide advance notification to TCEQ and Comanche County Dispatch of every approved proposed burn as part of the site plan approval process for crop residue burning for agricultural management purposes.¹²

- (e) Brush, trees, and other plant growth causing a detrimental public health and safety condition burned by county or municipal government at a site it owns upon receiving site and burn approval from the Executive Director of TCEQ. Such burns cannot be conducted at municipal solid waste landfills unless authorized under the Texas Administrative Code 111.215, and shall be subject to the requirements of the Texas Administrative Code 111.219, Site and burn authorization required by TCEQ. TCEQ will be notified in writing with confirmation verbally when possible. The City of Comanche Public Works Director will notify TCEQ and seek the necessary approval. The Public Works Director will notify Comanche County Dispatch prior to the burn taking place.¹³

Section 6: Exceptions for Prescribed Burn. Outdoor burning shall be authorized for:

1. Prescribed burning for forest, range and wildland/wildlife management purposes, with the exception of coastal salt-marsh management burning: Such burning shall be subject to the requirements of Texas Administrative Code 111.219 relating to the General Requirements for Allowable Outdoor Burning, and structures containing sensitive receptors must not be negatively affected by the burn. Prior to a burn of this nature, the Texas Forest Service will be notified. When possible, notification of

¹⁰ Title 30 Texas Administrative Code Section 111.209 (7) & Ordinance.

¹¹ Title 30 Texas Administrative Code, Section 111.209, Ordinance, Reporting not required to TCEQ by law, but they request notification.

¹² Title 30 Texas Administrative Code Section 111.209 (7), Ordinance, Reporting not required but is requested verbally by TCEQ.

¹³ Title 30 Texas Administrative Code Section 111.209 (1), Title 30 Texas Administrative Code Section 111.211 (1), Reporting required by ordinance to TCEQ and the Texas Forest Service.

intent to burn should be made to Texas Commission on Environmental Quality Region 3 Office. Texas Commission on Environmental Quality notification for this type of burn is not required by law. TCEQ request to be verbally notified of this type of burn. The Public Works Director will notify TCEQ and Comanche County Dispatch of a burn of this nature. If the burn being conducted is for forest management the Public Works Director will also notify the Texas Forest Service.¹⁴

2. Exceptions for Hydrocarbon Burning: Outdoor burning shall be authorized for hydrocarbon burning from pipeline breaks and oil spills upon proper notification to the Texas Commission on Environmental Quality as set forth in Texas Administrative Code 101.6 (relating to Notification Requirements for Major Upset). The Texas Commission on Environmental Quality Executive Director has determined that the burning is necessary to protect the public welfare.

Reporting of Hydrocarbon burning will be the responsibility of the business or company needing to conduct the burning to deal with the spill. The business or company will be required to notify TCEQ and the City of Comanche.¹⁵

3. TCEQ Executive Director approval: If not otherwise authorized by the Texas Administrative Code, written permission from the Executive Director of the Texas Commission on Environmental Quality can be authorized if there is no practical alternative, and if burning will not cause or contribute to a nuisance, traffic hazard, or to a violation of any federal or state primary or secondary air ambient standard. The Executive Director may specify procedures or methods to control or abate emissions from outdoor burning he authorized in this situation. Authorization to burn may be revoked by the Executive Director at any time if the burning causes nuisance conditions, is not conducted in accordance with the specified conditions, violates and provision of the applicable permit, or causes a violation of air quality standard. If the Comanche City Secretary believes burning is required under this exception the City Secretary will seek approval from the TCEQ Executive Director to conduct a burn under this provision.¹⁶
4. General Requirements for Allowable Outdoor Burning: Outdoor burning which is otherwise authorized shall also be subject to the following requirements when specified in any section of this ordinance;
 - a. Prior to prescribed or controlled burning for forest management purposes, the Texas Forest Service shall be notified.¹⁷
 - b. Burning within the city limits of Comanche will not be allowed unless under the exceptions listed in Texas State law.¹⁸
 - c. Burning shall be commenced and conducted only when wind direction and other meteorological conditions are such that smoke and other pollutants will

¹⁴ Title 30 Texas Administrative Code Section 111.209 (1), Section 111.211 (1), Reporting required by ordinance to TCEQ and the Texas Forest Service.

¹⁵ Title 30 Texas Administrative Code Section 111.213 & Ordinance.

¹⁶ Title 30 Texas Administrative Code Section 111.215, Ordinance, Reporting required.

¹⁷ Title 30 Texas Administrative Code Section 111.219.

¹⁸ Title 30 Texas Administrative Code Section 111 Subchapter B Outdoor Burning & Ordinance.

not cause adverse effects to any public road, landing strip, navigable water, or off-site structure containing sensitive receptor(s).¹⁹

- d. If at any time the burning causes or may cause smoke to blow across a road or highway, it is the responsibility of the person initiating the burn to post flag persons on affected roads.²⁰
- e. Burning must be conducted downwind of or at least 300 feet (90 meters) from any structure containing sensitive receptors located on adjacent properties unless prior written approval is obtained from adjacent occupant with possessory control.²¹
- f. Burning shall be conducted in compliance with the following meteorological and timing considerations:
 - 1. 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 be allowed to increase after this time.²²
 - 2. Burning shall not be commenced when surface wind speed is predicted to be less than six miles per hour (MPH) (5 knots) or greater than 23 (MPH) or (20 knots).²³
 - 3. Burning shall not be conducted during periods of actual or predicted persistent low-level atmospheric temperature inversions.²⁴
- g. 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 shall not be burned.²⁵
- h. Responsibility for Consequences of Outdoor Burning: 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.²⁶

¹⁹ Title 30 Texas Administrative Code Section 111.219.

²⁰ Title 30 Texas Administrative Code Section 111.219.

²¹ Title 30 Texas Administrative Code Section 111.219.

²² Title 30 Texas Administrative Code Section 111.219 (6) (A).

²³ Title 30 Texas Administrative Code Section 111.219 (6) (B).

²⁴ Title 30 Texas Administrative Code Section 111.219 (6) (C).

²⁵ Title 30 Texas Administrative Code Section 111.219 (7).

²⁶ Title 30 Texas Administrative Code Section 111.221.

- i. Violation of any part of this ordinance is a class C misdemeanor and will be punishable with a \$500.00 fine. If any other State or of Federal law is violated at the same time as the ordinance violation, all pertinent charges will be pursued.²⁷
- j. Any outdoor burning within the city limits of Comanche will not be conducted unless it falls under one of the exceptions listed in Texas State law and also allowed by this ordinance. Burning will not be conducted unless allowed under an exception and meet all the General Requirements for Outdoor Burning required by Texas State law. It will be the responsibility of each person conducting the burn to make required notifications to TCEQ if required. It will be the responsibility of the person or organization setting and controlling the fire to get written permission from their neighbors within 300 feet of the proposed burn location if required by Texas State law or this ordinance prior to the burn. On the day of the burn. Prior to any burn, the person conducting the burn will call the National Weather Service Direct Line Forecast Desk 817-831-1581 and ensure the winds and environmental conditions are within the limits outlined in Texas State law (winds of at least 6 miles per hour or 5 Knots, winds no faster than 23 miles per hour or 20 knots, no temperature inversions).²⁸
- k. If a Comanche County Burn Ban is in effect, all requirements and restrictions of the ban must also be met.

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- l. According to the Outdoor Burning Rules of the State of Texas, commercial or business enterprises are prohibited from burning business waste. There is no exception allowed for businesses.²⁹

²⁷ Title 30 Texas Administrative Code Section 111 Subchapter B Outdoor Burning, City Ordinance.

²⁸ Title 30 Texas Administrative Code Section 111 Subchapter B Outdoor Burning, Texas Commission on Environmental Quality Chapter 111 – Control of Air Emissions from Visible Emissions and Particulate Matter – Subchapter B Outdoor Burning, Outdoor Burning in Texas Field Operations Texas Commission on Environmental Quality Appendix A, City Ordinance.

²⁹ Title 30 Texas Administrative Code Section 111.209, Outdoor Burning in Texas Field Operations Texas Commission on Environmental Quality–Exceptions to prohibition page 6.

PASSED, APPROVED, AND ADOPTED on this 13th day of April , 2020 by a vote at a Called Meeting of the City of Comanche City Council, Comanche, Texas.




Mary Boyd, Mayor



Jacqui Stewart, CCD, ICS
Interim City Secretary

Approved as to form



James H. Dudley
City Attorney