

May 9, 2008

Re: Adoption of County Burn Ban

Dear County Judges:

Due to the lack of rain in many parts of the state, it may be appropriate or necessary to prohibit or restrict outdoor burning in the unincorporated areas of your county. The following procedural summary and sample Order were prepared to explain the procedures to be followed when making a decision about whether or not to adopt a burn ban, and to simplify Court action.

There are two alternative methods to determine when circumstances warrant adoption of a burn ban. Either (i) the Texas Forest Service makes a determination that drought conditions exist in all or part of the county; or (ii) the Commissioners Court makes a finding that circumstances present in all or part of the unincorporated areas of the county create a public safety hazard that would be exacerbated by outdoor burning. To obtain a determination from the Texas Forest Service, please contact Tom Spencer, Texas Interagency Coordination Center, at 979/458-7331 or visit the website at <http://www.tamu.edu/ticc/>. The Texas Forest Service has developed new drought web links to assist your county in monitoring drought conditions more closely.

Restrictions against outdoor burning can be general or limited to a particular type of burning, such as trash, brush or open campfires. The restrictions can also be applied to all the unincorporated areas of the county or only limited portions of those areas of the county. You should be aware, however, that the statute does not permit restrictions against outdoor burning activities related to public health and safety that are authorized by the Texas Commission on Environmental Quality for: (1) firefighter training; (2) public utility, natural gas pipeline or mining operations; (3) planting or harvesting of agricultural crops; or (4) burns that are conducted by a prescribed burn manager certified under Section 153.048, Natural Resources Code, and meet the standards of Section 153.047, Natural Resources Code.

Once the Texas Forest Service determines that drought conditions exist or the Commissioners Court finds a public safety hazard exists, the Court may adopt an order prohibiting or restricting outdoor burning for a specific period of time, not to exceed 90 days from the date the order is adopted. By law, the Court's order will expire at the earliest of (a) 90 days from the date of adoption; (b) the date of a determination by the Texas Forest Service that drought conditions no longer exist; or (c) the date of a finding by the Commissioners Court that a public safety hazard no longer exists. The Court may adopt another order prohibiting or restricting burning at the expiration of any previous order by following the same procedures. A sample Order, with alternative language, is enclosed.

Violation of the Court's Order prohibiting or restricting outdoor burning is a Class C misdemeanor, punishable by a fine not to exceed \$500.00. Additionally, the law allows any person to obtain an injunction to prevent the violation or threatened violation of the Court's Order prohibiting or restricting outdoor burning. The Court may want to consider wide-spread publication of its adoption of a burn ban to put county residents and others on notice of the possible criminal penalties.

A copy of Local Government Code, § 352.081 (the Regulation of Outdoor Burning) is attached for your reference. If you have any questions about enacting a burn ban, please feel free to contact our legal department toll-free at 888-275-8224.

Sincerely,



ROBERT L. LEMENS
General Counsel

Enclosures (2)

TEXAS LOCAL GOVERNMENT CODE

SUBCHAPTER D OUTDOOR BURNING

Sec. 352.081. REGULATION OF OUTDOOR BURNING.

(a) In this section, "drought conditions" means the existence of a long-term deficit of moisture creating atypically severe conditions with increased wildfire occurrence as defined by the Texas Forest Service through the use of the Keetch-Byram Drought Index or, when that index is not available, through the use of a comparable measurement that takes into consideration the burning index, spread component, or ignition component for the particular area.

(b) On the request of the commissioners court of a county, the Texas Forest Service shall determine whether drought conditions exist in all or part of the county. The Texas Forest Service shall make available the measurement index guidelines that determine whether a particular area is in drought condition. Following a determination that drought conditions exist, the Texas Forest Service shall notify the county when drought conditions no longer exist. The Texas Forest Service may accept donations of equipment or funds as necessary to aid the Texas Forest Service in carrying out this section.

(c) The commissioners court of a county by order may prohibit or restrict outdoor burning in general or outdoor burning of a particular substance in all or part of the unincorporated area of the county if:

- (1) drought conditions have been determined to exist as provided by Subsection (b); or
- (2) the commissioners court makes a finding that circumstances present in all or part of the unincorporated area create a public safety hazard that would be exacerbated by outdoor burning.

(d) An order adopted under this section must specify the period during which outdoor burning is prohibited or restricted. The period may not extend beyond the 90th day after the date the order is adopted. A commissioners court may adopt an order under

this section that takes effect on the expiration of a previous order adopted under this section.

(e) An order adopted under this section expires, as applicable, on the date:

(1) a determination is made under Subsection (b) that drought conditions no longer exist; or

(2) a determination is made by the commissioners court that the circumstances identified under Subsection (c)(2) no longer exist.

(f) This section does not apply to outdoor burning activities:

(1) related to public health and safety that are authorized by the Texas Natural Resource Conservation Commission for:

(A) firefighter training;

(B) public utility, natural gas pipeline, or mining operations; or

(C) planting or harvesting of agriculture crops; or

(2) that are conducted by a prescribed burn manager certified under Section 153.048, Natural Resources Code, and meet the standards of Section 153.047, Natural Resources Code.

(g) Any person is entitled to injunctive relief to prevent the violation or threatened violation of a prohibition or restriction established by an order adopted under this section.

(h) A person commits an offense if the person knowingly or intentionally violates a prohibition or restriction established by an order adopted under this section. An offense under this subsection is a Class C misdemeanor.

Legislative History

Leg.H. Stats. 1999 76th Leg. Sess. Ch. 1435, effective August 30, 1999; Stats. 2001 77th Leg. Sess. Ch. 1185, effective June 15, 2001 (renumbered from Sec. 240.906).