

ORDINANCE NO. 17-014

AN ORDINANCE AMENDING CHAPTER 38, FIRE PREVENTION AND PROTECTION, ARTICLE III OUTDOOR BURNING, SECTION 38-63.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GILMER THAT:

Outdoor burning impacts air quality. Regulations to minimize possible adverse impacts of outdoor burning are now administered by the Texas Commission on Environment Quality (TCEQ). In conjunction with TCEQ, the purpose of this ordinance is to protect the environment, promote public health and safety, and avoid nuisance conditions through the sensible regulation of outdoor burning.

General Prohibition.

No person may cause, suffer, allow, or permit any outdoor burning within the State of Texas, except as provided by the Texas Clean Air Act, Subchapter B, Outdoor Burning. Outdoor disposal or storage of any material capable of igniting spontaneously (i.e. gasoline, kerosene, coal oil, etc.), with the exception of the storage of solid fossil fuels (i.e. charcoal for cooking), is prohibited and strictly forbidden.

It shall be unlawful for any person to burn, upon the streets, alleys, or public square of the city, any rubbish, brush, paper, or trash of any kind.

Electrical insulation, treated lumber, plastics, garbage, mattresses, non-wood construction/demolition materials, heavy oils, asphaltic materials, potentially explosive materials, chemical wastes, and items containing natural or synthetic rubber must not be burned. In addition, any substance which, when burned produces a foul, noxious, or offensive odor or heavy smoke is prohibited.

Definitions.

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

Land clearing operation – The uprooting, cutting, or clearing of vegetation in connection with conversion for the construction of buildings, 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.

Neighborhood - A platted subdivision or property contiguous to and within 300 feet of a platted subdivision.

Practical alternative – An economically, technologically, ecologically, and logistically viable option (recycling, composting, mechanical chipping or mulching)

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.

Refuse – Garbage, rubbish, paper, and other decayable and nondecayable waste, including vegetable matter and animal and fish carcasses.

Structure containing sensitive receptor(s) – A man-made structure utilized for 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 range 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 heat, examples of which includes, but is not limited to, nursery production, mushroom cultivation, pharmaceutical plant production, or laboratory experiments involving plants.

Sunrise/Sunset – Official sunrise/sunset as set forth in the United States Naval Observatory tables available from the National Weather Service offices.

General Requirements for Allowable Outdoor Burning.

1. Burning shall be commenced and conducted only when wind direction and other meteorological conditions are such that smoke and other pollutants will not cause adverse effects to any public road, landing strip, navigable water, or off-site structure containing sensitive receptor(s).
2. Outdoor burning is allowed when used solely for recreational or ceremonial purposes, in the noncommercial preparation of food, or exclusively as a means to provide warmth in cold weather. In other words, small campfires and cooking fires are allowed.
3. Trees, brush, grass, leaves, branch trimmings and other plant growth may be burned on the property on which the material grew.
4. No burning shall be authorized or allowed that would result in smoke being carried into adjacent or surrounding structures containing sensitive receptors or that would otherwise create a hazard to or endanger adjacent property. It is advisable that burning be conducted downwind of, and at least 300 feet (90 meters) from any structures containing sensitive receptors.

Bonfires (large fires) are prohibited without express permission and/or permit by the Gilmer Fire Department. Outdoor burning permitted does not exempt or forego other requirements of this article and are pursuant to regulations now existing or hereafter adopted by the Texas Air Control board.

Hours of burning.

Burning shall take place only during daylight hours. Each burning 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 or are not extinguished after daylight, such areas shall be completely extinguished.

The daylight hours requirement under this section does not apply to item 2 under General Requirements for Allowable Outdoor Burning.

Wind velocity.

Burning shall not be commenced when surface wind speed is predicted to be less than six miles per hour (mph) (five knots) or greater than 23 mph (20 knots) during the burn period.

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 regulation. The party responsible for the burn remains liable for damages, injuries, or other consequences that may result from burning, even when it is carried out in compliance with these regulations.

Reckless Damage or Destruction.

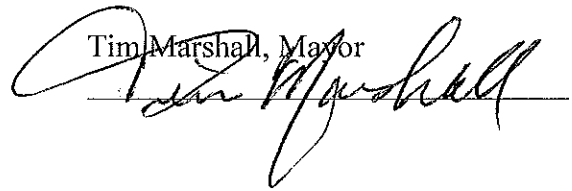
A person commits a crime if he recklessly allows his fire to damage or destroy someone else's property. A person acts recklessly, or is reckless, when he is aware of but consciously disregards a substantial and unjustifiable risk that his burning will escape from his control and result in damage to the property of another.

Burn Bans.

A burn ban is when the county commissioner's court, fire marshal, fire chief, or city council activates a ban against any type of burning, during any length of time that they deem necessary. The burn ban will pertain to any type of burning, such as controlled burns, bonfires, campfires, trash, or rubbish burning, discarding of light materials or objects. When a burn ban has been activated by the county, the city must abide by the ban and cannot supersede the county's ruling.

An offense under this ordinance is a class C misdemeanor, punishable by a fine not to exceed \$500.00.

PASSED AND APPROVED this 11th day of APRIL, 2017.

Tim Marshall, Mayor


ATTEST:

Kathy D. Hoover, City Secretary

APPROVED AS TO FORM AND EFFECT:


Michael D. Martin, City Attorney

