ORDINANCE NO. 2021-26

AN ORDINANCE AMENDING THE CITY OF HUNTSVILLE, TEXAS CODE OF ORDINANCES, SPECIFICALLY CHAPTER 20 "FIRE PREVENTION AND PROTECTION"; PROVIDING FOR A PENALTY; MAKING OTHER PROVISIONS AND FINDINGS THERETO; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the Huntsville Code of Ordinances, Chapter 20 "FIRE PREVENTION AND PROTECTION" provides for regulations for fire prevention and protection for residential and commercial buildings for the health, safety and public welfare of the City's residents:

WHEREAS, the City of Huntsville, as a home rule city may regulate this activity pursuant to its broad powers of self-government; and

WHEREAS, City Council finds it necessary to amend its existing regulations of these activities to protect the health and public safety; now therefore

WHEREAS, the City Council of the City of Huntsville, Texas now wishes to amend Chapter 20 to help promote the health, safety and welfare of its residents.

WHEREAS, notice of the agenda for this meeting, was given in accordance with law by posting the same at the place reserved and designated for notices of public meetings and public activities and prior to the adoption of this ordinance.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HUNTSVILLE, TEXAS, that:

SECTION 1: The facts and matters set forth in the preamble of this Ordinance are found to be true and correct and are hereby adopted, ratified, and confirmed.

SECTION 2: Huntsville Code of Ordinances Chapter 20 "FIRE PREVENTION AND PROTECTION" is hereby amended by amending Sections 20-1 and 20-2 and amending re-numbering 20-3 of Article 1 "General" as shown in the Exhibit "A" attached hereto and adopted for all purposes.

SECTION 3: Huntsville Code of Ordinances Chapter 20 "FIRE PREVENTION AND PROTECTION" is hereby amended by deleting Sections 20-29 and 20-30 and/or amending and re-numbering sections 20-27, 20-28, 20-31, 20-32 and 20-33 of Article II "Fire Marshal" as shown in the Exhibit "A" attached hereto and adopted for all purposes.

SECTION 4: Huntsville Code of Ordinances Chapter 20 "FIRE PREVENTION AND PROTECTION" is hereby amended by deleting Section 20-58 and amending sections 20-55, 20-57 and adding sections 20-58 thru 20-63, of Article III "Enforcement" as shown in the Exhibit "A" attached hereto and adopted for all purposes.

SECTION 5: All ordinances or parts of Ordinances that are in conflict or inconsistent with the provisions of this Ordinance shall be, and the same are hereby, repealed and all other ordinances of the City not in conflict with the provisions of this Ordinance shall remain in full force and effect.

SECTION 6: Should any paragraph, sentence, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole or any part or provision thereof, other than the part so declared to be invalid, illegal or unconstitutional.

SECTION 7: This Ordinance, being a penal ordinance, becomes effective ten (10) days after its date of passage by the City Council, as provided by Article 4.14 of the Charter of the City of Huntsville, Texas.

First Reading Date: September 7, 2021

PASSED AND APPROVED on the Second Reading on this the 21th day of September 2021.

THE CITY OF HUNTSVILLE

Andy Brauninger, Mayor

ATTEST:

Kristy Doll, City Secretary

APPROVED AS TO FORM:

Leonard Schneider, City Attorney

EXHIBIT A

Chapter 20 - FIRE PREVENTION AND PROTECTION

ARTICLE I. - IN GENERAL

Sec. 20-1. - International Fire Code—Adopted.

The book entitled , International Fire Code, 2021 Edition a copy of which, authenticated by the signatures of the mayor and the city secretary, and is on file in the city secretary's office with signatures, is hereby adopted as the fire prevention code of the city as fully as if copied at length in this chapter, and the provisions thereof shall be controlling in the storage, use or handling of hazardous materials, substances or devices, and in the repair, equipment, use, occupancy, and maintenance of every existing building or structure within the city.

Sec. 20-2. - Same—Amendments.

The following provisions of the International Fire Code are adopted, amended, or modified for purposes of administration of the Code in the city:

(1) Section 103.1 shall have Huntsville Fire Department inserted as the Code Compliance agency

(2) Section 111 is changed in its entirety to read: In order to have an appeal to any order, decision or determinations made by the Fire Official, the appeal request shall be heard by the board of adjustments and appeals in accordance with the provisions defined by the International Building Code section 113, the International Building Code Appendix B and as amended therein Section 12-20(6) of the code of ordinances.

(3) Section 308.1.4 is added to read:

308.1.4 Open flame cooking devices shall be prohibited on balconies of multiple-family dwellings and single-family rental dwellings of two or more stories in height and shall be prohibited within ten feet of the building of multiple-family dwellings or single-family rental dwellings regardless of number of stories in height.

(4) Section 503.3 is hereby amended to read:

503.3 Marking. Where required by the fire code official, approved signs installed in accordance with "appendix D" of this code or permanent striping painted on the curb or edge of the paved access shall be provided for fire apparatus access roads to identify such roads or prohibit the obstruction thereof. Signs or striping shall be maintained in a clean and legible condition at all times and be replaced or repaired when necessary to provide adequate visibility. Signs shall have the words, 'NO PARKING - FIRE LANE – TOW AWAY" and spaced every 40 feet. This spacing may be adjusted with the approval of the fire code official. Striping shall consist of a minimum six inch (6") wide red background stripe applied the full length on each side of the fire access road and shall be marked at each end and at least every 20 feet with minimum four inch (4") high white letters stating, "NO PARKING - FIRE LANE - TOW AWAY."

(5) Appendix D, Fire Apparatus Access Roads, is adopted.

(6) Section 603.5.2 Application and use of relocatable power taps delete exemption 1 and 2

Sec. 20-3 moved to Article III and re-numbered 20-58

Secs. 20-3—20-24. - Reserved.

ARTICLE II. - FIRE MARSHAL

Secs. 20-27, 20-28 moved to Article III and re-numbered 20-59 and 20-60

Secs. 20-31, 20-32, and 20-33 moved to Article III and re-numbered 20-61, 20-62 and 20-63

Secs. 20-27—20-54. - Reserved.

ARTICLE III. - ENFORCEMENT

Sec. 20-55. - Inspection of mercantile, manufacturing, and public buildings.

It shall be the duty of the Fire Chief/Fire Marshal or designee to enter upon and make, or to cause to be entered upon and made, annually or more often a thorough examination of all business mercantile, manufacturing, and public buildings, together with the premises belonging thereto. The Fire Chief/ Fire Marshal and the City Building Official shall be responsible for the enforcement of the fire code of the city in each instance where such code calls for action by the Fire Chief/ Fire Marshal.

Sec. 20-57. - Right of entry.

The city Fire Chief/Fire Marshal and or the Building Official, each separately, shall have the authority, at all times of day or night, when necessary in the performance of the duties imposed upon him by the provisions of this chapter, to enter upon and examine any building or premises where any fire or other emergency has occurred and other building or premises adjoining or near the same to establish the safety of the building and its occupants. This authority shall be exercised only with reason and good discretion. If access is denied or removed, an administrative search warrant may be requested through the court and or legal processes. The search warrant should be justified by a showing of reasonable governmental interest, and supported by a statute, ordinance, or regulation. If a valid public interest justifies the intrusion, then a valid and reasonable probable cause has been demonstrated.

Sec. 20-58 - Outdoor burning; when permit required; duties of Fire Chief/Fire Marshal; fees; penalty for violation.

(a) It shall hereafter be unlawful for any person to burn any unprocessed natural vegetation within the corporate limits of the city unless such person first obtains a residential burning permit from the Fire Chief/Fire Marshal. Such unprocessed natural material shall include limbs, brush, and grass clippings and shall not include materials such as and including garbage, dead animals, asphalt, petroleum products, paints, plastics, paper, cardboard, treated lumber, construction/demolition debris or any product that emits toxic emissions, dense smoke or obnoxious odors. Even if a burn permit is issued for burning, no burning will be allowed within the city limits during any period in which a determination has been made by the County Judge that burning within the county poses an imminent safety risk or threatens the health and welfare of the citizens or by the Fire Chief/ Fire Marshal that burning within the city poses an imminent safety risk or threatens the health and welfare of the citizens of the city (commonly referred to as a "burn ban"). Any burn permit for burning shall be suspended during any period in which a burn ban is in effect, and it shall be unlawful for any person to burn any unprocessed natural vegetation within the corporate limits of the city during any period in which a burn ban is in effect.

(2) Burning on property as part of a land clearing operation will be done by trench burning under the conditions set out in Title 30 Texas Administrative Code § 106.496, as amended from time to time. The term "land clearing operation" means 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. The TECQ permit for trench burning is located on the Fire Department website and must be completed prior to the burning operation. The burn site is then subject to the guidelines stated in the permit and is also subject to inspection by the Fire Chief/Fire Marshal or designee. The Fire Chief/ Fire Marshal or designee may direct the burn operation be terminated if the conditions of the permit are not followed or a hazardous or nuisance condition is being created.

(4) It shall be unlawful for any person to burn combustible material in a manner inconsistent or contrary to the conditions and regulations contained in the permit.

(c) Any person violating the terms of this chapter shall, upon conviction, be deemed guilty of a class C misdemeanor and, upon conviction, shall be punished as provided in section 1-11.

Sec. 20-59- Investigation of fires.

The Fire Chief/ Fire Marshal or designee shall investigate the cause, origin and circumstances of every fire occurring within the city by which property is destroyed or damaged and shall especially make investigation as to whether such fire was the result of carelessness or design. Such investigation shall commence as soon as reasonable possible after the occurrence of such fire. If access is denied or removed, an administrative search warrant may be requested through the court and or legal processes. The search warrant should be justified by a showing of reasonable governmental interest, and supported by a statute, ordinance, or regulation. If a valid public interest justifies the intrusion, then a valid and reasonable probable cause has been demonstrated. The Fire Chief/ Fire Marshal or designee may also during any fire investigation, may be responsible for locating, collecting, identifying, storing, examining, and arranging for the testing of physical evidence. The fire investigator should be familiar with the recommended and accepted methods of processing such physical evidence.

(Code 1961, § 12.02.03; Ord. of 10-5-1915, § 2)

Sec. 20-60 - Taking of testimony in investigation of fire.

The Fire Chief/Fire Marshal or designee shall have the power to summon witnesses before him to testify in relation to any fire or other matter which is, by the provisions of this article, a subject of inquiry and investigation. The Fire Chief/Fire Marshal, or designee when in his opinion further investigation of a fire is necessary, shall take or cause to be taken the testimony, on oath, of all persons supposed to be cognizant of any facts or to have means of knowledge in relation to the matter under investigation, and shall cause the same to be reduced to writing. According to NFPA 921, the Fire Chief/Fire Marshal or designee, is hereby authorized to advise the person being questioned of his or her Miranda rights. Those questioned may also be advised if the questioning is being conducted in a custodial environment which may or may not be on the fire scene, depending on the circumstances.

Sec. 20-61. - Offenses by witnesses summoned by Fire Chief/ Fire Marshal

Any witness who refuses to be sworn or who refuses to appear and testify, or who disobeys any lawful order of the Fire Chief/Fire Marshal, or who fails and refuses to produce any book, paper or document touching any matter under examination, or who is guilty of any contemptuous conduct during any of the proceedings of the Fire Chief/Fire Marshal during any investigation or inquiry, after being summoned to give testimony in relation to any matter under investigation, shall be deemed guilty of a misdemeanor and it shall be the duty of the Fire Chief/Fire Marshal to cause all such offenders to be prosecuted.

Sec. 20-62.- Duty when evidence sufficient to charge person with crime in connection with fire.

If, after an investigation of a fire as provided for in this article, the Fire Chief/Fire Marshal is of the opinion that there is evidence sufficient to charge any person with the crime of arson, or with an attempt to commit the crime of arson, or of conspiracy to defraud, or criminal conduct in connection with such fire, he shall cause such person to be lawfully arrested and charged with such offense, or either of them, and shall furnish to the proper prosecuting attorney all such evidence, together with the names of the witnesses and all information obtained by him, including a copy of all pertinent and material testimony taken in the case.

Sec. 20-63. - Record of fires to be kept.

The Fire Marshal shall keep a record of all fires occurring within the city by which property is destroyed or damaged, together with all facts, statistics, and circumstances, including the origin of the fire and the amount of the loss, which may be determined by the investigation required by this article.

Secs. 20-64—20-80. - Reserved.