

ORDINANCE NO. 2023- 007

AN ORDINANCE OF THE CITY OF WEST LAKE HILLS, TEXAS (“CITY”) AMENDING CHAPTER 8 FIRE PREVENTION AND PROTECTION, ARTICLE 8.03 BURN BAN, SECTION 8.03.004 PROHIBITING SMOKING IN PUBLIC RIGHT OF WAY OR A CONSTRUCTION SITE AND OTHER PROHIBITED ACTS; SECTION 8.03.005, EXCEPTIONS; AND SECTION 8.03.006 ENFORCEMENT; PROVIDING A SEVERABILITY CLAUSE; SAVINGS CLAUSE; A REPEAL CLAUSE; NOTICE OF OPEN MEETING CLAUSE; PENALTY AND AN EFFECTIVE DATE.

WHEREAS, the Governor of Texas issued a disaster proclamation for 191 Texas Counties including Travis County based on the existence of wildfires that pose an imminent threat of widespread or severe damage, injury or loss of life and further certifying that such conditions continue to exist; and

WHEREAS, the City Council wishes to amend Article 8.03 Burn Ban, to create additional city authority necessary to reduce the likelihood or spread of wildfires in the city;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST LAKE HILLS, TEXAS:

SECTION I. All of the above premises are hereby found to be true and correct legislative and factual findings of the City of West Lake Hills and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

SECTION II. Chapter 8 Fire Prevention and Protection, Article 8.03 Burn Ban, Section 8.03.004 shall be amended and replaced to read as follows:

§ 8.03.004. Prohibited actions.

During a city burn ban, it is unlawful for any person to:

- (1) Burn any combustible material, including tobacco products, regardless of whether the burning occurs in an enclosure.
- (2) Order another person to burn any combustible material.
- (3) Engage in activities that create sparks or flames resulting in the burning of combustible material.
- (4) Park or drive any internal combustion engine on any type of combustible material.
- (5) Openly smoke within the public right-of-way, or other public property, or on a construction site.

- (6) Perform outdoor construction or maintenance activities except as authorized in Section 8.03.005(b)(2).

SECTION III. Chapter 8 Fire Prevention and Protection, Article 8.03 Burn Ban, Section 8.03.005, Exceptions shall be amended and replaced to read as follows:

§ 8.03.005 Exceptions.

(a) The prohibitions established by this section and section 8.03.004 shall not apply to:

- (1) Licensed peace officers, as that term is defined by Texas Code of Criminal Procedure, article 2.12(3), provided that such outdoor fires are made in the course and scope of the peace officers' official duties.
- (2) Activities specifically permitted or expressly authorized by the Texas Commission on Environmental Quality (TCEQ).
- (3) Firefighting training activities properly supervised by a firefighting authority, department or political subdivision.
- (4) Prescribed burns properly conducted and supervised by a prescribed burn manager certified under section 153.048, and that meet the standards established in Texas Natural Resources Code, section 153.047.
- (5) Grilling only if performed by a gas-fueled grill using either propane or natural gas.
- (6) Indoor smoking of tobacco products unless otherwise prohibited under this code.

(b) The prohibitions established by section 8.03.004 shall not apply to:

- (1) Activities that involve the performance of outdoor combustible operations, including but not limited to, outdoor welding, cutting or grinding operations and outdoor hot works operations, by any person if the city has issued a permit for the activity, and so long as the operations are performed in compliance with the following requirements creating a controlled environment and safeguards on each day when operations are performed:
 - (A) Areas where welding, cutting or grinding operations or hot works operations are being performed are free of vegetation for at least 25 feet in all directions;
 - (B) Surfaces around welding or hot works area are wetted down;
 - (C) Each location where welding, cutting or grinding operations or hot works operations are being performed must have cellular telephone communications for emergency response;
 - (D) Before beginning any operations, the person performing the welding, cutting or grinding operations or hot works operations must notify the local fire

department or emergency services district which serves the location where the welding, cutting or grinding operations or hot works operations are planned;

(E) A dedicated fire watch person attends each welder, cutter, grinder, or worker performing hot works operations or any activity that causes a spark;

(F) At least 1 water pressure fire extinguisher per fire watch person is located within 10 feet of the location where the welding, cutting or grinding operations or hot works operations are being performed;

(G) No welding, cutting and grinding operations or hot works operations is allowed on days designated as red flag warning days by the National Weather Service;

(H) Are performed only in a total welding or hot works enclosure, or welding box or hot works box, that is sufficiently high to control sparks, including a fire retardant cover over the top, the operations must comply with the requirements in subsections (E), (F), and (G) above and is encouraged to comply with the requirements in subsections (A)–(D) above, if feasible and appropriate.

(2) Activities that involve the performance of outdoor construction or maintenance operations, by any person, and so long as the operations are performed in compliance with the following requirements creating a controlled environment and safeguards on each day when operations are performed:

(A) All outdoor construction activities shall be equipped with a working fire extinguisher located within the construction site and easily accessible.

(B) All outdoor maintenance activities that utilize combustible fuel shall be equipped with a working fire extinguisher located within the maintenance site and easily accessible.

(c) Other exceptions may be made by the fire marshal on a case-by-case basis when, upon receipt of a written request for a waiver, the fire marshal determines in writing (in the fire marshal's sole discretion) that the proposed activity will not pose a threat to the public health, safety or welfare in light of the precautions proposed by the applicant and the fire marshal's opinion following review of the National Fire Code (as applicable, and as may be amended).

SECTION IV. Chapter 8 Fire Prevention and Protection, Article 8.03 Burn Ban, Section 8.03.006 Enforcement shall be amended and replaced to read as follows:

§ 8.03.006. Enforcement.

(a) Generally. The City shall have the power to administer and enforce the provisions of this article as may be required by governing law. Any violation of this article is hereby declared to be a public nuisance.

- (b) Penalty for violation. An offense under this article shall be punished as provided in Section 1.01.013 of the Code of Ordinances.
- (c) If the violation occurs on or within a construction site, the construction site violation can be enforced, in addition to any other remedy, with a Stop Work Order, which Stop Work Order will be in place until the Burn Ban expires.
- (d) The Exceptions set out in section 8.03.005, automatically become terms and conditions of a construction or building permit, upon the declaration of a Burn Ban. In addition to the issuance of a Stop Work Order, the building or construction permit shall be subject to termination if a violation of this Article occurs.
- (e) Enforcement and remedies described herein are in addition to any other remedy provided herein, or state by law, or any other ordinance of this city and is cumulative thereof.

SECTION V. SEVERABILITY CLAUSE. If any provision, section, sentence, clause, or phrase of this ordinance or application of the same to any person or set of circumstances is for any reason held to be unconstitutional, void, invalid, or unenforceable, the validity of the remaining portions of this ordinance or its application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council of the City of West Lake Hills in adopting, and the Mayor in approving this Ordinance, that no portion thereof or provisions or regulation contained herein shall become inoperative or fall by reason of any unconstitutionally or invalidity of any portion, provision, or regulation.

SECTION VI. SAVINGS CLAUSE. The repeal of any ordinance or part of ordinances effectuated by the enactment of this ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the City under any section or provisions of any ordinances at the time of passage of this ordinance.

SECTION VII. REPEALER CLAUSE. The provisions of the Ordinance shall be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein, provided, however, that all prior ordinances or parts of ordinances inconsistent or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent that such inconsistency is apparent by any other ordinance.

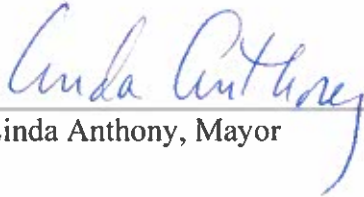
SECTION VIII. NOTICE AND MEETING CLAUSE. It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

SECTION IX. PENALTY. Any person who violates any provision of this ordinance shall be guilty of a misdemeanor, and upon conviction shall be fined as provided in Chapter 1. General Provisions, Article 1.01 Code of Ordinances, Section 1.01.013 General penalty for violations of code: continuing violations of the City of West Lake Hills Code, and/or applicable state law.

SECTION X. EFFECTIVE DATE. That this Ordinance shall take effect immediately from and after its passage as required by law.

DULY PASSED by the City Council of the City of West Lake Hills, Texas, on the 23 day of August, 2023.

CITY OF WEST LAKE HILLS, TEXAS

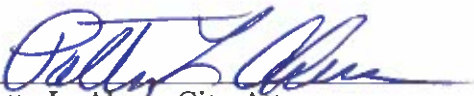

Linda Anthony, Mayor

ATTEST:


Terry Blanchard, City Secretary

[SEAL]

APPROVED AS TO FORM:


Patty L. Akers, City Attorney

