

# Outdoor Burning Rules, Regulations and Guidance

## A person's right to burn outdoors is not absolute

### Outdoor Burning

Outdoor burning in Texas is subject to many possible limitations. Local ordinances, governmental entities, and air quality control regulations may restrict when, where, how and if individuals and organizations can conduct outdoor burning.

In addition, Texas criminal statutes specify penalties that pertain to escaped control fires and deliberately set wildland fires. Persons responsible for escaped control or arson wildfires may also be faced with civil suits for damages caused by these fires.

Numerous entities, including the National Weather Service and the Texas Forest Service, may issue advisories, watches or warnings, when weather and fuel conditions increase the risk of escaped fires and/or the severity of wildfires. Public cooperation during the dangerous wildfire conditions is essential to prevent needless wildfires and the losses they may cause.

### Local Ordinances

Some municipalities have enacted local ordinances that prohibit or restrict outdoor fires within their corporate limits. Residents should always check with municipal officials about possible limitations on outdoor burning, so they do not unintentionally violate an existing ordinance.

### Governmental Entities

Under conditions of extreme fire danger, governmental units may issue a ban on outdoor burning to help prevent possibly disastrous wildfires from occurring.

A county judge and county commissioners court may issue a ban on outdoor burning that is applicable to unincorporated portions of the county. (The Texas Forest Service does not issue burn bans).

County officials may cite the Texas Disaster Act of 1975 (Chapter 418 Emergency Management) or HB 2620 Outdoor Burning (Chapter 352, Subchapter D, Local Government Code) as the basis for the county's ban.



Prior to 1999, most burning bans were based on the Disaster Act, which required a disaster declaration noting a present or imminent threat of natural disaster. In the case of a county, the county judge may issue a burning ban (or other emergency measures) for a period of seven days. Continuation of the burning ban longer than seven days is contingent on a vote of the county commissioners court to extend the ban. Violators of a burn ban under this legislation would be cited for failure to comply with the Emergency Management Plan. The plan may prescribe a punishment for the

offense of a fine up to \$1,000 or confinement in jail for a term up to 180 days.

In 1999 the Texas Legislature enacted HB 2620, which specifically addressed outdoor burning. This act authorizes counties to prohibit or restrict outdoor burning and provides a criminal penalty for noncompliance. Under this act, the commissioners court of a county by order may prohibit or restrict outdoor burning in general or in all or part of an unincorporated area of the county. An order must specify the period during which outdoor burning is prohibited or restricted, up to a maximum of 90 days. To continue the ban, the commissioners court may adopt an order that takes effect on the expiration of the previous order.

A person commits an offense if the person knowingly or intentionally violates the outdoor burning prohibition or restriction. An offense is a Class C misdemeanor, which is punishable by a fine up to \$500.

HB 2620 does not apply to outdoor burning activities (1) related to public health and safety that are authorized by the Texas Natural Resource Conservation Commission (Texas Commission on Environmental Quality) 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.

# Air Quality Regulations

## Excerpted from TCEQ publication “Outdoor Burning in Texas”

Outdoor burning impacts air quality. Regulations to minimize possible adverse impacts of outdoor burning are now administered by the Texas Commission on Environmental Quality (TCEQ).

The purpose of the current version of the Outdoor Burning Rule is to protect the environment, promote public health and safety, and avoid nuisance conditions through the sensible regulation of outdoor burning.

Only those portions of the outdoor burning regulations that most pertain to homeowners and rural residents are included in the following information.

### General Prohibition

The Outdoor Burning Rule first prohibits outdoor burning anywhere within the state of Texas, and then allows for exceptions for specific situations in which burning is necessary or does not pose a threat to the environment. The rule also prescribes conditions that must be met to protect the environment and avoid other adverse impacts when burning is allowed.

Outdoor disposal or deposition of any material capable of igniting spontaneously shall not be allowed without written permission of the TCEQ executive director or authorized staff representatives.

Compliance with TCEQ regulations does not mean that other, stricter laws, regulations or ordinances cannot be enforced by city, county or other governmental entities. There may be local ordinances or county burn bans that regulate burning; if so, you must comply with all such regulations (e.g. county burn bans) as well as the TCEQ rules.



## Exceptions to Prohibition of Outdoor Burning

### Firefighter Training

Entities that conduct firefighter training may obtain authorization to conduct outdoor burning for training, including training in the operation of fire extinguishers. The entity responsible for training must send a written request to the local air pollution control agency or the TCEQ regional office. The burning must not cause a nuisance or traffic hazard.

### Fires for Recreation, Ceremony, Cooking or Warmth



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, campfires, bonfires and cooking fires are allowed.

### Fires for Disposal or Land Clearing

**Domestic Waste** - Household trash or rubbish may be burned when the local governmental entity that has jurisdiction over such matters does not provide on-premises trash collection service or authorize a business or other entity to provide on-premises trash collection service. To qualify for this exception, the waste must come from a residence designed and used exclusively as a private residence for no more than three families. The waste must also be burned on the property where it was produced.

**On-site burning of waste plant growth** - Trees, brush, grass, leaves, branch trimmings and other plant growth may be burned on the property on which the material grew. Additional requirements and restrictions apply depending on the attainment status of the county in which the burning takes place. In most attainment counties, burning of waste plant growth is allowed regardless of how the material was generated. In nonattainment counties, burning of waste plant materials is allowed to maintain

rights-of-way, clear land or maintain the banks of water canals where there is no practical alternative.

**Crop residues** - Where there is no practical alternative, crop residues may be burned for agricultural management.

**Brush, trees, etc., off-site** - A county or municipal government may request site and burn approval from the TCEQ regional office to burn accumulations of brush, trees and other plant growth that cause a condition detrimental to public health and safety. The burning may not occur at a municipal solid waste landfill without obtaining permission from the TCEQ beforehand.

**Prescribed Burns** - This exception covers the use of fire to manage forests, rangeland, wildland and wildlife, and, in 14 counties, coastal salt marsh. Salt-marsh burning entails more specific notification requirements.

# General Requirements for Burning

The following requirements apply to the specific situations for which they are mentioned above. Note: 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. These requirements also do not exempt or excuse anyone from complying with all other applicable laws or ordinances, regulations and orders of governmental entities having jurisdiction.

Burn only outside the corporate limits of a city or town, unless the incorporated city or town has an ordinance that permits burning and is consistent with the Texas Clean Air Act.

Begin or continue burning only when wind direction and other weather conditions are such that smoke and other pollutants will not present a hazard to any public road, landing strip, or navigable water (e.g. lake, river, stream or bay) or have an adverse effect on any off-site structure containing "sensitive receptors."

Post someone to flag traffic if at any time the burning causes or may tend to cause smoke to blow onto or across a road or highway.

Keep fires downwind of or at least 300 feet (90 meters) away from any neighboring structure that contains sensitive receptors. This requirement may be waived only with the prior written approval of whoever owns or rents the adjacent property and either resides or conducts business there.



Begin burning no earlier than one hour after sunrise, end it the same day and no later than one hour before sunset, and make sure that a responsible party is present while the burn is active and the fire is progressing. Winds must be from six to 23 miles per hour during the burn period. Burning during temperature inversions or air stagnation advisories is prohibited.

Don't burn any electrical insulation; treated lumber; plastics; construction or demolition materials not made of wood; heavy oils; asphaltic materials; potentially explosive materials; chemical wastes; or items that contain natural or synthetic rubber.

Notify the Texas Forest Service before carrying out any prescribed or controlled burns that are intended for forest management.

For complete coverage of air quality regulations as they pertain to outdoor burning, consult the website for the Texas Commission on Environmental Quality at <http://www.tceq.state.tx.us/>.

A TCEQ publication entitled Outdoor Burning in Texas explains regulations in more detail and contains the answers to commonly asked questions. It can be accessed via the Internet at [http://www.tceq.state.tx.us/comm\\_exec/forms\\_pubs/pubs/rg-049.html](http://www.tceq.state.tx.us/comm_exec/forms_pubs/pubs/rg-049.html).

## Texas Penal Code - Outdoor Burning Offenses

Provisions within the Texas Penal Code address escaped control burning and deliberately set wildland fires.

### TITLE 7 OFFENSES AGAINST PROPERTY

#### CHAPTER 28 Arson, Criminal Mischief, Property Damage or Destruction

##### £28.04 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.

An offense under this section is a class C misdemeanor, punishable by a fine not to exceed \$500.

##### £28.02 Arson

A person commits a violation if he starts a fire or causes an explosion with intent to destroy or damage any vegetation, fence or structure on open space land. "Open space land" means real property that is undeveloped for the purpose of human habitation.

Wildland arson is a second degree felony unless the fire results in bodily injury or death. The offense becomes a first degree felony if someone is injured or killed because of the fire.

Punishment for wildland arson includes a possible fine up to \$10,000 and confinement in the Texas Department of Criminal Justice ranging from two years to life.

### Stop Arson

Report suspicious fire activity to your local law enforcement office or call the toll-free phone number shown below.

### Toll-Free

### Arson Hot Line

**1-800-364-3470**

You may be eligible for a reward up to \$2,000 if your information leads to the arrest and grand jury indictment of the person or persons responsible for arson.

# Guidance

## Fire Weather Watches and Warnings

National Weather Service offices issue daily fire weather forecasts that state and federal natural resource agencies use to plan deployment of wildfire detection and firefighting resources. NWS offices also issue fire weather watches and red flag warnings when weather and fuel conditions are expected to occur that significantly increase the risks of dangerous wildfires. Typically, these are short duration events.

The Texas Forest Service will also publicize the existence of dangerous fire conditions as they occur, to increase public awareness of the danger and encourage increased attention to outdoor fire safety.

The National Weather Service will issue a “Fire Weather Watch” to alert fire control officials and the public to the possible development of Red Flag conditions in a particular area or region in the near future (up to 72 hours in advance). Red Flag Warnings are issued when expected fuel (vegetation) and weather conditions will increase the likelihood of escaped control fires and rapid rates of spread of existing wildfires.

For a Red Flag Warning to be issued, predicted afternoon and evening relative humidity levels are expected to fall to 25 percent or lower, sustained winds at 20 feet above the ground are expected to exceed 15 miles per hour for at least two hours, and high fire danger is in place.

Weather criteria for Fire Weather Watches and Red Flag Warnings across Texas will vary somewhat with each NWS warning area, based on the vegetation, topography and distance from the Gulf of Mexico.



## Keetch-Byram Drought Index

### What It Measures and Means for Firefighters

The Keetch-Byram Drought Index (KBDI) is a stand-alone index that can be used to measure the effects of seasonal drought on fire potential. The numeric value of the index is an estimate of the precipitation amount (in hundredths of inches) needed to bring the soil back to saturation. A value of “0” reflects complete saturation of the soil. The index deals with only the top 8 inches of the soil profile, so the maximum KBDI value is 800 or 8.0 inches of precipitation that would be needed to bring soil back to saturation.

As KBDI value increases, the vegetation is subjected to increased stress due to moisture deficiency. At higher values, desiccation (or wilting) occurs, and live plant material is added to the dead fuel loading on the site. Also, an increasing portion of the duff/litter layer becomes available fuel at higher KBDI index values.

KBDI values are more closely tied to fire danger during the active growing season than during the winter months, so low

dormant season KBDI values do not necessarily correspond to low fire danger. Soil moisture can be abundant during the winter, but dormant vegetation gets its moisture largely from the humidity in the air, not from the soil. Dormant grass and weeds will dry rapidly during periods of dry, windy winter weather and can become highly fire-prone, even while the underlying soil remains damp or very wet.

For an indication of how KBDI values correlate with potential fire behavior, go to the following Internet website: <http://www.tamu.edu/ticc/> and then to Predictive Services. A wealth of other fire-related information is also available.

Wildfire risk assessment personnel and fire behavior analysts look at many other fire-related factors besides KBDI – particularly during the dormant season – to determine the expected risks of wildfire ignitions and difficulty of control. Fire control leaders then have a more comprehensive picture of potential wildfire activity and behavior on which to base decisions on resource staffing and placement.

## Fire Prevention Can Cut Wildfire Load

Prevention of human-caused wildfires holds the key to a significant reduction in the number of wildfires. People and their actions cause over 90 percent of all wildfires in Texas.

Successful fire prevention efforts aimed at reducing fires caused by careless debris burning will pay the biggest dividends in reducing wildfire occurrence. Unattended burning of household trash and brush piles, with poor or no firebreaks, accounts for a majority of debris fires. Burning leaves and other yard debris and burning off garden spots and pastures also contribute significantly to the wildfire load.

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