

FIRE RELATED RULES STATUTES AND LAWS
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GENERAL BURNING RULES AND REGULATIONS

Chapter 382, Health and Safety Code; Clean Air Act

Allows TNRCC, now TCEQ to adopt rules to control and prohibit outdoor burning, with little limitation.

The Rules They Adopted are Located in the Texas Administrative Code.

Title 30 T.A.C. §111, Subchapter B, Outdoor Burning

General prohibition on Outdoor Burning; then there are exceptions:

Exceptions: Firefighter Training
 Recreation, Ceremony, Cooking, Warmth
 Disposal Fires (including “Domestic Waste”)
 Prescribed Burns
 Hydrocarbon Burning
 Executive Director Approval

General Requirements for Allowable Outdoor Burning:

 Can’t smoke out a road
 Must stay away from “sensitive receptors”
 Can’t burn earlier than 1 hr. after sunrise
 Must complete burn not later than 1 hr. before sunset
 No burning unless wind > 6mph, and <23 mph
 List of things that can’t be burned (plastic, oils, rubber, treated lumber etc.)
30 TAC § 101.1(26) Domestic waste--The garbage and rubbish normally
 resulting from the functions of life within a residence.

Title 30 T.A.C. §70, Subchapter A, Enforcement Generally

Big Mess: Civil Enforcement
 &
 Process to refer for prosecution on criminal complaints

BUT, does not limit Class C citations by law enforcement responders.

PROSECUTION OF VIOLATIONS OF CLEAN AIR ACT

Water Code §7.177, Violations of Clean Air Act

Intentionally or Knowingly violate:

- H&S Code §382.0518(a); (Preconstruction Permit for facility emitting air cont.)
- H&S Code §382.054; (Federal Operating Permit)
- H&S Code §382.056(a); (Publication requirements for facility under §382.0518)
- H&S Code §382.058(a); (Permit to Build Concrete Plant)

OR, an order, permit, or exception issued or a **RULE ADOPTED** under Chapter 382 H&S Code (ie: T.A.C. §111 Rules)

PUNISHMENT (Water Code §7.187; Penalties):

Violation of §382.018, and accompanying rules adopted under that section:

General or first violation: Class C misdemeanor, up to \$500 fine.

Second or Subsequent violation: Class B misdemeanor, fine up to \$2,000, or up to 180 days in county jail, or a combination

Violation involving the burning of: tires, insulation on electrical wire or cable, treated lumber, plastics, non- wood construction or demolition materials, heavy oils, asphaltic materials, potentially explosive materials, furniture, carpet, chemical wastes, or items containing natural or synthetic rubber:

Class A Misdemeanor, fine up to \$4,000, or up to 1 year in county jail, or a combination

REGULATION OF OUTDOOR BURNING: (BURN BAN)

§352.081 Local Government Code

Gives Comm. Ct. authority to, by order,

Prohibit **OR** Restrict

Outdoor Burning: In general **OR** of a particular substance

In: All **OR** a part of the county

IF: drought conditions exist (defined in sub. (a), determined as set out in sub. (b))
OR
circumstances present create a public safety hazard that would be exacerbated by outdoor burning

DOES NOT APPLY TO: Outdoor Burning Activities Related To:

1. Public Health and Safety that are **authorized by TCEQ** for:

Firefighter Training (T.A.C. §111.205, Prior TCEQ approval req'd),

Public utility, natural gas pipeline, or mining operations (T.A.C. §111.215, Prior approval of TCEQ req'd), or

Planting or harvesting of agricultural crops(T.A.C. §111.215, Administrative Orders(RG-049).

OR

2. Burns conducted by Prescribed Burn Managers under §153 Natural Resources Code (Sets up Prescribed Burn Board, Prescribed Burn Standards, Certified Prescribed Burn Managers, Liability Limitations for Landowners, and Insurance Requirements for Prescribed Burn Managers)

Violation of Burn Ban Order is a Class C misdemeanor, up to \$500 fine.

NEW: Commissioners Court may designate that county judge or fire marshal can make determination that circumstances present no longer create a public safety hazard, and lift the burn ban!

DECLARATION OF DISASTER

Declaration can be from President, Governor, or County Judge.

To affect our discussion, declaration of governor or president must expressly prohibit all outdoor burning. County Declaration could be creative though as to what it prohibited. Remember to always get a copy of the written declaration to review. County declaration must specifically prohibit the activity that you want to participate in.

§418.108 Government Code

County Judge can declare a local disaster for 7 days, w/out Comm. Ct. action:

“Disaster” includes occurrence or imminent threat of bad stuff happening from **fire**.

§ 418.004. Definitions

In this chapter:

(1) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, **including fire**, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, extreme heat, other public calamity requiring emergency action, or energy emergency.

Prescribed Burn Legislation

Natural Resources Code § 153.001 - §153.104; Prescribed Burning

Tex. Nat. Res. Code § 153.081. Limitation of Owner Liability

(a) Subject to Section 153.082, an owner, lessee, or occupant of agricultural land is not liable for property damage or for injury or death to persons caused by or resulting from prescribed burning conducted on the land owned by, leased by, or occupied by the person if the prescribed burning is conducted under the supervision of a certified and insured prescribed burn manager.

T.A.C. Title 4, Chapters 225-229.

TITLE 4. AGRICULTURE
PART 13. PRESCRIBED BURNING BOARD
CHAPTER 226. STANDARDS FOR CERTIFIED PRESCRIBED BURN MANAGERS

§ 226.6. Requirements for Certified Prescribed Burn Managers Conducting Burns During a County Burn Ban

- (a) All TCEQ, state and local requirements for open burning shall apply at all times.
- (b) No certified prescribed burn manager may conduct a burn in a county in which a current Governor's and/or Presidential Declaration of Emergency or Disaster is in effect that expressly prohibits all outdoor burning.
- (c) The county commissioners court, county judge or designee must be notified in writing of the location where the prescribed burn is to take place prior to the burn. The commissioners court and county judge must be provided with the name, address, and emergency contact telephone numbers for the certified prescribed burn manager.
- (d) The county sheriff's office, TCEQ and TFS regional fire coordinator must be notified prior to the burn and when the burn is complete.
- (e) All necessary fire suppression entities serving the area where the burn is located must be notified prior to the burn and when the burn is complete.
- (f) The board will adopt a burn/do not burn checklist that must be adhered to during a county burn ban.

CRIMINAL CONCERNS

Clean Air Act Violations

Burn Ban Violations

Burning During Emergency Declaration

Burning During Burn Ban, without following all the rules (ie. 4 T.A.C. § 226.6)

Tex. Penal Code Chapter 28. Arson

§ 28.01. Definitions

In this chapter:

(1) "Habitation" means a structure or vehicle that is adapted for the overnight accommodation of persons and includes:

- (A) each separately secured or occupied portion of the structure or vehicle; and
- (B) each structure appurtenant to or connected with the structure or vehicle.

(2) "Building" means any structure or enclosure intended for use or occupation as a habitation or for some purpose of trade, manufacture, ornament, or use.

(3) "Property" means:

- (A) real property;
- (B) tangible or intangible personal property, including anything severed from land; or
- (C) a document, including money, that represents or embodies anything of value.

(4) "Vehicle" includes any device in, on, or by which any person or property is or may be propelled, moved, or drawn in the normal course of commerce or transportation.

(5) "Open-space land" means real property that is undeveloped for the purpose of human habitation.

(6) "Controlled burning" means the burning of unwanted vegetation with the consent of the owner of the property on which the vegetation is located and in such a manner that the fire is controlled and limited to a designated area.

§ 28.02. Arson

(a) A person commits an offense if the person starts a fire, regardless of whether the fire continues after ignition, or causes an explosion with intent to destroy or damage:

(1) any vegetation, fence, or structure on open-space land; or

(2) any building, habitation, or vehicle:

(A) knowing that it is within the limits of an incorporated city or town;

(B) knowing that it is insured against damage or destruction;

(C) knowing that it is subject to a mortgage or other security interest;

(D) knowing that it is located on property belonging to another;

(E) knowing that it has located within it property belonging to another; or

(F) when the person is reckless about whether the burning or explosion will endanger the life of some individual or the safety of the property of another.

(a-1) A person commits an offense if the person recklessly starts a fire or causes an explosion while manufacturing or attempting to manufacture a controlled substance and the fire or explosion damages any building, habitation, or vehicle.

(a-2) A person commits an offense if the person intentionally starts a fire or causes an explosion and in so doing:

(1) recklessly damages or destroys a building belonging to another; or

(2) recklessly causes another person to suffer bodily injury or death.

(b) It is an exception to the application of Subsection (a)(1) that the fire or explosion was a part of the controlled burning of open-space land.

(c) It is a defense to prosecution under Subsection (a)(2)(A) that prior to starting the fire or causing the explosion, the actor obtained a permit or other written authorization granted in accordance with a city ordinance, if any, regulating fires and explosions.

(d) An offense under Subsection (a) is a felony of the second degree, except that the offense is a felony of the first degree if it is shown on the trial of the offense that:

(1) bodily injury or death was suffered by any person by reason of the commission of the offense; or

(2) the property intended to be damaged or destroyed by the actor was a habitation or a place of

assembly or worship.

(e) An offense under Subsection (a-1) is a state jail felony, except that the offense is a felony of the third degree if it is shown on the trial of the offense that bodily injury or death was suffered by any person by reason of the commission of the offense.

(f) An offense under Subsection (a-2) is a state jail felony.

(g) If conduct that constitutes an offense under Subsection (a-1) or that constitutes an offense under Subsection (a-2) also constitutes an offense under another subsection of this section or another section of this code, the actor may be prosecuted under Subsection (a-1) or Subsection (a-2), under the other subsection of this section, or under the other section of this code.

§ 6.03. Definitions of Culpable Mental States

(a) A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result.

(b) A person acts knowingly, or with knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

(c) A person acts **recklessly**, or is reckless, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

(d) A person acts with criminal negligence, or is criminally negligent, with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

Tex. Code Crim. Proc. Art. 42.037. Restitution

(a) In addition to any fine authorized by law, the court that sentences a defendant convicted of an offense may order the defendant to make restitution to any victim of the offense or to the compensation to victims of crime fund established under Subchapter B, Chapter 56, to the extent that fund has paid compensation to or on behalf of the victim. If the court does not order restitution or orders partial restitution under this subsection, the court shall state on the record the reasons for not making the order or for the limited order.

CIVIL LIABILITY CONCERNS

Tort Law, mostly common law made by case law over the years, not necessarily codified in a statute.

Texas law follows the negligence standard to maintain a cause of action for damages resulting from a fire.

Three things that must be shown to maintain a cause of action for Negligence:

1. Breach of Duty:

Negligence: Failure to use ordinary care, that is, failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

Negligence per se: The unexcused violation of a legislative enactment or administrative regulation adopted by the Court as defining the standard of conduct of a reasonable person is negligence in itself. The unexcused violation of a statute or ordinance constitutes negligence as a matter of law if such statute or ordinance was designed to prevent injuries to a class of persons to which the injured party belongs. (A violation of any of the Criminal Concerns noted above)

2. Proximate Cause: That cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act of omission complained of must be such that a person using ordinary care would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause to an event.
3. Compensable Harm: Generally something that rises above minor aggravation or cosmetic in nature.

Non-Profit Exclusion From Liability

Charitable Immunity and Liability Act, Chapter 84:

Applies to a limited number of non-profit organizations engaging in a limited list of activities. Does not apply to prescribed burn associations formed for the purpose of rangeland management activities. Would not rely on it for any protection from liability for members of a PBA doing prescribed burns without a TDA licensed burn boss.

§ 84.004. Volunteer Liability

(a) Except as provided by Subsection (d) and Section 84.007, a volunteer of a charitable organization is immune from civil liability for any act or omission resulting in death, damage, or injury if the volunteer was acting in the course and scope of the volunteer's duties or functions, including as an officer, director, or trustee within the organization.

§ 84.003. Definitions

In this chapter:

(1) "Charitable organization" means:

(A) any organization exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c)(3) or 501(c)(4) of the code, if it is a nonprofit corporation, foundation, community chest, or fund **organized and operated exclusively for** charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, neighborhood crime prevention or patrol, **fire protection or prevention**(VFDs in my opinion, NOT PBAs), emergency medical or hazardous material response services, or educational purposes, including private primary or secondary schools if accredited by a member association of the Texas Private School Accreditation Commission but excluding fraternities, sororities, and secret societies, or is organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in a community;

(B) any bona fide charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, neighborhood crime prevention or patrol, or educational organization, excluding fraternities, sororities, and secret societies, or other organization **organized and operated exclusively for** the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in a community, and that:

(i) is organized and operated exclusively for one or more of the above purposes;

(ii) does not engage in activities which in themselves are not in furtherance of the purpose or purposes;

(iii) does not directly or indirectly participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office;

(iv) dedicates its assets to achieving the stated purpose or purposes of the organization;

(v) does not allow any part of its net assets on dissolution of the organization to inure to the benefit of any group, shareholder, or individual; and

(vi) normally receives more than one-third of its support in any year from private or public gifts, grants, contributions, or membership fees;

(C) a homeowners association ...;

(D) a volunteer center...; or

(E) a local chamber of commerce...

(2) "Volunteer" means a person rendering services for or on behalf of a charitable organization who does not receive compensation in excess of reimbursement for expenses incurred. The term includes a person serving as a director, officer, trustee, or direct service volunteer, including a volunteer health care provider.

(3) "Employee" means any person, including an officer or director, who is in the paid service of a charitable organization, but does not include an independent contractor....

INSURANCE POLICY ISSUES

Farm Liability Coverage:

Primary source of liability protection for most land owners, but may be ineffective for Prescribed Fire.

- Only designated Premises are covered.
- Your policy does not travel with you to your neighbors place.
- Your neighbor's policy does not cover your actions on his property in all likelihood.
- Policies don't define prescribed fire. No inclusion and no specific exclusion.
- Fire suppression expenses may be limited.
- Smoke coverage issues.
- Policy excludes liability when appropriate permits not received, and when actions are in violation of the law.

Never presume insurance exists unless you have verified with a professional insurance broker or company representative, **IN WRITING.**

Prescribed fire risks will continue to evolve as claims develop and legal precedents are made.
(You do not want to be a part of that process!)

Talk to your insurance company and make sure your specific insurance needs are being met.

Talk to your attorney and make sure you understand your criminal and civil liability in your specific situation.
