Village of Volente

OUTDOOR BURNING ORDINANCE

ORDINANCE NO. 2005-O-58

AN ORDINANCE OF THE VILLAGE OF VOLENTE, TEXAS, PROHIBITING THE CREATION OF CERTAIN FIRES WITHIN THE CITY LIMITS; PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT; A PURPOSE; DEFINITIONS; EXCEPTIONS; RESTRICTING THE DISCHARGE OF AIR GUNS; AN EFFECTIVE DATE; ENFORCEMENT CLAUSE INCLUDING INJUNCTIVE RELIEF AND A CRIMINAL FINE NOT TO EXCEED $500 AND CIVIL PENALTIES NOT TO EXCEED $500 PER VIOLATION; SEVERABILITY; AND PROPER NOTICE AND A MEETING

WHEREAS the City Council seeks to promote the health, safety and general welfare of the community by preventing death, injuries and property damage from wildfires within the City Limits; and

WHEREAS the City Council finds that the dry foliage and weather conditions within the Village are conducive to wildfires that may result in serious bodily injury, death, and property damage; and

WHEREAS the City Council finds that certain types of outdoor burning constitute a public nuisance that poses a significant and immediate threat to the health, safety, and welfare of City citizens and their property; and

WHEREAS pursuant to Texas Local Government Code Chapter 51 the City Council has the general authority to adopt and publish an ordinance or police regulation that is for the good government, peace or order of the municipality and is necessary or proper for the carrying out a power granted by law to the municipality; and

WHEREAS pursuant to Texas Local Government Code Chapter 217 the City Council has the general authority to identify, prevent and abate public nuisances; and

WHEREAS pursuant to Texas Local Government Chapter 342 the City Council has the express authority to adopt rules for the prevention of fires; and

NOW THEREFORE, be it ordained by the City Council of the Village of Volente, County of Travis, State of Texas:

1. ENACTMENT PROVISIONS

A. Findings of Fact

All of the above premises are hereby found to be true and correct legislative and factual findings of the Village of Volente and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

B. Purpose

This Ordinance is adopted so that the City Council may promote the public health, safety, and general welfare within the Village through the regulation of fires in order to prevent bodily injury, death, and property damage within the City Limits.

C. Jurisdiction

This Ordinance shall apply within and throughout the incorporated municipal boundary (i.e., city limits) of the Village of Volente.

D. Duration

This Ordinance shall be in effect immediately upon passage and publication. This Ordinance shall expire on JANUARY 1, 2006 unless earlier repealed by the City Council. This Ordinance may be extended by majority vote of the City Council.

2. DEFINITIONS

A. General

Words and phrases used in this Ordinance shall have the meanings set forth in this section. Words and phrases which are not defined in this Ordinance but are defined in other ordinances of the Village of Volente shall be given the meanings set forth in those ordinances. Other words and phrases shall be given their common, ordinary meaning unless the context clearly requires otherwise. Headings and captions are for reference purposes only, and shall not be used in the interpretation of this Ordinance.

B. Specific

(1) **City Limits:** means the municipal boundaries of the Village of Volente.

(2) **Enclosure:** means a structure that contains all flames and sparks, and is designed to prevent the fire from spreading.

(3) **Person:** means any human individual or corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

(4) **Village**: means the incorporated municipality of the Village of Volente, located in Travis County, Texas, its agents and assigns.

3. PROHIBITED ACTIONS

A. It shall be unlawful for any person to burn any combustible material outside of an enclosure within the City limits.

B. It shall be unlawful for any person to order another person to burn any combustible material outside of an enclosure within the City limits.

C. It shall be unlawful for any person to engage in activities that create sparks or flames resulting in the burning of combustible material outside of an enclosure within the City limits.

4. EXCEPTIONS

A. Sections 3.A through 3.C of this Ordinance 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) fire fighting training activities properly supervised by a firefighting authority, department or political subdivision; or

(4) prescribed burns properly conducted and supervised by a prescribed burn manager certified under section 153.048, and that meet the standards established in section 153.047 of the Texas Natural Resources Code.

(5) the use of blank cartridges for a theatrical production, military ceremony, or sporting event that is either sponsored by an educational institution or issued a permit by the Village; or

(6) emergency flares or other identification markers used in emergency situations.

5. ENFORCEMENT

A. Civil and Criminal Penalties

The Village shall have the power to administer and enforce the provisions of this Ordinance as may be required by governing law. Any person violating any provision of this Ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this Ordinance is hereby declared to be a nuisance.

B. Criminal Prosecution

Any person violating any provision of this Ordinance shall, upon conviction, be fined a sum not exceeding $2,000.00. Each day that a provision of this Ordinance is violated shall constitute a separate offense. An offense under this Ordinance is a misdemeanor.

C. Civil Remedies

Nothing in this Ordinance shall be construed as a waiver of the Village's right to bring a civil action to enforce the provisions of this Ordinance and to seek remedies as allowed by law, including, but not limited to the following:

(1) injunctive relief to prevent specific conduct that violates the Ordinance or to require specific conduct that is necessary for compliance with the Ordinance; and

(2) a civil penalty up to $1,000.00 a day when it is shown that the defendant was actually notified of the provisions of the Ordinance and after receiving notice committed acts in violation of the Ordinance or failed to take action necessary for compliance with the Ordinance; and

(3) other available relief.

6. SEVERABILITY

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this ordinance be severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance, and the remainder of this ordinance shall be enforced as written.

7. PROPER NOTICE AND MEETING

It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public as required 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. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

PASSED AND APPROVED the 15th day of November 2005, by a vote of 5 (ayes) to 0 (nays) to 0 (abstentions) of the City Council of the Village of Volente, Texas.

VILLAGE OF VOLENTE

by: _____
Jan Yenawine, Mayor

ATTEST:

_____
Jennifer Zufelt, City Secretary