

**CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Environmental Services Department

AGENDA DATE: CCA Introduction 12/22/09; Public Hearing 1/5/10

CONTACT PERSON/PHONE: Ellen Smyth, 621-6719

DISTRICT(S) AFFECTED: **Citywide**

SUBJECT: **ORDINANCE**

AN ORDINANCE AMENDING TITLE 9 (HEALTH AND SAFETY), CHAPTER 9.36 (AIR POLLUTION) OF THE EL PASO CITY CODE BY DELETING SECTION 9.36.050 AND BY ADDING SECTION 9.36.100 (DISPOSAL FIRE EXCEPTION); THE PENALTY AS PROVIDED IN SECTIONS 9.52.030.105.1.1 OF THE EL PASO CITY CODE.

BACKGROUND / DISCUSSION:

The Environmental Services Department is requesting an ordinance be revised to allow for a disposal fire at the Rio Bosque Wetlands Park consisting of the on-site burning of trees, brush, grass, leaves, branch trimmings, or other plant growth. The park consists of open land occupying an area of approximately 372 acres. The area serves as a public park and a wetland habitat for migratory water fowl and plant life. The wetlands park focuses on establishing meaningful examples of native plant life and animal communities historically found in the river valley. The ordinance change is needed because no other practical alternative exists for disposal of the on-site vegetation.

PRIOR COUNCIL ACTION: N/A

AMOUNT AND SOURCE OF FUNDING: N/A

BOARD / COMMISSION ACTION: N/A

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required)

DEPARTMENT HEAD:

(Example: if RCA is initiated by Purchasing, client department
should sign also)

Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 9 (HEALTH AND SAFETY), CHAPTER 9.36 (AIR POLLUTION) OF THE EL PASO CITY CODE BY DELETING SECTION 9.36.050 AND BY ADDING SECTION 9.36.100 (DISPOSAL FIRE EXCEPTION); THE PENALTY AS PROVIDED IN SECTIONS 9.52.030.105.1.1 OF THE EL PASO CITY CODE.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

Section 1. That Title 9 (Health and safety), Chapter 9.36 (Air pollution), Section 9.36.050 (Adoption of ambient air and emission standards) of the El Paso City Code, shall be and hereby is deleted, and that the section number shall remain reserved.

Section 2. That Title 9 (Health and safety), Chapter 9.36 (Air pollution) of the El Paso City Code, shall be and hereby is amended to revise Section 9.36.060 (Additional ambient air and emission standards) as follows:

9.36.060 Additional ambient air and emission standards.

In addition to the requirements of Texas State Law in the area of air and emissions standards, the city council of the city adopts the following air and emission standards for those contaminants and activities specified below and which are not regulated by the Texas Commission on Environmental Quality:

The maximum acceptable concentration in the ambient air of this city of each air contaminant named in Column I is set forth in Column II. The maximum acceptable emission in the air of this city of each air contaminant named in Column I is set forth in Column III. When the emission is measured by a high volume air sampler, the level of emission shall be determined on the basis of the difference between the upwind level and the downwind level of the air contaminant for the property.

TABLE INSET:

Column I	Column II	Column III
(1) Lead compounds	5 ug/m ³ of air average over any 30-day period	5 ug/m ³ of air average over any 30-day period
(2) Hydrogen Fluoride	1 ppb of air by volume over a 24-hour period	0.5 ppb of air by volume
(3) Beryllium	0.01 ug/m ³ of air average over any 24-hour period	0.01 ug/m ³ of air average over any 24-hour period

(4) Hydrocarbons	3.0 ppm-total hydrocarbons	
Total hydrocarbons shall be the sum of the concentration of C and higher saturated and unsaturated hydrocarbons as measured by gas chromatography.		(a) Non-methane hydrocarbons -- 1.5 ppm
(5) Carbonyls		10 ppm of air by volume
Total carbonyls shall include aldehydes and ketones calculated as formaldehydes. Each carbonyl group is deemed equivalent to one molecule of formaldehyde.		
(7) Carbon monoxide	10 ppm for 8 hours or 30 ppm for 1 hour	
(8) Ozone	0.1 ppm (one hour average) not to be exceeded on more than 3 days per year	
(9) Visible emissions		
(A) A person shall not discharge into the atmosphere from any single point source of emission(s) whatsoever any air contaminants which exceed:		
(a) 20% opacity using Environmental Protection Agency (EPA) Method 9 procedures under New Source Performance Standards (NSPS).		
(b) Any opacity that exceeds any type of Air Permit or Permit by Rule issued by the Texas Commission on Environmental Quality.		
(10) Particulate matter from certain activities		
Open storage and open processing operations, including on site transportation movements, which are the source of windborne dust or other particulate matter, and the operation of equipment which generates suspended particulate matter, such as that used in paint spraying, grain handling, or gravel processing or storage, or sandblasting, shall be so conducted that dust and		

<p>other particulate matter is not transported across the boundary line of the property on which the operation is conducted in concentrations exceeding the limits specified in 30 TAC Chapter 111 Control of Air Pollution from Visible Emissions and Particulate Matter.</p>		
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Section 3. That Title 9 (Health and safety), Chapter 9.36 (Air pollution) of the El Paso City Code, shall be and hereby is amended to add Section 9.36.100 (Disposal Fire Exception) as follows:

9.36.100 Disposal Fire Exception.

A. Notwithstanding any current prohibitions against outdoor burning within the limits of the city, there shall be an exception for a disposal fire that consists of the on-site burning of trees, brush, grass, leaves, branch trimmings, or other plant growth at Rio Bosque Park located at 10719 Socorro Road, El Paso, Texas by the city or any other person authorized by the city and when the material is generated only from that property even while said outdoor burn is in a designated nonattainment area or that contains any part of the city that extends into a designated nonattainment area, if the plant growth was generated as a result of right-of-way maintenance, land clearing operations, and maintenance along water canals when no practical alternative to burning exists. Such burning is subject to the following requirements:

1. Prior to prescribed or controlled burning, the applicant for an open burning permit shall submit to the fire official an application for an open burning permit, a minimum of ten (10) days in advance of the proposed burn, and that application shall include the date(s) burning will occur, specific location, the time burning will commence, and the estimated time burning will terminate.

2. The fire official shall in turn submit the application to the City of El Paso Air Quality Program of the Department of Environmental Services. Upon review of the application, the Director of the Department of Environmental Services shall approve said application if the following criteria are not met or shall deny said application if the following criteria are met, and within five working days of receipt of the application shall

notify the fire official of the Department of Environmental Services' approval or denial of the application:

a. during periods when the outdoor burn ban is in effect for El Paso County, as established by the Texas Interagency Coordination Center;

b. if the request proposes anything other than the on-site burning of trees, brush, grass, leaves, branch trimmings, or other plant growth when the material is generated only from that property and when there is no other practical alternative means of disposal; or

c. if there is a structure with sensitive receptors on adjacent property less than 300 feet from the area of the open burning, unless the disposal fire requestor provides written approval from the property owner where said structure is located.

3. After receipt of a denial from the Department of Environmental Services, the fire official shall notify the applicant of said denial. After receipt of an approval from the Department of Environmental Services, the fire official shall issue the open burning permit for the prescribed or controlled burn subject to the following criteria being met:

a. Current and adopted fire code requirements;

b. An on-site pre-burn inspection conducted by the El Paso Fire Department-Fire Prevention Division when required by the fire official;

c. Receipt of fees for the open burning permit; and

d. Receipt of fees for fire watch/standby personnel when such personnel are required by the fire official in the amount identified in the adopted budget resolution for the current fiscal year, or other appropriately adopted resolution by City Council.

4. Pursuant to this subsection, a "practical alternative" is defined as an economically, technologically, ecologically, and logistically viable option, such as recycling, composting, mechanical chipping or mulching, logging, landfills or air curtain incineration (trench burning).

5. Burning must be outside the corporate limits of the city except as described in subchapter 9.36.100 which permits burning consistent with the Texas Clean Air Act, subchapter E, Authority of Local Governments.

6. Burning shall commence and be conducted only when wind direction and other meteorological conditions are such that smoke and other pollutants will not cause adverse effects to any public road, landing strip, navigable water, or off-site structure containing sensitive receptor(s), unless the city obtains prior written approval from the property owner where said receptor is located.

7. If at any time the burning causes or may tend to cause smoke to blow onto or across a road or highway, it is the responsibility of the person initiating the burn to post flag-persons on affected roads.

8. Burning must be conducted downwind of or at least 300 feet (90 meters) from any structure containing sensitive receptors located on adjacent properties unless the city obtains prior written approval from the property owner where said structure is located.

9. Burning shall be conducted in compliance with the following meteorological and timing considerations:

a. The initiation of burning shall commence no earlier than one hour after sunrise. Burning shall be completed on the same day not later than one hour before sunset, and shall be attended by a responsible party at all times during the active burn phase when the fire is progressing. In cases where residual fires and/or smoldering objects continue to emit smoke after this time, such areas shall be extinguished if the smoke from these areas has the potential to create a nuisance or traffic hazard condition. In no case shall the extent of the burn area be allowed to increase after this time.

b. Burning shall not be commenced when surface wind speed is predicted to be less than six miles per hour (mph) (five knots) or greater than 23 mph (20 knots) during the burn period.

c. Burning shall not be conducted during periods of actual or predicted persistent low-level atmospheric temperature inversions.

10. Electrical insulation, treated lumber, plastics, non-wood construction/demolition materials, heavy oils, asphaltic materials, potentially explosive materials, chemical wastes, and items containing natural or synthetic rubber must not be burned.

B. The fire official is authorized to order the extinguishment by the permit holder or the fire department of open burning, which creates or adds to a hazardous or objectionable situation. Prescribed or controlled burning without an approved open burning permit shall not be allowed and City Code Subsection 9.52.030.105.1.1 shall be enforced.

Section 2. This ordinance shall take effect on January 5, 2010.

Section 3. Except as expressly herein amended, Title 9 (Health and safety), Chapter 9.36 (Air pollution), of the El Paso City Code shall remain in full force and effect.

(signatures appear on following page)

ADOPTED THIS ____ DAY OF _____, 2010.

THE CITY OF EL PASO:

ATTEST:

John F. Cook, Mayor

Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Josette Flores
Assistant City Attorney

Otto Drozd
Fire Chief

APPROVED AS TO CONTENT:

Ellen A. Smyth, Director
Environmental Services Department