

ORDINANCE NO. O2022-018

AN ORDINANCE of the City Council of the City of Tumwater, Washington, related to amendments to Chapter 8.16, *Fire Safety*, of the Tumwater Municipal Code associated with burn restrictions as more particularly described herein; declaring an emergency and establishing an effective date.

WHEREAS, the City is in the process of preparing a Habitat Conservation Plan in partnership with the Port of Olympia, which will include the conservation of native prairies; and

WHEREAS, other property owners in the City have state or federally approved habitat conservation plans that include the conservation of native prairies; and

WHEREAS, to mitigate actions taken under habitat conservation plans, the conservation of native prairies require controlled burns to maintain their conservation value; and

WHEREAS, amendments to Chapter 8.16, *Fire Safety*, of the Tumwater Municipal Code are proposed to allow for controlled burns to maintain native prairie conservation lands; and

WHEREAS, both City and the Washington State Department of Natural Resources (WDNR) burn permits would be required, so coordination is required between WDNR and the City Fire Department; and

WHEREAS, controlled burns to maintain the conservation value of native prairies used as conservation lands for habitat conservation plans can only occur during a limited period during the year; and

WHEREAS, controlled burns promote public safety by reducing the threat of wildfire in open spaces; and

WHEREAS, due to the time constraints to complete a required burn for an approved habitat conservation plan in the 2022 burn season; the City Council finds a public emergency exists; and

WHEREAS, the Attorney General *Advisory Memorandum and Recommended Process for Evaluating Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property* (September 2018) was reviewed and utilized by the City in objectively evaluating the proposed amendments; and

WHEREAS, the Public Health and Safety Committee held a briefing on the proposed code amendments on August 9, 2022; and

WHEREAS, the City Council considered the proposed code amendments September 6, 2022; and

WHEREAS, the City Council finds that the provisions of this Ordinance are in the best interest of and protect the health, safety, and welfare of the residents of the City.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TUMWATER, STATE OF WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Section 8.16.010 of the Tumwater Municipal Code is hereby amended to read as follows:

8.16.010 Burning restricted.

Except as otherwise allowed by permit issued by the City pursuant to TMC 8.16.035,
The burning or disposal of refuse, sawdust, oil, fuel oil, or other material, in such a manner as to cause or permit ashes, sawdust, soot, cinders or other material to be cast upon the streets and/or alleys of the city, or to cause or permit the smoke, ashes, soot, gases or other materials arising from such burning to become annoying to any considerable number of persons or to damage the property of any considerable number of persons, or to injure or endanger the health, comfort or repose of such persons or to damage or injure the property of any person or persons, firm, company or corporation is declared to be a nuisance.

(Ord. O2011-007, Amended, 07/19/2011; Ord. 376, Added, 11/10/1958)

Section 2. A new Section 8.16.035, Permit process and authority, of the Tumwater Municipal Code is hereby created and is to read as follows:

8.16.035 Permit process and authority.

The fire chief, or their designee, shall have the authority to issue a controlled burn permit consistent with State law.

A. An applicant shall apply for a permit through the fire department and shall concurrently apply for state burn permit through the Washington department of natural resources.

B. An applicant shall be required to submit a communications plan regarding the proposed burn to notify area residents as part of the city controlled burn permit application. The fire chief or designee will work with the applicant to determine the required scope for the communications plan, but the implementation of the communications plan shall be the responsibility of the applicant.

C. A city controlled burn permit may not be issued until the applicant has an approved state burn permit and communications plan. The fire chief shall retain the right to cancel, modify, or postpone the burn if conditions are deemed too hazardous to burn on a given day.

Section 3. Corrections. The City Clerk and codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers, and any references thereto.

Section 4. Ratification. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section 5. Severability. The provisions of this ordinance are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of the ordinance, or the validity of its application to other persons or circumstances.

Section 6. Declaration of Emergency — Effective Date. For the reasons set forth above, and to promote the objectives stated herein, the City Council finds that a public emergency exists, necessitating that this ordinance take effect immediately upon its passage by unanimous vote of the City Council in order to protect the public health, safety, property, and general welfare. This ordinance shall take effect and be in force immediately upon unanimous passage by the City Council.

Section 7. Alternate Effective Date. If this Ordinance does not become effective immediately as provided in Section 6, then this Ordinance shall become effective thirty days after passage, approval, and publication as provided by law.

ADOPTED this _____ day of _____, 20__.

CITY OF TUMWATER

Debbie Sullivan, Mayor

ATTEST:

Melody Valiant, City Clerk

APPROVED AS TO FORM:

Karen Kirkpatrick, City Attorney

Published:_____

Effective Date:_____