

1 **THE CITY OF WOODCREEK**
2 **ORDINANCE NO. 2023-01-10-03**
3

4 **AN ORDINANCE AMENDING THE CITY OF WOODCREEK CODE OF ORDINANCES**
5 **AT TITLE IX ("GENERAL REGULATIONS"), CHAPTER 93 ("FIRE PREVENTION AND**
6 **PROTECTION") PROVIDING FOR THE PROHIBITION OF OPEN BURING WITH**
7 **EXCEPTIONS.**

8
9 **WHEREAS**, the City Council recognizes the importance of fire safety, prevention and protection; and

10 **WHEREAS**, the City Council finds that the fire response systems available to the City to be adequate, but
11 limited, and therefore preventative measures are essential; and

12 **WHEREAS**, the City Council further finds that the City of Woodcreek has a duty and responsibility to
13 uphold regulations as set by the local regulatory authority for fire prevention and safety; and

14 **WHEREAS**, the City Council understands that the City of Woodcreek has a duty and responsibility to
15 enforce such regulations as outlined by the local regulatory authority and may add additional limitations under
16 the framework of fire prevention and safety as determined necessary by the governing body; and

17 **WHEREAS**, the City Council thus finds it desirable and reasonable to create, update, and maintain a
18 municipal ordinance for fire safety and prevention to ensure the health and safety of all residents; and

19 **WHEREAS**, section 51.012 of the Local Government Code provides a Type A general law municipality,
20 such as the City of Woodcreek, Texas, may adopt an ordinance, act, law, or regulation, not inconsistent with state
21 law, that is necessary for the government, interest, welfare, or good order of the municipality; and

22 **Whereas**, pursuant to Texas Local Government Code section 342.003 the City Council has the express
23 authority to adopt rules and for the prevention of fires and the governing body considers necessary; and

24 **Whereas**, open burning within the city is hereby found by the City Council to be a public nuisance and
25 hazard to adjoining property.

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27 **NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WOODCREEK, TEXAS:**

28 **SECTION I. CODE AMENDMENT:** The City Code of Ordinances Title IX, Chapter 93 is hereby amended by
29 deleting Sections 93.17 through 93.18 and replacing said sections with the following sections:

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31 **§ 93.17 DEFINITIONS.**

32 For the purpose of this subchapter, the following definitions shall apply unless the context
33 clearly indicates or requires a different meaning.

34 *Open Burning.* burning of brush, trash, wood, plastics, leaves, waste products or similar
35 materials outdoors, other than in an incinerator designed and constructed for such purpose.

36 *Trash.* Anything worthless and useless, building materials, twigs, trees, limbs, rubbish,
37 garbage, rags and brush.

38 **§ 93.18 OPEN BURNING PROHIBITED; RESTRICTIONS.**

39 (A) Except as provided for herein, it shall be unlawful for any person to engage in Open
40 Burning within the City limits, unless a written permit has been issued by the Fire Marshal.

41 (B) During times when no burn ban has been declared by Hays County, small fires
42 are permitted in residential fire pits or chimineas subject to the following:

43 (a) The fire pit or chiminea is not located within five feet of a residence or
44 structure;

45 (b) The fire pit has large metal sides, built up concrete blocks, or is constructed of
46 cement, rock, or similar non-flammable/non-conductive materials;

47 (c) The chiminea is placed on a non-flammable stand or is elevated to not be

- 48 placed directly on the ground and/or structure.
- 49 (d) The fire pit or chiminea must be completely covered by a spark arrestor or
- 50 similar fine metal grate to prevent flying sparks and embers;
- 51 (e) All fire pits must be based on a solid, non-flammable surface (rock, brick);
- 52 (f) Non-commercial preparation of food utilizing a bar-b-que, grill, or smoker
- 53 or individual device;
- 54 (g) The fire must be attended at all times; and
- 55 (h) The property owner or the fire attendant has the means to
- 56 extinguish the fire at all times, if necessary.
- 57 (C) Any governmental entity, with written permission from the City, may conduct Open
- 58 Burning in the City limits to correct an obvious hazardous condition or to conduct fire
- 59 training.
- 60 (D) It shall be unlawful for any person or persons to violate any verbal or written directive of
- 61 the Fire Marshal, City Marshal or any City Official when the directive prohibits, restricts, limits or sets
- 62 guidelines for open burning consistent with this Chapter and State law.
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- 66 (E) The Fire Marshal, City Marshal and all other officers of the City are granted the
- 67 authority to enforce the provisions of this subchapter and impose, by written order,
- 68 temporary restrictions upon the use of outdoor fire pits or chimineas as conditions warrant.
- 69

70 **SECTION II. SEVERABILITY CLAUSE:** Should any of the clauses, sentences, paragraphs, sections or parts of this
 71 Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with
 72 jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.
 73 All provisions of this Ordinance are declared severable.

74 **SECTION III. CUMULATIVE CLAUSE:** This Ordinance shall be cumulative of all provisions of ordinances of the City
 75 except where provisions of this Ordinance are in direct conflict with the provisions of such ordinances, in which
 76 event the conflicting provision soft h such ordinances are hereby repealed.

77 **SECTION IV. REPEALER CLAUSE:**All Ordinances, Resolutions, or parts thereof, that are in conflict or inconsistent
 78 with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this
 79 Ordinance shall be and remain controlling as to the matters regulated, herein.

80 **SECTION V. SAVINGS CLAUSE:** The repeal or amendment of any ordinance or part of ordinances effectuated by
 81 the enactment of this ordinance shall not be construed as abandoning any action now pending under or by virtue
 82 of such ordinance or as discontinuing, abating, modifying, or altering any penalty accruing or to accrue or as
 83 affecting any right of the City of Woodcreek under any section or provisions of any ordinances in effect at the time
 84 of the passage of this Ordinance.

85 **SECTION VI. PROPER NOTICE AND MEETING:** It is hereby officially found and determined that the meeting at
 86 which this Ordinance was passed was open to the public as required and that public notice of the time, place and
 87 purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government
 88 Code. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

89 Effective as of final passage and any publication as required by law.

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91 **PASSED AND APPROVED** this _____ day of _____, 2023,
 92
 93 by a _____ to _____ vote of the City Council of Woodcreek, Texas.

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96

97 WOODCREEK, TEXAS

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100 By: _____

101 Jeff Rasco, Mayor

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| PLACE | 102 |
| | 103 |
| CITY SEAL | 104 |
| | 105 |
| HERE | 106 |
| | 107 |

108 ATTEST:
109
110 _____
111 Suzanne J. Mac Kenzie, City Secretary

112
113 APPROVED AS TO FORM:
114
115 _____
116 City Attorney's Office