

City Council
Special Meeting

March 5, 2013

The following were present: Mayor Charlie Brown; Mayor Pro Tem Fred Jones; Council Members Tommy Ewing, Kevin Schkade, Gene Parker, and Joel Lopez; City Attorney Michelle Weiser, City Manager Ricky Jorgensen, and City Secretary Jessica Graefe.

I. Call to Order

Mayor Brown called to order the regular meeting of the City Council at 7:00 p.m. on Tuesday, March 5, 2013, at the Giddings Municipal Building.

II. Pledges to the US and Texas Flags

Boy Scout Kyle Schatte led the pledges of allegiance to the U.S. and Texas flags.

III. Invocation & Welcome

Mayor Pro Tem Fred Jones gave the invocation and Mayor Brown welcomed the visitors.

IV. Citizens' Comments

No comments.

V. Proclamation

Mayor Brown read the Proclamation to Sean and Anna Friedrich.

VI. Consent Agenda

a) Mayor Pro Tem Fred Jones moved to approve minutes of the regular meeting held on February 4, 2013. The motion was seconded by Council Member Tommy Ewing.

Motion carried by the following vote:

AYE: five

NAY: none

VII. New Business

a) Interlocal Agreement between the City and Texas Colorado River Floodplain Coalition requires no action per City Attorney Michelle Weiser.

b) Council Member Joel Lopez moved to approve the recommendation from the Chief of Police regarding the ratification of Stop and Speed Limit Signs. The motion was seconded by Council Member Kevin Schkade.

Motion carried by the following vote:

AYE: five

NAY: none

c) Resolution nominating a member to the Lee County Appraisal District Board was tabled per City Attorney Michelle Weiser.

d) Council Member Gene Parker moved to approve Ordinance #680 amending article 5.07 "outdoor burning". The motion was seconded by Council Member Tommy Ewing.

Motion carried by the following vote:

AYE: five

NAY: none

City of Giddings, Texas

ORDINANCE NO. 680
Amendment and Replacement of Article 5.07
"Outdoor Burning"

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIDDINGS, TEXAS, REGULATING OUTDOOR BURNING WITHIN THE CORPORATE CITY LIMITS OF THE CITY OF GIDDINGS; PROVIDING DEFINITIONS; ESTABLISHING PROCEDURES FOR AN EMERGENCY BURN BAN; PROVIDING A PENALTY OF FINE FOR VIOLATIONS; PROVIDING A SAVINGS CLAUSE, PROVIDING SEVERABILITY, AND PROVIDING AN EFFECTIVE DATE

WHEREAS, City Council desires to provide the regulating of outdoor burning to protect public health, safety and welfare of the City of Giddings as set forth in Title 30 of the Texas Administrative Code (TAC), Sections 111.201 to 111.221 and to comply with Subchapter E of the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382).;

WHEREAS, City Council desires to amend Section 5.07 of the Code of Ordinance regarding Outdoor Burning to better protect the public health, safety and welfare of the City of Giddings.

WHEREAS, City Council desires to provide penalties for violations of Outdoor Burning regulations and restrictions;

WHEREAS, a public nuisance is anything that works injury, harm or prejudice to an individual or public, or which causes a well-founded apprehension of danger. A nuisance obstructs, impairs or destroys the reasonable, peaceful and comfortable use of property.

WHEREAS; outdoor burning, except under the limited circumstances set out herein, is a public nuisance;

WHEREAS; to protect the public health, safety and welfare of the City of Giddings it is beneficial to enforce this ordinance throughout the territory of the city.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GIDDINGS, TEXAS:

That Article 5.07 of the City of Giddings Code of Ordinance entitled "Outdoor Burning" is hereby amended and revised as follows:

SECTION 5.07.001- General prohibition

No person may cause, suffer, allow, or permit any outdoor burning within the city, except as provided by this article or by orders or permits of the state commission on environmental quality. Outdoor disposal or deposition of any material capable of igniting spontaneously, with the exception of the storage of solid fossil fuels, shall not be allowed without written permission of the Fire Marshal. The term "Fire Marshal" shall mean a regularly salaried, full-time employee of the city, designated as the individual tasked with the enforcement of this article or his designee.

SECTION 5.002 Definitions

Terms used in this article shall be defined as follows:

Extinguished. The absence of any visible flames, glowing coals, or smoke.

Land clearing operation. The uprooting, cutting or clearing of vegetation in connection with conversion for the construction of buildings, rights-of-way, residential, commercial, or industrial development, or the clearing of vegetation to enhance property value, access or production. It does not include the maintenance burning of on-site property wastes such as fallen limbs, branches, or leaves, or other wastes from routine property cleanup activities, nor does it include burning following clearing for ecological restoration.

Practical alternative: An economically, technologically, ecologically and logistically viable option.

Prescribed burn. The controlled application of fire to naturally occurring vegetative fuels under specified environmental conditions and confined to a predetermined area, following appropriate planning and precautionary measures.

Structure containing sensitive receptor(s). A manmade structure utilized for human residence or business, the containment of livestock, or the housing of sensitive live vegetation. The term "manmade structure" does not include such things as range fences, roads, bridges, hunting blinds or facilities used solely for the storage of hay or other livestock feeds. The term "sensitive live vegetation" is defined as vegetation which has potential to be damaged by smoke and heat, examples of which include, but are not limited to, nursery production, mushroom cultivation, pharmaceutical plant production, or laboratory experiments involving plants.

Wildland. Uncultivated land other than fallow, land minimally influenced by human activity, and land maintained for biodiversity, wildlife forage production, protective plant cover, or wildlife habitat.

SECTION 5.07.003 Exception for fire training

- (a) Outdoor burning shall be authorized for training firefighting when done in accordance with Texas Administrative Code title 30, part 1, chapter 111, subchapter B, section 111.205.
- (b) Authorization to conduct outdoor burning under this provision may be revoked by the Fire Marshal if the authorization is used to circumvent other prohibitions of this article.

SECTION 5.07.004 Exception for fires used for recreation, ceremony, cooking, and warmth

Outdoor burning shall be authorized for fires used solely for recreational or ceremonial purposes, in the preparation of food, or used exclusively for the purpose of supplying warmth during cold weather. Such burning shall be subject to the requirements of this article relating to general requirements for allowable outdoor burning.

SECTION 5.07.005 Exception for disposal fires

Outdoor burning shall be authorized for the following:

- (1) On-site burning of trees, brush, and other plant growth for right-of-way maintenance, land clearing operations and maintenance, untreated lumber, grass, leaves, and branch trimmings, when no practical alternative to burning exists and when the materials are generated only from that property. Examples of wastes which cannot be burned include, but are not limited to, such things as tires, nonwood construction debris, furniture, carpet, electrical wire, plastics, rubber and appliances. Structures containing sensitive receptors must not be negatively affected by the burn. Such burning shall be subject to the requirements of section 5.07.008 of this article relating to general requirements for allowable outdoor burning. Notifications of intent to burn should be made to the Fire Marshal prior to the proposed burn. For a single project entailing multiple days of burning, an initial notice delineating the scope of the burn is sufficient if the scope does not constitute circumvention of the rule for a continual burn situation and if conditions do not change which would cause the burn to be prohibited.
- (2) Diseased animal carcass burning when burning is the most effective means of controlling the spread of disease.
- (3) Veterinarians in accordance with V.T.C.A., Occupations Code section 801.361, disposal of animal remains.
- (4) Crop residue burning for agricultural management purposes when no practical alternative exists. Such burning shall be subject to the requirements of section 5.07.008 of this article, and the burn must not negatively affect structures containing sensitive receptors. Notification of intent to burn should be made to the Fire Marshal prior to the proposed burn.

SECTION 5.07.006 Exception for prescribed burn

Prescribed burning for forest, range and wildland/wildlife management purposes shall be subject to the requirements of section 5.07.008 of this article, relating to general requirements for allowable outdoor burning, and structures containing sensitive receptors must not be negatively affected by the burn.

SECTION 5.07.007 Exception for hydrocarbon burning

Outdoor burning shall be authorized for hydrocarbon burning from pipeline breaks and oil spills only upon proper notification as set forth in Texas Administrative Code, title 30, part 1, chapter 101, subchapter F.

SECTION 5.007.008 General requirements for allowable outdoor burning

All allowable outdoor burning shall be subject to following requirements unless specifically stated otherwise.

- (1) All burning shall comply with Texas Administrative Code, title 30, chapter 111, subchapter B.
- (2) Burning shall be commenced and 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 receptors.
- (3) Burning shall only be allowed on tracts of land 2 acres or larger.
- (4) 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 flagpersons on affected roads.
- (5) Burning must be conducted no closer than 50 feet to structure or combustible materials and downwind of or at least 300 feet (90 meters) from any structure containing sensitive receptors located on adjacent properties unless prior written approval is obtained from the adjacent occupant with possessory control.
- (6) 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. Nor shall burning be commenced if there is a drought index of more than 575 average. If burning has already commenced when one of the above conditions occurs, burning shall cease and the fire shall be extinguished as soon as practical.
- (7) 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.

SECTION 5.07.009 Responsibility for consequences of outdoor burning

The authority to conduct outdoor burning under this article does not exempt or excuse any person responsible from the consequences, damages, or injuries resulting from the burning and does not exempt or excuse anyone from complying with all other applicable laws or ordinances, regulations, and orders of governmental entities having jurisdiction, even though the burning is otherwise conducted in compliance with this article.

SECTION 5.07.010 –Penalties

These regulations and restrictions shall be controlling in the areas governed. Any person, firm or corporation violating any provision of this ordinance is guilty of a separate offense for each day during which the violation is committed, continued, or permitted, and is punishable by a fine not to exceed two thousand dollars (\$2,000.00) per offense.

SECTION 5.07.011 -That if any section, subsection, sentence, clause or phrase of this ordinance is for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining, provisions of this ordinance.

SECTION 5.07.012 -This ordinance shall be effective from and after the date of its passage.

READ AND APPROVED AND ADOPTED on this the 5th day of March, 2013.

City of Giddings
Charlie Brown, Mayor

Attest:
Jessica Graefe, City Secretary

e) Council Member Kevin Schkade moved to approve Resolution approving a modification to the GEDC Sales Tax Revenue Bond, Series 2007 (initial interest rate of 4.55% to 2.0750%). The motion was seconded by Mayor Pro Tem Fred Jones.

Motion carried by the following:

AYE: five

NAY: none

RESOLUTION BY THE CITY COUNCIL OF THE CITY OF GIDDINGS, TEXAS APPROVING A MODIFICATION TO THE GIDDINGS ECONOMIC DEVELOPMENT CORPORATION SALES TAX REVENUE BOND, SERIES 2007

WHEREAS, on October 30, 2007 the Giddings Economic Development Corporation (the "Corporation") issued its Sales Tax Revenue Bond, Series 2007 at an initial interest rate of 4.55% per annum; and

WHEREAS, the sole holder of such Bond is Classic Bank; and

WHEREAS, Classic Bank has now agreed to lower the interest rate on the Bond to 2.750% per annum effective as of March 1, 2013; and

WHEREAS, the City of Giddings, Texas (the "City") desires to approve such modification insofar as it affects indebtedness of the Corporation;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GIDDINGS, TEXAS:

1. That the above recitals are true and correct.
2. That the City Council hereby approves the lowering of the interest rate on the Bond from 4.55% per annum to 2.750% per annum effective as of March 1, 2013, and further approves the action of the Board of the Corporation taken on January 14, 2013, approving this modification.
3. That it is expressly found and determined that the Bond is not a liability of the City of Giddings in any way whatsoever but is solely a liability of the Corporation.
4. That the City hereby confirms that the Sales Tax Remittance Agreement entered into by the City in connection with the issuance of the original Bond in 2007 shall remain in full force and effect and apply to the Bond as modified, it being understood that Classic Bank is relying upon this to make the lower interest rate.
5. That it is officially found and determined that this meeting was open to the public as required by law and that notice of the time, place and subject matter of this meeting has been posted in the manner required by law.

Adopted as of this 5th day of March, 2013.

CITY OF GIDDINGS, TEXAS
Charlie Brown, Mayor

Attest:
Jessica Graefe, City Secretary

VIII. Adjournment

Mayor Brown adjourned the meeting at 7:25 p.m.

Minutes submitted by: Jessica Graefe, City Secretary

Minutes approved by: Charlie Brown, Mayor