



City of Grand Island

Tuesday, March 13, 2012

Council Session

Item F7

#9375 - Consideration of Amendment to Chapter 16 of the Grand Island City Code or Proposals for Ballot Measures Relative to Open Burning

Staff Contact: Tim Hiemer

Council Agenda Memo

From: Robert J. Sivick, City Attorney

Meeting: March 13, 2012

Subject: Open Burning

Item #'s: F-7

Presenter(s): Tim Hiemer, Fire Operations Division Chief

Background

The first restriction on open burning in the City of Grand Island (City) was Ordinance 437 approved on July 21, 1909. This ordinance prohibited the burning of paper or refuse in the streets and alleys of the City.

On October 3, 1951 Ordinance 2540 was approved which regulated the burning of garbage and other refuse. This ordinance restricted burning to certain hours on Sunday, Tuesday, Thursday, and Saturday.

Ordinance 5216 approved on June 1, 1972 reduced the days open burning was permitted to Wednesday and Saturday. This ordinance also empowered the Fire Chief to ban open burning when otherwise permitted if warranted by weather conditions or other circumstances.

On July 8, 1991 Ordinance 7729 was approved which essentially banned open burning in the City with very narrow exceptions.

In May, 1994 the citizens of Grand Island overturned the ban on open burning through their approval of a ballot referendum. This was memorialized in Ordinance 7993, approved on May 23, 1994. This ordinance permitted the open burning of leaves and brush for two week periods in the Spring and Autumn.

Discussion

Open Burning was the subject of a Grand Island City Council (Council) Study Session meeting on January 31, 2012 at the request of Councilmember Gericke. At that meeting it was suggested this issue was one to be decided by the electorate.

On February 14, 2012 the matter was brought back before the Council in the form of two resolutions containing separate ballot referenda offering the electorate the opportunity to ban open burning in the City. The Council rejected both proposals and directed City staff to bring the matter back in the form of an Ordinance for Council consideration.

On February 28, 2012 the matter was again brought back before the Council in the form of an Ordinance for Council consideration. The Council took no action and Councilmember Gericke requested staff review the matter and bring it back for Council consideration.

City staff is presenting three separate options for Council consideration. The first is a revised Ordinance addressing the concerns of Councilmembers. The second and third are the resolutions previously presented to the Council at the February 14, 2012 meeting.

Because the present ordinance was a result of a referendum election in May, 1994 Neb. Rev. Stat. §18-2531 sets forth the conditions for repealing or amending the ordinance. That statute requires passage of the proposed ordinance “by a two-thirds majority of the members of the governing body” and no attempt to do so may be made “within one year of the repeal or amendment of the measure by the electors.” Far more than a year has passed since the referendum election of May, 1994 which means the only requirement for passage is a two-thirds majority or seven votes of the Council.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve the proposed Ordinance.
2. Refer the issue to a Committee.
3. Postpone the issue to future date.
4. Take no action on the issue.

ORDINANCE NO. 9375

WHEREAS, the City of Grand Island finds it necessary to amend Grand Island City Code §16-11, its laws regulating open fires, to reflect modern fire safety and health standards,

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA:

I. That Grand Island City Code §16-11 be amended to read as follows:

§16-11. Open Fires; ~~When Allowed; Permit; Fire Locations; Hours of Burning~~

(1) For purposes of this section, Open Fire shall mean burning under such conditions that the products of combustion are emitted directly into the ambient air ~~and are not conducted thereto through a stack, chimney, duct, or pipe.~~

(2) No person shall cause or permit any open fire within the limits of the City.

(3) Exceptions:

(a) Fires set solely for the outdoor cooking of food for human consumption ~~on other than commercial premises~~ where no nuisance or hazard is created;

(b) Fires set with the written permission of the Fire Chief of the City of Grand Island or his or her designated representative and upon receipt of a permit from the Nebraska Department of Environmental Quality:

(i) for the purpose of training public or industrial fire fighting personnel.

(ii) for essential agricultural operation in the growing of crops where no nuisance or hazard is created.

(iii) for the purpose of destroying dangerous materials or diseased trees.

(iv) for the purpose of clearing land for roads or other construction activity.

(c) ~~(v)~~ for ceremonial, educational, or recreational purposes by a legally established and recognized non-profit organization or governmental entity.

~~(vi) for the purpose of burning leaves and brush where no nuisance or hazard is created~~

(d) ~~(e)~~ Fires set in operation of smokeless flare stacks for the combustion of waste gases, provided they meet the requirements of the Nebraska Department of Environmental ~~Control~~ Quality.

(e) ~~(d)~~ For ~~opening burning of leaves and brush where no nuisance or hazard is created during the following periods: (1) A fourteen (14) day period beginning the third Sunday in April, and (2) A fourteen (14) day period beginning the second Sunday in October or as the Fire Chief may designate due to inclement weather during the foregoing specified periods~~ the private, residential use of outdoor fireplaces as defined below and with the following restrictions:

(i) portable fire pits which are designed and commercially sold to confine outdoor wood fires;

(ii) chimineas, constructed of clay or some other fire safe material which are designed and commercially sold to confine outdoor wood fires;

ORDINANCE NO. 9375 (Cont.)

(iii) fire rings which are designed to enclose an outdoor fire with a metal tube, poured concrete, stones, or some other fire safe material partially buried in the ground;

(iv) all outdoor fireplaces must be at a minimum of fifteen (15) feet distance from any structure, including fences and sheds and placed on a stable, non-combustible surface such as a concrete pad;

(v) the fuel area for all outdoor fireplaces shall be no more than three (3) feet in diameter and completely enclosed by a non-combustible screening material;

(vi) fuel for outdoor fireplaces shall be limited to untreated wood;

(vii) while in operation, all outdoor fireplaces shall be continuously monitored by at least one (1) person eighteen (18) years of age or older and an operable garden hose connected to a water supply shall be available for extinguishing flames; and

(viii) outdoor fireplaces shall not be operated when local average wind speed is twenty miles per hour (20 mph) or greater.

~~(4) Open fires shall be constantly attended by a competent person until the fire is extinguished. The person so attending shall have a water supply or other fire extinguishing equipment readily available for use, and no such fire shall be abandoned until it has been completely extinguished~~
A fee of ten dollars (\$10.00) per day shall be paid by any person or organization before receiving a permit for any of the activities listed in paragraph (3)(b) above.

~~(5) Permits to burn leaves and brush shall only be issued to the owner or occupant of private residential property fire locations. Permits may be issued during each open burning period and the week prior thereto. A separate permit shall be required for each open burning period and shall be maintained in the possession of a person tending the fire at all times.~~

~~-(6) Fire locations for leaf and brush piles greater than three (3.0) feet in diameter or two (2.0) feet in height must be at least fifty (50.0) feet away from any structure or other combustible material. Fire locations for leaf and brush piles less than three (3.0) feet in diameter and two (2.0) feet in height must be at least twenty five (25.0) feet from any structure or other combustible material unless the fire is contained within an approved burning appliance or barrel with one half (1/2") inch wire mesh screen covering the entire opening and such container or barrel is located not less than fifteen (15.0) feet from any structure or other combustible material.~~

~~-(7) Leaf and brush fires may only be burned between the hours of 8:00 a.m. and 8:00 p.m. of the open burning periods.~~

~~-(8) The Fire Chief of the Grand Island Fire Department may prohibit any and all open burning when he or she determines atmospheric conditions or local circumstances make such fires hazardous.~~

II. Any ordinances or parts of ordinances in conflict are hereby repealed.

III. This ordinance shall be in full force and will take effect from and after its passage and publication pursuant to law.

ORDINANCE NO. 9375 (Cont.)

Enacted: March 13, 2012.

Jay Vavricek, Mayor

ATTEST:

RaNae Edwards, City Clerk