

CITY OF HORSESHOE BAY

ORDINANCE NO. ORD 08-06-17A

FIREWORKS ORDINANCE

AN ORDINANCE OF THE CITY OF HORSESHOE BAY, TEXAS REGULATING THE USE OF FIREWORKS WITHIN THE CITY OF HORSESHOE BAY, BANNING THE POSSESSION OR SALE OF FIREWORKS THEREIN; REQUIRING A PERMIT FROM THE CITY FOR THE USE OF FIREWORKS; PROVIDING A PENALTY OF \$2,000 FOR VIOLATION; PROVIDING FOR AN EFFECTIVE DATE; REPEALER; SEVERABILITY; AND PROPER NOTICE AND MEETING

WHEREAS, the use of fireworks within the City of Horseshoe Bay poses a fire safety risk; and

WHEREAS, under the laws of the State of Texas the City may ban the sale and use of fireworks within the corporate limits of the City and may regulate the circumstances when their use will be allowed; and

WHEREAS, on the 20th day of February, 2007, the City Council of the City of Horseshoe Bay adopted Ordinance No. ORD 07-02-20D for the purpose of establishing reasonable regulations regarding the sale and use of fireworks within the City; and

WHEREAS, the City Council has determined that ORD 07-02-20D should be amended to provide for certain types of aerial fireworks displays approved by the fire marshal, to clarify the procedure therefore and to state that issuance of a fireworks permit does not exempt or excuse a person from the consequences resulting from the use of fireworks;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HORSESHOE BAY:

I. FINDINGS OF FACT

The foregoing recitals are adopted and incorporated herein for all purposes, and ORD 07-02-20D is hereby amended so that the remainder of the Ordinance shall read in its entirety as follows:

II. GENERAL PROVISIONS

(a) Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Fireworks means and includes any firecrackers, cannon crackers, skyrockets, torpedoes, roman candles, sparklers, squibs, fire balloons, star shells, or any other substance in whatever combination by and designated name intended for use in obtaining visible or audible pyrotechnic display. Such term shall include all articles or substances within the commonly accepted meaning of fireworks, whether specially designated and defined in this section or not.

Person means and includes any natural person, association of persons, partnership, corporation, agent or officer of a corporation. Such term shall also include all warehousemen, common and private carriers, bailees, trustees, receivers, executors and administrators.

(b) Prohibitions Generally

Except as otherwise specifically provided in this Article, it shall be unlawful for any person to manufacture, assemble, store, transport, receive, keep, sell, offer or have in his possession with intent to sell, use, discharge, cause to be discharged, ignite, detonate, fire or otherwise set in action any fireworks of any description.

(c) Permitted transportation

It shall be lawful to transport I.C.C. Class C Common Fireworks, as defined by state law, by motor vehicles that meet the Interstate Commerce Commission requirement for transporting I.C.C. Class C Common Fireworks and are equipped with at least one (1) ten-pound fire extinguisher for extinguishing fire, along and upon state highways within the city.

(d) Exemptions

This article shall not apply to:

- (1) Signal flares and torpedoes of the type and kind commonly used by the railroads, which signal flares and torpedoes are received by any railroad for the use in railroad operations.
- (2) Any marine signal flare or rocket of the type and kind commonly carried by a vessel at sea for its own use and which signal flare or rocket is transported or received or stored for use only as ship's stores;
- (3) Toy paper pistol caps which contain less than twenty-five one-hundredths grains of explosive compounds shall not be affected by this article and the sale and use is permitted at all times;
- (4) Sparklers;
- (5) Any type of flare or similar signal device used for military or police purposes; or

(6) Any type of starter's blanks, cartridges and/or pistols used at theatrical or athletic events

(e) Fireworks Declared a Nuisance; Seizure; Destruction, Injunctive Relief

The presence of any fireworks within the jurisdiction of the city in violation of this article is hereby declared to be a common and public nuisance. The fire marshal is directed and required to seize and cause to be safely destroyed any fireworks found in violation of this article and any member of the fire prevention division of the Fire Department, any police officer of the city or any other duly constituted peace officer is empowered to stop the transportation of and detain any fireworks found being transported illegally or to close any building where any fireworks are found stored illegally until the fire marshal can be notified in order that such fireworks may be seized and destroyed in accordance with the terms of this section. Notwithstanding any penal provision of this article, the city attorney is authorized to file suit on behalf of the city or the fire marshal, or both, for such injunctive relief as may be necessary to prevent unlawful storage, transportation, keeping or use of fireworks within the jurisdiction of the city and to aid the fire marshal in the discharge of his duties and to particularly prevent any person from interfering with the seizure and destruction of such fireworks. It shall not be necessary to obtain any such injunctive relief as a prerequisite to such seizure and destruction.

(f) Right of Entry to Enforce Article; Limitation

The fire marshal is hereby authorized to enter any building where the unlawful presence of fireworks is suspected in order to inspect the same for the presence of such fireworks; but such authority does not include the right to enter a private dwelling or apartment.

(g) Violations

Any person who shall manufacture, assemble, store, transport, receive, keep, sell, offer for sale or have in his possession with intent to sell any fireworks in violation of this article shall be fined in an amount not to exceed \$2,000 for each offense. If the fireworks are separately wrapped or packaged, the doing or omitting to do any act prohibited by this article shall be a separate offense as to each such separately wrapped or separately packaged fireworks. Each day that a violation of this article shall continue with respect to any package of fireworks shall constitute a separate offense.

III. PUBLIC DISPLAYS

(a) Permitted Public Displays Allowed

The provisions of this article shall not apply to a public display of fireworks made under the terms and conditions of this division and such a display shall be permitted, upon compliance with the provisions of this division.

(b) Permit Application

Any adult person or any firm, co-partnership, corporation or association planning to make a public display of fireworks shall first make written application for a permit to the building department at least 14 days in advance of the date of the proposed display. No city permit shall be issued until a permit issued for such purposes has been issued by the state except for a 1.4G (or Class C) aerial fireworks display permit which can be approved by the City's fire marshal.

(c) Permit Application Issuance or Denial; Term; Transfer

It shall be the duty of the fire marshal to make an investigation as to whether the display as proposed by the applicant for a permit under this article shall be of such a character that it may be hazardous to property or dangerous to any person, and he shall, in the exercise of reasonable discretion, grant or deny the application, subject to the conditions prescribed in this article. If the application is approved, a permit shall be issued for the public display by the Development Services Department. Such permit shall be for a period of time designated on the permit, but shall not exceed fourteen (14) days, and the permit shall not be transferable. In the event that the application is denied by the Development Services Department, he shall notify the applicant of the denial in writing.

(d) Insurance; Bond

The applicant for a display permit under this article shall, at the time of making application, furnish proof that he carries compensation insurance for his employees as provided by the laws of the state, and he shall file with the code enforcement officer, a certificate of insurance evidencing the carrying of public liability insurance in an amount not less than five hundred thousand dollars (\$500,000) issued by an insurance carrier authorized to transact business in the state, for the benefit of the person named therein as assured, as evidence of ability to respond in damages in at least the amount of five hundred thousand dollars (\$500,000), such policy to be approved by the city. In lieu of insurance, the applicant may file with the city a bond in the amount of five hundred thousand dollars (\$500,000) issued by an authorized surety company approved by the city conditioned upon the applicant's payment of all damages to persons or property which shall or may result from or be caused by such public display of fireworks, or any negligence on the part of the applicant or his agents, servants, employees or subcontractors in the presentation of the public display. The city shall also be designated as an insured by the insurance policy and bonded by the bond.

An applicant that is approved and permitted for a 1.4G (or Class C) aerial fireworks display that is within the state requirements need not furnish the public liability insurance or bonding coverage that is required of a 1.3G (or Class B) fireworks display.

(e) Only Aerial Displays Permitted; Times Authorized

Any fireworks display authorized under this article shall be limited to an aerial display. Except as determined by the City Council, no fireworks display shall be allowed after 11:00 p.m unless the same is specifically authorized by permit for the celebration of a New Year during the night of December 31-January 1.

(f) Material Not to be Stored in City

The material to be used for a public display authorized by this article shall not be stored within the city limits, but shall be brought in on the day of the public display and then shall be taken immediately to the place of display for further handling and storage.

(g) Hazardous Conditions Prohibited

No public display of fireworks shall be of such a character and so located, discharged or fired as to be hazardous or dangerous to persons or property, and this determination shall be within the sound discretion of the fire marshal.

(h) Qualifications of Persons Handling Fireworks

The persons handling the display of fireworks under this article shall be competent, adult persons and experienced pyrotechnic operators approved by the fire marshal. No person not approved by the fire marshal shall handle fireworks at the public display. The names of the experienced pyrotechnic operators shall be designated on the permit issued.

(i) Firefighters to be Present

For each public display of fireworks under this article, not less than two (2) firemen of the city may be required to be in attendance during the display, as determined by the permitting authority. The expense of such firemen at the display shall be borne by the applicant for the permit and shall be paid in advance at the time of the application for the permit.

(j) Responsibility for Consequences

A city fireworks permit does not exempt or excuse the individual conducting the fireworks display from the consequences, damages, or injuries resulting from this display 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 this display is otherwise conducted in compliance with this regulation.

IV. EFFECTIVE DATE

This ordinance shall take effect upon its passage and publication in accordance with the law.

