

ORDINANCE NO. 010321

AN ORDINANCE PROHIBITING THE MANUFACTURE, DISCHARGE, SALE, STORAGE, OR TRANSPORTATION OF FIREWORKS WITHIN THE CITY OF SIMONTON; SETTING FORTH EXCEPTIONS AND LIMITS; PROVIDING REQUIREMENTS FOR PERMITS FOR PUBLIC DISPLAYS; AND PROVIDING ENFORCEMENT, PENALTY AND SEVERANCE CLAUSE.

WHEREAS, The City Council has determined that fireworks represent a danger to the safety of the citizens and property within the City that should be closely controlled, or eliminated:

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF SIMONTON, TEXAS:

Section I. Definitions

(1) The term “fireworks” as used in this ordinance, shall mean and include any firecrackers, cannon crackers, skyrockets, torpedoes, Roman candles, sparklers, squibs, fire balloons, star shells, gerbs or any other substance intended for use in obtaining visible or audible pyrotechnic display and such term shall include all articles or substances within the commonly accepted meaning of fireworks, whether herein specifically designated or not.

(2) The term “person”, as used in this ordinance, shall mean and include any natural person, association of persons, partnership, corporation, agent or officer of a corporation, and shall include warehousemen, and common and private carriers.

Section II. General prohibition against manufacture, discharge, sale, transportation, and storage.

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

Section III. Discharge in connection with plays, circuses and other shows

It shall not be unlawful, upon being issued a permit by the City, for any person engaged in any organized theatrical performance, circus, or other show designated for the amusement and edification of the general public to use, discharge, or cause to be discharged any fireworks as a part of the performance, or circus, so long as such person does not also engage in the retailing, wholesaling or distribution of any of such fireworks.

Section IV. Transportation

It shall be lawful to transport ICC Class C Common Fireworks, as defined in article 1725, Vernon's Annotated Texas Penal Code, by motor vehicles which meet the Interstate Commerce Commission requirements for transporting ICC Class C Common Fireworks and equipped with at least one ten pound fire extinguisher for extinguishing Type B fires, along and upon highways within City limits.

Section V. Certain signal flares, torpedoes and rockets exempt from Ordinance

This Ordinance shall not apply to signal flares and torpedoes of the type and kind commonly used by any railroads, which signal flares and torpedoes are received by and stored or transported by any railroad for use in railroad operation; nor shall this ordinance apply to any marine signal flare or rocket of the type and kind commonly carried by a vessel at sea for its own use and which is transported or received or stored for use only as ship's stores; nor shall this ordinance apply to signal flares or rockets for military or police use.

Section VI. Illegal fireworks as nuisance; seizure and destruction

The presence of any fireworks within the jurisdiction of the City in violation of this Ordinance is hereby declared to be a common and public nuisance. Any duly authorized police officer or duly constituted peace officer is empowered to stop the illegal transportation, or the manufacture, assembly, storage, transportation, sale or discharge of fireworks within the City limits, and to seize and destroy any fireworks found in violation of this Ordinance. Notwithstanding any penal provision of this Ordinance, the City attorney is authorized to file suit on behalf of the City, for such injunctive relief as may be necessary to prevent unlawful manufacture, assembly, storage, sale or discharge of fireworks within the jurisdiction of the City, and to prevent any person from interfering with the seizure and destruction of such fireworks, but it shall not be necessary to obtain any such injunctive relief as a prerequisite to such seizure and destruction.

Section VII. Violations

(1) Any person who shall manufacture, assemble, store, transport, sell or have in his possession with the intent to sell, any fireworks in violation of this Ordinance shall be fined two hundred dollars (\$200.00) for each offense. Each day that a violation of this Ordinance shall continue shall constitute a separate offense.

(2) Any person who shall use, discharge, cause to be discharged or otherwise set in action any fireworks in violation of this Ordinance shall be fined not less than twenty-five dollars (\$25.00) or more than two hundred dollars (\$200.00).

Section VIII. Application for permit

Any person planning to make a public display of fireworks as described in Section III of this Ordinance must first make written application for a permit to the City Secretary at least fourteen (14) days in advance of the date of the proposed display.

Section IX. Issuance or denial of permit

(1) The Mayor of the City or the person or persons designated by him shall investigate as to whether the proposed display by the applicant for a permit shall be hazardous to property or dangerous to any person, and he shall, in the exercise of reasonable discretion, recommend the approval or disapproval of the application. Provided the other requirements of this Ordinance are fulfilled the Mayor shall authorize the City Secretary to issue, or deny the application for public display.

(2) Any permit issued shall be for a period of time designated on the permit not to exceed fourteen (14) days, and shall be limited to one performance. The permit shall not be transferable. In the event the application is denied, applicant shall be notified of the denial in writing.

Section X. Insurance

Any applicant for a permit 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 City Secretary a certificate of insurance evidencing the carrying of public liability insurance in an amount not less than one hundred thousand dollars (\$100,000.00) issued by an insurance carrier authorized to transact business in the state. In lieu of insurance, the applicant may file with the City Secretary a bond in the amount of one hundred thousand dollars (\$100,000.00) issued by an authorized surety company, conditioned upon the applicant's payment of all damages to persons or property which may result from or be caused by such public display of fireworks, or any negligence on the part of the applicant or his agents, employees or subcontractors in the presentation of the public display.

Section XI. Limits of aerial display

Any fireworks display authorized under this Ordinance shall be limited to an aerial display. The range of aerial display shall not be more than two hundred (200) feet and the fireworks shall be discharged vertically from steel tubes.

Section XII. Material storage

The material to be used for public display authorized by permit 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.

Section XIII. Qualifications of persons handling fireworks

The persons handling fireworks authorized by permit shall be competent, adult persons and experienced pyrotechnic operators approved by the person recommending issuance of the permit and no person not approved shall handle fireworks at the public display. The names of experienced pyrotechnic operators shall be designated on the application and on the permit.

Section XIV. Firemen to be present

For each public display authorized by permit under this Ordinance, not less than two (2) firemen of the Fulshear-Simonton Volunteer Fire Department shall be in attendance during the display. 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.

Section XV. Severability

If any word, phrase, sentence, clause, paragraph, section or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional.

PASSED AND APPROVED THIS _____ DAY OF _____, 2001 IN THE CITY OF SIMONTON, TEXAS.

Mayor

ATTEST: _____
City Secretary