

ORDINANCE NO. 573

AN ORDINANCE PROHIBITING THE TRANSPORTATION, STORAGE, SALES OR DISCHARGING OF FIREWORKS WITHIN THE LIMITS OF THE CITY OF FULSHEAR EXCEPTED WITHIN THE LIMITS PROVIDED BY THIS ORDINANCE; PROVIDING LIMITS FOR TRANSPORTING FIREWORKS WITHIN THE CITY; PROVIDING THE REQUIREMENTS FOR PERMITS FOR PUBLIC DISPLAYS; AND PROVIDING ENFORCEMENT AND PENALTY, AND SEVERANCE CLAUSE.

Whereas, the Board of Aldermen 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 BOARD OF ALDERMEN OF THE CITY OF FULSHEAR, TEXAS.

SECTION I. DEFINITIONS

(1) The term "fireworks," as used in this ordinance shall mean and include any firecrackers, cannon crackers, skyrocketes, torpedoes, Roman candles, sparklers, squibs, fire balloons, star shells, gerbs or any other substance in whatever combination by any designated name 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 specially designated and defined 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 also include all warehousemen, common and private carriers, bailees, trustee, receivers, executors and administrators.

SECTION II. GENERAL PROHIBITION AGAINST MANUFACTURE, SALE, DISCHARGE, TRANSPORTATION, ETC.

Except as otherwise specifically provided in this ordinance 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.

SECTION III. DISCHARGE IN CONNECTION WITH PLAYS, CIRCUSES AND OTHER SHOWS.

It shall not be unlawful, upon a permit issued by the City, for any person engaged in any organized play, legitimate theatrical performance, circus, or other show designated for the amusement and edification of the general public to use, discharge, or cause to be discharged and ignited fireworks as a part of any act, performance, play or circus, so long as such person does not also engage in the retailing, wholesaling, selling or distribution of any of such fireworks. The fire chief shall cause to be made an investigation of each application made hereunder to determine the use of such fireworks as proposed 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 for such permit.

SECTION IV. PERMITTED 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 IH No. 10 within the city limits.

SECTION V. CERTAIN SIGNAL FLARES, TORPEDOES AND ROCKETS EXEMPT FROM ARTICLE.

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 article 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 signal flare or rocket is transported or received or stored for use only as ship's stores; nor shall this article apply to signal flares or rockets for military or police use.

SECTION VI. ILLEGAL FIREWORKS AS NUISANCE; SEIZURE AND DESTRUCTION, ETC.

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 or 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 the Chief of Police, 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, but it shall not be necessary to obtain any such injunctive relief as a prerequisite to such seizure and destruction.

SECTION VII. RIGHT OF ENTRY TO ENFORCE ARTICLE.

The Fire Marshal or any member of the police department of the city 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.

SECTION VIII. VIOLATIONS OF ARTICLE.

(a) 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 two hundred dollars (\$200.00) 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 such separately wrapped or separately packaged fireworks. Each day that a violation of this ordinance shall continue with respect to any package of fireworks shall constitute a separate offense.

(b) Any person who shall use, discharge, cause to be discharged, ignite, detonate, fire or otherwise set in action any fireworks in violation of this ordinance shall be fined not less than twenty-five dollars (\$25.00) nor more than two hundred dollars (\$200.00). Any parent or guardian of any minor child below the age of fourteen (14) who permits or allows such minor child to use, discharge, ignite, detonate, fire or otherwise set in action any fireworks in violation of this article shall be fined not less than twenty-five dollars (\$25.00) nor more than two hundred dollars (\$200.00).

SECTION IX. WHEN PERMITTED.

The provisions of division 1 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.

SECTION X. APPLICATION FOR PERMIT.

Any adult or any firm, copartnership, corporation or association planning to make a public display of fireworks shall 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 XI. ISSURANCE OR DENIAL AND TERM OF PERMIT; PERMIT NOT TRANSFERABLE.

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 division 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, 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 the public display. Any permit issued shall be a period of time designated on the permit not to exceed fourteen (14) days, and the permit shall not be transferable. In the event the application is denied by the mayor he shall notify the applicant of the denial in writing.

SECTION XII. INSURANCE OR BOND REQUIRED.

The applicant for a display permit under this division shall, at the time of making application, furnish proof that he carries compensation insurance for his employees

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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, for the benefit of the person named therein as assured, as evidence of ability to respond in damages in at least the amount of one hundred thousand dollars (\$100,000.00) such policy to be approved by the city attorney. 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 approved by the city attorney, 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.

SECTION XIII. ONLY AERIAL DISPLAYS PERMITTED; RANGE OF DISPLAY; USE OF STEEL TUBES REQUIRED.

Any fireworks display authorized under this division 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 XIV. TIME LIMIT AND LIMITATION ON NUMBER OF PERFORMANCES.

The limit of a display authorized by this division shall be not more than one performance.

SECTION XV. MATERIAL NOT TO BE STORED IN CITY.

The material to be used for public display authorized by the division 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 XVI. 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.

SECTION XVII. QUALIFICATIONS OF PERSONS HANDLING FIREWORKS.

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

SECTION XVIII. FIREMEN TO BE PRESENT.

For each public display of fireworks under this division, not less than two (2) firemen of the Fulshear 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 for the permit.

SECTION XIX. SEVERABILITY.

If any word, phrase, sentence, clause, paragraph, section, or part of this ordinance shall be declared unconstitutional, then and in such event the work, phrase, sentence, clause, paragraph, section, or part of this ordinance declared as unconstitutional shall be deleted and severed from this ordinance.

PASSED AND APPROVED this the 16th day of August, 1982.

THE CITY OF FULSHEAR, TEXAS

BY: James W. Johns
Mayor

ATTEST:

Carolyn Smith
City Secretary

VOTING

ALDERMEN:

E. DOZIER	<u>yes</u>
V. RANDLE	<u>yes</u>
S. WEST	<u>yes</u>
N. BANKS	<u>yes</u>
B. G. WALLING	<u>absent</u>