

ORDINANCE 03-23

AN ORDINANCE DEFINING FIREWORKS; AND, EXCEPT AS PROVIDED HEREUNDER, PROHIBITING ANY PERSON TO MANUFACTURE, ASSEMBLE, STORE, TRANSPORT, RECEIVE, KEEP, SELL, OFFER FOR SALE, POSSESS, USE, DISCHARGE OR IGNITE ANY FIREWORKS IN THE CITY OF HARLINGEN; PROHIBITING ANY PARENT OR GUARDIAN OF A MINOR CHILD FROM PERMITTING SAID CHILD TO POSSESS, USE, DISCHARGE, IGNITE, DETONATE OR OTHERWISE SET IN MOTION ANY FIREWORKS IN THE CITY OF HARLINGEN; PROVIDING EXCEPTIONS; PROVIDING A PENALTY NOT TO EXCEED \$200.00 FOR EACH VIOLATION OF THE PROVISIONS HEREOF; PROVIDING FOR PUBLICATION AND ORDAINING OTHER MATTERS RELATED TO THE FOREGOING

WHEREAS, the Elective Commission of the City of Harlingen, Texas finds that the manufacture, assembly storage, transport, sale, use, and discharge of fireworks in the City of Harlingen constitutes a substantial threat to the health, welfare and safety of the residents of the City of Harlingen by creating an imminent risk of property damage, personal injury and death due to fire and from detonation of fireworks; and

WHEREAS, the Elective Commission of the City of Harlingen, deems it necessary to exercise its authority as a home-rule municipal corporation of the State of Texas to regulate fireworks in the manner provided herein;

NOW THEREFORE BE IT ORDAINED BY THE CITY OF HARLINGEN:

SECTION I: As used in this Ordinance the term "fireworks" shall have the following definition:

"Fireworks - Any combustible or explosive composition or any substance or combination of substances, or article or device prepared for the purpose of producing or capable of producing a visible or an audible effect by combustion, explosion, deflagration or detonation. The term "fireworks" shall include but is not limited to firecrackers, bottle rockets, sky rockets, roman candles and sparklers. The term fireworks does not include automobile flares, paper caps or plastic caps which contain twenty-five hundredths (.25) of a grain of explosive content or less per cap which are used with toy pistols, toy canes, toy guns or other similar devices.

SECTION II: Except as provided in Section VII below, it shall be unlawful for any person to knowingly or intentionally manufacture, assemble, store, transport, receive, keep, sell, offer for sale, have in his possession, use,

discharge, cause to be discharged, ignite, detonate, fire or otherwise set in action any fireworks within the city limits of the City of Harlingen, Texas.

SECTION III: It shall be unlawful for any parent or guardian of any child under 17 years of age to knowingly or intentionally permit or allow such minor child to use, possess, discharge, ignite, detonate, fire or otherwise set in action any fireworks within the City of Harlingen, Texas.

SECTION IV: Any person, found guilty of a violation of this Ordinance shall be fined in an amount not to exceed \$200.00 for each occurrence.

SECTION V: The presence of any fireworks within the city limits of Harlingen, except as allowed in Section VII, shall constitute a violation of this Ordinance and is hereby declared to be a common and public nuisance and contrary to the public health, safety and general welfare. The Fire Marshal, and the Harlingen Chief of Police are directed and required to seize and cause to be safely destroyed any fireworks found within the city limits in violation of this ordinance. Any member of the Fire Prevention Bureau of the Fire Department or any police officer of the City of Harlingen or other duly constituted peace officer is empowered to lawfully seize any fireworks found within the City in violation of this Ordinance and cause the same to safely be destroyed.

SECTION VI: Notwithstanding any penal provisions of this ordinance, the Harlingen City Attorney is authorized to file suit on behalf of the City for injunctive relief as may be necessary to prevent unlawful storage, transportation, keeping or use of fireworks within the city limits and to aid the Fire Marshal and the Police Department in the discharge of their duties and to prevent any person from interfering with the seizure and destruction of fireworks, but it shall not be necessary to obtain such injunctive relief as a prerequisite to such seizure and destruction.

SECTION VII:

EXCEPTIONS

1. Those locations offering fireworks for sale at a legal fireworks retail location which existed outside city limits prior to the city annexation taking place on December 18, 2002 and which were annexed prior to the final passage of this ordinance shall be allowed to continue with sales of fireworks (to be transported outside of city limits) for a period to expire on December 18, 2004. This provision may be amended or repealed upon a simple majority vote of the City Commission to amend for whatever reason they deem necessary in the public health safety and welfare.

2. Nothing herein shall prohibit the sale of fireworks, at wholesale, by a manufacturer residing within the city limits of Harlingen, provided such fireworks are shipped directly out of the State of Texas in accordance with United States Department of Transportation regulations by motor, rail, water, or other interstate transportation.

3. The Fire Marshal of the City of Harlingen may adopt reasonable rules and regulations for the granting of permits for supervised public displays of fireworks by municipalities, associations, amusement parks, military organizations, civic groups, and other organizations or groups of individuals. Such permits may be granted upon application to the Fire Marshal and after approval by the Chief of Police. No such permit shall be granted unless the applicant therefore obtains a bond from a reputable surety company payable to the City of Harlingen in the sum of not less than \$1,000.00 conditioned upon compliance by the permittee with the conditions stated in his permit and further conditioned on said person, firm, or corporation conducting said pyrotechnic display in a manner reasonably safe to persons and property. Before any permit for a pyrotechnic display shall be issued, the person, firm or corporation making application therefore shall furnish, in addition to the bond required hereunder, a public liability insurance policy with a combined single limit of not less than One Million (\$1,000,000.00) Dollars for personal injury, property damage or death of any person arising out of any act or omission on the part of such person, firm, or corporation or any agent or employee thereof and said policy of insurance shall contain an endorsement naming the City of Harlingen as an additional insured and shall require that the City be given at least thirty (30) days notice prior to cancellation of the policy.

SECTION VIII: If any section, paragraph, subdivision, clause, phrase or provision of this Ordinance shall be held invalid, it shall not affect any valid provisions of this or any other ordinance of the City of Harlingen to which these rules or regulations relate.

SECTION IX: The caption of this Ordinance shall be published in a newspaper having general circulation in the City of Harlingen, Cameron County, Texas. A copy of this Ordinance shall be maintained in the office of the Chief of Police of the City of Harlingen, in the office of the Fire Marshal of the City of Harlingen, and in the office of the City Secretary and said ordinance shall be made available for public inspection at those offices.

FINALLY ENACTED THIS 16th day of April, 2003 at a regular meeting of the Elective Commission of the City of Harlingen, Texas at which a quorum was present and which was held in accordance with TEX. REV. CIV. STAT. ANN. ART.

6252-17, as amended.

CITY OF HARLINGEN

BY: _____
C. Connie de la Garza, Mayor

ATTEST: _____
Sylvia R. Treviño, City Secretary