

**ORDINANCE NO. 2015-33**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WYLIE, TEXAS, AMENDING WYLIE'S CODE OF ORDINANCES, ORDINANCE NO. 2005-07, AS AMENDED, CHAPTER 46 (FIRE PREVENTION AND PROTECTION), ARTICLE IV (FIREWORKS), SECTIONS 46-63 (DECLARED A PUBLIC NUISANCE) AND 46-65 (TERRITORIAL APPLICABILITY OF ARTICLE); CLARIFYING JURISDICTION TO REGULATE FIREWORKS OUTSIDE OF THE CITY LIMITS IN ACCORDANCE WITH RECENT CHANGE IN TEXAS LAW; PROVIDING A PENALTY CLAUSE, SAVINGS/REPEALING CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.**

WHEREAS, the City Council of the City of Wylie, Texas, ("City Council") has investigated and determined that it would be advantageous, beneficial and in the best interest of the citizens of the City of Wylie, Texas ("Wylie") to amend Wylie's Code of Ordinances, Ordinance No. 2005-07, Chapter 46 (Fire Protection), Article IV (Fireworks), Sections 46-63 (Declared a Public Nuisance) and 46-65 (Territorial Applicability of Article), as set forth below; and

WHEREAS, Section 217.042(a) of the Texas Local Government Code previously granted Wylie the authority to regulate nuisances, including the sale or use of fireworks or similar materials, within the Wylie city limits and within 5,000 feet outside of the Wylie city limits; and

WHEREAS, in accordance with then-existing law, Wylie prohibited as a nuisance, among other things, the sale or use of fireworks or similar materials under Sections 46-63 and 46-65 of the Wylie Code of Ordinances; and

WHEREAS, the Texas Legislature recently approved Senate Bill 1593, which amended Section 217.042(a) of the Texas Local Government Code and added and Section 217.042(c) of the Texas Local Government Code to provide that a municipality may define and prohibit as a nuisance the sale or use of fireworks or similar materials only within the limits of the municipality; and

WHEREAS, the City Council has investigated and determined that it is necessary to amend Sections 46-63 and 46-65 of the Wylie Code of Ordinances in accordance with the recent change in law, provided, however, that the City Council does not intend with this Ordinance to limit Wylie's authority to regulate fireworks or similar materials except as expressly limited by Sections 217.042(a) and 217.042(c) of the Texas Local Government Code; and

WHEREAS, Wylie has complied with all notices and public hearings as required by law; and

WHEREAS, the City Council finds that it will be advantageous and beneficial and in the best interest of the citizens of Wylie to amend the Code of Ordinances as set forth below.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY**

**OF WYLIE, TEXAS:**

SECTION 1: Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2: Amendment to Wylie's Code of Ordinances, Chapter 46 (Fire Protection), Article IV (Fireworks), Sections 46-63 (Declared a Public Nuisance) and 46-65 (Territorial Applicability of Article). Wylie's Code of Ordinances, Chapter 46 (Fire Protection), Article IV (Fireworks), Sections 46-63 (Declared a Public Nuisance) and 46-65 (Territorial Applicability of Article) are hereby amended to read as follows:

**“ARTICLE IV. FIREWORKS**

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**Sec. 46-63 Declared a Public Nuisance**

The presence of any fireworks within the territorial limits 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 within the territorial limits of the city in violation of this article. Any member of the fire department of the city 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 the fireworks may be seized and destroyed in accordance with the terms of this article. 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 injunctive relief as may be necessary to prevent unlawful storage, transportation, keeping or use of fireworks within the territorial limits 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, however, be necessary to obtain any such injunctive relief as a prerequisite to such seizure and destruction. The fire marshal or any member of the fire prevention division of the city is hereby authorized, at reasonable times, to enter any building where the unlawful presence of fireworks is suspected in order to inspect the building for the presence of such fireworks.

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**Sec. 46-65 Territorial applicability of article.**

The restrictions of this article shall be applicable and in force throughout the territorial limits of the city and extending for a distance outside the territorial limits of the city of up to 5,000 feet in any direction; provided, however, that this article

shall not be in effect within any portion of area which is contained within the territory of any other municipal corporation, and further provided that the restrictions on the sale and use of fireworks set forth in section 46-63 of this article shall be applicable and in force only within the territorial limits of the city.”

**SECTION 3: Penalty.** Any person, firm, corporation or entity violating any provision of this Ordinance or the Code of Ordinances, as they exist or may be amended, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in an amount not exceeding TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00). Each continuing day’s violation shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude Wylie from filing suit to enjoin the violation. Wylie retains all legal rights and remedies available to it pursuant to local, state and federal law.

**SECTION 4: Savings/Repealing.** The Code of Ordinances shall remain in full force and effect, save and except as amended by this or any other Ordinance. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict, but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

**SECTION 5: Severability.** Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional and/or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, regardless of whether any one or more sections, subsections, sentences, clauses or phrases is declared unconstitutional and/or invalid.

**SECTION 6: Effective Date.** This Ordinance shall be effective immediately upon its passage and publication as required by the City Charter and by law.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF WYLIE, TEXAS,** on this 13th day of October, 2015.

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Keith Stephens, Mayor pro tem

**ATTESTED TO AND CORRECTLY  
RECORDED:**

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Carole Ehrlich, City Secretary

Date of Publication: October 21, 2015 in the Wylie News