

**ORDINANCE NO. 2015-1190**

**AN ORDINANCE OF THE CITY OF FULSHEAR, TEXAS, REPEALING AND REPLACING ORDINANCE NO. 82-573 REGULATING AND PROHIBITING THE POSSESSION OF FIREWORKS WITH THE INTENT TO DISCHARGE; PROVIDING FOR DEFINITIONS; PROVIDING EXCEPTIONS; PROVIDING REQUIREMENTS FOR A PERMIT AND BOND FOR PUBLIC DISPLAYS; DECLARING FIREWORKS TO BE A PUBLIC NUISANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR A PENALTY; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF**

**WHEREAS**, the City Council of the City of Fulshear, Texas previously investigated and determined that it would be in the best interest of the City of Fulshear, Texas and its inhabitants to prohibit the possession of fireworks with the intent to discharge within Fulshear through the passage of Ordinance No. 82-573; and

**WHEREAS**, the City Council finds that it is the best interest of the life, health and safety for the residents of the City, to repeal and replace said Ordinance;

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

**SECTION 1.0**

**PURPOSE:** The purpose of this Ordinance is to repeal and replace Ordinance No. 82-573 and reassert the prohibition of the possession of Fireworks with the intent to discharge within the Municipal Limits of the City of Fulshear.

**SECTION 2.0**

**DEFINITIONS:** For purposes of this Ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

**Person:** means a natural person (individual), corporate, company, association, partnership, firm, Limited Liability Company, joint venture, Joint Stock Company or association, and other such entity.

**Fireworks:** means any combustible or explosive composition, or any substance or combination of substances, or device prepared for the purpose of producing a visible or audible effect or pyrotechnic display of combustion, explosion, deflagration, or detonation, and shall include, but not be limited to, the following: blank cartridges, toy pistols, toy cannons, toy canes, or toy guns in which explosives are used, fire crackers, torpedoes, sky rockets, bottle rockets, Roman candles, Daygo bombs, sparklers, cannon crackers, squibs, fire balloons, star shells, gerbs, or any other device by whatever name, of like construction, and any devices containing any explosive or flammable compound, or any tablet or other device containing an explosive substance whether herein specifically designated and defined or not.

The term "fireworks" shall not include toy pistols, toy canes, toy guns or other devices in which paper plastic caps manufactured in accordance with the United States Department of Transportation regulations for packing and shipping of toy paper or plastic caps are used and such toy paper or plastic caps are manufactured as provided therein except that no toy paper or plastic cap shall contain more than twenty-five hundredths of a grain of explosive composition per cap. Each package containing toy paper or plastic offered for retail sale shall be labeled to indicate the maximum explosive content per cap. The sale and use of these toy paper or plastic caps shall be permitted at all times.

Nothing in this definition shall be construed as applying to the manufacture, storage, sale, or use of signals necessary for the safe operation of railroads or other classes of public or private transportation, nor applying to the military or naval forces of the United States or of this state, or to peace officers.

Nothing in this definition shall be construed as forbidding the sale and use of blank cartridges for

ceremonial, theatrical or athletic events.

**Passenger Area:** means the area of a motor vehicle designed for the seating of the operator and the passengers of the vehicle. The term does not include (a) a locked glove compartment or similar locked storage area; or (b) the trunk of a vehicle; or (c) the area behind the last upright seat of a vehicle that does not have a trunk.

### **SECTION 3.0**

**PROHIBITED:** It shall be unlawful for any person to or intend to manufacture, assemble, sell or offer any fireworks of any description within the city limits of the City of Fulshear, Texas except as otherwise provided in this Ordinance.

Further, it shall be unlawful for any person to have in their possession with the intent to discharge, cause to be discharged, ignite, detonate, fire or otherwise set in action any fireworks of any description within the city limits of the City of Fulshear Texas except as otherwise provided in this Ordinance.

### **SECTION 4.0**

**EXCEPTIONS:** This Ordinance shall not apply to:

- 1) Signal flares and torpedoes of the type and kind commonly used by any railroad and which signal flares and torpedoes are received by and stored or transported by any such railroad for use in railroad operation; or
- 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 flares or rockets are transported or received or stored for use only as ship's stores; or
- 3) Signal flares or rockets intended for military or police use; or
- 4) Fireworks being transported through the City or stored within the City in compliance with a validly issued and not expired or revoked permit for public displays as set forth in this Ordinance; or
- 5) Fireworks in the possession of a defendant who was operating or was a passenger in a motor vehicle that was being operated in a public place; provided that the fireworks were not in the Passenger Area of the vehicle; or
- 6) Fireworks in the possession of a defendant safely storing them within the confines of a house or garage.

### **SECTION 5.0**

**PERMITS AND BONDING FOR PUBLIC DISPLAYS:** A permit issued through the City's Building Services Department following review and written approval of the Fire Chief or the Fire Marshal shall be required for supervised public displays of fireworks by a jurisdiction, fair association, amusement park, festival or other association or for the use of fireworks by artisans in the pursuit of their trade.

**Each application shall include:**

- 1) A form containing:
  - A. The name, address, phone, email, and relevant government issued identification information of the operator conducting the display; and
  - B. The name of the sponsoring entity including the address, phone, email for the event coordinator; and
  - C. The applicable fee as designated in this Ordinance; and

- D. A description of the proposed display, which must include:
- i. The exact location, date and time of the proposed display; and
  - ii. The estimated duration of the display; and
  - iii. The types of fireworks to be ignited; and
  - iv. The proposed trajectory and landing site of all fireworks that will be airborne; and
  - v. The person(s) who will transport the fireworks and the location and the duration of the storage of the fireworks; and
  - vi. A statement explaining what steps have been taken to ensure the safety of the public associated with the display.
- 2) Every such display shall be handled by a competent operator whose application is approved in writing by the local Fire Chief/Fire Marshal, and shall be of such character and so located, discharged, or fired so as not to be hazardous to persons or property. Proof of bonding or insurance totaling not less than \$1,000,000.00 to protect the permittee from claims arising from damages to persons or property as a result of the display.
- 3) Applications for such permits shall be made in writing at least ten (10) days in advance of the date of the display to the Building Services Department. After such permit is issued, possession and use of fireworks for such display shall be lawful for that purpose only. No permit granted hereunder shall be transferable. Any fireworks that remain unfired after the display is concluded shall be immediately removed from the City, or shall be disposed of in a way safe for the particular type of fireworks remaining.

#### **SECTION 6.0**

**PERMIT CONDITIONAL:** The application shall contain express provisions stating that issuance of a permit shall be conditioned upon compliance with all requirements of this Ordinance and other applicable laws.

#### **SECTION 7.0**

**PERMIT FEES:** All applicants must pay a permit fee to the City of \$60.00.

#### **SECTION 8.0**

**PUBLIC NUISANCE:** The presence of any fireworks within the City in violation of this Ordinance is hereby declared to be a common and public nuisance. The Police are directed and required to seize and cause to be safely destroyed any unpackaged, open fireworks found within the City 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 injunctive relief as may be necessary to prevent unlawful sale, keeping or use of fireworks within the City and to aid the Police Chief in the discharge of his or her 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 Police, Code Enforcement or Fire Marshal 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.

#### **SECTION 9.0**

**TERRITORIAL APPLICABILITY:** This Ordinance shall be applicable and in force throughout the incorporated territory of the City within its corporate city limits.

**SECTION 10.0**

**VIOLATION AND PENALTY:** Any person violating the provisions of this Ordinance is guilty of a Class "C" misdemeanor and upon conviction shall be fined not more than \$2,000.00 for each offense. Each separate violation of this Ordinance and each continuing day a person violates the provisions of this Ordinance shall be considered a separate offense.

**SECTION 11.0**

**REPEALING CLAUSE:** All provisions in conflict with the provisions of this Ordinance shall be, and the same are hereby repealed, and all other provisions not in conflict with the provisions of this Ordinance shall remain in full force and effect.

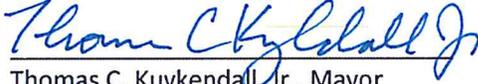
**SECTION 12.0**

**SEVERABILITY CLAUSE:** That if any provision, word, sentence, paragraph, clause, phrase or section of this Ordinance or its application to any person or circumstances is adjudged or held invalid, void or unconstitutional, the invalid, void or unconstitutional portion shall not affect the validity of the remaining portions of this ordinance which shall remain in full force and effect.

**SECTION 13.0**

**EFFECTIVE DATE:** This Ordinance shall be effective and in full force when published as required by law.

**PASSED, APPROVED, and ADOPTED** this, the 15<sup>th</sup> day of December, 2015.

  
Thomas C. Kuykendall, Jr., Mayor

**ATTEST:**

  
D. Gordon Offord, City Secretary