

ORDINANCE NO. 2006-06-13-001

AN ORDINANCE OF THE CITY OF KEMPNER, TEXAS, TO AMEND IN ITS ENTIRETY, ORDINANCE NO. 2005-10-25-002, PROHIBITING THE MANUFACTURE, ASSEMBLY, STORAGE, TRANSPORT AND IGNITION OF FIREWORKS WITHIN THE CITY; DECLARING A PUBLIC NUISANCE; PROVIDING EXCEPTIONS; PROVIDING A PENALTY; PROVIDING FOR RELATED MATTERS; AND FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

Whereas, there is a need to amend said ordinance #2003-04-08-001 in its entirety for the manufacture, assembly, storage, transportation or ignition of fireworks within the city limits of the City that would be a threat to the public health and safety of the citizens and property of the city; and

Whereas, the regulation of fireworks within the City will serve the public purposes by preventing fires;

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

Section 1. Definitions. For the purposes of this ordinance the following words and terms shall, when used, have the meaning given in this section.

“Fireworks” means and included any firecrackers, cannon crackers, skyrockets, torpedoes, Roman candles, sparklers, squibs, fire balloons, star shells or any other substance in whatever combination by any designated name intended for use in obtaining visible or audible pyrotechnic display and includes all articles or substances within the commonly accepted meaning of fireworks, whether specifically designated and defined in this ordinance or not.

“Authorized Enforcement Officer” shall mean any person designated by the City to serve in the position or capacity, and, absent such designation, the Mayor.

Section 2. Fireworks Prohibited. (a) It shall be unlawful for any person to manufacture, assemble, store, transport, receive, keep, 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, except under special permit as authorized in the Fire Prevention Code.

(b) It shall be unlawful for any parent or guardian of any minor child below the age of 14, or for any adult, to permit or allow such a minor child to use, discharge, ignite, detonate, fire or otherwise set in action any fireworks.

Section 3. Public Nuisance – Enforcement. The presence of fireworks within the jurisdiction of the City in violation of this ordinance is declared to be a common and public nuisance.

(a) The Authorized Enforcement Officer may seize any fireworks found within the jurisdiction in violation of this ordinance and may hold same as contraband to be used in the

prosecution of any person found to be in violation of this ordinance. All fireworks seized pursuant to this authority and no longer needed for evidence, shall be disposed of as provided by law.

- (b) The Authorized Enforcement Officer or any law enforcement officer or any 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 City/Fire Marshal can be notified in order that said fireworks may be seized in accordance with the terms of this ordinance, and properly tag as evidence.
- (c) Notwithstanding any penal provision of this ordinance, the City Attorney is authorized to file suit on behalf of the City or the Authorized Enforcement Officer or both for 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 Authorized Enforcement Officer in the discharge of such fireworks, but it shall not be necessary to obtain any such injunctive relief as a prerequisite to such seizure and destruction.
- (d) The Authorized Enforcement Officer is authorized to enter any commercial, retail or manufacturing building or establishment where the unlawful presence of fireworks is suspected in order to inspect the same for the presence of such fireworks.

Section 4. Exceptions. This ordinance does not apply to (a) 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 railroad or trucking company for use in railroad or trucking operations; and any other emergency type of flares used by non-commercial vehicles and boats during a period of an emergency within the roadway and (b) fireworks only being transported through the City by railroad, or on any state or county maintained roadway, by a licensed carrier.

Section 5. Territorial Applicability. This ordinance is applicable and in force throughout the territory of the City within its corporate limits.

Section 6. Penalty. (a) Any person who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine not to exceed \$2,000.00.

(b) Any person who manufactures, assembles or stores, or who transports, receives, keeps, sells, offers for sale or has in his possession with intent to sell, any fireworks within the City shall be fined an amount not to exceed \$500 for each offense for which such person is convicted. If the fireworks are separately wrapped or packaged, doing any act prohibited by, or omitting to do any act required by this ordinance shall be a separate offense as to each such separately wrapped or separately packaged fireworks. Each day that a violation of this ordinance continues with respect to any package of fireworks constitutes a separate offense.

(c.) Any person who uses, discharges, causes to be discharged, ignites, detonates, fires or otherwise sets in action any fireworks shall be fined an amount not to exceed \$2,000 for each offense for which such person is convicted.

(d.) Any person who possesses with the intent to use, discharge, ignite, detonate, fire or intends to otherwise set in action any fireworks shall be fined an amount not to exceed \$500 for each offense for which such person is convicted.

Section 7. Repeal of Conflicting Ordinances. All ordinances or parts of ordinances and sections of the City Code of Ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

Section 8. Severability. If any provision of this ordinance or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications hereof which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

Section 9. Effective Date. This ordinance shall take effect immediately from and after its passage and publication in the manner set forth with the provisions of the Local Gov't Code.

Section 10. Open Meetings. That it is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapt. 551, Loc. Gov't Code.

PASSED AND APPROVED on this the ____ day of _____, 20____.

Attest:

CITY OF KEMPNER, TEXAS

Frances Spinney, City Secretary

Gene Isenhour, Mayor

