

ORDINANCE NUMBER 1063

AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS, AMENDING CHAPTER 94: GENERAL PROVISIONS BY CHANGING TITLE OF CHAPTER 94 TO FIRE PREVENTION; PYROTECHNICS; REPEALING SUBCHAPTER "FIREWORKS," SECTIONS 94.20-94.25 AND REPLACING WITH SUBCHAPTER "PYROTECHNICS," SECTIONS 94.20-94.28; PROVIDING REPEALER AND SEVERABILITY CLAUSES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Board of Commissioners of the City of Burkburnett is continually reviewing the provisions of the City Code of Ordinances to ensure that it meets the current needs of the City and that the procedures herein reflect standard practice.; and

WHEREAS, the Board of Commissioners of the City of Burkburnett desires to promote its citizens' health, safety, and general welfare by updating the definition of pyrotechnics, update regulation along city boundaries, establish a pyrotechnic display permit, and incorporate the affirmative defenses for possession established in Section 342.013 of the Texas Local Government Code;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS THAT:

PART 1. REPEAL AND PLACEMENT OF SUBCHAPTER "FIREWORKS," SECTION 94.20-94.25

THAT the Code of Ordinances Chapter 94 be retitled "FIRE PREVENTION; PYROTECHNICS," and Subchapter "Fireworks," Sections 94.20-94.25 be repealed in their entirety and replaced with the following provisions which are here adopted:

Pyrotechnics

§ 94.20 DEFINITION.

For the purpose of this subchapter the following definition(s) shall apply unless the context clearly indicates or requires a different meaning.

"PERSON." A human being, a firm, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

"PYROTECHNICS." Includes any combustible or explosive composition or any substance or combination of substances or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation including, but not limited to fireworks such as Roman candles, sky rockets, helicopter type rockets, cylindrical fountains, cone fountains, wheels, illuminating torches and colored fire in any form, sparklers and dip sticks, or firecrackers; as well as mines; shells; salutes; whistles without report; squibs; a fire balloon; a hydrogen-filled balloon; signal lights; blank cartridges; toy pistols, toy cannons, toy canes or toy guns in which explosives are used; torpedoes; dago bombs or other devices of like construction and any devices

containing any explosive or flammable compound or any tablets or other devices containing **any** explosive substance. However, the term “pyrotechnics” does not include auto flares, paper caps containing not in excess of an average of 0.25 of a grain of explosive content per paper cap manufactured in accordance with the regulations for packing and shipping as provided therein and toy pistols, toy canes, toy guns or other devices for use of such caps, the sale and use of which shall be permitted.

§ 94.20.1 APPLICABILITY.

This article shall be applicable within the corporate city limits and also within the area immediately adjacent and contiguous to the city limits and extending outside the city limits for a distance of 5,000 feet.

§ 94.21 DISCHARGE OF PYROTECHNICS.

No person shall throw or explode any pyrotechnics of any kind within the city limits.

§ 94.22 SALE OF PYROTECHNICS.

No person shall exhibit or have in his or her possession with the intent to give away or sell or offer for sale any pyrotechnics within the city limits.

§ 94.23 EXCEPTIONS.

Nothing in this subchapter shall be construed to apply to the sale, storage, or use of railroad track torpedoes, or other signaling devices used by railroads, the Police Department and Fire Department; nor to the sale, storage, or use of flashlight composition by photographers or dealers in photographic supplies; or prevent any public or private demonstration or display of fireworks of any kind if conducted under proper police supervision after application has been made and a permit issued by the Fire Marshal’s Office, for such demonstration or display, and shall be of such a character, and so located, discharged, or fired, as in the opinion of the Fire Marshal’s Office after proper inspection so as not to be hazardous to property or endanger any persons.

§ 94.24 POSSESSION IN CITY LIMITS; IDENTIFICATION OF COMMERCIAL VEHICLES.

- (a) No person shall have in his possession in the corporate city limits any pyrotechnics. Subject to Texas Local Government Code sec. 342.013, any pyrotechnics found in the possession of any person shall be condemned, seized, and confiscated by the Police Department or the fire marshal.
- (b) Any commercial pyrotechnics dealer or operator, jobber, retailer, importer, or manufacturer transporting Class C fireworks within the city limits and extending for a distance outside of the city limits for a total of 5,000 feet must display on each vehicle the word “fireworks.” This may be permanently attached to the vehicle or on a sign. The word “fireworks” must be at least six inches in height and shall be visible on both sides and the rear of the vehicle.

Prosecution for possession of fireworks pursuant to this article shall be subject to the affirmative defense established by Texas Local Government Code sec. 342.013

§ 94.25 PERMIT FOR PYROTECHNICS DISPLAY.

The state fire marshal may issue a written permit to a properly qualified person for giving a pyrotechnic display in accordance with Texas Government Code sec. 417.004 and Chapter 2154 of the Texas Occupations Code. It shall be the duty of the city fire marshal to make an investigation as to whether such a display as proposed shall be of such a character and so located that it may be hazardous to property or dangerous to any person, and he shall so advise the state fire marshal of his findings. All pyrotechnic displays must be permitted by the city Fire Marshal's Office. A fee established by separate ordinance will be assessed for the permit. All displays will be supervised by the fire marshal.

§ 94.26 USE, KEEPING, OR MANUFACTURING IN EXTRATERRITORIAL JURISDICTION.

- (a) No person shall have, keep, store, or manufacture any pyrotechnics within the area immediately adjacent and contiguous to the city limits and extending for a distance outside of the city limits for a total of 50 feet. It shall be unlawful to do or perform any act in violation of this subsection within such area of 50 feet outside the city limits, provided that this subsection shall not apply within any portion of such 50-foot area which is contained within the territory of any other municipal corporation.
- (b) No person shall use, fire, explode or cause to be used, fired or exploded any pyrotechnics within the area immediately adjacent and contiguous to the city limits and extending for a distance outside the city limits for a total of 50 feet. It shall be unlawful to do or perform any act in violation of this subsection within such area of 50 feet outside the city limits, provided that this subsection shall not apply within any portion of such 50-foot area which is contained within the territory of any other municipal corporation.
- (c) No person shall have, keep, store, or manufacture any pyrotechnics within an area extending for a distance outside of the city limits from a distance of 50 feet to a distance of 5,000 feet from the city limits, during a period in which the County Commissioners' Court has issued a burn ban in and for the county

§ 94.27 PERMIT FOR KEEPING, OR MANUFACTURING IN EXTRATERRITORIAL JURISDICTION.

No person shall have, keep, store, or manufacture any pyrotechnics within an area extending for a distance outside of the city limits from a distance of 50 feet to a distance of 5,000 feet from the city limits, unless such person shall have obtained a permit from the city fire marshal's office. The application for such permit shall contain the specific location of the building used to keep, store, manufacture or sell the pyrotechnics and must also contain a blueprint or diagram showing the construction of such building. The construction of the building must comply with the rules and regulations of the city fire marshal's office. A permit fee established by a separate ordinance will be assessed per retail location.

§ 94.28 HOURS OF CLOSING FOR MANUFACTURING IN EXTRATERRITORIAL JURISDICTION.

All persons manufacturing pyrotechnics within an area extending for a distance outside of the city limits from a distance of 50 feet to a distance of 5,000 feet from the city limits shall close their doors and places of business each night from 11:55 p.m. until 6:00 a.m. the following morning and

shall not manufacture any pyrotechnics during this time period.

PART II: REPEALER

All ordinances or parts of ordinances in force when the provisions of this Ordinance become effective, which are inconsistent or are in conflict with the terms and provisions contained in this Ordinance, are hereby repealed only to the extent of any such conflict.

PART III: SEVERABILITY

It is hereby declared to be the intention of the Board of Commissioners that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance be severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance, and the remainder of this Ordinance shall be enforced as written.

PART IV: COMPLIANCE WITH TEXAS OPEN MEETINGS ACT

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act Chapter 551 of the Texas Government Code.

PART V: EFFECTIVE DATE

This Ordinance shall take effect after publication in accordance with State law.

PASSED AND APPROVED ON THIS 15TH DAY OF JULY, 2024.

Lori Kemp, Mayor

ATTEST:

Nikki Tepfer, City Clerk