

CITY OF SEVEN POINTS

ORDINANCE NO. 255

AN ORDINANCE PROVIDING FOR THE SALE AND USE OF FIREWORKS WITHIN THE CORPORATE LIMITS OF THE CITY OF SEVEN POINTS, TEXAS; PROVIDING A PENALTY FOR UNLAWFUL SALE OR DISCHARGE OF FIREWORKS WITHIN THE CORPORATE LIMITS OF THE CITY OF SEVEN POINTS, TEXAS; REPEALING ORDINANCE NO. 81, ORDINANCE NO. 206 AND ORDINANCE NO. 223; PROVIDING FOR A PENALTY; PROVIDING FOR A SEVERABILITY CLAUSE AND REPEALING CONFLICTING ORDINANCES AND RESOLUTIONS.

BE IT ORDAINED BY THE CITY COUNCIL OF SEVEN POINTS, TEXAS:

WHEREAS, it is necessary to provide for fair and uniform Regulation of the Sale and Use of Fireworks in the City of Seven Points the following Chapter is hereby adopted:

CHAPTER I.

Section 1. Definitions. As used in this Chapter, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:

- (1) **CITY means:** The City of Seven Points
- (2) **FIREWORKS means:** Any composition or device designed to produce a visible or audible effect by combustion, explosion, deflagration, or detonation, and that is defined as "**special fireworks**" by 49 C.F.R. Section 173.88(d) (1983), or as "**common fireworks**" by 49 C.F.R. Section 173.100(r) (1983).
- (3) **COMMON FIREWORKS means:** Any fireworks designed primarily to produce visual or audible effects by combustion.
 - (a) The term includes:
 1. Ground and hand-held sparkling devices, including items commonly known as dipped sticks, sparklers, cylindrical fountains, cone fountains, illuminating torches, wheels, ground spinners, and flutter sparklers;
 2. Smoke devices;
 3. Fireworks commonly known as helicopters, aerals, spinners, roman candles, mines and shells;
 4. Class C explosives classified as common fireworks by the United States Department of Transportation, by regulations found in the code of Federal Regulations (49 CFR 173.108).
 - (b) The term does not include fireworks commonly known as firecrackers, salutes, chasers, skyrockets, and missile-type rockets.
- (4) **DANGEROUS FIREWORKS means:** Any fireworks not defined as a "common fireworks".
- (5) **"SPECIAL FIREWORKS" means:** means a large fireworks device designed primarily to produce visible or audible effects by combustion, deflagration, or detonation and that is classified as a Class B explosive by the United States Department of Transportation.

(6) "**DISTRIBUTOR**" means a person or entity that sells fireworks to jobbers, retailers, or other distributors for resale to others.

(7) "**FIRE PREVENTION OFFICER**" means the chief of a fire department, a fire marshal, the county fire marshal, the sheriff, a constable, any other local enforcement officer primarily responsible for fire prevention, or, if there is no local fire authority, the state fire marshal.

(8) "**ILLEGAL FIREWORKS**" means a fireworks device manufactured, distributed, or sold in violation of this article.

(9) "**IMPORTER**" means a person who imports fireworks from a foreign country or from another state for sale to distributors or jobbers in this state.

(10) "**JOBBER**" means a person who purchases fireworks for resale to retailers only.

(11) "**MANUFACTURER**" means a person, firm, corporation, or association that engages in the making of fireworks.

(12) "**PERSON**" means an individual or entity, including an owner, manager, officer, employee, or occupant.

(13) "**PUBLIC DISPLAY**" means the igniting of Class B fireworks for public or private amusement.

(14) "**PYROTECHNIC OPERATOR**" means an individual who, by experience, training, and passing any required examination, has demonstrated the necessary skill and ability for safely assembling, discharging, and supervising public displays of Class B fireworks.

(15) "**RETAILER**" means a person who purchases fireworks for resale to the general public only.

(16) "**SALE**" means the sale or offering for sale any merchandise, equipment, or service, at wholesale or retail, to the public or to any person, for an agreed sum of money or other consideration.

(17) "**INSURANCE AGENT**" means:

(a) a person, firm, or corporation licensed under Article 21.14 or 1.14-2 of this code;

(b) a salaried, state, or special agent; and

(c) a person authorized to represent an insurance fund or pool created by a city, county, or other political subdivision of the state under The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes).

Section 2. Sale or Use of fireworks unlawful. It is unlawful for any person to **Sell, Discharge** or **Use** any fireworks within the City other than those fireworks designated as "**Common Fireworks**" in Section 1 of this Chapter, provided that this prohibition shall not apply

to duly authorized public displays.

Section 2A. The following are not common fireworks:

- (a) (1) sky rockets, also known as "**bottle rockets**":
 - (A) with a total propellant charge of less than four grams;
 - (B) with a casing size of less than five-eighths of an inch for the outside diameter and less than 3 1/2 inches in length; and
 - (C) with an overall length, including stick, of less than 15 inches; and
 - (2) other fireworks determined not acceptable by the United States Consumer Product Safety Commission.
- (b) The term "**bottle rocket**" may not be used in association with the advertisement or sale of fireworks.

Section 3. Permit required to sell or display fireworks. It is unlawful for any person to engage in the retail sale of or to sell any fireworks or to hold, conduct, or engage in a public display of fireworks within the City without first having obtained a valid permit issued pursuant to the provisions of this Ordinance.

Section 4. Time limit set on sale. The holder of a retail fireworks permit may only sell fireworks to the general public, and only during periods:

- (1) beginning June 24 and ending at midnight on July 4; and
- (2) beginning December 20 and ending at midnight on January 1 of the following year; and
- (3) No fireworks may be sold between the hours of 1:00 a.m. and 8:00 a.m.

Section 5. Permit fees. The annual fee for a "seller's permit" for the sale of fireworks as may be authorized under this Chapter, shall be Two Hundred Fifty Dollars and No Cents (\$250.00) per year for each seller's permit, payable in advance. The fee for a "public display permit" for the public display of fireworks shall be One Hundred Dollars and No Cents (\$100.00), payable in advance.

Section 6. Issuance--nontransferable--voiding. Each seller's permit issued under this Chapter shall be for only one retail outlet. The number of seller's permits shall not be limited as long as all conditions are met as stated in Section 8 and 10 of this Chapter. Each seller's permit issued pursuant to this Chapter shall be valid only for the current year, shall be used only by the designated permittee and shall be nontransferable. Each public display permit issued pursuant to this Chapter shall be valid for the specific authorized public display event only, shall be used only by the designated permittee and shall be nontransferable. Any transfer or unauthorized use of a permit is a violation of this Chapter and shall void the permit granted in addition to all other sanctions provided in this Chapter.

Section 7. Application for public display permit. Applications for a permit to conduct a public display of fireworks shall be made to the City Fire Marshal at least 14 days prior to the scheduled event. Applicants shall meet all qualifications and requirements of state law regarding public display of fireworks and all fire and safety requirements as set forth in the standards for public display, and as set forth in Section 12 of this Chapter.

Section 8. Application for seller's permit--conditions for issuance.

Applications for seller's permits shall be made to the City Inspector/Code Enforcement Official annually on or after April 1st of the year for which the permit is to be issued and the filing period shall close on June 17th of such year unless extended by action of the City Council. Upon compliance with all the conditions of this ordinance and this amendment as amended, the City Inspector/Code Enforcement Official shall instruct the City Secretary and/or City Clerk to issue a permit in accordance with this Ordinance. Applications shall be signed by the retail seller, if an individual, or by the duly authorized officer, if an association or corporation. It is unlawful for a fireworks manufacturer, wholesaler or supplier to make application for or to obtain a retail sales permit on behalf of any retailer. Seller's permits for the sale of those fireworks allowed pursuant to section 2 of this Chapter shall be issued only to applicants meeting the following conditions:

(a) The retailer or person in charge and responsible for the retail operation shall be 21 years of age or older, of good moral character and of demonstrated responsibility.

(b) The applicant shall comply with, and have a valid and current license issued by the State of Texas pursuant to, Tex. Ins. Code art. 5.43-4, authorizing the holder to engage in the retail sale of fireworks.

(c) The applicant shall own or have the right to possess a temporary fireworks stand complying with the requirements of this Chapter.

(d) The applicant shall procure and maintain a policy or policies of public liability and property damage insurance issued by a company or companies authorized to do business in the State of in the following minimum amounts:

\$500,000 for injuries to any one person in one accident or occurrence; \$1,000,000 for injuries to two or more persons in any one accident or occurrence; \$500,000 for damage to property in any one accident or occurrence; \$1,000,000 combined single limit for any one accident or occurrence. In addition, the City is to be an additional named insured and the policy shall provide for the immediate notification of the City by the insurer of any cancellation of any policy.

(e) The permit holder's location or place of business shall be only in zoning districts B-1, B-2 and L-1 as those districts are defined in Ordinance Number 125 enacted by the City of Seven Points on the 12th day of July 1983; provided, that the sale of those fireworks authorized herein shall not be deemed an enlargement of an existing nonconforming use.

(f) The applicant shall post with the City a performance bond or a cash deposit in an

amount not less than \$200 conditioned upon the prompt removal of the temporary fireworks stand and the cleaning up of all debris from the site of the stand, which deposit shall be returned to the applicant only in the event that the applicant removes the temporary stand and cleans up all debris to the satisfaction of the City. In the event the applicant fails to do so, the performance bond or cash deposit shall be forfeited. In no event shall the applicant be entitled to the return of the performance bond or cash deposit if he or she has failed to remove the stand and clean up all debris by the tenth day following the sales period. Further, the applicant may be subjected to a fine not to exceed \$200.00 a day for each and every day following the 10th day after the end of the sales period wherein he or she has failed to remove the stand and clean up all debris.

(g) No seller's permit shall be issued for a location which fails to meet the criteria set forth in this section and Sections 9, 10 and 11 of this Chapter, including the minimum stand separation requirement. When necessary, in order to determine priority as to a newly proposed location, the earliest date and time of filing of an application for a new seller's permit with the City Inspector/Code Enforcement Official, shall be controlling.

(h) Sellers Permit shall be valid from April 1st, of current year, until January 2nd of following year.

(i) The applicant shall comply with and have a valid and current "Texas Sales and Use Tax Permit". A copy of said permit shall be on file in the City Inspector/Code Enforcement Official's office before the seller's permit will be issued. The permit holder shall be responsible for the payment of the "Texas Sales and Use Tax" to the State Comptrollers office. No seller's permit shall be issued until prior year's "Texas Sales and Use Tax" has been paid to the State Comptroller's office. A "Texas Sales and Use Tax" permit must be publicly displayed with the "Seller's Permit" at each location.

(j) The permit holder shall be responsible for compliance of all conditions of this Ordinance.

Section 9. Sale from stands--exceptions. All approved fireworks as set forth in Section 2 of this Chapter except toy paper caps containing not more than twenty-five hundredths grain of explosive compound for each cap and trick or novelty device not classified as common fireworks, shall be sold and distributed only from temporary stands.

Section 10. Standards for temporary stands. The temporary stands of all seller's permit holders shall conform to the following minimum standards and conditions:

(a) Temporary fireworks stands need not comply with all provisions of the building code; provided, however, that all such stands be erected under the supervision of the City Inspector/Code Enforcement Official, who shall require all stands to be constructed in a safe manner ensuring the safety of attendants and patrons. In the event any temporary stand is wired for electricity, the wiring shall conform to the electrical code.

(b) No temporary fireworks stand shall be located within 50 feet of any other building or structure, nor within 150 feet of any gasoline station, oil storage tank or premises where flammable liquids or gases are kept or stored.

(c) Each temporary fireworks stand must have at least two exits that provide ingress and

egress to and from the stand and which shall be unobstructed at all times.

(d) Each temporary fireworks stand shall have, in a readily accessible place, at least two, ABC Ten (10) pound fire extinguishers, or an equivalent thereof, which are in good working order.

(e) All weeds, grass, and combustible material shall be cleared from the location of the temporary fireworks stand and the surrounding area to a distance of not less than 25 feet, measured from the exterior walls of the temporary fireworks stand.

(f) No smoking shall be permitted in or near a temporary fireworks stand for a distance of not less than 50 feet measured from the exterior walls of the temporary fireworks stand. Signs in bold face letters, at least 5" high, stating:

"No smoking within 50 feet"

shall be posted on the exterior of each wall of the temporary fireworks stand.

(g) Each temporary fireworks stand shall have a person who is 18 years old or older in attendance at all times the stand is stocked. Stock from the stand shall not be removed and stored in any other building during the sales period without the express approval of the City Inspector/Code Enforcement Official.

(h) All unsold stock and accompanying litter shall be removed from the temporary fireworks stand by 12:00 noon on the seventh day of July of each year and the 4th day of January of the following year.

(i) No temporary fireworks stand shall be located within 300 feet of any other temporary fireworks stand which is located on same side of the street which any other temporary fireworks stand is situated.

(j) Each temporary fireworks stand shall have provisions for sufficient off-street parking, at least 15 spaces, to avoid impeding a continuous flow of traffic at entrances and exits from the premises.

(k) No person shall setup, or cause to be setup, any temporary fireworks stand prior to 30 days immediately preceding the beginning date of any legal selling period as setforth in this ordinance. Failure to comply with this provision may result in revocation of the person's permit to sell fireworks and/or a fine not to exceed \$500.00 a day for every day such failure to comply herewith exists.

(l) Upon completion of issuance of permits, Section 8, and upon compliance of standards for "Temporary Stands", Section 10, the Fire Marshall and/or Fire Chief shall then perform inspection of the fireworks stand in matters relating to fire safety standards.

Section 11. Standards for public fireworks displays. All public fireworks displays shall conform to the following minimum standards and conditions:

(a) All public fireworks displays must be planned, organized and discharged by

pyrotechnician, "Pyrotechnician" means an individual who by experience and training has demonstrated the required skill and ability for safely setting up and discharging displays of special fireworks.

(b) A permit must be obtained from the City and approved by the City Fire Marshal or designee prior to any display of public fireworks. The permit shall include the name of the applicant and his address, the name of the Pyrotechnician and his address; the exact location, date and time of the proposed display; the number, type and class of fireworks to be displayed the manner in which the fireworks are being stored prior to the public fireworks display; and shall include the name and address of the insurance company providing the bond required. Said permit must be displayed within the stand and in plain view of the general public.

(c) A drawing shall be submitted to the City Fire Marshal showing a plan view of the fireworks discharge site and the surrounding area within a 500-foot radius. The drawing shall include all structures, fences, barricades, streets fields, streams and any other significant factors that may be subjected to ignition of that may inhibit firefighting capabilities.

(d) When, in the opinion of the City Fire Marshal, such requirement is necessary to preserve the public health, safety and welfare, the permit may require that a City Fire Department pumper and a minimum of two trained City Firefighters shall be on site 30 minutes prior to and after the shooting of the event. The exhibitor shall repay the City for all wages due to firefighters for such time. All compensation for City Fire Department apparatus will be as per the State of Texas Fire Chief's Association's fee schedule and shall be designated to the Seven Points Volunteer Fire Department's general fund.

(e) All combustible debris and trash shall be removed from the area of discharge for a distance of 300 feet in all directions.

(f) All unfired or "dud" fireworks shall be disposed of in a safe manner.

(g) A minimum of two ABC Ten (10) pound fire extinguishers, or an equivalent thereof, and one fire blanket shall be required to be at the fireworks discharge site.

(h) The permit shall be immediately revoked at any time the City Fire Marshal or his designee deems such revocation is necessary due to noncompliance, weather conditions such as, but not limited to, extremely low humidity or high winds. The display shall also be canceled by accidental ignition of any form of combustible or flammable material in the vicinity due to falling debris from the display.

(i) Areas of public access shall be determined by the City Fire Marshal or designee and maintained in an approved manner.

Section 12. Use of fireworks in public parks and on public land. It shall be unlawful for any person to discharge any fireworks upon public land or in any public park, owned by the City, provided, however, that such use shall be permitted under the following circumstances:

(a) This provision shall not apply to possession of fireworks in the otherwise lawful use of public rights of way such as sidewalks and planting strips. This subsection shall not

be a defense to a charge of obstructing traffic or otherwise obstructing a public right of way.

(b) The Superintendent of Parks shall designate limited areas for use during the hours permitted by the Chapter for the discharge of fireworks as allowed by section 1 of this Chapter. Otherwise lawful discharge of fireworks as allowed by section 1 in such areas shall not be a violation of this section. In doing so, the Superintendent shall consider:

- (1) The sensitivity of the area's environment, wildlife and wildlife habitat;
- (2) The inconvenience and nuisance to abutting property owners;
- (3) The safety and suitability of the area as a place for the discharge of fireworks; and
- (4) Danger of fire or other destruction of public property and improvements from the use of the fireworks.

(c) Upon designation of any area, it shall be signed and posted by July 1st of each year for use on July 4th between the hours of 9:00 a.m. and 11:00 p.m. Designation of any area may be appealed in writing to the City Council by any citizen of the City. The decision of the City Council shall be final.

(d) Nothing in this ordinance shall be deemed to limit the authority of the City Council to allow event display of special fireworks under a permit issued in accordance with the provisions of the Chapter.

Section 13. Special effects for entertainment media. This Chapter does not prohibit the assembling, compounding, use and display of special effects of whatever nature by any person engaged in the production of motion pictures, radio, or television productions, theatricals or operas when such use and display is a necessary part of the production and such person possesses a valid permit issued by the City in accordance with Sections 7 and 8 of this Chapter.

Section 14. Nonprohibited acts--signal purposes, forest protection. This Chapter does not prohibit the use of flares or fuses in connection with the operation of motor vehicles, railroads, or other transportation agencies for signal purposes or illumination or for use in forest protection activities.

Section 15. Applicability. The provisions of this Chapter shall not be applicable to toy paper caps containing not more than twenty-five hundredths grain of explosive compound for each cap and trick nor to novelty device not classified as common fireworks.

Section 16. Chapter in connection with State law. This Chapter is intended to implement applicable State law, to wit, Tex. Ins. Code art. 5,43-4, and shall be construed in connection with that law and any and all rules or regulations issued pursuant to that law.

Section 17. Enforcement. The City Fire Marshal or designee, is authorized to enforce all provisions of this Chapter and, in addition to criminal sanctions or civil remedies, may revoke any permit issued pursuant to this Chapter upon any failure or refusal of the permittee to

comply with the lawful orders and directives of the City Fire Marshal or designee, or to comply with any provisions of this Chapter or the requirements of the community development code relating to temporary structures.

Section 18. Reckless discharge or use prohibited. It is unlawful for any person to discharge or use fireworks in a careless or reckless manner which creates a substantial risk of death or physical injury to another person or damage to the property of another. Violation of this Section is subject to the penalties set forth in Section 20 in addition to any other sanctions provided by law.

Section 19. Severability. The provisions of this Chapter are severable. If any provision of this ordinance or its application to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provisions or application.

Section 20. Penalty. Any person, firm or corporation violating any provision of this Chapter shall be fined not less than Five Dollars and No Cents (\$5.00) dollars nor more than Two Thousand Dollars and No Cents (\$2,000.00) for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

Section 21. Effective Date. This Ordinance shall become effective on the date of its signing.

Section 22. Repealing Clause. This Ordinance specifically repeals Ordinance No. 81; Ordinance No. 206 and Ordinance No. 223; all ordinances and resolutions or parts of ordinances and resolutions that conflict herewith, be and the same are hereby repealed to the extent of such conflict only.

PASSED AND APPROVED BY THE SEVEN POINTS CITY COUNCIL this the 6th day of June, 1997.


Hon. Marian Hill, MAYOR

ATTEST:


Terry Abbott, CITY SECRETARY