

**CITY OF TOOL
HENDERSON COUNTY, TEXAS**

ORDINANCE NO. 2006-1019

AN ORDINANCE PROVIDING FOR THE SALE AND USE OF FIREWORKS WITHIN THE CORPORATE LIMITS OF THE CITY OF TOOL, TEXAS, PROVIDING A PENALTY FOR UNLAWFUL SALE OR DISCHARGE OF FIREWORKS WITHIN THE CORPORATE LIMITS OF THE CITY OF TOOL, TEXAS; REPEALING ARTICLE 5.3 AND AMENDMENTS OF THE TOOL CITY CODE.

BE IT ORDAINED BY THE CITY COUNCIL OF TOOL, TEXAS:

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

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

- (1) **BUILDING.** Any structure, either temporary or permanent, having a roof, and used or built for the enclosure or shelter of persons, animals, vehicles, goods, merchandise, equipment, materials, or property of any kind.
- (2) **PRINCIPLE BUILDING.** A building in which is conducted the principle use of the lot, tract or property on which it is situated.
- (3) **ACCESSORY BUILDING.** A subordinate building, the use of which is incidental to that of the principle building on the same lot, tract or property.
- (4) **BUILDING LINE - SETBACK LINE.** A line established, in general parallel to the front street line. No building or structure may be permitted in the area between the building line and the street right-of-way.
- (5) **CITY.** The City of Tool.
- (6) **EASEMENT.** A right given by the owner of a parcel of land to another person, public agency or private corporation for specific and limited use of that lot, parcel or property.
- (7) **FIREWORKS.** 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).
- (8) **COMMON FIREWORKS.** Any fireworks designed primarily to produce visual or audible effects by combustion.

(a) The term includes:

1. Ground and hand-held sparking devices, including items commonly known as dipped sticks, sparklers, cylindrical fountains, cone fountains, illuminating torches, wheels, ground spinners, and flutter sparklers;
2. Smoke device;
3. Fireworks commonly known as helicopters, aerials, 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).

- (9) **DANGEROUS FIREWORKS.** Any fireworks not defined as a common firework.
- (10) **SPECIAL FIREWORKS.** A large fireworks device designed primarily to produce visible or audible effects by combustion, deflagration, or detonation and that is classified as Class B explosives by the United States of America.
- (11) **DISTRIBUTOR.** A person or entity that sells fireworks to jobbers, retailers, or other distributors for resale to others.
- (12) **FIRE PREVENTION OFFICER.** The chief of a fire department, a fire marshal, the county fire marshal, the sheriff, a constable, or any other local enforcement officer primarily responsible for the prevention of fire or, if there is no local fire authority, the state fire marshal.
- (13) **ILLEGAL FIREWORKS.** A fireworks device manufactured, distributed, or sold in violation of this article.
- (14) **IMPORTER.** A person who imports fireworks from a foreign country or from another state for sale to distributors or jobbers in this state.
- (15) **INSURANCE AGENT:**
- (a) A person, firm, or corporation licensed under Article 21.14 or 1.14-2 of the Texas Insurance Code and as referenced under Article 5.43-4 of the Texas Insurance 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).
- (16) **JOBBER.** A person who purchases fireworks for resale to retailers only.
- (17) **LOT AREA.** The total horizontal area included within lot or property lines.
- (18) **MANUFACTURER.** A person, firm, corporation, or association that engages in the making of fireworks.

- (19) **PERSON.** An individual or entity, including an owner, manager, officer, employee, occupant.
- (20) **PUBLIC DISPLAY.** The igniting of Class B fireworks for public or private amusement.
- (21) **PYROTECHNIC OPERATOR.** 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.
- (22) **RETAILER.** A person who purchases fireworks for resale to the general public only.
- (23) **SALE.** 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.
- (24) **YARD.** The open space existing on the same lot with a principle building, unoccupied and unobstructed by building from the ground upward, between the lot line and the building line.
- (25) **FRONT YARD.** A yard extending across the front of a lot between the side lot, tract or property lines and being the minimum horizontal distance between the front lot line and the principal building.
- (26) **REAR YARD.** A yard extending across the rear of a lot between the side lot, tract or property lines and being the minimum horizontal distance between the rear lot line and the principal building. On both corner and interior lots the rear yard shall in all cases be at the opposite end of the front yard.
- (27) **SIDE YARD.** A yard extending from the front yard to the rear yard and being the minimum horizontal distance from the side lot, tract or property line to the principle building.
- (28) **SIDE STREET YARD.** A yard adjacent to a street between the front and the rear lot, tract or property line and being the minimum horizontal distance from the side lot line to the principal building.

Section 2. **Sale or Use of fireworks unlawful.** It is unlawful for any person to **Sell** any fireworks within the City, other than those fireworks designated as “**Common Fireworks**” in Section 1 of this Ordinance, with out acquiring a permit from the City. It is unlawful for any person to **Discharge** or **Use** any fireworks within the City, provided that this prohibition shall not apply to duly authorized public displays.

A seller or retailer of fireworks may apply for a sellers permit to the City of Tool provided that the sale of fireworks will be conducted from a permanent fireworks sale and distribution building constructed on site in accordance with Section 7.B of this ordinance. No temporary firework sale stands shall be permitted within the city limits of the City of Tool.

Section 2.A **Not common fireworks.** The following are not common fireworks:

- (a) (1) sky rockets, also known as “bottle rockets”
 - i. with a total propellant charge of less than four grams.

ii. With a casing size of less than five-eighths of an inch of the outside diameter and less than 3 ½ inches in length; and

iii. 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 of 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

(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) per year, per 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 Ordinance 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 7 and 8 of this Ordinance. Each seller’s permit issued pursuant to this Ordinance shall be valid only for the current calendar year, shall be used only by the designated permittee and shall be nontransferable. Each public display permit issued pursuant to this Ordinance shall be valid for the specific authorized public 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 Ordinance and shall void the permit granted in addition to all other sanctions provided in the Ordinance.

Section 7. **Application for seller’s permit-conditions for issuance.** Applications for seller’s permits shall be made to the City Secretary or designee annually on or after April 1 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, the City Secretary or designee shall 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 firework 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 Ordinance 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 procure and maintain a policy 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 amount:
 - \$500,000 for injury to any person in one accident of occurrence;
 - \$1,000,000 for injures 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 and additional named insured and the policy shall provide for the immediate notification of the City by the insurer of any cancellation of any policy.
- (d) No seller's permit shall be issued for a location which fails to meet the criteria set forth in this Section 7.A of this Ordinance.
- (e) Seller's permit shall be valid from April 1st of current year until January 2nd of following year.
- (f) 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 Secretary's office before the seller's permit will be issued. The permit holder shall be responsible for the payment for 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" had 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.
- (g) The permit holder shall be responsible for compliance of all conditions of this Ordinance.

Section 7.A **Fireworks sale and distribution building.** A fireworks sale and distribution building may only be permitted for construction on commercially zoned or designated property with direct vehicular access to State or Federal Highways within the City limits of the City of Tool.

Section 7.B **Site and development plan requirements.** At the time of application for a seller's permit, the applicant shall submit three copies of a site plan to the City of Tool for review and consideration The report and recommendation regarding acceptance of the site plan by the staff of the City of Tool will be presented to the Tool City Council concurrent with the City Council's consideration of permitting the sale and distribution of fireworks within the City of Tool.

(1) Site Plan Submittal Requirements.

- (A) Three copies of the site plan
- (B) Site plan sheet size: 18" x 24" or 24" x 36"
- (C) Minimum drawing scale: 1" = 20'

- (D) Site plan shall illustrate: building location, building setbacks, public access and parking, cross access and service drives, utility easements, building elevations, north arrow and the general utilization of the property.

(2) Development Requirements.

(A) Minimum Site and Building.

- (1) Lot area - One-half (1/2) acre
- (2) Lot frontage on State or Federal Highway - 125 feet
- (3) Building Size - 2000 square feet

(B) Minimum Building Setbacks.

- (1) Front yard - 50'
- (2) Rear yard - 25'
- (3) Side yard - 25'
- (4) Side street yard (facing Highways) - 40'

- (3) The maximum height of the building shall not exceed thirty-five (35') feet.
- (4) No accessory or secondary building can be constructed in the required front, side or rear building setback
- (5) Only onsite permanent construction is permitted
- (6) Buildings may be constructed of metal and/or wood and masonry building material
- (7) All buildings must be constructed of at least sixty (60%) percent new material
- (8) The front or side elevation of metal buildings adjacent to Highways shall have a masonry (brick or stone) facade covering at least fifty (50%) percent of the elevation.
- (9) Garage or overhead rollup doors shall not be permitted on a building elevation facing a Highway

(10) Parking Requirements.

- (A) Primary public parking spaces per 1000 square feet of building area: Ten (10) 10' x 20' spaces
- (B) All primary off street public parking shall be located in the front yard of the property as measured from the front building line of the building.
- (C) Primary public off street parking areas and access drives to highways shall be paved utilizing asphalt, concrete or other material approved by the City.
- (D) Secondary (overflow) public off street parking spaces per 1000 square feet of building area: Eight (8) 10' x 20' spaces

(E) Secondary (overflow) off street parking shall be provided in the side and rear yards of the property and shall be constructed of a compacted rock material, asphalt, concrete or other material approved by the City.

(F) Parking areas, Primary and/or Secondary, shall not be allowed to be constructed in required utility easements.

(11) Utility Easements. Minimum easements widths of at least ten (10) feet wide on rear property lines and five (5) feet wide on side property lines shall be provided whenever necessary for utilities. A minimum fifteen (15) feet wide utility easement shall be provided along front property lines or along property lines adjacent to State or Federal Highway right-of-ways.

(12) Emergency Access. An unobstructed emergency access drive of at least twenty (20') feet in width shall be designated around all sides of the building. An emergency access drive may be included as part of the public access and parking area provided that the access drives shall not be part of any designated public parking spaces.

(13) Cross Access. A cross access easement and drive to adjoining properties having frontage on State or Federal Highways shall be provided. The easement and drive shall be a minimum of twenty (20') feet in width.

(a) The cross access drive shall be provided along the State or Federal Highway frontage of the property being developed and shall be paved, utilizing either asphalt, concrete or other material approved by the City.

(b) The cross access easement and drive may be included as part of the public access and parking facilities of the site.

(c) The cross access easement shall be recorded in the public records of county in which the development exists.

Section 7.C. **Pre-existing Facilities.** Permanent or temporary firework sale or distribution buildings existing on property annexed into the City prior to the effective date of this Ordinance are exempt from the Site and Development Plan Requirements set forth in Section 7.B of this Ordinance. In the event said building facilities do not acquire an annual permit pursuant to Section 7 of this Ordinance, or said permanent or temporary building is removed for the site for a period of sixty (60) days, the requirements of Section 7.B shall be met.

Section 8. **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 a pyrotechnician. "Pyrotechnician" means an individual whom by experience and

training has demonstrated the required skill and ability for safety setting up and discharging displays of special fireworks.

(b) A permit must be obtained from the City and approved by the City 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 showing a plan view of the fireworks discharge site and the surrounding area with 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 or that may inhibit firefighting capabilities.
- (d) When, in the opinion of the City, such requirements are necessary to preserve the public health, safety and welfare, the permit may require that a fire department pump truck and a minimum of two trained firefighters shall be on site 30 minutes prior to and after the shooting of the event. The exhibitor shall repay all wages due to firefighters for such time. All compensation for the fire department apparatus will be as per the State of Texas Fire Chief's Association's fee schedule and shall be paid to the Tool Volunteer Fire Department, Inc.'s general fund of Henderson County Emergency Service District #4.
- (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 or its 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 or its designee and maintained in an approved in an approved manner.

Section 9.

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 possessions 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 City shall designate limited areas of use during the hours permitted by this Ordinance for the discharge of fireworks as allowed by Section 2 of this Ordinance. Otherwise lawful discharge of fireworks as allowed by section 2 in such areas shall not be a violation of this section. In doing so, the City 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 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 Ordinance.

Section 10. **Special effects for entertainment media.** This Ordinance 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 Ordinance.

Section 11. **Non-prohibited acts-signal purposes, forest protection.** This Ordinance 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 12. **Applicability.** The provisions of this Ordinance shall be applicable to toy paper cups 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 13. **Ordinance in connection with State Law.** This Ordinance 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 14. **Enforcement.** The City Police Chief, Building Inspector or other City Official so designated by the City of Tool, is authorized to enforce all provisions of this Ordinance and, in addition to criminal sanctions or civil remedies, may revoke any permit issued pursuant to this Ordinance upon any failure or refusal of the permittee to comply with the lawful orders and directives of the City Official or designee, or to comply with any provisions of this Ordinance or the requirements of the community development code relating to temporary structures. Coordination with the Tool Volunteer Fire Department, Inc. of Henderson County Emergency Service District #4 is encouraged.

Section 15. **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 property of another. Violation of this Section is subject to the penalties set forth in Section 17 in addition to any other sanctions provided by law.

Section 16. **Severability.** The provisions of this Ordinance 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 17. **Penalty.** Any person, firm or corporation violating any provision of this Ordinance 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 on or which a violation occurs or continues.

Section 18. Effective Date. This Ordinance shall become effective on the date of its signing.

Section 19. Repealing Clause. This Ordinance specifically repeals Article 5.3 " Sale of Fireworks " of the Tool City Code; all ordinances and resolutions or parts of ordinances that conflict herewith, be the same are hereby repealed to the extent of such conflict only.

PASSED AND APPROVED BY THE TOOL CITY COUNCIL this the 19 day of October, 2006.

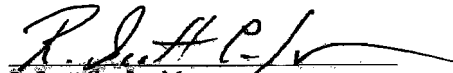
R. Scott Confer, Mayor

ATTEST:

Neva Tankursley, City Secretary

Seal

PASSED AND APPROVED BY THE TOOL CITY COUNCIL this day October 19, 2006.



R. Scott Confer, Mayor

ATTEST:



Neva Tankursley, City Secretary

