



# City Council Agenda Item Report

April 2<sup>nd</sup>, 2013

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**SUBJECT: DELIBERATION AND DIRECTION TO STAFF REGARDING ABILITY TO CONTINUE SELL OF FIREWORKS FOLLOWING ANNEXATION OF PROPERTY.**

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## **1. BACKGROUND/HISTORY**

In January 2012, staff received a letter of request to continue the use of a fireworks stand located on a lot currently under annexation proceedings. The applicant requested to recoup any capital invested in the existing site such as an existing lease. In particular, the applicant requested to either “grandfather” or vest the site in perpetuity until the use goes out of business or allow the use to continue for a fixed term of 5 years. An example of an ordinance to allow the use to continue after annexation is included was included in the letter of request. City Council at that time decided not to pursue any alteration to Article 14.03 of the Code of Ordinances as it pertained to the sale of fireworks.

Upon annexation, existing uses whether conforming or nonconforming to the assigned zoning district, are allowed to continue in accordance with state law notwithstanding the sale and use of fireworks. Cities can immediately regulate fireworks after annexation, whereupon under Article 14.03 Fireworks under the City Code of Ordinances, all sales and use of fireworks is prohibited within the city limits.

## **2. FINDINGS/CURRENT ACTIVITY**

Staff is returning this item for discussion due to a pending annexation that will once again affect an existing fireworks sale facility. While no formal correspondence has been received, given history staff felt in appropriate to provide an opportunity to discuss the topic prior to completion of the annexation since fireworks sales are treated differently than other uses under state law and local ordinance.

Staff has also provided an example of an amortization ordinance from Lufkin related to fireworks sales.

## **3. FINANCIAL IMPACT**

The applicant mentions sales tax revenue would be received from the continuance of the fireworks structure.

**4. ACTION OPTIONS/RECOMMENDATION**

Council's first concern is whether to allow or not allow the use to continue. Should Council allow the use to continue, staff recommends a variance process wherein Article 14.03 would be amended to allow for a variance provision. This option allows Council to stipulate conditions to the use such as structural and site design compliance with the City's UDC and building regulations, amortization period on operations, annual renewal of such variance, and so forth.

**5 ENCLOSURES**

- Article 14.03 of Code of Ordinances
- Applicant's letter of request from 2012
- Lufkin Ordinance with Fixed Amortization