



City Council Agenda Item Report

May 7, 2013

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SUBJECT: DELIBERATION AND POSSIBLE ACTION ON AN ORDINANCE AMENDING ARTICLE 14.03 OF THE CODE OF ORDINANCES REGARDING THE SALE OF FIREWORKS BY ESTABLISHING AN AMORTIZATION PROCESS FOR FIREWORKS SALES FACILITIES FOLLOWING ANNEXATION AND FURTHER PROHIBITING THE SALE OF FIREWORKS WITHIN 5,000 OF THE CITY LIMITS.

1. BACKGROUND/HISTORY

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.

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 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.

In March 2013, staff as well as individual City Council members received similar letters pertaining to a fireworks building currently under annexation proceedings. At the April 2, 2013 meeting, City Council directed staff to investigate options. At the April 16, 2013 meeting, City Council requested to consider three options: a “do nothing” alternative, extend regulation to 5,000’ outside of the city limits without amortization, or extend regulation to 5,000’ outside of the city limits AND include amortization.

2. FINDINGS/CURRENT ACTIVITY

Staff has developed three possible methodologies for City Council consideration: a “do nothing” alternative, a “variance” alternative, and an “amortization” alternative. Each is discussed in greater depth below.

Option 1: Do-Nothing Alternative

This option makes no alterations to the ordinance. As a result, American Fireworks located near the northwest corner of Main Street and IH-35 would be required to cease operations immediately. This means that American Fireworks would need to either find an existing building outside of the city limits or construct a new building outside of the city limits prior to their next sales season (June 24th-July 4th).

Option 2: 5,000' Extension of Authority, but No Amortization

This option takes the status quo ordinance, and adds a clause extending the City's regulatory authority regarding the sale and detonation of fireworks to 5,000' outside of the city limits. This makes the ordinance more restrictive than the prior, and will result in the closure of three fireworks facilities in the Buda ETJ within the 5,000' area. This would result in the restriction being enforceable in such neighborhoods as Sunfield, Meadows at Buda, Stonefield and Hillside Terrace.

Option 3: 5,000' Extension of Authority and Adding Amortization

This option takes Option 2, and adds an amortization process. In this scenario, a fireworks sale business is granted a particular period of time to continue use if certain criteria are met. The draft provided establishes a 90-day amortization period, but this provision can easily be modified by City Council to reflect any different time period.

Other Issues for Consideration

Staff has further investigated relocation potential for the American Fireworks facility to determine feasibility within the Interstate 35 corridor given current city limits of each city and inclusion of fireworks prohibitions extending 5,000' outside of city limits. American Fireworks should confer with other cities, but from staff's review it appears a stand could be located in the Interstate 35 corridor between the following points:

- North: Interstate 35 @ York Creek Road
- South: Interstate 35 @ approximately 1,400' south of East Watson Lane

This is approximately halfway between San Marcos and New Braunfels, and is about 2.25 miles of Interstate 35 frontage.

Moreover, staff was contacted by local state representatives regarding discussions with Mr. Davis. They encouraged the City to consider the challenges small businesses face while considering Mr. Davis's relocation dilemma.

3. FINANCIAL IMPACT

Some sales tax revenue would be received from the continuance of the fireworks structure.

4. ACTION OPTIONS/RECOMMENDATION

Staff presents the three options for consideration without recommendation. If the City Council chooses the "Do Nothing" Alternative, then the City Council need not take any action.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BUDA, TEXAS, AMENDING CHAPTER 14 OF THE CODE OF THE CITY OF BUDA; BY REVISING ARTICLE 14.03, THEREBY ESTABLISHING RESTRICTIONS ON THE SALE AND POSSESSION OF FIREWORKS, AND ESTABLISHING A MEANS TO AMORTIZE SALES OF FIREWORKS FOLLOWING ANNEXATION; PROVIDING A SEVERABILITY CLAUSE AND EFFECTIVE DATE.

WHEREAS, the sale and detonation of fireworks, when not appropriately regulated, represents a threat to the health, safety and general welfare of the public, and is contrary to the character and established land uses within the City of Buda; and

WHEREAS, Local Government Code section 211.017 provides that continuation of land use in newly incorporated areas does not apply to a regulation relating to the sale and use of fireworks; and

WHEREAS, the City Council finds that it is in the best interest of the citizens of the City to implement regulatory revisions to the sale and detonation of fireworks;

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

SECTION 1. Sections 14.03.002 and 14.03.003 are hereby amended to read as follows:

ARTICLE 14.03. FIREWORKS

Sec. 14.03.002. Sale.

The sale of all and any variety or type of fireworks is hereby prohibited within the city limits or within five thousand (5,000) feet of the city limits, except to allow amortization of operation of a fireworks retail sale business in a permanent structure unilaterally annexed into the City of Buda. Such business selling fireworks in a permanent structure shall meet the following specifications and requirements in order to operate the business after a unilateral annexation:

- (a) A business shall only operate within the confines of a permanent structure with a minimum size of one thousand (1,000) square feet and not more than five thousand (5,000) square feet, located on a minimum of one acre;

OPTION 1 – WITH AMORTIZATION AND ADDING 5,000 FOOT RESTRICTION

- (b) Structures must be connected to a permanent slab foundation and not of a temporary design;
- (c) Structures that are movable by mechanical or manual means are excluded from use;
- (d) Business hours shall be no earlier than 9 A.M. and no later than 12 A.M. (midnight);
- (e) There shall be no change in the scope of current operations, including the size of the structure, hours of operation or the sale of products on a retail basis;
- (f) The business shall post signage at each public entrance and exit from the building stating the prohibition on detonation and penalty as described in Sections 14.03.003 and 14.03.001 of this Article;
- (g) The business shall provide a flyer to purchasers with each sales transaction stating the prohibition on detonation and penalty as described in Sections 14.03.003 and 14.03.001 of this Article;
- (h) Firework sales shall be limited to retail sales; no manufacturing or distributor license operations shall be permitted;
- (i) An amortization plan shall be implemented immediately upon annexation to allow the use of the business for fireworks sales for a maximum of 90 days, and eliminate the sale of fireworks at the end of the amortization plan term;
- (j) Any change in property ownership or business ownership shall automatically terminate the amortization plan and all sale of fireworks shall cease immediately;
- (k) The maximum size of fireworks permitted to be sold shall be limited to Fireworks defined as Fireworks 1.4G (Formerly Class C, Common Fireworks) as listed in the 2009 International Building Code and in Section 2154.001 of the Texas Occupations Code; and
- (l) All fireworks must be removed from the premises at issue within fourteen calendar days of the end of the applicable retail sales period established by Section 2154.202 of the Texas Occupations Code.

Sec. 14.03.003. Detonation.

It is hereby prohibited for any person, other than the city, to use, detonate, or explode any type or variety of fireworks within the city limits or within five thousand (5,000) feet of the city limits.

OPTION 1 – WITH AMORTIZATION AND ADDING 5,000 FOOT RESTRICTION

SECTION 2. If any clause or provision of this Ordinance shall be deemed to be unenforceable for any reason, such unenforceable clause or provision shall be severed from the remaining portion of the Ordinance, which shall continue to have full force and effect.

PASSED AND APPROVED on first reading by an affirmative vote of the City Council of the City of Buda, this ___ day of May, 2013.

PASSED, APPROVED AND ADOPTED on second reading by an affirmative vote of the City Council of the City of Buda, this ___ day of May, 2013.

APPROVED:

Todd Ruge, Mayor

ATTEST:

City Secretary

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BUDA, TEXAS, AMENDING CHAPTER 14 OF THE CODE OF THE CITY OF BUDA; BY REVISING ARTICLE 14.03, THEREBY ESTABLISHING RESTRICTIONS ON THE SALE AND POSSESSION OF FIREWORKS BY EXTENDING 5,000 OUTSIDE OF THE CITY LIMITS; PROVIDING A SEVERABILITY CLAUSE AND EFFECTIVE DATE.

WHEREAS, the sale and detonation of fireworks, when not appropriately regulated, represents a threat to the health, safety and general welfare of the public, and is contrary to the character and established land uses within the City of Buda; and

WHEREAS, Local Government Code section 211.017 provides that continuation of land use in newly incorporated areas does not apply to a regulation relating to the sale and use of fireworks; and

WHEREAS, the City Council finds that it is in the best interest of the citizens of the City to implement regulatory revisions to the sale and detonation of fireworks;

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

SECTION 1. Sections 14.03.002 and 14.03.003 are hereby amended to read as follows:

ARTICLE 14.03. FIREWORKS

Sec. 14.03.002. Sale.

The sale of all and any variety or type of fireworks is hereby prohibited within the city limits or within five thousand (5,000) feet of the city limits.

Sec. 14.03.003. Detonation.

It is hereby prohibited for any person, other than the city, to use, detonate, or explode any type or variety of fireworks within the city limits or within five thousand (5,000) feet of the city limits.

SECTION 2. If any clause or provision of this Ordinance shall be deemed to be unenforceable for any reason, such unenforceable clause or provision shall be severed from the remaining portion of the Ordinance, which shall continue to have full force and effect.

OPTION 2 – NO AMORTIZATION AND ADDING 5,000 FOOT RESTRICTION

PASSED AND APPROVED on first reading by an affirmative vote of the City Council of the City of Buda, this ___ day of May, 2013.

PASSED, APPROVED AND ADOPTED on second reading by an affirmative vote of the City Council of the City of Buda, this ___ day of May, 2013.

APPROVED:

Todd Ruge, Mayor

ATTEST:

City Secretary