



City Council Agenda Item Report

April 16, 2013

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

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.

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). This means that upon the effective date of the annexation, American Fireworks would have less than 60 days to find a suitable location.

Option 2: Variance Alternative

This option simply adds a statement giving City Council the flexibility to approve exceptions on a case-by-case basis. This could be left as an open option with complete Council discretion, or have established criteria like a more formal variance process. This would allow American Fireworks to continue operation, pending Council approval of the ordinance revision followed by Council approval of the exception with any necessary conditions & length of time constraints. The variance method, particularly the open-ended type with no criteria, introduces the potential for actions that could be perceived as arbitrary or capricious. Staff does not recommend this option.

Option 3: Amortization Option

This option is more technical & predictable in nature. In this scenario, a fireworks sale business is granted a particular period of time to continue use if certain criteria are met. These criteria can be as direct as "a fireworks facility annexed on April 30, 2013 is exempt from prohibition for __ years" (as used in Marble Falls), though staff would recommend establishing particular operational criteria to accompany the amortization clause (as used in Lufkin).

Time Period if Option 2 or 3 Pursued

Should City Council choose to pursue Options 2 or 3, various time periods can be considered.

- *90 days following annexation*
The 90-day option would allow American Fireworks to continue through the July 4th sales season. This would allow time for the owner to find an existing building outside of the city limits and potentially relocate prior to December 20th (the beginning of the New Year's sales season). Successful relocation in this time period would depend on real estate inventory and other variables.
- *1 year following annexation*
The 1-year option would allow American Fireworks to continue through the New Year's sales season. This, in effect due to the limited time periods of fireworks sales, would give American Fireworks 420 days (the beginning of the 2014 July 4th sales period) to relocate. Staff feels this is sufficient time for a real estate search, and permitting & construction of a new building outside of the city limits.
- *2-3 years following annexation*
A longer time period may be considered, though staff does not feel it is necessary in order to successfully achieve relocation.
- *7-years following annexation*
This was the applicant's request. Staff does not feel such a long period is necessary in order to successfully achieve relocation.

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 an amortization with specific operational criteria be considered wherein Article 14.03 would be amended. Staff requests direction on the option to pursue, if any.