



City Council Agenda Item Report

July 16th, 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 AND USE OF FIREWORKS WITHIN 5,000 FEET OF THE CITY LIMITS.

1. BACKGROUND/HISTORY

At the July 2nd City Council meeting, City Council requested to consider an amendment to the fireworks ordinance to prohibit use & sale of fireworks within 5,000 feet of the City Limits.

2. FINDINGS/CURRENT ACTIVITY

Staff estimates a prohibition on fireworks sales within 5,000 feet of the city limits would affect 4 existing fireworks stands. From a use perspective, this prohibition would affect most of the ETJ. In particular, use of fireworks would no longer be permitted in the Coves of Cimarron, Sunfield, Stonefield, Meadows at Buda, Hillside Terrace, Marlboro Country, properties off Cole Springs & Old Black Colony Road, and portions of Leisure Woods. The proposed ordinance does not affect Eliot Ranch or Ruby Ranch as those neighborhoods are more than 5,000 feet outside the city limits and outside the ETJ.

The ordinance as presented is not affected by H.B. 1813; the current ordinance only addresses sale and use, rather than possession. H.B. 1813 prohibits a city from confiscating packaged, unopened fireworks and creates an affirmative defense to prosecution for possession of fireworks brought under a city ordinance if:

- a. The defendant was operating or was a passenger in a motor vehicle being operated in a public space, and
- b. The fireworks were not in the passenger area of the vehicle.

3. FINANCIAL IMPACT

Not applicable.

4. ACTION OPTIONS/RECOMMENDATION

City Council may consider approval as presented, approval with revisions, no action or denial. Staff recommends the City Council consider approval.

5. ATTACHMENTS

Ordinance with 5,000-foot amendment

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 WITHIN 5,000 FEET OF THE CITY LIMITS; PROVIDING A SEVERABILITY CLAUSE AND EFFECTIVE DATE.

WHEREAS, the City Council finds the City of Buda is a Texas Home-Rule Municipality as that term is defined by Texas law.

WHEREAS, the City Council finds 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, the City Council finds that the sale, use, detonation and/or explosion of any type or variety of fireworks constitutes a common and public nuisance and such finding has been recognized by Texas courts; and

WHEREAS, the City Council finds Local Government Code section 217.042 provides that a municipality may define and prohibit any nuisance within the limits of the municipality and within 5,000 feet outside the limits; and

WHEREAS, the City Council finds that the sale, use, detonation and/or explosion of any type or variety of fireworks within 5,000 feet of the city limits poses an equal threat to the health, safety and general welfare of the public as does the sale, use, detonation and/or explosion of any type or variety of fireworks within the City; 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 declared a nuisance and is hereby prohibited within the city limits and within five thousand (5,000) feet of the city limits.

Sec. 14.03.003. Detonation.

It is hereby prohibited as a nuisance for any person, other than the city, to sell use, detonate, or explode any type or variety of fireworks within the city limits and 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.

SECTION 3. Passage. Pursuant to Section 3.11(A) of the City Charter, if the Council determines that the first reading of this ordinance is sufficient for adequate consideration by an affirmative vote of five or more members of the City Council during the first reading and the Ordinance is passed by a the affirmative vote of four or more members of the City council, this Ordinance is adopted and enacted without further readings. In the event a second reading is necessary, this Ordinance is adopted and enacted upon the affirmative vote of four or more members of the City Council upon second reading.

SECTION 4. Effective Date. Pursuant to Section 3.11(D) of the City Charter, this ordinance is effective upon adoption, except that every ordinance imposing any penalty, fine or forfeiture shall become effective only after having been published once in its entirety, or a caption that summarizes the purpose of the ordinance and the penalty for violating the ordinance in a newspaper designated as the official newspaper of the City. An ordinance required by the Charter to be published shall take effect when the publication requirement is satisfied.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Buda, on this the ____ day of _____, 2013.

APPROVED:

Todd Ruge, Mayor

ATTEST:

(CITY SEAL)

City Secretary
City of Buda, Texas