

ORDINANCE NO. O-12 - 06-11

AN ORDINANCE TO PROHIBIT THE STORAGE, SALE, POSSESSION AND USE OF EXPLOSIVES AND FIREWORKS WITHIN THE CITY LIMITS OF NIXON, TEXAS, AND WITHIN 5,000 FEET OUTSIDE THE CITY LIMITS; DECLARING THE STORAGE, SALE, POSSESSION AND USE OF FIREWORKS TO BE A NUISANCE AND PROVIDING FOR INJUNCTIVE RELIEF, EXCLUDING, HOWEVER, FROM THE PROVISIONS OF THIS ORDINANCE, THE USE OF FIREWORKS FOR AGRICULTURAL PURPOSES AS HEREINAFTER SET FORTH; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALING CLAUSE; PROVIDING A PENALTY OF FIVE HUNDRED DOLLARS (\$500.00) FOR EACH OFFENSE EXCEPT WHERE A DIFFERENT PENALTY HAS BEEN ESTABLISHED BY STATE LAW FOR ANY OFFENSE WHICH PENALTY SHALL BE THAT FIXED BY STATE LAW, AND FOR ANY OFFENSE WHICH IS A VIOLATION OF ANY PROVISION OF LAW THAT GOVERNS FIRE SAFETY, ZONING, OR PUBLIC HEALTH AND SANITATION, AND EACH AND EVERY DAY SAID VIOLATION IS CONTINUED SHALL CONSTITUTE A SEPARATE OFFENSE; AND PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Nixon, Texas, has determined there is a need for prohibition of explosives and fireworks within the City limits of Nixon, Texas; and

WHEREAS, the prohibition of explosives and fireworks within the City limits of Nixon, Texas, and within 5,000 feet outside the City limits, will be in the best interest of the public health, safety, and general welfare of the citizens of Nixon, Texas.

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

SECTION 1.

All of the facts recited in the preamble to this Ordinance are hereby found by the City Council to be true and correct and are incorporated by reference herein and expressly made a part hereof, as if copied herein verbatim.

SECTION 2.

No person, firm or corporation shall store OR possess fireworks within the City limits of Nixon, Texas, and within 5,000 feet outside the City limits, except if necessary for the performance of a public exhibition to be held pursuant to a permit issued as hereinafter provided. Storage of fireworks for a public exhibition shall be in a safe place, securely locked or guarded so that no child or unauthorized person shall have access thereto and shall be protected from fire hazards. The Fire Chief of the City shall inspect the storage to determine whether it complies with the terms of this Section.

SECTION 3.

No person, firm or corporation shall sell fireworks within the City limits of Nixon, Texas, and within 5,000 feet outside the City limits.

SECTION 4.

No person, firm or corporation shall discharge or use fireworks within the City limits of Nixon, Texas, and within 5,000 feet outside the City limits, except at a public exhibition held pursuant to a permit issued as provided hereinafter.

SECTION 5.

A permit for a public display of fireworks shall be issued by the City Council, after examination of the proposal by the City Fire Chief. No such permit shall be issued if it appears from the information available to the Fire Chief and to the City Council that there are substantial dangers to people or property, due to the location, the fireworks proposed to be used or the procedures proposed to be used.

SECTION 6.

No person shall discharge fireworks at any public display without a temporary license therefore issued by the City Fire Chief. The City Fire Chief shall provide an oral examination and a written examination, and shall issue the temporary license if the applicant demonstrates an ability to provide a safe fireworks program. The license shall not be issued until the applicant has paid a fee established from time to time by the City Council. The fee shall be delivered to the City Clerk, to be placed with funds used for the City.

SECTION 7. DEFINITIONS

"City" shall mean the City of Nixon, Texas, with administrative offices at 100 W. Third St., Nixon, Texas 78140-2579.

"Fireworks" shall mean any combustible or explosive composition, or any substances or combination of substances, or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation, and shall include the type of unmanned balloons which require fire underneath to propel the same, firecrackers, lady fingers, torpedoes, skyrockets, Roman candles, dayglo bombs, sparklers, or other devices containing any such explosive substance.

The term "fireworks" shall not include toy pistols, toy canes, toy guns or other devices in which paper plastic caps manufactured in accordance with the United States Department of Transportation regulations for packing and shipping of toy paper or plastic caps are used and such toy paper or plastic caps are manufactured as provided therein except that no toy paper or plastic cap shall contain more than twenty-five hundredths of a grain of explosive composition per cap. Each package containing toy paper or plastic offered for retail sale shall be labeled to indicate the maximum explosive content per cap. The sale and use of these toy paper or plastic caps shall be permitted at all times.

Nothing in this definition shall be construed as applying to the manufacture, storage, sale, or use of signals necessary for the safe operation of railroads or other classes of public or private transportation, nor applying to the military or naval forces of the United States or of this state, or to peaceofficers.

Nothing in this definition shall be construed as forbidding the sale and use of blank cartridges for ceremonial, theatrical or athletic events.

"Person" shall mean any individual, firm, organization, partnership, unincorporated association or corporation.

"Sell" or "Display" shall mean the selling, offering to sell, exhibiting, or possessing with intent to give away, sell, or offer to sell within the City.

"Use" shall mean purchasing, possessing, setting off or otherwise causing the explosion or discharge or burn, of firecrackers, torpedo, rocket, or other fireworks or explosives of inflammable OR flammable material, or to discharge

them or throw them from land, air, or highway into any area of the City. This prohibition includes any substance, compound, mixture, or article that in conjunction with any other substance or compound would be dangerous from any of the foregoing standpoints. This provision shall also mean and include casting, throwing, lighting, or firing any squib, rocket, cracker, torpedo, cap or cartridge, or other fireworks or combustible firecrackers of ANY kind.

SECTION 8. NUISANCE AND INJUNCTIVE RELIEF

Any violation of this Ordinance is hereby declared to be a nuisance. In addition to any other relief provided by this Ordinance, the City Attorney may apply to a court of competent jurisdiction for an injunction to prohibit the continuation of any violation of this Ordinance. The application for relief may include seeking a temporary restraining order, temporary injunction and permanent injunctions.

SECTION 9. AGRICULTURAL USE OF FIREWORKS

Notwithstanding anything stated in this Ordinance to the contrary, any person possessing, setting off or otherwise causing the explosion or discharge of firecrackers for agricultural purposes is hereby exempted from this Ordinance, if the explosion or discharge is under the following conditions:

1. the explosion or discharge is solely for agricultural purposes;
2. the explosion or discharge is on property having an agricultural exemption for ad valorem taxes granted by the Gonzales County Appraisal District at the time of the explosion or discharge;
3. the amount of property on which the explosion or discharge occurs is no less than thirteen (13) acres.

SECTION 10. SEVERABILITY CLAUSE

The provisions of this Ordinance are severable, and if any sentence, section or other part of this Ordinance should be found to be invalid, such invalidity shall not affect the remaining provisions, and the remaining provisions shall continue in full force and effect.

SECTION 11. REPEALING CLAUSE

All other ordinances, parts of ordinances or resolutions in conflict with this Ordinance are hereby repealed to the extent of any such conflict.

SECTION 12. PENALTY CLAUSE

A person, firm or corporation violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction in the Municipal Court of the City of Nixon, Texas, or any other Court of proper jurisdiction, shall be subject to a fine not to exceed the sum of Five Hundred Dollars (\$500.00) for each offense, except however, where a different penalty has been established by state law for such offense the penalty shall be that fixed by state law, and for any offense which is a violation of any provision of law that governs fire safety, zoning, or public health and sanitation; and each and every day said violation is continued shall constitute a separate offense.

SECTION 13. EFFECTIVE DATE

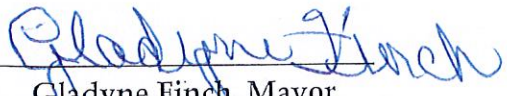
This Ordinance shall take effect as of the date of the passage of this Ordinance, February 12th, 2018 and after publication as required by law.

SECTION 14. PUBLICATION


The City Secretary is hereby authorized and directed to publish the caption of this Ordinance, together with the penalty provision contained therein, in the manner and for the length of time prescribed by law.

PASSED, APPROVED and ADOPTED on this the 12th day of February, 2018.


CITY OF NIXON

BY: 
Gladysne Finch, Mayor

ATTEST:


Gina Trotter, City Secretary

APPROVED AS TO FORM:


Eduardo "Eddie" X. Escobar, City Attorney