

## ORDINANCE BOOK 4

## ORDINANCE #008-12

**AN ORDINANCE REPEALING AND REPLACING ORDINANCE #79-103 OF THE CITY OF DE LEON, TEXAS, DECLARING THAT THE POSSESSION, USE, MANUFACTURE, SALE, OFFER FOR SALE AND DISCHARGE OF FIREWORKS TO BE A PUBLIC NUISANCE AND PROHIBITING THE POSSESSION, USE, MANUFACTURE, SALE, OFFER FOR SALE AND DISCHARGE OF FIREWORKS WITHIN THE CORPORATE LIMITS OF THE CITY OF DE LEON; PROVIDING A PENALTY FOR VIOLATIONS; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS,** the City Council seeks to promote the health, safety and general welfare of the community by preventing death, injuries and property damage within the City limits; and

**WHEREAS,** the City Council finds that the possession, use, manufacture, sale, offer for sale and discharge of fireworks will result in bodily injury, death, and property damage; and

**WHEREAS,** the City Council finds that the possession, use, manufacture, sale, offer for sale and discharge of fireworks, especially in the confines of a municipality of its jurisdictional limits, is dangerous not only to property but also to persons, and results annually in the loss of property and the loss of life; and

**WHEREAS,** the City Council finds that the noise generated by the use or combustion of fireworks and explosives constitutes a public nuisance; and

**WHEREAS,** pursuant to Texas Local Government Code section 51 the City Council has the express authority to adopt and publish an ordinance or police regulation that is the good government, peace or order of the municipality and is necessary or proper for the carrying out a power granted by law to the municipality; and

**WHEREAS,** pursuant to Texas Local Government Code section 217 the City Council has the express authority to prevent and abate any nuisance within the limits of the municipality; and

**WHEREAS,** pursuant to Texas Local Government Code section 217 the City Council has the express authority to have any nuisance removed at the expense of the owner of the nuisance or the person who owns the property on which the nuisance exists; and

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WHEREAS, pursuant to Texas Local Government Code section 54 the City Council has the express authority to enforce local ordinances and to prescribe penalties for the violation of those ordinances in accordance with the guidelines of that section.

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

**SECTION 1. FIREWORKS**

- (a) **Definition** – for the purposes of this section, “fireworks” are defined as any composition or device designed to produce a visible or audible affect by combustion, explosion, deflagration, or detonation.
- (b) **Public Nuisance and Prohibition** – The possession, use, manufacture, sale, offer for sale, give away, or discharge of fireworks within the city limits of the City of De Leon, is hereby declared to be a common and public nuisance and it shall be unlawful for any person to possess, use, manufacture, sell, offer to sale, give away, or discharge fireworks with the city limits of the City of De Leon.
- (c) **Exceptions** – This section does not apply to:
1. Toy pistols, toy canes, toy guns, or other devised that use paper or plastic caps;
  2. Model rockets and model rocket motors, designed, sold, and used for the purpose of propelling recoverable aero models;
  3. The sale, and use in emergency situations, of pyrotechnic signaling devices or distress signals for aviation, or highway use;
  4. The use of fuse and railway torpedoes by railroads;
  5. The sale of blank cartridges for use in radio, television, film, or theater productions for signal or ceremonial purposes in athletic events, or for industrial purposes; or
  6. The use of any pyrotechnic device by military organizations.

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- (d) **Public displays exempted.** The provisions of section 54-126 shall not apply to a public display of fireworks made under the terms and conditions of this section, and such display shall be permitted upon compliance with the provisions of city's adopted fire prevention code and of this section, as follows:
1. Any adult person or any firm, co-partnership, corporation or association planning to make a public display of fireworks shall first make written application for a permit to the city official at least 14 days in advance of the date of the proposed display.
  2. It shall be the duty of the city official to make an investigation as to whether the display as proposed by the applicant for a permit under this article shall be of such a character that it may be hazardous to property or dangerous to any person; and he shall, in the exercise of reasonable discretion, grant or deny the application, subject to the conditions prescribed in this section. If the application is approved, a permit shall be issued for the public display by the city official. Such permit shall be for a period of time designated on the permit, but shall not exceed 14 days, and the permit shall not be transferable. If the application is denied by the city official, he shall notify the applicant of the denial in writing.
  3. The applicant for a display permit under this section shall, at the time of making application, furnish proof of compensation insurance employees as provided by the laws of the state; and shall file with the city official a certificate of insurance evidencing the carrying of public liability insurance in an amount not less than \$300,000.00, issued by an insurance carrier authorized to transact business in the state, for the benefit of the person named therein as insured, as such policy to be approved by the city official. In lieu of insurance, the applicant may file with the city official a bond in the amount of \$300,000.00, issued by an applicant's payment of all damages to persons or property which shall or may result from or be caused by such public display of fireworks or any negligence on the part of the applicant or his agents, servants, employees, or subcontractors in the presentation of the public display.

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4. The range of aerial displays shall not be more than 200 feet, and the fireworks shall be discharged vertically from tubes approved by the city official.
  5. The limit of a display authorized by this section shall not be more than 45 minutes per performance, and there shall not be more than two performances in each 24 hours.
  6. No public display of fireworks shall be of such a character and so located, discharged, or fired as to be hazardous or dangerous to persons or property, and this determination shall be within the sound discretion of the city official.
  7. The persons handling the display of fireworks under this section shall be competent, adult persons and experienced pyrotechnic operators approved by the city officials. No person not approved by the city official shall handle fireworks at the public display. The names of the experienced pyrotechnic operators shall be designated on the permit issued.
  8. For each public display of fireworks under this section, the city official may require that no less than two firefighters be in attendance during the display. The expense of such firefighters at the display shall be borne by the applicant for the permit and shall be paid in advance at the time of the application for the permit.
  9. The material to be used for a public display authorized by this section shall not be stored within the city limits, but shall be brought in on the day of the public display and then shall be taken immediately to the place of display for further handling and storage.
- (e) **City Attorney Authority** – Notwithstanding any penal provision of this article, the city attorney is authorized to file suit on behalf of the city, the city official, or both, for such injunction relief as may be necessary to prevent a violation of this Ordinance. It shall not be necessary to obtain injunctive relief as prerequisite to seizure of fireworks.
- (f) **Penalty** – The violation of this section is punishable by a fine not exceeding \$2,000.00. Each day any violation of this section continues shall constitute a separate offense. If

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fireworks are separately wrapped or packaged, the commission or omission of any act prohibited by this article shall be a separate offense as to each such separately wrapped or separately packaged fireworks.

**SECTION 2. SEVERABILITY**

Should any section or part of this Ordinance be held unconstitutional, illegal, or invalid, or the application to any person or circumstances thereof ineffective or inapplicable, such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portion or portions thereof; but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this Ordinance are declared to be severable.

**SECTION 3. OPEN MEETINGS**

It is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the *Open Meetings Act, Texas Govt. Code, Chapt. 551.*

**SECTION 4. EFFECTIVE DATE**

This Ordinance shall take effect immediately upon its adoption by the City Council and publication as required by the Texas Local Government Code.

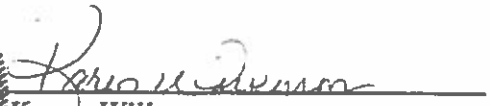
**PASSED AND APPROVED** on this 12<sup>th</sup> day of July, 2012.

**PASSED, APPROVED AND ADOPTED** on this 2<sup>nd</sup> day of August, 2012.



**Lowell Ercanbrack, Mayor**

**ATTEST:**

  
**Karen Wilkerson,**  
**City Administrator/Secretary**

