



City Council Agenda Item Report

May 21, 2013

Contact – Chance Sparks, AICP, CNUa, Director of Planning 312-0084
csparks@ci.buda.tx.us

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.

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

At the May 7th City Council meeting, City Council voted to approve a 90-day amortization for fireworks stores following annexation, subject to certain terms & conditions as outlined in the attached ordinance. The City Council chose not to extend regulation of fireworks 5,000 feet into the ETJ. 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.

3. FINANCIAL IMPACT

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

4. ACTION OPTIONS/RECOMMENDATION

At its May 7th meeting, City Council voted to approve a 90-day amortization for fireworks stores following annexation, subject to certain terms & conditions as outlined in the attached ordinance.

5. ATTACHMENTS

Ordinance with 90-day amortization

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. Section 14.03.002 of the City of Buda Code of Ordinances is 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, 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;
- (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.

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 7th 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 21st day of May, 2013.

APPROVED:

Todd Ruge, Mayor

ATTEST:

City Secretary