

ORDINANCE NO. 2012-023

AN ORDINANCE AMENDING TITLE IX (GENERAL REGULATIONS), CHAPTER 93 (FIREWORKS) OF THE CITY OF WIMBERLEY'S CODE OF ORDINANCES TO AMEND SECTION 93.04 (EXCEPTIONS) TO ADD A PROVISION ALLOWING THE POSSESSION AND DISCHARGE OF CERTAIN NON-AERIAL FIREWORKS WITHIN THE CITY LIMITS UNLESS PROHIBITED BY A STATE STATUTE OR REGULATION OR BY A CITY OR COUNTY-WIDE BAN IMPOSED FOR A DESIGNATED PERIOD; AND PROVIDING FINDINGS OF FACT, A REPEALING CLAUSE, A SAVINGS AND SEVERABILITY CLAUSE, AN EFFECTIVE DATE, AND PROPER NOTICE AND MEETING.

WHEREAS, the City Council may prohibit or otherwise regulate the use of fireworks within the City limits and to define and prohibit any nuisance within the City limits and within 5,000 feet outside the limits; and

WHEREAS, currently the City of Wimberley ("City") declares the transporting, storing, offering for sale, sale, possession, assembly, manufacture, use or discharge of fireworks within the City limits to be illegal and a public nuisance and prohibits any person from transporting, storing, offering for sale, selling, having in his possession, using, discharging, causing to be discharged, igniting, detonating or otherwise setting into action any fireworks within the City; and

WHEREAS, the current city ordinance prohibiting the transportation, storage, offer for sale, sale, possession, use, discharge, causing to be discharged, igniting, detonating or otherwise setting into action any fireworks within the City contains certain exceptions; and

WHEREAS, the City Council has determined that, in the interest of promoting the public's health, safety, and welfare, expansion of the exceptions to allow the possession and discharge only of sparklers and fire crackers within the city limits unless such possession and/or discharge is prohibited by state law or regulation or by a city or county-wide ban imposed for a designated period should be authorized.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WIMBERLEY, HAYS COUNTY, TEXAS

Section 1. Findings. All of the above premises are hereby found to be true and correct legislative and factual findings of the City of Wimberley and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

Section 2. Amendment.

That Title IX (General Regulations), Chapter 93 (Fireworks), Section 93.04 (Exceptions), of the Wimberley Code of Ordinances is hereby amended to add subparagraph (c) to read as follows:

Section 93.04 Exceptions

(c) This Chapter shall not apply to the possession or discharge of common non-aerial fireworks, small in size, which are classified as Class C explosives, such as sparklers and firecrackers, and larger non-aerial fireworks devices, which are designed primarily to produce, visible or audible effects by combustion, deflagration, or detonation and are classified as Class B explosives by the U.S. Department of Transportation (TEX.OCC.CODE, Chapter 2154) within the City limits so long as such possession and/or discharge is not otherwise prohibited by state law or regulation or by a city or county-wide ban imposed for a designated period. The possession or discharge of skyrockets with sticks and missiles with fins are not included in this exception.

Section 3. Except as expressly amended herein, the Wimberley Code of Ordinances shall remain in full force and effect.

Section 4. All ordinances or parts of ordinances in force when the provisions of this Ordinance become effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed, but only to the extent of any such conflict.

Section 5. Should any sentence, paragraph, subdivision, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Ordinances as a whole.

Section 6. This Ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and charter in such cases provide.

Section 7. Open Meetings. That 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 Meeting Act, Capt. 551, Loc. Gov't. Code.

PASSED AND APPROVED this 17th day of May, 2012, by a vote of 4 (Ayes) to 1 (Nays) 0 (Abstain) vote of the City Council of the City of Wimberley, Texas.

CITY OF WIMBERLEY, TEXAS

Bob Flocke
Bob Flocke, Mayor

ATTEST:

Cara McPartland
Cara McPartland, City Secretary

APPROVED AS TO FORM:

Catherine Fryer
Catherine Fryer, City Attorney

