

ORDINANCE NO. 353

AN ORDINANCE OF THE CITY OF MANOR, TEXAS, AMENDING ORDINANCE 69B IN ITS ENTIRETY; PROHIBITING THE POSSESSION, MANUFACTURE, ASSEMBLY, STORAGE, AND IGNITION OF FIREWORKS WITHIN THE CITY; DECLARING A PUBLIC NUISANCE; PROVIDING EXCEPTIONS; PROVIDING FOR PERMITTING OF FIREWORKS DISPLAYS; PROVIDING A PENALTY; AND PROVIDING FOR CERTAIN RELATED MATTERS.

Whereas, the City of Manor, Texas (herein the "City") is a home-rule City authorized to regulate nuisances within the City limits and within 5,000 feet of the City limits (the "City Jurisdiction");

Whereas, the possession, manufacture, assembly, storage, or ignition of fireworks within the City Jurisdiction will constitute a nuisance and be a threat to the public health and safety of the citizens and property of the residents; and

Whereas, the regulation of fireworks within the City Jurisdiction will serve the public purposes by preventing fires and injuries;

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

Section 1. Definitions. For the purposes of this ordinance the following words and terms shall, when used, have the meaning given in this section.

"Fireworks" means any device that can be used to produce or intended for use in obtaining visible or audible pyrotechnic display or a combination of those by the combustion of explosive or flammable composition and includes any firecrackers, cannon crackers, skyrockets, torpedoes, Roman candles, sparklers, squibs, fire balloons, star shells or any other substance in whatever combination by any designated name and includes all articles or substances within the commonly accepted meaning of fireworks, whether specifically designated and defined in this ordinance or not.

Section 2. Fireworks Prohibited.

(a) It shall be unlawful for any person to manufacture, assemble, store, receive, keep, offer to another or to otherwise have in his or her possession with intent to store, keep, sell, use, discharge, cause to be discharged, ignite, detonate, fire or otherwise set in action any fireworks of any description, except under special permit as authorized herein or in the Fire Prevention Code.

(b) It shall be unlawful for any parent or guardian of any minor child below the age of eighteen (18) years, to permit or allow such a minor child to store, keep, use, discharge, ignite, detonate, fire or otherwise set in action any fireworks.

(c) It shall be unlawful for any person to knowingly or intentionally encourage or in any way assist a person under eighteen (18) years of age in to store, keep, use, discharge, ignite, detonate, fire or otherwise set in action, keep, possess or otherwise store any fireworks.

Section 3. Public Nuisance - Enforcement. The presence of any fireworks within the City limits or within 5,000 feet of the City limits (the "City Jurisdiction") in violation of this ordinance is declared to be a common and public nuisance.

(a) The Fire Marshal is directed and required to seize and cause to be safely destroyed any fireworks found within the City Jurisdiction in violation of this ordinance, and the Fire Marshall or any peace officer of the City or any other duly constituted peace officer is empowered to close any building where any fireworks are found stored illegally until the Fire Marshal can be notified in order that said fireworks may be seized and destroyed in accordance with the terms of this ordinance.

(b) Notwithstanding any penal provision of this ordinance, the City Attorney is authorized to file suit on behalf of the City or the Fire Marshal or both for injunctive relief as may be necessary to prevent unlawful storage, keeping or use of fireworks within the City Jurisdiction and to aid the Fire Marshal in the discharge of his or her duties and to particularly prevent any person from interfering with the seizure and destruction of such fireworks, but it shall not be necessary to obtain any such injunctive relief as a prerequisite to such seizure and destruction.

(c) The Fire Marshal is authorized to enter any commercial, retail or manufacturing building or establishment where the unlawful presence of fireworks is suspected in order to inspect the same for the presence of such fireworks.

(d) Provided, properties annexed into the City Jurisdiction for which an exception was granted within the service plan or annexation ordinance for existing firework stands to continue to operate as non-conforming uses may continue to sell and operate the firework stand during the period of time specifically recognized in the service plan and/or annexation ordinance but not longer.

Section 4. Exceptions. This ordinance does not apply to:

(a) signal flares and torpedoes of the type and kind commonly used by any railroad, including auto flares, and which signal flares and torpedoes are received by and stored or transported by any railroad or trucking company for use in railroad or trucking operations;

(b) paper caps containing not in excess of an average 0.25 of a grain of explosive content per cap manufactured in accordance with the interstate commerce regulations for packing and shipping as provided therein, including toy pistols, toy canes, toy guns or other devices for use of such caps, the sale and use of which shall be permitted at all times;

(c) fireworks being transported through the City;

(d) fireworks being transported through the City or stored within the City in compliance with a valid permit issued by the City for a fireworks display, provided such transportation and storage shall only be valid for those permitted to transport and store the fireworks and so long as a valid permit has not expired or been revoked; and

(e) firework stands as identified in Section 3 (d) during the period of time only such exception was granted.

Section 5. Permitting of Fireworks Displays.

(a) Any person, company or other entity desiring to ignite fireworks in a controlled display must file an application with the Building Services Department at least thirty (30) days prior to the proposed display along with a \$40.00 application fee. The applicant must identify:

1. the exact location upon which the display is intended to be held;
2. the date and time the display is proposed to be ignited;
3. the estimated duration of the display;
4. the types of fireworks to be ignited;
5. the proposed trajectory and landing site of all fireworks that will be airborne;
6. identify the persons to transport the fireworks and the location, including duration, for which the fireworks are to be stored; and
7. provide a safety plan for fire prevention and for the safety of persons and property at or near the display. The Fire Marshall shall review the application.

(b) With the recommendation of the Fire Marshall, the City Manager may issue a permit for controlled displays of fireworks. The fireworks display permitted may only be ignited as provided in the application and any restrictions added in the permit. At the time of the display, the Fire Marshall may require that a Fire Department be on standby at the site. As a requirement of the permit, the permittee may be charged a reasonable cost for the Fire Department being on standby

status for the display.

(c) The City, its agents, assigns and contractors, may sponsor City fireworks displays with the express authorization of a majority vote of the City Council. The Fire Marshall shall be notified of all City fireworks displays and shall review the proposed ignition site, the proposed trajectory and landing site for all fireworks displays and make recommendations or proposals for any changes. The City sponsored fireworks displays shall be exempt from the permit requirements. The Fire Marshall shall be notified of the location for storage of fireworks.

(d) All fireworks displays shall be operated and supervised by a person qualified in pyrotechnic displays. All applications for permits must include the name and qualifications of the person to operate and supervise the fireworks display. Permits that are issued shall name the person to operate and supervise the fireworks display.

(e) The City reserves the right to deny any application. The City reserves the right, with or without notice, to revoke any fireworks permit. All permits shall expire, and no longer be valid, immediately after the fireworks display permitted was to occur. Granting of a permit does not authorize firework displays if a burn ban is in effect on the date the display is to occur.

(f) Only those persons issued a valid permit shall be permitted to store or ignite fireworks in compliance with a valid permit.

(g) The applicant for a permit shall remain fully responsible for any and all damage or injuries resulting from any use, storage, transportation, ignition or other similar activity. The applicant is responsible for ensuring adequate insurance and premise insurance for the protection against personal or property damage.

Section 6. Penalty.

(a) Any person who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine not to exceed \$2,000.00.

(b) Any person who manufactures, assembles or stores, receives, keeps, sells, offers for sale or has in his or her possession, or allows a minor to have in his or her possession, any fireworks within the City limits or within 5,000 feet of the City limits without a valid permit or other applicable exception, shall be fined an amount not less than \$500 and not more than \$2,000 for each offense. If the fireworks are separately wrapped or packaged, doing any act prohibited by, or omitting to do any act required by this ordinance shall be a separate offense as to each such separately wrapped or separately packaged fireworks. Each day that a violation of this ordinance continues with respect to any package of fireworks constitutes a separate offense. Failure to seize the fireworks shall not constitute consent to retain the fireworks in City Jurisdiction.

(c) Any person who uses, discharges, causes to be discharged, ignites, detonates, fires or otherwise sets in action any fireworks, without a permit as provided herein, in violation of the provisions of this ordinance is guilty of a separate offense for each act prohibited by this ordinance. Upon conviction for the first offense the offender shall be fined an amount not to exceed \$500. For each subsequent conviction, within two-years, the offender shall be fined an amount not less than \$500 and not more than \$2000 for each offense.

Section 7. Amendment of Ordinances. Ordinance number 69B is hereby amended in its entirety and all ordinances or parts thereof conflicting or inconsistent with the provisions of this ordinance as adopted and amended herein, are hereby amended to the extent of such conflict. In the event of a conflict or inconsistency between this ordinance and any other code or ordinance of the city, the terms and provisions of this ordinance shall govern.

Section 8. Savings Clause. All rights and remedies of the City of Manor are expressly saved as to any and all violations of the provisions of any ordinances affecting possession, manufacture, assembly, storage, or ignition of fireworks within the City which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

Section 9. Severability. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation of this ordinance of any such invalid phrase, clause, sentence, paragraph or section. If any provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end the provisions of this Ordinance are declared to be severable.

Section 10. Effective Date. This ordinance shall take effect immediately from and after its passage and publication in the manner set forth with the provisions of the Local Gov't Code and City Charter.

Section 11. 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 Meetings Act, Chapt. 551, Loc. Gov't. Code.

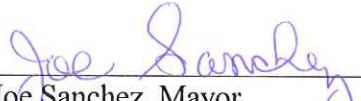
PASSED AND APPROVED on this the 6th day of August, 2008.

Attest:

THE CITY OF MANOR, TEXAS



Dustin Haisler, City Secretary



Joe Sanchez, Mayor