

ORDINANCE NO. O-2022-0004

AN ORDINANCE OF THE CITY OF LA MARQUE, TEXAS AMENDING CHAPTER 29 OF THE CITY'S CODE OF ORDINANCES; PROVIDING AN EFFECTIVE DATE; PROVIDING A PENALTY; AND MAKING OTHER FINDINGS AND PROVISIONS RELATED TO THE SUBJECT

WHEREAS, Chapter 29 of the City of La Marque, Texas's Code of Ordinances was amended on or about December 14, 2020 to adopt the 2018 Fire Code;

WHEREAS, Section 29-3 of the City of La Marque, Texas's Code of Ordinances of the previously banned fireworks in the city limits of the City of La Marque, Texas;

WHEREAS, the prohibition on fireworks was mistakenly not included in the amended Chapter 29 of the City of La Marque, Texas's Code of Ordinances;

WHEREAS, the City Council of La Marque Texas on or about December 13, 2021 passed an emergency ordinance banning fireworks in the City.

WHEREAS, the City Council desires to ban fireworks in the City of La Marque, Texas in order to protect public health, safety, and welfare.

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

Section 1. That the facts and matters set forth in the preamble of this Ordinance are found to be true and correct.

Section 2. Section 29.6 of the City of La Marque, Texas's Code of Ordinances is amended to read as follows:

Sec. 29-6. - Illegal fireworks declared nuisance; seizure and destruction.

- a. Definitions. The following words, terms, and phrases, when used in this Section 29.6, shall have the meanings ascribed to them in this Section, except when the context indicates a different meaning:
 1. Distributor means a person who sells fireworks to retailers or to jobbers, for resale to others.
 2. Fireworks means any composition or device designed to produce a visible or audible effect by combustion, explosion, deflagration, or detonation,

such as firecrackers, cannon crackers, skyrocketers, torpedoes, Roman candles, sparklers, squibs, fire balloons, star shells, gerbs, or any other substance in whatever combination by any designated name intended for use in obtaining visible or audible pyrotechnic display, and such term shall include all articles or substances within the commonly accepted meaning of fireworks, whether specifically designated and defined in this section or not.

3. Illegal Fireworks means a Fireworks device manufactured, distributed, or sold in violation of this article.
 4. Importer means a person who imports fireworks from a foreign country for sale to distributors, jobbers, or retailers within the state.
 5. Person means and includes any natural person, association of persons, partnership, company, limited liability company, corporation, agent, or officer of a corporation, and shall also include all warehousemen, common and private carriers, bailees, trustees, receivers, executors, and administrators.
 6. Public display means the igniting and discharging of fireworks for public amusement.
- b. General Prohibition. It shall be unlawful for any person to manufacture, store, possess, sell, offer for sale, use, or transport, any Fireworks within the City except as provided in Section 29.6(e).
- c. Illegal Fireworks Declared a Nuisance
1. The presence of any Fireworks within the City in violation of this Section, is hereby declared to be a common and public nuisance. The Fire Marshal or any other law enforcement officer is directed and required to seize any Fireworks found in violation of this Section, and any authorized deputy of the Fire Marshal, or any police officer of the city, or any other duly-constituted state peace officer is empowered to stop the transportation of and detain any Fireworks being transported illegally or to close any building where any Fireworks are found stored illegally in order that such fireworks may be seized in accordance with the terms of this Section.
 2. Notwithstanding any penal provision of this Section, the city attorney is authorized to file suit on behalf of the city, the Fire Marshal, or both, for such injunctive relief as may be necessary to prevent unlawful storage, transportation, keeping, or use of Fireworks within the city or within the area described in Section 29.6(c)(1). It shall not be necessary to obtain injunctive relief as a prerequisite to the seizure of fireworks.
 3. If any Fireworks or combustibles are deemed by the Fire Marshal to be in such a state or condition as to constitute a hazard to life or property,

the Fire Marshal may dispose of such Fireworks or combustibles without further process of law. The Fire Marshal is authorized to dispose of any abandoned Fireworks or combustibles that are deemed to be hazardous to life or property.

d. Exceptions. The general prohibitions as set forth in Section 29.6(b) shall not apply to the following:

1. (i) toy pistols, toy canes, toy guns, or similar devices in which paper caps containing 0.0025 grains or less of explosive compounds are used, provided they are so constructed that the hand cannot come in contact with the cap when in place for exploding, and (ii) toy paper pistol caps which contain less than 0.0025 grains of explosive compounds, the sale and use of which shall be permitted at all times.
2. It shall not be unlawful, upon a permit issued by the city Fire Marshal, for any person engaged in any organized play, legitimate theatrical performance, circus, or other show designed for the amusement and edification of the general public to use, discharge, or cause to be discharged and ignited fireworks as a part of an act, performance, play, or circus, so long as such person does not also engage in the retailing, wholesaling, selling, or distribution of any of such fireworks. The Fire Marshal shall cause to be made an investigation of each application made under this article to determine whether the use of such fireworks as proposed 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 for such permit.
3. signal flares and torpedoes of the type and kind commonly used by any railroads, which signal flares and torpedoes are received by and stored or transported by any railroad for use in railroad operation; any marine signal flare or rocket which is transported or received or stored for use only as ship's stores; signal flares or rockets for military or police use; signal flares for use by motorists in distress, or signal flares for use by fire department personnel.

e. Public Fireworks Displays Permitted with Required Permit.

1. The provisions of Section 29.6(b) shall not apply to a public display of Fireworks made under the terms and conditions of this subsection, and such display shall be permitted upon compliance with the provisions of City's adopted fire prevention code and of this section, as follows:
 - i. Any adult person planning to make a public display of fireworks shall first make written application for a permit to the Fire Marshal at least 96 hours in advance of the date of the proposed display.

- ii. The Fire Marshal shall make an investigation as to whether the display as proposed by the applicant for a permit under this section 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 Fire Marshal. Such permit shall be for a period of time designated on the permit, not to exceed 14 days, and the permit shall not be transferable. If the application is denied by the Fire Marshal, the Fire Marshal shall notify the applicant of the denial in writing.
- iii. The applicant for a display permit under this section shall, at the time of making application, furnish proof that it carries worker's compensation insurance for his employees as provided by the laws of the state; and he shall file with the Fire Marshal a certificate of insurance evidencing the carrying of public liability insurance in an amount not less than \$1,000,000.00, issued by an insurance carrier authorized to transact business in the State of Texas, for the benefit of the person named therein as insured, as evidence of ability to respond to damages in at least the amount of \$1,000,000.00, such policy to be approved by the Fire Marshal. In lieu of insurance, the applicant may file with the Fire Marshal a bond in the amount of \$1,000,000.00, issued by an authorized surety company approved by the Fire Marshal, conditioned upon the 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.
- iv. The range of aerial displays shall not be more than 200 feet, and the Fireworks shall be discharged vertically from tubes approved by the Fire Marshal.
- v. The limit of a display authorized by this section shall be not more than 45 minutes per performance, and there shall not be more than two performances in each 24-hour period.
- vi. 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 Fire Marshal.

- vii. The persons handling the display of fireworks under this Subsection shall be competent, adult persons and experienced pyrotechnic operators approved by the Fire Marshal. No person not approved by the Fire Marshal shall handle fireworks at the public display. The names of the experienced pyrotechnic operators shall be designated on the permit issued.
 - viii. For each public display of Fireworks under this Subsection, the Fire Marshal may require not less than two firefighters and fire fighting equipment of the city be in attendance during the display. The expense of such firefighters and fire fighting equipment 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.
 - ix. The material to be used for a public display authorized by this Subsection 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.
- f. Penalty. Any person who shall violate this Section 29.6 shall, upon conviction, be punished by a fine as prescribed in Section 1-7 of this Code. If Fireworks are separately wrapped or packaged, the commission or omission of any act prohibited by this section shall be a separate offense as to each such separately wrapped or separately packaged fireworks.

Section 3. Repeal. This ordinance is intended to be cumulative and shall not repeal any provision of a previous ordinance or City Code provision, except to the extent that a provision is inconsistent and cannot be reconciled with this ordinance.

Section 4. Severability. In the event any clause, phrase, provision sentence, or part of this Ordinance or the application of the same to any person or circumstance for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it is the intention of the City Council that the invalidity or unconstitutionality of the one or more parts shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision other than the part declared to be invalid or unconstitutional; and the City Council of the City of La Marque, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

Section 5. Effective Date. This Ordinance shall be effective on May 20, 2022.

PASSED AND APPROVED on First reading this the 11th day of April 2022.

PASSED, APPROVED, AND ADOPTED on the Second and Final reading this the ____ day of _____, 2022.

Keith Bell
Mayor

ATTEST:

Kierra Nance, TRMC
City Clerk