

ORDINANCE NO. 2026-28

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, AMENDING THE CODE OF ORDINANCES BY REPEALING SECTION 11-4 ("FIREWORKS") OF ARTICLE I, CHAPTER 11; CREATING A NEW ARTICLE X ENTITLED "FIREWORKS" IN CHAPTER 14 (HEALTH, SANITATION, AND NUISANCES); PROVIDING FOR DEFINITIONS, ADMINISTRATIVE CITATIONS, CIVIL PENALTIES, RESPONSE COST RECOVERY, AND ENFORCEMENT; PROVIDING A PENALTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL; AND PROVIDING AN EFFECTIVE DATE.

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WHEREAS, the City Council of the City of Rosenberg, Texas, is authorized to protect the public health, safety, and welfare through the exercise of its police powers; and

WHEREAS, the unlawful use and discharge of fireworks creates fire hazards and requires the expenditure of public safety resources; and

WHEREAS, the City Council finds that the use, possession, and discharge of fireworks create conditions that are dangerous to persons and property and present a risk of fire and other hazards; and

WHEREAS, pursuant to Texas Local Government Code § 342.003, the City has authority to regulate conditions that pose a risk of fire and danger to property and the public; and

WHEREAS, pursuant to Texas Health and Safety Code § 341.012, the City may abate conditions that constitute a public nuisance; and

WHEREAS, the City Council further finds that the unlawful discharge and storage of fireworks may constitute a public nuisance requiring abatement to protect the public; and

WHEREAS, the City Council finds that relocating fireworks regulations to Chapter 14 (Health, Sanitation, and Nuisances) aligns enforcement with the City's nuisance framework and enhances the City's ability to address recurring violations;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ROSENBERG:

Section 1. Section 11-4 ("Fireworks") of Chapter 11 of the Code of Ordinances is hereby repealed in its entirety.

“Sec. 11-4. - Reserved.”

Section 2. Chapter 14 (Health, Sanitation, and Nuisances) is hereby amended by adding a new Article X entitled “Fireworks,” to read as follows:

“ARTICLE X. – FIREWORKS

Sec. 14-190. Applicability.

This article shall apply within the corporate limits of the City. This article shall not apply outside the corporate limits except as otherwise expressly authorized by state law.

Sec. 14-191. Definitions.

- (1) Fireworks shall mean any combustible or explosive composition or any substance or combination of substances or any article designed for entertainment to produce a visible or an audible effect by combustion, explosion, deflagration or detonation, including firecrackers, torpedoes, sky rockets, Roman candles, or other devices of like construction; and any devices containing any explosive substances. The term fireworks shall not include sparklers, smoke devices, snakes, glow worms, party poppers, snappers, or other similar small novelty ground-based fireworks that remain on the ground at all times, do not travel aerially, and do not produce a loud explosion or detonation. Further, the term fireworks shall not include paper caps containing not in excess of an average of twenty-five hundredths (0.25) of a grain of explosive content per cap manufactured in accordance with the applicable regulations for packing and shipping as provided therein, and such toy pistols, toy canes, toy guns or other devices which use such caps, the sale and use of which shall be permitted at all times.
- (2) Enforcement officer shall mean a police officer, fire marshal, code

compliance officer, or other enforcement agent designated by the Police Chief.

- (3) Responsible party shall mean a person who causes a violation of this article to occur or allows a violation to exist or continue, by his or her action or failure to act, or whose agents, employee, or independent contractor causes a violation of this article to occur, or allows a violation to exist or continue. There is a rebuttable presumption that both the record owner of real property, as shown on the county's latest tax roll, and any lessee of the real property have notice of any violation existing on the property. For purposes of this article, there may be more than one responsible person for a violation.

Any person, irrespective of age, found in violation of any provision of this article may be issued a citation in accordance with the provisions of this code. Every parent, guardian, or other person having the legal care, custody, or control of any person under the age of eighteen years, who knows or reasonably should know that a minor is in violation of this article, may be issued a citation in accordance with the provisions of this article, in addition to any citation that may be issued to the offending minor.

- (4) Response costs shall mean those reasonable and necessary costs directly incurred by public safety personnel for a response to an unpermitted discharge or illegal storage of fireworks, and include the cost of providing law enforcement, firefighting, and/or other emergency services at the scene of the unpermitted discharge or illegal storage of fireworks, including, but not limited to:
- a. Salaries and benefits of public safety personnel for the amount of time spent responding to, remaining at, or otherwise dealing with the unpermitted discharge or illegal storage of fireworks, and the administrative costs attributable

- to the response(s); and
- b. The cost of any medical treatment to or for any public safety personnel injured responding to, remaining at, or leaving the scene of the unpermitted discharge or illegal storage of fireworks; and
- c. The cost of repairing any public safety equipment or property damage, and the cost of the use of any such equipment, in responding to, remaining at, or leaving the scene of an unpermitted discharge or illegal storage of fireworks.

Sec. 14-192. Exceptions.

Nothing in this article shall be construed to prohibit any wholesaler, dealer, or jobber to transport fireworks in accordance with applicable state or federal regulations regarding the transportation of explosives and other dangerous articles by motor, rail, and water, provided that the fireworks are to be shipped directly out of the corporate limits of the city, or to prohibit the use of fireworks by railroads or other transportation agencies for signal purposes or illumination, nor to prohibit the possession or use of flares or rockets for the military, police, or emergency purposes by others.

Packaged, unopened fireworks shall not be confiscated by the City. It shall be an affirmative defense to prosecution under this article for possession of fireworks if the defendant was operating or was a passenger in a motor vehicle being operated in a public place and the fireworks were not located in the passenger area of the vehicle.

For purposes of this section, the “passenger area” means the area of a motor vehicle designed for the seating of the operator and passengers and does not include a locked glove compartment or similar locked storage area, the trunk of the vehicle, or the area behind the last upright seat of a vehicle that does not have a trunk.

Sec. 14-193. Manufacturing prohibited.

The manufacture of fireworks is prohibited within the corporate limits of the city.

Sec. 14-194. Possession, sale, or use.

Except as provided in this article, it shall be unlawful for any person to possess, store, offer for sale, sell at retail, or use or explode any fireworks within the corporate limits of the city.

Sec. 14-195. Permit for displays.

Nothing in this article shall be construed to prohibit the application for a permit to be issued by the city fire marshal for the use of fireworks for public or private display when all of the provisions of NFPA 1123, Public Display of Fireworks, including all subsequent amendments thereto, as published by the National Fire Protection Association are met and after such necessary permits have been issued by the fire marshal. Every such use or display shall be handled by a competent operator approved by the fire marshal and shall be of such character and so located, discharged, or fired so as not to be hazardous to property or endanger any person.

Sec. 14-196. Removal of fireworks in violation.

Enforcement Officers may seize, take, remove, or cause to be removed, at the expense of the owner, all stocks of fireworks offered or exposed for sale, stored, possessed, or held in violation of this article.

Sec. 14-197. Administrative citations.

Upon identification of an unpermitted discharge or illegal storage of fireworks occurring on private property, an enforcement officer may issue an administrative citation or a written notice of violation to a responsible party.

Violations of this article occurring on public property, including public streets, sidewalks, parks, rights-of-way, or other publicly owned property, shall be enforced through any lawful enforcement mechanism available under state law or this Code, including verbal or written warnings, criminal citations, or arrest where authorized by law.

Sec. 14-198. Civil penalties.

A responsible party issued an administrative citation for a violation occurring on private property may be subject to a civil penalty not to exceed five hundred dollars (\$500.00) per violation. A responsible party who has been issued a second or subsequent administrative citation or written notice of violation under this article may be liable for response costs, as defined in Section 14-191 of this article, incurred by the City in responding to an unpermitted discharge or illegal storage of fireworks. Response costs are intended to reimburse the City for actual costs incurred and are not punitive in

nature. The enforcement officer may also issue a written notice to all other identifiable responsible persons, as defined in Section 14-191 of this article, not present at the unpermitted discharge of fireworks, that a violation of the fireworks ordinance has occurred and that further violations may result in the assessment of response costs.

Sec. 14-199. Payment.

The administrative fines and response costs shall be paid in accordance with applicable administrative enforcement procedures. Payment of a fine and/or response costs shall not excuse or discharge any continuation or repeated occurrence of the violation.

Sec. 14-200. Third-party administrative citations.

- (a) Whenever one or more private persons observe a violation of this article occurring on private property, they may request that an administrative citation be issued to a responsible party by any of the officers or employees identified in Section 14-191 of this article. The private persons will be required to sign an affidavit under penalty of perjury verifying that they personally observed a violation of this article by a responsible party, and may be required to testify at an administrative hearing if the administrative citation is contested. Failure of the private persons to testify at an administrative hearing if required may result in dismissal of the administrative citation. The enforcement officer shall have the authority to issue an administrative citation to the responsible party upon the basis of this affidavit.
- (b) Each third-party administrative citation shall contain:
 - (1) the date of the violation;
 - (2) the address or a definite description of the location where the violation occurred;
 - (3) the section of this Code violated and a description of the violation;
 - (4) the amount of the fine for the violation;
 - (5) a description of the fine payment process, including the time within which and the place to which the fine must be paid;
 - (6) an order prohibiting the continuation or repeated occurrence of the violation described in the administrative citation;

- (7) a description of the administrative citation review process, including the time within which the citation may be contested and the place from which a request for hearing may be obtained; and
 - (8) the name, signature, and department issuing the citation.
- (c) Each third-party administrative citation shall be accompanied by an affidavit from the private persons setting forth a description of the violation as observed, signed under penalty of perjury.
- (d) The administrative fines for third-party administrative citations shall be the same as set forth in Section 14-198.

Sec. 14-201. Administrative adjudication.

- (a) An administrative citation issued under this article constitutes a civil offense subject to administrative adjudication as provided herein. A person charged with an administrative citation under this article is entitled to an administrative adjudication hearing as provided herein. The City Manager shall designate a hearing officer to conduct administrative hearings under this article. The hearing officer is authorized to administer oaths, issue written orders determining liability, and dismiss citations that are unenforceable or erroneously issued.
- (b) An administrative citation issued under this article serves as notice of the alleged violation and of the right to an administrative hearing. A person receiving an administrative citation under this article may request an administrative hearing within ten (10) days from the date of citation. A person is not required to pay the civil penalty prior to requesting or attending a hearing. Failure to timely request a hearing constitutes an admission of liability.
- (c) At the administrative adjudication hearing:
- (1) The person cited may admit, admit with explanation, or deny the violation;
 - (2) The person who issued the citation is not required to attend the hearing;
 - (3) The city attorney is not required to appear at the hearing; however, if

the person cited is represented by legal counsel, the hearing officer may notify the city attorney's office so that counsel may appear on behalf of the City.

- (4) No formal or sworn complaint is required;
- (5) The administrative citation and any supporting report constitute prima facie evidence of the violation; and
- (6) The hearing officer shall determine liability based on a preponderance of the evidence.

(d) At the conclusion of the hearing, the hearing officer shall issue a written order stating:

- (1) Whether the person is liable for the violation;
- (2) The amount of any civil penalty or response costs assessed; and
- (3) That the order may be enforced as provided in this article.

(e) The order shall be filed with the City and may be maintained as an official record.

(f) A person found liable may appeal the decision of the hearing officer to the municipal court by filing a notice of appeal not later than the thirtieth (30) day after the date the order is issued.

(g) An order issued under this article may be enforced by the City through filing an action to collect the civil penalty or response costs in a court of competent jurisdiction.”

Section 3. A person who violates this article shall be liable for civil penalties as provided herein.

Section 4. In the event any section, paragraph, subdivision, clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part of provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Rosenberg, 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. All ordinances or parts inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

Section 6. This Ordinance shall become effective immediately upon its passage, approval, and publication as provided by law.

PASSED AND APPROVED by a vote of _____ “ayes” in favor, _____ “noes” against, and _____ abstentions on this first and final reading in full compliance with the provisions of Section 3.10 of the City Charter of the City of Rosenberg, Texas on this the _____ day of _____ 2026.

ATTEST:

APPROVED:

Danyel Swint, TRMC, **CITY SECRETARY**

William Benton, **MAYOR**

APPROVED AS TO FORM:

CITY ATTORNEY
Randle Law Office, Ltd., L.L.P.