

**AN ORDINANCE REGULATING FIREWORKS AND PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT; A POPULAR NAME; DEFINITIONS; RESTRICTIONS ON THE SALE, USE, POSSESSION OR DISCHARGE OF FIREWORKS WITHIN THE CITY OF MILES; EXEMPTIONS; ENFORCEMENT OF ORDINANCE, INCLUDING A MAXIMUM PENALTY OF \$2,000.00; CONFLICTING PROVISIONS; SEVERABILITY; EFFECTIVE DATE; AND PROPER NOTICE AND OPEN MEETING.**

**WHEREAS**, the City Council of the CITY OF MILES is authorized by the Texas Government Code, Section 51.001, to adopt an ordinance that is for the good government, peace, or order of the City and is necessary or proper for implementing a power granted by law to the City; and

**WHEREAS**, the City Council is authorized by the Texas Local Government Code, Sections 217.022 and the Texas Occupations Code, Section 2154.004 to regulate or prohibit the discharge of fireworks within the City; and

**WHEREAS**, the City Council finds that the sale, use, possession or discharge of fireworks within the City could endanger the health and safety of City residents, including the risk of substantial harm to property from fires; and

**WHEREAS**, the City Council finds that the combination of fireworks, especially in the confines of a municipality, is dangerous not only to property but also to persons, and results annually in the loss of property and the loss of life; and

**WHEREAS**, the City Council finds that the indiscriminate use of fireworks constitutes a menace to life, limb and health to the users and their associates, increases the hazard and loss by fires, and constitutes a common public nuisance, which can be prevented and abated by law; and

**WHEREAS**, the City Council finds that it is necessary and proper for the good government, peace or order of the City, for public health and safety, and for fire protection within the City, to adopt an ordinance regulating the sale, use, possession or discharge of fireworks within the City.

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

**SECTION 1. FINDINGS OF FACT**

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if set forth herein at length.

## **SECTION 2. POPULAR NAME**

This Ordinance shall hereinafter be referred to as the "Fireworks Ordinance."

## **SECTION 3. DEFINITIONS**

### **(A) General**

Words and phrases used in this ordinance shall have the meanings set forth in this section. Words and phrases which are not defined in this ordinance but are defined in other ordinances of the City of Miles shall be given the meanings set forth in those ordinances. Other words and phrases shall be given their common, ordinary meaning unless the context clearly requires otherwise. Headings and captions are for reference purposes only, and shall not be used in the interpretation of this ordinance.

### **(B) Definitions**

(1) "Council" means the City Council of the City of Miles, the governing body of the municipality.

(2) "Code Official" means the person or persons officially designated by the City Council to assist the City Council in implementing the provisions of this Ordinance. Such person or persons may include, but are not limited to, the Fire Prevention Officer or the Fire Marshal, Code Enforcement Officer and such assistance includes, but is not limited to, conducting investigations for possible violations of this Ordinance.

(3) "Fire Prevention Officer" means the person designated as such by the City Council. Such persons may include but are not limited to the chief of a fire department, a fire marshal, a county fire marshal, a sheriff, a constable, another local enforcement officer primarily responsible for fire prevention, or if there is no local fire authority, the County Fire Marshal.

(4) "Fireworks" means any combustible or explosive composition, or any substance or combination of substances, or article or device prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration, or detonation. The term includes "firecrackers."

(5) "Person" means an individual, corporation, organization, government agency, business, trust, partnership, association, or any other legal entity.

(6) "Possess" means actual care, custody, control, or management

(7) "City boundaries" means the municipal boundaries (i.e., "City limits") of the City. The term does not include the extraterritorial jurisdiction.

(8) "City" means the City of Miles, a duly incorporated municipality in Runnels County, Texas, and all officials, agents and employees who are acting on behalf of the City.



#### **SECTION 4. RESTRICTIONS ON THE SALE, USE, POSSESSION OR DISCHARGE OF FIREWORKS**

- (A) No person may sell fireworks within the City boundaries.
- (B) No person may use or discharge fireworks within the City boundaries.
- (C) No person may be in possession of fireworks with the intent to discharge such fireworks within the City boundaries.

#### **SECTION 5. EXEMPTIONS**

(A) The restrictions in this ordinance on the use or discharge of fireworks do not apply if such use, possession or discharge occurs as part of a City approved and supervised event that complies with the provisions of a Runnels County burning ban and/or applicable drought status.

(B) In accordance with the provisions of the Texas Occupations Code, Section 2154.002, the restrictions on the use, possession or discharge of fireworks in this Ordinance do not apply to:

- (1) a toy pistol, toy cane, toy gun, or other device that uses paper or plastic caps in sheets, strips, rolls, or individual caps, that contains not more than an average of 25 hundredths of a grain of explosive composition per cap and that is packed and shipped in accordance with the requirements of Title 49, Code of Federal Regulations, Part 173, as amended;
- (2) a model rocket or model rocket motor designed, sold, and used to propel recoverable aero models;
- (3) a propelling or expelling charge consisting of a mixture of sulfur, charcoal, and potassium nitrate;
- (4) novelties or trick noisemakers;
- (5) the use of pyrotechnic signaling devices or distress signals in emergency situations; (6) a signal or ceremonial purpose in an athletic event; or
- (7) the use of a pyrotechnic device by a military organization;
- (8) Black Powder or Black Powder substitute utilized in period, antique or theater weapons.

(C) The restrictions in this ordinance on the use or discharge of fireworks do not apply on the following days and times:

1. On July 3<sup>rd</sup> every year, until 12 midnight
2. On July 4<sup>th</sup> every year, until 11 p.m.
3. On December 31<sup>st</sup> of every year until 1:00 A.M. of every January 1<sup>st</sup>
4. On January 1<sup>st</sup> until 9:00 p.m.

## **SECTION 6. PROCEDURES FOR FILING COMPLAINTS ABOUT A VIOLATION OF THIS ORDINANCE**

(A) Any City resident or property owner may file a complaint alleging a violation of this Ordinance. The complaint:

- (1) must be made in writing;
- (2) must provide sufficient details about the violation; and
- (3) must be made to the Code Official, the City Secretary, or a City police officer.

## **SECTION 7. ENFORCEMENT OF ORDINANCE**

### **(A) Civil and Criminal Penalties**

The City shall have the power to administer and enforce the provisions of this Ordinance as may be required by governing law. Any person violating any provision of this Ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this Ordinance is hereby declared to be a nuisance.

### **(B) Criminal Prosecution**

Any person violating any provision of this Ordinance shall, upon conviction, be fined a sum not exceeding \$2,000.00. Each day that a provision of this Ordinance is violated shall constitute a separate offense. An offense under this Ordinance is a misdemeanor.

### **(C) Civil Remedies**

Nothing in this Ordinance shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this Ordinance and to seek remedies as allowed by law, including, but not limited to the following:

- (1) injunctive relief to prevent specific conduct that violates the Ordinance or to require specific conduct that is necessary for compliance with the Ordinance; and
- (2) a civil penalty up to \$1,000.00 a day when it is shown that the defendant was actually notified of the provisions of the Ordinance and after receiving notice committed acts in violation of the Ordinance or failed to take

action necessary for compliance with the Ordinance; and

- (3) any other available relief permitted by law.

### **SECTION 8. CONFLICTING PROVISIONS**

If any provision of this Ordinance conflicts with any provision in another Ordinance, resolution or order of the Council, then the stricter provision shall apply.

### **SECTION 9. SEVERABILITY**

If any word, article, phrase, paragraph, sentence, clause or provision of this Ordinance be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or application 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 as required by governing law.

PASSED AND APPROVED on this the 7<sup>th</sup> day of September, 2015.

CITY OF MILES

*Sylvester Schwetne*  
Mayor

ATTEST:

*Amy Fischer*  
Amy Fischer, City Secretary

Approved as to Form:

Michael B. Halla  
City Attorney

