

ORDINANCE NO. 03-2006

AN ORDINANCE OF THE CITY OF MOULTON, TEXAS AMENDING THE CITY OF MOULTON CODE OF ORDINANCES, CHAPTER 5, "FIRE PREVENTION AND PROTECTION," ARTICLE 5.05, "FIREWORKS", TO PROHIBIT THE DISCHARGE OF FIREWORKS WHILE A PROHIBITION ON OUTDOOR BURNING IS IN EFFECT, AND CREATING A NEW ARTICLE 5.06, "REGULATION OF OUTDOOR BURNING"; AND PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT; REPEALER; SEVERABILITY; EFFECTIVE DATE; AND PROPER NOTICE AND MEETING

WHEREAS, the City Council of the City of Moulton (the "City") seeks to provide for the health, safety and welfare of its citizens; and

WHEREAS, the City Council is authorized to adopt reasonable rules related to fire safety and to abate nuisances pursuant to the City's police power and sections 54.001, 217.002 and 217.003 of the Texas Local Government Code; and

WHEREAS, the City Council is authorized to prohibit or otherwise regulate the use of fireworks by section 342.003(a)(8) of the Texas Local Government Code; and

WHEREAS, the City Council hereby declares the outdoor burning of materials and the sale or discharge of fireworks within the city limits in a manner other than that described by this ordinance to be a public nuisance;

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

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

Section 2. Amendments.

A. Chapter 5, "Fire Prevention and Protection," Article 5.05, "Fireworks," of the Code of Ordinances, City of Moulton, Texas, is hereby amended as follows:

**"ARTICLE 5.05 FIREWORKS**

**Section 5.05.001 Discharge restricted**

(a) In the city, fireworks may only be discharged during the following periods:

(1) Beginning June 24 and ending at midnight on July 4; and

(2) Beginning December 20 and ending at midnight on January 1 of the following year.

(b) During such times discharge will be limited to no later than 10:00 p.m. on weeknights; 12:00 a.m. on Fridays and Saturdays; and 1:00 a.m. on the 4<sup>th</sup> of July, Christmas and New Year's Eve.

(c) Notwithstanding the foregoing, no fireworks may be discharged during a period in which an order prohibiting outdoor burning is in effect as provided by this Article 5.06 of this Code.

B. Chapter 5, "Fire Prevention and Protection," of the Code of Ordinances, City of Moulton, Texas, is hereby amended to add a new Article 5.06, "Regulation of Outdoor Burning," as follows:

### "ARTICLE 5.06 REGULATION OF OUTDOOR BURNING

#### Sec. 5.06.001 Definitions

"County burn ban" means any period during which the County of Lavaca has adopted an order that prohibits or restricts outdoor burning in that part of the unincorporated area of Lavaca County that is immediately adjacent to all or a part of the corporate limits of the City of Moulton.

#### Sec. 5.06.002 Declaration of Prohibition on Outdoor Burning

The Mayor by signed order may restrict outdoor burning in general or outdoor burning of a particular substance in all or part of the city limits if:

(a) The Mayor or City Council determines that circumstances present in all or part of the city limits create a public safety hazard that would be exacerbated by outdoor burning; or

(b) There is a county burn ban in effect as defined by this ordinance.

An order adopted under this section shall specify the period during which outdoor burning is prohibited or restricted.

#### Sec. 5.06.003 Expiration of Burn Ban

An order adopted under section 5.06.002(a) of this article expires, as applicable, on the earlier of:

(a) The expiration date indicated on the order;

(b) For orders initiated by the Mayor under section 5.06.002(a), the adjournment of the next city council meeting that takes place more than 72 hours after the date on which the Mayor signs the order, unless the City Council determines that circumstances present in all or part of the city limits continue to create a public safety hazard that would be exacerbated by outdoor burning; or

(c) The date on which the City Council determines that the conditions identified under subsection (b) no longer exist.

An order adopted under section 5.06.002(b) expires on the date that the county burn ban expires.

**Sec. 5.06.004            Violations**

A person, firm or corporation commits an offense if that person, firm or corporation burns an outdoor fire, or orders such burning by others, during a period in which an order prohibiting such burning is in effect as provided by this ordinance. An offense under this article is punishable by fine in accordance with the general penalty provision found in section 1.01.009.

It shall be a defense to prosecution under this article that such fire was confined in an enclosure that contained all flames and/or sparks."

Section 3. Repealer. All ordinances or parts of ordinances in force when the provisions of this Ordinance becomes effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed only to the extent of any such conflict.

Section 4. Severability. It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this ordinance be severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance, and the remainder of this Ordinance shall be enforced as written.

Section 5. Effective Date. This Ordinance shall take effect immediately upon its passage and publication as may be required by governing law.

Section 6. Proper Notice and Meeting. It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

**PASSED AND APPROVED** this 3th day of June, 2006, by a 3 (Ayes) 0 (Nays) 0 (Abstain) vote of the City Council of the City of Moulton, Texas.

**CITY OF THE MOULTON**

By:

  
Kathy Koranek, Mayor

**ATTEST:**

  
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Gloria Jasek, City Secretary

**APPROVED AS TO FORM:**

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Emily Rogers, City Attorney