

Memorandum

To: Honorable Mayor Shetter and members of the Burleson City Council

From: Stacy Singleton, Fire Marshal

Date: January 5, 2009

Subject: Minute Order MO-09-052, request from Mark Minor for an extension of Resolution R-1110-08 which declared a moratorium on the enforcement of any city ordinances or codes prohibiting the storage or retail or wholesale sale of fireworks on the property annexed into the City of Burleson by Ordinance A-311-07.

Council Action Requested:

1. Hear the request from Mark Minor of Renegade Wholesale Fireworks for an extension of Resolution R-1110-08.
2. Approve or Deny Minute Order MO-09-052, directing staff to place Resolution R-1110-08 on the January 20, 2009 City Council agenda.

Background Information:

On January 10, 2008, the City Council approved Resolution R-1110-08, which declared a moratorium on the enforcement of any city ordinance or codes prohibiting the storage or retail or wholesale sale of fireworks on the property annexed into the City of Burleson by ordinance A-311-07.

The passing of this Resolution allowed fireworks stand owners in the areas annexed in January 2008, including Renegade Wholesale Fireworks (owned by Mark Minor) located at 4200 South I-35W, to continue the sale and storage of fireworks for the purpose of providing a reasonable opportunity to the owners and operators of the existing fireworks businesses to reduce the inventory and re-locate the businesses. It also allowed them to have two additional retail sale periods, July 2008 and December 2008.

Resolution R-1110-08 will expire at 5:01 p.m. on January 31, 2009.

Renegade Wholesale Fireworks' owner Mark Minor has asked to appear before Council to request an extension of Resolution R-1110-08. Mr. Minor has informed staff that he has been unable to locate an affordable location to relocate his business and that he is having difficulty selling the current location due to damage from storms during the spring of 2008.

Staff does not recommend this extension beyond the one year granted by R-1110-08. Should City Council wish to grant an extension, staff recommends the extension be for storage of current inventory only (exclude all sales) and not exceed six additional months.

Board/Citizen Input:

N/A

Financial Considerations:

There is no expenditure of municipal funds associated with this item.

Attachments:

Resolution R-1110-08.

Staff Contact:

Stacy Singleton, CFEI

Fire Marshal

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RESOLUTION R-1110-08

A RESOLUTION DECLARING A MORATORIUM, EFFECTIVE IMMEDIATELY UPON PASSAGE AND EXPIRING AT 5:01 P.M., JANUARY 31, 2009, ON THE ENFORCEMENT OF ANY CITY ORDINANCES OR CODES PROHIBITING THE STORAGE OR RETAIL OR WHOLESALE SALE OF FIREWORKS ON THE PROPERTY ANNEXED INTO THE CITY OF BURLESON BY ORDINANCE NO. A-311-07, ADOPTED ON JANUARY 10, 2008, AS DESCRIBED MORE SPECIFICALLY HEREIN; PROVIDING FOR A METHOD OF REPEAL OF THIS MORATORIUM; PROVIDING FOR A VARIANCE; AND PROVIDING EFFECTIVE DATES.

WHEREAS, Section 2154.152 of the Texas Occupations Code requires a person who imports into this state or stores, possesses, and sells fireworks to a licensed jobber, retailer, distributor, or pyrotechnic operator in this state, to obtain an annual distributor's license, which license expires on January 31 of each year; and

WHEREAS, Section 2154.202 of the Texas Occupations Code requires a person who sells fireworks directly to the public to obtain a retail fireworks permit for each retail location, which permit expires on January 31 of each year; and

WHEREAS, Section 2154.202 of the Texas Occupations Code further allows the sale of fireworks to the public only during the following periods: (a) beginning June 24 and ending at midnight on July 4, and (b) beginning December 20 and ending at midnight on January 1 of the following year; and

WHEREAS, the City of Burleson has adopted ordinances and codes prohibiting, among other things, the storage and retail and wholesale sale of fireworks within the City of Burleson's corporate limits; and

WHEREAS, on Thursday, January 10, 2008, the Burleson City Council adopted Ordinance No. A-311-07 which annexed certain property into the City's corporate limits; and

WHEREAS, there are existing fireworks businesses located on the aforesaid property annexed into the City's corporate limits by Ordinance No. A-311-07; and

WHEREAS, the City Council, for the purpose of providing a reasonable opportunity to the operators of the existing fireworks businesses to assess the impact of the annexation on the operation of their businesses, desires to maintain the status quo in the City until January 31, 2009.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BURLESON:

SECTION 1.

Effective immediately and for a period expiring at 5:01 p.m. on January 31, 2009, the City of Burleson shall not take any enforcement action against any persons who had existing businesses engaged in the storage or the retail or wholesale sale of fireworks on the property annexed into the corporate limits of the City of Burleson by Ordinance No. A-311-07, adopted by the City Council on January 10, 2008, as more specifically described in Ordinance No. A-311-07.

SECTION 2.

This moratorium shall automatically expire at 5:01 p.m. on January 31, 2009, unless it is specifically extended by additional City Council action for an additional time period, or unless it is sooner terminated by additional City Council action.

SECTION 3.

Any property owner who believes that the imposition of this moratorium works a unique and unreasonable hardship upon his/her business shall have the right to request a variance to the provisions of this moratorium. A property owner seeking a variance shall submit a written request to the City Council via the City Secretary's office. The request must provide the following information:

- a. A description of the business to be covered by the variance.
- b. An explanation as to why the application of the moratorium is unreasonable as applied to the applicant's business.
- c. A description of any negative impacts created by the moratorium provision.

The City Secretary's office shall place the request for a variance on the agenda of the City Council for consideration at a public meeting. The applicant shall receive written notice of the date of the proposed hearing on the variance request. The City staff shall not be required to provide written notice of the variance request to any other individual or entity. On the date that the item is set for hearing, the City Council shall conduct a public hearing on the variance request giving any individual who desires to present information or evidence to the City Council on the appropriateness or inappropriateness of the variance the opportunity to appear before the City Council and present such information. At the conclusion of the hearing, the City Council, by majority vote, may approve a variance to the provisions of this moratorium resolution or may deny the request for variance.

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SECTION 4.

This resolution shall be effective on January 10, 2008, and it is accordingly so resolved.

PASSED AND APPROVED on this 10th day of January, 2008.

ATTEST:


CITY SECRETARY


MAYOR