TOWN OF PROSPER, TEXAS ORDINANCE NO. 00-13

AN ORDINANCE OF THE TOWN OF PROSPER, TEXAS, PROHIBITING FIREWORKS; PROVIDING FOR DEFINITIONS; PROVIDING EXCEPTIONS; PROVIDING REQUIREMENTS FOR A PERMIT AND BOND FOR PUBLIC DISPLAYS; DECLARING FIREWORKS TO BE A PUBLIC NUISANCE; PROVIDING FOR SEVERABILITY, SAVINGS AND PENALTY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the Town Council of the Town of Prosper, Texas ("Town Council") has investigated and determined that it would be in the best interest of the Town of Prosper, Texas ("Prosper") and its inhabitants to prohibit fireworks within Prosper; and

WHEREAS, the Town Council finds that it will be advantageous, beneficial and in the best interest of the citizens of Prosper to prohibit fireworks.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS:

SECTION 1: Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2: Definitions. For purposes of this Ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

"Person" means a natural person (individual), corporate, company, association, partnership, firm, limited liability company, joint venture, joint stock company or association, and other such entity.

"Fireworks" means any combustible or explosive composition, or any substance or combination of substances, or device prepared for the purpose of producing a visible or audible effect or pyrotechnic display of combustion, explosion, deflagration, or detonation, and shall include, but not be limited to the following: blank cartridges, toy pistols, toy cannons, toy canes, or toy guns in which explosives are used, fire crackers, torpedoes, sky rockets, bottle rockets, Roman candles, Daygo bombs, sparklers, cannon crackers, squibs, fire balloons, star shells, gerbs, or any other device by whatever name, of like construction, and any devices containing any explosive or flammable compound, or any tablet or other device containing an explosive substance whether herein specifically designated and defined or not. The term **fireworks** shall not include any auto flares, paper caps containing not in excess of an average of 0.25 of a gram of explosive content per cap, or toy pistols, toy guns, toy canes or other devices using such caps.

"Town Fire Chief" means Prosper's Town Fire Chief or his designee.

"Town Mayor" means Prosper's Town Mayor or his designee.

SECTION 3: Fireworks Prohibited. It shall be unlawful for any person to manufacture, assemble, store, transport, receive, keep, sell, offer or have in their possession with the intent to sell, use, discharge, cause to be discharged, ignite, detonate, fire or otherwise set in action any fireworks of any description.

SECTION 4: Exceptions. This Ordinance shall not apply to signal flares and torpedoes of the type and kind commonly used by any railroad and which signal flares and torpedoes are received by and stored or transported by any such railroad for use in railroad operation; nor shall this article apply to any marine signal flare or rocket of the type and kind commonly carried by a

vessel at sea for its own use and which signal flares or rockets are transported or received or stored for use only as ship's stores; nor shall this Ordinance apply to signal flares or rockets for military or police use.

SECTION 5: Requiring Permits and Bond for Public Displays. The Town Mayor shall have power to adopt reasonable rules and regulations for the granting of permits for supervised public displays of fireworks by a jurisdiction, fair association, amusement park, other organizations, or for the use of fireworks by artisans in pursuit of their trade. Every such display shall be handled by a competent operator approved by the Town Mayor, and shall be of such character and so located, discharged, or fire so as not to be hazardous to property and/or endanger any person. Applications for such permits shall be made in writing at least ten (10) days in advance of the date of the display to the Town Mayor and the State Fire Marshal's office and shall contain an approved bond in an amount adequate to protect any permittee against claims arising from damage to person and/or property as a result of the display. After such privilege shall be granted, sale, possession, use and distribution of fireworks for such display shall be lawful for that purpose only. No permit granted hereunder shall be transferable. Any fireworks that remain unfired after the display is concluded shall be immediately removed from the Town, or shall be disposed of in a way safe for the particular type of fireworks remaining.

SECTION 6: Fireworks Declared a Public Nuisance. The presence of any fireworks within the Town in violation of this Ordinance is hereby declared to be a common and public nuisance. The Town Fire Chief is directed and required to seize and cause to be safely destroyed any fireworks found within the Town in violation of this Ordinance. Any member of the Fire

Department of the Town, or any police officer of the Town, or any other duly constituted peace officer is empowered to stop the transportation of and detain any fireworks found being transported illegally or to close any building where fireworks are found stored illegally until the Town Fire Chief can be notified in order that said fireworks may be seized and destroyed in accordance with the terms of this Ordinance. Notwithstanding any penal provision of this Ordinance, the Town attorney is authorized to file suit on behalf of the Town or the Town Fire Chief, or both, for injunctive relief as may be necessary to prevent unlawful storage, transportation, keeping or use of fireworks within the Town and to aid the Town Fire Chief in the discharge of his duties, and to particularly prevent any person from interfering with the seizure and destruction of such fireworks. It shall not, however, be necessary to obtain any such injunctive relief as a prerequisite to such seizure and destruction. The Town Fire Chief or any member of the fire prevention division of the Town is hereby authorized, at reasonable times, to enter any building where the unlawful presence of fireworks is suspected in order to inspect the building for the presence of such fireworks.

SECTION 7: Penalty. Any person, firm, corporation or business entity violating this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined a sum not exceeding Two Thousand Dollars ($2,000.00). Each continuing day's violation under this Ordinance shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude Prosper from filing suit to enjoin the violation. Prosper retains all legal rights and remedies available to it pursuant to local, state and federal law.

SECTION 8: Territoral Applicability. This Ordinance shall be applicable and in force throughout the incorporated territory of the Town within its corporate city limits, and within the extraterritorial jurisdiction of the Town being the area immediately adjacent and continuous with the corporate limits of the Town and extending for a distance outside the corporate limits for a distance as established by the laws of the State of Texas, provided that this Ordinance shall not apply within any portion of this extraterritorial jurisdiction which is contained within the territory of any other municipal corporation.

SECTION 9: Savings/Repealing Clause. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 10: Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Prosper hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, and phrases be declared unconstitutional or invalid.

SECTION 11: Effective Date. This Ordinance shall become effective from and after its adoption and publication as required by law.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS on this 11th day of APRIL, 2000

JIM DUNMIRE, MAYOR PRO-TEM

ATTESTED TO AND
CORRECTLY RECORDED BY:

SHIRLEY JACKSON
Town Secretary

APPROVED AS TO FORM:

ABERNATHY, ROEDER, BOYD,
& JOPLIN, P.C.
RICHARD M. ABERNATHY
REBECCA BREWER
Town Attorneys

DATE OF PUBLICATION: 4-14-00 *, in the* McKinney Courier Gazette