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Mayor

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ORDINANCE NO. 1507.03.01

AN ORDINANCE REGULATING FIREWORKS AND PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT; DEFINITIONS; DECLARATION OF NUISANCE; RESTRICTIONS ON THE SALE, USE, MANUFACTURE, OR DISCHARGE OF FIREWORKS WITHIN THE CITY; EXEMPTIONS; ENFORCEMENT OF ORDINANCE AS A MISDEMEANOR, INCLUDING A MAXIMUM PENALTY OF \$2,000.00 PER OFFENSE; AND EFFECTIVE DATE.

RECITALS

WHEREAS, the City Council of the City of San Elizario (“Council”) wishes to promote a clean, healthy, safe, and attractive environment for the citizens of the City of San Elizario (“City”); 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 of 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 public health and safety, and for fire protection within the City, to adopt an ordinance regulating the sale, use or discharge of fireworks within the City; and

WHEREAS, Texas Local Government Code, Sections 342.003, 217.002, and 217.003, and Texas Occupations Code, Section 2154.004 authorize the City to regulate or prohibit the sale, use, manufacture and discharge of fireworks within the City.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of San Elizario:

SECTION I. FINDINGS OF FACT

The foregoing recitals are adopted as facts and incorporated fully herein.

SECTION 2. DEFINITIONS

A. General

Words and phrases used in this ordinance shall have the meanings set forth in this section. Other words and phrases shall be given their common, ordinary meaning unless the context clearly requires otherwise.

B. Definitions

1. "City boundaries" means the municipal boundaries (i.e., "city limits") of the City of San Elizario.
2. "Fire Prevention Officer" means the person designated by the City to assist in implementing the provisions of this Ordinance and conducting investigations for possible violations of this Ordinance. Such persons may include, but are not limited to, the City Marshal, Code Official, chief of a fire department, a fire marshal, a county fire marshal, a sheriff, a constable, a local enforcement officer primarily responsible for fire prevention, or if there is no local fire authority, the State Fire Marshal.
3. "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."

SECTION 3. RESTRICTIONS ON THE SALE, USE MANUFACTURE, OR DISCHARGE OF FIREWORKS

- A. No person may assemble, manufacture, sell, or offer to sell fireworks within the City boundaries and within 1000 feet of the City boundaries.
- B. No person may use or discharge fireworks within the City boundaries in violation of United States or Texas laws and regulations governing the use or discharge of fireworks, including, but not limited to, any orders, requirements or procedures established by the State Fire Marshal or the Fire Prevention Officer.
- C. No person may use or discharge fireworks within the City during an outdoor burning ban established by the City and/or the County of El Paso or during a Stage III Drought Status.

SECTION 4. EXEMPTIONS

- A. The restrictions in this Ordinance on the use or discharge of fireworks do not apply if such use or discharge occurs as part of a City approved and supervised event that complies with the provisions of a burning ban by the City and/or the County of El Paso, and/or applicable drought status.
- B. In accordance with the provisions of the Texas Occupations Code, Chapter 2154.002, the restrictions on the use 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 contain 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.

SECTION 5. ENFORCEMENT AND PENALTIES

A. Declaration of Nuisance

Any violation of this Ordinance is hereby declared to be a nuisance. A person violating any provision of this Ordinance is subject to prosecution for criminal violations as well as suit for injunctive relief.

B. Criminal and Civil Penalties

1. Criminal Prosecution

An offense under this Ordinance is a misdemeanor. 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.

2. 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:

- a. injunctive relief to prevent specific conduct that violates the Ordinance or to require specific conduct that is necessary for compliance with the Ordinance; and
- b. 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
- c. other available relief.

SECTION 6. REPEAL OF CONFLICTING ORDINANCES

Any ordinance now in effect that conflicts or is inconsistent with any provisions of this Ordinance is hereby repealed to the extent of such conflict or inconsistency.

SECTION 7. REPEALER AND SEVERABILITY

REPEALER: All ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

SEVERABILITY: Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

SECTION 8. EFFECTIVE DATE

This Ordinance shall be effective immediately upon passage and publication.

PASSED AND APPROVED this, the 23 day of June 2015, by a vote of 4 (ayes) to 0 (nays) to _____ (abstentions) of the City Council of San Elizario, Texas.

CITY OF SAN ELIZARIO, TEXAS



Maya Sanchez, Mayor