

Maya Sanchez
Mayor
Leticia Miranda
Alderson Place 1
David Cantu
Alderson Place 2



Miguel Najera Jr.
Alderson Place 3
Rebecca Martinez-Juarez
Alderson Place 4
George Almanzar
Alderson Place 5

GARAGE SALE ORDINANCE NO. 1617.01

AN ORDINANCE ENACTING THE “GARAGE SALE ORDINANCE” ESTABLISHING REGULATIONS AND RESTRICTIONS FOR CONDUCTING A GARAGE SALE, AND PROVIDING FOR THE FOLLOWING: GARAGE SALE PERMIT REQUIRED; ENFORCEMENT INCLUDING A FINE AND/OR CIVIL PENALTY NOT TO EXCEED \$500.00 PER DAY; AND EFFECTIVE DATE

WHEREAS, the City Council (“City Council”) of the City of San Elizario (“City”) seeks to promote the health, safety and general welfare of the City residents and visitors by regulating the sale of tangible personal items in residential areas; and

WHEREAS, the City Council is concerned about increased noise, pedestrian traffic, and the vehicular congestion on City streets that is attributable to garage sales; and

WHEREAS, the City Council finds that a special challenge is presented by the conducting of garage sales in residential areas; and

WHEREAS, the City Council has authority to collect sales and use taxes pursuant to Chapter 321 of the Texas Tax Code, and seeks to collect said tax whenever possible; and

WHEREAS, the City Council has authority to adopt an ordinance that is for the peace, and order of the municipality pursuant to section 51.001 of the Texas Local Government Code; and

WHEREAS, the Council finds that it is necessary and proper for the good government, peace, or order of the City of San Elizario to adopt this Ordinance regulating garage sales.

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. ENACTMENT

The City Council hereby adopts and enacts the “*Garage Sale Ordinance*”, contained in Attachment A, attached hereto and incorporated fully herein for all intents and purposes.

SECTION 3. 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All ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.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 4. EFFECTIVE DATE

This Ordinance shall be effective immediately upon passage and publication in the city’s official newspaper.

PASSED AND APPROVED this, the 21st day of June, 2016, by a vote of 4 (ayes) to 0 (nays) to 0 (abstentions) of the City Council of San Elizario, Texas.

CITY OF SAN ELIZARIO, TEXAS



Maya Sanchez, Mayor

CITY OF SAN ELIZARIO GARAGE SALE ORDINANCE

I. Purpose

The purpose of this Ordinance is to provide reasonable and necessary regulations designed to reduce traffic congestion along residential streets and in the public right-of-way, minimize the noise and commotions that accompany most garage sales, and ensure that those persons operating retail businesses collect and remit the appropriate sales taxes to the City and State, thereby promoting the public health, safety and general welfare.

II. Definitions

Words and phrases used in this Ordinance shall have the meanings set forth in this section. Words and phrases that are not defined in this Ordinance but are defined in other ordinances of the City 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.

City: the City of San Elizario.

Garage Sale: the sale of anything of value on any premises not considered a retail business establishment licensed to do business in the City of San Elizario and/or the State of Texas. For purposes of this Ordinance, the term includes and is synonymous with "estate sale", "patio sale", "rummage sale", "yard sale", "auctions", and "clearance sale".

Person: includes any individual, consignment seller or sellers, and/or groups responsible for the sale, the occupier and/or owner of the premises on which the sale is conducted, and/or any person conducting or participating in a sale on the premises.

Premises: includes a zoned property lot, streets, sidewalks and other public right-of-way.

Consignment: the sale of personal property pursuant to an agreement between the owner of personal property and a seller to sell the owner's property to a third party for an agreed upon price and fee.

III. Garage Sale Requirements

A. Conditions for Garage Sale

- (1) A person conducting a garage sale must first obtain a permit from the City.
- (2) A garage sale shall be conducted only on a residential premise that is used for homes or the primary purpose of which is for human habitation and is zoned accordingly. A garage sale by neighborhood and homeowners associations, and tax exempt organizations, may be held on property other than that owned by the association or organization and at one or multiple locations within the boundaries of the neighborhood or homeowners association.
- (3) A garage sale shall be confined to the premises and no more than fifteen (15) feet from any property boundary line of the premises.
- (4) A garage sale shall be conducted only by the owner or tenant of the residential premises where the sale is held.
- (5) Only tangible personal property shall be sold by the legal owner of such tangible personal property at the time of a garage sale.
- (6) No new merchandise (*i.e.*, merchandise acquired for the purpose of resale) shall be sold at a garage sale.
- (7) A garage sale must be conducted by the owner or tenant of the property where the sale is conducted. A person who habitually engages in or hold themselves out to engage in the business of selling tangible personal property may not hold a garage sale unless the person collects and reports sales tax on the items sold in the manner prescribed by state law.
- (8) There shall not be more than three (3) garage sales at the same premises during any one calendar year.
- (9) The duration of a garage sale shall not exceed ten (10) consecutive hours, and shall not extend over more than two (2) consecutive calendar days.
- (10) A garage sale shall not commence prior to 7:00 a.m., and must conclude no later than 7:00 p.m. per day.
- (11) A garage sale shall not be conducted in a manner that constitutes a public nuisance by emitting unreasonably loud noises, generating foul odors, or creating dangerous levels of vehicular or pedestrian traffic.
- (12) All signs promoting the garage sale shall not exceed six (6) square feet and shall not be displayed for more than three (3) consecutive days. There shall be a notation on the sign of the date of installation of the sign.

- (13) All garage sale advertisement signs must be properly disposed of within four (4) hours after the garage sale ends.

B. Garage Sale Permit Application and Requirements

- (1) A person desiring to have a garage sale shall make application with the City for a permit.
- (2) The City shall provide a standard application form for a garage sale permit to include the name and address of the person conducting the garage sale, location of the sale, hours of operation, and date of the garage sale.
- (3) Applications must be submitted two (2) days prior to the start date of the garage sale.
- (4) No fee for a permit is required but the permit must be obtained prior to the garage sale.
- (5) A garage sale permit must be displayed during the sale in a conspicuous place on the premises.
- (6) No permit shall be issued if the applicant has been cited in the past 12 months of the application date for violation of this Ordinance.
- (7) No permit shall be issued if three (3) garage sales at the same premises have been conducted during any one calendar year.
- (8) The City's designee shall have the authority to deny an application or revoke an issued garage sales permit for failure to meet the standards for issuance.
- (9) An Applicant denied a garage sales permit may appeal the denial to the City Administrator or Mayor.

C. Sales Taxes

A person conducting a garage sale shall acquire a valid Texas sales tax permit and pay sales tax in accordance with State law if the person sells consignment items at a garage sale and if the total receipts from the sale exceed \$3,000.

IV. Offense and Penalties

A. Violation

A person who violates this Ordinance commits an offense. A person violating any provision of this Ordinance is subject to prosecution for criminal violations as well as suit for injunctive relief.

B. Compliance

A person issued a citation for any nonconforming sale shall have a maximum of one (1) business day for compliance without penalty.

C. Criminal and Civil Penalties

(1) Criminal Prosecution

A person violating any provision of this Ordinance shall, upon conviction, be fined a sum not exceeding five hundred dollars (\$500.00). Each day that a provision of this Ordinance is violated shall constitute a separate offense. An offense under this Ordinance is a misdemeanor.

(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 \$500.00 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.