

Antonio Araujo
Mayor

Leticia Miranda
Aldersperson Place 1

David Cantu
Aldersperson Place 2



Lorenzo E. Leyva Sr.
Aldersperson Place 3

Maria Covernali
Aldersperson Place 4

George Almanzar
Aldersperson Place 5

CITY OF SAN ELIZARIO

ORDINANCE NO. 2007.03

AN ORDINANCE TO REPEAL AND REPLACE ORDINANCE NO. 1507.03.01 IN ITS ENTIRETY REGULATING FIREWORKS; AND TO ADOPT COMPREHENSIVE FIRE PREVENTION REGULATIONS, INCLUDING FIREWORKS REGULATIONS; AND PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT; DECLARATION OF NUISANCE; REPEALER, SEVERABILITY, EFFECTIVE DATE; AND DECLARING THAT A VIOLATION OF THE ORDINANCE IS A MISDEMEANOR OFFENSE AND PROVIDING FOR A PENALTY NOT TO EXCEED \$500 PER OFFENSE.

RECITALS

WHEREAS, the City Council of the City of San Elizario ("City Council") is authorized by the Texas Government Code, Section 51.001, to adopt an ordinance that is for the good government, peace, or order of the City and is necessary or proper for implementing a power granted by law to the City; and

WHEREAS, under Section 775.036, Texas Health and Safety Code, the board of an emergency services district may adopt and enforce a fire code and enforce that fire code within the boundaries of a municipality that has not adopted a fire code; and

WHEREAS, the Emergency Services District #2 has adopted an International Fire Code, which should be applied uniformly within the City of San Elizario; and

WHEREAS, the City Council has determined that it is appropriate to repeal Ordinance No.1507.03.01 and adopt this ordinance to regulate matters not falling under the authority of ESD #2 and their Fire Marshal and to provide enforcement authority to the Fire Marshal; 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 1. 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. The following definitions shall apply in the interpretation and enforcement of this ordinance:

Fire marshal means the person so appointed by El Paso County Emergency Services District #2.

Fireworks means any composition or device containing a pyrotechnic composition or explosive materials designed for the purpose of producing a visible or an audible effect for entertainment purposes by combustion, deflagration or detonation. It does not include the following items excepted by Section 2154.002 of the Texas Occupations Code:

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.

Passenger area of a motor vehicle means the area of the vehicle designed for the seating of the operator and the passengers of the vehicle, and does not include:

1. A locked glove compartment or similar locked storage area;
2. The trunk of the vehicle; or
3. The area behind the last upright seat of a vehicle that does not have a trunk.

Permit official means the building official or other designee of the mayor.

SECTION 3. ENFORCEMENT; AUTHORITY OF FIRE MARSHAL AND OTHER PERSONNEL

A. Enforcement generally; right of entry.

1. The fire marshal and his designees shall have authority for the enforcement of this ordinance, in addition to the City Marshal and his/her deputies, and are authorized to work with the building official in conjunction with the issuance of building permits within the city and all other duties of the building official.
2. When it is necessary to make an inspection to enforce the provisions of this ordinance or of an applicable technical code, or when there is reasonable cause to believe that there exists in a structure or upon premises a condition that is contrary to or in violation of an applicable technical code, any officer or person authorized with enforcement authority may enter the structure or premises, at all reasonable times and upon presentation of appropriate credentials, to inspect or to perform the duties imposed by such technical code or this ordinance. If such structure or premises is unoccupied, the officer or person authorized with enforcement authority shall first make a reasonable effort to locate the owner or other person having charge or control of the structure or premises and request entry. If entry is denied or if a person in control of the premises cannot be located, the officer or person authorized with enforcement authority shall have every recourse provided by law to secure entry. Such recourse shall include the right to obtain a search warrant under the guidelines of the Texas Code of Criminal Procedure or other appropriate order of a court of competent jurisdiction as provided by law.
3. Nothing in this section shall be construed to limit an officer's ability to enter upon premises when a violation of this ordinance or other law occurs in their presence and entry is made in accordance with state and federal law.

B. Authority to place barricades at scene of emergency. The fire marshal, his designees and other personnel authorized by El Paso County Emergency Services District #2, and designated City personnel, at the scene of an emergency situation within the city limits, shall have the authority to place ropes, guards, barricades, or other obstructions across any street or city right-of-way, so as to prevent accidents, injuries or interference with the lawful efforts of the fire department to manage and control the situation and to accommodate fire apparatus.

SECTION 4. PROHIBITED ACTS; DEFENSES

A. Prohibited acts. It shall be unlawful for any person:

1. Fireworks. To possess, store, offer for sale, discharge, ignite, use or display any

fireworks within the city limits.

2. Obstructing fire hydrant. To allow the accumulation of any garbage, rubbish, refuse or other objects, pile(s) of dirt, weeds of any height, or grasses exceeding six (6) inches, within three (3) feet of a fire hydrant located on the person's property or property under the control of the person, or to otherwise block, hinder or prevent the ready access to the hydrant.

B. Fireworks displays. A person may possess, use and discharge fireworks as part of a public or private display pursuant to a permit issued by the city as provided in Section and a permit issued by El Paso County Emergency Services District #2 if one is so required, and such permitted display shall be an exception to the prohibition in subsection A(1).

C. Defenses. It is an affirmative defense to prosecution for possession of fireworks under this ordinance that:

1. The defendant was operating or was a passenger in a motor vehicle that was being operated in a public place; and
2. The fireworks were not in the passenger area of the vehicle.

SECTION 5. PERMIT FOR FIREWORKS DISPLAY

A. Application; insurance. The applicant (person or organization) seeking to obtain a city permit, in conjunction with a permit issued by El Paso County Emergency Services District #2, shall file an application with the permit official for such permit which shall provide the following information and pay the required fee in the amount of \$100.00:

1. The name of the applicant.
2. The permanent and (if any) local address of the applicant.
3. A brief description of the proposed fireworks display.
4. A description of the display site and the location(s) where spectators are likely to congregate to watch the display.
5. Authorization to allow the display from the display site property owner.
6. A copy of the permit issued by El Paso County Emergency Services District #2 for the display.
7. Proof of general liability insurance in the amount of \$1,000,000.00 per occurrence; provided, however, if the applicant wishes to use a city park or other city property for the display site, such insurance shall be in the amount of \$5,000,000.00 per occurrence. A certificate of insurance shall be delivered to the issuing official prior to the issuance of the license. The city and its employees shall be named as additional insureds against any liabilities that may arise in connection with the display.

B. Issuance or denial. The permit shall be issued promptly after application but in all cases within five business days of completion of an application, unless it is determined within that time that:

1. The applicant has made any statement in the application that is false, misleading or fraudulent, unless the applicant can demonstrate that such statement was made as the result of excusable neglect.
2. The applicant fails to provide the insurance in the required form and amounts.
3. The applicant fails to provide the required documentation under subsection (a).
4. The applicant has requested to use a city park or other public space and has failed to comply with any ordinances or other processes necessary to obtain separate

permission for such use.

C. Appeal of denial. In the event that the permit official determines that the permit may not be issued, the permit official will provide notice to the applicant, who may appeal the decision to the city council.

D. Waiver of fees. Fees may be waived by the City Council for events that are co-sponsored by the City or sponsored by the San Elizario Independent School District or other local civic organization.

SECTION 6. VIOLATION—PENALTY

Except as otherwise provided by Texas state law, any person violating any provision of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction, shall be punished by a fine not to exceed five hundred dollars. Each occurrence shall be deemed to be a separate violation.

SECTION 7. REPEALER AND SEVERABILITY

REPEAL AND REPLACEMENT: Ordinance No. is hereby repealed and replaced by the provisions of this Ordinance simultaneously upon the effective date of this Ordinance.

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. 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 9. PROPER NOTICE AND MEETING

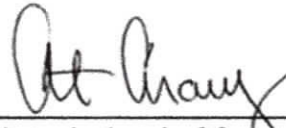
It is officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551.

SECTION 10. EFFECTIVE DATE

This Ordinance shall be effective upon passage and publication.

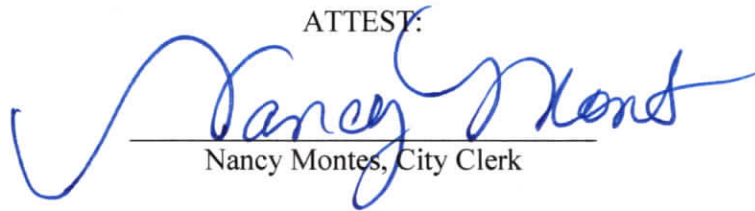
PASSED AND APPROVED this, the 25 day of August, 2020, by a vote of 4
(*ayes*) to 0 (*nays*) to 0 (*abstentions*) of the City Council of San Elizario, Texas.

CITY OF SAN ELIZARIO, TEXAS



Antonio Araujo, Mayor

ATTEST:



Nancy Montes, City Clerk