

ORDINANCE NO. 0224

AN ORDINANCE ESTABLISHING FIRE PREVENTION REGULATIONS; PROHIBITING FIREWORKS AND REGULATING CERTAIN FIREWORKS DISPLAYS; PROVIDING FOR ENFORCEMENT AND PENALTIES FOR VIOLATIONS; AND PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT, REPEALER, AND SEVERABILITY; TO REPEAL ORDINANCE NO. 0005 AND ALL AMENDMENTS THERETO, THAT PREVIOUSLY ESTABLISHED FIRE PREVENTION REGULATIONS AND CODES; THE PENALTY BEING AS PROVIDED IN ARTICLE I, SECTION V OF THE ORDINANCE, CREATING A MISDEMEANOR PUNISHABLE BY A FINE NOT TO EXCEED \$2,000.00.

WHEREAS, the City Council of the Town of Horizon City (“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 #1 has adopted the 2009 International Fire Code, which should be applied uniformly within the Town of Horizon City, as well as for building construction as provided in Ordinance No. 0012; and

WHEREAS, the City Council has determined that it is appropriate to repeal Ordinance No. 0005 and all amendments thereto, and adopt this ordinance to regulate matters not falling under the authority of ESD #1 and their Fire Marshall and to provide enforcement authority to the Fire Marshall, some of which regulations previously had been in Ordinance No. 0005; and

WHEREAS, the provisions relating to fireworks are adopted to be in conformity with Section 217.042, Texas Local Government Code, relating to the area in which the City may regulate fireworks and with Section 342.013, Texas Local Government Code, which provides that a home-rule municipality that regulates fireworks may not confiscate packaged, unopened fireworks, and which provides for an affirmative defense to a prosecution for the possession of fireworks.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF HORIZON CITY, TEXAS that;

ARTICLE I. ADOPTION OF THE ORDINANCE

Pursuant to Sections 51.001 and 51.012 of the Texas Local Government Code, the City Council of the Town of Horizon City hereby enacts and adopts this ordinance which defines animal nuisances and establishes regulations for the keeping of animals and establishes the powers of the Town of Horizon City and repeals Ordinance No. 0005 and all amendments therein, which previously regulated these matters.

SECTION I. DEFINITIONS

The following definitions shall apply in the interpretation and enforcement of this Ordinance:

“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.

“Fire Marshal” means the person so appointed by the El Paso County Emergency Services District #1.

“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 II. PROHIBITED ACTIONS AND AFFIRMATIVE DEFENSE

A. It shall be unlawful for any person:

1. To possess, store, offer for sale, discharge, ignite, use or display any fireworks within the city limits.
2. To engage in the open burning of trash, weeds, tires, wood, paper or any other type of materials, unless such person has obtained a permit from the Fire Marshal.
3. 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. A person may possess, use and discharge fireworks as part of a public or private display pursuant to a permit the City as provided in Section III, and a permit issued by the El Paso County Emergency Services District #1 if one is so required, and such permitted display shall be an exception to the prohibition in Subsection A 1.

C. 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 III. DISPLAY PERMIT

A. The applicant (person or organization) seeking to obtain a City permit, in conjunction with a permit issued by the El Paso County Emergency Services District #1, shall file an application with the permit official for such permit with 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 the El Paso County Emergency Services District #1 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. 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. 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.

SECTION IV. ENFORCEMENT

A. Right of entry

1. The Fire Marshal and his designees shall have authority for the enforcement of this Ordinance, 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 a premises 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 premised 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 a 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. Use of City rights-of-way.

1. The Fire Marshall, his designees and other personnel authorized by the El Paso County Emergency Services District #1 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 V. 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 two thousand dollars. Each occurrence shall be deemed to be a separate violation.

ARTICLE II. REPEAL OF PRIOR ORDINANCE

That Ordinances no. 0005 (An ordinance of the Town of Horizon City, Texas establishing fire prevention codes for the general welfare of the citizens of Horizon City), along with all amendments thereto, as previously adopted by the City Council, are hereby repealed in their entirety.

ARTICLE III. FINDINGS OF FACT

That this ordinance was duly enacted with all requisites and formalities incident thereto the enactment of ordinance, and such is evidenced by the signatures below; and further that the foregoing recitals are incorporated into this ordinance by reference as findings of fact as if expressly set forth herein.

ARTICLE IV. REPEALER

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

ARTICLE V. 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.

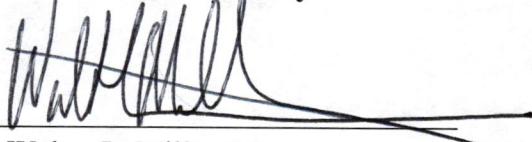
ARTICLE VI. PROPER NOTICE AND MEETING

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. Notice was also provided as required by Chapter 52, Texas Local Government Code.

PASSED AND APPROVED this the 10th day of November 2015, by a vote of 7 (ayes) to 0 (nays) to 0 (abstentions) of the Town Council of Horizon City, Texas.

By:

Town of Horizon City



Walter L. Miller, Mayor

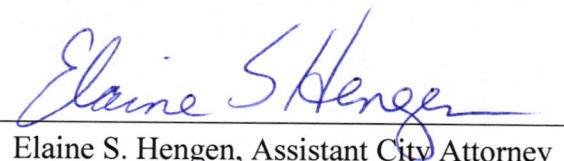
ATTEST:

By:



Elvia Schuller, City Clerk

APPROVED AS TO FORM:


Elaine S. Hengen, Assistant City Attorney

First Reading: 10/13/2015

Second Reading: 11/10/2015