

ORDINANCE NO. 2023-002

AN ORDINANCE OF THE CITY OF EAST BERNARD, TEXAS, THAT PROVIDES REGULATIONS FOR THE REGULATION OF FIREWORKS IN THE CITY; PROHIBITING THE DISCHARGE OF FIREWORKS; PROVIDING EXCEPTIONS FOR USE OF FIREWORKS; PROVIDING A PENALTY; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR SEVERABILITY.

WHEREAS, Chapter 2154 of the Texas Occupations Code regulates fireworks and fireworks displays without limiting or restricting a municipality to enact an ordinance prohibiting or further regulating fireworks; and

WHEREAS, Chapter 54 of the Local Government Code permits the governing body of a municipality to enforce ordinances of the municipality and may punish violations of an ordinance; and

WHEREAS, the Board of Aldermen of the City of East Bernard has determined that the regulation of fireworks in the City of East Bernard is necessary in the interest of public safety and public health, **NOW, THEREFORE**,

**BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF
EAST BERNARD, TEXAS:**

SECTION 1. The facts, purpose, and recitations contained in the preamble of this Ordinance are found to be true and correct.

SECTION 2. REGULATION OF FIREWORKS

2-1. Definitions. The following words, terms and phrases when used in this Ordinance shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Extraterritorial jurisdiction means the legal ability of a government to exercise authority beyond its normal boundaries up to two (2) miles.

Fire chief means the appointed officer-in-charge of the East Bernard Volunteer Fire Department.

Fire department means the East Bernard Volunteer Fire Department.

Fireworks means a composition or device for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation that meets the definition of 1.3G fireworks or 1.4G fireworks.

Fireworks, 1.3G means a large fireworks devices which are explosive materials, intended for use in fireworks displays and designed to produce audible or visual effects by combustion, deflagration, or detonation, but are not limited to firecrackers containing more than one hundred thirty (130) milligrams (two (2) grains) of explosive composition, aerial shells containing more than forty (40) grams of pyrotechnic composition and other display pieces which exceed the limits for classification as 1.4G fireworks. Such 1.3G fireworks are also described as explosives by the United States Department of Transportation in 49 C.F.R. Part 173 (1996).

Fireworks, 1.4G means a small fireworks device containing restricted amounts of pyrotechnic composition designed primarily to produce visible or audible effects by combustion or deflagration that complies with the construction, chemical composition and labeling regulations of the United States Consumer Product Safety Commission in 16 C.F.R. Parts 1500 1507 (1996), or the most recently adopted version of that rule; classified as a 1.4G explosive by the United States Department of Transportation in 49 C.F.R. Part 173 (1996), and section 2154.001 of the Texas Occupations Code.

Fire marshal means the city fire marshal appointed in accordance with the Fire Code of the City of East Bernard.

Illegal fireworks means a fireworks device manufactured, distributed or sold in violation of this Ordinance.

Interstate commerce means soliciting, selling, taking orders for, or offering to take orders for any goods, wares, or merchandise, which at the time the order is taken, are in another state or will be produced in another state and shipped or introduced into this city in the fulfillment of such orders.

Itinerant vendor or *itinerant merchant* means all persons, firms, and corporations, as well as their agents and employees, who engage in the transient business, in

the city, of selling, or offering for sale, any goods or merchandise or service, or exhibiting the same for sale or for the purpose of taking orders for the sale thereof. A person, firm, corporation, or organization which falls within the definition of an itinerant vendor or an itinerant merchant shall not be relieved from complying with the provisions of this Ordinance merely by reason of associating temporarily with any local dealer, trader, merchant or other person.

Private means any person or entity, other than the City of East Bernard.

Retailer means a person, firm, or corporation, as well as their agents and employees, who purchases fireworks only for resale to the general public.

Sale means selling or offering for sale merchandise, equipment, or service, at wholesale or retail, to the public or to any person, for an agreed sum of money or other consideration.

Pyrotechnics means controlled exothermic chemical reactions timed to create the effects of heat, hot gas, sound, dispersion of aerosols, emission of visible light or a combination of such effects to achieve the maximum effect from the least volume of pyrotechnic composition.

Retail fireworks stand means a structure that is a retail fireworks site from which Fireworks 1.4G are sold over the counter to members of the general public who always remain outside of the structure.

Selling season and sales periods means the days between the Monday fourteen (14) days before the last Monday in May ending on the last Monday in May; June 20th to July 4th, and December 11th to January 1st.

Transient means the business of any itinerant vendor as may be operated or conducted by persons, firms, or corporations or by their agents or employees who have their headquarters in places other than the city, or who move stocks of goods or merchandise or samples thereof into the city with the purpose or intention of removing them or the unsold portion thereof away from the city at the end of each selling season.

2-2. – Manufacture, sale, and discharge.

- A. The manufacture of fireworks within the city is prohibited.
- B. Fireworks 1.4G are permissible fireworks to possess, store, offer for sale, or sell at retail during the selling season, subject to the provisions of this Ordinance.
- C. Except as permitted by section 2-3 of this Ordinance, the ignition, discharge, use, or explosion of fireworks within the city is prohibited.
- D. Any person that possesses, stores, or discharges fireworks is responsible for any damage, injury, and/or expense for fire department response caused from the possession, storage, or discharge of fireworks, regardless whether the action is found to have been committed intentionally, knowingly, recklessly or from negligence.
- E. Any person that possesses fireworks and allows a person younger than sixteen (16) years of age to discharge the fireworks is responsible for any damage, injury, and/or expense for fire department response caused from the possession or discharge of fireworks, regardless whether the action is found to have been committed intentionally, knowingly, recklessly or from negligence.
- F. A person whose possession, storage, or discharge of fireworks are determined to be responsible for the fire department response by the fire marshal shall be charged with the expense for fire suppression, which shall not be less than three hundred dollars (\$300.00).
- G. The following requirements shall apply to the operation of retail sales of fireworks at fireworks stands (hereinafter “stand”):
 - (1) Prior to opening a stand for business:
 - a. Copies of state retail fireworks permit and a copy of documents indicating proof of current tax permit or 501(c)(3) status shall be provided to the fire marshal.

- b. The fire marshal or designee shall inspect and approve the stand. No such inspection or approval shall be transferable, and any approval given is void at the end of the sales period for which the approval was granted.
 - (2) Stands shall comply with all regulations of the Texas State Marshal's Office and the Texas Occupations Code and are subject to inspection by the fire marshal or designee at any time.
 - (3) No stand shall be located within fifty feet (50') of any other building, including motor homes and trailers, nor within one hundred feet (100') of any gasoline or liquid propane gas (LPG) dispensing device, or within one hundred feet (100') of another stand.
 - (4) Each stand of less than sixteen feet (16') shall have at least one (1) properly operating fire extinguisher rated to at least 2A,20BC mounted on the stand in an easily accessible location.
 - (5) Stands measuring sixteen (16) feet or longer shall have at least two (2) properly operating fire extinguishers that are rated to at least a 2A,20BC mounted to the stand, one in each end, in an easily accessible location.
 - (6) Sleeping is prohibited in the stand.
 - (7) Sales to anyone under the age of sixteen (16) years of age is prohibited.
 - (8) Stands are permitted to operate only during the selling season.
- H. It is unlawful for a person younger than sixteen (16) years of age to purchase or possess fireworks. It is an exception to this subsection when a person younger than sixteen (16) years of age is being directly supervised by a parent, guardian, or other responsible person eighteen (18) years of age or older to allow the person younger than sixteen (16) years of age to possess Fireworks 1.4G during the selling season.

2-3. – Public Fireworks.

- A. Fireworks are permissible to ignite, discharge, use, or explode in displays by the city for public enjoyment. However, a person may not:
- (1) explode or ignite fireworks during a city-wide, county-wide, or state-wide burn ban;
 - (2) explode or ignite fireworks within six hundred feet (600') of any church, a hospital other than a veterinary hospital, an asylum, a licensed child care center, or a public or private primary or secondary school or institution of higher education unless the person receives authorization in writing from that organization;
 - (3) explode or ignite fireworks within one hundred feet (100') of a place where flammable liquids or flammable compressed gasses are stored and dispensed;
 - (4) explode or ignite fireworks within one hundred feet (100') of a place where fireworks are stored or sold; or
 - (5) ignite or discharge fireworks in or from a motor vehicle, or place ignited fireworks in or throw ignited fireworks at a motor vehicle.
- B. All public displays, including fireworks, flame effects, and pyrotechnics, shall be in compliance with all requirements of the Texas State Marshal's Office.
- C. An acceptable water source must be readily accessible any time fireworks are discharged, exploded, or used.
- (1) Minimal acceptable water source for Fireworks 1.4G includes five (5) gallons of potable water or a garden hose attached to running water.
 - (2) Minimal acceptable water source for Fireworks 1.3G includes having units of the fire department on standby, or other means approved by both the fire marshal and fire chief in writing in advance.

2-4. – Private Fireworks, prohibited.

All private displays, including fireworks, flame effects, and pyrotechnics within the city are prohibited.

2-5. – Storage and disposal of fireworks.

- A. No unfired fireworks shall be stored at any location in the city except as approved by the fire marshal or designee. All fireworks stored between sales periods at the approved locations by the fire marshal or designee shall be an amount approved by the fire marshal or his designee.
- B. All discharged fireworks shall be saturated in water and then properly discarded.

2-6. – Seizure of fireworks.

- A. The fire marshal or any peace officer commissioned by the city may seize illegal fireworks in accordance with section 2154.304 of the Texas Occupations Code.
- B. In lieu of formal seizure and forfeiture process, the city and the person possessing illegal fireworks subject to seizure may enter an agreement wherein the city agrees to confiscate and destroy the fireworks subject to seizure.
- C. An agreement made pursuant to subsection B vests all right, title and possession in the fireworks with the fire marshal, or peace officer commissioned by the city taking possession of the fireworks. The fireworks may be immediately destroyed or otherwise disposed of at the discretion of the fire marshal, or peace officer commissioned by the city.
- D. An agreement made pursuant to subsection (B) does not negate the violation of this article, nor hinder criminal charges from being filed for the violation.

2-7. – Exceptions.

This ordinance does not apply to:

- A. 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 under 49 C.F.R. Part 173(1996);
- B. a model rocket or model rocket motor designed, sold, and used to propel recoverable aero models;
- C. a propelling or expelling charge consisting of a mixture of sulfur, charcoal, and potassium nitrate;
- D. novelties or trick noisemakers;
- E. the sale or use of, in emergency situations, pyrotechnic signaling devices or distress signals for marine, aviation, train, or highway use;
- F. the use of a fusee or a railway torpedo by a railroad;
- G. the sale of blank cartridges (also known as “blanks”, “shots” and/or “loads”) for use in:
 - (1) radio, television, film, or theater production;
 - (2) ceremonies; or
 - (3) construction.
- H. the possession, ignition, discharge, use, or explosion of fireworks, including flame effects and pyrotechnics, by the city, subject to the provisions of section 2-3.

2-8. – Prohibition due to extreme fire danger.

During periods of extreme fire danger, the fire marshal may prohibit the sale and storage of any or all fireworks. This decision will be based on consultation with the Texas Forest Service and the fire chief.

2-9. – Penalty.

- A. Except as otherwise provided in this Ordinance, any person violating any provision of this Ordinance is guilty of a Class C misdemeanor punishable by a fine per day not to exceed two thousand dollars (\$2,000.00), with each day constituting a new offense. The jurisdiction for all actions pertaining to this Ordinance shall be the Municipal Court of the City of East Bernard, Texas.
- B. A person whose possession, storage, or discharge, or who discharges or ignites fireworks in violation of this Ordinance is guilty of a Class C misdemeanor punishable by fine not to exceed two thousand dollars (\$2,000.00). The jurisdiction for all actions pertaining to this article shall be the Municipal Court of the City of East Bernard, Texas.
- C. A person whose possession, storage, or discharge, or use of fireworks causes any damage, injury, and/or expense for fire department response is guilty of a Class C misdemeanor punishable by fine not to exceed two thousand dollars (\$2,000.00). The jurisdiction for all actions pertaining to this article shall be the Municipal Court of the City of East Bernard, Texas.
- D. A person eighteen (18) years of age or older who acts as parent, guardian, or a responsible person and allows a person younger than sixteen (16) years of age to possess, discharge, and/or use of fireworks is responsible for any damage, injury, and/or expense for fire department response and is guilty of a Class C misdemeanor punishable by fine not to exceed two thousand dollars (\$2,000.00). The jurisdiction for all actions pertaining to this article shall be the Municipal Court of the City of East Bernard, Texas.
- E. A person whose possession, storage, or discharge of fireworks are determined to be the cause for the fire department response by the fire marshal shall be charged with the expense, which shall not be less than

three hundred dollars (\$300.00). Failure to pay expenses will result in a lien being placed on the property for expenses, provided that the fire department responded to property owned by the person responsible, or that the property owner allowed the person responsible permission to be on the property. The person who is determined to be the cause for a fire department response by the fire marshal may appeal the decision of the fire marshal to the Board of Aldermen within thirty (30) days of the fire marshal's decision.

- F. If conduct constituting an offense under this section also constitutes an offense under another section of this article, the actor may be prosecuted under either section or under both sections.

2-10. – Non-applicability.

Section 2-2(G) and does not apply to property that meets all of the following requirements:

- A. The structure used for storage and/or sale of fireworks must be constructed entirely of non-combustible materials.
- B. The structure used for storage and/or sale of fireworks must be a minimum of thirty (30) feet from the roadway and a minimum of one hundred fifty (150) feet from the property lines not located along a roadway.
- C. A twenty-foot (20') perimeter around the structure must be cleared and maintained free of vegetation combustibles and refuse at all times. Vegetation outside of perimeter shall be maintained at a height lower than eight inches (8") at all times.
- D. Power disconnection devices for the property shall be located twenty feet (20') or more from a structure on the roadway or public entrance side. The power disconnect shall not be locked on and must be easily accessible without the use of any tools or equipment. The property owner may lock the power off if desired.
- E. Contact information for person responsible for property must be provided and any changes reported in a timely manner to the fire marshal's office.


- F. The property must meet security requirements of the Fireworks Rules of the Texas State Fire Marshal requiring fencing, in compliance with Fireworks Rule § 34.821(a)(1), with personnel on the premises twenty-four (24) hours per day and night, or a security alarm system.

2-11. – Itinerant merchants/vendors.

- A. It shall be unlawful for any itinerant vendor to sell, offer for sale, exhibit for sale, or exhibit for the purpose of taking orders for the sale thereof, any goods or merchandise in the city without first obtaining a license therefor from the city.
- B. The annual fee for a license required by this Ordinance shall be one hundred fifty dollars (\$150.00) or as set from time to time by the Board of Aldermen. The fee shall be used for the purpose of defraying expenses incident to the issuing of the license. The provisions of this section requiring the payment of a license fee shall not apply to persons engaged in interstate commerce.
- C. This section shall not apply to permanent structures used as retail firework stands or permanent structures used as indoor firework stands.

2-12. – Severability. In the event any clause phrase, provision, sentence, or part of this Ordinance or the application of this Ordinance to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and, the Board of Alderman declares that it would have passed each and every part of this Ordinance notwithstanding the omission of any such part declared to be invalid or unconstitutional, whether there be one or more parts.

PASSED AND APPROVED THIS 20TH DAY OF MARCH, 2023.


MARVIN HOLUB, MAYOR

ATTEST:


LISA PLESS, CITY SECRETARY