

Ordinance No. 2008.23
Village of Salado
County of Bell
State of Texas
October 2, 2008

FIREWORKS

AN ORDINANCE REGULATING FIREWORKS AND PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT; A POPULAR NAME; DEFINITIONS; RESTRICTIONS ON THE SALE, USE, POSSESSION OR DISCHARGE OF FIREWORKS WITHIN THE VILLAGE OF SALADO; EXEMPTIONS; ENFORCEMENT OF ORDINANCE, INCLUDING A MAXIMUM PENALTY OF \$2,000.00; CONFLICTING PROVISIONS; SEVERABILITY; EFFECTIVE DATE; AND PROPER NOTICE AND OPEN MEETING.

WHEREAS, the Board of Aldermen of the VILLAGE OF SALADO 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 Village and is necessary or proper for implementing a power granted by law to the Village; and

WHEREAS, the Board of Aldermen is authorized by the Texas Local Government Code, Sections 217.022 and the Texas Occupations Code, Section 2154.004 to regulate or prohibit the discharge of fireworks within the Village; and

WHEREAS, the Board of Aldermen finds that the sale, use, possession or discharge of fireworks within the Village could endanger the health and safety of Village residents, including the risk of substantial harm to property from fires; and

WHEREAS, the Board of Aldermen finds that the combination of fireworks, especially in the confines of a municipality, is dangerous not only to property but also to persons, and results annually in the loss of property and the loss of life; and

WHEREAS, the Board of Aldermen finds that the indiscriminate use of fireworks constitutes a menace to life, limb and health to the users and their associates, increases the hazard and loss by fires, and constitutes a common public nuisance, which can be prevented and abated by law; and

WHEREAS, the Board of Aldermen finds that it is necessary and proper for the good government, peace or order of the Village, for public health and safety, and for fire protection within the Village, to adopt an ordinance regulating the sale, use, possession or discharge of fireworks within the Village.

NOW, THEREFORE, be it ordained by the Board of Aldermen of the VILLAGE OF SALADO, County of Bell, State of Texas, that:

SECTION 1. FINDINGS OF FACT

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if set forth herein at length.

SECTION 2. POPULAR NAME

This Ordinance shall hereinafter be referred to as the "Fireworks Ordinance."

SECTION 3. DEFINITIONS

(A) General

Words and phrases used in this ordinance shall have the meanings set forth in this section. Words and phrases which are not defined in this ordinance but are defined in other ordinances of the Village of Salado 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.

(B) Definitions

(1) "Council" means the Board of Aldermen of the Village of Salado, the governing body of the municipality.

(2) "Code Official" means the person or persons officially designated by the Board of Aldermen to assist the Board in implementing the provisions of this Ordinance. Such person or persons may include, but are not limited to, the Fire Prevention Officer or the State Fire Marshal, and such assistance includes, but is not limited to, conducting investigations for possible violations of this Ordinance.

(3) "Fire Prevention Officer" means the person designated as such by the Board of Aldermen. Such persons may include but are not limited to the chief of a fire department, a fire marshal, a county fire marshal, a sheriff, a constable, another local enforcement officer primarily responsible for fire prevention, or if there is no local fire authority, the State Fire Marshal.

- (4) "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."
- (5) "Person" means an individual, corporation, organization, government agency, business, trust, partnership, association, or any other legal entity.
- (6) "Possess" means actual care, custody, control, or management
- (7) "State Fire Marshal" means the chief law enforcement officer of the State of Texas charged with the responsibility of fire prevention.
- (8) "Village" means the Village of Salado, a duly incorporated municipality in Bell County, Texas, and all officials, agents and employees who are acting on behalf of the Village.
- (9) "Village boundaries" means the municipal boundaries (i.e., "City limits") of the Village. The term does not include the extraterritorial jurisdiction.

SECTION 4. RESTRICTIONS ON THE SALE, USE, POSSESSION OR DISCHARGE OF FIREWORKS

- (A) No person may sell fireworks within the Village boundaries.
- (B) No person may use or discharge fireworks within the Village boundaries.
- (C) No person may be in possession of fireworks with the intent to discharge such fireworks within the Village boundaries.

SECTION 5. EXEMPTIONS

- (A) The restrictions in this ordinance on the use or discharge of fireworks do not apply if such use, possession or discharge occurs as part of a Village approved and supervised event that complies with the provisions of a Bell County burning ban and/or applicable drought status.
- (B) In accordance with the provisions of the Texas Occupations Code, Section 2154.002, the restrictions on the use, possession 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;
- (8) Black Powder or Black Powder substitute utilized in period, antique or theater weapons.

SECTION 6. PROCEDURES FOR FILING COMPLAINTS ABOUT A VIOLATION OF THIS ORDINANCE

(A) Any Village resident or property owner may file a complaint alleging a violation of this Ordinance. The complaint:

- (1) may be made orally or in writing;
- (2) must provide sufficient details about the violation; and
- (3) must be made to the Code Official, the Village Secretary, or a Village police officer.

SECTION 7. ENFORCEMENT OF ORDINANCE

(A) Civil and Criminal Penalties

The Village shall have the power to administer and enforce the provisions of this Ordinance as may be required by governing law. Any person violating any provision of this Ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this Ordinance is hereby declared to be a nuisance.

(B) Criminal Prosecution

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. An offense under this Ordinance is a misdemeanor.

(C) Civil Remedies

Nothing in this Ordinance shall be construed as a waiver of the Village'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:

- (1) injunctive relief to prevent specific conduct that violates the Ordinance or to require specific conduct that is necessary for compliance with the Ordinance; and
- (2) 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
- (3) other available relief.

SECTION 8. CONFLICTING PROVISIONS

If any provision of this Ordinance conflicts with any provision in another Ordinance, resolution or order of the Council, then the stricter provision shall apply.

SECTION 9. SEVERABILITY

If any word, article, phrase, paragraph, sentence, clause or provision of this Ordinance be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or application of this Ordinance which can be given effect without the invalid provision, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 10. EFFECTIVE DATE

This Ordinance shall take effect immediately from and after its passage and publication as required by governing law.

SECTION 11. PROPER NOTICE AND OPEN MEETING

It is hereby 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 the meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551.

PASSED AND APPROVED on this the _____ day of _____, 2008.

VILLAGE OF SALADO

Mayor Merle Stalcup

ATTEST:

Dianna Zulauf, Village Secretary

Approved as to Form:

Alan J. Bojorquez
Village Attorney