ORDINANCE NO. 22-04

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL CENTRO, CALIFORNIA AMENDING CHAPTER 10, ARTICLE V OF THE EL CENTRO MUNICIPAL CODE ENTITLED "FIREWORKS"

Section 1. The City Council of the City of El Centro, California, finds as follows:

(a) That the continued use of dangerous or illegal fireworks within the City is an immediate threat to public health, safety and welfare because of the size of such fireworks, the lack of safeguards in their manufacture and residents lack of compliance with fireworks laws; and

(b) That traditional law enforcement methods are not effective in deterring such use; and

(c) That public education and the availability of safe and sane fireworks has not been effective in deterring such use; and

(d) That individual use of fireworks should be distinguished from permitted fireworks displays conducted by pyrotechnic professionals; and

(e) With the Fourth of July approaching, it is urgent and a matter of immediate public health and safety to adopt this ordinance, to be effective immediately, to address the use of illegal fireworks and thereafter publicize its provisions before that holiday.

Section 2. The City Council of the City of El Centro, California, does ordain as follows:

Chapter 10, Article V is amended to read as follows:

(a) Section 10.66 is amended to add the following definitions:

Dangerous fireworks or illegal fireworks shall have the same meaning as set forth in Health and Safety Code §§ 12505 and 12561 and the relevant sections of Title 19, Code of Regulations, subchapter 6 which are hereby incorporated by reference.

Host means the person physically present and in charge of private property during the possession or use of any illegal fireworks, including, but not limited to, an owner, tenant, landlord or property manager. Host also means a person who consents to or organizes, supervises, officiates, conducts, controls, or is otherwise in charge of illegal fireworks possession or use on the property whether or not that person is present during the activity that is the subject of this Article, including but not limited to an owner, tenant, landlord or property manager.

Organization means a public agency or other corporation located within the City

Public right of way means any City property, including that City property over which the City has granted an easement to another public agency.
Street means any City street or alley, including those granted to the City by easement.

(b) Section 10.67 is amended to read as follows:

Sec. 10-67. - General prohibition against possession, retail sale or use of dangerous or illegal fireworks.

(a) Except as otherwise provided in this Article, no person shall possess, sell, use, display or explode any dangerous or illegal fireworks, including, but not limited to, any rocket, firecracker, roman candle, squib, torpedo, wire core sparkler, black cartridge, aerial shell, mortar or other combustible device or explosive substance or any kind of fireworks, by whatever name known, within the city.

(b) The Fire Chief and Police Chief may seize, take, remove or cause to be removed, at the expense of the owner or any vendor, any and all such illegal or dangerous fireworks offered or exposed for sale, stored or held in violation of this Article, the state fireworks law or the California Fire Code.

(c) Sections 10-80 and 10-81 are repealed in their entirety and amended to read as follows and Sections 10.82 – 10.85 are added to read as follows:

Sec. 10.80. – Supervised Public Display; Permit Required

(a) Any Organization desiring to hold a public display of fireworks within the City shall submit an application for a permit to do so to the Fire Chief at least two (2) calendar months prior to the date of the proposed event.

(1) Any permit granted for such display shall be lawful only for that event.

(2) No permit granted under this section shall be transferable.

(b) The Fire Chief shall adopt reasonable rules and regulations for granting such permits for supervised public displays of fireworks to Organizations.

(c) Each such display must be handled and presented by a competent operator approved by the Fire Chief and licensed by the State of California.

(d) Such display must be located and discharged in a manner that in the sole opinion of the Fire Chief is not hazardous to persons or property.

(e) Such Organization or operator shall furnish an indemnification in the form specified by the Fire Chief.

(f) In addition, the Organization or operator shall proof of current commercial general liability coverage in an amount of $5M generally liability insurance (or such other amount as agreed upon by the Fire Chief and risk manager) to address the potential for damage to persons or property that may arise from the permitted display and the acts of the Organization, its agents employees or contractors. The
certificate of insurance shall be endorsed to name the City, its officers, agents and employees as additional insureds.

(g) Any permit issues shall be only for the event, date and time named and is non-renewable and non-transferable.

10-81. - Host Liability.

(a) Except as provided in (3) below, no Host shall allow any person to violate a provision of this Article on the Host’s private property or on the public right of way or street adjacent or proximate to the Host’s private property.

(1) Where there is more than one Host, each Host is liable jointly and severally.

(2) No Host shall aid or abet another person’s violation of a provision of this Article. A Host aids and abets another person’s violation of a provision of this Article if the Host knows of the other person’s unlawful purpose and then specifically intends to, and does in fact, supervise, control, aid, facilitate, promote, encourage, or instigate the other person’s commission of that violation.

(3) The provisions this section shall not apply to:

(i) The possession, manufacture, storage, display, sale, purchase, use, or discharge of fireworks as permitted under this Chapter, state or federal law; or

(ii) A Host who initiates contact with law enforcement or fire officials to assist in removing any person from its property or terminating an activity in order to comply with this Article, if the request for assistance is made before any other person contacts law enforcement or fire officials to complain about the violation of this Article

Sections 10.82. - Liability for Response Costs

(a) In addition to any administrative penalty under Section 10.81 or any penalty under any other section of this City Code or state law, any Host who violates this Article is liable for the response costs relating to the violation.

(1) As used here, “response costs” include the following: the fully burdened cost of police, fire, code enforcement or other City personnel required to deal with the violation, the cost of seizure and disposal of the illegal fireworks, and attorney fees for any and all notices, meetings, or administrative or court proceedings to enforce this ordinance.
Where there is more than one Host, each Host is liable jointly and severally for response costs.

The amount of response costs constitutes a debt owed to the City which may be collected in any manner legally available to the City.

Notice of the response costs shall contain the following itemized information:

1. The name of the Host(s) who is liable for the response costs;
2. The address of the private property where the incident occurred;
3. The date and time of the response;
4. The itemized cost of law enforcement, fire, or other emergency response personnel who responded as well as code enforcement or other City personnel and the associated legal costs.

Notice shall be served on each Host at the property address by first-class mail or by any means provided for service of a civil complaint.

Payment for response costs shall be remitted to the City within 30 calendar days of the date of the notice.

The payment of any such costs shall be stayed upon the filing of a timely appeal under Section 10.83.

10.83. – Appeal of Charge for Response Costs

Any Host charged with response costs may, without a fee and within 10 calendar days of the date of the notice of response costs, appeal all or a portion of the response costs to the City Manager. The City Manager shall meet with the Host within 15 calendar days of receiving the appeal. Within the next 30 calendar days, the City Manager shall determine whether or not to uphold the appeal. The decision of the City Manager is final.

Failure to timely file an appeal constitutes a failure to exhaust available administrative remedies, and bars any further review, administrative appeal or court review of the response costs.

Sec. 10-84. - Violation—Penalties.

In addition to any other remedy allowed by law, any person who violates a provision of this Article is subject to criminal sanctions, civil actions, and administrative penalties pursuant to the provisions of this City Code. All remedies prescribed under this Article are cumulative and the election of one or more remedies does not bar the City from the pursuit of any other remedy available to the City.
(b) All violations of this Article are declared to be a public nuisance.

(c) Notwithstanding anything to the contrary, the amounts for an administrative penalty for a violation of Section 10-81 of this Article are:

(1) $1,000 for the first violation;

(2) $2,500 for the second violation within one year of the first violation; and

(3) $5,000 for each additional violation within one year of the first violation.

Sec. 10.85 – Violation - Public Nuisance.

Violations of this Article are hereby declared to be a public nuisance.

Sec. 10.86 - Severability. The provisions of this ordinance hereby are declared to be severable. If any provision, clause, word, sentence or paragraph of this Ordinance, or the application thereof, to any person, establishment or circumstance shall be held invalid, such invalidity shall not affect the other provisions of this article.

Section 3: Effective Date: This ordinance is an urgency ordinance necessary to protect public health, safety and welfare that must be put into place in advance of the upcoming Fourth of July holiday. This ordinance shall be effective immediately upon its adoption and the City Clerk shall cause a certified copy of this ordinance or a summary of it to be published one time within fifteen (15) days after its adoption in the Imperial Valley Press, a newspaper of general circulation printed in Imperial County and circulated in the City.

INTRODUCED, PASSED AND ADOPTED by a 4/5ths vote of the City Council as an urgency ordinance at a regular meeting of the City Council of the City of El Centro California, held on the 7th day of June, 2022.

CITY OF EL CENTRO

By: ________________________________
Tomas Oliva, Mayor

ATTEST:

By: ________________________________
Norma Wyles, City Clerk

APPROVED AS TO FORM:

By: ________________________________
Elizabeth L. Martyn, City Attorney
STATE OF CALIFORNIA  
COUNTY OF IMPERIAL  
CITY OF EL CENTRO  

I, Norma Wyles, City Clerk of the City of El Centro, California, do hereby certify that the foregoing Urgency Ordinance No. 22-04 was duly and regularly adopted at a regular meeting of the City Council of the City of El Centro, California, held on the 7th day of June, 2022 by the following vote:

AYES: Garcia, Viegas-Walker, Oliva, Cardenas-Singh, Marroquin
NOES: None
ABSENT: None
ABSTAINED: None

By Norma Wyles, City Clerk