

ORDINANCE NO. O2018-015

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF YUMA, ARIZONA, AMENDING TITLE 13, HEALTH AND SAFETY, OF THE YUMA CITY CODE, CHAPTER 139, FIREWORKS

WHEREAS, in order to protect, enhance and promote the health, safety and welfare of the City of Yuma (City) and its residents, in May 2013 the Yuma City Council adopted a fireworks ordinance, Ordinance No. 2013-26, governing the sale and use of fireworks within the City, and in conformance with state statutes at that time; and,

WHEREAS, in April of 2014, the Arizona legislature made changes to the state statute governing the use and sale of fireworks; and,

WHEREAS, the City Council seeks to prevent fire hazards which threaten the safety of individuals and private and public improvements, including residential, commercial and industrial structures; and,

WHEREAS, the Arizona League of Cities and Towns recently provided a draft ordinance to assist jurisdictions with incorporation of the various changes to the state statutes governing the use and sale of fireworks; and,

WHEREAS, the proposed changes will bring the City into conformance with the recent revisions to the state statutes and provide consistency across jurisdictions in Arizona, resulting in less confusion for distributors and sellers of permissible fireworks.

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Yuma as follows:

SECTION 1: Yuma City Code Title 13, Health and Safety, Chapter 139, Fireworks, is amended to delete the strikethrough text and insert the following underlined text thereof:

§ 139-001 Definitions.

For purposes of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CONSUMER FIREWORK. Those fireworks defined by A.R.S. § 36-1601.

CONSUMER FIREWORKS RETAIL SALES FACILITY. A permanent or temporary building or structure, consumer fireworks retail sales stand, tent, canopy, or membrane structure that is used primarily for the display or sale of consumer fireworks to the public as defined by A.R.S. § 36-1601.

DISPLAY FIREWORK. Those fireworks defined by A.R.S. § 36-1601.

FIREWORKS. Any combustible or explosive composition, substance or combination of substances, or any article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, that is a consumer firework, display firework or permissible consumer firework as defined by A.R.S. § 36-1601.

NFPA 1124. The National Fire Protection Association code for the manufacture, transportation, storage, and retail sales of fireworks and pyrotechnic articles as defined by A.R.S. § 36-1601.

NOVELTY ITEMS. Federally deregulated novelty items that are known as snappers, snap caps, party poppers, glow worms, snakes, toy smoke devices, sparklers, and certain toys as defined in A.R.S. § 36-1601.

PERMISSIBLE CONSUMER FIREWORK. Those fireworks as defined by A.R.S. § 36-1601 that may be sold within the city even where the use of those items has been prohibited.

PERSON. Includes an individual, partnership, firm, or corporation as defined by A.R.S. § 36-1601.

STORE. A building that is classified as a mercantile occupancy that contains a variety of merchandise and that is not used primarily for the retail sales of consumer fireworks, as defined by A.R.S. § 36-1601.

SUPERVISED PUBLIC DISPLAY. A monitored performance of display fireworks open to the public and authorized by permit by the Fire Chief or his designee.

§ 139-002 Fireworks Prohibited; Exceptions.

(A) The use, discharge, or ignition of fireworks is prohibited on all public property including, but not limited to, all public buildings, parking lots, public parks, sidewalks, streets, public schools, and public rights-of-way at all times, except as otherwise provided for herein or by permit for supervised public displays only.

(B) Nothing in this section or chapter shall be construed to prohibit the use, discharge or ignition of federally deregulated novelty items on private property or the occurrence of a permitted supervised public display of fireworks.

(C) The Fire Chief or designee is authorized to grant permits for conducting a properly supervised public display of fireworks. Every supervised public display of fireworks shall have a permit and shall be inspected by the Fire Chief or designee prior to such event. Every supervised public display of fireworks shall be of such character and so located, discharged, or ignited in a manner that does not endanger persons, animals, or property. A permit shall not be issued, or may be revoked, during time periods of High Fire Danger warnings. The Fire Chief has authority to impose conditions on any permits granted.

(D) Failure to comply with any permit requirements issued by the Fire Chief or designee is a civil offense punishable by a civil fine not to exceed \$500 for each violation or schedule of progressive fines for multiple violations.

§ 139-003 Limited Use of Permissible Consumer Fireworks.

The use, discharge, or ignition of permissible consumer fireworks within the city may only be used from June 24 through July 6 and December 24 through January 3 of each year.

§ ~~139-003~~ 139-004 Sale of Fireworks.

(A) No person shall sell or permit or authorize the sale of permissible consumer fireworks or federally deregulated novelty items to a person who is under 16 years of age.

(B) No person shall sell or permit or authorize the sale of permissible consumer fireworks or federally deregulated novelty items in conflict with state law, this code, or NFPA 1124.

(C) No person shall sell or permit or authorize the sale of permissible consumer fireworks, except from May 20 through July 6 and December 10 through January 3 of each year. Notwithstanding the foregoing, the sale of permissible consumer fireworks shall be prohibited at any time a federal or state agency implements a stage one or higher fire restriction.

§ ~~139-004~~ 139-005 Posting of Signs by Persons Engaged in the Sale of Fireworks; Penalty.

(A) Prior to the sale of permissible consumer fireworks, every person engaged in such sales shall prominently display signs in accordance with A.R.S. § 36-1611, indicating the following:

- ~~1) The use, discharge, or ignition of fireworks is prohibited on all public property, including parks, sidewalks, streets, and rights-of-way at all times.~~
- ~~2) Permissible consumer fireworks authorized for sale under state law may not be sold to persons under the age of 16.~~

State of Arizona
Consumer Fireworks Regulations
A.R.S. § 36-1601, et al.

The use of permissible consumer fireworks as defined under state law is
allowed:

June 24 – July 6 and December 24 – January 3

The sale of permissible consumer fireworks as defined under state law is
allowed:

May 20 – July 6 and December 10 – January 3

All other fireworks are prohibited, except as authorized by local fire
department permit.

The sale and use of novelties known as snappers (pop-its), party poppers,
glow worms, snakes, toy smoke devices, and sparklers are permitted at all
times.

Permissible consumer fireworks may not be sold to persons under 16
years of age.

Check with your local fire department for additional regulations and
dates before using.

(B) Signs required under this section shall be placed at all retail sales displays of permissible consumer fireworks and at each cash register ~~and in each area where fireworks are displayed for sale or point of sale.~~

(C) ~~The Fire Chief or designee shall develop regulations concerning the size and color of the required signs and shall develop a model sign. The required sign regulations and model sign shall be posted on the city's website and filed with the Clerk's office. Signs shall be eight and one-half inches by eleven inches (8 ½" x 11") in size, on cardstock paper, in landscape orientation, and~~

displayed on a contrasting background. A model sign shall be posted on the city's website and filed with the Clerk's office.

(D) Failure to comply with this section shall be a civil offense and shall be punishable by a civil fine not to exceed \$500.

§ ~~139-005~~ 139-006 Authority to Enforce Violations of this Chapter; Means of Enforcement.

(A) The Fire Chief, or designee, a city police officer, or City Attorney may issue civil complaints to enforce violations of this Chapter designated as civil offenses.

(B) Any person authorized pursuant to this Section to issue a civil complaint may also issue a notice of violation specifying actions to be taken and the time in which they are to be taken to avoid the issuance of a civil complaint.

(C) A city law enforcement officer or City Attorney may issue a criminal complaint to enforce violations of this chapter.

§ ~~139-006~~ 139-007 Liability for Emergency Responses Related to Use of Fireworks; Definitions

(A) A person who uses, discharges, or ignites permissible consumer fireworks, fireworks or anything that is designed or intended to rise into the air and explode or to detonate in the air or to fly above the ground, is liable for the expenses of an emergency response that is required by such use, discharge, or ignition. The fact that a person is convicted or found responsible for a violation(s) of this chapter is prima facie evidence of liability under this section.

(B) The expenses of an emergency response are a charge against the person liable for those expenses pursuant to division (A) of this section. The charge constitutes a debt of that person and may be collected proportionately by the public agencies, for-profit entities or not-for-profit entities that incurred the expenses. The person's liability for the expense of an emergency response shall be the actual expenses of the incident. The liability imposed under this section is in addition to and not in limitation of any other liability that may be imposed.

(C) For the purposes of this section:

(1) ***EXPENSES OF AN EMERGENCY RESPONSE*** means reasonable costs directly incurred by public agencies, for-profit entities or not-for-profit entities that make an appropriate emergency response to an incident.

(2) ***REASONABLE COSTS*** includes the costs of providing police, fire fighting, rescue and emergency medical services at the scene of an incident and the salaries of the persons who respond to the incident.

§ 139-009 Providing For Repeal of Conflicting Ordinances.

All ordinances and parts of ordinances in conflict with the provisions of this chapter or any part of the code adopted herein by reference are hereby repealed.

§ 139-010 Severability.

If any section, subsection, sentence, clause, phrase, or portion of this chapter is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision

shall not affect the validity of the remaining portions thereof.

§ ~~139-999~~ 139-099 Penalty.

(A) Unless otherwise provided for herein, it shall be unlawful for any person, firm, or corporation to violate, or cause the violation of, any provision of this chapter. Any person, firm, or corporation violating any of the provisions in this chapter shall be guilty of a class three misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed \$500 or by imprisonment for not more than one day or both fine and imprisonment.

(B) Each separate day or part thereof during which any violation of this chapter occurs or continues shall be deemed to constitute a separate offense, and upon conviction thereof shall be punishable as herein provided. Notwithstanding the foregoing, the unauthorized use of permissible consumer fireworks only shall be deemed a petty offense and punishable by a fine not to exceed \$500.

SECTION 2: Violations of this Ordinance are subject to the following penalties:

(A) It shall be unlawful for any person, firm, or corporation to violate, or cause the violation of, any provision of this ordinance. Unless designated as a civil offense punishable by a civil fine not to exceed \$500, any person, firm, or corporation violating any of the provisions in this ordinance shall be guilty of a class three misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed \$500 or by imprisonment for not more than one day or both fine and imprisonment.

(B) Each separate day or part thereof during which any violation of this ordinance occurs or continues shall be deemed to constitute a separate offense, and upon conviction thereof shall be punishable as herein provided. Notwithstanding the foregoing, the unauthorized use of permissible consumer fireworks only shall be deemed a petty offense and punishable by a fine not to exceed \$500.

ADOPTED THIS _____ day of _____, 2018

APPROVED:

Douglas J. Nicholls
Mayor

ATTESTED:

Lynda L. Bushong
City Clerk

APPROVED AS TO FORM:

Richard W. Files
City Attorney