

ORDINANCE NO. 1617

AN ORDINANCE AMENDING SECTIONS 18-83 THROUGH 18-94 OF ARTICLE IV OF CHAPTER 18 OF THE CITY OF NEODESHA CODE REGARDING FIREWORKS, ADDING SECTIONS 18-95 THROUGH 18-97 AND REPEALING OLD SECTIONS 18-83 THROUGH 18-94 OF ARTICLE IV OF CHAPTER 18 OF THE CITY OF NEODESHA CODE.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF NEODESHA, KANSAS:

Section One: Sections 18-83 through 18-94 of Chapter 18 of the City of Neodesha Code shall be amended to read as follows:

Sec. 18-83. - Definitions.

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

- (a) **Fireworks.** Any composition or device for the purpose of producing a visible or an audible effect for entertainment purposes by combustion, deflagration or detonation that meets the definition of 1.4G fireworks, approved consumer fireworks, or 1.3G fireworks as set forth herein.
- (b) **Fireworks, 1.4G.** (Formerly known as Class C, Common Fireworks.) Small fireworks devices containing restricted amounts of pyrotechnic composition designed primarily to produce visible or audible effects by combustion. Such 1.4G fireworks which comply with the construction, chemical composition and labeling regulations of the DOTn for Fireworks, UN 0336, and the U.S. Consumer Product Safety Commission as set forth in CPSC 16 CFR: Parts 1500 and 1507, are not explosive materials for the purpose of this code and are approved for consumer sale in the City of Neodesha.
- (c) **Fireworks, 1.3G.** (Formerly known as Class B, Special Fireworks.) Large fireworks devices, which are explosive materials, intended for use in fireworks displays and designed to produce audible or visible effects by combustion, deflagration or detonation. Such 1.3G fireworks include, but are not limited to firecrackers containing more than 130 milligrams (2 grains) of explosive composition, aerial shells containing more than 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 Fireworks, Uno335 by the DOTn and are not approved for consumer sale in the City of Neodesha.
- (d) **Chinese or Sky Lanterns.** Any uninhabited free floating luminary device which includes a flame or other heating device to heat air as a lifting mechanism are not approved for consumer sale in the City of Neodesha. These typically are made of rice paper or flame resistant paper, and have a fuel cell in the opening.
- (e) **Bottle Rockets.** As used in this section, "bottle rocket" (or sky rocket) means any pyrotechnic device which:
 - 1) Is mounted on a stick or wire; and
 - 2) Projects into the air when ignited, with or without reports, and includes any device with the same configuration, with or without reports, which may be classified as a pipe or trough rocket. "Bottle rocket" does not include helicopter-type rockets.

Sec. 18-84. - Prohibited.

- (a) It shall be prohibited to sell or discharge 1.3G Fireworks in the City of Neodesha.
- (b) It shall be prohibited to sell or discharge Chinese or Sky Lanterns in the City of Neodesha.
- (c) It shall be unlawful to sell or discharge Bottle Rockets or sky rockets in the City of Neodesha.
- (d) Except as provided in sections 18-86 through 18-95, it shall be unlawful for any person to keep, store, display for sale, fire, discharge or explode any fireworks.
- (e) Nothing in this article shall be construed as applying to:
 - 1) Toy paper caps containing not more than 0.25 of a grain of explosive composition per cap;
 - 2) The manufacture, storage, sale or authorized use of signals necessary for the safe operation of railroads or other classes of public or private transportation;
 - 3) The military or naval forces of the United States or of this state while in the performance of official duty;
 - 4) Law enforcement officers while in the performance of official duty; or

- 5) The sale or use of blank cartridges for ceremonial, theatrical or athletic events.
- (f) It shall be unlawful for any person to discharge fireworks on public property of the city at any time.
 - (g) It shall be unlawful for any person to discharge fireworks at any time within the fire zone of the city which shall be defined as the area running parallel one block north and one block south of Main Street.
 - (h) It shall be unlawful for any person to discharge fireworks into, under, or from a car or vehicle, whether moving or standing still, or on a public roadway or the right-of-way adjoining a public roadway;.
 - (i) While on private property without the express written consent of the property owner, including the property owner's name, address, telephone number and signature, unless said property owner is present and has given oral permission;
 - (j) Within 100 feet of any hospital, sanitarium, infirmary, nursing home, or assisted living facility;
 - (k) So as to throw, cast, or propel the fireworks in the direction of, or into the path of, any person or group of persons, whether on foot, on a bicycle, on a motorcycle, or in a vehicle;
 - (l) So as to impact adjoining property from either direct contact from fireworks or the residue resulting from the use of fireworks.

Sec. 18-85. - Unlawful areas of sale, storage, display.

- (a) It shall be unlawful for fireworks to be stored, sold or displayed for sale in a place of business where paint, oils, varnishes, turpentine or gasoline or other flammable substances are kept, unless such fireworks are in a separate and distinct section or department of the premises.
- (b) Where the fire chief deems there is a fire hazard, he is hereby authorized to have such hazard abated.

Sec. 18-86. - Exceptions; discharges.

- (a) Section 18-84 shall not apply to the fire or discharge of fireworks in the city between the hours of 8:30 a.m. and 10:30 p.m. on June 27 through July 3, nor between the hours of 8:30 a.m. and 12:00 midnight on July 4, nor 8:30 a.m. and 10:30 p.m. on July 5.
- (b) The governing body may, at its discretion, grant written permission at any time for the sale or discharge of fireworks.

Sec. 18-87. - Permit.

No person shall offer for sale at retail, sell at retail, deliver, consign, give or otherwise furnish consumer fireworks without first obtaining a Consumer Fireworks Sales Permit ("permit") for the operation of a consumer fireworks sales facility in accordance with the municipal code for the City of Neodesha.

- (a) **Application.** A permit application shall be filed with the office of the City Clerk no later than May 20 of each year. The application shall require the information necessary to identify the applicant, to verify the property owner's consent to the application, and to assure compliance with all applicable code requirements.
- (b) **Fees.** Every permit application must be accompanied by a nonrefundable application fee as prescribed in section 16-19. The permit fee shall include a preliminary and final inspection of the applicant's consumer fireworks Sales facility by the Fire Chief or his representative prior to issuance of the Consumer Fireworks Sales Permit. Any additional inspections required in the course of the applicant's qualification for a permit will result in additional inspection fees as established in section 16-19.
- (c) **Application Review.** A permit application will not be accepted until all required information is provided. In the case of a repeat applicant, the applicant's past performance in complying with applicable rules and procedures for the operation of a consumer fireworks Sales facility shall be a valid consideration in relation to whether the current application should be approved. Following administrative review of the application, the applicant will be notified whether the application has been granted or denied or if corrections or modifications are required for further consideration. An applicant will have until no later than June 1 of the year of application to submit the final version of its corrected or modified application.
- (d) **Issuance and Display of Permit.** No sooner than 7 days and after obtaining approval of its application and payment of the permit fee, the applicant may commence site preparation that shall include having the underground utilities marked at the site where the consumer fireworks sales facility is to be erected if poles or tent stakes are to be used in the erection of the consumer fireworks sales facility. After the site has been marked for underground utility locations the applicant may start erecting and equipping of its consumer fireworks sales facility. Upon the approval of the City, the applicant may proceed with stocking of the consumer fireworks sales facility in preparation for final inspection. The applicant will qualify for issuance of the permit upon successful passage of final inspection of the stocked facility and payment of the permit

fee. No person shall offer for sale at retail, sell at retail, deliver, consign, give or otherwise furnish consumer fireworks from the consumer fireworks sales facility until the permit has been issued and prominently displayed on site.

- (e) **Period of Validity.** A permit shall be valid commencing on the date of issuance and shall terminate July 4th at 10:30 p.m. of the current year.
- (f) **Suspension or Revocation.** A permit shall be subject to suspension or revocation by the City Fire Chief on the basis of the permit holder's failure to comply with applicable laws and standards for the operation of a consumer fireworks sales facility.

Sec. 18-88. - Hours of sale.

- (a) Any person who has first obtained a permit from the City to sell fireworks may do so between the hours of 8:30 a.m. and 10:30 p.m. commencing June 27 and through July 4 for the year of the permit only.
- (b) No retail stand shall be open for the sale of any fireworks unless there is at least one adult over the age of 18 years present on the premises at all times during the hours of operation.

Sec. 18-89. Use of approved consumer fireworks.

The use of approved consumer fireworks by the public for personal use is prohibited other than from the hours of 8:30 a.m. and 10:30 p.m. on June 27 through July 3, nor between the hours of 8:30 a.m. and 12:00 midnight on July 4, nor 8:30 a.m. and 10:30 p.m. on July 5 of each calendar year.

Sec. 18-90. - Retail display.

- (a) All retailers are forbidden to expose fireworks where the sun shines through glass on the merchandise displayed, except where such fireworks are in the original package.
- (b) All fireworks displayed for sale must remain in original packages, except where an attendant is on constant duty at all times where such fireworks are on display; provided that fireworks in open stock may be kept in show cases or counters out of the reach of the public without an attendant being on duty.
- (c) Signs reading "FIREWORKS FOR SALE—NO SMOKING ALLOWED" shall be displayed in the section of a store or premises set aside for the sale of fireworks.
- (d) Fireworks shall not be ignited, discharged, or otherwise used within 300 feet of a consumer fireworks sales facility. At least one sign reading "NO FIREWORKS DISCHARGE WITHIN 300 FEET" shall be conspicuously posted on the exterior of each side of the consumer fireworks sales facility.

Sec. 18-91. - Fire extinguisher required.

- (a) One ABC certified fire extinguisher with a minimum rating of 2A, and one certified water extinguisher with at least a 20 pound rating must be provided and kept in close proximity to the stock of fireworks in all buildings where fireworks are sold.
- (b) Fireworks stands less than 200 square feet are only required to have one portable fire extinguisher.

Sec. 18-92. - Restrictions as to gasoline installations.

It shall be unlawful to store, keep, sell, display for sale or discharge any fireworks within 50 feet of any gasoline pump, gasoline filling station, gasoline bulk station or any building in which gasoline or volatile liquids are sold in quantities in excess of one gallon, except in stores where cleaners, paints and oils are handled in sealed containers only.

Sec. 18-93. - Records.

Each operator of a Consumer Fireworks Sales Facility shall maintain a list of what consumer firework items are on the premises, indicating the Kansas licensed distributor from whom those items were purchased.

Sec. 18-94. - Seizure of fireworks.

The Neodesha Fire Chief is authorized to seize and confiscate all fireworks which may be kept, stored or used in violation of any section of this article, and any of the rules of the State Fire Marshal. He shall dispose of all such fireworks as may be directed by the governing body.

Section Two: Sections 18-95 through 18-97 shall be added to Article IV, Chapter 18 of the City of Neodesha Code:

Sec. 18-95. – Removal of Inventory and Restoration of Site.

All inventory must be removed from a consumer fireworks sales facility no later than July 5th. The site of the consumer fireworks sales facility must be cleared and restored no later than July 11th.

Sec. 18-96. Debris

It is the responsibility of the person(s) discharging fireworks to remove all fireworks debris from private and public property no later than 12:00 p.m. (noon) on the day following the discharge of fireworks.

Sec. 18-97. Penalty.

Violation of any of the provisions of Sections 18-83 through 18-96 shall be a Class B violation.

Section Three: EFFECTIVE DATE. This ordinance shall be in full force and effect upon its publication in the official city newspaper.

Passed by the Governing Body of the City of Neodesha, Kansas and signed by the Mayor this 27th day of November, 2013.

ATTEST:

/s/Terry M. Harper

Terry M. Harper, Mayor

/s/Bobby Busch

Bobby Busch, City Clerk

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