

ORDINANCE NO. 39 OF 2021

AN ORDINANCE TO REPEAL CERTAIN SECTIONS OF THE CODE OF CABOT; TO AMEND CERTAIN SECTIONS OF THE UNIFIED DEVELOPMENT CODE; AND FOR OTHER PURPOSES

WHEREAS, upon careful consideration of the current law and of comments from the residents of Cabot, the City of Cabot desires to update municipal law regarding the use and sale of fireworks within city limits; and

WHEREAS, an advertised and announced public hearing was held before the Cabot Planning Cabot Commission on September 28, 2021. The proposed changes and amendments were discussed and public comment was taken and considered by the Planning Commission. The Planning Commission voted in favor of forwarding the proposed changes and amendments to the Cabot City Council for a vote on their adoption; and

WHEREAS, The Cabot City Council desires to adopt the changes and amendments to the Code of Cabot and the Unified Development Code referenced herein.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF CABOT, ARKANSAS:

SECTION 1: Article VII § 7.1 – 7.3 of the Unified Development Code (“UDC”), is hereby adopted and added to the UDC as delineated in Exhibit A, attached hereto and incorporated herein by this reference.

SECTION 2: If, for any reason, any portion or portions of this ordinance or its attachment, or the application thereof, shall be held invalid, such invalidity shall in no way affect the remaining portions thereof which are valid, and that such valid portions shall be and remain in full force and effect.

SECTION 3: Any municipal legislation or portion of municipal legislation in conflict with this ordinance or its attachment is/are hereby repealed to the extent of such conflict. Section 20-67 and Section 20-68 of the Code of Cabot are hereby specifically repealed.

SECTION 4: This ordinance shall take effect on January 2, 2022 and shall be controlling

from that date forward.

SPONSOR:

Ed Long, Council Member

PASSED: 7-0

EMERGENCY CLAUSE: NO VOTE

DATE: 11/1/2021

APPROVED:




Ken Kincade, Mayor

APPROVED AS TO FORM:



Ben Hooper, City Attorney

ATTEST:



Tammy Yocom, City Clerk-Treasurer



CHAPTER 20 – MISCELLANEOUS OFFENSES

ARTICLE III. – FIREWORKS – **Current Code (Currently not in the UDC)**

Footnotes:

--(1)--

State Law Reference-Fire prevention and protection generally, A.C.A. § 12-13-101 et seq.; fire prevention and protection and safety, A.C.A. § 20-22-201 et seq.; Fireworks, A.C.A. § 20-22-701 et seq.

Sec. 20-67. – Fireworks prohibition; exception.

It shall be unlawful for any person to sell or discharge any item of fireworks within the city limits, except that the mayor shall have authority to permit supervised public displays of fireworks as provided in A.C.A. § 20-22-701.

(Code 1992, § 92.30; Ord. No. 5-1973, 8-13-1973)

State Law Reference-Fireworks, A.C.A. § 20-22-701 et seq.

Sec. 20-68. – Penalty.

- a) Any person who violates any provision of this article for which no penalty is otherwise provided shall be subject to the penalty provided in [section 1-23](#).
- b) Any person who violates the provisions of [section 20-67](#) shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$10.00 nor more than \$50.00 for each offense.

(Code 1992, § 92.99; Ord. No. 5-1973, 8-13-1973; Ord. No. 7-2011, 6-20-2011)



REMOVING THIS ENTIRE ARTICLE FROM CHAPTER 20

CHAPTER 20—MISCELLANEOUS OFFENSES

ARTICLE III.—FIREWORKS

Footnotes:

~~—(1)—~~

~~State Law Reference Fire prevention and protection generally, A.C.A. § 12-13-101 et seq.; fire prevention and protection and safety, A.C.A. § 20-22-201 et seq.; Fireworks, A.C.A. § 20-22-701 et seq.~~

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~~State Law Reference Fireworks, A.C.A. § 20-22-701 et seq.~~

Sec. 20-68.—Penalty.

- ~~e) Any person who violates any provision of this article for which no penalty is otherwise provided shall be subject to the penalty provided in [section 1-23](#).~~
- ~~d) Any person who violates the provisions of [section 20-67](#) shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$10.00 nor more than \$50.00 for each offense.~~

~~(Code 1992, § 92.99; Ord. No. 5-1973, 8-13-1973; Ord. No. 7-2011, 6-20-2011)~~

PART II – UNIFIED DEVELOPMENT CODE
ARTICLE VII. – FIREWORKS – (Adding to the UDC)

Section 7.1 – Use of Fireworks.

- a) No fireworks, including firecrackers, sparklers, or Roman candles may be discharged within the city limits except as hereinafter provided.
- b) On the dates of July 4 through July 5 between the hours of 7:00 p.m. and 11:00 p.m. and on December 31 between the hours of 7:00 p.m. and 12:00 midnight, the use of fireworks shall be permitted, with the exception of any aerial fireworks device commonly referred to as a “sky lanterns”, or any other similar device, regardless of its name.
- c) With the exception of fireworks used or exploded by the city for purposes of a public display, no fireworks shall be used or discharged on any city-owned property.
- d) No fireworks shall be used or exploded on private property without the property owner’s written consent.
- e) A person of at least 21 years of age shall supervise the discharge of any fireworks if any person participating in the activity is under the age of 16.
- f) The fire chief shall permit the use of fireworks, including aerial fireworks, for a public display when all provisions of NFPA 1123 are met and after all necessary permits have been issued. If any such permit is issued, any such display shall be handled by a competent operator approved by the fire chief, and shall be of such character and so located, discharged or fired so as not to be hazardous to property or endanger any person. No such permit shall normally be authorized except between the hours of 7:00 p.m. and 11:00 p.m. on July 1 through July 5, and December 31 between the hours of 7:00 p.m. and 12:00 midnight.
- g) The mayor, or his designee, after consultation with the fire chief, may grant an event permit to allow the discharge of fireworks for special events/occasions. Applications for an event permit must be made on a form supplied by the city. A permit may be granted at the discretion of the Mayor and Fire Chief.
- h) The display and/or consumer use of fireworks may be prohibited by the fire chief at any time based on fire or wind conditions and the need to maintain public safety.
- i) Persons possessing or using fireworks in violation of this section shall be guilty of a misdemeanor. In addition, a law enforcement or code compliance officer is authorized to seize all fireworks from persons violating the terms of this section. If any provisions of this section are violated, a law enforcement or code compliance officer shall be authorized to enforce these provisions. Any ceased fireworks may be destroyed at the discretion of the fire chief, law enforcement or code compliance officer.

State Law Reference-Fire prevention and protection generally, A.C.A. § 12-13-101 et seq.; fire prevention and protection and safety, A.C.A § 20-22-201 et seq.; Fireworks, A.C.A § 20-22-701 et seq.; cities may prohibit, A.C.A. § 20-22-704.

Section 7.2 – Penalty.

- a) Any person who violates any provision of this article shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100.00 nor more than \$1,000.00 for each offense.
- b) Juvenile citations issued for any violation of this article shall be forwarded for prosecution in the Juvenile division of the Lonoke County Circuit Court.

Section 7.3 – Sale, display and storage of fireworks.

- a) *Definition.* As used herein, the term “fireworks” means items now or hereafter classified as Class C or common fireworks and/or consumer fireworks, by the U.S. Department of Transportation and/or those items that comply with the construction, chemical compositions, and labeling regulations promulgated by the U.S. Consumer Product Safety Commission and permitted for use by the general public under their regulations. The term “fireworks” also includes I.C.C. Class C common fireworks as defined in A.C.A. title 20, Ch. 22, subch. 7 (A.C.A. § 20-22-701 et seq.).
- b) *Permits required.* No person, corporations, partnership, limited partnership, limited liability company, nonprofit corporation, association or other legal entity, or any combination thereof, shall offer for sale or sell at retail, or store in anticipation of sale, any fireworks of any kind within the city without having first applied for and received:
 - 1. The applicable permit as a retailer from the Public Works department.
- c) *Application for retail permit.* An application for a permit must be submitted to the Public Works department in writing on forms provided for this purpose by the Public Works department for each location at which fireworks are to be offered for sale, sold, or stored in anticipation of sale, accompanied with a copy of the pyrotechnic license issued by the authorized state authority, an application filing fee of \$1,000.00 payable to the city, and a list of the persons, with up-to-date contact information including name, address and telephone number, meeting the requirements in subsection (f) of this section on behalf of the applicant.
- d) *Application Period.* Applications for July 4th holiday will be accepted from January 2nd-May 20th and applications for New Year’s Eve holiday will be accepted from July 5th-November 17th. No applications will be accepted outside these dates.
- e) *Number of allotted permits.* The city will authorize permits according to the following:
 - 1. Commercial – 1 per 8,500 population (Per the most recent Census)
 - 2. 501(C)(3) Organization – 1 per 5,000 population (Per the most recent Census)
- f) *Operation.* The operation of all firework stands/tents and storage shall be in conformance with the following requirements:

- 1) No fireworks shall be sold or stored within a permanent structure with the city limits. All locations where fireworks are sold must comply with all Arkansas and federal laws, as well as the fire code;
- 2) No person selling fireworks within the city limits shall be allowed to sell any fireworks commonly referred to as or “sky lanterns”, as these particular fireworks are prohibited to be discharged within the city limits.
- 3) No person under the age of 16 shall be allowed to purchase fireworks with the city limits.
- 4) No fireworks stand/tent shall be located within 250 feet of a fuel dispensing facility and all fireworks stand/tent must have at least 50-foot setback from the street or highway.
- 5) All locations where fireworks are sold within the city limits shall post a sign, visible to the public, which states, “The discharge of sky lanterns are prohibited in the City of Cabot.”
- 6) Provide one or more attendants at least 21 years of age at the location of sale and/or storage 24 hours per day from the time fireworks arrive at the location until all fireworks are removed from the location;
- 7) Post the permit issued by the state fire marshal section of the Arkansas State Police and the permit issued pursuant to this chapter at all times in a location viewable by the public;
- 8) Make available for review a certification affidavit of flame retardant treatment application of tents housing the fireworks stand and any storage area;
- 9) Keep the premises clear of rubbish, trash, dry grass, and combustible debris inside the retail sales area and within 30 feet of the facility.
- 10) Maintain the sales facility at least 20 feet from lot lines, buildings, parked vehicles and other tents;
- 11) Maintain electrical extension cords off the ground and, in a manner, not subject to physical damage. Electrical extension cords exposed to elements must be listed for outdoor use. Multi-plug adapters without surge protection are not allowed. GFI protection must be provided. All electrical wiring shall be in accordance with NFPA 70 (National Electrical Code);
- 12) Maintain a conspicuously posted “FIREWORKS. NO SMOKING” sign;
- 13) Smoking and any form of vaping is strictly prohibited within 30 feet. It is the responsibility of the applicant to ensure this is enforced.
- 14) Provide at least two exit openings with a minimum width of 72 inches. The means of egress must be maintained and be unobstructed at all times the stand is open to

the public. Aisles and walkways must be unobstructed and have a minimum width of 44 inches;

- 15) Provide illuminated or self-illuminated exit signs and emergency lighting installed so that the power provided to them is on a separate circuit from all other circuits providing electrical power to the stand, as well as have a backup power supply (batteries or on-site generator) to provide power in the event of a disruption of primary electrical power;
 - 16) Maintain a clearance of 36 inches between tent fabric and the contents of the tent;
 - 17) Operate in full conformity with all federal, state and local laws and regulations. This specifically includes payment of local sales taxes and state taxes as applicable;
 - 18) Not open to the public until the fire chief and public works, or their designee, has inspected the stand/tent installation for conformance with all applicable laws, codes and ordinances.
- g) *Revocation.* A permit issued pursuant to the authority of this article may be revoked upon evidence that the permittee has purchased, received, sold, used, stored, kept, shipped or caused to be shipped any fireworks in violation of this article or any other regulation or provision of law. In such event, the fire chief, or his designee, will provide written notice to the permittee that the permittee's permit will be revoked. Such notice shall include the basis for the revocation. Within 48 hours of the receipt of the written notice of revocation, the permittee may request a hearing with the fire chief to present any evidence the permittee may have for why such permit should not be revoked. If a hearing is requested, the fire chief or his designee shall, if possible, conduct such hearing within 24 hours from the date of the request of hearing and shall conduct such hearing not later than 48 hours (Saturday and Sunday excluded) of the request of hearing unless a good cause is given to hold hearing at a later date. If the permittee disagrees with the decision of the fire chief or his designee, the permittee must file a written notice of appeal of such decision with the city clerk within 48 hours of the decision (Saturday and Sunday excluded). Upon receipt of such notice of appeal, the city clerk shall schedule a hearing before the city council at the next regular scheduled meeting following receipt of the permittee's written notice of appeal. The decision of the city council shall be final, subject only to appeal to the circuit court as provided by state law.
- h) *Non-renewal.* The city, in its discretion, may refuse to issue another permit to the holder of a permit that has been revoked for a violation of the provisions of this chapter, any regulation or any other provision of law, for a period of up to, and including, three years.
- i) *Time period.* Permits issued pursuant to this article shall be valid only for the dates permitted on the permit.
- j) *Hours of Operation.* The permissible hours of operation for sales shall be daily from 7 am to midnight. No sales or any other business shall take place between the hours of 12:01 am to 6:59 am.