

ORDINANCE NO. 1079

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF WICKENBURG, COUNTY OF MARICOPA, STATE OF ARIZONA AMENDING THE TOWN OF WICKENBURG CODE CHAPTER 10 OFFENSES, BY AMENDING 10-1 UNLAWFUL ACTS BY AMENDING SECTION 1-5 EXPLOSIVES TO DELETE SUBSECTIONS B AND C WHICH PROVIDE REGULATIONS OF FIREWORKS AND BY ADDING NEW ARTICLE 10-6 FIREWORKS RELATED TO THE RELATING TO THE SALE AND USE OF FIREWORKS; PROVIDING FOR PENALTIES; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING FOR SEVERABILITY

WHEREAS, the Mayor and Council deem it necessary to adopt certain regulations to protect, enhance and promote the health, safety and welfare of the Town of Wickenburg and its residents; and,

WHEREAS, the Mayor and Council desire to prevent fire hazards which threaten the safety of individuals, private and public improvements, including residential, commercial and industrial dwellings; and

WHEREAS, due to the dry, desert like conditions and terrain of the community there is a danger of fire with the use of fireworks in the community that can cause significant harm to the community and its residents.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Common Council of the Town of Wickenburg, County of Maricopa, State of Arizona as follows:

Section 1. In General.

The Code of Wickenburg, Chapter 10 Offenses, is hereby amended by amending Section 10-1-5 Explosives, by deleting subsections B and C as follows (deletions shown in ~~strikeout~~, additions shown in ALL CAPS):

- ...
- B. ~~Anyone wishing to display the fire works within the Town shall:~~
- 1.) ~~File with the Town Clerk a petition or request for a permit to display fire works no less than thirty (30) days prior to the proposed delay.~~
 - 2.) ~~Each such request shall be accompanied by a non-refundable fee of twenty-five dollars (\$25.00) unless the request is made by the Town to be used for and on behalf of the Town.~~
 - 3.) ~~The request may be in letter form and shall include an explanation of the purpose of such display, the manner in which the display is to be supervised, the particular fire works to be displayed, the location of the display, the qualifications of the individuals to be directly in charge of the display, and the precautions which will be taken to protect spectators, nearby property and the operators of the display.~~
 - 4.) ~~The Town Council shall rule on such requests. No permit issued by the Town shall be transferable nor assignable.~~
- C. ~~It is unlawful for any person to sell, furnish or give to any minor any squid, cracker, bomb or other thing of like character containing powder, or other combustible or explosive material, or any explosive cane, for use or to be fired, exploded or set off within the Town, or to knowingly permit such minor child to fire, explode or set off any squid, bomb, cracker or other thing of like character containing powder or other combustible or explosive materials or any explosive cane.~~
- ...

The Code of Wickenburg, Chapter 10 Offenses, is hereby amended by adding new Article 10-6 Fireworks, to read as follows (deletions shown in ~~strikeout~~, additions in ALL CAPS):

ARTICLE 10-6 FIREWORKS

SECTION 10-6-1 DEFINITIONS

- A. THE FOLLOWING WORDS, TERMS AND PHRASES, WHEN USED IN THIS ARTICLE HAVE THE MEANINGS ASCRIBED TO THEM IN THIS SECTION, EXCEPT WHERE THE CONTEXT CLEARLY INDICATES A DIFFERENT MEANING:
1. CONSUMER FIREWORK MEANS THOSE FIREWORKS DEFINED BY ARIZONA REVISED STATUTES

SECTION 36-1601.

2. DISPLAY FIREWORK MEANS THOSE FIREWORKS DEFINED BY ARIZONA REVISED STATUTES SECTION 36-1601.
3. FIREWORKS MEANS 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 ARIZONA REVISED STATUTE 36-1601.
4. NOVELTY ITEMS MEANS 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 ARIZONA REVISED STATUTE SECTION 36-1601.
5. PERMISSIBLE CONSUMER FIREWORKS MEANS THOSE FIREWORKS AS DEFINED BY ARIZONA REVISED STATUTE SECTION 36-1601 THAT MAY BE SOLD WITHIN THE TOWN OF WICKENBURG EVEN WHERE THE USE OF THOSE ITEMS HAS BEEN PROHIBITED.
6. SUPERVISED PUBLIC DISPLAY MEANS A MONITORED PERFORMANCE OF DISPLAY FIREWORKS OPEN TO THE PUBLIC AND AUTHORIZED BY PERMIT BY THE WICKENBURG FIRE CHIEF OR HIS DESIGNEE.

SECTION 10-6-2 FIREWORKS PROHIBITED; EXCEPTIONS

- A. THE USE, DISCHARGE OR IGNITION OF FIREWORKS WITHIN THE TOWN OF WICKENBURG IS PROHIBITED; EXCEPT AS PROVIDED FOR IN THIS SECTION. THE USE, DISCHARGE OR IGNITION OF FIREWORKS WITHIN THE TOWN OF WICKENBURG IS LIMITED TO THE ANNUAL TOWN SPONSORED FOURTH OF JULY CELEBRATION CONDUCTED BY A REPUTABLE FIREWORKS COMPANY WITH THE EXPRESS AUTHORIZATION BY MAYOR & COUNCIL UPON THE RECOMMENDATION OF THE WICKENBURG FIRE CHIEF IF A USE IS APPROVED BY THE WICKENBURG FIRE CHIEF OR DESIGNEE, A PERMIT MUST BE ISSUED AND SIGNED AND KEPT IN THE POSSESSION OF THE HOLDER.
- B. NOTHING IN THIS SECTION OR ARTICLE SHALL BE CONSTRUED TO PROHIBIT THE USE, DISCHARGE OR IGNITION OF NOVELTY ITEMS OR THE OCCURRENCE OF A SUPERVISED PUBLIC DISPLAY OF FIREWORKS.
- C. PERMITS MAY BE GRANTED BY THE WICKENBURG FIRE CHIEF OR DESIGNEE FOR CONDUCTING A PROPERLY SUPERVISED PUBLIC DISPLAY OF FIREWORKS. EACH SUCH PUBLIC DISPLAY OF FIREWORKS SHALL BE OF SUCH CHARACTER AND SO LOCATED, DISCHARGED OR FIRED, ONLY AFTER PROPER INSPECTION BY THE WICKENBURG FIRE CHIEF OR DESIGNEE AND IN A MANNER THAT DOES NOT ENDANGER PERSONS, ANIMALS, OR PROPERTY. THE PERMITTEE SHALL PROVIDE PROOF OF INSURANCE IN AN AMOUNT AND FORM REQUIRED BY THE TOWN. A PERMIT SHALL NOT BE ISSUED, AND MAY BE REVOKED, DURING TIME PERIODS OF HIGH FIRE DANGER WARNINGS. THE WICKENBURG FIRE CHIEF HAS AUTHORITY TO IMPOSE CONDITIONS ON ANY PERMITS GRANTED.

SECTION 10-6-3 SALE OF FIREWORKS

- A. NO PERSON SHALL SELL OR PERMIT OR AUTHORIZE THE SALE OF PERMISSIBLE CONSUMER FIREWORKS TO A PERSON UNDER SIXTEEN YEARS OF AGE.
- B. NO PERSON SHALL SELL OR PERMIT OR AUTHORIZE THE SALE OF PERMISSIBLE CONSUMER FIREWORKS IN CONFLICT WITH ARIZONA STATE LAW.
- C.

SECTION 10-6-4 POSTING OF SIGNS BY PERSONS ENGAGED IN THE SALE OF FIREWORKS

- A. PRIOR TO THE SALE OF PERMISSIBLE CONSUMER FIREWORKS, EVERY PERSON ENGAGED IN SUCH SALES SHALL PROMINENTLY DISPLAY SIGNS INDICATING THE FOLLOWING:
 - 1. THE USE OF FIREWORKS, EXCEPT NOVELTY ITEMS AS DEFINED BY THE WICKENBURG TOWN CODE IN SECTION 10-6-3.C OF THIS SECTION, AND INCLUDING PERMISSIBLE CONSUMER FIREWORKS IS PROHIBITED.
 - 2. PERMISSIBLE CONSUMER FIREWORKS AUTHORIZED FOR SALE UNDER ARIZONA STATE LAW MAY NOT BE SOLD TO PERSONS UNDER THE AGE OF 16.
- B. SIGNS REQUIRED UNDER THIS SECTION SHALL BE PLACED AT EACH CASH REGISTER AND IN EACH AREA WHERE FIREWORKS ARE DISPLAYED FOR SALE.
- C. THE WICKENBURG 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 TOWN OF WICKENBURG'S WEBSITE AND FILED WITH THE CLERK'S OFFICE.

SECTION 10-6-5 AUTHORITY TO ENFORCE VIOLATIONS OF THIS ARTICLE; MEANS OF ENFORCEMENT

- A. A WICKENBURG FIRE CHIEF, FIRE MARSHALL, POLICE OFFICER AND/OR TOWN ATTORNEY MAY ISSUE CRIMINAL COMPLAINTS TO ENFORCE THIS ARTICLE.

SECTION 10-6-6 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 ANY EMERGENCY RESPONSE THAT IS REQUIRED BY SUCH USE, DISCHARGE OR IGNITION. THE FACT THAT A PERSON IS CONVICTED FOR A VIOLATION(S) OF THIS ARTICLE 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 SUBPART A OF THIS SECTION. THE CHARGE CONSTITUTES A DEBT OF THAT PERSON AND MAY BE COLLECTED PROPORTIONATELY BY THE PUBLIC AGENCIES, NON-PROFIT ENTITIES, OR NOT-FOR-PROFIT ENTITIES THAT INCURRED THE EXPENSES. THE PERSON'S LIABILITY FOR THE EXPENSE OF AN EMERGENCY RESPONSE SHALL NOT EXCEED \$10,000.00 FOR A SINGLE 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" INCLUDE 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.

SECTION 10-6-7 PENALTY

THE PENALTY FOR VIOLATING ANY PROHIBITION OR REQUIREMENT IMPOSED BY THIS ARTICLE IS A CLASS 1 MISDEMEANOR AND SUBJECT TO THE PENALTIES SET FORTH IN SECTION 1-8 OF THIS CODE.

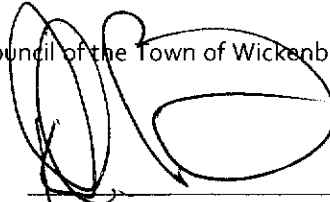
Section II. Repeal of Conflicting Ordinance.

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

Section III. Providing for Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the Code adopted herein by reference, 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.

PASSED AND ADOPTED by the Town Council of the Town of Wickenburg, Arizona, this 18 day of October, 2010.



KELLY C. BLUNT, MAYOR

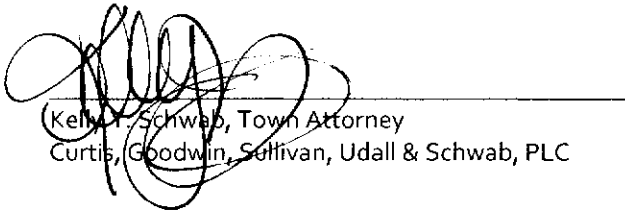
Date Signed: 10-18-10

ATTEST:


Donna Riffel, Town Clerk

Date Signed: 10-18-10

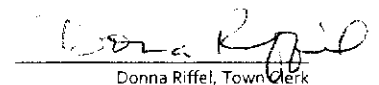
APPROVED AS TO FORM:


Kelly T. Schwab, Town Attorney
Curtis, Goodwin, Sullivan, Udall & Schwab, PLC

Number of Councilmembers Present: 7
Number of Votes For: 7
Number of Votes Against: 0
Number of Abstentions: 0

CERTIFICATION

I, Donna Riffel, the duly appointed and qualified Town Clerk of the Town of Wickenburg, an Arizona Corporation, do hereby Certify that the foregoing Ordinance Number 1079 was duly passed, approved and adopted by the Common Council of the Town of Wickenburg, Arizona, at a regular meeting held on the 18th day of OCTOBER 2010, and that a quorum was present at the meeting.


Donna Riffel, Town Clerk



OFFICE OF THE STATE FIRE MARSHAL



JANICE K. BREWER
GOVERNOR

GENE PALMA
DIRECTOR

ROBERT BARGER
FIRE MARSHAL

1110 WEST WASHINGTON, SUITE 100
PHOENIX, ARIZONA 85007
(602) 364-1003
(602) 364-1052 FAX

September 10, 2010

TO: CITY MANAGERS AND FIRE SERVICE PERSONNEL

As you may be aware, this past May Governor Jan Brewer signed HB2246 into law permitting the sale and use of specific fireworks, all of which are also federally approved consumer fireworks. There has been some confusion as to which categories have been approved for sale beginning December 1, 2010. In order to clarify this situation I have attached a list of those fireworks categories that are permissible and those which are not. The statute that lists the permissible fireworks can be found online at:

www.azleg.gov/FormatDocument.asp?inDoc=/ars/36/01601.01.htm&Title=36&DocType=ARS
(A.R.S. §36-1601(5))

The key consideration is that if a firework is "designed or intended to rise into the air and explode or to detonate in the air or to fly above the ground," (A.R.S. §36-1601(5)(b)) it is NOT legal in Arizona. Labels are included on each firework device and should that label make mention of explosion or shooting into the air, it is considered illegal in Arizona.

Furthermore, the pending statute states that "The sale and use of permissible consumer fireworks are of statewide concern ... and their use is not subject to further regulation by a governing body, except that an incorporated city or town may regulate the use of permissible consumer fireworks within its corporate limits." A.R.S. §36-1606. The statute also requires the State Fire Marshal to adopt rules that adopts the 2006 edition of the National Fire Protection Association ("NFPA") code for the manufacture, transportation, storage and retail sales of fireworks. These guidelines fall under section 1124 of the NFPA code and can be viewed online or purchased by visiting www.nfpa.org. Please note, any additional regulation, i.e. signage, permitting, etc., adopted by a governing body pertaining to the sale of permissible consumer fireworks which is not included in NFPA 1124, would appear to be in conflict with the above referenced statutes.

Sincerely,

Bob Barger
State Fire Marshal
Department of Fire, Building and Life Safety
1110 W. Washington
Phoenix, AZ 85007

Attachment

STATE APPROVED PERMISSABLE FIREWORKS FOR SALE IN ARIZONA

1. Ground and Hand-held Sparkling Devices
These devices are ground-based or hand-held devices that produce a shower of white, gold or colored sparks as their primary pyrotechnic effect. Additional effects may include a colored flame, an audible crackling effect, an audible whistle effect, and smoke. These devices do not rise into the air, do not fire inserts or projectiles into the air and do not explode or produce a report (a mild audible cracking-type effect is not considered to be a report). Ground-based or hand-held devices that produce a cloud of smoke as their sole pyrotechnic effect are also included in this category.

Types of devices in this category include:

- a. Cylindrical Fountain
 - b. Cone Fountain
 - c. Illuminating Torch
 - d. Wheel
 - e. Ground Spinner
 - f. Flitter Sparkler
 - g. Toy Smoke Device
 - h. Wire Sparkler/Dipped Stick
2. Novelties (de-regulated by the United States Department of Transportation):
Party Popper, Snapper, Toy Smoke Devices, Snakes, Glow Worms
 3. Multi-tube Items: This is a construction requirement for a single item that uses a combination of any or all of the above permissible items. This does NOT allow multi-tube aerial items.

CONSUMER FIREWORKS NOT APPROVED FOR SALE IN ARIZONA

1. Sky Rockets and Bottle Rockets
2. Missile-Type Rocket
3. Helicopter, Aerial Spinner
4. Roman Candle
5. Mine and Shell Devices
6. Aerial Shell Kit, Reloadable Tube
7. Firecracker
8. Chaser - the device travels along the ground upon ignition, and whistling effect, or other noise is often produced.

Reference Document 2001 Version of APA 87-1.

Copies may be obtained from American Pyrotechnic Association - www.americanpyro.com