

Ordinance No. 752

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PRESCOTT VALLEY, A MUNICIPAL CORPORATION OF ARIZONA, AMENDING SECTION 10-01-030 “FIREWORKS” IN ARTICLE 10-01 “OFFENSES” IN CHAPTER 10 “OFFENSES” OF THE TOWN CODE TO PROVIDE FOR THE SALE WITHIN THE TOWN OF “PERMISSIBLE CONSUMER FIREWORKS” AS DEFINED BY A.R.S. §36-1601, SUBJECT TO CERTAIN RESTRICTIONS AND LIMITATIONS, BUT CONTINUING TO PROHIBIT THE USE OF SAID FIREWORKS WITHIN THE TOWN; PROVIDING THAT ALL OTHER CHAPTERS, ARTICLES, AND SECTIONS OF THE TOWN CODE, NOT HEREIN AMENDED, SHALL REMAIN IN FULL FORCE AND EFFECT; PROVIDING THAT, IF ANY PROVISION IN THIS ORDINANCE IS HELD INVALID BY A COURT OF COMPETENT JURISDICTION, THE REMAINING PROVISIONS SHALL NOT BE AFFECTED BUT SHALL CONTINUE IN FULL FORCE AND EFFECT; AND PROVIDING THAT THIS ORDINANCE SHALL BE EFFECTIVE THIRTY (30) DAYS AFTER ITS PASSAGE AND APPROVAL ACCORDING TO LAW.

WHEREAS, by Ordinance No. 8 (dated June 28, 1979) the Town Council prohibited the possession and use of fireworks within the Town without a permit in writing from the Chief of Police; and

WHEREAS, the Legislature recently amended the state’s underlying authority for municipal regulation of fireworks [A.R.S. §§36-1601 *et seq.*] to provide for the sale of certain “permissible consumer fireworks” in Arizona (subject to certain restrictions and limitations), while continuing to authorize prohibition of the use of such fireworks; and

WHEREAS, the Town Council continues to be concerned about the fire hazards posed by use of fireworks within the Town;

WHEREAS, the Central Yavapai Fire District Fire Marshal has recommended against permitting use of “permissible consumer fireworks” within the District area because of the inherent fire risks; and

WHEREAS, in light of the Fire Marshal’s recommendations, the dry conditions in this area, and the risks to life and property posed by wildfires, the Council deems it necessary for the health, safety and welfare of the Town and its residents to continue to prohibit use of “permissible consumer fireworks” within the Town;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PRESCOTT VALLEY, ARIZONA AS FOLLOWS:

SECTION ONE. That Section 10-01-030 “Fireworks” in Article 10-01 “OFFENSES” in Chapter 10 “OFFENSES” of the Town Code of the Town of Prescott Valley, Arizona, be hereby amended to read as follows:

10-01-030 Fireworks.

~~It is unlawful for any person within the limits of the Town to ignite, use or possess fireworks without a permit in writing from the Chief of Police.~~

A. Definitions. In this Section, unless the context otherwise requires:

1. *Consumer firework* means those fireworks defined by A.R.S. §36-1601, as amended.
2. *Display firework* means those fireworks defined by A.R.S. §36-1601, as amended.
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 A.R.S. §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 A.R.S. §36-1601.
5. *Permissible consumer fireworks* means those fireworks as defined by A.R.S. §36-1601 that may be sold within the Town even though use of those items within the Town is prohibited.
6. *Supervised public display* means a monitored performance of display fireworks open to the public and authorized by the Fire Marshal after appropriate inspection(s) to confirm that all safety precautions deemed necessary and prudent by the Fire Marshal for safe deployment of the display are in place.

B. Possession of Fireworks Prohibited; Exceptions.

No person shall possess fireworks within the Town except as follows:

1. Persons of suitable age and discretion may possess novelty items.
2. Persons at least sixteen (16) years of age or older may possess permissible consumer fireworks.

C. Use of Fireworks Prohibited; Exceptions.

The use, discharge or ignition of fireworks within the Town is prohibited except as follows:

1. Novelty items may be used within the Town with appropriate caution and supervision by a responsible adult.
2. Supervised displays of fireworks by a licensed fireworks contractor and shooter may be used within the Town after proper inspection and authorization by the Fire Marshal or designee. Such displays shall be of a character and so located, discharged or fired, as to not endanger persons, animals, or property. The Fire Marshal or designee has authority to impose conditions on any such display and to decline to authorize, or revoke authorization, of any public display of fireworks during time periods when High Fire Danger Warnings are in effect. Failure to comply with the requirements issued by the Fire Marshal for a public display of fireworks is punishable as provided in this Section and the applicable rules and regulations of the State Fire Marshal.

D. Sale of Fireworks Prohibited; Exceptions.

1. Sale of fireworks within the Town is prohibited with the exception of novelty items and permissible consumer fireworks which may be sold by a retailer pursuant to A.R.S. §§36-1601 et. seq., as amended; provided, however, that no person shall sell, permit or authorize the sale of permissible consumer fireworks to a person who is under sixteen (16) years of age or to any person or entity prior to the effective date of A.R.S. §§36-1601 et. seq., as amended by Laws 2010, Ch. 286, §§1-6. Sale of permissible consumer fireworks and novelty items shall conform to the requirements of the Town Code, including the provisions of Chapter 13 and Articles 8-02 and 8-07, as applicable.
2. All sales of permissible consumer fireworks shall conform to the requirements of state law and to the rules and regulations adopted by the State Fire Marshal pursuant to A.R.S. §36-1609.
3. Pursuant to A.R.S. §36-1609, all sales of permissible consumer fireworks shall also conform to the rules relating to the storage and retail sales of permissible consumer fireworks set forth in the National Fire Protection Association, Rule No. 1124 “Manufacture, Transportation, Storage and Retail Sales of Fireworks and Pyrotechnic Articles”, 2006 edition. Those rules require, among other things, that:
 - (a) All persons desiring to sell permissible consumer fireworks must obtain a permit from the Central Yavapai Fire District Fire Marshall for the construction, erection or operation of any permanent building or structure or any temporary structure such as a stand, tent or canopy to be used for the purpose of the retail

display, sales or storage of permissible consumer fireworks to the public, in addition to any other permit required by law.

(b) No smoking shall be permitted within fifty (50) feet of the permissible consumer fireworks retail sales area.

(c) Only those permissible consumer fireworks with covered fuses shall be permitted for sale to the public. A permissible consumer fireworks device shall be considered to have a covered fuse if the device is contained within a packaged arrangement, container, or wrapper that is arranged and configured so that the fuse of the device cannot be touched directly by a person handling the device without having to puncture or tear the packaging or wrapper or unseal or break open a package or container within which the permissible consumer fireworks are contained.

(d) All personnel handling permissible consumer fireworks shall receive safety training related to the performance of their duties. Such training may include any training required by OSHA for employment in the operation of a permissible consumer fireworks retail sales or storage facility.

(e) Any person selling permissible consumer fireworks shall not knowingly sell permissible consumer fireworks to any person who is, or is suspected to be, under the influence of alcohol or controlled substances.

(f) No motor vehicle, trailer or storage container used for the storage of consumer fireworks shall be parked/placed within ten (10) feet of a permissible consumer fireworks retail sales facility except when delivering, loading or unloading permissible consumer fireworks or other merchandise and materials used, stored or displayed for sale in the facility.

E. Labeling/Packaging of Fireworks for Sale.

1. Labeling of all permissible consumer fireworks for sale within the Town shall comply with the labeling regulations prescribed in 49 Code of Federal Regulations parts 172 and 173, 16 Code of Federal Regulations parts 1500 and 1507, and the American Pyrotechnics Association, Standard 87-1 "Standard for Construction and Approval for Transportation of Fireworks, Novelties and Theatrical Pyrotechnics," December 1, 2001 version.

2. All multi-assortment packages for sale within the Town shall contain only permissible consumer fireworks and/or novelty items. Labeling for multi-

assortment packages shall conform to the requirements of 16 Code of Federal Regulations, part 1500.83.

F. Signage Required for Sale of Fireworks.

1. Prior to the sale of permissible consumer fireworks, seller shall prominently display signs stating the following:
 - (a) The use of fireworks within the Town (except novelty items defined by Town Code Subsection 10-01-030(A)) is strictly prohibited and is punishable as a class 3 misdemeanor;
 - (b) Consumer fireworks authorized for sale under state law may not be sold to persons under the age of sixteen (16); and
 - (c) Fireworks – No Smoking
2. The signs required in paragraphs (a) and (b) above shall be placed at each cash register and in each area where fireworks are displayed for sale and shall conform to the rules and regulations of the State Fire Marshal adopted pursuant to A.R.S. §36-1609. The required verbiage and sign specifications shall be posted on the Town’s website and shall be available at the Town Clerk’s office.
3. The sign required in paragraph (c) above shall contain letters that are at least two (2) inches in height on a contrasting background and shall be conspicuously posted at each entrance of a permissible consumer fireworks retail sales facility or within ten (10) feet of every aisle directly serving the permissible consumer fireworks retail sales area in a store pursuant to National Fire Protection Association, Rule No. 1124, Subsection 7.3.11.2.

G. Enforcement.

Every violation of this Section is punishable as a class 3 misdemeanor and as otherwise provided by Town Code Article 1-08 and other applicable law.

H. Emergency Response; Liability.

1. A person who uses, discharges or ignites permissible consumer 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 or found responsible for a violation(s) of this Section is prima facie evidence of liability under this Subsection.

2. The expenses of an emergency response include all reasonable costs directly incurred by public agencies, for-profit entities or not-for-profit entities that make an appropriate emergency response to the incident. Such expenses constitute a debt against the person liable for those expenses pursuant to paragraph 1 of this Subsection and may be collected proportionately by the responding agencies/entities that incurred the expenses. A person's liability for the expense of an emergency response shall not exceed \$10,000 for a single incident. The liability imposed under this Subsection is in addition to, and not in limitation of, any other liability that may be imposed.

(Ord. No. 8, Enacted, 06/28/79; Ord. No. 178, Ren&Amd, 05/26/88, 11-01-050; Ord. No. 752, Amended, 10/28/10)

SECTION TWO. That all other Chapters, Articles, and Sections of the Town Code, not herein amended, shall remain in full force and effect.

SECTION THREE. That, if any provision of this Ordinance is held invalid by a Court of competent jurisdiction, the remaining provisions shall not be affected but shall continue in full force and effect.

SECTION FOUR. That this Ordinance shall be effective thirty (30) days after its passage and approval according to law.

PASSED AND APPROVED by the Mayor and Common Council of the Town of Prescott Valley, Arizona, this 28th day of October, 2010.

Harvey C. Skoog, Mayor

ATTEST:

Diane Russell, Town Clerk
APPROVED AS TO FORM:

Ivan Legler, Town Attorney