



CITY OF SOUTH TUCSON ORDINANCE NO: 11-01

AN ORDINANCE OF THE CITY OF SOUTH TUCSON, PIMA COUNTY, ARIZONA, CREATING, AMENDING AND ADOPTING CITY CODE CHAPTER 13, ARTICLE 1, §§ 13-1 THROUGH 13-7, FIREWORKS RULES AND REGULATIONS, BY REFERENCE.

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

WHEREAS, the Mayor and Council desire to prevent fire hazards which threaten the safety of individuals and 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 danger of fire with the use of consumer fireworks in the community that can cause significant harm to the community and its residents.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF SOUTH TUCSON, PIMA COUNTY, ARIZONA, AS FOLLOWS:

Section 1: Adoption by Reference, A.R.S. § 9-801.

That a certain document, three (3) copies of which is on file in the office of the City Clerk of the City of South Tucson, being marked and designated as **Chapter 13, Article 1, §§ 13-1 through 13-7** of the South Tucson City Code, be and is hereby adopted, by reference, as "**Fireworks Rules and Regulations**" governing all general and miscellaneous regulations; providing for permits; and providing for enforcement.

Section 2: Revisions, Additions, Changes and Renumbering.

That the following Chapter and Sections are created, added, changed and renumbered:

Chapter 13, Article 1, is created and numbered as §§13-1 to 13-7

Section 3: All ordinances or parts of ordinances, in conflict herewith, are hereby repealed.

Section 4: That if any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance, the City of South Tucson, Pima County, Arizona hereby declares that it would have passed this ordinance, and each section, subsection, clause or phrase, irrespective of the fact that any sections, subsections, sentences, clauses and phrases be declared unconstitutional.

Section 5: That nothing in this Ordinance shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of actions acquired or existing, under any act or ordinance hereby repealed as cited in this ordinance; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this ordinance.

Section 6: That the various City Officers and Official(s) and/or any other duly appointed deputy are authorized and directed to perform all acts necessary or desirable to give effect and to carry out all the duties authorized under this Ordinance and the City Code.

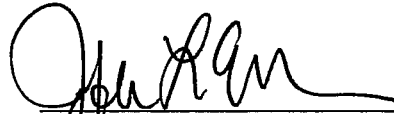
Section 7: That where this Ordinance conflicts or overlaps with any other Ordinance, Code provision or regulation, whichever imposes the more stringent restrictions for the health, safety and welfare of the public shall prevail.

Section 8: The City Clerk is ordered and directed to cause this ordinance to be published.

Section 9: The City Clerk shall attest to the adoption of this Ordinance and cause same to be maintained as a public record as required by law. This Ordinance shall become effective upon passage and adoption and publication as required by law.

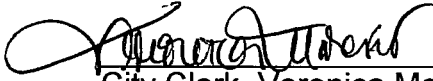
PASSED AND ADOPTED by the Mayor and Council of the City of South Tucson, Pima County, Arizona, this 20th day of June, 2011.

APPROVED/EXECUTED



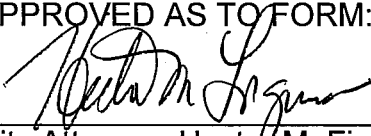
MAYOR, JENNIFER ECKSTROM

ATTEST:



City Clerk, Veronica Moreno

APPROVED AS TO FORM:



City Attorney, Hector M. Figueroa

CHAPTER 13, ARTICLE I: GENERAL PROVISIONS

Purpose and scope: Article 1, §§ 13-1 to 13-7

The purpose of this Amendment to Chapter 13 is to set forth the Rules and Regulations governing Fireworks and to promote and preserve the health, safety and welfare of the citizens of South Tucson, Arizona.

Chapter 13 of the South Tucson Code hereby is amended by creating and adding to said Chapter 13 amendments to Article I. IN GENERAL, §§ 13-1 – 13-7 previously Reserved.

§ 13-1: **FIREWORKS RULES AND REGULATIONS:**

Except as otherwise provided in Title 36, Chapter 13, Article 1, A.R.S. § 36-1602, it is unlawful to sell, offer or expose for sale, use, explode or possess any fireworks. This statute shall not be construed to prohibit or restrict the manufacture or possession of any fireworks. These provisions are adopted for the purpose of regulating the use of fireworks as allowed under the provisions of the law.

Pursuant to A.R.S. § 36-1602, each governing body may adopt reasonable rules and regulations for granting permits for supervised public displays of fireworks within its jurisdiction, by municipalities, fair associations, amusement parks and other organizations and groups.

Pursuant to A.R.S. § 36-1605, Article 1 shall not be construed to prohibit the sale or use of fireworks for permitted uses enumerated therein or as may be regulated by this section.

Pursuant to A.R.S. § 36-1606, the sale and use of *permissible consumer fireworks* are of statewide concern. The regulation of permissible consumer fireworks pursuant to *Article 1* and their use is not subject to further regulation by a governing body, except that an incorporated city may regulate the use of permissible consumer fireworks within its corporate limits during times when there is reasonable risk of wildfires in the immediate county. Article 1 does not prohibit the imposition, by ordinance, of further regulations and prohibitions upon the sale, use and possession of fireworks other than permissible consumer fireworks by a governing body. A governing body shall not permit or authorize the sale, use or possession of any fireworks in violation of Article 1.

A. DEFINITIONS: Unless the context otherwise requires, the following words, terms and phrases, when used in this provision, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) *City permit* means a permit issued by the fire chief.

(2) *Consumer fireworks* means small firework devices that contain restricted amounts of pyrotechnic composition designed primarily to produce visible or audible effects by combustion and that comply with the construction, chemical composition and labeling regulations prescribed in 49 Code of Federal Regulations part 172 and 173, regulations of the United States consumer product safety commission as prescribed in 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.

(3) *Display fireworks* means large firework devices that are explosive materials intended for use in fireworks displays and designed to produce visible or audible effects by combustion, deflagration or detonation as prescribed by 49 Code of Federal Regulations part 172, regulations of the United States consumer product safety commission as prescribed in 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.

(4) *Expenses of an emergency response* means reasonable costs directly incurred by public agencies including but not limited to the city fire, police and public works departments or other first responders including but not limited to private ambulance companies that make an appropriate emergency response to an incident.

(5) *Fire chief* means the fire chief or that officer's designee.

(6) *Fireworks*:

(a) 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 or display firework.

(b) Does not include:

(i) Toy pistols, toy canes, toy guns or other devices in which paper caps containing not more than twenty-five hundredths grains of explosive compound are used if constructed so that the hand cannot come in contact with the cap when in place for the explosion.

(ii) Toy pistol paper caps that contain less than twenty-hundredths grains of explosive mixture, or fixed ammunition or primers therefore.

(iii) Federally deregulated novelty items that are known as snappers, snap caps, party poppers, glow worms, snakes, toy smoke devices and sparklers.

(7) *Permissible consumer fireworks*:

(a) Means the following types of consumer fireworks as defined by the American pyrotechnics association standard 87-1, standard for construction and approval for transportation of fireworks, novelties and theatrical pyrotechnics, December 1, 2001 version:

- (i) Ground and handheld sparkling devices.
- (ii) Cylindrical fountains.
- (iii) Cone fountains.
- (iv) Illuminating torches.
- (v) Wheels.
- (vi) Ground spinners.
- (vii) Flitter sparklers.
- (viii) Toy smoke devices.
- (ix) Wire sparklers or dipped sticks.
- (x) Multiple tube fireworks devices and pyrotechnic articles.

(b) Does not include 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, including, for example, firework items commonly known as bottle rockets, sky rockets, missile-type rockets, helicopters, torpedoes, roman candles and jumping jacks.

(8) *Police chief* means the police chief or that officer's designee.

(9) *Supervised public display* means a monitored performance of display fireworks open to the public and authorized by city permit.

(Code 2011, Ord. No. 11-01, § 1, 06-20-11)

Cross reference: (Code 1976, Chapter 13, §§ 13-1 – 13-15, Reserved)

State law reference – Definitions, A.R.S. § 36-1601

State law reference: Unlawful sale, offer to expose or sale, use, explode or possess any fireworks, A.R.S. § 36-1602.

State law reference: Authority to adopt reasonable rules and regulations by governing body, A.R.S. § 36-1602.

State law reference: Article 1 construction on the sale or use of permitted uses, A.R.S. § 36-1605.

State law reference: Permissible consumer fireworks are of statewide concern, A.R.S. § 36-1606.

Federal Regulations reference: Restricted amounts of pyrotechnics, 49 CFR, parts 172 and 173.

Federal Regulations reference: US Consumer Product Safety Commission, 16 CFR parts 1500 and 1507.

Sec. 13-2: Use of fireworks, and sale of fireworks other than permissible consumer fireworks, prohibited within the city; exceptions; penalties for violation.

(A) Except as specifically permitted under paragraph (D) of this subsection, the use of fireworks (including any display firework, consumer firework, permissible consumer firework, 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) within the city is prohibited.

(B) The sale of fireworks, other than permissible consumer fireworks, within the city is prohibited.

(C) Violation of the provisions of paragraphs (A) or (B) of this subsection is a civil infraction, except that any such violation that results in damage to property or injury to any person or animal is a class 1 misdemeanor and, upon conviction, in addition to any other penalty or fine, restitution shall be ordered made by the defendant to the victim. This remedy shall not abridge any civil cause of action by the victim.

(D) Nothing in this section shall be construed to prohibit:

(1) The use of items defined to not be fireworks under subsection (a)(6)(b) above and A.R.S. § 36-1601(3)(b); or

(2) The occurrence of a supervised public display of fireworks authorized by city permit issued by the fire chief. The fire chief may charge a fee for this permit to cover administrative costs, including the costs of any necessary inspections.

(Code 2011, Ord. No. 11-01, § 1, 06-20-11)

Cross reference: (Code 1976, Chapter 13, §§ 13-1 – 13-15, Reserved)

State law reference: Items defined to not be fireworks under subsection (a)(6)(b) above and A.R.S. § 36-1601(3)(b).

State law reference: Authority to adopt reasonable rules and regulations by governing body, A.R.S. § 36-1602.

Sec. 13-3: Sale of permissible consumer fireworks; permits required; inspections; fees.

(A) No person shall sell or allow the sale of permissible consumer fireworks to a person who is under sixteen (16) years of age.

(B) No person shall sell or allow the sale of permissible consumer fireworks in conflict with state law.

(C) A person who desires to sell permissible consumer fireworks to the public shall first obtain a city permit allowing all of the activities listed under § 7.3.2(1)(a) and (b) and (2) of the National Fire Protection Association *Code for the Manufacture, Transportation, Storage and Retail Sales of Fireworks and Pyrotechnic Articles* (NFPA 1124), 2006 Edition.

(D) In addition to any other remedies or sanctions, failure to comply with paragraph (C) of this subsection is a civil infraction.

(E) A person who desires to sell permissible consumer fireworks to the public is subject to inspection by the fire chief to assure:

(1) That the person has obtained the permit required under paragraph (c) of this subsection and the sign requirements of subsection (d) of this section.

(2) That the person is in compliance with NFPA 1124, 2006 Edition, as well as with any other rules adopted by the State Fire Marshal pursuant to A.R.S. § 36-1609 and Title 41, Chapter 6 and relating to the storage or retail sale of consumer fireworks.

(F) The fire chief may charge a fee for the permit required under paragraph (c) of this subsection to cover the administrative costs of the permit system, including the inspections carried out under paragraph (e) of this subsection.

(G) Three (3) copies of the fee schedule for permits, and of any amendments to it, shall be filed in the office of the city clerk and made public records and shall be available for public use and inspection during regular office hours, and shall be of full force and effect immediately upon such filing.

(Code 2011, Ord. No. 11-01, § 1, 06-20-11)

Cross reference: (Code 1976, Chapter 13, §§ 13-1 – 13-15, Reserved)

State law reference: Rules adopted by the State Fire Marshal pursuant to A.R.S. § 36-1609.

State law reference: Person desiring to sell permissible consumer fireworks to the public shall first obtain a city permit, NFPA 1124, 2006 Edition.

State law reference: Authority to adopt reasonable rules and regulations by governing body, A.R.S. § 36-1602.

Sec. 13-4: Posting of signs by persons engaged in the sale of permissible consumer fireworks; penalty.

(A) Prior to the sale of permissible consumer fireworks, every person engaged in such sales shall prominently display signs that state the following:

(1) The use of fireworks within the City is prohibited.

(2) You must be sixteen (16) years old to buy fireworks.

(B) The signs required under paragraph (a) of this subsection shall be posted in a conspicuous place in each area where fireworks are displayed and at each cash register where fireworks are sold; shall be not less than eleven (11) inches by fourteen (14) inches in size; shall be in both Spanish and English; and shall use easily legible print.

(C) In addition to any other remedies or sanctions, failure to comply with paragraphs (A) and (B) of this subsection is a civil infraction.

(Code 2011, Ord. No. 11-01, § 1, 06-20-11)

Cross reference: (Code 1976, Chapter 13, §§ 13-1 – 13-15, Reserved)

State law reference – Fireworks; A.R.S. §§ 36-1601; 36-1602; 36-1605; and 1606

Sec. 13-5: Authority to enforce violations of this section designated as civil infractions.

(A) The fire chief or the police chief may enforce violations of this section.

Sec. 13-6: Violation of this section a civil infraction, except where specifically provided otherwise.

(A) Any violation of this section and penalties are controlled by state statute. The Mayor and Council may from time to time establish specific local penalty fees and fines by Resolution without having to amend this code section.

(Code 2011, Ord. No. 11-01, § 1, 06-20-11)

Cross reference: (Code 1976, Chapter 13, §§ 13-1 – 13-15, Reserved)

State law reference – Fireworks; A.R.S. §§ 36-1601; 36-1602; 36-1605; and 1606

Sec. 13-7: Liability for emergency responses required by use of fireworks, or by violations of this section.

(A) A person who uses any fireworks, including display fireworks, consumer fireworks, 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 strictly liable for the expenses of any emergency response that is dispatched as a result of such use. The fact that a person is convicted or found responsible for a violation of this section is prima facie evidence of liability under this subsection.

(B) A person who violates any provision of this section is strictly liable for the expenses of any emergency response that is dispatched as a result of such violation. The fact that a person is convicted or found responsible for a violation of this section is prima facie evidence of liability under this subsection.

(C) The expenses of an emergency response are a charge against the person liable for those expenses pursuant to paragraphs (A) or (B) of this subsection. The charge constitutes a debt of that person and may be collected proportionately by the public

agencies, or other first responders that incurred the expenses. The liability imposed under this subsection is in addition to and not in limitation of any other liability that may be imposed.

(Code 2011, Ord. No. 11-01, § 1, 06-20-11)

Cross reference: (Code 1976, Chapter 13, §§ 13-1 – 13-15, Reserved)

State law reference – Fireworks; A.R.S. §§ 36-1601; 36-1602; 36-1605; and 1606