

ORDINANCE NO. 10-05

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, AMENDING THE TOWN CODE, CHAPTER 11, OFFENSES, BY ADDING REGULATIONS RELATED TO THE USE OF FIREWORKS.

WHEREAS, the Mayor and Council of the Town of Fountain Hills (the “Town Council”) deem it necessary to adopt certain regulations to protect, enhance and promote the health, safety and welfare of the Town of Fountain Hills (the “Town”) and its residents; and

WHEREAS, the Town Council desires 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 conditions existing in large areas of Fountain Hills, the ever-present risk of wildfires and the challenging terrain within the corporate limits of the Town, the danger of fire associated with the use of consumer fireworks is enhanced, causing the possibility of serious fire damage to the community and injury to its residents; and

WHEREAS, the Town Council desires to reduce the threat of harm to the Community by banning the use of Fireworks within its corporate limits.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, as follows:

SECTION 1. The foregoing recitals are incorporated as if fully set forth herein.

SECTION 2. The Fountain Hills Town Code, Chapter 11 (Offenses), Article 11-1 (Offenses), Section 11-1-4 (Explosives) is hereby deleted in its entirety and replaced with the following:

Section 11-1-4 Fireworks

- A. **Definitions.** The following words, terms and phrases, when used in this Section, 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 as such by ARIZ. REV. STAT. § 36-1601, as amended.
 2. **“Display firework”** means those fireworks defined as such by ARIZ. REV. STAT. § 36-1601, as amended.
 3. **“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.

4. **“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, including a Consumer Firework, Display Firework or Permissible Consumer Firework as defined by ARIZ. REV. STAT. § 36-1601, as amended.
5. **“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 ARIZ. REV. STAT. § 36-1601, as amended.
6. **“Permissible consumer fireworks”** means those fireworks defined as such by ARIZ. REV. STAT. § 36-1601, as amended, that may be sold within the Town, even where the use of those items has been prohibited.
7. **“Reasonable costs”** includes 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.
8. **“Supervised public display”** means a monitored performance of Display Fireworks open to the public and authorized by permit by the Fire Chief or his designee.

B. Use of Fireworks prohibited; exceptions.

1. The use, discharge or ignition of Fireworks within the Town is prohibited.
2. Nothing in this Section shall be construed to prohibit the use, discharge or ignition of Novelty Items or the occurrence of a Supervised Public Display of Fireworks.
3. Permits may be granted by the Fire Chief or authorized designee for conducting a properly Supervised Public Display of Fireworks. Every such Supervised Public Display of Fireworks shall be of such character and so located, discharged or fired, only after proper inspection and in a manner that does not endanger persons, animals or property. A permit shall not be issued, and may be revoked, during time periods of High Fire Danger warnings. The Fire Chief or authorized designee has authority to impose conditions on any permits granted.
4. Failure to comply with any permit requirements issued by the Fire Chief or authorized designee is a civil offense punishable by a base civil fine of Seven Hundred and Fifty Dollars (\$750) for each violation.

C. Sale of Fireworks.

1. No person shall sell or permit or authorize the sale of Permissible Consumer Fireworks to a person who is under sixteen (16) years of age.

2. No person shall sell or permit or authorize the sale of Permissible Consumer Fireworks in conflict with State law.

D. Posting of signs by persons engaged in the sale of Fireworks; civil penalty.

1. Prior to the sale of Permissible Consumer Fireworks, every person engaged in such sales shall prominently display signs indicating the following:
 - a. The use of Fireworks, including Permissible Consumer Fireworks except novelty Items as defined by Town Code, Section 11-1-4, is prohibited within the corporate limits of the Town.
 - b. Consumer Fireworks authorized for sale under State law may not be sold to persons under the age of sixteen (16).
2. Signs required under this Section shall be placed at each cash register and in each area where Fireworks are displayed for sale.
3. The Fire Chief or authorized 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's website and filed with the Town Clerk's office.
4. Failure to comply with Subsections 11-1-4(D)(1) or (2) of this Section is a civil offense punishable by a base fine of up to seven hundred fifty dollars (\$750.00).

E. Authority to enforce violations of this Section; Means of enforcement.

1. The Fire Chief or authorized designee, a Maricopa County Sheriff Deputy, a Town Code Enforcement Officer or the Town Prosecutor may issue civil complaints to enforce violations of this Section designated as civil offenses.
2. Any person authorized pursuant to this Section to issue a civil complaint may also issue a notice of violation specifying actions to be taken and the time in which they are to be taken to avoid issuance of a civil or criminal complaint.
3. A Maricopa County Sheriff Deputy or the Town Prosecutor may issue criminal complaints to enforce this Section.

F. Liability for emergency responses related to use of Fireworks.

1. 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 or found responsible for a violation(s) of this Section is prima facie evidence of liability under this Section.

2. The expenses of an emergency response are a charge against the person liable for those expenses pursuant to Subsection 11-1-4(F)(1) of this Section. The charge constitutes a debt of that person and may be collected proportionately by the public agencies, for-profit entities or not-for-profit entities that incurred the expenses. The liability imposed under this Section is in addition to and not in limitation of any other liability that may be imposed.

G. Penalty. Unless otherwise specifically set forth in this Section, the penalty for violating any prohibition or requirement imposed by this Section is a class three misdemeanor.

PASSED AND ADOPTED by the Mayor and Council of the Town of Fountain Hills, Arizona, October 21, 2010

FOR THE TOWN OF FOUNTAIN HILLS:

ATTESTED TO:



Jay T. Schlum, Mayor




Bevelyn J. Bender, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:



Richard L. Davis, Town Manager



Andrew J. McGuire, Town Attorney