



Town of Huachuca City

The Sunset City

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ORDINANCE NO. 18-10

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF HUACHUCA CITY, COCHISE COUNTY, ARIZONA, AMENDING THE TOWN CODE TITLE 9 "PUBLIC PEACE, MORALS AND WELFARE" CHAPTER 9.05 "GENERAL OFFENSES" SECTION 9.05.050 "EXPLOSIVES" BY DELETING THE CURRENT LANGUAGE IN ITS ENTIRETY, RENAMING THE SECTION "FIREWORKS," AND ADOPTING NEW PROVISIONS FOR REGULATING FIREWORKS.

WHEREAS, the Town Council of the Town of Huachuca City has adopted by Resolution No. 84-002 a code known as the Town Code of the Town of Huachuca City, Arizona [the "Code"], and has amended and republished the Code from time to time, as authorized by A.R.S. 9-240 (B) (28); 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 properties; and

WHEREAS, due to the exceptionally dry and desert-like conditions, high winds and risk of wildfires, in and around the Town, there is a danger of fire with the use of consumer fireworks in the Town that can cause significant harm to the Town and its residents; and

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 Huachuca City and its residents, and

WHEREAS, as required by the Code, section 2.25.040, this Ordinance was first read at a public meeting of the Town Council on April 12, 2018, and at a subsequent meeting on April 26, 2018.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Town of Huachuca City, as follows:

SECTION 1. The Code, Section 9.05.050 "EXPLOSIVES" is amended by renaming the Section "Fireworks."

SECTION 2. The text of Section 9.05.050 is deleted in its entirety and is replaced with the following provisions:

9.05.050 Fireworks.

(A) **Definitions.** 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, and display firework as defined by Arizona Revised Statute Section 36-1601.
4. *NFPA 1124* means the National Fire Protection Association Code for the Manufacture, Transportation, Storage and Retail Sales of Fireworks and Pyrotechnic Articles as defined by Arizona Revised Statute Section 36-1601.
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 Arizona Revised Statute 36-1601.
6. *Permissible consumer fireworks* means consumer fireworks defined by Arizona Revised Statute Section 36-1601 that may be sold within the [City/Town].
7. *Supervised public display* means a monitored performance of display fireworks open to the public and authorized by permit by the Police or Fire Chief or his designee.

(B) **Prohibitions: Exceptions.** The use, discharge or ignition of fireworks within the Town is prohibited on all public property including but not limited to, public buildings, parking lots, public parks, public schools, streets, and public rights of way, except as authorized below.

1. 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.
2. Permits may be granted by the Police or Fire Chief or designee for conducting a properly supervised public display of fireworks. Every such 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 Police or Fire Chief has authority to impose conditions on any permits granted.

3. Failure to comply with any permit requirements issued by the Police or Fire Chief or designee is a civil offense for each violation, subject to a \$1,000 fine.

(C) Limited Use of Permissible Consumer Fireworks. The use, discharge, or ignition of permissible consumer fireworks within the Town may be used from June 24 through July 6 and December 24 through January 3 of each year, except when a federal or state agency implements a stage one or higher restriction on these dates.

(D) 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 years of age.
2. No person shall sell or permit or authorize the sale of permissible consumer fireworks in conflict with state law, this code, or NFPA 1124.
3. No person shall sell or permit or authorize the sale of permissible consumer fireworks, except from May 20 through July 6 and December 10 through January 3 of each year. The sale of permissible consumer fireworks shall be prohibited from May 20 through July 6 and December 10 through January 3 when a federal or state agency implements a stage one or higher restriction during these dates.

(E) 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:

State of Arizona

Consumer Fireworks Regulations

Arizona Revised Statutes § 36-1601, et al.

The use of permissible consumer fireworks as defined under state law is allowed:

June 24 - July 6 and December 24 - January 3

The sale of permissible consumer fireworks as defined under state law is allowed:

May 20 - July 6 and December 10 - January 3

All other fireworks are prohibited, except as authorized by local fire department permit.

The sale and use of novelties known as snappers (pop-its), party poppers, glow worms, snakes, toy smoke devices and sparklers are permitted at all times.

Permissible consumer fireworks may not be sold to persons under sixteen years of age.

Check with your local fire department for additional regulations and dates before using.

2. Signs required under this section may be placed at any retail sales display of permissible consumer fireworks.
3. The sign shall be eight and one-half inches by eleven inches in size, on cardstock paper, in landscape orientation, and displayed on a contrasting background. A model sign shall be posted on Town's website and filed with the Clerk's office.
4. Failure to comply with subparts (1), (2), (3) of this Subsection is a civil offense punishable by fine of \$1,000.00.

(F) Authority to enforce violations of this Section: means of enforcement.

1. The Police or Fire Chief or designee, a Town police officer or the Town Attorney 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 complaint.

(G) Liability for emergency responses related to use of fireworks: definitions.

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 (G)(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 person's liability for the expense of an emergency response shall not exceed \$20,000.00 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.
3. For Purposes of this Subsection (G).
 - i. "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.
 - ii. "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.

(H) Remedies. The remedies in this Section are cumulative and nonexclusive. In the event a defendant fails to comply with any civil enforcement action commenced under this section, the Town may file a criminal charge against the defendant for violation of this Section, pursuant to Town Code Section 1.05.110. The Town Attorney may also elect to file for injunctive relief, or pursue such other relief as may be available.

SECTION 3. Criminal Penalty - As provided in the Code, Section 1.05.110, any person found guilty of violating any provision of the Code, including this Ordinance, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not to exceed one thousand dollars or by imprisonment for a period of not to exceed six months, or by both such fine and imprisonment. Each day that a violation continues shall be a separate offense punishable as hereinabove described.

SECTION 4. If any section, subsection or portion of this Ordinance is for any reason held to be invalid or unenforceable by the decision of a court of competent jurisdiction, such decision shall not affect the validity or enforceability of the remaining portions hereof.

SECTION 5. The Town Clerk is hereby directed, pursuant to the Code, sections 2.25.080 and 2.25.090, to post this Ordinance in three or more public places within the Town, and to publish this Ordinance as required by A.R.S. 9-812 and 39-204.

PASSED AND ADOPTED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF HUACHUCA CITY, COCHISE COUNTY, ARIZONA, THIS 26th DAY OF APRIL, 2018.


Ken Taylor, Mayor

ATTEST:


Jennifer Fuller, Town Clerk

Approved as to Form:


Thomas Benavidez, Town Attorney