

(Published in the Topeka Metro News December 19, 2011)

ORDINANCE NO. 19678

AN ORDINANCE introduced by Councilmembers Karen Hiller, Sylvia Ortiz and Richard Harmon, sitting as the Public Health and Safety Committee, amending City of Topeka Code § 8.35.070 concerning fireworks and specifically repealing said original section.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF TOPEKA:

Section 1. That section 8.35.070, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Fireworks.

(a) Definitions.

(1) ~~“Consumer fireworks” shall mean any small firework devices designed to produce visible effects by combustion and are classified as consumer fireworks UN0336, and UN0337 by the U.S. Department of Transportation at 49 CFR 172.101, and 27 CFR 555.11 as may be amended. Metal sparklers are specifically excluded from this definition of consumer fireworks.~~ “Fireworks” shall mean any composition or device for the purpose of producing a visible or an audible effect for entertainment purposes by combustion, deflagration, or detonation, that meets the definition of Consumer Fireworks or Display Fireworks as set forth in this Code. [NFPA 1124, 2006]

(2) ~~“Display fireworks” shall mean large fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation and are classified as display fireworks UN0333, UN0334 or UN0335 by the U.S. Department of Transportation at 49 CFR 172.101, and 27 CFR 555.11.~~ “Consumer fireworks” shall mean any small firework devices containing

30 restricted amounts of pyrotechnic composition, designed primarily to produce
31 visible or audible effects by combustion that comply with the construction,
32 chemical composition, and labeling regulations of the U.S. Consumer Product
33 Safety Commission (CPSC), as set forth in CPSC 16 CFR 1500 and 1507, 49
34 CFR 172, and APA Standard 87-1, Standard for the Construction and Approval
35 for Transportation of Fireworks, Novelties and Theatrical Pyrotechnics. [NFPA
36 1124, 2006]

37 (3) ~~“Fireworks” shall mean any composition or device designed to~~
38 ~~produce a visible or an audible effect by combustion, deflagration, or detonation.~~
39 “Display fireworks” shall mean large fireworks devices that are explosive material
40 intended for use in fireworks displays and designed to produce visible or audible
41 effects by combustion, deflagration, or detonation, as set forth in CPSC 16 CFR
42 1500 and 1507, 49 CFR 172, and APA Standard 87-1, Standard for the
43 Construction and Approval for Transportation of Fireworks, Novelties, and
44 Theatrical Pyrotechnics.

45 (4) “Fire chief” shall mean the duly appointed chief of the city of
46 Topeka fire department or any person designated by said chief to enforce the
47 provisions of this chapter.

48 (b) Possession/Discharge of Fireworks. It shall be unlawful for any person to
49 possess, transport, ignite, discharge or cause to be discharged any firework in the city
50 except as specifically permitted in this section.

51 (1) Consumer fireworks may be discharged within the City of Topeka
52 as follows:

53 (i) Between the hours of 8:00 a.m. and 10:00 p.m. on July 1,
54 July 2 and July 3 of each year.

55 (ii) Between the hours of 8:00 a.m. and 11:59 p.m. on July 4 of
56 each year.

57 ~~(i) Between the hours of 8:00 a.m. and 9:00 p.m. on June 27th,~~
58 ~~28th, 29th, 30th, July 1st and July 5th of each year.~~

59 ~~(ii) Between the hours of 8:00 a.m. and 11:00 p.m. on July 2nd,~~
60 ~~3rd and 4th of each year.~~

61 (2) ~~It shall be unlawful for any person to~~ A person shall not recklessly or
62 intentionally discharge, ignite or otherwise cause a firework:

63 (i) To place another person in reasonable apprehension of
64 immediate bodily harm; or

65 (ii) To cause physical contact with another person; or

66 (iii) To deface or damage real or personal property of another
67 person without the consent of any such other person.

68 (3) A person shall not ignite or discharge fireworks into, under, or from
69 a car or vehicle, whether moving or standing still, or on a public roadway or the
70 right-of-way adjoining a public roadway.

71 (4) Fireworks shall not be discharged within 100 feet of any "place of
72 institution," as defined by national fire protection association standard no. 101,
73 which is adopted by reference in K.A.R. 22-1-3, or any retail fireworks stand or
74 facility where fireworks are stored. (Authorized by and implementing K.S.A. 2007

75 Supp. 31-133; effective January 1, 1973; amended May 1, 1986; amended
76 December 29, 2008).

77 (5) Further, it shall be unlawful for any person to possess, ignite or
78 otherwise cause the discharge of any firework that is not a consumer firework or
79 any firework which is prohibited by federal or state statute or regulation.

80 (c) Sale of Fireworks.

81 (1) It shall be unlawful for any person to sell, hold for sale, or offer for
82 sale at retail, any consumer fireworks in the city unless such person has first
83 obtained a permit from the city as a retailer.

84 (2) Any person desiring to sell or offer for sale any
85 ~~permissible~~consumer fireworks as a retailer shall make application to the city
86 clerk for a permit authorizing the same. Such application shall include the
87 following information and such additional information as the fire chief shall deem
88 necessary:

89 (i) The name and residence address of the applicant.

90 (ii) The location of the premises for which the permit is sought. If
91 ownership of premises is different from the applicant, written consent of
92 the owner is required.

93 (iii) When the permit is sought in a temporary structure or facility,
94 the applicant shall provide a legal description of the premises, a
95 description of the structure or facility to be used, and the location of such
96 structure or facility upon the premises. All temporary structures, including
97 tents, shall be posted with the approved NFPA 704 placards ~~as described~~

98 ~~in the Uniform Fire Code.~~ A copy of subsection (b) of this section shall
99 also be posted on all premises where fireworks are sold. Such notice shall
100 be at least eight and one-half inches by 11 inches in size and printed in
101 type no smaller than 12 characters per inch. After an inspection of the
102 premises including review by appropriate city agencies such as the fire
103 department and developmental services director, and consideration of the
104 information contained in the application for a permit, the fire chief may
105 issue a permit therefor, conditioned upon reasonable safety measures to
106 be specified in the permit and upon payment by the applicant of a fee of
107 \$280.00 to the city clerk. Any permit issued under the provisions of this
108 section shall be valid only for the period of June 27 through and including
109 July 5th of the year in which issued and shall be issued in accordance with
110 the ~~Uniform~~International Fire Code article entitled "Permits." Persons
111 responsible for the operations of ~~permissible~~ firework stands in which
112 fireworks are stored or handled shall be familiar with safety requirements
113 for the materials being sold, and the appropriate actions necessary in the
114 event of a fire. Additionally, each seller is required to give each purchaser
115 of fireworks at the time of sale a written notice stating the following:
116 "The discharge of fireworks is lawful in the City of Topeka on July 1, July 2
117 and July 3 from the hours of 8:00 a.m. to 10:00 p.m., and on July 4 from
118 8:00 a.m. to 11:59 p.m. Discharge on any other day or during any other
119 times is unlawful."

(d) Confiscation of Fireworks. Any fireworks in the immediate possession or control of a person violating any city ordinance controlling the use of fireworks may be confiscated by any sworn law enforcement official, the fire chief, or any member of the fire department who has been duly authorized by the fire chief. Confiscated fireworks must be retained by the confiscating agency and may only be destroyed upon approval by the court. The City Council encourages the fire department to continue public education efforts and encourages the police department to work internally and with the community to develop improved strategies for enforcement.

(e) Adult Supervision Required. At all times that it is lawful for any person over the age of 18 years to possess and discharge permitted consumer fireworks, it shall also be lawful for a person under the age of 18 years to possess and discharge permitted consumer fireworks when such person does so under adult supervision and in the physical presence of the adult. It shall be unlawful for any person over the age of 18 years to permit a person under the age of 18 to discharge fireworks without adult supervision and in the physical presence of the adult.

(f) Rules and Regulations. Display fireworks may be sold and ignited and/or discharged pursuant to rules and regulations established by the chief of the Topeka fire department.

(g) Penalties. Any person convicted of violating any of the provisions in this section shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than \$250.00 to a maximum amount of \$499.00 per violation. In addition to any fine, the individual may be sentenced up to 179 days in jail. The fine shall not be paroled.

Section 2. That original § 8.35.070 of The Code of the City of Topeka, Kansas,
is hereby specifically repealed.

Section 3. This ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper.

Section 4. This ordinance shall supersede all ordinances, resolutions or rules, or portions thereof, which are in conflict with the provisions of this ordinance.

Section 5. Should any section, clause or phrase of this ordinance be declared invalid by a court of competent jurisdiction, the same shall not affect the validity of this ordinance as a whole, or any part thereof, other than the part so declared to be invalid.

PASSED AND APPROVED by the City Council December 13, 2011.

CITY OF TOPEKA, KANSAS

William W. Bunten, Mayor

ATTEST:

Brenda Younger, City Clerk