

1 (Published in the Topeka Metro News June 25, 2012)

2
3 **ORDINANCE NO. 19740**

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5 AN ORDINANCE introduced by Pamela S. Simecka, Interim City Manager, amending
6 City of Topeka Code § 8.35.070 concerning fireworks and
7 specifically repealing said original section.
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9 BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

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11 Section 1. That section 8.35.0070, Fireworks, of The Code of the City of
12 Topeka, Kansas, is hereby amended to read as follows:

13 **Fireworks.**

14 (a) Definitions.

15 (1) "Fireworks" shall mean any composition or device for the purpose
16 of producing a visible or an audible effect for entertainment purposes by
17 combustion, deflagration, or detonation, that meets the definition of "consumer
18 fireworks" or "display fireworks" as set forth in this code. [NFPA 1124, 2006]

19 (2) "Consumer fireworks" shall mean any small firework devices
20 containing restricted amounts of pyrotechnic composition, designed primarily to
21 produce visible or audible effects by combustion that comply with the
22 construction, chemical composition, and labeling regulations of the U.S.
23 Consumer Product Safety Commission (CPSC), as set forth in CPSC 16 CFR
24 1500 and 1507, 49 CFR 172, and APA Standard 87-1, Standard for the
25 Construction and Approval for Transportation of Fireworks, Novelties and
26 Theatrical Pyrotechnics. [NFPA 1124, 2006] Metal sparklers are specifically
27 excluded from the definition of consumer fireworks.

28 (3) “Display fireworks” shall mean large fireworks devices that are
29 explosive material intended for use in fireworks displays and designed to produce
30 visible or audible effects by combustion, deflagration, or detonation, as set forth
31 in CPSC 16 CFR 1500 and 1507, 49 CFR 172, and APA Standard 87-1,
32 Standard for the Construction and Approval for Transportation of Fireworks,
33 Novelties, and Theatrical Pyrotechnics.

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

37 **(b) Metal sparklers. It shall be unlawful for any person to possess, transport,**
38 **or ignite a metal sparkler within the city.**

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

42 (1) Consumer fireworks may be discharged within the city of Topeka as
43 follows:

44 (i) Between the hours of 8:00 a.m. and 10:00 p.m. on July 1st,
45 July 2nd and July 3rd of each year.

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

48 (2) A person shall not recklessly or intentionally discharge, ignite or
49 otherwise cause a firework:

50 (i) To place another person in reasonable apprehension of
51 immediate bodily harm;

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

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

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

58 (4) Fireworks shall not be discharged within 100 feet of any "place of
59 institution," as defined by National Fire Protection Association Standard No. 101,
60 which is adopted by reference in K.A.R. 22-1-3, or any retail fireworks stand or
61 facility where fireworks are stored. (Authorized by and implementing K.S.A. 2007
62 Supp. 31-133; effective January 1, 1973; amended May 1, 1986; amended
63 December 29, 2008.)

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

67 (ed) Sale of Fireworks.

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

71 (2) Any person desiring to sell or offer for sale any consumer fireworks
72 as a retailer shall make application to the city clerk for a permit authorizing the

73 same. Such application shall include the following information and such
74 additional information as the fire chief shall deem necessary:

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

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

79 (iii) When the permit is sought in a temporary structure or facility, the
80 applicant shall provide a legal description of the premises, a description of the
81 structure or facility to be used, and the location of such structure or facility upon
82 the premises. All temporary structures, including tents, shall be posted with the
83 approved NFPA 704 placards. A copy of subsection (b) of this section shall also
84 be posted on all premises where fireworks are sold. Such notice shall be at least
85 eight and one-half inches by 11 inches in size and printed in type no smaller than
86 12 characters per inch. After an inspection of the premises including review by
87 appropriate city agencies such as the fire department and developmental
88 services director, and consideration of the information contained in the
89 application for a permit, the fire chief may issue a permit therefor, conditioned
90 upon reasonable safety measures to be specified in the permit and upon
91 payment by the applicant of a fee of \$280.00 to the city clerk. Any permit issued
92 under the provisions of this section shall be valid only for the period of June 27th
93 through and including July 5th of the year in which issued and shall be issued in
94 accordance with the International Fire Code article entitled "Permits." Persons
95 responsible for the operations of firework stands in which fireworks are stored or

96 handled shall be familiar with safety requirements for the materials being sold,
97 and the appropriate actions necessary in the event of a fire. Additionally, each
98 seller is required to give each purchaser of fireworks at the time of sale a written
99 notice stating the following:

100 The discharge of fireworks is lawful in the City of Topeka on July 1, July 2 and
101 July 3 from the hours of 8:00 a.m. to 10:00 p.m., and on July 4 from 8:00 a.m. to 11:59
102 p.m. Discharge on any other day or during any other times is unlawful.

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

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

(fg) 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.

(gh) 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 on June 19, 2012.

CITY OF TOPEKA, KANSAS

William W. Bunten, Mayor

ATTEST:

Brenda Younger, City Clerk