

(Published in the Topeka Metro News March 19, 2018)

ORDINANCE NO. 20112

AN ORDINANCE introduced by City Manager Brent Trout, concerning fireworks, amending City of Topeka Code § 8.35.070 and repealing original section.

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

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

Fireworks.

(a) Definitions.

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

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

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

(5) "Special event" shall mean an organized celebration, commemoration, occasion or other similar event sponsored by a nonprofit religious, educational or community service organization.

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

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

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

(i) Between the hours of ~~8:00~~ 10 a.m. and ~~10:00~~ 11:00 p.m. on July 1st, ~~July 2nd~~ July 2nd and July 3rd of each year.

(ii) Between the hours of ~~8:00~~ 10 a.m. and 11:59 p.m. on July 4th of each year.

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

52 (i) To place another person in reasonable apprehension of
53 immediate bodily harm;

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

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

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

60 (4) Fireworks shall not be discharged within 100 feet of any "place or
61 institution," as defined by National Fire Protection Association Standard No. 101,
62 which is adopted by reference in K.A.R. 22-1-3, or any retail fireworks stand or
63 facility where fireworks are stored.

64 (5) Fireworks shall not be discharged within 500 feet of the Colmery-O'Neil
65 Veterans Administration Medical Center building at 2200 S. W. Gage Boulevard.

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

69 (d) Sale of Fireworks.

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

73 (2) Any person desiring to sell or offer for sale any consumer fireworks as
74 a retailer shall make application to the city clerk for a permit authorizing the
75 same. Such application shall include the following information and such
76 additional information as the fire chief shall deem necessary:

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

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

81 (iii) When the permit is sought in a temporary structure or facility,
82 the applicant shall provide a legal description of the premises, a
83 description of the structure or facility to be used, and the location of such
84 structure or facility upon the premises. All temporary structures, including
85 tents, shall be posted with the approved NFPA 704 placards. A copy of
86 subsection (c) of this section shall also be posted on all premises where
87 fireworks are sold. Such notice shall be at least eight and one-half inches
88 by 11 inches in size and printed in type no smaller than 12 characters per
89 inch. After an inspection of the premises including review by appropriate
90 city agencies such as the fire department and developmental services
91 director, and consideration of the information contained in the application
92 for a permit, the fire chief may issue a permit therefor, conditioned upon
93 reasonable safety measures to be specified in the permit and upon
94 payment by the applicant of a fee of \$280 to the city clerk. Any permit
95 issued under the provisions of this section shall be valid only for the period

of June ~~27th~~ 29th through and including July ~~5th~~ 4th of the year in which issued and shall be issued in accordance with the International Fire Code article entitled "Permits." Persons responsible for the operations of firework stands in which fireworks are stored or handled shall be familiar with safety requirements for the materials being sold, and the appropriate actions necessary in the event of a fire. Additionally, each seller is required to give each purchaser of fireworks at the time of sale a written notice stating the following:

The discharge of fireworks is lawful in the City of Topeka on ~~July 1, July 2, and~~ July 3, from the hours of ~~8:00~~ 10:00 a.m. to ~~40~~ 11:00 p.m., and on July 4 from ~~8:00~~ 10:00 a.m. to 11:59 p.m. Discharge on any other day or during any other times is unlawful.

(e) 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.

(f) 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.

(g) 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.

(h) Special Events. Consumer fireworks may be ignited and/or discharged for a special event pursuant to rules and regulations established by the fire chief or designee.

(i) 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 July 5, 2018, 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 March 6, 2018.

CITY OF TOPEKA, KANSAS

Michelle De La Isla, Mayor

ATTEST:

Brenda Younger, City Clerk