

★ **Roll Call Number**

Agenda Item Number

5

Date June 2, 2017

An Ordinance entitled, "AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by amending Sections 46-3, 46-211, 46-212 and 46-216, repealing Sections 46-213, 46-214, 46-215, and by adding and enacting new Sections 46-213, 46-214 and 46-215, relating to fireworks and pyrotechnic special effects material",

presented.

Moved by _____ that this ordinance be considered and given first vote for passage.

FORM APPROVED:

(First of three required readings)

Ann DiDonato
Ann DiDonato
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MOORE				
WESTERGAARD				
TOTAL				
MOTION CARRIED			APPROVED	
_____ Mayor				

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk

ORDINANCE NO. _____

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by amending Sections 46-3, 46-211, 46-212 and 46-216, repealing Sections 46-213, 46-214, 46-215, and by adding and enacting new Sections 46-213, 46-214 and 46-215, relating to fireworks and pyrotechnic special effects material.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, is hereby amended by amending Sections 46-3, 46-211, 46-212 and 46-216, repealing Sections 46-213, 46-214, 46-215, and by adding and enacting new Sections 46-213, 46-214 and 46-215, relating to fireworks and pyrotechnic special effects material, as follows:

Sec. 46-3. Violations.

- (a) Any person who fails to perform an act required by the provisions of this chapter, or who commits an act prohibited by the provisions of this chapter, shall be guilty of a misdemeanor punishable by ~~fine or imprisonment~~ as provided by section 1-15, or shall be guilty of a municipal infraction punishable by a civil penalty as provided by section 1-15, subject to the simple misdemeanor minimum fines below in subsections (c), (d), (e) and (f).
- (b) The fire department may also proceed under public nuisance provisions set forth in this code, and/or pursue any other remedy available at law, to address any failure to perform an act required by the provisions of this chapter or any action prohibited by the provisions of this chapter.
- (c) A person who sells Consumer Fireworks to a person who is less than 18 years of age commits a simple misdemeanor, punishable by a fine of not less than \$250.00. A person who is less than 18 years of age who purchases Consumer Fireworks commits a simple misdemeanor, punishable by a fine of not less than \$250.00.
- (d) A person who uses or explodes Consumer Fireworks in violation of this article commits a simple misdemeanor, punishable by a fine of \$625.00.
- (e) A person who uses or explodes Display Fireworks while the use of such devices is in violation of this article commits a simple misdemeanor, punishable by a fine of not less than \$250.00.

Sec. 46-211. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Fireworks means Consumer Fireworks and Display Fireworks. Fireworks does not include novelties as defined in American Pyrotechnics Association Standard 87-1, Chapter 3 and that comply with the labeling regulations promulgated by the United States Consumer Product Safety Commission, ~~certain types of sparklers and snakes containing no poisonous form or mercury as defined in I.C. § 727.2.~~

Consumer Fireworks means those fireworks as defined by Iowa Code Chapter 727 and includes the below described First-Class Consumer Fireworks and Second-Class Consumer Fireworks.

First-Class Consumer Fireworks means the following Consumer Fireworks, as described in American Pyrotechnics Association Standard 87-1, Chapter 3.

- (1) Aerial shell kits and reloadable tubes.
- (2) Chasers.
- (3) Helicopter and aerial spinners.
- (4) Firecrackers.
- (5) Mine and shell devices.
- (6) Missile-type rockets.
- (7) Roman candles.
- (8) Sky rockets and bottle rockets.
- (9) Multiple tube devices under this definition that are manufactured in accordance with American Pyrotechnics Association Standard APA 87-1, Section 3.5.

Second-Class Consumer Fireworks means the following consumer fireworks, as described in American Pyrotechnics Association Standard 87-1, Chapter 3.

- (1) Cone fountains.
- (2) Cylindrical fountains.
- (3) Flitter sparklers.
- (4) Ground and hand-held sparkling devices, including multiple tube ground and hand-held sparkling devices that are manufactured in accordance with American Pyrotechnics Association Standard 87-1, Section 3.5.
- (5) Ground spinners.
- (6) Illuminating torches.
- (7) Toy smoke devices that are not classified as novelties pursuant to American Pyrotechnics Association Standard 87-1, Section 3.2.
- (8) Wheels.
- (9) Wire or dipped sparklers that are not classified as novelties pursuant to American Pyrotechnics Association Standard 87-1, Section 3.2.

Display Fireworks includes any explosive composition, or combination of explosive substances, or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation, and includes fireworks containing any explosive or flammable compound, or other device containing any explosive substance. Display Fireworks do not include Consumer Fireworks.

Cross reference(s)--Definitions generally, § 1-2.

Sec. 46-212. Prohibitions.

- (a) ~~It shall be unlawful to manufacture fireworks within the corporate city limits, and, except as provided in this article, it shall be unlawful for any person to possess, store, offer for sale, expose for sale, sell at retail, or use or explode any fireworks.~~
- (b) ~~It shall be unlawful to sell Display Fireworks within the city limits.~~
- (c) ~~It shall be unlawful for a person to possess, use or explode Display Fireworks except in possession of and in compliance with all requirements of a permit issued under Section 46-215.~~

Sec. 46-213. Exception.~~Repealed by Ord. No. 15,---~~

~~Nothing in this article shall be construed to prohibit any resident wholesaler, dealer, or jobber to sell at wholesale such fireworks as are not prohibited in this article or the sale of any kind of fireworks, provided the fireworks are to be shipped directly out of the state; or the use of fireworks by railroad or other transportation agencies for signal purposes or illumination; or the sale or use of blank cartridges for a show or theater, or for signal or ceremonial purposes in athletics or sports, or for use by military organizations.~~

Sec. 46-214. Permits required.~~Repealed by Ord. No. 15,---~~

~~For the purpose of this article, a permit shall be obtained to:~~

- ~~(1) Conduct a fireworks display.~~
- ~~(2) Compound, store or use pyrotechnic special effects material.~~
- ~~(3) Conduct a display involving fire, open flames or flammable material other than fireworks or pyrotechnic special effects material.~~

Sec. 46-215. Application for permit.~~Repealed by Ord. No. 15,---~~

~~Application for a permit required by this article shall be made in writing to the fire prevention bureau at least 14 days in advance of the display or use.~~

Sec. 46-213. Sale of Consumer Fireworks.

- (a) It shall be unlawful for a person to offer for sale, expose for sale, or sell at retail Consumer Fireworks, unless a person is a retailer or community group as defined in Iowa Code Chapter 100 and possesses and complies with all requirements of a Consumer Fireworks seller license issued by the state fire marshal. Consumer Fireworks may only be sold during the dates and times as allowed under Iowa Code Chapter 100 and in zoning districts permitted by this code.
- (b) It shall be unlawful for a person to sell Consumer Fireworks to a person less than 18 years of age and it shall be unlawful for a person who is less than 18 years of age to purchase Consumer Fireworks.
- (c) The following information must be stated in an easily readable type size and prominently posted at the place of payment at each location selling Consumer Fireworks:

- (1) The restrictions on use of Consumer Fireworks described in Section 46-214; and
- (2) A statement that a violation of section 46-214 constitutes a simple misdemeanor, punishable by a fine of \$625.00.

Sec. 46-214. Restrictions on Use of Consumer Fireworks.

A person may use or explode Consumer Fireworks only from 4:00 p.m. until 10:00 p.m. Daylight Savings Time on July 4th and subject to the following:

- (1) Consumer Fireworks may only be used or exploded on private property which is owned by the person using the Consumer Fireworks or with the consent of the owner of such private property.
- (2) Persons using or exploding the Consumer Fireworks must be 18 years of age or older.
- (3) Persons using or exploding Consumer Fireworks are prohibited from being under the influence of alcohol or other drug or a combination of such substances, while having a blood alcohol concentration of .08 or more or while having any amount of a controlled substance in such person's body.
- (4) Any use or explosion of Consumer Fireworks must be more than 200 yards from a hospital, hospice, assisted living residential facility, elder family home, elder group home, nursing home, or retirement home.
- (5) No use or explosion of Consumer Fireworks is allowed in parks, cemeteries and right-of-way, including sidewalks and streets.

Sec. 46-215. Permits required.

- (a) For the purpose of this article, a permit shall be obtained to:
 - (1) Use or explode Display Fireworks, except for Display Fireworks at the Iowa State Fairgrounds by the Iowa State Fair Board.
 - (2) Compound, store or use pyrotechnic special effects material.
 - (3) Conduct a display involving fire, open flames or flammable material other than Fireworks or pyrotechnic special effects material.
- (b) A permit is not required to use or explode Consumer Fireworks.
- (c) Application for a permit required by this article shall be made in writing to the fire prevention bureau at least 14 days in advance of the display, use storage, or compounding.

Sec. 46-216. Insurance and indemnification for ~~Permit, display.~~

- (a) Unless otherwise specified in this section, the applicant for the permit required by this article shall, at the time application is made for a permit, attach thereto a certificate of insurance naming the applicant as insured and showing liability insurance coverage with a limit of not less than \$5,000,000.00, provided that the fire chief or finance director at his or her discretion or the city council may at its discretion require a greater amount. The type of liability insurance to be required shall be determined by the city's finance director or designee. The insurance shall inure to the use and benefit of any person who suffers damage either to person or property because of the display, use, or explosion of Display Fireworks of fireworks, the compounding, storage or use of pyrotechnic special effects material, or

the display involving fire, open flames or other flammable material other than ~~fireworks~~ fireworks or pyrotechnic special effects material. The applicant shall further comply with all insurance and indemnification provisions set forth in the permit required by this article.

- (b) Notwithstanding the foregoing, if a display involving fire, open flames or other flammable material other than Display fireworks or pyrotechnic special effects material is to be held outside in an open area using non-detonating materials and is determined by the fire chief to be a low-hazard display, then the applicant for the permit required by this article for such a display shall, at the time application is made for a permit, attach thereto a certificate of insurance naming the applicant as insured and showing liability insurance coverage with a limit of not less than \$2,000,000.00, provided that the fire chief or finance director at his or her discretion may require a greater amount. The type of liability insurance to be required shall be determined by the city's finance director or designee. The insurance shall inure to the use and benefit of any person who suffers damage either to person or property because of the display involving fire, open flames or other flammable material other than Display fireworks or pyrotechnic special effects material. The applicant shall further comply with all insurance and indemnification provisions set forth in the permit required by this article.

Sec. 46-217. Seizure of fireworks.

The fire chief ~~shall~~ may seize, take, remove or cause to be removed at the expense of the owner all stocks of ~~fireworks~~ fireworks offered or exposed for sale, used, stored or held in violation of this ~~chapter.~~ article.

Sec. 46-218. Firework operator certification.

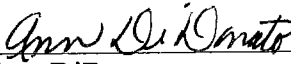
Add the following exception to Section 5601.4:

Exception: Persons in charge of ~~fireworks display~~ using or exploding Display Fireworks or pyrotechnic special effect operations may be less than 21 years of age if they possess a valid PGI display fireworks operator certification or equivalent certification approved by the fire code official.

Secs. 46-219—46-245. Reserved.

Section 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:



Ann DiDonato
Assistant City Attorney