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Chapter 10 - FIRE PREVENTION AND PROTECTION

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Sec. 10-73. Definitions.

For the purposes of this article, the terms used herein are defined as follows:

Distributor: Those who sell fireworks to retailers or to jobbers for resale to others.

Fireworks: Any firecrackers, cannon crackers, skyrockets, torpedoes, roman candles, sparklers, squibs, fire balloons, star shells, gerbs or any other substance in whatever combination by any designated name intended for use in obtaining visible or audible pyrotechnic display; and such term shall include all articles or substances within the commonly accepted meaning of fireworks whether herein specially designated and defined or not.

Importer: Those who import fireworks from a foreign country for sale to distributors, jobbers or retailers within the State of Texas.

Jobber: Those who purchase fireworks for resale to consumers only.

Manufacturer: Persons, firms, corporations or associations that are engaged in the making of fireworks.

Person: Any natural person, association of persons, partnership, corporation, agent or officer of a corporation and shall also include all warehousemen, common and private carriers, bailees, trustees, receivers, executors and administrators.

Public display: The igniting and shooting of fireworks for public amusement.

Retailers: Those who purchase fireworks for resale to consumers only.

(Ord. No. 513-2, § 1, 6-11-90)

Sec. 10-74. General prohibition.

Except as otherwise specifically provided in this article, it shall be unlawful for any person to sell, offer to sell or have in his/her possession with intent to sell, keep, use, discharge, cause to be discharged, ignite, detonate, fire or otherwise set in action any fireworks of any description.

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(Ord. No. 513-2, § 1, 6-11-90)

Sec. 10-75. Aiding minors to purchase, use, etc., fireworks.

No relation in the ascending line of a minor or guardian of a minor shall furnish money or a thing of value to a minor for the purchase of fireworks or encourage, act in conjunction with or in any manner instigate or aid a minor in the commission of having, keeping, storing, selling, offering for sale, giving away, using, transporting or manufacturing fireworks within the corporate limits of the city. This shall be an offense regardless of whether the minor has been found guilty of the offense. The commission of the offense by the minor on the property under the control or owned by the relation or guardian shall be prima facie evidence that the relation or guardian was instigating or aiding the minor.

(Ord. No. 513-2, § 1, 6-11-90)

Sec. 10-76. Exceptions.

The general prohibition as set forth in section 10-74 herein shall not apply to the following:

- (1) Section 10-74 shall not apply to toy pistols, toy canes, toy guns or similar devices in which paper caps containing twenty-five one-hundredths (0.25) grains or less of explosive compounds are used provided they are so constructed that the hand cannot come in contact with the cap when in place for exploding, and toy paper pistol caps which contain less than twenty-five one-hundredths (0.25) grains of explosive compounds, the sale and use of which shall be permitted at all times.
- (2) It shall not be unlawful upon a permit issued by the fire marshal for any person engaged in any organized play, legitimate theatrical performance, circus or other show designed for the amusement and edification of the general public to use, discharge or cause to be discharged and ignited fireworks as a part of an act, performance, play or circus so long as such person does not also engage in the retailing, wholesaling, selling or distribution of any of such fireworks. The fire marshal shall cause to be made an investigation of each application made hereunder to determine whether the use of such fireworks as proposed shall be of such a character that it may be hazardous to property or dangerous to any person; and he/she shall, in the exercise of reasonable discretion, grant or deny the application for such permit.
- (3) Section 10-74 shall not apply to signal flares and torpedoes of the type and kind commonly used by any railroads, which signal flares and torpedoes are received by and stored or transported by any railroad for use in railroad operation; nor shall section 10-74 apply to any marine signal flare or rocket which is transported or received and stored for use only as ship's stores; nor shall section 10-74 apply to signal flares or rockets for military or police use; nor shall section 10-74 apply to signal flares for use by motorists in distress.

(Ord. No. 513-2, § 1, 6-11-90; Ord. No. 513-3, § 1, 4-8-91)

Sec. 10-77. Public displays exempted.

The provisions of section 10-74 shall not apply to a public display of fireworks made under the terms and conditions of this section, and such display shall be permitted upon compliance with the provisions of this section as follows:

- (1) Any adult person or any firm, copartnership, corporation or association planning to make a public display of fireworks shall first make a written application for a permit to the fire marshal at least forty-eight (48) hours in advance of the date of the proposed display.

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- (2) It shall be the duty of the fire marshal to make an investigation as to whether the display as proposed by the applicant for a permit under this article shall be of such a character that it may be hazardous to property or dangerous to any person; and he/she shall, in the exercise of reasonable discretion, grant or deny the application subject to the conditions prescribed in this section. In the event the application is approved, a permit shall be issued for public display by the fire marshal. Such permit shall be for a period of time designated on the permit but shall not exceed fourteen (14) days, and the permit shall not be transferable. In the event that the application is denied by the fire marshal, he/she shall notify the applicant of the denial in writing.
- (3) The applicant for a display permit under this section shall, at the time of making application, furnish proof that he/she carries compensation insurance for his/her employees as provided by the laws of the state; and he/she shall file with the fire marshal a certificate of insurance evidencing the carrying of public liability insurance in an amount not less than fifty thousand dollars (\$50,000.00), issued by an insurance carrier authorized to transact business in the state, for the benefit of the person named therein as assured as evidence of ability to respond in damages in at least the amount of fifty thousand dollars (\$50,000.00), such policy to be approved by the fire marshal. In lieu of insurance, the applicant may file with the fire marshal a bond in the amount of fifty thousand dollars (\$50,000.00) issued by an authorized surety company approved by the fire marshal, conditioned upon the applicant's payment of all damages to persons or property which shall or may result from or be caused by such public display of fireworks or any negligence on the part of the applicant or his/her agents, servants, employees or subcontractors in the presentation of the public display.
- (4) The range of aerial displays shall not be more than two hundred (200) feet, and the fireworks shall be discharged vertically from steel tubes.
- (5) The limit of a display authorized by this section shall be not more than sixty (60) minutes per performance, and there shall not be more than two (2) performances in each twenty-four (24) hours.
- (6) No public display of fireworks shall be of such a character and so located, discharged or fired as to be hazardous or dangerous to persons or property, and this determination shall be within the sound discretion of the fire marshal.
- (7) The persons handling the display of fireworks under this section shall be competent, adult persons and experienced pyrotechnic operators approved by the fire marshal, and no person not approved by the fire marshal shall handle fireworks at the public display. The names of the experienced pyrotechnic operators shall be designated on the permit issued.
- (8) For each public display of fireworks under this section, not less than two (2) firemen of the city shall be in attendance during the display. The expense of such firemen at the display shall be borne by the applicant for the permit and shall be paid in advance at the time of the application for the permit.
- (9) The material to be used for a public display authorized by this section shall not be stored within the city limits (unless approved by the fire marshal) but shall be brought in on the day of the public display and then shall be taken immediately to the place of display for further handling and storage.

(Ord. No. 513-2, § 1, 6-11-90)

Sec. 10-78. Illegal fireworks as nuisance; seizure and destruction.

The presence of any fireworks within the city and within the area immediately adjacent and contiguous to the city limits extending for a distance outside of the city limits for a total of five thousand (5,000) feet, in violation of this article, is hereby declared to be a common and public nuisance. The fire

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marshal is directed and required to seize any fireworks found in violation of this article and any authorized deputy of the fire marshal, or any police officer of the city or any other duly constituted Texas peace officer is empowered to stop the transportation of and detain any fireworks being transported illegally or to close any building where any fireworks are found stored illegally until the fire marshal can be notified in order that such fireworks may be seized in accordance with the terms of this article. Notwithstanding any penal provision of this article, the city attorney is authorized to file suit on behalf of the city, the fire marshal or both for such injunctive relief as may be necessary to prevent unlawful storage, transportation, keeping or use of fireworks within the city or such five-thousand-foot area. It shall not be necessary to obtain injunctive relief as a prerequisite to the seizure of fireworks. This section shall not apply within any portion of such five-thousand-foot area which is contained within the territory of any other incorporated city, town or village.

(Ord. No. 513-2, § 1, 6-11-90)

Sec. 10-79. Penalty.

Any person, firm or corporation who shall violate or fail to comply with the requirements of any provisions of this article shall be guilty of a misdemeanor and shall, upon conviction by a court of competent jurisdiction, be punished as provided in section 1-11 of the city Code of Ordinances.

(Ord. No. 513-2, § 1, 6-11-90)

Sec. 10-80. Permitted transportation; identification.

It shall not be an offense under this article for a person to transport ICC Class C common fireworks as defined in V.T.C.A., Occupations Code § 2154.001, as amended, by motor vehicles which meet the interstate commerce commission requirements for transporting ICC Class C common fireworks if equipped with at least one ten-pound fire extinguisher for extinguishing Type A, B and C fires along and upon Farm to Market Road 518 or upon State Highway 35, either within the city limits or within five thousand (5,000) feet of the corporate boundaries of the city. Vehicles used for transportation of fireworks shall be provided with a sign on each side reading *Fireworks*. The sign shall have a white background with red letters at least six (6) inches in height and a minimum width of not less than three-fourths ($\frac{3}{4}$) of an inch.

(Ord. No. 513-2, § 1, 6-11-90)

Secs. 10-81—10-90. Reserved.