

ORDINANCE NO. 18-08

AN ORDINANCE OF THE COMMON COUNCIL OF THE TOWN OF YOUNGTOWN, ARIZONA, AMENDING THE CODE OF YOUNGTOWN, ARIZONA, TITLE 9 PUBLIC PEACE, MORALS AND WELFARE, CHAPTER 9.04 OFFENSES AGAINST PUBLIC PEACE AND DECENCY, BY AMENDING SECTION 9.04.010 FIREARMS AND EXPLOSIVES AND BY ADDING A NEW CHAPTER 9.15 FIREWORKS, RELATED TO REGULATIONS FOR THE SALE AND USE OF FIREWORKS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; DECLARING AN EMERGENCY; AND PROVIDING FOR PENALTIES.

WHEREAS, the Mayor and Council desire to adopt certain regulations to protect the health, safety, and welfare of the Town of Youngtown and its residents; and

WHEREAS, the Mayor and Council desire to prevent fire hazards which threaten the safety of individuals and private and public improvements, including residential, commercial, and industrial dwellings; and

WHEREAS, due to the dry, desert-like conditions of the community, there is a danger of fire with the use of consumer fireworks that can cause significant harm to the community and its residents; and

WHEREAS, the Town Council declares that adoption of these regulations shall be on an emergency basis and immediately effective to protect public health and safety;

NOW THEREFORE, BE IT ORDAINED by the Council of the Town of Youngtown, Arizona, as follows:

Section I. In General.

The Code of Youngtown, Arizona, Title 9 Public Peace, Morals and Welfare, Chapter 9.04 Offenses against Public Peace and Decency is hereby amended by amending Section 9.04.010 Firearms and explosives to read as follows (deleted text appears in ~~strikeout~~):

9.04.010 - Firearms and explosives.

- A. It is unlawful for any person within town limits to blast or use gun powder, ~~fireworks~~, or other explosive devices without first obtaining a written permit approved by the town council of Youngtown.
- B. No person shall bring weapons into any town park, building or onto other property owned by the town. Such weapons include, but are not limited to, BB guns, CO² or pellet guns, knives with blades longer than three and one-half inches, explosives, ~~fireworks~~, sling shots, bows and arrows, cross-bows, spear guns, spears, and swords. This section does not include firearms as defined by A.R.S. Section 13-3101(4).

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The Code of Youngtown, Arizona, Title 9 Public Peace, Morals and Welfare, is hereby amended by adding Chapter 9.15 Fireworks to read as follows (new text in ALL CAPS):

CHAPTER 9.15 - FIREWORKS

SECTIONS

9.15.010 DEFINITIONS.

THE FOLLOWING WORDS, TERMS, AND PHRASES, WHEN USED IN THIS CHAPTER, HAVE THE MEANINGS ASCRIBED TO THEM IN THIS SECTION, EXCEPT WHERE THE CONTEXT CLEARLY INDICATES A DIFFERENT MEANING:

1. *CONSUMER FIREWORK* MEANS THOSE FIREWORKS DEFINED BY ARIZONA REVISED STATUTES SECTION 36-1601.
2. *DISPLAY FIREWORK* MEANS THOSE FIREWORKS DEFINED BY ARIZONA REVISED STATUTES SECTION 36-1601.
3. *FIREWORKS* MEANS ANY COMBUSTIBLE OR EXPLOSIVE COMPOSITION, SUBSTANCE OR COMBINATION OF SUBSTANCES, OR ANY ARTICLE PREPARED FOR THE PURPOSE OF PRODUCING A VISIBLE OR AUDIBLE EFFECT BY COMBUSTION, EXPLOSION, DEFLAGRATION OR DETONATION, THAT IS A CONSUMER FIREWORK, AND DISPLAY FIREWORK AS DEFINED BY ARIZONA REVISED STATUTES SECTION 36-1601.
4. *NFPA 1124* MEANS THE NATIONAL FIRE PROTECTION ASSOCIATION CODE FOR THE MANUFACTURE, TRANSPORTATION, STORAGE, AND RETAIL SALES OF FIREWORKS AND PYROTECHNIC ARTICLES AS DEFINED BY ARIZONA REVISED STATUTES SECTION 36-1601.
5. *NOVELTY ITEMS* MEANS FEDERALLY DEREGULATED NOVELTY ITEMS THAT ARE KNOWN AS SNAPPERS, SNAP CAPS, PARTY POPPERS, GLOW WORMS, SNAKES, TOY SMOKE DEVICES, SPARKLERS, AND CERTAIN TOYS AS DEFINED IN ARIZONA REVISED STATUTES SECTION 36-1601.
6. *PERMISSIBLE CONSUMER FIREWORKS* MEANS CONSUMER FIREWORKS DEFINED BY ARIZONA REVISED STATUTES SECTION 36-1601 THAT MAY BE SOLD WITHIN THE TOWN.
7. *SUPERVISED PUBLIC DISPLAY* MEANS A MONITORED PERFORMANCE OF DISPLAY FIREWORKS OPEN TO THE PUBLIC AND AUTHORIZED BY PERMIT BY THE FIRE MARSHALL/FIRE CHIEF OR HIS OR HER DESIGNEE.

9.15.020 FIREWORKS PROHIBITED; EXCEPTIONS.

- A. THE USE, DISCHARGE, OR IGNITION OF FIREWORKS WITHIN THE TOWN IS PROHIBITED ON ALL PUBLIC PROPERTY, INCLUDING, BUT NOT LIMITED TO, PUBLIC BUILDINGS, PARKING LOTS, PUBLIC PARKS, PUBLIC SCHOOLS, STREETS, AND PUBLIC RIGHTS OF WAY, EXCEPT AS AUTHORIZED IN SECTION 9.15.030.
- B. NOTHING IN THIS CHAPTER SHALL BE CONSTRUED TO PROHIBIT THE USE, DISCHARGE, OR IGNITION OF NOVELTY ITEMS OR THE OCCURRENCE OF A SUPERVISED PUBLIC DISPLAY OF FIREWORKS.
- C. PERMITS MAY BE GRANTED BY THE TOWN'S DESIGNATED LAW ENFORCEMENT OR FIRE PROVIDER OR DESIGNEE FOR CONDUCTING A PROPERLY SUPERVISED PUBLIC DISPLAY OF FIREWORKS. EVERY SUCH PUBLIC DISPLAY OF FIREWORKS SHALL BE OF SUCH CHARACTER AND SO LOCATED, DISCHARGED, OR FIRED ONLY AFTER PROPER INSPECTION AND IN A MANNER THAT DOES NOT ENDANGER PERSONS, ANIMALS, OR PROPERTY. A PERMIT SHALL NOT BE ISSUED, AND MAY BE REVOKED, DURING TIME PERIODS OF HIGH FIRE DANGER WARNINGS. THE TOWN'S DESIGNATED LAW ENFORCEMENT OR FIRE PROVIDER HAS AUTHORITY TO IMPOSE CONDITIONS ON ANY PERMITS GRANTED.
- D. FAILURE TO COMPLY WITH ANY PERMIT REQUIREMENTS IS A CIVIL OFFENSE PUNISHABLE BY A FINE OF ONE THOUSAND DOLLARS (\$1,000) FOR EACH VIOLATION.

9.15.030 LIMITED USE OF PERMISSIBLE CONSUMER FIREWORKS.

THE USE, DISCHARGE, OR IGNITION OF PERMISSIBLE CONSUMER FIREWORKS IS PROHIBITED WITHIN THE TOWN EXCEPT THAT PERMISSIBLE CONSUMER FIREWORKS MAY BE USED FROM JUNE 24 THROUGH JULY 6 OF EACH YEAR AND DECEMBER 24 OF EACH YEAR THROUGH JANUARY 3 OF THE FOLLOWING YEAR.

9.15.040 SALE OF FIREWORKS.

- A. NO PERSON SHALL SELL OR PERMIT OR AUTHORIZE THE SALE OF PERMISSIBLE CONSUMER FIREWORKS TO A PERSON WHO IS UNDER SIXTEEN (16) YEARS OF AGE.
- B. NO PERSON SHALL SELL OR PERMIT OR AUTHORIZE THE SALE OF PERMISSIBLE CONSUMER FIREWORKS IN CONFLICT WITH STATE LAW, THIS CODE, OR NFPA 1124.
- C. NO PERSON SHALL SELL OR PERMIT OR AUTHORIZE THE SALE OF PERMISSIBLE CONSUMER FIREWORKS, EXCEPT FROM MAY 20

THROUGH JULY 6 OF EACH YEAR AND DECEMBER 10 OF EACH YEAR THROUGH JANUARY 3 OF THE FOLLOWING YEAR.

9.15.050 POSTING OF SIGNS BY PERSONS ENGAGED IN THE SALE OF FIREWORKS; CIVIL PENALTY.

- A. PRIOR TO THE SALE OF PERMISSIBLE CONSUMER FIREWORKS, EVERY PERSON ENGAGED IN SUCH SALES SHALL PROMINENTLY DISPLAY SIGNS INDICATING THE FOLLOWING:

STATE OF ARIZONA
CONSUMER FIREWORKS REGULATIONS
ARIZONA REVISED STATUTES § 36-1601, ET AL.
THE USE OF PERMISSIBLE CONSUMER FIREWORKS AS DEFINED UNDER STATE LAW IS ALLOWED:

JUNE 24 - JULY 6 AND DECEMBER 24 - JANUARY 3

THE SALE OF PERMISSIBLE CONSUMER FIREWORKS AS DEFINED UNDER STATE LAW IS ALLOWED:

MAY 20 - JULY 6 AND DECEMBER 10 - JANUARY 3

ALL OTHER FIREWORKS ARE PROHIBITED, EXCEPT AS AUTHORIZED BY LOCAL FIRE DEPARTMENT PERMIT.

THE SALE AND USE OF NOVELTIES KNOWN AS SNAPPERS (POP-ITS), PARTY POPPERS, GLOW WORMS, SNAKES, TOY SMOKE DEVICES, AND SPARKLERS ARE PERMITTED AT ALL TIMES.

PERMISSIBLE CONSUMER FIREWORKS MAY NOT BE SOLD TO PERSONS UNDER SIXTEEN (16) YEARS OF AGE.

CHECK WITH YOUR LOCAL FIRE DEPARTMENT FOR ADDITIONAL REGULATIONS AND DATES BEFORE USING.

- B. SIGNS REQUIRED UNDER THIS SECTION MAY BE PLACED AT ANY RETAIL SALES DISPLAY OF PERMISSIBLE CONSUMER FIREWORKS.
- C. THE SIGN SHALL BE EIGHT AND ONE-HALF (8½) INCHES BY ELEVEN (11) INCHES IN SIZE, ON CARDSTOCK PAPER, IN LANDSCAPE ORIENTATION, AND DISPLAYED ON A CONTRASTING BACKGROUND. A MODEL SIGN SHALL BE POSTED ON TOWN'S WEBSITE AND FILED WITH THE CLERK'S OFFICE.
- D. FAILURE TO COMPLY WITH SUBPARTS, A, B, AND C OF THIS SECTION IS A CIVIL OFFENSE PUNISHABLE BY A FINE OF ONE THOUSAND DOLLARS (\$1,000) FOR EACH VIOLATION.

9.15.060 LIABILITY FOR EMERGENCY RESPONSES RELATED TO USE OF FIREWORKS; DEFINITIONS.

- A. A PERSON WHO USES, DISCHARGES, OR IGNITES PERMISSIBLE CONSUMER FIREWORKS, FIREWORKS, OR ANYTHING THAT IS DESIGNED OR INTENDED TO RISE INTO THE AIR AND EXPLODE OR TO DETONATE IN THE AIR OR TO FLY ABOVE THE GROUND IS LIABLE FOR THE EXPENSES OF ANY EMERGENCY RESPONSE THAT IS REQUIRED BY SUCH USE,

DISCHARGE, OR IGNITION. THE FACT THAT A PERSON IS CONVICTED OR FOUND RESPONSIBLE FOR A VIOLATION(S) OF THIS CHAPTER IS PRIMA FACIE EVIDENCE OF LIABILITY UNDER THIS SECTION.

- B. THE EXPENSES OF AN EMERGENCY RESPONSE ARE A CHARGE AGAINST THE PERSON LIABLE FOR THOSE EXPENSES PURSUANT TO SUBPART A OF THIS SECTION. THE CHARGE CONSTITUTES A DEBT OF THAT PERSON AND MAY BE COLLECTED PROPORTIONATELY BY THE PUBLIC AGENCIES, FOR-PROFIT ENTITIES, OR NOT-FOR-PROFIT ENTITIES THAT INCURRED THE EXPENSES. THE PERSON'S LIABILITY FOR THE EXPENSE OF AN EMERGENCY RESPONSE SHALL NOT EXCEED TEN THOUSAND DOLLARS (\$10,000) FOR A SINGLE INCIDENT. THE LIABILITY IMPOSED UNDER THIS SECTION IS IN ADDITION TO AND NOT IN LIMITATION OF ANY OTHER LIABILITY THAT MAY BE IMPOSED.
- C. FOR THE PURPOSES OF THIS SECTION:
 - 1. *EXPENSES OF AN EMERGENCY RESPONSE* MEANS REASONABLE COSTS DIRECTLY INCURRED BY PUBLIC AGENCIES, FOR-PROFIT ENTITIES, OR NOT-FOR-PROFIT ENTITIES THAT MAKE AN APPROPRIATE EMERGENCY RESPONSE TO AN INCIDENT.
 - 2. *REASONABLE COSTS* INCLUDES THE COSTS OF PROVIDING POLICE, FIRE FIGHTING, RESCUE, AND EMERGENCY MEDICAL SERVICES AT THE SCENE OF AN INCIDENT AND THE SALARIES OF THE PERSONS WHO RESPOND TO THE INCIDENT.

Section II. Providing for Repeal of Conflicting Ordinances.

All ordinances and parts of ordinances in conflict with the provisions of this Ordinance or any part of the Code adopted herein by reference are hereby repealed.

Section III. Providing for Severability.

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance or any part of the Code adopted herein by reference is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

Section IV. Providing for Penalties.

Unless otherwise provided, any person found in violation of any provision of this Ordinance shall be responsible under Section 1.12.010 of the Town Code for a civil violation, punishable by a fine not less than fifty dollars (\$50) nor more than five hundred dollars (\$500) for each violation. Each day that a violation continues shall be a separate offense punishable as herein described. After having been found responsible for committing three (3) or more civil infractions of the same code provision in any twenty-four (24) month period, a person is a habitual offender and may be charged with a class one misdemeanor, punishable by a fine of not less than five hundred dollars (\$500) nor more than twenty-five hundred dollars (\$2500), imprisonment for a period not to exceed six (6) months, or by both such fine and imprisonment.

Section V. Declaring an Emergency.

The immediate operation of the provisions of this Ordinance is necessary for the preservation of the public peace, health, and safety of the Town of Youngtown, and an emergency is hereby declared to exist. This Ordinance shall be in full force and effect from and after its passage, adoption, and approval by the Common Council of the Town of Youngtown.

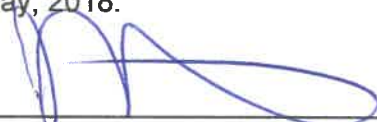
PASSED AND ADOPTED by the Common Council of the Town of Youngtown, Arizona, this 17th day of May, 2018, by the following vote:

AYES: 6

NAYES: 0 ABSENT: 1

EXCUSED: _____ ABSTAINED: _____

APPROVED this 17th day of May, 2018.



Michael E. LeVault, Mayor

ATTEST:



Nicole Smart, Deputy Town Clerk

APPROVED AS TO FORM:



Gust Rosenfeld, P.L.C.
Town Attorneys
By Trish Stuhan

I, MARY REYNOLDS, TOWN CLERK, DO HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE ORDINANCE NO. 18-08 ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF YOUNGTOWN ON THE 17TH DAY OF MAY, 2018, WAS POSTED IN THREE PLACES ON THE 18TH DAY OF MAY, 2018.



Mary Reynolds, Town Clerk