

## **CHAPTER 8.08. FIREWORKS**

### **Sec. 8.08.010. Definitions.**

"Fireworks" means and includes any firecrackers, cannon crackers, skyrocketes, 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 includes all articles or substances within the commonly accepted meaning of fireworks, whether specifically designated and defined in this chapter or not. A pyrotechnic device used for law enforcement purposes shall not be considered a firework in accordance with this ordinance.

"Passenger area," means the area of the motor vehicle designed for the seating of the operator and passengers of the vehicle. The term does not include:

- (1) A locked glove compartment or similar locked storage area;
- (2) The trunk of the vehicle; or
- (3) The area behind the last upright seat of a vehicle that does not have a trunk.

"Unpackaged, opened fireworks" means fireworks not in their original wrapping or where the original wrapping has been broken.

(Ord. No. 2014-96, § 3(Exh. A); Ord. No. 2014-40, § 3(Exh. A))

### **Sec. 8.08.020. Prohibited.**

It is unlawful for any person to manufacture, assemble, store, sell, offer to sell, possess, use, ignite, cause to be discharged or discharge, fireworks within the corporate limits of the city or within 5,000 feet outside the city limits, except under special permit as authorized in the Fire Prevention Code. This section shall not apply within any portion of such five thousand foot area which is contained within the territory of another municipality.

(Ord. No. 2014-96, § 3(Exh. A); Ord. No. 2014-40, § 3(Exh. A))

### **Sec. 8.08.030. Declared public nuisance.**

Any conduct prohibited in Section 8.08.020 within the jurisdiction of the City in violation of this chapter is declared to be a nuisance pursuant to Local Government Code, Section 217.042.

(Ord. No. 2014-96, § 3(Exh. A); Ord. No. 2014-40, § 3(Exh. A))

### **Sec. 8.08.040. Enforcement.**

- A. The Fire Chief or chief of police or their designee(s) are hereby authorized to enforce this Chapter.
- B. Notwithstanding any penal provision of this chapter, the City Attorney is authorized to file suit on behalf of the City or the Fire Chief, or designee, for injunctive relief as may be necessary to prevent any conduct prohibited in Section 8.08.020 within the jurisdiction of the City and to aid the Fire Chief, or designee, in the discharge of their duties.

### **Sec. 8.08.050. Exceptions.**

This Chapter excludes from the general prohibition of fireworks the following items:

1. A toy pistol, toy cane, toy gun, or other device that uses paper or plastic caps in sheets, strips, rolls, or individual caps that contain not more than an average of 2500ths of a grain of explosive composition per cap and that is packed and shipped under 49 CFR 173(1996);
2. A model rocket or model rocket motor designed, sold and used to propel recoverable aero models;
3. A propelling or expelling charge consisting of a mixture of sulfur, charcoal, and potassium nitrate;
4. Novelties or trick noisemakers such as:
  - a) Snake, GlowWorms - Pressed pellet of pyrotechnic composition that produces a large, snakelike ash upon burning. The ash expands in length as the pellet burns. These devices may not contain mercuric thiocyanate.
  - b) Smoke Device - Tube or sphere containing pyrotechnic composition that, upon ignition, produces white or colored smoke as the primary effect.
  - c) Wire Sparkler - Wire coated with pyrotechnic composition that produces a shower of sparks upon ignition. These items may not contain magnesium and must not exceed 100g of composition per item. Devices containing any chlorate or perchlorate salts may not exceed 5g of composition per item.
  - d) Trick Noisemaker - Item produces a small report intended to surprise the user. These devices include:
    - i. Party Popper - Small plastic or paper item containing not more than 16 mg of explosive composition that is friction-sensitive. A string protruding from the device is pulled to ignite it, expelling paper streams and producing a small report.
    - ii. Booby Trap - Small tube with string protruding from both ends, similar to a party popper in design. The ends of the string are pulled to ignite the friction-sensitive composition, producing a small report.
    - iii. Snapper - Small, paper-wrapped item containing a minute quantity of explosive composition coated on small bits of sand. When dropped, the device explodes, producing a small report.
    - iv. Trick Match - Kitchen or book match that has been coated with a small quantity of explosive or pyrotechnic composition. Upon ignition of the match, a small report or a shower of sparks is produced.
    - v. Cigarette Load - Small wooden peg that has been coated with a small quantity of explosive or pyrotechnic composition. Upon ignition of the match, a small report or a shower of sparks is produced.
    - vi. Auto Burglar Alarm - A tube which contains pyrotechnic composition that produces a loud whistle and/or smoke when ignited. A small quantity of explosive, not exceeding 50 mg, also may be used to produce a small report. A squib is used to ignite the device.
5. The sale or use of, in emergency situations, pyrotechnic signaling devices or distress signals for marine, aviation or highway use;

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6. The use of a fuse or a railway torpedo by a railroad;
  7. The sale of blank cartridges for use in a radio, television, film or theater production; a signal or ceremonial purpose in an athletic event; or an industrial use; or
  8. Pyrotechnic displays designed to entertain the general public, which have been approved by the Fire Marshal and are supervised by the Fire Marshal or his/her designee.

(Ord. No. 2014-96, § 3(Exh. A); Ord. No. 2014-40, § 3(Exh. A))

#### **Sec. 8.08.070. Violation—Penalty.**

- A. Any person who manufactures, assembles, sells, offers for sale, possesses, uses, discharges, causes to be discharged, ignites, detonates, fires, or otherwise sets in action any fireworks shall be fined as provided in Section 1.08.010 for each offense. If the fireworks are separately wrapped or packaged, doing any act prohibited by, or omitting to do any act required by, this chapter shall be a separate offense as to each such separately wrapped or separately packaged firework. Each day that a violation of this chapter continues with respect to any package of fireworks constitutes a separate offense.
- B. Any parent or guardian of any minor child below the age of 17 who permits or allows such minor child to use, discharge, ignite, detonate, fire or otherwise set in action any fireworks shall be fined as provided in Section 1.08.010.

(Ord. No. 2014-96, § 3(Exh. A); Ord. No. 2014-40, § 3(Exh. A))

#### **Sec. 8.08.080. Affirmative Defenses.**

- A. It is an affirmative defense to prosecution of a charge of possession of fireworks under this chapter if:
  - (1) The defendant was operating or was a passenger in a motor vehicle that was being operated in a public place; and
  - (2) The fireworks were not in the passenger area of the motor vehicle.
- B. It is an affirmative defense to prosecution of a charge of possession of fireworks under this chapter if:
  - (1) The defendant was in possession of a quantity of fireworks with a current market value of less than \$250.00;
  - (2) The defendant was in possession of fireworks for personal use only; and
  - (3) The fireworks were located in the defendant's residence and stored in safe cool, dry location that is protected from unintended ignition.

(Ord. No. 2014-96, § 3(Exh. A); Ord. No. 2014-40, § 3(Exh. A))

#### **Sec. 1.08.010. Violation—Penalty.**

- A. Whenever in this code or in any ordinance of the City an act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or wherever in such code or ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, where no specific penalty is provided therefor, the violation of any such provision of the code or any such ordinance shall be punished by a fine of not exceeding \$500.00; provided, however, that where the offense is one for which a penalty is fixed by state law, the penalty for such offense shall be the same as fixed by state law.

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- B. When a fine or penalty is imposed for the violation of a rule, ordinance or police regulation that governs safety, zoning or public health, including dumping of refuse, it may not exceed \$2,000.00.
  - C. Each day any violation of this code or other ordinance of the City continues constitutes a separate offense unless otherwise provided.

(Ord. 900120 § 2: prior code § 1-6)