

ORDINANCE NO. 5021

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AMENDING MESA CITY CODE TITLE 7, CHAPTER 2, "FIRE CODE" AND ADOPTING A NEW TITLE 6, CHAPTER 21 OF THE MESA CITY CODE ENTITLED "FIREWORKS" PROVIDING REGULATIONS FOR THE SALE AND USE OF FIREWORKS; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR PENALTIES.

**WHEREAS**, the Mayor and Council deem it necessary to adopt certain regulations to protect, enhance and promote the health, safety and welfare of the City of Mesa 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,

**WHEREAS**, due to the dry/desert like conditions, risk of wildfires, and terrain of the community there is a danger of fire with the use of consumer fireworks in the community that can cause significant harm to the community and its residents.

**NOW THEREFORE, BE IT ORDAINED** by the Council of the City of Mesa, Arizona, as follows:

SECTION 1: That Title 7, Chapter 2, "Fire Code" is hereby amended to read:

(P) CHAPTER 33 EXPLOSIVES AND FIREWORKS

Section 3301.1.3 Fireworks. The possession, manufacture, storage, handling and use of fireworks are prohibited except as allowed under Mesa City Code 6-21.

SECTION 2: That Title 6 is hereby amended by adopting a new Chapter 21 entitled "FIREWORKS" that reads as follows:

Title 6, Chapter 21. FIREWORKS.

**Section 6-21-1 Definitions.**

(A) The following words, terms and phrases, when used in this article, 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, display firework or permissible consumer firework as defined by Arizona Revised Statute Section 36-1601.
- (4) *Novelty items* means federally deregulated novelty items that are known as glowworms, snakes, toy smoke devices, sparklers, and certain toys as defined in Arizona Revised Statute 36-1601.
- (5) *Permissible consumer fireworks* means those fireworks as defined by Arizona Revised Statute Section 36-1601 that may be sold within the City of Mesa.
- (6) *Supervised public display* means a monitored performance of display fireworks open to the public and authorized by permit by the City of Mesa Fire Chief or his designee.
- (7) *Public facilities* means any building or real property, excluding public right of way, which is owned, leased or otherwise operated by a governmental entity.

**Section 6-21-2 Fireworks prohibited; exceptions.**

(A) The use, discharge or ignition of permissible consumer fireworks within the City of Mesa corporate limits, is prohibited except as provided for in this section:

(i) The use, discharge or ignition of permissible consumer fireworks is limited to June 28<sup>th</sup> through July 4<sup>th</sup> and December 30<sup>th</sup> through January 1<sup>st</sup> on private property with the property owner's permission.

(ii) The use, discharge or ignition of fireworks is prohibited in all public parks, public retention basins and public facilities.

(B) Nothing in this section shall be construed to prohibit the use, discharge or ignition of novelty items as defined in Section 6-21-1 (A) (4) or the occurrence of a supervised public display of fireworks.

(C) Permits may be granted by the City of Mesa Fire Chief 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. Additionally, a permit may be

denied or revoked during time periods of High Fire Danger warnings. The City of Mesa Fire Chief or designee has authority to impose conditions on any permits granted.

**Section 6-21-3 Sale of Fireworks.**

(A) No person shall sell or permit or authorize the sale of permissible consumer fireworks to a person who is under 16 years of age.

(B) No person shall sell or permit or authorize the sale of permissible consumer fireworks in conflict with state law.

**Section 6-21-4 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:

(i) The use, discharge or ignition of permissible consumer fireworks may only be used within the Mesa city limits between June 28<sup>th</sup> through July 4<sup>th</sup> and December 30<sup>th</sup> through January 1<sup>st</sup> on private property with the property owner's permission. The use, discharge or ignition of fireworks is prohibited in all public parks, public retention basins and public facilities. Mesa City Code 6-21-2

(ii) Permissible consumer fireworks authorized for sale under state law may not be sold to persons under the age of 16.

(B) Signs required under this section shall be placed at each cash register and in each area where permissible consumer fireworks are displayed for sale.

(C) The City of Mesa Fire Chief or designee shall develop regulations concerning the size and color of the required signs and shall develop a model sign. The required sign regulations and model sign shall be filed with the Mesa City Clerk's office.

**Section 6-21-5. Authority to enforce violations; means of enforcement; penalty**

(A) The City of Mesa Fire Chief or designee or a City of Mesa police officer may issue complaints to enforce violations under this Chapter.

(B) Using, discharging or igniting permissible consumer fireworks in violation of this Chapter is a civil offense and is subject to the following penalties:

(i) A first offense is punishable by a fine of seventy five dollars (\$75.00).

(ii) A second offense within 12 months of the first offense is punishable by a fine of one hundred fifty dollars (\$150.00).

(iii) A third offense within 12 months of the second offense is punishable by a fine of five hundred dollars (\$500.00).

(iv) For each offense thereafter occurring within 12 months of the preceding offense is punishable by a fine of seven hundred fifty dollars (\$750.00).

(C) All owners, managers, operators, tenants or other persons in control of a business offering for sale fireworks under this Chapter are jointly and individually liable for compliance with this Chapter.

(D) Selling or offering for sale permissible consumer fireworks in violation of this Chapter is a civil offense and is subject to the following penalties:

(i) A first offense is punishable by a fine of two hundred fifty dollars (\$250.00).

(ii) A second offense within 12 months of the first offense is punishable by a fine of five hundred dollars (\$500.00).

(iii) A third offense within 12 months of the second offense is punishable by a fine of one thousand dollars (\$1000.00).

(iv) For each offense thereafter, the violator shall be subject to class one criminal misdemeanor prosecution in the Mesa Municipal Court as a habitual offender. For each violation as a habitual offender, the defendant is subject to a maximum fine of two thousand five hundred dollars (\$2,500.00) and up to six (6) months in jail.

(E) The penalties provided for in Subsection (B) and (D) are in addition to any other enforcement remedies that the City may have under City ordinances and state law. Nothing in this Section shall preclude City employees from issuing warnings for violations under this Chapter or seeking voluntary compliance with the provisions of this Chapter.

SECTION 3: That the Mesa City Code, as amended, will remain in full force and effect, save and except as amended by this Ordinance.

SECTION 4: That the terms and provisions of this Ordinance are severable and if any section, subsection, sentence, clause, phrase or portion of this Ordinance, or any part of the Mesa City Code adopted herein by reference, is for any reason held to be invalid, unenforceable or unconstitutional by a court of competent jurisdiction, the remaining provisions of this Ordinance shall remain in effect.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona, this 10<sup>th</sup> day of January, 2011.