

ORDINANCE NO. (O)11-18

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF ORO VALLEY, ARIZONA, RELATING TO FIRE PROTECTION AND PREVENTION; PROHIBITING THE USE OF FIREWORKS AND THE SALE OF FIREWORKS OTHER THAN PERMISSIBLE CONSUMER FIREWORKS WITHIN THE TOWN OF ORO VALLEY, EXCEPT AS PROVIDED HEREIN, AMENDING THE ORO VALLEY TOWN CODE BY AMENDING CHAPTER 10, OFFENSES, BY ADDING A NEW ARTICLE 10-13; FIREWORKS, REPEALING ALL RESOLUTIONS, ORDINANCES, AND RULES OF THE TOWN OF ORO VALLEY IN CONFLICT THEREWITH; PRESERVING THE RIGHTS AND DUTIES THAT HAVE ALREADY MATURED AND PROCEEDINGS THAT HAVE ALREADY BEGUN THEREUNDER; AND DECLARING AN EMERGENCY

WHEREAS, Oro Valley is a political subdivision of the State of Arizona, is vested with all rights, privileges, and benefits and entitled to the immunities and exemptions granted municipalities and political subdivisions under the Constitution and laws of the State of Arizona and the United States; and

WHEREAS, the Arizona Legislature passed House Bill 2246, effective December 1, 2010, that authorizes the sale of certain permissible consumer fireworks in Arizona; and

WHEREAS, under the state legislation, local regulations cannot prohibit the sale of permissible consumer fireworks within a city or town, but the city or town can prescribe requirements under which fireworks may be lawfully used and when they may be used; and

WHEREAS, because of unprecedented fire conditions within the region and at the request of professional fire fighting organizations, the Town desires to prohibit the use of permissible consumer fireworks.

NOW, THEREFORE BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF ORO VALLEY, ARIZONA, that:

SECTION 1. The Oro Valley Town Code, Chapter 10, Offenses, is hereby amended by adding a new Article 10-13, Fireworks to read as follows:

Chapter 10 Offenses

Article 10-13 Fireworks

10-13-1 Definitions.

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

(A) *Permit* means a permit issued by the Department of Development and Infrastructure Services.

(B) “Consumer Fireworks”, “Display Fireworks”, “Fireworks” and “Permissible Consumer Fireworks” shall have the same meaning as in Arizona Revised Statutes, Section 36-3601.

(C) *Fire Chief* means the chief or chiefs of the applicable fire prevention agency or agencies within Oro Valley or that officer’s designee.

(D) *Police Chief* means the Oro Valley police chief or that officer’s designee

(E) *Supervised public display* means a professionally monitored performance of display fireworks open to the public and authorized by permit.

10-13-2 Use of fireworks, and sale of fireworks other than permissible consumer fireworks, prohibited within the town; exceptions; penalties for violation.

(A) Except as specifically permitted under paragraph (C) of this section, the use of fireworks, including any display firework, consumer firework, permissible consumer firework, 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, within the Town of Oro Valley is prohibited.

(B) The sale of fireworks, other than permissible consumer fireworks, within the Town of Oro Valley is prohibited.

(C) Nothing in this section shall be construed to prohibit:

(1) The use of items defined to not be fireworks under Arizona Revised Statutes § 36-1601(3)(b); or

(2) The occurrence of a supervised public display of fireworks authorized by a permit issued by the Department of Development and Infrastructure Services.

(D) Violation of the provisions of paragraphs (A) or (B) of this section is a civil infraction, except that any such violation that results in damage to property or injury to any person or animal is a class 1 misdemeanor and, upon conviction, in addition to any other penalty or fine, restitution shall be ordered. This remedy shall not abridge any civil cause of action by the victim.

10-13-3 Sale of permissible consumer fireworks; permits required; inspections; fees.

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

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

(C) A person who desires to sell permissible consumer fireworks to the public shall first obtain a permit allowing the activities listed under § 7.3.2(1)(a) and (b) and (2) of the National Fire Protection Association Code for the Manufacture, Transportation, Storage and Retail Sales of Fireworks and Pyrotechnic Articles (NFPA 1124), 2006 Edition.

(D) A person who desires to sell permissible consumer fireworks to the public is subject to inspection by the fire chief and the Department of Development and Infrastructure Services to assure:

(1) That the person has obtained the permit required under paragraph (C) of this section.

(2) That the person is in compliance with NFPA 1124, 2006 Edition, International Building Code 2006, International Fire Code 2006 and any other rules adopted by the State Fire Marshal pursuant to A.R.S. § 36-1609 and Title 41, Chapter 6 and relating to the storage or retail sale of consumer fireworks.

10-13-4 Posting of signs by persons engaged in the sale of permissible consumer fireworks; penalty.

(A) Prior to the sale of permissible consumer fireworks, every person engaged in such sales shall prominently display signs that state the following:

(1) The use of fireworks within the Town of Oro Valley is prohibited.

(2) A person must be at least 16 years of age to buy fireworks.

(B) The signs required under paragraph (A) of this section shall be posted in a conspicuous place in each area where fireworks are displayed and at each cash register where fireworks are sold; shall be not less than eleven (11) inches by fourteen (14) inches in size; shall be in both Spanish and English; and shall use easily legible print.

(C) Failure to comply with paragraph (A) or (B) of this section is a civil infraction.

10-13-5 Authority to enforce violations of this article designated as civil infractions.

The fire chief, police chief or the Town Department of Development and Infrastructure Services may enforce violations of this article designated as civil infractions.

10-13-6 Violation of this article a civil infraction, except where specifically provided otherwise.

Except where specifically provided otherwise in this article, any violation of this section is a civil infraction.

10-3-7 Liability for emergency responses required by use of fireworks, or by violations of this article.

(A) A person who uses any fireworks, including display fireworks, consumer fireworks, permissible consumer 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 as a result of such use. The fact that a person is convicted or found responsible for a violation of this section is prima facie evidence of liability under this section.

(B) A person who violates any provision of this article is liable for the expenses of any emergency response that is required as a result of such violation. The fact that a person is convicted or found responsible for a violation of this article is prima facie evidence of liability under this subsection.

(C) The expenses of an emergency response are a charge against the person liable for those expenses pursuant to this section. The charge constitutes a debt of that person and may be collected proportionately by the public agencies, or other first responders that incurred the expenses. The liability imposed under this section is in addition to and not in limitation of any other liability that may be imposed.

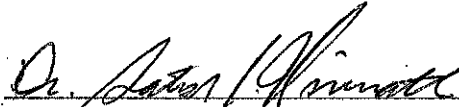
SECTION 2. The various Town officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this ordinance.

SECTION 3. If any provisions of this ordinance, or of its application to any person or circumstance is declared invalid or unenforceable, as determined by a court of competent jurisdiction, the invalidity or unenforceability shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or circumstance, and to this end, the provisions of this ordinance are severable.

SECTION 4. WHEREAS, it is necessary for the preservation of the peace, health and safety of the Town of Oro Valley that this ordinance become immediately effective, an emergency is hereby declared to exist, and this ordinance shall be effective immediately upon its passage and adoption.

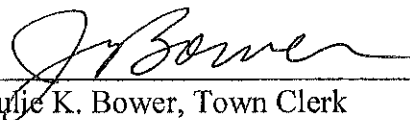
PASSED AND ADOPTED by the Mayor and Council of the Town of Oro Valley, Arizona, this 29th day of June, 2011.

TOWN OF ORO VALLEY



Dr. Satish I. Hiremath, Mayor

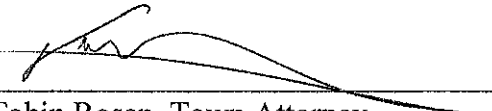
ATTEST:



Julie K. Bower, Town Clerk

Date: 7/6/11

APPROVED AS TO FORM:



Tobin Rosen, Town Attorney

Date: 7/6/11

POSTED: 7/6/11 - 8/6/11

Town Clerk Note: Ordinance No. (O)11-18, as amended by Council on 6/29/11, provided that the Town Fire Marshall shall evaluate the restrictions on the use of fireworks on a monthly basis and may lift the use restrictions upon consultation with appropriate Town officials.