

ORDINANCE _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, REPEALING IN ITS ENTIRETY MESA CITY CODE TITLE 6, CHAPTER 21 ENTITLED “FIREWORKS” AND REPLACING IT WITH A NEW CHAPTER 21 ENTITLED “FIREWORKS AND PERMISSIBLE CONSUMER FIREWORKS”.

WHEREAS, Arizona Revised Statute (“A.R.S.”) title 36, chapter 13, article 1 governs the sale and use of fireworks in Arizona and sets forth certain preemption limitations on regulations a municipal or county government may impose on fires, including that a municipality may only prohibit the sale and use of permissible consumer fireworks within its jurisdiction on specified days and times of the year.

WHEREAS, title 6, chapter 21 of the Mesa City Code entitled “Fireworks” governs, in pertinent part, the use and sale of permissible consumer fireworks and the use of display fireworks in the City of Mesa, Arizona (the “City”).

WHEREAS, due to the dry desert like conditions and terrain of Mesa, the use of fireworks and permissible consumer fireworks includes risk of significant harm to the community and its residents.

WHEREAS, the City wishes to prevent fire hazards and injuries caused by fireworks which threaten the safety of individuals and are hazardous to real property and improvements including residential, commercial and industrial buildings.

WHEREAS, reasonable penalties are required to ensure compliance with the City’s regulation of fireworks, display fireworks, and permissible consumer fireworks.

WHEREAS, the City deems it necessary to adopt additional regulations addressing fireworks, display fireworks, and permissible consumer fireworks to protect, enhance and promote the health, safety and welfare of City residents as set forth herein.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

SECTION 1: REPEALED AND REPLACED LANGUAGE. That Mesa City Code title 6, chapter 21 entitled “Fireworks” is repealed in its entirety and replaced with the following language:

CHAPTER 21

FIREWORKS AND PERMISSIBLE CONSUMER FIREWORKS

SECTION:

6-21-1: PURPOSE

6-21-2: DEFINITIONS

6-21-3: FIREWORKS AND PERMISSIBLE CONSUMER FIREWORKS PROHIBITED; EXCEPTIONS

6-21-4: SALE OF FIREWORKS AND PERMISSIBLE CONSUMER FIREWORKS

6-21-5: POSTING OF SIGNS BY PERSONS ENGAGED IN THE SALE OF PERMISSIBLE CONSUMER FIREWORKS

6-21-6: AUTHORITY TO ENFORCE VIOLATIONS; PENALTY

6-21-1 PURPOSE

The intent of this Chapter is to protect the health, safety, and welfare of the citizens of Mesa from the use and sale of fireworks and permissible consumer fireworks to the fullest extent authorized by Arizona Revised Statutes (A.R.S.) § 36-1601 et seq.

6-21-2: DEFINITIONS

- (A) 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) **DISPLAY FIREWORK:** means as defined by A.R.S. § 36-1601.
 - (2) **FIREWORKS:** means as defined by A.R.S. § 36-1601.
 - (3) **PERMISSIBLE CONSUMER FIREWORKS:** means as defined by A.R.S. § 36-1601.
 - (4) **SUPERVISED PUBLIC DISPLAY:** means a monitored performance of display fireworks open to the public and authorized by permit by the City of Mesa Fire and Medical Chief or designee.
- (B) All references to Arizona Revised Statutes in this Chapter refer to the statute as amended or replaced.

6-21-3: FIREWORKS AND PERMISSIBLE CONSUMER FIREWORKS PROHIBITED; EXCEPTIONS

- (A) The use or possession of fireworks within the City of Mesa corporate limits is unlawful except as authorized by Arizona Revised Statutes, Title 36, Chapter 13, Article 1, or other applicable state law.
- (B) The use of permissible consumer fireworks within the City of Mesa corporate limits is prohibited on all days and at all times except that permissible consumer fireworks may be used on all the following days and times each year:
- (1) May 4th through May 6th between the hours of 8:00 A.M. and 11:00 P.M.
 - (2) June 24th through July 6th between the hours of 8:00 A.M. and 11:00 P.M., and between the hours of 11:00 P.M. on July 4th and 1:00 A.M. on July 5th.
 - (3) December 24th through January 3rd between the hours of 8:00 A.M. and 11:00 P.M., and between the hours of 11:00 P.M. on December 31st and 1:00 A.M. on January 1st.
 - (4) Second and third days of Diwali.
 - (5) Any other days and times the use of permissible consumer fireworks cannot be prohibited by the City of Mesa as set forth in A.R.S. § 36-1606(A).

- (C) Notwithstanding Subsection (B), the use of permissible consumer fireworks is prohibited, including on the days and times the use is authorized in Subsection (B), during a stage one or higher fire restriction within a one-mile radius of the border of any municipal or county mountain preserve, desert park, regional park, designated conservation area, national forest, or wilderness area.
- (D) The use of permissible consumer fireworks is prohibited on property that is owned and controlled by the City of Mesa, excluding public right of way, except for supervised public displays of fireworks.
- (E) Display fireworks are allowed in the City of Mesa only as supervised public displays receiving a permit granted by the City of Mesa Fire and Medical Chief or designee.
 - (1) A permit may be denied or revoked during time periods of high fire danger warnings or if the City of Mesa Fire and Medical Chief or designee reasonably determines that a supervised public display of fireworks poses a threat to the health or safety of the public or property.
 - (2) The City of Mesa Fire and Medical Chief or designee has authority to impose reasonable rules and regulations for granting permits, and conditions on any permits granted.
 - (3) In addition to permitting requirements, every public display of fireworks shall meet the requirements of A.R.S. § 36-1603 and be of a character and so located, discharged, and fired only after proper inspection and in a manner that does not endanger persons, animals, or property.
 - (4) It is a violation of this Chapter to: (i) fail to obtain a permit for a supervised public display of fireworks, (ii) fail to meet the requirements of a supervised public display permit, or (iii) use display fireworks in violation of this Chapter or state law.
- (F) Nothing in this Section shall be construed to prohibit the use of federally deregulated novelty items, known as snappers, snap caps, party poppers, glow worms, snakes, toy smoke devices, or sparklers, and certain types of toy devices as set forth in A.R.S. § 36-1601(4)(b)(iii).

6-21-4: SALE OF FIREWORKS AND PERMISSIBLE CONSUMER FIREWORKS

- (A) It is unlawful to sell, offer or expose for sale fireworks within the City of Mesa corporate limits except as authorized by Arizona Revised Statutes, Title 36, Chapter 13, Article 1, or other applicable state law.
- (B) No person shall sell permissible consumer fireworks to a person who is under 16 years of age.
- (C) No person shall sell permissible consumer fireworks in conflict with state law.
- (D) It is unlawful to sell permissible consumer fireworks within the City of Mesa corporate limits on all days except that permissible consumer fireworks may be sold on the following days each year: April 25th through May 6th, May 20th through July 6th, December 10th through January 3rd, two days before the first day of Diwali through the third day of Diwali, and on days and times sales cannot be prohibited by the City of Mesa as set forth in A.R.S. § 36-1606(A).

6-21-5: POSTING OF SIGNS BY PERSONS ENGAGED IN THE SALE OF PERMISSIBLE CONSUMER FIREWORKS

- (A) Prior to the sale of permissible consumer fireworks, every person engaged in such sales shall prominently display signage that (i) is eight and one-half inches by eleven inches in size, (ii) is on cardstock paper in landscape orientation, and (iii) contains the specific language set forth in A.R.S. § 36-1606(B) for additional signage printed on a contrasting background.
- (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 and Medical Chief or designee shall develop a model sign. The model sign shall be filed with the Mesa City Clerk's Office.

6-21-6: AUTHORITY TO ENFORCE VIOLATIONS; PENALTY

- (A) The City of Mesa Fire and Medical Chief and Mesa Police Chief, or their designees, each has the authority to issue civil complaints to enforce civil violations of this Chapter. A peace officer and the City Prosecutor, or their designee, each has the authority to issue criminal complaints to enforce criminal violations of this Chapter.
- (B) A violation of Sections 6-21-3(A), 6-21-3(C), 6-21-3(E)(3), 6-21-3(E)(4), or 6-21-4 is a class 1 misdemeanor that is subject to a sentence of incarceration not to exceed six (6) months in jail and/or a fine not to exceed twenty-five hundred dollars (\$2,500), exclusive of penalty assessments prescribed by law, for each count upon which a conviction is obtained. The court shall order a person convicted of a violation of Sections 6-21-3(A), 6-21-3(C), 6-21-3(E)(3), 6-21-3(E)(4), or 6-21-4 to pay a fine not less than one thousand dollars (\$1,000) for each conviction.
- (C) A violation of Sections 6-21-3(B), 6-21-3(D), 6-21-5(A), or 6-21-5(B) is a civil offense punishable by a fine of five hundred dollars (\$500) for each violation.
- (D) Habitual Offender.
 - (1) A person who commits a civil violation of this Chapter after previously having been found responsible for committing civil violations of this Chapter on three (3) separate dates within a thirty-six (36) month period, whether by admission, by payment of the fine, by default, or by judgment after hearing, shall be guilty of a class 1 criminal misdemeanor as a habitual offender. For purposes of calculating the thirty-six (36) month period under this Subsection (D), the dates of the commission of the offenses are the determining factor.
 - (2) Upon conviction of a violation as a habitual offender pursuant to Subsection (D)(1), the court may impose a sentence of incarceration not to exceed six (6) months in jail and/or a fine not to exceed twenty-five hundred dollars (\$2,500), exclusive of penalty assessments prescribed by law, for each count upon which a conviction is obtained. The court shall order a person who has been convicted of a violation as a habitual offender to pay a fine not less than one thousand dollars (\$1,000) for each conviction.
- (E) All owners, managers, operators, or other persons in control of a business offering fireworks or permissible consumer fireworks for sale are jointly and individually liable for compliance with this Chapter.

(F) The penalties provided for in this Section are in addition to any other enforcement remedies the City of Mesa may have under City ordinances and state law.

SECTION 2: INCORPORATION OF RECITALS. The recitals above are fully incorporated in this Ordinance by reference.

SECTION 3: EFFECTIVE DATE. The effective date of this Ordinance shall be thirty days following adoption by the Mesa City Council.

SECTION 4: MATURED RIGHTS AND DUTIES, PENALTIES OR PROCEEDINGS. This Ordinance does not affect the rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this Ordinance.

SECTION 5: SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or any part of the material adopted herein by reference, is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED by the Council of the City of Mesa, Maricopa County, Arizona, this 17th day of October, 2022.

APPROVED:

Mayor

ATTEST:

City Clerk