

ORDINANCE NO. 207

AN ORDINANCE AMENDING THE CITY CODE OF ATKINS, IOWA, BY AMENDING ATKINS CITY CODE, CHAPTER 41.12 FIREWORKS.

WHEREAS, the General Assembly of the State of Iowa has taken measures to allow the sale and use of consumer fireworks in the State of Iowa during specific timeframes and pursuant to applicable state licensure; and

WHEREAS, the new legislation provides for city councils, by ordinance, to prohibit or limit the use of consumer fireworks within their jurisdiction, if determined a public safety risk or a nuisance to neighbors.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of Atkins, Iowa as follows:

SECTION 1. AMEND Chapter 41.12 (FIREWORKS). The Code of Ordinances of the City of Atkins, Iowa, is amended by repealing Chapter 41.12 and adopting the new section stated as follows: The new section would be effective on the passage of the third reading or on December 30th, 2017 which ever is later.

41.13 FIREWORKS

The sale, use or exploding of fireworks within the City is subject to the following:

1. **Definition.** For purposes of this section, definitions are enumerated in the Iowa Code section 727.2, which definitions are incorporated herein by reference.

(Code of Iowa, Sec. 727.2)

2. Sales - General Requirements.

A. The state fire marshal shall establish a consumer fireworks seller license. An application for a consumer fireworks seller license shall be made on a form provided by the state fire marshal. The state fire marshal shall adopt rules consistent with section 100.19 of the Iowa Code establishing minimum requirements for a retailer or community group to be issued a consumer fireworks seller license.

(1) a person shall possess a consumer fireworks seller license under this section in order to sell consumer fireworks.

B. The state fire marshal shall establish a fee schedule for consumer fireworks seller licenses as follows:

(1) For a retailer at a permanent building who devotes fifty percent or more of the retailer's retail floor space to the sale or display of first-class consumer fireworks, an annual fee of one thousand dollars.

- (2) For a retailer at a temporary structure who devotes fifty percent or more of the retailer's retail floor space to the sale of fire-class consumer fireworks, an annual fee of five hundred dollars.
- (3) For a retailer who devotes less than fifty percent of the retailer's retail floor space to the sale or display of first-class consumer fireworks, an annual fee of four hundred dollars.
- (4) For a retailer or community group that offers for sale, exposes for sale, or sells second-class consumer fireworks, but not first-class consumer fireworks, an annual fee of one hundred dollars.
 - a. A license issued to a retailer or community group pursuant to paragraph "B", subparagraph (1), (2), (3), or (4), shall allow the licensee to sell both first-class consumer fireworks and second-class consumer fireworks.

C. The state fire marshal shall adopt rules to:

- (1) Require that any retailer or community group offering for sale at retail any consumer fireworks, as described in APA 87-1, chapter 3, shall do so in accordance with the national fire protection association standard 1124, published in the code for the manufacture, transportation, storage, and retail sales of fireworks and pyrotechnic articles, 2006 edition.
- (2) Require that a retailer or community group to be issued a license pursuant to this section provide proof of and maintain commercial general liability insurance with minimum per occurrence coverage of at least one million dollars and aggregate coverage of at least two million dollars.
- (3) Permit a retailer or community group issued a license pursuant to this section to sell consumer fireworks, as described in APA 87-1, chapter 3, at the following locations as specified:
 - a. At a permanent building that meets the requirements of paragraph "B", between June 1 and July 8 and between December 10 and January 3 each year, all dates inclusive.
 - b. At a temporary structure that meets the requirements of paragraph "B", between June 13 and July 8 each year, both dates inclusive.
- (4) A retailer or community group shall not transfer consumer fireworks, as described in APA 87-1, chapter 3, to a person who is under eighteen years of age.

D. The state fire marshal shall adopt rules to provide that a person's consumer fireworks seller license may be revoked for the intentional violation of this section. The proceedings for revocation shall be held before the division of the state fire marshal, which may revoke the license or licenses involved as provided in paragraph "C".

- (1) If, upon the hearing of the order to show cause, the division of the state fire marshal finds that the licensee intentionally violated this section, then the license or licenses under which the licensed retailer or community group sells first-class consumer fireworks or second-class consumer fireworks, shall be revoked.
 - a. Judicial review of actions of the division of the state fire marshal may be sought in accordance with the terms of the Iowa administrative

procedure Act, chapter 17A. If the licensee has not filed a petition for judicial review in district court, revocation shall date from the thirty-first day following the date of the order of the division of the state fire marshal. If the licensee has filed a petition for judicial review, revocation shall date from the thirty-first day following entry of the order of the district court, if action by the district court is adverse to the licensee.

- b. A new license shall not be issued to a person whose license has been revoked, or to the business in control of the premises on which the violation occurred if it is established that the owner of the business had actual knowledge of the violation resulting in the license revocation, for the period of one year following the date of revocation.
- E. The state fire marshal shall adopt rules for the administration of this section.
 - (1) A person who violates a provision of this section or a rule adopted pursuant to this section is guilty of a simple misdemeanor.
- F. A city council may by ordinance or resolution prohibit or limit the use of consumer fireworks, display fireworks, or novelties, as described in section 727.2.
- G. Display Fireworks.
 - (1) A person, firm, partnership, or corporation who offers for sale, exposes for sale, sells at retail, or uses or explodes any display fireworks, commits a simple misdemeanor, punishable by a fine of not less than two hundred and fifty dollars. However, a city council of a city may, upon application in writing, grant a permit for the display of display fireworks by municipalities, fair organizations, amusement parks, or other organizations or groups of individuals approved by the city when the display fireworks will be handled by a competent operator, but no such permit shall be required for the display of display fireworks at the Iowa state fair board, at incorporated county fairs, or at district fairs receiving state aid. Sales of display fireworks for such display may be made for that purpose only. No permit shall be granted hereunder unless the operator or sponsoring organization has filed with the City evidence of insurance in the following amounts:
 - 1) Personal Injury: \$250,000 per person.
 - 2) Property Damage: \$50,000.
 - 3) Total Exposure: \$1,000,000.
 - (2) A person who uses or explodes display fireworks while the use of such devices is prohibited or limited by an ordinance or resolution adopted by the city in which the fireworks is used commits a simple misdemeanor, punishable by a fine of not less than two hundred and fifty dollars.
 - (3) A person who uses or explodes display fireworks while the use of such devices is suspended by an order of the state fire marshal commits a simple misdemeanor, punishable by a fine of not less than two hundred fifty dollars.
- H. Consumer fireworks and novelties.
 - (1) a person or firm, partnership, or corporation may possess, use, or explode fireworks in accordance with this subsection and subsection C.

- (2) a person, firm, partnership, or corporation who sells consumer fireworks to a person who is less than eighteen years of age commits a simple misdemeanor, punishable by a fine of not less than two hundred and fifty dollars. A person who is less than eighteen years of age who purchases consumer fireworks commits a simple misdemeanor, punishable by a fine of not less than two hundred fifty dollars.
- (3) A person who uses or explodes consumer fireworks or novelties while the use of such device is prohibited or limited by an ordinance adopted by the city in which the fireworks are used commits a simple misdemeanor, punishable by a fine of not less than two hundred fifty dollars.
- (4) A person who uses or explodes consumer fireworks or novelties while the use of such devices is suspended by an order of the state fire marshal commits a simple misdemeanor, punishable by a fine of not less than two hundred fifty dollars.

3. Fireworks - Discharging General Requirements.

- A. No person under the age of 18 shall discharge a DOT 1.4 class consumer firework.
- B. A person shall only discharge a consumer fireworks device on real property they own or on property where consent has been given. Novelties, including snakes, sparklers, or caps, can be discharged on a public place so long as all trash, wrappers, and wires are properly disposed of.
- C. Consumer fireworks shall not be discharged by persons showing visible signs of, or determined to be, intoxicated or under the influence of a drug or narcotic.
- D. Any person discharging a consumer fireworks device assumes all responsibility for its operation and the consequences thereof. No person shall discharge a consumer fireworks device in a reckless manner or manner likely to cause death, injury, fire, or property damage.
- E. No person shall discharge a consumer fireworks device outside the following dates and hours:
 - 1) June 28th thru July 4th from the hours of 9 am to 11 pm each day.
 - 2) December 30th from the hours of 9 am to 10 pm.
 - 3) December 31st from the hours of 9 am to 12:30 am on January 1st.
- F. It shall be unlawful to alter, remove, or discharge components of a consumer fireworks device from its intended method of discharging.
- G. Sky lantern open flame devices are not permitted to be released within the city limits, except if tethered by a retrievable rope so long as the person discharging has control over the sky lantern.

4. **Violations.** All violations of any provisions of this Chapter are hereby declared simple misdemeanors and/or municipal infractions. Violations may be prosecuted as either a misdemeanor criminal offense or a municipal infraction at the sole discretion of the fire chief or peace officer. Fines shall be set by resolution of the City Council. Violations of this chapter shall be reported to the state fire marshal.

5. **Exceptions.** This section does not prohibit the sale by a resident, dealer, manufacturer, or jobber of such fireworks as are not prohibited; or the sale of any kind of fireworks if they are to be shipped out of State; or the sale or use of blank cartridges for a show or theater, or for signal purposes in athletic sports or by railroads or trucks for signal purposes, or by a recognized military organization. This section does not apply to any substance or composition prepared and sold for medicinal or fumigation purposes.

SECTION 2. REPEALER. All ordinances or parts thereof in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. SEVERABILITY CLAUSE. If any section, provision, or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of this ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

SECTION 4. WHEN EFFECTIVE. This ordinance shall be effect from and after its final passage, approval and publication as provided by law.

Passed First Reading by the City Council of Atkins, Iowa, ____ day of ____, 2017.

Passed Second Reading by the City Council of Atkins, Iowa, the ____ day of ____, 2017.

PASSED AND ENACTED by the City Council of Atkins, Iowa, the ____ day of ____, 2017.

Kevin Korsmo, Mayor

ATTEST:

Amber Bell, City Clerk

The Mayor declared Ordinance No. 207 was passed on _____.

I certify that the foregoing was published as Ordinance No. 207 on the ____ day of _____ 2017.

Amber Bell, City Clerk