

ORDINANCE \_\_\_\_\_

**An Ordinance to amend and reenact Section 545.10, Article 545 of the Codified Ordinances of the City of Nitro, West Virginia, as amended, all relating to the regulation of fireworks within the City of Nitro.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA,** that Section 545.10, Article 545 of the Codified Ordinances of the City of Nitro, West Virginia, as amended, be amended and reenacted, all to read as follows:

ARTICLE 545  
Weapons and Explosives

**545.10 FIREWORKS SALE, POSSESSION AND DISCHARGE.**

(a) *Definitions.* For purposes of this Code, the following terms shall have the meaning ascribed herein unless another meaning is clearly established.

(1) "Amusement park" means any person or organization which holds a permit for the operation of an amusement ride or amusement attraction under article ten, chapter twenty-one of the Code of West Virginia, as amended;

(2) "Consumer fireworks" means small fireworks devices that are designed to produce visible effects by combustion that are required to comply with the construction, chemical composition and labeling regulations promulgated by the United States Consumer Product Safety Commission under 16 C.F.R. Parts 1500 and 1507 (2014), and that are listed in APA Standard 87-1. Consumer fireworks do not include sparkling devices, novelties, toy caps or model rockets;

(3) "Display fireworks" means large fireworks to be used solely by professional pyro-technicians licensed by the State Fire Marshal and designed primarily to produce visible or audible effects by combustion, deflagration or detonation and includes, but is not limited to, salutes containing more than two grains (one hundred thirty milligrams) of explosive materials, aerial shells containing more than forty grams of pyrotechnic compositions and other display pieces that exceed the limits of explosive materials for classification as consumer fireworks and are classified as fireworks UN0333, UN0334, or UN0335 under 49 C.F.R. §172.101 (2014);

(4) "Distributor" means a person who sells fireworks to wholesalers and retailers for resale;

(5) "Fire Marshal" means the State Fire Marshal;

(6) "Firework" or "fireworks" means any composition or device designed for the purpose of producing a visible or audible effect by combustion, deflagration or detonation. Fireworks include consumer fireworks, display fireworks and special effects. Fireworks does not include sparkling devices, novelties, toy caps or model rockets;

(7) "Interstate wholesaler" means a person who is engaged in interstate commerce selling fireworks;

(8) "Model rocket" means that term as defined in National Fire Protection Association Standard 1122, "Code for Model Rocketry";

(9) "Novelties" means that term as defined under APA standard 87-1, section 3.2; but shall not include toy pistols, toy caps, toy canes, toy guns or other similar devices;

(10) "Person" means an individual or the responsible person for an association, an organization, a partnership, a limited partnership, a limited liability company, a corporation or any other group or combination acting as a unit;

(11) "Public display of fireworks" means a public entertainment feature that is advertised to the general public or is on public property that includes the display or discharge of fireworks;

(12) "Retailer" means a person who purchases consumer fireworks for resale to consumers;

(13) "Sparkling devices" means "ground or handheld sparkling devices" as that phrase is defined under APA 87-1, sections 3.1.1 and 3.5;

(14) "Special effects" means a combination of chemical elements or chemical compounds capable of burning independently of the oxygen in the atmosphere and designed and intended to produce an audible, visual, mechanical or thermal effect as an integral part of a motion picture, radio, television, theatrical or opera production or live entertainment;

(15) "Toy caps" means that term as defined under APA 87-1, section 3.3; and

(16) "Wholesaler" means any person who sells consumer fireworks to a retailer or any other person for resale and any person who sells articles of pyrotechnics, display fireworks, and special effects to a person licensed to possess and use those devices.

(b) *Licensing requirement.* No person or entity may manufacture, wholesale, distribute, import, sell or store for the purpose of resale, fireworks, sparkling devices, novelties or toy caps without:

(1) First registering each business location in Nitro with the City of Nitro;

(2) First paying a business registration fee of \$100.00 for each place of business located in Nitro; and

(3) First being registered to pay all applicable taxes derived from doing business in Nitro.

(c) *Sale of fireworks.*

(1). A retailer selling fireworks shall have a consumer fireworks certificate issued under the authority of West Virginia Code § 29-3E-5.

(2). The sale of fireworks shall be under the direct supervision and control of a competent person at least twenty-one years of age and duly qualified and responsible for the enforcement of all safety measures.

(3). Smoking, matches and open flames shall not be permitted within fifty feet of fireworks being sold. Signs shall be posted in conspicuous places in, on and around all fireworks being displayed for sale with the words "FIREWORKS -- NO SMOKING" in letters of not less than four inches in height.

(4). Fire extinguishing equipment shall be kept and maintained upon the sale premises and shall include, but not be limited to, a ten-pound A.B.C. fire extinguisher.

(5). All electrical fixtures contained upon the sale premises shall be dust-ignition proof. No fewer than two unobstructed exits shall be maintained upon the fireworks sale premises at all times.

(6). No fireworks shall be offered for sale within 300 feet of the property line of any church, hospital or school, or within fifty feet of the property line of any lot upon which any flammable liquid dispensers or flammable liquid storage areas are located.

(7). Any outdoor fireworks sales shall be located not less than twenty-five feet from any building, structure and all rights of way including, but not limited to, highways, streets, alleys, and sidewalks.

(8). Fireworks shall not be sold to any person under the age of eighteen years.

(d) *Storage of fireworks.*

(1). Fireworks shall be stored in a manner to be fire-resistant, weather-resistant and theft-resistant from any external or internal source.

(2). Fireworks storage shall be under the direct supervision and control of a competent person at least eighteen years of age.

(3). Consumer fireworks shall be stored in accordance with the manufacturer's printed instructions.

(e) *Fireworks, use requirements, generally.* A person using fireworks:

(1) Shall not do so while that person is under the influence of alcoholic liquor or controlled substance or a combination of both;

(2) Shall be eighteen years of age or older or shall be under the direct supervision of his or her parent, guardian or other adult person having the care and custody of the minor;

(3) Shall be responsible for the removal of all debris accumulated within twenty-four hours of such fireworks use and be financially responsible for all cleanup costs and damages due to the use of such fireworks;

(4) Shall be responsible for all costs and expenses associated with emergency response efforts, including but not limited to fire suppression efforts, related to such fireworks; and

(5) Shall abide by all legal requirements concerning such fireworks use.

(f) *Consumer Fireworks, use requirements.* A person using consumer fireworks:

(1) Shall not do so within 100 feet of any building or structure;

(2) Shall not do so except between 10 a.m. and 10 p.m. on Memorial Day, Independence Day, Labor Day and between 10 a.m. and 10 p.m. on the holiday weekends corresponding to those holidays, or between 10 a.m. on December 31 and 12:30 a.m. on January 1;

(3) Shall not do so from any motor vehicle or boat;

(4) Shall ensure that such consumer fireworks do not travel through, come in contact with or discharge or explode onto any public street, highway or sidewalk, in or upon any building, at or near any person or within 500 feet of any location posing a special fire danger, such as a gas station or chemical storage area;

(5) Shall not do so during periods of very high or extreme fire danger as determined by the Nitro Fire Department or the West Virginia Division of Forestry, or while wind conditions are such that proper fireworks control cannot be exercised; and

(6) Shall do so in accordance with the fireworks manufacturer's printed instructions.

(g) *Display Fireworks*

(1). Display fireworks shall be used by a competent operator licensed or certified as to competency by the State Fire Marshal and shall be of such composition and character and so located and used so as to be safe in the opinion of the Fire Chief and Police Chief.

(2). The use of display fireworks is conditioned on compliance with the provisions of this section, West Virginia Code Article 29-3E and the regulations of the State Fire Marshal.

(3). The operator shall provide to the Mayor proof of liability insurance coverage issued by an insurance company licensed to do business in West Virginia in the minimum amount of \$1 million and of a character and form as the Mayor determines to be necessary for the protection of the public, with the City being a named insured to satisfy claims for damages to property or personal injuries arising out of any act or omission on the part of the operator or an employee thereof.

(4). After such privilege shall have been granted, the sale, possession, use and distribution of display fireworks shall be lawful for that purpose only.

(5). No privilege granted hereunder shall be transferable.

(h) *Seizure authorized.* The City of Nitro may seize, take, remove and dispose of at public auction or destroy at the expense of the owner, or cause to be seized, taken or removed and disposed of at public auction, or destroyed at the expense of the owner, all fireworks or combustibles offered for sale, stored or held in violation of this section, West Virginia Code Article 29-3E or an emergency or legislative rule promulgated thereunder by the Fire Marshall.

(i) *Enforcement.* The provisions of this section shall be enforced by the Fire Chief, the Police Chief or their designees.

(J) *Penalty.* Whoever violates any of the provisions of this section shall be fined not more than five hundred dollars (\$500.00). Each violation of the provisions of this section shall constitute a separate offense.

This ordinance shall take effect immediately upon passage.

Passed on First Reading September 20, 2016

Passed on Second Reading October 4, 2016

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David Casebolt, Mayor

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Rita Cox, Recorder