

ORDINANCE NO. 829

**AN ORDINANCE TO AMEND THE CODE OF ORDINANCES OF THE CITY OF
CLEAR LAKE, IA, 2003, REGARDING FIREWORKS REGULATION**

WHEREAS, On May 9, 2017, the State of Iowa legislature and Governor enacted a law relating to the possession, sale, transfer, purchase, and use of fireworks, providing penalties, and including effective date provisions; and

WHEREAS, the law includes provisions that allow municipalities to adopt an ordinance or resolution to prohibit or restrict the sale of consumer fireworks within the municipality; and

WHEREAS, the City's Code of Ordinances, Section 41.11, currently restricts the display of fireworks, but does not specifically address the sale, use, discharge, and possession of fireworks; and

WHEREAS, to better protect the public health, safety and welfare of its Citizens, the City desires to create an Ordinance to restrict the sale and use of consumer fireworks within the City; and

BE IT THEREFORE ORDAINED by the City Council of the City of Clear Lake, Iowa:

Section 1: Amendment. Section 41.11 of the Code of Ordinances is hereby amended by deleting the section in its entirety and replacing it with the following:

SECTION 41.11 FIREWORKS REGULATION.

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

1. Definitions. For the purposes of this Section 41.11, the following terms are defined:
 - a. "Consumer fireworks" shall mean first-class consumer fireworks and second-class consumer fireworks as those terms are defined in subparagraphs (c) and (e) below.
 - b. "Display Fireworks" shall mean any explosive composition, or combination of explosive substances or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation, and includes fireworks containing any explosives or flammable compound, or other devices containing any explosive substance.
 - c. "First Class Consumer Fireworks" shall mean the following consumer fireworks, as described in the American Pyrotechnics Association ("APA") Standard 87-1, chapter 3:
 - (i) Aerial shell kits and reloadable tubes;
 - (ii) Chasers;

- (iii) Helicopters and aerial spinners;
- (iv) Firecrackers;
- (v) Mine and shell devices;
- (vi) Missile-type rockets;
- (vii) Sky rockets and bottle rockets; and
- (viii) Multiple type devices under this subparagraph (b) which are manufactured in accordance with APA 87-1, section 3.5.

- d. "Novelties" shall mean all novelties enumerated in chapter 3 of the APA standard 87-1, and that comply with the labeling regulations promulgated by the United States Consumer Product Safety Commission.
- e. "Second Class Consumer Fireworks" shall mean the following consumer fireworks, as described in APA Standard 87-1, chapter 3:

- (i) Cone fountains;
- (ii) Cylindrical fountains;
- (iii) Flitter sparklers;
- (iv) Ground and hand-held sparkling devices, including multiple tube and hand held sparkling devices that are manufactured in accordance with APA Standard 87-1, section 3.5;
- (v) Ground spinners;
- (vi) Illuminating torches;
- (vii) Toy smoke devices that are not classified as novelties pursuant to APA Standard 87-1, section 3.2;
- (viii) Wheels;
- (ix) Wire or dipped sparklers that are not classified as novelties pursuant to APA Standard 87-1, section 3.2.

- 2. The use or explosion of Consumer Fireworks within the City is hereby prohibited.
- 3. The use or explosion of Display Fireworks by the City, a City agency, fair associations, amusement parks and other organizations or groups of individuals approved by City authorities when such fireworks display will be handled by a competent operator. In no event shall a permit be granted unless the operator or sponsoring organization provides evidence to the City of insurance in at least the following amounts:
 - A. Personal Injury: \$ 250,000.00 per person.
 - B. Property Damage: \$ 50,000.00.
 - C. Total Exposure: \$1,000,000.00.
- 4. The sale of consumer fireworks within a permanent or temporary structure within the City by a retailer or community group is subject to the following:

- A. The sale of consumer fireworks can only occur between the dates of June 1st and July 8th inclusive; and December 10th and January 3rd inclusive.
- B. The sale may occur only within an I-2 Zoning District classification.
- C. The retailer or community group shall maintain commercial general liability insurance of at least One Million Dollars (\$1,000,000) per occurrence and aggregate coverage of at least Two Million Dollars (\$2,000,000).
- D. The Permit fee shall be \$250.
- E. The retailer or community group shall obtain a permit from the City Clerk which shall be reviewed by Fire Department to ensure that the permanent or temporary structure meets the guidelines of NFPA 1124, 2006 Edition, as well as the Building Official and Police Department.
- F. All temporary structures for the sale of consumer fireworks shall obtain a Permit as described in this Code from the City Clerk.
- G. No storage, sales, or display for sale of fireworks may occur from within a vehicle.
- H. Approval of Property Owner. A copy of a lease agreement or letter of approval from the property owner of the location where sales are requested must accompany the Fireworks Sales Permit Application.
- I. A person under the age of 18 years shall not buy, purchase, acquire or obtain consumer fireworks. A person shall not sell consumer fireworks to a person under the age of 18 years.
- J. Inspections. Any property, building, or premise whether it be permanent or temporary, intended for the sale of first-class consumer fireworks shall have an inspection completed by the Fire Chief and Building Official.

PENALTIES

Any individual who violates the restrictions of this ordinance or who aids, abets, perpetuates, participates in, or otherwise promotes the actions of an individual who violates said restrictions, may be cited and prosecuted for the applicable ordinance violation(s). The owner, occupant, or other person with control of the real property where the violations are occurring and/or the person who has or shares control of the fireworks shall be guilty of a misdemeanor, punishable as stated herein.

A person convicted of a violation of Section 2 of this Ordinance is guilty of a simple misdemeanor punishable as a scheduled violation under Iowa Code, which is a \$100 scheduled fine.

Unless otherwise provided by law or this Ordinance, violations of any other provisions of this Ordinance are hereby declared simple misdemeanors. Anyone violating provisions other than Section 2 of this ordinance shall upon conviction be fined a minimum amount of not less than \$250.

SEIZURE & DISPOSAL OF FIREWORKS

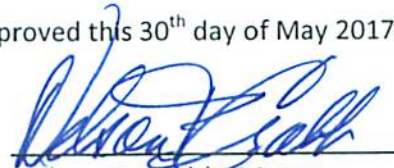
The City Police Department may seize consumer and impound all fireworks and fireworks paraphernalia that it has probable cause to believe are used, possessed, or sold in violation of this ordinance. If the impounded items are lawful to possess, they may be retained as evidence until any court proceedings or citations have been adjudicated. The police department may dispose of the seized fireworks by providing them to the fire department.

Section 2. Repealer. All ordinances or parts of ordinances 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 the ordinance as a whole or any section, provisions or part thereof not adjudged invalid or unconstitutional.

Section 4. Effective Date. This ordinance shall be in effect from and after its final passage, approval and publication as provided by law.

Passed by the Council the 30th day of May 2017, and approved this 30th day of May 2017.


Nelson P. Crabb, Mayor

Attest:


Jennifer Larsen, City Clerk

I certify that the forgoing was published as Ordinance No.829 in the Clear Lake Mirror Reporter on the 7th day of June, 2017.


Jennifer Larsen
City Clerk

1st reading: May 30, 2017

2nd reading: May 30, 2017

Final reading: May 30, 2017