

ORDINANCE NO.: 29 -2009
INTRODUCED BY: Gambatese

AN ORDINANCE AMENDING PART 15, FIRE PREVENTION CODE, OF
THE CODIFIED ORDINANCES TO ADOPT REGULATIONS RELATED TO
FIREWORKS; AND DECLARING AN EMERGENCY.

WHEREAS, in addition to the Ohio Revised Code provisions regulating fireworks in the State of Ohio and its municipalities, the Chief of Police and this Council deem it necessary to have local regulations with respect to the manufacturing, sale, purchasing, transporting, shipping, exhibiting, possession, discharge, advertising and disposal of fireworks in the City of Richmond Heights, all in furtherance of the public peace, health, safety and general welfare; and

WHEREAS, the need for the regulation of fireworks is most heightened at or near the 4th of July holiday and it is necessary for the within regulations to be effective prior to the July 4th holiday;

NOW, THEREFORE, be it ordained by the Council of the City of Richmond Heights, State of Ohio, that:

Section 1: Part Fifteen, "Fire Prevention Code," of the Codified Ordinances of the City of Richmond Heights is hereby amended to add new Chapter 1519, "Fireworks", to hereinafter read as follows:

"CHAPTER 1519
Fireworks

1519.01 DEFINITIONS.

As used in this chapter, unless otherwise provided:

(a) "Beer" and "intoxicating liquor" have the same meanings as in Section 4301.01 of the Revised Code.

(b) "Booby trap" means a small tube that has a string protruding from both ends, that has a friction-sensitive composition, and that is ignited by pulling the ends of the string.

(c) "Cigarette load" means a small wooden peg that is coated with a small quantity of explosive composition and that is ignited in a cigarette.

(d) (1) "1.3G fireworks" means display fireworks consistent with regulations of the United States Department of Transportation as expressed using the designation "Division 1.3" in Title 49, Code of Federal Regulations.

(2) “1.4G fireworks” means consumer fireworks consistent with regulations of the United States Department of Transportation as expressed using the designation “Division 1.4” in Title 49, Code of Federal Regulations.

(e) “Controlled substance” has the same meaning as in Section 3719.01 of the Revised Code.

(f) “Discharge site” means an area immediately surrounding the mortars used to fire aerial shells.

(g) “Explosive” means any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion. “Explosive” includes all materials that have been classified as Division 1.1, Division 1.2, Division 1.3, or Division 1.4 explosives by the United States Department of Transportation in its regulations and includes, but is not limited to, dynamite, black powder, pellet powders, initiating explosives, blasting caps, electric blasting caps, safety fuses, fuse igniters, squibs, cordeau detonant fuses, instantaneous fuses, and igniter cords and igniters. “Explosives” does not include “fireworks” as defined below, or any explosive that is not subject to regulation under the rules of the State Fire Marshal adopted pursuant to Section 3737.82 of the Revised Code.

(h) “Fireworks” means any composition or device prepared for the purpose of producing a visible or an audible effect by combustion, deflagration, or detonation, except ordinary matches and except as provided in Section 1519.09 of this chapter.

(i) “Fireworks incident” means any action or omission that occurs at a fireworks exhibition, that results in injury or death, or a substantial risk of injury or death, to any person, and that involves either of the following:

- (1) The handling or other use, or the results of the handling or other use, of fireworks or associated equipment or other materials;
- (2) The failure of any person to comply with any applicable requirement imposed by this chapter or any applicable rule adopted under this chapter.

(j) “Fireworks incident site” means a discharge site or other location at a fireworks exhibition where a fireworks incident occurs, a location where an injury or death associated with a fireworks incident occurs, or a location where evidence of a fireworks incident or an injury or death associated with a fireworks incident is found.

(k) “Fireworks plant” means all buildings and other structures in which the manufacturing of fireworks, or the storage or sale of manufactured fireworks by a manufacturer, takes place.

(l) “Highway” means any public street, road, alley, way, lane, or other public thoroughfare.

(m) “Licensed building” means a building on the licensed premises of a licensed manufacturer or wholesaler of fireworks that is approved for occupancy by the building official having jurisdiction.

(n) “Licensed exhibitor of fireworks” or “licensed exhibitor” means a person licensed pursuant to Sections 3743.50 to 3743.55 of the Revised Code.

(o) “Licensed manufacturer of fireworks” or “licensed manufacturer” means a person licensed pursuant to Sections 3743.02 to 3743.08 of the Revised Code.

(p) “Licensed premises” means the real estate upon which a licensed manufacturer or wholesaler of fireworks conducts business.

(q) “Licensed wholesaler of fireworks” or “licensed wholesaler” means a person licensed pursuant to Sections 3743.15 to 3743.21 of the Revised Code.

(r) “Manufacturing of fireworks” means the making of fireworks from raw materials, none of which in and of themselves constitute a fireworks, or the processing of fireworks.

(s) “Novelties and trick noisemakers” include the following items:

- (1) Devices that produce a small report intended to surprise the user, including, but not limited to, booby traps, cigarette loads, party poppers, and snappers;
- (2) Snakes or glow worms;
- (3) Smoke devices;
- (4) Trick matches.

(t) “Party popper” means a small plastic or paper item that contains not more than sixteen milligrams of friction-sensitive explosive composition, that is ignited by pulling a string protruding from the item, and from which paper streamers are expelled when the item is ignited.

(u) “Processing of fireworks” means the making of fireworks from materials all or part of which in and of themselves constitute a fireworks, but does not include the mere packaging or repackaging of fireworks.

(v) “Railroad” means any railway or railroad that carries freight or passengers for hire, but does not include auxiliary tracks, spurs, and sidings installed and primarily used in serving a mine, quarry, or plant.

(w) “Retail sale” or “sell at retail” means a sale of fireworks to a purchaser who intends to use the fireworks, and not resell them.

(x) "Smoke device" means a tube or sphere that contains pyrotechnic composition that, upon ignition, produces white or colored smoke as the primary effect.

(y) "Snake or glow worm" means a device that consists of a pressed pellet of pyrotechnic composition that produces a large, snake-like ash upon burning, which ash expands in length as the pellet burns.

(z) "Snapper" means a small, paper-wrapped item that contains a minute quantity of explosive composition coated on small bits of sand, and that, when dropped, implodes.

(aa) "Storage location" means a single parcel or contiguous parcels of real estate approved by the fire marshal pursuant to division (I) of Section 3743.04 of the Revised Code or division (G) of Section 3743.17 of the Revised Code that are separate from a licensed premises containing a retail showroom, and which parcel or parcels a licensed manufacturer or wholesaler of fireworks may use only for the distribution, possession, and storage of fireworks in accordance with this chapter.

(bb) "Trick match" means a kitchen or book match that is coated with a small quantity of explosive composition and that, upon ignition, produces a small report or a shower of sparks.

(cc) "Wholesale sale" or "sell at wholesale" means a sale of fireworks to a purchaser who intends to resell the fireworks so purchased.

(dd) "Wire sparkler" means a sparkler consisting of a wire or stick coated with a non-explosive pyrotechnic mixture that produces a shower of sparks upon ignition and that contains no more than one hundred grams of this mixture.

1519.02 MANUFACTURING.

(a) No licensed manufacturer of fireworks shall knowingly fail to comply with the rules adopted by the State Fire Marshal pursuant to Section 3743.05 of the Revised Code or the requirements of Section 3743.06 of the Revised Code.

(b) No licensed manufacturer of fireworks shall fail to maintain complete inventory, wholesale sale and retail records as required by Section 3743.07 of the Revised Code, or to permit inspection of these records or the premises of a fireworks plant pursuant to Section 3743.08 of the Revised Code.

(c) No licensed manufacturer of fireworks shall fail to comply with an order of the State Fire Marshal issued pursuant to Section 3743.08(B)(1) of the Revised Code within the specified period of time.

(d) No licensed manufacturer of fireworks shall fail to comply with an order of the State Fire Marshal issued pursuant to Section 3743.08(B)(2) of the Revised Code. The order shall be effective until the nonconformities are eliminated, corrected or otherwise remedied or the 72-hour period specified in that division has expired, whichever occurs first.

(e) No person shall smoke or shall carry a pipe, cigarette, or cigar, or match, lighter, other flame-producing item, or open flame on, or shall carry a concealed source of ignition into, the premises of a fireworks plant, except as smoking is authorized in specified lunchrooms or restrooms by a manufacturer pursuant to Section 3743.06(C) of the Revised Code.

(f) No person shall have possession or control of, or be under the influence of, any intoxicating liquor, beer, or controlled substance while on the premises of a fireworks plant.

1519.03 WHOLESALING.

(a) No licensed wholesaler of fireworks shall knowingly fail to comply with the rules adopted by the State Fire Marshal pursuant to Section 3743.18 of the Revised Code or the requirements of Section 3743.19 of the Revised Code.

(b) No licensed wholesaler of fireworks shall fail to maintain complete inventory, wholesale sale and retail records as required by Section 3743.20 of the Revised Code, or to permit an inspection of these records or the premises of the wholesaler pursuant to Section 3743.21 of the Revised Code.

(c) No licensed wholesaler of fireworks shall fail to comply with an order of the State Fire Marshal issued pursuant to Section 3743.21(B)(1) of the Revised Code within the specified period of time.

(d) No licensed wholesaler of fireworks shall fail to comply with an order of the State Fire Marshal issued pursuant to Section 3743.21(B)(2) of the Revised Code. The order shall be effective until the nonconformities are eliminated, corrected or otherwise remedied or the 72-hour period specified in that division has expired, whichever occurs first.

(e) No person shall smoke or shall carry a pipe, cigarette, or cigar, or a match, lighter, other flame-producing item, or open flame on, or shall carry a concealed source of ignition into, the premises of a wholesaler of fireworks, except as smoking is authorized in specified lunchrooms or restrooms by a wholesaler pursuant to Section 3743.19(D) of the Revised Code.

(f) No person shall have possession or control of, or be under the influence of, any intoxicating liquor, beer, or controlled substance while on the premises of a wholesaler of fireworks.

1519.04 PURCHASING AND TRANSPORTING.

(a) No person who resides in another state and purchases fireworks in this State shall obtain possession of the fireworks in this State unless the person complies with Section 3743.44 of the Revised Code, provided that knowingly making a false statement on the fireworks purchasers form is not a violation of this section but is a violation of Section 2921.13 (Falsification) of the Revised Code or a substantially similar municipal ordinance.

(b) No person who resides in another state and who purchases fireworks in this State shall obtain possession of fireworks in this State other than from a licensed manufacturer or wholesaler, or fail, when transporting the fireworks, to transport them directly out of this State

within 72 hours after the time of their purchase. No such person shall give or sell to any other person in this State fireworks that the person has acquired in this State.

(c) No person who resides in this State and purchases fireworks in this State shall obtain possession of the fireworks in this State unless the person complies with Section 3743.45 of the Revised Code, provided that knowingly making a false statement on the fireworks purchasers form is not a violation of this section but is a violation of Section 2921.13 (Falsification) of the Revised Code or a substantially similar municipal ordinance.

(d) No person who resides in this State and who purchases fireworks in this State under Section 3743.45 of the Revised Code shall obtain possession of fireworks in this State other than from a licensed manufacturer or licensed wholesaler, or fail, when transporting the fireworks, to transport them directly out of this State within 48 hours after the time of their purchase. No such person shall give or sell to any other person in this State fireworks that the person has acquired in this State.

1519.05 PROHIBITED ACTIVITIES BY EXHIBITORS.

(a) An exhibitor of fireworks licensed under Sections 3743.50 through 3743.55 of the Revised Code who wishes to conduct a public fireworks exhibition shall apply for approval to conduct the exhibition to the Fire Chief or fire prevention officer and to the Police Chief or other similar chief law enforcement officer, or the designee of the Police Chief or other similar chief law enforcement officer, having jurisdiction over the premises.

(b) The approval required by division (a) of this section shall be evidenced by the Fire Chief or fire prevention officer and by the Police Chief or other similar chief law enforcement officer, or the designee of the Police Chief or similar chief law enforcement officer, signing a permit for the exhibition. Any exhibitor of fireworks who wishes to conduct a public fireworks exhibition may obtain a copy of the form from the State Fire Marshal or, if available, from the Fire Chief, a fire prevention officer, the Police Chief or other similar chief law enforcement officer, or a designee of the Police Chief or other similar chief law enforcement officer.

(c) Before a permit is signed and issued to a licensed exhibitor of fireworks, the Fire Chief or fire prevention officer, in consultation with the Police Chief or other similar chief law enforcement officer, or the designee of the Police Chief or other similar chief law enforcement officer, shall inspect the premises on which the exhibition will take place and shall determine that, in fact, the applicant for the permit is a licensed exhibitor of fireworks. Each applicant shall show his or her license as an exhibitor of fireworks to the Fire Chief or fire prevention officer.

(d) The Fire Chief or fire prevention officer and the Police Chief or other similar chief law enforcement officer, or the designee of the Police Chief or other similar chief law enforcement officer, shall give approval to conduct a public fireworks exhibition only if satisfied, based on the inspection, that the premises on which the exhibition will be conducted allow the exhibitor to comply with the rules adopted by the State Fire Marshal pursuant to Sections 3743.53(B) and (E) of the Revised Code and that the applicant is, in fact, a licensed exhibitor of fireworks. The Fire Chief or fire prevention officer, in consultation with the Police

Chief or other similar chief law enforcement officer or with the designee of the Police Chief or other similar chief law enforcement officer, may inspect the premises immediately prior to the exhibition to determine if the exhibitor has complied with the rules, and may revoke a permit for noncompliance with the rules.

(e) If Council has prescribed a fee for the issuance of a permit for a public fireworks exhibition, the Fire Chief or fire prevention office and Police Chief or similar chief law enforcement officer, or their designee, shall not issue a permit until the exhibitor pays the requisite fee.

(f) Each exhibitor shall provide an indemnity bond in the amount of at least one million dollars with surety satisfactory to the Fire Chief or fire prevention officer and to the Police Chief or other similar chief law enforcement officer, or the designee of the Police Chief or other similar chief law enforcement officer, conditioned for the payment of all final judgments that may be rendered against the exhibitor on account of injury, death, or loss to person or property emanating from the fireworks exhibition, or proof of insurance coverage of at least one million dollars for liability arising from injury, death, or loss to persons or property emanating from the fireworks exhibition. Council may require the exhibitor to provide an indemnity bond or proof of insurance coverage in amounts greater than those required by this division. The Fire Chief or fire prevention officer and Police Chief or other similar chief law enforcement office, or their designee, shall not issue a permit until the exhibitor provides the bond or proof of the insurance coverage required by this division or by Council.

(g) Each permit for a fireworks exhibition issued by the Fire Chief or fire prevention officer and by the Police Chief or other similar chief law enforcement officer, or the designee of the Police Chief or other similar chief law enforcement officer, shall contain a distinct number, designate the municipality, and identify the certified fire safety inspector, Fire Chief, or fire prevention officer who will be present before, during and after the exhibition, where appropriate. A copy of each permit issued shall be forwarded by the Fire Chief or fire prevention officer and by the Police Chief or other similar chief law enforcement officer, or designee of the Police Chief or other similar chief law enforcement officer, issuing it to the State Fire Marshal. A permit is not transferable or assignable.

(h) The Fire Chef or fire prevention officer and Police Chief or other similar chief law enforcement officer, or designee of the Police Chief or other similar chief law enforcement officer shall keep a record of issued permits for fireworks exhibitions. In this list, the Fire Chief, fire prevention officer, Police Chief or other similar chief law enforcement officer, or designee of the Police Chief or other similar chief law enforcement officer, shall list the name of the exhibitor, his or her license number, the premises on which the exhibition will be conducted, the date and time of the exhibition, and the number and political subdivision designation of the permit issued to the exhibitor for the exhibition.

(i) Council shall require that a certified fire safety inspector, Fire Chief or fire prevention officer be present before, during and after the exhibition, and shall require the certified fire safety inspector, Fire Chief or fire prevention officer to inspect the premises where

the exhibition is to take place and determine whether the exhibition is in compliance with this section and Chapter 3743 of the Revised Code.

1519.06 UNLAWFUL CONDUCT BY EXHIBITOR.

(a) No licensed exhibitor of fireworks shall fail to comply with the applicable requirements of the rules adopted by the State Fire Marshal pursuant to Sections 3743.53(B) and (E) of the Revised Code or to comply with Sections 3743.53(C) and (D) of the Revised Code.

(b) No licensed exhibitor of fireworks shall conduct a fireworks exhibition unless a permit has been secured for the exhibition pursuant to Section 3743.54 of the Revised Code or a substantially similar municipal ordinance, or if a permit so secured is revoked by a Fire Chief or fire prevention officer, in consultation with a Police Chief or other similar chief law enforcement officer, or with a designee of a Police Chief or other similar chief law enforcement officer, pursuant to those sections.

(c) No licensed exhibitor of fireworks shall acquire fireworks for use at a fireworks exhibition other than in accordance the Sections 3743.54 and 3743.55 of the Revised Code, or a substantially similar municipal ordinance.

(d) No licensed exhibitor of fireworks or other person associated with the conduct of a fireworks exhibition shall have possession or control of, or be under the influence of, any intoxicating liquor, beer, or controlled substances while on the premises on which the exhibition is being conducted.

(e) No licensed exhibitor of fireworks shall permit an employee to assist the licensed exhibitor in conducting fireworks exhibitions unless the employee is registered with the State Fire Marshal under Section 3743.56 of the Revised Code.

1519.07 POSSESSION, SALE, DISCHARGE AND ADVERTISING; FALSIFICATION.

(a) No person shall possess fireworks in this Municipality or shall possess for sale or sell fireworks in this Municipality, except a licensed manufacturer of fireworks as authorized by Sections 3743.02 to 3743.08 of the Revised Code, a licensed wholesaler of fireworks as authorized by Sections 3743.15 to 3743.21 of the Revised Code, a shipping permit holder as authorized by Section 3743.40 of the Revised Code, an out-of-state resident as authorized by Section 3743.44 of the Revised Code, a resident of this State as authorized by Section 3743.45 of the Revised Code, or a licensed exhibitor of fireworks as authorized by Sections 3743.50 to 3743.55 of the Revised Code, or as authorized by any municipal ordinance that is substantially similar to any of these statutes, and except as provided in Section 3743.80 of the Revised Code or a substantially similar municipal ordinance.

(b) Except as provided in Section 3743.80 of the Revised Code or a substantially similar municipal ordinance, and except for licensed exhibitors of fireworks authorized to conduct a fireworks exhibition pursuant to Sections 3743.50 through 3743.55 of the Revised Code or a substantially similar municipal ordinance, no person shall discharge, ignite, or explode any fireworks in this Municipality.

(c) No person shall use in a theater or public hall what is technically known as fireworks showers, or a mixture containing potassium chlorate and sulphur.

(d) No person shall sell fireworks of any kind to a person under 18 years of age. No person under eighteen years of age shall enter a fireworks sale showroom unless that person is accompanied by a parent, legal guardian, or other responsible adult. No person under eighteen years of age shall touch or possess fireworks on a licensed premises without the consent of the licensee. A licensee may eject any person from a licensed premises that is in any way disruptive to the safe operation of the premises.

(e) No person, other than a licensed manufacturer, licensed wholesaler, licensed exhibitor, or shipping permit holder shall possess 1.3G fireworks in this Municipality.

(f) Except as otherwise provided in division (J) of Section 3743.06 and division (K) of section 3743.19 of the Revised Code, no person shall knowingly disable a fire suppression system as defined in Section 3781.108 of the Revised Code on the premises of a fireworks plant of a licensed manufacturer of fireworks or on the premises of the business operations of a licensed wholesaler of fireworks.

1519.08 TRANSPORTING AND SHIPPING.

(a) No person shall transport fireworks in this Municipality except in accordance with the rules adopted by the State Fire Marshal pursuant to Section 3743.58 of the Revised Code.

(b) As used in this division, "fireworks" includes only 1.3G and 1.4G fireworks. No person shall ship fireworks into this Municipality by mail, parcel post, or common carrier unless the person possesses a valid shipping permit issued under Section 3743.40 of the Revised Code, and the fireworks are shipped directly to the holder of a license under Sections 3743.03, 3743.16 or 3743.51 of the Revised Code.

(c) No person shall ship fireworks within this Municipality by mail, parcel post, or common carrier unless the fireworks are shipped directly to the holder of a license issued under section 3743.03, 3743.16 or 3743.51 of the Revised Code.

1519.09 EXCEPTIONS.

This section does not prohibit or apply to the following:

(a) The manufacture, sale, possession, transportation, storage, or use in emergency situations of pyrotechnic signaling devices and distress signals for marine, aviation, or highway use;

(b) The manufacture, sale, possession, transportation, storage, or use of fusees, torpedoes, or other signals necessary for the safe operation of railroads;

(c) The manufacture, sale, possession, transportation, storage or use of blank cartridges in connection with theaters or shows, or in connection with athletics as signals for ceremonial purposes;

(d) The manufacture for, the transportation, storage, possession or use by, or the sale to the armed forces of the United States and the militia of this State of pyrotechnic devices;

(e) The manufacture, sale, possession, transportation, storage or use of toy pistols, toy canes, toy guns, or other devices in which paper or plastic caps containing 0.025 grains or less of explosive material are used, provided that they are constructed so that a hand cannot come into contact with a cap when it is in place for explosion, or apply to the manufacture, sale, possession, transportation, storage or use of those caps;

(f) The manufacture, sale, possession, transportation, storage or use of novelties and trick noise makers, auto burglar alarms, or model rockets and model rocket motors designed, sold, and used for the purpose of propelling recoverable aero models;

(g) The manufacture, sale, possession, transportation, storage or use of wire sparklers;

(h) The conduct of radio-controlled special effect exhibitions that use an explosive black powder charge of not more than one-quarter pound per charge, and that are not connected in any manner to propellant charges; provided, that the exhibition complies with all of the following:

- (1) No explosive aerial display is conducted in the exhibition;
- (2) The exhibition is separated from spectators by not less than 200 feet;
- (3) The person conducting the exhibition complies with regulations of the Bureau of Alcohol, Tobacco and Firearms of the United States Department of the Treasury and the United States Department of Transportation with respect to the storage and transport of the explosive black powder used in the exhibition.

1519.10 FORFEITURE AND DISPOSAL.

Fireworks manufactured, sold, possessed, transported, or used in violation of the provisions of this chapter shall be forfeited by the offender. The Fire Marshal's office or certified fire safety inspector's office shall dispose of seized fireworks pursuant to the procedures specified in Sections 2981.11 to 2981.13 of the Revised Code for the disposal of forfeited property by law enforcement agencies, and the Fire Marshal or that office is not liable for claims for the loss of or damages to the seized fireworks.

1519.99 PENALTY.

(a) Except as otherwise provided in division (b) or (c) of this section, whoever violates any provisions of this chapter is guilty of a misdemeanor of the first degree.

(b) If the offender previously has been convicted of or pleaded guilty to a violation of Sections 3743.60(I) or 3743.61(I) of the Revised Code, or a substantially similar municipal ordinance, a violation of Section 1519.02(e) or Section 1519.03(e) of this Chapter is a felony to be prosecuted under appropriate state law.

(c) Whoever violates Section 1519.06(a) of this Chapter is guilty of a misdemeanor of the first degree. In addition to any other penalties that may be imposed on a licensed exhibitor of fireworks under this division and unless the third sentence of this division applies, the person's license as an exhibitor of fireworks or as an assistant exhibitor of fireworks shall be suspended, and the person is ineligible to apply for either type of license, for a period of five years. If the violation of Section 1519.06(a) of this Chapter results in serious physical harm to persons or serious physical harm to property, the person's license as an exhibitor of fireworks or as an assistant exhibitor of fireworks shall be revoked, and that person is ineligible to apply for a license as or to be licensed as an exhibitor of fireworks or as an assistant exhibitor of fireworks in this State."

Section 2: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3: This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and general welfare of the City, its residents, and visitors and it is necessary to have detailed, local regulations regarding fireworks within the City's Codified Ordinances for enforcement prior to the July 4th holiday; wherefore, this Ordinance shall take effect and be in force immediately after its passage by Council and signature by the Mayor.

PASSED: _____

APPROVED: _____

Daniel J. Ursu, Mayor

ATTEST: _____

Betsy Traben
Clerk of Council

David H. Roche
President of Council