

ORDINANCE 2016-2017-8

TEXT AMENDMENT

ARTICLE 545.10 FIREWORKS

WHEREAS, The West Virginia Legislature, through the passage of House Bill 2852 [2016], repealed and amended several laws concerning fireworks, as well as created a new article in West Virginia Code, Fireworks Safety Article 3E in Chapter 29;

WHEREAS, House Bill 2852 [2016] authorizes the sale of consumer fireworks with a license, registration, certificate or permit from the State Fire Marshal;

WHEREAS, West Virginia Code § 29-3E-10 [2016] specifically provides that Article 3E does not affect the authority of the governing body of a municipality to prohibit or regulate the use of consumer fireworks within its boundaries;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WINFIELD, WEST VIRGINIA, THAT ARTICLE 545, SECTION 10, BE AMENDED TO READ AS FOLLOWS:

545.10 FIREWORKS SALE, POSSESSION AND DISCHARGE.

(a) The terms used in this section, including "fireworks," "consumer fireworks" and "display fireworks," shall have such meaning as defined in West Virginia Code Section 29-3E-2. Fireworks include consumer fireworks, display fireworks and special effects. Fireworks do not include sparkling devices, novelties, toy caps or model rockets.

(b) Fireworks -- A person igniting, discharging or using fireworks:

1. shall not do so while that person is under the influence of alcoholic liquor or a 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 ignition, discharge or use of such fireworks;
4. shall be responsible for all costs associated with fire suppression efforts related to such fireworks; and
5. shall abide by all legal requirements concerning such fireworks use.

(c) Consumer Fireworks - A person igniting, discharging or using consumer fireworks:

1. shall not do so within 100 feet of any building or structure;
2. shall not do so except between 12:00 p.m. (noon) and 12:30 a.m. on Memorial Day, Independence Day, Labor Day or corresponding holiday weekends or on December 31 and 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; and
5. shall not do so during periods of very high or extreme fire danger as determined by the Winfield Volunteer Fire Department or the West Virginia Division of Forestry or while wind conditions are such that proper fireworks control cannot be exercised.

(d) Display Fireworks -- Display fireworks shall be operated by a competent operator licensed or certified as to competency by the State Fire Marshal and shall be of such composition, character, and so located, discharged or fired so as to be safe in the opinion of the Fire Chief and Police Chief. The Mayor shall require a bond from the licensee in a sum not less than one thousand dollars (\$1,000) conditioned on compliance with the provisions of this section, West Virginia Code Article 29-3E and the regulations of the State Fire Marshal, provided, that this Municipality shall not be required to file such bond. The Mayor may require the licensee to furnish proof of financial responsibility to satisfy claims for damages to property or personal injuries arising out of any act or omission on the part of the person or an employee thereof, in the amount, character and form as the Mayor determines to be necessary for the protection of the public. After such privilege shall have been granted, the sale, possession, use and distribution of display fireworks shall be lawful for that purpose only. No permit granted hereunder shall be transferable.

(e) 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 a license, registration, certificate or permit from the State Fire Marshal and the City of Winfield.

(f) 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. 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. 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. 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. No fireworks shall be offered for sale within 300 feet of the property line of any church, hospital or school, or shall be offered for sale within fifty feet of the property line of any lot upon which any flammable liquid dispensers or flammable liquid storage areas are located. 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. Fireworks shall not be sold to any person under the age of eighteen years.

(g) Fireworks shall be stored in a manner so as to fire-resistant from any external or internal source, weather-resistant and theft-resistant. Fireworks storage shall be under the direct supervision and control of a competent person at least eighteen years of age.

(h) The City of Winfield may seize, take, remove and dispose of at public auction or destroy, or cause to be seized, taken or removed and disposed of at public auction, or destroyed at the expense of the owner, all stocks of 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.

(i) The provisions of this section shall be enforced by the Fire Chief, Police Chief or his/her designee.

(j) Whoever violates any of the provisions of this section shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both. Each violation of the provisions of this section shall constitute a separate offense.

This Ordinance was read and adopted by the Winfield City Council as follows:

First Reading: October 11, 2016

Second Reading: November 15, 2016

Third Reading & Adoption: January 20, 2017

Randy L. Barrett, Mayor

Jackie Hunter, Recorder