

ORDINANCE NUMBER 568

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF COTTONWOOD, YAVAPAI COUNTY, ARIZONA, AMENDING THE MUNICIPAL CODE OF THE CITY OF COTTONWOOD BY ADDING A NEW CHAPTER 8.60, FIREWORKS, TO TITLE 8, HEALTH AND SAFETY.

WHEREAS, the Mayor and Council deem it necessary to adopt certain regulations to protect, enhance and promote the health, safety and welfare of the City of Cottonwood and its residents; and

WHEREAS, the Mayor and Council desire to prevent fire hazards which threaten the safety of individuals and private and public improvements, including residential, commercial and industrial dwellings; and

WHEREAS, due to the dry/desert like conditions, risk of wildfires, and terrain of the community there is a danger of fire with the use of consumer fireworks in the community that can cause significant harm to the community and its residents.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, YAVAPAI COUNTY, ARIZONA, AS FOLLOWS:

Section 1: That a new Chapter 8.60 is hereby added to Title 8, HEALTH AND SAFETY, of the Cottonwood Municipal Code, as follows:

Chapter 8.60

FIREWORKS

Sections:

8.60.010 Definitions.

8.60.020 Fireworks prohibited; exceptions.

8.60.030 Sale of Fireworks.

8.60.040 Posting of signs by persons engaged in the sale of fireworks; civil penalty.

8.60.050 Authority to enforce violations of this article; means of enforcement.

8.60.060 Liability for emergency responses related to use of fireworks; definitions.

8.60.070 Penalty.

8.60.010 Definitions. The following words, terms and phrases, when used in this article, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

“Consumer firework” means those fireworks defined by Arizona Revised Statutes Section 36-1601.

“Display firework” means those fireworks defined by Arizona Revised Statutes Section 36-1601.

“Fireworks” means any combustible or explosive composition, substance or combination of substances, or any article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, that is a consumer firework, display firework or permissible consumer firework as defined by Arizona Revised Statutes Section 36-1601.

“Novelty items” means federally deregulated novelty items that are known as snappers, snap caps, party poppers, glow worms, snakes, toy smoke devices, sparklers, and certain toys as defined in Arizona Revised Statutes Section 36-1601.

“Permissible consumer fireworks” means those fireworks as defined by Arizona Revised Statutes Section 36-1601 that may be sold within the city even where the use of those items has been prohibited.

“Supervised public display” means a monitored performance of display fireworks open to the public and authorized by permit by the Fire Marshal or his designee.

8.60.020 Fireworks prohibited; exceptions. A. Except as otherwise provided in this Chapter 8.60, the use, discharge or ignition of fireworks within the City of Cottonwood is prohibited, provided, however, that nothing in this Chapter shall be construed to prohibit the use, discharge or ignition of “novelty items” as defined in Section 8.60.010 above, or the occurrence of a permitted, supervised public display of fireworks.

B. Permits to conduct a supervised public display of fireworks may be issued by the Fire Marshal or his designee. Every such public display of fireworks shall be of such character and so located, discharged or fired, only after proper inspection and in a manner that does not endanger persons, animals, or property. A permit shall not be issued, and may be revoked, during time periods of High Fire Danger warnings. The Fire Marshal has the authority to impose reasonable conditions on any permits granted, and to revoke any permit for any reason deemed necessary to protect persons or property.

C. Failure to comply with any permit requirements issued by the Fire Marshal is a civil offense punishable by a fine not to exceed two hundred and fifty dollars for a first offense, and five hundred dollars for a second and each subsequent offense. A third offense under this Section 8.60.020 may be charged as a misdemeanor punishable in accordance with Section 1.12.010 of this Code.

8.60.030 Sale of Fireworks. A. No person shall sell or permit or authorize the sale of permissible consumer fireworks to a person who is under sixteen years of age, and no person under the age of sixteen may engage or assist in the sale of permissible consumer fireworks to any other person.

B. No person shall sell or permit or authorize the sale of permissible consumer fireworks in conflict with state law.

8.60.040 Posting of signs by persons engaged in the sale of fireworks; civil penalty. A. Prior to the sale of permissible consumer fireworks, every person engaged in such sales shall prominently display signs indicating the following:

1. The use of any fireworks, including permissible consumer fireworks (except for novelty items as defined in Section 8.60.010 of this Chapter) within the City limits of Cottonwood is prohibited.

2. Consumer fireworks authorized for sale under state law may not be sold to persons under the age of 16.

B. Signs required under this section shall be placed at each cash register and in each area where fireworks are displayed for sale.

C. The Fire Marshal or his designee shall develop rules and/or regulations concerning the size and color of the required signs and may develop a model sign. The required sign regulations and any model sign shall be posted on the City's website and filed with the Clerk's office.

D. Failure to comply with subparts A and B of this section is a civil offense punishable by a fine not to exceed two hundred and fifty dollars for a first offense, and five hundred dollars for a second and each subsequent offense. A third offense under this Section 8.60.040 may be charged as a misdemeanor punishable in accordance with Section 1.12.010 of this Code.

8.60.050 Authority to enforce violations of this article; means of enforcement.

A. The Fire Marshal or designee, a City peace officer, or the City Attorney may issue civil complaints to enforce violations of this section designated as civil offenses.

B. Any person authorized pursuant to this section to issue a civil complaint may also issue a notice of violation specifying actions to be taken and the time in which they are to be taken to avoid issuance of a civil or criminal complaint.

8.60.060 Liability for emergency responses related to use of fireworks; definitions. A. A person who uses, discharges or ignites permissible consumer fireworks, fireworks or anything that is designed or intended to rise into the air and

explode or to detonate in the air or to fly above the ground, is liable for the expenses of any emergency response that is required by such use, discharge or ignition. The fact that a person is convicted or found responsible for a violation(s) of this article is prima facie evidence of liability under this section.

B. The expenses of an emergency response are a charge against the person liable for those expenses pursuant to subpart A of this section. The charge constitutes a debt of that person and may be collected proportionately by the public agencies, for-profit entities or not-for-profit entities that incurred the expenses. The liability imposed under this section is in addition to and not in limitation of any other liability that may be imposed.

C. For the purposes of this section:

1. "Expenses of an emergency response" means reasonable costs directly incurred by public agencies, for-profit entities or not-for-profit entities that make an appropriate emergency response to an incident.

2. "Reasonable costs" includes the costs of providing police, fire fighting, rescue and emergency medical services at the scene of an incident and the salaries of the persons who respond to the incident.

8.60.070 Penalty. The penalty for violating any prohibition or requirement imposed by this Chapter is a civil offense punishable by a fine not to exceed two hundred and fifty dollars for a first offense, and five hundred dollars for a second and each subsequent offense. Provided, however, that a third offense under this Chapter 8.60 may be charged as a misdemeanor punishable in accordance with Section 1.12.010 of this Code.

Section 2. That if any section, subsection, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions hereof.

PASSED AND ADOPTED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR OF THE CITY OF COTTONWOOD, YAVAPAI COUNTY, ARIZONA, THIS 16TH DAY OF NOVEMBER 2010.

Diane Joens, Mayor

APPROVED AS TO FORM:

ATTEST:

Steven B. Horton, Esq., City Attorney

Marianne Jiménez, City Clerk