

ORDINANCE NO. 1788

AN ORDINANCE ESTABLISHING A NEW CHAPTER (CHAPTER 9.72) OF TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE), OF THE FOUNTAIN MUNICIPAL CODE, RELATING TO THE POSSESSION AND USE OF FIREWORKS

WHEREAS, the State of Colorado has established rules regarding the possession, sale, and use of certain fireworks; and

WHEREAS, the City of Fountain is tasked with the preservation of health and safety and for the protection of public welfare; and

WHEREAS, the City of Fountain seeks clarity of the expectations of what is allowed within the City of Fountain regarding fireworks; and

WHEREAS, the City of Fountain would like to create enforcement measures against anyone violating the laws set forth herein, to include liability for anyone hosting the use of illegal fireworks; and

WHEREAS, the City of Fountain hereby adopts the following ordinance to accomplish this foregoing purposes.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FOUNTAIN, COLORADO:

Section 1. The Fountain Municipal Code is hereby amended by establishing Chapter 9.72 (Fireworks), in Title 9 (Public Peace, Morals and Welfare) attached hereto.

Section 2. All other ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 3. Safety Clause. The City Council hereby finds, determines and declares that this Ordinance is promulgated under the home rule authority of the City of Fountain, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 4. Severability. If any clause, sentence, paragraph or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 5. Effective Date. This Ordinance shall become effective five days from the date of final publication subsequent to passage on second reading by the City Council.

Introduced, read by title, and passed this 23rd day of May 2023, by the City Council, City of Fountain, Colorado, signed by the Mayor, and ordered published by title with a summary written by the City Clerk together with a statement that the ordinance is available for public inspection and acquisition in the office of the City Clerk in the Gazette, a newspaper of general circulation in the City of Fountain.


Sharon Thompson, Mayor

ATTEST:


Sylvia Huffman, City Clerk



Introduced, read by title, and passed on second and final reading on the 6th day of June 2023, signed by the Mayor and ordered published by title in the Gazette, a newspaper of general circulation in the City of Fountain, Colorado, in accordance with the City Charter.


Sharon Thompson, Mayor

ATTEST:


Sylvia Huffman, City Clerk



TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE)

CHAPTER 9.72 FIREWORKS

9.72.010 Sale and use of Fireworks Prohibited.

- A. Except as specifically provided in this Chapter, it is unlawful for any person to offer for sale, expose for sale or sell any Fireworks or to have Fireworks in their possession with the intent to offer said items for sale.
- B. Except as specifically provided in this Chapter, it is unlawful for any person to possess, store, handle, use or ignite any Fireworks.
- C. It shall be unlawful for any person to knowingly furnish to any person who is under sixteen years of age, by gift, sale, or any other means, any Fireworks, including those defined as permissible fireworks as stated in this Chapter.
- D. The use and sale of all Fireworks is prohibited during a Stage 1 or Stage 2 burn ban, during issued "Red Flag" warnings or when deemed to be a public safety hazard by the Fire Chief, or designee.

9.72.020. Exceptions.

- A. The retail sale of Permissible Fireworks with an approved license issued by the city, shall only take place between the dates of May 31st to July 6th.
- B. The possession, use, storage, handling or ignition of Permissible Fireworks shall only take place between the dates of May 31 to July 6th.
- C. Except if the person under sixteen years of age is possessing, using, handling or igniting Permissible Fireworks only between dates of May 31st to July 6th, and while in the presence of, or under the supervision of another over the age of eighteen.

9.72.030. Definitions.

As used in this Chapter, the following terms shall have the meanings indicated herein:

- A. *Authorized Enforcement Officer* shall mean and include any police officer, Fire Chief or designee and code enforcement officer of the City of Fountain.
- B. *Fireworks* means any composition or device designed to produce a visible or audible effect by combustion, deflagration, or detonation, and that meets the definition of articles pyrotechnic, permissible fireworks, or display fireworks. *Fireworks* does not include:
 - i. Toy caps, party poppers, and items similar to toy caps and party poppers that do not contain more than sixteen milligrams of pyrotechnic composition per item and snappers that do not contain more than one milligram of explosive composition per item;
 - ii. Highway flares, railroad fuses, ship distress signals, smoke candles, and other emergency signal devices;
 - iii. Educational rockets and toy propellant device type engines used in such rockets when such rockets are of nonmetallic construction and utilize replaceable engines or model cartridges containing less than two ounces of propellant and when such engines or model cartridges are designed to be ignited by electrical means;
 - iv. Fireworks which are used in testing or research by a licensed explosives laboratory.

- C. *Permissible fireworks* means the following small fireworks devices designed to produce audible or visual effects by combustion, complying with the requirements of the United States consumer product safety commission as set forth in 16 CFR 1500.1 to 1500.272 and 1507.1 to 1507.12, and classified as consumer fireworks UN0336 and UN0337 pursuant to 49 CFR 172.101:
- i. Cylindrical fountains, total pyrotechnic composition not to exceed seventy-five grams each for a single tube or, when more than one tube is mounted on a common base, a total pyrotechnic composition of no more than two hundred grams;
 - ii. Cone fountains, total pyrotechnic composition not to exceed fifty grams each for a single cone or, when more than one cone is mounted on a common base, a total pyrotechnic composition of no more than two hundred grams;
 - iii. Wheels, total pyrotechnic composition not to exceed sixty grams for each driver unit or two hundred grams for each complete wheel;
 - iv. Ground spinner, a small device containing not more than twenty grams of pyrotechnic composition venting out of an orifice usually in the side of the tube, similar in operation to a wheel, but intended to be placed flat on the ground;
 - v. Illuminating torches and colored fire in any form, total pyrotechnic composition not to exceed two hundred grams each;
 - vi. Dipped sticks and sparklers, the total pyrotechnic composition of which does not exceed one hundred grams, of which the composition of any chlorate or perchlorate shall not exceed five grams;
 - vii. Any of the following that do not contain more than fifty milligrams of explosive composition:
 - a) Explosive auto alarms;
 - b) Toy propellant devices;
 - c) Cigarette loads;
 - d) Strike on box matches; or
 - e) Other trick noise makers
 - viii. Snake or glow worm pressed pellets of not more than two grams of pyrotechnic composition and packaged in retail packages of not more than twenty-five units;
 - ix. Fireworks that are used exclusively for testing or research by a licensed explosives laboratory;
 - x. Multiple tube devices with:
 - a) Each tube individually attached to a wood or plastic base;
 - b) The tubes separated from each other on the base by a distance of at least one half of one inch;
 - c) The effect limited to a shower of sparks to a height of no more than fifteen feet above the ground;
 - d) Only one external fuse that causes all of the tubes to function in sequence; and
 - e) A total pyrotechnic composition of no more than five hundred grams.
- D. *Permissible fireworks* do not include any aerial devices or audible ground devices, including, but not limited to, firecrackers.
- E. *Display fireworks* means large fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation and includes, but is not limited to, salutes containing more than one hundred thirty milligrams of explosive material, 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 as defined in 16 CFR 1500.1 to

1500.272 and 16 CFR 1507.1 to 1500.12 and are classified as fireworks UN0333, UN0334, or UN0335 pursuant to 49 CFR 172.101, as amended, and including fused set pieces containing components that exceed fifty milligrams of salute powder.

- F. *Display retailer* means a person, including a manufacturer, who is licensed as a display retailer under the provisions of the Chapter and who sells, delivers, consigns, gives, or otherwise furnishes display fireworks or articles pyrotechnic to a person authorized by the City to discharge fireworks in Fountain.
- G. *Articles pyrotechnic* means pyrotechnic special effects materials and pyrotechnic devices for professional use that are similar to consumer fireworks in chemical composition and construction but are intended for theatrical performances and not intended for consumer use. “Articles pyrotechnic” shall also include pyrotechnic devices meeting the weight limits for consumer fireworks but are not labeled as such and are classified as UN0431 or UN0432 pursuant to 49 CFR 172.101, as amended.
- H. *Pyrotechnic operator* includes an individual who, by experience and training, has demonstrated the required skill and ability to safely set up and discharge articles of pyrotechnics.
- I. *Retailer* means any person who sells, delivers, consigns, or furnishes permissible fireworks to another person not for resale.
- J. *Proper Storage* means the possession of fireworks for safe custody, where the safekeeping is the principal object of deposit, and not the consumption or sale. All storage of fireworks shall be in accordance with the building and fire codes adopted by the City of Fountain in accordance with the version of the International Fire Code then in effect.
- K. *Government-sponsored or Co-sponsored* shall mean the City of Fountain, State of Colorado, or any political subdivision of the state or the federal government or an agency thereof.
- L. *Host* means a person who either:
 - i. Is in charge of private property, including, but not limited to, an owner, tenant, landlord, or property manager of the property; or
 - ii. Organizes, supervises, officiates, conducts, controls, or is otherwise in charge of the activity on the property.

9.72.040. Fireworks Displays.

Fireworks displays are allowed in the City only for government sponsored or co-sponsored events. Permitting of any such fireworks displays shall be done in accordance with Fountain Municipal Code and the International Fire Code then in effect.

9.72.050. Host Liability.

- A. Except as may be permitted by this Chapter or as provided in G(i) of this Section, it is unlawful for any individual to permit, allow, aid or abet any illegal discharge or use of

fireworks, if such person either knows or reasonably should know that an individual is discharging or using fireworks on his or her private property, or property under his or her control.

- B. A person who permits, allows, aids, or abets any illegal discharge or use of fireworks on a property under their possession or control as a “Host”, shall be deemed to have actual or constructive knowledge that fireworks have been discharged or used if the person has not taken all reasonable steps to prevent to discharge or use of fireworks, as discussed in G(ii) of this Section.
- C. Any person who permits, allows, aids, or abets any illegal discharge or use of fireworks from their property as a “Host” shall be rebuttably presumed to have actual or constructive knowledge that individuals have discharged or used fireworks if such person is present at the premises at any time that the discharge or use of fireworks is to have occurred.
- D. Upon identification of an illegal discharge or use of fireworks, an authorized enforcement officer may issue a written warning notice to all identifiable responsible persons not present at the time of the illegal discharge or use of fireworks that a fireworks violation has occurred and that further violations may result in a summons to appear in court.
- E. It is the duty of any person who permits, allows, aids, or abets any illegal discharge or use of fireworks on his or her private property, or property under his or her control to take all reasonable steps to prevent the illegal discharge or use of fireworks at the premises.
- F. No “Host” shall permit, allow, aid or abet another person’s violation of a provision of this Chapter in a public right-of-way adjacent to the “Host’s” property. A host aids and abets another person’s unlawful purpose violation of a provision of this Chapter if he or she knows of the other person’s unlawful purpose and the host specifically intends to, and does in fact, aid, facilitate, promote, encourage, or instigate the other person’s commission of that violation.
- G. It shall be an affirmative defense to an offense committed under this section if:
 - i. The possession, storage, display, sale, discharge, and use of permitted fireworks during the dates of May 31st to July 6th and while in compliance with Burn Ban and Red Flag restrictions.
 - ii. A host who initiates contact with law enforcement or fire officials to assist in removing any person from that property or terminating the activity in order to comply with this Chapter, if the request for assistance is made before any other person contacts law enforcement or fire officials to complain about a violation of this Chapter.

9.72.060. Seizure of Fireworks.

Any authorized enforcement officer of the City shall be authorized to seize, take and remove at the expense of the violator, all stocks of fireworks or combustibles offered or exposed for sale, or otherwise possessed, held or stored in violation of the Chapter.

9.72.070. Penalties.

- A. It shall be unlawful for any person to violate any provision of this Chapter. A violation of this Chapter shall be a criminal offense, punishable as provided in section 1.12.010, with the exception that under no circumstances shall an offense under this Chapter be punishable by imprisonment. .
- B. Any violation of this Chapter shall also be deemed a public nuisance within the meaning contained in Title 8, as well as the general right of entry provisions of Title 8.
- C. Mandatory Minimum Penalty. Any person who pleads guilty or is found guilty shall be subject to the following mandatory minimum penalties:
 - i. A mandatory minimum fine of \$400.00 for a first violation;
 - ii. A mandatory minimum fine of \$800.00 for a second violation within a two-year period; and;
 - iii. A mandatory minimum fine of \$1,600.00 for a third violation within a two-year period.