

ORDINANCE NO. 788

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, ADDING SECTION 130.39 TO THE CODE OF THE TOWN OF PAYSON. (FIREWORKS REGULATION)

WHEREAS, during its second regular session of 2010, the Arizona Legislature passed and Governor Brewer signed House Bill 2246 legalizing certain types of fireworks in Arizona; and

WHEREAS, House Bill 2246 allows cities and towns to regulate the use of certain types of fireworks within their corporate limits; and

WHEREAS, the Town of Payson desires to regulate the use of Permissible Consumer Fireworks within its Town limits to the maximum amount allowed by House Bill 2246 by enacting Section 130.39 of the Code of the Town of Payson,

NOW, THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DO HEREBY ORDAIN AS FOLLOWS:

- Section 1. Section 130.39 (Fireworks) of the Code of the Town of Payson set forth in Resolution 2572 was declared to be a public record by such Resolution, and all the provisions thereof are hereby referred to and adopted by this reference as though all the provisions thereof were set forth in full in this Ordinance.
- Section 2. That at least three copies of Section 130.39 (Fireworks), as adopted by this Ordinance shall be filed in the Office of the Town Clerk and shall be maintained and kept available for public use and inspection.
- Section 3. Pursuant to Sections 10.99(A) and 130.99 of the Code of the Town of Payson the penalty for any violation of Chapter 130 is as follows:

§10.99 GENERAL PENALTY.

(A) Any person found guilty of violating any provision of this Code shall be guilty of a class one misdemeanor, and upon conviction thereof shall be punished in the same manner as is provided for the punishment for class one misdemeanors in A.R.S. Title 13, Chapters 7, 8 and 9, as amended from time to time, and as currently providing for a fine of not more than \$2,500 for individuals and not more than \$20,000 for firms, entities, companies, corporations, or businesses and by imprisonment for not more than six months, or by probation for not more than three years, or by any combination or all of such fine, imprisonment and probation. Each day that a violation continues shall be a separate offense punishable as hereinabove described.

Section 4. If any section, subsection, sentence, clause, phrase or portion of this Ordinance or Section 130.39 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 portions of this Ordinance or Section 130.39. The Mayor and Common Council of the Town of Payson declares that it would have adopted this Ordinance or Section 130.39 and each section, subsection, sentence, clause, phrase or portion thereof despite the fact that any one or more sections, subsections, sentences, clauses, phrases or portions would be declared invalid or unconstitutional.

Section 5. The provisions of this Ordinance shall not become effective until November 30, 2010.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON this 2nd day of September, 2010, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

Kenny J. Evans, Mayor

ATTEST:

APPROVED AS TO FORM:

Silvia Smith, Town Clerk



Timothy M. Wright, Town Attorney

**RESOLUTION NO. 2572 IS
PROVIDED FOR INFORMATION
ONLY
AT THE 8/19/10 COUNCIL MEETING.**

**RESOLUTION NO. 2572 WILL
BE AGENDIZED AS AN ACTION ITEM
AT THE 9/2/10 COUNCIL MEETING.**

RESOLUTION NO. 2572

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, ADDING SECTION 130.39 TO THE CODE OF THE TOWN OF PAYSON AND DECLARING SUCH AMENDMENT TO THE CODE TO BE A PUBLIC RECORD. (FIREWORKS REGULATION)

WHEREAS, the Code of the Town of Payson was declared to be a public record by Resolution Number 1536 of the Town of Payson; and

WHEREAS, the Code of the Town of Payson was adopted as a public record by Ordinance Number 588 of the Town of Payson; and

WHEREAS, it is the intention of the Town of Payson to amend the Code of the Town of Payson by adding Section 130.39 to Chapter 130 relating to Fireworks; and

WHEREAS, such amendment may be enacted by reference, pursuant to A.R.S. § 9-802,

NOW, THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DO HEREBY RESOLVE AS FOLLOWS:

Section 130.39 (Fireworks) of the Code of the Town of Payson is hereby added, is declared to be a public record, and shall read as set forth in Exhibit A, attached hereto.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON this 2nd day of September, 2010, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

Kenny J. Evans, Mayor

ATTEST:

APPROVED AS TO FORM:

Silvia Smith, Town Clerk



Timothy M. Wright, Town Attorney

EXHIBIT A TO RESOLUTION 2572

§130.39 FIREWORKS

- (A) DEFINITIONS - The following words, terms and phrases, when used in this section, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
- (1) CONSUMER FIREWORK means those fireworks defined by Arizona Revised Statutes Section 36-1601.
 - (2) DISPLAY FIREWORK means those fireworks defined by Arizona Revised Statutes Section 36-1601.
 - (3) 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 Statute Section 36-1601.
 - (4) 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 Statute 36-1601.
 - (5) PERMISSIBLE CONSUMER FIREWORKS means those fireworks as defined by Arizona Revised Statute Section 36-1601 that may be sold within the Town even where the use of those items has been prohibited.
 - (6) SUPERVISED PUBLIC DISPLAY means a monitored performance of display fireworks open to the public, not sponsored by the Town, and authorized by permit of the Fire Chief.
 - (7) TOWN SPONSORED DISPLAY means a performance of display fireworks open to the public and paid for in whole, or in part, by the Town.
- (B) PROHIBITIONS.
- (1) The use, discharge or ignition of fireworks within the Town is prohibited except as provided in this section.
 - (2) Conducting a Supervised Public Display of fireworks in violation of subsection (D) is prohibited.
- (C) EXCEPTIONS.
- Nothing in this section shall be construed to prohibit or regulate any of the following:
- (1) The use, discharge or ignition of Novelty Items.
 - (2) Town Sponsored Displays.

- (D) SUPERVISED PUBLIC DISPLAYS.
- (1) The Fire Chief may grant a permit for conducting a Supervised Public Display of fireworks. Conditions that are necessary to protect the health and safety of the community shall be included in such permit.
 - (2) Every such Supervised 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.
 - (3) The Fire Chief has the authority to reject or revoke a permit for a Supervised Public Display during times of high fire danger.
- (E) SALE OF FIREWORKS.
- (1) No person shall sell or permit or authorize the sale of Permissible Consumer Fireworks to a person who is under sixteen years of age.
 - (2) No person shall sell or permit or authorize the sale of Permissible Consumer Fireworks in conflict with state law.
 - (3) No person shall sell Permissible Consumer Fireworks without first obtaining an inspection from the Fire Chief for compliance with the International Fire Code as adopted by the Town of Payson. Following such inspection, the Fire Chief shall issue a permit if the sales site is in compliance. No roadside sales shall be permitted.
- (F) POSTING OF SIGNS BY PERSONS ENGAGED IN THE SALE OF FIREWORKS.
- (1) Prior to the sale of Permissible Consumer Fireworks, every person engaged in such sales shall prominently display signs indicating the following:
 - (a) The use of fireworks within the Town of Payson, except Novelty Items as defined by Town Code Section 130.39, is prohibited.
 - (b) Consumer Fireworks authorized for sale under state law may not be sold to persons under the age of 16.
 - (2) Signs required under this subsection shall be placed at each cash register and in each area where fireworks are displayed for sale.
 - (3) The Fire Chief shall develop an administrative policy concerning the size and color of the required signs and shall develop a model sign. The administrative policy and model sign shall be posted on the Town's website and filed with the Clerk's office.
- (G) ENFORCEMENT.
- A police officer or the Town Attorney may issue criminal complaints to enforce this section.

(H) LIABILITY FOR EMERGENCY RESPONSES RELATED TO THE USE OF FIREWORKS; DEFINITIONS.

- (1) 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 for a violation(s) of this section is prima facie evidence of liability under this subsection.
- (2) The expenses of an emergency response are a charge against the person liable for those expenses pursuant to subsection (1) above. 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 person's liability for the expense of an emergency response shall not exceed one hundred thousand dollars (\$100,000.00) for a single incident. The liability imposed under this subsection is in addition to and not in limitation of any other liability that may be imposed.
- (3) For the purposes of this subsection:
 - (a) "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.
 - (b) "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.