

2010-0019

INTRODUCED BY: PAUL J. HOGAN, PE, COUNCILMAN, DISTRICT IV

An ordinance to amend the Code of Ordinances, Chapter 14 Miscellaneous Provisions and Offenses, Section 14-3. Fireworks, to authorize the legalization, sale, and discharging of fireworks within the Parish of St. Charles.

THE ST. CHARLES PARISH COUNCIL HEREBY ORDAINS:

SECTION I. That the Code of Ordinances, Chapter 14 Miscellaneous Provisions and Offenses, Sec. 14-3. Fireworks is hereby amended in its entirety and replaced with the following:

Section 14-3. Fireworks

- (a) The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:
- (1) *Fireworks retailer* means any person engaged in the business of making sales of fireworks at retail to persons other than a distributor or a jobber.
 - (2) *Sale* means the sale, barter, exchanges or gift or offer therefore, and each such transaction made by any person, whether as principal, proprietor, agent, servant or employee.
 - (3) *Industrial facility* means any chemical or petrochemical facility in operation located in an M-1 or M-2 zoning district.
- (b) It shall be unlawful for any person to possess, sell or offer for sale or use within the Parish any pyrotechnics (commonly known as fireworks) other than the permissible fireworks hereinafter. SPECIFICALLY PROHIBITED ARE ANY TYPES OF ROCKETS OR ROCKETS ON STICKS (SKY ROCKETS, PENNY ROCKETS, BOTTLE ROCKETS, ETC.) The permissible fireworks consist of ICC class "C" Common Fireworks," and shall mean such articles of fireworks as are enumerated or may hereinafter be enumerated as ICC class "C" fireworks in the regulations of the interstate commerce commission for the transportation of explosives and other dangerous articles and shall include but not limited to the following:
- (1) *Roman candles.* Total pyrotechnic composition not to exceed 20 grams each in weight (10) ball.
 - (2) *Helicopter type rockets.* Total pyrotechnic composition not to exceed 20 grams each in weight.
 - (3) *Cylindrical fountains.* Total pyrotechnic composition not to exceed 75 grams each in weight. The inside tube diameter shall not exceed three-fourths inch.
 - (4) *Cone fountains.* Total pyrotechnic composition not to exceed 50 grams each in weight.
 - (5) *Wheels.* Total pyrotechnic composition not to exceed 60 grams in weight for each driver unit, but there may be any number of drivers on any one unit. The inside bore of driver tubes shall not be over one-half inch.
 - (6) *Illuminating torches and colored fire in any form.* Total pyrotechnic composition not to exceed 100 grams each in weight.
 - (7) *Sparklers and dipped stocks.* Total pyrotechnic composition not to exceed 100 grams each in weight. Pyrotechnic composition containing any chlorate or per chlorate shall not exceed 5 grams.
 - (8) *Mines and shells,* of which the mortar is an integral part, total pyrotechnic composition not to exceed 40 grams each in weight.
 - (9) *Firecrackers and salutes,* with castings, the external dimensions of which do not exceed 1½ inches in length or one-quarter inch in diameter and other items designed to produce an audible effect, total pyrotechnic composition not to exceed two grains each in weight.
 - (10) *Combination of two or more.* Items composed of a combination of two or more articles or devices of the above-enumerated approved items.
 - (11) *Whistles.* Domestic or imported whistles with report. No component of any device listed in this subsection, which is designed to produce an audible effect shall contain pyrotechnic composition in

excess of two grains in weight, excluding propelling or expelling charges.

- (c) Permissible items of fireworks enumerated in subsection (b) of this section may be sold at retail on the dates listed below in Table 1 and ignited or exploded on the dates and within the times set forth in Table 2.

TABLE 1 - Selling Dates

June 28th – July 4 th
Dec. 26th – Jan. 1 st

TABLE 2 – Ignite and Explode Dates

July 3 rd	9:00 a.m. to 10:00 p.m.
July 4 th	9:00 a.m. to 10:00 p.m.
July 5 th	9:00 a.m. to 10:00 p.m.
December 30th	9:00 a.m. to 10:00 p.m.
December 31st	9:00 a.m. to 1:00 a.m. January 1st
January 1st	9:00 a.m. to 10:00 p.m.

- (d) It shall be unlawful to offer for retail sale or to sell any fireworks to persons under the age of eighteen (18) years or to any intoxicated or irresponsible person. It shall be unlawful to explode or ignite fireworks within 1,000 feet of any church, school, gas station, hospital, asylum, public school, or industrial facility, or within 250 (two-hundred fifty) feet of where fireworks are stored, sold or offered for sale. No person shall ignite or discharge any permissible articles of fireworks within or throw the same from a motor vehicle while within, nor shall any person place or throw any ignited article or fireworks into or at such a motor vehicle.

- (e) It shall be unlawful to sell any items of fireworks as a retailer without first obtaining a permit to sell fireworks issued by the State Fire Marshal in addition to a license therefore to be issued by the Parish as follows:

- (1) An applicant to engage in the sale of fireworks as a retailer must complete an application on a form provided by the Parish through the Department of Planning and Zoning, setting forth such facts and information as the Parish may determine necessary and proper, such application shall include an affidavit by the applicant that no counter letter or similar business transaction has been made with a second party (that the applicant is an independent business entity having no business relationship whatsoever with other applicants) and further stating that the business will be operated by the applicant or a qualified individual under the supervision of the applicant. Any fraudulent application will make the license null and void and shall result in revocation of the applicant's occupational business license within the Parish.
- (2) All applications shall be accompanied by a copy of the previous year's sales tax return (for applicants previously involved in fireworks sales) and certified copies of any lease agreement extract involving the property where the sales shall take place, any partnership agreement or incorporation charter for the business entity making the application. The applicant must pay all taxes and fees due to the Parish.
- (3) The applicant shall pay a license fee of \$1,500 for a license to engage in the sale of fireworks as a retailer. The license shall be valid for a one (1) calendar year period. The license shall be valid for one building or tent per license. No building or tent can be moved from one location to another after the license is issued. The building or tent in which the sale of fireworks is to take place cannot be within 50 ft. proximity to another building, and must be located in a C-2, C-3, M-1, or M-2 zoning district. The operator of the retail outlet shall provide adequate trash containers or storage of disposable waste and shall be responsible for the cleanliness of the area around the retail outlet. Licenses are not transferable. Revenues received from license fees and sales taxes are to be earmarked for the Recreation Department. Should the applicant be denied the permit to sell fireworks issued by the State Fire Marshal, the applicant shall be refunded the license fee.

- (4) Not more than one license per person or business entity shall be issued.
 - (5) No person convicted of a felony violation in this State or any State in the United States, may hold a valid permit provided herein nor shall such person engage in the sale or offering for sale of fireworks within the Parish limits. No person under the age of 18 may engage in the sale or offering for sale of fireworks under the permit provided herein. By applying for a license, the applicant agrees to a background check to be performed by the Sheriff. The Sheriff shall not disclose any information learned as a result of the required background check. The sheriff shall only inform the planning and zoning department of the applicant passing or failing the background check. Should the applicant fail the background check, the applicant shall be refunded the license fee.
- (f) Nothing in this section shall be construed as applying to the manufacture, storage, sale or use of signals necessary for the safe operation of railroads or other classes of public or private transportation or of illuminating devices for photographic use, nor as prohibiting the sale or use of blank cartridges for ceremonial, theatrical or athletic events.
- (1) The sale of fireworks shall only be permitted in C-2, C-3, M-1 or M-2 zoning districts. Applicants for the retail sale of fireworks shall be permitted to install portable buildings or tents two weeks before the opening dates for the sale of fireworks and shall be permitted two weeks to remove the building or tent after the closing dates of the sale of the fireworks. Installation of the portable buildings or tents for the purpose of selling fireworks is allowed on property leased by the applicant. The applicant shall provide a certified copy of any lease agreement extract involving the property where the sales shall take place or a property deed showing the applicant's ownership prior to the installation of the portable buildings or tents. Applicants are allowed to sell fireworks from existing buildings (either owned or rented) provided no other laws or regulations prohibit the sale from these buildings. All trash and signs relating to the sale of fireworks shall be removed within five days after the last day of the sale of fireworks. All signs relating to the sale of fireworks must be located at the sale location.
 - (2) Fireworks retailers doing business within the Parish must store all portable buildings, tents, signs, and other materials related to the sale of fireworks behind sight-obscuring fences located in C-2, C-3, M-1 or M-2 zoning districts within two weeks after the last day on which the sale of fireworks is permitted under this section. Failure to comply with the provisions of this section shall result in a citation. A finding of guilt for violation of this section shall result in a revocation of the retailer's permit to sell fireworks in the Parish.
 - (3) Each sale location shall provide adequate off-street parking. The parking surface shall be paved or gravel and must be able to accommodate a minimum of 10 (ten) vehicles. Failure to provide the required off-street parking shall cause revocation of the license to sell until such time that the parking requirements are met.
 - (4) The applicant shall provide a copy of a contract to the Planning and Zoning Department for a port-a-let service at the sale location at least one (1) week in advance of sale unless other facilities exist to service the sale location. Failure to provide the required contract (should other facilities not exist) shall cause revocation of the license to sell until such time that the contract is provided to the Department.
- (g) An informational sales tax return for each license issued reflecting the total sale of fireworks shall be furnished to the Parish within two weeks after the closing date for the sale of fireworks of each period.
- (h) Any person who sells or offers for sale any fireworks not permitted by this section shall, in addition to all other penalties provided for herein, shall have their license immediately revoked and shall forfeit his right to a permit for the sale of fireworks for all future years.
- (i) The following regulations are relative to the regulation of fireworks sales and related matters.
- (1) All fireworks licensees must provide a certificate of insurance in the amount of \$1,000,000.00 naming the Parish as an additional insured.

Said certificate shall be provided to the Parish prior to receiving a fireworks license.

- (2) Each fireworks license shall cost \$1,500 per year without regard to the size of the building or tent.
- (3) No storage of any excess or unsold inventory will be allowed within the Parish of St. Charles at the expiration of the fireworks seasons. A finding of guilt for violation of this section shall result in a revocation of the retailer's permit to sell fireworks in the Parish.

(j) Violations.

(1) Any person that does not act in conformity with the above rules and regulations established in any section is hereby in violation of this fireworks ordinance and is subject to the penalties contained herein.

(2) The property owner of the property where the use of fireworks prohibited by this ordinance occurs shall be fined five hundred dollars (\$500.00) payable upon conviction.

(k) Require license to be displayed in a conspicuous place at the retail location.

(l) The sale and use of fireworks during the permissible times and days as previously specified shall be prohibited in St. Charles Parish during the duration of a no burn order should one be issued by the Louisiana State Fire Marshall concurrent with the sale and use time periods.

(m) Fireworks retailers must comply with all applicable state laws relating to the purchasing, selling, storing, etc. of fireworks.

SECTION III. Severability. If any section, clause, paragraph, provision or portion of this Ordinance shall be held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect any other section, clause, paragraph, provision or portions of this Ordinance, the St. Charles Parish Council hereby expresses and declares that it would have adopted the remaining portion of this Ordinance with the invalid portions omitted.

The foregoing ordinance having been submitted to a vote, the vote thereon was as follows:

YEAS: HOGAN

NAYS: SCHEXNAYDRE, AUTHEMENT, RAYMOND, TASTET, BENEDETTO,
COCHRAN, LAMBERT, NUSS

ABSENT: NONE

**PROPOSED ORDINANCE FAILED FOR LACK OF A FAVORABLE MAJORITY
ON JANUARY 24, 2011.**

Failed revised 2010-0019 Fireworks ord Rev (12-15-10).doc