

ORDINANCE NO. 58

AN ORDINANCE CONCERNING THE IGNITION, DISCHARGE, USE, AND SALE OF FIREWORKS IN THE UNINCORPORATED AREAS OF CERRO GORDO COUNTY AND ESTABLISHING PROSCRIBED DAYS AND HOURS; PENALTIES; AND TO PROVIDE FOR THE PUBLIC HEALTH SAFELY AND GENERAL WELFARE

WHEREAS, On May 9, 2017, the State of Iowa legislature and Governor enacted a law relating to the possession, sale, transfer, purchase, and use of fireworks, providing penalties, and including effective date provisions; and

WHEREAS, the law includes provisions that allow local jurisdictions to adopt an ordinance or resolution to prohibit or restrict the use and sale of consumer fireworks within the County; and

WHEREAS, the County restricts and permits the display of fireworks as granted by Iowa Code 727.2, but does not specifically address the sale, use, discharge, and possession of fireworks; and

WHEREAS, the Iowa-Illinois Safety Council's June 2017 newsletter cites 2013 data that 8 fatalities, 11,400 injuries that require medical attention, 1,400 structure fires, and 200 vehicle fires are caused by fireworks each year; and

WHEREAS, to better protect the public health, safety, and general welfare of its citizens within the County; and

BE IT THEREFORE ORDAINED by the Board of Supervisors of Cerro Gordo County, Iowa:

SECTION 1: DEFINITIONS

- 1.1 *APA 87-1*. The American Pyrotechnics Association's standard 87.1, as published in December 2001.
- 1.2 *Consumer fireworks*. Includes "first-class consumer fireworks" and "second-class consumer fireworks" as defined herein.
- 1.3 *Display fireworks*. Includes any explosive composition, or combination of explosive substances, or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation, and includes fireworks containing any explosive or flammable compound, or other device containing any explosive substance. "Display fireworks" does not include novelties or consumer fireworks enumerated in chapter 3 of APA 87-1.
- 1.4 *Explosives*. Any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion with substantially instantaneous release of gas and heat, unless such compound, mixture, or device is otherwise specifically classified by the United States department of transportation. The term "explosive" includes all materials which are classified as a class 1, division 1.1, 1.2, 1.3, or 1.4

explosive by the United States department of transportation, under 49 C.F.R. §173.50, and all 26 materials classified as explosive materials under 18 U.S.C. 27 §841, and includes, but is not limited to, dynamite, black powder, pellet powders, initiating explosives, blasting caps, electric blasting caps, safety fuse, fuse lighters, fuse igniters, squibs, cordeau detonative fuse, instantaneous fuse, igniter cord, igniters, smokeless propellant, cartridges for propellant-actuated power devices, cartridges for industrial guns, and overpressure devices, but does not include “fireworks” Senate File 489,

p. 7 as “consumer fireworks”, “display fireworks”, or “novelties” as those terms are defined in Iowa Code 727.2 or ammunition or small arms primers manufactured for use in shotguns, rifles, and pistols. Commercial explosives are those explosives which are intended to be used in commercial or industrial operations.

- 1.5 *Fireworks*. Includes any explosive composition, or combination of explosive substances, or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation, and includes blank cartridges, firecrackers, torpedoes, skyrockets, roman candles, or other fireworks of like construction and fireworks containing any explosive or flammable compound, or other device containing any explosive substance. The term “fireworks” does not include goldstar-producing sparklers on wires which contain no magnesium or chlorate or perchlorate, flitter sparklers in paper tubes that do not exceed one-eighth of an inch in diameter, toy snakes which contain no mercury, or caps used in cap pistols.
- 1.6 *First-class consumer fireworks*. Includes the following fireworks, as described in APA 87-1, chapter 3:
 - 1.6.1 Aerial shell kits and reloadable tubes;
 - 1.6.2 Chasers;
 - 1.6.3 Helicopter and aerial spinners;
 - 1.6.4 Firecrackers;
 - 1.6.5 Mine and shell devices;
 - 1.6.6 Missile-type rockets;
 - 1.6.7 Roman candles;
 - 1.6.8 Sky rockets and bottle rockets; and
 - 1.6.9 Multiple tube devices under this paragraph that are manufactured in accordance with APA 87-1, section 3.5.
- 1.7 *Novelties*. Includes all novelties enumerated in chapter 3 of APA 87-1, and that comply with the labeling regulations promulgated by the 27 United States consumer product safety commission.
- 1.8 *Retailer*. As defined by Iowa Code 423.1 or any entity required to collect taxes for sales of merchandise. Also referred to as “sellers.”
- 1.9 *Second-class consumer fireworks*. Includes the following fireworks, as described in APA 87-1, chapter 3:
 - 1.9.1 Cone fountains;
 - 1.9.2 Cylindrical fountains;
 - 1.9.3 Flitter sparklers;
 - 1.9.4 Ground and hand-held sparkling devices, including multiple tube ground and hand-held sparkling devices that are manufactured in accordance with APA 87-1, section 3.5;
 - 1.9.5 Ground spinners;

- 1.9.6 Illuminating torches;
 - 1.9.7 Toy smoke devices that are not classified as novelties pursuant to APA 87-1, section 3.2;
 - 1.9.8 Wheels; and
 - 1.9.9 Wire or dipped sparklers that are not classified as novelties pursuant to APA 87-1, section 3.2.
- 1.10 *Temporary Structure.* Any structure not permanently affixed to the ground and/or without a foundation or footings, including, but not limited to, tents, sheds, structures on skids, or stands.
- 1.11 *Wholesaler.* A person who engages in the business of selling or distributing consumer fireworks for the purpose of resale in the State of Iowa. Also referred to as “sellers.”

SECTION 2. FIREWORKS GENERAL PROVISIONS

- 2.1 Retail operations in which less than 50% of the retail floor space is devoted to the sale and display of second-class consumer fireworks or novelties shall not be considered a consumer fireworks sales use and are not subject to permit requirements.
- 2.2 Industrial District Permitted Use. Article 16.3 of Ordinance No. 15, Zoning Ordinance of Cerro Gordo County, Iowa, is hereby amended by adding the following to the list of Principal Permitted Uses:
- Z. First Class Consumer Fireworks sales and/or retail operations in which the sale of second-class consumer fireworks or novelties exceeds 50% of the retail floor space, provided that such structures or buildings shall be at least two hundred (200) feet from any residential district and at least fifty (50) feet from the nearest structure on an adjacent lot.
- 2.3 No person shall use, explode, discharge, or ignite consumer fireworks in the unincorporated areas of Cerro Gordo County at any time.

SECTION 3. FIREWORKS PERMIT FOR DISPLAY

- 3.1 Supervised public exhibitions or displays of display fireworks as defined in Iowa Code 727.2(1)(b) shall be conducted only in accordance with this section along with any rules and regulations issued by the Fire Chief for the area included with the permit application
- 3.2 Upon written application, the County may grant a permit for the display of display fireworks by a County agency, fair association, or other organizations or groups as may be approved by the County, and when such firework are to be displayed are under the direct control of a licensed and competent operator. Any applications shall have attached thereto proof of insurance with limits not less than \$1,000,000 per Occurrence and \$2,000,000 in the aggregate.

SECTION 4. SALE, DISTRIBUTION, AND WAREHOUSING OF FIREWORKS

- 4.1 Liability Insurance. No person, retailer, consumer group or otherwise shall sell or display for sale any consumer fireworks without possessing a consumer fireworks sellers license as required under Iowa Code Chapter 100, and without providing evidence of insurance in the amounts of not less than \$1,000,000 per Occurrence and \$2,000,000 in the aggregate.

- 4.2 Fireworks Sale, Wholesale, and Manufacture. Prior to any person engaging in retail sale of first-class consumer fireworks, a seller shall obtain a Fireworks Sales Permit from the Cerro Gordo County Zoning Administrator. A Fireworks Sales Permit application shall be submitted to the Cerro Gordo County Planning and Zoning Office. A seller shall be approved by the County Sherriff, the Fire Chief of the area in which sales will take place, and the Zoning Administrator. The permit fee is \$100. No Fireworks Sales Permit shall be issued unless and until the applicant has been issued a permit by the State Fire Marshall's Office.
- 4.3 The sale, display for sale, wholesale, or manufacture of consumer fireworks shall comply with all zoning, fire, and electrical codes applicable to fireworks sales operations and uses.
- 4.4 No sale or display for sale of consumer fireworks shall take place in any temporary structure, travel trailer, or trailer as defined in the Cerro Gordo County Zoning Ordinance.
- 4.5 No storage, sales, or display for sale of fireworks may occur from within a vehicle.
- 4.6 Approval of Property Owner. A copy of a lease agreement or letter of approval from the property owner of the location where sales are requested must accompany the Fireworks Sales Permit application.
- 4.7 Inspections. Any location intended for the sale of consumer fireworks shall have an inspection completed by the Fire Chief for the area in which sales will take place and the Zoning Administrator.

SECTION 5. PENALTIES

Any individual who violates the restrictions of this ordinance or who aids, abets, perpetuates, participates in, or otherwise promotes the actions of an individual who violates said restrictions, may be cited and prosecuted for the applicable ordinance violation(s). The owner, occupant, or other person with control of the real property where the violations are occurring and/or the person who has or shares control of the fireworks shall be guilty of a misdemeanor, punishable as stated herein.

Unless otherwise stipulated by state law or this Ordinance, violations of any provisions of this Ordinance are hereby declared simple misdemeanors. Anyone violating the provisions of this Ordinance shall upon conviction be fined a minimum amount of not less than \$250 unless a different fine is stipulated.

SECTION 6. EXTREME FIRE DANGER

Whenever drought, high winds, or other natural phenomena create, or are likely to create, hazardous conditions and increased chance of fire danger and the Board of Supervisors determines that adverse conditions exist for the use and exploding of fireworks, the Board of Supervisors, or their designee, may issue a temporary ban on the use of fireworks with the jurisdiction of Cerro Gordo County. The Board of Supervisors shall have the authority to declare an emergency and temporarily halt the use of all fireworks.

SECTION 7. SEIZURE AND DISPOSAL OF FIREWORKS

The County Sheriff's Department may seize and impound all fireworks and fireworks paraphernalia that it has a probable cause to believe are used, possessed, or sold in

violation of this Ordinance. If the impounded items are lawful to possess, they may be retained as evidence until any court proceedings or citations have been adjudicated. The Sheriff's Department may dispose of the seized fireworks by providing them to a fire department within Cerro Gordo County.

SECTION 8. LITTERING

Individuals are responsible for cleaning up fireworks debris that ends up on property other than their own. Failure to do so is a violation of this Ordinance.

SECTION 9. SEVERABILITY

If any provision of this chapter is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect the remaining provisions that can be implemented without the invalid provision, and, to this end, the provisions of this ordinance are declared to be severable.

SECTION 10. ADOPTION

Motion by Supervisor Callanan and seconded by Supervisor Watts: To approve the final consideration of Cerro Gordo County Home Rule Ordinance No. 58, entitled "AN ORDINANCE CONCERNING THE IGNITION, DISCHARGE, USE, AND SALE OF FIREWORKS IN THE UNINCORPORATED AREAS OF CERRO GORDO COUNTY AND ESTABLISHING PROSCRIBED DAYS AND HOURS; PENALTIES; AND TO PROVIDE FOR THE PUBLIC HEALTH SAFETY AND GENERAL WELFARE." The second and third considerations were waived June 13, 2017. The final consideration was approved on June 13, 2017.

Vote taken as follows:

AYES – Callanan, Watts, & Latham

NAYS - None

ABSENT – None

This ordinance shall be effective on after its final consideration and publication as provided by law.

Chairman Casey M. Callanan
Board of Supervisors

ATTEST:

Becky Kirchgatter
Deputy County Auditor

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