

ORDINANCE No. 14-107

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF DEWEY-HUMBOLDT, COUNTY OF YAVAPAI, ARIZONA, AMENDING THE TOWN OF DEWEY-HUMBOLDT, ARIZONA CODE OF ORDINANCES, TITLE XII GENERAL OFFENSES, CHAPTER 130 GENERAL OFFENSES, TO ADD NEW SUBCHAPTER FIREWORKS AND EXPLOSIVES AND §§ 130.10 DEFINITIONS, 130.11 USE OF FIREWORKS; EXCEPTIONS, 130.12 SALE OF PERMISSIBLE CONSUMER FIREWORKS, 130.13 POSTING OF SIGNS BY PERSONS ENGAGED IN THE SALE OF PERMISSIBLE CONSUMER FIREWORKS, 130.14 LIABILITY FOR EMERGENCY RESPONSES RELATED TO USE OF FIREWORKS; DEFINITIONS, 130.15 EXPLOSIVES, AND 130.16 PENALTIES ALL RELATED TO THE SALE AND USE OF FIREWORKS AND EXPLOSIVES WITHIN THE TOWN LIMITS; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING PENALTIES

**Whereas**, the Mayor and Council of the Town of Dewey-Humboldt find it necessary and prudent to adopt certain regulations to protect, enhance and promote the health, safety and welfare of its residents against injuries caused by the use of explosives, including permissible consumer fireworks; and

**Whereas**, due to the dry/desert like conditions, there is a danger of fire with the use of consumer fireworks in Dewey-Humboldt that can cause significant harm to Dewey-Humboldt and its residents; and

**Whereas**, A.R.S. § 36-1606 authorizes municipalities to regulate and prohibit some activities related to permissible consumer fireworks; and

**Whereas**, the adoption of regulations relating to prohibiting the use of permissible consumer fireworks and requiring a permit for possession and use of other explosives, is in the best interests of the citizens of Dewey-Humboldt,

**Now, Therefore**, Be it ordained by the Mayor and Common Council of the Town of Dewey-Humboldt, Arizona, as follows:

Section I. In General

The Town of Dewey-Humboldt, Arizona Code of Ordinances, Title XIII General Offenses, Chapter 130 General Offenses is hereby amended to add new subchapter Fireworks and Explosives to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

## FIREWORKS AND EXPLOSIVES

### § 130.10 DEFINITIONS

THE FOLLOWING WORDS, TERMS AND PHRASES WHEN USED IN THIS SUBCHAPTER, 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 A.R.S. § 36-1601.
- (2) *DISPLAY FIREWORK* MEANS THOSE FIREWORKS DEFINED BY A.R.S. § 36-1601.
- (3) *EXPLOSIVES* MEANS ANY DYNAMITE, NITROGLYCERINE, BLACK POWDER, OR OTHER SIMILAR EXPLOSIVE MATERIALS, INCLUDING PLASTIC EXPLOSIVES. "EXPLOSIVES" DOES NOT INCLUDE AMMUNITION OR AMMUNITION COMPONENTS SUCH AS PRIMERS, PERCUSSION CAPS, SMOKELESS POWDER, BLACK POWDER AND BLACK POWDER SUBSTITUTES USED FOR HAND LOADING PURPOSES.
- (4) *FIRE CHIEF* MEANS THE CHIEF OF THE CENTRAL YAVAPAI FIRE DISTRICT.
- (5) *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 OR DISPLAY FIREWORK AS DEFINED BY A.R.S. § 36-1601.
- (6) *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.
- (7) *PERMISSIBLE CONSUMER FIREWORKS* MEANS THOSE FIREWORKS AS DEFINED BY A.R.S. § 36-1601.
- (8) *SUPERVISED PUBLIC DISPLAY* MEANS A MONITORED PERFORMANCE OF DISPLAY FIREWORKS OPEN TO THE PUBLIC AND AUTHORIZED BY PERMIT BY THE TOWN.

**§ 130.11 USE OF FIREWORKS; EXCEPTIONS**

- (A) THE USE, DISCHARGE OR IGNITION OF FIREWORKS AND PERMISSIBLE CONSUMER FIREWORKS, WITHIN THE TOWN IS PROHIBITED EXCEPT AS PROVIDED FOR IN THIS SECTION.
- (B) THE USE OF PERMISSIBLE CONSUMER FIREWORKS IS PROHIBITED WITHIN THE CORPORATE LIMITS OF THE TOWN EXCEPT FROM JUNE 24 THROUGH JULY 6 AND DECEMBER 24 THROUGH JANUARY 3 EACH YEAR. THE USE OF PERMISSIBLE CONSUMER FIREWORKS IS ALSO PROHIBITED WHEN A FEDERAL OR STATE AGENCY IMPLEMENTS STAGE ONE FIRE RESTRICTIONS IN ANY PORTION OF YAVAPAI COUNTY IN EFFECT FOR ANY ONE OR MORE OF THE DAYS LISTED IN THIS SUBSECTION.
- (C) NOTHING IN THIS SECTION OR ARTICLE SHALL BE CONSTRUED TO PROHIBIT THE USE, DISCHARGE OR IGNITION OF NOVELTY ITEMS OR THE OCCURRENCE OF A SUPERVISED PUBLIC DISPLAY OF FIREWORKS.
- (D) PERMITS MAY BE GRANTED BY THE TOWN FOR CONDUCTING A PROPERLY SUPERVISED PUBLIC DISPLAY OF FIREWORKS. 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. A PERMIT SHALL NOT BE ISSUED, AND MAY BE REVOKED, DURING TIME PERIODS OF HIGH FIRE DANGER WARNINGS. NO SUCH PERMIT SHALL BE ISSUED UNLESS REVIEWED AND APPROVED BY THE FIRE CHIEF WHO HAS AUTHORITY TO AND MAY IMPOSE REASONABLE CONDITIONS ON ANY PERMITS GRANTED.

**§130.12 SALE OF PERMISSIBLE CONSUMER FIREWORKS**

- (A) NO PERSON SHALL SELL OR PERMIT OR AUTHORIZE THE SALE OF PERMISSIBLE CONSUMER FIREWORKS TO A PERSON WHO IS UNDER 16 YEARS OF AGE.
- (B) NO PERSON SHALL SELL OR PERMIT OR AUTHORIZE THE SALE OF PERMISSIBLE CONSUMER FIREWORKS IN CONFLICT WITH STATE LAW.
- (C) THE SALE OF PERMISSIBLE CONSUMER FIREWORKS IS PROHIBITED WITHIN THE CORPORATE LIMITS OF THE TOWN EXCEPT FROM MAY 20 THROUGH JULY 6 AND DECEMBER 10 THROUGH JANUARY 3 EACH YEAR. THE SALE OF PERMISSIBLE CONSUMER FIREWORKS IS ALSO

PROHIBITED WHEN A FEDERAL OR STATE AGENCY IMPLEMENTS STAGE ONE FIRE RESTRICTIONS IN ANY PORTION OF YAVAPAI COUNTY IN EFFECT FOR ANY ONE OR MORE OF THE DAYS LISTED IN THIS SUBSECTION.

**§ 130.13 POSTING OF SIGNS BY PERSONS ENGAGED IN THE SALE OF PERMISSIBLE CONSUMER FIREWORKS**

- (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 FIREWORKS AND PERMISSIBLE CONSUMER FIREWORKS, EXCEPT NOVELTY ITEMS AS DEFINED IN THIS SUBCHAPTER IS PROHIBITED WITHIN THE LIMITS OF THE TOWN OF DEWEY-HUMBOLDT EXCEPT FROM JUNE 24 THROUGH JULY 6 AND DECEMBER 24 THROUGH JANUARY 3 EACH YEAR.
  - (2) PERMISSIBLE 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 TOWN, IN COLLABORATION WITH THE FIRE CHIEF OR HIS DESIGNEE, SHALL DEVELOP REGULATIONS CONCERNING THE SIZE AND COLOR OF THE REQUIRED SIGNS AND SHALL DEVELOP A MODEL SIGN. THE REQUIRED SIGN REGULATIONS AND MODEL SIGN SHALL BE POSTED ON THE TOWN'S WEBSITE AND FILED WITH THE CLERK'S OFFICE.

**§ 130.14 LIABILITY FOR EMERGENCY RESPONSES RELATED TO USE OF FIREWORKS; DEFINITIONS**

- (A) A PERSON WHO INAPPROPRIATLY OR NEGLIGENTLY 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 PERSON'S LIABILITY FOR THE EXPENSE OF AN EMERGENCY RESPONSE SHALL NOT EXCEED \$10,000.00 FOR A SINGLE INCIDENT. 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.

**§ 130.15 EXPLOSIVES**

(A) IT IS UNLAWFUL AND A PUBLIC NUISANCE FOR ANY PERSON WITHIN THE LIMITS OF THE TOWN TO POSSESS, BLAST OR USE EXPLOSIVES WITHOUT A PERMIT FROM THE TOWN, AS REVIEWED AND APPROVED BY THE FIRE CHIEF.

(B) FAILURE TO COMPLY WITH ANY MUNICIPAL, COUNTY, STATE AND FEDERAL LAWS, RULES AND REGULATIONS RELATED TO THE POSSESSION, SALE AND USE OF EXPLOSIVES WITHIN THE TOWN SHALL BE DEEMED A VIOLATION OF THIS CODE.

**§ 130.16 PENALTIES**

(A) A PERSON FOUND GUILTY OF A VIOLATION OF ANY PROVISION IN SECTIONS 130.11 THROUGH 130.14 SHALL BE SUBJECT TO A CIVIL PENALTY OF ONE THOUSAND DOLLARS.

(B) A PERSON FOUND GUILTY OF VIOLATING ANY PROVISION OF SECTION 130.15 SHALL BE GUILTY OF A CLASS ONE MISDEMEANOR, AND UPON CONVICTION THEREOF SHALL BE PUNISHABLE BY A FINE OR BY IMPRISONMENT OR BOTH SUCH FINE AND IMPRISONMENT, AS SET

FORTH IN SECTION 10.99(B) OF THE DEWEY-HUMBOLDT CODE OF ORDINANCES. EACH DAY THAT A VIOLATION CONTINUES SHALL BE A SEPARATE OFFENSE PUNISHABLE AS HEREIN DESCRIBED.

Section II. Savings Clause

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance as amended 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 remainder of this Ordinance.

Section III. Repeal of Conflicting Ordinance

All other code provisions, ordinances, or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed as of the effective date hereof.

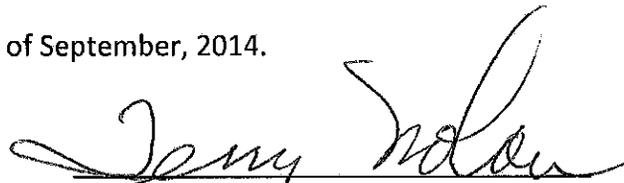
**PASSED AND ADOPTED** by the Mayor and Common Council of the Town of Dewey-Humboldt, Arizona, this 2<sup>nd</sup> day of September, 2014, by the following vote:

AYES:         six (6)        

NAYES:         one (1)                              ABSENT:         zero (0)        

EXCUSED:         zero (0)                              ABSTAINED:         zero (0)        

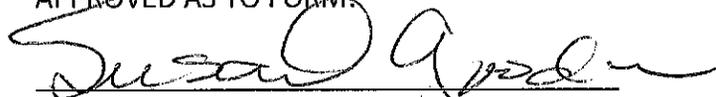
APPROVED this 2nd day of September, 2014.

  
Terry Nolan, Mayor

ATTEST:

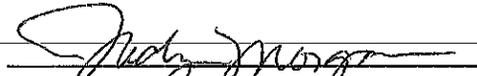
  
Judy Morgan, Town Clerk

APPROVED AS TO FORM:

  
Curtis, Goodwin, Sullivan, Udall & Schwab, P.L.C.  
Town Attorneys  
By Susan D. Goodwin

I, JUDY MORGAN, TOWN CLERK, DO HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE ORDINANCE NO. 14-107 ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF DEWEY-HUMBOLDT, ARIZONA ON THE 2nd DAY OF September, 2014, WAS POSTED IN THREE PLACES ON THE 30<sup>th</sup> DAY OF September, 2014.

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Judy Morgan, Town Clerk