

**TOWN OF MIAMI**

**ORDINANCE NO. 370**

**AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF MIAMI, ARIZONA, AMENDING THE CODE OF MIAMI, ARIZONA, TITLE 5 BUSINESS LICENSES AND REGULATIONS, BY AMENDING CHAPTER 5.16 MISCELLANEOUS BUSINESS REGULATIONS, BY REPEALING SECTION 5.16.030 SALES OF PERMISSIBLE CONSUMER FIREWORKS PROHIBITED; AMENDING TITLE 8 HEALTH AND SAFETY BY AMENDING CHAPTER 8.04 EXPLOSIVES AND FIREWORKS TO RENAME IT AS EXPLOSIVES AND AMENDING SECTION 8.04.010 REGULATING EXPLOSIVES BY AMENDING PARAGRAPH A AND REPEALING PARAGRAPHS F AND G; AMENDING TITLE 9 OFFENSES BY ADDING NEW CHAPTER 9.06 USE OF PERMISSIBLE CONSUMER FIREWORKS; AND AMENDING TITLE 11 PARKS AND RECREATION, CHAPTER 11.01 GENERAL PROVISIONS, SECTION 11.01.100 PROHIBITED ACTIVITIES, PARAGRAPH I, TO REFERENCE NEW CHAPTER 9.06.010; ALL RELATED TO PROHIBITING THE USE OF PERMISSIBLE CONSUMER FIREWORKS WITHIN TOWN LIMITS PURSUANT TO STATE STATUTE; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR PENALTIES.**

**WHEREAS**, the Arizona State Legislature and Governor approved amendments to the State law governing the sale and use of fireworks in Arizona;

**WHEREAS**, the Common Council of the Town of Miami, Arizona, desires to bring the Town Code related to fireworks into conformance with State law.

**NOW THEREFORE, BE IT ORDAINED** by the Common Council of the Town of Miami, Arizona, as follows:

**Section I.     In General.**

The Code of Miami, Arizona, Title 5 Business Licenses and Regulations, Chapter 5.16 Miscellaneous Business Regulations is hereby amended by repealing Section 5.16.030 Sales of Permissible Consumer Fireworks Prohibited in its entirety.

The Code of Miami, Arizona, Title 8 Health and Safety, is hereby amended by changing the title of Chapter 8.04 Explosives and Fireworks to Explosives and by amending Chapter 8.04 Explosives by amending Section 8.04.010 Regulating Explosives, Paragraph A and repealing Paragraphs F and G to read as follows (deletions in ~~strikeout~~; additions in ALL CAPS):

**8.04.010      REGULATING EXPLOSIVES**

A. It is unlawful for any person to blast, or use powder, fireworks, or other explosives in the town without permission from the Chief of Police.

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F. ~~"Fireworks" as used in this Chapter shall not include "permissible Consumer Fireworks," as that term is defined in A.R.S. Section 36-1601(5), as amended.~~

G. ~~The Chief of Police is not authorized to grant permission for the use of "Permissible Consumer Fireworks" in the Town.~~

The Code of Miami, Arizona, Title 9 Offenses, Chapter 9.06 Use of Permissible Consumer Fireworks and Open Fires, is hereby amended to amend Section 9.06.010 Use of Permissible Consumer Fireworks Prohibited to read as follows (deletions in ~~strikeout~~; additions in ALL CAPS):

**9.06.010      USE OF PERMISSIBLE CONSUMER FIREWORKS PROHIBITED**

~~The use of "Permissible Consumer Fireworks" in the town is prohibited. For purposes of this chapter, "Permissible Consumer Fireworks" shall have the same meaning as set forth in Section 36-1601(5), as amended, of the Arizona Revised Statutes. Permissible Consumer Fireworks shall include, but not be limited to, ground and hand held sparkling devices, cylindrical fountains, cone fountains, illuminating torches, wheels, ground spinners, flitter sparklers, toy smoke devices, wire sparklers or dipped sticks, multiple tube fireworks devices and pyrotechnic articles, is prohibited. Violations of this section are punishable as provided by Section 1.16.010 of this Code.~~

A. DEFINITIONS.

THE FOLLOWING WORDS, TERMS, AND PHRASES, WHEN USED IN THIS CHAPTER, 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, AND DISPLAY FIREWORK AS DEFINED BY ARIZONA REVISED STATUTES SECTION 36-1601.
4. *NFPA 1124* MEANS THE NATIONAL FIRE PROTECTION ASSOCIATION CODE FOR THE MANUFACTURE, TRANSPORTATION, STORAGE, AND RETAIL SALES OF FIREWORKS AND PYROTECHNIC ARTICLES AS DEFINED BY ARIZONA REVISED STATUTES SECTION 36-1601.
5. *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 STATUTES SECTION 36-1601.
6. *PERMISSIBLE CONSUMER FIREWORKS* MEANS CONSUMER FIREWORKS DEFINED BY ARIZONA REVISED STATUTES SECTION 36-1601 THAT MAY BE SOLD WITHIN THE CITY.
7. *SUPERVISED PUBLIC DISPLAY* MEANS A MONITORED PERFORMANCE OF DISPLAY FIREWORKS OPEN TO THE PUBLIC AND AUTHORIZED BY PERMIT BY THE FIRE MARSHALL/FIRE CHIEF OR HIS OR HER DESIGNEE.

**B. FIREWORKS PROHIBITED; EXCEPTIONS.**

1. THE USE, DISCHARGE, OR IGNITION OF FIREWORKS WITHIN THE CITY IS PROHIBITED ON ALL PUBLIC PROPERTY, INCLUDING, BUT NOT LIMITED TO, PUBLIC BUILDINGS, PARKING LOTS, PUBLIC PARKS, PUBLIC SCHOOLS, STREETS, AND PUBLIC RIGHTS OF WAY, EXCEPT AS AUTHORIZED IN SECTION 9.06.010, PARAGRAPH B.3.
2. NOTHING IN THIS CHAPTER SHALL BE CONSTRUED TO PROHIBIT THE USE, DISCHARGE, OR IGNITION OF

NOVELTY ITEMS OR THE OCCURRENCE OF A SUPERVISED PUBLIC DISPLAY OF FIREWORKS.

3. PERMITS MAY BE GRANTED BY THE CITY'S DESIGNATED LAW ENFORCEMENT OR FIRE PROVIDER OR DESIGNEE FOR CONDUCTING A PROPERLY SUPERVISED PUBLIC DISPLAY OF FIREWORKS. EVERY SUCH 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. THE CITY'S DESIGNATED LAW ENFORCEMENT OR FIRE PROVIDER HAS AUTHORITY TO IMPOSE CONDITIONS ON ANY PERMITS GRANTED.
4. FAILURE TO COMPLY WITH ANY PERMIT REQUIREMENTS IS A CIVIL OFFENSE PUNISHABLE BY A FINE OF ONE THOUSAND DOLLARS (\$1,000) FOR EACH VIOLATION.

C. LIMITED USE OF PERMISSIBLE CONSUMER FIREWORKS.

THE USE, DISCHARGE, OR IGNITION OF PERMISSIBLE CONSUMER FIREWORKS IS PROHIBITED WITHIN THE CITY EXCEPT ON SUCH DATES AS ALLOWED PURSUANT TO STATE LAW.

D. 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 (16) YEARS OF AGE.
2. NO PERSON SHALL SELL OR PERMIT OR AUTHORIZE THE SALE OF PERMISSIBLE CONSUMER FIREWORKS IN CONFLICT WITH STATE LAW, THIS CODE, OR NFPA 1124.
3. NO PERSON SHALL SELL OR PERMIT OR AUTHORIZE THE SALE OF PERMISSIBLE CONSUMER FIREWORKS, EXCEPT ON SUCH DATES AS ALLOWED PURSUANT TO STATE LAW.

E. POSTING OF SIGNS BY PERSONS ENGAGED IN THE SALE OF FIREWORKS; CIVIL PENALTY.

1. PRIOR TO THE SALE OF PERMISSIBLE CONSUMER FIREWORKS, EVERY PERSON ENGAGED IN SUCH SALES SHALL PROMINENTLY DISPLAY SIGNS AS SET FORTH IN A.R.S. § 36-1606.B.
2. SIGNS REQUIRED UNDER THIS SECTION MAY BE PLACED AT ANY RETAIL SALES DISPLAY OF PERMISSIBLE CONSUMER FIREWORKS.
3. THE SIGN SHALL BE EIGHT AND ONE-HALF (8<sup>1</sup>/<sub>2</sub>) INCHES BY ELEVEN (11) INCHES IN SIZE, ON CARDSTOCK PAPER, IN LANDSCAPE ORIENTATION, AND DISPLAYED ON A CONTRASTING BACKGROUND. A MODEL SIGN SHALL BE POSTED ON CITY'S WEBSITE AND FILED WITH THE CLERK'S OFFICE.
4. FAILURE TO COMPLY WITH SUBPARTS, A, B, AND C OF THIS SECTION IS A CIVIL OFFENSE PUNISHABLE BY A FINE OF ONE THOUSAND DOLLARS (\$1,000) FOR EACH VIOLATION.

F. LIABILITY FOR EMERGENCY RESPONSES RELATED TO 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 OR FOUND RESPONSIBLE FOR A VIOLATION(S) OF THIS CHAPTER IS PRIMA FACIE EVIDENCE OF LIABILITY UNDER THIS SECTION.
2. 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 TEN THOUSAND DOLLARS (\$10,000) 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.

3. FOR THE PURPOSES OF THIS SECTION:

- 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.

The Code of Miami, Arizona, Title 11 Parks And Recreation, Chapter 11.01 General Provisions, is hereby amended by amending Section 11.01.100 Prohibited Activities, Paragraph I to read as follows (deletions in ~~strikeout~~; additions in ALL CAPS):

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- I. Fireworks. No person shall use fireworks in parks except as authorized by ~~Chapters 5.16 and 9.06~~

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**Section II. Providing for Repeal of Conflicting Ordinances.**

All ordinances and parts of ordinances in conflict with the provisions of this Ordinance or any part of the Code adopted herein by reference, are hereby repealed.

**Section III. Providing for Severability.**

If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the Code adopted herein by reference, 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 thereof.

**Section IV. Providing for Penalties.**

Any person found guilty of violating any provision of this Ordinance shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine not to exceed Two Thousand Five Hundred Dollars (\$2,500) or by imprisonment for a period not to exceed six (6) months, or both such fine and imprisonment. Each day that a violation continues shall be a separate offense punishable as herein described.

**PASSED AND ADOPTED** by the Common Council of the Town of Miami, Arizona, this **27<sup>TH</sup>** day of **April**, 2020, by the following vote:

AYES:         10        

NAYES:         0         ABSENT:         0        

EXCUSED:         0         ABSTAINED:         0        

APPROVED this **27<sup>th</sup>** day of **April**, 2020.

        S. Gonzales          
Sammy Gonzales, Mayor

ATTEST:

        Karen Norris          
Karen Norris, Town Clerk

APPROVED AS TO FORM:

        Susan D Goodwin          
Gust Rosenfeld P.L.C.  
Town Attorneys  
By: Susan D. Goodwin

I, KAREN NORRIS, TOWN CLERK, DO HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE ORDINANCE NO. 370 ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF MIAMI, ARIZONA, ON THE **27<sup>th</sup>** DAY OF **April**, 2020, WAS POSTED IN THREE PLACES AND ON THE WEBSITE OF THE TOWN OF MIAMI ON THE     10     DAY OF     May    , 2020.

        Karen Norris          
Karen Norris, Town Clerk