

Ordinance No. 806

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PRESCOTT VALLEY, A MUNICIPAL CORPORATION OF ARIZONA, ADOPTING BY REFERENCE A DOCUMENT ENTITLED "AMENDMENTS TO SECTION 10-01-030 'FIREWORKS'" (DECLARED BY RESOLUTION NO. 1919 TO BE A PUBLIC RECORD) WHICH AMENDS SECTION 10-01-030 "FIREWORKS" IN ARTICLE 10-01 "OFFENSES" IN CHAPTER 10 "OFFENSES" OF THE TOWN CODE TO ALLOW THE SALE, POSSESSION AND USE WITHIN THE TOWN OF "PERMISSIBLE CONSUMER FIREWORKS" AS DEFINED BY A.R.S. §36-1601 ONLY ON CERTAIN DATES SPECIFIED BY SPECIFIED BY STATE LAW; PROVIDING THAT ALL OTHER CHAPTERS, ARTICLES, AND SECTIONS OF THE TOWN CODE, NOT HEREIN AMENDED, SHALL REMAIN IN FULL FORCE AND EFFECT; PROVIDING THAT, IF ANY PROVISION IN THIS ORDINANCE IS HELD INVALID BY A COURT OF COMPETENT JURISDICTION, THE REMAINING PROVISIONS SHALL NOT BE AFFECTED BUT SHALL CONTINUE IN FULL FORCE AND EFFECT; AND PROVIDING THAT THIS ORDINANCE SHALL BE EFFECTIVE THIRTY (30) DAYS AFTER ITS PASSAGE AND APPROVAL ACCORDING TO LAW.

WHEREAS, by Ordinance No. 8 (dated June 28, 1979) the Town Council prohibited the possession and use of fireworks within the Town without a permit from the Chief of Police; and

WHEREAS, in 2010 the Legislature amended the state's underlying authority for municipal regulation of fireworks [A.R.S. §§36-1601 *et seq.*] to allow statewide the sale of certain permissible consumer fireworks in Arizona (subject to certain restrictions and limitations) while continuing to authorize local prohibition of the use of such fireworks; and

WHEREAS, in response, the Town Council adopted Ordinance No. 752 (dated October 28, 2010) allowing the *sale* of permissible consumer fireworks while still prohibiting the *use* of all fireworks within the Town; and

WHEREAS, the Legislature has recently amended A.R.S. §§36-1601 *et seq.* again to now require that cities and towns in counties with a population of less than five hundred thousand persons to allow sale, possession and use of permissible consumer fireworks within their corporate limits on designated days of each year unless a fire emergency is declared by a federal or state regulatory agency; and

WHEREAS, in light of the dry conditions in this area and the risks to life and property posed by wildfires, the Council deems it necessary for the health, safety and welfare of the Town and its residents to only allow the sale, possession and use of permissible consumer fireworks within the Town limits on the days of the year mandated by the Legislature; and

WHEREAS, ARS §9-802 provides for adoption by reference of certain lengthy documents designated as "public records" (in order to save on publication costs); and

WHEREAS, the document entitled “Amendments to Section 10-01-030 ‘Fireworks’” has been declared by Resolution No. 1919 to be such a “public record”; and

WHEREAS, ARS §9-803 requires in such cases that the penalty clauses in those public records to be set forth in full in the adopting ordinance so that they may be published;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PRESCOTT VALLEY, ARIZONA, AS FOLLOWS:

SECTION ONE. That certain document entitled “Amendments to Section 10-01-030 ‘Fireworks’” declared to be a “public record” by Resolution No. 1919 (and available for public inspection in the Office of the Town Clerk, 7501 East Civic Circle, Prescott Valley, Arizona, 86314), is hereby referred to, adopted and made a part hereof as if fully set forth herein.

SECTION TWO. That the following penalty clauses contained in Section 10-01-030 “Fireworks” be hereby set forth as follows:

10-01-030 Fireworks.

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D. Sale of Fireworks Prohibited; Exceptions.

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46. Failure to comply with the requirements of this Subsection is a criminal offense punishable as a class 3 misdemeanor.

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F. Signage Required for Sale of Fireworks.

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45. Failure to comply with this Subsection is a criminal offense punishable as a class 3 misdemeanor.

G. Enforcement.

The Fire Marshal or designee, a Town Code Enforcement Officer or the Town Attorney may issue civil complaints to enforce civil violations of this Section and may also issue a notice of violation specifying actions to be taken and the time in which they must be taken to avoid issuance of a civil complaint. Persons found responsible for civil violations of this Section shall be subject to fines, an administrative fee then in effect, restitution (if applicable) and any other remedies available under applicable law. Unless otherwise stated, a violation of this Section shall be considered a civil violation. A Town

police officer or the Town Prosecutor may issue criminal complaints to enforce violations of this Section designated as class 3 misdemeanors.

H. Emergency Response; Liability.

1. A person who uses, discharges or ignites permissible consumer 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 Section is prima facie evidence of liability under this Subsection.
2. The expenses of an emergency response include all reasonable costs directly incurred by public agencies, for-profit entities or not-for-profit entities that make an appropriate emergency response to the incident. Such expenses constitute a debt against the person liable for those expenses pursuant to paragraph 1 of this Subsection and may be collected proportionately by the responding agencies/entities that incurred the expenses. A person's liability for the expense of an emergency response shall not exceed \$10,000 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.

SECTION THREE. That all other Chapters, Articles and Sections of the Town Code, not herein amended, shall remain in full force and effect.

SECTION FOUR. That, if any provision in this Ordinance is held invalid by a Court of competent jurisdiction, the remaining provisions shall not be affected but shall continue in full force and effect.

SECTION FIVE. That this Ordinance shall be effective thirty (30) days after its passage and approval according to law.

PASSED AND APPROVED by the Mayor and Common Council of the Town of Prescott Valley, Arizona, this 11th day of June, 2015.

Harvey C. Skoog, Mayor

ATTEST:

Diane Russell, Town Clerk

APPROVED AS TO FORM:

Ivan Legler, Town Attorney