

ORDINANCE 18-28A

**AN ORDINANCE OF THE CITY OF SPRING HILL, TENNESSEE, AMENDING
SPRING HILL MUNICIPAL CODE TITLE 7, CHAPTER 7 FIREWORKS**

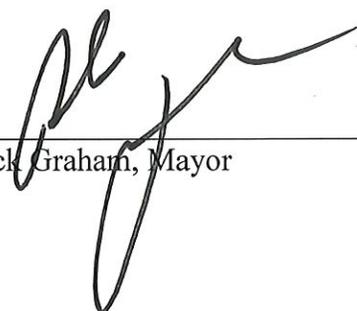
WHEREAS, the Board of Mayor and Aldermen have previously created rules and regulations related to the sale and use of fireworks within the Spring Hill City Limits; and

WHEREAS, the Board of Mayor and Aldermen desire to amend said regulations to permit the retail sale of fireworks within the Spring Hill City Limits.

NOW, THEREFORE, BE IT BE ORDAINED BY THE CITY OF SPRING HILL, TENNESSEE, BOARD OF MAYOR AND ALDERMEN, that Title 7, Chapter 7 Fireworks of the Spring Hill Municipal Code be amended as provided in Exhibit "A" attached hereto and the effective date of said amendments shall be January 2, 2019.

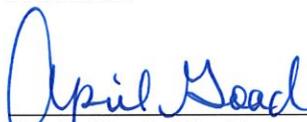
BE IT FURTHER ORDAINED, that all Ordinances in conflict herewith be, and the same hereby are, repealed.

Passed and adopted by the Board of Mayor and Alderman of the City of Spring Hill, Tennessee, on this 17th day of December, 2018.



Rick Graham, Mayor

ATTEST:



April Goad, City Recorder

LEGAL FORM APPROVED:



Patrick M. Carter, City Attorney

Passed on First Reading: November 19, 2018

Passed on Second Reading: December 17, 2018



REQUEST: Ordinance 18-28 – Ordinance to Amend Title 7, Chapter 7 Municipal Code to permit retail sale of fireworks

SUBMITTED BY: Chuck Downham, Assistant City Administrator

DATE: December 17, 2018

RE: Ordinance to Amend Title 7, Chapter 7 Fireworks to permit retail sale of fireworks

ATTACHMENTS: Ordinance 18-28 and Exhibit A – Amendment to Municipal Code Title 7, Chapter 7 Fireworks; MTAS Sample Ordinance

PURPOSE:

To approve Ordinance 18-28, an Ordinance to amend the Spring Hill Municipal Code, Title 7, Chapter 7, Fireworks, to permit the retail sale of fireworks inside the corporate limits of the City of Spring Hill.

BACKGROUND:

During the most recent meetings of the Board of Mayor and Aldermen members deliberated on whether the Spring Hill Municipal Code should be amended to permit the retail sale of fireworks inside the corporate limits of the City of Spring Hill. Staff recommended and the Board concurred that additional background research including input from the Municipal Technical Advisory Service (MTAS) was advisable and subsequently deferred further consideration in order to provide staff the opportunity to gather additional background information and a draft of the amendments necessary to the Municipal Code to permit retail sales of fireworks within the corporate limits of the City.

Staff contacted MTAS and received a sample ordinance that City staff utilized as a basis in part for preparing a comprehensive draft amendment to the Municipal Code to permit retail sales of fireworks for consideration by the Board. The draft ordinance amendment of the Municipal Code contains several new sections that are recommended in order to properly permit and regulate retail sales of fireworks inside the City of Spring Hill including definitions, permissible fireworks, storage requirements, site location requirements, and unlawful acts associated with fireworks. The draft has also been updated to reflect input provided by members of the Board of Mayor and Aldermen during the November 5, 2018 Work Session. The draft has been reviewed by the City Attorney and determined to be in good order for consideration by the Board.

During first reading of Ordinance 18-28, the draft was amended by the Board to limit the number of fireworks retail sales permits issued by the City during a given fireworks period to a maximum of four (4) permits. Exhibit A to Ordinance 18-28 was revised to reflect the amendment approved by the Board of Mayor and Aldermen on first reading limiting the number of retail sales permits to not more than four (4) permits in a given season.

The Board of Mayor and Aldermen were presented with additional requested refinements from interested parties that may be considered in the form of amendments to the Ordinance approved initially on first reading. Staff has prepared a revised exhibit containing further amendments that may be considered by the Board on second and final reading. The amendments have been reviewed by City staff and the City Attorney and reflect their recommended revisions to the narratives presented for consideration.

In addition to the amendments to Exhibit A, City staff would also request consideration by the Board to amend Ordinance 18-28 to provide for an effective date of January 2, 2019. The new regulations require applicants submit completed applications along with providing supporting documentation including a Temporary Use Permit issued by the Planning Department a minimum of 14 days in advance of the sales period. There is not sufficient time given limited staff resources during the upcoming holidays to expeditiously process applications in order to issue retail sales permits in advance of the January 1st holiday. Moving the effective date to January 2nd will also allow staff sufficient time to formalize procedures including Temporary Use Permits for the issuance of retail sales permits for fireworks.

FINANCIAL IMPACT:

The draft amendment provides for the assessment of permit fees that if adopted will provide additional revenues for the City along with corresponding sales tax revenues derived from the retail sales of fireworks. The draft amendment also provides for requirements that the retail sales vendor obtain required licenses in order to properly report and pay required taxes.

STAFF RECOMMENDATION:

Staff recommends the Board of Mayor and Aldermen approve Ordinance 18-28 and Exhibit A contained therein that sets forth an amendment to the Municipal Code to allow retail sales of fireworks.

In addition, should the Board of Mayor and Aldermen desire to further amend Ordinance 18-28 to establish an effective date of January 2, 2019, or amendments as presented in the staff report and reflected in Exhibit A (Revised), Staff recommends approval of these amendments.

EXHIBIT A (REVISED)

CHAPTER 7: FIREWORKS

Section

- 7-701 Definitions
- 7-702 Use restrictions and permits
- 7-703 Permit Revocation
- 70704 Permissible Fireworks
- 7-705 Storing and Structures
- 7-706 Limitations on Structures
- 7-707 Location of Fireworks Retail Sales Site
- 7-708 Parking Requirement for Retail Fireworks Sales Site
- 7-709 Unlawful Sale to Certain Children and Other Persons; Unlawful Use of Fireworks
- 7-710 Exclusions
- 7-711 Authorization to seize
- 7-712 Violation and penalty

§ 7-701 DEFINITIONS

- (A) As used in this chapter, unless the content otherwise requires.
- (1) "Fireworks" means any composition or device for the purpose of producing a visible or an audible effect by combustion, deflagration, or detonation, and which meets the definition of:
 - a. All articles of fireworks classified as 1.4 G or referred to as "Consumer Fireworks", or as "Class C Common Fireworks,"
 - b. Theatrical or novelty, classified as 1.4S, or
 - c. Display fireworks, classified as 1.3G, as set forth in the U.S. Department of Transportation's (DOT) Hazardous Materials Regulation, Title 49, Code of Federal Regulations (CFR), Parts 171-180.
 - d. Exceptions: 1) Toy caps for use in toy pistols, toy canes, or toy guns, and novelties and trick noisemakers manufactured in accordance with DOT regulations, 49 CFR 173.100(p), and packed and shipped according to those regulations; 2) Model rockets and model rocket motors designed, sold, and used for the purpose of propelling recoverable aero models; and 3) Propelling or expelling charges consisting of a mixture of sulfur, charcoal, saltpeter are not considered as designed to produce audible effects.
 - (2) "Mobile Retailer" means a vendor operating from motor vehicle, trailer, bicycle or motorcycle.
 - (3) "Distributor" means any person engaged in the business of selling of fireworks to any other person engaged in the business of reselling fireworks either as a wholesaler or retailer, or any person who receives, brings, or imports any fireworks of any kind, in any manner into the City of Spring Hill.
 - (4) "Permit" means the written authority of the City of Spring Hill issued under the authority of this section.
 - (5) "Person" means any individual, firm, partnership or corporation.
 - (6) "Retailer" means any person engaged in the business of making retail sales of fireworks to the general public.
 - (7) "Sale" means an exchange of articles of fireworks for money and also includes barter, exchange, gift, or offer and each such transaction made by any person, whether as principal, proprietor, salesperson, agent, association, co-partnership, or one (1) or more individual(s).

- (8) "State Fire Marshal Permit" means the appropriate fireworks permit issued by the Tennessee Fire Marshal under the authority of Tennessee Code Annotated § 68-104-101, *et seq*
- (B) Singular words and plural words used in the singular include the plural and the plural as singular.

§ 7-702 USE RESTRICTIONS AND PERMITS.

(A) (1) ~~Except as hereinafter provided, no person, firm, partnership or corporation shall offer for sale, expose for sale, sell at retail or keep with intent to sell at retail, fireworks in the city.~~ The Fire Marshal of the city may adopt reasonable rules and regulations for the granting of permits for supervised displays of fireworks by fair associations, amusement parks and other organizations or groups of individuals. Such permits may be granted upon application to the Fire Marshal and the filing of a bond in the amount of \$1,000 by the applicant. Every such display shall be handled by a competent operator licensed or certified as to competency by the Fire Marshal and shall be of such composition and character, and so located, discharged or fired as, in the opinion of the Fire Marshal, shall not be hazardous to property or endanger any person or persons.

- (2) It is unlawful for any person to sell or to offer for sale in the City of Spring Hill any item of fireworks without first having secured a State Fire Marshal Permit and a Permit issued by the City of Spring Hill.
- (3) A person applying for a retail fireworks sales site permit with the City of Spring Hill must disclose the location where the applicant will conduct the business of selling fireworks and the dates for which the right to do business is desired.
- (4) A permit (to sell fireworks to the general public) is valid only from June 25 through July 4 or December 23 through January 1.
- (5) The permit fee for fireworks retail permit is \$2,500 for the summer period and \$1,000 for the winter period and the permit shall be valid for a maximum period of ten (10) days as specified on such permit. In addition to the permit fee, the applicant must pay \$500 cleanup deposit per location, which shall be refunded after the fireworks permit has expired or used by the city to clean up the retail fireworks site if needed.
- (6) A permit to sell fireworks in the City of Spring Hill must be obtained at least two (2) weeks prior to the date on which the applicant begins making sales. Each application shall contain the following:
- The application must include the name, address and telephone number of applicant.
 - The applicant must be the natural person who will operate or be responsible for sales.
 - The applicant's name must be the same as the name on the State Fire Marshal permit.
 - The applicant is liable for all violations of this chapter by persons under his/her supervision.
 - The applicant must submit a letter or contract signed by the property owner (or authorized agent of the property owner) that provides written permission by the property owner to the applicant to conduct retail fireworks sales on the property.
- (7) A copy of the State Fire Marshal Permit. (For a state permit to be obtained by a retailer, the Mayor must sign in behalf of the retailer an Application for Fireworks Permit that the state requires before a state permit is issued to a retailer for a specific location).
- (8) A person that applies for a retail fireworks permit must show proof that a state sales tax number has been obtained for sales tax purposes.
- (9) A permit to sell fireworks in the City of Spring Hill will require the issuance of a Temporary Use Permit in accordance with Section 8.4 of the City of Spring Hill Unified Development Code. The applicant must provide a site plan that includes the dimension of

the lot, size and location of the temporary structure, setback of the structure from the right-of-way, location of other structures in the area that are occupied, location and number of parking spaces, location of any nearby residences, and location of the nearest fuel outlets.

- (10) Mobile vendors are not permitted.
- (11) Distributors are not permitted.
- (12) Signage for a retail fireworks location must comply with the City of Spring Hill Unified Development Code. Flashing signs are not permitted.
- (13) The application for a retail fireworks location must contain evidence that general liability insurance has been obtained by applicant naming the City of Spring Hill as additional insured for at least \$2,000,000 for each occurrence, whether in respect to bodily injury liability or property damage liability or bodily injury liability and property damage liability combined.
- (14) After the application has been submitted and approved, a city codes inspector and/or fire inspector shall inspect the site for compliance with applicable codes and ordinances.
- (15) After such privilege shall have been granted, sales, possession, use and distribution of fireworks for such display is lawful for that purpose only.
- (16) No person shall manufacture any fireworks within the corporate limits of the City of Spring Hill.
- (17) No permit granted hereunder shall be transferable.

(B) The discharge of fireworks within the city limits shall be limited to the following days and times:

- (1) Memorial Day, beginning at 12:00 noon and ending at 11:00 p.m.;
- (2) July 4, beginning at 12:00 noon and ending at 11:00 p.m.;
- (3) Christmas Eve and Christmas Day, beginning at 12:00 noon and ending at 11:00 p.m.;
- (4) New Year's Eve, beginning at 12:00 noon and ending at 12:30 a.m.; and
- (5) New Years Day, beginning at 12:00 noon and ending at 11:00 p.m.

(2011 Code, § 7-701) (Ord. 02-25, passed 10- -2002)

§ 7-703 PERMIT REVOCATION

(A) The city Codes Director and/or Fire Marshal may revoke any permit upon failure of retailer to correct any of the following conditions within twenty-four (24) hours after written notice is issued to the retailer.

- (1) When the permit or the permittee's operator violates any lawful rule, regulation, or order of the city Codes Director and/or Fire Marshal.
- (2) When the permittee's application contains any false or untrue statements.
- (3) When the permittee fails to timely file any report or pay any tax, fee, fine or charge.
- (4) When the permittee or the permittee's operator violates any fireworks ordinance or statute.

(B) When any activities of the permittee constitute a distinct hazard to life or property, the city Codes Director or Fire Marshal, or both, may revoke the permit immediately.

§ 7-704 PERMISSIBLE FIREWORKS

(A) It is unlawful for any individual, firm, partnership or corporation to sell or use within the City of Spring Hill, except as provided in this chapter, any "fireworks" as defined in § 7-701 (A) (1), other than the following:

- (1) Those items classified by the U.S. Department of Transportation as 1.4G Consumer Fireworks, or

- (2) Those items that comply with the construction, chemical composition, and labeling regulations promulgated by the United States Consumer Product Safety Commission and permitted for use by the general public under its regulations.

(B) Any display using 1.3G Display Fireworks must be under the control of a licensed pyrotechnics technician.

§ 7-705 **STORING AND STRUCTURES**

No person may smoke within a structure where fireworks are sold. No person selling fireworks may permit the presence of lighted cigars, cigarettes, or pipes within a structure where fireworks are offered for sale. At all places where fireworks are stored or sold, there must be posted signs with the words "Fireworks- No Smoking" in letters not less than four (4) inches high. An inspected and currently tagged fire extinguisher with a minimum 2A rating and one pressurized water type fire extinguisher must be present at each retail fireworks site. Fireworks sold at retail may be sold only from a freestanding structure. Fireworks must be stored at least ten (10) feet away from windows and other areas where the sun may shine through. Fireworks are not permitted to be stored in residential districts, except for personal use.

§ 7-706 **LIMITATIONS ON STRUCTURES**

Tents meeting the current adopted International Building Code and the Life Safety Code (NFPA 101) may be used for the retail sale of fireworks. Ground fault interrupter protection must be used for power cords that supply power to tents and other outdoor structures. Electrical wiring inside tents and other outdoor locations shall be securely installed, without splices, and lamps shall be protected from accidental breakage by a suitable fixture or guard. No structure from which fireworks are sold may exceed 3,200 square feet. Fireworks may not be stored in a permanent building unless the building has a sprinkler system and is constructed of non-flammable materials such as metal or concrete block.

§ 7-707 **LOCATION OF FIREWORKS RETAIL SALES SITE**

(A) Fireworks retail sales site are not permitted in any Residential District as defined in City of Spring Hill Unified Development Code.

(B) Retail fireworks sales site are only permitted in C-4, General Commercial District and C-5, Regional Commercial District as defined in the City of Spring Hill Unified Development Code and illustrated on the Official Zoning Map of the City of Spring Hill; provided, however fireworks retail sales structures must not be located closer than 500 linear feet to any occupied residence or Residential District, public or private educational facility, public building, or hospital, and must not be located closer than 1,000 linear feet to a fuel (gasoline, diesel, kerosene, or propane) outlet or storage facility.

(C) Any site for a fireworks retailer must be located so that all parts of the structure and fireworks inventory on the site are no closer than 50 feet to a property line or right-of-way.

(D) Fireworks sales are not allowed on any property where there is an existing retail business use in which a single business operates from a building in excess of 10,000 square feet.

(E) The parcel in which a fireworks retail use is proposed shall be a minimum of two thousand five hundred (2,500) feet from other similar uses. This distance shall be measured in a straight line from structure to structure. If two retailers are applying for permits for the first time at locations within 2,500 feet of each other for the same fireworks season, priority shall be given to the retailer who obtained a city permit at the earliest day and time prior to the permit period. In addition, priority shall be given to the retailer who obtained a permit the previous **summer** fireworks season at the same location.

(F) The location of the fireworks retail sales site and structure must be verified by the Planning Department prior to the issuance of a permit by the City of Spring Hill.

(G) There shall be no more than a total of four (4) retail fireworks sales permits issued by the City of Spring Hill for retail sales of fireworks during each period as described in Section 7-702 (A)(4). Priority will be first come, first serve provided, however, after the first year (2019), priority shall be given to the retailer that obtains a retail sales permit for the previous summer season at the same location.

§ 7-708 PARKING REQUIREMENT FOR RETAIL FIREWORKS SALES SITE

The site for a fireworks retailer shall be improved to provide at least twelve (12) graveled or paved parking places for off street and right-of-way customer parking compliant with ADA requirements. In addition, the retail fireworks site must provide for an on-site turn-around area so that backing of vehicles onto the street will not be necessary.

§ 7-709 UNLAWFUL SALE TO CERTAIN CHILDREN AND OTHER PERSONS; UNLAWFUL USE OF FIREWORKS

It is unlawful to offer for sale or to sell any fireworks to children under the age of sixteen (16) years of age or to any intoxicated person. It is unlawful to explode or ignite fireworks within six hundred (600) feet of any church, assisted living facility, nursing home, hospital, funeral home, public or private school academic structure, or within two hundred (200) feet of where fireworks are stored, sold, or offered for sale. It is unlawful to ignite or discharge any permissible articles of fireworks within or throw them from a motor vehicle. It is unlawful to place or throw any ignited article of fireworks into or at a motor vehicle, or at or near any person or group of persons. It is unlawful to ignite fireworks on another person's private property unless permission is obtained from the owner or occupant of the property. It is unlawful to launch fireworks onto property of persons who have not given permission. It is unlawful to use fireworks at times, places, or in any manner that endangers other persons. It is unlawful to ignite fireworks during a burning ban declared by either the State of Tennessee or the City of Spring Hill Fire Department, except for public (and/or group) displays for which permits have been granted.

§ 7-710 EXCLUSIONS

(A) Nothing in this chapter prohibits:

- (1) The transport of any kind of fireworks through the corporate limits of the city in accordance with the regulations of the United States Department of Transportation covering the transportation or explosives and other dangerous articles by motor, rail and water.
- (2) The sale, transportation, handling, or use of industrial pyrotechnic devices or fireworks, such as railroad torpedoes, fusees, automotive, aeronautical, and marine flares and smoke signals.
- (3) The sale or use of blank cartridges for theater, for signal or ceremonial purposes in athletics or sporting events, or legal power tools.
- (4) The transportation, handling, or use of any pyrotechnic device by the armed forces of the United States.
- (5) The use of pyrotechnics in training by the fire service, law enforcement or similar governmental agencies.
- (6) The use of fireworks for agricultural purposes under conditions approved by the city Fire Marshal.
- (7) Displays of fireworks as provided for in this chapter.

§ 7-711 AUTHORIZATION TO SEIZE

The Fire Marshal shall seize, take, remove or cause to be removed at the expense of the owner all stocks of fireworks or combustibles offered or exposed for sale, stored or held in violation of this chapter. The Fire Marshal shall store and maintain seized fireworks and dispose of them as ordered by a court of competent jurisdiction. Seized fireworks shall in no event be returned to the person from whom seized until all appellate remedies are exhausted. The confiscation and forfeiture of fireworks being an action "in rem", the city shall have the right to appeal an order restoring the seized fireworks to the person from whom seized.

(2011 Code, § 7-702) (Ord. 02-25, passed 10- -2002)

§ 7-712 VIOLATION AND PENALTY

Any person, firm, partnership or corporation violating the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding \$50.

(2011 Code, § 7-703) (Ord. 02-25, passed 10- -2002)