

AN ORDINANCE AMENDING SECTIONS 5.11 AND 2.05 OF THE MUNICIPAL CODE OF THE TOWN OF SHEBOYGAN PROHIBITING THE SALE OF FIREWORKS AND AUTHORIZING ENFORCEMENT BY CITATION

WHEREAS, the Town Board of the Town of Sheboygan has determined that the safety and wellbeing of the residents of the Town and surrounding communities will be promoted by the adoption of regulations prohibiting the sale of fireworks within the Town of Sheboygan.

NOW, THEREFORE, the Board of Supervisors of the Town of Sheboygan does hereby ordain as follows:

Section 1. Amending Code. Section 5.11 of the Municipal Code of the Town of Sheboygan, Sheboygan County, Wisconsin, is hereby amended to read as follows (additions are indicated by underscoring and deletions are indicated by strikeouts):

“5.11 Regulation of Fireworks

(1) Definition -

In this section, "fireworks" means anything manufactured, processed or packaged for exploding, emitting sparks or combustion which does not have another common use, but does not include any of the following:

- (a) Fuel or a lubricant.
- (b) A firearm cartridge or shotgun shell.
- (c) A flare used or possessed or sold for use as a signal in an emergency or in the operation of a railway, aircraft, watercraft or motor vehicle.
- (d) A match, cigarette lighter, stove, furnace, candle, lantern or space heater.
- (e) A cap containing not more than one-quarter grain of explosive mixture, if the cap is used or possessed or sold for use in a device which prevents direct bodily contact with a cap when it is in place for explosion.
- (f) A toy snake which contains no mercury.
- (g) A model rocket engine.
- (h) Tobacco and a tobacco product.
- (i) A sparkler on a wire or wood stick not exceeding thirty-six inches (36") in length that is designed to produce audible or visible effects or to produce audible and visible effects.
- (j) A device designed to spray out paper confetti or streamers and which contains less than one-quarter grain of explosive mixture.
- (k) A fuseless device that is designed to produce audible or visible effects or audible and visible effects, and that contains less than one-quarter grain or explosive mixture.
- (l) A device that is designed primarily to burn pyrotechnic smoke-producing mixtures, at a controlled rate, and that produces audible or visible effects, or audible and visible effects.
- (m) A cylindrical fountain that consists of one or more tubes and that is classified by the federal department of transportation as a Division 1.4 explosive, as defined in 49 CFR 173.50.
- (n) A cone fountain that is classified by the federal department of transportation as a Division 1.4 explosive, as defined in 49 CFR 173.50.

(2) Sale -

No person may sell or possess with intent to sell fireworks, except:

- (a) To the Town; or
- (b) For a purpose specified under sub (3)(b)2. to 6.

(3) Use -

(a) No person may possess or use fireworks without a user's permit from the Chairperson of the Town, or from an official or employee of the Town designated by the Chairperson. No person may use fireworks or a device listed under sub (1)(e) to (f) while attending a fireworks display for which a permit has been issued to a person listed under paragraph (c) 1. to 5., or under paragraph (c)6., if the display is open to the general public.

(b) Paragraph (a) does not apply to the following:

1. The Town, but the Town fire and law enforcement officials shall be notified of the proposed use of fireworks at least two (2) days in advance.
2. The possession or use of explosives in accordance with rules or general orders of the Department of Commerce.
3. The disposal of hazardous substances in accordance with rules adopted by the Department of Natural Resources.
4. The possession or use of combustible materials in any manufacturing process.
5. The possession or use of explosive or combustible materials in connection with classes conducted by educational institutions.
6. A possessor or manufacturer of explosives in possession of a license or permit under 18 U.S.C. §§ 841 to 848 if the possession of the fireworks is authorized under the license or permit.
7. The possession of fireworks in the Town while transporting the fireworks to a city, town or village where the possession of the fireworks is authorized by permit or ordinance. Paragraph (a) applies to a person transporting fireworks under the paragraph if, in the course of transporting the fireworks through the Town, the person remains in the Town for a period of at least twelve (12) hours.

(c) A permit under this subsection may be issued only to the following:

1. A public authority.
2. A fair association.
3. An amusement park.
4. A park board.
5. A civic organization.
6. Any individual or group of individuals.
7. An agricultural producer for the protection of crops from predatory birds or animals.

(d) A person issue a permit for crop protection shall erect appropriate signs disclosing the use of fireworks for crop protection.

(e) The person issuing a permit under this subsection may require an indemnity bond with good and sufficient sureties or policy of liability insurance for the payment of all claims that may arise by reason of injuries to person or property from the handling, use or discharge of fireworks under the permit. The bond or policy, if required, shall be taken in the name of the Town, and any person injured thereby may bring an action on the bond or policy in the person's own name to recover the damage the person has sustained, but the aggregate liability of the surety or insurer to all persons shall not exceed the amount of the bond or policy. The bond or policy, if required, together with a copy of the permit shall be filed in the office of the Town Clerk.

(f) A permit under this subsection shall specify all of the following:

1. The name and address of the permit holder.
2. The date on and after which fireworks may be purchased.
3. The kind and quantity of fireworks which may be purchased.
4. The date and location of permitted use.

(g) A copy of a permit under this subsection shall be given to Town fire or law enforcement officials at least two (2) days before the date of authorized use.

(h) A permit under this subsection may not be issued to a minor.

(4) Local Regulation -

- (a) No person may smoke where fireworks are stored or handled.
- (b) A person who stores or handles fireworks shall notify the Fire Chief of the Town Fire Department of the location of the fireworks.
- (c) No wholesaler, dealer or jobber may store fireworks within fifty feet (50') of a dwelling.
- (d) No person may store fireworks within fifty feet (50') of a public assemblage or place where gasoline or volatile liquid is dispensed in quantities exceeding one gallon.

(5) Parental Liability -

A parent, foster parent, treatment foster parent, family-operated group home parent or legal guardian of a minor who consents to the use of fireworks by the minor is liable for damages caused by the minor's use of the fireworks.

(6) Enforcement -

- (a) The Town may petition the Circuit Court for an order enjoining violations of sub. (2) or (3).
- (b) Fireworks stored, handled, sold, possess or used by a person who violates this ordinance or a court order under paragraph (a) may be seized and held as evidence of the violation. Except as provided in Wis. Stats. § 968.20(4), the fireworks that are the subject of a violation of this ordinance or a court order under paragraph (a) may be destroyed after conviction for a violation. Except as provided in Wis. Stats. § 968.20(4), fireworks that are seized as evidence of a violation for which no conviction results shall be returned to the owner in the same condition as they were when seized to the extent practicable.

(7) Penalties -

- (a) A person who violates a court order shall be fined not more than \$10,000.00, together with costs, and in default of payment thereof, be imprisoned in the county jail until such forfeiture and costs are paid, but not to exceed sixty (60) days.
- (b) The forfeiture for all other violations of the ordinance shall be not more than \$1,000.00, together with costs, and in default of payment thereof, be imprisoned in the county jail until such forfeiture and costs are paid, but not to exceed sixty (60) days."

Section 2. Amending Code. Section 2.05(2)(b) of the Municipal Code of the Town of Sheboygan entitled "Town Ordinance Enforcement Officers a/k/a Town Constables," is hereby amended to add the following:

"10. Regulation of fireworks (Section 5.11)."

Section 3. Effective Date. This Ordinance shall take effect upon enactment and posting as required by law.

Adopted this 18th day of February, 2014.

TOWN OF SHEBOYGAN

By **DANEL W. HEIN**, Chairman

CERTIFICATE OF ADOPTION

I hereby certify that the foregoing Ordinance was duly adopted by the Board of Supervisors of the Town of Sheboygan on the 18th day of February, 2014.

CATHY CONRAD, Town Clerk

Posted: 3-19-2014