ORDINANCE NO. 18467

AN ORDINANCE introduced by Councilmember Brett Blackburn, relating to the use and sale of fireworks within the city limits, amending Topeka City Code § 70-57 and specifically repealing said original section.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. That City of Topeka Code § 70-57, Fireworks, is hereby amended to read as follows:

Fireworks.

(a) It shall be unlawful for any person to sell or offer for sale at retail or use within the city any cartridge can, squib, rocket, firecracker, Roman candle or other combustible fireworks other than permissible fireworks.

Permissible fireworks shall mean "novelties and noisemakers" not classified as fireworks by the United States Department of Transportation and any other fireworks which the fire chief shall determine as permissible.

It shall be unlawful for any wholesaler, jobber or other person to store or keep within the limits of the city any such combustible fireworks or articles that may be used in a pyrotechnical display excepting sparklers as described in this section.

Definitions:

(1) “Consumer Fireworks” shall mean any small firework device designed to produce visible effects by combustion and are classified as consumer fireworks UN0336, and UN0337 by the U.S. Department of Transportation at 49 C.F.R. 172.101, and 27 C.F.R. 555.11 as may be amended. Metal sparklers are specifically excluded from this definition of consumer fireworks.
(2) "Display Fireworks" shall mean large fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation and are classified as display fireworks are classified as fireworks UN0333, UN0334 or UN0335 by the U.S. Department of Transportation at 49 CFR 172.101, and 27 C.F.R. 555.11.

(3) "Fireworks" shall mean any composition or device designed to produce a visible or an audible effect by combustion, deflagration, or detonation

(4) "Fire Chief" shall mean the duly appointed chief of the City of Topeka Fire Department or any person designated by said chief to enforce the provisions of this ordinance.

(b) Fireworks commonly known as skyrockets, Roman candles, firecrackers, bottle rockets, or any other form of fireworks consisting of a case containing a combustible composition fastened to a guiding stick which is designed and manufactured to be projected through the air by the reaction resulting from the rearward discharge of gases liberated by combustion and fireworks commonly known as helicopters or any other form of fireworks which launch in their entirety and leave no base shall not be permissible fireworks within the city and it shall be unlawful for any person to sell at retail, offer for sale at retail, discharge, explode, or use any of said fireworks within the city. Nothing contained in this section shall be construed as prohibiting the fire chief from giving or permitting pyrotechnical displays in accordance with NFPA-1123.

Possession/discharge of fireworks

It shall be unlawful for any person to possess, transport, ignite, discharge or cause to be discharged any firework in the City except as specifically permitted in this section.
(1) Consumer fireworks may be discharged within the City of Topeka:

   (i) Between the hours of 8:00 a.m. and 9:00 p.m. on June 27, 28, 29, 30, July 1 and July 5 of each year.

   (ii) Between the hours of 8:00 a.m. and 11:00 p.m. on July 2, 3 and 4 of each year.

(2) It shall be unlawful for any person to recklessly or intentionally discharge, ignite or otherwise cause a firework:

   (i) to place another person in reasonable apprehension of immediate bodily harm; or

   (ii) to cause physical contact with another person; or

   (iii) to deface or damage real or personal property of another person without the consent of any such other person.

(3) Further, it shall be unlawful for any person to, possess, ignite or otherwise cause the discharge of any firework that is not a consumer firework or any firework which is prohibited by federal or state statute or regulation.

(c) Sale of fireworks

   (1) It shall be unlawful for any person to sell, hold for sale, or offer for sale at retail, any permissible consumer fireworks in the city unless such person has first obtained a permit from the city as a retailer.

   (2) Any person desiring to sell or offer for sale any permissible fireworks as a retailer shall make application to the city clerk for a permit authorizing the same. Such application shall include the following information and such additional information as the fire chief shall deem necessary:
(i) The name and residence address of the applicant.

(ii) The location of the premises for which the permit is sought. If ownership of premises is different from the applicant, written consent of the owner is required.

(iii) When the permit is sought in a temporary structure or facility, the applicant shall provide a legal description of the premises, a description of the structure or facility to be used, and the location of such structure or facility upon the premises. All temporary structures including tents, shall be posted with the approved NFPA 704 placards as described in the Uniform Fire Code. A copy of subsection b of this ordinance shall also be posted on all premises where fireworks are sold. Such notice shall be at least eight and one half inches by eleven inches (8 ½” x 11”) in size and printed in type no smaller than twelve (12) characters per inch. After an inspection of the premises including review by appropriate city agencies such as fire department, developmental services director and consideration of the information contained in the application for a permit, the fire chief may issue a permit therefore, conditioned upon reasonable safety measures to be specified in the permit and upon payment by the applicant of a fee of two hundred eighty dollars ($280.00) to the city clerk. Any permit issued under the provisions of this section shall be valid only for the period of June 27 through and including July 5 of the year in which issued and shall be issued in accordance with the Uniform Fire Code article entitled "permits." Persons responsible for the operations of permissible firework stands in which
fireworks are stored or handled shall be familiar with safety requirements for
the materials being sold, and the appropriate actions necessary in the event
of a fire.

(d) Any person desiring to sell or offer for sale any permissible fireworks as a
retailer shall make application to the city clerk for a permit authorizing the same. Such
application shall include the following information and such additional information as the
fire chief shall deem necessary:

(1) The name and residence address of the applicant.

(2) The location of the premises for which the permit is sought. If
ownership of premises is different from the applicant, written consent of the owner is
required.

(3) When the permit is sought in a temporary structure or facility, the
applicant shall provide a legal description of the premises, a description of the
structure or facility to be used, and the location of such structure or facility upon the
premises. All temporary structures including tents, shall be posted with the
approved NFPA 704 placards as described in the Uniform Fire Code. After an
inspection of the premises including review by appropriate city agencies such as fire
department, development coordination and building inspection division and
consideration of the information contained in the application for a permit, the fire
chief may issue a permit therefor, conditioned upon reasonable safety measures to
be specified in the permit and upon payment by the applicant of a fee of $280.00 to
the city clerk. Any permit issued under the provisions of this section shall be valid
only for the period of June 27 through and including July 5 of the year in which
issued and shall be issued in accordance with the Uniform Fire Code article entitled "permits." Persons responsible for the operations of permissible firework stands in which fireworks are stored or handled shall be familiar with safety requirements for the materials being sold, and the appropriate actions necessary in the event of a fire.

Confiscation of fireworks.

Any fireworks in the immediate possession or control of a person violating any city ordinance controlling the use of fireworks may be confiscated by any sworn law enforcement official, the fire chief, or any member of the fire department who has been duly authorized by the fire chief. Confiscated fireworks must be retained by the confiscating agency and may only be destroyed upon approval by the court.

(e) Fireworks which are illegally sold, offered for sale, used, discharged, possessed or transported in violation of these regulations shall be subject to seizure by the fire chief, his or her representative and members of the fire and police departments who may be assigned such responsibilities.

Adult supervision required

At all times that it is lawful for any person over the age of eighteen (18) years to possess and discharge permitted consumer fireworks, it shall also be lawful for a person under the age of eighteen (18) years to possess and discharge permitted consumer fireworks when such person does so under adult supervision and in the physical presence of the adult. It shall be unlawful for any person over the age of eighteen (18) years to permit a person under the age of eighteen (18) to discharge fireworks without adult supervision and in the physical presence of the adult.
Display fireworks may be sold and ignited and/or discharged pursuant to rules and regulations established by the Chief of the Topeka Fire Department.

Any person convicted of violating any of the provisions in this section shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than two hundred fifty dollars ($250.00) to a maximum amount of four hundred ninety-nine dollars ($499.00) per violation. In addition to any fine, the individual may be sentenced up to one hundred seventy-nine (179) days in jail. The fine shall not be paroled.

Section 2. That original City of Topeka Code § 70-57 is hereby specifically repealed.

Section 3. This Ordinance shall take effect and be in force from and after its passage, approval and publication in the official city newspaper.

PASSED and APPROVED by the City Council

JUN 21 2005

William W. Bunten, Mayor

ATTEST:

Iris E. Walker, City Clerk