

ORDINANCE 09-07

AN ORDINANCE BY THE COMMON COUNCIL OF THE CITY OF WESTFIELD CONCERNING AMENDMENTS TO CHAPTER 17 OF THE MUNICIPAL CODE OF ORDINANCES

WHEREAS, the City Council is the governing body of the City of Westfield, Indiana, in Hamilton County, in the State of Indiana; and

WHEREAS, Ind. Code § 22-11-14 allows municipalities to limit the sale of fireworks; and

WHEREAS, the City Council wishes to accommodate fireworks sales and use within the City of Westfield; and

WHEREAS, the City Council of the City of Westfield, Indiana so desires to establish and enforce regulations for Fireworks Sales in a manner that preserves public welfare within the City of Westfield,

NOW THEREFORE BE IT ORDAINED by the Common Council of the City of Westfield, Hamilton County, Indiana, as follows:

- Section 1.** That upon review of the information and needs of the City the Council now finds that the sale of consumer fireworks as defined in Ind. Code § 22-11-14-1 shall become permitted pursuant to the conditions, restrictions and policies as evidenced and outlined by Exhibit “A” attached hereto and incorporated by reference herein.
- Section 2.** That the Director of Community Development is ordered to incorporate Exhibit “A” into the Westfield Municipal Code of Ordinances, Chapter 17.
- Section 3.** This Ordinance shall be in full force and effect in accordance with Indiana law, upon the passage of any applicable waiting periods, all as provided by the laws of the State of Indiana. All ordinances or parts thereof that are in conflict herewith are hereby ordered repealed. If any portion of this Ordinance is later found to be invalid, the entire ordinance shall be deemed invalid and all sales of

consumer fireworks (as defined in Ind. Code § 22-11-14-1)
shall not be permitted to be sold.

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Chapter 17 Article 3 – Consumer Fireworks Sales

Sec. 17.40 Definitions

Class 1 Building(s) – as defined in Ind. Code § 22-12-1-4

Consumer Fireworks (“Fireworks”) - as defined in Ind. Code § 22-11-14-1

Consumer Fireworks Sales (“Sales”) - a retail operation engaged in selling Fireworks.

Consumer Fireworks Sales License (“License”) - a license to sell fireworks issued by the Community Development Department (the “Department”).

Operator – a person or company engaged in the business of Sales.

Point Of Sale – location at which a retail transaction occurs within a Class 1 Building.

Portable Storage Units – temporary container for the keeping of goods.

Section 8 (a) Fireworks – as defined in Ind. Code § 22-11-14-8 (a).

Store – a Class 1 Building, or portion thereof used for the purpose of conducting Sales.

Temporary Structures – any non-permanent building or tent that will not remain onsite after the sale.

Sec. 17.41 Applicability

- (a) A License shall be required for those persons or entities engaged in the sale of Fireworks as defined; and
- (b) A separate License shall be required for each sales location.
- (c) A License shall not be required for those persons or entities engaged in the sale of Section 8(a) Fireworks and not Consumer Fireworks.

Sec. 17.42 License Required

It shall be unlawful for any person or entity to engage in the business of Fireworks Sales within the City of Westfield without first applying for and legally obtaining a License.

Sec. 17.43 License Requirements and Conditions

- (a) Licenses shall only be issued for locations within recognized Business Districts (as established and identified in the Westfield-Washington Township Zoning Ordinance WC § 16.04.050), within the corporate limits of the City of Westfield.

- (b) Licenses shall expire after six (6) months after the date of issuance or thirty (30) days after Sales are discontinued, whichever occurs first.
- (c) Sales shall only be permitted within Class 1 Buildings, that are protected by an active automatic sprinkler system, smoke detector, and fire alarm.
- (d) Sales are prohibited in Temporary Structures or tents.
- (d) All Fireworks shall be stored inside the Store.
- (e) The use of Temporary Structures or Portable Storage Units is prohibited.
- (f) Point of Sale Sign – A sign identifying the permitted time of use for Fireworks within the City of Westfield corporate limits shall be erected in a manner that is clearly visible at the Point Of Sale.
 - (1) Such signs shall state that the use of Fireworks is permitted:
 - i. Between the hours of 5:00 p.m. and two (2) hours after sunset on June 29, June 30, July 1, July 2, July 3, July 5, July 6, July 7, July 8, July 9;
 - ii. Between the hours of 10:00 a.m. and 12:00 a.m. (midnight) on July 4; and
 - iii. Between the hours of 10:00 a.m. on December 31 and 1:00 a.m. on January 1.
- (g) Use, discharge or demonstration of Fireworks in the Store or on the property of the Store is prohibited without a display permit as required by Ind. Code § 22-11-14-2.
- (h) Store Signage (the “Sign”):
 - (1) Each License shall permit a maximum of one (1) on-site Sign.
 - (2) The Sign area shall be limited to one (1) square foot of sign per linear foot of tenant or retail space along the front façade.
 - (3) The Sign shall be located on the front façade.
 - (4) The Sign shall be firmly affixed to the exterior wall.
 - (5) The Sign shall not protrude out from or above the roofline.
 - (6) No florescent colors shall be used on the Sign.
 - (7) The Sign shall not possess movable parts, rotate or blink.
- (i) The License shall be posted at the Point Of Sale.
- (j) Sales shall be conducted in compliance with Indiana Law.

(k) The Store shall comply with all State and Local Fire and Building Codes.

Sec. 17.44 License Application

- (a) The Department shall issue Licenses to all applicants (“Applicants”) that comply with the provisions of this Article.
- (b) Applicants shall submit an application form (as established by the Department), to the Department.
- (c) A License shall be acquired prior to engaging in any Sales activities.
- (d) Applicants shall provide the following information to the Department at the time of application:
 - (1) Applicant’s Name.
 - (2) Name of Local Operator.
 - (3) Applicant’s Corporate Address.
 - (4) Operator’s Email Address and Phone Number.
 - (5) Applicant’s Email Address and Phone Number.
 - (6) Applicant’s Local Address for Sales.
 - (7) List of three (3) Emergency Contacts.
 - (i.) List shall include for each contact: names, phone numbers, e-mail address, and mailing address.
 - (8) Copy of approved State required permit or copy of pending application.
 - (9) A license fee of \$1000 shall be submitted with each application for each site.
 - (10) Any checks shall be made payable to the City of Westfield.

Sec. 17.45 Consumer Fireworks Sales Violations, and Penalties

- (a) The Director of the Westfield Community Development Department, the Westfield Fire Chief, or their respective designees may suspend or revoke the License upon making an administrative determination that the Applicant and / or Operator violated the terms of this Article or failed to comply with any Ordinance of the City of Westfield.
- (b) Written notice of violation(s) shall be sent via U.S. Mail, hand delivery or by email. Notice shall be deemed given three (3) business days after mailing (for U.S. Mail), upon hand delivery (if hand delivered) or upon email confirmation from the recipient (if emailed). Notice shall be served to the Applicant at the address or email included on the License application if not hand delivered.
- (c) No Applicant, Operator or entity that has violated this Article may be eligible for a license within the City for one (1) year from the time of violation.

Sec. 17.46 Conflict of Law

- (a) The definitions established in this Article shall only apply to the terms of this Article.
- (b) To the extent that the terms and definitions contained in the Article conflict with other applicable terms and definitions, the terms and definitions of this Article shall prevail.

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ALL OF WHICH IS ORDAINED THIS 11th DAY OF May 2009.

WESTFIELD CITY COUNCIL

Voting For

Voting Against

Abstain

John Dippel

John Dippel

John Dippel

Steven Hoover

Steven Hoover

Steven Hoover

Bob Horkay

Bob Horkay

Bob Horkay

Ken Kingshill

Ken Kingshill

Ken Kingshill

Bob Smith

Bob Smith

Bob Smith

Thomas Smith

Thomas Smith

Thomas Smith

Rob Stokes

Rob Stokes

Rob Stokes

ATTEST:

Cindy Gossard, Clerk Treasurer

I hereby certify that ORDINANCE 09-07 was delivered to the Mayor of Westfield

on the _____ day of _____, 2009, at _____ m.

Cindy Gossard, Clerk-Treasurer

I hereby APPROVE ORDINANCE 09-07

this _____ day of _____, 2009.

J. Andrew Cook, Mayor

I hereby VETO ORDINANCE 09-07

this _____ day of _____, 2009.

J. Andrew Cook, Mayor

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