

ORDINANCE NO. 16-3871

**AN ORDINANCE OF THE CITY OF KELSO AMENDING KELSO MUNICIPAL CODE CHAPTER 8.20 FIREWORKS TO REVISE PERMITTING AND APPROVAL PROCEDURES AND REFLECT CHANGES IN STATE LAW**

WHEREAS, the City adopted Chapter 8.20 Fireworks in 1986 and changes to state law governing the regulation of fireworks have since occurred that have not been reflected in the municipal code; and

WHEREAS, the City Council finds that it is in the public interest and will promote efficient and timely decisions regarding permits to authorize the City Manager to approve or deny such permits and set the criteria therefore;

NOW, THEREFORE,

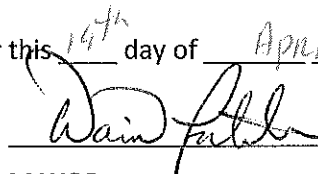
THE CITY COUNCIL OF THE CITY OF KELSO DO ORDAIN AS FOLLOWS:

**SECTION 1.** That Kelso Municipal Code Chapter 8.20 is hereby amended as set forth in Exhibit A, attached hereto and incorporated fully by this reference.


**SECTION 2. SEVERABILITY.** The provisions of this Ordinance are declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

**SECTION 3. EFFECTIVE DATE.** This Ordinance shall be in full force and effect 5 days after its passage and publication of summary as required by law.

ADOPTED by the City Council and SIGNED by the Mayor this 14<sup>th</sup> day of April, 2016.

  
\_\_\_\_\_  
MAYOR

ATTEST/AUTHENTICATION:

  
\_\_\_\_\_

CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_

CITY ATTORNEY

PUBLISHED: April 23, 2016

**Exhibit A.**

**8.20 FIREWORKS**

8.20.005. Statutory Provisions—adoption by reference.

RCW Chapter 70.77, as currently enacted or as hereafter amended from time to time is adopted by reference as and for the ordinances of the city regulating the sale, possession and use of common and special fireworks as if set forth in full in this section, except further limited by the provisions of this Chapter.

**8.20.010 Definitions.**

A. Unless the context in which they are used otherwise requires, the following definitions shall contained within the Revised Code of Washington (RCW) Chapter 70.77 sections 126 through 236 are hereby adopted by reference as currently enacted or as hereafter amended from time to time and shall be given the same force and effect as if set forth herein in full. govern the construction of the terms found in this chapter:

B. The term "common fireworks, shall, in addition to the definition set forth in RCW 70.77.136, include the types of fireworks set forth in WAC 212-17-035.

C. The term "special fireworks," shall, in addition to the definition set forth in RCW 70.77.131, include the types of fireworks set forth in WAC 212-17-040.

D. The term "city", "local public agency" and "local government" as used in Chapter 70.77 RCW that are adopted by reference in this Chapter shall mean the City of Kelso.

E. The term, "Fire chief" or "local fire official" shall means the chief administrative officer of Fire Protection District No. 2 and/or his designee who shall be the local fire official for purposes of RCW Chapter 70.77.

A. "Agricultural and wildlife fireworks" means and includes fireworks devices distributed to farmers, ranchers, and growers through a wildlife management program administered by the United States Department of the Interior.

B. "Common fireworks" means any fireworks designed primarily to produce visible or audible effects by combustion.

1. "Common fireworks" includes:

a. Ground and hand-held sparkling devices, including items commonly known as dipped sticks, sparklers, cylindrical fountains, cone fountains, illuminating torches, wheels, ground spinners, and flitter sparklers;

b. Smoke devices;

c. Fireworks commonly known as helicopters, aeriels, spinners, roman candles, mines and shells;

d. Class C explosives classified on January 1, 1984, as common fireworks by the United States Department of Transportation.

2. "Common fireworks" does not include fireworks commonly known as firecrackers, salutes, chasers, skyrockets and missile type rockets.

~~C. "Fire chief" means the chief administrative officer of Fire Protection District No. 2 and/or his designee who shall be the local fire official for purposes of RCW Chapter 70.77.~~

D. "Fire nuisance" means anything or any act which increases, or may cause an increase of, the hazard or menace of fire to a greater degree than customarily recognized as normal by persons in the public service or preventing, suppressing or extinguishing fire; or which may obstruct, delay or hinder, or may become the cause of any obstruction, delay or the hindrance to the prevention of or extinguishment of fire.

E. "Fireworks" means any composition or device, in a finished state, containing any combustible or explosive substance for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, and classified as common or special fireworks.

F. "License" means a nontransferable formal authorization which the State Fire Marshal is permitted to issue under RCW Chapter 70.77 to engage in the acts specifically designated therein.

G. "Manufacturer" means and includes any person who manufactures, makes, constructs, fabricates or produces any fireworks article or device but does not include persons who assemble or fabricate sets or mechanical pieces in public displays of fireworks.

H. "Permit" means the official permission granted by the city for the purpose of doing any act which is regulated by this chapter.

~~I. "Person" means and includes any individual, firm, partnership, joint venture, association, concern, corporation, estate, trust, business trust, receiver, syndicate or any other group or combination acting as a unit.~~

~~J. "Public display of fireworks" means an entertainment feature where the public is admitted or permitted to view the display or discharge of special fireworks.~~

~~K. "Pyrotechnic operator" means and includes any individual who by experience and training has demonstrated the required skill and ability for safely setting up and discharging public displays of fireworks.~~

~~L. "Retailer" means and includes any person who, at a fixed location or place of business, sells, transfers or gives common fireworks to a consumer or user.~~

~~M. "Special fireworks" means and includes any fireworks designed primarily for exhibition display by producing visible or audible effects. The term includes fireworks commonly known as skyrockets, missile-type rockets, firecrackers, salutes and chasers and fireworks not classified as common fireworks.~~

~~N. "Wholesaler" means and includes any person who sells fireworks to a retailer or any other person for resale and any person who sells special fireworks to public display permittees.~~

#### **8.20.020 Unlawful acts without obtaining a permit.**

No person shall do any of the following acts in the city without having first obtained and having in full force and effect a valid permit issued by the city to do so:

A. Manufacture, import, possess or sell any fireworks, including agricultural and wildlife fireworks, at wholesale or retail for any use; provided, however, no permit is required for the possession or use of common fireworks lawfully purchased at retail;

B. Discharge special fireworks at any place;

C. Make a public display of fireworks; or

D. Transport fireworks, except as a public carrier delivering to a permittee.

#### **8.20.030 Permit—Application—Form.**

A. Any person desiring to do any act set forth in Section 8.20.020 of this chapter shall first make written application for a permit to the fire chief. The application for a permit shall be signed by the applicant. If the application is made by a partnership, it shall be signed by each partner of the partnership, and if the

application is made by a corporation, it shall be signed by an officer of the corporation and bear the seal of the corporation.

B. The application shall be in such form as the fire chief shall require and shall include, at a minimum, the following information:

1. The true name, address and telephone number of the applicant;
2. A statement by the applicant that he or she is over the age of eighteen years of age;
3. A statement as to whether the applicant possesses a license issued by the State Fire Marshal to do the act for which the permit is sought, and the current status of such license;
4. The proposed location at which the applicant intends to perform the act for which the permit is sought; and
5. Such other information as the fire chief may require in order to make any investigation or report required by this chapter.

**8.20.040 Permit—Fee.**

All applications for permits pursuant to this chapter shall be accompanied by a nonrefundable permit fee in an amount set by resolution of the city council for each fireworks stand and a refundable deposit also in an amount set by resolution of the city council shall be submitted at the time application is made to insure proper cleanup of the site following the close of business. The city council finds that this charge is necessary to cover the legitimate administrative costs for permit processing and inspection.

**8.20.050 Permit—Certificate of insurance coverage.**

All applications for permits pursuant to this chapter shall be accompanied by a certificate of insurance coverage evidencing the carrying of a comprehensive general liability insurance policy, issued by a company authorized to do business in Washington, and shall provide a minimum coverage of one million dollars for bodily injury liability for each person per occurrence and two million dollars annual aggregate. Such general liability policy shall name the city as an additional insured party, must be in full force and effect for the duration of the permit, and shall include a provision prohibiting cancellation of said policy without thirty days' written notice to the city. The policy and certificate shall be in a form approved by the city attorney.

**8.20.060 Permit—Investigation and report.**

It shall be the duty of the fire chief to make an investigation and prepare a report of his findings and conclusions for or against the issuance of the permit, together with his reasons therefor. In the case of an

application for a permit for a public display of fireworks, the fire chief shall, in addition to any other investigation, make an investigation as to whether such display as proposed will be of such a character and will be so located that it may be hazardous to property or dangerous to any person.

**8.20.070 Permit—Approval or denial—~~Council authority.~~**

The ~~city council~~City Manager shall have the power to grant or deny any application for a permit, or to subject the same to such reasonable conditions, if any, as the City Manager shall prescribe.

The decision of the City Manager shall be final. An applicant may appeal the decision of the City Manager to the county superior court by filing such appeal within ten days of the date of the final decision. This shall be the exclusive remedy of any permittee under this chapter.

**8.20.080 License required prior to issuance of permit.**

No permit shall be issued unless the person applying therefor shall first have obtained and have in full force and effect a valid license issued by the State Fire Marshal, pursuant to RCW Chapter 70.77, to do the particular act or acts for which the permit is sought.

**8.20.090 Public display permit—Application.**

Applications for public display of fireworks shall be made in writing at least ten days in advance of the proposed display.

**8.20.100 Public display permit—Limitations—Nontransferable.**

If a permit for the public display of fireworks is granted, the sale, possession and use of fireworks for the public display is lawful for that purpose only. No such permit granted shall be transferable.

**8.20.110 Public display—Supervision required.**

Every public display of fireworks shall be handled or supervised by a pyrotechnic operator approved by the fire chief.

**8.20.120 Fireworks stands—Limitations on number.**

A maximum of one permit per five thousand population, or portion thereof shall be available for issue each year. ~~In the event more than the authorized number of permits are requested, p~~Permits shall ~~may~~ be granted ~~or denied~~ based upon the ~~council~~City Manager's assessment of the applicants experience and demonstrated record together with such other factors as are determined to be in the best interest of ~~and benefit~~ the community. All applications to operate fireworks stands shall be made no later than May 2nd of the calendar year in question.

**8.20.130 Common fireworks sales—Permit required.**

No person shall sell common fireworks to a consumer or user thereof other than at a fixed place of business of a retailer for which a license and permit have been issued.

**8.20.140 Common fireworks sales—Selling restrictions.**

All sales of common fireworks shall be from temporary stands, which shall not be erected prior to the eighteenth day of June of any year and which shall be removed or torn down not later than the sixteenth day of July of the same year.

**8.20.150 Common fireworks sales—General requirements.**

The fireworks stands of all those persons engaging in the sale of common fireworks pursuant to a permit issued under this chapter shall conform to the following minimum standards and conditions:

- A. Fireworks stands shall comply with all provisions of the building code and shall be constructed in such a manner so as not to endanger the safety of attendants and patrons;
- B. No fireworks stand shall be located within fifty feet of any other building or structure;
- C. Each fireworks stand must have at least two exits which shall be unobstructed at all times;
- D. Each fireworks stand shall have in a readily accessible place, at least two fire extinguishers approved by the fire chief;
- E. All weeds, grass and combustible material shall be cleared from the location of the fireworks stand and the surrounding area a distance of not less than twenty feet, measured from the exterior walls on each side of the fireworks stand;
- F. No smoking shall be permitted in or near a fireworks stand, and the same shall be posted with proper "No Smoking" signs;
- G. Each fireworks stand shall have an adult in attendance at all times that the stand is stocked. Stock from the stand shall not be removed or stored in any other building during the sales period without the express written approval of the fire chief;
- H. No fireworks stand shall be located within a radius of 500 feet from any other stand;
- I. Each fireworks stand shall have provision for sufficient off-street parking, in the opinion of the fire chief, to avoid impeding continuous flow of traffic at entrances and exits from the premises;
- J. Each fireworks stand shall post prominently a list of fireworks that may be sold to the public.

**8.20.160 Common fireworks sales—Time restrictions.**

A. No common fireworks shall be sold or discharged within the city except from 12:00 noon on the twenty-eighth of June to 9:00 pm on the fifth ~~12:00 noon on the sixth~~ day of July of each year. No common fireworks may be sold or discharged between the hours of 11:00 p.m. and 9:00 a.m.

**8.20.170 Permit authorizes activities of salesmen, employees.**

The authorization to engage in the particular act or acts as conferred by a permit to a person shall extend to salesmen and other employees of such person.

**8.20.180 Approved storage facilities—Required.**

It is unlawful for any person to store unsold stocks of fireworks remaining unsold after the lawful period of sale as provided in his permit except in such places of storage as the fire chief shall approve. Unsold stocks of fireworks remaining after the authorized retail sales period from 12:00 noon on June 28th to 42:00 noon on July 6th ~~9:00 pm on July 5th~~ shall be returned on or before July 31st of the same year to the approved storage facilities of a licensed fireworks wholesaler, to a magazine or storage place approved by the fire chief or to a place approved by the State Fire Marshal. Upon receiving a written application at least ten days prior to the date of proposed storage, the fire chief shall investigate whether the character and location of the storage would constitute a hazard to any property or be dangerous to any person. Based upon the investigation, the fire chief may grant or deny any application for storage or to subject the same to such reasonable conditions, if any, as he shall prescribe.

**8.20.190 Special fireworks—Sales or transfers.**

No person shall sell or transfer any special fireworks to any person who is not a fireworks permittee as provided in this chapter.

**8.20.200 Manufacture or sale of fireworks for out-of-state shipment.**

This chapter does not prohibit any manufacturer, wholesaler, dealer or jobber, having a license issued by the State Fire Marshal and a permit secured under the provisions of this chapter from manufacturing or selling any kind of fireworks for direct shipment out of the state.

**8.20.210 Fire nuisances prohibited.**

No person shall allow any rubbish to accumulate in any premises where any fireworks are sold or stored or permit a fire nuisance to exist on such premises.

**8.20.220 Unlawful possession prohibited.**

The possession of any class or kind of fireworks in violation of the provisions of this chapter is prohibited.

**8.20.230 Reckless discharge or use prohibited.**



It is unlawful for any person to discharge or use fireworks in a reckless manner which creates a substantial risk of death or serious physical injury to another person or damage to the property of another.

**8.20.240 Use of fireworks in public parks and on public land prohibited.**

A. It is unlawful for any person to discharge or possess any fireworks upon public land or in any public park owned by the city.

B. Nothing in this chapter shall be deemed to limit the authority of the ~~council~~City to allow event display of special fireworks under a permit issued in accordance with the provisions of this chapter.

**8.20.250 Exceptions—Signal purposes, forest protection.**

This chapter does not prohibit the use of flares or fuses in connection with the operation of motor vehicles, railroads or other transportation agencies for signal purposes or illumination or for use in forest protection activities.

**8.20.260 Exceptions—Special effects for entertainment media.**

This chapter does not prohibit the assembling, compounding, use and display of special effects of whatever nature by any person engaged in the production of motion pictures, radio or television productions, theatricals or operas when such use and display is a necessary part of the production and such person possesses a valid permit issued by the city to purchase, possess, transport or use such fireworks.

**8.20.270 Permit revocation or suspension—Authority.**

The ~~fire chief~~City Manager may at any time suspend or revoke any permit issued under the provisions of this chapter, if the permittee has:

A. Violated any of the provisions of this chapter by the person holding such permit or any of his servants, agents or employees;

B. Made any false statement or misrepresentation of fact in connection with obtaining the permit; or

C. Failed to obtain or has had any license required by the state to engage in any act prohibited by RCW Chapter 70.77 or this chapter to be done without a license, suspended or revoked; or

D. Has had any insurance coverage required by this chapter cancelled, revoked or lapsed.

**8.20.280 Permit revocation or suspension—Determination and notification.**

When the City Manager or fire chief determines that there is cause for revoking or suspending any permit issued pursuant to this chapter, the ~~fire chief~~City Manager shall notify the person holding such permit.

The notice shall specify the grounds for the suspension or revocation of the permit. The suspension or revocation shall become effective immediately upon receipt of the notice by the permittee.

**8.20.290 Permit revocation or suspension—Appeal procedure.**

The decision of the ~~fire chief~~City Manager with respect to the revocation or suspension of any permit issued under this chapter shall be final. Any permittee whose permit is suspended or revoked may appeal the decision of the ~~fire chief~~City Manager to the county superior court by filing such appeal within ten days of the date of the final decision ~~of the fire chief~~. This shall be the exclusive remedy of any permittee under this chapter.

**8.20.300 Violation—Penalty.**

A. Except as provided in section B. Any person violating any of the provisions of this chapter shall, upon a finding that such violation was committed, be guilty of a misdemeanor and be punished by a monetary penalty in a sum not exceeding five hundredone thousand dollars or imprisonment not to exceed 90480 days or by both such fine and imprisonment.

B. For those violations constituting a gross misdemeanor under RCW 70.77, any person violating those provisions shall, upon a finding that such a violation was committed, be guilty of a gross misdemeanor, punishable as set forth by RCW 9.92.020.

**8.20.310 Violation deemed a separate, continuing offense.**

A person commits a separate offense for each day during which he commits, continues or permits a violation of any provision of this chapter.