

CITY OF BOX ELDER

**ORDINANCE #510,
FIREWORKS REGULATIONS**

EFFECTIVE ON 6/10/2011

**CITY OF BOX ELDER ORDINANCE #510,
FIREWORKS REGULATIONS**

BE IT ORDAINED by the Common Council of the City of Box Elder as follows:

ARTICLE I – PURPOSE AND JURISDICTION

SECTION 1 – PURPOSE AND REPEAL OF ORDINANCE #449.

Ordinance #510 is an ordinance regulating the sale and use of fireworks within the jurisdiction of the City of Box Elder. The Common Council of the City of Box Elder has deemed these regulations and controls to be reasonable and reasonably related to the health, safety, and general welfare of the residents of Box Elder. Therefore to eliminate conflict with these regulations, Ordinance #449 of the Box Elder Municipal Code is hereby repealed in its entirety.

SECTION 2 – JURISDICTION AND AUTHORITY.

This Ordinance shall govern all territory within the municipal limits of the City of Box Elder, South Dakota and is made pursuant to SDCL 9-33-1.

SECTION 3 – SEVERABILITY AND SEPARABILITY.

Should any Article, Section, Subsection, or Provision of this Ordinance be found to be or declared invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity or constitutionality of the Ordinance as a whole or any part thereof, other than the portion so declared to be invalid or unconstitutional.

ARTICLE II – DEFINITIONS

For the purposes of this Ordinance, and in order to carry out the provisions and intentions as set forth herein, certain words, terms, and phrases are to be used and interpreted as defined hereafter. Words used in the present tense shall include the future tense; words in the singular number include the plural; words in the plural number include the singular; the word "person" includes a firm, partnership, or corporation as well as an individual; the term "shall" is always mandatory and not discretionary; and the word "may" is permissive.

CITY: The City of Box Elder, South Dakota.

COMMISSION: The Planning & Zoning Commission of the City.

COUNCIL: The Common Council of the City.

FIREWORKS: Devices designed to produce audible and/or visible effects by combustion as set forth in SDCL 34-37.

FIREWORKS SALES: The retail or wholesale sale of fireworks as set forth in SDCL 34-37.

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ARTICLE III – SALE OF FIREWORKS

SECTION 1 – FIREWORKS SALES LICENSE REQUIRED.

- A. No person shall sell fireworks within the City's jurisdiction without first obtaining an approved Fireworks Sales License.
- B. Any person licensed under this Ordinance must also hold a license under SDCL 34-37-2.
- C. Fireworks shall be considered consumer goods for zoning purposes of the City's municipal code.

SECTION 2 – CLASSES OF FIREWORKS SALES LICENSE.

- A. There shall be two (2) classes of Fireworks Sales Licenses: Temporary and Annual.
- B. The holder of an approved Temporary Class Fireworks Sales License may sell fireworks to individuals at retail within the City's jurisdiction during the period beginning June twenty-seventh and extending through July fifth.
- C. The holder of an approved Annual Class Fireworks Sales License may sell fireworks within the City's jurisdiction at wholesale during the term of the Fireworks Sales License or at retail to individuals during the period beginning May first and extending through August thirty-first and during the period beginning December twenty-sixth and extending through January second.

SECTION 3 – FIREWORKS SALES LICENSE APPLICATION.

- A. Any person who is required by this Ordinance to possess a Fireworks Sales License shall first submit an Application to the Planning Department.
- B. Each Application for a Fireworks Sales License in any year after 2011 must be received by the Planning Department no later than May 1 of that year. Any Application received between May 2 and December 31 shall be denied by the Planning Department and returned to the applicant together with any Application Fee submitted.
- C. A Fireworks Sales License Application shall consist of an application form provided by the Planning Department, a Fireworks Sales License Application Fee, proof of liability insurance coverage of at least \$2,000,000, a scaled site plan of the proposed sales site, a copy of the applicant's South Dakota Sales Tax License, and a copy of the appropriate state fireworks sales license(s).

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- D. The Fireworks Sales License Application Fee shall be two thousand five hundred dollars (\$2,500.00) for a Temporary Class Fireworks Sales License or five hundred dollars (\$500.00) for an Annual Class Fireworks Sales License.
- E. The Fireworks Sales License Application Fee shall be non-refundable for all Fireworks Sales License Applications that are not denied by the Planning Department due to the requirement of Section 3.B. (above).

SECTION 4 – FIREWORKS SALES LICENSE APPLICATION REVIEW.

- A. The Commission shall review each Fireworks Sales License Application at the next Commission meeting that will be held more than seven (7) days (inclusive) after the complete Application is received by the Planning Department. The Commission may recommend to the Council that the Application be approved or denied based upon the Applicant's proposed sales location, zoning, proposed signage, building code compliance of the sales location, code enforcement compliance history, record of compliance with City fireworks regulations, record of compliance with state fireworks regulations, and/or other factors considered relevant by the Commission.
- B. The Council shall review and may approve each Fireworks Sales License Application at their next regular meeting after the Commission's recommendation is made. The Council shall, in their sole discretion, issue the Fireworks Sales Licenses it deems are compliant with the purposes of this Ordinance.
- C. The Council shall approve no more than six (6) Temporary Class Fireworks Sales Licenses for any given year. No one person, or legal entity with substantially the same ownership as the person, shall be issued more than two (2) such Licenses.
- D. The Fireworks Sales License, if approved by the Council, shall expire on the last day of April of the year following said approval.

SECTION 5 – REQUIREMENTS FOR THE STORAGE AND SALE OF FIREWORKS.

- A. Temporary Storage and Sales.
 - 1. No person shall store or sell fireworks within the City's jurisdiction without first obtaining the written permission of the landowner of the sales location.
 - 2. No person shall store or sell fireworks within the City's jurisdiction from a temporary structure without first obtaining a temporary class Fireworks Sales License.
 - 3. The storage and sale of fireworks within the City shall be restricted to structures that are no closer than fifty feet (50') to any other structure used for commercial, industrial, or residential use. Temporary structures used for the storage and sale of fireworks shall not be located closer than one hundred and fifty feet (150') to any structure used for the storage and sale at wholesale of fireworks.

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4. The storage and sale at retail of fireworks by the holder of a temporary class Fireworks Sales License may be made from a temporary structure erected for those purposes that has adequate means of egress and that meets the City's current Building Code requirements. Such temporary structure shall be erected no more than twenty (20) days before the allowed sales period and shall be removed no more than twenty (20) days following the allowed sales period. Storage of fireworks in such temporary structures shall not be allowed more than fifteen (15) days before or after the allowed sales period.

B. Annual Storage and Sales.

1. No person shall store or sell fireworks within the City's jurisdiction from a permanent structure without first obtaining an annual class Fireworks Sales License.
2. The storage and sale of fireworks within the City shall be restricted to structures that are no closer than fifty feet (50') to any other structure used for commercial, industrial, or residential use. Permanent structures used for the storage and sale of fireworks shall not be located closer than fifty feet (50') to any structure used for the storage and sale at wholesale of fireworks.
3. The storage and sale at retail of fireworks by the holder of an annual class Fireworks Sales License may be made from a permanent structure used solely for the storage and sale of fireworks and that meets the City's current Building Code requirements.

- C. All structures used for the storage and/or sale of fireworks shall comply with the City's currently adopted building code before commencement of and during said storage or sales. One or more inspections by a Building Official may be required as a condition of approval of a Fireworks Sales License. Random, unannounced inspections by a Building Official or Code Enforcement Official may be conducted to ensure continuing compliance with the adopted building code and/or the requirements of this Ordinance.**

SECTION 6 – REQUIRED SIGNAGE.

All holders of approved Fireworks Sales Licenses shall post a prominent sign, using letters at least one inch (1") tall, at the point of sale that informs customers that:

1. It is unlawful to resell or otherwise transfer any fireworks within the City;
2. It is unlawful to use an out-of-state driver's license to purchase fireworks that will be stored for more than two (2) days within the City;
3. No one under the age of 16 can purchase fireworks unless accompanied by a parent or legal guardian;

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4. The use or discharge of fireworks within the municipal limits of the City of Box Elder is prohibited unless first authorized by the Common Council of the City.
5. Violation of this Ordinance is a Class II Misdemeanor.

ARTICLE IV – USE OF FIREWORKS

SECTION 1 – USE OR DISCHARGE OF FIREWORKS.

The use or discharge of fireworks as defined in SDCL 34-37 within the jurisdiction of the City is hereby banned unless allowed by resolution by the Council on an annual basis. Such resolution may only be adopted when the South Dakota grassland fire danger index is below or is expected to remain below the very high or extreme category.

SECTION 2 – AUTHORIZED DISPLAYS.

Nothing in this Ordinance shall be construed as prohibiting the possession or discharge of fireworks within the City for public display in compliance with SDCL 34-37-13. However, any person, before making such public display of fireworks, shall secure a written permit from the Council. The person requesting the written permit shall submit a letter of request to the Finance Officer at least thirty (30) days before the date of the public display. There shall be no charge by the City for the written permit.

SECTION 3 – EXEMPTIONS TO REGULATIONS.

Nothing in this Ordinance shall be construed to prohibit the manufacture, storage, sale, use, or possession within the City of pyrotechnical signal devices necessary for the safe operation of railroads or other classes of public or private transportation, nor applying to the military forces of the United States or its various states, or to peace officers, nor blank cartridges for ceremonial, theatrical, or athletic events, nor items commonly known as sparklers or toy paper caps.

ARTICLE V – VIOLATIONS AND PENALTIES

A violation of any provision of this Ordinance or any amendment thereto, or failure to perform any act required hereunder, is a Class II Misdemeanor. In addition to any penalty assessed herein or any fine or penalty assessed by the court, any violator found guilty shall pay all court costs and expenses involved in the case.

BE IT FURTHER ORDAINED by the Common Council of the City of Box Elder that this Ordinance shall become effective in accordance to law.

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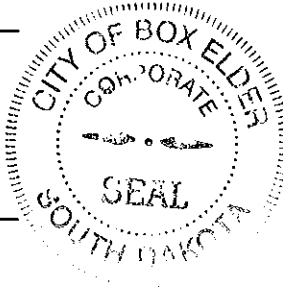


Mayor Alfred Dial

ATTEST:



Finance Officer Debbie Khapp
(SEAL)



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