

ORDINANCE NO. 2007-6

AN ORDINANCE OF ELMORE COUNTY, IDAHO, DEFINING THE TERMS "FIREWORKS", "DANGEROUS FIREWORKS" AND "SAFE AND SANE FIREWORKS"; PROVIDING FOR A DANGEROUS FIREWORKS PERMIT AND A SAFE AND SANE FIREWORKS PERMIT; PROVIDING FOR THE INVESTIGATION OF APPLICANTS FOR PERMITS; PROVIDING UNDER WHAT CONDITIONS THE COUNTY CLERK SHALL ISSUE THE PERMIT; AUTHORIZING DATES FOR THE SALE AND USE OF FIREWORKS; ENACTING RULES FOR TEMPORARY FIREWORKS STANDS; ENACTING GENERAL PROHIBITIONS; PROVIDING FOR RECORD KEEPING; PROVIDING FOR ENFORCEMENT; SETTING OUT PENALTIES FOR VIOLATIONS; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF PURPOSE:

WHEREAS, the Idaho Legislature under I.C. § 39-2601 *et seq.* has recognized the authority of local governments to enact ordinances to regulate the storage, possession, retail sale and use of fireworks; and

WHEREAS, the Elmore County Board of County Commissioners does find after due consideration of the issues presented that it is necessary and proper to adopt this ordinance to provide for the safety, health and comfort of Elmore County and its inhabitants, and promote the protection of persons and property therein.

THEREFORE, PURSUANT to the authority under Article 12, Section 2 of the Constitution of the State of Idaho and the provisions of I.C. § 39-2601 *et seq.*,

BE IT ORDAINED BY THE BOARD OF ELMORE COUNTY COMMISSIONERS as follows:

SHORT TITLE: This ordinance shall be known as the "ELMORE COUNTY FIREWORKS ORDINANCE."

SECTION I: DEFINITIONS

This chapter shall adopt the definitions stated in I.C. § 39-2602. The following definitions shall apply to this chapter:

- A. AUTHORITY HAVING JURISDICTION:** A city fire department if the area is within a city, or a fire protection district formed pursuant to provisions of the Idaho Code if the area is within a fire protection district, or the county commission if the area is not within a city or fire protection district.
- B. BOARD:** The Elmore County Board of Commissioners.

C. PERMIT: An authorization given by the authority having jurisdiction pursuant to I.C. §§ 39-2604 or 39-2605.

D. PERSON: Any individual, corporation, partnership, organization, association, entity, estate, joint venture, firm, government entity, trust, receiver, syndicate, or any other group or combination acting as a unit.

E. PUBLIC DISPLAY OR OTHER EVENT USING FIREWORKS: Any use of fireworks except the use of nonaerial common fireworks during the normal sales and use period provided in I.C. § 39-2606.

F. FIREWORKS: Any combustible or explosive composition, or any substance or combination of substances, or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation. Fireworks include items classified as common or special fireworks by the United States Bureau of Explosives or contained in the regulations of the United States Department of Transportation and designated as UN 0335 1.3G or UN 0336 1.4G. The term "fireworks" shall not include any automotive safety flares, toy guns, toy cannons, caps or other items designed for use with toy guns or toy cannons, party poppers, pop-its or other devices which contain twenty five hundredths (0.25) of a grain or less of explosive substance.

G. DANGEROUS FIREWORKS DEFINED: "Dangerous Fireworks" includes any of the following:

(1) Firecrackers, cannon crackers, giant crackers, salutes, silver tube salutes, cherry bombs, mines, ground bombardment, grass-hoppers, ground-blooms and other explosive articles of similar nature;

(2) Blank cartridges, with the exception of official school-sponsored track meets and cross country meets and military funerals;

(3) Sky rockets and rockets, including all similar devices employing any combustible or explosive material and which rise in the air during discharge;

(4) Roman candles, including all devices which discharge a ball of fire into the air;

(5) Chasers and whistles, including all devices which dart or travel about the surface of the ground during discharge and exceed twelve inches (12") of vertical movement at any time;

(6) Snakes and hats containing dichloride of mercury;

(7) Sparklers more than ten inches (10") in total length or one quarter inch (1/4") in diameter;

(8) All articles for pyrotechnic display such as aerial shells, salutes, flash shells, sky battles, parachute shells, mines, Dago Bombs and similar devices, with the exception of parachute shells including all ground to air projectiles that deploy a parachute and do not carry a flame, ember, spark,

or any pyrotechnic discharge and which the vertical movement of the projectile shall be restricted to twenty feet (20');

(9) All torpedoes which explode by means of friction, or which contain arsenic, and all other similar fireworks devices including cracker balls; and

(10) Fire balloons or balloons of any type which have burning material of any kind attached thereto.

H. NONAERIAL COMMON FIREWORKS: Any fireworks such as ground spinners, fountains, sparklers, smoke devices or snakes designed to remain on or near the ground and to travel outside a fifteen foot (15') diameter circle or emit sparks or other burning material which land outside a twenty foot (20') diameter circle or above a height of twenty feet (20'). Nonaerial common fireworks do not include firecrackers, jumping jacks, or similar products.

I. SAFE AND SANE FIREWORKS: "Safe and Sane Fireworks" include any pyrotechnic device that meets the following requirements:

(1) The product shall be "listed" by the Mountain Home Fire Department, Mountain Home Rural Fire Department, or other appropriate fire department;

(2) Testing (if required) shall be conducted using the following criteria:

a. The item must not leave the ground or move laterally beyond a ten foot (10') radius except as stated in section C of the "Dangerous Fireworks Defined" section of this Ordinance set forth above.

b. The combined movement and pyrotechnic discharge of any device shall not extend beyond a twenty foot (20') radius vertically or laterally under any circumstances.

J. SPECIAL FIREWORKS: Any fireworks designed primarily for display and classified as special fireworks by the United States Bureau of Explosives or designated as UN 0335 1.3G. (Ord. 428, 6-26-2001).

SECTION II: PERMIT REQUIREMENTS

A. PROHIBITED ACTS:

1. It shall be unlawful for any person to hold a public display of fireworks or other event using fireworks without first obtaining a permit for that purpose issued pursuant to the terms and conditions of this chapter. Said fireworks may be stored for a period not exceeding ten (10) days immediately preceding the date of said public display or other event, provided the fireworks are to be used exclusively for said public display or other event.

2. It shall be unlawful for any person to import, export, possess for the purpose of sale, offer for sale or sell "safe and sane fireworks" for any use or purpose without first obtaining a permit for that purpose issued pursuant to the terms and conditions of this chapter.

B. DANGEROUS FIREWORKS (PUBLIC DISPLAY) PERMIT:

(1) Application Fee: Any person desiring to conduct a public display of fireworks within the County of Elmore may apply for a permit to the County Clerk. The Board of County Commissioners shall have the power to grant or deny such application after conducting an investigation. Such permit, if granted, shall authorize the permittee to purchase, transport, keep and use fireworks of all kinds for the purposes of a specifically identified public display, but shall not authorize the permittee to sell, distribute, or give away any fireworks, except to the wholesaler or distributor from which they were obtained. The permit shall be valid only for the public display for which applied. The Board of County Commissioners may impose a reasonable charge, not to exceed one hundred and twenty-five dollars (\$125.00) for each dangerous fireworks (public display) permit to defray expenses associated with investigating the applicant.

(2) In order for a dangerous fireworks permit to be issued, the applicant must ensure that the public display or other event using fireworks will be supervised by a qualified person and will not constitute an unreasonable hazard to persons or property.

(3) Contents: An applicant for a dangerous fireworks (public display) permit shall furnish the following information to the County Clerk:

(a) Name, address, date of birth and driver's license number of applicant.

(b) Names and addresses of officers, trustees and/or directors, if an association or corporation, of the applicant.

(c) When and where the applicant was organized and established, if an association or corporation.

(d) The location of the applicant's principal and permanent meeting place or places, or principal place of business.

(e) The applicant's state sales tax permit number.

(f) The purpose for which the applicant primarily exists and for which it was organized.

(g) If the applicant is an entity other than a sole proprietorship, the name and general description of the business activities of each parent or subsidiary company, business or entity and a general description of the ownership organization of each parent or subsidiary if any.

(h) The location and time of the public display.

(i) The name and address of the wholesaler or distributor from whom the fireworks shall be obtained.

(j) Such other information as the clerk may require on a standard form submitted to all applicants and which is reasonably necessary to protect the public health, safety and morals.

C. SAFE AND SANE FIREWORKS PERMIT:

(1) Any person, in reasonable pursuit or furtherance of any legitimate personal, business or charitable purpose, desiring to engage in the sale of "safe and sane fireworks" within Elmore County shall first make written application to the County Clerk for a "safe and sane fireworks permit."

(2) Each applicant shall pay to the County Clerk a fee of twenty-five dollars (\$25.00) at the time he/she files his/her application. At the time and as a condition to such filing and with each application, each applicant shall pay a fee to defray costs of preliminary investigations required hereunder which fee shall be twenty-five dollars (\$25.00) per site applied for and shall not be refundable in any event.

(3) Contents: An applicant for a safe and sane fireworks permit shall furnish the following information to the County Clerk:

(a) Name, address, date of birth and driver's license number of applicant.

(b) Names and addresses of officers, trustees and/or directors, if an association or corporation, of the applicant.

(c) When and where the applicant was organized and established, if an association or corporation.

(d) The location of the applicant's principal and permanent meeting place or places, or principal place of business.

(e) The applicant's state sales tax permit number.

(f) The purpose for which the applicant primarily exists and for which it was organized.

(g) If the applicant is an entity other than a sole proprietorship, the name and general description of the business activities of each parent or subsidiary company, business or entity and a general description of the ownership organization of each parent or subsidiary if any.

(h) The location and time of the proposed sale of "safe and sane fireworks."

(i) The name and address of the wholesaler or distributor from whom the fireworks shall be obtained.

(j) Such other information as the clerk may require on a standard form submitted to all applicants and which is reasonably necessary to protect the public health, safety and morals.

D. INVESTIGATION:

The County Clerk shall notify the Elmore County Growth and Development Department of the permit application. Said department, in confidence with the Clerk, shall cause an investigation to be made of each application and applicant.

E. BOARD TO ISSUE PERMIT:

A permit will be issued pursuant to this chapter in the Board's discretion, subject to such reasonable conditions, if any, the Board shall prescribe so long as the denial of the application or any conditions imposed on the granting of the application are reasonably necessary for the protection of the public health, safety and morals. Furthermore, the Board must find that all information required by Elmore County has been provided by the applicant and the proposed sale or use of such fireworks will not constitute an unreasonable hazard to persons or property.

G. TERM OF PERMIT:

A "Safe and Sane Fireworks Permit" issued pursuant to this ordinance shall be valid only within the calendar year in which issued. A permit shall be valid only for the specific premises or location designated in the permit. However, subject to reasonable conditions necessary for the protection of public health, safety and morals, an applicant may be granted permits for more than one premise or location within the County.

A "Dangerous Fireworks (Public Display) Permit" issued pursuant to this ordinance shall be valid only with respect to the specific public display identified in the application.

No permit shall be transferable or assignable under any circumstances.

H. TIME OF FILING APPLICATION:

An application for a "Safe and Sane Fireworks Permit" must be made on or before June 15th of each year for the July 4th period and on or before December 1st for the New Year's period.

An application for a "Dangerous Fireworks (Public Display) Permit" must be made at least 60 days before the specific public display.

I. INSURANCE REQUIRED:

Each applicant for a "Dangerous Fireworks (Public Display) Permit" shall have filed with the Clerk, prior to the issuance of any permit, a bond or valid certificate of public liability and property-

casualty insurance providing coverage of at least one million dollars (\$1,000,000.00) for personal injury and property damage.

Each applicant for a "Safe and Sane Fireworks Permit" shall have filed with the Clerk, prior to the issuance of any permit, a bond or valid certificate of public liability and property-casualty insurance providing coverage of up to one hundred thousand dollars (\$100,000) for personal injury and property damage may be required at the time of application.

Each policy of insurance shall be acceptable to the County in both form and substance, and shall name as insured parties under the terms of the policy Elmore County, all elected and appointed County officials acting in performance of their official functions regarding all operations under or pertaining to said permit, any licensee or licensor of the applicant, and all vendors of fireworks covered by the permit to be issued to the applicant.

Said insurance policy shall be written so that it cannot be canceled without at least ten (10) days prior written notice to Elmore County from the underwriting insurance company. The insurance policy shall be underwritten through or by a qualified and duly licensed insurance company or companies doing or authorized to do insurance business in the State of Idaho.

SECTION III: GENERAL PROVISIONS

A. AUTHORIZED DATES FOR THE SALE AND USE OF SAFE AND SANE FIREWORKS:

"Safe and sane fireworks" may be sold at retail and used in compliance with Idaho Code §39-2606. "Safe and sane fireworks" may only be sold at during the above period in compliance with a permit issued under the provisions of this ordinance.

B. AUTHORIZED DATES FOR THE SALE AND USE OF DANGEROUS FIREWORKS:

Dangerous fireworks may be sold and used according to the specific conditions set forth in the "Dangerous Fireworks (Public Display) Permit" issued pursuant to this ordinance.

C. TEMPORARY FIREWORKS STANDS:

Temporary fireworks stands from which "safe and sane fireworks" are to be sold shall be subject to the following provisions:

(1) All retail sales of "safe and sane fireworks" shall be permitted only from within a temporary fireworks stand, and the sale from any other building or structure is hereby prohibited.

(2) The stand in which the fireworks will be stored or sold shall not be located within twenty-five feet (25') of any other building nor within one hundred feet (100') of any gasoline station or flammable liquid dispensing device or installation.

(3) All such stands shall meet the requirements of the Elmore County Building Code and all lighting circuits and other electrical equipment shall meet the requirements of the Elmore County Electrical Ordinance. No heating device may be used in a temporary fireworks stand at any time.

(4) The stand shall have exit doors at least thirty inches (30") wide at both ends of the structure and one (1) additional door for each twenty-five feet (25') of rear wall in excess of twenty-five feet (25'). All doors shall open outward from the stand and all doorways shall be kept free and clear of all supplies and materials at all times.

(5) Each stand shall be provided with a minimum of two (2) two and one-half (2½) gallon water type fire extinguishers, in good working order and easily accessible for use in case of fire, which shall be kept in immediate proximity to the location where the fireworks are retailed.

(6) There shall be at least one supervisor twenty-one (21) years of age or older on duty at all times. All fireworks shall be effectively kept away from any kind of self service by the public, and shall be placed in a location which is unavailable and inaccessible to members of the public in capacities other than as legal customers. No person under eighteen (18) years of age shall work at or about or be permitted inside any stand where "safe and sane fireworks" are sold or offered for sale.

(7) No person employed as a watchman shall be permitted to remain inside of any stand when it is not open for business.

(8) "No Smoking" signs shall be prominently displayed both inside and outside the stand. No smoking shall be permitted within the stand or within twenty-five feet (25') of the stand.

(9) During the first selling period, no temporary stand shall be erected before June 22 of any year. The premises on which the stand is erected shall be cleared of all structures and debris not later than noon on July 6. During the second selling period, no temporary stand shall be erected before December 24 of any year. The premises on which the stand is erected shall be cleared of all structures and debris not later than noon on January 2.

(10) No fireworks shall be discharged in or within twenty-five feet (25') of any fireworks stand.

(11) No person shall allow any rubbish to accumulate in or around any fireworks stand or permit a fire nuisance to exist. Only non-combustible waste containers shall be permitted within the stand.

(12) No fireworks shall remain unattended at any time regardless of whether the firework stand is open for business or not. If any fireworks are stored, they shall only be stored at such places as are approved for storage of fireworks by the Fire Chief of the applicable municipality or fire district, or the Board.

(13) No stand shall be erected at a location where retail sales are not allowed under the Elmore County Zoning Ordinance.

(14) No dry vegetation, Christmas trees, or any other combustible material may be stored, displayed, sold, or otherwise kept within twenty five (25) feet of a fireworks stand.

(15)(a) A short-term storage facility may be used for the storage of non-aerial common fireworks for a period of sixty (60) days prior to, and fifteen (15) days after, any authorized retail sales date. The fire department shall be notified of the address or location of all short-term storage facilities when fireworks will not be stored in a temporary fireworks stand.

(b) Short-term storage is allowed in or on any of the following vehicles or premises - a temporary fireworks stand, truck trailer, or other vehicle - provided the place of storage is locked or otherwise secured. A truck trailer or other vehicle used for short-term storage must remain at least twenty-five (25) feet from any inhabited building. Short-term storage may occur in a locked or secured shed, garage, barn or other building or storage container which is detached from an inhabited building and contains no open flames, including heating and lighting sources.

SECTION III: GENERAL PROHIBITIONS

A. GENERAL PROHIBITIONS:

It shall be unlawful for any person, except in compliance with this chapter to:

(1) Alter any fireworks;

(2) Throw any firework from, into or at a moving vehicle or at any person;

(3) Sell or use any fireworks at any time not permitted under this chapter;

(4) Use fireworks in any area that constitutes a severe fire threat based on the vegetative conditions during the current fire season as determined by the Fire Chief of the applicable municipality or fire district or the Board, provided that notice of such areas is given in advance.

B. RECORDS TO BE KEPT:

Each permittee shall be required to retain at the licensed premises while said premises is open, and at his/her principal place of business for a year thereafter, copies of all invoices, receipts and orders evidencing the source from which he/she acquired the fireworks which he/she handled.

C. COMPLY WITH IDAHO STATE FIREWORKS ACT:

It shall be the duty of every person issued a "Fireworks Permit" to comply with all the provisions of the Idaho State Fireworks Act and this Ordinance. The conviction or violation of the

aforsaid Idaho State Fireworks Act or any of the provisions of this Ordinance by the permittee, or by any of its agents, employees, or officers shall constitute a cause, in and of itself, to deny any subsequent application for a permit.

D. VIOLATION AND PENALTY:

(1) It shall be unlawful for any person, firm or corporation to violate any of the provisions of this Ordinance, and any violation thereof shall constitute an infraction and shall be punishable by a fine of one hundred dollars (\$100.00) excluding court costs and fees. An infraction is a civil public offense, not constituting a crime, which is punishable only by a penalty not exceeding one hundred dollars (\$100.00) and for which no period of incarceration may be imposed. There is no right to a trial by jury of a citation or complaint for an infraction and such trials shall be held before the court without a jury. A separate offense shall be deemed committed on each day during which a violation occurs or continues.

(2) A second and any subsequent conviction of any violation of any of the provisions of this Ordinance within five years shall constitute a misdemeanor, punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment for not more than thirty (30) days, or by both such fine and imprisonment.

(3) Fireworks being used in violation of this chapter will be confiscated by the appropriate fire department.

That this ordinance shall be in full force and effect from and after its passage, approval and publication.

Enacted by the Elmore County Board of County Commissioners as an ordinance on the 20th day of August 2007.



Larry E. Rose
Larry Rose, Chairman

Connie M. Cruser
Connie Cruser, Commissioner

Arlie Shaw
Arlie Shaw, Commissioner

ATTEST:

Marsa Grimm
Marsa Grimm, County Clerk

SUMMARY OF ORDINANCE 2007-6

AN ORDINANCE OF ELMORE COUNTY, IDAHO, DEFINING THE TERMS "FIREWORKS", "DANGEROUS FIREWORKS" AND "SAFE AND SANE FIREWORKS"; PROVIDING FOR A DANGEROUS FIREWORKS PERMIT AND A SAFE AND SANE FIREWORKS PERMIT; PROVIDING FOR THE INVESTIGATION OF APPLICANTS FOR PERMITS; PROVIDING UNDER WHAT CONDITIONS THE COUNTY CLERK SHALL ISSUE THE PERMIT; AUTHORIZING DATES FOR THE SALE AND USE OF FIREWORKS; ENACTING RULES FOR TEMPORARY FIREWORKS STANDS; ENACTING GENERAL PROHIBITIONS; PROVIDING FOR RECORD KEEPING; PROVIDING FOR ENFORCEMENT; SETTING OUT PENALTIES FOR VIOLATIONS; AND PROVIDING AN EFFECTIVE DATE.

The following is a list of sections contained in the Ordinance. A copy of the entire Ordinance is available upon request at the Recorder's Office, Elmore County Courthouse, 150 South 4th East, Mountain Home, Idaho.

Section 1. Definitions

A. Authority Having Jurisdiction B. Board C. Permit D. Person E. Public Display or Other Event Using Fireworks F. Fireworks G. Dangerous Fireworks Defined H. Non-aerial Common Fireworks I. Safe and Sane Fireworks J. Special Fireworks

Section 2. Permit Requirements

A. Prohibited Acts B. Dangerous Fireworks (Public Display) Permit C. Safe and Sane Fireworks Permit D. Investigation E. Board to Issue Permit G. Term of Permit H. Time of Filing Application I. Insurance Required

Section 3 General Provisions

A. Authorized Dates for the Sale and Use of Safe and Sane Fireworks B. Authorized Dates for the Sale and Use of Dangerous Fireworks C. Temporary Fireworks Stands

Section 3. General Prohibitions

A. General Prohibitions B. Records to be Kept C. Comply with Idaho State Fireworks Act D. Violation and Penalty

Passed, at a regular meeting of the Elmore County Board of Commissioners, on August 20, 2007. This Ordinance will be in full force and effect from and after its passage, approval and publication.

ELMORE COUNTY COMMISSIONERS

/S/ LARRY E. ROSE Chairman

/S/ ARLIE SHAW, Commissioner

/S/ CONNIE CRUSER, Commissioner

ATTEST: /S/ MARSIA GRIMMETT, Clerk

1 Publication August 29, 2007