

**CITY OF KIRTLAND**

**ORDINANCE NUMBER 22-O-34**

**AN ORDINANCE AMENDING CODIFIED ORDINANCE SECTION 672.10 RELATING TO FIREWORKS, AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City wishes to regulate the practice possession, sale, and use of fireworks; and

**WHEREAS**, the City wishes to enact regulations to preserve the citizens' quiet enjoyment of their residential properties and ensure the safety of dense residential and business areas; and

**WHEREAS**, Governor De Wine recently signed House Bill 172 into law, allowing any person authorized to possess consumer-grade fireworks to discharge them on their own property or on another person's property with permission on the certain designated days, and further allowing local municipalities to restrict the dates and times that individuals may discharge consumer-grade fireworks or to impose a complete ban on the use of consumer-grade fireworks; and

**WHEREAS**, the Council wishes to impose a complete ban on the use of consumer-grade fireworks.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Kirtland, County of Lake, State of Ohio, that:

**SECTION I:** Codified Ordinance Section 672.10, entitled "Fireworks," is hereby amended as set forth in Exhibit "A" attached hereto and made a part hereof as though fully set forth herein at length.

**SECTION II:** That the heretofore existing 672.10 of the Codified Ordinances of the City of Kirtland, previously enacted and in force, be amended by the passage of this ordinance, and is hereby replaced as set forth in Section I hereinabove.

**SECTION III:**

(a) It is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

(b) This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare of the City, and for the further reason to timely impose this limitation prior to the state statute's effective date and to protect the citizenry, this Ordinance shall be in full force and effect on July 1, 2022 by the affirmative vote of five members of Council and approval by the Mayor, otherwise this Ordinance shall be in effect from and after its adoption at the earliest period allowed by law.

First Reading: \_\_\_\_\_  
Second Reading: \_\_\_\_\_  
Third Reading: \_\_\_\_\_

DATE PASSED: \_\_\_\_\_

\_\_\_\_\_  
President of Council

Submitted to the Mayor for his  
Approval on this \_\_\_\_\_ day of  
\_\_\_\_\_, 2022.

ATTEST:

Approved by the Mayor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Clerk of Council  
Amend 672.10 – Fireworks

\_\_\_\_\_  
Mayor Kevin F. Potter

## § 672.10 FIREWORKS.

(a) Definitions. As used in this section, unless otherwise provided:

(1) "1.3G fireworks." Display fireworks consistent with regulations of the United States Department of Transportation as expressed using the designation "Division 1.3" in Title 49 of the Code of Federal Regulations.

(2) "1.4G fireworks." Consumer fireworks consistent with regulations of the United States Department of Transportation as expressed using the designation "Division 1.4" in Title 49 of the Code of Federal Regulations.

(3) "Beer" and "intoxicating liquor." Have the same meaning as in Ohio R.C. 4301.01.

(4) "Booby trap." A small tube that has a string protruding from both ends that has a friction-sensitive composition and that is ignited by pulling the ends of the string.

(5) "Cigarette load." A small wooden peg that is coated with a small quantity of explosive composition and that is ignited in a cigarette.

(6) "Controlled substance." Has the same meaning as in Ohio R.C. 3719.01.

(7) "Discharge site." An area immediately surrounding the mortars used to fire aerial shells.

(8) "Explosive." Any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion. "Explosive" includes all materials that have been classified as division 1.1, division 1.2, division 1.3, or division 1.4 explosives by the United States Department of Transportation in its regulations and includes, but is not limited to, dynamite, black powder, pellet powders, initiating explosives, blasting caps, electric blasting caps, safety fuses, fuse igniters, squibs, cordeau detonant fuses, instantaneous fuses, and igniter cords and igniters. "Explosives" does not include "fireworks" as defined in Ohio R.C. 3743.01, or any substance or material otherwise meeting the definition of explosive set forth in this section that is manufactured, sold, possessed, transported, stored, or used in any activity described in Ohio R.C. 3743.80, provided the activity is conducted in accordance with all applicable laws, rules, and regulations, including, but not limited to, the provisions of Ohio R.C. 3743.80 and the rules of the state Fire Marshal adopted pursuant to Ohio R.C. 3737.82.

(ORC 2923.11)

(9) "Fireworks." Any composition or device prepared for the purpose of producing a visible or an audible effect by combustion, deflagration, or detonation, except ordinary matches and except as provided in Ohio R.C. 3743.80.

(10) "Fireworks incident." Any action or omission that occurs at a fireworks exhibition that results in injury or death, or a substantial risk of injury or death, to any person, and that involves either of the following:

A. The handling or other use, or the results of the handling or other use, of fireworks or associated equipment or other materials;

B. The failure of any person to comply with any applicable requirement imposed by this section or Ohio R.C. Chapter 3743, or any applicable rule adopted under this section or Ohio R.C. Chapter 3743.

(11) "Fireworks incident site." A discharge site or other location at a fireworks exhibition where a fireworks incident occurs, a location where an injury or death associated with a fireworks incident occurs, or a location where evidence of a fireworks incident or an injury or death associated with a fireworks incident is found.

(12) "Fireworks plant." All buildings and other structures in which the manufacturing of fireworks, or the storage or sale of manufactured fireworks by a manufacturer, takes place.

(13) "Highway." Any public street, road, alley, way, lane or other public thoroughfare.

(14) "Licensed building." A building on the licensed premises of a licensed manufacturer or wholesaler of fireworks that is approved for occupancy by the building official having jurisdiction.

(15) "Licensed exhibitor of fireworks" or "licensed exhibitor." A person licensed pursuant to Ohio R.C. 3743.50 through 3743.55.

(16) "Licensed manufacturer of fireworks" or "licensed manufacturer." A person licensed pursuant to Ohio R.C. 3743.02 through 3743.08.

(17) "Licensed premises." The real estate upon which a licensed manufacturer or wholesaler of fireworks conducts business.

(18) "Licensed wholesaler of fireworks" or "licensed wholesaler." A person licensed pursuant to Ohio R.C. 3743.15 through 3743.21.

(19) "Manufacturing of fireworks." The making of fireworks from raw materials, none of which in and of themselves constitute fireworks, or the processing of fireworks.

(20) "Novelties" and "trick noisemakers."

A. Devices that produce a small report intended to surprise the user, including but not limited to booby traps, cigarette loads, party poppers, and snappers;

B. Snakes or glow worms;

C. Smoke devices;

D. Trick matches.

(21) "Party popper." A small plastic or paper item that contains not more than 16 milligrams of friction-sensitive explosive composition that is ignited by pulling a string protruding from the item, and from which paper streamers are expelled when the item is ignited.

(22) "Processing of fireworks." The making of fireworks from materials all or part of which in and of themselves constitute fireworks, but does not include the mere packaging or repackaging of fireworks.

(23) "Railroad." Any railway or railroad that carries freight or passengers for hire, but does not include auxiliary tracks, spurs, and sidings installed and primarily used in serving a mine, quarry or plant.

(24) "Retail sale" or "sell at retail." A sale of fireworks to a purchaser who intends to use the fireworks and not to resell them.

(25) "Smoke device." A tube or sphere that contains pyrotechnic composition that, upon ignition, produces white or colored smoke as the primary effect.

(26) "Snake" or "glow worm." A device that consists of a pressed pellet of pyrotechnic composition that produces a large snake-like ash upon burning, which ash expands in length as the pellet burns.

(27) "Snapper." A small paper-wrapped item that contains a minute quantity of explosive composition coated on small bits of sand and that, when dropped, implodes.

(28) "Storage location." A single parcel or contiguous parcels of real estate approved by the Fire Marshal pursuant to Ohio R.C. 3743.04(I) or Ohio R.C. 3743.17(G) that are separate from a licensed premises containing a retail showroom, and which parcel or parcels a licensed

manufacturer or wholesaler of fireworks may use only for the distribution, possession, and storage of fireworks in accordance with this chapter.

(29) "Trick match." A kitchen or book match that is coated with a small quantity of explosive composition and that, upon ignition, produces a small report or a shower of sparks.

(30) "Wholesale sale" or "sell at wholesale." A sale of fireworks to a purchaser who intends to resell the fireworks so purchased.

(31) "Wire sparkler." A sparkler consisting of a wire or stick coated with a nonexplosive pyrotechnic mixture that produces a shower of sparks upon ignition and that contains no more than 100 grams of this mixture.

(ORC 3743.01)

(b) Manufacturing.

(1) No licensed manufacturer of fireworks shall knowingly fail to comply with the rules adopted by the state Fire Marshal pursuant to Ohio R.C. 3743.05 or the requirements of Ohio R.C. 3743.06.

(2) No licensed manufacturer of fireworks shall fail to maintain complete inventory, wholesale sale and retail records as required by Ohio R.C. 3743.07, or to permit an inspection of these records or the premises of a fireworks plant or the wholesaler pursuant to Ohio R.C. 3743.08.

(3) No licensed manufacturer of fireworks shall fail to comply with an order of the state Fire Marshal issued pursuant to Ohio R.C. 3743.08(B)(1) within the specified period of time.

(4) No licensed manufacturer of fireworks shall fail to comply with an order of the state Fire Marshal issued pursuant to Ohio R.C. 3743.08(B)(2) until the nonconformities are eliminated, corrected or otherwise remedied or the 72-hour period specified in those subsections has expired, whichever occurs first.

(5) No person shall smoke or shall carry a pipe, cigarette, or cigar, or a match, lighter, other flame-producing item, or open flame on, or shall carry a concealed source of ignition into, the premises of a fireworks plant, except as smoking is authorized in specified lunchrooms or restrooms by a manufacturer pursuant to Ohio R.C. 3743.06(C).

(6) No person shall have possession or control of, or be under the influence of, any intoxicating liquor, beer, or controlled substance while on the premises of a fireworks plant.

(ORC 3743.60(E) - (J))

(c) Wholesaling.

(1) No licensed wholesaler of fireworks shall knowingly fail to comply with the rules adopted by the state Fire Marshal pursuant to Ohio R.C. 3743.18 or the requirements of Ohio R.C. 3743.19.

(2) No licensed wholesaler of fireworks shall fail to maintain complete inventory, wholesale sale and retail records as required by Ohio R.C. 3743.20, or to permit an inspection of these records or the premises of a fireworks plant or the wholesaler pursuant to Ohio R.C. 3743.21.

(3) No licensed wholesaler of fireworks shall fail to comply with an order of the state Fire Marshal issued pursuant to Ohio R.C. 3743.21(B)(1) within the specified period of time.

(4) No licensed wholesaler of fireworks shall fail to comply with an order of the state Fire Marshal issued pursuant to Ohio R.C. 3743.21(B)(2) until the nonconformities are eliminated,

corrected or otherwise remedied or the 72-hour period specified in those subsections has expired, whichever occurs first.

(5) No person shall smoke or shall carry a pipe, cigarette, or cigar, or a match, lighter, other flame-producing item, or open flame on, or shall carry a concealed source of ignition into, the premises of a wholesaler of fireworks, except as smoking is authorized in specified lunchrooms or restrooms by a wholesaler pursuant to Ohio R.C. 3743.19(D).

(6) No person shall have possession or control of, or be under the influence of, any intoxicating liquor, beer, or controlled substance while on the premises of a wholesaler of fireworks.

(ORC 3743.61(E) - (J))

(d) Purchasing, Use, and Local Regulation

(1) No person who purchases 1.3G or 1.4G fireworks in this state shall obtain possession of the fireworks in this state unless the person complies with Ohio R.C. 3743.44 and 3743.45

(2) A county, with respect to the unincorporated territory of the county, a township, with respect to the unincorporated territory of the township, or a municipal corporation may do either of the following:

(a) Restrict the dates and times a person may discharge, ignite, or explode fireworks purchased pursuant to this section.

(b) Ban the discharge, ignition, or explosion of fireworks purchased pursuant to this section.

(ORC 3743.63)

(e) Prohibited activities by exhibitors.

(1) An exhibitor of fireworks licensed under Ohio R.C. 3743.50 through 3743.55 who wishes to conduct a public fireworks exhibition shall apply for approval to conduct the exhibition to the Fire Chief or fire prevention officer and to the Police Chief or other similar chief law enforcement officer, or the designee of the Police Chief or other similar chief law enforcement officer, having jurisdiction over the premises.

(2) The approval required by subsection (e)(1) of this section shall be evidenced by the Fire Chief or fire prevention officer and by the Police Chief or other similar chief law enforcement officer, or the designee of the Police Chief or similar chief law enforcement officer, signing a permit for the exhibition. Any exhibitor of fireworks who wishes to conduct a public fireworks exhibition may obtain a copy of the form from the state Fire Marshal or, if available, from the Fire Chief, a fire prevention officer, the Police Chief or other similar chief law enforcement officer, or a designee of the Police Chief or other similar chief law enforcement officer.

(3) Before a permit is signed and issued to a licensed exhibitor of fireworks, the Fire Chief or fire prevention officer, in consultation with the Police Chief or other similar chief law enforcement officer, or the designee of the Police Chief or other similar chief law enforcement officer, shall inspect the premises on which the exhibition will take place and shall determine that, in fact, the applicant for the permit is a licensed exhibitor of fireworks. Each applicant shall show his or her license as an exhibitor of fireworks to the Fire Chief or fire prevention officer.

(4) The Fire Chief or fire prevention officer and the Police Chief or other similar chief law enforcement officer, or the designee of the Police Chief or other similar chief law enforcement officer, shall give approval to conduct a public fireworks exhibition only if satisfied, based on

the inspection, that the premises on which the exhibition will be conducted allow the exhibitor to comply with the rules adopted by the state Fire Marshal pursuant to Ohio R.C. 3743.53(B) and (E) and that the applicant is, in fact, a licensed exhibitor of fireworks. The Fire Chief or fire prevention officer, in consultation with the Police Chief or other similar chief law enforcement officer or with the designee of the Police Chief or other similar chief law enforcement officer, may inspect the premises immediately prior to the exhibition to determine if the exhibitor has complied with the rules, and may revoke a permit for noncompliance with the rules.

(5) If the Council has prescribed a fee for the issuance of a permit for a public fireworks exhibition, the Fire Chief or fire prevention officer and Police Chief or other similar chief law enforcement officer, or their designee, shall not issue a permit until the exhibitor pays the requisite fee.

(6) Each exhibitor shall provide an indemnity bond in the amount of at least one million dollars with surety satisfactory to the Fire Chief or fire prevention officer and to the Police Chief or other similar chief law enforcement officer, or the designee of the Police Chief or other similar chief law enforcement officer, conditioned for the payment of all final judgments that may be rendered against the exhibitor on account of injury, death, or loss to person or property emanating from the fireworks exhibitor, or proof of insurance coverage of at least one million dollars for liability arising from injury, death, or loss of persons or property emanating from the fireworks exhibition. The Council may require the exhibitor to provide an indemnity bond or proof of insurance coverage in amounts greater than those required by this subsection. The Fire Chief or fire prevention officer and Police Chief or other similar chief law enforcement officer, or their designee, shall not issue a permit until the exhibitor provides the bond or proof of the insurance coverage required by this subsection or by the Council.

(7) Each permit for a fireworks exhibition issued by the Fire Chief or fire prevention officer and by the Police Chief or other similar chief law enforcement officer, or the designee of the Police Chief or other similar chief law enforcement officer, shall contain a distinct number, designate the municipality, and identify the certified fire safety inspector, Fire Chief, or fire prevention officer who will be present before, during and after the exhibition, where appropriate. A copy of each permit issued shall be forwarded by the Fire Chief or fire prevention officer and by the Police Chief or other similar chief law enforcement officer, or designee of the Police Chief or other similar chief law enforcement officer, issuing it to the state Fire Marshal. A permit is not transferable or assignable.

(8) The Fire Chief or fire prevention officer and Police Chief or other similar chief law enforcement officer, or designee of the Police Chief or other similar chief law enforcement officer, shall keep a record of issued permits for fireworks exhibitions. In this list, the Fire Chief, fire prevention officer, Police Chief or other similar chief law enforcement officer, or designee of the Police Chief or other similar chief law enforcement officer, shall list the name of the exhibitor, his or her license number, the premises on which the exhibition will be conducted, the date and time of the exhibition, and the number and political subsection designation of the permit issued to the exhibitor for the exhibition.

(9) The Council shall require that a certified fire safety inspector, Fire Chief or fire prevention officer be present before, during and after the exhibition, and shall require the certified fire safety inspector, Fire Chief or fire prevention officer to inspect the premises where the exhibition is to take place and determine whether the exhibition is in compliance with this section and Ohio R.C. Chapter 3743.

(ORC 3743.54)

(10) No licensed exhibitor of fireworks shall fail to comply with the applicable requirements of the rules adopted by the state Fire Marshal pursuant to Ohio R.C. 3743.53(B) and (E) or to comply with Ohio R.C. 3743.53(C) and (D).

(11) No licensed exhibitor of fireworks shall conduct a fireworks exhibition unless a permit has been secured for the exhibition pursuant to Ohio R.C. 3743.54 or a substantially equivalent municipal ordinance, or if a permit so secured is revoked by a Fire Chief or fire prevention officer, in consultation with a Police Chief or other similar chief law enforcement officer, or with a designee of a Police Chief or other similar chief law enforcement officer, pursuant to those sections.

(12) No licensed exhibitor of fireworks shall acquire fireworks for use at a fireworks exhibition other than in accordance with Ohio R.C. 3743.54 and 3743.55, or a substantially equivalent municipal ordinance.

(13) No licensed exhibitor of fireworks or other person associated with the conduct of a fireworks exhibition shall have possession or control of, or be under the influence of, any intoxicating liquor, beer, or controlled substance while on the premises on which the exhibition is being conducted.

(14) No licensed exhibitor of fireworks shall permit an employee to assist the licensed exhibitor in conducting fireworks exhibitions unless the employee is registered with the state Fire Marshal under Ohio R.C. 3743.56.

(ORC 3743.64)

(f) Possession, sale, discharge and advertising; falsification.

(1) No person shall possess fireworks in this municipality or shall possess for sale or sell fireworks in this municipality, except a licensed manufacturer of fireworks as authorized by Ohio R.C. 3743.02 through 3743.08, a licensed wholesaler of fireworks as authorized by Ohio R.C. 3743.15 through 3743.21, a shipping permit holder as authorized by Ohio R.C. 3743.40, any person as authorized by Ohio R.C. 3743.44, and 3743.45, or a licensed exhibitor of fireworks as authorized by Ohio R.C. 3743.50 through 3743.55, or as authorized by any municipal ordinance that is substantially equivalent to any of these statutes, and except as provided in Ohio R.C. 3743.80 or a substantially equivalent municipal ordinance.

(2) Except as provided in Ohio R.C. 3743.80 or a substantially equivalent municipal ordinance, and except for licensed exhibitors of fireworks authorized to conduct a fireworks exhibition pursuant to Ohio R.C. 3743.50 through 3743.55 or a substantially equivalent municipal ordinance, no person shall discharge, ignite, or explode any fireworks in this municipality.

(3) No person shall use in a theater or public hall what is technically known as fireworks showers, or a mixture containing potassium chlorate and sulphur.

(4) No person or entity shall sell fireworks of any kind to a person under 18 years of age. No person under 18 years of age shall enter a fireworks sales showroom unless that person is accompanied by a parent, legal guardian, or other responsible adult. No person under 18 years of age shall touch or possess fireworks on a licensed premises without the consent of the licensee. A licensee may eject any person from a licensed premises that is in any way disruptive to the safe operation of the premises.

(5) Except as otherwise provided in Ohio R.C. 3743.44, no person, other than a licensed manufacturer, licensed wholesaler, licensed exhibitor, or shipping permit holder shall possess 1.3G fireworks in this municipality.

(ORC 3743.65(A) - (E))

(g) Transporting and shipping.

(1) No person shall transport fireworks in this municipality except in accordance with the rules adopted by the state Fire Marshal pursuant to Ohio R.C. 3743.58.

(2) As used in this subsection, "fireworks" includes only 1.3G and 1.4G fireworks. No person shall ship fireworks into this municipality by mail, parcel post, or common carrier unless the person possesses a valid shipping permit issued under Ohio R.C. 3743.40, and the fireworks are shipped directly to the holder of a license issued under Ohio R.C. 3743.03, 3743.16 or 3743.51.

(3) No person shall ship fireworks within this municipality by mail, parcel post, or common carrier unless the fireworks are shipped directly to the holder of a license issued under Ohio R.C. 3743.01, 3743.16 or 3743.51.

(ORC 3743.66)

(h) Exceptions. This section does not prohibit or apply to the following:

(1) The manufacture, sale, possession, transportation, storage, or use in emergency situations of pyrotechnic signaling devices and distress signals for marine, aviation, or highway use;

(2) The manufacture, sale, possession, transportation, storage or use of fusees, torpedoes, or other signals necessary for the safe operation of railroads;

(3) The manufacture, sale, possession, transportation, storage or use of blank cartridges in connection with theaters or shows, or in connection with athletics as signals for ceremonial purposes;

(4) The manufacture for, the transportation, storage, possession or use by, or the sale to the armed forces of the United States and the militia of this state of pyrotechnic devices;

(5) The manufacture, sale, possession, transportation, storage or use of toy pistols, toy canes, toy guns, or other devices in which paper or plastic caps containing 0.25 grains or less of explosive material are used, provided that they are constructed so that a hand cannot come into contact with a cap when it is in place for explosion, or apply to the manufacture, sale, possession, transportation, storage or use of those caps;

(6) The manufacture, sale, possession, transportation, storage or use of novelties and trick noisemakers, auto burglar alarms, or model rockets and model rocket motors designed, sold, and used for the purpose of propelling recoverable aero models;

(7) The manufacture, sale, possession, transportation, storage or use of wire sparklers;

(8) The conduct of radio-controlled special effect exhibitions that use an explosive black powder charge of not more than one-quarter pound per charge, and that are not connected in any manner to propellant charges; provided, that the exhibition complies with all of the following:

A. No explosive aerial display is conducted in the exhibition;

B. The exhibition is separated from spectators by not less than 200 feet;

C. The person conducting the exhibition complies with regulations of the Bureau of Alcohol, Tobacco and Firearms of the United States Department of the Treasury and the United States Department of Transportation with respect to the storage and transport of the explosive black powder used in the exhibition.

(ORC 3743.80)

(i) Forfeiture and disposal. Fireworks manufactured, sold, possessed, transported, or used in violation of this section shall be forfeited by the offender. The Fire Marshal's office or certified fire safety inspector's office shall dispose of seized fireworks pursuant to the procedures specified in Ohio R.C. 2981.11 to 2981.13 for the disposal of forfeited property by law enforcement agencies, and the Fire Marshal or that office is not liable for claims for the loss of or damages to the seized fireworks.

(ORC 3743.68(B))

(j) Penalty.

(1) Except as otherwise provided in subsection (j)(2) or (j)(3) of this section, whoever violates any provisions of this section is guilty of a misdemeanor of the first degree.

(2) If the offender previously has been convicted of or pleaded guilty to a violation of Ohio R.C. 3743.60(I) or Ohio R.C. 3743.61(I), or a substantially equivalent municipal ordinance, a violation of subsection (b)(5) of this section or subsection (c)(5) of this section is a felony to be prosecuted under appropriate state law.

(3) Whoever violates subsection (e)(10) of this section is guilty of a misdemeanor of the first degree. In addition to any other penalties that may be imposed on a licensed exhibitor of fireworks under this subsection and unless the third sentence of this subsection applies, the person's license as an exhibitor of fireworks or as an assistant exhibitor of fireworks shall be suspended, and the person is ineligible to apply for either type of license, for a period of five years. If the violation of subsection (e)(10) of this section results in serious physical harm to persons or serious physical harm to property, the person's license as an exhibitor of fireworks or as an assistant exhibitor of fireworks shall be revoked, and that person is ineligible to apply for a license as or to be licensed as an exhibitor of fireworks or as an assistant exhibitor of fireworks in this state.

(ORC 3743.99(C), (D))