

## CHAPTER 48

### FIREWORKS

SECTION 48.00 Purpose. The Town has determined that the public health, safety and welfare will be promoted by adopting ordinances regulating the safe and orderly sale, possession and use of fireworks.

SECTION 48.10 Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

48.11 Fireworks. Fireworks means anything manufactured, processed or packaged for exploding, emitting sparks or combustion which does not have another common use, but does not include any of the following:

- (A) Fuel or lubricant.
- (B) A firearm cartridge or shotgun shell.
- (C) A flare used or possessed, or sold for use as a signal in an emergency or in the operation of a railway, aircraft, watercraft or motor vehicle.
- (D) A match, cigarette lighter, stove, furnace, candle, lantern or space heater.
- (E) A cap containing not more than one-quarter grain of explosive mixture, if the cap is used or possessed, or sold for use in a device which prevents direct bodily contact with a cap when it is in place for explosion.
- (F) A toy snake which contains no mercury.
- (G) A model rocket engine.
- (H) Tobacco and a tobacco product.
- (I) A sparkler on a wire or wood stick not exceeding thirty-six (36) inches in length or one-fourth inch in outside diameter, which does not contain magnesium, chlorate or per chlorate.
- (J) A device designed to spray out paper confetti or streamers and contains less than one-quarter grain of explosive mixture.
- (K) A device designed to produce an audible sound, but not explode, spark, move or emit an external flame after ignition and does not exceed three

grams in total weight.

- (L) A device that emits smoke with no external flame and does not leave the ground.
- (M) A cylindrical fountain that consists of one (1) or more tubes and that is classified by the Federal Department of Transportation as a Division 1.4 explosive, as defined in 49 CFR 173.50 and labeled emits showers of sparks from the manufacturer.
- (N) A cone fountain that is classified by the Federal Department of Transportation as a Division 1.4 explosive, as defined in 49 CFR 173.50 and labeled emits showers of sparks from the manufacturer.
- (O) A novelty device that spins or moves on the ground and labeled emits showers of sparks from the manufacturer.

SECTION 48.20 Fireworks sales.

48.21 Seller's permit required.

- (A) Required. No person may sell, or possess with the intent to sell, fireworks without a seller's permit from the Town obtained in accordance with this article.
- (B) Term and quantity. Seller's permit issued hereunder shall be issued under two categories: annual and seasonal as described as follows:
  - (1) Annual seller's permits shall be for a term of not more than one (1) year and shall expire on December 31 of each year. The fee for each annual seller's permit shall be Two Hundred Fifty (\$250.00) Dollars.
  - (2) Seasonal seller's permits issued hereunder shall be for a term beginning not earlier than the 1st day of March and ending on the 31st day of July of each year. The fee for a seasonal permit shall be One Hundred (\$100.00) Dollars.
- (C) Application. Applicants for a seller's permit shall apply for each site in writing on forms provided by the Town Clerk. Applications for a seller's permit shall be filed not later than ten (10) days prior to the granting of a seller's permit and for those seeking a new seller's permit to be effective on January 1st, the application shall be filed not later than December 1st of each year. A permit fee for each site shall accompany each application. The Town shall conduct a background check on each applicant. The application for seller's permits shall include, without limitation, the

following information:

- (1) Name, address, telephone number and e-mail address of the applicant;
  - (2) Within ten (10) days of any order of fireworks from a supplier, the Applicant shall provide a photocopy of such documents to the Fire Chief.
  - (3) Address at which the applicant intends to sell the enumerated fireworks and description of the temporary or permanent structure to be used for the storage and sale of the fireworks;
  - (4) Name(s), addresses, and consent(s) of the owner(s) (if other than the applicant) of the real estate upon which the enumerated fireworks will be sold;
  - (5) The proposed days and hours of operation and planned changes in days/hours of operation of in-season versus off-season sales; and
  - (6) A site plan and description of the signage to be used in promoting and/or advertising the sale of fireworks.
- (D) Consideration. The Town Board shall consider the application for seller's permits hereunder and shall approve or deny each application. Where a application is denied, the application fee, less a Seventy-five (\$75.00) Dollars processing charge, shall be returned to the applicant.
- (E) Seller's permit contents and conditions. If approved, the Town Clerk shall issue the seller's permit as provided below with conditions imposed noted on the seller's permit.
- (1) At a minimum, the seller's permit shall specify the following:
    - (a) The name and address of the permit holder.
    - (b) Location of permitted operations and a description of the seasonal or permanent structure to be used for the storage and sale of the fireworks.
    - (c) The kind and quantity of fireworks which may be sold under the permit.
    - (d) The dates and hours of operations of permitted sales (on and off season); and

- (e) Special conditions prescribed by ordinance or deemed necessary by the Town Board to ensure public safety including, at a minimum, the following conditions:
  - (i) Prior to issuing the seller's permit, the applicant shall provide the Town with a certificate of insurance proving a policy of liability insurance in the amount of Two Million (\$2,000,000.00) Dollars per person and Four Million (\$4,000,000.00) Dollars in the aggregate for the payment of all claims that may arise by reason of injury to persons or property from the handling, use or discharge of fireworks under the permit. The liability policy shall name the Town as an additional insured. Such insurance shall be maintained by the applicant so long as it holds a seller's permit under this article; and
  - (ii) The seller's permit holder shall be assumed to be the applicant named on the permit. If the business operation or location is leased, owned or controlled by a third party, disclosure of such information must be included on the permit application.

48.22 Sale. No person may sell, or possess with the intent to sell, fireworks, except:

- (A) To a person holding a permit under Section 48.21 or Section 48.41; or
- (B) To a city, village or town; or
- (C) For a purpose specified under Section 48.43(A) to (F); or
- (D) “Out of State Residents” pursuant to State Statute.

48.23 Hours of sale. No person may sell fireworks before 9:00 a.m. or after 9:00 p.m. Additional hours of sale may be permitted during the ten (10) day period preceding July 4, with the approval and written consent of the Town Board and such approval is required annually.

48.24 Location of sale. Sales of fireworks may only occur from a temporary location or a permanent structure that has been inspected and given written approval by the Town building Inspector and the Town Fire Chief. All locations, which hold (for the intent of later selling) or utilized in the sale of fireworks, shall be equipped with such fire safety equipment required by these ordinances or by the Town Fire Chief and Town Board. Any additions to or changes of location must be approved by the Town Board.

48.25 Permit transferability. All seller's permits are issued at the pleasure of the Town

Board and may not be transferred, bartered, sold, given or assigned to another individual, group of individuals, family, partnership, business, proprietorship or corporation.

SECTION 48.30      Use and Possession.

48.31 Permit required. No person may possess or use fireworks without a seller's or user's permit from the Town of Wheatland obtained in accordance with the provisions of this section or from another governmental body.

48.32 Possessor's permit. A holder of a possessor's permit issued under this section is authorized to possess fireworks.

- (A) The form of the permit shall be determined by the Town of Wheatland and printed and provided to the Town by each seller intending to issue permits to recipients; each form shall have printed thereon the identity of the seller providing the same.
- (B) Forms shall be issued by the Town for the seller in multiples of one hundred (100) without limit and shall be signed and/or validated by a Town official in blank to the seller. The seller shall pay in advance for such forms at a fee as set by the Town Board.
- (C) The seller shall issue permits to purchasers of fireworks at a cost as set by the Town Board. Copies of each permit issued shall be maintained by the seller and provided periodically to the Town. Each permit shall expire at the end of the calendar year in which the permit is dated.
- (D) A possessor's permit does not allow use of fireworks within the Town of Wheatland.

SECTION 48.40      REPEALED 4/9/2018

SECTION 48.50      Limitation of liability. A party requesting a user permit and/or a seller's permit has the ultimate responsibility for their own safety and for the safety of all persons who may be affected by their activity. The issuance of a user permit or a seller's permit shall not be interpreted as endorsing or condoning the activity or as ensuring that the activity will be safe. An applicant for a user permit and/or a seller's permit individually and on behalf of any entity for which the applicant submits the application, and also on behalf of the property owner where the activity will be conducted, accepts all risks and agrees to indemnify, defend and hold harmless the Town of Wheatland, its officers, employees and agents, from any and all claims arising out of the use, sale or possession of the fireworks.

SECTION 48.60      Permit suspension and revocation. Any seller's or user's permit issued under this article may be suspended or revoked, in writing, by the Town Board for any of the following reasons:

- (A) Fraud, misrepresentation or a false statement contained in the application for the permit.
- (B) Any violation of this article.
- (C) Conviction of a crime or misdemeanor involving the illegal use of fireworks.
- (D) In the case of a seller's permit, conducting the business of fireworks sales in an unlawful manner or in such a manner as to constitute a breach of the peace or general health, safety and welfare of the public.
- (E) In the case of a seller's permit, verification by the fire chief or building inspector that the premises, means of storage, methods of sale or other operation related to the sale, storage or handling of fireworks is unsafe or does not meet any applicable governmental regulations.

SECTION 48.70 Permit expiration. No seller's permit shall be issued under this article for a longer period than one year. All seller's permits issued under the provisions of this article shall expire at 12:00 midnight on December 31st.

SECTION 48.80 Appeals. Any applicant aggrieved by the action of the Town in the denial, suspension or revocation of a permit under this article may appeal to the Town Board. Such appeal shall be taken by filing with the Town Clerk, within fourteen (14) days after notice of the action complained of, a written statement fully setting forth the grounds of the appeal. The Town Board shall set a time and place for a hearing on such an appeal and notice shall be mailed by the Town Clerk to the appellant at the last known address at least five (5) days prior to the date set for the hearing, or shall be delivered by a police officer or Town Constable in the same manner as a summons at least three days prior to the date set for the hearing.

SECTION 48.90 Storage and handling.

48.91 Fire extinguishers required. No seller, wholesaler, dealer or jobber may store or handle fireworks in a premises unless the premises is equipped with fire extinguishers approved by the fire chief.

48.92 Smoking prohibited. No person may smoke where fireworks are stored or handled.

48.93 Notification of fire official. A person who sells, stores or handles fireworks shall notify the fire official of the municipality in which the fireworks are stored or handled of the location of the fireworks.

48.94 Storage distance. No seller, wholesaler, dealer or jobber may store fireworks within fifty (50) feet of a dwelling. No wholesaler, dealer or jobber may store fireworks closer than fifty (50) feet to the storage facility lot line unless otherwise approved under a seller's

permit.

48.95 Storage restriction. No person may store fireworks within fifty (50) feet of a public assemblage or place where gasoline or volatile liquid is sold in quantities exceeding one gallon unless otherwise approved under a seller's permit, or in the case of a public assemblage, the Town Board resolution designating the fireworks use site under Section 48.42(B). To the extent not in conflict with these ordinances any holder of a seller's permit shall comply with the requirements of the 2013 version of Chapter 1124 of the NFPA.

48.96 Storage in vehicles prohibited. No person may store fireworks within any motor vehicle, vehicle trailer of any kind or part of a vehicle for a period of time greater than twenty-four (24) hours.

48.97 Inspections. The fire chief and other authorized safety officials shall perform an annual inspection of every premises where fireworks are stored pursuant to a seller's permit issued under this article. The fire chief may inspect other premises where fireworks are stored within the Town and may order corrections to the storage method as he deems necessary. Any person storing fireworks shall comply with any orders by the fire chief or his designee to correct and a failure to do so shall be a violation of the article.

SECTION 48.100 Failure to comply; penalties. Any person who fails to comply with the provisions of this section, or any permit issued in accordance with this section, shall, upon conviction, forfeit not less than One Hundred (\$100.00) Dollars and not more than One Thousand (\$1,000.00) Dollars for each day of violation for each separate offense and costs of prosecution for each violation, and, in default of payment of such forfeiture and costs, shall be imprisoned in the county jail until payment thereof, but not exceeding ninety (90) days. Each day a violation exists or continues shall constitute a separate offense.

SECTION 48.110 Severability. The several sections of this article are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions, sections or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect.