

**ORDINANCE NO. M 2013-11-25**

**AN ORDINANCE OF THE CITY OF MOODY TO PROVIDE FOR AND REGULATE THE USE, STORAGE, SALE DISTRIBUTION AND MANUFACTURE OF FIREWORKS; TO PROVIDE FOR PERMITS TO BE ISSUED BY THE CITY OF MOODY; TO PROHIBIT CERTAIN FIREWORKS AND TO DEFINE CERTAIN TERMS RELATING TO FIREWORKS AND EXPLOSIVES; AND TO PRESCRIBE PENALTIES FOR THE VIOLATION OF THIS ORDINANCE**

BE IT ORDAINED by the Mayor and City Council of the City of Moody, Alabama, as follows:

**Section 1.** Definitions . As used in this ordinance, the following terms shall have the meanings ascribed to them in this section unless clearly indicated otherwise:

- (A) Distributor. Any person engaged in the business of selling fireworks to a wholesaler.
- (B) Fireworks. All items now or hereafter classified as “Class C” or “Common Fireworks,” and/or “**Consumer Fireworks**,” by the United States Department of Transportation and/or those items that comply with the construction, chemical composition, and labeling regulations promulgated by the United States Consumer Product Safety Commission and permitted for use by the general public under their regulations. Permitted items designed to produce an audible effect are confined to small ground items which include firecrackers not over one and one-half (1 ½) inches and containing not over fifty (50) milligrams of explosive composition and aerial devices containing not over one hundred, thirty (130) milligrams of explosive composition. As used herein, the term “fireworks” shall include and a permit shall be required for, in addition to the above, related items not classified as “Class C” or “Common Fireworks,” and/or “**Consumer fireworks**,” but identified under the federal and/or state regulations as trick noisemakers, toy novelties, toy smoke devices and sparklers, toy snakes, snappers, smoke balls, smoke novelty items, and wire sparklers containing not over one hundred (100) grams of composition per item. Sparklers containing any chlorate or percholate salts may not exceed five (5) grams of composition per item.
- (C) Manufacturer. Any person engaged in the making, manufacture or construction of fireworks of any kind.
- (D) Permit. The written authority of the City of Moody issued pursuant to the provisions and authority of this ordinance.
- (E) Person. Any corporation, limited liability company, limited liability partnership, partnership, association, or other entity or one or more persons.
- (F) Retailer. Any person engaged in the business of selling fireworks to consumers.
- (G) Sale or selling. Any exchange of fireworks for money, including barter, exchange,

gift or offer thereof, or other transfer, gift or exchange of fireworks, and each such transaction or exchange made by any person.

(H) “Special Fireworks” for “Class B Fireworks” and/or “Display Fireworks”. All items of Special Class B Fireworks, also known as “Display Fireworks,” commonly known as cherry bombs and various tubular salutes which exceed the limits of permitted Class C Common fireworks, Consumer Fireworks, as to size and/or explosive composition and/or designed to produce an audible effect are expressly prohibited from shipment into, manufacture, possession, sale and use within the City of Moody.

(I) Temporary unit or structure. Any building, unit or other structure used for selling, keeping or storing fireworks that is not built on a permanent foundation or that is otherwise not permanently affixed to the lot or parcel of real property upon which it is placed in accordance with the provisions of the applicable edition of the International Building Code being enforced by the City of Moody at the time any such temporary unit or structure is placed on a parcel of real property within the corporate limits of the City of Moody. Any temporary unit or structure must be licensed by the State of Alabama and approved by the Fire Chief of the City of Moody.

(J) Wholesaler. Any person engaged in the business of selling fireworks to any other person engaged in the business of selling fireworks at retail.

**Section 2.** Unlawful Acts. Except as herein provided, it shall be unlawful for any person to:

(A) have, possess, keep, store, use, manufacture, sell or handle any pyrotechnics or fireworks other than those items classified as Class C Common Fireworks or Consumer Fireworks, by the United States Department of Transportation and/or those items that comply with the construction, chemical composition, and labeling regulations promulgated by the United States Consumer Product Safety Commission and permitted for use by the general public under their regulations;

(B) manufacture, sell, offer for sale, ship, or cause to be shipped into or within the corporate limits of the City of Moody, any item of fireworks without first having applied for and obtained: (i) the applicable permit as manufacturer, distributor, wholesaler or retailer from the Fire Chief of the City of Moody, (ii) a business license from the City of Moody, and/or (iii) the applicable permit as manufacturer, distributor, wholesaler or retailer from the State Fire Marshall’s Office and/or other applicable agency as required by state law;

(C) have, possess, keep, store, use, manufacture, sell or handle any Special Class B Fireworks or “Display Fireworks” unless in compliance with all provisions of Section 10 of this Ordinance;

(D) offer for sale or sell at retail or wholesale any fireworks of any kind without having first applied for and obtained a permit to sell fireworks for each location in the City of Moody from which fireworks sales are permitted under this ordinance;

(E) offer for sale, sell or give to children under the age of sixteen (16) years unless accompanied by an adult or to any intoxicated or irresponsible person;

(F) explode, ignite, discharge or shoot fireworks within one hundred (100) feet of any church, hospital, asylum, public school or within two hundred (200) feet of where fireworks are stored, sold, or offered for sale;

(G) explode, ignite, discharge or shoot fireworks within or throw any fireworks from a motor vehicle while within or to place, throw, shoot or direct any firework into or at any motor vehicle;

(H) place, throw, shoot or direct any firework at or near any person or group of people;

(I) place, throw, shoot or direct any firework at or near any enclosed building, residence or structure;

(J) explode, ignite, discharge or shoot fireworks within the corporate limits of the City of Moody on any day of the year other than during those days when Fireworks may legally be sold pursuant to this Ordinance;

(K) on a day permitted for the discharge of fireworks as set forth above, explode, ignite, discharge or shoot fireworks within the corporate limits of the City of Moody after 10:00 PM of said day other than the 4<sup>th</sup> of July, when they may be discharged until midnight and New Year's Eve/New Year's Day when they may be discharged until 1:00 a.m. on New Year's Day;

(L) allow any debris or fall-out resulting from the explosion, ignition, discharge or shooting of any fireworks to land on or be deposited onto adjoining properties in areas zoned for residential use;

(M) fail to clean-up or remove any debris resulting from the explosion, ignition, discharge or shooting of any fireworks;

(N) explode, ignite, discharge, or shoot any fireworks onto or over real property owned by another person or to cause or allow the explosion, ignition, discharge, or shooting of any fireworks onto or over real property owned by another person; or to

(O) violate any term, provision or condition contained in this ordinance or to violate any term, provision or condition of applicable state law.

**Section 3.** Time of Authorized Sales. Class C Common Fireworks, **Consumer Fireworks**, may be sold within the corporate limits of the City of Moody during the periods beginning on the fifteenth day of June and ending on the sixth day of July and beginning on the fifteenth day of December and ending on the third day of January of each year, pursuant to the provisions of this ordinance.

**Section 4.** Use of Temporary Units or Structures. Any temporary unit or structure used

for or in connection with the sale, storage or keeping of fireworks may only be placed, erected or located on any lot or parcel of real property within the corporate limits of the City of Moody during the periods beginning on the first day of June and must be removed from the lot or parcel of real property no later than the twentieth day of July and beginning on the first day of December and removed no later than the twentieth day of January of each year. After the removal of the temporary unit or structure, the lot or parcel of real property upon which the temporary unit or structure was located must be left in a clean and orderly condition free of any debris.

**Section 5.**     Permit Required. Except as otherwise provided in this ordinance, no person shall offer for sale or sell at retail or wholesale, manufacture, ship, deliver or distribute any fireworks of any kind within the corporate limits of the City of Moody without having first applied for and received: (I) the applicable permit as manufacturer, distributor, wholesaler or retailer from the Fire Chief of the City of Moody, (ii) obtained a business license from the City of Moody, and/or (iii) the applicable permit as manufacturer, distributor, wholesaler or retailer from the State Fire Marshall's Office and/or other applicable agency as required by state law.

**Section 6.**     Application for Permit. The following provisions are applicable to all applications for and to all permits issued for the sale, manufacture, distribution or wholesale of fireworks:

(A)     An application for a permit must be submitted to the City for each calendar year in which any person intends to engage in the business of selling, manufacturing, distributing or wholesaling fireworks within the corporate limits of the City of Moody.

(B)     All applications must be made in writing on forms provided by the City of Moody for a permit or permits required under this ordinance for each location at which fireworks are to be **offered** for sale, sold, stored, kept, manufactured, or distributed, accompanied by a permit from the State Fire Marshall's Office and by a receipt evidencing payment of all applicable business license fees due the City of Moody.

(C)     All applications must include a statement that the applicant agrees to furnish the City of Moody with any additional information which may be required by the City.

(D)     All applications must set forth and identify the proposed location for the sale, storage, keeping, manufacturing or distribution of fireworks. Applicants must contact code enforcement and license departments of the City before any temporary unit or structure is placed on any lot or parcel of real property within the City of Moody and before any permanent building or structure is used for the sale, storage, keeping, manufacturing or distribution of fireworks within the City of Moody.

(E)     All applications must be accompanied by an assurance that if a permit is granted, the applicant shall at the time of issuance of the permit, deliver to the City Clerk an insurance certificate in an amount of not less than one million dollars (\$1,000,000.00) combined single limits designating the City of Moody as an additional insured and issued by a company licensed to issue such insurance policies in the State of Alabama that is acceptable to the City.

(F)     All applications must include payment of the required permit fee of: (I) one

thousand dollars (\$1,000.00) for each retail sales location, (ii) one thousand dollars (\$1,000.00) for a manufacturer, (iii) one thousand dollars (\$1,000.00) for a distributor, and (iv) one thousand dollars (\$1,000.00) for each wholesaler.

(G) All applications must include payment of a security deposit of five hundred dollars (\$500.00) for each retail sales location. The security deposit will be refunded upon written request by the permittee once the permittee is no longer selling fireworks in the City of Moody unless the permittee has failed to comply with the terms and provisions of this ordinance including, but not limited to, the permittee having moved the temporary unit or structure used for the sale of fireworks from the sales location, the permittee having cleaned-up the lot or parcel of real property upon which the temporary unit or structure was located. The security deposit may be held by the City of Moody on a continuous basis as long as permittee intends to do business again in the City of Moody. The security deposit shall be forfeited to the City of Moody if the permittee fails to abide by the rules and regulations set out in this ordinance.

(H) No permit shall be transferred nor shall a person be permitted to operate under a permit issued to any other person or under a permit issued to another location unless such transfer is authorized by the Fire Chief of the City of Moody.

(I) A manufacturer's permit issued pursuant to this article shall also be subject to the rules and regulations promulgated by the Fire Chief of the City of Moody to govern the manufacture of fireworks as in the Fire Chief's judgment may be reasonably necessary or required by the public welfare.

(J) No permit shall be issued to any applicant until the premises, and any unit or structure located thereon, where fireworks are to be sold, offered for sale, stored or kept have been inspected by the Fire Chief of the City of Moody or his designated representative and it shall have been determined that the premises, unit and structure meet applicable safety standards for the storing and keeping of fireworks.

#### **Section 7.**     Operation of Fireworks Stand.

(A) No person under the age of nineteen (19) years shall be issued a permit to sell fireworks in the City of Moody.

(B) All fireworks stands shall be occupied by a person whom is nineteen (19) years old or older while open for business.

(C) All fireworks stands shall be closed by 12:00 midnight each night of business except that fireworks stands may stay open on New Year's Eve/New Year's Day when fireworks stands shall be closed by 1:00 AM.

(D) No fireworks may be exploded, ignited, discharged, or shot on or at any location where fireworks are sold or offered for sale.

(E) Any fireworks that are readily accessible to handling by customers or purchasers must have their fuses protected in such a manner as to protect against accidental ignition of an item

by a spark, cigarette ash or other source of ignition.

(F) It shall be unlawful for any person to place, store, locate or display fireworks in any window where the sun may shine through glass onto the fireworks so displayed or to permit the presence of lighted cigars, cigarettes or pipes within fifty (50) feet of where fireworks are offered for sale, sold, stored or kept.

(G) At all places where fireworks are sold, offered for sale, stored or kept, there must be conspicuously posted signs with the words "FIREWORKS - NO SMOKING" in letters not less than four inches high.

(H) Each person who operates a fireworks stand and/or sells fireworks at retail shall post a sign visible to the public, on premises, at least 1'x1' that states use of Fireworks subject to Moody Ordinance \_\_\_\_\_

(I) All signs related to a fireworks business at a temporary or fixed location may be placed on the business site no sooner than May 15 for the June 15 through July 6 period and no sooner than November 15 for the December 15 through January 3 period. All such signs must be removed not later than July 20 and January 20, respectively.

**Section 8.** Fireworks Structure Requirements. All units or structures used for the sale, storage or keeping of fireworks are subject to the following requirements and those required by the State Fire Marshall's Office or such other applicable agency:

(A) All temporary units or structures must be erected, placed or located in a manner that will reasonably insure the safety of attendants and customers and must comply with the rules and regulations promulgated by the Fire Chief of the City of Moody. Code enforcement and business license departments must approve the placement of and any temporary unit or structure before it is opened for business. A permit as provided for herein is also required before a temporary unit or structure is opened for business.

(B) All permanent structures must comply with the provisions of the applicable building code enforced by the City of Moody and must be approved by code enforcement and business license departments before it is opened for business. A permit as provided for herein is also required before a permanent structure is opened for business.

(C) All units or structures, whether temporary or permanent, must be a minimum of two hundred (200) feet away from any school, public park, or playground.

(D) All units or structures, whether temporary or permanent, must be a minimum of twenty-five (25) feet away from all other buildings and/or dumpsters.

(E) No generators, gasoline or other combustible/flammable materials may be placed or located within one hundred (100) feet of any temporary or permanent unit or structure.

(F) Each unit or structure which allows customers to enter must be at least thirty-two

(32) feet in length and eight (8) feet in width.

(G) Each structure in excess of twenty-four (24) feet in length must have at least two (2) exits.

(H) Any unit or structure at which fireworks are sold, offered for sale, stored or kept must have at least two (2) ten-pound A.B.C. dry chemical fire extinguishers that are properly marked, certified, operational and readily accessible.

(I) No fireworks shall be sold, offered for sale, stored or kept at any location where paints, oils, or varnishes are sold, nor within fifty (50) feet of where resin, turpentine, gasoline or other flammable substances are used, stored, sold or offered for sale.

**Section 9.**     General Requirements.

(A) All persons selling, manufacturing, distributing or wholesaling fireworks within the City of Moody shall comply with applicable federal and state laws governing the sale, storage, shipping and distribution of fireworks as well as with any applicable City of Moody ordinances, rules or regulations.

(B) Prior to opening for business and after closing same, the premises shall be cleared of weeds, litter, debris and combustible material.

(C) A record of all sales by manufacturers, distributors, or wholesalers must be kept showing the names, addresses and contact information (telephone numbers, email addresses, etc.) of all persons to whom fireworks are sold and/or delivered.

(D) The Fire Chief of the City of Moody shall have the responsibility of directing the general enforcement of this ordinance; provided, however, the City of Moody may direct such other officers, officials and employees of the City as it deems necessary and/or appropriate to assist in the enforcement of the provisions of this ordinance and all other laws applicable to fireworks including, but not limited to, state and federal laws. The Fire Chief may call upon any peace officer for assistance in the enforcement of the provisions of this ordinance as well as applicable municipal, state and federal law and the Fire Chief may appoint a designee to assist the Fire Chief in enforcing the provisions of this ordinance as well as other applicable municipal, state and federal laws.

(E) The Fire Chief may issue such additional rules and regulations regarding the sale, offering for sale, manufacture, distribution and wholesaling of fireworks that are reasonably necessary for the safety and well-being of the citizens of the City of Moody that are not in conflict with the provisions of this ordinance or other applicable municipal, state and federal fireworks laws.

(F) No person shall deliver, sell or ship fireworks into or within the corporate limits of the City of Moody unless the consignee has been issued and provides a valid permit issued by the City of Moody evidencing that the consignee is authorized to receive such fireworks. Each holder

of a permit under the provisions of this ordinance shall keep an accurate record of each shipment received. Each holder of a permit as distributor or wholesaler shall keep a record of each sale, delivery or shipment of fireworks. Such records shall be clear, legible and accurate showing the name, address and other contact information of the seller, purchaser and consignee.

(G) All records required to be kept by any permittee shall be subject to examination by the Fire Chief of the City of Moody or his designee(s) who shall have the authority at any reasonable time to require any manufacturer, distributor, wholesaler or retailer to produce records for the current year and the immediately preceding full calendar year.

(H) No permissible article of fireworks or related items shall be sold, offered for sale, possessed, manufactured, distributed, or used within the corporate limits of the City of Moody unless it shall be properly named and labeled to conform to the nomenclature of the provisions of this ordinance and applicable local, state and federal law. Such items must be identified on the shipping cases or containers by imprinting on the article or retail sales container or unit "D.O.T. Class C Common Fireworks", **consumer fireworks**, or other appropriate classification or identification as may be applicable or required by and local, federal or state agency having jurisdiction over fireworks or related items; such imprints to be of sufficient size and so positioned as to be readily recognized by law enforcement authorities and the general public.

(I) The City of Moody may revoke any permit issued pursuant to the provisions of this ordinance upon evidence that the permittee has purchased, received, sold, used, stored, kept, shipped or cause to be shipped any illegal fireworks in violation of the provisions of this ordinance as well as applicable state or federal law. In such event, the Fire Chief will provide written notice to the permittee that the permittee's permit will be revoked. Such notice shall include the basis for the revocation. The permittee may request a hearing with the Fire Chief to present any evidence the permittee may have for why such permit should not be revoked. If a hearing is requested, the Fire Chief or his/her designee shall, if possible, conduct such hearing within twenty-four (24) hours from the date of the issuance of the written notice of revocation and shall conduct such hearing no later than thirty-six (48) hours of the issuance of the written notice unless an extension is agreed to in writing by the permittee. If the permittee disagrees with the decision of the Fire Chief or his designee, the permittee may file a written notice of appeal of such decision with the City Clerk. Upon receipt of such notice of appeal, the City Clerk shall schedule a hearing before the Moody City Council not later than seven (7) days following receipt of the permittee's written notice of appeal. The decision of the City Council shall be final.

(J) The City of Moody, in its discretion, may refuse to issue another permit to the holder of a permit that has been cancelled or revoked for a violation of the provisions of this ordinance, any rules and regulations issued by the Fire Chief of the City of Moody, or other applicable local, federal or state law for a period of up to and including three (3) years.

(K) The Fire Chief and/or any law enforcement officer may seize as contraband any fireworks other than the permitted Class C Common Fireworks, **consumer fireworks**, and related items which are sold, possessed, manufactured, distributed, displayed or used in violation of the provisions of this ordinance and to dispose of same in accordance with applicable law.

**Section 10.** Fireworks Displays. All persons performing fireworks displays must comply with the following:

(A) All persons performing fireworks displays must strictly adhere to and comply with the provisions of applicable state law including, but not limited to, *Code of Alabama* § 8-17-216 (1975).

(B) Provide the City of Moody with a copy of such person's permit issued by the State of Alabama.

(C) The location of the display must be approved by the Fire Chief of the City of Moody. After approval of the location, the Fire Chief, Police Chief and/or other proper authorities must sign the State of Alabama application for a display permit issued by the State Fire Marshall's office.

(D) Pay a firework's display permit fee of five hundred dollars (\$500.00) to the City of Moody for each display. If the applicant has multiple and consecutive displays at the same location only one (1) permit fee will be required. (Example: a civic organization has a display at the same location on New Year's Eve and New Year's Day).

(E) Provide evidence of liability insurance listing the City of Moody as an additional insured issued by a company licensed to issue such insurance policies in the State of Alabama that is acceptable to the City. The liability insurance policy must have a combined single limit of at least one million dollars (\$1,000,000.00).

**Section 11.** Exclusions. Nothing in this ordinance shall be construed as applying to the manufacture, storage, keeping, sale or use of signals necessary for the safe operation of railroads and other classes of public or private transportation, nor as applying to the military or naval forces of the United States, or of the State of Alabama or to peace officers, nor as prohibiting the sale or use of blank cartridges for ceremonial, theatrical or athletic events. The term "fireworks" shall not include, and a permit is not required by this ordinance, for paper toy-pistol caps which contain less than twenty-five one-hundredths grains of explosive compounds, model rockets, emergency signal flares, matches, cone, bottle, tube and other type serpentine pop-off novelties, trick matches, and cigarette loads.

**Section 12.** Penalties. Any person that violates any provisions of this ordinance shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) or imprisoned for not more than one hundred, eighty (180) days, or both.

**Section 13.** Remedies Cumulative.

**Section 14:** All ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

**Section 15:** This ordinance shall become effective as provided by law after passage, approval and publication.

**ORDAINED, ADOPTED and APPROVED** on this 25<sup>th</sup> day of November 2013.

**THE CITY OF MOODY, ALABAMA**

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**Joe Lee, Mayor**

**ATTEST:**

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**Patsy Beard, City Clerk**