

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATIONS**

CC: _____
Amend No. _____

Date prepared: December 22, 2010

Council Meeting Date: January 18, 2011

TO: Carl Swenson, City Manager

THROUGH: Susan J. Daluddung, AICP, Deputy City Manager *Susan J. Daluddung*

FROM: Glen Van Nimwegen, AICP, Planning and Community Development Director *GVN*

SUBJECT: TA 10-0225, Amendments to Zoning Ordinance: Amend Articles 14-2 Definitions, 14-3 General Provisions, 14-9 Non-Residential Districts, and 14-39 Administrative Procedures of the Zoning Ordinance. The amendment will amend definitions, home occupations, permitted land uses, and temporary use permits as related to the sales of Permissible Consumer Fireworks.

RECOMMENDATION:

The Mayor and City Council concur with the Planning and Zoning Commission's recommendation to adopt the attached Ordinance amending Articles 14-2 Definitions, 14-3 General Provisions, 14-9 Non-Residential Districts, and 14-39 Administrative Procedures of the Peoria Zoning Ordinance as it pertains to the sales of Permissible Consumer Fireworks.

PLANNING & ZONING COMMISSION ACTION (December 22, 2010):

On December 22, 2010, the Planning and Zoning Commission voted unanimously in favor of recommending approval of the request to amend Article 14-2, Article 14-3, Article 14-9, and Article 14-39 of the Peoria Zoning Ordinance. No one spoke in favor or against the request.

SUMMARY OF AMENDMENTS:

As a result of the passage of HB 2246 during the 2010 Arizona Legislative Session, the sale and use of certain types of fireworks became legal in Arizona effective December 1, 2010. While the City Council banned the use of fireworks within the City for a period of one-year, the sales of fireworks are still permitted per the approved legislation. The proposed amendment to the zoning ordinance will codify the language contained in HB 2246 while assigning the sales of fireworks to the proper zoning categories. The proposed amendment has been composed to achieve the following objectives:

- Provide a definition of Permissible Consumer Fireworks in Article 14-2 (Definitions).
- Prohibit the sales of Permissible Consumer Fireworks as a Home Occupations in Article 14-3 (General Provisions).
- Delineate the zoning district for permitted sales of Permissible Consumer Fireworks in Article 14-9 (Non-Residential Districts).
- Add outdoor sales of Permissible Consumer Fireworks as a Permitted Temporary Use in Article 14-39 (Administrative Procedures).

The supporting analysis and detail are fully described on the attached staff report to the Planning and Zoning Commission.

ATTACHMENTS:

- December 22, 2010 Planning & Zoning Commission Staff Report
- Draft Ordinance

CONTACT: Robert Gubser, AICP, Senior Planner, 623-773-7405



ZONING ORDINANCE TEXT AMENDMENT

REPORT TO THE PLANNING AND ZONING COMMISSION

CASE NUMBER: TA 10-0225
DATE: December 22, 2010
AGENDA ITEM: 4R

Applicant: City of Peoria

Request: Amend Articles 14-2 Definitions, 14-3 General Provisions, 14-9 Non-Residential Districts, and 14-39 Administrative Procedures of the Zoning Ordinance. The amendment will amend definitions, home occupations, permitted land uses, and temporary use permits as related to the sales of Permissible Consumer Fireworks within the City of Peoria.

Support / Opposition: As of the date of this printing, Staff has received one phone call in opposition to this request. There has been no stated support for this request.

Recommendation: **Approve** as requested.

BACKGROUND

1. As a result of the passage of HB 2246 (Exhibit E) during the 2010 Arizona Legislative Session, the sale and use of certain types of fireworks are legal in Arizona effective December 1, 2010. The language contained within this statute includes provisions that allows cities and towns the flexibility to regulate the *use* of permissible consumer fireworks within their jurisdictional boundaries. Conversely, the statute does not permit the cities and towns the ability to prohibit the *sales* of fireworks.
2. On November 16, 2010, a proposed ordinance to prohibit the use of fireworks was discussed at the City Council Study Session. As part of that discussion, it was communicated to the City Council that a zoning ordinance amendment would be forthcoming to further clarify and outline requirements for retail and temporary sales of permissible consumer fireworks. At the following City Council meeting that evening, the City Council adopted *Ordinance No. 2010-33* banning the use of permissible consumer fireworks within the Peoria corporate limits. The adopted ordinance does not prohibit a public display of fireworks for such events as the 4th of July celebrations at the Peoria Sports Complex, subject to permitting through the Fire Department.

3. As a result of the language contained in the statute that prohibits local jurisdictions from banning the sales of permissible consumer fireworks, the City is proposing the following amendment to the zoning ordinance that will codify the language contained in HB 2246 while assigning the sales of fireworks to the proper zoning categories. The proposed amendment has been composed to achieve the following objectives:
- Provide a definition of Permissible Consumer Fireworks in Article 14-2 (Definitions).
 - Prohibit the sales of Permissible Consumer Fireworks as a Home Occupations in Article 14-3 (General Provisions).
 - Delineate the zoning district for permitted sales of Permissible Consumer Fireworks in Article 14-9 (Non-Residential Districts).
 - Add outdoor sales of Permissible Consumer Fireworks as a Permitted Temporary Use in Article 14-39 (Administrative Procedures).

ANALYSIS AND DISCUSSION

Definitions – Article 14-2

4. The definition of “*Permissible Consumer Fireworks*” has been added and references directly to the language contained within Arizona Revised Statute Title 36-1601.5(a) and 5(b) (Exhibit E).

General Provisions – Article 14-3

5. The sales of *Permissible Consumer Fireworks* has been incorporated into the list of prohibited home occupations. Based on language contained within the NFPA 1124 (Chpt 7.2.2), all sales shall be limited to mercantile (M) occupancies only. A residential home could only be classified with an M occupancy if it was not longer deemed to be a residence. This in turn would exclude the residence from potentially being classified with a home occupation as an accessory use.

Non-Residential Districts – Article 14-9

6. The sales of *Permissible Consumer Fireworks* has been added to the General Retail Land Use category and will be a permitted use in the C-1 through C-5 commercial districts (as shown below) in close alignment with the general retail sales of goods.

Article 14-9-3 Land Use Matrix

LAND USE	O-1	C-1	PC-1	PC-2	C-2	C-3	C-4	C-5	BPI	PI-1	I-1	I-2
General Retail												
Permissible Consumer Fireworks Sales [#]	=	<u>P</u>	=	=	=	=						
General Retail Sales, Indoor	-	P	P	P	P	P	P	P	A	-	-	-

7. As referenced in Title 36-1601 and further defined by the recently adopted City Code amendment (Ord No. 2010-33), there are special requirements that must be adhered to in order to allow for the sales of permissible consumer fireworks. The limitations placed on the sales of fireworks are in direct relation to both City Code and the National Fire Protection Association 1124 (NFPA 1124), which outlines the codes and standards for the manufacture, transportation, storage and retail sales of fireworks. The limitations are as follows:
 - a. Signage will be required to be displayed at the point-of-sale in accordance with City Code Section 9-49. The signs will state that use of fireworks are not allowed in the City of Peoria and permissible consumer fireworks may not be sold to persons under the age of 16.
 - b. Based on NFPA 1124 (Chpt.7.2.2), all sales shall be limited to buildings classified with a mercantile (M) occupancies only. This is the building classification that is generally associated with most retail establishments.
8. It should be noted that a general retailer, such as a local grocer or big-box operations, will be permitted to conduct permissible consumer fireworks sales in conjunction with the business and the sales of the fireworks will be considered to be ancillary to the overall retail operation.

Administrative Procedures – Article 14-39

9. Outdoor sales of consumer permissible fireworks have been added as a Permitted Temporary Use. A temporary use permit application will allow for a review of the vehicular access, parking, dust control measures, site lighting and hours of operation. In addition, any tents/structures and on-site generators will be reviewed by the Fire Department. The time period for TUP's may be up to 60 days in length with renewals dependent on the length of the event. For example, events lasting less than 30 days may be renewed twice annually; events between 30-60 days may be renewed once annually. It is anticipated that the scope of outdoor sales of permissible consumer fireworks will be similar in nature to other seasonal sales such as pumpkin and Christmas tree lots.

Departmental Comments

10. The proposed amendments were reviewed by the City Attorney's Office, the Fire Department, and the Building Safety Division. All comments generated from the subsequent reviews have been incorporated into the amendment.

Public Notice

11. Public notice of this proposed amendment to the Zoning Ordinance was provided in the manner prescribed under Article 14-39. The time, date, and place of the hearing have been published at least once in a newspaper of general circulation

in the City at least fifteen (15) days prior to the hearing. The notice included the text of the proposed amendment and a general description of any regulations proposed to be amended.

Public Comment

12. There has been stated opposition to the request from a fireworks industry representative. It is the industry's interpretation of the state statute that the local jurisdictions may not further regulate fireworks sales beyond the stated language contained in the statute. Based on discussions with our City Attorney during the drafting of this text amendment, the City has the authority to regulate uses, as with any use, to provide for the protection of the health, safety, and welfare of the public. This amendment provides just that by limiting the sales of fireworks to the commercial zoning districts, prohibiting home occupation sales, and requiring temporary use permits for outdoor sales.

FINDINGS AND RECOMMENDATION

13. Based on the following findings:
 - The proposed amendment constitutes an improvement to the Zoning Ordinance by increasing its accuracy, clarifying inferences, and improving the overall usability.
 - The amendment also updates the language of the Zoning Ordinance to maintain relevancy and conform to the requirements of HB 2246.
 - The amendment constitutes a protection of the health, safety and welfare of the public by limiting fireworks sales to appropriately zoned areas.
 - Upon review of the application, the Planning Manager has determined that a Proposition 207 waiver is not required for this application.

It is recommended that the Planning and Zoning Commission take the following action:

Recommend to the Mayor and City Council approval of Case TA 10-0225, a request to amend the Peoria Zoning Ordinance as contained in Exhibits A through D.

ATTACHMENTS:

Exhibit A	Proposed changes to Article 14-2 ('Definitions')
Exhibit B	Proposed changes to Article 14-3 ('General Provisions')
Exhibit C	Proposed changes to Article 14-9 ('Non-Residential Districts')
Exhibit D	Proposed changes to Article 14-39 ('Administrative Procedures')
Exhibit E	House Bill 2246 (for reference)
Exhibit F	Ordinance No. 2010-33 (for reference)

(deletions/additions shown in the Articles as ~~strike~~/underscore)

Prepared by: Robert Gubser, AICP
Senior Planner

ARTICLE 14-2

DEFINITIONS

CONTENTS

- 14-2-1 INTENT
- 14-2-2 DEFINITIONS

14-2-1 INTENT (Ord. No 02-68)

This Article is intended to clarify the meaning of any term used within the regulations and development standards for which the common definition may not serve the purpose of the regulations, or which is not a commonly used term outside of the context of this Zoning Ordinance.

14-2-2 DEFINITIONS

- D. For the purpose of this Zoning Ordinance, certain words are hereby defined as follows (Ord. No. 02-68):

Pawnshop means any establishment in that is carried on the business of pawn brokerage, or the business of loaning money, receiving as security for payment thereof pawns or pledges of property, or the business of purchasing personal property and reselling or agreeing to resell, trade or exchange such articles to vendors, their personal representatives, or their assignees at a price agreed upon at or before the time of such purchase whether such business be the principal or sole business so carried on or be merely incidental to, or in connection with, or a branch or a department of some other business. (Ord. No. 00-28)

Permissible Consumer Fireworks means fireworks devices as defined by Arizona Revised Statutes Section 36-1601.5(a) and (b). (Ord. No. 11-##)

Planned Shopping Center means a business development of two acres or more not divided by a street and characterized by an organized and concentrated grouping of retail and service outlets served by a common circulation and parking system.

ARTICLE 14-3 GENERAL PROVISIONS

(Ord. No. 02-85)

CONTENTS

14-3-1	INTENT
14-3-2	GENERAL USE PROVISIONS
14-3-3	ACCESSORY BUILDINGS AND USES
14-3-4	SCREENING
14-3-5	WALLS AND FENCES
14-3-6	PERFORMANCE STANDARDS
14-3-7	SATELLITE DISH ANTENNAE
14-3-8	MISCELLANEOUS PROVISIONS
14-3-9	HOME OCCUPATIONS
14-3-10	MANUFACTURED HOUSING
14-3-11	MOBILE HOMES, TRAVEL TRAILERS, HOUSE TRAILERS, AND RECREATIONAL VEHICLES
14-3-12	GROUP HOMES, DAY CARE GROUP HOMES, GROUP CARE FACILITIES AND COMMUNITY RESIDENTIAL SETTING FACILITIES
14-3-13	WIRELESS COMMUNICATION FACILITIES

14-3-9 HOME OCCUPATIONS

A. General

A Home Occupation is an accessory use of the primary dwelling unit permitted either by-right or by conditional use permit. Home occupations are generally conducted and located such that the average neighbor, under normal circumstances, would not be aware of their existence. The home occupation is generally carried on by a member of a family, residing on the premises, and is clearly incidental to the use of the structure for dwelling purposes and does not change the exterior character of the premises in any way.

B. Standards

The standards set forth in this Section are intended to ensure compatibility of the Home Occupation use with the residential character of the neighborhood. The proposed use shall be clearly accessory or incidental to the residential use of the main building to qualify as a home occupation use under this Section.

1. *Home Occupation as Permitted Accessory Use.* A home occupation where permitted, except for Day Care Group Homes, shall be considered a permitted accessory use when it complies with the following regulations:

- a. Changes or alterations to the exterior of the building(s) that are inconsistent with the residential character of the building(s) or with the character of the surrounding area shall not be allowed. Such changes or alterations include, but are not limited to, construction of parking areas or garages at a scale exceeding the scale of such structures in the surrounding area.
 - b. Signs advertising a home occupation shall be strictly prohibited.
 - c. Exterior display or storage of materials or equipment, or any other exterior indication of the home occupation, shall be prohibited.
 - d. Emissions of noise, light, dust, gas, vibration, odor, smoke, or any other noxious matter emanating from the home occupation at a scale greater than that normally associated with the residential use shall be prohibited.
 - e. The home occupation shall not involve more than one (1) business caller or visitor at a time and not more than two (2) visitors per hour, nor commercial deliveries or outside services beyond those normal and incidental to the residential uses in the district.
 - f. The home occupation shall be conducted by a resident or residents of the dwelling unit only. No outside employees shall be employed at the site and not more than one (1) employee may report to the site for off-site employment.
 - g. No unusual load shall be placed on power, sewer, water, or other utilities as a result of the home occupation use.
 - h. External activity resulting from the home occupation shall be limited to the hours between 7:00 A.M. and 10:00 P.M.
 - i. Storage of commercial vehicles used in conjunction with the home occupation is not permitted on the home occupation site. Up to two (2) commercial vehicles may be parked on the home occupation site if these commercial vehicles are used for both business and personal needs. Commercial vehicles must be parked in accordance with Article 14-23, "Parking," of this Ordinance.
 - j. All home occupations shall be subject to the standards contained herein and shall be approved by the City prior to the initiation of any business activity.
 - k. A valid City sales tax and/or business license shall be obtained for the home occupation use.
2. *Home Occupation as Conditional Use.* A Conditional Use Permit for a home occupation shall be required in cases where any of the following conditions may result
- a. The home occupation use requires or uses storage or space accessory to the principal residence, will utilize or require outdoor or open storage of materials

or will require or result in the construction or installation of additional parking on-site.

- b. The home occupation use will produce or make noticeable the appearance of a non-residential use or will cause the emission of noise, light, dust, gas, vibration, odor, smoke, or other noxious matter from the premise.
 - c. The home occupation will have more than one (1) business caller or visitor at any one time, more than two (2) visitors per hour, or more than one (1) commercial delivery per business day.
 - d. Pedestrian or vehicular traffic will increase beyond what is considered normal and incidental to the zoning district in which the use is located.
 - e. An increased load will be placed on any of the power, water, sewer or other utilities.
 - f. The home occupation use will require the services of a single employee or assistant who is not a resident of the household.
3. *Prohibited Home Occupations* Home occupations expressly prohibited shall include, but not be limited to, the following:
- a. Personal service offices such as physicians, dentists, massage therapists, and barber and beauty shops
 - b. Animal services such as commercial stables, dog grooming, veterinary offices, hospitals, and kennels
 - c. Permanent real estate offices
 - d. Restaurants
 - e. Vehicle services such as repairing, painting, storage, washing, or sales, where vehicle is defined as any motorized or non-motorized means of transportation
 - f. Sales of Permissible Consumer Fireworks
4. *Violations.* The City may deem any violation of the above conditions as just cause for the termination of the home occupation. In such cases, the City may issue a Cease and Desist Order, and, if the violation continues, file a criminal complaint in City Court.

ARTICLE 14-9 NON-RESIDENTIAL DISTRICTS

(Ord. No. 02-68)

CONTENTS

14-9-1 INTENT

14-9-2 ZONING DISTRICTS

Office Commercial O-1

Convenience Commercial C-1

Planned Neighborhood Commercial PC-1

Planned Community Commercial PC-2

Intermediate Commercial C-2

Central Commercial C-3

General Commercial C-4

Regional Commercial C-5

Business Park Industrial BPI

Planned Light Industrial PI-1

Light Industrial I-1

Heavy Industrial I-2

14-9-3 LAND USE MATRIX

14-9-4 GENERAL REGULATIONS FOR O-1, C-1, PC-1, PC-2, C-2, AND C-3

14-9-5 LIMITATIONS ON USES

14-9-6 PROPERTY DEVELOPMENT STANDARDS

14-9-3 LAND USE MATRIX

The following land use matrix (Table 14-9-3) indicates uses which are permitted outright, conditionally permitted, or prohibited in specific non-residential zoning districts in the City of Peoria. The land use matrix is intended to serve as a guide for the convenience of the user of this zoning ordinance. Where the text of this zoning ordinance differs from the land use matrix, the text shall prevail. In the event of a specific use not being identified on the matrix, the Community Development Director or designee(s) shall determine the closest associated use based on the provisions of this ordinance. The City will permit any accessory use customarily incidental to a permitted principal use in the same zoning district.

Table 14-9-3 Land Use Matrix

GENERAL RETAIL												
Antiques, Crafts, and Collectibles Sales	-	-	P	P	P	P	P	P	-	-	-	-
Bait and Tackle Shops	-	-	P	P	P	P	P	-	-	-	-	-
Book, Stationery & Greeting Card Store	P	P	P	P	P	P	P	P	-	-	-	-

ARTICLE 14-9

NON-RESIDENTIAL DISTRICTS

LAND USE	O-1	C-1	PC-1	PC-2	C-2	C-3	C-4	C-5	BPI	PI-1	I-1	I-2
GENERAL RETAIL - CONTINUED												
Candy and Ice Cream Store	P	P	P	P	P	P	P	P	-	-	-	-
Carpet and Floor Covering Store	-	-	-	-	P	P	P	P	-	-	-	-
Copy Center	P	P	P	P	P	P	P	P	P	P	P	P
Donation Center* (Ord. No. 03-171)	-	-	-	-	C	-	C	C	P	P	P	P
Florist	P	P	P	P	P	P	P	P	-	-	-	-
Gift, Novelty and Souvenir Shop	P	P	P	P	P	P	P	P	-	-	-	-
Hobby, Stamp and Coin Shop	P	P	P	P	P	P	P	P	-	-	-	-
Newsstand (Ord. No. 05-58A)	P	P	P	P	P	P	P	P	P	A	A	A
Pawn Shop*	-	-	-	-	C	-	C	C				
Permissible Consumer Fireworks Sales*	-	P	P	P	P	P	P	P	-	-	-	-
Pet Shop* (Ord. No. 05-51)	-	-	P	P	P	P	P	P	-	-	-	-
Plumbing, Heating & Air-conditioning Sales and Service	-	-	-	-	-	-	P	-	-	P	P	P
Retail Decorative Rock Sales	-	-	-	-	C	-	P	-	-	P	P	P
Retail Sales of New & Used Merchandise, Indoor, excluding Sale of Automobile, Boats RVs and Motorcycles (Ord. No. 05-36)*	-	P	P	P	P	P	P	P	A*	-	-	-
Retail Liquor Store*	-	-	-	-	C	-	C	C	-	-	-	-
Small Merchandise Vendor Carts* (Ord. No. 05-36)	A	A	A	A	A	A	A	A	A	A	A	A
Video Rental Store	P	P	P	P	P	P	P	P	-	-	-	-
Water and Ice Store	-	P	P	P	P	P	P	P	-	-	-	-

- P = Permitted Use
- C = Permitted Conditional Use. Conditional Use Permit required. See Article 14-39-10.
- A = Accessory use
- * = Any uses located within 200 feet of a residential district shall be subject to a Conditional Use Permit (Ord. No. 05-58A)
- # = Subject to special limitations (see the following section 14-9-5)
- = Not Permitted

14-9-5 LIMITATIONS ON USES

E. General Retail (Ord. No. 03-171 and 11-##)

1. Donation Centers shall be subject to the following conditions:
 - a. Donation drop off shall be limited to business hours only.
 - b. Drop off location shall be at the rear of the building and shall be fully screened from view.
 - c. No drop off items shall be stored outside the screened area.
2. Pet Shops, including commonly associated accessory uses such as grooming, veterinary care, training, pet day camp services and the boarding of household pets, shall be subject to the following conditions: (Ord. No. 06-16)

- a. Veterinarian and grooming services shall be restricted to the care and treatment of small animals during regular business hours.
 - b. The commercial breeding of animals shall be prohibited. (Ord. No. 06-16)
 - c. All activities shall be completely contained within enclosed buildings; the building shall be designed and constructed to achieve a Sound Transmission Control Value of 50 or greater.
 - d. All refuse shall be stored within a completely enclosed building.
 - e. Outdoor runs or exercise pens shall be prohibited.
 - f. Overnight boarding services for household pets may be operated as an accessory use, provided no more than twenty-five percent (25%) of the total square footage of the establishment may be used as sleeping quarters for the boarded pets; and the area shall be constructed, maintained or operated so that the smell of the boarded animals does not create a nuisance off-site. (Ord. No. 06-16)
3. Indoor retail sales of new and used merchandise excluding sale of automobiles, boats, RVs, and motorcycles as an Accessory Use within the BPI Zoning District shall be no greater than 20% of the overall gross floor area (G.F.A.) of the establishment and shall not exceed 1,000 square feet in area.
4. Permissible Consumer Fireworks Sales shall be subject to the following conditions:
- a. Signage shall be displayed at the point-of-sale in accordance with Peoria City Code Section 9-49.
 - b. Sales may only occur in buildings classified with a Mercantile building occupancy code.

ARTICLE 14-39

ADMINISTRATIVE PROCEDURES

(Ord. No. 02-80)

CONTENTS

14-39-11 TEMPORARY USE PERMITS

14-39-11 TEMPORARY USE PERMITS

A. *Intent.*

1. In addition to regulating uses which are permanent in nature, it is the intent of this Ordinance to provide for certain temporary uses for limited periods of time. Allowing temporary uses, as herein provided for, is not intended to permit uses otherwise prohibited by the Zoning Ordinance or to allow permanent uses to be established.
2. The purpose of this Section is to establish the procedures and outline the review criteria to be used by the Community Development Department when considering an application for a Temporary Use Permit. All Temporary Uses shall be conducted so as not to be detrimental to the surrounding properties and shall be subject to the standards and regulations contained herein. The Community Development Department shall not grant a Temporary Use Permit until adequate assurances have been provided ensuring compliance with the provisions of this Ordinance and all other applicable City codes.

B. *General.* Every Temporary use shall require a Temporary Use Permit as herein stipulated.

C. *Permitted Temporary Uses.* The City may grant a Temporary Use Permit for any of the following uses.

1. Carnivals, circuses, or similar special events.
2. Christmas tree sales, pumpkin sales, or similar holiday-related events.
3. Outdoor sales of consumer permissible fireworks. (Ord. No. 11-###)
34. Temporary municipal uses. (Ord. No. 05-22)
45. Off-site retail sales of souvenirs, gifts, and food incidental to a sporting or cultural event.
56. Tent revival or fellowship meetings.

- | 67. Craft shows, home and garden shows, festivals, or similar events.
- | 78. Outdoor concerts, paid admission events, and events involving the distribution of alcoholic beverages.
- | 89. Such other uses as the City may deem to be within the intent and purpose of this Section.

House Engrossed

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

HOUSE BILL 2246

AN ACT

AMENDING SECTIONS 36-1601, 36-1605 AND 36-1606, ARIZONA REVISED STATUTES;
AMENDING TITLE 36, CHAPTER 13, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING
SECTIONS 36-1609 AND 36-1610; AMENDING SECTION 37-623.02, ARIZONA REVISED
STATUTES; RELATING TO FIREWORKS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 36-1601, Arizona Revised Statutes, is amended to
3 read:

4 36-1601. Definitions

5 In this article, unless the context otherwise requires:

6 1. "CONSUMER FIREWORK" MEANS SMALL FIREWORK DEVICES THAT CONTAIN
7 RESTRICTED AMOUNTS OF PYROTECHNIC COMPOSITION DESIGNED PRIMARILY TO PRODUCE
8 VISIBLE OR AUDIBLE EFFECTS BY COMBUSTION AND THAT COMPLY WITH THE
9 CONSTRUCTION, CHEMICAL COMPOSITION AND LABELING REGULATIONS PRESCRIBED IN
10 49 CODE OF FEDERAL REGULATIONS PART 172 AND 173, REGULATIONS OF THE UNITED
11 STATES CONSUMER PRODUCT SAFETY COMMISSION AS PRESCRIBED IN 16 CODE OF FEDERAL
12 REGULATIONS PARTS 1500 AND 1507 AND THE AMERICAN PYROTECHNICS ASSOCIATION
13 STANDARD 87-1, STANDARD FOR CONSTRUCTION AND APPROVAL FOR TRANSPORTATION OF
14 FIREWORKS, NOVELTIES AND THEATRICAL PYROTECHNICS, DECEMBER 1, 2001 VERSION.

15 2. "DISPLAY FIREWORK" MEANS LARGE FIREWORK DEVICES THAT ARE EXPLOSIVE
16 MATERIALS INTENDED FOR USE IN FIREWORKS DISPLAYS AND DESIGNED TO PRODUCE
17 VISIBLE OR AUDIBLE EFFECTS BY COMBUSTION, DEFLAGRATION OR DETONATION AS
18 PRESCRIBED BY 49 CODE OF FEDERAL REGULATIONS PART 172, REGULATIONS OF THE
19 UNITED STATES CONSUMER PRODUCT SAFETY COMMISSION AS PRESCRIBED IN 16 CODE OF
20 FEDERAL REGULATIONS PARTS 1500 AND 1507 AND THE AMERICAN PYROTECHNICS
21 ASSOCIATION STANDARD 87-1, STANDARD FOR CONSTRUCTION AND APPROVAL FOR
22 TRANSPORTATION OF FIREWORKS, NOVELTIES AND THEATRICAL PYROTECHNICS, DECEMBER
23 1, 2001 VERSION.

24 ~~1.~~ 3. "Fireworks":

25 (a) Means any combustible or explosive composition, substance or
26 combination of substances, or any article prepared for the purpose of
27 producing a visible or audible effect by combustion, explosion, deflagration
28 or detonation, ~~and toy cannons in which explosives are used, the type of~~
29 ~~balloon which requires fire underneath to propel it, firecrackers, torpedoes,~~
30 ~~skyrockets, roman candles, daygo bombs, sparklers or other fireworks of like~~
31 ~~construction, fireworks containing any explosive or combustible compound, and~~
32 ~~any tablet or other device containing an explosive substance THAT IS A~~
33 CONSUMER FIREWORK OR DISPLAY FIREWORK.

34 (b) Does not include:

35 (i) Toy pistols, toy canes, toy guns or other devices in which paper
36 caps containing not more than twenty-five hundredths grains of explosive
37 compound are used if constructed so that the hand cannot come in contact with
38 the cap when in place for the explosion.

39 (ii) Toy pistol paper caps that contain less than twenty-hundredths
40 grains of explosive mixture, or fixed ammunition or primers therefor.

41 (iii) Federally deregulated novelty items THAT ARE known as snappers,
42 snap caps, party poppers, ~~or~~ glow worms, SNAKES, TOY SMOKE DEVICES AND
43 SPARKLERS ~~that contain less than twenty five hundredths grains of explosive~~
44 ~~compound.~~

1 ~~2-~~ 4. "Governing body" means THE board of supervisors of a county as
2 to the area within the county but without the corporate limits of an
3 incorporated city or town;— and means THE governing body of an incorporated
4 city or town as to the area within its corporate limits.

5 5. "PERMISSIBLE CONSUMER FIREWORKS":

6 (a) MEANS THE FOLLOWING TYPES OF CONSUMER FIREWORKS AS DEFINED BY THE
7 AMERICAN PYROTECHNICS ASSOCIATION STANDARD 87-1, STANDARD FOR CONSTRUCTION
8 AND APPROVAL FOR TRANSPORTATION OF FIREWORKS, NOVELTIES AND THEATRICAL
9 PYROTECHNICS, DECEMBER 1, 2001 VERSION:

10 (i) GROUND AND HAND-HELD SPARKLING DEVICES.

11 (ii) CYLINDRICAL FOUNTAINS.

12 (iii) CONE FOUNTAINS.

13 (iv) ILLUMINATING TORCHES.

14 (v) WHEELS.

15 (vi) GROUND SPINNERS.

16 (vii) FLITTER SPARKLERS.

17 (viii) TOY SMOKE DEVICES.

18 (ix) WIRE SPARKLERS OR DIPPED STICKS.

19 (x) MULTIPLE TUBE FIREWORKS DEVICES AND PYROTECHNIC ARTICLES.

20 (b) DOES NOT INCLUDE ANYTHING THAT IS DESIGNED OR INTENDED TO RISE
21 INTO THE AIR AND EXPLODE OR TO DETONATE IN THE AIR OR TO FLY ABOVE THE
22 GROUND, INCLUDING, FOR EXAMPLE, FIREWORK ITEMS COMMONLY KNOWN AS BOTTLE
23 ROCKETS, SKY ROCKETS, MISSILE-TYPE ROCKETS, HELICOPTERS, TORPEDOES, ROMAN
24 CANDLES AND JUMPING JACKS.

25 ~~3-~~ 6. "Person" includes AN individual, partnership, firm or
26 corporation.

27 Sec. 2. Section 36-1605, Arizona Revised Statutes, is amended to read:

28 36-1605. Permitted uses

29 This article ~~shall not be construed to~~ DOES NOT prohibit:

30 1. The sale at wholesale by a resident wholesaler, dealer or jobber of
31 fireworks ~~which~~ THAT are not prohibited by this article.

32 2. The sale of fireworks ~~which~~ THAT are to be and are shipped directly
33 out of the state.

34 3. The use of fireworks by railroads or other transportation agencies
35 for signal purposes or illumination.

36 4. The sale or use of explosives for blasting or other legitimate
37 industrial purposes.

38 5. The use of fireworks or explosives, or both, by farmers, ranchers
39 and their employees, and by state and federal employees who manage wildlife
40 resources, to rally, drive or otherwise disperse concentrations of wildlife
41 for the purpose of protecting property or wildlife.

42 6. THE SALE OF PERMISSIBLE CONSUMER FIREWORKS BY A RETAIL
43 ESTABLISHMENT IF THE RETAIL ESTABLISHMENT COMPLIES WITH THE RULES ADOPTED
44 PURSUANT TO SECTION 36-1609.

1 7. THE USE OF PERMISSIBLE CONSUMER FIREWORKS BY THE GENERAL PUBLIC,
2 UNLESS THE USE IS PROHIBITED BY A GOVERNING BODY OF AN INCORPORATED CITY OR
3 TOWN.

4 Sec. 3. Section 36-1606, Arizona Revised Statutes, is amended to read:
5 36-1606. Consumer fireworks regulation; state preemption;
6 further regulation of fireworks by local
7 jurisdiction

8 THE SALE AND USE OF PERMISSIBLE CONSUMER FIREWORKS ARE OF STATEWIDE
9 CONCERN. THE REGULATION OF PERMISSIBLE CONSUMER FIREWORKS PURSUANT TO THIS
10 ARTICLE AND THEIR USE IS NOT SUBJECT TO FURTHER REGULATION BY A GOVERNING
11 BODY. EXCEPT THAT AN INCORPORATED CITY OR TOWN MAY REGULATE THE USE OF
12 PERMISSIBLE CONSUMER FIREWORKS WITHIN ITS CORPORATE LIMITS AND A COUNTY MAY
13 REGULATE THE USE OF PERMISSIBLE CONSUMER FIREWORKS WITHIN THE UNINCORPORATED
14 AREAS OF THE COUNTY DURING TIMES WHEN THERE IS A REASONABLE RISK OF WILDFIRES
15 IN THE IMMEDIATE COUNTY. This article ~~shall not be construed to~~ DOES NOT
16 prohibit the imposition by ~~municipal~~ ordinance of further regulations and
17 prohibitions ~~upon~~ ON the sale, use and possession of fireworks ~~within an~~
18 ~~incorporated city or town~~ OTHER THAN PERMISSIBLE CONSUMER FIREWORKS BY A
19 GOVERNING BODY. ~~No such city or town~~ A GOVERNING BODY shall NOT permit or
20 authorize the sale, use or possession of any fireworks in violation of this
21 article.

22 Sec. 4. Title 36, chapter 13, article 1, Arizona Revised Statutes, is
23 amended by adding sections 36-1609 and 36-1610, to read:

24 36-1609. State fire marshal; adoption of code; sale of
25 permissible consumer fireworks

26 A. THE STATE FIRE MARSHAL SHALL ADOPT RULES PURSUANT TO TITLE 41,
27 CHAPTER 6 TO CARRY OUT THIS ARTICLE, INCLUDING A RULE THAT ADOPTS THE
28 NATIONAL FIRE PROTECTION ASSOCIATION CODE FOR THE MANUFACTURE,
29 TRANSPORTATION, STORAGE AND RETAIL SALES OF FIREWORKS AND PYROTECHNIC
30 ARTICLES, 2006 EDITION. A PERSON WHO SELLS PERMISSIBLE CONSUMER FIREWORKS TO
31 THE PUBLIC SHALL COMPLY WITH THOSE RULES RELATING TO THE STORAGE OF CONSUMER
32 FIREWORKS AND RELATING TO THE RETAIL SALES OF CONSUMER FIREWORKS BEFORE
33 SELLING PERMISSIBLE CONSUMER FIREWORKS TO THE PUBLIC.

34 B. A PERSON SHALL NOT SELL OR PERMIT OR AUTHORIZE THE SALE OF
35 PERMISSIBLE CONSUMER FIREWORKS TO A PERSON WHO IS UNDER SIXTEEN YEARS OF AGE.

36 36-1610. Prohibited use of fireworks on state land; civil
37 penalty

38 A. THE STATE FIRE MARSHAL MAY IMPOSE A CIVIL PENALTY OF ONE THOUSAND
39 DOLLARS FOR EACH INCIDENT OF PROHIBITED USE OF FIREWORKS ON STATE LAND IN
40 VIOLATION OF THIS ARTICLE.

41 B. THE STATE FIRE MARSHAL SHALL DEPOSIT, PURSUANT TO SECTIONS 35-146
42 AND 35-147, CIVIL PENALTIES COLLECTED PURSUANT TO THIS SECTION IN THE FIRE
43 SUPPRESSION REVOLVING FUND ESTABLISHED BY SECTION 37-623.02.

1 Sec. 5. Section 37-623.02, Arizona Revised Statutes, is amended to
2 read:

3 37-623.02. Emergencies; prohibiting fireworks; liabilities and
4 expenses; fire suppression revolving fund

5 A. On request of the state forester, the governor may authorize the
6 state forester to incur liabilities for suppressing wildland fires and
7 responding to other unplanned all risk activities from unrestricted monies in
8 the state general fund whether or not the legislature is in session.

9 B. The state forester has the authority to prohibit the use of
10 fireworks during times of high fire potential in the unincorporated areas of
11 the state.

12 C. The state forester or the state forester's designee shall review
13 all liabilities incurred and expenditures made under this section and shall
14 report the expenditures to the department of administration for audit
15 according to department of administration rules. The state forester shall
16 transmit a copy of the report to the state emergency council.

17 D. Liabilities incurred under this section are subject to the
18 following limitations:

19 1. Wildland fire suppression or other unplanned all risk emergency
20 liabilities shall not exceed three million dollars of state general fund
21 monies pursuant to subsection A of this section in a fiscal year for costs
22 associated with suppressing wildland fires, supporting other unplanned all
23 risk activities such as fire, flood, earthquake, wind and hazardous material
24 responses and preparing for periods of extreme fire danger and pre-position
25 equipment and other fire suppression resources to provide for enhanced
26 initial attack on wildland fires. The state forester shall not incur
27 nonreimbursable liabilities for support of nonfire all risk activities. The
28 governor shall determine when periods of extreme fire danger exist and must
29 approve any expenditure for pre-positioning activities.

30 2. If the funding authorization in paragraph 1 of this subsection is
31 exhausted, or if the nonreimbursable liabilities incurred exceed the cash
32 balance of the fire suppression revolving fund, the state forester shall not
33 incur additional liabilities without the consent of a majority of the state
34 emergency council as authorized by section 35-192.

35 E. The state forester shall process and pay claims for reimbursement
36 for wildland fire suppression services as follows:

37 1. Except as provided by paragraph 2 of this subsection, within thirty
38 days after receiving a complete and correct claim for wildland fire
39 suppression services, the state forester shall pay the claim from available
40 monies that have not been committed to the payment of other wildfire
41 expenses.

42 2. Within thirty days after receiving a complete and correct claim for
43 wildland fire suppression services on federal lands, the state forester shall
44 complete the processing of the claim and forward the claim to the appropriate
45 federal agency.

1 3. For any valid claim other than for federal reimbursement, if there
2 is insufficient funding in the fire suppression revolving fund, the holder of
3 the unpaid claim shall be issued a certificate pursuant to section 35-189.

4 F. No later than December 31 of each year the state forester shall
5 submit a report to the joint legislative budget committee and the governor
6 detailing the specific uses of all monies authorized to be expended from the
7 fire suppression revolving fund and any additional monies authorized by the
8 governor to prepare for periods of extreme fire danger and pre-position
9 equipment and other fire suppression resources to provide for enhanced
10 initial attack on wildland fires.

11 G. Monies received for suppressing wildland fires, pre-positioning
12 equipment and firefighting resources and other unplanned all risk activities
13 may be used for the purposes of section 37-623 and this section.

14 H. The state forester shall adopt rules for administering the wildland
15 fire suppression monies authorized under this section, subject to approval of
16 the governor.

17 I. The state forester may require reimbursement from cities and other
18 political subdivisions of this state and state and federal agencies for costs
19 incurred in the suppression of wildland fires, pre-suppression or unplanned
20 all risk activities. Reimbursement shall be based on the terms and
21 conditions in cooperative agreements, land ownership or negligence. The
22 state forester may require reimbursement from individuals or businesses only
23 for costs incurred in the suppression of wildland fires or unplanned all risk
24 activities caused by their negligence or criminal acts.

25 J. ~~A-~~ THE fire suppression revolving fund is established ~~for deposit~~
26 ~~of~~ CONSISTING OF CIVIL PENALTIES COLLECTED PURSUANT TO SECTION 36-1610 AND
27 monies received by the state forester for wildland fire suppression and
28 pre-positioning equipment and resources and for payment for activities
29 related to combating wildland fires and supporting other unplanned all risk
30 activities such as fire, flood, earthquake, wind and hazardous material
31 responses. The state forester shall not incur nonreimbursable liabilities
32 for support of nonfire all risk activities. The state forester shall
33 administer the fund, and all monies received for these activities shall be
34 deposited, pursuant to sections 35-146 and 35-147, in the fund. Monies in
35 the fire suppression revolving fund are continuously appropriated to the
36 state forester, except that if the unobligated balance of the fund exceeds
37 two million dollars at the end of any calendar year, the excess shall be
38 transferred to the state general fund. Monies in the fire suppression
39 revolving fund are otherwise exempt from the provisions of section 35-190
40 relating to lapsing of appropriations.

ORDINANCE NO. 2010- 33

AN ORDINANCE OF THE CITY OF PEORIA MAYOR AND COUNCIL OF THE CITY OF PEORIA, ARIZONA AMENDING CHAPTER 9 OF THE PEORIA CITY CODE (1992) BY ENACTING SECTION 9-46 WHICH WAS PREVIOUSLY RESERVED AND NOW PERTAINS TO FIREWORKS; DEFINITIONS; ENACTING SECTION 9-47 WHICH WAS PREVIOUSLY RESERVED AND NOW PERTAINS TO FIREWORKS; PROHIBITED; EXCEPTIONS; ENACTING SECTION 9-48 WHICH WAS PREVIOUSLY RESERVED AND NOW PERTAINS TO FIREWORKS; SALE OF FIREWORKS; VIOLATIONS; ENACTING SECTION 9-49 WHICH WAS PREVIOUSLY RESERVED AND NOW PERTAINS TO FIREWORKS; POSTING OF SIGNS BY PERSONS ENGAGED IN THE SALE OF FIREWORKS; CIVIL PENALTY: ENACTING SECTION 9-50 WHICH WAS PREVIOUSLY RESERVED AND NOW PERTAINS TO FIREWORKS; AUTHORITY TO ENFORCE VIOLATIONS OF THIS ARTICLE; MEANS OF ENFORCEMENT; ENACTING SECTION 9-51 WHICH WAS PREVIOUSLY RESERVED AND NOW PERTAINS TO FIREWORKS; LIABILITY FOR EMERGENCY RESPONSES RELATED TO USE OF FIREWORKS; DEFINITIONS; ENACTING SECTION 9-52 WHICH WAS PREVIOUSLY RESERVED AND NOW PERTAINS TO FIREWORKS; PENALTY AND ESTABLISHING SECTIONS 9-53, 9-54, AND 9-55 AS RESERVED; PROVIDING FOR AN EXPIRATION DATE; AND PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Mayor and Council deem it necessary to adopt certain regulations to protect, enhance and promote the health, safety and welfare of the City of Peoria and its residents, and

WHEREAS, the Mayor and Council desire to prevent fire hazards which threaten the safety of individuals and private and public improvements, including residential, commercial and industrial dwellings, and

WHEREAS, due to the dry/desert like conditions, risk of fires, and terrain of the community there is a danger of fire with the use of consumer fireworks in the community that can cause significant harm to the community and its residents.

THEREFORE, It is ordained by the Mayor and Council of the City of Peoria as follows:

SECTION 1. Chapter 9 of the Peoria City Code (1992) is amended by enacting Section 9-46 which was previously reserved and now pertains to Fireworks; definitions and providing that Section 9-46 shall read as follows:

Sec. 9-46. Fireworks; definitions.

(a) The following words, terms and phrases, when used in this article, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) *Consumer fireworks* means those fireworks defined by Arizona Revised Statutes Section 36-1601.

(2) *Display fireworks* means those fireworks defined by Arizona Revised Statutes Section 36-1601.

(3) *Fireworks* means any combustible or explosive composition, substance or combination of substances, or any article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, that is a consumer firework, display firework or permissible consumer firework as defined by Arizona Revised Statutes Section 36-1601.

(4) *Novelty item* means federally deregulated novelty items that are known as snappers, snap caps, party poppers, glow worms, snakes, toy smoke devices, sparklers and certain toys as defined in Arizona Revised Statutes Section 36-1601.

(5) *Permissible consumer fireworks* means those fireworks as defined by Arizona Revised Statutes Section 36-1601 that may be sold within the City of Peoria even where the use of those items has been prohibited.

(6) *Supervised public display* means a monitored performance of display fireworks open to the public and authorized by permit by the Fire Marshall and/or Fire Chief or their designee.

SECTION 2. Chapter 9 of the Peoria City Code (1992) is amended by enacting Section 9-47 which was previously reserved and now pertains to Fireworks; prohibited; exceptions and providing that Section 9-47 shall read as follows:

Sec. 9-47. Fireworks; prohibited; exceptions.

(a) The use, discharge or ignition of fireworks within the City of Peoria is prohibited. The use of all consumer fireworks is banned within the incorporated City of Peoria.

(b) Permits may be granted by the Fire Marshal and/or Fire Chief or their designee for conducting a properly supervised public display of fireworks. Every such public display of fireworks shall be of such character and so located, discharged or fired, only after proper inspection and in a manner that does not endanger persons, animals or property. A permit shall not be issued and may be revoked, during time periods of High Fire Danger warnings. The Fire Marshal and/or Fire Chief have authority to impose conditions on any permits granted.

(c) Failure to comply with any permit requirements issued by the Fire Marshal and/or Fire Chief shall result in the immediate termination of the permit and imposition of a civil penalty of not less than five hundred dollars (\$500.00) imposed by the Fire Chief. A revocation of the permit or imposition of a civil penalty may be appealed in the manner provided for license appeals pursuant to Chapter 11 of this code.

SECTION 3. Chapter 9 of the Peoria City Code (1992) is amended by enacting Section 9-48 which was previously reserved and now pertains to Fireworks; sale of fireworks and providing that Section 9-48 shall read as follows:

Sec. 9-48. Fireworks; sale of fireworks; violations.

(a) No person shall sell or permit or authorize the sale of permissible consumer fireworks to a person who is under sixteen years of age.

(b) No person shall sell or permit or authorize the sale of permissible consumer fireworks in conflict with state law.

(c) It shall be a class one misdemeanor to sell, permit or authorize the sale of permissible consumer fireworks in violation of state law.

SECTION 4. Chapter 9 of the Peoria City Code (1992) is amended by enacting Section 9-49 which was previously reserved and now pertains to Fireworks; posting of signs by persons engaged in the sale of fireworks; civil penalty and providing that Section 9-49 shall read as follows:

Sec. 9-49. Fireworks; posting of signs by persons engaged in the sale of fireworks; civil penalty.

(a) Prior to the sale of permissible consumer fireworks, every person engaged in such sales shall prominently display signs indicating the following:

(1) NOTICE: Use of fireworks, including permissible consumer fireworks is not allowed in the City of Peoria.

(2) Consumer fireworks authorized for sale under state law may not be sold to persons under the age of 16.

(b) Any person who obtains a business license for the sale of retail fireworks under this section shall have signage placed at each cash register and in each area where fireworks are displayed for sale informing customers that the use of fireworks in the City of Peoria is prohibited.

(c) The prominently displayed signs are required to be at least 8½ X 11 at a minimum and the type (font) size cannot be less than 1 inch in size.

(d) Failure to comply with subparts a, b, and c of this section is a civil offense punishable by a civil fine of not less than two hundred dollars (\$250.00) for each violation.

SECTION 5. Chapter 9 of the Peoria City Code (1992) is amended by enacting Section 9-50 which was previously reserved and now pertains to Fireworks; authority to enforce violations of this article; means of enforcement and providing that Section 9-50 shall read as follows:

Sec. 9-50. Fireworks; authority to enforce violations of this article; means of enforcement.

(a) The Fire Marshal and/or Fire Chief or their designee, a police officer or the Peoria City Attorney may issue civil complaints to enforce violations of this article designated as civil offenses.

(b) Any person authorized pursuant to this section to issue a civil complaint may also issue a notice of violation specifying actions to be taken and the time in which they are to be taken to avoid issuance of a civil or criminal complaint.

(c) A Peoria police officer or the Peoria City Attorney may issue criminal complaints to enforce sections 9-46 through 9-52.

SECTION 6. Chapter 9 of the Peoria City Code (1992) is amended by enacting Section 9-51 which was previously reserved and now pertains to Fireworks; liability for emergency responses related to use of fireworks; definitions and providing that Section 9-51 shall read as follows:

Sec. 9-51. Fireworks; liability for emergency responses related to use of fireworks; definitions.

(a) A person who uses, discharges or ignites permissible consumer fireworks, fireworks or anything that is designed or intended to rise into the air and explode or to detonate in the air or to fly above the ground, is liable for the expenses of any emergency response that is required by such use, discharge or ignition. The fact that a person is convicted or found responsible for a violation(s) of this article is prima facie evidence of liability under this section.

(b) The expenses of an emergency response are a charge against the person liable for those expenses pursuant to subpart (a) of this section. The charge constitutes a debt of that person and may be collected proportionately by the public agencies, for-profit entities or not-for-profit entities that incurred the expenses. The person's liability for the expense of an emergency response shall not exceed five hundred sixty-nine dollars (\$569.00) per hour of emergency response time for a single incident depending on the apparatus and personnel required to respond. The person will be liable for a minimum hourly rate upon response. The liability imposed under this section is in addition to and not in limitation of any other liability that may be imposed.

(c) For the purpose of this section:

(1) "Expenses of an emergency response" means reasonable costs directly incurred by public agencies, for-profit entities or not-for-profit entities that make an appropriate emergency response to an incident.

(2) "Reasonable costs" includes the costs of providing police, fire fighting, rescue and emergency medical services at the scene of an incident and the salaries of the persons who respond to the incident.

SECTION 7. Chapter 9 of the Peoria City Code (1992) is amended by enacting Section 9-52 which was previously reserved and now pertains to Fireworks; penalty and providing that Section 9-52 shall read as follows:

Sec. 9-52. Fireworks; penalty.

The penalty for violating any prohibition or requirement imposed by this article is a class two misdemeanor and is punishable by a fine not to exceed seven hundred fifty dollars (\$750.00) or jail time not to exceed four (4) months.

SECTION 8. Chapter 9 of the Peoria City Code (1992) is amended by establishing Sections 9-53, 9-54 and 9-55 as Reserved.

SECTION 9. The provisions of this ordinance shall automatically terminate on November 30, 2011.

SECTION 10. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any Court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION 11. This Ordinance shall become effective in the manner provided by law.

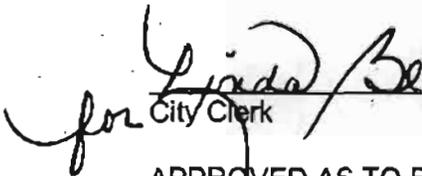
PASSED AND ADOPTED by the Mayor and Council of the City of Peoria,
Arizona, this 16th day of November, 2010.

CITY OF PEORIA, Arizona, an
Arizona municipal corporation



Bob Barrett, Mayor
DATE: 11/20/2010

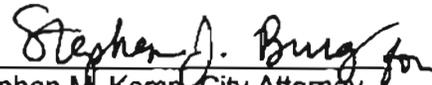
ATTEST:



Linda Beap
City Clerk



APPROVED AS TO FORM:



Stephen M. Kemp, City Attorney

Published in Peoria Times

Publication Dates: November 19 and 26, 2010

Effective Date: December 21, 2010

ORDINANCE NO. 2011-03

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PEORIA, MARICOPA COUNTY, ARIZONA, AMENDING CHAPTER 14 OF THE PEORIA CITY CODE (1977 EDITION), BY AMENDING ARTICLES 14-2 DEFINITIONS, 14-3 GENERAL PROVISIONS, 14-9 NON-RESIDENTIAL DISTRICTS, AND 14-39 ADMINISTRATIVE PROCEDURES OF THE PEORIA ZONING ORDINANCE; PROVIDING FOR SEPARABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission of the City of Peoria, Maricopa County, Arizona, held a public hearing on December 22, 2010 to consider a proposed amendment to the Peoria City Code, after notice in the manner provided by law; and

WHEREAS, due and proper notice of such Public Hearing was given in the time, form, substance, and manner provided by law including publication of such in the Peoria Times on November 26, 2010; and

WHEREAS, the Planning and Zoning Commission of the City of Peoria, Arizona at its regularly convened meeting of December 22, 2010, voted to recommend to the Mayor and Council of the City of Peoria, Arizona, that amendments be made to the Peoria City Code (1977 edition) and Chapter 24 of the Peoria City Code; and

WHEREAS, the Mayor and Council of the City of Peoria, Arizona, have considered the recommendation of the Planning and Zoning Commission of the City of Peoria, Arizona, and deem it to be in the best interest of the public health, safety and welfare of the residents of the City of Peoria, Arizona to amend Articles 14-2 Definitions, 14-3 General Provisions, 14-9 Non-Residential Districts, and 14-39 Administrative Procedures of Chapter 14 of the Peoria City Code (1977 edition):

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the City of Peoria, Arizona as follows:

SECTION 1. Articles 14-2 Definitions, 14-3 General Provisions, 14-9 Non-Residential Districts, and 14-39 Administrative Procedures of Chapter 14 of the Peoria City Code (1977 edition) shall be amended to read as shown in Exhibit A.

SECTION 2. Effective Date. This Ordinance shall become effective on the date provided by law.

SECTION 3. SEPARABILITY. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

PASSED AND ADOPTED by the Mayor and Council of the City of Peoria, Maricopa County, Arizona this 18th day of January, 2011.

Bob Barrett, Mayor

Date Signed

ATTEST:

Wanda Nelson, City Clerk

APPROVED AS TO FORM:

Stephen M. Kemp, City Attorney

Published in: Peoria Times

Pub. Dates: January 21, 2011, and January 28, 2011.
Effective Date:

EXHIBIT A

ARTICLE 14-2

DEFINITIONS

CONTENTS

- 14-2-1 INTENT
- 14-2-2 DEFINITIONS

14-2-1 INTENT (Ord. No 02-68)

This Article is intended to clarify the meaning of any term used within the regulations and development standards for which the common definition may not serve the purpose of the regulations, or which is not a commonly used term outside of the context of this Zoning Ordinance.

14-2-2 DEFINITIONS

D. For the purpose of this Zoning Ordinance, certain words are hereby defined as follows (Ord. No. 02-68):

Pawnshop means any establishment in that is carried on the business of pawn brokerage, or the business of loaning money, receiving as security for payment thereof pawns or pledges of property, or the business of purchasing personal property and reselling or agreeing to resell, trade or exchange such articles to vendors, their personal representatives, or their assignees at a price agreed upon at or before the time of such purchase whether such business be the principal or sole business so carried on or be merely incidental to, or in connection with, or a branch or a department of some other business. (Ord. No. 00-28)

Permissible Consumer Fireworks means fireworks devices as defined by Arizona Revised Statutes Section 36-1601.5(a) and (b). (Ord. No. 11-##)

Planned Shopping Center means a business development of two acres or more not divided by a street and characterized by an organized and concentrated grouping of retail and service outlets served by a common circulation and parking system.

ARTICLE 14-3

GENERAL PROVISIONS

(Ord. No. 02-85)

CONTENTS

14-3-1	INTENT
14-3-2	GENERAL USE PROVISIONS
14-3-3	ACCESSORY BUILDINGS AND USES
14-3-4	SCREENING
14-3-5	WALLS AND FENCES
14-3-6	PERFORMANCE STANDARDS
14-3-7	SATELLITE DISH ANTENNAE
14-3-8	MISCELLANEOUS PROVISIONS
14-3-9	HOME OCCUPATIONS
14-3-10	MANUFACTURED HOUSING
14-3-11	MOBILE HOMES, TRAVEL TRAILERS, HOUSE TRAILERS, AND RECREATIONAL VEHICLES
14-3-12	GROUP HOMES, DAY CARE GROUP HOMES, GROUP CARE FACILITIES AND COMMUNITY RESIDENTIAL SETTING FACILITIES
14-3-13	WIRELESS COMMUNICATION FACILITIES

14-3-9 HOME OCCUPATIONS

A. General

A Home Occupation is an accessory use of the primary dwelling unit permitted either by-right or by conditional use permit. Home occupations are generally conducted and located such that the average neighbor, under normal circumstances, would not be aware of their existence. The home occupation is generally carried on by a member of a family, residing on the premises, and is clearly incidental to the use of the structure for dwelling purposes and does not change the exterior character of the premises in any way.

B. Standards

The standards set forth in this Section are intended to ensure compatibility of the Home Occupation use with the residential character of the neighborhood. The proposed use shall be clearly accessory or incidental to the residential use of the main building to qualify as a home occupation use under this Section.

1. *Home Occupation as Permitted Accessory Use.* A home occupation where permitted, except for Day Care Group Homes, shall be considered a permitted accessory use when it complies with the following regulations:

- a. Changes or alterations to the exterior of the building(s) that are inconsistent with the residential character of the building(s) or with the character of the surrounding area shall not be allowed. Such changes or alterations include, but are not limited to, construction of parking areas or garages at a scale exceeding the scale of such structures in the surrounding area.
 - b. Signs advertising a home occupation shall be strictly prohibited.
 - c. Exterior display or storage of materials or equipment, or any other exterior indication of the home occupation, shall be prohibited.
 - d. Emissions of noise, light, dust, gas, vibration, odor, smoke, or any other noxious matter emanating from the home occupation at a scale greater than that normally associated with the residential use shall be prohibited.
 - e. The home occupation shall not involve more than one (1) business caller or visitor at a time and not more than two (2) visitors per hour, nor commercial deliveries or outside services beyond those normal and incidental to the residential uses in the district.
 - f. The home occupation shall be conducted by a resident or residents of the dwelling unit only. No outside employees shall be employed at the site and not more than one (1) employee may report to the site for off-site employment.
 - g. No unusual load shall be placed on power, sewer, water, or other utilities as a result of the home occupation use.
 - h. External activity resulting from the home occupation shall be limited to the hours between 7:00 A.M. and 10:00 P.M.
 - i. Storage of commercial vehicles used in conjunction with the home occupation is not permitted on the home occupation site. Up to two (2) commercial vehicles may be parked on the home occupation site if these commercial vehicles are used for both business and personal needs. Commercial vehicles must be parked in accordance with Article 14-23, "Parking," of this Ordinance.
 - j. All home occupations shall be subject to the standards contained herein and shall be approved by the City prior to the initiation of any business activity.
 - k. A valid City sales tax and/or business license shall be obtained for the home occupation use.
2. *Home Occupation as Conditional Use.* A Conditional Use Permit for a home occupation shall be required in cases where any of the following conditions may result
- a. The home occupation use requires or uses storage or space accessory to the principal residence, will utilize or require outdoor or open storage of materials

or will require or result in the construction or installation of additional parking on-site.

- b. The home occupation use will produce or make noticeable the appearance of a non-residential use or will cause the emission of noise, light, dust, gas, vibration, odor, smoke, or other noxious matter from the premise.
 - c. The home occupation will have more than one (1) business caller or visitor at any one time, more than two (2) visitors per hour, or more than one (1) commercial delivery per business day.
 - d. Pedestrian or vehicular traffic will increase beyond what is considered normal and incidental to the zoning district in which the use is located.
 - e. An increased load will be placed on any of the power, water, sewer or other utilities.
 - f. The home occupation use will require the services of a single employee or assistant who is not a resident of the household.
3. *Prohibited Home Occupations* Home occupations expressly prohibited shall include, but not be limited to, the following:
- a. Personal service offices such as physicians, dentists, massage therapists, and barber and beauty shops
 - b. Animal services such as commercial stables, dog grooming, veterinary offices, hospitals, and kennels
 - c. Permanent real estate offices
 - d. Restaurants
 - e. Vehicle services such as repairing, painting, storage, washing, or sales, where vehicle is defined as any motorized or non-motorized means of transportation
 - f. Sales of Permissible Consumer Fireworks
4. *Violations.* The City may deem any violation of the above conditions as just cause for the termination of the home occupation. In such cases, the City may issue a Cease and Desist Order, and, if the violation continues, file a criminal complaint in City Court.

ARTICLE 14-9 NON-RESIDENTIAL DISTRICTS

(Ord. No. 02-68)

CONTENTS

14-9-3 LAND USE MATRIX

The following land use matrix (Table 14-9-3) indicates uses which are permitted outright, conditionally permitted, or prohibited in specific non-residential zoning districts in the City of Peoria. The land use matrix is intended to serve as a guide for the convenience of the user of this zoning ordinance. Where the text of this zoning ordinance differs from the land use matrix, the text shall prevail. In the event of a specific use not being identified on the matrix, the Community Development Director or designee(s) shall determine the closest associated use based on the provisions of this ordinance. The City will permit any accessory use customarily incidental to a permitted principal use in the same zoning district.

Table 14-9-3 Land Use Matrix

LAND USE	O-1	C-1	PC-1	PC-2	C-2	C-3	C-4	C-5	BPI	PI-1	I-1	I-2
GENERAL RETAIL												
Antiques, Crafts, and Collectibles Sales	-	-	P	P	P	P	P	P	-	-	-	-
Bait and Tackle Shops	-	-	P	P	P	P	P	-	-	-	-	-
Book, Stationery & Greeting Card Store	P	P	P	P	P	P	P	P	-	-	-	-
Candy and Ice Cream Store	P	P	P	P	P	P	P	P	-	-	-	-
Carpet and Floor Covering Store	-	-	-	-	P	P	P	P	-	-	-	-
Copy Center	P	P	P	P	P	P	P	P	P	P	P	P
Donation Center # (Ord. No. 03-171)	-	-	-	-	C	-	C	C	P	P	P	P
Florist	P	P	P	P	P	P	P	P	-	-	-	-
Gift, Novelty and Souvenir Shop	P	P	P	P	P	P	P	P	-	-	-	-
Hobby, Stamp and Coin Shop	P	P	P	P	P	P	P	P	-	-	-	-
Newsstand (Ord. No. 05-58A)	P	P	P	P	P	P	P	P	P	A	A	A
Pawn Shop #	-	-	-	-	C	-	C	C				
Permissible Consumer Fireworks Sales#	-	P	P	P	P	P	P	P	-	-	-	-
Pet Shop # (Ord. No. 05-51)	-	-	P	P	P	P	P	P	-	-	-	-
Plumbing, Heating & Air-conditioning Sales and Service	-	-	-	-	-	-	P	-	-	P	P	P
Retail Decorative Rock Sales	-	-	-	-	C	-	P	-	-	P	P	P
Retail Sales of New & Used Merchandise, Indoor, excluding Sale of Automobile, Boats RVs and Motorcycles (Ord. No. 05-36) #	-	P	P	P	P	P	P	P	A#	-	-	-
Retail Liquor Store #	-	-	-	-	C	-	C	C	-	-	-	-
Small Merchandise Vendor Carts # (Ord. No. 05-36)	A	A	A	A	A	A	A	A	A	A	A	A
Video Rental Store	P	P	P	P	P	P	P	P	-	-	-	-
Water and Ice Store	-	P	P	P	P	P	P	P	-	-	-	-

- P** = Permitted Use
- C** = Permitted Conditional Use. Conditional Use Permit required. See Article 14-39-10.
- A** = Accessory use
- *** = Any uses located within 200 feet of a residential district shall be subject to a Conditional Use Permit (Ord. No. 05-58A)
- #** = Subject to special limitations (see the following section 14-9-5)
- = Not Permitted

14-9-5 LIMITATIONS ON USES

E. General Retail (Ord. No. 03-171 and 11-##)

1. Donation Centers shall be subject to the following conditions:
 - a. Donation drop off shall be limited to business hours only.
 - b. Drop off location shall be at the rear of the building and shall be fully screened from view.
 - c. No drop off items shall be stored outside the screened area.
2. Pet Shops, including commonly associated accessory uses such as grooming, veterinary care, training, pet day camp services and the boarding of household pets, shall be subject to the following conditions: (Ord. No. 06-16)
 - a. Veterinarian and grooming services shall be restricted to the care and treatment of small animals during regular business hours.
 - b. The commercial breeding of animals shall be prohibited. (Ord. No. 06-16)
 - c. All activities shall be completely contained within enclosed buildings; the building shall be designed and constructed to achieve a Sound Transmission Control Value of 50 or greater.
 - d. All refuse shall be stored within a completely enclosed building.
 - e. Outdoor runs or exercise pens shall be prohibited.
 - f. Overnight boarding services for household pets may be operated as an accessory use, provided no more than twenty-five percent (25%) of the total square footage of the establishment may be used as sleeping quarters for the boarded pets; and the area shall be constructed, maintained or operated so that the smell of the boarded animals does not create a nuisance off-site. (Ord. No. 06-16)
3. Indoor retail sales of new and used merchandise excluding sale of automobiles, boats, RVs, and motorcycles as an Accessory Use within the BPI Zoning District shall be no greater than 20% of the overall gross floor area (G.F.A.) of the establishment and shall not exceed 1,000 square feet in

area.

4. Permissible Consumer Fireworks Sales shall be subject to the following conditions:

- a. Signage shall be displayed at the point-of-sale in accordance with Peoria City Code Section 9-49.
- b. Sales may only occur in buildings classified with a Mercantile building occupancy code.

ARTICLE 14-39

ADMINISTRATIVE PROCEDURES

(Ord. No. 02-80)

CONTENTS

14-39-11 TEMPORARY USE PERMITS

14-39-11 TEMPORARY USE PERMITS

A. *Intent.*

1. In addition to regulating uses which are permanent in nature, it is the intent of this Ordinance to provide for certain temporary uses for limited periods of time. Allowing temporary uses, as herein provided for, is not intended to permit uses otherwise prohibited by the Zoning Ordinance or to allow permanent uses to be established.
2. The purpose of this Section is to establish the procedures and outline the review criteria to be used by the Community Development Department when considering an application for a Temporary Use Permit. All Temporary Uses shall be conducted so as not to be detrimental to the surrounding properties and shall be subject to the standards and regulations contained herein. The Community Development Department shall not grant a Temporary Use Permit until adequate assurances have been provided ensuring compliance with the provisions of this Ordinance and all other applicable City codes.

B. *General.* Every Temporary use shall require a Temporary Use Permit as herein stipulated.

C. *Permitted Temporary Uses.* The City may grant a Temporary Use Permit for any of the following uses.

1. Carnivals, circuses, or similar special events.
2. Christmas tree sales, pumpkin sales, or similar holiday-related events.
3. Outdoor fireworks sales. (Ord. No. 11-###)
34. Temporary municipal uses. (Ord. No. 05-22)
45. Off-site retail sales of souvenirs, gifts, and food incidental to a sporting or cultural event.
56. Tent revival or fellowship meetings.
67. Craft shows, home and garden shows, festivals, or similar events.

78. Outdoor concerts, paid admission events, and events involving the distribution of alcoholic beverages.

89. Such other uses as the City may deem to be within the intent and purpose of this Section.