

Ordinance No. 483-2022

By Council Members Polensek and Griffin
(by departmental request)

AN EMERGENCY ORDINANCE

To amend Sections 387.01, 387.03, 387.04, 387.06, and 387.16 of the Codified Ordinances of Cleveland, Ohio, 1976, as amended by various ordinances, relating to prohibiting the receipt, storage, possession, sale, use, or discharge of any 1.4G consumer fireworks without a permit under this chapter.

WHEREAS, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLEVELAND:

Section 1. That the following Sections of the Codified Ordinances of Cleveland, Ohio, 1976:

Sections 387.01, 387.03, 387.04, 387.06, as amended by Ordinance No. 1253-07, passed November 19, 2007, and

Section 387.16, as amended by Ordinance No. 599-11, passed June 6, 2011, are amended to read as follows:

Section 387.01 Definitions

As used in this chapter:

(a) “Artificial barricade” means any artificial mound or properly revetted wall of earth of minimum thickness of not less than three (3) feet or an equivalent protection.

(b) “Binary system” means a two (2) component system for mixing certain pyrotechnic materials on site. The items are commonly shipped as separate ingredients: an oxidizer typically labeled “A”; and a fuel, typically labeled “B”. These ingredients do not become a pyrotechnic material until they are mixed.

(c) “Black powder” means a low explosive consisting of an intimate mixture of potassium or sodium nitrate, charcoal, and sulfur.

(d) “Blaster” means a qualified person in charge of and responsible for the loading and firing of an explosive.

(e) “Blasting agent” means an explosive material that meets prescribed criteria for insensitivity to initiation.

For storage, a blasting agent is any material or mixture, consisting of fuel and oxidizer, intended for blasting and not otherwise defined as an explosive; if the finished product, as mixed for use or shipment, cannot be detonated by means of a No. 8 test blasting cap when unconfined. 27 C.F.R. 55.11 (Bureau of Alcohol, Tobacco, Firearms and Explosives regulation).

For transportation, a Class 1, Division 1.5 blasting agent is a substance that is a mass explosion hazard, but is so insensitive that there is very little probability of initiation or of transition from burning to detonation under normal conditions of transport. 49 C.F.R. 173.50 (U.S. Department of Transportation (DOT)).

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(f) “Consumer fireworks” or “common fireworks” mean any small fireworks device designed primarily to produce visible effects by combustion or deflagration that complies with the construction, chemical composition, and labeling regulations of the U.S. Consumer Product Safety Commission, as set forth in 16 C.F.R. Parts 1500-1507. Consumer fireworks include small devices designed to produce audible effects, such as whistling devices, and ground devices containing fifty (50) mg (two thousandths (0.002) g) or less of explosive composition (salute powder) per explosive unit and aerial devices containing one hundred thirty (130) mg or less of explosive material. Consumer fireworks are classified as fireworks UN 0336 and UN 0337 by the DOT, at 49 C.F.R. 172.101. This term does not include fused setpieces containing components that together exceed fifty (50) mg of salute powder. Consumer fireworks, as used in this chapter, are considered pyrotechnic material and pyrotechnics.

(g) “Deflagration” means an explosive reaction such as a rapid combustion that moves through an explosive material at a velocity less than the speed of sound in the material.

(h) “Detonation” means an exothermic reaction that moves through an explosive material at a velocity greater than the speed of sound.

(i) “Display fireworks” means firework devices intended for use in fireworks display that are designed to produce visible or audible effects for entertainment purposes by combustion, deflagration, or detonation. The term “display fireworks” includes consumer fireworks to be used in fireworks displays, larger devices of similar construction and chemical composition that are classed as Explosives 1.3G and described as Fireworks UN0333, UN 0334, and UN 0335 by the DOT, and other devices that produce visible or audible effects for entertainment purposes that are classed as Explosives 1.3G, 1.4G, or 1.4S, and described as pyrotechnics and pyrotechnic material by the DOT. This term also includes fused setpieces containing components that together exceed fifty (50) mg of salute powder.

(j) “DOT and “DOTn” mean U.S. Department of Transportation.

(k) “Exhibitor” means an Ohio exhibitor licensed under the requirements of Ohio Rev. Code Ann. Section 3743.50 to 3743.55.

(l) “Explosive” means:

(1) Any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion, i.e., with substantially instantaneous release of gas and heat. This includes, but is not limited to, dynamite and other high explosives, black powder and pellet powder, slurries, emulsions, water gels, initiating explosives, detonators (blasting caps), safety fuses, squibs, detonating cord, igniter cord, igniters, fireworks, and pyrotechnics.

(2) The term “explosive” includes any material determined to be within the scope of 18 U.S.C. Chapter 40, Importation, Manufacture, Distribution and Storage of Explosive Materials, issued at least annually by the Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives of the Department of the Justice, and also includes any material classified as an explosive by the hazardous material regulations of the DOTn (49 C.F.R.)

(3) The term “explosive” must also include all of the following categories in 49 C.F.R. Parts 1-199, as follows:

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Division 1.1 - Mass exploding (Class A explosives).

Division 1.2 - Projection hazard (Class A or B explosives).

Division 1.3 - Fire hazard, minor blast (Class B explosives) - or projection hazard or both.

Division 1.4 - Minor explosion hazard (Class C explosive) - not mass detonating.

Division 1.5 - Insensitive explosives. (blasting agents) - very little probability of initiation or transition from burning to detonation under normal conditions of transport.

Division 1.6 - Extremely Insensitive Detonating Substances.

(EIDS) that must pass DOTn criteria as such.

The requirements of this chapter pertaining to the use, storage, and handling of explosives, including the permit required by Section 387.06, applies to explosives as defined in divisions (1)(1), (1)(2), or (1)(3) of Section 387.01 of this chapter. The requirements of this chapter pertaining to the transportation of explosives apply only to explosives as defined in division (1)(3) of Section 387.01 of this chapter.

(m) “Explosives interchange lot” means a specially designated safe area of a motor vehicle terminal where less-than-truckload lots of explosives can be held for transfer from one (1) vehicle to another for continuance in transportation.

(n) “Explosives motor vehicle facility” means a designated area where motion vehicles transporting explosives can be parked, pending further movement in transportation.

(o) “Fireworks” means any composition or device prepared for the purpose of producing a visible or an audible effect by combustion, deflagration, or detonation, and meeting the definition of Consumer Fireworks or Display Fireworks as defined in this section, or as defined in other NFPA standards. For purposes of this chapter, all fireworks are considered pyrotechnic material or pyrotechnics.

(1) “Fireworks” does not include toy caps for use in toy pistols, toy canes, toy guns, and novelties, and trick noisemakers, not containing more than an average of twenty-five hundredths (0.25) grains (sixteen (16) mg) of explosive composition per cap, provided they are so constructed that the hand cannot come in contact with the cap when it is in place for explosion.

(2) “Fireworks” does not include model rockets and model rocket motors designed, sold, and used for the purpose of propelling recoverable aero models.

(p) “Fireworks exhibition” means any presentation or discharge of fireworks. A fireworks exhibition includes, but is not limited to, those displays conducted in accordance with the provisions of ~~RC~~ Chapter 3743 of the Revised Code or any variance issued under it, this rule, and NFPA 1123 listed in OAC 1301:7-7-44.

(q) “1.4G Fireworks” means “Consumer Fireworks,” consistent with regulations of ~~DOTn (49 C.F.R.)~~ the United States Department of Transportation as expressed using the designation “division 1.4” in title 49, Code of Federal Regulations,

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and includes but is not limited to “fountain devices” as defined in Section 3743.01 of the Revised Code.

(r) “1.3G Fireworks” means “Display Fireworks” consistent with regulations of DOTn ~~(49 C.F.R.)~~ the United States Department of Transportation as expressed using the designation “division 1.3” in Title 49, Code of Federal Regulations.

(s) “1.4S Fireworks” means pyrotechnic devices for professional use in the performing arts in conjunction with theatrical, musical or other productions that are similar to “consumer fireworks” in chemical composition and construction, but not intended for consumer use. Those fireworks shall be classified as “Article Pyrotechnic 1.4S” and marked and labeled in conformance with 49 C.F.R.

(t) “Fixed facility” means any building or property where materials or articles are received, shipped, stored, transferred, picked up, or delivered, and includes without limitation, a terminal, storage facility, explosives interchange lot, explosives motor vehicle terminal, and intermodal facility.

(u) “Flame effects” has the meaning as defined in NFPA Standard 160. An indoor or outdoor flame effect resulting from the combustion of flammable solids, liquids, or gases to produce thermal, physical, visual, or audible phenomena before an audience. Flame effects for entertainment, exhibition, demonstration, or simulation before an audience, and/or as determined by the Fire Chief, shall be defined as regulated by this chapter.

(v) “Highway” means any interstate, public street, public alley, public road or other public thoroughfare.

(w) “Interstate highway” means the highways in the City of Cleveland identified as Interstates 71, 77, 90, 480, 176 and 490.

(x) “Inhabited building” means any building regularly occupied in whole or part as a habitation for human beings, or any church, school-house, railroad station, store, or other structure where people are accustomed to assemble, except any building or structure occupied in connection with the manufacture, transportation, storage or use of explosives.

(y) “Intermodal facilities” means any designated area where truck trailers, storage containers, and other vehicles used in the transportation of hazardous materials are received, shipped, loaded onto, unloaded from, or stored in connection with two (2) or more modes of transportation.

(z) “Laser” means a device that produces an intense, coherent, directional beam of light by stimulating electronic or molecular transitions to lower energy levels. It also means an acronym for light amplification by simulated emission of radiation (ANSI Z136.1). As used in this section, lasers must mean Class III or IV lasers, as defined by the Bureau of Radiological Health, when used in front of a proximate audience for purposes of visual or special effects.

(aa) “Lycopodium” means the spores produced by the genus of mosses called lycopodium. This powdery, organic, yellow, material can be agitated and dispersed mechanically into a cloud and then ignited by a spark, pilot flame, or electrical heating device. Although not a pyrotechnic material, this material is used by special effects operators to produce fire effects or in conjunction with other pyrotechnics to create a special effect.

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(bb) “Magazine” means any building, structure, or container, other than an explosives manufacturing building, approved for the storage of explosive materials.

(cc) “Motor vehicle” includes a vehicle, machine, tractor, trailer, or semi trailer, or a combination of them, propelled or drawn by mechanical power and used on the highways in the transportation of passengers or property. It does not include a vehicle, locomotive, or car operated exclusively on a rail or rails, or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street railway service.

(dd) “Natural barricade” means natural features of the ground, such as hills, or timber of sufficient density that the surrounding exposures that require protection cannot be seen from the magazine when the trees are bare of leaves.

(ee) “NFPA” means National Fire Protection Association.

(ff) “Operator” means a person with overall responsibility for the safety, setup and discharge of an outdoor fireworks display.

(gg) “Permit” means written authority issued by the City of Cleveland Fire Chief or his or her duly authorized representative.

(hh) “Person” means an individual, association, corporation, business, partnership or other legal entity or group of individuals.

(ii) “Proximate audience” means an audience closer to pyrotechnic devices than allowed by NFPA 1123, Code for Fireworks Display. This definition is also applicable to the indoor or outdoor use of pyrotechnic materials in the performing arts in conjunction with theatrical, musical, or similar productions or the filming of television, radio, or movie productions before a proximate audience, performers, or support personnel. It also applies to all use of lasers in indoor or outdoor displays unless otherwise determined by the City of Cleveland Fire Chief.

(jj) “Pyrotechnic display” means a display or performance of pyrotechnic material.

(kk) “Pyrotechnic material” means a chemical mixture used in the entertainment industry to produce visible or audible effects by combustion, deflagration, or detonation, when the mixture predominantly consists of solids capable of producing a controlled, self- sustaining, and self-contained exothermic chemical reaction that results in heat, gas, sound, light, or a combination of these effects, and when the chemical reaction functions without external oxygen. For purposes of this chapter, all fireworks are considered pyrotechnic material or pyrotechnics, and all pyrotechnics are considered explosives.

(ll) “Railway” means any steam, electric, diesel, electric or other railroad or railway.

(mm) “Receive” means to accept delivery, or to take possession of materials or articles; a “receiver” may include, without limitation, a consignee, a terminal, storage facility, or other fixed facility.

(nn) “Ship” means to turn over possession of materials or articles for transport; a “shipper” may include, without limitation, a manufacturer, consignor, terminal, storage facility, or other fixed facility or operation that has possession of explosives prior to transport.

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(oo) “Small arms ammunition” means any cartridge for shotgun, rifle, pistol, revolver, and cartridges for propellant-actuated power devices and industrial guns. Military-type ammunition containing explosive bursting charges or any incendiary, tracer, spotting, or pyrotechnic projectile is excluded from this definition.

(pp) “Special Effects” means a visible or audible effect for entertainment purposes. Frequently an illusion: that is, something that appears to be other than what it really is. For example, smoke may be created to give an audience the impression of fog being present. Or a puff of smoke, a flash of light, and a loud sound may be produced to give an audience the impression that a cannon has been fired, when in reality a cannon has not been fired.

(qq) “Terminal” means a fixed facility used by transporters for the receipt, shipment, transfer, storage, pick-up or delivery of articles or materials.

(rr) “Transporter” means a person engaged in the transport, movement or carrying of explosives by a motor vehicle on a highway.

(ss) “Vessel” means every description of watercraft, used or capable of being used, as a means of transportation on the water.

Section 387.03 Prohibitions

(a) A person shall not manufacture any gunpowder, fireworks, explosive compounds or detonating or deflagrating substances within the corporate limits of the City except the manufacture of fireworks as permitted in accordance with ~~RC~~ Chapter 3743 of the Revised Code, and OAC 1301:7:7-33, and applicable provisions of the NFPA, and any stricter rules of the City Fire Marshal to protect the public health and safety. This division does not apply to the mixing of binary systems, providing the mixing is done in conformity with all federal, State and City laws, and regulations and the mixing is associated with a pyrotechnic display, which has been permitted under this chapter.

(b) A person shall not sell, purchase for, give away to, or otherwise dispose of, or deliver to, any person less than eighteen (18) years of age, any explosives, including fireworks, whether the person is acting on their own behalf or for any other person.

(c) A person shall not knowingly acquire, have, carry, or use any dangerous ordnance as defined in Section 627.01 of these Codified Ordinances (“Weapons and Explosives”) unless excepted by ~~RC~~ Section 2923.17 of the Revised Code (“Dangerous Ordnance and Explosives Strictly Regulated”) or the person is the holder of a license or temporary permit issued and in effect under ~~RC~~ Section 2923.18 of the Revised Code.

(d) A person shall not discharge any firearms or fireworks at, or against, any magazine or a vehicle transporting explosives.

(e) A person shall not ship, receive, store, possess, sell, use, or discharge any explosives, pyrotechnics, fireworks, lasers, or flame effects, including but not limited to 1.4G consumer fireworks, within the City except as permitted under Sections 387.06, 387.09, and 387.10 of this chapter, and in compliance with all applicable federal, State and City laws, and regulations.

(f) A person shall not sell, offer for sale, or have in his or her possession or custody, any squib, rocket, cracker, roman candle, or fire balloon, or any other combustible fireworks, or any article for the making of a pyrotechnic display, within the City, except as authorized by a permit issued by the City Fire Chief under Sections 387.06 and 387.07 of this chapter.

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(g) A vessel shall not operate in the Cuyahoga River or elsewhere in the City with explosives aboard, whether for loading or unloading explosives, unless such vessel is in conformity with 49 C.F.R. Part 176 and the regulations of the United States Coast Guard.

(h) A person shall not transport explosives through the City unless they are in compliance with all applicable federal, State, and City laws and regulations.

(i) A person shall not keep or store any explosives or fireworks at any place of habitation, or within 100 feet thereof and no permits shall be issued by the City Fire Chief for such purposes.

(j) A person shall not sell, construct a retail display, nor offer for sale explosives, explosive materials or fireworks upon highways, sidewalks, public property or in Group A or E occupancies.

Section 387.04 Exceptions to Provisions

(a) This chapter does not apply to: the regular military or naval forces of the United States; the duly- authorized militia of the State; the police, or fire divisions of the City, County, or State, provided they are acting within their official capacity and in the proper performance of their duties; or the laboratories, hospitals, schools, colleges, and similar institutions when confined to the purpose of demonstration, instruction, or research; or to explosives in the forms authorized and procured by the official United States Pharmacopoeia.

(b) This chapter does not apply to the manufacture, sale, possession, transportation, or use, in emergency situations of pyrotechnic signaling devices and distress signals for marine, aviation, or highway use.

(c) This chapter does not apply to the manufacture, sale, storage, possession, or transportation of blank cartridges in connection with theaters or shows or movie productions, or blank cartridges in connection with athletics as signals or for ceremonial purposes. Exception: The use of blank cartridges in conjunction with theaters or shows or movie productions shall be subject to review and approval by the Fire Marshal as to any applicable permitting and/or restrictions.

(d) This chapter does not apply to the manufacture, sale, possession, transportation, storage, or use of sparklers on a wire stick, as defined under DOTn.

(e) Section 387.03(i) does not apply to the storage of smokeless propellant, black powder and small arms primers for personal use and not for resale and the small arms ammunitions and small arms ammunitions components complies with OAC rule 1301:7-7-56(F).

Section 387.06 Permit Registration For Use and/or Storage Required; Fee

(a) Permits for Explosives and Pyrotechnic Materials. A person shall not store, possess, use, sell, give away, or otherwise dispose of, any explosive, including without limitation, pyrotechnic material, consumer or 1.4G consumer fireworks or display fireworks, as defined in this chapter, without first obtaining a written permit from the City Fire Chief. This division is not applicable to the use, possession, or control of less than fifteen (15) pounds of smokeless powder, fifty (50) pounds or less of black powder, or less than one thousand (1,000) pounds shipping weight of small arms ammunition, except as required under division (c) of Section 387.04 of this chapter. This division does not apply to a transporter of explosives on highways, railways, or waterways. For purposes of this section, the term “storage” does not include “storage incidental to

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transportation” when defined as preempted by 49 U.S.C. 5125 or related regulations by federal administrative determinations or court opinions. The fee for any permit required by this section shall be seventy-five dollars (\$75.00).

(b) Permits for Lasers. A person shall not use any Class III or IV laser in front of a proximate audience without first obtaining a separate permit from the Fire Chief. The fee for laser permits shall be seventy-five dollars (\$75.00).

(c) Permits for Flame Effects. A permit must be obtained from the City of Cleveland Fire Prevention Bureau for the use of all indoor and outdoor flame effects before an audience. The permit must be obtained at least ten (10) business days in advance of the production, exhibition, demonstration, or simulation using the flame effects. Failure to submit the permit application prior to ten (10) business days in advance of the production, or failure to comply with the requirements of NFPA Standard 160 listed in OAC 1301:7-7-44 may result in denial or revocation of the permit. The fee for a permit for flame effects shall be seventy-five dollars (\$75.00).

(d) Permits for Dangerous Ordnance. Each person handling explosives in conjunction with a blasting operation shall obtain a dangerous ordnance permit. The permit shall expire on the date specified on it. All permits expire no later than one (1) year from the date of issuance. The City Fire Marshal or the City Fire Marshal’s designee may issue a temporary permit for the casual use of explosive devices, and other consumable dangerous ordnance, and it shall expire within thirty (30) days of its issuance. The cost of a permit shall be seventy-five dollars (\$75.00) under this section. A person must not perform blasting without possession of a dangerous ordnance permit under this section. Every person involved in the blasting operation that will handle or use the explosive shall be listed on a separate dangerous ordnance permit application.

(e) Applications for each permit required by this section shall be made to the City Fire Chief in the form and detail as the Chief prescribes. The Chief may require a separate permit for use of explosives and a separate permit for storage of explosives from each applicant. The Chief may limit the quantity of explosives, explosive materials or fireworks permitted at any given location. Each permit granted by the Chief shall be for the period of time as the Chief may determine, but not to exceed one (1) year. The permit must, at all times, be subject to inspection by any officer of the Fire and/or Police Divisions. In addition to the permit fees, the Division of Fire may charge the person obtaining a permit under this section the actual cost to the City of providing plan review, inspection and oversight services by Division of Fire officials. The costs may include, without limitation, the actual cost to the City of paying overtime wages to fire officials.

(f) All permit applications that are covered by this section shall be submitted to the City Fire Chief with accurate information and within a reasonable time frame to accommodate the handling and processing of the permit applications. All permit applications containing complete information, as required by this chapter, must be delivered to the Division of Fire no later than ten (10) business days before the date the permit is needed by the applicant, or by an earlier date, as needed, for the Division to make arrangements to observe all areas where materials subject to the permit are to be used or stored.

Section 387.16 Insurance

(a) The applicant for a permit under the provisions of this chapter shall take out and maintain during the life of the permit such public liability and property damage insurance as will protect the public from damages for personal injury, including accidental death, as well as from property damage, that may occur by operations under the permit, whether the operations are by the permit holder or by anyone directly or indirectly employed by the permit holder.

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(b) Except as otherwise stated in this chapter, the policy of insurance for all permits under this chapter shall be in an amount not less than one million dollars (\$1,000,000.00) for each occurrence for bodily injuries and property damage, including accidental wrongful death of any one (1) person, and a general aggregate limit in an amount not less than five million dollars (\$5,000,000.00). The insurance required can be comprised of a combination of primary insurance and excess insurance. However, insurance for the use, handling, storage, receipt and shipment of explosives for permitted pyrotechnical displays and small arms ammunition must be in an amount not less than one million dollars (\$1,000,000.00) for injuries, including accidental each occurrence including body injury liability and wrongful death to any one (1) person, and a general aggregate limit in an amount not less than three million dollars (\$3,000,000.00) on account of three (3) ~~accident~~ accidents, and property damage insurance in an amount not less than one million dollars (\$1,000,000.00). Each policy of insurance shall include the City of Cleveland as an additional insured, and the Certificate of Insurance required in this section in division (c) must designate that the City of Cleveland is an additional insured.

(c) Each permit applicant shall provide to the Fire Chief a certificate of insurance, subject to review by the Director of Law, prior to the issuance of a permit. A copy of the certificate of insurance may be forwarded and utilized for the permit application review process, but an original must be forwarded to the Division of Fire prior to the issuance of a permit.

Section 2. That the existing following Sections of the Codified Ordinances of Cleveland, Ohio, 1976:

Sections 387.01, 387.03, 387.04, 387.06, as amended by Ordinance No. 1253-07, passed 11-19-07,

Section 387.16, as amended by Ordinance No. 599-11, passed June 6, 2011,

are repealed.

Section 3. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

ST:nl
5-9-2022
FOR: Director Howard

