

ORDINANCE NO. 2011-1

AN ORDINANCE ADOPTING AN AMENDED AND RESTATED VERSION OF THE TOWN OF EATONVILLE'S FIREWORKS CODE CODIFIED AT CHAPTER 8.16 OF THE EATONVILLE MUNICIPAL CODE, ADDING NEW CHAPTERS 18.17 AND 18.18 TO THE EATONVILLE MUNICIPAL CODE REGULATING MANUFACTURE, DISCHARGE AND PUBLIC DISPLAY OF FIREWORKS, AND AMENDING TOWN OF EATONVILLE MUNICIPAL CODE SECTION 8.11.110 & 9.16.020 TO EXEMPT CERTAIN ALLOWED USES OF FIREWORKS UNDER THIS ORDINANCE

WHEREAS, the Town of Eatonville originally enacted its fireworks code provisions in 1966; and

WHEREAS, changes to applicable federal and Washington statutes and regulations respecting fireworks have been made since that; and

WHEREAS, the Town of Eatonville wishes to amend and restate its fireworks code, in its entirety, to conform with changes to applicable federal and Washington statutes and regulations, and to provide rules and procedure for the use of such fireworks in the Town of Eatonville and permits related thereto; and

WHEREAS, the proposed action will require the Town of Eatonville to repeal or amend certain previously passed ordinances and portions of the Eatonville Municipal Code;

NOW THEREFORE, BE IT ORDAINED by the Council of the Town of Eatonville, Washington, as follows:

Ordinance 223 §§ 1-13, 1966, codified at Eatonville Municipal Code 8.16.010 – 8.16.120, is hereby repealed.

Section 1. A new Section 8.16.010 is hereby added to the Eatonville Municipal Code, which shall read as follows:

8.16.010 Intent. It is the intent of this section to provide a procedure for the granting of permits and for the sale of consumer fireworks as that term is defined in WAC 212-17-035.

Section 2. A new Section 8.16.020 is hereby added to the Eatonville Municipal Code which shall read as follows:

8.16.020 Permit Required. It is unlawful to engage in the retail sale of fireworks within the town without having first obtained an annual fireworks sales permit from the town clerk.

Section 3. A new Section 8.16.030 is hereby added to the Eatonville Municipal Code which shall read as follows:

8.16.030 Application and Fee. Persons seeking an annual fireworks sales permit shall complete and submit an application on a form as prescribed by the town clerk and pay a \$10.00 annual application fee.

Section 4. A new Section 8.16.040 is hereby added to the Eatonville Municipal Code which shall read as follows:

8.16.040 Permit Issuance.

- A. Fireworks sales permits shall only be issued to applicants meeting the following qualifications:
 - 1. Nonprofit, charitable, religious , or eleemosynary corporations organized and existing primarily for veteran, patriotic, religious, charitable, or civic betterment purposes; and
 - 2. Said corporation or association has its principal and permanent meeting place in the town and has been organized and established in the town for a period of at least one year prior to the date the application is made for the fireworks sales permit.
- B. The application shall be made on or prior to the second Tuesday in April of each year. Applicants desiring a permit for the retail sale of fireworks must submit a written application to the Town's Fire Chief. Upon receipt of such an application, the Town's Fire Chief shall investigate the application and submit a report of findings and a recommendation for or against the issuance of the permit, together with reasons, to the Town Council or the Council's designee for the purpose of receiving such reports. The Town Council, or its designee, shall grant such application if the application meets the standards devised by RCW Chapter 70.77, WAC Chapter 212-17, and any local regulations adopted by the Town.
- C. Applicants for a permit shall be notified by the Town of the granting or rejection of their application on or before the 28th of April of each year.
- D. Any applicant whose application is denied shall be refunded their \$10.00 application fee.
- E. A fireworks sales permit shall only cover 1 sales retail sales outlet.
- F. No organization may receive more than one application per calendar year.

Section 5. A new Section 8.16.050 is hereby added to the Eatonville Municipal Code which shall read as follows:

8.16.050 Permitting Preference. Applications for the renewal of permits will be given preference over applicants not previously permitted; provided that if the holder of the permit fails to make application by the second Tuesday in April, said preference shall be forfeited.

Section 6. A new Section 8.16.060 is hereby added to the Eatonville Municipal Code which shall read as follows:

8.16.060 Fireworks Stand Locations. Fireworks stands shall only be permitted in Commercial zones and must be separated by at least 300 feet.

Section 7. A new Section 8.16.070 is hereby added to the Eatonville Municipal Code which shall read as follows:

8.16.070 Operation of Stands

A. No Person other than the permittee organization or affiliates shall operate the stand for which the permit is issued, or share or otherwise participate in the benefits of the stand.

B. Fireworks stand operators shall comply with all RWC and WAC requirements governing the operation of fireworks stands including but not limited to WAC 212-17-185, 212-17-198, 212-17-203, 212-17-21503, 212-17-21505, 212-17-21507, 212-17-21509, 212-17-21511, 212-17-21513, 212-17-21515, 212-17-21517, and 212-17-21519.

C. It is unlawful to offer for retail sale, expose for retail sale, or sell at retail any fireworks within the town except from 12:00 noon on June 28th to 9:00pm on July 4th of each year.

Section 8. A new Section 8.16.080 is hereby added to the Eatonville Municipal Code which shall read as follows:

8.16.080 Violation – Penalty. Any person or entity who violates, disobeys, omits or neglects or refuses to comply with or resist the enforcement of any of the provisions of the ordinance codified in this chapter is guilty of a misdemeanor and shall upon conviction be punished by a fine not to exceed \$500.00 or by imprisonment for not more than 30 days or may be punished by both such fine and imprisonment; provided, that each separate day of violation shall constitute a separate violation of the ordinance codified in this chapter.

Section 9. A new Section 8.17.010 is hereby added to the Eatonville Municipal Code which shall read as follows:

8.17.010 Intent. It is the intent of this section to provide for the permitting of and safety related to public displays of fireworks.

Section 10. A new Section 8.17.020 is hereby added to the Eatonville Municipal Code which shall read as follows:

8.17.020 Public Display of Fireworks

A. Every public display of fireworks shall be handled by a competent operator approved by a permit issued by the Fire Chief and be of such character, and so located, discharged, or fired, that, in the opinion of the Chief after proper investigation, it will not constitute a hazard to property or endanger any person. Any person desiring a permit for a public display of fireworks must make an application in writing to the Fire Chief at least ten days in advance of the proposed display according to the procedures outlined in WAC 212-17-270 – WAC 212-17-280.

B. A state pyrotechnics license is required for operators of public displays of fireworks.

C. A bond or certificate of insurance from a company or companies approved by the Town must be furnished to the Department before a permit is issued. The bond shall be in the amount of \$1,000,000 and shall be conditioned upon the applicant's payment of all damages to persons and property resulting from or caused by the public display of fireworks or by any negligence in the presentation of the display on the part of the applicant or its agents, servants, employees, or subcontractors. The certificate of insurance shall evidence a Comprehensive General Liability insurance policy (including explosion and collapse hazards, automobile coverage, and Jones Act coverage where the base of operations is on water) providing \$1,000,000 combined single limit for all coverage per occurrence. The policy shall name the Town as an additional insured thereunder and stipulate it is primary coverage, regardless of what other insurance the Town may carry on its own behalf. The Town shall be given not less than 15 days' advance written notice of any termination or material change to the policy.

D. Transportation and storage.

1. All fireworks shall be transported within the Town in accordance with 49 CFR Part 177 and 397.9(b) prior to reaching the display site.
2. As soon as the fireworks have been delivered to the display site, they shall be attended and shall remain dry.
3. All shells shall be inspected by the display operator upon delivery to the display site. Any shells having tears, leaks, broken fuses, or showing signs of having been wet shall be set aside and not fired. After the display, any such shells shall be either returned to the supplier or destroyed according to the supplier's instructions.
4. All fireworks at the firing site must be stored in ready boxes (substantially constructed wood magazines). During the display, the magazines must be 25 feet upwind (relation to firing time) from the nearest mortar. Magazine lids must open in the opposite direction to the firing. All ready boxes are to be protected by a flameproof water repellent canvas cover until emptied.

5. The shell storage area shall be located at least 25 feet from the discharge site.
6. During the display, shells shall be stored upwind from the discharge site. If the wind shifts during the display, the shell storage area shall be relocated to be upwind from the discharge site.

E. Preparation of site and crowd control.

1. All dry grass, weeds, and other combustible waste matter within 50 feet of the firing site shall be removed.
2. The site shall be located so that the trajectory of shells shall not come within 25 feet of any overhead object.
3. Discharged fireworks shall not come within 100 feet of any tent or canvas shelter.
4. The firing and storage site shall be located at least 200 feet from any building.
5. The operator shall provide sufficient security personnel to assure that no unauthorized persons are allowed within 200 feet of the firing and storage site. This requirement shall be in effect from one-half hour prior to the arrival of fireworks until all fireworks debris, equipment, and fireworks have been removed from the site.
6. Spectators shall be restrained behind lines or barriers at least 200 feet from the firing and storage locations.

F. Installation of mortars.

1. Mortars shall be inspected for dents, bent ends, and cracked or broken plugs prior to ground placement. Mortars found to be defective in any way shall not be used. Any scale on the inside surface of the mortars shall be removed.
2. Mortars shall be positioned so that the shells are carried away from spectators and buildings. When fired over water, mortars shall be installed at an angle of at least 10 degrees, pointing toward the water.
3. Mortars shall be either buried securely into the ground to a depth of two-thirds to three-quarters of their length or fastened securely in mortar boxes or drums. In soft ground, heavy timber or rock slabs shall be placed beneath the mortars to prevent their sinking or being driven into the ground during firing.
4. In damp ground, a weather-resistant bag shall be placed under the bottom of the mortar prior to placement in the ground to protect the mortar against moisture.
5. Weather-resistant bags shall be placed over the open end of the mortar in damp weather to keep moisture from accumulating on the inside surface of the mortar.
6. Sandbags, dirt boxes, or other suitable protection shall be placed around the mortars to protect the operator from ground bursts. This requirement does not apply to the down-range side of the discharge site.

G. Operation of the display.

1. The operator shall provide fire protection at the site as required by the Fire Chief.
2. Only permitted fireworks are authorized for use.
3. If, in the opinion of the Fire Chief or the Chief's authorized representative, lack of crowd control should pose a danger, the display shall be immediately discontinued until such time as the situation is corrected.
4. If, at any time, high winds or unusually wet weather conditions present a definite danger, in the opinion of the Fire Chief, the Chief's authorized representative, or the display operator, the public display shall be postponed until weather conditions allow the safe discharge of fireworks.
5. Light snow or mist need not cause cancellation of the display; however, all materials used in the display shall be protected from the weather until immediately prior to use.
6. Display operators and assistants shall use only flashlights or approved electric lighting for artificial illumination.
7. No smoking or open flames are allowed within 50 feet of the firing or storage area as long as shells are present. Signs to this effect shall be conspicuously posted.
8. The first shell fired shall be carefully observed to determine that its trajectory will carry it into the intended firing range and that the shell functions over, and debris falls into, the planned landing area.
9. The mortars shall be re-angled or reset, if necessary, at any time during the display.
10. When a shell fails to ignite in the mortar, the mortar shall not be touched for at least five minutes. After five minutes, it shall be carefully flooded with water. Immediately following the display, the mortar shall be emptied into a bucket of water. The supplier shall be contacted as soon as possible for proper disposal instructions.
11. Operators shall not attempt to repair a damaged shell, nor shall they attempt to dismantle a dry shell. In all such cases, the supplier shall be contacted as soon as possible for proper disposal instructions.
12. Operators shall not dry a wet shell, lance, or pot for reuse.
13. The entire firing range shall be inspected immediately following the display to locate any defective shells. Any such shells found shall be immediately doused with water before handling. The shells shall be placed in a bucket of water. The supplier shall then be contacted as soon as possible for proper disposal instructions.
14. When fireworks are displayed in darkness, the sponsor shall ensure that the firing range is inspected early the following morning.
15. Any fireworks remaining unfired after the display shall be immediately disposed of or removed from the Town in a safe manner.
16. Operators shall properly dispose of all debris from discharged fireworks.

H. Denial by the Chief of a permit for the public display of fireworks may be appealed to the Town Council.

Section 11. A new Section 8.18.010 is hereby added to the Eatonville Municipal Code which shall read as follows:

8.18.010 Intent. It is the intent of this section to establish rules governing the discharge (excluding public displays of fireworks in accordance with EMC 8.17) and manufacture of fireworks within the town.

Section 12. A new Section 8.18.020 is hereby added to the Eatonville Municipal Code which shall read as follows:

8.18.020 Prohibited Acts

A. The discharge of fireworks within the Town of Eatonville is prohibited except as follows:

1. "Consumer Fireworks" as defined in RCW 70.77.136 may be discharged on the following dates during the times indicated:
July 3: 12:00pm – 11:00pm
July 4: 12:00pm – 11:00pm
December 31st 6:00pm – January 1st 1:00am
2. Public displays of fireworks conforming to all state laws with the approval of the Eatonville Fire Chief.

B. "Consumer Fireworks" shall not be discharged on public property or within public rights of way including but not limited to parks, streets, or sidewalks. "Consumer Fireworks" shall also not be discharged in areas where dry unmaintained vegetation exists during periods when the Washington State Department of Natural Resources indicates that the fire hazard for Pierce County is Moderate, High, or Very High/Extreme. Dry unmaintained vegetation is defined to mean wooded areas and grassy areas where the length of grass is in excess of an average of 12 inches.

C. Any discharge of fireworks identified as prohibited in 8.18.020 (A-C) above is a class one civil infraction and, upon a finding that a violation has been committed, the person committing the act, or in the event of a minor, their parent(s) or legal guardian(s) shall be assessed as follows:

- First Offense: \$100.00
- Second Offense: \$250.00
- Additional Offenses: \$250.00

Such penalty is in addition to any other remedies or penalties specifically provided by law. For each act herein prohibited of a continuing nature, each day shall be considered a separate offense. "Civil infraction" has the

meaning given that term by chapter 7.80 RCW, the Infraction Rules for Courts of Limited Jurisdiction (“IRLJ”) and any local rule adopted thereto by the Eatonville Municipal Court.

D. The manufacture of fireworks within the Town is prohibited. Violation of this subsection is a misdemeanor, punishable by 90 days in jail, a \$1,000 fine, or both such fine and imprisonment.

Section 12. A new Section 8.18.030 is hereby added to the Eatonville Municipal Code which shall read as follows:

8.18.030 Seizure of fireworks.

The Police Chief or his/her designee may seize, remove, or cause to be removed, at the expense of the owner, all fireworks manufactured or used in violation of this chapter.

A. Any person whose fireworks are seized under this chapter may, within ten days after such seizure, petition the Chief in writing to return the fireworks upon the grounds that they were illegally or erroneously seized. Such petitions shall be considered by the Chief within 15 days after filing and an oral hearing granted to the petitioner, if requested. The decision of the Chief shall be provided in writing to the petitioner. The Chief may order the fireworks seized under this chapter, disposed of, or returned to the petitioner if illegally or erroneously seized, if such return is in compliance with state law or this chapter.

B. The determination of the Chief is final unless, within 60 days, an appeal of the seizure is made to the Town Council of the Town. The decision of the Town Council shall be final.

C. Fireworks which are illegal for use and possession in this state shall be turned over to the State Fire Marshal for destruction.

Section 13. Section 9.16.020 of the Eatonville Municipal Code is hereby amended to read as follows:

9.16.020 Disturbing peace. Any person who by noisy, riotous or tumultuous conduct disturbs the peace and quiet of the town or of any meeting or assemblage therein is guilty of a misdemeanor. (Ord. 79-2 § 29, 1979). Legally discharged fireworks in accordance with EMC 8.16, 8.17, and 8.18 shall be exempt from this provision.

Section 14. Section 8.11.110 of the Eatonville Municipal Code is hereby amended to read as follows:

8.11.110 Exemptions.

2011-1 Fireworks Ordinance as approved

A. Between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday, and 9:00 a.m. and 6:00 p.m. on Saturdays and Sundays, the following shall be exempt from this chapter; however, other state restrictions may apply:

1. Sounds originating from residential property as a result of temporary projects for the construction, maintenance, or repair of homes, grounds, and appurtenances;
2. Sounds created by the discharge of firearms on authorized shooting or firing ranges;
3. Sounds created by blasting;
4. Sounds created by aircraft engine testing and maintenance not related to flight operations; provided, that aircraft testing and maintenance shall be conducted at remote sites whenever possible;
5. Sounds created by the installation or repair of essential utility services;
6. Sounds originating from temporary, nonresidential construction sites as a result of construction activity are exempt from this chapter.

B. The following shall be exempt from this chapter:

1. Sounds from electrical substations and existing stationary equipment used in the conveyance of water or wastewater by a utility;
2. Sounds from existing industrial installations which exceed the standards contained in these regulations and which, over the previous three years, have consistently operated in excess of 15 hours per day as a consequence of process necessity and/or demonstrated routine normal operation. Changes in working hours which would affect exemptions under this regulation require approval of the director of public works;
3. Sounds commonly associated with an existing commercial operation which has been approved through a public hearing process and is operating in compliance with any permit conditions;
4. Sounds commonly associated with an existing commercial operation which was established prior to the effective date of any land use regulation(s) and is thereby nonconforming;
5. Sounds originating from aircraft in flight and sounds that originate at airports which are directly related to flight operations;
6. Sounds created by surface carriers engaged in interstate commerce by railroad;
7. Sounds created by warning devices not operated continuously for more than five minutes (bells, chimes, and carillons);
8. Sounds created by safety and protective devices where noise suppression could defeat the intent of the device or is not economically feasible;
9. Sounds created by emergency equipment and work necessary in the interests of law enforcement or for the health, safety, or welfare of the community;

10. Sounds originating from motor vehicle or motorcycle racing events at existing authorized facilities, or being sanctioned by a responsible authority under a valid permit or license;
11. Sounds originating from officially sanctioned parades and other public events under a valid permit or license;
12. Sounds emitted from petroleum refinery boilers during startup of said boilers; provided, that the startup operation is performed during daytime hours whenever possible;
13. Sounds created by the discharge of firearms in the course of hunting;
14. Sounds created by the discharge of legal fireworks in accordance with EMC 8.17 and 8.18. ~~are exempt from this chapter between from 12:00 noon on June 28th, to 12:00 noon on July 5th between the hours of 10:00 a.m. to 11:00 p.m.~~ (Ord. 2006-05 § 1, 2006; Ord. 2005-17 § 1, 2005).

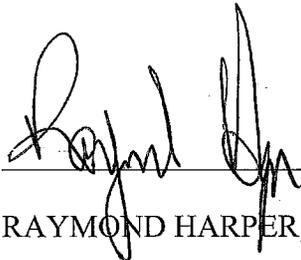
Section 14. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 15. Savings. Ordinance 223 §§ 1-13, 1966, codified at Eatonville Municipal Code 8.16.010 – 8.16.120, which is repealed by this ordinance, shall remain in force and effect until the effective date of this ordinance.

Section 16. Effective Date. This ordinance shall become effective after its passage by the Council, approval, and publication as required by law except for Section 7, Part C, Section 10, and Section 12, Part B, which will become effective one year after passage by the Council, approval and publication as required by law.

PASSED by the Town Council of the Town of Eatonville on this 11 day of April, 2011.

TOWN OF EATONVILLE


RAYMOND HARPER, MAYOR

ATTEST/AUTHENTICATED:
By: 
Chrystal McGlone, Town Clerk

2011-1 Fireworks Ordinance as approved

APPROVED AS TO FORM:

By:  5/25/11

Patterson Buchanan Fobes Leitch & Kalzer, Inc., P.S., Town Attorneys