

## **ORDINANCE NO. 2513**

**AN ORDINANCE FIXING CERTAIN STANDARDS OF CONDUCT FOR PERSONS WITHIN THE CITY OF GARDNER, KANSAS; MAKING VIOLATION OF ANY SUCH STANDARDS A PUBLIC OFFENSE, SUBJECT TO PENALTY; AMENDING AND REPEALING SECTION 10.30, RELATING TO THE DISCHARGE OF FIREWORKS, AND 10.31, RELATING TO THE SALE OF FIREWORKS, OF THE "UNIFORM PUBLIC OFFENSE CODE FOR KANSAS CITIES: EDITION OF 2015," AND REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH.**

**WHEREAS**, the Governing Body of the City of Gardner, Kansas does hereby adopt the following amendments to the Uniform Public Offense Code for Kansas Cities: Edition of 2015 relating to the sale and use of fireworks within the City for the purpose of further the public health, safety and welfare and the City and its residents;

### **BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GARDNER, KANSAS:**

**SECTION ONE.** That Chapter 9.05 of the Municipal Code of the City of Gardner, Kansas 2008, be and the same is hereby amended to the extent that such Chapter amends Section 10.30 of the Uniform Public Offense Code for Kansas Cities: Edition of 2015 pursuant to Ordinance No. 2501 as follows:

10.30 DISCHARGE and SALE OF FIREWORKS.

A. **DEFINITIONS.** As used in this Section, unless the context clearly indicates otherwise, the following words and terms have the following meanings:

1. "Fireworks" - mean any combustible or deflagrating composition, article, or device suitable for the use of the public for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation and previously approved for transportation by the chemical laboratory of the United States Department of Transportation.
  - a. "1.4G, UN0336 (Consumer) Fireworks" - Small firework devices containing restricted amounts of pyrotechnic composition designed primarily to produce visible or audible effects by combustion. Such 1.4G fireworks which comply with the construction, chemical composition and labeling regulations of the Department of Transportation for Fireworks, UN 0336, and the U.S. Consumer Product Safety Commission, and as set forth in 16 CFR: Parts 1500 and 1507, are not explosive materials for the purpose of this Code. (The fireworks in this definition were formerly known as Class C, Common Fireworks).
  - b. "1.3G, UN0335 (Display) Fireworks" - Large firework devices, which are explosive materials, intended for use in fireworks displays and designed to produce audible or visual effects by combustion, deflagration or detonation. Such 1.3G, UN0335 fireworks include, but are not limited to, firecrackers containing more than 130 milligrams (2 grains) of explosive composition, aerial shells containing more than 40 grams of pyrotechnic composition, and other display pieces which exceed the limits for classification as 1.4G, UN0335 fireworks. (The fireworks in this definition were formerly known as Class B, Special fireworks).

2. "Fireworks Stand" - means any permanent or temporary building, trailer, tent, display, awning, canopy, temporary membrane structure, or location from which a Person sells or otherwise distributes 1.4G, UN0336 (Consumer) Fireworks within the city limits of Gardner, Kansas.
  3. "Operator" - means any Person who sells or otherwise distributes 1.4G, UN0336 Fireworks or owns, manages or operates a Fireworks Stand.
  4. "Person" - means an individual, organizational entity of any type, partnership, church, corporation, limited liability company, trust, association of any type, or any agent, officer, employer, committee, or group of any of the foregoing.
- B. DISCHARGE OF FIREWORKS. It shall be unlawful to ignite, explode, discharge, or use any Fireworks within the city limits, except as follows.
1. Consumer Fireworks, 1.4G, UNO336 – 1.4G, UN0336 consumer fireworks may lawfully be ignited, exploded, discharged or used within city limits as follows:
    - a. Date and Time Limitations. The use of consumer fireworks shall be allowed only during the following dates and times: July 3 and July 4, 10:00 A.M. to Midnight.
    - b. Prohibited Locations. Notwithstanding the date and time limitations of this section, it shall be unlawful to ignite, explode, discharge, or use any Fireworks:
      - i. within 1,000 feet of any hospital, sanitarium or infirmary; or
      - ii. within 100 feet of any Fireworks Stand; or
      - iii. within 50 feet of a motor vehicle fuel-dispensing station; or
      - iv. on any public property, including but not limited to roadways, sidewalks, paths, trails, greenways, parks and the right-of-way adjoining such property; or
      - v. on any private property without the express permission and direct supervision of the owner, occupier, or other Person having control of such property.
    - b. Throwing Prohibited. It shall be unlawful for any person to throw, cast or propel fireworks of any kind in the direction of or into the path of any animal, person or groups of persons, or from, in the direction of or into any vehicle of any kind.
    - c. Prohibited Fireworks. Notwithstanding the date and time limitations of this section, it shall be unlawful to ignite, explode, discharge, or use Fireworks prohibited under the laws of the State of Kansas or under the laws of the United States.
    - d. Modification Prohibited. It shall be unlawful to alter, modify or enhance fireworks for use in a manner other than intended.
  2. Display Fireworks, 1.3G, UNO335 – 1.3G, UNO335 display fireworks, may lawfully be ignited, exploded, discharged or used within city limits as follows:
    - a. A permit shall be required for the discharge of display (1.3G, UNO335) fireworks and a fee in the amount of \$150.00 for such a permit shall be charged to the applicant. Application for

such permit shall be made to the Business & Economic Development Department at least 30 days prior to the date for which the permit is requested.

- b. The Business & Economic Development Department shall submit each application to Fire District 1 for their comments and/or recommendations.
  - c. The permit will be submitted to the Governing Body of the City of Gardner for formal action after receipt of the application. The Governing Body shall retain the privilege to waive the fee for the municipality or a non-profit organization.
  - d. The individual(s), organization, municipality or landowner conducting the display fireworks exhibition shall maintain public liability and property damage insurance coverage, including spectator coverage in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in aggregate, and shall submit to the City as part of its permit application, a certificate of insurance.
  - e. The individual(s), organization, municipality or landowner submitting an application for the display fireworks exhibition shall provide a site plan of the exhibition site indicating the point of ignition of display (1.3G, UN0335) fireworks, the distance of any adjacent buildings, location of storage of display (1.3G, UN0335) fireworks and emergency ingress and egress to the property.
  - f. Display (1.3G, UN0335) fireworks shall be kept and stored, prior to firing in a place and manner that presents neither a hazard to any property nor a danger to any person, such as a warehouse or magazine or comparable depository that complies with the requirements of the current Bureau of Alcohol, Tobacco, firearms and explosives Federal Explosives law and Regulations, and the current Fire Code as adopted by the City of Gardner.
  - g. The discharge or display shall be arranged so that the display (1.3G, UN0335) fireworks are to be fired at least 100 feet from the nearest public right-of-way, person or building. Proximate fireworks may be fired within the distance limitations of NFPA 1126.
  - h. Display (1.3G, UN0335) fireworks that fire a projectile in the air shall be directed in such a manner that the projectile does not fire over or above any building, structure or person viewing the exhibition or display, and the angle of the projectile shall be no more than 15 degrees from vertical.
  - i. Persons firing display (1.3G, UN0335) fireworks shall be experienced pyrotechnic experts in the public exhibition or display of fireworks, shall be at least 21 years of age and shall possess a valid license as a Display Operator issued by the State Fire Marshall.
  - j. At least two approved fire extinguishers shall be present at the exhibition site.
  - k. All unfired display (1.3G, UN0335) fireworks and any residue remaining after the discharge shall be extinguished and shall be immediately disposed of in a nonflammable container.
- C. SALE OF FIREWORKS. It shall be unlawful to sell or otherwise distribute fireworks at a Fireworks Stand, except as follows:
- 1. Permits Required. The sale or other distribution of Fireworks at a Fireworks Stand shall not be done without obtaining and holding both a valid Short Term Special Use Permit and a Seasonal Fireworks Retailer Permit, issued by the Business and Economic Development Department.

2. Date Limitations. The sale or distribution of Fireworks shall be allowed only on the following dates within the city limits: June 28, June 29, June 30, July 1, July 2, July 3, and July 4.
  3. Prohibited Fireworks. Sale or other distribution of Fireworks shall be limited to 1.4G, UN0336 (consumer) fireworks (formally known as Class "C" Fireworks) authorized under the laws of the State of Kansas.
  4. Appropriate Zoning. Fireworks Stands may only be located on, and permits may only be issued for, property as allowed by this city's zoning regulations as they exist on the date the permit is granted. As of (date of passage), Fireworks Stands are allowed only in zoning districts A, C-1, C-2, C-3, M-1 and M-2.
- D. PERMIT APPLICATION FOR FIREWORKS STAND. Applications for a Fireworks Stand permit shall be on forms and according to procedures prepared by the City's Business and Economic Development Department and shall be accompanied by a \$1000.00 application fee for each location from which Fireworks will be sold. Applications will not be made available or accepted before January 2<sup>nd</sup> of each year and must be received on or before the close of business on June 15<sup>th</sup> of that same year. If June 15<sup>th</sup> is a day on which the City's offices are closed, the application must be received on or before the close of business on the last business day before June 15<sup>th</sup>. Submitted applications shall, at a minimum, contain the following information:
1. The name, address, legal description, phone number and written permission of the owner of the real estate upon which the Fireworks Stand is to be operated;
  2. The name, address, and phone number of the Operator of the Fireworks Stand;
  3. A site plan of the grounds on which the Fireworks Stand is to be located, showing the location of the Fireworks Stand; the location of all buildings, highways and any lines of communication; property lines, setbacks and adjoining structures; and the location of the off-street parking area designated for the Fireworks Stand;
  4. If a sign will be used to advertise the Fireworks Stand, the diagram must show the location and size of the sign; and
  5. The application shall contain a copy of the Operator's current Kansas Retailers' Sales Tax Registration Certificate. No permit shall be issued if the Fireworks Stand does not or will not comply with the provisions of this ordinance. In addition, the Business and Economic Development Department is authorized to deny a permit to an Operator who has previously failed to comply with this ordinance governing the sale of Fireworks and the operation of a Fireworks Stand.
  6. The applicant must provide a current valid certificate of insurance reflecting a minimum of \$1,000,000 in Commercial General Liability coverage.
- E. FIREWORKS STAND REQUIREMENTS. All Fireworks Stands shall be subject to and operate in compliance with the following minimum requirements:

1. Compliance with the Law. The tract of real estate on which the Fireworks Stand is located, and any and all buildings thereon (whether or not the buildings are actually used in connection with the Fireworks Stand), shall not have been found to be in violation of any of the City's zoning, site planning, building, plumbing, mechanical or electrical codes on or before the application for the permit is submitted. No permit shall be issued for a Fireworks Stand to be located on any real estate if any such violations have been determined on or before the application for the permit is submitted. In addition, any temporary or permanent structure used in connection with the Fireworks Stand shall comply with all applicable building codes relevant to the sale and storage of Fireworks, whether or not found to be in violation on or before the application for the permit is submitted. In addition, each Operator shall comply with all applicable local, state and federal laws and regulations, regardless of whether those legal requirements are specifically referenced herein. Without limiting the foregoing, all electrical systems and equipment, including temporary electrical connections, used in conjunction with the Fireworks Stand shall be installed and used in compliance with the National Electric Code (Article 590) or other applicable electric code, as then adopted and in force in this city.
2. Distance from Road and Residential Property. All Fireworks Stands shall be located at least 30 feet from any road rights-of-way or highway rights-of-way and 50 feet from residential zoned property.
3. Distance from Flammable Materials. No Fireworks shall be stored or sold within 50 feet of any source of flame, sparks, or more than one gallon of any explosive, flammable, combustible, or volatile material; provided, however, that the foregoing shall not apply to operable motor vehicles located more than 20 feet away from stored Fireworks or the Fireworks Stand.
4. Fireworks, Open Flames and Hot Objects. Fireworks, open flames and devices capable of igniting combustible materials shall not be used, discharged or exploded in or adjacent to any Fireworks Stand.
5. No Smoking/Alcoholic Beverages. Smoking and alcoholic beverages shall not be permitted within 100 feet of any Fireworks Stand or any adjacent areas where Fireworks are stored, sold or displayed. "FIREWORKS FOR SALE—NO SMOKING" signs shall be conspicuously posted inside and outside of the storage and/or sales location. The Operator shall enforce this provision with respect to all Persons at the Fireworks Stand. Both the Operator and the Person violating this provision may be subject to prosecution pursuant to Section G (VIOLATIONS, ENFORCEMENT AND PENALTIES).
6. Use of Awnings, Canopies, Temporary Membrane Structures and Tents. The use of awnings, canopies, temporary membrane structures or tents shall, in addition to all other requirements, comply with the following requirements:
  - a. Location. No temporary membrane structure, canopy or tent shall be located within 30 feet of property lines, buildings, parked vehicles, internal combustion engines, other temporary membrane structures, tents, awnings, and/or canopies.

- b. Flame-retardant Treatments. The sidewalls, drops, and tops of awnings, canopies, temporary membrane structures and tents shall be composed of flame-resistant material or shall be treated with a flame-retardant material.
7. Means of Egress.
- a. Location of Exits. Exits shall be spaced at approximately equal intervals around the perimeter of the Fireworks Stand and shall be located such that all points are no more than 75 feet from an exit.
  - b. Number of Exits. Every Fireworks Stand shall have at least 2 exits or as determined in NFPA 101 Life Safety Code, whichever is greater.
  - c. Maintenance of Exits. The required width of exits, aisles and passageways to a public way shall not be less than 48 inches. Guide wires and other support members shall not cross a means of egress.
  - d. Exit Signs. Exit signs shall be installed at required exit doorways and where otherwise necessary to clearly indicate the direction of egress.
8. Fire Extinguisher/Telephone. Each Fireworks Stand shall have at least 2 approved and operable fire extinguishers (2A10BC minimum) and telephone on site for emergencies at all times. The telephone requirement may be satisfied by maintaining an operable wireless phone on site.
9. Posting of Rules. Each Fireworks Stand shall display a sign provided by the city at each required exit, visible to the public, advising of the following rules:
- a. Fireworks shall only be discharged on private property within this City. An adult owner, occupier, or person having control of the property must consent to the activity and provide direct supervision of the discharge of fireworks.
  - b. Fireworks shall not be discharged on any public property, including but not limited to roadways, sidewalks, paths, trails, parks, greenways and the right-of-way adjoining such property.
  - c. Fireworks may be discharged in this City during the following dates and times; July 3 and July 4, 10:00 A.M. to Midnight.
  - d. No smoking or alcoholic beverages are allowed at the Fireworks Stand.
  - e. Violations are punishable by fines and/or confiscation of Fireworks.
10. Parking. Off street parking must be provided for all employees and customers, which shall be a minimum of 20 feet away from the Fireworks Stand and any Fireworks storage areas.
11. Site Preparation. Weeds and grass must be cut back a minimum of 100 feet from the Fireworks Stand.
12. Temporary Stand Removal. The temporary stand, signs and all debris on site shall be removed on or before July 6<sup>th</sup>.

13. **Damage Deposit/Bond.** Any Fireworks Stand which gains its principle means of ingress/egress by crossing either a public hike or bike path shall post a \$1,000 refundable bond or pay a \$1,000 deposit to ensure that the path is not damaged by the operation. The bond shall be made payable to the City of Gardner.
  14. **Advertising Sign.** Only one advertising sign can be erected to advertise each Fireworks Stand, which may be illuminated but shall not be flashing. The sign cannot be larger than 32 sq. ft. and must be located in the front of the Fireworks Stand but not on the road or highway rights-of-way, and shall not represent a safety hazard. A temporary sign permit must be obtained from the Business and Economic Development Department before the sign is erected.
  15. **Sales Tax Registration Certificate.** The Operator shall conspicuously display its current Kansas Retailers' Sales Tax Registration Certificate at the Fireworks Stand.
  16. **Only Fireworks May be Sold.** Unless applicable zoning regulations and approved site-plans allow the sale of other items at retail, only Fireworks related items may be sold at Fireworks Stands and sale of other items is strictly prohibited.
  17. **Seasonal Fireworks Retailer Permit.** The Operator shall conspicuously display its Seasonal Fireworks Retailer permit at the Fireworks Stand.
  18. **Original Packaging.** All Fireworks shall remain in original packaging, unless otherwise permitted pursuant to regulations of the Kansas Fire Marshall.
- F. **INSPECTIONS OF FIREWORKS STANDS; REVOCATION OF PERMIT.** One or more inspections of the proposed site for the Fireworks Stand may be required to ensure compliance with this Section prior to or after issuing the permit. Inspections may be made by any Gardner, Kansas law enforcement officer, any member of the City's Business and Economic Development Department, or personnel of Fire District 1. By submitting any application for a Fireworks Stand permit, the applicant shall be deemed to have consented to all such inspections. If the applicant does not own the subject property, the filing of an application shall be deemed to be a representation by the applicant that the applicant has permission of the owner of the land that the applicant is authorized to consent to such inspection. Any permit previously issued may be revoked or suspended upon notice to the Operator if the Fireworks Stand is not operating in compliance with the provisions of this Section. Upon revocation or suspension of the permit, the Operator of the Fireworks Stand shall immediately cease sale of all Fireworks until the Fireworks Stand is brought into compliance and the permit is reinstated.
- G. **VIOLATIONS, ENFORCEMENT AND PENALTIES.**
1. **Criminal Penalties.** Any Person who violates the provisions of this Section shall be guilty of an unclassified misdemeanor, punishable by a fine in an amount not to exceed \$500, confinement in the county jail for a period not to exceed one month, or both.
  2. **Initiation of Proceedings.** In addition to any other method of initiating a criminal proceeding under applicable law, criminal proceeding may be initiated for violation of any provision of this

Section by making an offense report and serving a uniform complaint and notice to appear upon the accused. The offense report may be forwarded to the city prosecutor for prosecution.

3. Continuing Violation. Each day that any violation occurs shall constitute a separate offense and shall be punishable as a separate violation. Provided, however, that if any person is found guilty of a violation hereunder and it shall appear to the court that the violation complained of is continuing, then in addition to the penalty set forth, the court shall enter such order as it deems appropriate to cause the violation to be abated.
4. Confiscation of Fireworks. In addition to the other provisions of this Section, whenever a Gardner law enforcement officer, code enforcement officer, or personnel of Fire District 1 has probable cause to believe that a person possesses Fireworks with intent to violate the provisions of this Section or has violated the provisions of this Section, the law enforcement officer, code enforcement officer or personnel of the fire department may confiscate Fireworks from such person and arrange for their immediate destruction in a manner approved by the Fire Chief.
- H. BURNING BAN. The use or discharge of all fireworks shall be prohibited whenever a fire or burn ban is put in effect by the Governor, Mayor, Fire Chief or Johnson County Emergency Manager. The Mayor may also suspend the sale of fireworks while the ban is in effect. If sales are suspended, permit fees for Firework Stands shall be refunded on a prorated basis to the permit applicants.
- I. PARTIAL INVALIDITY. If any provision of this Section or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Section which can be given effect without the invalid provision or application, and to this end the provisions of this Section are severable.
- J. JURISDICTION. The provisions of this Article shall apply to the city limits of Gardner, Kansas.”

**SECTION TWO.** That the formerly adopted amendments to Sections 10.30 and 10.31 of the Uniform Public Offense Code for Kansas Cities: Edition of 2015, adopted through amendments to Chapter 9.05 of the Gardner Municipal Code pursuant to Ordinance No. 2501, are hereby repealed.

**SECTION THREE.** That this Ordinance does not repeal or replace any other provisions of Ordinance No. 2501 other than the above identified amendments to Section 10.30 and 10.31 of the Uniform Public Offense Code for Kansas Cities: Edition of 2015.

**SECTION FOUR.** All other ordinances not in conformity herewith are hereby repealed or amended to conform hereto.

**SECTION FIVE: EFFECTIVE DATE.** This ordinance shall take effect and be in force from and after its publication as provided by law.

PASSED and APPROVED this 7<sup>th</sup> day of March, 2016.



CITY OF GARDNER, KANSAS

(SEAL)

/s/ Chris Morrow  
Chris Morrow, Mayor

Attest:

/s/ Jeanne Koontz  
Jeanne Koontz, City Clerk

Approved as to form:

/s/ Ryan B. Denk  
Ryan B. Denk, City Attorney