

ORDINANCE NO. 99-23

AN ORDINANCE AMENDING SECTION 672.10 OF THE CODIFIED ORDINANCES OF THE CITY OF AVON ENTITLED "FIREWORKS" TO REVISE REGULATIONS REGARDING THE SALE AND POSSESSION OF FIREWORKS AND DECLARING AN EMERGENCY

WHEREAS, Sub. H.B. 172 of the 134th General Assembly enacted comprehensive amendments to Chapter 3743 of the Ohio Revised Code related to the regulation of fireworks in the State, inclusive of their possession and discharge under specific circumstances; and

WHEREAS, the City of Avon previously enacted Section 672.10 of the Codified Ordinances prohibiting the possession, sale and discharge of fireworks in the City, unless specific exceptions apply as further set forth in Section 672.10; and

WHEREAS, to avoid any confusion with new State law as well as to harmonize City Ordinances with various terms, phrases, licensing schemes, and other aspects of State law, the Council desires to enact amendments to Section 672.10, which will prohibit the sale of fireworks within the City and permit the discharge of fireworks in accordance with State Law; and

WHEREAS, the Charter authorizes City Council to enact emergency ordinances for the preservation of public peace, health, safety, or welfare; and

WHEREAS, the Council finds that it is in furtherance of the public peace, health, safety and welfare to enact fireworks regulations and hereby does so pursuant to the Charter and plenary power conferred upon the City by Article XVIII, § 3 and 7 of the Ohio Constitution.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVON, LORAIN COUNTY, OHIO:

Section 1 – That the provisions of Section 672.10 entitled "Fireworks" shall be amended to read as set forth in the new Section which is attached hereto as Exhibit "A", and incorporated herein by reference.

Section 2 – That the Codifier is hereby instructed to insert new Section 672.10 as contained in Exhibit A of this legislation in the appropriate order within the existing codified ordinances, renumbering and/or re-lettering anywhere applicable. All other language contained in Section 672.10 not specifically amended herein shall remain in full force and effect.

Section 3 – That wherever the provisions of this Ordinance conflict with any other ordinance or any provision of the Codified Ordinances of the City, the restrictive provision(s) shall control.

Section 4 – That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this

Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 5 – That this Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, safety and welfare of the citizens of the City of Avon, Ohio; the immediate emergency being the necessity to regulate the use, possession and sale of fireworks to protect the public interest and rights of property owners; therefore, this Ordinance shall take effect and be in full force immediately upon its passage and approval by the Mayor.

PASSED: September 18, 2023 DATE SIGNED: September 18, 2023

By: Brian Fischer
Brian Fischer, Council President

DATE APPROVED BY THE MAYOR: September 19, 2023

[Signature]
Bryan K. Jensen, Mayor

APPROVED AS TO FORM:

John A. Gasior
John A. Gasior, Law Director

ATTEST:

Barbara Brooks
Barbara Brooks, Clerk of Council

Posted: September 20, 2023
Electronically and at City Hall as
Provided by Council

Prepared By:
John A. Gasior, Esq.
Law Director

I, Barbara J. Brooks, Clerk of the Council of the City of Avon, Ohio, hereby certify this document to be a true and exact copy of Ordinance No. 99-23, passed by the Council of said City on September 18, 2023.

IN WITNESS WHEREOF, I have on this 19th day of September, 2023, affixed my signature and official seal.

Barbara J. Brooks
Barbara J. Brooks, Clerk of the Council
of the City of Avon, Ohio

EXHIBIT A TO ORDINANCE NO. 99-23

672.10 FIREWORKS.

(a) Definitions. As used in this section, unless otherwise provided:

(1) "1.3G fireworks." Display fireworks consistent with regulations of the United States Department of Transportation as expressed using the designation "Division 1.3" in Title 49 of the Code of Federal Regulations.

(2) "1.4G fireworks." Consumer fireworks consistent with regulations of the United States Department of Transportation as expressed using the designation "Division 1.4" in Title 49 of the Code of Federal Regulations.

(3) "Beer." Has the same meaning as in R.C. § 4301.01.

(4) "Booby trap." A small tube that has a string protruding from both ends that has a friction-sensitive composition and that is ignited by pulling the ends of the string.

(5) "Cigarette load." A small wooden peg that is coated with a small quantity of explosive composition and that is ignited in a cigarette.

(6) "Controlled substance." Has the same meaning as in Ohio R.C. 3719.01.

(7) "Discharge site." An area immediately surrounding the mortars used to fire aerial shells.

(8) "Fireworks." Any composition or device prepared for the purpose of producing a visible or an audible effect by combustion, deflagration, or detonation, except ordinary matches and except as provided in Ohio R.C. 3743.80.

(9) "Fireworks incident." Any action or omission that occurs at a fireworks exhibition that results in injury or death, or a substantial risk of injury or death, to any person, and that involves either of the following:

A. The handling or other use, or the results of the handling or other use, of fireworks or associated equipment or other materials;

B. The failure of any person to comply with any applicable requirement imposed by this section or Ohio R.C. Chapter 3743, or any applicable rule adopted under this section or Ohio R.C. Chapter 3743.

(10) "Fireworks incident site." A discharge site or other location at a fireworks exhibition where a fireworks incident occurs, a location where an injury or death associated with a fireworks incident occurs, or a location where evidence of a fireworks incident or an injury or death associated with a fireworks incident is found

(11) "Fireworks plant." All buildings and other structures in which the manufacturing of fireworks, or the storage or sale of manufactured fireworks by a manufacturer, takes place.

(12) "Fountain device." Means a specific type of 1.4G firework that meets all of the following criteria:

A. It is nonaerial and nonreport producing.

B. It is recognized and manufactured in accordance with sections 3.1.1 and 3.5 of APA standard 87-1 (2001 edition).

C. It is a ground-based or hand-held sparkler with one or more tubes containing a nonexplosive pyrotechnic mixture that produces a shower of sparks upon ignition, with or without additional effects that may include a colored flame, audible crackling effect, audible whistle effect, or smoke.

D. It contains not more than 75 grams of the nonexplosive pyrotechnic mixture in any individual tube and not more than 500 grams or less for multiple tubes.

(13) "Highway." Any public street, road, alley, way, lane or other public thoroughfare.

(14) "Intoxicating liquor." Had the same meaning as in R.C. § 4301.01.

(15) "Licensed building." A building on the licensed premises of a licensed manufacturer or wholesaler of fireworks that is approved for occupancy by the building official having jurisdiction.

(16) "Licensed exhibitor of fireworks" or "licensed exhibitor." A person licensed pursuant to Ohio R.C. 3743.50 through 3743.55.

(17) "Licensed fountain device retailer" or "licensed retailer." Means a person licensed pursuant to R.C. § 3743.26.

(18) "Licensed manufacturer of fireworks" or "licensed manufacturer." A person licensed pursuant to Ohio R.C. 3743.02 through 3743.08.

(19) "Licensed premises." The real estate upon which a licensed manufacturer or wholesaler of fireworks conducts business.

(20) "Licensed wholesaler of fireworks" or "licensed wholesaler." A person licensed pursuant to Ohio R.C. 3743.15 through 3743.21.

(21) "List of licensed exhibitors." The list required by R.C. § 3743.51(C).

(22) "List of licensed manufacturers." The list required by R.C. § 3743.03(C).

(23) "List of licensed wholesalers." The list required by R.C. § 3743.16(C).

(24) "Manufacturing of fireworks." The making of fireworks from raw materials, none of which in and of themselves constitute fireworks, or the processing of fireworks.

(25) "Navigable waters." Any body of water susceptible of being used in its ordinary condition as a highway of commerce over which trade and travel is or may be conducted in the customary modes, but does not include a body of water that is not capable of navigation by barges, tugboats, and other large vessels.

(26) "Novelties" and "trick noisemakers."

A. Devices that produce a small report intended to surprise the user, including but not limited to booby traps, cigarette loads, party poppers, and snappers;

B. Snakes or glow worms;

C. Smoke devices;

D. Trick matches.

(27) "Party popper." A small plastic or paper item that contains not more than 16 milligrams of friction-sensitive explosive composition that is ignited by pulling a string protruding from the item, and from which paper streamers are expelled when the item is ignited.

(28) "Processing of fireworks." The making of fireworks from materials all or part of which in and of themselves constitute fireworks, but does not include the mere packaging or repackaging of fireworks.

(29) "Railroad." Any railway or railroad that carries freight or passengers for hire, but does not include auxiliary tracks, spurs, and sidings installed and primarily used in serving a mine, quarry or plant.

(30) "Retail sale" or "sell at retail." A sale of fireworks to a purchaser who intends to use the fireworks and not to resell them.

(31) "Smoke device." A tube or sphere that contains pyrotechnic composition that, upon ignition, produces white or colored smoke as the primary effect.

(32) "Snake" or "glow worm." A device that consists of a pressed pellet of pyrotechnic composition that produces a large snake-like ash upon burning, which ash expands in length as the pellet burns.

(33) "Snapper." A small paper-wrapped item that contains a minute quantity of explosive composition coated on small bits of sand and that, when dropped, implodes.

(34) "Storage location." A single parcel or contiguous parcels of real estate approved by the Ohio Fire Marshal pursuant to R.C. § 3743.04(I) or 3743.17(F) that are separate from a licensed premises containing a retail showroom, and which parcel or parcels a licensed manufacturer or wholesaler of fireworks may use only for the distribution, possession and storage of fireworks in accordance with this chapter.

(35) "Trick match." A kitchen or book match that is coated with a small quantity of explosive composition and that, upon ignition, produces a small report or a shower of sparks.

(36) "Wholesale sale" or "sell at wholesale." A sale of fireworks to a purchaser who intends to resell the fireworks so purchased.

(37) "Wire sparkler." A sparkler consisting of a wire or stick coated with a nonexplosive pyrotechnic mixture that produces a shower of sparks upon ignition and that contains no more than 100 grams of this mixture.

(R.C. § 3743.01)

(b) Purchasing and Transporting.

(1) No person who resides in another state and purchases fireworks in this State shall obtain possession of the fireworks in this State unless the person complies with Ohio R.C. 3743.44.

(2) No person who resides in another state and who purchases fireworks in this State shall obtain possession of fireworks in this State other than from a licensed manufacturer or wholesaler, or fail, when transporting 1.3G fireworks, to transport them directly out of this State within 72 hours after the time of their purchase. No such person shall give or sell to any other person in this State fireworks that the person has acquired in this State.

(3) No person who resides in this state and purchases fireworks in this State shall obtain possession of the fireworks in this State unless the person complies with Ohio R.C. 3743.45.

(4) No person who resides in this State and who purchases fireworks in this State under Ohio R.C. 3743.45 shall obtain possession of the fireworks in this State other than from a licensed manufacturer or licensed wholesaler, or fail, when transporting the fireworks, to transport them directly out of this State within 48 hours after the time of their purchase. No such person shall give or sell to any other person in this State fireworks that the person has acquired in this State.

(ORC 3743.63)

(c) Prohibited Activities by Exhibitors.

(1) An exhibitor of fireworks licensed under Ohio R.C. 3743.50 through 3743.55 who wishes to conduct a public fireworks exhibition shall apply for approval to conduct the exhibition to the Fire Chief or fire prevention officer and to the Police Chief or other similar chief law enforcement officer, or the designee of the Police Chief or other similar chief law enforcement officer, having jurisdiction over the premises.

(2) The approval required by division (c)(1) of this section shall be evidenced by the Fire Chief or fire prevention officer and by the Police Chief or other similar chief law

enforcement officer, or the designee of the Police Chief or similar chief law enforcement officer, signing a permit for the exhibition. Any exhibitor of fireworks who wishes to conduct a public fireworks exhibition may obtain a copy of the form from the State Fire Marshal or, if available, from the Fire Chief, a fire prevention officer, the Police Chief or other similar chief law enforcement officer, or a designee of the Police Chief or other similar chief law enforcement officer.

(3) Before a permit is signed and issued to a licensed exhibitor of fireworks, the Fire Chief or fire prevention officer, in consultation with the Police Chief or other similar chief law enforcement officer, or the designee of the Police Chief or other similar chief law enforcement officer, shall inspect the premises on which the exhibition will take place and shall determine that, in fact, the applicant for the permit is a licensed exhibitor of fireworks. Each applicant shall show his or her license as an exhibitor of fireworks to the Fire Chief or fire prevention officer.

(4) The Fire Chief or fire prevention officer and the Police Chief or other similar chief law enforcement officer, or the designee of the Police Chief or other similar chief law enforcement officer, shall give approval to conduct a public fireworks exhibition only if satisfied, based on the inspection, that the premises on which the exhibition will be conducted allow the exhibitor to comply with the rules adopted by the State Fire Marshal pursuant to Ohio R.C. 3743.53(B) and (E) and that the applicant is, in fact, a licensed exhibitor of fireworks. The Fire Chief or fire prevention officer, in consultation with the Police Chief or other similar chief law enforcement officer or with the designee of the Police Chief or other similar chief law enforcement officer, may inspect the premises immediately prior to the exhibition to determine if the exhibitor has complied with the rules, and may revoke a permit for noncompliance with the rules.

(5) If the Council has prescribed a fee for the issuance of a permit for a public fireworks exhibition, the Fire Chief or fire prevention officer and Police Chief or other similar chief law enforcement officer, or their designee, shall not issue a permit until the exhibitor pays the requisite fee.

(6) Each exhibitor shall provide an indemnity bond in the amount of at least one million dollars with surety satisfactory to the Fire Chief or fire prevention officer and to the Police Chief or other similar chief law enforcement officer, or the designee of the Police Chief or other similar chief law enforcement officer, conditioned for the payment of all final judgments that may be rendered against the exhibitor on account of injury, death, or loss to person or property emanating from the fireworks exhibitor, or proof of insurance coverage of at least one million dollars for liability arising from injury, death, or loss of persons or property emanating from the fireworks exhibition. The Council may require the exhibitor to provide an indemnity bond or proof of insurance coverage in amounts greater than those required by this division. The Fire Chief or fire prevention officer and Police Chief or other similar chief law enforcement officer, or their designee, shall not issue a permit until the exhibitor provides the bond or proof of the insurance coverage required by this division or by the Council.

(7) Each permit for a fireworks exhibition issued by the Fire Chief or fire prevention officer and by the Police Chief or other similar chief law enforcement officer, or the designee of the Police Chief or other similar chief law enforcement officer, shall contain a distinct number, designate the municipality, and identify the certified fire safety inspector, Fire Chief, or fire prevention officer who will be present before, during and after the exhibition, where appropriate. A copy of each permit issued shall be forwarded by the Fire Chief or fire prevention officer and by the Police Chief or other similar chief law enforcement officer, or designee of the Police Chief or other similar chief law enforcement officer, issuing it to the State Fire Marshal. A permit is not transferable or assignable.

(8) The Fire Chief or fire prevention officer and Police Chief or other similar chief law enforcement officer, or designee of the Police Chief or other similar chief law enforcement officer, shall keep a record of issued permits for fireworks exhibitions. In this list, the Fire Chief, fire prevention officer, Police Chief or other similar chief law enforcement officer, or designee of the Police Chief or other similar chief law enforcement officer, shall list the name of the exhibitor, his or her license number, the premises on which the exhibition will be conducted, the date and time of the exhibition, and the number and political subdivision designation of the permit issued to the exhibitor for the exhibition.

(9) The Council shall require that a certified fire safety inspector, Fire Chief or fire prevention officer be present before, during and after the exhibition, and shall require the certified fire safety inspector, Fire Chief or fire prevention officer to inspect the premises where the exhibition is to take place and determine whether the exhibition is in compliance with this section and Ohio R.C. Chapter 3743.

(ORC 3743.54)

(10) No licensed exhibitor of fireworks shall fail to comply with the applicable requirements of the rules adopted by the State Fire Marshal pursuant to Ohio R.C. 3743.53(B) and (E) or to comply with Ohio R.C. 3743.53(C) and (D).

(11) No licensed exhibitor of fireworks shall conduct a fireworks exhibition unless a permit has been secured for the exhibition pursuant to Ohio R.C. 3743.54 or a substantially similar municipal ordinance, or if a permit so secured is revoked by a Fire Chief or fire prevention officer, in consultation with a Police Chief or other similar chief law enforcement officer, or with a designee of a Police Chief or other similar chief law enforcement officer, pursuant to those sections.

(12) No licensed exhibitor of fireworks shall acquire fireworks for use at a fireworks exhibition other than in accordance with Ohio R.C. 3743.54 and 3743.55, or a substantially similar municipal ordinance.

(13) No licensed exhibitor of fireworks or other person associated with the conduct of a fireworks exhibition shall have possession or control of, or be under the influence of, any intoxicating liquor, beer, or controlled substance while on the premises on which the exhibition is being conducted.

(14) No licensed exhibitor of fireworks shall permit an employee to assist the licensed exhibitor in conducting fireworks exhibitions unless the employee is registered with the State Fire Marshal under Ohio R.C. 3743.56.

(ORC 3743.64)

(d) Possession, Sale, Discharge and Advertising; Falsification.

(1) No person shall possess fireworks in this Municipality, except an out-of-state resident as authorized by Ohio R.C. 3743.44, a resident of this State as authorized by Ohio R.C. 3743.45, or a licensed exhibitor of fireworks as authorized by Ohio R.C. 3743.50 through 3743.55, or as authorized by any municipal ordinance that is substantially equivalent to any of these statutes, and except as provided in Ohio R.C. 3743.80 or a substantially equivalent municipal ordinance.

(2) No person shall possess for sale at retail or sell at retail fireworks within this Municipality. This prohibition does not apply to sales of fountain devices by a licensed fountain device retailer.

(3) Except as provided in Ohio R.C. 3743.80, R.C. 3743.45 or a substantially equivalent municipal ordinance, and except for licensed exhibitors of fireworks authorized to conduct a fireworks exhibition pursuant to Ohio R.C. 3743.50 through 3743.55 or a substantially equivalent municipal ordinance, no person shall discharge, ignite, or explode any fireworks in this Municipality.

(4) No person shall use in a theater or public hall what is technically known as fireworks showers, or a mixture containing potassium chlorate and sulphur.

(5) No person shall sell fireworks of any kind to a person under 18 years of age. No person under 18 years of age shall enter a fireworks sales showroom unless that person is accompanied by a parent, legal guardian, or other responsible adult. No person under 18 years of age shall touch or possess fireworks on a licensed premises without the consent of the licensee. A licensee may eject any person from a licensed premises that is in any way disruptive to the safe operation of the premises.

(6) Except as otherwise provided in R.C. § 3743.44, no person, other than a licensed manufacturer, licensed wholesaler, licensed exhibitor, or shipping permit holder shall possess 1.3G fireworks in this Municipality.

(ORC 3743.65(A) - (E))

(e) Transporting and Shipping.

(1) No person shall transport fireworks in this Municipality except in accordance with the rules adopted by the State Fire Marshal pursuant to Ohio R.C. 3743.58.

(2) As used in this division, "fireworks" includes only 1.3G and 1.4G fireworks. No person shall ship fireworks into this Municipality by mail, parcel post, or common carrier unless the person possesses a valid shipping permit issued under Ohio R.C. 3743.40,

and the fireworks are shipped directly to the holder of a license issued under Ohio R.C. 3743.03, 3743.16 or 3743.51.

(3) No person shall ship fireworks within this Municipality by mail, parcel post, or common carrier unless the fireworks are shipped directly to the holder of a license issued under Ohio R.C. 3743.01, 3743.16 or 3743.51.

(ORC 3743.66)

(f) Exceptions. This section does not prohibit or apply to the following:

(1) The manufacture, sale, possession, transportation, storage, or use in emergency situations of pyrotechnic signaling devices and distress signals for marine, aviation, or highway use;

(2) The manufacture, sale, possession, transportation, storage or use of fusees, torpedoes, or other signals necessary for the safe operation of railroads;

(3) The manufacture, sale, possession, transportation, storage or use of blank cartridges in connection with theaters or shows, or in connection with athletics as signals for ceremonial purposes;

(4) The manufacture for, the transportation, storage, possession or use by, or the sale to the armed forces of the United States and the militia of this state, as recognized by the Adjutant General of Ohio, of pyrotechnic devices;

(5) The manufacture, sale, possession, transportation, storage or use of toy pistols, toy canes, toy guns, or other devices in which paper or plastic caps containing 0.25 grains or less of explosive material are used, provided that they are constructed so that a hand cannot come into contact with a cap when it is in place for explosion, or apply to the manufacture, sale, possession, transportation, storage or use of those caps;

(6) The manufacture, sale, possession, transportation, storage or use of novelties and trick noisemakers, auto burglar alarms, or model rockets and model rocket motors designed, sold, and used for the purpose of propelling recoverable aero models;

(7) The manufacture, sale, possession, transportation, storage or use of wire sparklers.

(8) The conduct of radio-controlled special effect exhibitions that use an explosive black powder charge of not more than one-quarter pound per charge, and that are not connected in any manner to propellant charges; provided, that the exhibition complies with all of the following:

A. No explosive aerial display is conducted in the exhibition;

B. The exhibition is separated from spectators by not less than 200 feet;

C. The person conducting the exhibition complies with regulations of the Bureau of Alcohol, Tobacco and Firearms of the United States Department of the Treasury

and the United States Department of Transportation with respect to the storage and transport of the explosive black powder used in the exhibition.

(ORC 3743.80)

(g) Forfeiture and Disposal. Fireworks manufactured, sold, possessed, transported, or used in violation of this section shall be forfeited by the offender. The Fire Marshal's office or certified fire safety inspector's office shall dispose of seized fireworks pursuant to the procedures specified in Ohio R.C. 2981.11 to 2981.13 for the disposal of forfeited property by law enforcement agencies, and the Fire Marshal or that office is not liable for claims for the loss of or damages to the seized fireworks.

(ORC 3743.68(B))

(h) Penalty.

(1) Except as otherwise provided in division (h)(2) of this section, whoever violates any provisions of this section is guilty of a misdemeanor of the first degree.

(2) Whoever violates division (c)(10) of this section is guilty of a misdemeanor of the first degree. In addition to any other penalties that may be imposed on a licensed exhibitor of fireworks under this division and unless the third sentence of this division applies, the person's license as an exhibitor of fireworks or as an assistant exhibitor of fireworks shall be suspended. If the violation of division (c)(10) of this section results in serious physical harm to persons or serious physical harm to property, the person's license as an exhibitor of fireworks or as an assistant exhibitor of fireworks shall be revoked.

(R.C. § 3743.99(C), (D))