

ORDINANCE NO. _____

AN EMERGENCY ORDINANCE TEMPORARILY PROHIBITING THE SALE AND USE OF PERMISSIBLE FIREWORKS IN THE CITY OF LOVELAND

WHEREAS, on June 14, 2012, Governor John W. Hickenlooper issued Executive Order D 2012-015 pursuant to C.R.S. § 23-31-308 imposing a statewide ban on "open burning" in Colorado, which includes a total ban on the private use of fireworks (the "Executive Order"); and

WHEREAS, Governor Hickenlooper states in his Executive Order that he issued it to address the high fire danger that currently exists throughout much of Colorado, citing in particular the ongoing High Park Fire here in Larimer County; and

WHEREAS, on June 19, 2012, the Larimer County Commissioners adopted Resolution No. 06192012R004 which, among other things, enacted a temporary ban on the sale and use of all fireworks within the unincorporated areas of Larimer County effective through September 30, 2012; and

WHEREAS, the City's Fire Code, as adopted in City Code Chapter 15.28 ("Fire Code"), currently prohibits the possession, manufacture, storage, sale, handling and use of all fireworks except that "permissible fireworks," as defined in C.R.S. § 12-28-101(8), ("Permissible Fireworks") are currently permitted to be possessed, stored, sold and used within the City; and

WHEREAS, ~~even~~ the sale and use of Permissible Fireworks currently represents an unacceptable risk to the public's health, safety and welfare considering the hot, dry and windy weather conditions that have existed in the City and Larimer County for the past few weeks and that are forecast to continue to exist for the foreseeable future; and

WHEREAS, the City is authorized under its home rule powers and C.R.S. §§ 12-28-107 and 31-15-601(1)(j) to regulate the sale and use of fireworks including Permissible Fireworks; and

WHEREAS, the Council has determined that it is necessary for the public's health, safety and welfare that this Emergency Ordinance be adopted to temporarily ban the sale and use of Permissible Fireworks in the City, with this ban on the sale and use of Permissible Fireworks to expire when Governor Hickenlooper rescinds the Executive Order or earlier if the Council hereafter determines by ordinance that the fire danger in the City has subsided.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That the preceding recitals contained in this Ordinance are hereby adopted and incorporated by reference as findings of fact of the City Council.

Section 2. That the sale and use of Permissible Fireworks within the City during the current and forecasted weather conditions creates a very high risk of fire danger within the City and areas surrounding the City, as clearly evidenced by the High Park Fire and, therefore, an emergency exists requiring the immediate passage of this Ordinance for the preservation of the health, safety and welfare of the citizens of Loveland.

Section 3. That notwithstanding any provision to the contrary in Section 105 of the Fire Code and in paragraphs DD., EE., FF. and GG. of City Code Section 15.28.020, until the Executive Order is rescinded or such earlier date as may hereafter be established by ordinance of the City Council, it shall be unlawful and a violation of this Ordinance for any person or legal entity to sell or use Permissible Fireworks within the City. This prohibition shall not, however, apply to the possession or storage of Permissible Fireworks, which activities shall continue to be legal as currently authorized in accordance with the applicable provisions of the Fire Code and City Code Chapter 15.28. However, any existing and current permits issued by the City to vendors for the sale of Permissible Fireworks under Section 105 of the Fire Code shall be deemed immediately suspended and such suspension shall remain in effect so long as this Ordinance remains in effect. Accordingly, these suspensions shall be deemed to have expired when this Ordinance is no longer in effect. Any vendor whose permit is suspended under this Ordinance may request and receive from the City a full reimbursement of the permit fee paid by the vendor. However, once the suspension imposed herein is lifted and before the suspended permit goes back into effect, the vendor must pay the City the required fee in an amount prorated for the remaining duration of the permit.

Section 4. Violations of Section 3. of this Ordinance shall be enforced, cited, prosecuted and punished as misdemeanor offenses in accordance with City Code Section 15.28.030B. This Ordinance may be enforced by both City fire and police officials. In addition, the remaining and undischarged Permissible Fireworks in possession of a person cited for a violation under this Ordinance may be seized, subject to any Fourth Amendment requirements, by the City's fire and police officials~~Loveland Police Department~~ as evidence and, if the person cited is convicted of the violation, the Loveland Municipal Court may order the seized Permissible Fireworks to be destroyed as contraband by the Loveland Police Department.

Section 5. Nothing herein shall be deemed to prohibit the City from conducting its annual Fourth of July professional fireworks display at the City's North Lake Park as currently authorized under applicable law.

Section 6. That if any section, paragraph, sentence, clause or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of and shall be severable from the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each part or parts thereof irrespective of the fact that any one part or parts may hereafter be declared unconstitutional or invalid.

Section 7. That all other ordinances and City Code provisions, or portions thereof, which are inconsistent or conflicting with this Ordinance, or any portion hereof, are hereby superseded by this Ordinance and their legal effect shall be held in abeyance until the Executive Order is rescinded or earlier as so determined by the City Council by ordinance.

Section 8. That pursuant to City Charter Section 4-10(b), this Ordinance shall become effective immediately upon its adoption by the City Council.


ADOPTED this 26th day of June, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



City Attorney