

ORDINANCE #318-09

AN ORDINANCE REPEALING ORDINANCE #122; ADOPTING IDAHO CODE DEFINITIONS; PROHIBITING WITH EXCEPTIONS AND PERMITTING; SETTING DATES OF SALE, HOURS OF SELLING AND USING; SETTING PERMIT APPLICATION PARAMETERS; SETTING APPROVAL OR DENIAL STANDARDS; SETTING FEES BY RESOLUTION; REQUIRING A PERFORMANCE BOND; LIMITING STORAGE AND SETTING REMOVAL DEADLINE; SETTING EXCEPTIONS TO REQUIREMENTS; REQUIRING RECORDKEEPING; SETTING LIABILITY INSURANCE REQUIREMENTS; PARENT / GUARDIAN LIABLE FOR ACTIONS OF MINOR; ADOPTING STATE FIREWORKS CODE REQUIRING COMPLIANCE AND SETTING A PENALTY; SEVERABILITY; REPEAL OF CONFLICTING ORDINANCES; AND EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NEW MEADOWS, IDAHO, AS FOLLOWS

Section 1. REPEALING CLAUSE: That Ordinance #122 of the City of New Meadows, Idaho, is hereby repealed;

Section 2. ADOPTION OF IDAHO CODE DEFINITIONS: The definitions of fireworks, nonaerial common fireworks and special fireworks as set out in Idaho Statute Title 39, Chapter 26 are hereby adopted by reference and incorporated herein;

Section 3. PROHIBITION, EXCEPTION and PERMIT: It is unlawful for any person within the City to import, export, offer for sale, sell, have, possess for any use or purpose, keep, store or permit the keeping or storing of fireworks, other than nonaerial common fireworks, for any use or purpose, except that a person holding a special fireworks permit issued pursuant to this ordinance may use special fireworks for a safely supervised and conducted public display of fireworks. Temporary storage of special fireworks shall not be permitted in the City.

Section 4. DATES OF SALE, USE and HOURS OF SELLING: A person who does not possess a valid fireworks permit issued pursuant to this ordinance shall not import, export, possess for the purpose of sale, offer for sale, or sell any fireworks for any use or purpose. No fireworks shall be sold or offered for sale within the City except between twelve o'clock (12:00) noon and 7:00 P.M., June 26th through July 4th and December 26th through January 1st. No fireworks shall be discharged within the City except between twelve o'clock (12:00) noon and twelve o'clock (12:00) midnight, June 26th through July 4th and December 26th and January 1st, except as provided for in Section 5 of this ordinance;

Section 5. PERMIT, APPLICATION & CONTENTS:

A. Any person desiring to sell nonaerial common fireworks shall file his application for a permit with the City Clerk no later than June 10th of each year.

B. Any person desiring to make a public display of special fireworks, other than nonaerial common fireworks, within the City shall file his application for a permit with the City Clerk at least thirty (30) days in advance of the proposed event. Special

fireworks shall be ignited by a qualified pyrotechnician.

C. Each application for a permit pursuant to this Section shall contain the following information:

1. The name and address of applicant;
2. The names and addresses of the officers, if any, of the applicant;
3. The pyrotechnician's qualifications (for public display of special fireworks) including but not limited to training certification on the size and types of fireworks to be used in the proposed display, any licensure from the State of Idaho or other states, and the names and contact numbers of the last five (5) organizations/individuals that they have performed like services for;
4. The location where the applicant will sell fireworks or conduct the public display and a copy of written permission of the location's owner;
5. The name and address of any wholesaler or distributor from whom the retailer proposes to purchase fireworks for resale;
6. The applicant's State sales tax permit number;
7. The manner, methods, and times when and how the applicant proposes to sell fireworks;
8. A drawing depicting the stand dimensions, location of the stand on the property with setbacks from property lines, and uses of adjacent properties, or in instances of a public display, the launch location, launch direction, fallout area and buildings within 500 feet of launch location;
9. Such other information as the City Clerk may require on a standard form submitted to all applicants and which is reasonably necessary to protect the public health, safety and morals.

D. Any person desiring to use fireworks as part of a play, concert or similar theatrical production shall first obtain a permit following the same procedures as set out in subsection C of this Section, which permit shall not be issued until all of the requirements of Idaho Code Title 39, Chapter 26 are met;

Section 6. APPLICANT, INVESTIGATION and PERMIT APPROVAL OR DENIAL STANDARDS: The Adams County Sheriff or their designee shall cause an investigation to be made of each application and submit a report of those findings to the Council. The Council shall have the power and discretion to grant or deny any application subject to such reasonable conditions, if any, as it shall prescribe and subject to the following conditions:

A. Retail sale of fireworks to be permitted from temporary stands only. Except as may be provided for in subsection O of this Section, no sales shall be permitted from permanent buildings or structures.

B. Temporary stands need not comply with the requirements of the Building Code of the City; provided, however, that all such stands shall be erected under the supervision of the Fire Chief or his designee and shall meet any structural stability requirements set by the City as they pertain to temporary structures. Stands shall be constructed in a safe manner and of such materials as will ensure the safety of the attendants, patrons and other persons. If wired for electricity, the wiring must conform to the Electrical Code of the City and the State of Idaho.

C. Each stand shall have at least two (2) exits at least thirty inches (30") wide which shall be unobstructed at all times and one additional exit for each thirty two feet (32') of rear wall area in excess of twenty five feet (25'). All doors shall open outward and be free and clear at all times.

D. Each stand shall have at least two (2) fire extinguishers with a 2-A rated minimum rating or other type fire extinguishers approved by the Fire Chief or his designee. The extinguishers shall be located in a readily accessible place and shall be charged and in good working order.

E. No smoking shall be permitted in or within twenty five feet (25') of a fireworks stand. "NO SMOKING" signs shall be prominently displayed both inside and outside a fireworks stand and in a manner approved by the Fire Chief or his designee.

F. All weeds, grass and other combustible material shall be cleared from the fireworks stand and for a distance of not less than twenty feet (20') on each side of the stand.

G. Fireworks stands shall not be located within twenty five feet (25') of any other building or structure nor within fifty feet (50') of the property line of any gasoline station, oil storage tank or premises where inflammable liquids are kept or stored, nor within one hundred feet (100') of fuel-dispensing devices.

H. Each fireworks stand shall have an adult supervisor in attendance at all times. No child or children under the age of sixteen (16) years shall be allowed inside any fireworks stand at any time, nor shall any child under the age of sixteen (16) years be allowed to sell fireworks.

I. Fireworks stands shall be located only in those areas within the City where business or commercial activities are authorized.

J. Fireworks shall not be discharged, ignited or exploded within one hundred feet (100') of any fireworks stand, gasoline station, oil storage tank or premises where inflammable liquids are kept or stored.

K. No fireworks stand shall have a floor area in excess of seven hundred fifty (750) square feet.

L. If merchandise is left in the stand when not open for business, an adult night watchman shall be present at the location. No person employed as a watchman shall be permitted to remain inside any stand when it is not open for business.

M. No person shall allow any rubbish to accumulate, or permit a fire nuisance to exist in or around the area where fireworks are sold.

N. No building where alcoholic beverages are sold for consumption on the premises shall be used for the retail sale of safe fireworks.

O. The Council may establish other regulations for permanent structures where fireworks are to be sold, so long as said regulations are reasonably necessary to protect the public health, safety and morals and apply uniformly to all applicants.

P. No person under the influence of alcohol or illegal substances shall be permitted to supervise, operate, be inside or remain inside of any stand for the retail sale of legal nonareial fireworks or supervise and/or execute a public display of special fireworks.

Q. No person convicted of any felony or any misdemeanor of violence or alcohol and/or illegal substance abuse or possession shall be permitted to obtain or possess a permit for the retail sale of legal nonareial fireworks or for a public display of special fireworks.

R. No person convicted of any felony or any misdemeanor of violence or alcohol and/or illegal substance abuse or possession shall be permitted to supervise or operate any stand used for the retail sale of legal nonareial fireworks or supervise and/or execute a public display of special fireworks.

Section 7. FEES: A \$25.00 fee shall be paid to the City Clerk for the permit to sell fireworks, to have a public display or for any other fireworks related activity for which a fee may be charged. Fees may be changed and set by resolution in the future;

Section 8. PERFORMANCE BOND REQUIRED: An applicant for retail sale of fireworks shall post cash or a bond of one hundred dollars (\$100.00) with the City prior to issuance of a permit to guarantee removal of the temporary fireworks stand and all rubbish and debris from the premises, the acts to be completed not later than July 10th of each year. In event of failure of the person holding the permit to remove the stand, rubbish and debris to the satisfaction of the City Clerk, the bond shall be forfeited to the City. In no event shall the applicant be entitled to the return of said cash bond or cash deposit if applicant has failed to remove said temporary fireworks stand and clean up all debris by noon of the 8th day of July of the year in which the permit is granted, and failure to do so shall constitute a misdemeanor;

Section 9. STORAGE LIMITATION & REMOVAL: Storage of any class of fireworks prior to display or sale and unsold stocks of fireworks remaining after the lawful period of sale as provided by permit shall be in a secured facility. Unsold stocks of fireworks remaining after the authorized retail sales period shall be removed from the City on or before July 10th of each year;

Section 10. EXCEPTIONS TO ORDINANCE REQUIREMENTS: Toy guns and similar devices using caps containing not more than twenty five one-hundredths (0.25) grains of explosive per compound cap are excluded from the regulation of this ordinance;

Section 11. RECORDKEEPING REQUIRED: Each permittee shall be required to retain at the licensed premises while said premises are open, and at his principal place of business for a year thereafter, copies of all invoices, receipts and orders evidencing the source from which he acquired the fireworks which were sold within the City limits;

Section 12. LIABILITY INSURANCE REQUIREMENTS: Before the City Clerk issues any permit or before any permit becomes valid, an applicant shall first file with the City Clerk a public liability and products liability insurance policy, or a true copy thereof, which insurance includes both "accident" and "occurrences" coverage. The insurance coverage limits for both public liability coverage and for products liability coverage shall be at least one hundred thousand dollars (\$100,000.00) per person per occurrence, three hundred thousand dollars (\$300,000.00) per occurrence aggregate for personal injury, and one hundred thousand dollars (\$100,000.00) per occurrence for aggregate property damage. Each policy of insurance shall be in a form and substance acceptable to the City and shall name as insured parties under the terms of the policy all City officials, elected and appointed, while in the performance of official functions regarding all operations pertaining to said permit, any licensee or licensor of the applicant, and all vendors of fireworks covered by the permit to be issued to the applicant. Said policy of insurance shall be so written that it cannot be canceled without at least thirty (30) days' prior written notice to the City from the underwriting insurance company. The policy of insurance

shall be underwritten through or by a qualified and duly licensed insurance company or companies authorized to do business in the state, and a copy of said policy shall be filed with the City Clerk prior to the issuance of the permit. For public displays the insurance requirement shall be one million dollars (\$1,000,000.00) for aggregate personal injury and property damage;

Section 13. PARENT / GUARDIAN LIABLE FOR ACTIONS OF MINOR: Idaho Code Title 39-2611 is hereby adopted imposing liability upon parents and guardians for damages caused by minors;

Section 14. ADOPTION OF STATE FIREWORKS CODE REQUIRING PERMITTEE COMPLIANCE AND PENALTY: Idaho Code, Title 39, Chapter 29 is hereby adopted in full. It shall be the duty of every person issued a fireworks permit to comply with all the provisions of the State fireworks law and of this Ordinance. Any violation of the State fireworks law or any of the provisions of this Ordinance by any permittee, or by any of its agents, employees or officers, shall constitute a cause in and of itself to deny any subsequent application for a permit. Any person found guilty of violating the provisions of this Ordinance shall be guilty of a misdemeanor and punishable by a fine of one thousand dollars (\$1000.00) dollars in addition to any court costs that may be assessed.

Section 15. SEVERABILITY: If any section or provision of this ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, or contravened by preemptive legislation, the remaining sections and/or provisions of this ordinance shall remain valid. The City Council hereby declares that it would have adopted this ordinance and each section or provision thereof, regardless of the fact that any one or more sections or provisions may be declared invalid, unconstitutional or contravened via legislation.

Section 16. REPEAL OF CONFLICTING ORDINANCES: Any ordinance, or parts thereof, in conflict herewith, shall be and the same hereby repealed.

Section 17. EFFECTIVE DATE: This ordinance shall be in full force and effect from and after its passage, approval and publication.

Passed and approved this 13th day October of 2009.

/s/ Gale Stillman
Gale Stillman, Mayor

ATTEST: /s/ Jacob Qualls
Jacob Qualls, City Clerk