ORDINANCE NO. 4190

AN ORDINANCE of the city council of the city of Kent, Washington, prohibiting the sale, possession, and discharge of consumer fireworks, while allowing public displays of fireworks and the use of fireworks in theatrical presentations, both conditioned upon the issuance of a city permit.

RECITALS

A. Through its adoption of Resolution No. 1913 on July 28, 2015, the council determined that the interests of the city would be best served by placing before voters an advisory proposition asking whether the sale, possession, and discharge of consumer fireworks should be prohibited in Kent.

B. Advisory Proposition 1 appeared on the November 3, 2015, ballot, and asked the following question of the voters:

Whether the sale, possession and discharge of consumer fireworks should be prohibited in the city of Kent. The prohibition of the sale, possession and discharge of consumer fireworks would not affect properly licensed and permitted public displays of fireworks.

C. As of November 10, 2015, a majority of voters have answered the question set forth in Advisory Proposition 1 in the affirmative.

D. In light of voter recommendation, the council repeals the city’s existing fireworks regulations, and enacts an ordinance that will

1. Repeal and Reenact Ch. 13.05 KCC Fireworks
prohibit the sale, possession, and discharge of consumer fireworks, but will allow, in certain circumstances, the public display of fireworks and the use of fireworks in theatrical presentations conditioned upon a permit issued by the city.

E. In accordance with RCW 70.77.250, this ordinance will become effective one year from the date of its adoption.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

ORDINANCE

SECTION 1. – Repeal Chapter 13.05. Chapter 13.05 of the Kent City Code, entitled “Fireworks,” is repealed in its entirety.

SECTION 2. – Enact New Chapter 13.05. The Kent City Code is amended to add a new Chapter 13.05 of the Kent City Code, entitled “Fireworks,” as follows:

CHAPTER 13.05
FIREWORKS

Sec. 13.05.010. Intent. At the November 3, 2015, election, the Kent City Council certified Advisory Proposition 1 to the voters. Advisory Proposition 1 asked the following question:

Whether the sale, possession and discharge of consumer fireworks should be prohibited in the city of Kent. The prohibition of the sale, possession and discharge of consumer fireworks would not affect properly licensed and permitted public displays of fireworks.

At the November 3, 2015, election, a majority of voters answered the above question in the affirmative. The city council, having determined that the prohibition of the sale, possession, and discharge of consumer
fireworks is requested by the voters and is in the interests of the public
health, safety, and welfare, establishes this ordinance to prohibit the sale,
possession, and discharge of consumer fireworks, to establish the
circumstances in which public displays of fireworks and fireworks used in
theatrical presentations are permitted, and to establish the penalty for a
violation of the ordinance.

**Sec. 13.05.020. Definitions – References to Revised Code of
Washington.**

A. The words and phrases used in this chapter shall be given the
definitions contained in Chapter 70.77 of the Revised Code of Washington
(“RCW”) as now enacted or hereafter amended or recodified.

B. Any reference to a section of the RCW or the Washington
Administrative Code (“WAC”) in this chapter shall refer to the chapter or
section referenced and any amendment or recodification thereof.

**Sec. 13.05.030. Prohibited acts—Exceptions.**

A. Except as permitted in this chapter, the sale, possession, and
discharge of fireworks of any kind within the city is prohibited.

B. Notwithstanding the prohibition set forth in subsection A, the
following shall be permitted in the city of Kent:

1. The public display of fireworks authorized by permit issued by
   the city;

2. The use of articles pyrotechnic and special effects, as defined
   by RCW 70.77.138 and RCW 70.77.146, when used in accordance with
   RCW 70.77.535 and when authorized by permit issued by the city;

3. The use by law enforcement or emergency response agencies
   of devices that may fall within the definition of firework, when such devices
   are used in furtherance of law enforcement or emergency response
   operations or training;

3  Repeal and Reenact Ch. 13.05 KCC
Fireworks
4. The transportation of consumer fireworks through the city as part of interstate commerce;

5. The use of flares to warn motor vehicles of road hazards; or the use of torpedoes, flares, or fuses by railroads or other government transportation agencies for signal purposes as provided in RCW 70.77.530;

6. The use of agricultural and wildlife fireworks as defined by RCW 70.77.141 when used in accordance with RCW 70.77.311;

7. The possession, storage, or transportation of fireworks that is incidental to the permitted uses in this subsection.

C. It shall be unlawful for an owner of property, or a person renting, leasing, or who has control over the use of property, to knowingly permit the property that he or she owns, rents, leases or has control over, to be utilized for the discharge of fireworks when the discharge of fireworks is not properly permitted pursuant to KCC 13.05.040.

D. It shall be unlawful for any person to deposit fireworks or parts of fireworks, whether discharged or not, in or upon any street, sidewalk or other public place, except when the fireworks or parts of fireworks are deposited in private or public litter receptacles, and it shall be unlawful for a private property owner to fail to remove fireworks or parts of fireworks, whether discharged or not, that are not contained in a litter receptacle from private property that is open to the public within 72 hours of the deposit of such fireworks or parts of fireworks on the private property.

Sec. 13.05.040. Permits.

A. The city council designates the city’s fire marshal or the fire marshal’s designee as the fire official authorized to review permits required by this chapter or Chapter 70.77 RCW; provided only those acts set forth in KCC 13.05.030(B) shall be permitted.
B. Except as required elsewhere in this chapter, the procedures, requirements, and conditions set forth in Chapter 70.77 RCW and Chapter 212-17 WAC, which are applicable to the submittal, consideration, or granting of permits filed with a city shall apply to the filing, review, and issuance of any permit required by this chapter.

C. In reviewing an application for a permit, the fire official may consider relevant provisions in the fire codes, building codes, and health and sanitation codes adopted by the city in determining whether the discharge, possession, or storage of fireworks is performed in a safe manner or presents a risk to public health, safety, or welfare.

D. A permit will only issue under this section in the event a pyrotechnic operator licensed by the state of Washington is designated as the person to discharge the fireworks. The permit application shall designate the licensed pyrotechnic operator by name and Washington state license number.

E. As a condition of the issuance of any permit, the fire official retains the authority to revoke a permit at any time due to safety concerns.

F. The fee for any permit issued in accordance with this chapter shall be established by city council resolution.

Sec.13.05.060. Violations and penalties.

A. It shall be a gross misdemeanor, punishable by imprisonment not to exceed one (1) year, or by a fine not to exceed five thousand dollars ($5,000), or by both such confinement and fine, for any person to:

1. Conduct an indoor or outdoor public display of fireworks without a properly issued city permit or in violation of a properly issued city permit;

5 Repeal and Reenact Ch. 13.05 KCC Fireworks
2. Discharge special effects or articles pyrotechnic without a properly issued city permit or in violation of a properly issued city permit;

3. Make any misrepresentation of fact, or knowingly permit any misrepresentation of fact, on any application for a city permit required pursuant to this chapter;

4. Possess or store in excess of 20 pounds of fireworks, except when such possession or storage is incidental to a properly issued city permit; or

5. Discharge or use fireworks in a reckless manner. "Reckless manner" exists when the use or discharge creates a substantial risk of death or serious physical injury to any person or damage to any property.

B. Any person violating any provision of this chapter not set forth in subsection A of this section shall be deemed to have committed a class 1 civil infraction as set forth in RCW 7.80.120; provided, in lieu of a class 1 civil infraction, a person under the age of 18 who commits an infraction while not under the supervision of a responsible adult shall be subject to a fine not to exceed 10 times their age at the time of the infraction. An infraction issued pursuant to this section shall be filed in the Kent municipal court and processed in the same manner as other infractions filed in the Kent municipal court; provided an infraction issued to a person under the age of 16 shall be filed in the King County juvenile court. When assessing a penalty under this section, the court shall, in all cases, provide the violator with the option of converting the fine into community service hours.

C. For the purposes of this section, the term "person" shall be defined as it is in RCW 9A.04.110 as now enacted or hereafter amended or recodified.

D. When a corporation, joint stock association, or unincorporated association is deemed guilty of a gross misdemeanor under subsection A of
this section, the corporation shall, in lieu of jail, be punished by a fine of $5,000 plus any applicable costs and assessments.

E. Restitution shall be considered, and when appropriate, assessed against any person, corporation, joint stock association, or unincorporated association deemed guilty of an offense set forth in subsection A of this section.

Sec. 13.05.070. Seizure of fireworks.

A. Fireworks that are sold, possessed, or discharged in violation of this chapter are subject to seizure and forfeiture, and no property right shall exist in them.

B. Fireworks may be seized by the city by process issued by municipal or superior court. A law enforcement officer may seize, without process, fireworks that the officer has probable cause to believe were sold, possessed, or discharged in violation of this chapter, or fireworks that were seized incident to a lawful arrest.

C. In the event of seizure pursuant to this section, proceedings for forfeiture shall be deemed commenced by the seizure. The city shall cause notice to be served within 15 days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. The notice of seizure may be served by any method authorized by law or court rule, including without limitation service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the 15 day period following the seizure.

D. If no person notifies the city in writing of the person's claim of ownership or right to possession of the items specified in subsection (A) of
this section within 30 days of the seizure, the item seized shall be deemed forfeited.

E. If a person notifies the city in writing of the person's claim of ownership or right to possession of the seized property within 30 days of the seizure, the city shall give the person a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the city fire official and shall occur within 90 days of the city’s receipt of written notice of the claim of right. Property deemed forfeited may be destroyed or otherwise disposed of after 15 days from the issuance of the determination of forfeiture, unless the city receives written notice of an appeal to superior court. The city shall promptly return the property to the claimant upon a determination that the claimant is the present lawful owner or is lawfully entitled to possession of the property.

F. In lieu of the above process, the person from whom the fireworks were seized may waive his or her claim to any right in the fireworks, and upon such waiver, the city shall deem the fireworks forfeited.

G. In the event fireworks in the presence of an officer are not claimed by any person then present, the fireworks will be deemed abandoned property, and the officer may seize them. Abandoned fireworks may be summarily destroyed or otherwise disposed of, and the process set forth in this section shall not apply.

SECTION 3. — Savings. The existing Chapter 13.05 of the Kent City Code, which is repealed and replaced by this ordinance, shall remain in full force and effect until the effective date of this ordinance.

SECTION 4. — Corrections by City Clerk or Code Reviser. Upon approval of the city attorney, the city clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state, or federal
laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

**SECTION 5.** - **Severability.** If any one or more section, subsections, or sentences of this ordinance are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

**SECTION 6.** - **Effective Date.** This ordinance shall take effect and be in force one year from and after its adoption as provided by RCW 70.77.250.

\[Signature\]

Suzette Cooke, Mayor

ATTEST:

\[Signature\]

Ronald F. Moore, MMC

Ronal F. Moore, City Clerk

APPROVED AS TO FORM:

\[Signature\]

Tom Brubaker, City Attorney

Repeal and Reenact Ch. 13.05 KCC
Fireworks
PASSED: 16th day of February, 2016.
APPROVED: 16th day of February, 2016.
PUBLISHED: 19th day of February, 2016.

I hereby certify that this is a true copy of Ordinance No. 4190 passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

[Signature]
RONALD F. MOORE, CITY CLERK

p:\civil\ordinance\kcc 13.05 - fireworks final.docx

Repeal and Reenact Ch. 13.05 KCC
Fireworks