

ORDINANCE NO. 2021-01

**VILLAGE OF YORKVILLE
RACINE COUNTY, WISCONSIN**

**AN ORDINANCE TO AMEND ARTICLE VIII OF CHAPTER 14 OF THE CODE OF
ORDINANCES FOR THE VILLAGE OF YORKVILLE ENTITLED "FIREWORKS"**

**THE VILLAGE BOARD OF THE VILLAGE OF YORKVILLE, RACINE COUNTY,
WISCONSIN, DO ORDAIN AS FOLLOWS:**

1. That Article VIII of Chapter 14 of the Code of Ordinances for the Village of Yorkville be, and hereby is, amended to read as set forth on the attached Exhibit "A."

2. That this ordinance shall be effective upon adoption and publication as provided by law.

Adopted by the Village Board of the Village of Yorkville, Racine County, Wisconsin, this 8th day of February, 2021.

VILLAGE OF YORKVILLE

Ayes: 5

By: /s/ Douglas Nelson
Douglas Nelson, President

Nays: 0

Attest: /s/ Michael McKinney
Michael McKinney, Administrator/Clerk

Abstentions: 0

Absences: 0

Exhibit "A"

Article VIII. Fireworks

Cross reference— Fire prevention and protection, ch. 26; fireworks, § 30-71 et seq.
State Law reference— Fireworks, Wis. Stat. § 167.10.

Sec. 14-431. Definitions.

Fireworks means anything manufactured, processed or packaged for exploding, emitting sparks or combustion which does not have another common use, but does not include any of the following:

- (1) Fuel or a lubricant.
- (2) A firearm cartridge or shotgun shell.
- (3) A flare used or possessed or sold for use as a signal in an emergency or in the operation of a railway, aircraft, watercraft or motor vehicle.
- (4) A match, cigarette lighter, stove, furnace, candle, lantern or space heater.
- (5) A cap containing not more than one-quarter grain of explosive mixture, if the cap is used or possessed or sold for use in a device which prevents direct bodily contact with a cap when it is in place for explosion.
- (6) A toy snake which contains no mercury.
- (7) A model rocket engine.
- (8) Tobacco and a tobacco product.
- (9) A sparkler on a wire or wood stick not exceeding 36 inches in length that is designed to produce audible or visible effects or to produce audible and visible effects.
- (10) A device designed to spray out paper confetti or streamers and which contains less than one-quarter grain of explosive mixture.
- (11) A fuseless device that is designed to produce audible or visible effects or audible and visible effects, and that contains less than one-quarter grain of explosive mixture.

- (12) A device that is designed primarily to burn pyrotechnic smoke-producing mixtures, at a controlled rate, and that produces audible or visible effects, or audible and visible effects.
- (13) A cylindrical fountain that consists of one or more tubes and that is classified by the federal department of transportation as a Division 1.4 explosive, as defined in 49 CFR 173.50.
- (14) A cone fountain that is classified by the federal department of transportation as a Division 1.4 explosive, as defined in 49 CFR 173.50.
- (15) A novelty device that spins or moves on the ground.

Sec. 14-432. Sale and use.

- (a) *Sale Prohibited.* No person may sell or possess with intent to sell any fireworks or those devices described in Sec. 14-431 (5), (6), (9) through (14) within the limits of the village.
- (b) *Permit Required for Use.* No person may use or possess fireworks within the village without a user's permit from the village, except that possession of fireworks without a permit is permitted while transporting the fireworks to a city, town, village or county where possession of fireworks is authorized by permit or ordinance.
- (c) *Application.* All permit applications shall be filed with the administrator/clerk, or designee, in writing upon payment of an application fee in an amount set from time-to-time by the village board. All applications shall be on a form prepared by the village administrator/clerk and shall include at a minimum the following:
 - (1) The name and address of the permit holder.
 - (2) The date on and after which fireworks may be purchased.
 - (3) The general kind and approximate quantity of fireworks which may be purchased and used.
 - (4) The date and location of permitted use.
 - (5) The event for which the fireworks will be used and whether the public is invited to attend.
- (d) *Referral and Approval.* The village administrator/clerk or designee shall have the authority to issue a permit for the use of fireworks containing Division 1.4 explosives, as defined in 49 CFR 173.50 ("consumer grade fireworks"). The administrator/clerk shall refer complete applications for the use of other types of fireworks, including those containing Division 1.3 explosives as defined in 49 CFR

173.50 (“commercial grade fireworks”) to the village board for review and approval following review and recommendation by the chief of the fire department and the code enforcement officer. A user's permit may be issued by the village president or designee to a person listed under subsection (e)(1) through (e)(7) of this section upon receiving approval by the administrator/clerk or designee for consumer grade fireworks and by the village board for commercial grade fireworks. The issuance of any such permit shall not be deemed a guarantee by the village or any of its officers or designees that the use of any fireworks shall be safe. Permits issued shall contain all of the following information:

- (1) The name and address of the permit holder.
 - (2) The general kind and approximate quantity of fireworks which have been approved for use.
 - (3) The date and location of permitted use.
 - (4) The event for which the fireworks will be used and whether the public is invited to attend.
 - (5) Statements of limitation of liability for the Village, pursuant to Wis. Stat. Section 167.10(7m), and requiring indemnification of the Village for claims related to the use of the fireworks permitted by the Village.
 - (6) Other special conditions prescribed by ordinance or the Village Board necessary to protect the public health, safety and welfare, including restrictions limiting the manner of use and distances from buildings and spectators.
- (e) *Authorized Permittees.* A permit under this section may be issued only to the following:
- (1) A public authority.
 - (2) A fair association.
 - (3) An amusement park.
 - (4) A park board.
 - (5) A civic organization.
 - (6) An individual or a group of resident or nonresident individuals.
 - (7) An agricultural producer for the protection of crops from predatory birds or animals.

(f) *Miscellaneous Prohibitions.*

- (1) A person issued a permit for crop protection shall erect appropriate warning signs disclosing the use of fireworks for crop protection.
- (2) No person may use a device listed under Section 14-431 (5),(6), (9) through (14) within the village, except upon private property with the owner's consent
- (3) No person may possess or use fireworks or a device listed under Section 14-431 (5),(6), (9) through (14) while attending any permitted fireworks display.
- (4) No permit shall be granted for the display or use of any fireworks within 100 feet of any gasoline pump, gasoline filling station or bulk station or any building in which gasoline or volatile liquid is sold in quantities in excess of one gallon.
- (5) A permit under this section may not be issued to a minor.
- (6) Unless otherwise approved by the Village Board, fireworks must be used on the date set forth on the permit between the hours of dusk and 11:00 pm.
- (7) A user's permit may be cancelled and rescheduled by the administrator/clerk or designee, or fire chief or designee, if the weather or other situations make it unsafe for the use to be conducted or if it is determined by the village board that the user permit was issued based upon fraud or misrepresentation.
- (8) The Village Board reserves the right to limit the amount of permits granted or to enact a moratorium on the issuance of such permits where conditions so warrant (e.g, drought conditions, pending no-burn orders, etc).

Sec. 14-433. Liability insurance required.

The person issuing a permit under this article for commercial grade fireworks shall require a surety bond or policy of liability insurance showing evidence of fireworks liability, for the payment of all claims that may arise by reason of injuries to person or property from the handling, use or discharge of fireworks under the permit granted under this article, in the amount of no less than \$1,000,000, with the Village of Yorkville named as an additional insured. Any person injured thereby may bring an action on the policy in the person's own name to recover the damage the person has sustained, but the aggregate liability of the insurer to all persons shall not exceed the amount of the bond or policy. The policy

and documentation showing the village as an additional insured shall be filed in the office of the administrator/clerk prior to permit issuance.

Sec. 14-434. Permit to be provided to fire chief and code enforcement officer.

Copies of all permits issued shall be given to municipal fire chief, Code Enforcement Officer, and Racine County Sheriff's Department at least two days before the date of authorized use.

Sec. 14-435. Parental liability.

A parent or legal guardian of a minor who consents to the use of fireworks by a minor is liable for damages caused by the minor's use of the fireworks.

Sec. 14-436. Enforcement.

Fireworks stored, handled, sold, possessed or used by a person in violation of this Article, shall be seized. The fireworks shall be destroyed after conviction for a violation; and if not convicted shall be otherwise returned to the owner.

Sec. 14-437. Penalty.

A person, or a parent or legal guardian of a minor who consents to the use of fireworks by the minor, who violates this Article shall forfeit not less than \$50.00 nor more than \$1,000.00.