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DATE: JUNE 20, 1988  
TO: MAYOR BRODELL  
FROM: JIM BURTON  
CHIEF WAYNE MASTERSON  
SUBJECT: FIREWORKS SALES

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The recent incorporation of a significant number of islands into the corporate limits of Jonesboro by annexation has created a question, among others, with respect to the applicability of various ordinances to activities which may have been carried on in given location prior to annexation, and were thus previously not subject to regulation. The initial research by the city attorney and by the attorney for the Arkansas Municipal League, suggested that sales of fireworks could continue in newly annexed areas where a contract for the location of a fireworks stand predated the annexation as in the context of a pre-existing non-conforming use. Subsequent research, however, with particular regard to the police power aspect of the ordinance in question as well as the legislative intent to legitimately exercise police power leads to the conclusion that the ordinance in question, along with section 17.03 of the standard fire code which also makes it unlawful "...to offer for sale, expose for sale, sell at retail... any fireworks" effectively prohibit the sale of fireworks in any portion of the corporate limits of the City of Jonesboro without regard as to the recency of that areas annexation or any previously unrelated sales activities which may have taken place there heretofore.

The Arkansas Statutes place no limitations upon cities in Arkansas to regulate or "prohibit the sale or use of fireworks" A.C.A. §§ 20-22-701. As such cities in Arkansas are free to adopt ordinances as they see fit to place limitations restrictions or to completely prohibit the sale of fireworks in the city limits. This is what the city of Jonesboro chose to do

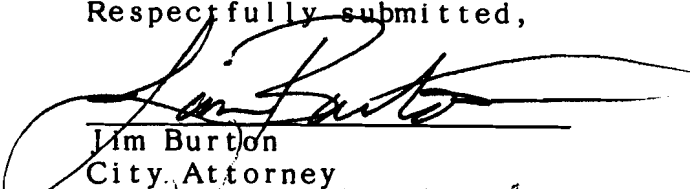
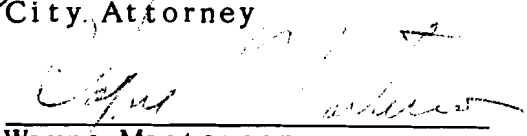
June 10, 1988

in its ordinance, and also in the adoption in the standard fire code language. The regulation of the use and sale of fireworks by a city is a legitimate exercise of the police power. Cannon vs. City of Dallas 263 S.W. 2d 288. In the exercise of their police powers, municipalities may also prohibit the sale of fireworks within their corporate limits. Fred Gill vs. State, 275 S.W. 2d 658.

The majority rule in cases dealing with ordinances of this type favor of the police power, or public safety aspect of such an ordinance clearly over its possible interference with commercial activities. "A law prohibiting ... the sale ... of fireworks must be interpreted of its general purpose, which is the protection of the health, safety and general welfare of the public. 35 Corpus Juris Secundum 248-49.

As such, it is the opinion of the city attorney and the fire chief that the existing Jonesboro municipal ordinance section 16-11 and the above referenced standard fire code provision effectively prohibit the sale of fireworks anywhere within the corporate limits of the city of Jonesboro. As a legitimate exercise of police power in order to protect the public health and safety, it cannot be waived or interdicted in any way, and applies without regard to the fact that sales activities may have previously taken place in newly annexed areas. Once an area is annexed it comes under the immediate jurisdiction of any ordinance which has police power functions to protect the public health and safety, and as such sales in the newly annexed areas are prohibited by the existing ordinance and the present state of the law on this subject.

Respectfully submitted,

  
Jim Burton  
City Attorney  
Wayne Masterson  
Fire Chief

## FIREWORKS

## 17.01

Nothing in this Chapter shall be construed to prohibit the use of fireworks by railroads or other transportation agencies for signal purposes of illumination, or the sale or use of blank cartridges for a show or theater, or for signal or ceremonial purposes in athletics or sports or for use by military organizations.

## 17.02 Definition

*State Fire Code*

**Fireworks**—means and includes any combustible or explosive composition, or any substance or combination of substances, or device prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration, or detonation, and shall include blank cartridges, toy pistols, toy cannons, toy canes, or toy guns in which explosives are used, firecrackers, torpedoes, skyrockets, Roman candles, Daygo bombs, sparklers, or other devices of like construction and any devices containing any explosive or flammable compound, or any tablet or other device containing an explosive substance, except that the term "fireworks" shall not include any auto flares, paper caps containing not in excess of an average of twenty-five hundredths (.25) of a grain of explosive content per cap, and toy pistols, toy canes, toy guns or other devices for use of such caps, the sale and use of which shall be permitted at all times.

## 17.03 Manufacture, Sale and Discharge of Fireworks

a. The manufacture of fireworks within the jurisdictional area is prohibited except under special permits as are required by local and state regulations.

b. Except as hereinafter provided, it shall be unlawful for any person to possess, store, to offer for sale, expose for sale, sell at retail, or use or explode any fireworks; provided that the Fire Official shall have power to adopt reasonable rules and regulations for the granting of permits for supervised public displays of fireworks by a jurisdiction, fair associations, amusement parks, other organizations or for the use of fireworks by artisans in pursuit of their trade. Every such use or display shall be handled by a competent operator approved by the Fire Authority having jurisdiction, and shall be of such character and so located, discharged or fired so as not to be hazardous to property or endanger any person.

c. Applications for permits shall be made in writing at least ten (10) days in advance of the date of the display. After such privilege shall be granted, sale, possession, use and distribution of fireworks for such display shall be lawful for that purpose only. No permit granted hereunder shall be transferable.

## STATE FIRE CODE

### 17.04 Bond for Fireworks Display Required

The permittee shall furnish a bond or certificate of insurance in an amount deemed adequate by the administrative authority for the payment of all damages which may be caused either to a person or persons or to property by reason of the permitted display, and arising from any acts of the permittee, his agents, employees or subcontractors.

### 17.05 Disposal of Unfired Fireworks

Any fireworks that remain unfired after the display is concluded shall be immediately disposed of in a way safe for the particular type of fireworks remaining.

### 17.06 Seizure of Fireworks

The Fire Authority having jurisdiction shall seize, take, remove, or cause to be removed at the expense of the owner all stocks of fireworks offered or exposed for sale, stored, or held in violation of this Chapter.

## § 16-8 OFFENSES AND MISCELLANEOUS PROVISIONS § 16-11

- City Ordinance*
- (a) Engaging in a fistic encounter; or
  - (b) Using of any unnecessarily loud, offensive, or insulting language; or
  - (c) Appearing in an intoxicated condition; or
  - (d) Engaging in any act in a violent and tumultuous manner by any three or more persons; or
  - (e) Holding of an unlawful assembly; or
  - (f) Interruption of any lawful assembly of people; or
  - (g) Commission of any other act in such a manner as to unreasonably disturb or alarm the public.

Cross reference—Dogs disturbing the peace, § 4-20.

State law reference—Disturbing the peace, § 41-1401, Ark. Stats.

**Sec. 16-9. False alarm of fire.**

It shall be unlawful for any person wilfully or maliciously or recklessly to send in, give in, report, by telephone or otherwise, any false alarm of fire to the fire department, and any person convicted thereof shall be deemed guilty of a misdemeanor. (Digest 1934, § 850)

**Sec. 16-10. False imprisonment.**

False imprisonment is the unlawful violation of the personal liberty of another, and consists in confinement or detention without legal authority. (Digest 1934, § 852)

**Sec. 16-11. Fireworks, sale or discharge.**

It shall be unlawful for any person to keep for sale, offer for sale, sell, shoot, fire or explode any firecrackers, roman candle, torpedo or any fireworks of any kind or character in or upon any of the public streets or alleys, or other public places in the city, or to fire or shoot same from anything into or across any of the public streets or alleys of the city. (Digest 1934, § 855)

Cross reference—Manufacture and sale of fireworks prohibited, fire prevention code, § 13.1 to 13.6.

State law reference—Sale, manufacture, giving away or shooting toy pistol, firecracker or gun that shoots blank cartridges prohibited, §§ 4-3308 and 41-3309, Ark. Stats.