

POLK COUNTY ORDINANCE NO. 94-34

AN ORDINANCE REGULATING THE SALE AND DISTRIBUTION OF FIREWORKS; PROVIDING FOR DEFINITIONS; REGULATING THE STORAGE AND SALE OF SPARKLERS; PROHIBITING THE SALE OR USE OF FIREWORKS; REGULATING THE PUBLIC DISPLAY OF FIREWORKS; PROVIDING FOR SALE RECORDS AND RECEIPTS; PROVIDING PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, many injuries to both persons and property occur each year as a result of improper use and illegal sale of fireworks being sold under the guise of being sparklers and, therefore, legal for consumer purchase and use; and

WHEREAS, the improper use and illegal sale of items purporting to be lawful sparklers cause life and property threatening fires and fire hazards; and

WHEREAS, it is deemed necessary to protect the lives and property of the people of Polk County, Florida, through regulatory measures designed and intended to reduce personal injury and property damage and minimize the possibility of fires and the creation of fire hazards; and

WHEREAS, by the adoption of this Ordinance, it is the intention of the Board of County Commissioners of Polk County, Florida, to facilitate the enforcement of the statutory provisions of Chapter 791, Florida Statutes.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF POLK COUNTY, FLORIDA;

SECTION 1: Title.

This ordinance shall be known as and may be cited as the Polk County Fireworks Ordinance.

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To	From <u>[Signature]</u>
Co.	Co. <u>1</u>
Dept.	Phone #
Fax # <u>334-0385</u>	Fax # <u>334-6125</u>

SECTION 2: Findings of Fact.

The foregoing findings are incorporated herein by reference and made a part hereof.

SECTION 3: Applicability.

This Ordinance shall apply within all of the unincorporated areas of Polk County, Florida and all incorporated areas of the County to the extent that it does not conflict with a municipal ordinance or code.

SECTION 4: Definitions.

1. Division - "Division" shall mean the Polk County Fire Services Division
2. As used herein, the terms "fireworks", "sparklers", "retailer", "wholesaler", "distributor", and "manufacturer" shall have the same meaning as specified in Section 791.01, Florida Statutes.

SECTION 5: Storage and Sale of Sparklers.

1. Sparklers shall be stored and/or sold in the unincorporated areas of Polk County in accordance with the Zoning Ordinance, the Fire Code, and all related fire prevention regulations, Polk County license laws, permits issued by the local fire official having jurisdiction, and all other state and local laws.
2. All manufacturers, distributors, and wholesalers of sparklers shall be registered with the State Division of Fire Marshal pursuant to Section 791.015, Florida Statutes.
3. A retailer of sparklers shall be required to comply with the provisions of Section 791.02, Florida Statutes.

SECTION 6: Prohibition Against Fireworks; Exceptions; Permits and Regulations.

1. Except as provided in Sections 791.02, 791.04, or 791.07, Florida Statutes, it shall be unlawful for any person, firm, partnership, or corporation to offer for sale, expose for sale, sell at retail, use or explode any fireworks within Polk County, Florida.

2. Anyone person, firm, partnership, or corporation engaging in the sale, at retail or wholesale, or in the distributing or manufacturing of fireworks must first apply for and secure a permit from the Division. The application for such permit shall include proof that the applicant is registered with the Division of the State Fire Marshal as a wholesaler, distributor or manufacturer of fireworks pursuant to Section 791.015, Florida Statutes, and such other information as deemed necessary by the Division.

3. The purchaser of any fireworks from a retailer, wholesaler, distributor or manufacturer must furnish to the seller, at the time of sale, proof of identification and, if applicable, proof that the buyer is registered with the Division of the State Fire Marshal and otherwise in compliance with Chapter 791, Florida Statutes.

4. The seller must maintain a permanent, on-site record of all sales, including the name and address of each purchaser, the form of purchaser's identification, and proof of registration and compliance with Chapter 791, Florida Statutes. If the seller determines that registration under Chapter 791 is not required, then the basis for such exception or exemption shall be recorded.

5. Any person, firm, partnership, or corporation who is not

registered with the Division of the State Fire Marshal and who, pursuant to Section 791.04, Florida Statutes, purchases fireworks for shipment directly out of the state, shall not be allowed to take possession of such fireworks. The seller shall retain the possession of such fireworks and shall be responsible for shipping same to the purchaser at an out-of-state point of delivery.

6. Any person, firm, partnership or corporation who is not registered with the division of State Fire Marshall and who, pursuant to Section 791.07, Florida Statutes, purchases firecrackers for frightening birds must provide to the seller a copy of the statement that has been filed with and stamped as received by the Polk County Sheriff's Office pursuant to the rules prescribed by the Department of Agriculture and Consumer Services. The seller shall be required to maintain the stamped copy of the statement in addition to the information required in paragraph 4 above.

7. All appropriate local and state permits, registrations and licenses must be displayed at each retail, wholesale, distributing, or manufacturing site.

8. The law enforcement agency having jurisdiction has the authority to close immediately any business that is selling fireworks without the appropriate state and local permits or in violation of any portion of this ordinance.

**SECTION 7: Public Display of Fireworks.**

1. Any person, firm, partnership, or corporation that intends to present a public display of fireworks, within the unincorporated area of Polk County, as contemplated within Section

791.02, Florida Statutes, shall apply for and secure a permit for same from the Division before purchasing and using such fireworks.

2. The application for such permit shall be made at least fifteen (15) days prior to the event and on a form adopted by the Division. The application must be accompanied by the following:

a. Proof of general liability insurance for each fireworks display in the amount of One Million Dollars (\$1,000,000.00).

b. A Hold Harmless Agreement executed by the applicant in favor of Polk County, Florida.

#### SECTION 8: Vendor Receipts.

Every seller of fireworks shall be required to provide to each purchaser of such item a receipt showing items sold, purchaser's name and address, seller's name and address, and date of purchase. Such receipt shall be provided at the time of purchase and the seller shall maintain the copy, which shall be available for inspection by the Division or any law enforcement officer.

#### SECTION 9: Penalties.

Any person, firm, partnership, or corporation that violates any provision of this Ordinance shall, upon conviction, in a court of competent jurisdiction, be subject to a fine not exceeding the sum of Five Hundred Dollars (\$500.00) or imprisonment in the County jail for a term not exceeding sixty (60) days, or by both such fine and imprisonment. Each incidence of a violation shall constitute a separate offense.

SECTION 10: Severability.

If any provision of this ordinance or the application thereof to any person, firm, partnership or corporation or circumstances is held to be unenforceable or otherwise invalid, the unenforceability or invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the unenforceable or invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 11: Effective Date.

The provisions of this ordinance shall become effective upon receipt of acknowledgement from the Department of State that a certified copy of this ordinance has been filed with said office.

EFFECTIVE DATE: Acknowledgement from the Department of State received on the \_\_\_\_ day of \_\_\_\_\_, 1994, and filed in the Office of the Clerk of the Board of County Commissioners of Polk County, Florida.

E.D. "BUD" DIXON, CLERK

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Lynnette A. Clark, Deputy Clerk

POLK COUNTY ORDINANCE NO. 97- 12

AN ORDINANCE AMENDING POLK COUNTY ORDINANCE NO. 94-34, THE POLK COUNTY FIREWORKS ORDINANCE; PROVIDING FOR A PERMIT FEE; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF POLK COUNTY, FLORIDA:

**SECTION 1:** Section 6 of Polk County Ordinance No. 94-34 is hereby amended as follows:

**SECTION 6: Prohibition Against Fireworks; Exceptions; Permits and Regulations.**

1. Except as provided in Sections 791.02, 791.04, or 791.07, Florida Statutes, it shall be unlawful for any person, firm, partnership, or corporation to offer for sale, expose for sale, sell at retail, use or explode any fireworks within Polk County, Florida.

2. Anyone person, firm, partnership, or corporation engaging in the sale, at retail or wholesale, or in the distributing or manufacturing of fireworks must first apply for and secure a permit from the Division. The application for such permit shall include proof that the applicant is registered with the Division of the State Fire Marshal as a wholesaler, distributor or manufacturer of fireworks pursuant to Section 791.015, Florida Statutes, and shall be accompanied by a permit fee in an amount to be established by resolution of the Board of County Commissioners and such other information as deemed necessary by the Division.

3. The purchaser of any fireworks from a retailer, wholesaler, distributor or manufacturer must furnish to the seller, at the time of sale, proof of identification and, if applicable, proof that the buyer is registered with the Division of the State Fire Marshal and is otherwise in compliance with Chapter 791, Florida Statutes.

4. The seller must maintain a permanent, on-site record of all sales, including the name and address of each purchaser, the form of purchaser's identification, and proof of registration and compliance with Chapter 791, Florida Statutes. If the seller determines that registration under Chapter 791 is not required, then the basis for such exception or exemption shall be recorded.

5. Any person, firm, partnership, or corporation who is not registered with the Division of the State Fire Marshal and who, pursuant to Section 791.04, Florida Statutes, purchases fireworks for shipment directly out of the state, shall not be allowed to take possession of such fireworks. The seller shall retain the possession of such fireworks and shall be responsible for shipping same to the purchaser at an out-of-state point of delivery.

6. Any person, firm, partnership or corporation who is not registered with the ~~d~~Division of the State Fire Marshal and who, pursuant to Section 791.07, Florida Statutes, purchases firecrackers for frightening birds must provide to the seller a copy of the statement that has been filed with and stamped as received by the Polk County Sheriff's Office pursuant to the rules prescribed by the Department of Agriculture and Consumer Services. The seller shall be required to maintain the stamped copy of the statement in addition to the information required in paragraph 4 above.

7. All appropriate local and state permits, registrations and licenses must be displayed at each retail, wholesale, distributing, or manufacturing site.

8. The law enforcement agency having jurisdiction has the authority to close immediately any business that is selling fireworks without the appropriate state and local permits or in violation of any portion of this ordinance.

**SECTION 2:** Section 7 of Polk County Ordinance No. 94-34 is hereby amended as follows:

**Section 7: Public Display of Fireworks.**

1. Any person, firm, partnership, or corporation that intends to present a public display of fireworks within the unincorporated area of Polk County as contemplated within Section 791.02, Florida Statutes, shall apply for and secure a permit for same from the Division before purchasing and using such fireworks.

2. The application for such permit shall be made at least fifteen (15) days prior to the event and on a form adopted by the Division. The application must be accompanied by the following:

- a. Proof of general liability insurance for each fireworks display in the amount of One Million Dollars (\$1,000,000.00);
- b. A Hold Harmless Agreement executed by the applicant in favor of Polk County, Florida; and
- c. A permit fee in an amount to be established by resolution of the Board of County Commissioners.

**SECTION 3: SEVERABILITY.**

If any portion of this ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this ordinance.

**SECTION 4: EFFECTIVE DATE.**

This Ordinance shall become effective upon filing of a certified copy of the Ordinance with the Department of State.

## RESOLUTION

**WHEREAS**, the Polk County Fire Marshal's Office issued 40 fireworks permits in 1996 and anticipates issuing over 80 fireworks permits in 1997; and

**WHEREAS**, the number of fireworks permits issued in coming years will continue to grow; and

**WHEREAS**, each permit involves the cost of an on-site inspection of the premises where fireworks are to be sold, along with the costs to process the application; and

**WHEREAS**, Polk County Ordinance No. 94-34, as amended, provides that the Board of County Commissioners may establish by resolution the amount of the permit fee for issuing fireworks permits;

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF POLK COUNTY, FLORIDA THAT:**

1. The permit fee to sale, at retail or wholesale, or to distribute or manufacture fireworks pursuant to Section 6 of Polk County Ordinance No. 94-34, as amended, shall be \$50.00.
2. The permit fee for public displays of fireworks pursuant to Section 7 of Polk County Ordinance No. 94-34, as amended, shall be \$100.00.

**ADOPTED** this 3rd day of June, 1997.

ATTEST:  
E.D. "BUD" DIXON, CLERK

BOARD OF COUNTY COMMISSIONERS  
POLK COUNTY, FLORIDA

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Neil Combee, Chairman