

DIVISION 1. GENERALLY*

***Editor's note:** Ord. No. 04-020, arts. 1 and 2, adopted July 21, 2004, amended the Code by repealing former div. 1, §§ 12-36--12-39, and adding a new div. 1, §§ 12-36--12-47. Former div. 1 pertained to similar subject matter; and derived from Ord. No. 98-21, adopted June 2, 1998; Ord. No. 98-62, adopted December 22, 1998; and Ord. No. 04-009, adopted May 18, 2004.

Sec. 12-36. Title.

This division shall be known as the "Palm Beach County Fireworks Code" and may be hereinafter referred to as "this Code."

(Ord. No. 04-020, art. 1, 7-21-04)

Sec. 12-37. Definitions.

(a) As used herein, the terms "fireworks," "sparklers," "retailer," "wholesaler," "distributor," and "manufacturer" shall have the same meaning as specified in F.S. § 791.01, as it may from time to time be amended.

(b) As used herein, "seller" shall refer to either the seller of fireworks or the seller of sparklers as appropriate to the context of the transaction.

(c) As used herein, any reference to "sales," "sell" or "selling" shall include offering for sale and exposing for sale.

(d) As used herein, "county fire marshal" shall refer to the Palm Beach County Fire Marshal or his designee.

(e) As used herein, "sheriff" shall refer to the Palm Beach County Sheriff, unless the context of the text requires otherwise.

(Ord. No. 04-020, art. 1, 7-21-04)

Sec. 12-38. Applicability.

This code shall be applicable throughout the unincorporated areas of Palm Beach County.

(Ord. No. 04-020, art. 1, 7-21-04)

Sec. 12-39. Exemption from code.

Notwithstanding anything herein to the contrary, this code shall not be applicable to the sale of sparklers within a permanent building with a fire safety system approved by the county fire marshal.

(Ord. No. 04-020, art. 1, 7-21-04)

Sec. 12-40. Prohibition against fireworks.

Except as provided in F.S. Ch. 791, it shall be unlawful for any person, firm, partnership or corporation to offer for sale, expose for sale, sell, use or explode any fireworks in the county.

(Ord. No. 04-020, art. 1, 7-21-04)

Sec. 12-41. Permits and regulations.

(a) *Permit.* Any person, firm, partnership or corporation engaging in the sale, distributing or manufacturing of fireworks or sparklers must first apply for and secure a permit from the county fire marshal for each sales site. This permit is in addition to any other permits, registrations or licenses that may be required by any other applicable federal, state or local laws and regulations. Any sale of fireworks or sparklers without a valid permit as required hereunder shall be a violation of this code.

A separate application for a permit must be filed for each site at which the applicant intends to sell fireworks or sparklers, and a separate fireworks or sparklers permit must be secured for each such site, as applicable. Each application for such permit shall list the sales site location; include proof that the applicant is registered with the division of the state fire marshal pursuant to F.S. Ch. 791; include proof of a current fire safety inspection from the county fire-rescue department documenting compliance with the state fire prevention code and the county's local amendments thereto for the sales site listed on each application; include proof of compliance with the bond requirements set forth in this section; and include proof of compliance with the financial responsibility provisions of this code, if applicable. In addition, the temporary retail sale of sparklers requires an additional permit from the county planning, zoning and building department, the requirements for which are set forth in the Unified Land Development Code.

Each application for a permit for the sale of fireworks or sparklers must list the name and address of the designated contact person for the listed sales location and the nature of any other sales or business operations of the applicant which are to take place at the permitted premises. Each permit application shall be accompanied by a permit fee, to offset the cost of the regulatory requirements of this code, in the following amounts:

Sale of fireworks: . . . \$100.00

Sale of sparklers not exempt under section 12-39: . . . 100.00

The permit shall be issued in the name of the applicant only and shall not be transferable. Once a permit is issued, the permit holder shall have a continuing obligation to notify the county fire marshal of any change in the information set forth in the application for the permit including, but not limited to, any changes in physical address or closure of the permit holder's operations at any location where the permit holder does business in the county.

As a condition of obtaining and maintaining the permit, the permit holder must comply with all applicable federal, state and local laws and regulations governing the sale and storage of fireworks and/or sparklers, as applicable, including the requirements of this code, the state fire prevention code and the county's local amendments thereto. The permit holder also must comply with the record keeping and financial responsibility provisions of this code, as applicable.

The county fire marshal is authorized to issue permits for the sale of fireworks and sparklers as required herein. Permits for the sale of fireworks or for the retail sale of sparklers shall be valid for the duration of the applicant's current certificate of registration from the state fire marshal issued pursuant to F.S. § 791.015. Permits for the seasonal retail sale of sparklers shall be valid for one (1) of the sales periods authorized in F.S. § 791.01, for seasonal retailers. The county fire marshal shall deny a permit if the application does not meet the requirements established herein. If a permit is denied by the

county fire marshal, the applicant shall be advised in writing of the reason(s) for such denial.

Upon a determination by the county fire marshal that there is a violation of this code or any permit condition and that such violation presents an imminent danger, the county fire marshal shall be authorized to immediately suspend any permit issued hereunder until such time as the violation is corrected. For purposes of this code, "imminent danger" shall mean any condition or practice at the permitted site that poses a danger that could reasonably be expected to cause serious physical harm, including death, or serious property loss. The sale of the permitted goods as set forth in this code shall cease for the duration of the permit suspension.

Upon notification of a permit suspension under this section, the seller shall, if so directed in the permit suspension order, remove their fireworks or sparklers inventory, as applicable, from the premises in accordance with the time frame established in the order, and store said inventory in a secure offsite location that meets all applicable state and local fire codes. Based upon the county fire marshal's assessment of the danger presented, the permit suspension order may provide that the seller may, as an alternative to removing its inventory, cease operations during the period of suspension if its premises are secure. It shall be the obligation of the seller to ensure that adequate security is in place during any suspension period. At a minimum, the seller's premises or storage location, as applicable, shall be locked or otherwise inaccessible to the general public. The county fire marshal's order suspending or denying a permit under this section shall be in writing and set forth the reason(s) for such suspension or denial. Such order shall be served upon the permit holder/applicant or its contact person, as listed on the permit application, by personal service or mail and by delivering same to, and leaving same with, a person of responsibility at the sales site. Any such notice shall be deemed sufficient notice to the permit holder/applicant. For unattended or abandoned locations, a copy of such order shall be posted on the premises in a conspicuous place at or near the entrance to such premises and the order or notice shall be mailed by registered or certified mail, with return receipt requested, to the last known address of the permit holder/applicant or its contact person.

Any person or entity whose permit is suspended or denied hereunder may appeal such decision as set forth in section 12-44.

(b) *Display of permit.* All appropriate local and state permits, registrations and licenses must be displayed at each sales site, and be made available during business hours for immediate on site inspection by the county and/or the sheriff's office or other applicable law enforcement agencies.

(c) *Bond.* Before any permit, as provided by this code, shall be issued by the county fire marshal for the sale of fireworks or sparklers, such applicant shall file, or have on file, with the county fire marshal a current performance bond or similar security acceptable to the county, naming the county as beneficiary in the sum of five thousand dollars (\$5,000.00). An applicant with more than one (1) sales site and application shall pay the sum of five thousand dollars (\$5,000.00) per site, but shall only pay a maximum of twenty thousand dollars (\$20,000.00) for multiple sites. Such security shall be approved by the county attorney's office. The conditions of such security shall be that:

(1) The permit holder will pay all costs and judgments that may be rendered against said permit holder by a court of law for a violation of this code or F.S. Ch. 791, regarding the sale of fireworks or sparklers; and

(2) The permit holder shall pay the cost to the sheriff's office of providing security at the site(s), pursuant to court order, in the event of the arrest or detention of the permit holder's employee(s), or agent(s), for violation of this code, which arrest or detention results in the site being unmanned by the permit holder's employee(s) or agent(s).

(d) *Proof of registration.* The purchaser of any fireworks from a wholesaler, distributor or manufacturer must furnish to the seller, at the time of sale, if applicable, proof that the buyer is registered with the division of the state fire marshal and that the sale is otherwise in compliance with F.S. Ch. 791. The seller shall retain a copy of such proof presented in accordance with subsection (f) herein.

(e) *Exemptions to registration.* Any person, firm, partnership or corporation who is not registered with the division of the state fire marshal and who, pursuant to F.S. § 791.07, 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 applicable sheriff's office pursuant to the rules prescribed by the state department of agriculture and consumer services. In order to verify compliance with F.S. § 791.07, the seller must receive a copy of the stamped statement filed with the sheriff's office before selling the firecrackers and shall be required to maintain the copy of the statement on the site of the sale in accordance with subsection (f) herein. Failure of the seller to obtain a copy of the statement prior to the sale of firecrackers pursuant to F.S. § 791.07 shall constitute a per se violation of this code. The seller must review the purchaser's photo identification and record and maintain the purchaser's name, address, and form of identification as provided in subsection (f) herein.

If a purchaser of fireworks claims to be exempt from registration requirements pursuant to an exemption set forth in F.S. § 791.04, the purchaser must provide a written notarized statement setting forth the basis of the exemption and the purpose for which the fireworks are being purchased, in the form attached to this code as exhibit "A." The seller shall retain a copy of this statement in accordance with subsection (f) herein. In order to verify compliance with F.S. § 791.04, the seller must receive a copy of said notarized statement before selling the fireworks and shall be required to maintain a copy of the statement on the site of the sale. Failure of the seller to obtain a copy of the statement prior to the sale of fireworks pursuant to F.S. § 791.04, shall constitute a per se violation of this Code.

Any person, firm, partnership, or corporation who is not registered with the division of the state fire marshal and who, pursuant to F.S. § 791.04, purchases fireworks for shipment directly out of the state, shall not be allowed to take possession of such fireworks. The seller shall retain possession of such fireworks and shall be responsible for shipping all fireworks purchased to the purchaser or other recipient at an out-of-state point of delivery.

The purchaser of fireworks to be used, pursuant to F.S. § 791.04, by a railroad or other transportation agency must provide a copy of the business license or other government issued document evidencing that the purchaser is a legitimate railroad or transportation agency. A commercial drivers license, by itself, shall not meet the requirements of this section. A copy of this document must be maintained by the seller.

The purchaser of fireworks to be used, pursuant to F.S. § 791.04, in quarrying or for blasting or other industrial use must produce a copy of the quarry or mine permit or business license or other government issued document showing that the purchaser is operating a mine, quarry or other industrial enterprise. The seller shall maintain a copy of this proof and note the use for which the fireworks shall be used.

The purchaser of fireworks to be used, pursuant to F.S. § 791.04, in a public display must produce a copy of the current permit from a county or municipality and the seller must keep a copy of this permit with the record of sale.

(f) *Record of sales and exemptions.* In order to verify compliance with F.S. Ch. 791 and this Code, the seller of fireworks must check a driver's license or other photo identification of each purchaser of fireworks, and keep a record of the names, addresses and form of proof of photo identification for each purchaser. The seller must maintain, on site, this record for all fireworks sales, which record includes the name and address of purchaser, and the form of identification. The record must also include proof of registration in compliance with F.S. Ch. 791 by the purchaser, if applicable, or the written notarized statement setting forth the basis of the exemption and the purpose for which the fireworks are being purchased. Seller must verify and record that the name, address and other identification information on this notarized statement is consistent with the information contained on the purchaser's driver's license or other photo identification. Effective December 1, 2004, every seller of fireworks shall provide to each purchaser of such item(s) a receipt showing the item(s) sold, the seller's name and address, and the date of purchase. This receipt shall be provided at the time of purchase and the seller shall maintain a copy.

All records required by this code to be retained by the seller shall be maintained, on site, and be made available during business hours for immediate on site inspection by the county and/or the sheriff's office or other applicable law enforcement agencies.

The seller must maintain copies of all records required by this code at the location where the sale took place for a period of three (3) years from the date of the sale. These records must be available and provided immediately upon request for inspection by the county, the sheriff's office, or other applicable law enforcement agencies. In the event that the sales location closes, moves or is vacated, the records required by this code to be retained must be stored at a location in the county where they will be readily available for inspection by the county, the sheriff's office, or other applicable law enforcement agencies. The seller shall advise the county fire marshal of any change in the location of these records.

(g) *Evidence of financial responsibility.* In furtherance of the provisions of F.S. Ch. 791, each seller of fireworks must keep in force an insurance policy showing general comprehensive, liability and property damage insurance coverage on an occurrence basis with minimum limits in the policy of not less than one million dollars (\$1,000,000.00) combined single limit coverage for each loss that may result from the activities of the seller. Sellers must maintain Worker's Compensation coverage as required pursuant to F.S. Ch. 440. Insurance coverage must be in a form acceptable to the county's risk management department.

(h) *Floor area.* The floor area occupied by the displays of fireworks and/or sparklers in a permanent sales facility shall not exceed forty (40) percent of the floor area within the sales area.

(i) *Inspections.* Sellers of fireworks must obtain for each fireworks sales site a satisfactory fire safety inspection from the county fire-rescue department every three (3) months documenting compliance with the state fire prevention code and the county's local amendments thereto. Any application for, or acceptance of, a permit to sell fireworks under this code shall constitute agreement and consent by the applicant and permit holder to allow the county fire marshal to enter the premises at any reasonable time to conduct the quarterly fire safety inspections required hereunder.
(Ord. No. 04-020, art. 1, 7-21-04)

Sec. 12-42. Authority to order the cessation of sales of fireworks.

The county fire marshal shall have the authority to immediately order the cessation of the sale of fireworks at any business or location that is selling fireworks without all permits as required in this code until such time as corrective actions are taken and the required permits are obtained. Such order shall be in writing and set forth the reason(s) for the cessation of sales. Such order shall be served upon the seller or its contact person by personal service or mail, and by delivering same to, and leaving same with, a person of responsibility at the sales site. Any such notice shall be deemed sufficient notice to the seller. For unattended or abandoned locations, a copy of such order shall be posted on the premises in a conspicuous place at or near the entrance to such premises and the order or notice shall be mailed by registered or certified mail, with return receipt requested, to the last known address of the seller or its contact person.

Upon notification by the county fire marshal that sales are to cease, the seller shall, if so directed in the order to cease sales, remove their fireworks inventory from the premises in accordance with the time frame established in the order, and store said inventory in a secure offsite location that meets all applicable state and local fire codes. Based upon the county fire marshal's assessment of the danger presented, the order may provide that the seller may, as an alternative to removing its inventory, cease operations until such time as the required permits are obtained and during this time, store the inventory on site if the location is secure. It shall be the obligation of the seller to ensure that adequate security is in place during any such period that they cease operations. At a minimum, the seller's premises or storage location, as applicable, shall be locked or otherwise inaccessible to the general public. The order to cease sales issued hereunder shall be in addition to any sanction otherwise available under state law or this code.

Any person or entity ordered to cease the sale of fireworks under this section shall be entitled to appeal such order as set forth in section 12-44.

(Ord. No. 04-020, art. 1, 7-21-04)

Sec. 12-43. Suspension of permit.

If a seller has been convicted of a violation of this code or of F.S. Ch. 791, relating to fireworks, and within twelve (12) months of that conviction is again convicted of a violation of this code or of F.S. Ch. 791, relating to fireworks, its permit, and ability to obtain a permit, to sell fireworks under this code shall be suspended by the county fire marshal, as provided in this section, within twenty (20) days of the county fire marshal's receipt of notice of such conviction. The suspension shall be in addition to any sanction otherwise available under state law or this code. The first suspension shall be for a period of thirty (30) days. For each successive conviction, if any, for violations of this code or

F.S. Ch. 791, relating to fireworks within twenty-four (24) months of a prior suspension under this section, the seller's permit, and ability to obtain a permit, to sell fireworks shall be suspended for a period of one hundred eighty (180) days. For purposes of this section, a conviction includes a plea of guilty or nolo contendere, the payment of an assessed fine in lieu of contesting a citation or notice of violation, a finding of violation by a code enforcement special master or board arising from a violation determination initiated by the county fire marshal, or other judicial or quasi-judicial determination of violation. The sale of fireworks shall cease for the duration of any suspension hereunder.

Upon notification of a suspension under this section, the seller shall, if so directed in the county fire marshal's order of suspension, remove its fireworks inventory from the premises in accordance with the time frame established in the order, and store said inventory in a secure offsite location that meets all applicable state and local fire codes. Based upon the county fire marshal's assessment of the danger presented, the suspension order may provide that the seller may, as an alternative to removing its inventory, cease operations during the period of suspension if its premises are secure. It shall be the obligation of the seller to ensure that adequate security is in place during any suspension period. At a minimum, seller's premises or storage location, as applicable, shall be locked or otherwise inaccessible to the general public.

The county fire marshal's order suspending a permit, or the ability to obtain a permit, hereunder shall be in writing and set forth the reason(s) for such suspension. Such order shall be served upon the seller or its contact person by personal service or mail, and by delivering same to, and leaving same with, a person of responsibility at the sales site. Any such notice shall be deemed sufficient notice to the seller. For unattended or abandoned locations, a copy of such order shall be posted on the premises in a conspicuous place at or near the entrance to such premises and the order or notice shall be mailed by registered or certified mail, with return receipt requested, to the last known address of the seller or its contact person. Any person or entity whose permit, or ability to obtain a permit, is suspended hereunder may appeal such decision as set forth in section 12-44.

(Ord. No. 04-020, art. 1, 7-21-04)

Sec. 12-44. Appeals of orders of the county fire marshal.

Any person or entity ordered by the county fire marshal to cease the sale of fireworks pursuant to section 12-42 may appeal said order to the fireworks board of appeals. Also, any person or entity whose permit, or ability to obtain a permit, is suspended or denied by the county fire marshal pursuant to sections 12-41(a) or 12-43 may appeal said order to the fireworks board of appeals.

Said appeal must be filed in writing with, and received by, the county fire marshal within ten (10) business days of the issuance of the order. The hearing before the fireworks board of appeals shall be set for a date no later than five (5) business days from the county fire marshal's receipt of the written notice requesting a hearing. The board's written decision, with its supporting factual findings, shall be mailed by certified mail to the appellant within two (2) business days after the hearing. The decision of the fireworks board of appeals shall be final and reviewable in the manner and within the time provided by the Florida Rules of Appellate Procedure only by a petition for writ of certiorari filed with the circuit court in the county.

(Ord. No. 04-020, art. 1, 7-21-04)

Sec. 12-45. Creation of the fireworks board of appeals.

The fireworks board of appeals is hereby created. The members of the fire code board of appeals and adjustments, established by section 1-8 of the county local amendments to the state fire prevention code (codified at section 12-57 of the County Code), as may be amended or recodified from time to time, shall hereby serve ex-officio as members of the fireworks board of appeals.

The purpose and scope of the fireworks board of appeals shall be to hear appeals from orders of the county fire marshal to cease the sale of fireworks pursuant to section 12-42; and to hear appeals from orders of the county fire marshal denying or suspending a permit, or the ability to obtain a permit, pursuant to sections 12-41(a) and 12-43. The fireworks board of appeals shall follow the procedures of the fire code board of appeals and adjustments except as otherwise provided for in this code.

(Ord. No. 04-020, art. 1, 7-21-04)

Sec. 12-46. Drought restrictions.

Whenever the Keetch-Byram Drought Index average for the county reaches five hundred (500) or more, the county fire marshal is authorized to issue a written order prohibiting the use of fireworks and sparklers if the county fire marshal determines that the fire hazard created by such use would present an imminent danger to life and property. In making this determination, the county fire marshal shall consider the level of the drought index, other weather factors such as wind, temperature, relative humidity and atmospheric stability, and the potential for, or existence of, brush fires. This prohibition shall continue until terminated in writing by the county fire marshal. Within twenty-four (24) hours of the Keetch-Byram Drought Index average for the county falling below five hundred (500), the county fire marshal shall review, and continue to review on a daily basis, the factors identified above to assess when the drought restrictions will be lifted. Anyone seeking to appeal a decision of the county fire marshal to not lift such drought restrictions may do so by filing a written request for review with the county fire-rescue administrator within five (5) business days of such decision. The fire-rescue administrator shall review the county fire marshal's action and issue a written decision, with its supporting factual findings, within five (5) business days of his receipt of the request for review. The decision of the fire-rescue administrator shall be final agency action. Notwithstanding the foregoing, public displays of fireworks shall not be prohibited if properly permitted in accordance with section 16-10 of the county local amendments to the state fire prevention code (codified at section 12 57 of the County Code), as may be amended or recodified from time to time, and conducted in compliance with all applicable laws and regulations, including NFPA 1123 ("Code for Fireworks Display") and F.S. Ch. 791. At a minimum, at least one (1) fire truck and one (1) fire inspector shall be on standby for each such public display.

(Ord. No. 04-020, art. 1, 7-21-04)

Sec. 12-47. Enforcement and penalties.

Any violation of this code, including any orders issued hereunder, shall subject an offender to arrest pursuant to F.S. § 901.15, and prosecution pursuant to F.S. §125.69. The provisions of this Code, including any orders issued hereunder, also may be enforced

pursuant to the procedures and penalties of F.S. Ch. 162, the code enforcement citation system set forth in Ch. 8.5, Art. II, of the County Code, and the code enforcement special master system set forth in Article 10 of the County Unified Land Development Code, all as may be amended or recodified from time to time; provided, however, that in no case shall the fine imposed exceed one thousand dollars (\$1,000.00) per violation. In addition to the sanctions contained herein, the county may take any other appropriate legal action to enforce the provisions of this code, including, but not limited to, cease and desist orders, administrative action, instituting civil action, and requesting temporary and permanent injunctions. It is the purpose of this code to provide additional, cumulative remedies. Each violation of this code shall constitute a separate offense and be punishable as such. These sanctions are in addition to any criminal penalties available under the provisions of F.S. Ch. 791.

(Ord. No. 04-020, art. 1, 7-21-04)