RESOLUTION NO. 2572

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, ADDING SECTION 130.39 TO THE CODE OF THE TOWN OF PAYSON AND DECLARING SUCH AMENDMENT TO THE CODE TO BE A PUBLIC RECORD. (FIREWORKS REGULATION)

WHEREAS, the Code of the Town of Payson was declared to be a public record by Resolution Number 1536 of the Town of Payson; and

WHEREAS, the Code of the Town of Payson was adopted as a public record by Ordinance Number 588 of the Town of Payson; and

WHEREAS, it is the intention of the Town of Payson to amend the Code of the Town of Payson by adding Section 130.39 to Chapter 130 relating to Fireworks; and

WHEREAS, such amendment may be enacted by reference, pursuant to A.R.S. § 9-802,

NOW, THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DO HEREBY RESOLVE AS FOLLOWS:

Section 130.39 (Fireworks) of the Code of the Town of Payson is hereby added, is declared to be a public record, and shall read as set forth in Exhibit A, attached hereto.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON this 2nd day of September, 2010, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

_____
Kenny J. Evans, Mayor

ATTEST:

_____
Silvia Smith, Town Clerk

APPROVED AS TO FORM:

_____
Timothy M. Wright, Town Attorney

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EXHIBIT A TO RESOLUTION 2572

§130.39 FIREWORKS

(A) DEFINITIONS - The following words, terms and phrases, when used in this section, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) CONSUMER FIREWORK means those fireworks defined by Arizona Revised Statutes Section 36-1601.

(2) DISPLAY FIREWORK means those fireworks defined by Arizona Revised Statutes Section 36-1601.

(3) FIREWORKS means any combustible or explosive composition, substance or combination of substances, or any article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, that is a consumer firework, display firework or permissible consumer firework as defined by Arizona Revised Statute Section 36-1601.

(4) NOVELTY ITEMS means federally deregulated novelty items that are known as snappers, snap caps, party poppers, glow worms, snakes, toy smoke devices, NON IGNITION sparklers, and certain toys as defined in Arizona Revised Statute 36-1601.

(5) PERMISSIBLE CONSUMER FIREWORKS means those fireworks as defined by Arizona Revised Statute Section 36-1601 that may be sold within the Town even where the use of those items has been prohibited.

(6) SUPERVISED PUBLIC DISPLAY means a monitored performance of display fireworks open to the public, not sponsored by the Town, and authorized by permit of the Fire Chief.

(7) TOWN SPONSORED DISPLAY means a performance of display fireworks open to the public and paid for in whole, or in part, by the Town.

(B) PROHIBITIONS.

(1) The use, discharge or ignition of fireworks within the Town is prohibited except as provided in this section.

(2) Conducting a Supervised Public Display of fireworks in violation of subsection (D) is prohibited.

(C) EXCEPTIONS.

Nothing in this section shall be construed to prohibit or regulate any of the following:

(1) The use, discharge or ignition of Novelty Items.

(2) Town Sponsored Displays.

(D) SUPERVISED PUBLIC DISPLAYS.

(1) The Fire Chief may grant a permit for conducting a Supervised Public Display of fireworks. Conditions that are necessary to protect the health and safety of the community shall be included in such permit.

(2) Every such Supervised Public Display of fireworks shall be of such character and so located, discharged or fired, only after proper inspection and in a manner that does not endanger persons, animals, or property.

(3) The Fire Chief has the authority to reject or revoke a permit for a Supervised Public Display during times of high fire danger.

(E) SALE OF FIREWORKS.

(1) No person shall sell or permit or authorize the sale of Permissible Consumer Fireworks to a person who is under sixteen years of age.

(2) No person shall sell or permit or authorize the sale of Permissible Consumer Fireworks in conflict with state law.

(3) No person shall sell Permissible Consumer Fireworks without first obtaining an inspection from the Fire Chief for compliance with the International Fire Code as adopted by the Town of Payson. Following such inspection, the Fire Chief shall issue a permit if the sales site is in compliance. No roadside sales shall be permitted.

(F) POSTING OF SIGNS BY PERSONS ENGAGED IN THE SALE OF FIREWORKS.

(1) Prior to the sale of Permissible Consumer Fireworks, every person engaged in such sales shall prominently display signs indicating the following:

(a) The use of fireworks within the Town of Payson, except Novelty Items as defined by Town Code Section 130.39, is prohibited.

(b) Consumer Fireworks authorized for sale under state law may not be sold to persons under the age of 16.

(2) Signs required under this subsection shall be placed at each cash register and in each area where fireworks are displayed for sale.

(3) The Fire Chief shall develop an administrative policy concerning the size and color of the required signs and shall develop a model sign. The administrative policy and model sign shall be posted on the Town's website and filed with the Clerk's office.

(G) ENFORCEMENT.

A police officer or the Town Attorney may issue criminal complaints to enforce this section.

(H) LIABILITY FOR EMERGENCY RESPONSES RELATED TO THE USE OF FIREWORKS; DEFINITIONS.

(1) A person who uses, discharges or ignites Permissible Consumer Fireworks, fireworks or anything that is designed or intended to rise into the air and explode or to detonate in the air or to fly above the ground, is liable for the expenses of any emergency response that is required by such use, discharge or ignition. The fact that a person is convicted for a violation(s) of this section is prima facie evidence of liability under this subsection.

(2) The expenses of an emergency response are a charge against the person liable for those expenses pursuant to subsection (1) above. The charge constitutes a debt of that person and may be collected proportionately by the public agencies, for-profit entities or not-for-profit entities that incurred the expenses. The person's liability for the expense of an emergency response shall not exceed one hundred thousand dollars ($100,000.00) for a single incident. The liability imposed under this subsection is in addition to and not in limitation of any other liability that may be imposed.

(3) For the purposes of this subsection:

(a) "Expenses of an emergency response" means reasonable costs directly incurred by public agencies, for-profit entities or not-for-profit entities that make an appropriate emergency response to an incident.

(b) "Reasonable costs" includes the costs of providing police, fire fighting, rescue and emergency medical services at the scene of an incident and the salaries of the persons who respond to the incident.