



# Commerce City

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## Council Communication

File Number: Ord 2333

**Agenda Date:** 6/7/2021

**Version:** 1

**Status:** ATS Review

**In Control:** City Council

**File Type:** Ordinance

AN ORDINANCE AMENDING SECTION 5-41001 OF THE COMMERCE CITY REVISED MUNICIPAL CODE TO AMEND THE FIRE CODE OF THE CITY OF COMMERCE CITY, THE 2018 INTERNATIONAL FIRE CODE AS ADOPTED AND AMENDED, TO ALLOW THE LIMITED USE OF CERTAIN FIREWORKS IN COMMERCE CITY

### **Summary and Background:**

Currently, the possession, storage, sale, handling, and use of fireworks is prohibited in Commerce City pursuant to Section 5601.1.3 of the Fire Code of the City of Commerce City. The use of fireworks and explosives in city parks is also prohibited.

The proposed ordinance amends the Fire Code to allow the limited use of certain fireworks in the city, except on park property. The ordinance would:

- (1) allow the outdoor use of "permissible fireworks," as defined by state law, on July 3-4 and December 31 from 10:00 a.m. to 11:00 p.m. Similar to state law, the use of fireworks by persons under the age of 16 is permitted only with direct adult supervision.
- (2) allow the possession, storage, sale and handling of such permissible fireworks, within state and federal regulatory requirements.

Stakeholder feedback was limited due to the requested timing of the ordinance. Comments from emergency services providers were not available at the time of agenda submission.

### ***What fireworks would be permitted:***

"Permissible fireworks," pursuant to state law (C.R.S. § 24-33.5-2001(11)), are specific types of small fireworks devices designed to produce audible or visual effects by combustion, complying with the requirements of the United States consumer product safety commission as set forth in 16 CFR 1500.1 to 1500.272 and 1507.1 to 1507.12 , and classified as consumer fireworks UN0336 and UN0337 pursuant to 49 CFR 172.101, as follows:

- **Cylindrical fountains**, total pyrotechnic composition not to exceed seventy-five grams each for a single tube or, when more than one tube is mounted on a common base, a total pyrotechnic composition of no more than two hundred grams;
- **Cone fountains**, total pyrotechnic composition not to exceed fifty grams each for a single cone or, when more than one cone is mounted on a common base, a total

pyrotechnic composition of no more than two hundred grams;

- **Wheels**, total pyrotechnic composition not to exceed sixty grams for each driver unit or two hundred grams for each complete wheel;

- **Ground spinners**, a small device containing not more than twenty grams of pyrotechnic composition venting out of an orifice usually in the side of the tube, similar in operation to a wheel, but intended to be placed flat on the ground;

- **Illuminating torches** and **colored fire** in any form, total pyrotechnic composition not to exceed two hundred grams each;

- **Dipped sticks** and **sparklers**, the total pyrotechnic composition of which does not exceed one hundred grams, of which the composition of any chlorate or perchlorate shall not exceed five grams;

- Any of the following that do not contain more than fifty milligrams of explosive composition:

- > Explosive auto alarms;
- > Toy propellant devices;
- > Cigarette loads;
- > Strike-on-box matches; or
- > Other trick noise makers;

- **Snake or glow worm pressed pellets** of not more than two grams of pyrotechnic composition and packaged in retail packages of not more than twenty-five units;

- Fireworks that are used exclusively for testing or research by a licensed explosives laboratory;

- **Multiple tube devices** with:

- > Each tube individually attached to a wood or plastic base;
- > The tubes separated from each other on the base by a distance of at least one-half of one inch;
- > The effect limited to a shower of sparks to a height of no more than fifteen feet above the ground;
- > Only one external fuse that causes all of the tubes to function in sequence; and

> A total pyrotechnic composition of no more than five hundred grams.

Permissible fireworks do not include aerial devices or audible ground devices,

including, but not limited to, firecrackers, mortars, cherry bombs, bottle rockets, and

roman candles. The ordinance also excepts items that may be fireworks under the Fire Code but would not constitute fireworks under state law (e.g., toy caps, party poppers of limited capacity, highway flares and other emergency signal devices, and educational rockets or their engines), pursuant to C.R.S. § 24-33.5-2001(5)(b).

**Fireworks Penalties:** Since 2019, a \$500 mandatory penalty for a first offense and a \$1000 mandatory penalty for subsequent offenses have been imposed for convictions for violations of city laws relating to the unlawful possession, manufacture, storage, sale, handling, discharge or use of fireworks, pursuant to Section 1-3003(e) of the Commerce City Revised Municipal Code, in addition to other applicable penalties. As a misdemeanor under city law, a limited jail sentence of up to 364 days is also possible.

By comparison, violations of state law relating to fireworks constitutes a third-degree misdemeanor subject to a fine between \$50-\$750 and up to 6 months in prison. The penalties for fireworks violations in other municipalities could not be determined within the time provided. The City of Thornton has a minimum \$500 fine for a first offense and a \$1,000 for subsequent violations. The City of Brighton does not maintain a specific minimum penalties; violations may routinely result in penalties from \$100-300 and safety classes.

In 2020, 9News reported that several cities had fines that could reach \$2,650 (Brighton, Fort Collins, Lakewood) or some lesser amount (Castle Rock, \$1000; Denver, \$999; Longmont, \$500; Northglenn, \$1000). Source:  
<https://www.9news.com/article/life/style/colorado-guide/fireworks-legal-not-legal-in-colorado-2020/73-ddef8dea-3a5e-429e-9ea6-6b8ba12ba7b2#:~:text=Fines%20for%20use%20of%20illegal,calling%20303%2D651%2D8501>.

**Potential amendments relating to permissible dates of use:**

Amendments could be offered to permit year-round use of "permissible fireworks" or to change the dates or times of permitted use.

- To permit year-round use: *I move to amend draft Ordinance 2333 by modifying Exhibit A, subsection (o) to strike from exception #5 the words "between the hours of 10:00 a.m. and 11:00 p.m. on July 3, July 4, and December 31 of any year."*

- To add dates of permitted use: *I move to amend draft Ordinance 2333 by modifying Exhibit A, subsection (o) to insert "[month/date]" after "July 4."*

- To delete a date of permitted use: *I move to amend draft Ordinance 2333 by modifying Exhibit A, subsection (o) to delete "[month/date]."*

- To change a time of permitted use: *I move to amend draft Ordinance 2333 by*

*modifying Exhibit A, subsection (o) to replace "[time]" with "[time]." OR I move to amend draft Ordinance 2333 by modifying Exhibit A, subsection (o) to replace "[time]" with "[time]" and "[time]" with "[time]."*

**Potential amendment relating to fines:**

During the May 24, 2021, the City Council discussed a potential amendment to the proposed ordinance to increase the mandatory minimum fine. Amendments could be offered to increase the mandatory minimum fine as follows:

- To modify both fines: *I move to amend draft Ordinance 2333 to insert a new section following Section 2 entitled "Amendment to Fireworks Penalties" stating "Section 1-3003(e) of the CCRMC is amended to replace "five hundred dollars (\$500.00) with "\_\_\_\_\_ dollars (\$\_\_\_\_\_) and "one-thousand dollars (\$1,000.00)" with "\_\_\_\_\_ dollars (\$\_\_\_\_\_)," as set forth in Exhibit B, and to modify the ordinance title and add an Exhibit B to reflect the amendment.*

- To modify only one of the fines: (Use amendment language above but remove one of the dollar amount clauses.)

**Attachments:**

- (1) Draft Ordinance 2333
- (2) Comparison to existing Fire Code Section 5601.1.3.
- (3) Presentation.

**References:**

Commerce City Revised Municipal Code:  
[https://library.municode.com/co/commerce\\_city/codes/municipal\\_code](https://library.municode.com/co/commerce_city/codes/municipal_code)

Ordinance 2219 (adopting and amending the 2018 International Fire Code):  
[https://library.municode.com/co/commerce\\_city/ordinances/municipal\\_code?nodeId=989907](https://library.municode.com/co/commerce_city/ordinances/municipal_code?nodeId=989907)

2018 International Fire Code: <https://codes.iccsafe.org/content/IFC2018>

Ordinance 2172 (establishing mandatory minimum penalties for fireworks violations):  
[https://library.municode.com/co/commerce\\_city/ordinances/municipal\\_code?nodeId=931631](https://library.municode.com/co/commerce_city/ordinances/municipal_code?nodeId=931631)

C.R.S. §§ 24-33.5-2001 et seq.:  
<https://codes.findlaw.com/co/title-24-government-state/co-rev-st-sect-24-33-5-2001.html>

The Sale and Use of Fireworks in Colorado, Colorado Legislative Council Staff, Damian Pechota (14-11, September 2014):  
[https://leg.colorado.gov/sites/default/files/14-11\\_update\\_2003\\_fireworks\\_lawsib.pdf](https://leg.colorado.gov/sites/default/files/14-11_update_2003_fireworks_lawsib.pdf)

**Financial Impact:** The permission of the limited use of fireworks may decrease fines, but may reduce enforcement costs or increase tax revenue.

**Staff Member Responsible:** Robert Sheesley, City Attorney

**Staff Member Presenting:** Robert Sheesley, City Attorney

**Suggested Motion:**

- First reading: I move to introduce by council as seated and approve on first reading Ordinance 2333. (Requires majority of those present.)

- Second reading: I move to approve Ordinance 2333 on second and final reading. (Requires 5 affirmative votes.)