

ORDINANCE NO. 2024-3

**An Ordinance Amending Chapter 35 Of The Municipal Code
Of The Village Of Rochester To Clarify
The Restrictions And Requirements
For The Possession And Sales Of Fireworks**

WHEREAS, the Village of Rochester seeks to update certain sections of the Village of Rochester Zoning Code for the sake of clarification, consistency, and to remedy oversights within the Village of Rochester Zoning Code; and

WHEREAS, the restrictions and requirements for sales of novelty fireworks within the Village are included within Code section 35-21; and

WHEREAS, historically, fireworks sales have been approved although the approval has not strictly complied with the Code requirements of 35-21; and

WHEREAS, the Plan Commission believes that the Code should be amended to reflect the standards that have historically been used for approval of fireworks sales; and

WHEREAS, this zoning amendment was initiated pursuant to Section 35-220 B. of the Village of Rochester Zoning Code; and

WHEREAS, the matter was duly referred to the Village of Rochester Plan Commission for report and recommendation pursuant to Section 35-220(D) of the Village of Rochester Zoning Code, and the Plan Commission has reviewed the matter and offered its recommendation to the Village Board; and

WHEREAS, a public hearing was conducted by the Village Board of the Village of Rochester on _____, 2024 as required by Section 35-220(F) of the Village of Rochester Zoning Code, upon due notice as required by Section 35-240 of the Village of Rochester Zoning Code and Section 62.23(7)(d), Wisconsin Statutes; and

WHEREAS, the Village Board finds that this change to the Village of Rochester Zoning Code is not a down zoning ordinance because it does not decrease the development density of land and it does not reduce the permitted uses of land, and therefore the super majority requirement of Section 66.10015, Wisconsin Statutes, does not apply to this ordinance; and

WHEREAS, the Village Board for the Village of Rochester finds that the public necessity, convenience, general welfare, and good zoning practice require the amendment to the Village Code described herein; and

NOW, THEREFORE, the Village Board of the Village of Rochester, Racine County, Wisconsin, does hereby ordain as follows:

Section 1: Chapter 35 of the Village of Rochester Zoning Code entitled “Planning and Zoning,” Section 35-21 entitled “Use Restrictions,” Subsection G entitled “Temporary Uses of Land and Temporary Structures,” Paragraph 10 entitled “Detailed standards for specific temporary uses,” Subdivision f entitled “Fireworks possession and sales,” is hereby repealed and re-created to read as follows:

f. Fireworks possession and sales. This section is enacted pursuant to Wis. Stat. s. 167.10(5), as may be amended from time to time.

(1) Definitions. The terms used in this section shall have the meanings indicated in s. 9-8.B. of this Municipal Code.

(2) Regulation of statutory fireworks. No person may possess or store statutory fireworks in the Village except as provided in this Section and Section 9-8 of this Municipal Code, or, if possession, sales or storage is to be a permanent use of land, under the appropriate zoning designation.

(3) Commercial novelty fireworks permit required.

(a) No person may sell, store, or possess novelty fireworks for other than personal use without a permit issued hereunder.

(b) Application. Application for novelty fireworks permits for seasonal sales shall specify the kind and quantity of fireworks that will be possessed and sold, and the dates and location of the sales. The owner or person in authority of the site of the storage and sales shall consent in writing to the use of the site. Applicants must submit a site plan identifying the location of the storage as well as sales (if different), the property’s zoning district, and any existing structures on the property and within 100 feet of the property lines.

(c) Review and issuance.

[1] The application shall be reviewed by the Plan Commission and the Fire Chief.

[2] No permits shall be issued to minors.

[3] No permit shall be issued unless the Plan Commission and the Fire Chief determine that the novelty fireworks are stored in a safe and secure trailer and that sales of the novelty fireworks will be made from a temporary shelter or tent in an outdoor area that, in the opinion of the Plan Commission and Fire Chief, will not be hazardous to property or endanger any person or persons. In addition:

[a] The site must be zoned as a business district and located a minimum of 300 feet from any residential dwelling.

[b] The storage and sales of the novelty fireworks must conform to the standards set forth in NFPA 1 Chapter 65, Explosives, Fireworks and Model Rocketry, as may be amended from time to time.

[c] The site must be served by adequate parking, ingress, and egress.

(d) No permit shall be issued unless the permittee has and maintains adequate liability insurance with minimum limits of \$1,000,000 bodily injury and property damage, combined single limit, naming the Village, its officers, employees and agents as additional insureds. Said insurance shall indemnify and defend the Village, its officers, employees, and agents against all claims, liability, loss, damages, or expenses, whether caused by or contributed to by the negligence of the Village, its officers, employees, or agents. Said insurance shall provide that the Village receive written notice 30 days prior to any cancellation, nonrenewal, or material change in the policy. Proof of said insurance shall be submitted to the Plan Commission and Fire Chief prior to the issuance of the permit.

(e) No permit shall be issued for the manufacture of novelty fireworks, and no permit shall be issued for the storage of novelty fireworks, except as storage may be necessary to sales permitted hereunder, or except as may be permitted for permanent uses allowed under this Chapter.

(f) A permit for the sales of novelty fireworks issued hereunder shall be valid for a period of no longer than 30 days.

(g) Temporary shelters or tents for the sale of novelty fireworks permitted hereunder may be erected, and storage trailers/containers containing novelty fireworks may be placed, on the site no earlier than the first date of approved permit validity and must be removed no later than the permit's expiration. No activities, uses, or storage related to the approved permit may occur outside of the permitted time frame.

(h) If the Plan Commission determines that a permit applicant violated any terms of this code section in the previous year, it reserves the right to decline the issuance of a permit for the subsequent year.

(i) Permit regulations. After the permit is issued, storage, sale, and possession for sale shall be lawful for that expressed purpose only. No permit granted hereunder is transferable.

(4) Permit fee. A non-refundable fee for the cost of the permit shall accompany the permit application. This fee shall be an amount determined by the Village Board and set forth in the Fee Schedule.

(5) Reserved.

(6) Storage and handling of commercial novelty fireworks.

(a) No person may store or handle commercial novelty fireworks on any premises unless the premises are equipped with fire extinguishers approved by the Fire Chief or Fire Inspector.

(b) No person may smoke where commercial novelty fireworks are stored or handled.

(c) A person who stores or handles commercial novelty fireworks shall immediately notify the Fire Chief or Fire Inspector of the location, description and quantity of the fireworks.

(7) Parental liability. A parent, foster, or family-operated group home parent or legal guardian of a minor who consents to the presence at a place selling novelty fireworks by the minor who is under the age of 18 years of age is liable for damages caused by the minor's access to the fireworks, and in addition shall be subject to the penalty provided in this Municipal Code.

(8) Inspection, search and seizure of fireworks.

(a) Inspection and search of permitted premises. An applicant for a permit under this chapter thereby consents to the entry of the Fire Chief, Fire Inspectors, Police, or authorized representatives of the Village upon the permitted premises, including but not limited to storage areas, containers, and vehicles, at all reasonable hours for the purposes of inspection and search and consents to removal from the premises and introduction into evidence in prosecutions for violations of this chapter of all things found therein in violation of this chapter or state law.

(b) Seizure. The Police or Fire Department shall seize, at the expense of the owner, all statutory or novelty fireworks stored, handled, sold, possessed, or used by any person who violates this chapter. Such seized fireworks shall be destroyed after conviction for a violation, or, if storage is deemed to be dangerous, may be destroyed pursuant to statute. Statutory or novelty fireworks that are seized as evidence of a violation for which no conviction results shall be returned to the owner if they have not been destroyed pursuant to statute.

(9) Emergency revocation of permit or authority to possess, sell, or store commercial novelty fireworks. The Fire Chief, Fire Inspectors, and/or Plan Commission may revoke a permit or prohibit or terminate the possession, sale or storage of novelty fireworks when, in the opinion of the Chief and Plan Commission, atmospheric conditions or local circumstances make such possession, sale or storage a fire hazard or other hazard to the safety of the public. During such period of such prohibition, no person may sell novelty fireworks anywhere within the Village. The failure to allow the inspection and/or search of a permitted premises pursuant to this section shall be grounds for the immediate revocation of the permit. The presence of statutory fireworks on premises

permitted for commercial novelty fireworks shall be grounds for the immediate revocation of a permit. The Fire Chief, Fire Inspectors and/or Plan Commission may reinstate a permit upon the permittee's compliance with this chapter.

(10) Violations and penalties.

(a) See Wis. Stat. s. 167.10(9)(b), which provides that a penalty for violation of an ordinance adopted pursuant to Wis. Stat. s. 167.10(5) may not exceed \$1,000. The penalties for violation of this Section shall be set forth in the Village Deposit Schedule and shall not exceed \$1000 per violation.

(b) In addition to the penalties found elsewhere in this Chapter, any violation of this Section shall also constitute a public nuisance which may be abated pursuant to Section 8-8 of this Municipal Code, in addition to prosecution therefore.

Section 2: CONTINUATION OF PROVISIONS

The provisions of this ordinance, to the extent that they are substantively the same as those of the ordinances in force immediately prior to the enactment of this ordinance, are intended as a continuation of such ordinances and not as new enactments, and the effectiveness of such provisions shall date from the date of adoption of the prior ordinances. In addition, the adoption of this ordinance shall not affect any action, prosecution, or proceeding brought for the enforcement of any right or liability established, accrued, or incurred under any legislative provision prior to the effective date of this ordinance for the time that such provision was in effect, and the repeal of any such provision is stayed pending the final resolution of such actions, including appeals.

Section 3: SEVERABILITY

The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful, or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions, sections, or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinance whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

Section 4: EFFECTIVE DATE

This ordinance shall take effect on _____, 2024 after passage and posting and/or publication as provided by law.

Passed and adopted this _____ day of _____, 2024.

VILLAGE OF ROCHESTER

Nick Ahlers, Village President

ATTEST:

Sandra J. Swan, Village Clerk