AN ORDINANCE TO AMEND THE ORDINANCES OF THE CITY OF COMMERCE, GEORGIA, TO REGULATE THE SALE, USE, IGNITION OF, POSSESSION, MANUFACTURE, TRANSPORT OR THE STORAGE OF ANY CONSUMER FIREWORKS OR FIREWORKS TO THE EXTENT PERMITTED BY THE GENERAL LAW OF THE STATE OF GEORGIA; TO PROVIDE A TITLE FOR THE ORDINANCE; TO PROVIDE DEFINITIONS FOR THE ORDINANCE; TO PROHIBIT THE SALE, USE OR POSSESSION OF CONSUMER FIREWORKS OR FIREWORKS UPON OR OVER THE PUBLIC PROPERTY OF THE CITY EXCEPT BY PERMIT ISSUED BY THE CITY COUNCIL; TO PROVIDE FOR THE ISSUANCE OF SPECIAL USE PERMITS AS TO THE USE OF ANY CONSUMER FIREWORKS OR FIREWORKS AT A TIME NOT PERMITTED GENERALLY UNDER STATE LAW OR AT A LOCATION NOT PERMITTED FOR SUCH USE ABSENT A SPECIAL USE PERMIT; TO PROVIDE FOR THE REGULATORY FEE FOR THE ISSUANCE OF A SPECIAL USE PERMIT; TO PROVIDE FOR THE ISSUANCE OF AN OCCUPATIONAL TAX LICENSE TO ALLOW A PERMANENT FIREWORKS RETAILS SALES FACILITY OR STORE TO BE LOCATED WITHIN THE MUNICIPALITY; TO PROVIDE REGULATIONS REGARDING A TEMPORARY CONSUMER FIREWORKS RETAIL SALES STAND; TO PROVIDE FOR THE LICENSE FEE FOR A DISTRIBUTOR SELLING CONSUMER FIREWORKS FROM A TEMPORARY CONSUMER FIREWORKS RETAILS SALES STAND; AND FOR OTHER PURPOSES.

WHEREAS, the Georgia General Assembly has greatly expanded the sale at retail or wholesale, the use, possession, manufacture, transport, and storage of consumer fireworks or fireworks by the general public;

WHEREAS, the City Council of the City of Commerce, Georgia is authorized by Art. IX, § II, ¶ III of the Constitution of the State of Georgia of 1983, and O.C.G.A. §§ 25-10-1 et seq. to regulate the sale at retail or wholesale, the use, the possession, the manufacture, the transport, and storage of any consumer fireworks or fireworks to the extent authorized by the general law of the State of Georgia;

WHEREAS, the City Council of the City of Commerce, Georgia, finds that it is appropriate for the public safety and general welfare of the citizens of the municipality, that the

City of Commerce regulate consumer fireworks or fireworks to the extent authorized by the general law of the State of Georgia; and

BE IT ORDAINED by the City Council of Commerce, Georgia, and it is hereby ordained by the authority of the City Charter, the above-referenced authority and authority as provided by Georgia law, as follows:

SECTION 1. <u>AMENDMENT TO THE ORDINANCES OF THE CITY OF COMMERCE.</u>

This ordinance shall amend the ordinances of the City of Commerce regulating consumer fireworks or fireworks, by deleting in its entirety Article III, Chapter 46 of the current ordinance and substituting this ordinance to read, as follows:

CHAPTER 16, ARTICLE III: FIREWORKS REGULATIONS.

Section 46-100. <u>Title.</u>

The sections of this ordinance shall be known and designated as the "Fireworks Regulations Ordinance."

Section 46-101. <u>Definitions.</u>

(a) As used in this ordinance, the term:

(1) "Consumer fireworks" means any small fireworks devices containing restricted amounts of pyrotechnic composition, designed primarily to produce visible or audible effects by combustion, that comply with the construction, chemical composition, and labeling regulations of the United States Consumer Product Safety Commission as provided for in Parts 1500 and 1507 of Title 16 of the Code of Federal Regulations, the United States Department of Transportation as provided for in Part 172 of Title 49 of the Code of Federal Regulations and the American Pyrotechnics Association as provided for in the 2001 American Pyrotechnics Association Standard 87-1, and additionally shall mean Roman candles.

(2) "Consumer fireworks retail sales facility" shall have the same meaning as provided for by NFPA 1124; provided, however, that such term shall not include a tent, canopy, or membrane structure.

(3) "Consumer fireworks retail sales stand" shall have the same meaning as provided for by NFPA 1124; provided, however, that such term shall not include a tent, canopy, or membrane structure.

(4) "Distributor" means any person, firm, corporation, association, or partnership which sells consumer fireworks.

(4.1) "Electric plant" shall have the same meaning as provided for in O.C.G.A. § 46-3A-1.

(5) "Fireworks" means any combustible or explosive composition or any substance or combination of substances or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation, including blank cartridges, skyrockets, bombs, sparklers, and other combustibles and explosives of like construction, as well as articles containing any explosive or flammable compound and tablets and other devices containing an explosive substance.

(6) "NFPA 1124" means the National Fire Protection Association Standard 1124, *Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles,* 2006 Edition.

(7) "Nonprofit group" means any entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, any entity incorporated under Chapter 3 of Title 14 of the [Official Code of Georgia Annotated] Georgia Non-Profit Corporation Code, or a sponsored organization of a public or private elementary or secondary school in this state.

(8) "Proximate audience" means an audience closer to pyrotechnic devices than permitted by the National Fire Protection Association Standard 1123, *Code for Fireworks Display*, as adopted by the Georgia Safety Fire Commissioner.

(9) "Pyrotechnics" means fireworks.

(10) "Store" shall have the same meaning as provided for by NFPA 1124; provided however, that such term shall only include such buildings with at least 4,000 square feet of retail display space and wherefrom:

(A) No more than 25% of such retail display space is used for consumer fireworks and items or products as provided for under paragraph (2) of subsection (b) of this ordinance section; and

(B) Other items or products which are not consumer fireworks or items or products as provided for under paragraph (2) of subsection (b) of this ordinance section are sold; and provided further that such term means a person, firm, corporation, association, or partnership with more than one mercantile location, with all such mercantile locations are collectively known to the public by the same name or share central management.

(11) "Wastewater Treatment Plant" shall have the same meaning as provided for in O.C.G.A. § 43-51-2.

(12) "Water Treatment Plant" shall have the same meaning as provided for in O.C.G.A. § 43-51-2.

(b) As used in this ordinance, the term "consumer fireworks" or "fireworks" shall not include:

(1) Model rockets and model rocket engines designed, sold, and used for the purpose of propelling recoverable aero models, toy pistol paper caps in which the explosive

content averages 0.25 grains or less of explosive mixture per paper cap or toy pistols, toy cannons, toy canes, toy guns, or other devices using such paper caps; nor shall the term "consumer fireworks" or "fireworks" include ammunition consumed by weapons used for sporting and hunting purposes; and

(2) Wire or wood sparklers of 100 grams or less of mixture per item; other sparkling items which are nonexplosive and nonaerial and contain 75 grams or less of chemical compound per tube or a total of 500 grams or less for multiple tubes, snake and glow worms; smoke devices; or trick noise makers which include paper streamers, party peppers, string peppers, snappers, and drop pops each consisting of 0.25 grams or less of explosive mixture.

Section 46-103. **Limited Prohibition as to Consumer Fireworks or Fireworks.**

(a) It shall be unlawful for any person, firm, corporation, association, or partnership to offer for sale at retail or wholesale, to use or ignite or cause to be ignited, or to possess, manufacture, transport, or store any consumer fireworks or fireworks, within the City except as expressly authorized by the general law of the State of Georgia but also as limited by this ordinance as follows:

(1) It shall be unlawful for any person, firm, corporation, association or partnership to use or ignite or cause to be ignited any consumer fireworks or fireworks, within the City on any day after the time of 9:00 p.m., and up to and including the time of 11:59 p.m., and during the morning hours of 12:00 midnight until 10:00 a.m. of any day pursuant to the noise ordinance of the City and this ordinance, except as otherwise provided for under subparagraph (2) of this Section or such use or ignition is allowed pursuant to the issuance of a special use permit pursuant to Section 46-104 of this ordinance.

(2) Not withstanding subparagraph (a)(1) of this section, the use or ignition of any consumer fireworks or fireworks, within the City is further allowed for additional hours without a special use permit as follows:

(A) The use or ignition of any consumer fireworks or fireworks is allowed on January 1, July 3, July 4, and December 31 of each year after the time of 9:00 p.m. and up to and including the time of 11:59 p.m. without a special use permit; and

(B) The use or ignition of any consumer fireworks or fireworks, within the City is allowed on January 1 of each year for the additional time of 12:00 midnight and up to and including the ending time of 1:00 a.m. without a special use permit.

(b) The right to use or ignite or cause to be ignited, any consumer fireworks or fireworks, as provided herein, is further subject to any regulations and restrictions concerning the use of consumer fireworks due to a declaration of drought by the Georgia Governor, and with the municipal City limits being within the boundaries of the area covered by the drought declaration. The regulations and restrictions of the drought declaration shall not be effective on January 1, July 3, July 4, or December 31 of any year. The drought regulations and restrictions shall also be rescinded upon the expiration or conclusion of the drought declaration. Any person that violates the drought regulations and restrictions by the use or ignition of consumer fireworks or fireworks will also be subject to a violation of this ordinance, and subject to the penalties for violation of this ordinance as provided herein.

(c) It shall unlawful for any person, firm, corporation, association, or partnership to use or ignite or cause to be ignited any consumer fireworks or fireworks, within the City in violation of O.C.G.A. §§ 25-10-2 and 25-10-2.1, and such violation shall be deemed to be a violation of this ordinance, besides being a violation of state law.

Section 46-104. **Prohibition of Consumer Fireworks or Fireworks in City Public Areas or the Use of Fireworks at a Time Not Authorized by the General Law of the State of Georgia Except Pursuant to a Special Use Permit.**

(a) It shall be unlawful for any person, firm, corporation, association, or partnership to offer for sale at retail or wholesale, to use or ignite or cause to be ignited, or to possess, manufacture, transport, or store any consumer fireworks or fireworks, on, upon, or above any City property, including but not limited to the public areas of the City including parks, or during the hours of 9:00 p.m. and up to and including the time of 11:59 p.m. on any day, except as provided herein and except as allowed by a special use permit issued by the City.

(b) It shall be unlawful for any person, firm, corporation, association, or partnership to use or ignite or cause to be ignited any consumer fireworks on any day at a time not allowed by the general law of the State of Georgia or this ordinance within the City, or upon any City public property, or both, unless such person, firm, corporation, association, or partnership is issued a special use permit by the City Council for the use or ignition of consumer fireworks in such ways. The applicant for a special use permit shall use the application forms of the City for said permit, and shall designate the time or times and/or location that such person, firm, corporation, association, or partnership desires to use or ignite or cause to be ignited such consumer fireworks or fireworks. The City Council shall consider the application, and considering reasonable factors such as the time requested, the proposed location of the fireworks display, prior experience concerning the applicant's use of fireworks, the potential for fires or wildfires, and other reasonable factors, and in its discretion based upon these factors grant or deny the issuance of a special use permit. If the special use permit is granted by the City Council, then the applicant shall pay a special use permit fee of $100.00 to the City. If the application is denied, then the applicant shall have a right of appeal to the superior court of the

applicable county pursuant to the procedures for the grant of a writ of certiorari by said court. The City of Commerce, the City Council, and the agents of the City shall have no liability as to any decision made pursuant to this section.

Section 46-105. **Occupational Tax for a Licensed Distributor Operating a Permanent Consumer Fireworks Retail Sales Facility or Store in the City.**

A licensed distributor operating a permanent consumer fireworks retail sales facility or store shall be entitled to receive a City occupational tax license for said facility or store upon making application for said license from the City pursuant to the City's procedure, and providing a copy of the license issued to the distributor and as to said permanent facility or store by the Georgia Safety Fire Commissioner or the judge of the probate court of the applicable county and as provided by general law. The occupational tax license fee for said licensed distributor shall be assessed for said licensed distributor upon the same basis as other businesses, professions, or occupations under the City's occupational tax ordinance. Any termination, revocation, or suspension of the license issued by the Georgia Safety Fire Commissioner shall act to automatically in similar fashion terminate, revoke, or suspend the City occupational tax license issued to said licensed distributor. If the licensed distributor selling consumer fireworks from a permanent consumer fireworks retails sales facility or store is a part of a store having multiple store locations as provided within O.C.G.A. § 25-10-51, then any City occupational tax license issued for said store location shall be sufficient to authorize the sale or the offer for sale at retail or wholesale any consumer fireworks or fireworks without having said store acquiring an additional occupational tax license from the City as to the sale of consumer fireworks or fireworks.

Section 46-107. **<u>License for a Temporary Consumer Fireworks Retail Sales Stand.</u>**

The City of Commerce is hereby authorized to issue a temporary license (and which shall also serve as a temporary occupational tax license) for a temporary consumer fireworks retail sales stand or stands, provided that the City fire department, or the fire department that is legally authorized to operate within the City, determines that the temporary consumer fireworks retail sales stand meets the requirements of the general law of the State of Georgia, including but not limited to O.C.G.A. § 25-10-5.1(c)(1) and O.C.G.A. § 25-10.5.1(a)(1). In accordance with O.C.G.A. § 25-10-5.1(c)(2), a temporary license shall also be granted in the event that the judge of the probate court of the applicable county determines that such a temporary license should be issued due to an appeal of the decision by the applicable fire department. The application for the temporary consumer fireworks retail sales stand shall be submitted to the applicable fire department, and with a copy provided to the administrative office of the City. Any temporary license issued shall identify the temporary consumer fireworks retail sales stand applicable to such license, and the temporary license shall expire on the next January 31 after the issuance of such license. The license fee for a distributor selling consumer fireworks from a temporary consumer fireworks retail sales stand shall be $500.00 per location, payable to the governing authority of the City. The distributor shall provide a copy of the list of distributor's temporary consumer retail sales stands submitted to the safety fire commissioner to the applicable fire department and the administrative office of the City as a part of the temporary license application. All temporary licenses for a temporary consumer fireworks retail sales stand shall only be issued to licensed distributors where the sales of consumer fireworks from at least one (out of two permitted) such temporary consumer fireworks retail sales stands shall accrue to the benefit of a nonprofit group as agreed between the licensed distributor and the participating

nonprofit group. A nonprofit group benefitting from the sale of consumer fireworks pursuant to this provision shall directly participate in operating the temporary consumer fireworks retail sales stand. The regulations of this ordinance applicable to the sale of consumer fireworks from temporary consumer fireworks retail sales stands shall only be applicable until January 31, 2018.

Section 46-107. <u>Enforcement.</u>

(a) The City fire department, or any applicable fire department that operates within the City, is authorized to refer cases for enforcement as to violations of O.C.G.A. § 25-10-5.1(c) to the State Fire Marshall.

(b) All fireworks or consumer fireworks manufactured, offered for sale, exposed for sale, stored, used, ignited or caused to be ignited in violation of this ordinance or state law, or both, are declared to be contraband (including fireworks in the possession of the violator but not yet used, ignited or caused to be ignited) and may be seized, taken, and removed, or caused to be removed and destroyed or disposed of, by a sale with the proceeds of the sale to be used for public safety purposes, or destroyed at the expense of the owner thereof, or both, by any authorized law enforcement officer operating within the City of Commerce. Any property declared as contraband pursuant to this ordinance shall be forfeited in accordance with the procedures set forth in Chapter 16 of Title 9 of the Official Code of Georgia Annotated (O.C.G.A.).

(c) Any law enforcement officer of the City, or any law enforcement officer authorized to provide law enforcement services within the City, shall be entitled to enforce the provisions of this ordinance or state law, or both, relating to the use or igniting or causing to be ignited fireworks or consumer fireworks, or both.

Section 46-108. **Certain Devices Unlawful that Require a Flame for Propulsion or Lighting.**

It shall be unlawful for any person, firm, corporation, association, or partnership to release or cause to be released any balloon, bag, parachute, or other similar device which requires fire underneath for propulsion or to release or cause to be released any floating water lantern or wish lantern which uses a flame to create a lighting effect in any public waters within the City of Commerce.

Section 46-109. **Penalties.**

Any person, firm, corporation, association, or partnership that knowingly violates the provisions of this ordinance may be punished by a fine, or imprisonment, or both, up to the maximum penalties allowed under the City Charter for the City of Commerce, or pursuant to state law. Each act in violation of this ordinance, including but not limited each sales transaction, shall be deemed to be a separate offense, and subject to the maximum penalties as provided herein.

SECTION 2. **REPEAL OF CONFLICTING ORDINANCES TO THE EXTENT OF THE CONFLICT.**

All parts of ordinances in conflict with the terms of this ordinance are hereby repealed to the extent of the conflict, but it is hereby provided that any ordinance or law which may be applicable hereto and aid in carrying out and making effective the intent, purpose and provisions hereof, is hereby adopted as a part hereof and shall be legally construed to be in favor of upholding this ordinance on behalf of the City of Commerce, Georgia.

SECTION 3. **SEVERABILITY.**

If any paragraph, subparagraph, sentence, clause or phrase, or any portion of this ordinance should be declared invalid or unconstitutional by any Court of competent jurisdiction

or if the provisions of any part of this ordinance as applied to any particular situation or set of circumstances shall be declared invalid or unconstitutional, such invalidity shall not be construed to affect the provisions of this ordinance not so held to be invalid, or the application of this ordinance to other circumstances not so held to be invalid. It is hereby declared to be the intent of the City Council of the City of Commerce, Georgia to provide for separate and divisible parts, and it does hereby adopt any and all parts hereof as may not be held invalid for any reason.

SECTION 4. EFFECTIVE DATE.

The effective date of this ordinance shall be upon its passage by the City Council

SO ORDAINED, this _____ day of _____, 2016.

COMMERCE CITY COUNCIL

By:_____
Mayor

Attest:

_____
City Clerk