ORDINANCE NO. 14-837

AN ORDINANCE AMENDING SECTION 7-302 AND SECTION 7-303 OF THE CODE OF THE CITY OF SOUTH HUTCHINSON, KANSAS REGULATING THE SALE AND DISCHARGE OF FIREWORKS WITHIN THE CITY OF SOUTH HUTCHINSON, KANSAS.

WHEREAS, the governing body of the City has decided to allow and regulate the sale and discharge of fireworks in the City.

NOW THEREFORE:

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SOUTH HUTCHINSON, KANSAS:

SECTION 1. Section 7-302 of the Code of the City of South Hutchinson, Kansas is hereby amended to read as follows:

(a) DOT Division 1.4G Consumer Fireworks as defined by the Federal Department of Transportation, the State of Kansas and approved by the South Hutchinson Fire Chief are permitted in any year to be discharged between the hours of 8:00 a.m. to 11:00 p.m. from June 30th to July 4th inclusive.

(b) It is hereby declared unlawful for any person to discharge any fireworks of any kind or nature whatsoever except as provided in this section unless authorized to do so by a resolution of the governing body of the City.

(c) No person shall discharge fireworks on public property.

(d) The Fire Chief is authorized to ban the discharge of fireworks due to weather conditions.

SECTION 2. Section 7-303 of the Code of the City of South Hutchinson, Kansas is hereby amended to read as follows:

Section 7-303. DOT Division 1.4G Consumer Fireworks: Sale and Regulation thereof:

1. DOT Division 1.4G Consumer Fireworks as defined by the Federal Department of Transportation, the State of Kansas and approved by the Fire Chief of the City of South Hutchinson, Kansas may be offered for sale by City permit only in the city limits of South Hutchinson, Kansas. Sales shall

be limited to the dates and times stated on each permit and no permit shall be renewable. Such fireworks shall be limited to those defined. Bottle Rockets are prohibited to be stored, sold, offered for sale, or possessed with the intent to offer for sale. The Fire Chief may also prohibit the sale, storage, discharge, or possession of any firework that in his/her opinion constitutes an undue risk to the safety of the citizens of South Hutchinson.

2. The number of permitted fireworks stands within the City of South Hutchinson will be limited to seven.

3. Applications for permits to sell consumer fireworks will be accepted between April 1st and June 10th of each year. Applications must be submitted to the City Clerk's Office during normal hours.

4. Submitted applications will be reviewed by the Fire Chief within seven business days. Once the site is approved, fees will be paid and a permit issued by the Fire Chief.

    a. At the time of application, the Fire Chief will provide the applicant with regulations regarding site location requirements including; temporary (tents) and permanent structures, set-backs from other buildings and public ways, storage of fireworks, disposal of waste, number of fire extinguishers, arrangement of displays and exits, illumination of stands, parking, other signage, disposal of damaged fireworks, and security of stands. Referenced publications: NFPA 101 Life Safety Code (2012); NFPA 1124 Code for Mfg., Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles (2006)

5. Approved fireworks may be offered for sale to individuals within the city limits of The City of South Hutchinson, Kansas, with approved permit, on the following dates, to-wit, June 30th to July 4th from 8:00 a.m. to 11:00 p.m., inclusive.

6. It shall be unlawful for any person to store, sell, possess with intent to sell or offer for sale, any pyrotechnic device not permitted by this Ordinance.

7. It shall be unlawful for any person to discharge fireworks in the City of South Hutchinson, Kansas except as provided in Section 7-302 of the Code of the City of South Hutchinson, Kansas.

8. An applicant wishing to sell consumer fireworks in the City of South Hutchinson shall submit the following in order to obtain a permit:

a. A completed fireworks stand application.

b. Furnish a bond or certificate of general liability insurance in the amount of $500,000.00, with coverage and policy numbers listing the applicant as the insured or as an additional insured and showing the sales location as the insured location.

c. Furnish a copy of the State Sales Tax Number Certificate issued in the name of the applicant.

d. Sign a statement that the applicant, if granted permission to sell such fireworks, will, at all times, comply with the terms of this ordinance and laws of the State of Kansas relating to the sale of fireworks.

e. If the place where fireworks are to be sold is not owned by the applicant, there shall be filed with the application a notarized written statement signed by the owner or owners of the location, stating the owner or owners consent to the sale of fireworks for the days being requested.

f. Once the application is approved by the Fire Chief, the applicant will submit to the City Clerk a fee of $2,500.00 for each fireworks stand and for the dates and times stated on the application. A fireworks sales permit will be issued at that time.

9. No person, firm or corporation engaged in the retail sales of fireworks shall store, sell or offer for sale, or display fireworks in any residential subdivision in the City of South Hutchinson, Kansas.

10. Temporary structures approved for selling consumer fireworks will be constructed no sooner than seven business days prior to commencement of sales and must be removed within seven business days at the conclusion of sales each year.

11. All rules and regulations adopted by Kansas Administrative Regulations concerning the storage, sale and handling of fireworks are incorporated by reference (K.A.R 22-6-1 through K.A.R. 22-6-16).

SECTION 3. SEIZURE, PENALTY AND VIOLATIONS.

1. No stocks of fireworks stored, offered for sale, exposed for sale, sold or held in violation of this Section shall be seized from the owner except by an

order or on a search warrant of a court of competent jurisdiction. Such order may be enforced by the City Council or its duly authorized deputies or by the Police Chief or his duly authorized deputies. The stocks of fireworks seized hereunder shall be held by the Police Chief. The City Police Chief shall hold such fireworks under seal in a safe place until final disposition of the charges against the owner; thereupon, the Police Chief shall dispose of the fireworks in accordance with the Court's order.

2. Any person, firm or corporation who shall be convicted in a court of competent jurisdiction for violating the provisions of Section 1 or Section 2 of this Ordinance shall be deemed guilty of a Class C Misdemeanor and in accordance with K.S.A. 21-4502 and K.S.A. 21-4503 shall be subject to a definite term of confinement in the county jail which shall be fixed by a court and shall not exceed one (1) month and/or a fine not to exceed $500.00.

SECTION 4. INVALIDITY IN PART.

If any section, sentence, subdivision, clause or provision of this Ordinance or application thereof to any person, firm, corporation, partnership, or other entity or circumstances is held invalid or unconstitutional in a court of competent jurisdiction, the remainder of the Ordinance and the application of the section, sentence, subdivision, clause or provision to other persons, firms, corporations, partnerships or entities not similarly situated or to other circumstances shall be affected thereby.

SECTION 5. DEFINITIONS.

Unless otherwise clearly indicated by the context as used in this Ordinance the following definitions shall apply:

1. Federal Department of Transportation Division 1.4G Consumer Fireworks shall mean and include any combustible or explosive composition, or any substance or combination of substances, or devices prepared for the purposes of producing a visible or an audible effect by combustion, explosion, deflagration or detonation, and shall include blank cartridges, toy pistols, toy cannons, toy canes, or toy guns in which explosives are used, firecrackers, torpedoes, Roman candles, Daygo bombs, sparklers, or other devices of like construction and devices containing any explosive or flammable compound, or any tablet or other devices containing an explosive substance, except that the term "fireworks" shall not include any safety flares, paper caps containing not in excess of an average of twenty-five hundredths of a grain of explosive content per cap, any toy pistols, toy canes, toy guns or other devices for use of such caps, the sale and use of

which shall be permitted at all times.

2. Bottle Rocket shall mean any pyrotechnic device which is mounted on a stick or wire and projects into the air when ignited, with or without reports, and includes any devices with the same configuration, with or without reports, which may be classified as a pipe or trough rocket. "Bottle Rocket" does not include helicopter-type fireworks.

3. Sale shall mean all sales of fireworks, within South Hutchinson, Kansas to an individual, firm, partnership, corporation, or association.

4. The term Fireworks Stand shall mean and include any location where fireworks are offered for sale such as, but not limited to, permanent or portable stands, tents trailers, stores, etc.

SECTION 6. Any ordinances or parts of ordinances of the City of South Hutchinson, KS regulating the sale and discharge of Fireworks in the City of South Hutchinson in conflict with the provisions of this Ordinance are hereby repealed.

SECTION 7. This ordinance shall be in full force from and after its passage and summary publication once in the official city newspaper.

PASSED AND APPROVED BY THE GOVERNING BODY OF THE CITY OF SOUTH HUTCHINSON, KANSAS THIS 3rd DAY OF MARCH, 2014.

Dave Pitman, Mayor

ATTEST:

Denise McCue, City Clerk