CHAPTER 35

Fireworks and Explosives

**SECTIONS 23‑35‑10 to 23‑35‑40.** Repealed by 2010 Act No. 196, Section 2, eff June 1, 2010.

Editor’s Note

Former Section 23‑35‑10 was entitled “Sale, storage, transportation or use of impermissible fireworks; enumeration of permissible fireworks” and was derived from 1962 Code Section 66‑551; 1959 (51) 333; 1992 Act No. 257, Section 1.

Former Section 23‑35‑20 was entitled “Nomenclature and identification on shipping case” and was derived from 1962 Code Section 66‑552; 1959 (51) 333.

Former Section 23‑35‑30 was entitled “Toy paper pistol caps and devices using them as ‘Fireworks’” and was derived from 1962 Code Section 66‑553; 1959 (51) 333.

Former Section 23‑35‑40 was entitled “Exceptions to application of chapter” and was derived from 1962 Code Section 66‑554; 1959 (51) 333; 1972 (57) 2742.

**SECTION 23‑35‑45.** Use of pyrotechnic materials indoors; regulation.

 Nothing in this chapter or in any other provision of law prohibits the use of pyrotechnic materials inside any enclosed entertainment or assembly area before proximate audiences when the indoor pyrotechnics are used in accordance with Standard 1126 of the National Fire Protection Association entitled “Standard for the Use of Pyrotechnics Before a Proximate Audience”, 1992 edition. The State Fire Marshal Division of the Department of Labor, Licensing, and Regulation is designated as the agency responsible for implementing, administering, and enforcing the provisions of this section, including the promulgation of necessary regulations. The State Fire Marshal Division also may establish fees which may be charged on a per performance or other basis to offset the cost of enforcing the provisions of this section, such fees to be the responsibility of the owner or operator of the establishment where the indoor pyrotechnics shall be used.

HISTORY: 1994 Act No. 356, Section 1.

CROSS REFERENCES

State Fire Marshal regulations pertaining to fireworks and pyrotechnics, see S.C. Code of Regulations R. 71‑8305.1 et seq.

**SECTIONS 23‑35‑50 to 23‑35‑120.** Repealed by 2010 Act No. 196, Section 2, eff June 1, 2010.

Editor’s Note

Former Section 23‑35‑50 was entitled “Exception for storage and sale of agricultural and display fireworks by licensed distributor” and was derived from 1962 Code Section 66‑554.1; 1968 (55) 2855; 1983 Act No. 151, Part II, Section 42A; 2004 Act No. 303, Section 1.

Former Section 23‑35‑60 was entitled “Permits and other requirements for fireworks displays; penalty for violation” and was derived from 1962 Code Section 66‑555; 1959 (51) 333; 1972 (57) 2742.

Former Section 23‑35‑70 was entitled “Wholesale distributor’s and jobber’s licenses; retailer’s license or permit” and was derived from 1962 Code Section 66‑556; 1959 (51) 333; 1972 (57) 2742; 1983 Act No. 151, Part II, Section 42B; 1993 Act No. 181, Section 362.

Former Section 23‑35‑80 was entitled “Sales to and purchases from unlicensed persons prohibited; records shall be kept open” and was derived from 1962 Code Section 66‑557; 1959 (51) 333; 1972 (57) 2742; 1986 Act No. 381, Section 1.

Former Section 23‑35‑90 was entitled “Storage of fireworks by wholesalers” and was derived from 1962 Code Section 66‑558; 1959 (51) 333.

Former Section 23‑35‑100 was entitled “Storage and display of fireworks by retailers” and was derived from 1962 Code Section 66‑559; 1959 (51) 333; 1972 (57) 2742.

Former Section 23‑35‑110 was entitled “Display for sale or storage near certain flammable substances” and was derived from 1962 Code Section 66‑560; 1959 (51) 333.

Former Section 23‑35‑120 was entitled “Sale of fireworks to minors and discharge of fireworks in certain circumstances unlawful” and was derived from 1962 Code Section 66‑561; 1959 (51) 333.

**SECTION 23‑35‑130.** Manufacture, storage, transportation or possession of certain fireworks illegal; storage and assembly of public display material; penalty.

 (A) It is unlawful to manufacture, store, transport, or possess fireworks containing pyrotechnic composition in excess of two grains, designed to produce a loud and piercing effect, including, but not limited to, fireworks commonly called “ground salutes” or “cherry bombs”, M‑80’s, T‑N‑T salutes, and “bulldog salutes”. A manufacturer shall obtain a permit to store or assemble materials for public fireworks displays. No manufacturer may store public display material in the same building where legal fireworks are offered for sale to retailers.

 (B) The provisions of this chapter do not prohibit continuous interstate commerce through this State into another state of any item of fireworks permitted for shipment by the regulations of the Interstate Commerce Commission or the United States Department of Transportation, or their successors. It is unlawful to ship into or through this State or possess, sell, or use, under any circumstances, any article of fireworks that is forbidden for transportation by regulations of the Interstate Commerce Commission, the United States Department of Transportation, or their successors.

 (C) A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than two years, or both.

HISTORY: 1962 Code Section 66‑562; 1959 (51) 333; 1972 (57) 2742; 1986 Act No. 381, Section 2; 1993 Act No. 184, Section 199.

Library References

Explosives 3.

Westlaw Topic No. 164.

C.J.S. Explosives Sections 10, 13, 20, 22.

Attorney General’s Opinions

Fireworks manufactured outside of South Carolina, which may not be possessed, sold, or used here, may not be stored along with fireworks permitted to be manufactured but not sold or used within the State. 1967 Op. Atty Gen, No. 2405, p 48.

**SECTION 23‑35‑140.** Repealed by 2010 Act No. 196, Section 2, eff June 1, 2010.

Editor’s Note

Former Section 23‑35‑140 was entitled “Issuance of rules and regulations concerning permissible fireworks” and was derived from 1962 Code Section 66‑562.1; 1972 (57) 2742; 1993 Act No. 181, Section 363.

**SECTION 23‑35‑150.** Penalties.

 Any person violating any provisions of this chapter or regulations promulgated by the State Fire Marshal or the State Board of Pyrotechnic Safety, unless otherwise specifically provided in this chapter, is guilty of a misdemeanor and, upon conviction, must be punished:

 (1) for a first offense, by a fine of not more than two hundred dollars or imprisonment for not more than thirty days;

 (2) for a second offense, by a fine of not less than five hundred dollars nor more than twenty‑five hundred dollars or imprisonment for not less than sixty days, or both;

 (3) for a third offense, by a fine of not less than one thousand dollars or imprisonment of not less than ninety days nor more than one year, or both.

 In addition to the above penalties, the license of any wholesaler, jobber, or retailer must be permanently revoked upon conviction for a third offense.

HISTORY: 1962 Code Section 66‑563; 1959 (51) 333; 1972 (57) 2742; 1986 Act No. 381, Section 3.

CROSS REFERENCES

Fireworks and pyrotechnics, general operational requirements of displays, see S.C. Code of Regulations R. 71‑8305.6.

Library References

Explosives 3.

Westlaw Topic No. 164.

C.J.S. Explosives Sections 10, 13, 20, 22.

**SECTION 23‑35‑160.** Repealed by 2010 Act No. 196, Section 2, eff June 1, 2010.

Editor’s Note

Former Section 23‑35‑160 was entitled “Sale, possession, discharge or use of fireworks prohibited in certain counties; penalties” and was derived from 1962 Code Section 66‑564; 1962 (52) 2252.

**SECTION 23‑35‑170.** Manner in which powerful explosives shall be sold or delivered; reports; penalties.

 No person shall sell, deliver or dispose of dynamite or similar powerful explosives, except ordinary gunpowder, unless such person knows the purchaser or the person to receive such explosive and is satisfied that the explosive is not to be used for killing fish, and then only upon a written application from the person desiring to purchase, stating the purpose for which he desires to use such explosives. A person selling, delivering or disposing of such explosives shall keep a book in which shall be recorded the name of the purchaser or person to whom the explosive is delivered, the quantity sold or so delivered and the date of such sale or delivery. No sale shall be made to a person under the age of eighteen or a person who has been convicted of a felony. Such person selling or keeping for sale the explosives mentioned in this section shall make sworn quarterly reports of such sales, the name and race of the purchaser, the amount sold and the date of sale to the county auditor of each county. The auditor of each county shall forward a copy of all reports to the South Carolina Law Enforcement Division. Any person violating this section shall be guilty of a misdemeanor, punishable by fine not to exceed one hundred dollars or imprisonment not to exceed thirty days.

HISTORY: 1962 Code Section 66‑4; 1952 Code Section 66‑4; 1942 Code Section 1304; 1932 Code Section 1304; Cr. C. ‘22 Section 197; Cr. C. ‘12 Section 491; 1903 (24) 124; 1971 (57) 887; 1976 Act No. 695, Section 1.

Library References

Explosives 3.

Westlaw Topic No. 164.

C.J.S. Explosives Sections 10, 13, 20, 22.

**SECTION 23‑35‑175.** Fireworks prohibited zones; Discharge of Fireworks Prohibited Agreements; extension of zones; posting of notice.

 (A) As used in this section:

 (1) “Fireworks” means ICC Class C Common Fireworks as defined and enumerated Section 23‑35‑10.

 (2) “Fireworks Prohibited Zone” means property designated through the processes in this section as an area in which fireworks are prohibited from being knowingly and wilfully discharged.

 (3) “Local governing body” means the governing body of a county or municipality.

 (4) “Managing authority” means a governing board of a condominium association.

 (5) “Subject property” means the property controlled by the owner, lessee, or managing authority for which a Discharge of Fireworks Prohibited Agreement has been filed.

 (B) It is unlawful to knowingly and wilfully discharge fireworks from, in, or into a Fireworks Prohibited Zone. A person who knowingly and wilfully discharges fireworks from, in, or into a Fireworks Prohibited Zone is guilty of a misdemeanor and, upon conviction, must be punished:

 (1) for a first offense by a fine of not more than one hundred dollars or imprisonment for not more than thirty days; and

 (2) for a second and subsequent offense by a fine of not more than two hundred dollars or imprisonment for not more than thirty days.

 (C) An owner, a lessee, or managing authority of real property may establish a Fireworks Prohibited Zone by:

 (1) filing a Discharge of Fireworks Prohibited Agreement with the law enforcement agency having jurisdiction over the subject property; and

 (2) posting at least two signs or placards in conspicuous locations on the subject property. These signs or placards must be posted to be visible from any street or thoroughfare the subject property abuts and any public land sharing a common boundary with the subject property. The signs or placards must measure not less than twelve inches by twelve inches and bear the following inscription:

 “DISCHARGE OF FIREWORKS PROHIBITED

 VIOLATORS WILL BE PROSECUTED”

 In addition to the inscription, the signs or placards must identify the subject property for which the Discharge of Fireworks Prohibited Agreement has been filed and, if applicable, any adjoining public property to which the local governing body has extended the Fireworks Prohibited Zone as provided in this section.

 (D) The Discharge of Fireworks Prohibited Agreement must be in the following form:

 DISCHARGE OF FIREWORKS PROHIBITED AGREEMENT

 DATE:\_

 ADDRESS OF SUBJECT PROPERTY:

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 NAME OF SUBJECT PROPERTY (IF COMMERCIAL):

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 PROPERTY BOUNDARIES OR LEGAL DESCRIPTION OF SUBJECT PROPERTY:

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 I, \_\_\_\_\_\_\_\_\_, the undersigned, being the owner, lessee, or managing authority of the above described subject property, establish for my period of ownership, occupancy, or authority over the subject property a Fireworks Prohibited Zone for the subject property and, if applicable, any adjoining public property to which the local governing body has extended the Fireworks Prohibited Zone. By filing this agreement, I request that the applicable law enforcement agency enforce the prohibition of the discharge of fireworks on said subject property and, if applicable, any adjoining public property to which the local governing body has extended the Fireworks Prohibited Zone to the fullest extent of the law.

 I acknowledge that this Discharge of Fireworks Prohibited Agreement exists only for the time period that I own, lease, or manage the subject property, or until I rescind the agreement, whichever occurs first.

 I agree to post two signs or placards measuring not less than twelve inches by twelve inches in conspicuous locations on the subject property. The signs or placards must: (1) identify the subject property and, if applicable, any adjoining public property to which the local governing body has extended the Fireworks Prohibited Zone, and (2) bear the following inscription:

 “DISCHARGE OF FIREWORKS PROHIBITED

 VIOLATORS WILL BE PROSECUTED”

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 OWNER, LESSEE, OR MANAGING AUTHORITY

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 WITNESS

 (E)(1) If authorized by a decision of the local governing body as provided in this subsection, an owner, lessee, or managing authority that has filed a Discharge of Fireworks Prohibited Agreement with a local law enforcement agency may extend the Fireworks Prohibited Zone beyond the subject property:

 (a) to the low‑water mark of all oceanic bodies of water adjoining the subject property;

 (b) to the center line of any street or thoroughfare that abuts the subject property; or

 (c) onto any public land sharing a common boundary with the subject property for a distance not to exceed five hundred feet.

 (2) The owner, lessee, or managing authority must apply for the extension in the office of the local governing body on the following form:

 APPLICATION FOR EXTENSION OF FIREWORKS PROHIBITED ZONE

 DATE:\_

 ADDRESS OF SUBJECT PROPERTY:

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 NAME AND ADDRESS OF APPLICANT:

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 I,\_\_\_\_\_\_\_\_\_, the undersigned, am the owner, lessee, or managing authority of the above described subject property for which a Discharge of Fireworks Prohibited Agreement was filed with the \_\_\_\_\_\_\_\_\_\_\_\_ law enforcement agency on \_\_\_\_\_\_\_\_\_\_. I am attaching with this application a copy of the Discharge of Fireworks Prohibited Agreement.

 I have circled the following applicable description of the public property onto which I request the zone to be extended:

 (a) to the low‑water mark of all oceanic bodies of water adjoining the subject property;

 (b) to the center line of any street or thoroughfare that abuts the subject property; or

 (c) onto any public land sharing a common boundary with the subject property for a distance not to exceed five hundred feet.

 Below I have briefly described the public property onto which this application proposes to extend the fireworks prohibited zone:

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 If authorized by a decision of the local governing body to extend the Fireworks Prohibited Zone, I agree to identify the subject property and extended public property included in the Fireworks Prohibited Zone on two signs or placards measuring not less than twelve inches by twelve inches posted in conspicuous locations on the subject property.

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 OWNER, LESSEE, OR MANAGING AUTHORITY

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 WITNESS

 (3) A local governing body may provide by ordinance for additional information to be included in the application. The local governing body must not require a fee for this application.

 (4) In considering whether a Fireworks Prohibited Zone may be extended onto public property as provided in item (1), the local governing body must:

 (a) schedule a public hearing within a reasonable time from which the application is made;

 (b) give fifteen days’ public notice of the hearing in a newspaper of general circulation in the community; and

 (c) receive testimony from interested persons, their agents, or their attorneys at the public hearing.

 (5) No later than five calendar days following the public hearing, the local governing body must issue a written decision, including all findings of fact and rationales upon which the determination is made, concerning whether the Fireworks Prohibited Zone is to be extended. If the local governing body authorizes the extension of a Fireworks Prohibited Zone, the local governing body’s decision must be filed by the owner, lessee, or managing authority with the Discharge of Fireworks Prohibited Agreement for the subject property at the local law enforcement agency.

 (F) A local governing body or local law enforcement agency is authorized to post appropriate signs or placards indicating the location of Fireworks Prohibited Zones in areas where contiguous properties have filed a Discharge of Fireworks Prohibited Agreement.

 (G) A person may be prosecuted pursuant to the provisions of this section only if the subject property of the Fireworks Prohibited Zone is posted as required by this section.

 (H) Unless restricted or prohibited by a lease or contract, a lessee may establish a Fireworks Prohibited Zone and apply for an extension of the zone onto public property as provided in this section during the time of the lease.

 (I) A Discharge of Fireworks Prohibited Agreement exists only:

 (1) during the ownership, lease, or authority of the person filing the agreement; or

 (2) until the owner, lessee, or managing authority rescinds the agreement by withdrawing the documentation filed with the local law enforcement agency. If the subject property is no longer established as a Fireworks Prohibited Zone, any extension by a local governing body of the Fireworks Prohibited Zone to public property is unenforceable.

 (J) The provisions of this section do not apply to a professional fireworks display show or demonstration that has been permitted or licensed to operate by the local governing body or has been authorized to operate as provided by law.

 (K) Nothing in this section is designed to abrogate any civil remedies available under statutory or common law.

HISTORY: 2005 Act No. 6, Section 1.

Code Commissioner’s Note

Section 23‑35‑10, referenced in subsection (A)(1), was repealed by 2010 Act No. 196, Section 2. 2010 Act No. 196, Section 1, enacted new Section 40‑56‑20 which provides definitions for Chapter 56, Title 40, State Board of Pyrotechnic Safety.

Library References

Explosives 3.

Westlaw Topic No. 164.

C.J.S. Explosives Sections 10, 13, 20, 22.

Attorney General’s Opinions

Absent amendment of notice statutes requiring notice in a newspaper of general circulation by the General Assembly, the term newspaper of general circulation cannot be extended to include online newspapers. S.C. Op.Atty.Gen. (October 21, 2015) 2015 WL 6745997.

State law does not preempt local ordinances concerning the discharge of fireworks, and such ordinances are thus valid to the extent consistent with State law. S.C. Op.Atty.Gen. (Oct. 11, 2011) 2011 WL 5304080.