

**NOTICE OF FINAL ORDINANCE MAKING**

**MARICOPA COUNTY AIR POLLUTION CONTROL REGULATIONS  
ORDINANCES**

**P-35: FIREWORKS RESTRICTION ORDINANCE**

The Maricopa County Air Quality Department (MCAQD) created Ordinance P-35 (Fireworks Restriction Ordinance). The Control Officer is posting this Notice of Final Ordinance Making on the MCAQD website as required by A.R.S. § 49-471.07(G). This notice includes the preamble, as prescribed in A.R.S. § 49-471.05, and the full text of the final ordinance. This notice also includes a list of all previous notices posted on the Maricopa County Enhanced Regulatory Outreach Program (EROP) website addressing the proposed ordinance and the concise explanatory statement prescribed in A.R.S. § 49-471.07, subsection B.

**PREAMBLE**

**1. Statutory authority for the ordinance making:**

A.R.S. §§ 49-112, 49-474, 49-479 and 49-480

**2. Name and address of department personnel with whom persons may communicate regarding the ordinance making:**

Name: Scott Kahldon or Kimberly Butler  
Maricopa County Air Quality Department  
Planning and Analysis Division  
Address: 301 W. Jefferson Street, Suite 410  
Phoenix, AZ 85003  
Telephone: (602) 506-6010  
Fax: (602) 506-6179  
Email: [AQPlanning@maricopa.gov](mailto:AQPlanning@maricopa.gov)

**3. Ordinance making process:**

This ordinance making followed procedures identified in state statutes and the Maricopa County EROP Policy.

|  |                    |
|--|--------------------|
| County Manager Briefing:   | September 03, 2021 |
| Stakeholder Workshop:  | September 29, 2021 |
| Board of Health Meeting to Approve Expedited Process Rulemaking: | October 25, 2021   |
| Notice of Proposed Ordinance Making:                             | November 03, 2021  |
| Board of Supervisors Formal Meeting to Set the Public Hearing:   | January 12, 2022   |

**4. Explanation of the ordinance, including the control officer's reasons for initiating the ordinance making:**

Maricopa County did not have a regulation in place to regulate the sale and use of fireworks in unincorporated areas of the county. A.R.S. §36-1606 allows a county to regulate the sale and use of fireworks within unincorporated areas of the county following specific requirements. The MCAQD created Ordinance P-35 (Fireworks Restriction Ordinance) to regulate the sale and use of fireworks within unincorporated areas of the county following the requirements and provisions in the Arizona Revised Statutes - A.R.S. §36-1601 to A.R.S. §36-1610.

The creation of a fireworks ordinance for unincorporated areas of the county is important for several reasons. First, firework smoke contributes to PM<sub>2.5</sub> (particulate matter smaller than 2.5 microns) air pollution. Elevated levels of PM<sub>2.5</sub> air pollution can have negative impacts on the health of children, seniors, and others with respiratory diseases and, if concentrations are high enough, can have negative health impacts on the majority of the community. The winter air in the Phoenix Metropolitan area can often stagnate for several days at a time and keep pollutants close to ground-level. Over the past several years on New Year's Day, nine air quality monitors have shown exceedances of the PM<sub>2.5</sub> National Ambient Air Quality Standard (NAAQS) due in part to fireworks smoke. A five-year study conducted in Maricopa County during the winter months demonstrated that winter high pollution days that exceed the PM<sub>2.5</sub> NAAQS increased the risk of hospitalizations for asthma patients by 20%.

Second, although Maricopa County is currently in attainment of the PM<sub>2.5</sub> NAAQS, the addition of fireworks smoke, especially to levels exceeding the PM<sub>2.5</sub> NAAQS, could put Maricopa County at risk to violate the PM<sub>2.5</sub> NAAQS and to be designated as nonattainment. If Maricopa County is designated as nonattainment for the PM<sub>2.5</sub> NAAQS, Maricopa County would have to develop a plan to reduce PM<sub>2.5</sub> emissions, which would include increased regulations on existing sources of PM<sub>2.5</sub>. In addition, emissions offsets would be required for the construction of any new major source of PM<sub>2.5</sub> emissions or for any major modification at an existing major source of PM<sub>2.5</sub>.

Finally, a regulatory gap existed between many of the cities in Maricopa County and the unincorporated areas of Maricopa County. Many of the cities in Maricopa County have regulations in place to regulate the sale and use of fireworks. Ordinance P-35 closes the regulatory gap between cities with established fireworks regulations and the unincorporated areas of the county. In addition, Ordinance P-35 clarifies Maricopa County's interpretation of its existing authority under A.R.S. §36-1606 and thereby provides notice to businesses and citizens regarding how Maricopa County implements its authority.

Ordinance P-35 is divided into four sections. Section one contains a purpose and applicability statement and nine exemptions clarifying the ordinance exclusions. Section two contains eight definitions consistent with those used in the A.R.S. Section three contains provisions on the prohibition of fireworks, the sale and use of fireworks, and signage requirements. Section four specifies the penalty amount for a person violating a provision of the ordinance.

**5. Studies relied on in the control officer's evaluation of or justification for the ordinance and where the public may obtain or review the studies, all data underlying the studies, any analysis of the studies and other supporting material.**

Pope, R., K.M. Stanley, I. Domsy, F. Yip, L. Nohre, and M.C. Mirabelli. 2017. "The relationship of high PM<sub>2.5</sub> days and subsequent asthma-related hospital encounters during the fireplace season in Phoenix, AZ, 2008–2012." Air Quality, Atmosphere & Health no. 10 (2):161-169.

**6. An economic, small business and consumer impact statement:**

The following discussion addresses each of the elements required for an economic, small business and consumer impact statement, as prescribed by A.R.S. §§ 41-1055, subsections A, B and C, and 41-1035:

**An identification of the ordinance making, including all of the following:**

This ordinance making created Ordinance P-35.

**(a) The conduct and its frequency of occurrence that the ordinance is designed to change.**

The P-35 ordinance making created an ordinance following the requirements and provisions in A.R.S. §36-1601 to A.R.S §36-1610 designed to regulate the sale and use of fireworks in unincorporated areas of the county.

**(b) The harm resulting from the conduct the ordinance is designed to change and the likelihood it will continue to occur if the ordinance is not changed.**

The P-35 ordinance making created an ordinance following the requirements and provisions in A.R.S. §36-1601 to A.R.S §36-1610 designed to regulate the sale and use of fireworks in unincorporated areas of the county. If P-35 had not been created the sale and use of fireworks in the unincorporated areas of the county would have continued to not be regulated.

**(c) The estimated change in frequency of the targeted conduct expected from the ordinance change.**

The P-35 ordinance making created an ordinance following the requirements and provisions in A.R.S. §36-1601 to A.R.S §36-1610 designed to regulate the sale and use of fireworks in unincorporated areas of the county.

**A brief summary of the information included in the economic, small business and consumer impact statement.**

The economic, small business and consumer impact statement addresses each of the elements required for an economic, small business and consumer impact statement, as prescribed by A.R.S. §§ 41-1055, subsections A, B, and C, and 41-1035.

**Name and address of agency employees who may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement.**

Name: Scott Kahldon or Kimberly Butler  
Maricopa County Air Quality Department

Address: Planning and Analysis Division  
301 W. Jefferson Street, Suite 410  
Phoenix, AZ 85003  
Telephone: (602) 506-6010  
Fax: (602) 506-6179  
Email: [AQPlanning@maricopa.gov](mailto:AQPlanning@maricopa.gov)

**An identification of the persons who will be directly affected by, bear the costs of or directly benefit from the ordinance making.**

This ordinance making will directly affect persons who sell and use fireworks within the unincorporated areas of Maricopa County. It will benefit persons in Maricopa County who are concerned about the lack of regulation of fireworks in the unincorporated areas of Maricopa County.

**A cost benefit analysis of the following:**

**(a) The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the ordinance making.**

This ordinance making should not impose any new costs on the MCAQD or on any other agencies affected by the ordinance making. This ordinance making should benefit the Maricopa County's Sheriff's Office by providing a tool to regulate the sale and use of fireworks in unincorporated areas of Maricopa County.

**(b) The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the ordinance making.**

This ordinance making should not impose any new costs on any political subdivisions of this state. This ordinance making should benefit political subdivisions within Maricopa County that have firework regulations in place by closing the regulatory gap that existed between these political subdivisions and the unincorporated areas of Maricopa County.

**(c) The probable costs and benefits to businesses directly affected by the ordinance making, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the ordinance making.**

This ordinance making will directly affect businesses that sell fireworks. The MCAQD anticipates this ordinance making will lessen and ease the regulatory burden by providing notice to businesses and citizens regarding how Maricopa County will implement and interpret its existing authority to regulate the sale of fireworks under A.R.S. § 36-1606 et. al.

**A general description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the ordinance making.**

This ordinance making should not have any impact on private and public employment in businesses, agencies, or political subdivisions of this state.

**A statement of the probable impact of the ordinance making on small businesses.**  
**The statement shall include:**

**(a) An identification of the small businesses subject to the ordinance making.**

This ordinance making will affect small businesses that sell fireworks.

**(b) The administrative and other costs required for compliance with the ordinance making.**

There are no significant administrative costs required for compliance with the ordinance.

**(c) A description of the methods that the agency may use to reduce the impact on small businesses.**

**i. Establish less stringent compliance or reporting requirements in the ordinance for small businesses.**

The MCAQD anticipates this ordinance making will not impose any significant new compliance or reporting requirements on small businesses. Many neighboring jurisdictions already have similar regulations in place to this ordinance.

**ii. Establish less stringent schedules or deadlines in the ordinance for compliance or reporting requirements for small businesses.**

The MCAQD anticipates this ordinance making will not impose any significant new compliance or reporting requirements on small businesses. Many neighboring jurisdictions already have similar regulations in place to this ordinance.

**iii. Consolidate or simplify the ordinance's compliance or reporting requirements for small businesses.**

The MCAQD anticipates this ordinance making will not impose any significant new compliance or reporting requirements on small businesses. Many neighboring jurisdictions already have similar regulations in place to this ordinance.

**iv. Establish performance standards for small businesses to replace design or operational standards in the ordinance.**

The MCAQD anticipates this ordinance making will not impose any significant new compliance or reporting requirements on small businesses. Many neighboring jurisdictions already have similar regulations in place to this ordinance.

**v. Exempt small businesses from any or all requirements of the ordinance.**

The MCAQD anticipates this ordinance making will not impose any significant new compliance or reporting requirements on small businesses. Many neighboring jurisdictions already have similar regulations in place to this ordinance.

**(d) The probable cost and benefit to private persons and consumers who are directly affected by the ordinance making.**

This ordinance making should not result in any significant costs for private persons and consumers.

**A statement of the probable effect on state revenues.**

The ordinance making will not impose increased monetary or regulatory costs on other state agencies, political subdivisions of this state, persons, or individuals so regulated. Without costs to pass through to customers, there is no projected change in consumer purchase patterns and, thus, no impact on state revenues from sales taxes.

**A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed ordinance making, including the monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.**

The P-35 ordinance making created an ordinance following the requirements and provisions in A.R.S. §36-1601 to A.R.S §36-1610 to regulate the sale and use of fireworks in unincorporated areas of the county.

**A description of any data on which an ordinance is based with a detailed explanation of how the data was obtained and why the data is acceptable data.**

Not applicable.

**7. The effective date of the ordinance:**

The effective date of this ordinance making was February 23, 2022.

**8. Such other matters as are prescribed by statute and that are applicable to the county or to any specific rule or ordinance:**

Under A.R.S. § 49-479(C), a county may not adopt a rule or ordinance that is more stringent than those adopted by the Director of the Arizona Department of Environmental Quality (ADEQ) for similar sources unless it demonstrates compliance with the applicable requirements of A.R.S. §49-112.

§ 49-112 County regulation; standards

§ 49-112(A)

When authorized by law, a county may adopt a rule, ordinance or regulation that is more stringent than or in addition to a provision of this title or rule adopted by the director or any board or commission authorized to adopt rules pursuant to this title if all of the following requirements are met:

1. The rule, ordinance or regulation is necessary to address a peculiar local condition.
2. There is credible evidence that the rule, ordinance or regulation is either;
  - (a) Necessary to prevent a significant threat to public health or the environment that results from a peculiar local condition and is technically and economically feasible.
  - (b) Required under a federal statute or regulation, or authorized pursuant to an intergovernmental agreement with the federal government to enforce federal statutes or regulations if the county rule, ordinance or regulation is equivalent to federal statutes or regulation.
3. Any fee or tax adopted under the rule, ordinance or regulation does not exceed the reasonable costs of the county to issue and administer the permit or plan approval program.

§ 49-112(B)

When authorized by law, a county may adopt rules, ordinances or regulations in lieu of a state program that are as stringent as a provision of this title or rule adopted by the director or any board or commission authorized to adopt rules pursuant to this title if the county demonstrates that the cost of obtaining permits or other approvals from the county will approximately equal or be less than the fee or cost of obtaining similar permits or approvals under this title or any rule adopted pursuant to this title. If the state has not adopted a fee or tax for similar permits or approvals, the county may adopt a fee when authorized by law in the rule, ordinance or regulation that does not exceed the reasonable costs of the county to issue and administer that permit or plan approval program.

The MCAQD is in compliance with A.R.S. §§ 49-112(A) and (B). This ordinance making did not make an ordinance more stringent than the state statute.

**9. List of all previous notices posted to the Maricopa County EROP website addressing the ordinance and a concise explanatory statement, as prescribed by A.R.S. § 49-471.07, subsection B:**

**(a) List of all previous notices posted to the Maricopa County EROP website addressing the ordinance:**

| <u>Notice</u>  | <u>Date of Posting</u> |
|--|------------------------|
| Briefing Notification to County Manager:                                   | September 09, 2021     |
| Notice of Stakeholder Workshop:  | September 14, 2021     |
| Notice of Board of Health Meeting to Approve Expedited Process Rulemaking: | October 08, 2021       |
| Notice of Proposed Ordinance Making:                                       | November 03, 2021      |
| Notice of Public Hearing:  | January 12, 2022       |

**(b) The following discussion addresses each of the elements required for a concise explanatory statement, as prescribed by A.R.S. § 49-471.07, subsection B:**

**i. A description of any change between the proposed ordinance, the final ordinance or notice of final supplemental ordinance.**

No changes were made after the Notice of Proposed Ordinance Making was published on November 03, 2021.

**ii. A summary of the comments and arguments for and against the notice and the county's response to the comments and arguments.**

The following discussion evaluates the arguments for and against the ordinance and includes responses to comments received on the ordinance or the preamble in the Notice of Proposed Ordinance Making. The MCAQD received written comments from one (1) stakeholder. The comment was reviewed and evaluated by the MCAQD.

**Comment #1:** Meeting ended far too early. Those that may have wanted to attend but were late had no chance to attend. Meeting should have been left open until the scheduled end time.

**Response #1:** Thank you for your interest in the ordinance making process. We conducted the workshop on September 29th, beginning at 9:30 am. The PowerPoint presentation was completed within the first 20 minutes and then we opened up the workshop to questions. We received only one question and then remained online for several more minutes, but there were no further questions, so we ended the workshop. We had anticipated we would have more questions on this topic as Maricopa County Air Quality has received many questions about it over the last several years; therefore, the workshop was scheduled longer to ensure enough time to address everyone's questions. You can view the entire PowerPoint presentation online if you are interested. If you have any further questions please let me know.

## **EXACT WORDING OF THE ORDINANCE**

### **MARICOPA COUNTY AIR POLLUTION CONTROL REGULATIONS**

#### **P-35 FIREWORKS RESTRICTION ORDINANCE**

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Adopted 02/23/2022

**MARICOPA COUNTY  
AIR POLLUTION CONTROL REGULATIONS**

**P-35  
FIREWORKS RESTRICTION ORDINANCE**

**SECTION 1 – GENERAL**

- A. PURPOSE:** This ordinance regulates fireworks within the unincorporated areas of Maricopa County.
- B. APPLICABILITY:** This ordinance applies to fireworks within the unincorporated areas of Maricopa County.
- C. EXEMPTIONS:** This ordinance does not apply to:
1. The manufacture or possession, by a qualified pyrotechnic expert as determined by the governing body, of aerial set pieces designed for use in pyrotechnical displays or the displays of such set pieces in accordance with the terms of the Arizona Revised Statutes (A.R.S.) § 36-1602(B).
  2. The sale at wholesale by a resident wholesaler, dealer, or jobber of fireworks that are allowed by this ordinance.
  3. The sale of fireworks to bona fide wholesalers, dealers, or jobbers that are to be and are shipped directly out of the state, if the seller of fireworks, under this ordinance, maintains for a period of five years and makes available on request to the Office of the State Fire Marshal or the local Fire Marshal, as applicable the information required by A.R.S. § 36-1605(A)(2).
  4. The use of fireworks by railroads or other transportation agencies for signal purposes or illumination.
  5. The sale or use of explosives for blasting or other legitimate industrial purposes
  6. The use of fireworks or explosives, or both, by farmer, ranchers, and their employees, who are regulated under A.R.S. Title 3 (Agriculture) and by state and federal employees, who manage wildlife resources, to rally, drive, or otherwise disperse concentrations of wildlife for the purpose of protecting property or wildlife, if the seller of fireworks for use under this section of this ordinance maintains for a period of five years and makes available on request to the Office of the State Fire Marshal or the local Fire Marshal, as applicable, all of the information required by A.R.S. § 36-1605(A)(5).
  7. The sale of permissible consumer fireworks by a retail establishment, if the retail establishment complies with the rules adopted according to A.R.S. § 36-1609.
  8. The use of permissible consumer fireworks by the general public in an incorporated city or town.
  9. The use, discharge, or ignition of novelty items.

**SECTION 2 – DEFINITIONS:** For the purpose of this ordinance and in accordance with A.R.S. § 36-1601, the following definitions shall apply. In the event of any inconsistency between any of the Maricopa County Air Pollution Control Regulations, the definitions in this ordinance take precedence.

- A. APA 87-1:** The American pyrotechnics association standards 87-1, standard for construction and approval for transportation of fireworks, novelties, and theatrical pyrotechnics, December 1, 2001 version.
- B. CONSUMER FIREWORK:** Small firework devices that contain restricted amounts of pyrotechnic composition designed primarily to produce visible or audible effects by combustion and that comply with the construction, chemical composition and labeling regulations prescribed in 49 Code of Federal Regulations parts 172 and 173, regulations of the United States consumer product safety commission as prescribed in 16 Code of Federal Regulations parts 1500 and 1507 and the APA 87-1.
- C. DISPLAY FIREWORK:** Large firework devices that are explosive materials intended for use in fireworks displays and designed to produce visible or audible effects by combustion, deflagration or detonation as prescribed by 49 Code of Federal Regulations part 172, regulations of the United States consumer product safety commission as prescribed in 16 Code of Federal Regulations parts 1500 and 1507 and the APA 87-1.
- D. FIREWORKS:**
  - 1. Any combustible or explosive composition, substance or combination of substances, or any article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, that is a consumer firework or display firework.
  - 2. Does not include:
    - a. Toy pistols, toy canes, toy guns or other devices in which paper caps containing not more than twenty-five hundredths grains of explosive compound are used if constructed so that the hand cannot come in contact with the cap when in place for the explosion.
    - b. Toy pistol paper caps that contain less than twenty-hundredths grains of explosive mixture, or fixed ammunition or primers therefor.
    - c. Federally deregulated novelty items that are known as snappers, snap caps, party poppers, glow worms, snakes, toy smoke devices, and sparklers.
    - d. Permissible consumer fireworks.
- E. GOVERNING BODY:** The board of supervisors of a county as to the area within the county but without the corporate limits of an incorporated city or town and means the governing body of an incorporated city or town as to the area within its corporate limits.
- F. NFPA 1124:** The national fire protection association code for the manufacture, transportation, storage, and retail sales of fireworks and pyrotechnic articles, 2013 edition as published in August 2012.

**G. NOVELTY ITEMS:** Federally deregulated items that are known as snappers, snap caps, party poppers, glow worms, snakes, toy smoke devices, sparklers, and certain toys as defined in A.R.S. § 36-1601.

**H. PERMISSIBLE CONSUMER FIREWORKS:**

1. Includes the following types of consumer fireworks as defined by the APA 87-1:
  - a. Ground and handheld sparkling devices
  - b. Cylindrical fountains
  - c. Cone fountains
  - d. Illuminating torches
  - e. Wheels
  - f. Ground spinners
  - g. Flitter sparklers
  - h. Toy smoke devices
  - i. Wire sparklers or dipped sticks
  - j. Multiple tube ground and handheld sparkling devices, cylindrical fountains, cone fountains and illuminating torches manufactured in accordance with Section 3.5 of the APA 87-1
2. Includes adult snappers, which means a device that consists of a paper-wrapped or plastic tube that does not contain a fuse and produces a single report and meets all applicable requirements for fuseless firecrackers as defined by the consumer product safety commission and the American fireworks safety laboratory.
3. Does not include anything that is designed or intended to rise into the air and explode or to detonate in the air or to fly above the ground, including firework items defined by the APA 87-1 and known as firecrackers, bottle rockets, sky rockets, missile-type rockets, helicopters, aerial spinners, torpedoes, roman candles, mine devices, shell devices and aerial shell kits or reloadable tubes.

**SECTION 3 – FIREWORKS RESTRICTIONS:**

**A. PROHIBITION-FIREWORKS:** Except as otherwise provided by this ordinance, within the unincorporated areas of Maricopa County, a person shall not sell, offer or expose for sale, use, explode or possess any fireworks.

**B. SALE:** Within the unincorporated areas of Maricopa County and consistent with the standards set forth in NFPA 1124:

1. A person shall not sell permissible consumer fireworks except on days permitted by A.R.S. § 36-1606.
2. A person shall not sell or permit or authorize the sale of permissible consumer fireworks to a person who is under sixteen years of age.

- C. USE:** Within the unincorporated areas of Maricopa County and consistent with the standards set forth in NFPA 1124:
1. A person shall not use permissible consumer fireworks except on days permitted by A.R.S. § 36-1606.
  2. A person shall not use permissible consumer fireworks on any days when within a one-mile radius of the border of preservation lands owned by a city or town that has purchased more than fifteen thousand acres of land for preservation purposes.
  3. A person shall not use permissible consumer fireworks on any days during a stage one or higher fire restriction and within a one-mile radius of the border of any municipal or county mountain preserve, desert park, regional park, designated conservation area, national forest or wilderness area.
- D. SIGNAGE:** For the purposes of this ordinance, the signage requirements set forth in A.R.S. § 36-1606 shall apply.

**SECTION 4 – VIOLATIONS AND PENALTIES:** For purpose of this ordinance and in accordance with A.R.S. § 36-1608, a person violating a provision of this ordinance is subject to a civil penalty of \$1,000.