

**ORDINANCE NO. 93875-0617**

**AN ORDINANCE REGULATING THE USE, SALE, AND DISPLAY OF FIREWORKS**

**WHEREAS**, near the end of the recently concluded legislative session the Iowa Legislature approved Senate File 489 which legalizes the sale and use of consumer fireworks; and

**WHEREAS**, Senate File 489 has left many important aspects of the sale and use of consumer fireworks up to local jurisdictions; and

**WHEREAS**, the City Code of Muscatine requires amendments to allow for the use and sale of fireworks as permitted under state law in a manner that is safe and which minimizes disturbances to the community; and

**WHEREAS**, the Planning and Zoning Commission on May 26, 2017 voted to recommend approval of revisions to Title 10, Zoning Ordinance in regards to where fireworks could be sold; and

**WHEREAS**, fireworks regulations are currently included in several sections of the City Code.

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MUSCATINE, IOWA:**

**SECTION 1.**

**Title 6, Chapter 3, Section 2 of the City Code for Fireworks; Explosives** is hereby repealed and replaced with:

**Title 6, Chapter 3, Section 2 Fireworks; Explosives:**

The sale, use, and exploding of fireworks within the City are subject to the regulations contained within Title 15 Chapter 8 of the City Code.

**SECTION 2.**

**Title 10, Chapter 15, Section 2, M-2 General Industrial District Conditional Uses, Item F Explosives** manufacture and storage, is hereby amended to read:

**Item F. Explosives** manufacture or storage. For the purposes of this section the term explosives does not include first-class consumer fireworks and second-class consumer fireworks, as those terms are defined in 2017 Iowa Acts, Senate File 489, Section 3.

**SECTION 3.**

**Title 15, Chapter 2, Section 4, Amendments Made to International Fire Code, Items A and B** are hereby repealed and replaced with:

**15-2-4 Amendments Made to the International Fire Code**

The International Fire Code is amended and changed in the following respects:

- A. Delete Section 307 in its entirety (open burning)
- B. Delete Section 401 in its entirety (false reporting)

**SECTION 4.**

Title 15, is hereby amended to add a new Chapter 8 for Fireworks Sales, Discharging and Display. This chapter is shown in the attached Exhibit A.

**SECTION 5.**

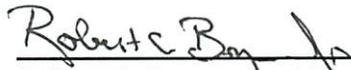
If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

**SECTION 6.** Any Ordinance or part thereof in conflict or inconsistent with the provisions of this Ordinance is repealed.

**SECTION 7.** This ordinance shall be in effect from and after the passage, approval and publication of this ordinance, as provided by law.

**PASSED, APPROVED AND ADOPTED** this 1<sup>st</sup> day of June, 2017.

**By the City Council of the City of Muscatine, Iowa**

  
\_\_\_\_\_  
Robert C. Bynum Jr., Mayor Pro Tem

**Attest:**

  
\_\_\_\_\_  
Gregg Mandsager, City Clerk



**First and Final Reading:** June 1, 2017

## **Exhibit A – New Chapter 8 to Title 15**

### **Chapter 8 – Fireworks Sales, Discharging, and Display**

#### **Sections**

- 15-8-1 Purpose and Intent
- 15-8-2 Fireworks Discharging Regulations
- 15-8-3 Fireworks Sales Permit Required
- 15-8-4 Fireworks Sales Permit Issuance
- 15-8-5 Fireworks Sales Safety and Operational Standards
- 15-8-6 Violations
- 15-8-7 Fireworks Display
- 15-8-8 Definitions

#### **15-8-1 Purpose and Intent**

To allow for the use and sale of fireworks as permitted under state law in a manner that is safe and which minimizes disturbances to the community.

#### **15-8-2 Fireworks Discharging Regulations**

Fireworks shall only be discharged in a manner that is compliant with all of the following regulations.

##### **A. General Regulations Regarding the Discharging of Fireworks**

1. Any person discharging a fireworks device, or person permitting the discharge of a fireworks device on their property, assumes responsibility for its operation and the consequences thereof. No person shall discharge a fireworks device in a reckless manner or manner likely to cause death, injury, fire, or property damage.
2. Persons 17 years of age and younger shall not discharge fireworks except under the supervision of an adult. Supervision shall be adequate where the adult is within sight and sound of the minors during the discharge of the fireworks.
3. It shall be unlawful for any parent, guardian or other adult person having custody or control of any minor 17 years of age or younger to knowingly allow such minor to discharge fireworks in violation of the preceding subsection.
4. Fireworks shall not be discharged by persons showing visible signs of, or determined to be, intoxicated or under the influence of a drug or narcotic.

5. It shall be unlawful to alter, remove, or discharge components of a fireworks device from its intended method of discharging.
6. Sky lantern open flame devices are not permitted to be released within the city limits, except if tethered by a retrievable rope so the person discharging has control over the sky lantern.

#### **B. Allowable Times for the Discharging of Fireworks**

1. A person shall not use or explode consumer fireworks on days other than July 1 through July 8 and December 26 through January 3 of each year, all dates inclusive.
2. A person shall not use or explode consumer fireworks at times other than between the hours of 9:00 a.m. and 10:00 p.m., except that on the following dates consumer fireworks shall not be used at times other than between the hours specified:
  - a. Between the hours of 9:00 a.m. and 11:00 p.m. on a Saturday or a Sunday immediately preceding or following July 4 or December 31.
  - b. Between the hours of 9:00 a.m. and 11:00 p.m. on July 4.
  - c. Between the hours of 9:00 a.m. on December 31 and 12:30 a.m. on the immediately following day.

#### **C. Allowable Locations for the Discharging of Fireworks**

1. A person shall only discharge a fireworks device on real property they own or on property where consent has been given.
  2. Snakes, sparklers, or caps can be discharged in a public place, unless specifically prohibited by the entity owning the public place, so long as all trash, wrappers, and wires are properly disposed of.
  3. No person shall light or cause to be lighted any fireworks or other combustible article within 300 feet of any location that has been permitted to sell fireworks.
- D.** This chapter does not prohibit the sale or use of blank cartridges for a show or theatre, or for signal purposes in athletic sports or by railroads or trucks for signal purposes, or by a recognized military organization. This Chapter does not apply to any substance or composition prepared and sold for medicinal or fumigation purposes.

### **15-8-3 Fireworks Sales and Operational Permit Required**

There shall be no sale of fireworks within the corporate City Limits without a permit having been issued by representatives of the Fire Department and inspections performed. If applicable a transient merchant license as required by Chapter 10 of Title 5 shall also be obtained from the Finance Department.

### **15-8-4 Fireworks Sales and Operational Permit Issuance**

Fireworks sales permits shall be issued in accordance with the following.

- A.** The following items shall be submitted with any application for a fireworks sales permit:
  - 1.** Proof of liability insurance that complies with the requirements set forth by the state fire marshal.
  - 2.** Site plan that demonstrates how all applicable portions of City Code, the National Fire Protection Association 1124 (2006 edition and amendments thereto) are being complied with.
  - 3.** Fees in accordance with the adopted fee schedule (Appendix B).
- B.** Proof of a valid permit or license issued from the state fire marshal shall be submitted prior to the start of sales.
- C.** Inspections

Any property, building, or premise whether it be permanent or temporary, intended for fireworks sales shall have an initial fire inspection completed by the fire chief or their designee prior to engaging in fireworks sales. The fire chief or their designee shall cause an annual inspection to occur each selling period meeting the requirements of the National Fire Protection Association 1124 (2006 edition and amendments thereto) and the current fire code adopted by the City of Muscatine.

### **15-8-5 Fireworks Sales Safety and Operational Standards**

All fireworks sales permit holders shall comply with the following safety and operational standards at all times.

#### **A. Allowable Locations for the Sales of Fireworks**

##### **1. Zoning**

Must be located within a zoning district that permits retail sales as an allowed use.

## **2. Required Setback for Temporary Structures**

- a. Property Line: 20 feet
- b. Any Residence: 150 feet
- c. Non-residential structure on a different parcel: 50 feet
- d. Any structure on the same parcel: 20 feet
- e. Motor fuel dispensing station: 50 feet
- f. Retail propane dispensing station: 50 feet
- g. Motor fuel dispensing station: 50 feet
- h. Bulk fuel dispensing or bulk storage: 300 feet
- i. Storage of consumer fireworks: 20 feet
- j. Generator fuel storage: 20 feet
- k. Generator placement: 20 feet
- l. Cooking equipment: 20 feet
- m. Any open flame cooking equipment: 50 feet
- n. Any parking space: 20 feet

### **3. Fire Department Access:**

All portion of the perimeter of a CFRS (Consumer Fireworks Retail Sales Facilities and Stores) must be located within 150 feet of a public way or an approved fire apparatus access.

### **B. Allowable Times for the Sales of Fireworks**

Fireworks sales shall only be conducted in accordance with dates and times designated by Iowa Code.

### **C. National Fire Protection Association (NFPA) 1124**

All CFRSs (Consumer Fireworks Retail Sales Facilities and Stores) shall comply with all applicable provisions of "*NFPA 1124 Code for the Manufacture, Transportation, Storage,*

*and Retail Sales of Fireworks and Pyrotechnic Articles, 2006 Edition” and any amendments thereto.*

#### **D. General Requirements**

- 1. Smoking, open flame source, or matches shall not be located within 50 feet of where fireworks are sold.**
  - a. Except that lighters and matches may be sold as part of a retail business in commercial structures who engage in other merchandise sales where fireworks sales is not the primary business.**
  - b. Locations who engage in fireworks sales as a primary source of revenue may sell extended lighters so long as lighters are located in a sealed package and not removed within the store premises.**
- 2. One or more signs reading "Fireworks-No Smoking" shall be displayed at all places where fireworks are stored or sold in letters not less than four inches in height.**
- 3. No persons under the influence of alcohol, drugs, or narcotics, shall be allowed to remain in a CFRS.**
- 4. Signs shall be posted at all points of ingress and egress to and from the CFRS, stating no sales will be made to anyone under the age of 18.**
- 5. A sign bearing the message, “Discharge of Consumer Fireworks is Prohibited at All Times within the City of Muscatine Except for July 1<sup>st</sup> through July 8<sup>th</sup> and December 26<sup>th</sup> through January 3<sup>rd</sup>, shall be posted at all points of ingress and egress to and from the CFRS. Such sign shall not count towards the limits of allowable signage provided for by Title 10 of the City Code.**
- 6. Fireworks Use Regulations Informational Pamphlet**
  - a. The City of Muscatine shall prepare a “fireworks use regulations informational pamphlet.” Said pamphlet shall detail all relevant regulations regarding the use of fireworks within the City of Muscatine. Said pamphlet shall be formatted in a manner that allows for it to be legibly reproduced on an 8.5” by 11” piece of paper.**
  - b. A seller of fireworks shall distribute to each purchaser a copy of the fireworks use regulation informational pamphlet on an 8.5” by 11” piece of paper.**

- c. It shall be the responsibility of the fireworks seller to reproduce all necessary copies of the fireworks use regulation informational pamphlet from an original copy provided by the City of Muscatine.
- 7. Flashing lights of any type are prohibited. All lighting shall be non-intermittent.
- 8. All signage must comply with Chapter 21 of Title 10 of City Code.
- 9. A CFRS shall provide a minimum of five hard surfaced parking spaces in accordance with Title 10 of the City Code. No parking spaces mandated by Title 10 of the City Code, for other uses on the subject parcel, shall be counted towards fulfillment of this requirement.
- 10. All weeds and combustible materials shall be cleared from the location of the CFRS including a distance of at least 30 feet surrounding the CFRS.
- 11. All unsold stock and accompanying litter shall be removed from the location by 5:00 p.m. two days after the end of sales of fireworks.
- 12. All temporary structures shall be removed from the temporary location by 12:00 pm on the seventh day after the end of sales of fireworks, and all accompanying litter shall be cleared from said location by the said time and date.

#### **15-8-6 Violations**

- A. Any violation that would constitute a simple misdemeanor pursuant to Iowa Code section 727.2 shall be charged as a simple misdemeanor. Any other violation of this Chapter shall be considered a simple misdemeanor or municipal infraction as provided for in Title 1 of this Code.
- B. In addition to the penalties provided for in 15-8-6(A), any violation of the use provisions of this Chapter may also result in the confiscation or destruction of any fireworks or consumer fireworks.
- C. If in the judgment of the fire chief or building inspector, the construction of a permanent or temporary structure or the conduct of the operations therein do not conform to the provisions of this chapter, such officers or either of them, may order the stand immediately closed, and the permit to operate such stand shall then be suspended and/or revoked.

### **15-8-7 Fireworks Display**

A. The City may, upon application in writing to the City Council at least one week in advance of the last Regular City Council meeting prior to the date of the display, grant a permit for the display of fireworks by a City agency, fair associations, amusement parks and other organizations or groups of individuals approved by City authorities when such fireworks display will be handled by a competent operator.

#### **B. Bond/Insurance for Fireworks Display Required.**

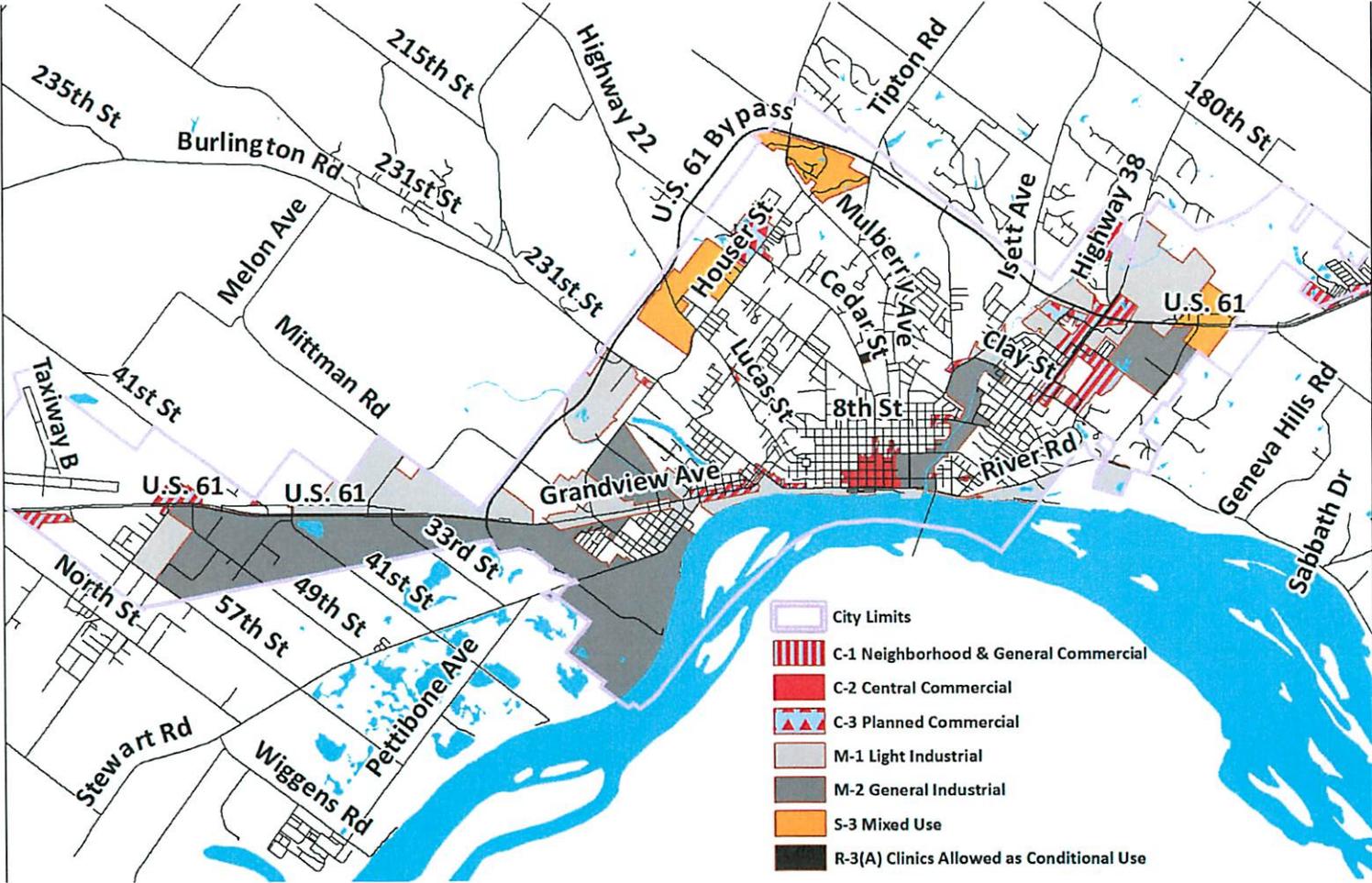
The permittee shall furnish a bond or certificates of insurance in the amounts set out in the Schedule of Permit and Licensing Requirements in Appendix B to this Code of Ordinances for the payment of all damages which may be caused either to a person or persons or to property by reason of the permitted display and arising from any acts of the permittee, his agents, employees or subcontractors.

### **15-8-8 Definitions**

**Consumer Fireworks:** First-class consumer fireworks and second-class consumer fireworks, as those terms are defined in 2017 Iowa Acts, Senate File 489, Section 3.

**Consumer Fireworks Retail Sales Facilities and Stores (CFRS):** The portion of a retail sales store or facility, including the immediately adjacent aisles, where consumer fireworks are located for the purpose of retail display and sale to the public.

# Zoning District Which Allow for Retail Sales



## *Setbacks for Temporary Structures from Which Fireworks are Being Sold*

- Any structure on the same parcel: 20 feet
- Motor fuel dispensing station: 50 feet
- Retail propane dispensing station: 50 feet
- Motor fuel dispensing station: 50 feet
- Bulk fuel dispensing or bulk storage: 300 feet
- Storage of consumer fireworks: 20 feet
- Generator fuel storage: 20 feet
- Generator placement: 20 feet
- Cooking equipment: 20 feet
- Any open flame cooking equipment: 50 feet
- Any parking space: 20 feet

*Setbacks for Temporary Structures from Which  
Fireworks are Being Sold*

- Property Line: 20 feet
- Any Residence: 150 feet
- Non-residential structure on a different parcel: 50 feet

**COMMUNITY DEVELOPMENT****MEMORANDUM**Planning,  
Zoning,  
Building Safety,  
Construction Inspection Services,  
Public Health,  
Housing Inspections,  
Code Enforcement

**To:** Mayor and City Council Members

**Cc:** Gregg Mandsager, City Administrator  
Dave Gobin, Community Development Director

**From:** Andrew Fangman, City Planner

**Date:** June 1, 2017

**Re:** Fireworks Regulations Ordinance

Near the end of the recently concluded legislative session the Iowa Legislature approved Senate File 489 (<https://www.legis.iowa.gov/legislation/BillBook?ba=SF%20489&ga=87>) which legalizes the sale and use of consumer fireworks. Consumer fireworks include items such as firecrackers, bottle rockets, roman candles, sky rockets, aerial shell kits, reloadable tubes, multiple tube devices, mine and shell devices, etc. This new state law will permit the sale and potentially the use of consumer fireworks within the City of Muscatine starting on June 1<sup>st</sup> of this year.

SF 489 has left many important aspects of the sale and use of consumer fireworks up to local jurisdictions. As such, the City Code needs to be amended to address this change in state law. Staff is proposing an amendment to the City Code which will regulate the sale and use of consumer fireworks. Please note that Council is being asked to consider waiving the second and third readings of the ordinance. This will require Council action to waive council rules. This action will be necessary because State law allows for the use and sale of fireworks to begin on June 1<sup>st</sup>, therefore final action by Council is needed on June 1<sup>st</sup>.

SF 489 gives the local jurisdiction very broad latitude in banning or limiting the use of consumer fireworks. Therefore, the first question that City Council must answer is if the use of consumer fireworks should be permitted. Staff's recommendation is that use of consumer fireworks continue to be prohibited within the City of Muscatine.

SF 489 allows for the use of fireworks between June 1<sup>st</sup> through July 8<sup>th</sup> and December 10<sup>th</sup> through January 3<sup>rd</sup>. However, the City has the authority to shorten the period of time during which the use of fireworks is legal. At its last meeting, Council reached a consensus that this is an excessively long period of time to allow for the use of fireworks. That shortening the period of time during which they may be used would be a good way of better striking balance between the enjoyment of those desiring to use fireworks and those who find the use of fireworks by their neighbors to be a nuisance. Based on this direction, staff has prepared draft regulations that would restrict the use of fireworks to July 1<sup>st</sup> through July 8<sup>th</sup> and December 26<sup>th</sup> through January 3<sup>rd</sup>. This compromise will strike the best possible balance between those looking to legally enjoy the use of fireworks and those who are disturbed by the use of fireworks. It

should be noted that as per state law the sale of fireworks will still be legal between June 1<sup>st</sup> through July 8<sup>th</sup> and December 10<sup>th</sup> through January 3<sup>rd</sup>.

SF 489 is silent on the use of fireworks by minors. A survey of firework regulations in other municipalities located in states which have long allowed for the use of consumer fireworks shows that most prohibit the use of fireworks by unsupervised minors. Given the potential damage that the improper use of fireworks could do to health and property, this is a very sensible regulation to adopt. As such, the proposed fireworks regulations contain a provision that limits the use of fireworks by minors except when under direct adult supervision. It would also make it unlawful for any parent, guardian or other adult person having custody or control of any minor 17 years of age or younger to knowingly allow such minor to discharge fireworks in an unsupervised manner.

SF 489 is silent on the use of fireworks when a person is intoxicated or under the influence of a drug or narcotic. A survey of firework regulations in other municipalities located in states which have long allowed for the use of consumer fireworks shows that most prohibit the use of fireworks by persons showing visible signs of, or who are determined to be, intoxicated or under the influence of a drug or narcotic. Given the potential damage that the improper use of fireworks could do to health and property, this is a very sensible regulation to adopt. As such, the proposed regulations contain a prohibition on the use of fireworks by persons showing visible signs of, or who are determined to be, intoxicated or under the influence of a drug or narcotic.

The proposed regulations also make a person permitting the discharge of a fireworks device on their property responsible for their discharge and the consequences thereof. This provision will help with the enforcement of the regulations relating to the use of fireworks. In the past, it has been found that by the time the police arrive at the site of a fireworks complaint there is no way to determine which particular individual was responsible for the fireworks violations, despite there being able evidence that fireworks were being used in an unlawful manner. Establishing the property owner permitting the discharge of fireworks on their property owner as an additional liable party will help address this situation and also create an incentive for those permitting the discharge of fireworks on their property to ensure that it is done in a lawful and safe manner.

While SF 489 did give local jurisdictions the option of prohibiting or limiting the use of consumer fireworks, it does not give the same local control to questions of permitting the sale of fireworks. Local jurisdictions must permit the sale of consumer fireworks between June 1 and July 8 when sold from a permanent building and between June 10 and July 8 when sold from a temporary structure such as a tent. However, so long as sale of consumer fireworks is permitted somewhere within a local jurisdiction, they retain the right to zone for it, the same as any other commercial activity.

SF 489 legalizes a previously illegal act and was only signed by the governor a couple of weeks prior to its effective date. City regulations regarding fireworks cannot be enacted any sooner than the same day that firework use becomes legal under state law and most community members will not be aware of the rules for the legal use of fireworks. To address this issue, the proposed regulations mandate that the City of Muscatine prepare a "fireworks use regulations

informational pamphlet.” Said pamphlet shall detail all relevant regulations regarding the use of fireworks within the City of Muscatine. Said pamphlet shall be formatted in a manner that allows for it to be legibly reproduced on an 8.5” by 11” piece of paper. A seller of fireworks shall distribute to each purchaser a copy of the fireworks use regulation informational pamphlet on an 8.5” by 11” piece of paper. It shall be the responsibility of the fireworks seller to reproduce all necessary copies of the fireworks use regulation informational pamphlet from an original copy provided by the City of Muscatine.

The City of Muscatine’s Zoning Ordinance as currently written does not distinguish between consumer fireworks and other types of explosives. Therefore, until the zoning ordinance is amended, the sale of fireworks is limited to the General Industry (M-2) District, and then only with an approved conditional use permit.

The Planning and Zoning Commission at a special meeting on May 26<sup>th</sup> reviewed the issue of where the sale of fireworks should be permitted within the City of Muscatine. The Commission voted to recommend that Council amend the zoning ordinance to allow for the sale in all zoning districts in which retail sales are allowed by right, but that temporary structures selling fireworks should be subject to the following additional setback requirements.

- Property line: 20 feet
- Any residence: 150 feet
- Non-residential structure located on another parcel: 50 feet

The reason for this recommendation of additional setback requirements is two-fold. First is safety. A tent or trailer containing hazardous material, such as consumer fireworks, should always be kept a safe distance away from all residences. Second, typically residences located near retail operations are buffered from the noise, light, commotion and other potential negative impacts of a nearby retail operation by the fact that most of this occurs inside of a building. When it occurs within a temporary structure such as a tent, further distance to mitigate the impact on surrounding residences is appropriate.

The proposed regulations also have the City of Muscatine establishing its own permit, site inspections on behalf of the State Fire Marshal, fire inspections, and related fees for the sale of consumer fireworks. For this new permit, the plan is to keep the Fire Department Permit fee the same as it is since it’s already in the fee structure as \$200. The permit for fireworks is already located in International Fire Code 105.6.15 and Appendix B – Schedule of Permit and Licensing Requirements.

The on-site inspection is required prior to the State Fire Marshal issuing a retail seller license. This on-site inspection can be done by the State Fire Marshall or local jurisdiction. It makes sense that we do it so we are familiar with the permanent or temporary structure. So, the retailer seller license application and payment of the \$200 permit fee would trigger an on-site inspection prior to the State Fire Marshal issuing a license. When the seller has proof of insurance and a license, then a fire inspection of the permanent structure and/or temporary structure will occur. The fire inspection fees are already established by resolution and are \$45 for the inspection and no charge for the re-inspection. A second re-inspection fee will be an additional \$50 fee and a third re-inspection fee would be \$100.

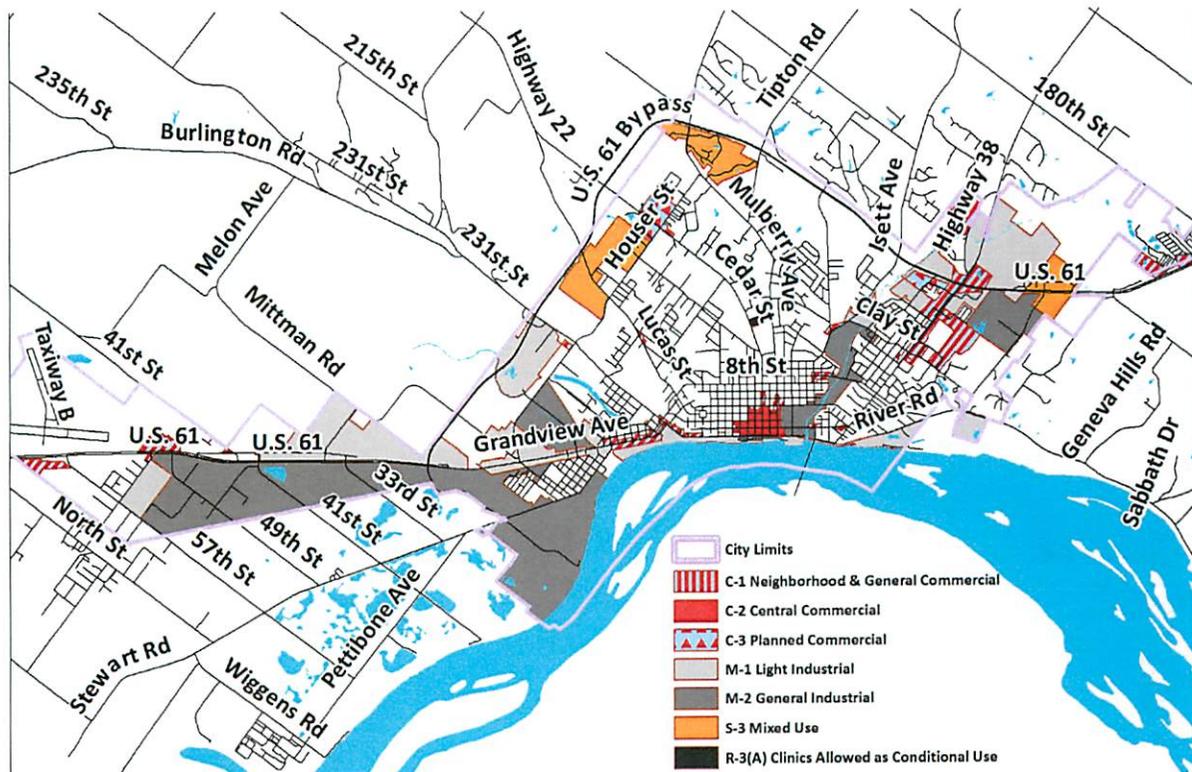
We will, along with other cities, need additional training on National Fire Protection Association 1124. This is the standard on the Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles.

**RECOMMENDATION:**

Approve the proposed fireworks regulations ordinance as attached.

**BACKUP INFORMATION:**

- Map showing zoning districts in which retail sales is allowed as permitted use.
- Proposed fireworks regulations
- Ordinance adopting proposed fireworks regulations
- Minutes from the May 26<sup>th</sup> special Planning and Zoning Commission meeting
- Resolution amending Appendix B – Schedule of Permit and Licensing Requirements, of City Code, to establish the fee for the fireworks sales permit.



**Zoning Districts in Which Retail Sales Is Allowed as Permitted Use**