

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 sale and potentially the use of consumer fireworks within the City of Muscatine starting on June 1st of this year.

SF 489 has left many important aspects of the sale and use of consumer fireworks up to local jurisdictions, and as such the City Code needs to be amended to address this change in state law. In order for staff to prepare an amendment to the City Code regarding the use and sale of consumer fireworks within the City of Muscatine, a number of questions shown below in bold and italics must be answered by Council. With this direction staff will bring at the next Council meeting an amendment to City Code which will regulate the sale and use of consumer fireworks.

Please note that for any changes being suggested we will be asking Council 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 1st, therefore final action by Council is needed on June 1st.

Should the use of consumer fireworks be allowed within the City of Muscatine?

SF 489 gives 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.

The use and sale of fireworks has been illegal in Iowa since 1938 when the Legislature acted in response to multiple Iowa firework tragedies. But, this has changed now that Governor Branstad signed SF489 last Tuesday. According to NFPA, in 2013 fireworks caused an estimated 15,600 reported fires in the U.S., including 1,400 structure fires, 200 vehicle fires, and 14,000 outside and other fires.

Most firework related injuries happen at family or private parties and roughly half of all injuries are to children under the age of 16. The most common place for injuries from fireworks is to hands, eyes and face. Firework related injuries and deaths occur from misuse, such as holding fireworks in hands, being too close to lit fireworks, setting fireworks improperly, mischief, igniting fireworks too close to someone, and/or dismantling fireworks.

Other related injuries are from malfunctions, such as errant flight path, tip-over, early ignition, and/or blow out. Concerns from Public Safety Associations and Healthcare associations include increased fires, increased call volume for emergency responders and emergency rooms, law enforcement and citizens mistaking fireworks for gunfire, increased injuries to our citizens we

are here to protect, problems with pets reacting to fireworks noise, and issues impacting our veterans with PTSD. It's best to keep fireworks to the licensed professionals.

However If council should choose to allow for the use of consumer fireworks, there are a number of decisions that must be made regarding the manner in which fireworks may be used. SF 489 gives the City broad authority to regulate these matters.

During what period of time should the use of fireworks be allowed?

SF 489 allows for the use of fireworks between June 1st and July 8th and December 10st through January 3rd. However, the City has the authority to shorten the period of time during which the use of fireworks is legal. Staff is of the opinion that this an excessively long period of time to allow for the use of fireworks and that if Council does decide 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. Keep in mind that enforcement of fireworks is difficult at best. You have to have a witness willing to testify in court or an officer observing the violation. In the past we have not written many citations to citizens unless it was a disturbing the peace charge where they were told to cease firing fireworks. Historically the Police Department deals with fireworks around the 4th of July for a few days then it normally is not much of an issue the rest of the year.

Between which hours should the use of fireworks be allowed?

SF 489 allows for the use of fireworks between 9:00 a.m. and 10:00 p.m. except that on July 4th and December 31st and the immediately following and proceeding Saturdays and Sundays fireworks may be used to 11:00 p.m. Additionally, fireworks may be used between the hours of 9:00 a.m. on December 31 and 12:30 a.m. on the immediately following day. Staff recommends that if council does decide to permit the use of fireworks that the use of fireworks past 10:00 p.m. be limited to 4th of July and New Year's Eve/Day. This will also help strike 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 by limiting the number of days which they can be used late at night.

Should the unsupervised use of fireworks be minors be prohibited?

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 very sensible regulation to adopt, should council decided to permit the use of fireworks. Fireworks should be used by minors only when under direct adult supervision

Should the use of fireworks by persons showing visible signs of, or determined to be, intoxicated or under the influence of a drug or narcotic be prohibited?

SF 489 is silent on this issue. 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 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 very sensible regulation to adopt, should council decide to permit the use of fireworks.

Should the City of Muscatine allow for the sale of fireworks to occur in areas beyond those zoned for general industrial use (the M-2 Zoning District)?

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.

The City of Muscatine 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. Does the council wish to allow the sale of fireworks to occur in other zoning districts in which retail sales are permitted?

Should there be a restriction on how close a temporary structure selling fireworks can be an existing residential structure?

If council does decide to allow for the sale of consumer fireworks in zoning districts other than the M-2 district, staff recommends that a restriction be placed on how close a temporary structure selling fireworks can be placed to an existing residential structure. The reason for this recommendation 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.

Should a conditional use permit be required for the sale of consumer fireworks?

In whatever zoning districts that Council decides to allow for the sale of consumer fireworks in, should a conditional use permit also be required. Conditional use permits are approved by the Zoning Board Adjustment after a public hearing. All property owners within 200 feet are notified of the proposed conditional use permit and public hearing regarding it. The benefits of requiring a conditional use permit are that it would allow for individual review and approval of each proposed site for the sale of consumer fireworks, and it would also give neighbors and the general public a chance to offer input prior to any approval. The major drawback to requiring a conditional use permit is that it requires anyone looking to sell consumer fireworks to make their plans well in advance. The ZBA only meets once a month, and applications are required to be submitted two week prior to the hearing date. This means that for this year, May 23rd is the latest that an application for a conditional use permit to sell fireworks could be turned in.

Should the City of Muscatine establish its own permit, inspections, and related fees for the sale of consumer fireworks?

City staff recommends that the City of Muscatine establish its own permit, inspections, and related fees for the sale of consumer fireworks and that for this new fireworks sales permit 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.

The inspection fee will technically be what the state is calling the on-site inspection. This is required by the State Fire Marshall prior to them issuing a license. This 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 application and \$ 200.00 permit fee, when filled out and paid, would trigger the on-site inspection.

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.

