



ORDINANCE NO. 2134

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF BOZEMAN, MONTANA AMENDING CHAPTER 18, ARTICLE 5 (FIREWORKS) OF THE BOZEMAN MUNICIPAL CODE, PROHIBITING THE SALE AND DISCHARGE OF FIREWORKS WITHIN THE CITY LIMITS OF BOZEMAN WITHOUT A PERMIT AND PROHIBITING THE DISCHARGE OF FIREWORKS IN COUNTY ENCLAVES WHOLLY SURROUNDED BY THE CITY LIMITS OF BOZEMAN WITHOUT A PERMIT.

WHEREAS, pursuant to its [Charter](#), the Montana Constitution, and state law, the City may exercise any power not prohibited by the constitution, law or charter and neither the Montana Constitution, state law, or the City Charter prohibits the City Commission from adopting this Ordinance; and

WHEREAS, pursuant to §7-33-4206, MCA the City Commission has the power to regulate or prohibit the building of bonfires or the explosion, use, or selling of fireworks, firecrackers, torpedoes, other pyrotechnics, or toy pistols or guns within the city; and

WHEREAS, pursuant in part to §7-32-4302, MCA, the City Commission has power to prevent and punish loud noises and acts or conduct calculated to disturb the public peace within the city and within 3 miles of the limits thereof; and

WHEREAS, pursuant to §50-37-102, §50-37-107, and §50-37-108, MCA, supervised and permitted firework displays are authorized with proper insurance; and

WHEREAS, the City Commission finds the discharge of fireworks has negative health and environmental consequences, endangers property, increases the risk of fire, disturbs the peace,

and further recognizes the loud noise of fireworks have a significant impact on the elderly, active and former service members, and pets and wildlife. As such, the City Commission determines, to protect the general health, safety and welfare of the citizens of Bozeman, a legitimate governmental interest exists in prohibiting the sale and discharge of fireworks within the city limits and prohibiting the discharge of fireworks within county enclaves wholly surrounded by property within the city limits of Bozeman.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF BOZEMAN, MONTANA:

Section 1

That Chapter 18 Fire Prevention and Protection, Article 5 Fireworks be amended as follows:

Sec. 18.05.010. - Definitions.

A. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. "Fireworks" means and includes any combustible or explosive composition or any substance, combination of substances, or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation and includes, but is not limited to, sky rockets, roman candles, dago bombs, blank cartridges, toy cannons, toy canes, or toy guns in which explosives other than toy paper caps are used, the type of balloons which require fire underneath to propel ~~then~~ them, firecrackers, torpedoes, sparklers or other fireworks of like construction, any fireworks containing any explosive or flammable compound, or any tablet or other device containing any explosive substance. This definition includes items which contain even small amounts of silver fulminate, potassium nitrate, ammonium perchlorate, or other chemical or pyrotechnical composition intended to produce a pyrotechnic event or effect, even if not classified as a "hazardous material" under federal regulation.

2. "County Enclave" means unincorporated property or properties wholly surrounded by property within the city limits of Bozeman.

Sec. 18.05.020. - When this article does not apply.

A. This article shall not apply to:

1. Fireworks held or sold to a person possessing a valid permit under MCA 50-37-107, and a valid permit issued by the fire chief for the purpose of conducting a supervised public display of such fireworks.

2. Fireworks used by railroads or other transportation agencies for signal purposes or illumination.

3. The sale or use of blank cartridges for a show or theater, for signal or ceremonial purposes in athletics or sports, for use by peace officers, or for use by official military organizations or organizations composed of veterans of the United States armed forces.

4. Sparklers as described in American Pyrotechnics Association Standard 87-1.

Sec. 18.05.030. Sale and discharge of fireworks Prohibited.

- A. No individual, firm, partnership, corporation or association shall possess for sale, sell, or offer for sale any fireworks as defined herein within the city limits.
- B. No fireworks may be discharged within the city limits without a permit as provided for in Sec. 18.05.040.
- C. No fireworks may be discharged within the county enclaves wholly surrounded by the city without a permit as provided for in Sec. 18.05.040.

Sec. 18.05.0340. Public display permitted when.

- A. The fire chief and/or chief of police shall review and inspect all supervised public displays of fireworks, including "display fireworks," by the municipality, fair associations, amusement parks, or other organizations or groups of individuals upon completion of the necessary application and submission of appropriate fees as may be established by resolution of the city commission. A visual site inspection shall occur before any permit is issued. Submission of the application does not guarantee issuance of a permit. All applications under this section shall be made to the fire chief.
- B. Each display ~~shall~~ must:
 - 1. Be handled by a licensed, bonded pyrotechnic operator to be approved by the fire chief;
 - 2. Be located, discharged, or fired such that the display, in the opinion of the fire chief, shall not be hazardous to persons or property;
 - 3. Clearly post a "NO SMOKING" warning within 50 feet of the staging and discharge area established for the display, and no one may smoke within the defined area.
- C. The application for a permit ~~shall~~ must be made in writing at least 15 days prior to the date of the display, and ~~shall~~ must contain, at a minimum:
 - 1. A map of the proposed display venue, including the temporary storage site, the parking and spectator viewing areas, the fireworks discharge point, location of structures and roads, streets, and alleys within a 1,000-yard radius, overhead obstructions or other hazards;
 - 2. The name of the licensed and bonded pyrotechnic operator along with the operator's qualifications, training and experience, and the names of any assistants for the event;
 - 3. The location of all fire hydrants, water spigots or other access points for water, and all other fire retardants or extinguishers available at or near the venue;

4. Proof of general liability insurance specifically including coverage for firework displays in an amount acceptable to the city, and which includes the city as an additional insured;
 5. The name of the association, entity, organization or group and its organizing or supervising board or responsible parties for the event;
 6. A complete list of the fireworks intended for use in the display together with their projectile range, if any;
 7. The location, date and time of the display and written consent from the landowner; and
 8. A detailed safety plan for the event.
- D. Only upon inspection and issuance of the permit, ~~and only then, sales, possession and shall~~ use of fireworks for such display as detailed in the permit ~~shall~~ be lawful. ~~for that purpose only.~~
- E. Following the public display, the organizers and the pyrotechnic operator ~~shall be~~ are responsible for clean-up of the display site, including disposal of all discharged fireworks and all non-discharged or "dud" fireworks in a safe manner.
- F. No permit issued under this article may be transferred. ~~shall be subject to transfer.~~
- G. ~~This~~ A permit issued under this article may be revoked by the fire chief at any time when any of the conditions under which the permit was granted change, when a hazardous condition is determined to exist, or when, in the best judgment of the fire chief, such permit must be withdrawn in the interests of public safety. The fire chief, and may revoke a permit issued under this article for a include violation of any rule, regulation or requirement of this article.

Sec. 18.05.040. Sale and discharge of fireworks.

- A. ~~No individual, firm, partnership, corporation or association shall possess for sale, sell, or offer for sale, at retail, or discharge within the city limits, any fireworks, as defined herein, except as specifically provided in this article.~~
- B. ~~No parent, guardian or custodian of any child under the age of majority shall knowingly permit or consent to the possession or discharge of fireworks by any child under the age of majority without proper supervision. Possession or discharge by any child under the age of majority within the city limits shall be prima facie evidence of the knowing permission or consent of such parent, guardian or custodian.~~
- C. ~~No fireworks may be discharged within the boundaries of or within 300 feet of any public park owned or maintained by the city without a public display permit except as otherwise provided in this article. No fireworks may be discharged upon any public street, alley, road or right of way, except as otherwise provided in this article. No fireworks may be discharged within 1,000 feet of any hospital, nursing or assisted living facility. No fireworks may be discharged under or upon a motor vehicle, whether moving or not, or within 300 feet of any gas station, gas, oil or propane storage facility or other area which is highly flammable by nature.~~
- D. ~~Subject to the limitations contained in this article, fireworks, as listed in subsection E of this section, may be discharged within the city limits only on private property of the owner, or~~

~~with the owner's permission, or on paved city streets which are not arterial streets or collectors when such discharge is in a safe and sane manner, and limited to the July 4 holiday only:~~

- ~~1. Between 12:00 p.m. July 3 and 12:00 a.m. July 4;~~
- ~~2. Between 12:00 p.m. July 4 and 1:00 a.m. July 5;~~
- ~~3. Between 12:00 p.m. July 5 and 12:00 a.m. July 6;~~

~~and for the New Year's Day holiday only from 11:00 p.m. December 31 until 1:00 a.m. January 1. As used in this subsection, the phrase "safe and sane manner" refers to actions which do not endanger life, limb or property of those in the area of the discharge. Nothing in allowing the discharge of fireworks within the city limits relieves the individual, firm, partnership, corporation or association of its responsibility for any injury or damage caused to individuals or property by the discharge of the fireworks. Any discharge, with or without a permit, is at the individual, firm, partnership, corporation or association's own risk, and is not sanctioned by this article.~~

~~E. Permitted fireworks are the following type of Class C "common fireworks" among those listed in federal law:~~

- ~~1. A cardboard or heavy paper cylindrical tube or cone that:
 - ~~a. Produces a shower of color and sparks that reach a maximum of 15 feet;~~
 - ~~b. May whistle or pop; and~~
 - ~~c. Is not designed to explode or leave the ground;~~~~
- ~~2. A pyrotechnic wheel device:
 - ~~a. May be attached to a post or tree; and~~
 - ~~b. Contains up to six "driver" units or tubes;~~~~
- ~~3. Any device that:
 - ~~a. Spins, jumps, or emits popping sounds when placed on the ground;~~
 - ~~b. Does not exceed a height of 15 feet when discharged; and~~
 - ~~c. Does not travel laterally more than ten feet on a smooth surface when discharged;~~~~
- ~~4. Sparklers under 12 inches in length which do not have a magnesium make up, glow worms, snakes, party poppers, trick noisemakers; and~~
- ~~5. Certain mortar type aerial devices and multi-shot cakes that are found acceptable by the fire chief.~~

~~F. When, in the opinion of the fire chief, drought or other conditions exist which, when coupled with the discharge of fireworks, would pose a hazard to persons or property, the fire chief shall issue a ban on the discharge of all fireworks until such time as the condition causing the ban ceases to exist.~~

~~G. Any individual, firm, partnership, corporation or association discharging fireworks under this article shall, upon such discharge, be responsible for clean-up of the discharge site, including disposal of all discharged fireworks, all non-discharged or "dud" fireworks, and the associated debris from the discharged fireworks in a safe manner.~~

~~H. The safe and sane discharge of fireworks in accordance with the provisions of this article shall not be deemed a violation of chapter 16, article 6.~~

Sec. 18.05.050. General liability insurance required.

- A. An individual, firm, partnership, corporation or association planning a public display of fireworks shall, in addition to the permit required in 18.05.040, provide proof of general liability insurance specifically including coverage for firework displays in an amount acceptable to the city attorney; and which includes the city as an additional insured.
- B. Notice to the fire chief must be given ten days prior to any public display if any insurance policy required under this article is cancelled or subject to non-renewal. Notice must be provided by the permittee, the insurance carrier.
- C. A copy of the insurance policy and applicable fireworks endorsements for any public display must be filed with the city clerk and must indemnify the city against any damages to private or public property, as well as any injuries to persons, which may be caused by or incident to the public display.
- D. Any individual, firm, partnership, corporation or association discharging fireworks without a public display permit shall be deemed to be the responsible party and shall be liable for any damages incurred as the result of such discharge. The individual, firm, partnership, corporation or association insurance policy or policies maintained by the individual or entity discharging the fireworks shall be subject to any claim as a result of such discharge resulting in damage or injury.

Sec. 18.05.060. Enforcement and Confiscation.

- A. Any police officer or firefighter may, in the enforcement of this article, seize, impound, remove or cause to be removed, at the expense of the owner, all stocks of fireworks offered for sale, sold, or in the possession of any individual, firm, partnership, corporation or association in violation of this article. ~~Notice of the seizure and the reasons for the seizure shall be reported to the chief of police within 48 hours of the seizure.~~
- B. Fireworks seized under this section may be disposed of in a safe and proper manner by the police or fire department ten days after seizure.
- C. ~~Appeal of any seizure shall be filed with the chief of police in writing within five working days of the seizure. The decision of the chief of police on the appeal shall be final.~~

Sec. 18.05.070. Violation; penalty.

- A. Sales and Public Display: Any individual, firm, partnership, corporation or association violating the provisions of this article regarding the sale of fireworks or the requirements for a public display of fireworks shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of ~~not less than \$100.00 or more than \$500.00 for a first offense; a fine of not less than \$200.00 or more than \$500.00 for a second offense; and a fine of not less than \$300.00 or more than \$500.00 for a third or subsequent offense.~~ Each day sale within the city limits ~~of a violation~~ constitutes a separate offense. In the case of a violation by a firm, partnership, corporation or association, the manager or members of the partnership or

responsible officers or agents shall be deemed to be prima facie responsible, individually, and subject to the penalty as provided.

- B. Individual or private discharge of fireworks: Any individual violating the provisions of this article regarding the discharge of fireworks shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of \$500.00. Each discharge shall constitute a separate offense. Unless the identity of the person discharging fireworks is otherwise distinguishable, the owner(s) or tenant(s) of the real property from where the firework(s) were discharged shall be deemed to be prima facie responsible for the discharge and subject to the penalty as provided. Any damages caused or injuries sustained as a result of any violation of this article shall be ordered paid as restitution as a part of any conviction for any violation.
- C. Any damages caused or injuries sustained as a result of any violation of this article shall be ordered paid as restitution as a part of any conviction for any violation.

~~E~~D. The court may order the reimbursement of costs of enforcement, investigation, fire suppression services, and overtime related to a violation upon conviction.

Section 4

Repealer.

All provisions of the ordinances of the City of Bozeman in conflict with the provisions of this ordinance are, and the same are hereby, repealed and all other provisions of the ordinances of the City of Bozeman not in conflict with the provisions of this ordinance shall remain in full force and effect.

Section 5

Savings Provision.

This ordinance does not affect the rights and duties that matured, penalties that were incurred or proceedings that were begun before the effective date of this ordinance. All other provisions of the Bozeman Municipal Code not amended by this ordinance shall remain in full force and effect.

Section 6

Severability.

That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof, other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Bozeman Municipal Code as a whole.

Section 7

Codification Instruction.

The provisions of Section 1 shall be codified as appropriate in Chapter 18, Article 5 of the Bozeman Municipal Code.

Section 8

Effective Date.

This ordinance shall be in full force and effect thirty (30) days after final adoption.

PROVISIONALLY ADOPTED by the City Commission of the City of Bozeman, Montana, on first reading at a regular session held on the 18th day of April, 2023.

DocuSigned by:



CYNTHIA L. ANDRUS

Mayor

ATTEST:

DocuSigned by:

DocuSigned by:



MIKE MAAS

City Clerk



FINALLY PASSED, ADOPTED, AND APPROVED by the City Commission of the City of Bozeman, Montana, on second reading at a regular session therefor held on the 2nd day of May 2023.

DocuSigned by:



CYNTHIA L. ANDRUS

Mayor

DocuSigned by:

DocuSigned by:



MIKE MAAS

City Clerk



APPROVED AS TO FORM:

DocuSigned by:



GREG SULLIVAN

City Attorney