

Emergency Ordinance 3504

An emergency ordinance generally amending Chapter 8.52 Missoula Municipal Code entitled "Fireworks," to clarify definitions, enhance enforcement and revise penalty provisions and declaring an emergency in order to have the ordinance revisions in effect before the upcoming Independence Day holiday on July 4, 2013, to support the City's efforts to increase enforcement of the Fireworks Ordinance to preserve public peace, health and safety.

Be it ordained that sections 8.52.010 through 8.52.070 Missoula Municipal Code are hereby established and/or amended as follows:

Chapter 8.52

FIREWORKS

Sections:

8.52.010	Fireworks defined
8.52.015	Exceptions
8.52.020	Manufacture, sale, use and explosion of fireworks
8.52.027	Professional fireworks display permit
8.52.030	Bond or liability insurance required for display
8.52.040	Disposal of unfired fireworks used in a display
8.52.050	Repealed
8.52.060	Violation, enforcement and seizure of fireworks.
8.52.070	Penalties

Section 1

8.52.010 Fireworks defined.

- A. The term "fireworks" means any fireworks defined in 50-37-101 Montana Code Annotated (MCA) as well as any combustible or explosive composition or any substance, or combination of substances, or article prepared for the purpose of providing a visible or audible effect by combustion, explosion, deflagration or detonation and includes sky rockets, roman candles, blank cartridges, toy cannons, toy canes or toy guns in which explosives other than toy paper caps are used, the types of balloons which require fire underneath to propel them, firecrackers, torpedoes, sparklers or other fireworks of like construction and any fireworks containing any explosive or flammable compound, or any tablets or other device containing any explosive substance.

[**Codifier's note:** In 2013, portions of this section pertaining to exceptions were amended and moved to newly established Section 8.52.015 entitled "Exceptions."]

Section 2

8.52.015 Exceptions

- A. This chapter does not apply to:
1. toy paper caps containing less than one-fourth ($\frac{1}{4}$) of a grain of explosive composition per cap, or
 2. any resident wholesaler, dealer or jobber wholesaling fireworks that are not prohibited by this chapter or the sale of any kind of fireworks provided the same are to be shipped directly out of state, or
 3. the use of fireworks by railroads or other transportation agencies for signal purposes or illumination, or
 4. the use of explosives when used in quarrying or blasting or other industrial use

5. the sale or use of blank cartridges for ceremonial or theatrical performances, or
6. use blank cartridges for signal or ceremonial purposes in athletics or sports, or
7. use of cartridges by military organizations or law enforcement organizations.
8. any use provided for in 50-37-102 MCA

Section 3

8.52.020 Manufacture sale, use and explosion of fireworks. The manufacture and/or sale of fireworks is prohibited in the city.

Unless permitted by the Fire Chief in accordance with Section 8.52.027, the use and/or explosion of fireworks are prohibited in the city.

[**Codifier’s note:** In 2013, this section was retitled “Manufacture, sale, use and explosion of fireworks” from Manufacture in city prohibited—Permit for sale or discharge.” The portions of this section pertaining to permits for public displays of fireworks were moved to newly established Section 8.52.027 entitled “Professional Fireworks Display Permit.”]

Section 4

8.52.027 Professional Fireworks Display Permit

- A. The Fire Chief shall have power to adopt reasonable rules and regulations for the granting of permits for supervised public displays of fireworks by the city, fair associations, amusement parks and other organizations. Every such display shall be handled by a competent operator approved by the chiefs of the police and fire departments of the city and shall be of such a character, and so located, discharged or fired as in the opinion of the chief of the fire department, after proper inspection, shall not be hazardous to property or endanger any person.
- B. Application for permits shall be made in writing at least fifteen days in advance of the date of the display to the treasurer of the city. The fee for the permit is established as follows:
 1. Fire performance artists, fireworks operators, and pyrotechnicians are required to obtain a City business license or business license exemption per 5.08.010 MMC.
 2. Fire Performance Art includes fire juggling, fire dancing, and fire eating. Every venue hosting fire performance art is required to obtain a permit. The fire performance art venue permit expires one year after the issuance date and is renewable annually.
 3. Pyrotechnic Special Effects include pyrotechnic displays at concerts, theatrical productions, and stage shows. The pyro-technician or operator conducting a pyrotechnic special effects performance is required to obtain a permit. A separate pyrotechnic special effects permit is required for each date of performance.
- C. Fire Performance Art Venue and Pyrotechnic Special Effect permit fees are established as follows:

Venue Capacity	Permit Fee
1 – 500 people	\$140.00
501 – 1,000 people	\$178.00
1,001 – 5,000 people	\$204.00
Each additional 5,000 people	\$38.00

1. Aerial Pyrotechnic Displays include outdoor aerial fireworks shows or displays. The pyro-technician or operator conducting an aerial pyrotechnic display is required to obtain a permit. A separate permit is required for each date of the aerial pyrotechnic display.

The aerial pyrotechnic display permit fees are established as follows:

Vertical and Horizontal Projectile Distance	Permit Fee
0 – 20 feet	\$183.00
21 – 50 feet	\$236.00
Greater than 51 feet	\$290.00

Fire performance art, pyrotechnic special effects, and aerial pyrotechnic displays that are conducted in compliance with a valid permit are lawful under this chapter. Permits granted under this chapter are not transferable.

Section 5

Section 8.52.030 Bond or liability insurance required for display. The permittee for a permitted fireworks display shall conduct the fireworks display pursuant to Missoula Municipal Code in a manner that is not likely to expose persons or property to risk or injury. The permittee shall submit a complete list of all fireworks that will be used in the fireworks display as part of any application for a fireworks display permit. The permittee shall furnish pursuant to the following list a bond or liability insurance conditioned for payment of all damages which may be caused to person or persons or to property by reason of the licensed fireworks display and arising from any acts of the licensee, his agents, employees or subcontractors:

- A. If the permitted fireworks display is comprised entirely of fireworks that have a projectile distance of no greater than twenty feet horizontally or vertically for any individual firework the permittee shall either post a bond with the city or possess liability insurance in the amount not less than one hundred thousand dollars;
- B. If the permitted fireworks display is comprised entirely of a ground display and/or fireworks having a projectile distance no greater than fifty feet horizontally or vertically for any individual firework, the permittee shall either post a bond with the city or possess liability insurance in an amount not less than three hundred thousand dollars;
- C. If the permitted fireworks display includes any fireworks that have a projectile distance in excess of fifty feet horizontally or vertically, the permittee shall either post a bond with the city or possess liability insurance in an amount not less than one million dollars.

Section 6

8.52.040 Disposal of unfired fireworks used in a display. Any fireworks that remain unfired after a permitted fireworks display is concluded shall immediately be disposed in a safe manner that is approved by the chiefs of the fire and police department.

Section 7

8.52.050 Repealed

[Codifier's note: In 2013, Section 8.52.050 entitled "Exceptions to Sections 8.52.010 through 8.52.040" was repealed, amended and incorporated into newly established Section 8.52.015]

Section 8

8.52.060 Violation, enforcement and seizure of fireworks. City police and fire departments are responsible for enforcing this chapter and are authorized to:

- A. seize, take, remove or cause to be removed at the expense of the owner all stocks of fireworks offered or exposed for sale, stored, being used or held in violation of this chapter or in violation of any state or federal law regulating fireworks.
- B. Issue a "Notice to Appear to Missoula Municipal Court" for violations of this chapter.

It shall not be an offense pursuant to this chapter to possess fireworks permitted by Montana state law for use within the State of Montana.

Section 9

8.52.070 Penalties. .

Any person who violates this chapter shall be guilty of a misdemeanor and subject to the following fines:

Offense	Penalty
1st offense	\$100 + court costs
2nd offense (during the same calendar year as the 1 st offense)	\$300 + court costs

There shall be no penalty of imprisonment for a violation of any provision of this chapter.

Section 10.

Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase, and words thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or words have been declared invalid or unconstitutional, and if for any reason this ordinance should be declared invalid or unconstitutional, then the remaining ordinance provisions will be in full force and effect.

First reading and adoption on the 17th day of June, 2013, by a vote of 8 ayes, 1 nay, 0 abstain and 3 absent.

Because this is an emergency ordinance, second reading was waived.

ATTEST:

APPROVED:

/s/ Martha L. Rehbein
Martha L. Rehbein, CMC
City Clerk

/s/ John Engen
John Engen
Mayor