

**CITY OF WEST DES MOINES
PLAN AND ZONING COMMISSION**

Meeting Date: May 22, 2017

Item: Amendment to City Code, Title 9 – Amend Title 9, Chapter 6, Commercial, Office, and Industrial Use Regulations, Chapter 15, Off-Street Parking and Loading, and Chapter 16: Temporary Use Permits to regulate the sale and storage of consumer-grade fireworks – City Initiated (AO-003476-2017)

Request Action: Approval of an amendment to the City Code

Case Advisor: Lynne Twedt 

Applicant's Request: The State of Iowa recently passed a bill allowing the use and sale of consumer-grade fireworks. The bill allows cities to opt-out on the use of fireworks; however, cities must allow the sale thereof. In light of this, the City's Zoning Code, Fire Code & Municipal Codes must be amended. The City of West Des Moines Development Services Department is requesting an amendment to the following chapters within Title 9, Zoning of City Code:

- Chapter 6, Commercial, Office, and Industrial Use Regulations) to regulate the following:
 - SIC 2899 Chemicals and Chemical Preparations, NEC (Manufacturing of Fireworks);
 - SIC 5092 Toys and Hobby Goods and Supplies (Wholesale Trade of Fireworks);
 - SIC 5999 Miscellaneous Retail Stores, NEC (Retail Sale of Fireworks);
 - SIC 7999 Amusement and Recreation Services, NEC (Fireworks Display Services);
 - SIC 4225 General Warehousing and Storage (Storage of Fireworks)
- Chapter 15, Off-Street Parking and Loading to establish parking requirements for establishments selling and storing fireworks.
- Chapter 16, Temporary Use Permits to clarify firework sales are not permitted through the Temporary Use Process.

City Council Subcommittee: This item was not discussed at Development & Planning City Council Subcommittee. The use and sale of fireworks was discussed at City Council workshops on May 1st and May 15th.

Staff Review and Comment: Staff would note the following:

Use: Per the bill, consumer-grade fireworks may be used between June 1 and July 8th and New Year's Eve. The bill allows City Councils to opt-out of the use. Per a May 15th City Council workshop, it appears that by a 3-2 vote, the City of West Des Moines will not be allowing the use of fireworks within the city. The actual use of consumer-grade fireworks is not governed by zoning regulations.

Sales: The bill allows the sale of consumer-grade fireworks within both permanent and temporary structures. The bill does not allow cities to ban the sale of fireworks. Fireworks may be sold in a permanent structure between June 1st and July 8th and from December 10th to January 3rd. Sales in a temporary structure may occur between June 13th and July 8th. Per a May 15th City Council workshop, the sale of fireworks will be limited to General Industrial Zoning Districts only. Via the Fire Code, performance standards will be placed in respect to such aspects as building construction, separation requirements, non-combustible surfacing of sales and storage areas, acceptable storage buildings, etc.

Permitting and Licensing: The bill requires all retail and wholesale sellers to obtain a license from the State Fire Marshal. To track seller's locations and to allow for appropriate inspections and enforcement of minimum performance standards such as separation requirements, parking, surfacing, fencing, signage, etc., the City will also be requiring the obtainment of a fireworks sales permit. While the permit application and process is not yet finalized, it is anticipated that the permit process will be similar to the City's Special Event Permit or Food Truck Permit processes. The Temporary Use Permit process will not be utilized due to the need for immediate enforcement authority.

Noticing Information: On May 19, 2017, notice of the May 22nd Plan and Zoning Commission and May 30th City Council public hearings for this project was published in the *Des Moines Register*. No mailing of notices is required with City Code amendments.

Staff Recommendation and Conditions of Approval: Staff recommends the Plan & Zoning Commission approve a resolution recommending to the City Council approval of the ordinance amendment.

Attachments:

Attachment A – Proposed Resolution

Exhibit A – Proposed Ordinance

RESOLUTION NO. PZC-17-052

A RESOLUTION OF THE PLAN AND ZONING COMMISSION OF THE CITY OF WEST DES MOINES, RECOMMENDING TO THE CITY COUNCIL THAT IT APPROVE AN ORDINANCE TO AMEND TITLE 9 (ZONING TO REGULATE THE SALE AND STORAGE OF FIREWORKS

WHEREAS, pursuant to the provisions of Title 9, Chapter 1 et seq, staff requests an amendment to amend Title 9 (Zoning), Chapter 6 (Commercial, Office and Industrial Zoning Districts), Section 6 (Commercial, Office and Industrial Use Regulations), Subsection C, Table 6.1 (Use Matrix) for SIC 2899, SIC 5092, SIC 5999, SIC 7999, and SIC 4225 as they relate to fireworks sales, storage, and use; Chapter 15, (Off-Street Parking and Loading), to define minimum parking requirements for establishments selling fireworks; and Chapter 16 (Temporary Use Permits) to clarify firework sales are not permitted under a Temporary Use Permit;

WHEREAS, studies and investigations were made, and staff reports and recommendations were submitted which is made a part of this record and herein incorporated by reference;

WHEREAS, this Commission held a duly-noticed hearing to consider the application for an amendment to ordinance;

WHEREAS, this Commission did consider the application for an amendment to ordinance;

NOW, THEREFORE, THE PLAN AND ZONING COMMISSION OF THE CITY OF WEST DES MOINES DOES RESOLVE AS FOLLOWS:

SECTION 1. The findings for approval in the staff report or as amended orally at the Plan and Zoning Commission public hearing are adopted.

SECTION 2. The AMENDMENT TO ORDINANCE (AO-003476-2017) to amend Title 9, Zoning as it relates to the sale, storage, and use of fireworks is recommended to the City Council for approval, as stated in the staff report or as amended in the attached Exhibit A.

PASSED AND ADOPTED on May 22, 2017.

Craig Erickson, Chair
Plan and Zoning Commission

ATTEST:

Recording Secretary

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the Plan and Zoning Commission of the City of West Des Moines, Iowa, at a regular meeting held on May 22, 2017, by the following vote:

- AYES:
- NAYS:
- ABSTENTIONS:
- ABSENT:

ATTEST:

Recording Secretary

Prepared by: L Twedt, West Des Moines Development Services, PO Box 65320, West Des Moines, IA 50265, 515-222-3620
 When Recorded, Return to: City Clerk, City of West Des Moines, PO Box 65320, West Des Moines, IA 50265-0320

ORDINANCE NO.

AN ORDINANCE AMENDING THE CITY CODE OF THE CITY OF WEST DES MOINES, IOWA, 2014, TITLE 9 (ZONING), CHAPTER 6 (COMMERCIAL, OFFICE, AND INDUSTRIAL ZONING DISTRICT); CHAPTER 15 (OFF-STREET PARKING AND LOADING); AND CHAPTER 16 (TEMPORARY USE PERMITS), TO ESTABLISH STANDARDS AND REGULATIONS RELATED TO THE SALE, STORAGE AND USE OF FIREWORKS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA:

Section 1. Amendment. Title 9: Zoning, Chapter 6: Commercial, Office and Industrial District, Section 6, Commercial, Office, and Industrial Use Regulations, Subsection C. Table 6.1 Use Matrix is hereby amended by adding the following text in bold italic lettering and deleting text in strikethrough, highlighted lettering.

DIVISION D - MANUFACTURING

SIC CODES	RC	CMC	NC	CVC	SC	VJC	VJHB	WR	BP	VJLI	LI	GI	OF	PCP	OS
2892 Explosives															
<i>2899: Chemicals and Chemical Preparations, NEC</i>															
29 Petroleum refining and related industries (except 2951)															

DIVISION E – TRANSPORTATION, COMMUNICATION, AND PUBLIC UTILITIES

SIC CODES	RC	CMC	NC	CVC	SC	VJC	VJHB	WR	BP	VJLI	LI	GI	OF	PCP	OS
4225 General warehousing and storage (except: miniwarehouse / self storage; <i>storage of fireworks; and storage of explosives and explosive materials</i>)	Pc	Pc	Pc					P	P	P	P	P			
With no outside storage yard								Pc	P	Pc	P	P			
With paved outside storage yard											Pc	P			
With gravel outdoor storage yard (see also subsection 9-10-4A8 of this title)												P			
4225 Self-service storage facility															
Exterior unit access with no outside storage yard								P		Pc	P	P			
Exterior unit access with paved outdoor storage yard								P			P	P			
Exterior unit access with gravel outdoor storage yard (*see also subsection 9-10-4A8 of this title)												P*			
Interior unit access with no outside storage yard								P	P	P	P	P	P	P	

(DIVISION E
continued)

SIC CODES	RC	CMC	NC	CVC	SC	VJC	VJHB	WR	BP	VJLI	LI	GI	OF	PCP	OS
Interior unit access with paved outside storage yard								P			P	P			
Interior unit access with gravel outdoor storage yard (*see also subsection 9-10-4A8 of this title)												P*			
<i>4225 General warehousing and storage - fireworks</i>												P			
<i>4225 General warehousing and storage – explosives and explosive materials</i>															

DIVISION F – WHOLESALE TRADE

SIC CODES	RC	CMC	NC	CVC	SC	VJC	VJHB	WR	BP	VJLI	LI	GI	OF	PCP	OS
509 Miscellaneous Durable Goods (except <i>5092-02; Fireworks</i> and 5093; ammunition; and wood and wood byproducts)								P	P	P	P	P			
<i>5092-02 Fireworks</i>												P			

DIVISION G – RETAIL TRADE

SIC CODES	RC	CMC	NC	CVC	SC	VJC	VJHB	WR	BP	VJLI	LI	GI	OF	PCP	OS
5999 Miscellaneous Retail Stores NEC (e.g. no outdoor sales or storage)															
Fiberglass materials, except insulation												Pc			
5999-053 Fireworks - must obtain state license and city permit: outdoor sales allowed with proper permit												P			
Foam and foam products										P	P	P			

DIVISION I - SERVICES

SIC CODES	RC	CMC	NC	CVC	SC	VJC	VJHB	WR	BP	VJLI	LI	GI	OF	PCP	OS
7999 Amusement and recreation services, NEC (e.g. golf courses – miniature, driving ranges, circus companies and fairs, except 7999-100 Fireworks Display Services	Pc	Pc	Pc					P	P	P	P	P			
7999-100 Fireworks Display Services: including bulk storage of fireworks												P			

Section 2. Amendment. Title 9: Zoning, Chapter 15: Off-Street Parking and Loading, Section 7, Number of Parking Spaces Required, Subsection E, Individual Uses Not Part of a Planned Commercial Center is hereby amended by adding the following text in italicized bold lettering;

Retail	
SIC Code/Land Use	Requirement In All Districts Except VJHB (All requirements listed for each land use are the minimum that must be met)
59 Miscellaneous retail (except 598 <i>and</i> 5999-053 <i>Fireworks</i>)	*Up to 50,000 square feet of GFA - 1 space per 225 square feet *Over 50,001 square feet of GFA - 1 space per 250 square feet
598 Fuel dealers	*Up to 20,000 square feet of GFA - 1 space per 200 square feet *Over 20,001 square feet of GFA - 1 space per 225 square feet
<i>5999-053 Fireworks</i>	<i>10 spaces per 1,000 square feet of sales area</i>

Section 3. Amendment. Title 9: Zoning, Chapter 16: Temporary Use Permits, Section 5, Uses Permitted with a Temporary Use Permit, Subsection A, is hereby amended by adding the following text in italicized bold lettering;

A. The following uses are eligible for a temporary use permit, provided they satisfy the following criteria specified in section 9-16-7 of this chapter:

Grand openings and planned events held on private properties that do not create anticipated significant impacts to city property or right of way.

Group assembly activities (e.g., carnivals, fairs, rodeos, sport events, concerts, worship services, and shows).

Parking lot sales, sidewalk sales (private sidewalks only), clearance sales, or other temporary uses which, in the opinion of the director of development services or designee, are similar to the uses listed in this section.
Parking lot sale of fireworks is not permitted under a Temporary Use Permit.

Retail sales of Christmas trees.

Retail sales of landscape nursery material.

Retail sales of pumpkins.

Stands for the sale of agricultural produce.

Temporary concrete and asphalt mixing and storage facilities in accordance with regulations elsewhere in this chapter.

Temporary food and beverage uses not regulated as a mobile food unit under the provisions of title 3, "Business And Licensing", of this code.

Other temporary uses which, in the opinion of the director of development services or designee, are similar to the uses listed in this section.

Section 4. Repealer. All ordinances or parts of ordinances in conflict with the provision of this ordinance are hereby repealed.

Section 5. Savings Clause. If any section, provision, sentence, clause, phrase 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 provision, section, subsection, sentence, clause, phrase or part hereof not adjudged invalid or unconstitutional.

Section 6. Violations and Penalties. Any person who violates the provisions of this Ordinance upon conviction shall be punished as set forth in Section 1-4-1 of the City Code of the City of West Des Moines, Iowa.

Section 7. Other Remedies. In addition to the provisions set out in the Violations and Penalties Section herein, the City may proceed in law or equity against any person, firm or corporation for violation of any section or subsection of this Ordinance.

Section 8. Effective Date. This Ordinance shall be in full force and effect from and after its passage, approval and publication as provided by law.

Passed by the City Council on the ____ day of _____, 2017, and approved this ____ day of _____, 2017.

Steven K. Gaer, Mayor

ATTEST:

Ryan T Jacobson
City Clerk

The foregoing Ordinance No. _____ was adopted by the Council for the City of West Des Moines, Iowa, on _____, 2017, and was published in the Des Moines Register on _____, 2017.

Ryan T. Jacobson
City Clerk