

CITY OF MARYSVILLE
ORDINANCE No. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARYSVILLE, WASHINGTON AMENDING CHAPTER 9.20 OF THE MUNICIPAL CODE, REGULATING FIREWORKS, PORHIBITING POSSESSION AND USE OF FIREWORKS, AND PROVIDING A PROCESS FOR LICENSING PUBLIC DISPLAYS OF FIREWORKS.

WHEREAS, state law and the municipal code currently permit the possession and use of most consumer fireworks; and

WHEREAS, for many years the city and its elected officials have received numerous complaints regarding the discharge of both legal and illegal fireworks; and

WHEREAS, the complaints include complaints about excessive noise, fire hazards, and safety risks created by the discharge of fireworks; and

WHEREAS, on July 27, 2015, the City Council adopted Resolution 2379 requesting the Snohomish County Auditor to place the following proposition on the November 2015 ballot as an advisory measure:

Should the Marysville City Council prohibit the possession, sale, and discharge of fireworks within the City limits of Marysville?

WHEREAS, on November 3, 2015, Proposition 1 appeared on the ballot and was approved by voters with 59.25% voting in favor of the measure; and

WHEREAS, prohibiting fireworks would enhance the health, safety, and welfare of the public; and

WHEREAS, chapter 70.77 RCW authorizes cities to adopt ordinances that are more restrictive than state law, but such ordinances may only become effective one year after their adoption;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF MARYSVILLE AS FOLLOWS:

Section 1. Amendment of Municipal Code.

The municipal code is amended as set forth in Exhibit “A.”

Section 2. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance should be held to be invalid or unconstitutional by a court of

competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word of this ordinance .

Section 3. Effective Date. This ordinance shall become effective one year after the date of its publication by summary.

PASSED by the City Council and APPROVED by the Mayor this _____ day of January 2016.

CITY OF MARYSVILLE

By _____
JON NEHRING, MAYOR

Attest:

By _____
APRIL O'BRIEN, DEPUTY CITY CLERK

Approved as to from:

By _____
JON WALKER, CITY ATTORNEY

Date of publication: _____
Effective Date (one year after publication): _____

EXHIBIT A

Chapter 9.20

FIREWORKS

Sections:

- 9.20.010 ~~State statutes adopted~~ Definitions.
- ~~9.20.015~~ ~~Additional definitions.~~
- 9.20.020 ~~Possession, use, sale, and discharge of fireworks unlawful~~ Date and time limits for sale or discharge of consumer fireworks.
- ~~9.20.030~~ ~~Permit required for public display.~~
- ~~9.20.040~~ ~~Permit fees.~~
- ~~9.20.050~~ ~~Issuance – Nontransferable – Voiding.~~
- ~~9.20.060~~ ~~Application for public display permit.~~
- 9.20.070 ~~Standards for public fireworks displays~~ Permit procedure.
- 9.20.080 ~~Action by city council.~~
- 9.20.090 ~~Issuance of – Nontransferable.~~
- ~~9.20.100~~ ~~Special effects for entertainment media.~~
- 9.20.110 ~~Operation of fireworks stands~~ Enforcement.
- 9.20.120 ~~Penalties for violations~~ Temporary fireworks stand specifications.
- ~~9.20.125~~ ~~Enforcement – Revocation of permit.~~
- ~~9.20.130~~ ~~Penalties for violations.~~

9.20.010 ~~State statutes adopted~~ Definitions.

The definitions of chapter 70.77 RCW, as now enacted or subsequently amended, are adopted by reference and shall govern the construction of this chapter, when applicable.

~~The following sections of the State Fireworks Law (Chapter 70.77 RCW) are adopted by reference, including any amendments to the same which may hereafter be enacted by the state of Washington:~~

RCW

- ~~70.77.126~~ ~~Definition of “fireworks.”~~
- ~~70.77.131~~ ~~Definition of “display fireworks.”~~
- ~~70.77.136~~ ~~Definition of “consumer fireworks.”~~
- ~~70.77.138~~ ~~Definition of “articles pyrotechnic.”~~
- ~~70.77.141~~ ~~Definition of “agricultural and wildlife fireworks.”~~
- ~~70.77.146~~ ~~Definition of “special effects.”~~
- ~~70.77.160~~ ~~Definition of “public display of fireworks.”~~
- ~~70.77.165~~ ~~Definition of “fire nuisance.”~~

~~70.77.180 — Definition of “permit.”~~

~~70.77.190 — Definition of “person.”~~

~~70.77.205 — Definition of “manufacturer.”~~

~~70.77.210 — Definition of “wholesaler.”~~

~~70.77.215 — Definition of “retailer.”~~

~~70.77.230 — Definition of “pyrotechnic operator.”~~

~~70.77.255 — Acts prohibited without a license.~~

~~70.77.285 — Public display permit — Bond.~~

~~70.77.290 — Public display permit.~~

~~70.77.295 — Public display permit — Amount of bond.~~

~~70.77.311 — Exemptions from licensing.~~

~~70.77.335 — License authorizes activities of salesmen, employees.~~

~~70.77.405 — Authorized sales of toy caps, tricks, novelties.~~

~~70.77.410 — Public displays not to be hazardous.~~

~~70.77.415 — Supervision of public displays.~~

~~70.77.420 — Storage permit required.~~

~~70.77.425 — Approved storage facilities required.~~

~~70.77.430 — Sale of stock after revocation or expiration of license.~~

~~70.77.450 — Examination, inspection of books and premises.~~

~~70.77.480 — Prohibited transfers of fireworks.~~

~~70.77.485 — Unlawful possession of fireworks — Penalties.~~

~~70.77.488 — Unlawful discharge or use of fireworks — Penalty.~~

~~70.77.510 — Sales or transfers of display fireworks — Penalty.~~

~~70.77.515 — Sales or transfers of consumer fireworks — Penalty.~~

~~70.77.520 — Unlawful to permit fire nuisance where fireworks kept — Penalty.~~

~~70.77.535 — Articles pyrotechnic, special fireworks for entertainment media.~~

~~70.77.545 — Violation a separate, continuing offense.~~

~~70.77.547—Civil enforcement not precluded.~~

~~70.77.580—Posting by retailers of lists of allowed fireworks.~~

(Ord. 2737 § 1, 2008; Ord. 2409 § 1, 2002; Ord. 1942 § 1, 1993; Ord. 1778 § 1, 1990; Ord. 1376 § 2, 1984).

9.20.015—Additional definitions.

The following additional definitions shall apply in this chapter:

~~“Permittee” means any person issued a fireworks permit in conformance with this chapter. (Ord. 2737 § 1, 2008; Ord. 2409 § 2, 2002).~~

9.20.020 Possession, use, sale, and discharge of fireworks unlawful ~~Date and time limits for sale or discharge of consumer fireworks.~~

A. It is unlawful for any person to possess, use, sell, transfer, discharge, ignite, or explode any fireworks within the city; provided that this prohibition shall not apply to the following activities, when authorized by a state license and city permit:

1. Duly authorized public displays, as provided in chapter 70.77 RCW; and

2. Duly authorized use by religious organizations or private organizations or persons for religious or other specific purposes on an approved date and in an approved location, as provided in RCW 70.77.311, and authorized by the Marysville fire marshal.

B. Trick and novelty devices, as defined by state law, are not fireworks for the purposes of this chapter.

C. This chapter does not prohibit the use of torpedoes, flares, or fuseses by motor vehicles, railroads, or other transportation agencies for signal purposes or illumination or for use in forest protection activities.

~~No fireworks shall be sold or discharged within the city except as follows:~~

~~(1) The sale of consumer fireworks shall be allowed from 12:00 noon to 11:00 p.m. on June 28th and from 9:00 a.m. to 11:00 p.m. on June 29th through July 4th.~~

~~(2) Consumer fireworks may be discharged July 4th only from 9:00 a.m. to 11:00 p.m. and December 31st from 9:00 a.m. to 2:00 a.m. on January 1st. (Ord. 2737 § 1, 2008; Ord. 2529 § 1, 2004; Ord. 2409 § 3, 2002; Ord. 2031 § 1, 1995; Ord. 1942 § 2, 1993).~~

9.20.030 Permit required for public display.

It is unlawful for any person to hold, conduct or engage in a public display of fireworks within the city without first having obtained and being the holder of a valid permit issued pursuant to the provisions of this chapter.

9.20.040 Permit fees.

The fee for inspections related to a permit, processing, and issuing the same shall be \$100.00, payable at the time of application. In addition, in the event that the location specified in the permit has unusual parameters, limitations or risks requiring inspection over and above that anticipated in the establishment of this fee (that is, in excess of one hour), a charge for inspection shall be paid by the applicant equal to the actual cost of providing the inspection and in no case more than a total of five thousand dollars for any one permit.

9.20.050 Issuance – Nontransferable – Voiding.

Each public display permit issued pursuant to this chapter shall be valid for the specific authorized public display event only, shall be used only by the designated permittee and shall be nontransferable. Any transfer or unauthorized use of a permit is a violation of this chapter and shall void the permit granted in addition to all other sanctions provided in this code.

9.20.060 Application for public display permit.

A person desiring to make a public display of fireworks shall apply in writing for a permit to hold, conduct or operate a public display of fireworks to the Marysville fire marshal at least 30 days prior to the scheduled event. Applicants shall meet all qualifications and requirements of state law regarding public display of fireworks and all fire and safety requirements as set forth in the standards for public display.

The application must include:

- (1) a copy of the applicant's Washington state pyrotechnic operator license (or the pyrotechnic operator license of the applicant's employee who will conduct the public display);
- (2) evidence of a bond issued by an authorized surety or a certificate of public liability insurance;
- (3) a drawing showing a plan view of the fireworks discharge site and the surrounding area within a 500-foot radius;
- (4) the exact location, date and time of the proposed display; and
- (5) the number, type and class of fireworks to be displayed, the manner in which the fireworks are being stored prior to the public fireworks display.

The fire marshal may impose other requirements on the application.

The fire marshal shall investigate whether the character and location of the display as proposed would be hazardous to property or dangerous to any person. Based on the investigation, the official shall submit a report of findings and a recommendation for or against the issuance of the permit, together with reasons, to the city council.

9.20.070 Standards for public fireworks displays~~Permit procedure.~~

A. All public fireworks displays shall conform to the standards and conditions imposed by the fire marshal and city council. The minimum standards and conditions will be consistent with the International Fire Code and the fire marshal or city council may impose any other requirements

that are reasonably related to public safety and fire prevention. All public fireworks displays shall comply with chapter 70.77 RCW.

B. All public fireworks displays must be planned, organized, and discharged by a state-licensed pyrotechnician.

C. A permit must be obtained from the city and approved by the fire marshal or designee prior to any public display of fireworks.

D. The permit may be immediately revoked at any time deemed necessary by the fire marshal or designee due to any noncompliance with the permit, law, or rule, weather conditions such as extremely low humidity or wind factor, accidental ignition of any form of combustible or flammable material in the vicinity of the public display due to falling debris from the display, or any other reason where the fire marshal or designee determines that public safety or fire prevention require the public display to be cancelled.

E. Areas of public access shall be determined by the fire marshal or designee and maintained in an approved manner. Any adult person, firm, partnership, corporation or association may apply for a fireworks permit; provided, that the applicant must hold a current business license issued by the city, and must be, or be sponsored by, a person or entity which has a permanent address within the city limits. The application shall be filed with the business licensing specialist or designee.

The application shall include the following:

(1) Proof that the applicant has been issued a fireworks license or permit by the Chief of the Washington State Patrol acting through the city's fire marshal;

(2) A description of the proposed location of the fireworks;

(3) Proof that the applicant has an insurance policy with bodily injury liability limits of \$50,000/\$1,000,000 for each person and occurrence and \$50,000 for property damage liability for each occurrence. The city shall be named as an additional insured on the policy;

(4) An annual license fee of \$100.00;

(5) Subject to MMC 9.20.080, such permit shall be issued if the application meets the requirements of Chapter 70.77 RCW and all ordinances of the city of Marysville. (Ord. 2890 § 1, 2012; Ord. 2737 § 1, 2008; Ord. 2409 § 4, 2002; Ord. 2031 § 2, 1995; Ord. 1592, 1987; Ord. 1241 § 2, 1982; Ord. 1235 § 3, 1982).

9.20.080 Action by city council.

Upon seven days' advance written notice to the applicant, the city council shall consider the application at a public meeting. The applicant may offer testimony at the meeting, subject to the city council's rules of procedure. The city council shall consider the report and recommendations of the fire marshal and any additional evidence. The city council may deny the application if it does not meet the requirements of chapter 70.77 RCW or this chapter or if the proposed display would be hazardous to property or dangerous to any person. The city council may impose any conditions that are reasonably related to public safety or fire prevention. Upon seven days'

~~advance written notice to the applicant, the city council shall hold a public meeting on the issuance of a fireworks permit. The city council shall have power, in its discretion, to grant or deny the application, subject to reasonable conditions, if any, as it shall prescribe.~~ The decision of the city council with respect to an application shall be final. (Ord. 2890 § 2, 2012; Ord. 2737 § 1, 2008; Ord. 1241 § 3, 1982; Ord. 1235 § 4, 1982).

9.20.090 Issuance of – Nontransferable.

Upon approval by the city council of a fireworks permit, the city clerk shall issue the same to the applicant, who thereafter shall be the permittee. The permit shall be for a ~~term of one year~~ specific public display with the date, time, and place specified. No permit shall be transferable without express approval by the city council. (Ord. 2737 § 1, 2008; Ord. 2409 § 5, 2002; Ord. 1235 § 5, 1982).

9.20.100 Special effects for entertainment media.

Any person desiring to assemble, compound, use, or display of articles pyrotechnic or special effects in the production of motion pictures, radio or television productions, or live entertainment shall apply for a permit utilizing the procedures of this chapter. Such special effects shall be under the direction and control of a pyrotechnic operator licensed by the state of Washington.

9.20.110 Operation of fireworks stands Enforcement.

A. The fire chief, or designee, is authorized to enforce all provisions of this chapter and, in addition to criminal sanctions or civil remedies, he may revoke any permit issued pursuant to this chapter upon any failure or refusal of the permittee to comply with the orders and directives of the fire chief or designee, and/or to comply with any provisions of this chapter or other requirements of the municipal code.

B. The police chief and commissioned police officers of the Marysville Police Department are authorized to enforce all provisions of this chapter. The party holding the fireworks permit shall operate the fireworks stand exclusively by and through its employees, members or designees. At least one adult person (age 18 or over) shall be present at all times a fireworks stand is open to the public. No person under 16 years of age shall be allowed to sell fireworks or remain within a fireworks stand when it is open to the public. (Ord. 2737 § 1, 2008; Ord. 1778 § 2, 1990; Ord. 1241 § 4, 1982; Ord. 1235 § 6, 1982; Ord. 479 § 11, 1962).

9.20.120 Penalties for violations Temporary fireworks stand specifications.

A. Any person possessing, using, discharging, igniting, or exploding any consumer firework in violation of this chapter has committed a civil infraction.

1. For a period of 365 days after the effective date of this ordinance, a violation of this subsection shall be a class 3 civil infraction.

2. For the period beginning on the 366th day after the effective date of this ordinance until the 730th day after the effective date of this ordinance, a violation of this subsection shall be a class 2 civil infraction.

3. Beginning on the 731st day after the effective date of this ordinance, a violation of this subsection shall be a class 1 civil infraction.

4. The penalties and assessments for each class of infraction shall be as set by state law. Base penalties shall be as set forth in RCW 7.80.120 as now enacted or subsequently amended. Public Safety and Education Assessments shall be as set forth in RCW 3.62.090 as now enacted or subsequently amended. The base penalty amounts and Public Safety and Education Assessments at the time of the adoption of this ordinance are shown in the table below. The table is for illustrative purposes only and the amount of the base fine and the Public Safety and Education Assessments shall be as provided by state law.

<u>Class</u>	<u>Base Penalty per RCW 7.80.120</u>	<u>Public Safety and Education Assessment per RCW 3.62.090(1)</u>	<u>Public Safety and Education Assessment per RCW 3.62.090(2)</u>	<u>Total Fine</u>
<u>Class 1</u>	<u>250</u>	<u>175</u>	<u>88</u>	<u>\$513</u>
<u>Class 2</u>	<u>125</u>	<u>88</u>	<u>44</u>	<u>\$257</u>
<u>Class 3</u>	<u>50</u>	<u>35</u>	<u>18</u>	<u>\$103</u>

B. Any person selling or transferring any consumer firework in violation of this chapter is guilty of a misdemeanor.

C. Any person possessing, using, selling, transferring, discharging, igniting, or exploding any display firework in violation of this chapter is guilty of a gross misdemeanor.

D. Any person possessing, using, selling, transferring, discharging, igniting, or exploding any dangerous firework, as defined by state law, is guilty of a gross misdemeanor.

E. Any fireworks that are possessed or used in violation of this chapter may be confiscated. ~~All retail sales of consumer fireworks shall be permitted only from a retailer at a retail fireworks stand or outlet that is temporary, and the sale from any other building or structure is prohibited.~~

~~A retail fireworks stand shall be subject to the following provisions, unless preempted by state-wide standards, in which event the state-wide standards shall apply:~~

~~(1) No retail fireworks stand shall be located within 25 feet of any other building, nor within 50 feet of any gasoline station.~~

~~(2) Retail fireworks stands shall be temporary and need not comply with the provisions of the building code of the city; provided, however, that all stands shall be erected under the supervision of the fire chief, as defined elsewhere in this code, who shall require that the stand be constructed in a manner which shall ensure the safety of attendants and patrons, shall be wired according to state or national electrical code, and shall satisfy any state-wide standards issued by the State Director of Fire Protection. At least two approved fire extinguishers with 2.5 gallons apiece, or equivalent, shall be maintained at each stand at all times.~~

~~(3) Each stand must have two exits.~~

~~(4) No retail fireworks stand shall be located closer than 600 feet to another fireworks stand.~~

~~(5) All weeds and combustible material shall be cleared from the location of the stand, including a distance of at least 20 feet surrounding the stand.~~

~~(6) "No Smoking" signs shall be prominently displayed on the fireworks stand.~~

~~(7) Each retail fireworks stand shall be operated by adults only. No fireworks shall be left unattended in a stand.~~

~~(8) All unsold stock and accompanying litter shall be removed from the location by 12:00 noon on the sixth day of July of each year.~~

~~(9) The retail fireworks stand shall be disassembled and removed from the location by 12:00 noon on the sixth day of July of each year. (Ord. 2737 § 1, 2008; Ord. 2409 § 6, 2002; Ord. 1778 § 3, 1990; Ord. 479 § 12, 1962).~~

9.20.125 — Enforcement — Revocation of permit.

~~The city fire marshal shall be authorized to enter and inspect all fireworks stands to assure compliance with the provisions of this chapter and to protect the public health, safety and welfare. The fire marshal is authorized to temporarily revoke any permit, for cause. Any party aggrieved by such revocation shall have the right to appeal the same to the city council within 10 days thereafter. The decision of the city council shall be final. (Ord. 2737 § 1, 2008; Ord. 1235 § 7, 1982).~~

9.20.130 — Penalties for violations.

~~(1) Any person violating this chapter shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding \$1,000, or by imprisonment in the jail for a period not exceeding 90 days, or by both such fine and imprisonment. Further, the license shall be revoked.~~

~~(2) Any person violating portions of this chapter specifically designated by this chapter or by RCW as gross misdemeanor or misdemeanor, upon conviction shall be guilty and punished for gross misdemeanor by a fine not to exceed \$5,000 or by imprisonment in jail for a period not to exceed 365 days or by both such fine and imprisonment; for misdemeanor by a fine not to exceed \$1,000 or by imprisonment in jail for a period not to exceed 90 days or by both such fine and imprisonment.~~

~~(3) Civil Infraction.—~~

~~(a) Violations involving possession or discharge of small quantities of fireworks, unless specifically designated in this chapter or RCW as gross misdemeanor or misdemeanor, is a civil infraction, and may be cited as a “civil infraction.”~~

~~(i) Upon finding that a violation has been committed the person committing the act shall be assessed an amount not to exceed \$500.00 plus applicable statutory assessments.~~

~~(ii) Such penalty is in addition to any other remedies or penalties specifically provided by law; nothing in this section precludes the charging of a misdemeanor or gross misdemeanor crime as defined under this chapter or RCW.~~

~~(iii) Three or more of said “civil infractions” within any consecutive two-year period of time shall be cited as a misdemeanor as set forth in subsection (1) of this section.~~

~~(b) “Civil infraction” has the meaning given that term by Chapter 7.80 RCW, the Infraction Rules for Courts of Limited Jurisdiction (“IRLJ”) and any local rule adopted by the Marysville municipal court. (Ord. 2737 § 1, 2008; Ord. 479 § 13, 1962).~~