

### **9.03 SALE AND DISCHARGE OF FIREWORKS RESTRICTED.(Ord. #1394 – 02-05-2015)**

- (1) STATE LAWS ADOPTED. The current and future statutory provisions of Wisconsin Statute, Section 167.10, regulating the sale and use of fireworks, except in so far as this ordinance is more restrictive as to use, exclusive of any provision therein relating to penalties, are hereby adopted by reference and made part of this code as though fully set forth herein. Any future additions, amendments, revisions or modifications of Wisconsin Statute 167.10 incorporated herein are intended to be made a part of this code, except in so far as this ordinance is more restrictive as to use.
- (2) SALE OF FIREWORKS.
  - (a) The sale of “fireworks”, as that term is defined in Section 167.10(1), Wisconsin Statutes, is prohibited within the City of Muskego.
  - (b) The sale of those items defined in Section 167.10(1)(e), (f), (i), (j), (k), (l), (m) and (n), Wisconsin Statutes, shall only be allowed after the seller of those items has been issued a license by the City of Muskego for that purpose. The license shall be issued pursuant to the provisions of Section 12.03 of the City of Muskego Municipal Code, and the provisions, procedures and conditions of that section shall apply, with the exception of the license fee. The fee for a license issued under this section shall be a \$50.00 daily fee or an annual license fee of \$500.00 to compensate for investigating and monitoring sellers and enforcing the provisions of this section.
- (3) USE OF FIREWORKS.
  - (a) Prohibited Without a Permit. The use of fireworks, as that term is defined in Section 167.10(1), Wisconsin Statutes, is prohibited in the City of Muskego unless the fireworks are used pursuant to a group user permit or individual user permit issued by the City of Muskego, according to the provisions of Section 167.10 (3), Wisconsin Statutes and all of the requirements and limitations of this Section 9.03.
  - (b) Group User Permit. A group user fireworks discharge permit application may be made by: a public authority; a fair association; an amusement park; a park board; a civic organization; a group of individuals that are all residents of the City of Muskego; of an agricultural producer for the protection of crops from predatory birds or animals. Such application may be made pursuant to Section 167.10 (3) (c), Wisconsin Statutes, and shall be subject to all terms of this Section 9.03. For group users, a pyrotechnic professional must discharge the fireworks and the applicant or sponsoring organization must have liability insurance naming the City of Muskego as additional insured in the amount of \$1,000,000.00 bodily injury to one person, \$2,000,000 for injury to more than one person, and \$1,000,000 for damage to property. The application must specify the name and address of the requested permit holder, the date on and after which fireworks may be purchased, the general kind and approximate quantity of fireworks which may be purchased, the date and location of the proposed use, and the name, address and telephone number for the pyrotechnic professional that will discharge the fireworks. If the application is from a group of individuals, the location of the proposed use must be owned by one of the members of the group, and this ownership of the location must be stated on the application. A certificate of insurance in a form approved by the City Attorney shall be provided prior to the discharge of any fireworks, evidencing all of the required insurance coverage. A separate application must be submitted for each day use is intended.

- (c) Individual User Permit. An individual user fireworks discharge permit application may be made by any owner and resident of real property in the City of Muskego, for intended discharge on such applicant's property. Such application may be made pursuant to Section 167.10(3)(c), Wisconsin Statutes, and shall be subject to all applicable terms of this Section 9.03. Such use is restricted to the following dates: July 3, 4 or 5 each year, subject to the following. If the 4<sup>th</sup> of July falls on a Monday or Tuesday, the Saturday before will be allowed. If the 4<sup>th</sup> of July falls on a Wednesday or Thursday, the Saturday after will be allowed. The application must specify the name and address of the requested permit holder, the date on and after which fireworks may be purchased, the general kind and approximate quantity of fireworks which may be purchased, the date and location of the proposed use, and the name, address and telephone number for the individual responsible for the discharge of fireworks. A separate application must be submitted for each day use is intended. All permit applications under this subsection must be filed between May 1 and June 30, unless earlier submission is required to allow for Public Safety Committee review pursuant to Section 9.03(3)(d)(7).
- (d) Restrictions and Limitations. In addition to all other requirements of this Section 9.03 and applicable State laws, any use of fireworks shall be subject to the following requirements:
1. *Wind velocity.* Wind velocity at the time of use shall not be more than 15 miles per hour as recorded by the U.S. Weather Bureau, Milwaukee, Wisconsin.
  2. *Wind direction.* Wind direction at the time of use shall be away from buildings or other combustible materials and structures and shall not carry fireworks onto any adjoining buildings or cause annoyance or danger to other persons or property.
  3. *Fire prevention.* Sufficient firefighting implements and personnel shall be available at the scene to control any fire that may be caused by the fireworks.
  4. *Hours.* Fireworks may only be used between 4:00 P.M. and 11:00 P.M.
  5. *Responsibility on Permitted Property.* For property that is subject to a fireworks permit, only the individual or professional designated on the permit application may discharge fireworks. Such individual or professional is responsible in case of a violation, jointly and severally with the permit holder and property owner, and any or all of these parties may be cited for the violation.
  6. *Responsibility on Non-Permitted Property.* For property that is not permitted for the discharge of fireworks, if fireworks are discharged the actual person that caused the illegal discharge is responsible for the violation if such person is identified to the City's satisfaction. If the City cannot determine to its satisfaction the actual person that caused the illegal discharge, the owner or occupant of the property where the discharge occurred will be presumed to have caused the discharge, or to have aided or abetted the discharge, and shall be held responsible for the illegal discharge and may be cited for the violation. Such presumption may be rebutted only by credible evidence to show that the owner or occupant of the property had no knowledge of the fireworks being on the property at any time prior to the discharge, and that the owner or occupant of the property fully cooperated with the City in trying to identify the actual person who caused the illegal discharge. If the actual person that caused the illegal discharge is a minor child, the

parents of the minor child shall be held responsible along with the minor child, and may be cited for the violation.

7. *Public Safety Committee Review.* The City of Muskego Public Safety Committee shall review certain fireworks permit applications. This review applies when the application includes an applicant, property owner, or person designated to discharge fireworks, who has been convicted of any citation issued under this section in the prior year, or was the subject of a written complaint filed with the City within one week of a permitted fireworks discharge in the prior year, or was issued a written warning from the City police department for a fireworks discharge violation in the prior year. For individual permit applications subject to this Safety Committee Review requirement, the applications must be submitted after April 1 and prior to May 1 of the year in which discharge is intended, to allow for this review. For group permit applications subject to this requirement, the applications must be submitted at least 30 days prior to the requested event, to allow for this review. The failure of an applicant that is subject to this Safety Committee Review requirement to submit their application in a timely manner, or to appear before the Committee, will result in the application for a permit being denied.
8. *No sale.* No person in the possession of fireworks pursuant to this section may resell those fireworks in the City of Muskego.
9. *Permit availability.* The permit the city issues for the use of fireworks must be made available upon request of a police officer. In accordance with state statute, a copy of a permit shall be given to the municipal fire and law enforcement official at least 2 days before the date of authorized use, and the Clerk is responsible for doing so.
10. *Fee.* A fee for said permit shall be established from time-to-time by resolution of the City of Muskego Common Council and must be submitted at the time of application. (Ord. #912 – 03/20/97)
11. *Temporary ban.* The Mayor, upon recommendation of the Fire Chief because of extreme dryness or drought, may in the Mayor's discretion declare a temporary ban on fireworks. No fireworks may be discharged during a declared ban. Any permit which would otherwise allow discharge on a date during such ban is automatically revoked, subject to the following. Such permittee may apply for a new discharge date after the ban is lifted without incurring a new fee. For individual user permits, if any of the possible discharge dates of Section 9.03(3)(c) are during the ban, the Common Council shall have the authority, but not the obligation, to establish additional discharge dates which would apply only to those permittees who were not able to discharge fireworks on their permitted dates due to the ban.
12. *Acceptance of risk.* All fireworks discharge permits issued in the City are issued subject to the possibility that discharge may be prohibited, even if the permit is issued, due to the restrictions and limitations of this ordinance. All applicants accept this risk and shall be solely responsible for all consequences of the same, by their submittal of the application.

(4) SEIZURE AND DESTRUCTION OF FIREWORKS.

In addition to, and not to the prejudice or exclusion of such other penalties and remedies as may apply, fireworks stored, handled, sold, possessed or used by a person who violates the terms of this ordinance may be seized and held as evidence of the violation. In the event a person is convicted of violating this ordinance all fireworks seized shall be destroyed pursuant to the provisions of Section 167.10(8)(b), Wisconsin Statutes, and any license or permit issued to the person under this section shall be revoked.