

ORDINANCE NO. 2009-05

AN ORDINANCE of the City of Bainbridge Island, Washington, relating to fireworks; repealing BIMC Chapter 5.36; and adopting a new BIMC Chapter 8.28 (Fireworks).

WHEREAS, the City Council is concerned about public safety and desires to protect the public from injuries and fires resulting from indiscriminate use of fireworks; and

WHEREAS, the City Council is concerned about the impact of fireworks on the environment and desires to minimize such impact; and

WHEREAS, the City Council finds that this ordinance satisfies the health, safety and public welfare of the people of Bainbridge Island; and

WHEREAS, the City Council conducted a duly advertised public hearing and received public testimony; and

WHEREAS, the purpose of this ordinance is to further restrict the sale and discharge of fireworks; now, therefore,

THE CITY COUNCIL OF THE CITY OF BAINBRIDGE ISLAND, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Chapter 5.36 of the Bainbridge Island Municipal Code ("BIMC") is hereby repealed in its entirety.

Section 2. A new chapter, 8.28, Fireworks, to Title 8, Health and Safety, is hereby adopted in its entirety as follows:

"Chapter 8.28

Fireworks

Sections:

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| 8.28.010 | Definitions. |
| 8.28.020 | Date and times when sale or discharge of consumer fireworks permitted. |
| 8.28.030 | Acts prohibited without a permit. |
| 8.28.040 | Application for public/private fireworks display. |
| 8.28.050 | Standards for public/private fireworks displays. |
| 8.28.060 | Special effects for entertainment media. |

- 8.28.070 Acts not prohibited – Signal purposes, forest protection, etc.
- 8.28.080 Sales from temporary stands required.
- 8.28.090 Standards for fireworks stands.
- 8.28.100 Prohibition due to extreme fire danger.
- 8.28.110 Applicability.
- 8.28.120 Chapter in connection with state law.
- 8.28.130 Enforcement.
- 8.28.140 Penalty for violations.

8.28.010 Definitions.

- A. “Fireworks” means any composition or device designed to produce a visible or an audible effect by combustion, deflagration or detonation, and which meets the definition or articles pyrotechnic as set forth in RCW 70.77.138, or consumer fireworks or display fireworks.
- B. “Public display” means an entertainment feature where the public is invited, admitted and/or permitted to view the display or discharge of display fireworks.
- C. “Private display” means an entertainment feature where the public is not invited, admitted and/or permitted to view the display or discharge of display fireworks.
- D. “Special effects,” pursuant to RCW 70.77.146, means any combination of chemical elements or chemical compounds capable of burning independently of the oxygen in the atmosphere, and designed and intended to produce an audible, visual, mechanical or thermal effect as an integral part of a motion picture, radio, television, theatrical or opera production, or live entertainment.
- E. “Display fireworks” means large fireworks designed primarily for display and classified as such by the U.S. Department of Transportation, as further set forth in RCW 70.77.131 and WAC 212-17-040.
- F. “Extreme fire danger” means a period of hot, dry weather accompanied by low fuel moistures. It is during this period that wildland fires can be expected and fire growth will be accelerated.

This chapter does not prohibit the use of flares or fuses in connection with the operation of motor vehicles, motor or sail vessels, or other transportation agencies for signal purposes or illumination or for use in forest protection activities or those uses described in RCW 70.77.311.

8.28.080 Sales from temporary stands required.

All sales of consumer fireworks shall be from temporary stands, which shall not be erected prior to the eighteenth day of June of any year and which shall be removed not later than the 10th day of July of the same year.

8.28.090 Standards for fireworks stands and transportation and temporary storage of fireworks.

Construction, location, maintenance, use and clean up of fireworks stands and related transportation and temporary storage of fireworks shall be done in accordance with RCW Chapter 70.77, WAC 212-17 Part V and all other applicable federal, state and local law. In addition, fireworks stands shall conform to the following conditions:

- A. No fireworks stand shall be located within 100 feet of any other building or structure, nor within 500 feet of any gasoline station, oil storage tank, or premises where flammable liquids are kept or stored.
- B. No fireworks stand shall be located within a radius of one-quarter mile from any other stand.
- C. Fireworks stands shall be located only in those areas or zones within the city wherein commercial activities are authorized under the applicable zoning laws of the city. The sale of fireworks shall not be deemed an enlargement of an existing nonconforming use. No fireworks shall be sold in any residential area where a commercial enterprise does not exist.
- D. Each fireworks stand shall have a provision for sufficient off-street parking, in the opinion of the fire marshal, to avoid impeding continuous flow of traffic at entrances and exits from the premises.

8.28.100 Prohibition due to extreme fire danger.

During periods of extreme fire danger, the fire marshal may prohibit the discharge of all fireworks.

8.28.110 Applicability.

The provisions of this chapter shall be applicable to the sales and use of all fireworks except toy paper caps containing not more than twenty-five hundredths grain of explosive compound for each cap and trick or novelty devices not classified as common fireworks.

8.28.120 Chapter in connection with state law.

This chapter is intended to augment RCW Chapter 70.77, and shall be construed in connection with that law and any and all rules or regulations issued pursuant thereto.

8.28.130 Enforcement.

Commissioned law enforcement officers of the Bainbridge Island Police Department are authorized to enforce all provisions of this chapter except those provisions where enforcement authority is explicitly provided to the fire marshal.

8.28.140 Penalty for violations.

A. Except as provided in subsection B of this section, conduct made unlawful by this section shall be a civil infraction and is subject to a monetary penalty and a default amount of Five Hundred Dollars (\$500.00) plus statutory assessments. Other than the amount of the monetary penalty, a civil infraction under this section shall be processed in the manner set forth in RCW Chapter 7.80.

B. Any person who continues to be in violation of this section after receiving a notice of infraction pursuant to subsection A of this section, or who again violates this section within twelve (12) months after receiving a notice of infraction pursuant to subsection A of this section commits a misdemeanor and any person who is convicted thereof shall be punished by a fine not to exceed One Thousand Dollars (\$1000.00), or by imprisonment in jail for a term not exceeding ninety (90) days, or by both such fine and imprisonment.

- G. "Fire marshal" means the fire marshal of the Bainbridge Island Fire Department or his/her designee.
- H. "Consumer fireworks" means any fireworks designed primarily to produce visible or audible effects by combustion as defined by RCW 70.77.136, and includes the following:
1. Ground and hand-held sparkling devices, dipped sticks, sparklers, cylindrical fountains, cone fountains, illuminating torches, wheels, ground spinners and flitter sparklers as those terms are defined by WAC 212-17-035;
 2. Smoke devices as defined by WAC 212-17-035;
 3. Helicopters, aerials, spinners, roman candles, mines and shells, and mortars as those terms are defined by WAC 212-17-035;
 4. Division 1.4G explosives classified on January 1, 1984, as consumer fireworks by the United States Department of Transportation except that the term does not include firecrackers, salutes, chasers, skyrockets and missile-type rockets.

8.28.020 Date and times when sale or discharge of consumer fireworks permitted.

- A. Consumer fireworks may be sold by state licensed and permitted vendors within the city between the hours of 12:00 noon and 11:00 p.m. July 1st through July 4th.
- B. Consumer fireworks may be discharged within the city between the hours of 5:00 p.m. and 11:00 p.m. on July 4th.

8.28.030 Acts prohibited without a permit.

No person shall do any of the following acts in the city without having first obtained and having in full force and effect a valid permit issued by the fire marshal to do so:

- A. Manufacture, import, possess or sell any fireworks, including agricultural and wildlife fireworks, at wholesale or retail for any use provided, however no permit is required for the possession or use of consumer fireworks lawfully purchased at retail;
- B. Discharge special effects fireworks at any place; or

C. Make a public or private display of fireworks other than consumer fireworks during legal discharge times.

8.28.040 Application for public/private fireworks display.

Applications for a permit to hold, conduct or operate a public/private display of fireworks, other than consumer fireworks, shall be made to the fire marshal at least 10 days prior to the scheduled event. Applicants shall meet all qualifications and permit requirements of state law regarding public display of fireworks and all fire and safety requirements as set forth in the standards for public display per RCW Chapter 70.77, the fire code adopted in BIMC Chapter 20.04, and all applicable National Fire Protection Association standards.

8.28.050 Standards for public/private fireworks displays.

All public/private fireworks displays, other than displays of consumer fireworks, shall conform to the following:

- A. A permit issued by the fire marshal in accordance with BIMC 8.28.040 must be obtained.
- B. Compliance with all conditions listed in the permit issued by the fire marshal.

8.28.060 Special effects for entertainment media.

This chapter does not prohibit the assembling, compounding, use and display of special effects of whatever nature by any person engaged in the production of motion pictures, radio or television productions, theatricals or operas when such use and display is a necessary part of the production and such person possesses a valid permit issued by the fire marshal to purchase, possess, transport or use such fireworks, and meets the requirements of BIMC 8.28.040 and 8.28.050.

8.28.070 Acts not prohibited – Signal purposes, forest protection, etc.

C. In addition to the penalties provided in subsections A and B, the fire marshal and commissioned law enforcement officers of the Bainbridge Island Police Department may seize and dispose of fireworks that are possessed, sold, purchased, offered for sale, and/or used in violation of this chapter according to the seizure and forfeiture procedures contained in RCW 70.77.435 and RCW 70.77.440.

Section 3. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is declared invalid or unconstitutional for any reason, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 4. This ordinance shall take effect and be in force one (1) year after its passage, approval and publication as provided by law.

PASSED by the City Council this 24th day of June, 2009.



Christopher Snow, Mayor

ATTEST/AUTHENTICATE:

Rosalind D. Lassoff
Rosalind D. Lassoff, City Clerk

APPROVED AS TO FORM:

Paul McMurray, City Attorney

FILED WITH THE CITY CLERK:	June 3, 2009
PASSED BY THE CITY COUNCIL:	June 24, 2009
PUBLICATION DATE:	June 26, 2009
EFFECTIVE DATE:	June 30, 2010
ORDINANCE NO.	2009-05

