

**ORDINANCE Ord #2015-010**

**AN ORDINANCE TO ADOPT  
CHAPTER 14. ARTICLES 1-6. FIRE PREVENTION AND PROTECTION  
TO THE CITY OF POLSON BOOK OF ORDINANCES**

**WHEREAS**, the City Commission of Polson has determined that it is in the best interests of the citizens of Polson to reestablish, rewrite and reauthorize the Ordinances of the City;

**WHEREAS**, the Commission recognizes the most expeditious way of adopting such Ordinances is by adoption in a near sequential manner over a term of months to give the Commission and the public time to review the material;

**WHEREAS**, it appears in the best public interest that the following ordinances be adopted for the City of Polson;

**NOW, THEREFORE, BE IT ORDAINED** by the City of Polson that the following Articles of the Ordinances of the City of Polson be adopted in full as attachments hereto:

**CHAPTER 14. FIRE PREVENTION AND PROTECTION**

**ARTICLE 1. - IN GENERAL**

**ARTICLE 2. - FIRE CODE**

**ARTICLE 3. - OFFENSES CONCERNING FIREFIGHTING OPERATIONS**

**ARTICLE 4. - OPEN BURNING**

**ARTICLE 5. - FIREWORKS**

**ARTICLE 6. - RESERVED**

The clerk is hereby instructed to codify this Ordinance and to place the same in the Book of Ordinances of the City of Polson.

Date: 09/21/15

First Reading: 5 ayes      nays      abstentions 2 absent

Date: 10/19/15

Second Reading: 4 ayes      nays      abstentions 3 absent

Effective Date: 11/18/15

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

## CHAPTER 14. FIRE PREVENTION AND PROTECTION

### ARTICLE 1. - IN GENERAL

### ARTICLE 2. - FIRE CODE

### ARTICLE 3. - OFFENSES CONCERNING FIREFIGHTING OPERATIONS

### ARTICLE 4. - OPEN BURNING

### ARTICLE 5. - FIREWORKS

### ARTICLE 6. - RESERVED

#### ARTICLE 1. IN GENERAL

Sec. 14.01.010-14.01.099. Reserved

#### ARTICLE 2. FIRE CODE

Sec. 14.02.010. International Fire Code.

Sec. 14.02.020. Fire code board of appeals.

Secs. 14.02.030 – 14.07.099 Reserved.

##### Sec. 14.02.010. International Fire Code.

###### *A. Adoption by reference of the International Fire Code.*

1. The current edition of the International Fire Code together with any supplements, adopted by the Fire Prevention and Investigation Bureau of the Montana Department of Justice (or its successor), as set out in the Administrative Rules of Montana, and as amended from time to time by the Bureau, are adopted by reference and incorporated in this article as if set forth in full, with the additions, amendments, and deletions enumerated within the Administrative Rules, except as may be noted in this article, by future administrative order, or by any regulations not applicable to local government jurisdictions.
2. One copy of the current edition of the code shall be kept on file in the office of the City Clerk of the City of Polson at 106 First Street East, Polson, MT, and one copy shall be kept on file in the office of the Polson Fire Department at the above address.
3. Any amendments adopted by the Fire Prevention and Investigation Bureau which apply to local government jurisdictions, including the adoption of the latest editions of the International Fire Code or applicable Administrative Rules of Montana shall become effective upon execution of an administrative order of the city manager unless a different effective date is specified in the administrative order.
4. A copy of the amendment notification and the corresponding new edition will be kept in the office of the city clerk, and the city fire department.
5. The International Fire Code, Administrative Rules of Montana, as adopted in subsection A.1 of this section, are applicable within the city limits.

###### *B. Violation; penalty.*

1. Any person, firm, business or corporation, who erects, constructs, reconstructs, enlarges, alters, repairs, moves, improves, removes, converts, equips, uses, changes the use of, occupies or maintains any building or structure in violation of any provision of this code shall be guilty of a misdemeanor criminal offense punishable by a fine not to exceed \$500.00, or be imprisoned in the county jail for a term not to exceed six months, or both. Each day the violation is allowed to continue shall be deemed a separate chargeable criminal offense.
2. Any damages caused or injuries sustained as a result of any violation of this article shall be ordered paid as restitution as a part of any conviction for any violation.
3. The court may order the reimbursement of costs of enforcement, investigation, fire suppression services, overtime and prosecution related to a violation upon conviction.

**Sec. 14.02.020. Fire code board of appeals.**

A. *Creation.* The city commission of the city shall appoint an ad hoc fire code board of appeals, hereinafter referred to as the "board," and designate the board to determine the suitability of alternate materials and types of construction under the International Fire Code and to provide reasonable interpretation of the International Fire Code, as adopted by the city.

B. *Membership; meetings.*

1. The board shall consist of five members, appointed by the city commission, who are qualified by experience and training to pass upon pertinent matters. Each member may be reappointed without limitation on the number of reappointments. The fire chief shall be an ex officio member and shall act as secretary of the board.
2. Initial terms of office shall be as follows: one appointed for one year, two appointed for two years and two appointed for three years. Succeeding appointments shall be for a period of three years.
3. Vacancies shall be filled in the same manner as original appointments for the balance of the term remaining.
4. Persons of legal age may be appointed to the board. A majority of the board shall be residents of the city. Nonresident members of the board shall live within the zoning jurisdictional area and shall have some interest in the city by virtue of working in the city, owning property in the city or entering the city frequently for any lawful purpose.
5. Members shall serve without compensation for their time and services.
6. Meetings of the board shall be conducted in accordance with all applicable rules and regulations of the city and the minimum bylaw provisions adopted by the board and approved by the commission.
7. The board shall hear appeals not more than 30 days after filing thereof, and render all decisions and findings in writing to the fire chief, with a copy to the appellant.

8. Any expenses incurred must first be approved by the city commission.

**Secs. 14.02.030 – 14.07.099 Reserved.**

**ARTICLE 3. OFFENSES CONCERNING FIREFIGHTING OPERATIONS**

- Sec. 14.03.010. False alarms and tampering with fire alarm boxes prohibited.
- Sec. 14.03.020. Taking or damaging fire apparatus prohibited; exception.
- Sec. 14.03.030. Taking fire apparatus for private use or outside city prohibited.
- Sec. 14.03.040. Fire area limits; private citizens to help extinguish fires.
- Sec. 14.03.050. Firefighting operations; destruction of property authorized when.
- Sec. 14.03.060. Hindering firefighting operations prohibited.
- Sec. 14.03.070. Abatement of fire hazard nuisances caused by structures.
- Sec. 14.03.080. Abatement of nonstructural fire hazard nuisances.
- Secs. 14.03.090 – 14.03.199 Reserved.

**Sec. 14.03.010. False alarms and tampering with fire alarm boxes prohibited.**

No person shall willfully use any fire alarm box, or telephone, or any means whatsoever for transmitting or sending in to the fire department an alarm of fire which such person knows to be false; nor shall such person willfully tamper with, or injure or destroy any such fire alarm box or any of the equipment thereof. No person shall negligently allow false fire alarm reports to be transmitted or sent which results in the mobilization of fire department resources to the report area. Costs of response for willfully or negligently transmitting or sending such false report shall be billed and paid by the responsible party or landowner.

**Sec. 14.03.020. Taking or damaging fire apparatus prohibited; exception.**

It is unlawful for any person or persons to take out or remove from the fire stations of the city, where the same are kept, any ladders, trucks, hose, hose cart or any other fire apparatus, except in case of fire, or under the direction of the chief of the fire department; nor shall any person or persons mar, deface or in any manner injure any of the fire apparatus used by the fire department. Any person violating any of the provisions of this section shall be guilty of a misdemeanor.

**Sec. 14.03.030. Taking fire apparatus for private use or outside city prohibited.**

Any officer in command of the fire department who suffers the engine or other fire apparatus, the property of the city, to be taken beyond the city limits, without permission of the city manager or under a duly authorized mutual or automatic aid agreement, shall be guilty of a misdemeanor. If any person having charge of any engine or other fire apparatus, the property of the city, suffers the same to be applied to private use without permission of the city manager, such person shall be guilty of a misdemeanor.

**Sec. 14.03.040. Fire area limits; private citizens to help extinguish fires.**

The chief of the fire department may prescribe limits in the vicinity of a fire within which no person, except those residing therein, members of the fire department, members of the police

force, or those admitted by the chief of the fire department, or the chief's subordinates, shall be permitted to respond.

The chief of the fire department, when in the chief's judgment the same is necessary, may call upon any person present to assist the firefighters in their duties, or to assist in extinguishing any fire, and any such person so called upon who refuses or neglects to so assist, unless physically incapacitated, shall be guilty of a misdemeanor.

**Sec. 14.03.050. Firefighting operations; destruction of property authorized when.**

The chief of the fire department, or in the chief's absence anyone acting in the chief's capacity, may, during the progress of any fire, whenever in the chief's judgment it becomes necessary in order to check or control the same, order any fence, building or structure to be cut or torn down and removed. The chief of the fire department shall, with the consent of the city manager, have power to cause any building or structure to be blown up for the purpose of checking or extinguishing the fire, and may tear down any portion of any building which may remain after a fire if, in the chief's judgment, such portion of any building so remaining standing shall be dangerous to persons or property.

**Sec. 14.03.060. Hindering firefighting operations prohibited.**

Any person who willfully interferes or hinders any city officer or firefighter in the performance of such officer's or firefighter's duty at, going to, or returning from any fire, or while attending to the officer's or firefighter's duties as a member of the fire department, or who willfully or negligently drives any dray, wagon, streetcar, locomotive, train of cars or other vehicle across, or along or upon any hose, or who willfully cuts, defaces, destroys or injures any telegraph wire or pole, or signal box, or any of the property belonging to or connected with the fire department, or any fire alarm telegraph, shall be deemed guilty of a misdemeanor.

**Sec. 14.03.070. Abatement of fire hazard nuisances caused by structures.**

Any and all buildings, ruins, chimneys, flues, boilers, walls, remains of burned buildings or other constructions within the city limits which, by reason of their construction or condition, are in danger of being set on fire, or are in any manner a menace to adjoining property or to the public generally, are each hereby declared to be a nuisance. It shall be the duty of the chief of the fire department to examine all such, and, for such purpose, may enter any building within reasonable hours, and if in the chief's opinion any nuisance, as defined by this article, shall exist, the chief of the fire department shall notify the owner or owners to abate such nuisance forthwith.

In case the owner of any premises upon which a nuisance exists fails or refuses to abate such nuisance, after being notified as aforesaid, the chief of the fire department shall report the facts in relation thereto to the city commission. If the city commission finds that such nuisance exists, it may direct the chief of police or city manager to abate such nuisance. The expense thereof shall be reported by such officer so abating same to the commission, to be an item of special assessment, which may be assessed against the premises as in case of special assessment of taxes. The owner of such premises, permitting any such nuisance to remain after being notified, shall be deemed guilty of a misdemeanor.

**Sec. 14.03.080. Abatement of nonstructural fire hazard nuisances.**

It shall be the duty of the chief of the fire department to inspect all streets and alleys, cellar ways, back lots, woodsheds and all other places within the city limits where shavings, straw, waste or other combustible material may or does accumulate, and to order instant removal of such material, if any is found, by the person responsible, or by the person upon whose premises the same may be located.

Upon the refusal of any such person so notified to abate the nuisance created by such combustible material so being in such place, the person so refusing shall be deemed guilty of maintaining a nuisance, and upon conviction thereof shall be fined as for a misdemeanor.

**Secs. 14.03.090 – 14.03.199 Reserved.**

**ARTICLE 4. OPEN BURNING**

- Sec. 14.04.010. Definitions.
- Sec. 14.04.020. Permit; when required; fees.
- Sec. 14.04.030. Other burning allowed with a permit.
- Sec. 14.04.040. Materials prohibited for open burning.
- Sec. 14.04.050. Burn barrels prohibited.
- Sec. 14.04.060. Permit holder responsibilities.
- Sec. 14.04.070. Safety conditions.
- Sec. 14.04.080. Enforcement; penalties.
- Secs. 14.04.090 – 14.04.199 Reserved.

**Sec. 14.04.010. Definitions.**

A. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. "Best available control technology" means those techniques and methods of controlling emissions of air contaminants from an open burning source and that limits those emissions to the maximum degree taking into consideration impacts on energy use, the environment, the economy, and any other costs, including the cost to the source, including, but not limited to:
  - a. Scheduling burning during periods and seasons of good ventilation;
  - b. Considering atmospheric dispersion forecasts;
  - c. Utilizing predictive modeling results from the Montana Department of Environmental Quality to minimize smoke;
  - d. Limiting the amount of burning to be performed during any one period of time;

- e. Using ignition and burning techniques that minimize smoke production;
- f. Selecting fuel preparation methods to minimize dirt and moisture content;
- g. Promoting fuel arrangements that create an adequate air to fuel ratio;
- h. Prioritizing burns as to air quality impact and assigning control techniques accordingly; and
- i. Promoting alternative treatments and uses of materials so that they do not have to be burned.

2. "Major open burning" means open burning that, on a statewide basis, will emit more than 500 tons of carbon monoxide or 50 tons of any other pollutant regulated under title 17, chapter 8, Administrative Rules of Montana (ARM), in a calendar year, except hydrocarbons. Major open burning requires a permit from the state.

3. "Minor open burning" means open burning that emits less pollutant than "major open burning" and must comply with this article, any other applicable state, federal, or county law including the ARMs and uses the best available control technology (BACT).

4. "Open burning" means the burning or combustion of any material directly in the open air or in a receptacle other than a furnace, multiple chambered incinerator, or a wood waste burner commonly used by the wood products industry.

**Sec. 14.04.020. Permit; when required; fees.**

A. For burning between the periods of March 1 through November 30, a county or tribal open burn permit must be obtained prior to engaging in any open burning within the city limits. When limits for atmospheric conditions or hours restrict burning, these limits will be designated in the permit restrictions.

B. For any major open burning during any time of the year or for open burning during the months of December, January, and February a person may make a written application to the state department of environmental quality or tribal authorities for permission to burn.

C. Where burning is conducted on public property or the property of someone other than the permit applicant within the city limits, the permit applicant will obtain a burn permit as well as written permission from the owner or the owner's authorized agent.

D. The fees for the permits will be set in accordance with a schedule adopted by the Lake County Board of County Commissioners or tribal fire management .

**Sec. 14.04.030. Other burning allowed with a permit.**

Essential agricultural open burning on a farm or ranch is allowed during the months of March through November with a burning permit and only for the purposes of eliminating excess vegetative matter from irrigation ditches or cultivated fields or improving range conditions or wildlife habitat when no reasonable alternative method of disposal is available.

Prescribed wild land open burning, if conducted on forest land or relatively undeveloped rangeland, is allowed with a burning permit only for the purpose of improving wildlife habitat or range conditions; reducing fire hazards from forestry practices; controlling forest pests and diseases; promoting forest regeneration; or promoting other accepted forest practices.

**Sec. 14.04.040. Materials prohibited for open burning.**

A. Open burning within the city limits is totally prohibited for:

1. Food wastes;
2. Styrofoam, plastic wastes and other materials generating noxious odors;
3. Poultry litter, animal droppings, dead animals or dead animal parts;
4. Rubber materials including, but not limited to, tires;
5. Treated lumber and timbers;
6. Pathogenic wastes;
7. Asbestos or asbestos-containing materials;
8. Materials resulting from salvage operations to reclaim or salvage any product or material, except materials from the forest practice commonly referred to as a salvage cut in timber harvesting;
9. Hazardous wastes, which are a waste or combination of wastes that, because of the quantity, concentration, or physical, chemical or infectious characteristic, if any, cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed as defined in the Code of Federal Regulations; and
10. Any other materials specifically prohibited by Montana Code Annotated and the ARMs.

**Sec. 14.04.050. Burn barrels prohibited.**

The use of burn barrels is totally prohibited within the city limits.

**Sec. 14.04.060. Permit holder responsibilities.**

A. A permit holder must call the county open burning number or tribal fire management each day burning is planned at least 30 minutes before the planned burn and give the following information:

1. Name, permit number, and phone number;
2. Material to be burned;

3. Starting time of burning, during daylight hours;
4. Location of burn;
5. The number of acres to be burned.

B. Before setting a fire, permit holders must ensure that adequate fire suppression equipment and personnel are present for fire control for the duration of the burn. The permit holder will not leave the immediate fire area until the fire has completely burned out, with no remaining embers or smoke.

C. The permit holder may delegate any of these duties to a designated responsible person; however, the permit holder is ultimately responsible for any violations.

**Sec. 14.04.070. Safety conditions.**

A. No fire shall be set if wind or weather conditions make it hazardous to burn. If wind or other weather conditions change making the fire hazardous, the fire must be extinguished as quickly as possible.

B. When there is high fire danger, because winds or other conditions make burning hazardous, or when fire suppression resources are not available, permits may be temporarily suspended until good ventilation exists and to allow assignment of burn priorities, if others request permission to burn on the same day.

C. The city fire chief may close or restrict open burning when necessary. All permit holders must extinguish fires upon request of any city or county law enforcement officer or firefighter. Failure to do so will be a violation of this article.

**Sec. 14.04.080. Enforcement; penalties.**

The city police department has the authority to investigate complaints and issue written notices of violation, orders to take corrective action, and citations to enforce this article.

**Secs. 14.04.090 – 14.04.199 Reserved.**

**ARTICLE 5. FIREWORKS**

Sec. 14.05.010. Definitions.

Sec. 14.05.020. When this article does not apply.

Sec. 14.05.030. Public display permitted when.

Sec. 14.05.040. General liability insurance required.

Sec. 14.05.050. Sale and discharge of fireworks.

Sec. 14.05.060. Permits required.

Sec. 14.05.070. Enforcement.

Sec. 14.05.080. Violation; penalty.

Secs. 14.05.090 – 14.05.199 Reserved.

**Sec. 14.05.010. Definitions.**

- A. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
- a. "Fireworks" means and includes any combustible or explosive composition or any substance, combination of substances, or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation and includes, but is not limited to, sky rockets, roman candles, dago bombs, blank cartridges, toy cannons, toy canes, or toy guns in which explosives other than toy paper caps are used, the type of balloons which require fire underneath to propel them, firecrackers, torpedoes, sparklers or other fireworks of like construction, any fireworks containing any explosive or flammable compound, or any tablet or other device containing any explosive substance. This definition includes items which contain even small amounts of silver fulminate, potassium nitrate, ammonium perchlorate, or other chemical or pyrotechnical composition intended to produce a pyrotechnic event or effect, even if not classified as a "hazardous material" under federal regulation.

**Sec. 14.05.020. When this article does not apply.**

- A. This article shall not apply to:
- 1. Fireworks held or sold to a person possessing a valid permit under MCA 50-37-107, and a valid permit issued by the fire chief for the purpose of conducting a supervised public display of such fireworks.
  - 2. Fireworks used by railroads or other transportation agencies for signal purposes or illumination.
  - 3. The sale or use of blank cartridges for a show or theater, for signal or ceremonial purposes in athletics or sports, for use by peace officers, or for use by official military organizations or organizations composed of veterans of the United States armed forces.
  - 4. Toy paper caps containing not more than 0.25 of a grain of explosive composition per cap.

**Sec. 14.05.030. Public display permitted when.**

- A. The fire chief and/or chief of police shall review and inspect all supervised public displays of fireworks, including "display fireworks," by the municipality, fair associations, amusement parks, or other organizations or groups of individuals upon completion of the necessary application and submission of appropriate fees as may be established by resolution of the city commission. A visual site inspection shall occur before any permit is issued. Submission of the application does not guarantee issuance of a permit. All applications under this section shall be made to the fire chief.
- B. Each display shall:

- a. Be handled by a licensed, bonded pyrotechnic operator to be approved by the fire chief;
  - b. Be located, discharged, or fired such that the display, in the opinion of the fire chief, shall not be hazardous to persons or property;
  - c. Clearly post a "NO SMOKING" warning within 50 feet of the staging and discharge area established for the display, and no one may smoke within the defined area.
- C. The application for a permit shall be made in writing at least 15 days prior to the date of the display, and shall contain, at a minimum:
- a. A map of the proposed display venue, including the temporary storage site, the parking and spectator viewing areas, the fireworks discharge point, location of structures and roads, streets, and alleys within a 1,000-yard radius, overhead obstructions or other hazards;
  - b. The name of the licensed and bonded pyrotechnic operator along with the operator's qualifications, training and experience, and the names of any assistants for the event;
  - c. The location of all fire hydrants, water spigots or other access points for water, and all other fire retardants or extinguishers available at or near the venue;
  - d. Proof of general liability insurance in an amount acceptable to the city, and which includes the city as an additional insured;
  - e. The name of the association, entity, organization or group and its organizing or supervising board or responsible parties for the event;
  - f. A complete list of the fireworks intended for use in the display together with their projectile range, if any;
  - g. The location, date and time of the display and written consent from the landowner; and
  - h. A detailed safety plan for the event.
- D. Upon inspection and issuance of the permit, and only then, sales, possession and use of fireworks for such display as detailed in the permit shall be lawful for that purpose only.
- E. Following the public display, the organizers and the pyrotechnic operator shall be responsible for clean-up of the display site, including disposal of all discharged fireworks and all non-discharged or "dud" fireworks in a safe manner.
- F. No permit issued under this article shall be subject to transfer.
- G. This permit may be revoked by the fire chief when any of the conditions under which the permit was granted change, when a hazardous condition is determined to exist, or when,

in the best judgment of the fire chief, such permit must be withdrawn in the interests of public safety, and may include violation of any rule, regulation or requirement of this article.

**Sec. 14.05.040. General liability insurance required.**

- A. An individual, firm, partnership, corporation or association planning a public display of fireworks shall provide proof of general liability insurance in an amount acceptable to the city attorney; and which includes the city as an additional insured.
- B. Notice to the city shall be given ten days prior to any public display if any insurance policy required under this article is cancelled or subject to non-renewal. Notice shall be provided by the insured and the insurance carrier.
- C. A copy of the insurance policy for any public display shall be filed with the city clerk and shall indemnify the city against any damages to private or public property, as well as any injuries to persons, which may be caused by or incident to the public display.

**Any individual, firm, partnership, corporation or association discharging fireworks without a public display permit shall be deemed to be the responsible party and shall be liable for any damages incurred as the result of such discharge. The individual, firm, partnership, corporation or association insurance policy or policies maintained by the individual or entity discharging the fireworks shall be subject to any claim as a result of such discharge resulting in damage or injury.**

**Sec. 14.05.050. Sale and discharge of fireworks.**

- A. No individual, firm, partnership, corporation or association shall possess for sale, sell, or offer for sale, at retail, or discharge within the city limits, any fireworks, as defined herein, except as specifically provided in this article.
- B. No parent, guardian or custodian of any child under the age of majority shall knowingly permit or consent to the possession or discharge of fireworks by any child under the age of majority without proper supervision. Possession or discharge by any child under the age of eighteen within the city limits shall be prima facie evidence of the knowing permission or consent of such parent, guardian or custodian.
- C. No fireworks may be discharged within the boundaries of or within 300 feet of any public park owned or maintained by the city without a public display permit except as otherwise provided in this article. No fireworks may be discharged upon any public street, alley, road or right-of-way, except as otherwise provided in this article. No fireworks may be discharged within 1,000 feet of any hospital, nursing or assisted living facility. No fireworks may be discharged under or upon a motor vehicle, whether moving or not, or within 300 feet of any gas station, gas, oil or propane storage facility or other area which is highly flammable by nature.
- D. Subject to the limitations contained in this article, fireworks, as listed in subsection E of this section, may be discharged within the city limits only on private property of the owner, or with the owner's permission, or on paved city streets which are not arterial streets or collectors when such discharge is in a safe and sane manner, and limited to the July 4 holiday only:

- a. Between 12:00 p.m. July 3 and 12:00 a.m. July 4;
  - b. Between 12:00 p.m. July 4 and 1:00 a.m. July 5;
  - c. Between 12:00 p.m. July 5 and 12:00 a.m. July 6;
- E. and for the New Year's Day holiday only from 11:00 p.m. December 31 until 1:00 a.m. January 1. As used in this subsection, the phrase "safe and sane manner" refers to actions which do not endanger life, limb or property of those in the area of the discharge. Nothing in allowing the discharge of fireworks within the city limits relieves the individual, firm, partnership, corporation or association of its responsibility for any injury or damage caused to individuals or property by the discharge of the fireworks. Any discharge, with or without a permit, is at the individual, firm, partnership, corporation or association's own risk, and is not sanctioned by this article.
- F. Permitted fireworks are the following type of Class C "common fireworks" among those listed in federal law:
- a. A cardboard or heavy paper cylindrical tube or cone that:
  - b. Produces a shower of color and sparks that reach a maximum of 15 feet;
  - c. May whistle or pop; and
  - d. Is not designed to explode or leave the ground;
  - e. A pyrotechnic wheel device:
    - i. May be attached to a post or tree; and
    - ii. Contains up to six "driver" units or tubes;
  - f. Any device that:
    - i. Spins, jumps, or emits popping sounds when placed on the ground;
    - ii. Does not exceed a height of 15 feet when discharged; and
    - iii. Does not travel laterally more than ten feet on a smooth surface when discharged;
  - g. Sparklers under 12 inches in length which do not have a magnesium make-up, glow worms, snakes, party poppers, trick noisemakers; and
  - h. Certain mortar type aerial devices and multi-shot cakes that are found acceptable by the fire chief.
- G. When, in the opinion of the fire chief, drought or other conditions exist which, when coupled with the discharge of fireworks, would pose a hazard to persons or property, the fire chief shall issue a ban on the discharge of all fireworks until such time as the condition causing the ban ceases to exist.
- H. Any individual, firm, partnership, corporation or association discharging fireworks under this article shall, upon such discharge, be responsible for clean-up of the discharge site,

including disposal of all discharged fireworks, all non-discharged or "dud" fireworks, and the associated debris from the discharged fireworks in a safe manner.

- I. It shall be unlawful for any individual, business entity, or association to use any fireworks designed to move vertically within two thousand feet of any part of the Polson Municipal Airport without first notifying the Fixed Base Operator of such intention for use no later than twenty-four hours prior to such use, or to follow any instructions issued by such Operator as to such use.

**Sec. 14.05.060. Permits required.**

- A. All groups and/or individuals engaged in the retail sale of fireworks shall obtain a permit at least 15 days prior to the opening of the retail outlet. Every permit issued for the retail sale of fireworks shall be conditioned on the retailer posting at his place of business, in such locations as may be directed by the Polson Fire Chief, a notice consisting of the terms of 14.05.05.0 above.
- B. All operators shall comply with all regulations set forth by the State of Montana.
- C. The permit fee for operation of an outlet for the sale of fireworks shall be as stated in the schedule of fees adopted for the city by resolution of the commission.
- D. No permit granted hereunder shall be transferable.

**Sec. 14.05.070. Enforcement.**

- A. Any police officer or firefighter may, in the enforcement of this article, seize, impound, remove or cause to be removed, at the expense of the owner, all stocks of fireworks offered for sale, sold, or in the possession of any individual, firm, partnership, corporation or association in violation of this article. Notice of the seizure and the reasons for the seizure shall be reported to the chief of police within 48 hours of the seizure.
- B. Fireworks seized under this section may be disposed of in a safe and proper manner by the police department ten days after seizure.
- C. Appeal of any seizure shall be filed with the chief of police in writing within five working days of the seizure. The decision of the chief of police on the appeal shall be final.

**Sec. 14.05.080. Violation; penalty.**

- A. Any individual, firm, partnership, corporation or association violating the provisions of this article shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than \$100.00 or more than \$500.00 for a first offense; a fine of not less than \$200.00 or more than \$500.00 for a second offense; and a fine of not less than \$300.00 or more than \$500.00 for a third or subsequent offense. Each day

of a violation constitutes a separate offense. In the case of a violation by a firm, partnership, corporation or association, the manager or members of the partnership or responsible officers or agents shall be deemed to be prima facie responsible, individually, and subject to the penalty as provided.

- B. Any damages caused or injuries sustained as a result of any violation of this article shall be ordered paid as restitution as a part of any conviction for any violation.
- C. The court may order the reimbursement of costs of enforcement, investigation, fire suppression services, and overtime related to a violation upon conviction.

**ARTICLE 6. RESERVED**