



*Plan and Zoning Commission  
Staff Report*

*Meeting Date: August 22, 2017*

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**Agenda Item:** Fireworks Retail Sales Facilities – Removal of Special Use Permit Requirement  
**Report Date:** August 14, 2017  
**Prepared by:** Eric C. Jensen, AICP *ECJ*  
Director of Planning and Building

**Staff Recommendation:**

That the Plan and Zoning Commission recommend City Council approval of an Ordinance Amending the Municipal Code of the City of Ankeny by removing the requirement for a Special Use Permit for Fireworks Retail Sales Facilities in the M-2, Heavy Industrial Zoning District.

**Staff Report:**

On June 5, 2017, after recommendation from City staff, the Plan and Zoning Commission and after a public hearing, the City Council amended the Zoning Ordinance by adding “Fireworks Retail Sales Facilities” as a permitted use in the M-2, Heavy Industrial Zoning District. The M-2 District, requires all permitted uses within the District to be approved by a Special Use Permit. Therefore, upon the Zoning Ordinance amendment approved by the City Council on June 5<sup>th</sup>, Fireworks Retail Sales Facilities were allowed only in the M-2 District and subject to approval of a Special Use Permit.

On June 16, 2017, a lawsuit was filed against four central Iowa cities, including the City of Ankeny, regarding the cities’ adoption of Zoning Ordinances to regulate Fireworks Sales. The plaintiff asserted that the State Law prohibited cities from using their Zoning power to regulate Fireworks Sales. Both the City of Ankeny and Pleasant Hill, one of the other cities named in the lawsuit, required Special Use Permit approval for Fireworks Retail Sales Facilities.

The plaintiff in the case filed a request for a preliminary injunction and the preliminary injunction case was heard by the United States District Court on June 23, 2017. On June 29<sup>th</sup>, 2017, the court ruled and denied the plaintiff’s request for a preliminary injunction. The court ruled that State Law does not prohibit cities from using their Zoning power to regulate the placement of Fireworks Sales Facilities. The court did rule, however, that cities could not require a Special Use Permit as these are considered additional permit requirements that are not allowed by the State Law.

Consequently, at the recommendation of the City’s Attorney, staff has drafted an Ordinance Amendment that removed the Special Use Permit requirement for Fireworks Retail Sales Facilities (see attached – text changes are in **red**). These uses will still be only permitted in the M-2 District, however, a Special Use Permit will not be required. Instead, the Ordinance indicates that Fireworks Retail Sales Facilities are allowed in the M-2 District without approval of a Special Use Permit and shall be subject to the regulations of the Code of Iowa.

Based on the Courts ruling on the preliminary injunction and the direction provided by the City’s Attorney, staff is comfortable with this change as presented. Staff recommends that the Plan and Zoning Commission recommend approval of the change to the Ankeny City Council.

192.13 M-2 HEAVY INDUSTRIAL DISTRICT. The M-2 District is intended and designed to provide areas of the City for activities and uses of a heavy industrial character. Since this district is the least restrictive of any district, almost any use is permissible with the exception of a small number of uses which, by reason of certain undesirable characteristics, are permitted subject to approval by the Board of Adjustment in accordance with appropriate safeguards. In addition, no residential uses are permitted.

1. Principal Permitted Uses. A building or premises may be used for any purpose whatsoever, provided the following regulations are met:

- A. No occupancy permit shall be issued for any use in conflict with any ordinance of the City or law of the State regulating nuisances.
- B. No occupancy permit shall be issued for any dwellings, school, hospital, clinic, or other institution for human care, except where incidental to a permitted principal use.
- C. The uses listed in Paragraph D of this section shall be permitted through a Special Use Permit as provided for in Section 196.02 of the Ankeny Municipal Code, issued after public hearing and approval by the Board of Adjustment. In its determination upon the particular uses at the location requested, the Board of Adjustment shall consider all of the following provisions:
  - (1) The proposed location, design, construction and operation of the particular use adequately safeguards the health, safety and general welfare of persons residing or working in adjoining or surrounding property.
  - (2) Such use shall not impair an adequate supply of light and air to surrounding property.
  - (3) Such use shall not unduly increase congestion in the streets or public danger of fire, and shall not endanger the public safety.
  - (4) Such use shall not diminish or impair established property values in adjoining or surrounding property.
  - (5) Such use shall be in accord with the intent, purpose and spirit of this Zoning Ordinance and the comprehensive plan of the City.
- D. The uses subject to the provisions of paragraph C of this section are as follows:
  - (1) Abattoirs and slaughterhouses or stockyards.
  - (2) Acid manufacture or wholesale storage of acids.

- (3) Automobile, tractor or machinery wrecking and used parts yards, provided any wrecking operation is carried on within a building completely enclosed with walls and roof and the yard completely enclosed with a wall or fence, reasonably maintained and at least six feet high, completely obscuring the activity. There shall be only one opening in the wall or fence facing any public street for each 200 feet of length.
- (4) Cement, lime, gypsum or plaster of paris manufacture.
- (5) Distillation of bones.
- (6) Explosive manufacture or storage.
- (7) Fat rendering.
- (8) Fertilizer manufacturing.
- (9) Garbage, offal or dead animal reduction or dumping.
- (10) Gas manufacture and cylinder recharging.
- (11) Glue, size, or gelatin manufacture.
- (12) Junk, iron or rags, storage or baling, and wastepaper yards, where the premises upon which such activities are conducted are wholly enclosed within a building, wall or fence not less than six feet in height and completely obscuring the activity.
- (13) Refining or wholesale storage of petroleum or its products, and asphalt plants.
- (14) Rubber goods manufacture.
- (15) Sand or gravel pits.
- (16) Smelting of tin, copper, zinc or iron ores.
- (17) Transmitting stations.
- (18) Wholesale storage of gasoline.

~~(19) Fireworks Retail Sales Facility.~~

**E. The following uses are allowed in the M-2 District outright and without approval of a special use permit.**

**(1) Fireworks Retail Sales Facility, pursuant to the regulations of the Code of Iowa.**

2. Required Conditions. Required conditions in the M-2 District are as follows:

- A. The best practical disposal of refuse matter or water-carried waste shall be employed, and the abatement of obnoxious or offensive odor, dust, smoke, gas, noise, or similar nuisances shall be required.
- B. All principal or accessory structures housing a use permitted only in the M-2 District shall be located at least 200 feet from any R or C-1 district and not less than 100 feet from any other district except an M-1 District.
- C. Outdoor storage of equipment not intended for over-the-road or rail use, supplies (or materials) intended for refabrication, waste materials, industrial by-products, or items intended for junk yards shall be so located and screened, fenced or landscaped to comply with a type "C" opaque screen as described in paragraph [194.02\(3\)\(C\)](#) of this Zoning Ordinance to effectively prevent visibility of such storage from all adjoining property lines and street right-of-way lines. In the event that the property owner and Department Director disagree regarding whether or not any site must be screened, the property owner may appeal to the Board of Adjustment in accordance with the provisions of Section [197.01\(3\)](#) of this Zoning Ordinance.

3. Area and Size Regulations. The following minimum requirements shall be observed in the M-2 District, subject to the height limitations found in Section [191.11](#) and the modifications contained in Section [196.03](#) of this Zoning Ordinance:

- A. Front Yard: 50 feet.
- B. Side Yard: 9 feet required, except when adjacent to any street right-of-way line, in which case 50 feet.
- C. Rear Yard: 40 feet, except that where a railroad right-of-way lies immediately adjacent to the rear of a lot, the rear yard requirement need not apply.
- D. Maximum Height: No limitation.
- E. Maximum Number of Stories: No limitation.

4. Off-Street Parking and Loading. Spaces for off-street parking and loading in the M-2 District shall be provided in accordance with the provisions of Section [194.01](#) of this Zoning Ordinance.



**~~5. Fireworks Retail Sales Facility Required Conditions. Required conditions for a Fireworks Retail Sales Facility are as follows:~~**

- ~~a) Operator shall provide proof of licensure by the State Fire Marshal.~~
- ~~b) For a facility occurring within a permanent structure, the allowable dates of operation shall be between June 1st through July 8th (38 total days) and between December 10th and January 3rd (25 total days).~~
- ~~c) For a facility occurring within a temporary structure, the allowable dates of operation shall be between June 13th through July 8th (26 total days).~~
- ~~d) The facility shall be located a minimum of 200 feet from property containing:
  - ~~i. residential uses,~~
  - ~~ii. fuel pumps or fuel containers,~~
  - ~~iii. schools,~~
  - ~~iv. public parks, or~~
  - ~~v. churches.~~~~
- ~~e) For a facility located within a permanent structure, the facility shall not be located in a multiple-tenant building and shall be located in a stand-alone structure that shall have a minimum of 50 feet of separation from adjacent structures.~~
- ~~f) All signage shall comply with City of Ankeny Sign Code.~~
- ~~g) Parking for the facility must be provided at 1 space per 200 square feet of floor area.~~
- ~~h) For a facility occurring in a temporary structure, required parking for the other uses on the site shall not be occupied by the temporary structure.~~

- ~~i) The operator of the facility will require to be posted in plain clear view of all patrons a sign which reads, "It is unlawful to discharge fireworks in the Ankeny City limits at any time, except between 9:00am — 11:00pm on July 4th."~~
- ~~j) The facility shall comply with all applicable Building and Fire Codes.~~
- ~~k) A site plan shall be provided with the Special Use Permit application that depicts at a minimum those items outlined in Section 192.02.4. of the Ankeny Municipal Code.~~