

ORDINANCE NO. 80-702

AN EMERGENCY ORDINANCE AMENDING CHAPTER 13 OF THE CODE OF ORDINANCES OF THE CITY OF WARREN TO ADOPT LOCAL FIREWORKS SAFETY STANDARDS

THE CITY OF WARREN ORDAINS:

SECTION 1. Chapter 13, Article II, Division 2, Sections 13-16 through Section 13-29, entitled Fireworks and Explosive Toys and Devices, is repealed in its entirety.

SECTION 2. Chapter 13, Article II, Division 2, **SHALL BE REPLACED TO**

READ AS FOLLOWS:

Division 2. Fireworks and Explosive Devices.

Section 13-16 Preamble.

The Michigan Fireworks Safety Act, Act 256 of 2011, effective January 1, 2012, legalized the sale of consumer fireworks in Michigan, and delegated to local communities limited control over the use and discharge of the fireworks. The City Warren recognizes that fireworks endangers property, can cause physical injury, and disrupts the peace and quality of neighborhoods and commercial districts. The City of Warren endeavors to reconcile the rights that this Act confers upon sellers and consumers, with the rights of the citizens, and families to reside in a safe, harmonious community. The following ordinance is adopted to repeal existing fireworks ordinances that conflicted with the Act, and to impose conditions on the time, place and manner of use, discharge and ignition of fireworks deemed to be within the purview of local regulation, and within the interest of the public, health, safety and welfare.

Section 13-17. Definitions. The terms used in this article, whether capitalized or not, will have the following meaning:

Act means the Michigan Fireworks Safety Act, Act 256 of 2011, and any amendments to the Act which may be from time to time be adopted.

APA standard 87-1 means 2001 APA standard 87-1, standard for construction and approval for transportation of fireworks, novelties, and theatrical pyrotechnics, published by the American Pyrotechnics Association of Bethesda, Maryland.

Articles pyrotechnic means the pyrotechnic devices for professional use that are similar to consumer fireworks in chemical composition and construction but not intended for consumer use, that meet the weight limits for consumer fireworks, but are not labeled as such, and that are classified as UN0431 or UN0432 under 49 C.F.R.172.101.

Consumer Fireworks means fireworks devices that are designed to produce visible effects by combustion, that are required to comply with the construction, chemical composition, and labeling regulations promulgated by the United States consumer product safety commission under 16 CFR parts 1500 and 1507, and that are listed in the APA standard 87-1, 3.1.2, 3.1.3, or 3.5. Consumer fireworks does not include low impact fireworks.

Display Fireworks means large fireworks devices that are explosive materials intended for use in fireworks displays and designed to produce visible or audible effects by combustion, deflagration, or detonation. Fireworks consist of consumer fireworks, low impact fireworks, articles pyrotechnic, display fireworks and special effects.

Firework or Fireworks means any composition or device, except for a starting pistol, a flare gun, or a flare, of non-toxic or non-explosive emissions, designed for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation. Fireworks, as used this Article, shall include consumer fireworks, low-impact fireworks, articles pyrotechnic, display fireworks, and special effects.

Low Impact Fireworks means ground sparkling devices as that phrase is defined under APA standard 87-1, 3.1, 3.1.1.1 to 3.1.18, and 3.5., except as provided below.

Minor means an individual who is less than 18 years of age.

National Holiday as used in this article shall mean:

- New Year's Day, January 1;
- Birthday of Martin Luther King, Jr, the third Monday in January;
- George Washington's Birthday, the third Monday in February;
- Memorial Day, the last Monday in May;
- Independence Day, July 4;
- Labor Day, the first Monday in September;
- Columbus Day, the second Monday in October;
- Veteran's Day, November 11; and
- Thanksgiving Day, the fourth Thursday in November,
- Christmas Day, December 25,

and any holidays as may be from time to time added, removed or changed under 5 USC Section 6103, or any replacement or amended legislation.

Novelties means the term defined under APA standard 87-1, 3.2,3.2.1, 3.2.2, 3.2.3, 3.2.4, and 3.2.5 and all of the following:

- (i) Toy plastic or paper caps for toy pistols in sheets, strips, rolls, or individual caps containing not more than .25 of a grain of explosive content per cap, in packages labeled to indicate the maximum explosive content pre cap.
- (ii) Toy pistols, toy canons, toy canes, toy trick noisemakers, and toy guns in which toy caps as described in subparagraph (i) are used, that are constructed so that the hand can not come in contact with the cap when in place for the explosion, and that are not designed to break apart or be separated so as to form a missile by the explosion.
- (iii) Flitter sparklers in paper tubes not exceeding 1/8 inch in diameter.
- (iv) Toy snakes not containing mercury, if packed in cardboard boxes with not more than 12 pieces per box for retail sale and if the manufacturer's name and quantity contained in each box are printed on the box; and toy smoke devices.
- (v) Handheld sparklers

Person means any individual, agent, legal representative, association, charitable organization, church, non-profit organization, unincorporated organization, labor organization, partnership, limited liability company, corporation, or any legal entity or commercial organization. An individual shall include a Minor as defined in this article.

Except as otherwise provided, other terms used in this Article shall have the meaning ascribed to them in the Act, or, if not defined in the Act, under the APA standards.

Section 13-18. Prohibited Fireworks.

- (a) Consumer Fireworks.

A Person shall not use, ignite, or discharge Consumer Fireworks within the geographical boundaries of the City of Warren, except on the day of, the day preceding or the day after a National Holiday, provided that on such days, a Person shall not discharge Consumer Fireworks in violation of the Act, this article, or any other ordinance.

- (b) Low Impact.

Low Impact Fireworks may not be discharged during the hours of 10:30 p.m. and 11 a.m., and may not otherwise be discharged in violation of this article or the Act, or any other ordinance.

- (c) Illegal Fireworks.

Any use, possession or discharge of any Fireworks that is prohibited and/or not approved by the State of Michigan or the State Fire Marshal, or that which contains a prohibited chemical, component, compound or composition under the APA 87-1 Standard, or any federal or state law or regulation, is prohibited at all times and places, regardless of how it is labeled.

Section 13-19. Minors.

- (a) A Minor shall not use, discharge or ignite any Consumer Fireworks, at any time, nor on any day, including National Holidays, and the day before and day after a National Holiday.
- (b) A Minor shall not use, discharge, or ignite any low impact fireworks or novelty fireworks, unless under supervision of a parent or guardian, and the use, discharge and ignition is within permitted hours, and does not violate the provisions of this article and the Act.

Section 13-20. Public Property.

- (a) No person shall at any time or on any day, use, discharge or ignite any Fireworks, including Consumer Fireworks, Low Impact Fireworks and Novelties, in public parks.
- (b) No Fireworks, including Consumer Fireworks, Low Impact Fireworks or Novelty Fireworks shall be discharged, used, ignited on any public property, including public streets, schools, sidewalks, easements and rights-of-way.

Section 13-21. General Restrictions Including Holidays. On any day, including the day of, the day preceding and the day after a National Holidays.

- (a) Fireworks, including Consumer fireworks, shall not be ignited within 20 feet of an open flame, a burner, gasoline, ignited gas or electric grill, or any combustible or flammable item or compound, or in any enclosed structure, garage, tent, or shed, or under any canopy or overhanging cover, of any nature.
- (b) Any use of Fireworks that disrupts the peace of the public, which

may include, deposits of litter or debris caused by Fireworks, is prohibited, notwithstanding anything to the contrary in the Act.

- (c) No Person shall, either individually or in concert with another Person, cause damage to any private or public property by the use, discharge or ignition of any Fireworks. Any violation of this provision is subject to any penalty imposed under the Act, except that damage to public property under control of the city or damage to any private property not protected in the Act is a misdemeanor, if a higher offense is not available under state law.
- (d) No Consumer Fireworks may be ignited, launched, or discharged within thirty (30) feet of any house, structure, building, vehicle, or landscaping. Landscaping may include, without limitation, any tree, bush, flowers, vegetable garden, or gazebo.
- (e) No Person shall at any time discharge or ignite any Low Impact Fireworks within fifteen (15) feet of another person's property, without the owner's permission. Any violation is a municipal civil infraction.
- (f) No individual shall use, ignite or discharge consumer fireworks or low-impact fireworks while under the influence of alcohol, a controlled substance and/or a synthetic marijuana or other illegal substance. Alcoholic liquor means that term as defined in section 1d of the Michigan vehicle code, 1949 PA 300, MCL 257.1d, or any subsequent provision amending or replacing that provision. Controlled substance means that term as defined in section 8b of the Michigan vehicle code, 1949 PA 300, MCL 257.1d, or any subsequent provision amending or replacing that definition. Synthetic marijuana or other illegal substances are as determined under the Public Act 180-183 of 2012, and the Public Health Code, 1978 PA 368, MCL 333.2451. A violation of this provision shall be a misdemeanor, and shall result in the seizure, removal and storage of the fireworks, at the expense of the responsible person.

Section 13-22. Applicability of General Ordinances.

Nothing in this article or in the Act shall preclude the enforcement of ordinances or laws of general applicability at any time or on any day regardless of whether the conduct or offense is secondary or incidental or to the use, discharge or ignition of fireworks.

Section 13-23. Any person selling, distributing or transporting fireworks shall otherwise comply with the Act, and is required to obtain the approvals that are

necessary under the applicable provisions of the Code of Zoning Ordinances of the City of Warren. Failure to secure applicable zoning approvals is subject to penalty as provided in this article and/or Code of Zoning Ordinances of the City of Warren.

Section 13-24. Any fireworks that are possessed, sold, distributed or displayed in violation of the Act or the Code of Zoning Ordinances of the City of Warren are subject to seizure and removal by the police department or fire department, at the expense of the responsible person, in addition to other penalties as provided in this article or by other ordinance.

Section 13-25. Notwithstanding the Act, any use, discharge or ignition of fireworks that is presenting an imminent danger or threat to the public health, safety or welfare, as deemed by a police officer or the Fire Marshal, or his or her designee, shall be prohibited, and the fireworks may be immediately seized.

Section 13-26. Penalties.

(a) Except as otherwise provided, a violation of this article is a misdemeanor and a Person responsible may be ordered to pay a fine up to \$500, and/or subject to up to 90 days in jail, plus costs.

(b) Except as otherwise provided, for any violation of this article that is a municipal civil infraction, a Person responsible may be ordered to pay a civil fine of \$200 for each violation.

(c) Any penalty for a violation of the Act shall be subject to the penalty imposed under the Act.

Section 13-27. Seizure and Cost Recovery.

(a) All Fireworks used, discharged and ignited and possessed in violation of the Act and this article are subject to seizure. Any costs incurred by the City to seize and store the Fireworks shall be paid by the responsible person.

(b) Any costs the City incurs to respond and remediate any damage to private or public property or injury to another person shall be paid by any Person responsible for the damage or injury. The City may pursue any legal remedies to collect such costs.

Section 13-28. Display Fireworks.

No Display Fireworks shall be ignited, used or displayed at any time unless approved in advance by the City Council, upon application is made to the City Clerk on a form provided by the Michigan Department of Licensing and Regulation. At a minimum, the applicant be adequately insured and bonded, the applicant has submitted a security plan, safety compliance plans, and pay the application fee in an amount to be determined by the City Council. A permit for display fireworks is supplemental to any other requirement for such display under the ordinances, including a license under Section 18-18, and zoning approval under Chapter 37 of the Code of Zoning Ordinances. In addition to other penalties for zoning violations, a violation of this act is a misdemeanor punishable by up to 90 days in jail and/or a fine up to \$500. An exemption is allowed for fireworks displayed at a city event that is sponsored and approved by the City of Warren or one of its commissions or boards, acting within the scope of its jurisdiction.

SECTION 3. This Ordinance is declared an emergency and shall be effective upon publication.

I HEREBY CERTIFY that the foregoing Ordinance No. 80-702 was adopted by the Council for the City of Warren at its meeting held on June 26, 2012.

PAUL WOJNO
City Clerk

Published: June 30, 2012.