

CHARTER TOWNSHIP OF WHITE LAKE
FIREWORKS SAFETY ACT ORDINANCE
ORDINANCE NO. 136

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**CHARTER TOWNSHIP OF WHITE LAKE
FIREWORKS SAFETY ACT ORDINANCE**

ORDINANCE NO. 136

AN ORDINANCE TO CONTROL THE USE AND DISCHARGE OF FIREWORKS AND OTHER EXPLOSIVE AND FLAMMABLE COMPOUNDS, CHEMICALS, AND DEVICES USED IN CONNECTION THEREWITH.

The Charter Township of White Lake ordains:

SECTION 1 – TITLE

This Ordinance shall be known as the Fireworks Safety Act Ordinance.

SECTION 2 – PURPOSE

The purpose and intent of this Ordinance is to regulate the use and discharge of certain fireworks consistent with the Michigan Fireworks Safety Act, Act 256 of 2011, as amended.

SECTION 3 – DEFINITIONS

The following words, terms and phrases, when used in this Ordinance, shall have the meaning ascribed to them in this section:

Act means the Michigan Fireworks Safety Act, Public Act 256 of 2011, MCL 28.451 – 28.471, as amended.

Agricultural and wildlife fireworks means firework devices distributed to farmers, ranchers, and growers through a wildlife management program administered by the United States Department of Interior or the Michigan Department of Natural Resources.

APA means American Pyrotechnics Association.

Articles pyrotechnic means 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 CFR 172.101.

Commercial fireworks includes display fireworks, articles pyrotechnic, special effects and agricultural and wildlife fireworks.

Consumer fireworks means fireworks devices that are designed to produce visible or audible 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 APA standard 87-1, 3.1.2, 3.1.3, or 3.5. Consumer fireworks do 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, as provided in 27 CFR 555.11, 49 CFR 172, and APA standard 87-1, 4.1.

Firework or fireworks means any composition or device, except for a starting pistol, a flare gun, or a flare, designed for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation. Fireworks consist of consumer fireworks, low-impact fireworks, articles pyrotechnic, display fireworks, and special effects.

Low-impact fireworks means ground and handheld sparkling devices as that phrase is defined under APA standard 87-1, 3.1, 3.1.1.1 to 3.1.1.8, and 3.5.

National holiday: A national holiday is defined in 5 USC 6103 and includes the following:

- (a) New Year's Day (January 1st).
- (b) Martin Luther King Jr. Day (third Monday in January)
- (c) Washington's Birthday (third Monday in February)
- (d) Memorial Day (last Monday in May)
- (e) Independence Day (July 4th)
- (f) Labor Day (first Monday in September)
- (g) Columbus Day (second Monday in October)
- (h) Veterans Day (November 11th)
- (i) Thanksgiving Day (fourth Thursday in November)
- (j) Christmas Day (December 25th)

NFPA means National Fire Protection Association.

Novelty fireworks means that term as 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:

- (a) 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 per cap.
- (b) Toy pistols, toy cannons, toy canes, toy trick noisemakers, and toy guns in which toy caps as described in subparagraph (a) are used, that are constructed so that the hand cannot 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.
- (c) Flitter sparklers in paper tubes not exceeding 1/8 inch in diameter.

- (d) 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 the quantity contained in each box are printed on the box; and toy smoke devices.

Special effects means a combination of chemical elements or chemical compounds 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.

State fire marshal means the Michigan state fire marshal appointed under section 1b of the Michigan Fire Prevention Code, 1941 PA 207, MCL 29.1b.

SECTION 4 – PROHIBITIONS

Fireworks Generally.

Fireworks shall not be ignited, discharged or used by: (a) a minor; (b) a person under the influence of alcohol or controlled substances; or (c) on public property, school property, church property, or property of another person, without that organization's or person's written authorization to do so.

Consumer Fireworks.

No person shall ignite, discharge or use consumer fireworks in the Township; except on the day preceding, the day of, or the day after a national holiday, and in accordance with the Michigan Fireworks Safety Act, Public Act 256 of 2011, as amended.

Commercial Fireworks.

Commercial Fireworks shall not be discharged in the Township without a permit.

Low Impact or Novelty Fireworks.

The display of low impact or novelty fireworks are regulated by state law and are not regulated by this Ordinance.

SECTION 5 – PERMITS

A permit is required for the discharge of commercial fireworks.

Permit Application. A person seeking a permit to discharge commercial fireworks shall complete an application for a permit, which shall be submitted to the Township Clerk's Office at least 45 days in advance of the proposed discharge date.

The application shall include:

1. Proof that the applicant is over 18 years in age;

2. A license or permit to operate commercial fireworks from the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives;
3. A scale drawing of the site, including but not limited to surrounding buildings, the display site as described by NFPA 1123, the spectator viewing area and the parking areas;
4. Proof of insurance as set forth in this Ordinance;
5. Information as to the competency and qualifications of the fireworks display operators as required by NFPA 1123;
6. A completed Application for Fireworks Display Permit from the State of Michigan;
7. A description of the display, including the type and number of fireworks to be discharged;
8. Proof to the Township Fire Chief or his designee, that the applicant is knowledgeable of the recommended safety requirements outlined in NFPA 1123;
9. A nonresident applicant shall appoint in writing a resident member of the bar of this state or a resident agent to be the legal representative upon whom all process in an action or proceeding against the person, firm, or corporation may be served; and
10. Payment of a fee as set forth in the Township Fee Ordinance.

Permit Approval Process.

1. The Township Clerk or his designee shall review the application for completeness.
2. The Township Fire Chief or his designee shall review the application and make a written recommendation to the Township Board.
3. The Township Board shall review the application and issue a permit if it finds that the following standards have been satisfied:
 - a. The permit application is complete and conforms with the requirements of this Ordinance.
 - b. The proposed discharge of fireworks shall not have an adverse effect upon public safety.
 - c. The time, duration and location of the fireworks will not unreasonably disturb the peace of neighboring property owners.

Requirements of Permit Holders.

1. A permit holder shall be responsible for the discharge of fireworks which shall conform with the approved permit and this Ordinance.
2. A permit holder shall be responsible for all shells being fired. In the event one or more shells do not explode, the permit holder shall take appropriate measures to locate and properly dispose of the unexploded shell(s).

Transfers.

Permits cannot be transferred or assigned without prior review and approval of the Township.

Revocation.

Permits shall be revoked and inventory seized if at any time during the term of the permit the terms and conditions of this Ordinance are violated.

SECTION 6 – COST RECOVERY

The payment of all costs incurred by the Township, including, but not limited to the time expended by police or fire personnel and equipment in enforcing this Ordinance or responding to an emergency resulting from a violation of this Ordinance, and any storage costs for fireworks seized under the Act, shall be the responsibility of the person or persons responsible or liable for the violation. Any failure by the person liable or responsible for the expenses to pay said bill within thirty (30) days of mailing or service of the bill shall constitute a default on said bill. The failure to pay may further be considered a violation of probation if the payment was ordered by the court at the time of sentencing. The Township shall also have the right to bring action in a court of competent jurisdiction to collect said costs if the Township deems such action to be necessary.

SECTION 7 – INSURANCE

To protect the public, the applicant shall provide proof of financial responsibility by insurance to satisfy claims for damages to property or personal injuries arising out of an act or omission on the part of the applicant. At a minimum, the applicant shall maintain (a) Worker's Compensation and Employers Liability coverage covering the statutory requirements of the State of Michigan and insuring the applicant with an Employer's Liability limit of at least \$500,000, if applicable, and (b) occurrence based Commercial General Liability coverage covering liability arising out of the operations of the applicant, with limits of at least \$3,000,000 per occurrence and (c) Automobile Liability with a limit of \$1,000,000 per occurrence CSL covering all owned, non-owned, and hired automobiles, and shall comply with all requirements of Michigan No-Fault law. The General Liability and Automobile liability policies shall be issued by an insurer licensed to do business in the State of Michigan with an A.M. Best rating of "A-" or better. If the applicant utilizes township owned property during the display, the Township shall be named as additional insured on the General Liability and Automobile Liability policies, and coverage shall be considered primary over any other insurance held by the Township.

SECTION 8 – PENALTY

A violation of this Ordinance shall be deemed a municipal civil infraction.

- A. The following civil fines shall apply in the event of a determination of responsibility for a municipal civil infraction, unless a different fine is specified in connection with a particular ordinance provision.
 - i. The First Offense. The civil fine for a first offense violation shall be in an amount of Seventy-Five Dollars (\$75.00), plus cost and other sanctions, for each offense.
 - ii. First Repeat of Offense. The civil fine for any offense which is a first repeat offense shall be in an amount of One Hundred Fifty Dollars (\$150.00), plus cost

and other sanctions, for each offense.

- iii. Second (or any subsequent) Repeat of Offense. The civil fine for any offense which is a second or subsequent repeat offense shall be in an amount of Five Hundred Dollars (\$500.00), plus cost and other sanctions, for each offense.
- B. In addition to ordering the defendant determined to be responsible for a municipal civil infraction to pay a civil fine, costs, damages and expenses, the Judge or Magistrate shall be authorized to issue any judgment, writ or order necessary to enforce, or enjoin violation of, this ordinance.
- C. Continuing Offense. Each act of violation and each day upon which any such violation shall occur, shall constitute a separate offense.
- D. Remedies Not Exclusive. In addition to any remedies provided for in this ordinance, any equitable or other remedies available may be sought.
- E. Judge or Magistrate. The Judge or Magistrate shall also be authorized to impose costs, damages and expenses as provided by law.
- F. Default on Payment of Fines and Costs. A default in the payment of a civil fine, costs, damages or expenses ordered under Subsection A or B or an installment of the fine, costs, damages or expenses as allowed by the court, may be collected by the Township of White Lake by a means authorized for the enforcement of a judgment under Chapters 40 or 60 of the Revised Judicature Act, MCL 600.101, et. seq., MSA 27A. 101, et. seq., as amended.
- G. Failure to Comply With Judgment of Order. If a defendant fails to comply with an order or judgment issued pursuant to this section within the time prescribed by the court, the court may proceed under Subsection I.
- H. Failure to Appear in Court. A defendant who fails to answer a citation or notice to appear in court for a violation of this ordinance is guilty of a misdemeanor, punishable by a fine of not more than Five Hundred Dollars (\$500.00), plus costs and/or imprisonment not to exceed ninety (90) days.
- I. Civil Contempt.
 1. If a defendant defaults in the payment of a civil fine, costs, damages, expenses, or installment as ordered by the district court, upon motion of the Township of White Lake or upon its own motion, the court may require the defendant to show cause why the defendant should not be held in civil contempt and may issue a summons, order to show cause, or bench warrant of arrest for the defendant's appearance.
 2. If a corporation or an association is ordered to pay a civil fine, costs, damages or expenses, the individuals authorized to make disbursements shall pay the fine, costs damages or expenses, and their failure to do so shall

be civil contempt unless they make the showing required in this subsection.

3. Unless the defendant shows that the default was not attributable to an intentional refusal to obey the order of the court or to a failure on his or her part to make a good faith effort to obtain the funds required for payment, the court shall find that the default constitutes a civil contempt and may order the defendant committed until all or a specified part of the amount due is paid.
4. If it appears that the default in the payment of a civil fine, costs, damages or expenses does not constitute civil contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of payment or of each installment or revoking the fine, costs, damages or expenses.
5. The term of imprisonment on civil contempt for nonpayment of a civil fine, costs, damages or expenses shall be specified in the order of commitment and shall not exceed one day for each Thirty Dollars (\$30.00) due. A person committed for nonpayment of a civil fine, costs, damages or expenses shall be given credit toward payment for each day of imprisonment and each day of detention in default of recognizance before judgment at the rate of Thirty Dollars (\$30.00) per day.
6. A defendant committed to imprisonment for civil contempt for nonpayment of a civil fine, costs, damages or expenses shall not be discharged from custody until one of the following occurs:
 - a. Defendant is credited with an amount due pursuant to Subsection I (5).
 - b. The amount due is collected through execution of process or otherwise.
 - c. The amount due is satisfied pursuant to a combination of Subsection I (6) (a) and (b).
7. The civil contempt shall be purged upon discharge of the defendant pursuant to Subsection I (6).

SECTION 9 – SEVERABILITY

Should any provision or part of this Ordinance be declared by any court of competent jurisdiction to be invalid or unenforceable, the same shall not affect the validity or enforceability of the balance of this Ordinance, which shall remain in full force and effect.

SECTION 10 – REPEALER

All other ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed only to the extent necessary to give this ordinance full force and effect.

SECTION 11 – SAVINGS CLAUSE


Nothing in this Ordinance shall be construed to affect any suit or proceeding pending in any court or any rights acquired or any liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed as cited in Section 10 of this Ordinance; nor shall any just or legal right or remedy of any character be lost, impaired, or affected by this Ordinance.

SECTION 12 – EFFECTIVE DATE

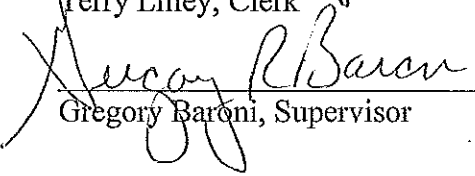
This Ordinance shall take effect following publication in the manner prescribed by law. This Ordinance shall be published in the manner provided by law.

SECTION 13 – ADOPTION

This Ordinance is hereby declared to have been adopted by the Township Board of the Charter Township of White Lake at a meeting duly called and held on the 16th day of April, 2013, and ordered to be given publication in the manner prescribed by law.



Terry Lilley, Clerk



Gregory Baroni, Supervisor

Introduction:	March 19, 2013
Introduction Publication:	April 3, 2013
Adopted:	April 16, 2013
Adoption Publication:	May 1, 2013
Effective:	May 8, 2013