

ORDINANCE D - 3 OF 2013

An ordinance to amend Chapter 5 of Ordinance D, the 1999 Revised Frankfort Municipal Code, by adding a new Article 13.

THE CITY OF FRANKFORT ORDAINS:

A new Article 13 is added to Chapter 5 as follows:

CHAPTER 5: PUBLIC HEALTH, SAFETY, AND WELFARE

ARTICLE 13. FIREWORKS

Section 51301 Purpose. The purpose of this Ordinance is to regulate the use of fireworks in the City of Frankfort, in accordance with PA 256 of 2011 (MCL 28.451 et seq.), the Michigan Fireworks Safety Act ("the Act"), as it may be amended.

Section 51302 Definitions. As used in the Article, the following terms have the definitions found in the Act, which as of the date of adoption of this Ordinance are substantially as follows:

51302.1 "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.

51302.2 "APA" means American Pyrotechnics Association.

51302.3 "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 APA standard 87-1, 3.1.2, 3.1.3, or 3.5. Consumer fireworks are often commonly known as, but not limited to, sky rockets, bottle rockets, missile-type rockets, helicopters, aerial spinners, roman candles, mine and shell devices, aerial shell kits, firecrackers, chasers, and certain multiple tube fireworks devices. Consumer fireworks does not include low-impact fireworks.

51302.4 "Display fireworks" means large fireworks devices that are explosive materials intended for use in fireworks displays and designed to produce visible or audible effect by combustion, deflagration, or detonation as provided in 27 CFR 555.11, 49 CFR 162 and APA standard 87-1, 4.1.

51302.5 “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.

51302.6 “Low Impact Fireworks” means ground and handheld sparkling devices as that phrase is defined in APA standard 87-1, 3.1, 3.1.1.1 to 3.1.1.8, and 3.5. Low impact fireworks are often commonly known as, but not limited to, sparklers, cylindrical fountains, cone fountains, illuminating torches, wheels, ground spinners, flitter sparklers, certain toy smoke devices, and certain wire sparklers/dipped sticks.

51302.7 “National holiday” means a national holiday as defined in 5 USC 6103 and includes: New Year’s Day (January); Martin Luther King Jr. Day (third Monday in January); Washington’s Birthday (third Monday in February); Memorial Day (last Monday in May); Independence Day (July 4); Labor Day (first Monday in September); Columbus Day (second Monday in October); Veterans Day (November 11); Thanksgiving Day (fourth Thursday in November); Christmas Day (December 25).

51302.8 “Novelties” 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 cup.
- b. Toy pistols, toy cannons, toy canes, toy trick noisemakers, and toy guns in which toy caps as described in the above paragraph 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.

51302.9 “Person” means individual, agent, association, charitable organization, company, limited liability company, corporation, labor organization, legal representative, partnership, unincorporated organization, or any other legal or commercial entity.

51302.10 “Special effects” means a combination of chemical elements or chemical compounds capable of burning independently of the oxygen of the atmosphere and designed and intended to produce an audible, visual, mechanical, or thermal effect as in integral part of a motion picture, radio, television, theatrical or opera production or live entertainment.

Section 51303 Novelties. This Ordinance does not regulate the use of novelties.

Section 51304 Low-impact Fireworks.

51304.1 A person shall not ignite, discharge or use low-impact fireworks on public property, school property, church property, or the property owned by another person or entity without that organization’s or person’s express permission.

51304.2 A person shall not discharge low-impact fireworks in such a manner so that remnants from consumer fireworks land on public property or the property of another, including, but not limited to, hotel and motel property, apartment property, and condominium property, without that person or organization’s express permission.

51304.3 An individual under the age of 18 shall not ignite, discharge, or use low-impact fireworks unless under the direct supervision of an adult.

Section 51305 Consumer Fireworks.

51305.1 Consumer fireworks may not be ignited, discharged, or used in the City of Frankfort except on the day before, the day of and the day after a National Holiday, between the hours of 8:00 a.m. and 12:00 midnight

51305.2 A person shall not ignite, discharge or use consumer fireworks on public property, school property, church property, or the property owned by another person or entity without that organization’s or person’s express permission.

51305.3 A person shall not discharge consumer fireworks in such a manner so that remnants from consumer fireworks land on public property or the property of another, including, but not limited to, hotel and motel property, apartment property, and condominium property, without that person or organization’s express permission.

51305.4 An individual under the age of 18 shall not ignite, discharge, or use consumer fireworks unless under the direct supervision of an adult.

51305.5 All consumer fireworks shall be used in accordance with State and Federal law and the Ordinances of the City of Frankfort, including the noise regulation provisions of Chapter 5, Article IV of the 1999 Revised Municipal Code.

51305.6 Upon application in writing by any person, the City Superintendant or his/her designee may grant permission for the public display of consumer fireworks, on days and times other than those permitted in Section 51305.1, subject to such conditions as deemed necessary to safeguard the safety, health, and welfare of the public and private property.

51306 Display Fireworks, Articles Pyrotechnic, Special Effect Fireworks.

51306.1 The City Council or its designee may permit articles pyrotechnic, display fireworks and special effect fireworks in the City, pursuant to the provisions of MCL 28.451, *et seq* and this Ordinance. Articles pyrotechnic, display fireworks, and special effects fireworks may not be used or ignited within the City without a permit.

51306.2 Any person wishing to conduct an articles pyrotechnic, display fireworks or special effects display shall, at least 45 days prior to any display, submit an application on a form furnished by the City, pay the required fee and shall secure permission from the City Council prior to any such fireworks display.

51306.3 The site plan of the area where the articles pyrotechnic, display fireworks or special effects display is to be conducted shall be submitted with the application. The site plan shall show all structures in the area and within the discharge site fallout area. The site plan shall also show the distance separating any fireworks and any spectator viewing areas. All site plans shall be forwarded to the Fire Chief or his designee for approval, including any recommended conditions, prior to coming before the City Council for its approval.

51306.4 A copy of any required state or federal permit for the fireworks display shall be submitted with the application.

51306.5 Proof of insurance conforming to the requirements of this Ordinance and the Act shall be submitted with the application.

51306.6 The application shall include information as to the competency and qualifications of the fireworks display operators, as required by NFPA 1123.

51306.7 The City Council shall approve an application for an articles pyrotechnic, display fireworks or special effects display if it finds that all of the following standards are satisfied:

- a. The application and accompanying documentation is complete and conforms to the requirements of this Ordinance.
- b. The operator of the fireworks display is competent and qualified to conduct the fireworks display, per NFPA 1123.
- c. The Fire Chief or his/her designee has approved the application and site plan.
- d. The fireworks display will not have an adverse effect upon public safety.
- e. The time, duration, location of the fireworks display will not, due to noise and other factors, unreasonably disturb the peace of persons residing within the vicinity.
- f. The City Council, in approving an application hereunder, shall have the authority to impose such conditions as it determines in its sole reasonable discretion are necessary to assure that the fireworks display will satisfy the above standards.

51306.8 The person conducting the fireworks display shall follow the NFPA 1123 requirements for fireworks displays, or the following requirements, whichever are more restrictive:

- a. A minimum safe area of 250 feet radius, plus an additional 70 feet radius for each inch by which the fireworks shell exceeds 3 inches in diameter shall be required. The City Council shall have the authority to grant a variance from this requirement where it determines in its sole reasonable discretion that, given 1) the nature of the subject site, 2) the nature of the surrounding area and/or 3) the nature of the proposed fireworks display, that a variance will not have a material adverse impact on public safety. In no event, however, shall the applicant fail to comply with the minimum requirements of NFPA 1123.
- b. The applicant shall maintain personal injury liability insurance/property damage liability insurance in the amount of \$1,000,000 for each event. The City shall be named as an additional insured on the insurance policy.
- c. The City Council shall not issue a permit to a nonresident person until the person has appointed in writing a member of the state bar or a resident agent to be the person's legal representative upon whom all process in an action or proceeding against the person may be served.
- d. The applicant shall be responsible for all shells being fired. In the event one or more of the shells does not explode, the applicant shall secure the area until the unexploded shell(s) is found and properly disposed of.
- e. No person involved in conducting a fireworks display may be under the influence of alcohol or drugs.
- f. A fireworks display conducted under this Ordinance shall conform with all specifications set forth in the approved application and site plan, as well as with any conditions imposed

- by the City Council in granting such approval.
- g. The applicant shall cause the site of the fireworks display to be cleaned up within 24 hours after the fireworks display has ended.
 - h. A permit is not transferable and shall not be granted to a minor.

51306.9 A person conducting a fireworks display without a permit or failing to comply with the terms of the permit shall be guilty of a misdemeanor.

51307 Penalties.

51307.1 A person who violates any section of this Ordinance except Section 51306 shall be responsible for a municipal civil infraction and subject to fines as set forth below.

51307.2 A person who owns property and/or is in charge of property who knowingly allows a violation of this Ordinance to occur on his/her property shall be responsible for a municipal civil infraction and subject to fines as set forth below.

51307.3 The penalty for a first violation shall be \$100 plus costs and other sanctions. The penalty for a second violation shall be \$250 plus costs and other sanctions, and the penalty for a third violation shall be \$500 plus costs and other sanctions.

51307.4 If a Police Officer determines that a violation of this Ordinance has occurred, the Officer may seize the fireworks as evidence of the violation.

51307.5 In addition, violations are subject to the supplementary enforcement procedures of Chapter 3, Article 4, of the 1999 Revised Municipal Code.

51308 Severability. The provisions of this Ordinance are hereby declared to be severable. If any clause, sentence, paragraph, rule, regulation, section or subsection is declared void or inoperable for any reason by any court, it shall not affect any other part or portion thereof other than the part declared void or inoperable.

51309 Effective Date. Pursuant to the attached declaration of emergency, this Ordinance shall be effective immediately upon publication.

DECLARATION OF EMERGENCY

Pursuant to Charter Section 5.3, the Frankfort City Council declares that an emergency affecting the public peace, health and safety exists by reason of the unregulated use of consumer fireworks during holiday periods, and the recent enactment by the Michigan Legislature of legislation allowing municipalities to regulate this use necessitates the immediate adoption of this Ordinance.

Ordinance D-3 of 2013, shall become effective immediately upon publication.

This Ordinance is enacted by the City of Frankfort, County of Benzie, State of Michigan, at a regular meeting of the City Council, held on June 18, 2013, and published in the Benzie County Record Patriot on June 26, 2013.

KIMBERLY KIDDER, City Clerk