

Charter Township of Union Fireworks Ordinance

Ordinance No. 2012-05

An Ordinance enacted to regulate the time, place and manner for the use of Consumer Fire Works, Display Fireworks, and Articles Pyrotechnic.

THE CHARTER TOWNSHIP OF UNION, ISABELLA COUNTY, MICHIGAN, HEREBY ORDAINS:

SECTION I NAME

This Ordinance shall be known and cited as the Union Township Fireworks Ordinance.

SECTION II PURPOSE

In the interest of maintaining public health, safety and the general welfare and the comfort and repose of Union Township residents, Union Township hereby provides for the regulation and use of fireworks in Union Township, as provided in PA 256 of 2011, as may be amended, (MCL 28.451, et seq) and repeals all Ordinances or parts of Ordinances in conflict herewith.

SECTION III DEFINITIONS

For purposes of this Ordinance, the following definitions shall apply:

1. Articles pyrotechnic: pyrotechnic devices for professional use that are similar to consumer fireworks in the 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.

Alcoholic liquor: that term as defined in section 1d of the Michigan Vehicle Code, 1949 PA 300, MCL 257.1d, as amended.

3. APA: American Pyrotechnics Association

4. Consumer fireworks: 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 does not include low-impact fireworks.

5. Controlled substance: that term as defined in section 8b of the Michigan Vehicle Code, 1949 PA 300, MCL 257.8b, as amended.

6. Display fireworks: 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 172 and APA standard 87-1, 4.1.

7. Firework or fireworks: 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.

8. 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.

9. Minor: individual who is less than 18 years old.

10. National holiday: A national holiday is 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).

11. NFPA: National Fire Protection Association.

12. Novelties: 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.

13. Person: individual, agent, association, charitable organization, company, limited liability company, corporation, labor organization, legal representative, partnership, unincorporated organization, or any other legal or commercial entity.

14. Site Plan: A graphic representation of the location proposed, streets, parking areas, fencing and gates, and other details to evaluate the safety of the display location, drawn to scale with dimensions.

15. Special effects: 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 IV NOVELTIES

This Ordinance does not apply to and does not regulate the use of Novelties in Union Township.

SECTION V CONSUMER FIREWORKS

1. Limitations on Use. Except on the day proceeding, the day of, or the day after a holiday, in accordance with state and federal laws and applicable Township ordinances, a person shall not ignite, discharge or use consumer fireworks.

Possession of Consumer Fireworks by a Minor. A minor shall not possess, ignite, discharge or use consumer fireworks.

3. Prohibited Conduct.

a. A person shall not ignite, discharge, or use consumer fireworks, articles pyrotechnics or display fireworks on public property, school property, church property, or the property of another person without that organization's or person's express permission to use those fireworks on those premises.

b. A person shall not use consumer fireworks, articles pyrotechnics, display fireworks or low-impact fireworks while under the influence of alcoholic liquor, a controlled substance, or a combination thereof.

c. A person shall not ignite, discharge, or use consumer fireworks, articles pyrotechnics, display fireworks or low-impact fireworks during the pendency of "red flag" warnings as designated by the National Weather Service, Grand Rapids, Michigan.

SECTION VI ARTICLES PYROTECHNIC AND DISPLAY FIREWORKS

1. The Township Board may permit articles pyrotechnic, display fireworks and special effect fireworks in Union Township, pursuant to the provisions of MCL 28.451, *et seq* and this Ordinance.

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 township along with a Site Plan, pay the required fee and shall secure permission from the Township Board prior to any such fireworks display.

3. Three copies of a 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. One copy shall be forwarded to the Mt Pleasant Fire Chief for review and comment to the Township Board, one copy to be retained on file by the township and a copy with a statement of approval or denial, and any conditions for approval and the signature of Township Clerk, to be returned to the applicant. The site plan shall set forth all structures in the area and within the

discharge site fallout area. The site plan shall furthermore set forth the distance separating any fireworks and any spectator viewing areas. All site plans shall be forwarded to the Zoning Administrator and/or his designated alternate for approval, including any recommended conditions, prior to coming before the Township Board for its approval.

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

5. Proof of insurance conforming the requirements of this Ordinance and PA 256 of 2011 shall be submitted with the application.

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

7. The Township Board shall approve an application for an articles pyrotechnic, display fireworks or special effects display if it finds that all of the following standards are reasonably 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 designated alternate has approved the application and site plan.

d. The fireworks display will not have an adverse effect upon public safety.

e. The time, duration, and location of the fireworks or special effects display will not, due to noise, traffic congestion, spectators, or other factors, unreasonably disturb the peace of persons residing within the vicinity.

f. The Township Board, 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.

8. Requirements and Restrictions

a. The person conducting the fireworks display shall follow NFPA 1123 for fireworks display and/or the Township requirements set forth herein, whichever are more restrictive.

b. 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 Township Board 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.

c. The applicant shall maintain personal injury liability

insurance/property damage liability insurance in the amount of \$1,000,000 for each event. The Township shall be named as an additional insured on the insurance policy.

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. The consumption of alcohol or any controlled substance immediately prior to and/or during the fireworks display by any person involved in conducting the display is prohibited.

f. A fireworks display conducted hereunder shall conform with all specifications set forth in the approved application and site plan, as well as with any conditions imposed by the Township Board 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.

SECTION VII SANCTIONS

1. If a law enforcement officer or the Township Ordinance Enforcement official determines that a violation of any section of this Ordinance has occurred, the officer may issue a municipal civil infraction citation and seize the consumer fireworks, articles pyrotechnic, display fireworks or low-impact fireworks as evidence of the violation.

2. A violation of any section of this Ordinance shall be punishable as a municipal civil infraction with fines not to exceed \$500, plus the costs and expenses of prosecution and enforcement.

3. Following final disposition of a finding of responsibility for violating this Ordinance, the Township may dispose of or destroy any consumer fireworks, articles pyrotechnic, display fireworks or low-impact fireworks that were retained as evidence in that prosecution.4. In addition to any other penalty, a person that is found responsible for a violation of this Ordinance shall be required to reimburse the Township for the costs of storing, disposing of, or destroying consumer fireworks, articles pyrotechnic, display fireworks or low-impact fireworks that were confiscated for a violation of this Ordinance.5. In addition, the Township shall have the right to proceed in any court of competent jurisdiction for the purpose of obtaining an injunction, restraining order or other appropriate remedy to enforce or compel compliance with this Ordinance.

6. Each day that a violation of this Ordinance continues to exist shall constitute a separate violation of this Ordinance.

SECTION VIII SEVERABILITY

Should any section, clause or provision of this Ordinance be declared to be invalid by a court of competent jurisdiction, the same shall not affect the validity of the Ordinance as a whole or any other part thereof other than the parts so declared to be invalid.

SECTION IX REPEAL OF CONFLICTING ORDINANCES

All Ordinances or parts of Ordinances in conflict herewith, including but not limited to Ordinance 1999-01, are hereby repealed.

SECTION X EFFECTIVE DATE

This Ordinance shall take effect 30 days after publication following its adoption.

ADOPTED BY THE TOWNSHIP BOARD:

John Barker

Charter Township of Union Supervisor

STATE OF MICHIGAN)

) ss

COUNTY OF ISABELLA)

I, the undersigned, the duly qualified and acting Clerk of Union Charter Township, Isabella County, Michigan, DO HEREBY CERTIFY that the foregoing is a true and complete copy of an ordinance adopted at a regular meeting of the Township Board on the ____ day of _____, 2011, and that such ordinance was duly published in the Morning Sun on the ____ day of _____, 2012.

Peter Gallinat

Charter Township of Union Clerk