



CITY COUNCIL AGENDA ITEM

Date: January 7, 2015

To: Brian Kischnick, City Manager

From: William Nelson, Fire Chief
David Roberts, Assistant Fire Chief/Fire Marshal

Subject: Delegation of Fireworks Inspections

The Michigan Bureau of Fire Services (BFS) annually seeks departments that are interested in applying for inspection delegation for consumer fireworks sales facilities (CFRS) under Section 19 of 2011 PA 256. This delegation is effective for one year. The local fire department is responsible for conducting inspections of the permanent and temporary CFRS locations within its jurisdiction. The certification, plan review, and citation functions remain the responsibility of the BFS. Fire departments that elect to have delegation authorization receive 70% of the application fee paid for the consumer fireworks certificate (\$700 for permanent facilities and \$420 for temporary facilities).

Legal Considerations

To qualify for inspection delegation, the local fire department must enter into a written agreement annually with the Bureau after acceptance of application. All inspections must be conducted by a certified fire inspector using the promulgated Fireworks Fire Safety Rules and documented on Bureau-approved forms. (The Troy Fire Department currently has five certified inspectors, four of whom are listed.)

Recommendation

The Fire Department believes such delegation of authority for the inspection of CFRS facilities is in the best interest of the City and therefore recommends a signed resolution for this delegation authority.

Enclosed for Council's review is the Fireworks Delegation of Authority Agreement with the BFS.

City Attorney's Review as to Form and Legality

Lori Grigg Bluhm, City Attorney



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF FIRE SERVICES
RICHARD W. MILLER
STATE FIRE MARSHAL

MIKE ZIMMER
ACTING DIRECTOR

FIREWORKS DELEGATION OF AUTHORITY AGREEMENT

Between
The Michigan Department of Licensing & Regulatory Affairs/
Bureau of Fire Services
and
Troy Fire Department
EXPIRATION
April 30, 2016

I. Purpose

This agreement is entered into for the purpose of delegating responsibility for inspections of consumer fireworks retail locations in accordance with the Michigan Fireworks Safety Act, PA 256 of 2011, as amended, MCL 28.469.

II. Local Agency Responsibilities

The **Troy Fire Department** agency agrees:

- A. To abide by all terms of this agreement including all attachments (i.e. procedures).
- B. To the use of State Certified Fire Inspectors to perform all delegated inspections.
- C. To complete all delegated inspections within the time frames as specified by the Department of Licensing & Regulatory Affairs, Bureau of Fire Services.
- D. To complete all delegated inspections using the applicable rules promulgated in accordance with MCL 28.470.
- E. To utilize all report forms and reporting formats required by the Department of Licensing & Regulatory Affairs, Bureau of Fire Services, for all delegated inspections of consumer fireworks retail locations.
- F. To follow and apply all Department of Licensing & Regulatory Affairs, Bureau of Fire Services, procedures regarding the inspection of consumer fireworks retail locations.
- G. To the proper conduct and demeanor of their employee(s) while performing delegated inspections in accordance with this agreement.

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- H. To attend training opportunities provided by the Department of Licensing & Regulatory Affairs, Bureau of Fire Services, necessary for the proper completion of delegated inspections.

III. Department of Licensing & Regulatory Affairs, Bureau of Fire Services responsibilities

The Bureau of Fire Services agrees:

- A. To abide by the terms of this agreement, including all attachments.
- B. To provide the technical assistance and supervision necessary for the proper administration of this agreement.
- C. To provide any report forms and reporting formats required by the Department of Licensing & Regulatory Affairs, Bureau of Fire Services, for the reporting of inspections performed in accordance with this agreement.
- D. To provide the **Troy Fire Department** with copies of applicable Department of Licensing & Regulatory Affairs, Bureau of Fire Services procedures, manuals, or other documents necessary for the implementation of this agreement.
- E. To provide the opportunity for training for an appropriate number of employees of the **Troy Fire Department**, as determined by the Department of Licensing & Regulatory Affairs, Bureau of Fire Services, regarding rules, laws, or procedures necessary for the completion of inspections delegated in accordance with this agreement.
- F. To annually review the delegation of authority to perform inspections of consumer fireworks retail locations to verify compliance with MCL 28.455.
- G. To notify the Agency, in writing, of intent to revoke delegated authority if the Department of Licensing & Regulatory Affairs, Bureau of Fire Services, finds that the terms of the agreement have not been kept, or if the Department intends to withdraw the delegation program.
- H. To revoke the authority of the employee(s) to perform delegated inspections upon notification of the **Troy Fire Department** that the request for delegation has been rescinded.
- I. To inform the State Fire Safety Board of all decisions by the Department of Licensing & Regulatory Affairs, Bureau of Fire Services, in delegating or revoking the authority delegated under MCL 28.469.

IV. Conflict of Interest

The **Troy Fire Department** and the Department of Licensing & Regulatory Affairs, Bureau of Fire Services, are subject to the provisions of Act No. 317, PA of 1968, as amended, being MCL 15.321 et seq, and Act No. 196, PA of 1973, as amended, being MCL 15.341 et seq.

V. Liability

- A. All liability and/or loss or damage as a result of claims, demands, costs, or judgments arising out of activities that are the responsibility of the **Troy Fire Department** or unit of government pursuant to the terms of this agreement shall be the responsibility of the Agency if the liability, loss, or damage is caused by, or arises out of, the actions or failure to act on the part of the unit of government or its employees either directly or indirectly, provided that nothing herein shall be construed as a waiver of any governmental immunity available to the government body or unit of government or its employees by common law, statute, or court decision.
- B. All liability and/or loss or damage as a result of claims, demands, costs, or judgments arising out of activities that are the responsibility of the Department of Licensing & Regulatory Affairs, Bureau of Fire Services, or its employees shall be the responsibility of the Department if the liability, loss, or damage is caused by, or arises out of, the actions or failure to act on the part of the Department or its employees either directly or indirectly, provided that nothing herein shall be construed as a waiver of any governmental immunity available to the State, its agencies, the Department of Licensing & Regulatory Affairs, Bureau of Fire Services, or the employees of any of them as provided by common law, statute, or court decision.
- C. In the event that liability to third parties, and/or loss, or damages arises as a result of activities which go beyond the mere fact of agreement between the **Troy Fire Department**, and the Department of Licensing & Regulatory Affairs, Bureau of Fire Services, in fulfillment of their responsibilities under this agreement, such a liability, loss or damage shall be borne in relation to each party's responsibilities under that joint activity, provided that nothing herein shall be construed as a waiver of any governmental immunity available to the governing body, unit of government, the State and the Department of Licensing & Regulatory Affairs, Bureau of Fire Services, or the employees of any of them, as provided by common law, statute, or court decision.

VI. Compensation from Application Fees

During the time this agreement is in effect, the financial entity for the **Troy Fire Department** will receive 70% of the consumer fireworks application fee paid by the applicant for facility inspection duties within the **Troy Fire Department** jurisdiction. This amounts to \$700 per permanent structure and \$420 per temporary structure.

VII. Statutory Authority

Authority to perform inspections of consumer fireworks retail locations to verify compliance with MCL 28.455 is delegated to the BFS approved certified fire inspector(s) of the **Troy Fire Department** by the Department of Licensing & Regulatory Affairs, Bureau of Fire Services, under provision of Michigan Fireworks Safety Act, PA 256 of 2011 as amended, MCL 28.469. This delegation does not include any authority to issue citations or otherwise enforce the provisions of the Fireworks Safety Act.

Print Name of Local Certifying Official

Title of Local Certifying Official

Certifying Official Signature

Date

Printed Name of Fire Chief

Fire Chief Signature

Date

Richard W. Miller
Printed Name of State Fire Marshal

State Fire Marshal Signature

Date