



MEMORANDUM

TO: Members of the Troy City Council
FROM: Lori Grigg Bluhm, City Attorney *LSB*
DATE: May 30, 2013
SUBJECT: Proposed Ordinance Incorporating Recent Changes To State Fireworks Statute

The Troy City Council has previously discussed some of the local impacts resulting from the passage of the Michigan Fireworks Safety Act (2011 PA 256, MCL 28.451 et. seq.). (See attached memorandums) In August 2012, the Troy City Council passed a resolution urging the Michigan legislature to modify the law to address some of the municipal concerns with the state law (attached). Since that time, City Administration has been closely monitoring this issue. Yesterday, on May 29, 2013, the Michigan House of Representatives almost unanimously passed amendments to the law that expressly allow for municipalities to set limits on the hours that fireworks can be discharged during the three day holiday period. It is hoped that the Michigan Senate will act quickly on this proposed bill, so that it will be effective prior to July 4, 2013.

There are only two regularly scheduled Troy City Council meetings before July 4, 2013. As of today's date, the Michigan Senate has not taken any action. However, if the Senate does approve changes to the law, then City Council only has one additional regularly scheduled City Council meeting prior to July 4, 2013. Therefore, in anticipation of changes to state law, this item is presented to the Troy City Council as an informational item for the June 3, 2013 agenda, with the hope that City Council will be able to consider ordinance amendments at the June 17, 2013 regularly scheduled City Council meeting.

A red lined draft of City Administration's current recommended revisions is attached, but this may need to be revised, depending on what happens to the state law. Please let me know if there are any questions concerning this matter.

CITY OF TROY
AN ORDINANCE TO AMEND
CHAPTER 98 OF THE CODE
OF THE CITY OF TROY

The City of Troy ordains:

Section 1. Short Title

This Ordinance shall be known and may be cited as an amendment to Chapter 98, Section 98.05.16 of the Code of the City of Troy.

Section 2. Amendment

Section 98.05.16 shall be amended as follows:

98.05.16 Fireworks. No person shall fire, discharge, display, or possess any fireworks, except as permitted by state law and this ordinance. There shall be no ignition, discharge or use of consumer fireworks on all days except for on the day before a national holiday, the national holiday, and the day after a national holiday. On these holiday dates only, persons are permitted to ignite, discharge, or use fireworks between the hours of 8 am to midnight for each of these days, and between 8 am and midnight on New Year's Day only, in accordance with state and local law. A person who ignites, uses or discharges a consumer firework at any time except as set forth above is responsible for a municipal civil infraction, which is punishable by a fine of up to \$500. A person who violates any other portion of this section is guilty of a misdemeanor, punishable by imprisonment in the county jail for not more than 90 days or by a fine or not more than \$500, or both.

Section 3. Repeal

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

Section 4. Savings

All proceedings pending, and all rights and liabilities existing, acquired or incurred, at the time this Ordinance takes effect, are hereby saved. Such proceedings may be consummated under and according to the ordinance in force at the time such proceedings were commenced. This ordinance shall not be construed to alter, affect, or abate any pending prosecution, or prevent prosecution hereafter instituted under any ordinance specifically or impliedly repealed or amended by this ordinance adopting this penal regulation, for offenses committed prior to the effective date of this ordinance; and new prosecutions may be instituted and all prosecutions pending at the effective date of this ordinance may be continued, for

offenses committed prior to the effective date of this ordinance, under and in accordance with the provisions of any ordinance in force at the time of the commission of such offense.

Section 5. Severability Clause

Should any word, phrase, sentence, paragraph or section of this Ordinance be held invalid or unconstitutional, the remaining provision of this ordinance shall remain in full force and effect.

Section 6. Effective Date

This Ordinance shall become effective ten (10) days from the date hereof or upon publication, whichever shall later occur.

This Ordinance is enacted by the Council of the City of Troy, Oakland County, Michigan, at a Regular Meeting of the City Council held at City Hall, 500 W. Big Beaver, Troy, MI, on the _____ day of _____, _____.

Dane Slater, Mayor

M. Aileen Bittner, City Clerk

CITY OF TROY
AN ORDINANCE TO AMEND
CHAPTER 93 OF THE CODE
OF THE CITY OF TROY

The City of Troy ordains:

Section 1. Short Title

This Ordinance shall be known and may be cited as an amendment to Chapter 93 of the Code of the City of Troy.

Section 2. Amendment

Sections 105.6.14.1, 3301.1.3, 3308.1, 3308.11, and Chapter 47 shall be amended as follows:

105.6.14.1 Fireworks. An operational permit is required for **ignition, discharge and use of agricultural or wildlife fireworks, articles pyrotechnic, public display fireworks before a proximate audience, or special effects fireworks as stipulated in this ordinance.**~~the public display and retail display and sale of fireworks.~~ Application for permits shall be made in writing at least 15 days in advance of the date of the public display,~~retail display or sale of fireworks.~~ The ~~sale,~~ possession, and distribution of fireworks for such **use and** display shall be lawful under the terms and conditions approved with the permit and for only that purpose. A permit granted hereunder shall not be transferable nor shall any such permit be extended beyond the time set forth therein unless approved by the fire official.

3301.1.3 Fireworks. The possession, manufacture, storage, sale, handling and use of fireworks ~~are prohibited unless~~ **shall be** in compliance with the Michigan Fireworks Law 1931 PA 328 **Safety Act, Act No. 256, Public Acts of 2011**~~as amended, or its equivalent.~~**and any amendments thereto, and this ordinance.**

3308.1 General. ~~The display of fireworks, including~~ **Outdoor fireworks displays,** proximate audience displays and pyrotechnic special effects in motion picture, television, theatrical, and group entertainment productions, shall comply with this chapter, and NFPA 1123 or NFPA 1126. ~~d~~Approved public displays shall be handled by an approved competent operator, and the fireworks shall be arranged, located, discharged and fired in a manner that will not be a hazard to property or endanger any person.

~~**3308.11 Retail Display and Sale.** A permit shall be required as set forth in Section 105.6 and regulated in accordance with this section. Fireworks~~

~~displayed for retail sale shall not be made readily accessible to the public. A minimum of one pressurized water portable fire extinguisher complying with Section 906 shall be located not more than 15 feet (4572 mm) and not less than 10 feet (3048 mm) from the hazard. "No Smoking" signs complying with Section 310 shall be conspicuously posted in areas where fireworks are stored or displayed for retail sale. No person under the age of 18 years shall sell, purchase or possess fireworks unless accompanied by a parent or legal guardian.~~

Chapter 47 REFERENCED STANDARDS

State of Michigan Laws, Rules, or Requirements including but not necessarily limited to the following with amendments:

Michigan Fire Prevention Code 1941 PA 207
Michigan Explosives Law 1970 PA 202
~~Michigan Fireworks Law 1931 PA 328~~ Michigan Fireworks Safety Act, Act No. 256, Public Acts of 2011, and any amendments thereto
Michigan Model Rocket Law 1965 PA 333
Michigan Storage and Handling of Flammable and Combustible Liquids Rules
Michigan Underground Storage Tank Rules 1999

Section 3. Repeal

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

Section 4. Savings

All proceedings pending, and all rights and liabilities existing, acquired or incurred, at the time this Ordinance takes effect, are hereby saved. Such proceedings may be consummated under and according to the ordinance in force at the time such proceedings were commenced. This ordinance shall not be construed to alter, affect, or abate any pending prosecution, or prevent prosecution hereafter instituted under any ordinance specifically or impliedly repealed or amended by this ordinance adopting this penal regulation, for offenses committed prior to the effective date of this ordinance; and new prosecutions may be instituted and all prosecutions pending at the effective date of this ordinance may be continued, for offenses committed prior to the effective date of this ordinance, under and in accordance with the provisions of any ordinance in force at the time of the commission of such offense.

Section 5. Severability Clause

Should any word, phrase, sentence, paragraph or section of this Ordinance be held invalid or unconstitutional, the remaining provision of this ordinance shall remain in full force and effect.

Section 6. Effective Date

This Ordinance shall become effective ten (10) days from the date hereof or upon publication, whichever shall later occur.

This Ordinance is enacted by the Council of the City of Troy, Oakland County, Michigan, at a Regular Meeting of the City Council held at City Hall, 500 W. Big Beaver, Troy, MI, on the _____ day of _____, _____.

Dane Slater, Mayor

M. Aileen Bittner, City Clerk

July 25, 2012
N-06a Regular Meeting



MEMORANDUM

TO: Members of the Troy City Council
FROM: Lori Grigg Bluhm, City Attorney *LSB*
DATE: July 18, 2012
SUBJECT: Fireworks Regulations

The Michigan Legislature's passage of the Michigan Fireworks Safety Act (2011 PA 256) has caused some municipalities to enact local regulations concerning the use and discharge of fireworks. Due to activity during the past month, some members of the Michigan legislature are reviewing the newly enacted state statute, MCL 28.451 et. seq. to address concerns that have been raised by residents and local governmental units.

In the interim, some municipalities have enacted ordinances that completely prohibit the use or discharge of fireworks on days other than the national holidays. Local ordinances have been enacted in Birmingham, Center Line, Ferndale, Keego Harbor, Novi, Rochester Hills, Royal Oak, Sterling Heights, Sylvan Lake, Warren, West Bloomfield and other metropolitan Detroit communities, as well as in cities on the west side of the State, including Grand Rapids, Kentwood and Walker.

The current state law pre-empts any local regulation addressing the use and discharge of fireworks on the national holidays (including the day before and the day after the holiday). In other communities, there have been challenges to criminal noise citations issued on these designated days, so there may be case law in the near future clarifying this aspect.

The City of Troy has used state law and Troy's existing ordinances to address firework complaints. Under state law, fireworks cannot be discharged on public property, school property, church property, or the property of another person (unless explicit permission is given). Persons under the influence of drugs or alcohol are prohibited from discharging fireworks. Minors cannot purchase the more powerful fireworks that are otherwise authorized under the new state statute. All of these provisions are incorporated in Troy's ordinance, which requires compliance with the State law. Troy also has additional provisions, including Chapter 98, Section 98.05.05, prohibiting loud conduct which disturbs the peace and quiet. This provision can be cited if persons are caught disturbing the peace with the use of fireworks. The City also has a nuisance ordinance, Chapter 88 of the City of Troy Ordinances, which could be used against property owners to abate a continuing nuisance, such as loud conduct or littering.

City Administration is happy to work on a proposed ordinance revisions concerning fireworks if Council directs. A proposed ordinance could do any of the following:

- prohibit fireworks on all days but the designated holidays; and/or
- set hours on the discharge of fireworks; and/or
- prohibit minors from using or discharging fireworks; and/or
- create setbacks from residential property; and/or
- other items that need to be addressed

Please let us know how Council would like to proceed on this matter.

1-06 August 13
2012
Regular
Meeting



MEMORANDUM

TO: Members of the Troy City Council
FROM: Lori Grigg Bluhm, City Attorney *LSB*
DATE: August 8, 2012
SUBJECT: Proposed Resolution Requesting Changes to State Fireworks Statute

At the July 23, 2012 City Council meeting, City Council discussed the impact of the newly passed Michigan Fireworks Safety Act (2011 PA 256, MCL 28.451 et. seq.) in the City of Troy. In recognition of the number of complaints filed and the potential conflicts in the law, City Council informally requested the preparation of a proposed resolution for consideration at the August 13, 2012 City Council meeting.

Attached please find a proposed resolution that sets forth the municipal concerns articulated by the Fire Department, Police Department, and Planning/ Code Enforcement Departments.

Please let me know if there are any questions concerning this matter.

CITY COUNCIL MINUTES-Final

August 13, 2012

the services of the Oakland County Board of Carvassers.

Yes: McGinnis, Slater, Daniels, Campbell, Fleming, Henderson
No: None
Abstain: Tietz

MOTION CARRIED

1-5 City Council Rules of Procedure

Moved by Fleming
Seconded by McGinnis

RESOLVED, That Troy City Council hereby APPROVES the 2011-2012 City Council Rules of Procedure as revised by City Council at the July 23, 2012 City Council Meeting and including the suggested revisions made by City Administration.

Vote on Resolution to Postpone Item 1-5 City Council Rules of Procedure

Resolution #2012-08-161
Moved by Tietz
Seconded by Fleming

RESOLVED, That Troy City Council hereby POSTPONES Item 1-5 City Council Rules of Procedure to the August 27, 2012 Regular City Council Meeting.

Yes: All-7
No: None

MOTION CARRIED

1-6 Proposed Resolution Requesting Changes to State Fireworks Statute

Resolution #2012-08-162
Moved by Daniels
Seconded by Slater

WHEREAS, 2011 PA No. 288 amended the law concerning fireworks in the State of Michigan, and these new provisions were effective on January 1, 2012; and

WHEREAS, The revised state fireworks statutes, specifically MCL 28.451 et seq., resulted in many complaints and concerns being raised by municipal constituents during the most recent 4th of July holiday period; and

WHEREAS, The statutory revisions to MCL 28.451 et. seq. also contain provisions that have created some concerns for Michigan municipalities.

NOW THEREFORE, BE IT RESOLVED, That the Troy City Council strongly URGES the Michigan Legislature to revisit and revise the state fireworks statutes, MCL 28.451 et. seq., to

←
2012
Resolution
←

CITY COUNCIL MINUTES-Final

August 13, 2012

address the following:

- Provide clarification as to the powers of municipalities to establish reasonable regulations on all days, including designated holidays, in furtherance of the municipal obligation to provide for the public peace and health and safety of persons and property. These municipal powers include but are not limited to restrictions on the hours that fireworks can be discharged or restrictions on the locations that fireworks can be discharged.
- Remove any potential conflicts between the Michigan Occupational Safety and Health Act (PA 154 of 1974, as amended), the Michigan Fire Prevention Code Act, (PA 207 of 1941, as amended), the International Fire Code (2009) and MCL 28.451 et. seq.
- Clarify the storage and disposal responsibilities imposed on municipal officials for seized or illegal fireworks.
- Articulate the pre-emptive abilities of a municipal government to enact emergency moratoriums, based on hazardous environmental conditions.
- Clarify the powers of municipal officials to enforce reasonable regulations on all days, including designated holidays.
- Explicitly affirm that fireworks distributors and entities are not exempt from any and all local municipal regulations governing temporary businesses.
- Apply consistent regulations governing minors who purchase, use, store or discharge fireworks.
- Explicitly delegate inspection responsibilities to municipal officials, since this will increase the knowledge and preparedness for emergency responders, as well as the timeliness of the inspections. This also requires coordinating provisions for payment to the municipalities for the inspection and other work performed.

BE IT FURTHER RESOLVED, That the City Clerk shall SEND a copy of this Resolution to all state elected officials representing any portion of the City of Troy.

Yes: Daniels, Campbell, Fleming, Henderson, McGinnis, Slater
No: Tietz

MOTION CARRIED

J. CONSENT AGENDA:

J-1a Approval of "J" Items NOT Removed for Discussion

Resolution #2012-08-163
Moved by Fleming
Seconded by McGinnis

RESOLVED, That Troy City Council hereby APPROVES all items on the Consent Agenda as