

Ordinance No. 2019-06

AN ORDINANCE TO AMEND CHAPTER 8, ARTICLE I, SECTION 8-2 “SALE AND USE OF FIREWORKS” OF THE MILAN CODE OF ORDINANCES TO UPDATE THIS SECTION REGULATING THE SALE AND USE OF FIREWORKS TO COMPLY WITH 2011 PA 256, AS AMENDED BY 2018 PA 634 AND 2018 PA 635 (MCL 28.451 *et seq.*).

WHEREAS, MCL 28.457(1) provides that “Except as provided in this Act, a local unit of government shall not enact or enforce an ordinance, code, or regulation pertaining to or in any manner regulating the sale, display, storage, transportation, or distribution of fireworks regulated under this Act.”

WHEREAS, MCL 28.457(2) permits a local unit of government to enact an ordinance regulating the ignition, discharge and use of consumer fireworks except on the following days after 11 a.m.: (a) December 31 until 1 a.m. on January 1; (b) the Saturday and Sunday immediately preceding Memorial Day until 11:45 p.m. on each of those days; (c) June 29 to July 4 until 11:45 p.m. on each of those days; (d) July 5, if that date is a Friday or Saturday, until 11:45 p.m.; and, (e) the Saturday and Sunday immediately preceding Labor Day until 11:45 p.m. on each of those days.

WHEREAS, MCL 28.457(3) requires that an ordinance under MCL 28.457(2) shall impose a civil fine of \$1,000.00 for each violation of the ordinance and no other fine or sanction. The ordinance must provide for the remittance of \$500.00 of the fine collected under the ordinance to the local law enforcement agency responsible for enforcing the ordinance.

THE CITY OF MILAN ORDAINS:

Section 1. Amendment to Chapter 8, Article I, Section 8-2 – Sale and Use of Fireworks. That the Milan City Code of Ordinances Chapter 8, Article I, Section 8-2 “Sale and use of fireworks” is hereby amended to read as follows:

Chapter 8 – FIRE PREVENTION AND PROTECTION

ARTICLE I – IN GENERAL

Sec. 8-2. – Sale and use of fireworks.

- (1) *Sale of consumer fireworks.* A person shall not sell consumer fireworks in the city unless the person annually obtains a consumer fireworks certificate from the Department of Licensing and Regulation of the State of Michigan under Section 4 of Act 256 of PA 2012-2011 PA 256, as amended by 2018 PA 634 (MCL 28.454).
- (a) No person shall sell any consumer fireworks to a minor.
 - (b) Sale of consumer fireworks from retail location.

Consumer fireworks shall only be sold from a retail location meeting the

requirements ~~of Section 5 of Act 256 of PA 2012~~ 2011 PA 256, as amended by 2018 PA 634 (MCL 28.455) and the building, fire, and zoning codes of the City of Milan (AG Opinion 7266 of 2012).

- (2) *Sale of low impact fireworks.* A person shall not sell low impact fireworks unless he or she has registered with the low impact fireworks retail registry not less than ten (10) days before selling the fireworks in each calendar year pursuant to ~~section~~ Section 6 of Act 256 of PA 2012 2011 PA 256, as amended by 2018 PA 634 (MCL 28.456).
- (3) *Sale and use of permitted fireworks.* Novelties, consisting of snappers, drop pops, snakes, party poppers, smoke balls, and sparkling devices and any other device defined under APA standard 87-1, 3.2, 3.2.1, 3.2.2, 3.2.3, 3.2.4, and 3.2.5 as amended may be sold, stored, displayed for sale, transported, used, or distributed without regulation.
- (4) *Ignition, discharge, ~~or and~~ use of consumer fireworks; civil fine.* It shall be unlawful for any person to ignite, discharge, ~~or and~~ use consumer fireworks at any time from any location in the City of Milan without a permit issued under Subsection 8-2(5) of this Chapter except on the following days after 11 a.m.: ~~between the hours of 8:00 a.m. and 1:00 a.m. on the day preceding, the day of, or the day after a national holiday.~~
 - (a) December 31 until 1 a.m. on January 1.
 - (b) The Saturday and Sunday immediately preceding Memorial Day until 11:45 p.m. on each of those days.
 - (c) June 29 to July 4 until 11:45 p.m. on each of those days.
 - (d) July 5, if that date is a Friday or Saturday, until 11:45 p.m.
 - (e) The Saturday and Sunday immediately preceding Labor Day until 11:45 p.m. on each of those days.

A civil fine of \$1,000.00 shall be imposed for each violation of Subsection 8-2(4) of this Chapter. The local law enforcement agency responsible for enforcing a particular violation of Subsection 8-2(4) of this Chapter shall receive a remittance of \$500.00 of each fine collected as a result of such enforcement.

- (5) *Articles pyrotechnic or display fireworks ignition; permit; competency and qualifications of operators; retention fee.*
 - (a) The ~~city~~ council, upon application in writing, on forms provided by the ~~State of Michigan Department~~ and payment of a fee, if any, set from time to time by the legislative body ~~council~~, council, ~~if any~~, may grant a permit for the use of agricultural or wildfire fireworks, articles pyrotechnic, display

fireworks, consumer fireworks, or special effects manufactured for outdoor pest control or agricultural purposes, or for public or private display within the city by municipalities, fair associations, amusement parks, or other organizations or individuals approved by the city council, if the applicable provisions of this act 2011 PA 256, as amended by 2018 PA 634 (MCL 28.451 et seq.) are complied with met. After a permit has been granted, a permit holder may sell, possess, or transport fireworks for only the purposes described in the permit. A permit granted under this subsection is not transferable and shall not be issued to a minor.

- (b) Before a permit for articles pyrotechnic or a display fireworks ignition is issued, the person, firm, or corporation applying for the permit shall furnish proof of financial responsibility by a bond or insurance in an amount, character, and form deemed necessary by the ~~local governing authority~~ council to protect the public and to satisfy claims for damages to property or personal injuries arising out of an act or omission on the part of the person, firm, or corporation or an agent or employee of the person, firm, or corporation, ~~and to protect the public.~~
- (c) A permit shall not be issued under this act to a nonresident person, firm, or corporation for ignition of articles pyrotechnic or display fireworks in this state until the person, firm, or corporation has appointed 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.
- (d) Before granting a permit under Subsection 8-2(5) of this Chapter, the ~~The~~ city council shall rule on the competency and qualifications of articles pyrotechnic and display fireworks operators, based on the operator's application form, as furnished by the operator, in accordance with the requirements provided under NFPA 1123, as required under NFPA 1123, as the operator has furnished in his or her application form, and on the time, place, and safety aspects of the display of articles pyrotechnic or display fireworks ~~before granting permits.~~
- (e) Any fees collected pursuant to Subsection 8-2(5) will be retained by the City.

Section 2. Violations and Penalties.

- a. The violations of Section 8-2 above are violations of state law subject to penalties set forth in 2011 PA 256, as amended. Violation of Subsection 8-2(4) is a civil violation of local ordinance punishable by a civil fine of \$1,000.00 for each violation of Subsection 8-2(4). The local law enforcement agency that enforced a particular violation of Subsection 8-2(4) shall receive a remittance of \$500.00 of each civil fine collected pursuant to such enforcement.

- b. Any person who disobeys, neglects, or refuses to comply with any provision of this ordinance or who causes, allows, or consents to any of the same shall be deemed to be responsible for the violation of this ordinance.

Section 3. Public Health and Safety. This Ordinance is declared necessary for the preservation of the public peace, health, safety, and welfare of the people of the City of Milan.

Section 4. Repealer. 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 5. Severability. Should any word, phrase, sentence, paragraph or section of this Ordinance be held invalid or unconstitutional, the remaining provisions of this ordinance shall remain in full force and effect. It is hereby declared to be the legislative intent of this body that the Ordinance would have been adopted had such invalid or unconstitutional provisions not have been included in this Ordinance.

Section 6. Savings Clause. The balance of the Code of Ordinances, City of Milan, Michigan, except as herein or heretofore amended, shall remain in full force and effect. The repeal provided herein will not abrogate or affect any offense or act committed or done, or any penalty or forfeiture incurred, or any pending fee, assessments, litigation, or prosecution of any right established, occurring prior to the effective date hereof.

Section 7. Copies to be available. Copies of the Ordinance are available at the office of the City Clerk for inspection by, and distribution to, the public during normal office hours.

Section 8. Effective Date. As provided by Section 7-3 of the Milan City Charter, the effective date of this ordinance shall be ten (10) days after its adoption and publication of a summary thereof as required by Subsection 7-4(b) of the Milan City Charter, which summary shall read as follows:

The Milan City Council has approved Ordinance No. 2019-06, which ordinance amends the Milan City Code of Ordinances to amend Chapter 8, Article I, Section 8-2 to update this section regulating the sale and use of fireworks to comply with 2011 PA 256, as amended by 2018 PA 634 and 2018 PA 635. Printed copies of the full text of Ordinance No. 2019-06 are available for inspection and purchase by the public at the office of the City Clerk during regular business hours, 8:00 a.m. to 4:00 p.m., Monday through Friday. Ordinance No. 2019-06 is effective ten (10) days after adoption and publication of this summary notice.

Adopted and signed this 26 day of August 2019.

Signed _____
Dominic N. Hamden, Mayor

Signed _____
Lavonna Wenzel, City Clerk

I hereby certify that the foregoing constitutes a true and complete copy of an Ordinance duly adopted by the City Council of the City of Milan, Counties of Monroe and Washtenaw, State of Michigan, at a regular Meeting held on the 26 day of August 2019, and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

I further certify that the following Members were present at said meeting: Mayor Dominic Hamden, Councilpersons Martha Churchill, Ann Gee, Douglas Gilson, and Mary Kerkes.

and that the following Members were absent: Pro-Tem Christian Thompson and Councilperson Ed Kolar.

I further certify that Member Martha Churchill, moved adoption of said ordinance, and that said motion was supported by Member Mary Kerkes.

I further certify that the following Members voted for adoption of said ordinance: _____
Mayor Dominic Hamden, Councilpersons Martha Churchill, Ann Gee, Douglas Gilson, and Mary Kerkes.

and that the following Members voted against adoption of said ordinance: None.

Lavonna Wenzel, City Clerk

First Reading: August 12, 2019

Second Reading: August 26, 2019

Published: September 1, 2019

Effective Date: September 5, 2019