

**CHARTER TOWNSHIP OF SHELBY  
MACOMB COUNTY, MICHIGAN**

**ORDINANCE NO. 266**

**AN ORDINANCE TO PROTECT THE HEALTH, SAFETY AND GENERAL WELFARE OF THE CHARTER TOWNSHIP OF SHELBY THROUGH THE REGULATION OF FIREWORKS, AS PROVIDED IN PA 256 OF 2011 AND PA 65 OF 2013 AMENDING ARTICLE V, SECTION 26-155 THROUGH 26-163 OF CHAPTER 26 OF THE CODE OF ORDINANCES, PROVIDING FOR REPEALER, SEVERABILITY, PENALTIES AND EFFECTIVE DATE.**

**THE CHARTER TOWNSHIP OF SHELBY ORDAINS:**

**Section 1.** Preamble.

**WHEREAS**, The Michigan Fireworks Safety Act, Act 256 of 2011, effective January 1, 2012, legalized the sale of consumer fireworks in Michigan and delegated to communities limited control over the use and discharge of the fireworks. In the interest of maintaining public health, safety and general welfare, the Charter Township of Shelby hereby provides for the regulation and use of fireworks within the Charter Township of Shelby as provided in PA 256 of 2011 as may be amended (MCL 28.451 et seq) and repeals all existing Fireworks ordinances that conflict with the Act.

**Section 2.** Chapter 26 Article V, Section 26-155 of the Code of Ordinances of the Charter Township of Shelby entitled Fireworks is hereby repealed in its entirety.

**Section 3.** Chapter 26 Article V, Section 26-155 through 26-163 of the Code of Ordinances of the Charter Township of Shelby shall be added to read as follows:

**Section 26.155 DEFINITIONS**

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

***ACT*** means the Michigan Fireworks Safety Act, Act 256 of 2011, and any amendments to the Act which may be from time to time adopted.

***APA STANDARD 87-1*** means standard for construction and approval for transportation of fireworks, novelties, and theatrical pyrotechnics, published by the American Pyrotechnics Association of Bethesda, Maryland.

***ARTICLES PYROTECHNIC*** means 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.

**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 does not include low-impact fireworks

**DEPARTMENT** means Department of Licensing and Regulatory Affairs (LARA), State of Michigan.

**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..

**FIREWORK OR 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.

**LOW IMPACT FIREWORK** 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 3.5p.

**MINOR** means individual who is less than 18 years old.

**NATIONAL HOLIDAY** as used in this article means

New Year's Day (January 1);  
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)  
And any holidays as may be from time to time added, removed or changes pursuant to 5 USC Section 6103, or any replacement or amended legislation.

**NFPA** means the National Fire Protection Association.

**NOVELTIES** means the term 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, 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.

**PERSON** means any individual, agent, association, charitable organization, company, limited liability company, corporation, labor organization, legal representative, partnership, unincorporated organization, or any other legal or commercial entity. An individual shall include a Minor as defined in this article.

Except as otherwise provided, other terms used in this Article shall have the meaning ascribed to them in the Act, or, if not defined in the Act, under the APA standards.

## **Section 26-156. PROHIBITED FIREWORKS**

### **CONSUMER FIREWORKS.**

A Person shall not ignite, discharge or use Consumer fireworks within the geographical boundaries of the Township, except on the day of, the day preceding or the day after a National Holiday. On the day of, the day preceding or the day after a National Holiday a person shall not ignite, discharge or use Consumer fireworks within the geographical boundaries of the Township between the hours of 12 midnight and 8 a.m or between the hours of 1 a.m. and 8 a.m. on New Year's day. When using any fireworks within the Township, a Person shall not use them in a manner inconsistent with or contrary to the manufacturer's direction for use, or in a manner which would reasonably be foreseen to cause, or which actually causes, harm to another or to property, or which causes, creates, or perpetuates a violation of any provision of the Township's Code of Ordinances, including but not limited to:

1. Disturbing the public peace
2. Violating the Townships nuisance ordinance, or
3. Creating or depositing litter in violation of the Township's litter ordinance

## **LOW IMPACT FIREWORKS**

Low impact fireworks may not be discharged during the hours of 12:00 pm and 8:00 am, and may not otherwise be discharged in violation of this article or the Act, or any other ordinance.

## **ILLEGAL FIREWORKS**

Any use, possession or discharge of any Fireworks that is prohibited and/or not approved by the State of Michigan or the State Fire Marshall, or that which contains a prohibited chemical component, compound or composition under APA 87-1 standard, or any federal or state law or regulation, is prohibited at all times and places, regardless of how it is labeled.

### **26-157. NOVELTIES**

Unless otherwise specified herein, novelties are not subject to any of the regulations in this Article, except that they may not be utilized in such a manner as to cause, create, or perpetuate a violation of any other section of the Township Code of Ordinances.

### **26-158. MINORS**

1. A minor shall not ignite, discharge or use any Consumer Fireworks, at any time, nor on any day, including National Holidays, and the day before and after a National Holiday.
2. A minor shall not ignite, discharge or use any Low Impact Fireworks or Novelty Fireworks, unless under the supervision of a parent, or guardian, and the ignition, discharge and use is within the permitted hours and does not violate the provisions of this article and the Act.

### **26-159. PUBLIC PROPERTY**

1. No person shall at any time or on any day ignite, discharge or use Consumer Fireworks in public parks.
2. No Consumer Fireworks shall be discharged, used or ignited on any public property, including public streets, sidewalks, easements and rights of ways as well as school property.

### **26-160. GENERAL RESTRICTIONS**

1. No person shall discharge fireworks or novelties other than in a manner prescribed by the manufacturer's directions for use and no person shall discharge consumer fireworks while within a building or enclosed space within 50 feet of a flame or flammable surface; within 20 feet of a property line; within any public

- roadway or public right of way; within, upon, or from a motor vehicle; at any person, vehicle or conveyance; within 500 feet of a gasoline service station; during weather conditions involving wind speeds in excess of 10 miles per hour; from any location not at ground level; from any surface that is not flat and level; without keeping a bucket of water or garden hose ready to address accidents; within 25 feet of a building; from within any type of container or other object that could reasonably be foreseen to impede the aerial progress of the firework, or to cause a fire or explosion after its ignition.
2. An individual who uses, ignites, or discharges consumer fireworks or low impact fireworks while under the influence of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance is guilty of a misdemeanor, punishable by up to 30 days in jail and/or a fine up to \$500.00, or if the violation caused damage to the property of another person, by up to 90 days in jail and/or a fine up to \$500.00
  3. A person shall not ignite, discharge or use consumer fireworks on public property, school property, church property of another person without that organization's or person's express permission to use those fireworks on those premises. A person who violates this subsection is responsible for a state civil infraction as provided by in the Act.
  4. No person shall, either individually or in concert with another Person, cause damage to any private or public property by the use, discharge or ignition of any Fireworks. Any violation of this subsection is subject to any penalty imposed by the Act.
  5. A law enforcement officer and or/fire official may confiscate and impound all fireworks and fireworks paraphernalia involved in causing a violation of this article. If the impounded items are lawful to possess, they may be retained as evidence until any court proceedings or citations have been adjudicated and any probationary periods have been completed. If the impounded items are unlawful to possess the police department or fire department shall dispose of or destroy the items in accordance with evidence protocols that will still allow for effective prosecution of the charged offenses without actual retention of the items. If any fireworks are retained by the Township, they shall be stored in compliance with the Act and rules promulgated under the Act. The person from whom the fireworks are seized under the Act or this Article shall pay the actual costs of storage and /or disposal of the seized fireworks. The police department may dispose of the seized fireworks by providing them to a disposal organization approved by the chief of police or designee, or by allowing them to be used by the Township police, fire and code enforcement agencies for training purposes.

## **26-161 APPLICABILITY OF GENERAL ORDINANCES**

Nothing in this article shall preclude the enforcement of ordinances or laws of general applicability at any time or on any day regardless of whether the conduct or offense is secondary or incidental to the use, discharge or ignition of fireworks.

## **26-162 DISPLAY FIREWORKS**

1. The Township Board may permit articles pyrotechnic, display fireworks, special effect fireworks and Consumer Fireworks in Shelby Township, pursuant to the provisions of the Act and this Ordinance.
2. Any person wishing to conduct an articles pyrotechnic, display fireworks, special effects display and Consumer Fireworks shall, at least 45 days prior to any display, submit an application on a form furnished by the Township, pay the required fee and shall secure permission from the Township Board prior to any such fireworks display.
3. The site plan of the area where the articles pyrotechnic, display fireworks, special effects display or Consumer Fireworks is to be conducted shall be submitted with the application. 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 Fire Chief 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 meeting the requirements of this Ordinance and PA 256 of 211 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 articles pyrotechnic, display fireworks, special effects display or Consumer Fireworks 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 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, location of the fireworks or special effects display will not, due to noise and other factors, unreasonably disturb the peace of persons residing within the vicinity or otherwise violate the Township's Nuisance Abatement Ordinance.
- 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 the nature of the subject site; the nature of the surrounding area and/or 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 Township Board 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.
- e. 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.
- f. The consumption of alcohol immediately prior to and during the fireworks display by any person involved in conducting the display is prohibited.
- g. 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.
- h. The applicant shall cause the site of the fireworks display to be cleaned up within 24 hours after the fireworks display has ended.
- i. A permit is not transferable and shall not be granted to a minor.

#### **26-163 PENALTIES**

Any person that violates any provision of this Ordinance shall be deemed responsible for a municipal civil infraction and fined in accordance with the following schedule:

	Minimum Fine	Maximum Fine
--- 1st offense within 3 year period*	\$ 75.00	500.00
--- 2nd offense within 3 year period*	\$150.00	500.00
--- 3rd offense within 3 year period*	\$325.00	500.00
--- 4th offense within 3 year period*	\$500.00	500.00

\*Determined on the basis of the date of commission of the offense(s).

Additionally, the violator shall pay costs which may include all expenses, direct and indirect, to which Shelby Township has been put in connection with the municipal civil infraction. In no case, however, shall costs of neither less than \$9.00 nor more than \$500.00 be ordered. 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 compel compliance with this Ordinance. Each day that a violation of this Ordinance continues to exist shall constitute a separate violation of this Ordinance.

**Section 4.** Severability

If any article, section, subsection, sentence, clause, phrase, or portion of this ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of remaining portions of the ordinance, it being the intent of the Township that this ordinance shall be fully severable.

**Section 5.** Effective Date

This ordinance shall become effective immediately upon second publication.

**CERTIFICATION**

I, STANLEY GROT, Clerk for the Charter Township of Shelby, County of Macomb, State of Michigan, certify that this is a true copy of an Ordinance adopted by the Board of Trustees of the Charter Township of Shelby at its regular meeting on the 20 day of August, 2013.

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Stanley Grot, Township Clerk

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