

CITY OF WIXOM
OAKLAND COUNTY, MICHIGAN

ORDINANCE NO. 2013-05

AN ORDINANCE TO AMEND AND REPLACE THE CITY OF WIXOM CODE OF ORDINANCES, TITLE 9, CHAPTER 9.12.140, FIREWORKS, TO PROVIDE DEFINITIONS; CONTAINING PROHIBITION ON USE UNDER CERTAIN CIRCUMSTANCES; PROHIBITING THE IGNITION AND DISCHARGE OF FIREWORKS EXCEPT AS PROVIDED; REGULATING THE USE OF FIREWORKS ON THOSE DAYS; AND TO PROVIDE PENALTIES.

THE CITY OF WIXOM ORDAINS:

Section 1 of Ordinance. Ordinance Amendment.

The City of Wixom City Code, Title 9, Public Peace and Welfare, Chapter 9.12.140, shall be replaced in its entirety as follows:

Sec. 9.12.140. Fireworks.

(a) Definitions.

As used in this Section, the following words and phrases have the meanings set forth herein:

Act means the Michigan Fireworks Safety Act, Public Act No. 256 of 2011, MCL 28.451 *et seq.*, as amended.

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

Articles pyrotechnic means pyrotechnic devices for professional use that are similar to consumer fireworks in 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.

Controlled substance means that term as defined in Section 8b of the Michigan Vehicle Code, 1949 PA 300, MCL 257.8b.

Display fireworks means large fireworks devices that are explosive materials intended for use in fireworks displays and designed to produce visible or audible effects by combustion, deflagration, or detonation, as provided in 27 CFR 555.11, 49 CFR 172, 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 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.

Minor means an individual under eighteen (18) years of age.

National holiday means New Year's Day (January 1); Birthday of Martin Luther King, Jr (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); and Christmas Day (December 25).

Novelties means that term 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:

- (i) 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 cap.

- (ii) Toy pistols, toy cannons, toy canes, toy trick noisemakers, and toy guns in which toy caps as described in subparagraph (i) 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.

- (iii) Flitter sparklers in paper tubes not exceeding 1/8 inch in diameter.

- (iv) 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.

(b) General prohibitions; exception.

No person shall ignite, discharge, or use fireworks within the City at any time, except that:

- (1) Fireworks may be discharged in strict compliance with any permit issued by the City in accordance with the Act.
- (2) Consumer fireworks may be discharged between the hours of 8:00 a.m. and 12:00 midnight only on the day before, the day of, and the day after, a national holiday, except on New Year's Day when consumer fireworks may also be discharged between the hours of 12:00 midnight and 1:00 a.m. A person who ignites, uses or discharges a consumer firework at any time except as set forth in this paragraph is responsible for a municipal civil infraction, which is punishable by a fine up to \$500.
- (3) This subsection (b) shall not apply to low impact fireworks.

(c) Additional prohibitions; Penalties.

- (1) Consumer fireworks shall not be ignited, discharged, or used on public property, including public streets and rights-of-way, or on school property, church property, or the private property of another, without the express written permission from the person or entity legally in possession and control of that property to undertake such action. A person who ignites, uses or discharges a consumer firework at any time except as set forth in this paragraph is responsible for a municipal civil infraction, which is punishable by a fine up to \$500.
- (2) Consumer fireworks shall not be ignited, discharged, or used by a person under the influence of alcoholic liquor or a controlled substance or a combination of both. A person who violates this paragraph is responsible for a municipal civil infraction, which is punishable of a fine of up to \$500.
- (3) Low impact fireworks shall not be ignited, discharged, or used by a person under the influence of alcoholic liquor or a controlled substance or a combination of both. A person who violates this paragraph is responsible for a municipal civil infraction, which is punishable of a fine of up to \$500.
- (4) Consumer fireworks shall not be sold to a minor. A person who violates this paragraph is responsible for a municipal civil infraction, which is punishable by a fine of up to \$500 for the first offense, or \$1000 for a second or subsequent offense.
- (5) No minor shall use, ignite or possess any consumer fireworks unless under the direct supervision of an adult at all times. A person who violates this

paragraph is responsible for a municipal civil infraction, which is punishable of a fine of up to \$500.

(d) Novelties not regulated.

This Section does not apply to novelties.

(e) Enforcement.

This Section may be enforced by the Fire Chief and Police Chief, their designees, and any sworn law enforcement officer.

(f) Determination of Violation; seizure of fireworks.

(1) If an enforcing official determines that a violation of this Section has occurred, the official may seize the fireworks as evidence of such violation. Upon a finding of responsibility or guilt for violation of this Section, the City may dispose of or destroy any consumer fireworks or low impact fireworks retained as evidence for prosecution of the violation.

(2) In addition to any other penalty provided herein, a person found responsible or guilty for violation of this Section shall reimburse the City for the costs of storing, disposing of, or destroying any consumer or low impact fireworks seized.

Section 2 of Ordinance. Repealer.

All ordinances, parts of ordinances, or sections of the City Code in conflict with this Ordinance are repealed only to the extent necessary to give this Ordinance full force and effect.

Section 3 of Ordinance. Severability.

Should any section, subdivision, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

Section 4 of Ordinance. Savings.

All proceedings pending and all rights and liabilities existing, acquired or incurred at the time this Ordinance takes effect, are saved and may be consummated according to the law in force when they were commenced.

Section 5 of Ordinance. Effective Date.

This Ordinance shall be effective twenty (20) days from the date of adoption and shall be published as required by the Charter of the City of Wixom.

Section 6 of Ordinance. Enactment.

This Ordinance is declared to have been enacted by the City Council of the City of Wixom at a meeting called and held on the _____ day of _____, 2013, and ordered to be given publication in the manner prescribed by law.

Ayes:

Nays:

Abstentions:

Absent:

STATE OF MICHIGAN)
) ss.
COUNTY OF OAKLAND)

I, the undersigned, the qualified and acting City Clerk of the City of Wixom, Oakland County, Michigan, do certify that the foregoing is a true and complete copy of the Ordinance adopted by the City Council of the City of Wixom at a meeting held on the _____ day of _____, 2013, the original of which is on file in my office.

CATHERINE BUCK, City Clerk
City of Wixom