

CHARTER TOWNSHIP OF OSHTEMO
KALAMAZOO COUNTY, MICHIGAN

NOTICE OF POSTING OF ORDINANCE ADOPTION

TO: THE RESIDENTS AND PROPERTY OWNERS OF THE CHARTER TOWNSHIP OF OSHTEMO, KALAMAZOO COUNTY, MICHIGAN, AND ANY OTHER INTERESTED PERSONS:

PLEASE TAKE NOTICE that on July 23, 2019, at a regular meeting of the Township Board of the Charter Township of Oshtemo, Kalamazoo County, Michigan, the Township Board adopted Ordinance No. 613, Fireworks Ordinance, and in accordance with Board policy, has determined the method of publication of its Ordinances will be by posting the Ordinance in the Office of the Township Clerk and on the Township's web page.

Ordinance No. 613, Fireworks Ordinance, has been adopted by the Board which, if passed, would limit fireworks in the Township to only those days specifically permitted under state law and would protect the health, safety and general welfare of Oshtemo Charter Township residents through the regulation of use of fireworks as provided in PA 256 of 2011.

PLEASE TAKE FURTHER NOTICE that the full text of the Ordinance has been posted for public inspection at the Township Hall located at 7275 West Main Street, Kalamazoo, Michigan, 49009, and on the Township's web page of www.oshtemo.org

PLEASE TAKE FURTHER NOTICE that said Ordinance will take effect 30 days after publication after adoption in accordance with State law.

DUSTY FARMER, Clerk
Oshtemo Charter Township Hall
7275 West Main Street
Kalamazoo, MI 49009
Telephone: (269) 375-4260

OSHTEMO CHARTER TOWNSHIP ORDINANCE NO. 613

Adopted: July 23, 2019

Effective: August 31, 2019

OSHTEMO CHARTER TOWNSHIP ORDINANCE

An Ordinance to protect the health, safety and general welfare of Oshtemo Charter Township residents through the regulation of use of fireworks, as provided in PA 256 of 2011 and to repeal all Ordinances or parts of Ordinances in conflict herewith.

THE CHARTER TOWNSHIP OF OSHTEMO

KALAMAZOO COUNTY, MICHIGAN

ORDAINS:

SECTION I. NAME

This Ordinance shall be known and cited as the Oshtemo Charter Township Fireworks Ordinance.

SECTION II. PURPOSE

In the interest of maintaining public health, safety and the general welfare and the comfort and repose of Oshtemo Charter Township residents, Oshtemo Charter Township hereby provides for the regulation and use of fireworks in Oshtemo Charter Township, as provided in PA 256 of 2011, as may be amended, (MCL 28.451, et seq) and repeals all Ordinances or parts of Ordinances in conflict herewith.

SECTION III. DEFINITIONS

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

1. *Articles pyrotechnic*: 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.
2. *APA*: American Pyrotechnics Association.

3. *Consumer fireworks*: 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.
4. *Department*: Department of Licensing and Regulatory Affairs (LARA), State of Michigan.
5. *Display fireworks*: 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.
6. *Firework or fireworks*: 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.
7. *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.
8. *Minor*: individual who is less than 18 years old.
9. *National holiday*: A national holiday is defined in 5 USC 6103 and includes: New Year's Day (January); 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).
10. *NFPA*: National Fire Protection Association.
11. *Novelties*: 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:
 - 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 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.
 - c. Flitter sparklers in paper tubes not exceeding 1/8 inch in diameter.
12. *Person*: individual, agent, association, charitable organization, company, limited liability company, corporation, labor organization, legal representative, partnership, unincorporated organization, or any other legal or commercial entity.

13. *Special effects*: a combination of chemical elements or chemical compounds capable of burning independently of the oxygen of the atmosphere and designed and intended to produce an audible, visual, mechanical, or thermal effect as in integral part of a motion picture, radio, television, theatrical or opera production or live entertainment.

SECTION IV. NOVELTIES

This Ordinance does not apply to and does not regulate the use of Novelties in Oshtemo Charter Township.

SECTION V. CONSUMER FIREWORKS

Consumer fireworks may be used in Oshtemo Charter Township on the following days beginning at 11 a.m. and ending as set forth below.

- 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.
- f. Consumer fireworks shall not be used if a burn ban is in effect.
- g. A person shall not ignite, discharge or use consumer fireworks on public property, school property, church property or the property of another person, without that person or organization's express permission to use the consumer fireworks on those premises.
- h. A person shall not use 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.
- i. Consumer fireworks shall only be used in accordance with all applicable local, state and federal laws.

SECTION VI. ARTICLES PYROTECHNIC AND DISPLAY FIREWORKS

1. The Township Board may permit articles pyrotechnic, display fireworks and special effect fireworks in Oshtemo Charter Township, pursuant to the provisions of MCL 28.451, *et seq* and this Ordinance.
2. Any person wishing to conduct an articles pyrotechnic, display fireworks or special effects display 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 or special effects display 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 conforming the requirements of this Ordinance and PA 256 of 2011, as amended, 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 an articles pyrotechnic, display fireworks or special effects display if it finds that all of the following standards are satisfied:
 - a. The application and accompanying documentation are 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 1) the nature of the subject site, 2) the nature of the surrounding area and/or 3) 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.

SECTION VII. SANCTIONS

Any person that violates any provision of this Ordinance shall be deemed responsible for a municipal civil infraction and fined \$1,000.00 for each violation with \$500.00 of the fine being paid to local law enforcement responsible for enforcing the Ordinance.

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 VIII. SEVERABILITY

Should any section, clause or provision of this Ordinance be declared to be invalid by a court of competent jurisdiction, the same shall not affect the validity of the Ordinance as a whole or any other part thereof other than the parts so declared to be invalid.

SECTION IX. REPEAL OF CONFLICTING ORDINANCES

All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

SECTION X. EFFECTIVE DATE

This Ordinance shall take effect 30 days after publication following its adoption.

DUSTY FARMER, CLERK
OSHTEMO CHARTER TOWNSHIP