

CITY OF BIRMINGHAM  
ORDINANCE NO. 2092

AN ORDINANCE TO AMEND PART II OF THE CITY CODE CHAPTER 74 OFFENSES, ARTICLE VI OFFENSES AGAINST PUBLIC SAFETY, DIVISION 1, GENERALLY, SALE OR USE OF FIREWORKS PROHIBITED.

Part II of City Code Chapter 74, Offenses, Article VI Offenses Against Public Safety, Division 1, Generally, Section 74-193, which shall read as follows:

Sec. 74-193. - Sale or use of fireworks.

Definitions As used in this Ordinance:

(a) "Act" means the Michigan Fireworks Safety Act, MCL 28.451 *et seq.*, as that statute may be amended from time to time, which is hereby adopted by reference as part of this ordinance.

(b) "Agricultural and wildlife fireworks" means fireworks devices distributed to farmers, ranchers, and growers through a wildlife management program administered by the United States department of the interior or the department of natural resources of this state.

(c) "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.

(d) "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.

(e) "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.

(f) "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.

(g) "Low-Impact fireworks" means ground and handheld sparkling devices as that phrase is defined under APA standard 87-1, 3.1, 3.1.1 to 3.1.1.8, and 3.5.

(h) "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.

(i) "Special effects" means 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 an integral part of a motion picture, radio, television, theatrical, or opera production or live entertainment.

#### 74-194 - Use of consumer fireworks prohibited.

(a) It shall be unlawful for any person to ignite, discharge or use consumer fireworks, as such term is defined in this Ordinance except for the use of consumer fireworks on the day preceding, the day of, or the day after the following national holidays:

- New Year's Day, January 1
- Martin Luther King, Jr. Day, the third Monday in January
- Washington's Birthday, the third Monday in February
- Memorial Day, the last Monday in May
- Independence Day, July 4
- Labor Day, the first Monday in September
- Columbus Day, the second Monday in October
- Veterans Day, November 11
- Thanksgiving Day, the fourth Thursday in November
- Christmas Day, December 25.

(b) 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 organization's or person's express permission to use those fireworks on those premises. Except as otherwise provided in this subsection, a person that violates this subsection is responsible for a civil infraction and may be ordered to pay a civil fine of not more than \$500.00.

(c) Consumer fireworks shall not be ignited, discharged or used by a person under the influence of alcoholic liquor or controlled substance or a combination of both.

(d) Low-Impact fireworks shall not be ignited, discharged or used by a person under the influence of alcoholic liquor or controlled substance or a combination of both.

(e) Unmanned Free-Floating Devices. Any unmanned free-floating device (sky lantern) which requires fire underneath to propel it and is not moored to the ground while aloft, have an uncontrolled and unpredictable flight path and descent area so as to pose a potential fire risk and are therefore prohibited.

(f) Novelties. This ordinance does not apply to novelties.

(g) Unless otherwise provided in this Ordinance, if a person knowingly, intentionally, or recklessly violates this Ordinance, the person is guilty of a crime as follows:

(1) Except as otherwise provided in this section, a misdemeanor punishable by imprisonment for not more than 30 days or a fine of not more than \$500.00, or both.

(2) If the violation causes damage to the property of another person, a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00, or both.

*State law reference— Fireworks, MCL 28.451 et seq.*

74-195. – Display and Articles Pyrotechnic Fireworks.

- a. Pursuant to MCL 28.451 *et seq*, (the “Act”) the City may grant a permit, upon application in writing on forms provided by the Department of Licensing and Regulatory Affairs, for the use of the following:
  - Agricultural or wildlife fireworks (as defined in the Act),
  - Articles pyrotechnic,
  - Display fireworks, or
  - Special effects manufactured for outdoor pest control.
- b. Such a permit granted by the City shall be subject to payment of a fee to the City, and shall be for either public or private displays within the City by the City, fair associations, amusement parks, or other organizations or individuals approved by the City, as long as the applicable conditions and requirements of the Act are complied with.
- c. Before a permit for display fireworks or articles pyrotechnic firework ignition is granted, 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 City 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.
- d. The City shall not approve or otherwise grant a permit for display fireworks or pyrotechnic fireworks ignition to a nonresident person, firm, or corporation 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.
- e. Pursuant to the Act, the City shall rule on the competency and qualification of articles pyrotechnic and display fireworks operators 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.

*State law reference— Fireworks, MCL 28.451 et seq.*

Ordained this 25th day of June 2012. Effective upon publication.

Mark Nickita, Mayor

Laura M. Broski, City Clerk

I, Laura M. Broski, City Clerk of the City of Birmingham, do hereby certify that the foregoing ordinance was passed by the commission of the City of Birmingham, Michigan at a regular meeting held June 25, 2012 and that a summary was published July 1, 2012.

Laura M. Broski, City Clerk