



CITY of NOVI CITY COUNCIL

**Agenda Item 3
July 23, 2012**

SUBJECT: Approval of Resolution supporting that the Legislature and Governor revise overly permissive and vague preemption statutes regarding fireworks.

SUBMITTING DEPARTMENT: Public Safety *DCM*

CITY MANAGER APPROVAL: *[Signature]*

BACKGROUND INFORMATION:

With the new Michigan Fireworks Safety Act (PA 256 of 2011, codified at MCL 28.451, et seq.), local units of government have, in large part, lost the ability to regulate locally the use and sale of fireworks. In addition, neutral laws and ordinances that relate to noise, littering, general commercial sales and similar regulations are cast into doubt as to whether and when they can be enforced.

Aside from the loss of local control and efforts to minimize the negative effects of fireworks, local communities have also been swamped with numerous complaints related to the use of these devices.

The proposed resolution urges the Michigan Legislature to repeal PA 256 of 2011 (Michigan Fireworks Safety Act) in recognition of the unintended consequences, burden, and impact that the Act has created. If the Michigan Legislature decides not to repeal PA 256 of 2011, that the Legislature amend Section 7 of the Act (codified at MCL 28.457), by allowing full local regulation and ordinances that can regulate or prohibit the sale and use of low impact and consumer fireworks, without regard to any licenses, certificates, registrations or permits issued by the State of Michigan or otherwise, and without regard to the other provisions of the Act. The Resolution further directs that Council directs the City Clerk to forward this resolution to the Governor of the State of Michigan, and our State Senator and Representative.

RECOMMENDED ACTION: Approval of Resolution supporting that the Legislature and Governor revise overly permissive and vague preemption statutes regarding fireworks.

	1	2	Y	N
Mayor Gatt				
Mayor Pro Tem Staudt				
Council Member Casey				
Council Member Fischer				

	1	2	Y	N
Council Member Margolis				
Council Member Mutch				
Council Member Wrobel				

Resolution Supporting the Legislature and Governor to Revise Statues Regarding Fireworks

Minutes of a Regular Meeting of the City Council of the City of Novi, County of Oakland, Michigan, held in the City Hall of said City on the 23rd day of July, 2012, at 7:00 p.m. prevailing eastern time.

PRESENT:

ABSENT:

The following preamble and resolution were offered by _____ and supported by _____:

WHEREAS, the State of Michigan adopted into the law the Michigan Fireworks Safety Act (Public Act 256 of 2011), effective January 1, 2012; and

WHEREAS, the Act provides for the sale and use of low impact and consumer fireworks, with provisions in the Act that purport to supersede and nullify, to some degree, municipal regulation and ordinances related to fireworks; and

WHEREAS, more specifically, Section 7 of the Act (MCL 28.457) contains two specific preemption provisions:

- Subsection (1) of the Act states that 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. . . ."
- Subsection (2) of the Act provides that a local unit of government may enact an ordinance regulating the ignition, discharge, and use of consumer fireworks, but then specifically states that "an ordinance enacted under this subsection shall not regulate the use of consumer fireworks on the day preceding, the day of, or the day after a national holiday"; and

WHEREAS, the language of these partial preemption provisions has caused a great deal of confusion among both local units of governments and the members of the fireworks industry, including raising questions whether traditional public health, safety, and welfare provisions contained in, for example, local zoning ordinances are somehow preempted, and whether, on the national holidays, traditional noise, litter, and nuisance regulations are preempted.

WHEREAS, local home rule and local authority to regulate in the public interest is an important legal and political legacy in Michigan, which such legacy is directly undermined by the Act; and

WHEREAS, the partial pre-emption of local authority in the Act – as well as the apparent confusion about the extent of remaining local authority – has already caused a decline in the quality of life for residents within the neighborhoods of Novi as a result of firework related noise, littering, smoke, light, and fires, including a vehicle fire from a firework device in a Novi neighborhood; and

WHEREAS, before enactment of the Act, fireworks-related complaints had been trending downwards each year, until 2012, when Novi experienced a **143% increase** in fireworks-related calls and complaints, as compared to 2011; and

WHEREAS, the Act has thus directly caused a significant increased demand on City services, in particular police services, resulting in a substantial amount of police patrol time being spent on these matters. The Act itself and the State of Michigan offer no financial reimbursement for these increased demands on services, which essentially creates an unfunded mandate; and

WHEREAS, this particular piece of legislation should serve as a catalyst for review by the State Legislature of its processes with respect to consideration and enactment of such special interest legislation, which should garner greater, not lesser, scrutiny as well as consideration of other competing points of view; and

NOW, THEREFORE BE IT RESOLVED, that the City of Novi urges the Michigan Legislature to repeal PA 256 of 2011 (Michigan Fireworks Safety Act) in recognition of the unintended consequences, burden, and impact that the Act has created.

NOW, THEREFORE BE IT FURTHER RESOLVED, that if the Legislature decides not to repeal the Act in its entirety, the Legislature at a minimum amend Section 7 of the Act to clarify that local units of government are permitted to enact and enforce, even on national holidays (including the days before and after), traditional public health, safety, and welfare provisions relating to:

- 1) time limits for use, ignition, and discharge of fireworks;
- 2) noise and nuisance activities;
- 3) permitted locations for use, ignition, and discharge of fireworks

and to clarify that the preemption of ordinances regulating or prohibiting the "sale" of low impact and consumer fireworks contained in Section 7 does not preempt the traditional zoning and land use regulatory authority of local units of government.

NOW, THEREFORE BE IT FURTHER RESOLVED, that this Council directs the City Clerk to forward this resolution to the Governor of the State of Michigan, our State Senator and Representative.

AYES:

NAY:

ABSTENTIONS:

ABSENT:

RESOLUTION DECLARED ADOPTED.

MARYANNE CORNELIUS, Clerk

CERTIFICATION

It is hereby certified that the foregoing Resolution is a true and accurate copy of the Resolution adopted by the City Council of the City of Novi at a meeting duly called and held on the 23rd day of July, 2012.

CITY OF NOVI

BY: _____
MARYANNE CORNELIUS, Clerk