



cityofnovi.org

CITY of NOVI CITY COUNCIL

Agenda Item E
June 18, 2012

SUBJECT: Approval of adoption of Ordinance 12-160.01, an ordinance to amend the City of Novi Code of Ordinances, Chapter 22, "Offenses," Article VI, "Offenses against public safety," Division 1, "Generally," Section 22-112, "Fireworks," in order to incorporate changes to state law regarding fireworks and to confirm that ignition and discharge of fireworks is not permitted except on certain days. **SECOND READING.**

SUBMITTING DEPARTMENT: Public Safety *DEM*

CITY MANAGER APPROVAL: *[Signature]*

BACKGROUND INFORMATION:

The State Legislature recently passed (effective January 1, 2012) the Michigan Fireworks Safety Act, Act 256 of 2011, which--somewhat in contrast of its name--is a comprehensive new law that is primarily intended to expand the kind and character of fireworks that can be sold in Michigan. It revises and consolidates some existing state laws; establishes a state-level fireworks safety fund and fireworks safety fee; and sets forth duties and responsibilities of various state and local fire and building officials regarding the regulation of fireworks. Fireworks are divided into various categories: "display fireworks" (like the name sounds the larger event-type fireworks); "low impact fireworks" (sparklers and ground-based devices that we are used to seeing in Michigan; novelty items like party "poppers" and snappers; and a new category of "consumer fireworks."

Consumer fireworks are fireworks that are designed to produce visible and/or audible effects by combustion--firecrackers, Roman Candles, bottle rockets, and the like. Many of these have not been permitted to be sold in Michigan for some time. The new law now allows the sale and distribution of these, subject to various regulations.

Of particular note for municipalities in Michigan is the "preemption" section of the new statute, MCL 28.457, which covers two separate subjects (1) local regulation of the **sale**, storage, or distribution, etc. of fireworks generally, and (2) local regulation of the **discharge or ignition** of consumer fireworks specifically:

(1) Except as provided in this act, 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 regulated under this act.

(2) A local unit of government may enact an ordinance regulating the ignition, discharge, and use of consumer fireworks. However, 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.

With regard to subsection (1), the prohibition against enacting or enforcing ordinances **specifically aimed at** the sale or display of fireworks is fairly broad, but it does not, in the opinion of the City Attorney, extend so far as to allow a fireworks provider to simply sell or distribute fireworks anywhere in the City regardless of existing City regulations. For example, the City administration has taken the position that the City's **zoning ordinance** is not preempted by the above language, and that any sales must be in conformance with its provisions as far as location and compliance with standards for parking and the like. The zoning ordinance is a land use ordinance that is not specifically aimed at the sale or display of fireworks. On this basis we have informed an applicant seeking approval to use the former Lazy Boy store on Novi Road for a fireworks retail location that parking requirements will apply; as a result, the applicant has applied for a variance from the parking standards under the zoning ordinance. We have also taken the position that the City's zoning requirements for temporary tents are applicable and are not preempted by the statute. Generally stated, under the temporary use provisions of the ordinance, temporary tent sales in connection with a retail use must relate to the principal use of the property. The City's building and fire officials will also be responsible for reviewing and approving any facilities where retail sales occur, consistent with the statute and the state laws it references. The State Legislature's rush, in our opinion, to adopt statutes favorable to the vendors at the expense of local rules has created some misunderstandings on the part of some vendors.

Note that, under the statute, applications for a certificate to sell fireworks were required to be filed with the State's Department of Licensing and Regulatory Affairs (LARA) by April 1, 2012, and the state rules require that the application list a specific location in a specific municipality. No sales can occur in the City unless identified by that date. At this point, while the State is still processing applications that were timely submitted, there are as yet no locations shown on the State website for Novi as having received a certificate (including, apparently, the lazy Boy site mentioned above).

The attached proposed ordinance amendment does not relate to sales or distribution of fireworks. It relates only to the activities listed in subsection (2)--**ignition and discharge**-- which is specifically permitted by the statute to be regulated locally. The local Novi ordinance takes advantage of the authorization to prohibit discharge consumer fireworks only (i.e., not the larger display fireworks, which would require a permit from the City, or the typical low impact fireworks), except on the day before, day of, and day after a national holiday. It uses definitions from the statute. It establishes the penalty for violation as a civil infraction. The Public Safety Department has recommended these changes.

As allowed by the statute, the ordinance also prohibits the discharge of consumer fireworks on public, school, and church property, and private property owned by others, without permission. The City administration is proposing a companion ordinance for the City Council's review confirming that the discharge of consumer fireworks is not permitted in the City's parks.

RECOMMENDED ACTION: Adoption of SECOND READING of Ordinance 12-160.01, an ordinance to amend the City of Novi Code of Ordinances, Chapter 22, "Offenses," Article VI, "Offenses against public safety," Division 1, "Generally," Section 22-112, "Fireworks," in order to incorporate changes to state law regarding fireworks and to confirm that ignition and discharge of fireworks is not permitted except on certain days.

	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				

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

ORDINANCE NO. 12-160.01

AN ORDINANCE TO AMEND THE CITY OF NOVI CODE OF ORDINANCES, CHAPTER 22, "OFFENSES," ARTICLE VI, "OFFENSES AGAINST PUBLIC SAFETY," DIVISION 1, "GENERALLY," SECTION 22-112, "FIREWORKS," IN ORDER TO INCORPORATE CHANGES TO STATE LAW REGARDING FIREWORKS AND TO CONFIRM THAT IGNITION AND DISCHARGE OF FIREWORKS IS NOT PERMITTED EXCEPT ON CERTAIN DAYS

THE CITY OF NOVI ORDAINS:

PART I. That Chapter 22, "Offenses," of the City of Novi Code, at Article VI, "Offense against Public Safety," Division 1, "Generally," Section 22-112, "Fireworks," is hereby amended to read as follows:

Sec. 22-112. Fireworks.

~~It shall be unlawful for any person to fire, discharge, display or possess any fireworks except of the type and under the conditions permitted by Chapter 39 of the Penal Code of the State of Michigan, as last amended by Act No. 422 of the Public Acts of Michigan of 1980 (MCL 750.243a et seq.), as amended.~~

(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.~~

~~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*.

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.

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 prohibition on ignition, discharge, and use of consumer fireworks; 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 only on the day before, the day of, and the day after, a National holiday.

(3) This subsection (b) shall not apply to low impact fireworks

(c) Additional prohibitions

(1) Consumer fireworks shall not be ignited, discharged, or used on public property, including 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.

** Added Language*

(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.

(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

(d) Novelties not regulated

This Section does not apply to novelties.

(e) Enforcement

This Section may be enforced by the Director of Public Safety and the Fire Chief, their designees, and any sworn law enforcement officers.

(f) Determination of Violation; seizure of fireworks

If an enforcing official determines that a violation of this Section has occurred, the official may seize the fireworks as evidence of such violation.

(g) Penalty

(i) A violation of this Section is a municipal civil infraction, punishable by a civil fine of not more than \$500.00, plus any costs, damages, and expenses as provided in Section 1-11 of this Code of Ordinances.

(ii) Upon a finding of responsibility 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.

(iii) In addition to any other penalty provided herein, a person found responsible 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 as provided for herein.

PART II.

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.

PART III.

Savings Clause. The amendment of the Novi Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the Novi Code of Ordinances set forth in this Ordinance.

PART IV.

Repealer. All other Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

PART V.

Effective Date: Publication. The provisions of this Ordinance shall become effective fifteen (15) days after its adoption and shall be published within 15 days of its adoption by publication of a brief notice in a newspaper circulated in the City, stating the date of enactment and the effective date of the ordinance, a brief statement as to the subject matter of this Ordinance and such other facts as the Clerk shall deem pertinent, and that a copy of the Ordinance is available for public use and inspection at the office of the City Clerk.

Made, Passed and Adopted by the Novi City Council this ____ day of _____, 2012.

Robert J. Gatt, Mayor

Maryanne Cornelius, City Clerk

Certificate of Adoption

I hereby certify that the foregoing is a true and complete copy of the ordinance adopted at the regular meeting of the Novi City Council held on the ____ day of _____, 2012.

Maryanne Cornelius, City Clerk

Adopted:
Published:
Effective: