

CITY OF FRASER
MACOMB COUNTY, MICHIGAN
ORDINANCE NO. 384

**AN ORDINANCE TO AMEND ARTICLE II OF CHAPTER 10 OF THE
FRASER CITY CODE TO UPDATE THE CITY'S REGULATIONS
GOVERNING FIREWORKS TO CONFORM WITH THE MICHIGAN
FIREWORKS SAFETY ACT**

THE CITY OF FRASER ORDAINS:

Section 1. Division 1 of Article II of Chapter 10 of the Fraser City Code shall be amended to read as follows:

ARTICLE II. – FIREWORKS

DIVISION 1. - GENERALLY

Sec. 10-10. - Definitions.

For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

Act. The Michigan Fireworks Safety Act, Public Act 256 of 2011, MCL 28.451 et seq., as amended from time to time.

APA standard 87-1. The “APA Standard 87-1, Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics,” 2001 edition, published by the American Pyrotechnics Association of Bethesda, Maryland.

Articles pyrotechnic. 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.

City. The City of Fraser.

Consumer fireworks. Firework 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 are often commonly known as, but not limited to, sky rockets, bottle rockets, missile-type rockets, helicopters, aerial spinners, roman candles, mine and shell devices,

aerial shell kits, firecrackers, chasers, and certain multiple tube fireworks devices. Consumer fireworks does not include low-impact fireworks.

Consumer fireworks certificate. The certificate issued by the department which allows a person to sell consumer fireworks in accordance with the Act.

Department. The Michigan Department of Licensing and Regulatory Affairs.

Display fireworks. 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.

Fire marshal. The Fire Marshal of the City of Fraser or the individual designated by the City to perform the responsibilities of the position of Fire Marshal.

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, homemade fireworks, and special effects.

Homemade fireworks. Any composition or device designed for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation that is not produced by a commercial manufacturer and does not comply with the construction, chemical composition, and labeling regulations of the United States Consumer Product Safety Commission under 16 CFR parts 1500 and 1507.

Low-impact fireworks. 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. Low impact fireworks are often commonly known as, but not limited to, sparklers, cylindrical fountains, cone fountains, illuminating torches, wheels, ground spinners, flitter sparklers, certain toy smoke devices, certain wire sparklers/dipped sticks, and certain multiple tube fireworks devices.

Minor. An individual who is less than 18 years of age.

NFPA. The National Fire Protection Association headquartered at 1 Batterymarch Park, Quincy, Massachusetts.

NFPA 1. The “Uniform Fire Code,” 2006 edition, developed by NFPA.

NFPA 72. The “National Fire Alarm Code,” 2002 edition, developed by NFPA.

NFPA 101. The “Life Safety Code,” 2009 edition, developed by NFPA.

NFPA 1123. The “Code for Fireworks Display,” 2010 edition, developed by NFPA.

NFPA 1124. The “Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles,” 2006 edition, developed by NFPA.

NFPA 1126. The “Standard for the Use of Pyrotechnics Before a Proximate Audience,” 2011 edition, developed by NFPA.

Novelties. The term "novelties" shall mean 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, often commonly known as, but not limited to, party poppers, snappers, toy smoke devices containing not more than 5g of pyrotechnic composition, snakes, glow worms, wire sparklers/dip sticks containing not more than 100g of pyrotechnic composition, and all of the following:

- (1) 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.
- (2) 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.
- (3) Flitter sparklers in paper tubes not exceeding one-eighth 1/8 inch in diameter.
- (4) Toy snakes not containing mercury, if packed in cardboard boxes with not more than twelve (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.

Permanent building or permanent structure. A building or structure that is affixed to a foundation on a site that has fixed utility connections and that is intended to remain on the site for more than one hundred eighty (180) consecutive calendar days.

Person. An individual, agent, association, charitable organization, company, limited liability company, corporation, labor organization, legal representative, partnership, unincorporated organization, or any other legal or commercial entity.

Retailer. A person who sells consumer fireworks or low-impact fireworks for resale to an individual for ultimate use.

Retail location. A facility listed under NFPA 1124, 7.1.2.

Sky lantern. An airborne lantern typically made of paper with a wood or bamboo frame containing a candle, fuel cell composed of waxy flammable material, or other open flame which serves as a heat source to heat the air inside the lantern to cause it to lift into the air. The term includes sky candles, fire balloons, airborne paper lanterns, Chinese lanterns, Kongming lanterns, wish lanterns, and khoom fay. Sky lanterns are not fireworks.

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 an integral part of a motion picture, radio, television, theatrical, or opera production or live entertainment.

Sec. 10-11. Consumer fireworks certificate; applicable codes and standards.

- (a) No person shall sell consumer fireworks unless the person annually obtains and maintains a consumer fireworks certificate from the Department, as required by the Michigan Fireworks Safety Act. Violations of this subsection shall be prosecuted and punishable as provided in the Act.
- (b) The holder of a consumer fireworks certificate shall prominently display the original or copy of the certificate in each retail location to which the certificate applies. Each day the consumer fireworks certificate is not displayed is a separate violation. A person who violates this subsection is responsible for a civil fine of \$200.
- (c) A person shall not sell consumer fireworks from a retail location unless all of the following conditions are met:
 - (1) Except as provided in subsection (2), the retail location and any adjacent or directly associated retail storage satisfies the applicable requirements of NFPA 101 and NFPA 1124 for consumer and low-impact fireworks that are not in conflict with the Act and the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531. Any provision of the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531, that is inconsistent with the applicable requirements of NFPA 101 and NFPA 1124 is superseded to the extent of the inconsistency or conflict.
 - (2) If the retail location is a permanent building or structure, the building or structure is equipped with a fire suppression system in compliance with NFPA 1124. Beginning December 28, 2018, and notwithstanding the NFPA 1124 requirements regarding automatic sprinkler systems, if the retail location is in a permanent multitenant building or structure, the building or structure must be equipped with an automatic sprinkler system. The requirement for an automatic sprinkler system described in this subsection does not apply to the retail location of a person that held a consumer fireworks certificate for a retail location of the same address in a permanent building or structure during the calendar year prior to December 28, 2018.
 - (3) The retailer at that retail location is licensed under the General Sales Tax Act.

- (4) The retailer has a valid federal taxpayer identification number. However, this requirement does not apply to a retailer that is a sole proprietorship.
- (d) A person that fails or neglects to comply with subsection (c) is responsible for a civil fine of not more than \$2,500 for each violation. The Department shall determine the amount of the fine in accordance with the requirements of the Act. Each day that a person is in noncompliance constitutes a separate violation.
 - (e) During any period of time in which a person is selling consumer fireworks, the person shall add as an additional insured, or obtain and maintain public liability and product liability insurance coverage for, each retail location at which the person is selling consumer fireworks, in an amount not less than \$10,000,000 per occurrence. If the Department determines that a person has failed or neglected to comply with this subsection, the Department shall order the person to immediately cease operations and pay a civil fine of not more than \$5,000.
 - (f) A person shall not sell low-impact fireworks unless that person registers with the low impact fireworks retail registry not less than 10 days before selling the fireworks in each calendar year in accordance with the requirements of the Act. A person who sells low-impact fireworks at retail and who has not registered as required by this subsection shall cease the sale of low-impact fireworks until the person complies with this subsection.
 - (g) A person shall not engage in the retail sale of consumer fireworks over the telephone, internet, or other like manner unless the consumer fireworks are picked up or shipped from a permanent location for which the person holds a valid consumer fireworks certificate.

State law reference-- MCL 28.451 et seq.

Administrative rules-- See R 29.2901 et seq.

Sec. 10-12. - Inspection of sales and storage areas.

The fire marshal may, at any time, undertake a review of any fireworks sales or storage area for which a consumer fireworks certificate has been issued or is required, or any discharge of fireworks, to determine whether any violations of state law or local ordinance are occurring which might endanger the public health, safety, and welfare, or which might warrant revocation of a certificate or permit, or which might warrant the issuance of citations for local ordinance and/or state law violations. Should any person fail or refuse access, the fire marshal may apply and obtain a search warrant as allowed under applicable law.

Secs. 10-13—10-19. - Reserved.

Section 2. Division 3 of Article II of Chapter 10 of the Fraser City Code shall be amended to read as follows:

DIVISION 3. - FIREWORKS AND PYROTECHNIC DISPLAYS

Sec. 10-24. - Ignition, discharge, and use of consumer fireworks.

- (a) A person shall not ignite, discharge, or use consumer fireworks, or permit, allow, or aid and abet in the ignition, discharge, or use of consumer fireworks, within the City.

Exception: Consumer fireworks may be ignited, discharged, or used:

- i. Between 11:00 a.m. on December 31 until 1:00 a.m. on January 1;
 - ii. Between 11:00 a.m. and 11:45 p.m. on the Saturday and Sunday immediately preceding Memorial Day;
 - iii. Between 11:00 a.m. and 11:45 p.m. on June 29 to July 4;
 - iv. Between 11:00 a.m. and 11:45 p.m. on July 5, if that date is a Friday or Saturday; and
 - v. Between 11:00 a.m. and 11:45 p.m. on the Saturday and Sunday immediately preceding Labor Day.
- (b) No person shall 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 consumer fireworks on those premises. "Property of another person" includes hotel and motel property, apartment property, and condominium property, where an owner, management company, or association has or retains authority and control over the use of the property or common areas.
- (c) A person shall not use, ignite, or discharge 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.
- (d) A person shall not violate the smoking prohibition under NFPA 1124, 7.3.11.1 (smoking within 50 feet of a consumer fireworks retail sales area) or fail to post signage regarding the smoking prohibition that satisfies the requirements of NFPA 1124.
- (e) A person shall not ignite, discharge, or use consumer fireworks or low-impact fireworks in a manner that is intended to harass, scare, or injure livestock.

- (f) A person shall not ignite, discharge, or use a consumer firework in a manner that causes harm or damage to any person or the property of another.
- (g) Consumer fireworks shall not be furnished or sold to a minor. The age of an individual purchasing consumer fireworks shall be verified by any of the following:
 - (1) An operator's or chauffeur's license issued under the Michigan Vehicle Code.
 - (2) An official state personal identification card.
 - (3) An enhanced driver license or enhanced official state personal identification card.
 - (4) A military identification card.
 - (5) A passport.
 - (6) Any other bona fide photograph identification that establishes the identity and age of the individual.
- (h) Sky lanterns shall not be used, ignited, launched, offered for sale, exposed for sale, sold at retail, or kept with intent to sell at retail.

Exception: Upon approval of the Fire Marshal, sky lanterns may be used when necessary for religious ceremonies and the Fire Marshal is satisfied, after reviewing an application for an operational permit, that adequate safeguards will be implemented. However, all such sky lanterns must be tethered in a manner that prevents them from leaving the immediate area, must be used in the manner and with the safeguards approved by the Fire Marshal, and must be constantly attended until extinguished and collected by the applicant.

- (i) Any person who violates subsection (e), (f), or (h) is guilty of a misdemeanor.
- (j) Any person who violates subsection (a), (d), or (g) is responsible for a municipal civil infraction punishable by a fine of \$1,000.00 for each violation. The amount of \$500.00 from each fine collected for a violation of subsection (a) shall be remitted to the Public Safety Department. The fine for a second or subsequent violation of subsection (g) shall be \$2,500.00.
- (k) Any person who violates subsection (b), (c), (d), or (g) is responsible for a municipal civil infraction punishable as provided in Chapter 1 of the City Code plus any other remedies allowed for a municipal civil infraction under applicable law.

- (l) A person who receives a municipal civil infraction citation for violating subsection (a), (b), or (c) and who commits another violation of the same subsection within 72 hours of the first violation shall be guilty of a misdemeanor.
- (m) Any City public safety officer or official who identifies a firework that is in violation of the Act or this Article shall secure the firework and immediately notify the Department of the alleged violation. The Public Safety Department shall investigate the alleged violation and, if it determines that a violation has occurred, may seize the firework as evidence of the violation. The Public Safety Department shall store, or cause to be stored, the evidence seized under this subsection pending disposition of any criminal or civil proceedings arising from the violation. If the person subject to criminal or civil proceedings is found guilty, responsible, or liable for the violation, the person shall be required to pay the storage expense for the evidence seized. Following a final disposition of an appeal of a conviction under the Act or this Article that affirms the conviction or finding of responsibility, the Public Safety Department may dispose of or destroy any fireworks retained as evidence in that prosecution.
- (n) A law enforcement officer and/or public safety official may confiscate and impound all fireworks and fireworks paraphernalia involved in causing a misdemeanor violation of this Article or which are found to be within the access and control of the violator(s). If the impounded items are lawful to possess, they may be retained as evidence until any court proceedings or citations have been adjudicated and any probationary periods have been completed. If the impounded items are unlawful to possess, the Public Safety Department shall dispose of or destroy the items in accordance with evidence protocols that will still allow for effective prosecution of the charged offenses without actual retention of the items. If any fireworks are retained by the City, they shall be stored in compliance with the Act and rules promulgated under the Act. The person from whom fireworks are seized under the Act or this Article shall pay the actual costs of storage and/or disposal of the seized fireworks. The Public Safety Department may dispose of the seized fireworks by providing them to a disposal organization approved by the Public Safety Director or designee, or by allowing them to be used by the Public Safety Department and/or code enforcement for training purposes.
- (o) Nothing within these requirements shall limit the Fire Marshal or Public Safety Department from exercising sound judgment and strict enforcement of measures necessary for the safety and welfare of the City and its populace, nor exempt retailers from ensuring the proposed site is in compliance with all property maintenance regulations and other applicable City ordinances, or from submitting to the City all applications and supporting documentation required by any other provisions of the City Code and/or the City's Zoning Ordinance pertaining generally, without specific reference to fireworks, to retail sales, permanent or temporary structures, temporary sales, and land use regulations. All other City ordinances not adopted pursuant to the Act and not directly or specifically

targeted at the use of consumer fireworks shall continue to apply and may be enforced at any time of the year, including but not limited to the City's ordinances governing disturbances of the public peace, noise, nuisances, and litter.

- (p) Unless otherwise specified herein, novelties are not subject to any of the regulations in this Article, except that they may not be utilized in such a manner as to cause, create, or perpetuate a violation of any other section of the City Code of Ordinances.

State Law Reference – MCL 28.451 et seq.

Sec. 10-25. - Display fireworks and pyrotechnic special effects; permit required.

No person shall discharge any display fireworks without a permit issued by the City Council. Pyrotechnic special effects shall not be discharged or displayed without a permit issued by the Fire Marshal. Permit applicants shall follow the procedures set forth in division 4 of this Article. Permits are not transferable and shall not be issued to a minor.

Sec. 10-26. - Responsibility for display fireworks.

- (a) An owner, occupant, or other person with control of real property shall not allow, permit, or otherwise assent to the possession or display of display fireworks on the property or an adjacent public way if such possession or display is in violation of this Article.
- (b) An owner, occupant, or other person with control of real property shall be presumed to have assented to the possession or display of display fireworks on the property or adjacent public way in violation of this subdivision if law enforcement or fire officials observe and document the existence of unlawful fireworks on the premises or the adjoining public way, or the existence of the remnants of unlawful fireworks on the premises or adjoining public way indicative of the use or display of such fireworks.
- (c) A person who pleads to or is found responsible for a violation of subsection (a) shall clean up any fireworks remnants on or adjoining the person's property, or pay the city's costs for such clean up, and reimburse the city's actual costs for destruction of any unlawful fireworks and materials impounded by law enforcement or fire officials during investigation of the unlawful activity under subsection (a).
- (d) A violation of subsection (a) or (c) is a municipal civil infraction. If the unlawful activity does not cease after issuance of a municipal civil infraction citation, the owner, occupant, or other person with control of the real property shall be guilty of a misdemeanor.

Secs. 10-27—10-29. - Reserved.

Section 3. Division 5 of Article II of Chapter 10 of the Fraser City Code shall be amended to read as follows:

DIVISION 5. - PENALTIES

Sec. 10-40. - Violations and penalties.

- (a) Each of violation of this article is punishable as provided in Chapter 1 of the City Code unless otherwise provided in this chapter.
- (b) In addition to any other penalty imposed for the violation of the Act or this article, a person who tenders a plea of guilty, no contest, or responsible to a violation of this article shall be required to reimburse the city for the costs of storing and disposing of seized fireworks that the city confiscated for a violation of the Act or this article.

Section 4. Sec. 1-10 of the Fraser City Code shall be amended to read as follows:

Sec. 1-10. - General penalty for violation of Code; continuing violations.

- (a) It shall be unlawful and constitute a misdemeanor for any person to violate or fail to comply with any of the provisions of this Code, unless such violation or failure is, by state statute, declared to be a felony, or civil infraction, or unless another penalty is expressly provided by this Code for any particular provision or section. Every person convicted of a misdemeanor for a violation of or failure to comply with any provision of this Code shall, unless otherwise prescribed in this Code, be punished by a fine of not more than five hundred dollars (\$500.00), or by imprisonment for not more than ninety (90) days, or by both such fine and imprisonment. However, unless otherwise provided by law, and notwithstanding any charter provisions to the contrary, every person convicted of a misdemeanor for a violation of or failure to comply with a provision of this Code which substantially corresponds to a violation of state law that is a misdemeanor for which the maximum period of imprisonment is ninety-three (93) days, unless otherwise prescribed in this Code, shall be punished by a fine of not more than five hundred dollars (\$500.00), or by imprisonment for a period of time not to exceed ninety-three (93) days, or by both such fine and imprisonment. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense. Any person convicted of attempting to commit an offense which constitutes a misdemeanor shall be fined not more than \$500, imprisoned for a jail term not to exceed 45 days, or both.
- (b) In addition to the penalties provided in subsection (a), the city may enjoin or abate any violation of this Code by appropriate action.

- (c) Municipal civil infraction. It is unlawful and constitutes a municipal civil infraction for any person to violate or fail to comply with the following provisions of this Code:

CHAPTER	TITLE	SECTION
6	Article III	All sections of the Property Maintenance Code except the following: 108.1.1, 108.1.2, 108.1.3, 108.1.4, 108.2, 108.4, 108.5, and 109.1
10	Article I	All sections of the International Fire Code except the following: 109.3, 111.4, and 503.6.2
10	Article II, Division 3	Sec. 10-24(a) (first offense within 72 hours), Sec. 10-24(b) (first offense within 72 hours), Sec. 10-24(c) (first offense within 72 hours), Sec. 10-24(d), Sec. 10-24(g), Sec. 10-26(a) (unless activity does not cease after issuance), Sec. 10-26(c) (unless activity does not cease after issuance)
12	Article II, Division 3	Sec. 12-43(a) (all offenses under age 17, first offense age 17); Sec. 12-44
16	Article VII, Division 4	Sec. 16-206(c)(9) (all offenses under age 17); Sec. 16-206(e); Sec. 16-206 (f) (first and second offenses only); Sec. 16-206(g) (all offenses under age 18 and first and second offenses over age 17)

- (d) The sanction for a municipal civil infraction citation shall be a civil fine in the amount provided by this Code, plus any costs, damages, expenses, and other sanctions, as authorized under Chapter 87 of the Act No. 236 of the Public Acts of 1961, as amended, and other applicable laws.

- (1) Unless otherwise specifically provided by this Code, the fine for each first offense violation shall be one hundred fifty dollars (\$150.00).
- (2) An increased fine shall be imposed for each repeat offense in accordance with the following schedule:
 - a. The fine for any offense that is a first repeat offense shall be not less than two hundred fifty dollars (\$250.00).
 - b. The fine for any second repeat offense shall be five hundred dollars (\$500.00).
 - c. The fine for any third repeat offense or any subsequent repeat offense shall be one thousand dollars (\$1,000.00).
- (3) If a defendant is ordered to pay a civil fine under subsection (2), the judge or district court magistrate shall summarily tax and determine the costs of the action, which are not limited to the costs taxable in ordinary civil actions and may include all expenses, direct and indirect, to which the plaintiff has been

put in connection with the municipal civil infraction, up to the entry of judgment. Costs of not less than nine dollars (\$9.00) or more than five hundred dollars (\$500.00) shall be ordered. Except as otherwise provided by law, costs shall be payable to the general fund of the plaintiff.

- (e) Pursuant to the provisions of this general penalty section and elsewhere where any criminal penalty is provided by the Code of Ordinances or pursuant to any section which is adopting a code by reference in addition to penalties provided for fine, imprisonment or both, the court as a sanction, may collect reasonable costs of prosecution and court costs including in whole or in part the actual court costs or costs of prosecution, in addition to any other sanction or penalty provided.

Charter reference— Limitation on penalties, [§ 7.5](#).

State Law reference— Authority, MCL 117.3(k).

Section 5. All other provisions of the Fraser City Code not specifically amended by this ordinance amendment shall remain in full force and effect.

Section 6. This ordinance shall take effect seven (7) days after publication of a notice of adoption of the ordinance.

This ordinance was duly adopted at a Regular meeting of the City Council of the City of Fraser on the 13th day of June, 2019.

MICHAEL CARNAGIE, Mayor

KELLY DOLLAND, City Clerk

CERTIFICATION

I, Kelly Dolland, City Clerk for the City of Fraser, County of Macomb, State of Michigan, certify that this is a true copy of an Ordinance adopted by the Council of the City of Fraser at its regular meeting on Thursday, June 13, 2019.

KELLY DOLLAND, CITY CLERK

PUBLICATION DATE:

Wednesday, June 26
Monday, _____, 2019

C & G Newspapers

CITY OF FRASER

ORDINANCE NO: 384

NOTICE OF ADOPTION OF ORDINANCE

The City of Fraser has adopted an ordinance that amends Article II of Chapter 10 of the Fraser City Code of Ordinances to update the City's regulations governing fireworks to conform with the Michigan Fireworks Safety Act. The ordinance shall be effective seven (7) days after publication of this Notice of Adoption. A copy of the ordinance can be inspected or obtained from the City Clerk's office in City Hall, 33000 Garfield Road, Fraser, Michigan 48026 during normal business hours.