

AGENDA REPORT

To: Mayor Pat Humphrey & the Clare City Commission
From: Ken Hibl, City Manager
Date: April 10, 2019
RE: Ordinance 2019-007 - Chapter 22 (Fire Prevention)

For the Agenda of April 15, 2019

Background. The Lame Duck Session of Michigan's legislature amended the state's current law related to the discharge of fireworks, thereby returning as an option a portion of control of pyrotechnics to local government that had previously been withdrawn by the state. The City Commission provided guidance to the City Staff to incorporate all of the controls returned by the state; our City Attorney has crafted an ordinance amendment in concert with that guidance. The resultant ordinance (2019-007 - *copy att'd*) is offered for the City Commission's consideration.

All ordinance code changes or amendments require the approval of the Clare City Commission. And all ordinances require two readings and approval of the Clare City Commission subsequent to a public hearing. The required public notice (*copy att'd*) announcing the hearing has been published. Subsequent to the conduct of the hearing, the Commission has the option of allowing a First Reading of the proposed Ordinance or denying the conduct of a First Reading, thereby rejecting the proposed new ordinance.

The City Commission is asked to conduct the required public hearing and approve or deny a First Reading of the proposed ordinance.

Issues & Questions Specified. Should the City Commission hold the requisite public hearing and allow a First Reading of the proposed amendment to our Fire Prevention ordinance?

Alternatives.

1. Hold the hearing and allow a First Reading of the proposed ordinance.
2. Hold the hearing and allow a First Reading with amendments or modifications to the proposed ordinance.
3. Hold the hearing and deny the First Reading, thereby rejecting the proposed new ordinance.
4. Set aside the decision regarding this matter to a later date.

Financial Impact. None.

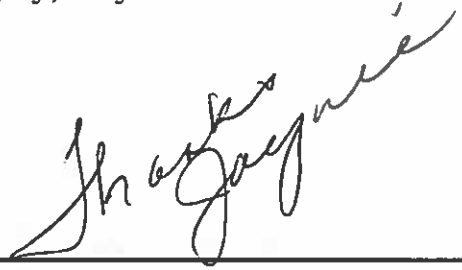
Recommendation. I recommend the City Commission hold the requisite public hearing and allow a First Reading of the proposed Fire Prevention ordinance.

Attachments.

1. City Attorney Memo.
2. Ordinance 2019-007.
3. Public Notice.

Memo

To: Ken Hibl, Chief Chapman, Chief Gregory, City Commission
From: Jaynie Smith Hoerauf
Date: March 13, 2019
Re: Fireworks Regulations



One of the things that the legislature did in lame duck session is revise the fireworks statute. The new Public Acts are here:

<http://legislature.mi.gov/doc.aspx?2018-HB-5940>

<http://legislature.mi.gov/doc.aspx?2018-HB-5939>

There are several things in this law that you ought to consider. The last iteration of the law limited local ordinance application around various holidays.

Our current prohibition is from Public Act 247 of 2011, as modified by Public Act 65 of 2013. That resulted in the ordinance prohibiting fireworks on the following times:

- Except the day before, day of, and day after a national holiday.
- Prohibited 1 a.m. to 8 a.m.
- No discharge on any public property, school property, church property, or the property of another person without that organization's express permission.

The new law permits the ordinance to regulate or prohibit fireworks except:

- After 11 a.m. on December 31 until 1 a.m. on January 1.
- The Saturday and Sunday immediately preceding Memorial day, until 11:45 p.m. on each of those days.
- June 29 to July 4th, until 11:45 on those days.
- July 5th, if it falls on a Friday or Saturday, until 11:45 p.m.

- The Saturday and Sunday immediately preceding Labor Day, until 11:45 p.m. on each of those days.

So basically, it gives a “curfew” to the fireworks, if City Administration so recommends to the Commission, and the Commission amends the ordinance. That would be Section 22-50(b).

While we are amending the times, if so, we need a revision to 22-50 (h) penalties. That provision is inconsistent with law, because the law provides that our ordinance can only impose a civil fine of \$1,000 for each violation of the ordinance, no other fine or sanction. The ordinance “must provide for the remittance of \$500 of the fine collected under the ordinance to the local law enforcement agency responsible for enforcing the ordinance.” MCL 28.457(3).

Let me know whether to draft any of this, please.

ORDINANCE NO. 2019 - 007

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF CLARE BY amending the City Code, Chapter 22, Article III.

Short Title: CITY OF CLARE – ORDINANCE AMENDMENT

Chapter 22, Article III, Section 22-50, of the Clare City Code is hereby revoked and restated as follows:

Sec. 22-50 - Fireworks.

Definitions. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Consumer fireworks means fireworks devices that are designed to produce visible or audible 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, designated 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.

Homemade fireworks means any composition or devise 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 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.

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:

- (1) Toy plastic or paper caps for toy pistols in sheets, strips, rolls, or individual caps containing not more than twenty-five-hundredths of a grain of explosive content per cap, in packages labeled to indicate the maximum explosive content per cup.
- (2) Toy pistols toy cannons, toy canes, toy trick noisemakers, and toy guns in which toy caps as described in subparagraph (1) 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.
- (2) Flitter sparklers in paper tubes not exceeding one-eighth-inch in diameter.

Chapter 22, Article III, Section 22-51, of the Clare City Code is hereby added as follows:

(a) *Prohibition on use of homemade fireworks.* No person shall create, make or have possession of, ignite, discharge or use homemade fireworks within the City.

(b) *Prohibition on use of consumer fireworks.*

- (1) No person shall ignite, discharge or use consumer fireworks within the city, except this prohibition shall not preclude any person from the ignition, discharge, and use of consumer fireworks, except as follows:
 - (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.
- (2) A person shall not ignite, discharge or use consumer fireworks between the hours of 11:45 p.m. and 11:00 a.m.
- (c) It shall be unlawful for any person, firm, partnership or corporation to offer for sale, expose for sale, keep with the intent to sell at retail, or sell at retail to any person who has not yet attained the age of 18 years of age any blank cartridge, toy pistol, toy cannon, toy cane or toy gun in which explosives are used; the type of unmanned balloon which requires fire underneath to propel the same; firecrackers, torpedoes, skyrockets, roman candles, daygo bombs or other fireworks of like construction; or any fireworks containing any explosive or inflammable compound or any tablets or other devices commonly used and sold as fireworks, containing nitrates, chlorates, oxolates, sulfides of lead, barium, antimony, arsenic, mercury, nitroglycerin, phosphorous or any compound containing any of the same or other modern explosives.
- (d) Not included within the foregoing prohibition are model rockets and model rocket engines designed, sold and used for the purpose of propelling recoverable aero models. Also not included are sparklers containing not more than one hundred twenty-five ten-thousandths pounds of burning portion per sparkler, flitter sparklers in paper tubes not

exceeding one-eighth-inch in diameter, 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 thereon, toy pistols, toy canes, toy guns or other devices manufactured to utilize paper and/or plastic caps containing not more than twenty-five hundredths of a grain of explosive content per cap, or said paper and/or plastic caps themselves, the sale of which shall be permitted at all times.

- (e) *Use while under the influence.* No person shall 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.
- (f) *Reckless use of fireworks.* No person shall ignite, discharge or use any fireworks in reckless disregard for the safety of persons or property.
- (g) *Enforcement.* In addition to police officers, the fire chief, his designee, the fire marshal, any fire awareness officer and any authorized law enforcement officer are authorized to enforce the provisions of this article.
- (h) *Penalties for violation.* Any person who is found guilty of violating any provisions of this article shall be deemed guilty of a civil infraction and upon adjudication is responsible therefor and shall be fined \$1,000 for each violation of the ordinance and no other fine or sanction.
- (i) *Severability.* The various parts, sections and clauses of this article are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the article shall not be affected.
- (j) *Repeal.* All regulatory fireworks provisions contained in other city ordinances which are inconsistent with the provisions of this article are repealed.

Passed by the City Commission of the CITY OF CLARE on _____, at its regular meeting with _____ commissioners in attendance, _____ voting aye, _____ nay.
Adopted by the City Commission of the City of Clare this _____ day of _____, 2019.

Signed: _____, Chair.

I hereby certify that the foregoing was duly adopted by the CITY COMMISSION of CITY OF CLARE, Michigan, at its regular meeting on the _____ of _____, 2019, that of _____ members of the City Commission, _____ were in attendance and _____ voted for the adoption of the Ordinance. I further certify that the above and foregoing ordinance is recorded in Ordinances for the CITY OF CLARE.

Effective Date

This Ordinance shall take effect thirty (30) days following date of publication as required by law. All Ordinances or part Ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

Diane Lyon, City Clerk

NOTICE OF PROPOSED ORDINANCE AMENDMENTS

CITY OF CLARE PUBLIC NOTICE

The City of Clare City Commission will hold a public hearing on Monday, April 15, 2019, at 6:00 p.m. at Clare City Hall, 202 W. Fifth Street, to receive public comments pertaining to an amendment of the City of Clare Code of Ordinances regarding Chapter 22, Article III, Sections 22-50 & 22-51, Fireworks; Chapter 26, Article IV, Marihuana Civil Infractions; Chapter 28, Article V, Section 124 & 28-125, Disorderly Intoxication and Section 28, Article VII, Section 209, Consumption of alcoholic beverages in public; Chapter 30, Article III, Section 30-75, Camping in Pettit Park; Chapter 41, Special Events, Sections 41-1, thru 41-11 and 41-20; . A copy of the proposed Ordinance amendment is available for review in the Clerk's office, Monday through Friday, 8 am to 5 pm. The City Commission will accept comments at the hearing or in writing if the written comments are received by the City Clerk not later than 5 p.m. on the date of the hearing. The City of Clare is an equal opportunity employer and provider.

Diane Lyon
Clare City Clerk

