

FIREWORKS ORDINANCE

(Ord. No. 15-01)

AN ORDINANCE to regulate the sale, ignition, discharge and use of consumer fireworks, the use of articles pyrotechnic, display fireworks and special effects, and to provide penalties for the violations thereof

THE CHARTER TOWNSHIP OF CALEDONIA ORDAINS:

Section 1. **Findings and Purpose.** In the interest of maintaining public health, safety and general welfare and the comfort and repose of Caledonia Township residents, the Charter Township of Caledonia hereby provides for the regulation and use of fireworks in Caledonia Township, as provided in PA 256 of 2011, as may be amended, (MCL 28.451, et seq).

Section 2. **Conduct Related.** The manufacture of fireworks is prohibited within the Township. The storage, sale, possession, transport, display or discharge of fireworks shall comply with all of the requirements of this Ordinance. It shall be unlawful for any person to offer for sale, expose for sale, sell at retail, keep with intent to sell at retail, possess, give, furnish, transport, use, explode or cause to explode any fireworks, except as provided by state law or in accordance with this Ordinance.

Section 3. **Definitions.** The terms used within this Ordinance shall have the following meanings:

a. "Alcoholic Liquor" as defined in section 1d of the Michigan Vehicle Code, 1949 PA300, MCL 257.1d, as amended.

b. "APA Standard 87-1" means the standard for construction and approval for transportation of fireworks, novelties and theatrical pyrotechnics, published by the American Pyrotechnics Association of Bethesda, Maryland

c. "Articles pyrotechnic" are defined as devices for professional use that are similar to consumer fireworks in the 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. "Caledonia Independence Day Celebration" means the day designated by the Charter Township of Caledonia to commemorate Independence Day.

e. "Consumer Fireworks" are defined as 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 standards 87-1,3.12,3.13, or 3.5. Consumer fireworks does not include low-impact fireworks.

f. "Controlled Substance" as defined in Section 8b of the Michigan Vehicle Code, 1949 PA 300, MCL 257.8b, as amended.

g. “Display Fireworks” are defined as large fireworks devices that are explosive materials intended for use in fireworks displays and designed to produce visible or audible effect by combustion, deflagration, or detonation.

h. “Firework or Fireworks” shall be as defined as any composition or device, except for a starting pistol, a flare gun, or a flare, designed for the purpose of producing visible or audible effect by combustion, deflagration, or detonation. Fireworks consist of consumer fireworks, low-impact fireworks, articles pyrotechnic, display fireworks and special effects.

i. “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.

j. “National Holiday” shall include any of the following:

1. New Year’s Day
2. Birthday of Martin Luther King Jr., the third Monday in January
3. President’s Day, the third Monday in February
4. Memorial Day, the last Monday in May
5. Independence Day, July 4th
6. Labor Day, the first Monday in September
7. Columbus Day, the second Monday in October
8. Veteran’s Day, November 11th
9. Thanksgiving Day, the fourth Thursday in November
10. Christmas Day, December 25

k. “Novelties” as defined under APA standard 87-1, 3.2 through 3.2.5.

l. “Person” means a firm, association, partnership, joint venture, corporation, trust, municipal or public entity or equivalent entity or a combination thereof as well as a natural person.

m. “Public Property” Streets, sidewalks, easements or other land owned by the local, county, state and federal government and used by the general public.

n. “Special Effects” is defined as 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 in integral part of a motion picture, radio, television, theatrical or opera production or live entertainment.

Section 4. **Ignition, Discharge and Use of Consumer Fireworks.**

a. Subject to the provision of this Ordinance and state and federal law, a person may ignite, discharge or use consumer fireworks within the Township, or allow the ignition, discharge or use of consumer fireworks within the Township, on the day before, the day of, or the day after a National Holiday, or the Caledonia Independence Day Celebration; except that no person shall so ignite, discharge or use consumer fireworks, or allow such activities on their property between the hours of 1:00 am and 8:00 am on such days.

b. No person shall ignite, discharge or use consumer fireworks not categorized as low impact fireworks within the Township, or allow the ignition, discharge or use of consumer fireworks not categorized as low impact fireworks, within the Township, without a permit from the Caledonia Township Board of Trustees, at any time other than the days and time permitted according to Section 4(a) above.

c. A person shall not ignite, discharge or use consumer fireworks on public property, school property, church property or the property of another person without the express written permission of the property owner. No person shall ignite, discharge or use consumer fireworks on Township property.

d. A person shall not recklessly endanger the life, health, safety or well-being of any person or property by the ignition, discharge or use of consumer fireworks.

e. A person shall not use consumer fireworks or low-impact fireworks while under the influence of alcoholic liquor, a controlled substance or combination thereof.

f. A person shall not sell consumer fireworks to a person under the age of 18 years.

g. A person under the age of 18 years shall not buy, purchase, acquire or obtain consumer fireworks.

h. A person under the age of 18 years shall not possess, ignite, discharge or use consumer fireworks without the presence and under the control of a parent, guardian or other responsible adult of the age of 18 years or older.

i. Consumer fireworks shall not be used if a burn ban is in effect within the Township.

Section 5. **Ignition, Discharge and Use of Articles Pyrotechnic and Display Fireworks.** The Township Board may permit articles pyrotechnic, display fireworks and special effects fireworks in the Township, pursuant to the provisions of MCL 28.451, et seq and this Ordinance.

a. Any person wishing to conduct an articles pyrotechnic, display fireworks or special effects display shall submit an application on a form furnished by the Township and shall secure permission from the Township Board prior to any such fireworks display.

b. Applications for permits shall be made in writing at least 30 days prior to the day of the proposed use, sale, possession, for resale, display or discharge of fireworks. The use, sale, possession, display or discharge of fireworks shall be lawful under the terms and conditions of such permit and only for the purpose expressly set forth in the permit. A permit granted hereunder shall not be transferable, nor shall any permit be issued to any person under 18 years of age, nor shall any permit be extended beyond the dates set forth thereof.

c. The site plan of the area where the articles pyrotechnic, display fireworks or special effects display is to be conducted shall be submitted with the application. The site plan shall set forth all structures in the area and within the discharge site fallout area. The site plan shall furthermore set forth the distance separating any fireworks and any spectator viewing areas.

d. A copy of the required state or federal permit for the fireworks display shall be submitted with the application.

e. Proof of insurance conforming to the requirements of this Ordinance shall be submitted with the application.

f. The Township Board, at its discretion, may approve an application for an articles pyrotechnic, display fireworks or special effects display if it finds that all of the following standards are satisfied:

1. The application and accompanying documentation is complete and conforms to the requirements of the Ordinance.

2. The operator of the fireworks display is competent and qualified to conduct the fireworks display.

3. The fireworks display will not have an adverse effect upon public safety.

4. The time, duration and location of the fireworks or special effects display will not, due to noise and other factors, unreasonably disturb the peace of persons residing within the vicinity.

5. The Township Board in approving an application hereunder, shall have the authority to impose such conditions as it determines in its sole reasonable discretion are necessary to assure that the fireworks display will satisfy the above standards.

g. Requirements and Restrictions.

1. The person conducting the fireworks display shall follow the NFPA 1123 Code for Fireworks Display.

2. The applicant shall maintain personal injury liability insurance/property damage liability insurance in the amount of \$1,000,000 for each event. The Township shall be named as an additional insured on the policy.

3. The applicant shall be responsible for all shells being fired. In the event one or more shells does not explode, the applicant shall secure the area until the unexploded shell(s) is found and properly disposed of.

4. Any person involved in conducting the display shall not be under the influence of alcoholic liquor, a controlled substance or combination thereof immediately prior to and during the fireworks display.

5. The fireworks display conducted hereunder shall conform with all specification set forth in the approved application and site plan, as well as with any conditions imposed by the Township Board in granting such approval.

6. The applicant shall cause the site of the fireworks display to be cleaned up within 24 hours after the display has ended.

Section 6. Permits. As required in Section 4(b) and Section 5 above, a permit shall be obtained from the Township Board prior to the sale, ignition, discharge, and use of consumer fireworks not categorized as low impact fireworks or novelties at any time other than the days and times permitted according to Section 4(a) above. Also, the discharge, or other use of fireworks manufactured for outdoor pest control or agricultural purposes, articles pyrotechnic, special effects and display fireworks for public display by municipalities, fair associations, amusement parks or other organizations or groups of individuals approved by the Township Board, shall take place only upon grant of a permit by the Township Board, within its discretion. Such permits shall be on forms provided by the Township. After grant of a permit, the sale, possession, transportation, discharge or other use of fireworks shall take place only for the purposes described in the permit. Permits are not transferrable and shall not be granted to a minor.

a. **Requirements for Permits.** Permits shall be granted only for the purposes described in Sections 4(b), 5 and 6 of this Ordinance or for other purposes authorized by the law of this state. Before any such permit is granted, the person, firm or corporation making application therefore shall furnish proof of financial responsibility by bond or insurance in an amount deemed necessary by the Township Board to satisfy any and all claims for damages to property or personal injuries arising out of any act or omission on the part of such person, firm or corporation or any agent or employee thereof. Such bond or insurance shall be in the amount, character and form deemed necessary by the Township Board for the protection of the public. No such permit shall be issued to any person, firm or corporation not a resident of the State of Michigan until such person, firm or corporation has duly appointed a resident agent to be his legal representative within the state and upon whom all process in any action or proceedings against him may legally be served. The Caledonia Township Board shall have authority to rule in its discretion on the competence and qualifications of proposed operators of pyrotechnic displays and on the time, place and matters of safety of such proposed displays, before granting permits therefore.

b. **Contents of Permits.** Permits for the discharge or other use of fireworks authorized hereunder shall specifically set forth the activities thereby permitted, and no other activities or purposes shall be authorized by reason of the permit. The permit shall specify the period of time within which the permitted activities are authorized to take place and also the

places or areas thereof. The permit shall be effective only as to activities within Caledonia Township and no such permit issued by other municipal corporation shall be effective within Caledonia Township. A permit may include all such conditions or requirements which the Township Board deems necessary to protect the public health and safety. The permit shall state the amount of bond or insurance required of the applicant, if the same be required, and in that event none of the activities authorized under the permit may take place until submission of proof of such bond or insurance to the Township Board or its delegated representative.

Section 7. Violations.

a. Any person who violates any term or provision of the Ordinance shall be responsible for a municipal infraction and subject to payment of a civil fine as well as any other action by the Township to abate the violations. The minimum fine for a municipal civil infraction under this Ordinance shall not be less than \$500, in the discretion of the court, and in addition to all other costs and expenses imposed by the court. For any violation, the Township may seek such other relief as may be provided by law.

b. The following persons may issue a municipal civil infraction citation for a violation of this Ordinance if they have reasonable cause to believe that an infraction has occurred, based upon personal observation or the report of a person who has allegedly witnesses the violation. Other procedures with respect to issuance of citations and other matters pertaining to violations hereof shall be as provided by law.

1. Any Township ordinance enforcement official appointed by the Township Board.

2. A law enforcement officer of the Kent County Sheriff's Department or the Michigan State Police.

c. The issuance of a municipal civil infraction citation is not an exclusive remedy and may be undertaken in addition to all other means of enforcement, including but not limited to injunctive and other relief.

Section 8. Nuisance Per Se. Any violation of this Ordinance is a public nuisance per se. The Township Board may enforce the provision of this Ordinance by seeking injunctive relief in a court of competent jurisdiction in addition to any other remedies which may be available under the law or this Ordinance.

Section 9. Administrative Liability. No officer, agent, employee, or member of the Township Board shall be personally liable for any damage that may accrue to any person as a result of any act, decision, or other consequence or occurrence.

Section 10. Severability and Captions. This Ordinance and its various parts, sections, subsections, sentences, phrases and clauses are severable. If any part, section, subsections, sentence, phrase, or clause is adjudged unconstitutional or invalid, the remainder of this ordinance shall not be affected. The captions included at the beginning of each section are for convenience only and shall not be considered as part of this Ordinance.

Section 11. **Repeal.** All ordinances or parts of ordinances in conflict with this Ordinance, including but not limited to Ordinance 95-1, are hereby repealed.

Section 12. **Publication; Effective Date.** This Ordinance shall become effective the day following its publication or the day following publication of a summary of its provisions in a newspaper of general circulation in the Township.