

TORCH LAKE TOWNSHIP
COUNTY OF ANTRIM
STATE OF MICHIGAN

POLICE POWER ORDINANCE NUMBER PP2021-01

An Ordinance to secure the public health, safety and general welfare of the citizens of Torch Lake Township, Antrim County, Michigan, by regulating the use of Consumer Fireworks, Display Fireworks and articles Pyrotechnic, in the Township, as provided in Public Act 256 of 2011, as amended (MCL 28.451, *et seq.*) and pursuant to Public Act 246 of 1945 (MCL 41.181 *et seq.*), and to amend any Ordinances of the township which conflict with the provisions hereof.

Section 1: Findings

The Township Board makes the following findings:

Public Act 246 of 1945 (MCL 41.181, *et seq.*) authorizes Torch Lake Township to enact ordinances that regulate the public health, safety and general welfare of persons and property. Public Act 256 of 2011, as amended (MCL 28.451, *et seq.*) authorizes Torch Lake Township to enact an ordinance regulating the ignition, discharge, and use of Consumer Fireworks, Display Fireworks, and other articles Pyrotechnic.

The Township Board believes an ordinance prohibiting the ignition, discharge, and use of Consumer Fireworks, to the extent allowed by Public Act 256 of 2011, as amended, is in the interest of public health, safety and general welfare.

The Township Board further believes an ordinance prohibiting the ignition, discharge and use of Pyrotechnic Display Fireworks other than by a professional with the requisite permits and necessary security is in the interest of public health, safety and general welfare.

Section 2: Title

This Ordinance shall be known and cited as the Torch Lake Township Fireworks Ordinance.

Section 3: Definitions

The American Pyrotechnic Association (APA) is a primary national industry association for manufacturers, importers, wholesalers, distributors, and retailers of consumer fireworks, display fireworks, and entertainment industry and technical pyrotechnic devices. The U.S. Consumer Product Safety Commission (CPSC) has jurisdiction in the United States over devices intended for use by consumers. The regulations for consumer fireworks are found in Title 16, CFR.

- A. Novelties, Ground and Low-Impact Fireworks:
- (1) Ground and handheld sparkling devices.
 - (2) 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.

(3) Toy pistols, toy cannons, toy canes, toy trick noisemakers, and toy guns in which toy caps 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.

(4) Flitter sparklers in paper tubes not exceeding 1/8 inch in diameter.

(5) 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. Sky Lantern: An unmanned device with a combustible fuel source that incorporates an open flame in order to make the device airborne.

C. Consumer Fireworks: 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 87-1A 2018. Consumer fireworks do not include novelties or low-impact fireworks.

D. Display Fireworks and Pyrotechnics: Professional displays of fireworks and Pyrotechnics. Large fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation (27 CFR § 555.11 & 49 CFR § 172). The term includes "salutes containing more than two grains (130 mg) of explosive material, aerial shells containing more than 40 grams of pyrotechnic compositions, and other display pieces that exceed the limits of explosive material for classification as consumer fireworks" (27 CFR § 555.11).

Section 4: Ignition, Discharge, and Use of Consumer Fireworks

As authorized by State law (MCL 28.451, *et seq.*), the ignition, discharge, and use of Consumer Fireworks in Torch Lake Township is prohibited, except after 11 a.m. on the following days:

(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.

A person shall not 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 those fireworks on those premises.

Section 5: Sky Lanterns

No person shall at any time release or cause to be released an untethered sky lantern.

Section 6: Penalty for Violation of Section 4 and 5 - Consumer Fireworks and Sky Lanterns

- (1) A violation of any provision concerning Consumer Fireworks or Sky Lanterns is a civil infraction subject to a fine of \$1,000.00 for each violation and court costs, if any. \$500.00 of the fine collected shall be remitted to the local law enforcement agency responsible for enforcement. MCL 28.457.
- (2) In addition to any other penalty imposed for the civil infraction, a person who tenders a plea of guilty, no contest, or responsible to a violation of this article shall be required to reimburse the township for the costs of storing and disposing of seized fireworks that the township confiscated for a violation of the Act or this article and costs incurred by the Township to clean-up the debris and remediate any fire damage.

Section 7: Ignition, Discharge, or Use of Display Fireworks or Articles Pyrotechnic

- (1) A permit is required for the ignition, discharge or use of display fireworks or articles pyrotechnic within the Township. Upon application in writing for a permit and payment of a fee set by the Township, the Township may grant a permit for the use of Display Fireworks and Articles Pyrotechnic, pursuant to MCL 28.466. A permit granted under this section is not transferable and shall not be issued to a minor. The Township shall retain the fee.
- (2) The Township shall rule on the competency and qualifications of articles pyrotechnic and display fireworks operators as required under NFPA 1123, as the operator has furnished in his or her application form, and on the time, place, and safety aspects of the display of articles pyrotechnic or display fireworks before granting a permit.
- (3) The permit holder shall comply with all provisions of this Ordinance and the Michigan Fireworks Act. MCL 28.451, *et seq.*

Section 8: Penalty for Violation of Section 7 – Display Fireworks or Articles Pyrotechnic

This Ordinance incorporates the Michigan Fireworks Safety Act, MCL 28.468, which provides penalties for violations of the law pertaining to display fireworks and articles pyrotechnic, as follows:

- (1) Unless otherwise provided in this Ordinance, if a person knowingly, intentionally, or recklessly violates Section 7 of this Ordinance, the person is guilty of a misdemeanor punishable 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.

(2) If the violation causes damage to the property of another person, the person is guilty of a misdemeanor punishable by imprisonment for a period of time not to exceed ninety-three (93) days or a fine of not more than \$5,000.00, or both.

(3) If the violation causes serious impairment of a body function of another person, a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$5,000.00, or both. As used in this subsection, "serious impairment of a body function" means that term as defined in section 58c of the Michigan vehicle code, 1949 PA 300, MCL 257.58c.

(4) If the violation causes the death of another person, a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$10,000.00, or both.

In addition to any other penalty imposed for the violation of this Ordinance, a person that is found guilty of a violation of this Ordinance shall be required to reimburse the appropriate governmental agency for the costs of storing seized fireworks that the governmental agency confiscated for a violation of this act. This reimbursement shall be in a form and at a time as required by State law.

Each act or 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.

Section 9: Responsibility for Landowner or Occupant for Display Fireworks or Pyrotechnics

- (1) 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 Ordinance.
- (2) 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 subsection 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.
- (3) A person who pleads to or is found responsible for a violation of Section 8 shall clean up any fireworks remnants on or adjoining the person's property, or pay the township's costs for such clean up, and reimburse the township's actual costs for destruction of any unlawful fireworks and materials impounded by law enforcement or fire officials during investigation of the unlawful activity.

A violation of this Section 9 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 punishable 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.

Section 10: Injunctive Relief

In addition to the penalties provided herein, the Township may enjoin or abate any violation of this Ordinance by appropriate action.

Section 11: Costs

- (a) If a defendant is ordered to pay a civil fine, 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, which the plaintiff has incurred in connection with the municipal civil infraction, up to the entry of judgment. Except as otherwise provided by law, costs shall be payable to the general fund of the Township.
- (b) 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.

Section 12: Clean up

Any person, organization or entity that uses fireworks, regardless of purpose or intent, shall be responsible for cleaning up the remnants of the fireworks no matter where located.

Section 13: Activities Not Prohibited

This Ordinance does not prohibit any of the following:

- (a) The use of novelties, ground and low-impact fireworks as defined herein.
- (b) A wholesaler, retailer, commercial manufacturer, or importer from selling, storing, using, transporting, or distributing consumer fireworks or low-impact fireworks.
- (c) The use of fireworks by railroads or other transportation agencies or law enforcement agencies for signal purposes or illumination.
- (d) The use of agricultural or wildlife fireworks.
- (e) The sale or use of blank cartridges for any of the following:
 - (i) A show or play.
 - (ii) Signal or ceremonial purposes in athletics or sports.

(iii) Use by military organizations.

(iv) Use by law enforcement agencies.

(f) The possession, sale, or disposal of fireworks incidental to the public display of fireworks by wholesalers or other persons who possess a permit to possess, store, and sell explosives from the bureau of alcohol, tobacco, firearms, and explosives of the United States department of justice.

(g) Interstate wholesalers from selling, storing, using, transporting, or distributing fireworks.

Section 14: Severability

This Ordinance shall be deemed severable and if any word, sentence, clause, section, or provision is declared invalid or unenforceable for any reason by any court of competent jurisdiction, it shall not affect any other portion of this Ordinance and the remaining portions of this Ordinance shall remain valid and enforceable.

Section 15: Superseding other Township Rules, Regulations and Ordinances

This Ordinance is intended to repeal, amend, update and replace any existing, duly adopted rule, regulation or Township Ordinance on the subject of fireworks. In all respects, this Ordinance shall be interpreted consistent with State Law. If there is any conflict between this Ordinance and State Law, State Law shall control.

Section 16: Enforcement

The Antrim County Sheriff and his deputies are authorized as local enforcement officers of this Ordinance.

Section 17: Effective Date

This Ordinance shall take effect 30 days following publication. *March 11, 2021 + 30 days*

The above Ordinance is adopted on this date of *February 16, 2021*.

Ayes: **5**

Nays: **0**

Abstain: **—**

State Law reference— Authority, MCL 117.3(k); Michigan Fireworks Safety Act, MCL 28.451, *et seq.*)