

Commission Letter #163-12
Commission Meeting: 5/21/2012

RE: 2012 Fireworks Ordinance – First Reading

May 14, 2012

The Honorable Mayor
and
Members of City Commission

On January 1, 2012, the Michigan Fireworks Safety Act, Public Act 256 of 2011, became effective. The Act repealed the former sections of the Michigan Penal Code regarding fireworks, and established new regulations regarding the purchase, possession, sale and use of fireworks.

Generally speaking, fireworks are now divided into four classifications: display fireworks, consumer fireworks (firecrackers, bottle rockets, and roman candles), low-impact fireworks (ground-based or handheld sparklers) and novelties (party poppers, snappers, snakes and smoke balls). Under the Act, a local unit of government is expressly prohibited from enacting or enforcing any ordinance that regulates the sale, display, storage, transportation, or distribution of fireworks. A local unit of government may regulate the ignition, discharge and use of consumer fireworks, but not on the day before, the day of, and the day after a national holiday.

Attached for your consideration on first reading is an ordinance that would (1) repeal the existing fireworks ordinance, (2) prohibit the ignition, discharge and use of consumer fireworks on any day other than the day before, day of, and day after a national holiday, and (3) prohibit the possession of consumer fireworks by a minor. A violation of the ordinance would be a civil infraction, punishable by a fine of up to \$500, plus the costs of prosecution.

If the Commission approves of the proposed ordinance, the following resolution would be appropriate:

BE IT RESOLVED, that the 2012 Fireworks Ordinance is approved on first reading.

Respectfully submitted,



David W. Gillam
City Attorney

cc: Donald E. Johnson, City Manager
Melanie Halas, City Clerk
Corrigan O'Donohue, Interim Chief of Police
Charles E. Thomas, Interim Fire Chief
Tom Nikkila, Fire Marshal

ORDINANCE NO. 12- ____

AN ORDINANCE TO REPEAL EXISTING CHAPTER 345 OF THE CITY CODE, "FIREWORKS", AND TO ADOPT A NEW CHAPTER TO PROVIDE FOR THE REGULATION OF THE IGNITION, DISCHARGE AND USE OF CONSUMER FIREWORKS, AS ALLOWED UNDER THE MICHIGAN FIREWORKS SAFETY ACT, MCL 28.451 ET SEQ., AS AMENDED

THE CITY OF ROYAL OAK ORDAINS:

Section 1. Short Title. This ordinance shall be known and may be cited as the "2012 Fireworks Ordinance."

Section 2. Statement of Purpose. This is an ordinance to repeal existing Chapter 345 of the City Code, "Fireworks", and to adopt a new chapter to provide for the regulation of the ignition, discharge and use of consumer fireworks, as allowed under the Michigan Fireworks Safety Act, MCL 28.451 et seq., as amended.

Section 3. Definitions. As used in this ordinance, the following terms shall be defined as follows:

- (A) "APA standard 87-1" means 2001 APA standard 87-1, standard for construction and approval for transportation of fireworks, novelties, and theatrical pyrotechnics, published by the American pyrotechnics association of Bethesda, Maryland.
- (B) "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.
- (C) "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.
- (D) "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.
- (E) "Minor" means an individual who is less than 18 years of age.
- (F) "National holiday" means the following legal public holidays:
 - (1) New Years' Day, January 1.
 - (2) Birthday of Martin Luther King, Jr., the third Monday in January.
 - (3) Washington's Birthday, the third Monday in February.
 - (4) Memorial Day, the last Monday in May.
 - (5) Independence Day, July 4.
 - (6) Labor Day, the first Monday in September.
 - (7) Columbus Day, the second Monday in October.
 - (8) Veteran's Day, November 11.
 - (9) Thanksgiving Day, the fourth Thursday in November.
 - (10) Christmas Day, December 25.

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

A person shall not ignite, discharge or use consumer fireworks, except on the day preceding, the day of, or the day after a national holiday.

Section 5. Possession of Consumer Fireworks by Minor.

A minor shall not possess consumer fireworks.

Section 6. Determination of Violation; Seizure.

If a police officer determines that a violation of this ordinance has occurred, the officer may seize the consumer fireworks as evidence of the violation.

Section 7. Penalty.

- (A) A violation of this ordinance is a civil infraction, punishable by a fine of up to \$500.00, plus the costs of prosecution.
- (B) Following final disposition of a finding of responsibility for violating this ordinance, the City may dispose of or destroy any consumer fireworks retained as evidence in that prosecution.
- (C) In addition to any other penalty, a person that is found responsible for a violation of this ordinance shall be required to reimburse the City for the costs of storing, disposing of, or destroying consumer fireworks that were confiscated for a violation of this ordinance.

Section 8. Severability. If any Section, subsection, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent portion of this ordinance, and such holding shall not affect the validity of the remaining portions of this ordinance.

Section 9. Savings. All proceedings pending and all rights and liabilities existing, acquired or incurred at the time this ordinance takes effect are saved and may be consummated according to the law in force when they are commenced.

Section 10. Repealer. All ordinances or parts of ordinances in conflict herewith are hereby repealed only to the extent necessary to give this ordinance full force and effect. The current Chapter 345, "Fireworks" is repealed in its entirety.

Section 11. Effective Date. This ordinance shall take effect ten (10) days after the final passage thereof.