

ORDINANCE NO. XXXXV-Amendment 3

**AN ORDINANCE TO AMEND GERRISH TOWNSHIP
FIREWORKS ORDINANCE NO. XXXIII.**

The Gerrish Township Fireworks Ordinance, Ordinance No. XXXIII is hereby amended to read in its entirety as follows:

WHEREAS pursuant to MCLA 41.181 and Section 7(2) of the Michigan Fireworks Safety Act; Act 256 of 2011, the Township of Gerrish ORDAINS:

Section 1. Purpose: The purpose of this Ordinance is to establish a safe environment for the use or discharge of fireworks and to regulate the public health, safety and general welfare of persons and property, in particular to ensure protection for the viewing public and the property owners surrounding the discharge site of fireworks.

Section 2. Definitions: As used in this Ordinance, the following words and phrases have the meanings set forth herein:

(a) "Articles Pyrotechnic" mean 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.

(b) "Chinese lanterns", also known as Sky lanterns or Kongming Lantern, are airborne paper lanterns constructed from oiled rice or other paper on a frame, and contain a small candle or fuel cell composed of a waxy flammable material. When lit, the flame heats the air inside the lantern causing the lantern to rise into the air.

(c) "Consumer Fireworks" means fireworks devices that are designed to produce visible effects by combustion, that are regulated 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. Examples include, but are not limited to aerials, roman candles, bottle rockets, firecrackers, helicopter/aerial spinners, re-loadable shell devices, missile-type devices, single tube devices with report and other items that leave the ground. Consumer fireworks does not include low-impact fireworks.

(d) "Display Fireworks" means large fireworks devices and 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.

(e) "Firework" or "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. Fireworks consist of consumer fireworks, low-impact fireworks, articles pyrotechnic, display fireworks, and special effects.

(f) "Low Impact Fireworks" means any ground-based and some 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.

(g) "Novelty fireworks" 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 and all of the following:

- (i) 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.
- (ii) 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 designed to break apart or be separated so as to form a missile by the explosion.
- (iii) Flitter sparklers in paper tubes not exceeding 1/8 inch in diameter.
- (iv) 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.

(h) "Special Effects" means 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.

(i) "Use of fireworks" means the ignition, discharge, and use of fireworks.

(j) "Person" means 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 including the owner(s) or occupant(s) of real property.

Section 3. General Prohibition on Ignition, Discharge and Use of Consumer Fireworks:

No person shall ignite, discharge or use fireworks or Chinese Lanterns within the Township of Gerrish at any time, NOR SHALL THE OWNER(S) OR OCCUPANT(S) OF REAL PROPERTY PERMIT THE IGNITION, DISCHARGE OR USE OF FIREWORKS OR CHINESE LANTERNS FROM THEIR PROPERTY except that:

(a) Fireworks may be discharged in strict compliance with any permit issued by the Township in accordance with the Act and this Ordinance.

(b) Pursuant to Public Act 635 of 2018, this ordinance shall not regulate the ignition, discharge, or use of consumer fireworks on the following days after 11:00am:

- December 31 until 1:00am on January 1.
- The Saturday and Sunday immediately preceding Memorial Day until 11:45pm on each of those days.
- June 29 to July 4 until 11:45pm on each of those days.
- July 5, if that date is a Friday or Saturday, until 11:45pm.
- The Saturday and Sunday immediately preceding Labor Day until 11:45pm on each of those days.

(c) The use of low impact fireworks will be permitted year-round.

(d) The ignition, discharge, or use of consumer fireworks outside of the permitted times, shall be considered a violation of this Ordinance.

Section 4. Additional Prohibitions:

(a) Consumer fireworks shall not be ignited, discharged, or used from any of the following locations without the owner or the legal representative's express written permission:

- 1) on public property, including streets and rights-of-way, or
- 2) on school property, or
- 3) on church property, or
- 4) from the property of another person,

(b) Consumer fireworks shall not be ignited, discharged, or used by a person under the influence of alcoholic liquor or a controlled substance or a combination of both.

(c) Low impact fireworks shall not be ignited, discharged, or used by a person under the influence of alcoholic liquor or a controlled substance or a combination of both.

(d) Any person who uses fireworks shall be in compliance with all other applicable laws or ordinances.

Section 5. Permit, Application and Site Plan:

(a) Any person wishing to use consumer fireworks or display fireworks on any day except the times and dates stated in section 3 paragraph (b), shall at least 30 days prior to the event, pay a fee established by the Gerrish Township Board and submit an application to Gerrish Township for a permit on a form created by the Michigan Department of Licensing and Regulatory Affairs furnished by the Township and shall secure permission from the Township Board prior to the event. Michigan Fireworks Safety Act, Act 256 of 2011, Section 16(1).

(b) Any person on behalf of any municipalities, fair board, amusement park, or other organizations or other individuals wishing to use agricultural wildlife fireworks, articles pyrotechnic, **display fireworks**, or special effects manufactured for outdoor pest control or agricultural purposes, whether for public or private display within the township shall at least 30 days prior to the event, pay a fee established by the Gerrish Township Board and submit an application to the Township for a permit on a form created by the Michigan Department of Licensing and Regulatory Affairs furnished by the Township and shall secure permission from the Township Board prior to the event. Michigan Fireworks Safety Act, Act 256 of 2011, Section 16(1).”

(c) A site plan of the area where the event is to be conducted shall be submitted with the application. The site plan shall set forth all structures in the area and the discharge site fallout area. The site plan shall furthermore set forth the distance separating the mortars used to launch the fireworks and the structures and also set forth the distance separating the mortars and the spectators viewing the display. All site plans must be approved by the Gerrish Township Fire Department Chief prior to Township Board approval. The approval by the Fire Chief or Township Board may be subject to such conditions as the Fire Chief or his designee may impose to properly safeguard the public, both as to persons and property; and subject to the provisions of the Michigan Fireworks Safety Act, Act 256 of 2011.

(d) Any use of fireworks for which a permit is required which takes place above the waters of Higgins Lake shall require approval of the Department of Natural Resources and shall include a plan for retrieval of unspent mortars and fireworks residue.

(e) No applications for a permit submitted less than 30 days prior to the event will be accepted or approved.”

Section 6. Requirements and Restrictions:

(a) Every person who ignites, discharges, or uses fireworks shall follow National Fire Protection Association (NFPA) Code 1123 for Fireworks Display and/or the Gerrish Township requirements, whichever is more restrictive.

(b) Every person who is granted a permit to ignite, discharge, or use fireworks shall maintain personal liability insurance/property damage liability insurance in the amount of \$5,000,000 as a minimum during each event. Additional insurance may be required based upon conditions and/or the location of the display. The Township and its employees and/or officers shall be named as additional named insured on the insurance policy. The insurance policy must be submitted with the aforementioned application and shall be subject to the Risk Management Company's review. The insurance policy shall also include coverage for the cleanup after the event has ended. Michigan Fireworks Safety Act, Act 256 of 2011, Section 16(2).

(c) Any person using fireworks shall be responsible for all shells or devices being fired or burned. In the event any shell does not explode, the person shall secure the area until the unexploded shell is found and properly disposed of.

(d) Smoking in an area where fireworks are being used is prohibited under NFPA 1124, 7.3.11.1 and is regulated by Michigan Fireworks Safety Act, Act 256 of 2011, Section 12(4)

(e) Nothing herein limits the liability of any individual for injury to any person or property as a result of the use of fireworks, including any fire suppression costs incurred as a result of improper, careless or negligent use of fireworks.

Section 7. Enforcement, Seizure of Fireworks and Penalties:

(a) This ordinance may be enforced by the Gerrish Township Police Chief and Gerrish Township Fire Chief, their designees, and any sworn law enforcement officers.

(b) If an enforcing official determines that a violation of this Ordinance or the Michigan Fireworks Safety Act has occurred, the official may seize the fireworks as evidence of such violation.

(c) Unless otherwise provided herein, any person or owner or occupant of real property in Gerrish Township who violates or allows the violation of Section 3 or 4, except section 4(a), is responsible for a civil infraction which shall be punishable upon conviction thereof by a fine of \$1,000.00 for each violation of the ordinance. Pursuant to MCL 28.457(C), \$500.00 of the fine collected under the ordinance shall be remitted to the Gerrish Township Police Department which is responsible for enforcing the ordinance.

(d) Any person who violates Section 4(a) is responsible for a state civil infraction as provided by Michigan Fireworks Safety Act, Act 256 of 2011, Section 12(1).

(e) Upon conviction, or finding of responsibility, for a violation of this Ordinance, the Township may dispose of or destroy any consumer fireworks or low impact fireworks retained as evidence for prosecution of the violation.

(f) In addition to any other penalty provided herein, a person who is convicted, or found responsible, for a violation of this Ordinance shall reimburse the Township for the costs of storing, disposing of, or destroying any consumer or low impact fireworks seized as provided for herein.

Section 8. Repealer.

Any and all ordinances and resolutions heretofore adopted inconsistent herewith are hereby repealed to the extent that the provisions thereof are inconsistent with the provisions hereof, including the prior ordinance provisions of the Township adopting the 2003 Edition of the International Fire Code and appendices thereto.

Section 9. Severability

The various parts, sections and clauses of this Ordinance 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 Ordinance shall not be affected thereby.

Section 10. 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 were commenced.

Section 11. Effective Date.

This Ordinance shall be effective thirty (30) days after publication in the local newspaper. Effective November 29, 2021.

Section 12. Enactment.

This Ordinance is declared to have been enacted by the Gerrish Township Board at its Regular meeting held on the 12th day of October, 2021 and shall be given publication in accordance with applicable law.

Kathleen Patchin
Kathleen Patchin, Township Clerk

Oct. 12, 2021
Date