

**ELMWOOD CHARTER TOWNSHIP
CONSUMER AND DISPLAY FIREWORKS ORDINANCE
Ordinance No. 2020-1**

AN ORDINANCE PURSUANT TO ACT 256 OF THE PUBLIC ACTS OF 2011, AS AMENDED, AND PURSUANT ACT TO 359 OF THE PUBLIC ACTS OF 1947, AS AMENDED, TO PROHIBIT THE IGNITION, DISCHARGE, AND USE OF CONSUMER FIREWORKS WITHIN THE TOWNSHIP, EXCEPT AS PERMITTED BY STATE LAW OR AUTHORIZED BY THE TOWNSHIP BOARD, TO PROVIDE FOR REGULATION OF THE IGNITION, DISCHARGE, AND USE OF DISPLAY FIREWORKS, AND TO PROVIDE PENALTIES FOR VIOLATIONS THEREOF

THE CHARTER TOWNSHIP OF ELMWOOD ORDAINS:

Section 1. Findings.

The Elmwood Charter Township Board makes the following findings: Public Act 359 of 1947 (MCL 42.1, *et seq.*) authorizes Elmwood Charter 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 Elmwood Charter Township to enact an ordinance regulating the ignition, discharge, and use of consumer fireworks and regulating the ignition, discharge, and use of display fireworks. The Elmwood Charter Township Board hereby finds that an ordinance prohibiting the ignition, discharge, and use of consumer fireworks, to the extent allowed by Public Act 256 of 2011, as amended, and as authorized by the township board, is in the interest of public health, safety and general welfare of persons and property within Elmwood Charter Township. The Elmwood Charter Township Board further finds that an ordinance regulating the ignition, discharge, and use of display fireworks, is in the interest of public health, safety and general welfare of persons and property within Elmwood Charter Township.

Section 2. Title.

This Ordinance shall be known as the Elmwood Charter Township Consumer and Display Fireworks Ordinance.

Section 3. Definitions. As used in this Ordinance,

“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 display fireworks and 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 1. 27 CFR 555.11, 49 CFR 172, and APA Standard 87-1, 4.1.

“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.

“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.

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

No person shall ignite, discharge, or use consumer fireworks within Elmwood Charter Township at any time, except during any of the following days and times and except as authorized by the Elmwood Charter Township Board under this Ordinance:

- (a). After 11 a.m. on December 31 and until 1 a.m. on January 1.
- (b). After 11 a.m. and until 11:45 p.m. on the Saturday and Sunday immediately preceding Memorial Day.
- (c). After 11 a.m. and until 11:45 p.m. on June 29 through July 4.
- (d). If July 5 falls on a Friday or Saturday, then after 11:00 a.m. and until 11:45 p.m. on July 5.
- (e). After 11 a.m. and until 11:45 p.m. on the Saturday and Sunday immediately preceding Labor Day.

Section 5. Application and Fee Requirements for Consumer Fireworks Permit.

A person who desires to ignite, discharge, or use consumer fireworks within Elmwood Charter Township on days not authorized under Section 4 of this Ordinance shall, no less than sixty (60) days prior to the proposed date of the display, submit a complete application to the township clerk and pay the required fee, which shall be determined from time to time by resolution of the township board. If the applicant fails to provide all the information required by this Ordinance, then the application shall be deemed incomplete, shall not be processed, and may be denied by the township board on that basis. The application shall include all of the following information and any information deemed reasonably necessary by the township board to determine whether the applicable standards for approval provided in Section 6 have been met.

- (a) Proof that the applicant is 18 years of age or older.
- (b) The proposed date(s), time(s), and duration(s) for the ignition, discharge, or use consumer fireworks.

- (c) A written statement from the property owner consenting to the ignition, discharge, or use of consumer fireworks on the owner's land.
- (d) A site plan stating the address where the consumer fireworks display will be held, documenting the land area of the parcel on which the consumer fireworks display will be located, documenting how the display will be conducted, and documenting the types of consumer fireworks that will be used in the display.
- (e) A written statement indicating that the individual(s) who will be conducting the display and all persons assisting with the display will use the consumer fireworks as directed by the manufacturer of the consumer fireworks.
- (f) A written statement describing the organized event for which the consumer fireworks display will be conducted and an estimate of the number of individuals who will be attending the organized event.
- (g) A written statement indicating how the applicant plans to ensure that the individual(s) who will be conducting the display and all persons assisting with the display will be free from any alcohol in their blood immediately prior to and during the display.
- (h) A written statement that the applicant and the property owner agree to enter into an indemnification agreement with the township acceptable to the township attorney that holds the township harmless from any liability and costs to the township in connection with the display.

Section 6. Standards for Approval of Consumer Fireworks Permit.

The township board shall approve, or approve with conditions, an application to ignite, discharge, or use consumer fireworks on days not authorized under Section 4 of this Ordinance only upon a finding that the application complies with all of the following standards:

- (a) The applicant is an individual 18 years of age or older.
- (b) The property owner on which the consumer fireworks display will be conducted has consented in writing to the display.
- (c) The property on which the consumer fireworks display will be conducted is no less than five (5) acres in area.
- (d) The consumer fireworks display will be conducted in conjunction with an organized event at which no less than 50 individuals are anticipated to attend.

- (e) The applicant and property owner have agreed to enter into an indemnification agreement with the township that is acceptable to the township attorney that holds the township harmless from any and all liability in connection with the display.
- (f) The applicant and property owner have agreed to enter into an agreement with the township that is acceptable to the township attorney in which the applicant and property owner agree, jointly and severally, to reimburse the township for its reasonable fire service and EMS costs incurred in responding to a fire and/or EMS call in connection with the display.
- (g) The applicant and property owner have substantially complied with the terms and conditions of previously issued consumer fireworks permits under this Ordinance.
- (h) Given the duration, time, and frequency of proposed and previous consumer fireworks displays on the property on which the proposed consumer fireworks display will be conducted, the proposed consumer fireworks display will not constitute a nuisance for surrounding properties or the neighborhood.
- (i) The applicant has adequate plans in place (1) to ensure that the individual(s) who will be conducting the display and all persons assisting with the display will be free from any alcohol in their blood immediately prior to and during the consumer fireworks display and (2) to ensure public safety and the safety of individuals assisting with the display.

Section 7. Ignition, Discharge, and Use of Display Fireworks.

No person shall ignite, discharge, or use display fireworks within Elmwood Charter Township, except as authorized by a permit issued by the Elmwood Charter Township Board pursuant to this Ordinance.

Section 8. Application and Fee Requirements for Display Fireworks Permit.

A person who desires to ignite, discharge, or use display fireworks within Elmwood Charter Township shall no less than sixty (60) days prior to the proposed date of the display submit a complete application to the township clerk and pay the required fee, which shall be determined from time to time by resolution of the township board. If the applicant fails to provide all the information required by this Ordinance, then the application shall be deemed incomplete, shall not be processed, and may be denied by the township board on that basis. The application shall include all of the following information and any information deemed reasonably necessary by the township board to determine whether the applicable standards for approval provided in Section 9 have been met.

- (a) A completed application form provided to the township by the Michigan Department of Licensing and Regulatory Affairs, Bureau of Fire Services, State of Michigan, or any successor agency.

- (b) Proof that the applicant is 18 years of age or older.
- (c) The proposed date(s), time(s), and duration(s) for the ignition, discharge, or use the display fireworks.
- (d) A written statement from the property owner consenting to the ignition, discharge, or use display fireworks on the owner's land.
- (e) A written statement describing the organized event for which the display fireworks will be conducted and an estimate of the number of individuals who will be attending the organized event.
- (f) If the applicant is not a resident of the State of Michigan, then written proof that the applicant has appointed in writing a resident member of the bar of this state or a resident agent to be the legal representative upon whom all process in an action or proceeding against the person, firm, or corporation may be served.
- (g) Proof of financial responsibility by a bond or insurance policy that names the township as an additional named insured from a company in good standing that is licensed to do business in the State of Michigan in an amount not less than \$1,000,000 for a single occurrence and \$2,000,000 in the aggregate to satisfy claims for damages to property or personal injuries arising out of an act or omission on the part of the applicant or an agent or employee of the applicant to protect the public.
- (h) Proof of the training and qualifications of the individual who will be igniting, discharging, or using the display fireworks.
- (i) A written statement indicating that the applicant and property owner have agreed to enter into an agreement with the township that is acceptable to the township attorney in which the applicant and property owner agree, jointly and severally, to reimburse the township for its reasonable fire service and EMS costs incurred in responding to a fire and/or EMS call in connection with the display.
- (j) A site plan stating the address where the display fireworks will be stored prior to the proposed date of the display, documenting the type of building in which the display fireworks will be stored prior to the proposed date of the display, stating the address where the display will be held, documenting how the display will be conducted, documenting the location where the shells will be discharged (the launch area), documenting the size of the shells that will be used in the display, documenting all structures in the area of the display and the distance between the launch area and those buildings, documenting the spectator viewing area and the distance between the launch area and spectator viewing area, documenting the parking area for vehicles and the distance between the launch area and parking area, and documenting all structures in the discharge fallout area.

- (k) A written statement indicating how the applicant plans to ensure that the individual who will be conducting the display and all persons assisting with the display will be free from any alcohol in their blood immediately prior to and during the display.
- (l) A written safety plan documenting how the applicant and the individual(s) who will be conducting the display will deal with the situation where a fireworks shell does not explode.
- (m) A written plan documenting how the applicant plans to clean up the site of the display.
- (n) A written statement that the applicant and property owner agree to enter into an indemnification agreement with the township acceptable to the township attorney that holds the township harmless from any liability in connection with the display.
- (o) A written statement documenting that the applicant has provided written notice to the owners and occupants of property within 300 feet of the property on which the display will be conducted (measured from the property lines) indicating the date and time of the display.

Section 9. Standards for Approval of Display Fireworks Permit.

The township board shall approve, or approve with conditions, an application to ignite, discharge, or use display fireworks only upon a finding that the application complies with all of the following standards:

- (a) The applicant is an individual 18 years of age or older.
- (b) The property owner on which the display fireworks will be conducted has consented in writing to the display.
- (c) The property on which the display fireworks will be conducted is no less than five (5) acres in area, or the display fireworks will be discharged from a barge anchored to the bottomland of a navigable body of water.
- (d) The display fireworks will be conducted in conjunction with an organized event at which no less than 100 individuals are anticipated to attend.
- (e) The applicant or the individual(s) who will be conducting the display has the training and certification in compliance with the National Fire Protection Association (NFPA) Codes 1123, 1124 & 1126, as may be amended from time to time, and is in full compliance with the Alcohol, Tobacco, Firearms & Explosives requirements.
- (f) If the applicant is not a resident of the State of Michigan, the applicant has appointed in writing a resident member of the bar of this state or a resident agent to be the legal

representative upon whom all process in an action or proceeding against the person, firm, or corporation may be served.

- (g) The applicant has obtained a bond or insurance policy that names the township as an additional named insured from a company in good standing that is licensed to do business in the State of Michigan in an amount not less than \$1,000,000 for a single occurrence and \$2,000,000 in the aggregate to satisfy claims for damages to property or personal injuries arising out of an act or omission on the part of the applicant or an agent or employee of the applicant to protect the public.
- (h) The applicant and property owner have agreed to enter into an indemnification agreement with the township that is acceptable to the township attorney that holds the township harmless from any and all liability in connection with the display.
- (i) The applicant and property owner have agreed to enter into an agreement with the township that is acceptable to the township attorney in which the applicant and property owner agree, jointly and severally, to reimburse the township for its reasonable fire service and EMS costs incurred in responding to a fire and/or EMS call in connection with the display.
- (j) The applicant and property owner have substantially complied with the terms and conditions of previously issued display fireworks permits under this Ordinance.
- (k) Given the duration, time, and frequency of proposed and previous display fireworks events on the property on which the proposed display fireworks event will be conducted, the proposed display fireworks will not constitute a nuisance for surrounding properties or the neighborhood.
- (l) The applicant has adequate plans in place (1) to ensure that the individual(s) who will be conducting the display and all persons assisting with the display will be free from any alcohol in their blood immediately prior to and during the display, (2) to ensure public safety and the safety of individuals assisting with the display when a fireworks shell does not explode, and (3) to ensure the proper cleanup of the site following the display.
- (m) The storage of the fireworks prior to the display, the manner of conducting the display, the location of the spectator viewing area and the parking area in relationship to the location of area where the fireworks will be discharged, and the discharge fallout area are reasonably safe for the general public, for the property owners and residents in the immediate area, and for the individual(s) assisting with the display.
- (n) The fire chief has reviewed and approved the display to ensure compliance with all applicable National Fire Protection Association (NFPA) Codes.

Section 10. Conditions.

The township board may impose reasonable conditions on a consumer fireworks permit or a display fireworks permit issued under this Ordinance which are reasonably necessary to ensure compliance with the standards for approval provided in Section 6 or Section 9, respectively.

Section 11. Fireworks Permit Filing Requirements.

Upon the issuance of a fireworks permit authorizing the ignition, discharge, or use of consumer or display fireworks, the applicant shall file a copy of the permit with the Elmwood Charter Township Fire Department and the Leelanau County Sheriff's Department.

Section 12. Penalty/Civil Infraction.

Any person who violates any provision of this Ordinance shall be responsible for a municipal civil infraction as defined in Public Act 12 of 1994, amending Public Act 236 of 1961, being Sections 600.101-600.9939 of Michigan Compiled Laws, and shall be subject to a civil fine of One Thousand and 00/100 (\$1,000.00) Dollars for each violation of the Ordinance and no other fine or sanction. Five Hundred and 00/100 Dollars of the fine collected under this Ordinance for violations of Section 4 of this Ordinance shall be remitted to the Leelanau County Sheriff's Office, which is responsible for the enforcement of this Ordinance. Each day this Ordinance is violated shall be considered as a separate violation.

Section 13. Enforcement.

The deputies of the Leelanau County Sheriff and other officials appointed by the Township Board are hereby designated as the authorized officials to issue municipal civil infraction citations directing alleged violators of this Ordinance to appear in court.

Section 14. Nuisance.

A violation of this Ordinance is hereby declared to be a public nuisance or a nuisance per se and is declared to be offensive to the public health, safety and welfare.

Section 15. Injunctive Relief.

In addition to enforcing this Ordinance through the use of a municipal civil infraction proceeding, the Township may initiate proceedings in the Circuit Court to abate or eliminate the nuisance per se or any other violation of this Ordinance.

Section 16. Validity.

If any section, provision or clause of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not effect any remaining portions or

application of this Ordinance, which can be given effect without the invalid portion or application.

Section 17. Repeal.

The Elmwood Charter Township Consumer Fireworks Ordinance, being Ordinance 2015-3, is hereby repealed in its entirety.

Section 18. Effective Date.

This Ordinance shall become effective thirty (30) days after being published in a newspaper of general circulation within the Township.

Ordinance No.2020-1 was adopted on the 9th day of November, 2020, by the Elmwood Charter Township Board as follows:

Motion by: Trustee Lautner

Seconded by: Trustee Darga

Yeas: Mikowski, Lautner, Trevas, O'Rourke, Darga, Preston, and Shaw

Nays: None

Absent: None

By: Connie M. Preston
Connie M. Preston, Clerk

I hereby certify that the foregoing constitutes a true and complete copy of Ordinance 2020-1, first presented to the Township Board on October 12, 2020 after publication in the Leelanau Enterprise on October 29, 2020.

I further certify that the ordinance was duly adopted by the Township Board of the Charter Township of Elmwood, County of Leelanau, Michigan at a regular meeting held on November 9, 2020, at which all members were present.

The approved ordinance was published on November 26, 2020 in the Leelanau Enterprise. The effective date is December 26, 2020.

Dated November 26, 2020

Connie M. Preston
Connie Preston, Clerk