

ORDINANCE NO. 35.011

**AN ORDINANCE TO AMEND VILLAGE OF SHEPHERD
FIREWORKS ORDINANCE NO. 35.011.**

The Village of Shepherd Fireworks Ordinance, Ordinance No. 35.011 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 Village of Shepherd **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) "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 do not include low-impact fireworks.

(c) "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.

(d) "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.

(e) "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.

(f) "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.

(g) "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.

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

(i) "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.

(j) For purposes of this ordinance, Federal Holidays are defined as:

- 1) New Year's Day (January 1)
- 2) Birthday of Martin Luther King, Jr. (Third Monday in January)
- 3) Washington's Birthday (Third Monday in February)
- 4) Memorial Day (Last Monday in May)
- 5) Independence Day (July 4)
- 6) Labor Day (First Monday in September)
- 7) Columbus Day (Second Monday in October)
- 8) Veteran's Day (November 11)
- 9) Thanksgiving (Fourth Thursday in November)
- 10) Christmas Day (December 25)

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

No person shall ignite, discharge or use fireworks within the Village of Shepherd at any time, except that:

- (a) Fireworks may be discharged in strict compliance with any permit issued by the Village of Shepherd in accordance with the Act and this Ordinance.
- (b) The use of consumer fireworks is permitted the day before, the day of, and the day after a Federal holiday.
- (c) The use of low impact fireworks will be permitted year-round.

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 day before, day of, or day after a Federal Holiday shall, at least 30 days prior to the event, pay a fee established by the Village of Shepherd Council and submit an application for a permit on a form created by the Michigan Department of Licensing and Regulatory Affairs furnished by the Village of Shepherd and shall secure permission from the Shepherd council prior to the event. Michigan Fireworks Safety Act, Act 256 of 2011, Section 16(1).

(b) 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 Shepherd Tri Township Fire Department Chief prior to Shepherd Council approval. The approval by the Fire Chief or Shepherd Council 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.

Section 5. 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 Village of Shepherd 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 Village of Shepherd 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 6. Enforcement, Seizure of Fireworks and Penalties:

(a) This ordinance may be enforced by the Village of Shepherd Police Chief and Shepherd Tri Township Fire Department 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 who violates Section 3 or 4 is guilty of a misdemeanor which shall be punishable upon conviction thereof by a fine not exceeding \$500 or by imprisonment for not more than 90 days, or by both such fine and imprisonment at the discretion of the court.

(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 Shepherd Police Department 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 Village of Shepherd for the costs of storing, disposing of, or destroying any consumer or low impact fireworks seized as provided for herein.

Section 7. 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 Village of Shepherd ordinances.

Section 8. 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 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 were commenced.

Section 10. Effective Date.

This Ordinance shall be effective fifteen (15) days after adoption by the Shepherd Council.

Section 11. Enactment.

CERTIFICATION

I hereby certify that the above is a true copy of an ordinance adopted by the Village Council for Village of Shepherd at the time, date, and place specified above pursuant to the required statutory procedures.

Respectfully submitted,

Gina L Gross, Village Clerk
Village of Shepherd Clerk