



Time to Revisit Existing Firework Ordinances

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Foster Swift Municipal Law News

May 31, 2012

For decades, Michigan law required a permit for the use of most fireworks, and issuing such permits was the responsibility of local governments. Accordingly, many local governments adopted ordinances regulating the issuance of fireworks permits.

But Michigan has now revamped its fireworks law by adopting Public Act 256 of 2011, which amends the Michigan Fireworks Safety Act ("Act"). As amended, the Act allows consumers to legally buy and use more powerful "consumer fireworks" – such as firecrackers, bottle rockets, and Roman candles – without obtaining a permit. The Act does not regulate "novelties," such as toy caps, noisemakers, and flutter sparklers; those remain legal without a permit.

Although the Act expands the types of fireworks that are legal without a permit, some restrictions are imposed. For example:

- minors may not purchase consumer fireworks
- consumer fireworks may not be used on public or school property without the landowner's consent
- individuals may not use fireworks if under the influence of drugs or alcohol.

Also, a person or business who wishes to sell consumer fireworks must obtain a certificate annually from the Michigan Department of Licensing and Regulatory Affairs. The Act also provides for a "safety fee" to be imposed on top of the regular 6% sales tax. Retailers selling "low-impact" fireworks – like sparklers, snakes, and poppers – must register online, but no certificate is required.

Important for municipalities, the Act says that local governments may not "enact or enforce an ordinance, code, or regulation pertaining to or in any manner regulating the sale, display, storage, transportation, or distribution of [consumer] fireworks." Yet there are limited exceptions:

1. A local government may enact an ordinance regulating the ignition, discharge, and use of consumer fireworks. But the ordinance may not regulate the use of consumer fireworks on the day before, the day of, or the day after a federal holiday.

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2. A local government may issue permits for non-consumer fireworks (such as agricultural or wildlife fireworks); pyrotechnic devices for professional use; display fireworks; or special effects manufactured for outdoor pest control or agricultural purposes, or for public or private display within the local government. As to those permits, the Act provides detailed issuing requirements, including bonding and competency requirements. Issuing such permits is the responsibility of the local government, not the State.

As a result of the Act, some local governments' existing fireworks ordinances may prohibit that which the Act allows and therefore be unenforceable. If so, the ordinances will need to be revised to comply with the Act. Local governments should consult with legal counsel to draft appropriate revisions.

If you have any questions about the Act or fireworks regulations, please feel free to contact Laura Garlinghouse of the Foster Swift Municipal Team.