

**CITY OF NILES
COUNTY OF BERRIEN
STATE OF MICHIGAN**

ORDINANCE NO. 497

An Ordinance to regulate the ignition, discharge and use of consumer fireworks within The City of Niles, Michigan; to set forth definitions as used within this Ordinance; to prohibit possession by minors and sale to minors of consumer fireworks; and to provide for penalties, including fines and costs for violation of these provisions.

THE CITY OF NILES, BERRIEN COUNTY, MICHIGAN ORDAINS:

SECTION 1 TITLE

This Ordinance shall be known and cited as the City of Niles Fireworks Ordinance.

SECTION 2 PURPOSE

The purpose of this Ordinance shall be to provide for and protect the public health, safety and welfare of persons within the City of Niles by establishing regulations pertaining to the ignition, discharge and use of consumer fireworks within the City of Niles.

SECTION 3 DEFINITIONS

As used in this Ordinance, the following terms shall be defined as follows:

1. *APA* as used herein means the American Pyrotechnics Association.
2. *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 do not include low-impact fireworks.

3. *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 27 CFR 555.11, 49 CFR 172 and APA standard 87-1, 4.1.
4. *Firework or fireworks* means any composition or device, except for a starting pistol, a flame gun or a flare, designated 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.
5. *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.
6. *Minor* is an individual who is less than eighteen (18) years old.
7. *Novelties* means 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 cup, in packages labeled to indicate the maximum explosive content per cup.
 - (ii) Toy, pistols, toy cannons, toy canes, toy trick noise makers 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 not 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.
8. *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 PROHIBITION

No person shall ignite, discharge or use consumer fireworks within the City of Niles, Michigan, except on the following days after 11:00 A.M.

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

SECTION 5 MISCELLANEOUS REQUIREMENTS / PROHIBITIONS

1. This Ordinance does not apply to and does not regulate the use of Novelties in the City of Niles, Michigan.
2. A minor shall not possess consumer fireworks.
3. Consumer fireworks shall not be sold to a minor.
4. No person shall ignite, discharge or use consumer fireworks on public property, school property, church property or the property of another person without that person or organization's express permission to use these fireworks on those premises.
5. A person shall not use consumer fireworks or low-impact fireworks while under the influence of alcoholic liquor, controlled substances or a combination of alcoholic liquor and a controlled substance (as defined by MCL 257.1d and MCL 257.86)
6. Consumer fireworks shall not be used if a burn ban is in effect.

7. Consumer fireworks shall only be used in accordance with all applicable local, state and federal law.

SECTION 6

PENALTY

A person that violates this Ordinance is responsible for a civil infraction and shall be ordered to pay a civil fine of \$1,000.00 for each violation and no other fine or sanction shall be imposed. \$500.00 of the fine collected shall be remitted to the City of Niles, Michigan Police Department.

SECTION 7

EXCEPTION

1. The City of Niles, Michigan, upon application in writing on forms provided by the City and payment of a fee set by resolution of the Niles City Council may grant a permit for the ignition discharge or use of consumer fireworks within the City of Niles Michigan on days other than the days stated in Section 4 of this Ordinance. After a permit has been granted, use of consumer fireworks, for the purposes described in the permit only, may be made in conformance with this section. A permit granted hereunder is not transferable and shall not be used by a minor.
2. Before a permit for consumer fireworks ignition is issued, the person, firm, or entity applying for the permit shall furnish proof of insurance in an amount, character and form deemed necessary by the City of Niles, Michigan to satisfying claims for damages to property or personal injury arising out of an act or omission on the part of the person, firm, or entity or an agent or employee of the person, firm, or entity to protect the public health safety and welfare.
3. The City of Niles, Michigan shall rule on the competency and qualifications of the applicant as required under NFPA 1123, and on time, place, and safety aspects of the ignition, discharge, or use of consumer fireworks, before granting a permit.

SECTION 8 REPEAL

All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

SECTION 9 EFFECTIVE DATE

This Ordinance shall take effect twenty (20) days after the date of its enactment.

Adopted this 10th day of May, 2021.

Proposed by: Council Member Gretchen Bertschy, Supported by Council Member Jessica Nelson.

ROLL CALL:

AYE: Gretchen Bertschy, Georgia Boggs, John DiCostanzo, Amanda Dunnem, Charlie McAfee, Jessica Nelson, Travis Timm, and William Weimer

NAY: None **ABSENT:** None **ABSTAIN:** None

Motion Carried ☒

Motion Defeated: ☐

ORDINANCE DECLARED ENACTED

This Ordinance was enacted by the City Council of the City of Niles, State of Michigan on the 10th day of May, 2021 and approved by its Mayor and Clerk on said date.

CITY OF NILES, MICHIGAN

By: _____
Nick Shelton, Mayor

By: _____
Linda Casperson, Clerk

1st Reading: April 26, 2021
2nd Reading & Enactment: May 10, 2021
Publication of Notice: May 22, 2021
Effective Date: May 31, 2021