

PITTSTON TOWNSHIP
Luzerne County, Pennsylvania

ORDINANCE NO. of 2019

AN ORDINANCE OF THE TOWNSHIP OF PITTSTON, LUZERNE COUNTY,
PENNSYLVANIA, TO REGULATE THE USE OF FIREWORKS, PYROTECHNICS, AND
FLAME EFFECTS WITHIN THE TOWNSHIP, AND PRESCRIBING PENALTIES FOR
VIOLATION THEREOF

BE AND IT IS HEREBY ORDAINED AND ENACTED by the Board of Supervisors of the Township of Pittston, Luzerne County, Pennsylvania, as follows:

Section 1. Short Title.

This Chapter shall be known and may be cited as the Pittston Township Fireworks, Flame Effects and Pyrotechnics Ordinance.

Section 2. Legislative Intent.

The Second-Class Township Code, 53 P.S. § 1534, authorizes a second-class township to regulate fireworks. The Commonwealth of Pennsylvania, at 35 P. S. § 1271, et. seq., has conferred certain authority upon townships and other municipal governments to regulate the use of fireworks within their boundaries, including permit requirements for fireworks displays by establishing rules and regulations therefore. Pursuant to the authority afforded it, the Board of Supervisors desires to establish rules and regulations to regulate the use of fireworks, pyrotechnics and flame effects within their boundaries, including permit requirements for fireworks, pyrotechnics and flame effects displays.

Section 3. Definitions and Word Usage.

Unless otherwise expressly stated, the following words and phrases shall be construed throughout this Chapter to have the meanings indicated:

BOARD OF SUPERVISORS-The governing body of Pittston Township.

CODE OFFICIAL - the Code Official with regard to this Ordinance shall be the Code Enforcement Officer of Pittston Township or his/her officially designated representative or in his absence or unavailability, full or part time police officer, fire chief or a fire department personnel.

CONSUMER FIREWORKS - Shall be the same as are defined in 27 CFR 555.11, and they are any small firework device designed to produce visible effects by combustion and which must comply with the construction, chemical composition, and labeling regulations set forth in the rules of the U.S. Consumer Product Safety Commission (Title 16, Code of Federal Regulations, Parts 1500 and 1507). Some small devices designed to produce audible effects are included, such as whistling devices, ground devices containing 50 milligrams or less of explosive materials, and aerial devices containing 130 milligrams or less of explosive materials. Consumer fireworks are classified as fireworks by the United States Department of Transportation, 49 CFR 172.101. This

term does not include fused set pieces containing components which together exceed 50 milligrams of salute powder.

DISPLAY FIREWORKS (formerly known as special fireworks) - Large fireworks shall be the same as are defined in 27 CFR 555.11, and they are designed primarily to produce visible or audible effects by combustion, deflagration, and detonation. This term includes, but is not limited to, salutes containing more than two grains (130 milligrams) of explosive materials, aerial shells containing more than 40 grams of pyrotechnic compositions, and other display pieces which exceed the statutory and regulatory limits of explosive materials for classification as consumer fireworks. Display fireworks are classified as fireworks by the United States Department of Transportation (49 CFR 172.101). This term also includes fused set pieces containing components which together exceed 50 milligrams of salute powder.

FIREWORKS- Both consumer and display fireworks, as defined herein, unless specifically identified as either consumer or display fireworks herein.

FLAME EFFECT - The combustion of solids, liquids, or gases utilizing atmospheric oxygen to produce thermal, physical, visual, or audible phenomena before an audience.

a. Automatic flame effect is a flame effect that is supervised and fired by an automatic control system.

b. Hybrid flame effect is a flame effect that is used in combination with a pyrotechnic material or device.

c. Manual flame effect is a flame effect that is operated manually without the use of an automatic control system.

d. Portable flame effect is a flame effect that is designed and installed, either in a permanent or temporary installation, and that are designed to move or be moved in the course of operation of installation.

NOVELTY ITEMS - A device containing small amounts of pyrotechnic and/or explosive composition which produce minimal visible or audible effects. Novelty items are those materials commonly marketed and sold as fireworks to the general public but do not fall under the category of consumer fireworks. Novelty items shall include sparklers, smoke bombs, fountains, pinwheels, snakes, snappers, poppers or any other similar items, the sale, possession and use of which shall be permitted at all times throughout this Township.

OCCUPIED STRUCTURE - A structure, vehicle or place adapted for overnight accommodation of persons or for conducting business, whether or not a person is actually present.

PERSON - Any individual, partnership, corporation, limited liability company or other legal entity.

POLICE DEPARTMENT - The Pittston Township Police Department or any successor entity providing police protective services within the Township.

POLICE OFFICER - A full-time or part-time officer of the Police Department.

PYROTECHNICS - Controlled exothermic chemical reactions that are timed to create the effects of heat, gas, sound, dispersion of aerosols, emission of visible electromagnetic radiation, or a combination of these effects.

RESIDENT - An adult individual, at least 21 years of age, who is a bona fide resident of Pittston Township, Luzerne County, Pennsylvania, and who can produce proof thereof upon demand made by any enforcement officer hereunder.

TOWNSHIP-Pittston Township, Luzerne County, Pennsylvania

Section 4. Use Restricted: Consumer Fireworks: Permits.

1. Except as herein provided, it shall be unlawful for any person, co-partnership, association or corporation to offer for sale, expose for sale, sell at retail, or use, detonate, or explode consumer fireworks at any time or in any place within Pittston Township.

- A. The consumer fireworks to be possessed, sold, used or detonated hereunder must qualify strictly as consumer fireworks under the statutes and regulations of the agencies of the United States government and the laws and agencies of the Commonwealth of Pennsylvania. The consumer fireworks hereunder must be manufactured, transported, sold, possessed and used in strict compliance with the aforesaid statutes, regulations, laws and governmental agencies, and the burden to demonstrate such compliance falls upon the resident or person.
- B. Any bona fide resident of Pittston Township who desires to possess, sell, use, detonate, or explode any consumer fireworks hereunder must be 21 years of age or older.
- C. Any adult bona fide resident of Pittston Township who desires to possess, sell, use or detonate any consumer fireworks in Pittston Township must first register the specific type of consumer fireworks with Township Code Officer. The application shall specify the composition, character and proposed location, and manner of discharge or firing and specify the identity, age, and address of the resident and the time and place where it is desired to possess, sell, use or detonate such consumer fireworks and the specific location of the consumer fireworks until the same are used or detonated.
- D. Applications for permits shall be made in writing at least three (3) days in advance of the date of the display. After such privilege has been granted, sale, possession, use and distribution of fireworks for such display shall be lawful for that purpose only for 30 days from the time of the issue of permit. No permit granted hereunder shall be transferable. An extension shall be governed by 35 P.S. § 1274, as may be amended, when display is prevented by unfavorable weather. The Township may from time to time adopt an Application fee by Resolution, the initial Application fee for a Consumer Fireworks permit shall be zero dollars (\$0.00) per permit.
- E. No consumer fireworks shall be used, exploded or detonated and no authorized and registered consumer fireworks can be exploded or detonated, as follows:
 - (1) Within any enclosed structure;

- (2) On a property without permission of the property owner;
- (3) From a motor vehicle or building;
- (4) Toward a motor vehicle or building;
- (5) Within 150 feet of an occupied structure;
- (6) By any person under 21 years of age;
- (7) By any person under the influence of alcohol, controlled substance, or other drug;
- (8) Before 12:00 noon and after 9:00 p.m. on any day of the week, unless otherwise provided in the written authorization of registration issued by the Township or on New Year's Eve and New Year's Day, July 3 and July 4 where fireworks are allowed until midnight.

Further to the extent allowed by law the Code Officer, Police Department, Fire Department and Township shall have no liability for harm or injury and the Applicant and permittee shall indemnify and hold harmless the Code Officer, Police Department, Fire Department and Township from all claims based upon the Application composition, character, location, transportation, distribution, discharge or firing.

- F. No consumer fireworks may be sold, exploded, or detonated in any location in Pittston Township other than the specific place or location designated therefore in the written authorization of registration.

Section 5. Supervised Public Displays shall be by Permit only.

- A. Except as provided hereinafter, it shall be unlawful for any person to sell, distribute, use or explode any display fireworks; provided, that the Board of Supervisors, or the Code Enforcement Officer, shall have the power to grant permits for supervised public displays of fireworks to be held in the Township.
- B. Every fireworks display shall be conducted by a competent operator, currently registered with the Attorney General of Pennsylvania, approved by the Board of Supervisors, or the Code Enforcement Officer and shall be of such character that in the opinion of the Board of Supervisors, or the Code Enforcement Officer to not pose a hazard to property or endanger any person.
- C. The Board of Supervisors or the Code Enforcement Officer may suspend any permit issued under this chapter due to drought, dry conditions, high winds, or any other factor reasonably related to the public safety.
- D. Applications for permits shall be made in writing on a form provided by the Township, at least thirty (30) days in advance of the date of a fireworks display, and at least three (3) days in advance of the date of a pyrotechnic or flame effects display. After such permit shall have been granted, sales, possession, use and distribution of fireworks, pyrotechnics or flame effects for such display shall be lawful for that purpose only.
- E. An application shall be accompanied by the applicable permit fee, which may be amended from time to time by resolution of the Board of Supervisors, the initial Application fee for display fireworks shall be seventy-five dollars (\$75.00) per permit.

- F. No permit granted hereunder shall be transferable.
- G. All firework displays shall be finished by 9:00 p.m. on all days except as hereinafter provided: On New Year's Eve and New Year's Day, July 3 and July 4 fireworks are allowed until midnight.
- H. No more than five (5) permits per calendar year may be issued for fireworks displays to the same permittee.
- I. No more than five (5) permits per calendar year may be issued for fireworks displays on single property.
- J. All pyrotechnic or flame effects displays shall require a permit, whether such display is located indoors or outdoors. Indoor and outdoor displays at the same address and for the same event can be approved in the same permit application, as a single event permit or annual permit.
- K. There is no limit to the number of pyrotechnic or flame effects displays per address, per year, but a separate permit will be required for each event, unless an annual permit is approved.
- L. A pyrotechnic event or flame effects display event may not exceed seven (7) days.
- M. Bond. Prior to the issuance of any permit hereunder, the Board of Supervisors may require the applicant to deliver to the Township evidence of the operator's registration with the Attorney General of Pennsylvania, and a bond, which shall be in an amount of not less than One Million Dollars (\$1,000,000), conditioned for payment of all damages which may be caused either to persons or to property by reason of the display and arising from any acts of the permit holder, his agents, employees or subcontractors.
- N. Insurance. The Board of Supervisors may also require proof of liability insurance issued to the permittee in the amount of at least One Million Dollars (\$1,000,000) per claim for the aforesaid purpose from a reputable insurance company authorized to conduct business in the Commonwealth of Pennsylvania. Pittston Township shall be a named co-insured in such policy of such liability insurance. Further, the licensee or permittee shall indemnify, hold harmless and defend Pittston Township from any injury to persons or damage to property arising out of the use by the permittee of display fireworks by a writing executed prior to the grant of any permit.
- O. If for any reason of unfavorable weather the display for which a permit has been granted does not take place at the time so authorized, the person to whom such permit was issued may use the date noted on the application as the "rain date" for the event display without the payment of any additional fee and without requiring any bond other than the one given for the original permit, the provisions of which shall extend to cover all damages which may be caused by reason of the said display taking place at such extended date in the same manner and to the same extent as if such display had taken place at the date originally fixed in the permit.

- P. In the event of any violation of this Ordinance or the terms, conditions, or limitations noted on a written registration authorized for the use of consumer fireworks or on a permit for the display of display fireworks, or in the event of any unsafe condition occurring before or during the course of a fireworks public display, or in the event of any unsafe condition occurring as a result of any use of consumer, display, or other fireworks within Pittston Township, the Pennsylvania State Police, the Pittston Township police, a Fire Chief of a fire company located in Pittston Township responsible for fire protection at the place of the event or the appropriate Township designee or any other duly authorized Township representative may, before or during the unsafe and/or violating occurrence, order such fireworks use or display to be stopped in the interest of public safety.

Section 6. Enforcement and Penalties

A. This chapter may be enforced by any police officer of the Township or the Code Enforcement Officer of the Township or the Pennsylvania State Police.

B. Penalties for Violation.

1. Any person, co-partnership, association or corporation using consumer fireworks in violation of the provisions of this act commits a summary offense and, upon conviction, shall be punished by a fine of not less than one hundred (\$100) dollars and not more one thousand (\$1,000) dollars plus all costs of prosecution.

2. Any person, co-partnership, association or corporation selling consumer fireworks in violation of the provisions of this act commits a misdemeanor of the second degree and, upon conviction, shall be punished by a fine of not less than three hundred (\$300) dollars and not more one thousand (\$1,000) dollars plus all costs of prosecution.

3. Any person, co-partnership, association or corporation using display fireworks in violation of the provisions of this act commits a felony of the third degree, and, upon conviction, shall be punished by a fine of not less than five hundred (\$500) dollars and not more two thousand (\$2,000) dollars plus all costs of prosecution.

4. Any person, co-partnership, association or corporation selling display fireworks in violation of the provisions of this act commits a felony of the third degree and, upon conviction, shall be punished by a fine of not less than one thousand (\$1,000) dollars and not more five thousand (\$5,000) dollars plus all costs of prosecution.

5. Any person, co-partnership, association or corporation selling federally illegal explosives such as devices as described in 49 CFR 173.54 (relating to forbidden explosives) or those devices that have not been tested, approved and labeled by the Federal Department of Transportation, including, but not limited to, those devices commonly referred to as "M-80," "M-100," "blockbuster," "cherry bomb" or "quarter or half stick" explosive devices, in violation of the provisions of this act commits a felony of the third degree and, upon conviction, shall be punished by a fine of not less than one thousand (\$1,000) dollars and not more five thousand (\$5,000) dollars plus all costs of prosecution.

6. Each day that a violation continues and each section of this chapter which is violated shall be deemed a separate offense. This chapter may also be enforced by an action in equity brought in the Luzerne County Court of Common Pleas.

7. In the event any provision, section, sentence, clause or part of this Ordinance shall be held to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such invalidity, illegality or unconstitutionality shall not affect or impair the remaining provisions , sections, sentences, clauses or parts of this Ordinance, it being the intent of the Board of Supervisors that the remainder of the Ordinance shall be and shall remain in full force and effect.

Section 7. Conflicts with Other Provisions.

Pittston Township hereby recognizes the authority of the United States government and the Commonwealth of Pennsylvania and the fireworks laws, rules, or regulations of each jurisdiction, as the same may be amended from time to time, regarding the manufacture, transport, holding, offering or exposing for sale, and the display, use, and possession , of combustible materials and items commonly referred to as "fireworks." Whenever there is any conflict between the terms of this Part and a statute, rule or regulation of the United States government or the Commonwealth of Pennsylvania, the stricter provision(s) shall apply.

Section 8. Effective Date

This Ordinance shall take effect and be in force five (5) days after its enactment by the Board of Supervisors of the Township of Pittston as provided by law.

ENACTED AND ORDAINED THIS ___ day of ___ ___ 2019 by the Board of Supervisors at a meeting duly convened.

ATTEST:

BOARD OF SUPERVISORS
PITTSTON TOWNSHIP

SECRETARY

BY: _____
CHAIRMAN

BY: _____
SUPERVISOR

BY: _____
SUPERVISOR