

NORTH HEIDELBERG TOWNSHIP, BERKS COUNTY, PENNSYLVANIA

ORDINANCE NO 2018 - ____

AN ORDINANCE OF THE TOWNSHIP OF NORTH HEIDELBERG, BERKS COUNTY, PENNSYLVANIA, TO REGULATE THE USE OF FIREWORKS WITHIN THE TOWNSHIP, AND PRESCRIBING PENALTIES FOR VIOLATION THEREOF

WHEREAS, the Township of North Heidelberg is a second class township in the Commonwealth of Pennsylvania; and

WHEREAS, as a second class township, the Township of North Heidelberg is governed by the Second Class Township Code of the Commonwealth of Pennsylvania; and

WHEREAS, Section 1534 of the Second Class Township Code, 53 P.S. § 66534, authorizes a second class township to regulate fireworks; and

WHEREAS, by Act 2017-43, codified as 72 P.S. § 9401, the Commonwealth of Pennsylvania amended the Pennsylvania Fireworks Law; and

WHEREAS, Act 2017-43 amends the definition of consumer fireworks and allows for their use of consumer fireworks with limited exceptions without the necessity for approval from the Township; and

WHEREAS, per the authority granted it by the Second Class Township Code, the Board of Supervisors of the Township of North Heidelberg desires to regulate the use of fireworks in accord with Act 2017-43; and

WHEREAS, Act 2017-43 provides for a municipality to establish regulations for the use of display fireworks including providing rules and regulations for permit requirements for display fireworks; and

WHEREAS, pursuant to the authority afforded it, the Board of Supervisors of the Township of North Heidelberg desires to establish rules and regulations for fireworks displays within their boundaries, including permit requirements therefor.

NOW THEREFORE, BE IT ENACTED AND ORDAINED by the Board of Supervisors of the Township of North Heidelberg, Berks County, Pennsylvania, and it is hereby enacted and ordained as follows:

Section 1. Definitions.

For purposes of this Ordinance, the following terms shall have the meanings set forth herein:

APA 87-1. The American Pyrotechnics Association Standard 87-1: Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics, 2001 edition, or any subsequent edition.

Consumer fireworks.

(1) Any combustible or explosive composition or any substance or combination of substances which is intended to produce visible or audible effects by combustion, is suitable for use by the public, complies with the construction, performance, composition and labeling requirements promulgated by the Consumer Products Safety Commission in 16 CFR (relating to commercial practices) or any successor regulation and complies with the provisions for “consumer fireworks” as defined in APA 87-1 or any successor standard, the sale, possession and use of which shall be permitted throughout this Commonwealth.

(2) The term does not include devices as “ground and hand-held sparkling devices,” “novelties” or “toy caps” in APA 87-1 or any successor standard, the sale, possession and use of which shall be permitted at all times throughout this Commonwealth.

Display fireworks. Large fireworks to be used solely by professional pyrotechnicians and designed primarily to produce visible or audible effects by combustion, deflagration or detonation. The term includes, but is not limited to:

(1) salutes that contain more than two grains or 130 milligrams of explosive materials;

(2) aerial shells containing more than 60 grams of pyrotechnic compositions; and

(3) other display pieces that exceed the limits of explosive materials for classification as consumer fireworks and are classified as fireworks UN0333, UN0334 or UN0335 under *49 CFR 172.101*(relating to purpose and use of hazardous materials table).

NFPA 1124. The National Fire Protection Association Standard 1124, Code for the Manufacture, Transportation and Storage of Fireworks and Pyrotechnic Articles, 2006 edition, or any subsequent edition.

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.

Outdoor storage unit. A consumer fireworks building, trailer, semitrailer, metal shipping container or magazine meeting the specifications of NFPA 1124.

Temporary structure. A structure, other than a permanent facility with fixed utility connections, which is in use or in place for a period of 20 consecutive calendar days or less and is dedicated to the storage and sale of consumer fireworks and related items. The term includes temporary retail sales stands, tents, canopies and membrane structures

meeting the specifications of NFPA 1124. The term shall not include a facility that is not licensed to sell consumer fireworks under this article.

Township. North Heidelberg Township, Berks County, Pennsylvania.

Section 2. Use of Consumer Fireworks.

- (a) Conditions. A person who is at least 18 years of age and meets the requirements of this article may purchase, possess and use consumer fireworks.
- (b) Prohibitions. A person may not intentionally ignite or discharge:
 - (1) Consumer fireworks on public or private property without the express permission of the owner.
 - (2) Consumer fireworks or sparkling devices within, or throw consumer fireworks or sparkling devices from, a motor vehicle or building.
 - (3) Consumer fireworks or sparkling devices into or at a motor vehicle or building or at another person.
 - (4) Consumer fireworks or sparkling devices while the person is under the influence of alcohol, a controlled substance or another drug.
 - (5) Consumer fireworks within 150 feet of an occupied structure.
 - (6) Consumer fireworks after 10:00 PM Sundays through Thursdays and 11:00 PM Fridays and Saturdays and federally designated holidays.
- (c) Amendments. Any amendments to the Pennsylvania Fireworks Law altering the conditions for use or prohibitions for use of Consumer Fireworks to allow for additional restrictions said amendments shall supersede the conditions and prohibitions of use of Consumer Fireworks provided for in this Ordinance.

Section 3. Display Fireworks Permits.

The Board of Supervisors, or its designee, shall have the power to grant permits for supervised public displays of fireworks to be held in the Township of North Heidelberg for displays covered by the permit or when used as authorized by a permit for any of the following purposes:

- (a) For agricultural purposes in connection with the raising of crops and the protection of crops from bird and animal damage.
- (b) By railroads or other transportation agencies for signal purposes or illumination.
- (c) In quarrying or for blasting or other industrial use.

- (d) In the sale or use of blank cartridges for a show or theater.
- (e) For signal or ceremonial purposes in athletics or sports.
- (f) By military organizations or organizations composed of veterans of the armed forces of the United States.

Section 4. Rules and Regulations for Display Fireworks Permits.

- (a) Permittee. A Display Fireworks Permit shall not be issued to a person under 21 years of age.
- (b) Operator. Each display shall be by a competent operator approved by the Township Board of Supervisors, or its designee, who or under the employment of a business entity performing, providing or supervising fireworks displays or exhibitions for profit is registered with the Attorney General of the Commonwealth of Pennsylvania and of such a character as in the opinion of the Chief of the Bernville Fire Company, or its successor organization, after proper inspection shall not be hazardous to property or endanger any person or persons.
- (c) Location. Every such display shall be so located, discharged or fired as in the opinion of the Chief of the Bernville Fire Company, or its successor organization, after proper inspection shall not be hazardous to property or endanger any person or persons. No display fireworks shall be ignited within 300 feet of a consumer fireworks sales facility including but not limited to a temporary structure as provided for herein.
- (d) Application. Applications for permits shall be made in writing on a form provided by the Township, at least forty-five (45) days in advance of the date of the display.
- (e) Fees. The application shall be accompanied by a Fifty and 00/100 Dollars (\$50.00) per application permit fee, which may be amended from time to time by adoption of a Resolution of the Township Board of Supervisors.
- (f) Suspension of Permit and Dispatch of Fire Company. The Chief of the Bernville Fire Company, or its successor organization, may suspend any permit issued under this Ordinance due to draught, dry conditions, high winds, or any other factor reasonably related to the public safety. The said Chief may, at his discretion, dispatch fire department members and/or equipment, and fire police, to the scene of any permitted fireworks display. Where any such deployment occurs, the permittee shall assist the fire company in defraying the costs of such services.
- (g) Notification of Neighbors. Within three (3) days after a permit is issued by the Township, the permittee shall file an affidavit with the Township Secretary indicating the permittee has mailed and/or hand delivered a written notice of the time and place of the fireworks display to each owner of property located within one-half (1/2) mile of any boundary of the property on which the fireworks display is to be performed.

- (h) Possession and Use. Upon issuance of the permit, possession and use of display fireworks for display shall be lawful for that purpose only.
- (i) Transferability. A permit shall be transferable.
- (j) Time. All permit fireworks displays shall be finished by 11:00 p.m.
- (k) Number of Permits. No more than five (5) permits per calendar year may be issued to the same permittee. No more than five (5) permits per calendar year may be issued for fireworks displays on a single property.

Section 5. Evidence of Bond.

A permittee shall submit to the Township a bond deemed adequate by the Township in a sum not less than Fifty Thousand and 00/100 Dollars (\$50,000.00) conditioned for payment of all damages which may be caused to a person or property by reason of the display and arising from an act of the permittee or an agent, an employee or a subcontractor of the permittee.

Section 6. Extension of Permit When Display Prevented by Unfavorable Weather.

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 within twenty-four (24) hours, or the next business day, apply to the Township Secretary for a request for extension of the permit setting forth under oath the fact that such display was not made, giving the reason therefore, and requesting a continuance of such permit for a day designated therein, not later than one (1) week after the day fixed originally in said permit. Upon receiving such application for a continuance, the Township Secretary, if he or she believes the facts stated therein are true, shall extend the provisions of said permit to the day fixed in said application, not later than one (1) week after the original day designated in the permit, and such extension of time shall be granted 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 and 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; provided, however, that in the event of any extension under this Section, the permittee shall provide notice of such extended display date to property owners, and proof of the same to the Township, in the same manner provided under this Ordinance.

Section 7. Duration of Permits for Agricultural Purposes.

A permit issued for use of suitable fireworks for agricultural purposes in connection with the raising of crops and the protection of crops from bird and animal damage shall remain in effect for the calendar year in which it was issued.

Section 8. Penalties for Violation.

- (a) A person using consumer fireworks in violation of the provisions of this ordinance commits a summary offense for each and every violation and, upon conviction, shall be punished by a fine up to \$100.
- (b) A person using display fireworks in violation of the provisions of this ordinance commits a criminal summary offense for each and every violation and, upon conviction, shall be punished by a fine up to \$1,000.

Section 9. Removal, Storage and Destruction.

The Pennsylvania State Police, a sheriff or police officer shall take, remove or cause to be removed at the expense of the owner all stocks of consumer fireworks or display fireworks or combustibles offered or exposed for sale, stored or held in violation of this article. The owner shall also be responsible for the storage and, if deemed necessary, the destruction of these fireworks.

Section 10. Severability.

If any section, subsection, clause, sentence, paragraph or part of this Ordinance shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, illegal, or unconstitutional, such invalidity, illegality or unconstitutionality shall not affect, impair or invalidate the remaining provisions of this Ordinance. It is hereby declared to be the legislative intent of the Board of Supervisors that this Ordinance would have been adopted had such provisions not been included herein.

Section 11. Repealer.

All Ordinances or parts of ordinances inconsistent herewith are hereby repealed.

Section 12. Effective Date.

This Ordinance shall become effective five (5) days after enactment, as provided by law.

ENACTED AND ORDAINED as an Ordinance of North Heidelberg Township, Berks County, Pennsylvania, this _____ day of _____, 2018.

**BOARD OF SUPERVISORS OF
NORTH HEIDELBERG TOWNSHIP,
BERKS COUNTY, PENNSYLVANIA**

Chairman

Vice Chairman

Member

ATTEST:

Secretary

CERTIFICATE OF ENACTMENT

I hereby certify that the foregoing is a true and accurate copy of Ordinance No. 2018-____ adopted by the Board of Supervisors of North Heidelberg Township, Berks County, Pennsylvania at a public meeting held on _____, 2018, pursuant to notice as required by law.

Dated: _____

Township Secretary