

BOROUGH OF BLAKELY
ORDINANCE NO. OF 2020

AN ORDINANCE AMENDING ORDINANCE NO. OF 2018 REGULATING THE DISPLAY OF FIREWORKS OF ANY KIND WITHIN THE BOROUGH LIMITS OF BOROUGH OF BLAKELY AND REQUIRING A PERMIT FOR THE DISCHARGE OF DISPLAY FIREWORKS

BE IT ENACTED AND ORDAINED by the Council of the Borough of Blakely and it is hereby **ENACTED AND ORDAINED** by the authority of the same as follows:

SECTION I: SCOPE

In order to protect life and property of the Borough of Blakely, the Blakely Borough Council, as authorized by the Fireworks Law, 35 P.S. Section 1275.2, as amended by Act 43 of 2017, effective October 30, 2017, and as may be subsequently amended, is promulgating rules on the issuance of permits and buying of fireworks.

SECTION II: DEFINITIONS

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"BOROUGH" - means the Borough of Blakely, its elected and appointed officers and any representative thereof.

"CODE OFFICER" - means any official designated by the Blakely Borough Council to carry out duties under this Ordinance and may include, by way of illustration and not by means of limitation, any member of the Blakely Police Department, the Blakely Borough Zoning and Enforcement Officer or any other duly designated representative of the Borough of Blakely.

"CONSUMER FIREWORKS" - means (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 2 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" - means 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).

"FIREWORKS" OR "FIREWORK" - mean the terms "Consumer Fireworks" and "Display Fireworks" as defined in the Fireworks Law, 35 P.S. Section 1271, et seq., as amended by Act 43 of 2017, effective October 30, 2017, and as may be subsequently amended.

"FIREWORKS LAW" - means 35 P.S. Section 1275.2, as amended by Act 43 of 2017, effective October 30, 2017, and as may be subsequently amended.

"FIRE OFFICIAL" - means the Borough of Blakely designated Fire Official.

"NFPA 1124" - means 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.

"PUBLIC OFFICER" - means any Blakely Borough Police Officer, sometimes herein referred to as Public Officer designated by the municipality to enforce the Borough ordinances, and to the extent permitted by Interjurisdictional Agreements), such other Police Officers duly authorized thereunder.

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

SECTION III: DISCHARGE OF DISPLAY OF FIREWORKS

A. Discharge. - The discharge of Display fireworks shall be by written permit only.

B. Permissible purposes. - Display Fireworks can only be discharged by a person holding a permit after full compliance with all of the following conditions:

- 1) Making written application, as set forth in **SECTION IV**, below, to the Borough Code Officer.
- 2) Receipt of written approval from the Fire Official.
- 3) Possession of and/or proof of a bond and/or certificate of insurance by the applicants complying with all requirements set forth in Section V.A., below.

C. Age limitation. - A permit for the discharge of Display Fireworks may not be issued to a person under 21 years of age.

D. NFPA Compliance. - Any Applicant must certify to the Code Officer and Fire Chief that the possession, transportation, use and distribution of fireworks for display purposes will be conducted with the applicable standards specified in NFPA 1124.

E. Approval of permit. - Before receiving any approval of any requested permit, the Code Officer must agree, upon consultation with the Fire Official, that the display is of such composition, character, and is so located, discharged and/or fired, that it shall not be hazardous to, or endanger, any person or property after proper inspection.

F. Transfer. - No permit granted hereunder shall be transferable.

G. Extension. - An Applicant can request a written extension in accordance with the Pennsylvania Fireworks Law when display is prevented by unfavorable weather.

SECTION IV: APPLICATION

A. Form. - Applications to be made to Borough Code Officer in accordance with **SECTION III.B.1**, above, must include the following:

- 1) The composition and character of the firework(s) and/or explosive device(s) sought to be displayed and/or discharged;
- 2) The proposed location for the discharge and/or display of the firework(s) and/or explosive device(s);
- 3) The precise manner of discharge or firing of the firework(s) and/or explosive device(s);
- 4) The date and time of day for the proposed discharge and/or display of the of the firework(s) and/or explosive device(s); and
- 5) The Bond required by **Section V.A.**, of this Ordinance set forth below.

B. Timing. - The Application shall be made in writing at least thirty (30) days in advance of the date of the proposed display and/or discharge of the firework(s) and/or explosive device(s).

C. Indemnification. - Possession and use of fireworks for display and discharge purposes shall be conducted so as to be reasonably safe to all persons and all property. Further, the Code Officer, Fire Official and Borough shall have no liability for harm or injury based upon any permit issued and, to the fullest extent allowed by law,

the Applicant, by making application for the required permit, agrees to indemnify and hold harmless the Code Officer, the Fire Official and the Borough from all claims based upon any and all of the Applicant's activities in applying for, and receiving, any permit required by this Ordinance.

D. Fee - The application fee for a permit required by this Ordinance shall be Twenty-Five Dollars (\$25.00) per permit. The Borough may from time to time, by Resolution, amend the permit fee.

SECTION V: BOND AND RESPONSIBILITY FOR DISPLAY FIREWORKS

A. Bond-- The Code Officer shall require a Bond and/or a Certificate of Insurance satisfactory to the Borough from the Applicant/Permittee in a sum not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) per permit conditioned on compliance with the provisions of this Ordinance, naming the Code Officer, the Fire Official and the Borough as Additional Insureds, with the additional requirement that a Notice of Cancellation is to be issued to the Additional Insureds upon the expiration of the Bond and/or a Certificate of Insurance.

B. Lapse of Bond. -- Failure of the Borough to require a Bond and/or a Certificate of Insurance or the lapse of a Bond and/or a Certificate of Insurance shall not be grounds for liability to any Additional Insured.

C. Proof of Financial Responsibility -- Before any permit for a fireworks or pyrotechnic display shall be issued, the person, firm or corporation making application therefor shall furnish proof of financial responsibility to satisfy claims for damages to property or personal injuries arising out of any act or omission on the part of such person, firm or corporation or any agent or employee thereof, in a sum not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) per permit conditioned on compliance with the provisions of this Ordinance.

SECTION VI: 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 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

SECTION VII: USE OF DISPLAY FIREWORKS

- A. No Display Fireworks shall be ignited within 300 feet of a facility that meets the requirements for sales locations and temporary structures consistent with 72 P.S. § 9401 et seq.
- B. Fireworks shall only be permitted to be utilized on the following days:
 - a. Memorial Day – from 5 p.m to 10 p.m
 - b. Fourth of July – from 5 p.m. to 10 p.m.
 - c. Labor Day - from 5 p.m. to 10 p.m.

SECTION VIII: Disposal of Fireworks.

Any fireworks that remain unfired after the display is concluded shall be immediately disposed of in a way safe for the particular type of fireworks remaining.

SECTION IX: SEIZURE OF FIREWORKS

A Public Officer may seize, take, remove or cause to be removed at the expense of the owner all stocks of fireworks offered or exposed for sale, stored or held in violation of state law as authorized under The Pennsylvania Fireworks Law.

SECTION X: AUTHORITY FOR ISSUANCE OF VIOLATION

Upon finding a violation of any provision of this Ordinance, a Public Officer, may proceed under the provisions of the Pennsylvania Fireworks Law, as it may be amended from time to time.

SECTION XI: ENFORCEMENT.

The provisions of this ordinance shall be enforced by the Blakely Borough Police Department and/or the Pennsylvania State Police.

SECTION XII: FINES AND PENALTIES

The following shall apply:

- (1) A person using Consumer Fireworks in violation of the provisions of this article commits a summary offense and, upon conviction, shall be punished by a fine of not more than \$300.
- (2) A person selling consumer fireworks in violation of the provisions of this act commits a misdemeanor of the second degree.
- (3) A person selling Display Fireworks in violation of the provisions of this act commits a felony of the third degree.

(4) A person 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 United States 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.

SECTION XIII: SEPARATE OFFENSES.

Each day a violation continues or is permitted to continue may constitute a separate offense for which a separate fine may be imposed.

SECTION XIV: CONFLICTING ORDINANCES

All relevant ordinances, regulations, and policies of the Borough of Blakely, Pennsylvania, not inconsistent with the terms of this Ordinance are not amended and shall remain in full force and effect. Any ordinance or part of an ordinance conflicting with the provisions of this ordinance shall be subordinate to this ordinance to the extent of such conflict, and the language contained in this ordinance shall control

SECTION XV: APPLICABILITY

All provisions of the Pennsylvania Fireworks Law, as amended, are applicable to the within Ordinance and are incorporated by reference as fully as though same were set forth at length herein.

SECTION XVI: SEVERABILITY

If any section, clause, provision or portion of this Ordinance shall be held invalid or Unconstitutional by any court of competent jurisdiction, such decision shall not affect any other section, clause, provision or portion of this Ordinance so long as it remains legally enforceable without the invalid portion. The Borough reserves the right to amend this Ordinance or any portion thereof from time to time at it shall deem advisable in the best interests of the promotion of the purposes and intent of this Ordinance, and the effective administration thereof.

SECTION XVII: EFFECTIVE DATE

This Ordinance shall be effective at the earliest time permitted by law after adoption.

SECTION XVIII: ENACTMENT CLAUSE

This Ordinance is enacted by the Council of the Borough of Blakely under the Borough Code and any other applicable law arising under the laws of the State of Pennsylvania, including but not limited to The Pennsylvania Fireworks Law, as amended.

ORDAINED AND ENACTED THIS 21st day of September, 2020

ATTEST:

The Borough of Blakely

Thomas J. Wascura, Secretary

Joseph F. Ercolani, Jr., President of Council

Approved this 21st day of September, 2020

Jeanette Acciare-Mariani, Mayor