

**BOROUGH OF PARKESBURG
CHESTER COUNTY, PENNSYLVANIA**

ORDINANCE NO. 533

**AN ORDINANCE OF THE BOROUGH OF PARKESBURG ADOPTING
REGULATIONS GOVERNING THE USE OF CONSUMER GRADE
FIREWORKS IN THE BOROUGH OF PARKESBURG AND PROVIDING
PENALTIES FOR VIOLATIONS OF SUCH REGULATIONS AND ALSO
ADDRESSING THE PERMITTING OF DISPLAY FIREWORKS IN THE
BOROUGH OF PARKESBURG**

WHEREAS, the Borough of Parkesburg is a municipality operating under Borough Code located in Chester County, Pennsylvania and subject to the authority under the Borough Code to, make, alter, adopt, modify repeal, or enforce ordinances, resolutions, rules, and regulations, as may be necessary for the health, safety, morals, general welfare, cleanliness and beauty of the Borough, to regulate and address matters of disorderly conduct or the disturbance of the peace within the Borough and with authority to regulate fireworks or inflammable or dangerous articles and to impose of fines and penalties (which may include partial or total forfeiture) for violation of its rules, regulations or Ordinances. See, §1202, (specifically §1202 subsections (3)(5)(14)and (17)) of the Borough Code, Act 37 of 2014 enacted April 18, 2014 P.L. 432, No. 37); and,

WHEREAS, pursuant to Act 43 of 2018, enacted and effective as of October 30, 2017 (hereinafter the "Fireworks Act") the State Legislature has repealed the Fireworks Law of 1939 to create two categories of fireworks: "Consumer Fireworks" which are generally available to public use and larger fireworks identified as "Display Fireworks" subject to reasonable rules and regulations adopted by the municipality as specifically authorized by Section 2406 of the Fireworks Act.; and,

WHEREAS, the Borough under the aforementioned authority wishes to regulate both Consumer Fireworks and Display Fireworks as identified under the Fireworks Act, imposing fines and generally, with limited exceptions, following the authority and limitations as set forth in the Fireworks Act.

NOW THEREFORE, according to the foregoing authority, and consistent with the Borough's general authority to protect public health, safety, and welfare, as well as the Borough's more specific authority under the police power, the Borough of Parkesburg hereby enacts the following:

1. **Definitions:** The Borough adopts the definitions of the Fireworks Act with respect to all defined terms found therein, which are incorporated herein by reference, but sets out for purposes of clarity the definitions of "Consumer Fireworks" and Display Fireworks" as follows:

- A. Consumer Fireworks. "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 at all times throughout this Commonwealth. The term "consumer fireworks" 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 through this Commonwealth."

 - B. 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 a fireworks UN0333, UN0334 or UN0335 under 49 CFR 172.101 (relating to purpose and use of hazardous materials table)."
2. **Regulation of Consumer Fireworks**. The Borough adopts the regulations of the Fireworks Act, which are incorporated herein by reference as same apply to Consumer Fireworks, subject to addition and more stringent penalties as noted herein. Consumer Fireworks may only be operated by a person of at least 18 years of age. A person of legal age to purchase, possess and use Consumer Fireworks 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; and 5) Consumer Fireworks within 300 feet of a structure.

3. **Regulation of Display Fireworks.** The Borough adopts the regulations of the Fireworks Act, which are incorporated herein by reference as same apply to Display Fireworks, subject to the additional and more restrictive regulations set forth herein and specifically governing the granting of permits for such use in the Borough of Parkesburg:

- a) a permit shall require the posting of a bond of not less than \$50,000, but may be in a greater amount if determined appropriate by the Borough Manager or his designee based upon the recommendations of the Chief of Police and the local Fire Department – up to a maximum of \$1,000,000.00 – conditioned for the 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, or an employee or a sub-contractor of the permittee.
- b) The permittee shall purchase and maintain general liability insurance per requirements set forth below which policy shall be written for not less than the limits of liability specified by the Borough or that which may be required by law, whichever is greater. Further, the permittee shall also purchase and maintain the appropriate insurance that would respond to claims under Workers Compensation Acts and other Employee Benefit Acts as it relates to claims for damages because of bodily injury, including death, and other claims for damages (when applicable by law). The Borough of Parkesburg, its officers, employees, and volunteers are to be named as "Additional Insured" on a primary, non-contributory basis for both operations and completed operations on the permittee's commercial general liability policy which the permittee must maintain for the periods of set-up, display and clean up. Certificates of insurance evidencing the requested insurance shall be filed with the Borough at least two (2) weeks prior to the commencement of any Display Fireworks event.

Minimum Requirements of Insurance:

- \$1,000,000 each occurrence (Bodily Injury and Property Damage)
 - \$2,000,000 General Aggregate
 - \$2,000,000 Products/Completed Operations Aggregate
 - \$1,000,000 Per Person or Organization (Personal and Advertising Injury) must obtain insurance and a certificate of insurance
- c) The permittee must execute an indemnification and hold harmless agreement with respect to the Borough (and any identified parties involved with or sponsoring the Display Fireworks event) in a standard form approved by the Borough Solicitor.


4. **Police enforcement.** The Parkesburg Borough Police shall be responsible for enforcement of this Ordinance pursuant to § 1121(b) of the Borough Code.
5. **Penalties.** In view of the fact that the use of Fireworks, whether Consumer Fireworks or Display Fireworks is regulated, not only by the Fireworks Act, but also the Borough's police power and specific provisions therein authorizing the Borough to exercise such authority as may be necessary for the health, safety, morals, general welfare, cleanliness and beauty of the Borough, including the regulation of disorderly conduct or the disturbance of the peace within the Borough, the Borough imposes the following penalties for violation of this Ordinance as noted below¹:
 - a) A person using Consumer Fireworks in violation of the provisions of this Ordinance commits a summary offense, and upon conviction shall be punished by a fine: for a first offense of not more than \$100.00; for a second offense of not more than \$300.00; and, for a third or subsequent offense of not more than \$500.00.
 - b) A person selling consumer fireworks in violation of the provisions of this act commits a misdemeanor of the second degree.
 - c) A person selling Display Fireworks in violation of the provisions of the Ordinance commits a felony of the third degree.
 - d) 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 Ordinance commits a felony of the third degree.
6. **Conflicts with statutory provisions.** In all matters that are regulated by the law of the Commonwealth of Pennsylvania by regulations or regulated by departments or an agency of the Commonwealth promulgated by authority of law, such law or regulations, or other Ordinance of the Borough of Parkesburg, as the case may be, shall control where the requirements thereof are the same or in excess of the provisions of this Ordinance. This Ordinance controls in all circumstances where the state requirements or the requirements of other Ordinances of the Borough are not as strict as those contained in this Ordinance.

¹It is specifically understood that any penalties or restitution imposed upon a juvenile shall be jointly and severally the obligation of the parents or guardians and treated as an injury to the Borough compensable in accordance with the Domestic Code at 23 Pa. C.S.A. §5503(a) and subject to the limitations thereon as set forth in said Code.

7. **Severability.** If any portion of the Ordinance shall be determined to be unconstitutional, illegal or unenforceable, then the portion and only that portion of this Ordinance, which is deemed to be unconstitutional, illegal or unenforceable, shall be severed from the remainder of this Ordinance and all other terms thereof shall remain in full force and effect.
8. **Effective date.** This Ordinance shall be effective as required by the Borough Code thirty (30) days after adoption.

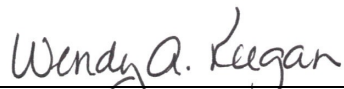
ORDAINED and ENACTED by the Parkesburg Borough Council this 19th day of November, 2018

PARKESBURG BOROUGH COUNCIL



CHARLES J. PERSCH, President

ATTEST:



WENDY A. KEEGAN, Secretary

Approved this 19th day of Novembetr, 2018.



JOHN P. HAGAN, II, Mayor