

**SUMMIT TOWNSHIP
ERIE COUNTY, PENNSYLVANIA**

ORDINANCE NO. 2019-03

AN ORDINANCE REGULATING THE USE OF FIREWORKS WITHIN THE TOWNSHIP, PROVIDING FOR DEFINITIONS, ESTABLISHING PROVISIONS REGARDING THE USE, SALE AND STORAGE OF CONSUMER FIREWORKS, ESTABLISHING A PERMITTING PROCEDURE FOR THE USE OF DISPLAY FIREWORKS, PROVIDING FOR THE AUTHORITY AND CONFISCATION OF UNAUTHORIZED SALE AND DISPLAY, PROVIDING PENALTIES FOR UNAUTHORIZED SALE OR USE OF CONSUMER FIREWORKS AND PROVIDING FOR SEVERABILITY, REPEALER, AND AN EFFECTIVE DATE.

WHEREAS, Summit Township (the "Township") recognizes that citizens and organizations wish to utilize consumer and display fireworks during major holidays and events; and

WHEREAS, the Second Class Township Code, at 53 P.S. §66534, authorizes the Board of Supervisors of the Township to "regulate fireworks" and to "(g)rant permits for supervised displays of fireworks and adopt rules and regulations governing the displays"; and

WHEREAS, Act 43 of 2017 amended the Pennsylvania Tax Reform Code of 1971, at 72 P.S. §9406, authorizes municipalities, such as the Township, to enact reasonable rules and regulations to govern the display of fireworks within the Township; and

WHEREAS, the Township is desirous of enacting rules and regulations regarding the consumer and display fireworks sold and utilized within Township boundaries and believes that the enactment of this Ordinance will be beneficial to the citizens of the Township.

NOW THEREFORE, this 4th day of February, 2019, be it enacted and ordained by the Board of Supervisors of Summit Township, Erie County, Pennsylvania, as follows:

1. **Recitals.** The recitals set forth above are incorporated herein as if more fully set forth.

2. **Definitions.** The following words and phrases shall be construed throughout this Ordinance to have the meanings indicated herein:

- a) **"APA 87-1"**- The American Pyrotechnics Association Standard 87-1: Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics.
- b) **"Board of Supervisors"** – The Summit Township Board of Supervisors
- c) **"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 and complies with the provisions of 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. The term does not include devices such as "ground and hand-held sparkling devices," "novelties" or "toy caps" in APA 87-1 or any successor standard, the sale, possession of use of which shall be permitted at all times throughout this Commonwealth.
- d) **"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 composition; and (3) other display pieces that exceeds the limits of explosive materials for classification as consumer fireworks and are classified as fireworks UN0333, UN0334, or UN0335 under 49 C.F.R. §172.101.
- e) **"Display Fireworks Permit."**- A permit issued by the Township authorizing a person to use Display Fireworks at predetermined date, time, and location.
- f) **"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.

3. **Use and Sale of Consumer Fireworks.**

- a) **Conditions.** A person who is at least eighteen (18) years of age and meets the requirements of this Ordinance 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.
- c) Sale and Storage of Consumer Fireworks. The sale and storage of Consumer Fireworks is licensed and regulated by the Pennsylvania Department of Agriculture. Any person who intends to sell or store Consumer Fireworks within the Township shall provide proof of such licensure prior to such use being conducted within the Township, in addition to compliance with all applicable laws and Township ordinances and regulations.

4. **Display Fireworks- Permitting and Use**

- a) Permitting. Display Fireworks Permits are required to be issued by the Township prior to the use of Display Fireworks. Application for permits shall be made, in writing, at least thirty (30) days in advance of the planned date of the use of Display Fireworks. Permit fees shall be established by the Board of Supervisors, by Resolution, and are subject to amendment by the Board of Supervisors, at their sole discretion. Permit fees shall be submitted with written application for a Display Fireworks Permit.
- b) Use of Display Fireworks. A Display Fireworks Permit will be issued by the Township only if the following conditions exist:
- 1) The applicant for a Display Fireworks Permit is twenty-one (21) years of age or older;
 - 2) The Display Fireworks are handled by a competent operator, properly authorized by the Pennsylvania Department of Agriculture to handle, operate, and/or store Display Fireworks;
 - 3) Any business entity which performs, provides or supervises Display Fireworks, for-profit, shall provide proof of registration issued by the Pennsylvania Attorney General, with an application for a Display Fireworks Permit;

- 4) The applicant for a Display Fireworks Permit provides bonding as described in Section 4(c) of this Ordinance;
 - 5) The Display Fireworks site shall be inspected by the Township's Fire Marshal, or other appropriate designee or Township official, and after proper inspection, the Display Fireworks site shall be determined to not be hazardous to property or endanger any person prior to the display occurring;
 - 6) The Display Fireworks site shall not be within three hundred (300) feet of a facility dispensing gasoline, propane, or other flammable products; and
 - 7) After a Display Fireworks Permit is issued by the Township under this section, the possession and use of Display Fireworks shall be lawful solely on the date(s) specified in the Display Fireworks Permit.
- c) Bonding. The Township shall require that an applicant for a Display Fireworks Permit supply a bond, deemed adequate by the Board of Supervisors, in a sum not less than Fifty Thousand Dollars (\$50,000) conditioned on 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 applicant, or the employees, officers, agents, contractors, or subcontractors of the applicant.
- d) Extension of Permit.
- 1) If, because of unfavorable weather conditions, the use of Display Fireworks for which a Display Fireworks Permit has been granted does not occur at the date and time authorized by the Display Fireworks Permit, the person to whom the Display Fireworks Permit was issued may, within twenty-four (24) hours, apply, in writing, for a request of extension to the Township. The requested continuance of the Display Fireworks Permit shall be no longer than one (1) week after the date originally designated in the Display Fireworks Permit.
 - 2) The request for extension shall be in the form of an Affidavit, provided under oath, stating that the display was not made, providing the reason the display was not made, and requesting continuance of the permit for a date designated within the Affidavit.
 - 3) The extension of time shall be granted by the Township without the payment of an additional fee and without additional bonding requirements. The bond initially provided in the Display Fireworks application shall be in force and effect in the same manner and to the same extent as if the Display Fireworks had been used at the date and time originally designated in the Display Fireworks Permit.

- e) Transfer. Pursuant to the Act 43 of 2017, at 72 P.S. §9406, a Display Fireworks Permit shall be transferrable, solely upon written request and approval of the Township's Board of Supervisors, or their designee.

5. **Authority and Confiscation of Fireworks**

- a) Confiscation. The Pennsylvania State Police, and its officers, shall have the authority to take, remove, or cause to be removed, at the expense of the owner, all stocks of Consumer and/or Display Fireworks offered or exposed for sale, stored, held, or use in violation of this Ordinance. The owner shall also be responsible for the storage, and if deemed necessary, the destruction of these fireworks.
- b) Cessation of Displays. The Pennsylvania State Police, and its officers, are authorized to cease all fireworks activities, utilize Consumer Fireworks or Display Fireworks, when there is a determination that there is imminent or immediate danger to any person(s) or any property, buildings, structures, or premises, are authorized to take any steps necessary, within the reasonable performance of their duties, to extinguish, mitigate, and/or control any fireworks in order to preserve and protect the life, health, welfare, or safety of any person(s) and to preserve and protect, property, building structures, or premises.
- c) Erie County Sheriff. In the event that the Pennsylvania State Police are unable to respond to a particular incident involving the unauthorized use, sale, display, or storage of Consumer Fireworks and/or Display Fireworks, the Erie County Sheriff's Office shall be vested with all authority to act as the Township's representative in the same capacity afforded to the Pennsylvania State Police in Section 5(a) and 5(b).

6. **Penalties**

- 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 of not more than One Hundred Dollars (\$100).
- b) A person using Display Fireworks in violation of the provisions of this Ordinance commits a summary offense, and upon conviction, shall be punished by a fine of not more than Five Hundred Dollars (\$500).
- c) A person selling Consumer Fireworks in violation of the provisions of this Ordinance commits a misdemeanor of the second degree.
- d) A person selling Display Fireworks in violation of the provisions of this Ordinance commits a felony of the third degree.
- e) A person selling federally illegal explosives, such as those devices described in 49 C.F.R. §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 provision of this Ordinance, commits a felony of the third degree.

- f) Prosecutions under Section 6(a-e) shall be the responsibility of the Pennsylvania State Police.

7. **Severability.** If any sentence, clause, section or amendment of this Ordinance is for any reason found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall not affect or impair the remaining provisions, sentences, clauses, sections or amendments of this Ordinance. It is hereby declared as the intent of the Board of Supervisors that this Ordinance would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section, or amendment thereof not been included herein.

8. **Repealer.** All other Ordinances or parts of Ordinances which are contrary to the provisions of this Ordinance are hereby repealed to the extent necessary to give this Ordinance full force and effect.

9. **Effective Date.** This Ordinance shall take effect five (5) days after its enactment.

DULY ENACTED AND ORDAINED on the day first written above by the Board of Supervisors of Summit Township, Erie County, Pennsylvania.

ATTEST:

SUMMIT TOWNSHIP

Christene S. Yeast
Christene Yeast, Secretary

BY: Mark A. Welka
Mark A. Welka, Chairman

BY: Jack F. Lee, Jr.
Jack F. Lee, Jr., Supervisor

BY: Anthony W. Davis
Anthony W. Davis, Supervisor

SECRETARY CERTIFICATE

I hereby certify a true copy of the Summit Township, Erie County, Pennsylvania,
Ordinance No.2019-03 adopted by the Board of Supervisors on February 4, 2019 and advertised
in the Erie Times News on January 25, 2019.

Christene S. Yeast
Christene Yeast, Secretary