

BOROUGH OF FLEMINGTON
CLINTON COUNTY, PENNSYLVANIA
ORDINANCE NO. 259

AN ORDINANCE REGULATING THE USE OF CONSUMER FIREWORKS AND DISPLAY FIREWORKS WITHIN THE BOROUGH AND PROVIDING FOR PERMITS IN CERTAIN CASES.

WHEREAS, Act 74 of 2022, House Bill 2157, P.N. 3332 was adopted by the General Assembly on July 6, 2022, was signed by the Governor on July 11, 2022, amends Title 3 Pa.C.S. Chapter 11 (hereafter, “Fireworks Law” or “Law”), and became effective on September 9, 2022; and

WHEREAS, the Fireworks Law governs the sale, purchase and use of Consumer Fireworks and Display Fireworks in the Commonwealth; and

WHEREAS, the Fireworks Law authorizes Pennsylvania municipalities to restrict or prohibit certain uses of Consumer Fireworks as defined in the Law if the municipality determines that certain conditions are met; and

WHEREAS, the Fireworks Law authorizes the adoption of local rules and regulations by the Borough that governs permit approvals; and

WHEREAS, the Borough has determined that the full authority provided by the Fireworks Law should be exercised in the interests of public safety; and

WHEREAS, the Borough has determined after conducting appropriate inquiries during its meetings and after receiving public comment, that use of Consumer Fireworks within Flemington Borough limits would violate the prohibition in the Fireworks Law and specifically Sections 1106(a)(1.2) and 1104(b)(5) (relating to use of consumer fireworks), and would be contrary to the public interest and harmful to public safety; and

WHEREAS, Borough Council desires to regulate the use of Display Fireworks and Consumer Fireworks within the Flemington Borough limits.

NOW, THEREFORE, BE AND IT IS HEREBY ORDAINED and enacted by the Borough Council of Flemington, Pennsylvania, as follows:

SECTION 1.

Definitions

For purposes of this Ordinance, the definitions of “Consumer Fireworks” and “Display Fireworks” shall be that set forth in Section 1 of the Fireworks Law, appearing here as

Attachment "A" to this Ordinance, and any successor legislation. As set forth therein, the term "Consumer Fireworks" shall not include devices such as "ground and hand-held sparkling devices," "novelties," or "toy caps."

SECTION 2.

Display Fireworks

2.1 In accordance with the Fireworks Law, a permit is required before any use of Display Fireworks within the Flemington Borough limits. Permit application forms are available through the Office of the Fire Department Administrator during normal business hours. The application must include facts sufficient to establish that the Display Fireworks will not be ignited within 300 feet of sales locations for Consumer Fireworks and that the Display Fireworks will be handled by a competent operator at least 21 years of age who demonstrates evidence of fireworks handling and safety training, all in accordance with Sections 1102 and 1107 of the Fireworks Law. The application must include the approval of the Fire Code Official or other appropriate official as may be designated by the Borough Council and that the Display Fireworks will not be located, discharged or fired in such a manner as to be hazardous to property or an endangerment to any person. The application shall be accompanied by a certificate of insurance in accordance with Subsection 1102(d) of the Law. The applicant must acknowledge acceptance of the requirements otherwise established by state and federal law. Permit extensions shall be permitted in accordance with Subsection 1102(e) provided the extension sought receives a renewed approval by the designated official that the extended use would not be hazardous to property or an endangerment to any person.

2.2 In accordance with Section 1105(a) of the Law, Borough Council may under this Ordinance grant permits for the use of Display Fireworks for agricultural purposes in connection with the raising of crops and the protection of crops from bird and animal damage. The application for such a permit must meet the requirements of this Section. A permit under Section 1105 shall remain in effect for the calendar year in which it was issued. Sales, possession and use of Display Fireworks for the purpose stated in the permit shall be lawful for that purpose only.

2.3 Applications for use of Display Fireworks shall be submitted at least two (2) weeks prior to the date of proposed use. Permits for the use of Display Fireworks may be granted by the Flemington Goodwill Hose Company Fire Chief, or by such official or officials as are so designated by Borough Council, upon approval of the application and payment of a fee of Twenty-five (\$25.00) Dollars per holiday.

SECTION 3.

Consumer Fireworks

3.1 In accordance with the Fireworks Law, and based upon legislative findings that there is no location within the Flemington Borough limits that meets statutory requirements,

including but not limited to the prohibition of use within 150 feet of a building or vehicle, the use of Consumer Fireworks within those limits in accordance with Section 1104(b)(5) of the Law is hereby prohibited.

3.2 Upon proper application as hereafter prescribed, a use within the Flemington Borough limits may be permitted as an exception when it is demonstrated that the proposed use by exception can be conducted without violating the prohibitions set forth in paragraph 3.1 and Section 1104(b)(5) of the Law.

3.3 Permit application forms for a use by exception are available through the Flemington Goodwill House Company Fire Chief during normal business hours. The application for use by exception must include facts sufficient to establish in accordance with Section 1104 of the Law that the provisions relating to Consumer Fireworks will not be violated, including facts sufficient to demonstrate (1) that no one under the age of 18 will purchase, possess or use Consumer Fireworks; (2) that Consumer Fireworks will not be used on private property or on public property, including, but not limited to, streets, parking lots, sidewalks and parks, without the express permission of the owner or entity that controls the property; (3) that the Consumer Fireworks will not be used within, directed at or directed from a "vehicle" or "building" as those two terms are defined in the Law; (4) that the Consumer Fireworks will not be directed at another person; (5) that the Consumer Fireworks will not be used by a person who is under the influence of alcohol, a controlled substance or another drug; and (6) that the Consumer Fireworks will not be used within 150 feet of a building or vehicle, whether or not the building or vehicle is owned by the user of the Consumer Fireworks.

3.4 In accordance with Section 1104 of the Fireworks Law, no permit shall be granted for the use by exception of Consumer Fireworks within 150 feet of an Animal Housing Facility as defined in the Law, or a fenced area designed to confine livestock owned or managed by another person. A permit may be granted on the basis of an application that meets the requirements of Section 1104 for use of Consumer Fireworks at a distance of 150 to 300 feet if the prospective user of the Consumer Fireworks provides proof of notification in writing to the owner or manager of the animals or livestock of the prospective use at least 72 hours in advance.

3.5 Applications for use by exception of Consumer Fireworks shall be received at least two (2) weeks prior to the date of proposed use. Permits for the use by exception of Consumer Fireworks may be granted by the Goodwill House Company Fire Chief, or by such official or officials as are so designated by Borough Council, upon approval of the application and payment of a fee of the cost of which will be set, from time to time, by resolution of Borough Council.

3.6 The permit shall restrict the use by exception of Consumer Fireworks to the day and time listed in the application but in no event shall the permit allow use later than 10:00 P.M., provided however, that (1) on July 2, 3 and 4 and December 31, Consumer Fireworks may be used until 1:00 A.M. on the following day, and (2) when July 4 falls on a Tuesday, Wednesday, or Thursday, Consumer Fireworks may be used until 1:00 A.M.

on the immediately preceding and following Friday and Saturday. Pursuant to Subsection 1106 (b) of the Law, the hours of use of Consumer Fireworks may not be restricted on the Monday of Memorial Day and the immediately preceding Saturday and Sunday, and the Monday of Labor Day and the immediately preceding Saturday and Sunday.

3.7 No permission is granted by the Borough of Flemington to any person to ignite or discharge Consumer Fireworks on the streets or sidewalks in the Borough or on any property owned or occupied by the Borough or other governmental entity, including without limitation, all of the Borough's parks and buildings.

SECTION 4.

Certified copies of this Ordinance shall be provided to the Judges of the Court of Common Pleas and all Magisterial District Judges having jurisdiction within the Borough, posted on the Borough's website, and made available to the public at the Borough Office.

SECTION 5.

Nothing in this Ordinance governs the sale of Consumer Fireworks for the period of one year from the effective date of the Fireworks Law in accordance with Section 1106(a)(2) of the Law.

SECTION 6.

6.1 In accordance with the provisions of Section 1114(1) of the Law, any person using Consumer Fireworks in violation of the provisions of this Ordinance, for the first offense a warning will be given. A subsequent offense under this Ordinance committed within three years of a prior conviction shall constitute a summary offense, and upon conviction shall, in addition to any other penalty authorized by law, be punishable of a fine of Three Hundred (\$300.00) to One Thousand (\$1,000.00) Dollars.

6.2 Any person selling Consumer Fireworks in violation of the Law is punishable in accordance with Section 1114(2) be punishable by a fine of not less than Three Hundred (\$300.00) Dollars.

6.3 Any person selling or using Display Fireworks in violation of the Law is punishable in accordance with Section 1114(3) by a fine of not less than Three Hundred (\$300.00) Dollars.

SECTION 7.

All ordinances or resolutions or parts ordinances or resolutions insofar as they are inconsistent herewith are hereby repealed and rescinded.

SECTION 8.

In the event any provision, section, sentence, clause or part of this Ordinance shall be held to be invalid, such invalidity shall not affect or impair any of the remaining provisions, sections, sentences, clauses or parts of this Ordinance; it being the intent of the Borough that the remainder of the Ordinance shall be and shall remain in full force and effect.

SECTION 9.

This Ordinance shall take effect in accordance with the Laws of the Commonwealth of Pennsylvania twenty (20) days after its final adoption.

ATTEST:

BOROUGH OF FLEMINGTON

Albert M. Hill
Maureen DeGuz-Elterz
Secretary

By:

Council President

APPROVED this 27th day of April 2023.

Sam J. Shubin
Mayor

Attachment "A" Fireworks Law (Act 74 of 2022)