

**BOARD OF SUPERVISORS OF
THE TOWNSHIP OF MIDDLE SMITHFIELD
MONROE COUNTY, PENNSYLVANIA**

ORDINANCE NO.

240

AN ORDINANCE OF THE TOWNSHIP OF MIDDLE SMITHFIELD, MONROE COUNTY, AMENDING CHAPTER 107, FIREWORKS DISPLAYS, ESTABLISHING DEFINITIONS AND REGULATIONS FOR THE USE OF CONSUMER AND DISPLAY FIREWORKS, INCORPORATING THE APPLICABLE STATE LAW AND PRESCRIBING PENALTIES FOR VIOLATIONS

WHEREAS, the Township of Middle Smithfield is empowered to regulate fireworks in accordance with the Pennsylvania Second Class Township Code, 53 P.S. §66534;

WHEREAS, the Township of Middle Smithfield is authorized to ensure the public safety and to define conduct that constitutes disturbing the peace pursuant to the Pennsylvania Second Class Township Code, 53 P.S. §65101 et seq.;

WHEREAS, the Township of Middle Smithfield is able to abate and prohibit nuisances on property pursuant to the Pennsylvania Second Class Township Code, 53 P.S. §66529;

WHEREAS, the Board of Supervisors of Middle Smithfield Township has determined that the use of fireworks can be detrimental to the health, safety and welfare of the Township's inhabitants and can interfere with both the quiet enjoyment of residential and public property and the operation of businesses and should therefore be reasonably controlled;

WHEREAS, it is the purpose and scope of this Ordinance to provide regulations that govern the use and display of fireworks within Middle Smithfield Township in accordance with the Pennsylvania Second Class Township Code and all other applicable Pennsylvania law; and,

WHEREAS, it is also the purpose of this Ordinance to require compliance with and incorporate the provisions set forth at 72 P.S. §§9401-9416, unless otherwise specifically provided for herein.

NOW THEREFORE, BE IT ORDAINED AND ENACTED by the Board of Supervisors of Middle Smithfield Township, Monroe County, Pennsylvania, that the Code of Ordinances of Middle Smithfield Township is hereby amended by amending Chapter 107, Fireworks Displays, in its entirety to read as follows:

ARTICLE I.

The Middle Smithfield Township Code of Ordinances is hereby amended by amending Chapter 107, Fireworks Displays, in its entirety to read as follows:

Chapter 107 Fireworks

§107-1. AUTHORITY AND INTENT.

This Chapter is adopted and codified pursuant to 72 P.S. §§9401-9416 and in accordance with the authority to regulate fireworks as set forth in the Pennsylvania Second Class Township Code at 53 P.S. § 66534, as well as the ability to ensure the public safety and to define conduct that constitutes disturbing the peace pursuant to the Pennsylvania Second Class Township Code, 53 P.S. §65101 et seq. and the authority to abate and prohibit nuisances on property pursuant to the Pennsylvania Second Class Township Code, 53 P.S. §66529. This Chapter is intended to comply with all applicable State statutes and/or laws regulating the use of fireworks within Middle Smithfield Township. The Board of Supervisors of Middle Smithfield Township, having found that the unregulated use and display of consumer and display fireworks, including the noise and visual disturbances that accompany such use and result from the ignition and discharge of such devices is detrimental to the physical, mental, and social well-being of Township residents as well as similarly detrimental to their comfort, living conditions, general welfare and safety, and peaceful enjoyment of their residences, and as such is generally detrimental to the public health, safety, and welfare; hereby declares that it is the intent of this Chapter to provide for greater control of the negative effects of the display and use of consumer and display fireworks while balancing the rights of the public to use such devices.

§107-2. WORD USAGE; DEFINITIONS.

- A. Interpretation. Words and phrases in this Chapter shall be used in their ordinary context unless such word or phrase is specifically defined in this Section.
 - (1) Words in the present tense also apply to the future tense.
 - (2) The singular includes the plural.
 - (3) The male (human) gender includes the female and nonbinary genders.
 - (4) The term "shall" or "must" is always mandatory.
 - (5) The word "used" shall be construed to include the words "or intended, arranged, or designed to be used."
 - (6) The term "such as" shall be considered as introducing a typical or illustrative designation of items and shall not be interpreted as constituting a complete list.

- B. The following words and terms shall, for purposes of this Chapter, have the following meanings:

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.

Consumer Fireworks —

- a) 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, the sale, possession and use of which shall be permitted in Middle Smithfield Township subject to the regulations provided in this Chapter 95.
- b) The term does not include devices such as "ground and hand- held sparkling devices", "novelties" or "toy caps" in APA 87- 1, the sale, possession, and use of which shall be permitted in Middle Smithfield Township subject to applicable regulations.

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, the following:

- a) salutes that contain more than two grains (130 milligrams) of explosive materials;
- b) aerial shells containing more than 40 grams of pyrotechnic compositions; and
- c) 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).

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.

Person - Any individual, partnership, corporation, association, institution, cooperative enterprise, municipal authority, local, state, or federal government or agency, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

Township — The Township of Middle Smithfield, Monroe County, PA, its elected officials, appointed officials, employees, and duly authorized representatives or agents.

§107-3. USE OF CONSUMER FIREWORKS.

A person who is at least 18 years of age and meets the requirements of this Chapter may use Consumer Fireworks, subject to the restrictions and limitations specifically contained herein.

A. A person may not intentionally ignite or discharge:

- (1) Consumer fireworks on public or private 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.
- (2) Consumer fireworks or sparkling devices within, directed at or directed from a vehicle, occupied structure or building.

- (3) Consumer fireworks or sparkling devices directed 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 a building, occupied structure or vehicle, whether or not the building, occupied structure or vehicle is owned by the user of the Consumer Fireworks.
- (6) Consumer fireworks on any property owned or operated by the Township, including parks, parking lots, streets, sidewalks, and rights-of-way.
- (7) Consumer fireworks between the hours of 10:00 p.m. and 10:00 a.m., except:
 - a. On July 2, 3, and 4 and December 31, when consumer fireworks may be used until 1:00 a.m. the following day; and
 - b. 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.
- (8) Consumer fireworks within 150 feet of an animal housing facility or a fenced area designed to confine livestock owned or managed by another person. If a person uses consumer fireworks at a distance of 150 to 300 feet from an animal housing facility or fenced area designed to confine livestock owned or managed by another person, the user of consumer fireworks shall notify in writing the owner or manager of the livestock at least 72 hours in advance of the use that consumer fireworks will be used in the area.

§107-4. USE OF DISPLAY FIREWORKS.

A. **Unlawful to use Display Fireworks without a Permit.** It shall be unlawful for any person, persons, firms or corporations, amusement parks, fair associations or other organizations or groups of individuals, to use and/or hold public displays of display fireworks within the limits of the Township, unless a permit therefor is first granted, as hereinafter provided. Display fireworks may be possessed and used by a person holding a permit from the Township at the display covered by the permit or when used as authorized by a yearly permit for any of the following:

- (1) For agricultural purposes in connection with the raising of crops and the protection of crops from bird and animal damage;
- (2) By railroads or other transportation agencies for signal purposes or illumination;
- (3) In quarrying or for blasting or other industrial use;
- (4) In the sale or use of blank cartridges for a show or theater;
- (5) For signal or ceremonial purposes in athletics or sports;
- (6) By military organizations or organizations composed of veterans of the armed

forces of the United States; or

(7) By governmental agencies to fulfill their mission.

B. Compliance with State and Federal Statutes and Regulations. The applicant for a permit for the use of display fireworks within the Township must comply with and abide by any and all Pennsylvania and Federal statutes and regulations and any and all applicable County or other local regulations governing the use, storage, and display of fireworks, including but not limited to the International Fire Code and 35 P.S. §§ 1271 et seq., as amended. All applicable Pennsylvania, Federal, County and/or local laws and regulations are incorporated herein by reference. All regulations relating to the display of fireworks under the International Fire Code and/or Uniform Construction Code are also incorporated herein by reference and shall be complied with by an applicant. In the event of an inconsistency between the above-referenced Pennsylvania, Federal, County and/or local laws and regulations and this Ordinance, the more stringent regulation shall apply. The applicant must further receive any and all requisite Pennsylvania, Federal, County and/or local permits and/or licenses relating to the proposed display of display fireworks.

C. Competent Operator and Safe Display Location. Every display of display fireworks within the limits of the Township shall be handled, arranged, managed, and directly supervised by a state-licensed and/or registered, as applicable, competent operator at least 21 years in age. Any business entity which performs, provides or supervises fireworks displays or exhibitions for profit shall register annually with the Attorney General and/or as otherwise required by law and/or State regulation. Every such display fireworks use and display within the Township shall be of such a character and so located, discharged, or fired, as not to be hazardous to property or endanger any person or persons in the opinion of the Township, or their duly authorized representative. The Township code official, or other such officer as may be designated by the Township, shall inspect the site where the display fireworks are to be used and displayed prior to the issuance of a permit in accordance with the International Fire Code and other applicable regulations and ensure that the site and proposed display fireworks exhibition are compliant with said regulations. No permit for the use of display fireworks shall be issued until the Township code official, or their duly authorized representative, determines that the requested permit may be granted after inspecting the location for the requested display. The applicant shall reimburse the Township or their duly authorized representative for any fees necessary to perform duties under this Chapter.

D. Permit.

(1) An application for a permit shall be made in writing to the Township at least 10 working days in advance of the date of the proposed use of the display fireworks. The application shall set forth the proposed date, time and location of the use and display, the character and duration thereof; the name and address of the competent operator, and the name and address of the owner or owners of the grounds on which the use and display is to be held, together with the written consent of such owner or owners thereto and a copy of any permit application required by the International Fire Code. The application for the permit shall also contain copies of any and all State, Federal and/or County permits

and/or licenses needed for the use and display of display fireworks. All applicants shall pay the Township the permit fee in the amount as established from time to time by resolution of the Board of Supervisors, before the issuance of a permit and shall further provide proof of liability insurance, acceptable to the Township, and the required bond to the Township. The Township may attach conditions and/or restrictions on any permit for the use and display of display fireworks as are deemed necessary.

- (2) In addition to the information set forth in Section 107-4.D(1) above, the application for a permit:
 - a) Shall contain the applicant's name and address.
 - b) Shall be verified by production of the applicant's proof of age in the form of a photo ID, driver's license, or passport.
 - c) Shall acknowledge that the applicant has read the Township's Ordinance and the applicable state statutes governing display fireworks and agrees to be bound by all the terms and conditions contained therein.
 - d) Shall contain such additional information as may be deemed necessary by the Township.
- (3) If and after such permit is granted by the Township or an authorized designee, the possession and use of display fireworks for the approved display shall be lawful for that purpose, date, and time only, except as permitted to be modified under Section 107-4.F.
- (4) A permit issued under this Section shall remain in effect for the calendar year in which it is issued for the following uses only:
 - 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; or
 - g) By governmental agencies to fulfill their mission.
- (5) No permit for the use and display of display fireworks shall be issued to an individual under the age of 21.

E. Liability insurance. All applicants for a permit for the display of display fireworks shall submit proof of liability insurance in an amount no less than \$1,000,000.00, and such policy shall name the Township as an additional insured. The liability insurance shall be in a form acceptable to the Township.

F. Continuance.

- (1) If by reason of unfavorable weather the display fireworks 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 use the date noted on the application and permit as the "rain date" for the fireworks display 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 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.
- (2) If by reason of unfavorable weather the display fireworks display for which a permit has been granted does not take place at the time so authorized or the approved rain date, the person to whom such permit was issued may within 24 hours or the next business day the Township office is open, whichever is later, apply to the Township, and set forth under oath the fact that such use and display was not made, the reason the use and display did not take place, and a request for a continuance of such permit for a day designated therein. The continuance date shall be no later than one week (7 days) after the day(s) fixed originally in said permit, unless otherwise approved by the Township. Upon receiving such application for a continuance, the Township, if it believes the facts stated therein are true, may extend the provisions of said permit to the day fixed in said application, subject to the rescheduled day being within seven (7) days of the original date or approved rain date or otherwise agreeable to the Township, 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, provided that the provisions of the original bond extend to and cover all damages which may be caused by reason of said use and display taking place at such extended date in the same manner and to the same extent as if such use and display had taken place at the date originally fixed in the permit.

G. Additional Regulations for Display Fireworks.

- (1) No display fireworks shall be ignited within Three Hundred (300) feet of a facility used for the sale of Consumer Fireworks.
- (2) Only two (2) display fireworks exhibition permits may be issued per quarter calendar year for a particular property or to a particular person, unless otherwise specifically approved by the Township.
- (3) All display fireworks must be launched from said permitted property, must explode over the permitted property, and all debris must fall on the permitted property. Where debris falls on property other than the permitted property, the license holder must remove said debris within 24 hours of the display.

- (4) No display fireworks exhibition may be held when a burn ban is in effect in the Township. Any party holding a valid permit and unable to renew the permit within the thirty-day time frame due to a burn ban will receive a refund of the permit fee. The fireworks permit must be conspicuously posted on the property.
- (5) No display fireworks exhibitions may be held, even with a permit, where the weather has wind gusts over 20 miles per hour.
- (6) All ground exhibitions of display fireworks shall be treated the same as aerial exhibitions of display fireworks under these regulations.
- (7) Anyone obtaining a permit for display fireworks must notify the Marshalls Creek Fire Company, Bushkill Volunteer Fire Company and Shawnee Fire Company of their intention to have a display fireworks exhibition on the property and pay a reasonable fee to the Fire Company with primary coverage responsibility over the location of the proposed display in order to have a representative or fire apparatus on site at all times during the display.

H. **Permit Bond.** To obtain a permit, a bond in the sum of not less than \$50,000.00 conditioned on the payment of all damages which may be caused to a person or property by reason of the display fireworks exhibition and arising from an act of the permittee or an agent or an employee or subcontractor of the permittee must be filed with the Township. The terms of the bond shall be subject to Township approval.

I. **Indemnification.** As part of the permit process, all owners of the property upon which the displays are going to be held must sign the request for the permit which shall also include a provision that the permit holders, including the property owners, all jointly and severally, agree to indemnify, hold harmless and defend the Township from all claims arising in whole or in part from fireworks displays and such hold harmless and indemnity provision must be signed as part of the permit application.

§107-5 MISCELLANEOUS

- A. All the regulations, requirements and/or restrictions set forth at 72 P.S. §§9401-9416 shall be complied with unless a more restrictive regulation, requirement and/or restriction is specifically provided for in this Chapter, in which case the more restrictive regulation, requirement and/or restriction shall apply.
- B. The following standards shall be used and/or complied with, if applicable, for all uses, displays, manufacture, transportation, and storage of fireworks:
 - (1) NFPA 160 — Standard for Use of Flame Effects Before an Audience.
 - (2) NFPA 1123 — Code for Fireworks Display.
 - (3) NFPA 1124 — Code for Manufacture, Transportation, and Storage of Fireworks and Pyrotechnic Articles.

- (4) NFPA 1126 -- Standard for Use of Pyrotechnics Before a Proximate Audience.
- (5) IFC Chapter 33 -- Explosives and Fireworks.

§107-6. VIOLATION OR PUBLIC SAFETY

In the event of any violation of this Chapter or of the terms, conditions or limitations noted on a permit for the use of display fireworks, or in the event of any unsafe condition occurring before or during the course of a fireworks display, or in the event of any unsafe condition occurring as a result of any use of consumer, display or other fireworks within the Township, the Pennsylvania State Police, the Fire Chief for either the Marshalls Creek Fire Company, Bushkill Volunteer Fire Company and/or Shawnee Fire Company, the Township Code Enforcement Officer, and/or other authorized Township designee and/or representative may, before or during the unsafe and/or violating occurrence, order such use or display to be stopped in the interest of public safety.

§107-7. PENALTY.

Any person, individual, partnership, co-partnership, association or corporation violating the provisions of this Chapter with respect to the use of consumer fireworks or display fireworks, or failing to comply with any order pursuant to any section thereof shall be guilty of a civil offense, and upon conviction thereof, shall be subject to a fine of not less than \$500.00 and not more than \$1,000.00 plus all court costs, including reasonable attorney fees incurred by the Township as a result thereof. Each day that a violation continues shall be deemed to be a separate offense.

ARTICLE II. SEVERABILITY.

It is hereby declared to be the legislative intent that if a court of competent jurisdiction declares any provisions of this Ordinance to be invalid or ineffective in whole or in part, the effect of such decision shall be limited to those provisions which are expressly stated in the decision to be invalid or ineffective, and all other provisions of this Ordinance shall continue to be separately and fully effective. The Board of Supervisors hereby declares that it would have passed this Ordinance and each section or part thereof, other than any part declared invalid, if it had advance knowledge that any part would be declared invalid.

ARTICLE III. REPEALER.

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

ARTICLE IV. EFFECTIVE DATE.

This Ordinance shall become effective five (5) days after enactment.

DULY ENACTED AND ORDAINED into law this 10 day of August 2023, by the Board of Supervisors of Middle Smithfield Township, Monroe County, Pennsylvania, in lawful session duly assembled.

Board of Supervisors of Middle Smithfield Township

By: Annette Atkinson
Annette Atkinson, Chair

By: Mark Oney
Mark Oney, Vice-Chair

By: Michael J. Dwyer
Michael J. Dwyer, Supervisor

ATTEST: Michael J. Dwyer [TOWNSHIP SEAL]
Township Secretary