

**MYERSTOWN BOROUGH
LEBANON COUNTY, PENNSYLVANIA**

ORDINANCE NO. 854

**AN ORDINANCE OF THE BOROUGH OF MYERSTOWN PROVIDING
FOR THE REGULATION OF FIREWORKS**

WHEREAS, the Commonwealth of Pennsylvania repealed the Fireworks Act of 1939 and enacted new legislation governing the regulation of fireworks in October 2017; and

WHEREAS, Borough Council of Myerstown ("The Borough") recognizes an increase in the number of resident complaints due to fireworks being discharged throughout the Borough; and

WHEREAS, fireworks present a serious threat to the public health and safety of the community if used improperly; and

WHEREAS, the Borough has a vested interest in protecting the Borough property and residents against the possibility of accidental fires, explosions, or other damage as can be attributed to fireworks, concludes that it is in the best interest of the health, safety, and welfare of its citizens and residents to impose regulations regulating fireworks located within Myerstown Borough in accordance with the fireworks regulations set forth in 72 P.S. § 9401 *et seq.*

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Borough Council of the Borough of Myerstown, in lawful session duly assembled, and it is hereby ORDAINED AND ENACTED as follows:

Section 1. Definitions.

The following terms shall have the meanings as indicated.

BOROUGH – Myerstown Borough, Lebanon County, Pennsylvania.

BOROUGH COUNCIL - The governing body of the Borough of Myerstown.

DISPLAY FIREWORKS - Any large fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation. This term includes, but is not limited to, salutes containing more than two (2) grains or one hundred thirty (130) milligrams of explosive materials; aerial shells containing more than sixty (60) grams of pyrotechnic compositions; and other display pieces which exceed the limits of explosive materials for classification as consumer fireworks and are classified as fireworks UN0333, UN0334, or UN0335 at 49 CFR 172.101.

FIRE PREVENTION OFFICER - The person appointed by the Borough Council to enforce the applicable provisions of this Chapter. This person or organization may be updated from time to time by Resolution.

FIREWORKS – CONSUMER - Any combustible or explosive composition or any substance or combination of substances, intended to produce visible and/or audible effects by combustion and which is suitable for use by the public that 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 which complies with the provisions for "consumer fireworks" as defined in the American Pyrotechnics Association (APA) Standard 87-1, or any successor standard. The term does not include devices as "ground and hand-held sparkling devices", "novelties", and "toy caps" in APA Standard 87-1, the sale, possession and use of which shall be permitted at all times throughout this Commonwealth.

FLAME EFFECT - The combustion of solids, liquids, or gases utilizing atmospheric oxygen to produce thermal, physical, visual, or audible phenomena before an audience.

- a. Automatic flame effect is a flame effect that is supervised and fired by an automatic control system.
- b. Hybrid flame effect is a flame effect that is used in combination with a pyrotechnic material or device.
- c. Manual flame effect is a flame effect that is operated manually without the use of an automatic control system.
- d. Portable flame effect is a flame effect that is designed and installed, either in a permanent or temporary installation, and that are designed to move or be moved in the course of operation of installation.

PERSON - Any individual, partnership, corporation, limited liability company, or other legal entity

POLICE DEPARTMENT – Any Police Department authorized to provide police protection services within the Borough.

POLICE OFFICER - An officer of the Police Department.

PYROTECHNICS - Controlled exothermic chemical reactions that are timed to create the effects of heat, gas, sound, dispersion of aerosols, emission of visible electromagnetic radiation, or a combination of these effects to provide the maximum effect from the least volume.

Section 2. Supervised Public Displays Permitted; Permits.

- A. The display or discharge of display fireworks shall comply with the requirements of 72 P.S. § 9401, *et seq.*
- B. Except as provided hereinafter, it shall be unlawful for any person to use or explode any display fireworks; provided, that the Borough Council, or its designee, shall have the power to grant permits for supervised public displays of display fireworks to be held in the Borough.
- C. Display fireworks may be used as authorized by a permit for any of the following, in accordance with 72 P.S. § 9402:
 - (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.
- D. Every fireworks display shall be conducted by a competent operator, currently registered with the Attorney General of Pennsylvania and approved by the Borough Council or its designee, and shall be of such a character and so located, discharged or fired as in the opinion of the Fire Prevention Officer or Chief of the Fire Department or other appropriate officer as may be designated by Borough Council, after proper inspection, shall not be hazardous to property or endanger any person.
- E. The Fire Prevention Officer may suspend any permit issued under this chapter due to drought, dry conditions, high winds, or any other factor reasonably related to the public safety. The Fire Prevention Officer may, at his discretion, dispatch fire company members and/or equipment to the scene of any permitted display. Where any such deployment occurs, the permittee will be subject to a fee, which may be amended from time to time by resolution of the Borough Council. The Fire Prevention Officer shall not be liable to the permittee or any other interested party in carrying out his authorized duties under this section.
- F. Applications for permits shall be made in writing on a form provided by the Borough, at least thirty (30) days in advance of the date of a fireworks display, and at least three (3) days in advance of the date of a pyrotechnic or flame effects display. After such permit shall have been granted, sales, possession, use and distribution of fireworks, pyrotechnics or flame effects for such display shall be lawful for that purpose only.

- G. An application shall be accompanied by the applicable permit fee, which may be amended from time to time by resolution of the Borough Council.
- H. No display fireworks permit shall be issued to a person under twenty-one (21) years of age.
- I. Permits granted hereunder shall be transferable with written approval of Borough Council.
- J. All fireworks displays shall be finished by 11:00 p.m. on Fridays and Saturdays and by 10:00 p.m. Sundays through Thursdays. Exceptions must be requested in writing and approved by the Borough Council.
- K. No more than five (5) permits per calendar year may be issued for fireworks displays to the same permittee.
- L. No more than five (5) permits per calendar year may be issued for fireworks displays on a single property.

Section 3. Evidence of Registration; Bond.

- A. Prior to the issuance of any permit under Section 2 hereof, the applicant shall deliver to the Borough evidence of the operator's registration with the Attorney General of Pennsylvania, and a bond or liability insurance, which shall be in the amount of One Million Dollars (\$1,000,000), conditioned for payment of all damages which may be caused either to persons or to property by reason of the display and arising from any acts of the permit holder, his agents, employees or subcontractors. The Borough of Myerstown and the Fire Company providing oversight at the event shall be named as additional insureds on the operator's liability insurance policy, which shall be shown on a Certificate of Insurance submitted to the Borough.

Section 4. Extension of Permit When Display Prevented by Unfavorable Weather.

- A. If for any reason of unfavorable weather the display 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 as the "rain date" for the event display without the payment of any additional fee and without requiring any bond or insurance 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.

Section 5. Consumer Fireworks.

- A. Consumer Fireworks may be purchased, possessed and used in the Borough by a person who is at least eighteen (18) years of age, except for the following 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.
- B. Consumer Fireworks shall not be discharged between the hours of 9:00 p.m. and 7:00 a.m.

Section 6. Enforcement and Penalties.

- A. This chapter may be enforced by the Fire Prevention Officer or any police officer.
- B. Any person using consumer fireworks in violation of the provisions of this chapter commits a summary offense and, upon conviction, shall be punished by a fine of not more than one hundred (\$100.00) dollars plus all costs of prosecution.
- C. Each day that a violation continues and each section of this chapter which is violated shall be deemed a separate offense. Each individual firework that has been discharged shall also be deemed a separate offense. This chapter may also be enforced by an action in equity brought in the Lebanon County Court of Common Pleas.

Section 7. Severability and Repealer.

- A. If any provision, sentence, clause, section, or part of this Ordinance or the application thereof to any person or circumstance is for any reason found to be unconstitutional, illegal, or invalid by a court of competent jurisdiction, such unconstitutionality, illegality, or invalidity shall not affect or impair the validity of

any of the remaining provisions, sentences, clauses, sections, or parts of this Ordinance. All Ordinances or parts of Ordinances which are inconsistent with this Ordinance are hereby repealed to the extent they are inconsistent with the provisions herein. All other sections, parts and provisions of the Code of Ordinances of the Borough of Myerstown shall remain in full force and effect as previously enacted and amended.

Section 8. Effective Date.

A. This Ordinance shall be effective immediately upon enactment by Borough Council as provided by law.

ENACTED AND ORDAINED this _____ day of _____, 2020.

ATTEST:

MYERSTOWN BOROUGH

By: _____
Michael R. McKenna, Secretary

By: _____
Bryan Rittle, President

Examined and Approved this _____ day of _____, 2020.

By: _____
Gloria Ebling, Mayor