

BOROUGH OF HIGHSPIRE
Dauphin County, Pennsylvania

ORDINANCE NO. 627 of 2020

AN ORDINANCE OF THE BOROUGH OF HIGHSPIRE, DAUPHIN COUNTY, PENNSYLVANIA REGULATING THE DISPLAY OF ANY FIREWORKS OF ANY KIND WITHIN THE LIMITS OF BOROUGH OF HIGHSPIRE WITHOUT A PERMIT

BACKGROUND

WHEREAS, the Borough of Highspire (hereafter, Borough) is a political subdivision of the Commonwealth of Pennsylvania, which is entitled to the rights, privileges and immunities conferred under The Borough Code (hereafter, Code), Act of February 1, 1996, P.L. (1965) 1656, §101, Reenacted May 17, 2012, P.L. 262, §1, codified April 18, 2014, P.L. 432, §1, 8 Pa. C.S.A. §101 et seq.; and; and

WHEREAS, under Sections 1005 and 1006 of the Code, 8 Pa. C.S.A. §§1005 and 1006, the corporate power of the Borough is vested in the council (hereafter, Council); and

WHEREAS, under Section 3301.1(a) of the Code, 8 Pa. C.S.A. §3301.1(a), Council has the duty to enact ordinances which it deems beneficial to the Borough;

NOW, THEREFORE, it is hereby ordained and enacted by the borough council of the Borough of Highspire, Dauphin County, Pennsylvania, that:

SECTION 1. Scope - In order to protect life and property in the Borough of Highspire, the Borough as authorized by the Fireworks Law, 35 P.S. § 1275.2, is promulgating rules on the issuance of permits.

SECTION 2. Definitions.

BOROUGH – The Borough of Highspire

CODE OFFICER – Such official designated by Borough Council to carry out duties under this Ordinance.

“CONSUMER FIREWORKS”–

- A. Any combustible or explosive composition or any substance or combination of substances which is intended to produce visible or audible effects or 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 throughout this Commonwealth.

- B. 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 and use of which shall be permitted at all times throughout this Commonwealth.

“DISPLAY FIREWORKS” – Shall mean the terms Large fireworks or “Display-grade Fireworks” as defined in 35 P.S. § 1271 et seq., as may be amended; used solely by professional pyrotechnicians and designed primarily to produce visible or audible effects of combustion, deflagration or detonation. The term includes, but is not limited to:

- A. Salutes that contain more than two grains or 130 milligrams of explosive materials;
- B. Aerial shells containing more than 60 grams of pyrotechnic compositions; and
- C. Other display pieces that exceed the limits of explosive materials for classification and 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).

FIREWORKS LAW – Shall mean Title, 35 P.S., Ch. 13A, Refs & Annos, PA ST T. 35 P.S., Ch. 13A Fireworks Law, 35 P.S. 1271 et. seq.

FIRE CHIEF – The Fire Chief of Citizens Fire Company #1 of Highspire or the Chief of the Fire Company which has entered into agreement with the Borough of Highspire for protection.

PUBLIC OFFICER – any Police Officer, Constable or Code Enforcement Officer, sometimes herein referred to as Public Officer, designated by the municipality to enforce the Borough ordinances, and also to the extent permitted by Intra-jurisdictional Agreement(s) such other Police Officers duly authorized thereunder.

NFPA 1124 – The National Fire Protection Association Standard 1124 Code for the Manufacture, Transportation and Storage of Fireworks and Pyrotechnic Articles, 2006 Edition.

OCCUPIED STRUCTURE – A structure, vehicle or place adapted for overnight accommodation of persons for conducting business whether or not a person is actually present.

SECTION 3. Discharge of Consumer Fireworks.

(a) Discharge of fireworks shall be by permit.

(b) Permits for Consumer Fireworks may be granted upon application to the Borough Secretary. The application shall specify the composition, character and proposed location, and manner of discharge or firing. No such permit shall be issued to a person younger than eighteen (18) years of age, as provided under 35 P.S. § 1275.

(c) Applications for permits shall be made in writing at least thirty (30) days in advance of the date of the display. After such privilege has been granted, sale, possession, use and distribution of fireworks for such display shall be lawful for that purpose only for 30 days from the time of the issue of permit. No permit granted hereunder shall be transferable. An extension shall be

governed by 35 P.S. § 1274, as may be amended, when display prevented by unfavorable weather. The Borough may from time to time adopt an Application and fees by Resolution, the initial Application fee for a Consumer Fireworks permit shall be twenty-five dollars (\$25.00) per permit.

(d) The possession and use of fireworks for display purposes shall be conducted so as to be reasonably safe to persons and property. As such, the following restrictions will be enforced. Consumer-grade Fireworks: cannot be ignited or discharged on any property of the Borough including, but not limited to streets, sidewalks, public parks or public buildings. Consumer Fireworks cannot be ignited or discharged on private property without the express, written permission of the property owner; cannot be discharged from or within a motor vehicle or building; cannot be discharged toward a motor vehicle or building; cannot be discharged within 150 feet of an occupied structure; cannot be discharged while the person is under the influence of alcohol, a controlled substance, or another drug; cannot be discharged by a person younger than eighteen (18) years of age without the direct supervision of the permit holder.

Further to the extent allowed by law the Code Officer, Fire Chief and Borough shall have no liability for harm or injury and the Applicant and permittee shall indemnify and hold harmless the Code Officer, Fire Chief and Borough from all claims based upon the Application composition, character, location, transportation, distribution, discharged or firing.

(e) No Consumer Fireworks may be discharged after 10 PM or before 7 AM at any time.

(f) Consumer fireworks on a property of less than one acre in area.

SECTION 4. Discharge of Display Fireworks.

(a) Discharge of fireworks shall be by permit from the Borough at the display covered by the permit or when authorized by a 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 show or theater.
- 5) For signal or ceremonial purposes in athletics or sports.
- 6) By military organizations or organizations of veterans of the Armed Forces of the United States.

(b) Permits for Display Fireworks may be granted upon application to the Code Officer after approval of the Fire Chief and filing of a bond and/or certificate of insurance by the applicants as provided in Section 4 (a). The application shall specify the composition, character, and proposed location, manner of discharge or firing, current registration with the Pennsylvania Attorney General inclusive of name of such entity/person. Every such display shall be handled by a

competent operator registered as noted above and approved by the Code Officer and shall be of such composition, character, and so located, discharged or fired as in the opinion of the Code Officer, after consultation with the Fire Chief, and after proper inspection, and shall not be hazardous or endanger any person or persons. Further the Applicant must certify to the Code Officer and Fire Chief that the possession, transportation, use and distribution of fireworks for display purposes will be conducted in accordance with the applicable standard specified in NFPA No 1122L, NFPA 1123 and 1126 as may be amended.

No such permit shall be issued to a person younger than twenty-one (21) years of age, as provided under 35 P.S. § 1275. All Permittees must be registered with the Pennsylvania Attorney General Office under the Pennsylvania Fireworks Law 35 P.S. 1276.2, as may be amended.

(c) Applications for permits shall be made in writing at least thirty (30) days in advance of the date of the display. After such privilege has been granted, sale, possession, use and distribution of fireworks for such display shall be lawful for that purpose only. No permit granted hereunder shall be transferable. An extension shall be governed by 35 P.S. § 1274, as may be amended, when display prevented by unfavorable weather. The Borough may from time to time adopt an Application and fees by Resolution, the initial Application fee shall be seventy-five dollars (\$75.00) per permit.

(d) The possession and use and of fireworks for display purposes shall be conducted so as to be reasonably safe to persons and property. Evidence by way of certification in the application that the possession, transportation, use and distribution of fireworks for display purposes will be conducted in accordance with the applicable standard specified in NFPA No 1122L, NFPA 1123 Code for Fireworks Display and NFPA Standard for the use of Pyrotechnics Before a Proximate audience 1126, as may be amended, shall be evidence that such design, construction, and use provide reasonable safety to persons and property. Further to the extent allowed by law the Code Officer, Fire Chief and Borough shall have no liability for harm or injury based upon such certification and the Applicant and permittee shall indemnify and hold harmless the Code Officer, Fire Chief and Borough from all claims based upon the Application composition, character, location, transportation, distribution, discharged or firing.

(e) No fireworks may be discharged after 10 PM or before 7 AM at any time unless otherwise permitted by the Borough.

SECTION 5. Bond and Responsibility for Display Fireworks Required.

(a) The Code Officer shall require a bond and/or a certificate of insurance from the permittee in a sum not less than Two hundred and fifty Thousand (\$250,000.00) Dollars conditioned on compliance with the provisions of this article, naming the Code Officer, Fire Chief and Borough of Highspire as an additional insured (additional Insured) with a notice of cancelation to the additional insured. Failure of the Borough to require or lapse of a Bond/Insurance shall not be grounds for liability to Additional Insured.

(b) Before any permit for a pyrotechnic display shall be issued, the person, firm or corporation making application therefore shall furnish proof of financial responsibility to satisfy claims for

damages to property or personal injuries arising out of any act or omission on the part of such person, firm or corporation or any agent or employee thereof, in such amount, character and form as the Public Officer determines to be necessary for the protection of the public.

SECTION 6. Disposal of Fireworks - Any fireworks that remain unfired after the display is concluded shall be immediately disposed of in a way safe for the type of fireworks.

SECTION 7. Seizure of Fireworks - The Public Officer may seize, take, remove or cause to be removed at the expense of the owner all stocks of fireworks offered or exposed for sale, stored or held in violation of state law as authorized under 35 P.S. § 1278.

SECTION 8. Authority for Issuance of Violation - Upon finding a violation, any Public Officer, as previously defined herein, may proceed under 35 P.S. §1277, as may be amended.

SECTION 9. Enforcement.

(a) The provisions of this Ordinance shall be enforced by the Public Officers assigned by the Borough of Highspire, and as such phrase is otherwise defined above, or the Pennsylvania State Police.

(b) Any violation of the provisions of this Ordinance may be cause for a citation to be issued to the violator in conformance with law, with a fine of no less than two hundred and fifty (\$250.00) dollars and no more than six hundred dollars (\$600.00); also, enforcement may include but not limited to 35 P.S. § 1277, as may be amended, as well as, no limitation is intended under the Crimes Code or other law having application.

SECTION 10. Separate Offense - Each day a violation continues or is permitted to continue may constitute a separate offense for which a separate fine may be imposed.

SECTION 11. Fines and Penalties.

(a) Any person who violates this Ordinance may be issued a citation for each offense as noted above, however, nothing herein limits the Public Officer(s) ability to act under 35 P.S. § 1277, Pa Crimes Code or other law having application.

(b) Nothing herein is intended to impede or restrict the prosecution of any criminal offense for any person continuing to violate the terms of this Ordinance or any order to stop or desist from any illegal conduct or from being charged with any separate offense under the criminal codes or otherwise.

SECTION 12. CONFLICTING ORDINANCES - All relevant ordinances, regulations, and policies of the Borough of Highspire, Pennsylvania not amended shall remain in full force and effect. Any Ordinance or part of an Ordinance conflicting with the provisions of this Ordinance shall be subordinate to this Ordinance to the extent of such conflict, and the language contained in the Ordinance shall control. Nothing herein is intended to repeal the Highspire Borough Zoning Ordinance. Further nothing herein is intended on limiting the Public Officers authority under Title. 35 P.S., Ch. 13A, Refs & Annos, PA ST T. 35 P.S., Ch. 13A Fireworks Law.35 P.S. 1271 et. seq.

SECTION 13. SEVERABILITY - If any section, clause, provision or portion of this ordinance shall be held invalid or unconstitutional by any Court of competent jurisdiction, such decision shall not affect any other section, clause, provision or portion of this ordinance so long as it remains legally enforceable minus the invalid portion. The Borough reserves the right to amend this ordinance or any portion thereof from time to time as it shall deem advisable in the best interests of the promotion of the purposes & intent of this ordinance, & the effective administration thereof.

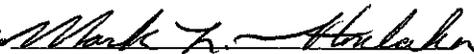
SECTION 14. EFFECTIVE DATE - This Ordinance shall be effective at the earliest time permitted by law after adoption.

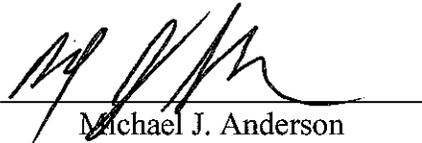
SECTION 15. This Ordinance is enacted by the Borough Council of the Borough of Highspire under the Borough Code and any other applicable law arising under the laws of the State of Pennsylvania, including but not limited to 35 P.S. § 1275.2.

ENACTED AND ORDAINED this 18th day of August, 2020.

ATTEST:

BOROUGH OF HIGHSPIRE

By: 
Mark L. Stonbraker
Secretary/Manager

By: 
Michael J. Anderson
Council President

APPROVED this 18th day of August, 2020.

By: 
Brenda K. Hoerner
Mayor

:1166970

NOTE:

The Proposed Ordinance will be considered for adoption at the regular meeting of the Highspire Borough Council on August 18, 2020 at 7:00 p.m. at the Highspire Borough Municipal Building. All interested residents are encouraged to attend.