

ORDINANCE NO. 877

**BOROUGH OF FOUNTAIN HILL
LEHIGH COUNTY, PENNSYLVANIA**

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE BOROUGH OF FOUNTAIN HILL, CHAPTER 6, PART 2, TO REVISE SECTION 202 RELATING TO THE SALE, DISCHARGE, AND POSSESSION OF FIREWORKS, TO ESTABLISH NEW REGULATIONS RELATING TO THE USE OF CONSUMER FIREWORKS WITHIN THE BOROUGH OF FOUNTAIN HILL

SECTION 1: LEGISLATIVE HISTORY

WHEREAS, on April 15, 1982, the Borough of Fountain Hill (the "Borough") adopted Ordinance No. 352, now codified in the Borough's Code of Ordinances (the "Code") at Chapter 6, Part 2; and

WHEREAS, Chapter 6, Part 2, Section 202 of the Code contains regulations relating to the sale, discharge, and possession of fireworks within the Borough that prohibit the sale, discharge, and possession of all firecrackers and fireworks; and

WHEREAS, on October 30, 2017, Governor Wolf signed into law Pennsylvania Act 43 of 2017, P.L. 672, No. 43, which, *inter alia*, authorized persons aged eighteen (18) years or older to purchase, possess, and use consumer fireworks; and

WHEREAS, on July 11, 2022, Governor Wolf signed into law Pennsylvania Act 74 of 2022, P.L. 762, No. 74, which, *inter alia*, authorized municipalities, including boroughs, to regulate the use and sale of consumer fireworks; and

WHEREAS, Pennsylvania Act 74 of 2022 is now codified in the Pennsylvania Consolidated Statutes at Title 3, Part I, Chapter 11, 3 Pa.C.S.A. §§ 1101 through 1115; and

WHEREAS, the Borough Council of the Borough of Fountain Hill ("Council") has determined that Chapter 6, Part 2, Section 202 of the Code is currently not in compliance with Pennsylvania Act 43 of 2017 and Pennsylvania Act 74 of 2022, as codified; and

WHEREAS, Council desires to amend Chapter 6, Part 2, Section 202 of the Code to bring it into compliance with Pennsylvania Act 43 of 2017 and Pennsylvania Act 74 of 2022, as codified.

NOW, THEREFORE, the Borough Council of Borough of Fountain Hill does hereby enact and ordain the following amendment to Chapter 6, Part 2, Section 202 of the Borough's Code of Ordinances.

**SECTION 2: AMENDMENT OF CHAPTER 6, PART 2, SECTION 202 OF THE
BOROUGH OF FOUNTAIN HILL CODE OF ORDINANCES**

Chapter 6, Part 2, of the Borough's Code of Ordinances, titled "Firearms and Fireworks" is hereby amended to delete Section 202, titled "Sale, Discharge and Possession of Fireworks" in its entirety, and the following is substituted therefor:

"§ 202 Regulation of Fireworks.

- A. Fireworks Defined. The term "Firework(s)" as used in this Section 202, shall have the meaning contained in 3 Pa.C.S.A. § 1101 and refers to "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 or any successor standard." The term does not include devices as "ground and hand-held sparkling devices," "novelties," or "toy caps" in APA 87-1 or any successor standard. The term also does not include "display fireworks" as the term is defined in 3 Pa.C.S.A. § 1101.
- B. Permit Required for Use of Fireworks on Certain Dates.
1. The use of Fireworks on days other than July 02, 03, 04, or when July 04 falls on a Tuesday, Wednesday, or Thursday, the immediately preceding Friday and Saturday, December 31, Memorial Day, including the immediately preceding Saturday and Sunday, and Labor Day, including the immediately preceding Saturday and Sunday, is prohibited unless authorized by a validly issued permit from the Borough of Fountain Hill.
 2. Applications for Fireworks permits shall be on a form prescribed by the Borough of Fountain Hill and shall, at a minimum, contain the following information:
 - i. The name, age, and home address of the applicant;

- ii. The address of the location at which the Fireworks will be used;
 - iii. The date and time on which the applicant proposes to use the Fireworks; and
 - iv. A description of the type of Fireworks the applicant proposes to use.
- 2. Permits shall only be issued upon satisfaction of the Fire Marshal of the Fountain Hill Borough that the Applicant's use of the Fireworks will comply with the requirements of 3 Pa.C.S.A. § 1104 (relating to use of consumer fireworks).
 - 3. Applicants proposing to use Fireworks on private property belonging to another must submit written consent of such property owner along with their application for a permit.
 - 4. The Fire Marshal shall be prohibited from issuing a permit to an applicant if the Fire Marshal determines that the location at which the applicant proposes to use Fireworks cannot facilitate the discharge of Fireworks at least 150 feet from any building or vehicle, whether or not such building or vehicle is owned by the applicant.
 - 5. The Fire Marshal shall be prohibited from issuing a permit to an applicant if the applicant proposes to use Fireworks before 10:00 a.m. or after 10:00 p.m.

C. Use of Fireworks Authorized on Certain Dates.

- 1. Permits are not required for the use of Fireworks on the following dates:
 - i. July 02, 03, 04, or, when July 04 falls on a Tuesday, Wednesday, or Thursday, the immediately preceding Friday and Saturday;
 - ii. December 31;
 - iii. Memorial Day, including the immediately preceding Saturday and Sunday; and

- iv. Labor Day, including the immediately preceding Saturday and Sunday.
2. Notwithstanding the foregoing Section 202(C)(1), the use of Fireworks is prohibited:
- i. After 1:00 a.m. on the date following July 2nd, 3rd, 4th, or, when July 4th falls on a Tuesday, Wednesday, or Thursday, the immediately preceding Friday and Saturday;
 - ii. After 1:00 a.m. on January 1st;
 - iii. Before 10:00 a.m. and after 10:00 p.m. on Memorial Day, including the immediately preceding Saturday and Sunday; and
 - iv. Before 10:00 a.m. and after 10:00 p.m. on Labor Day, including the immediately preceding Saturday and Sunday.
3. Nothing in this Section 202(C) shall be construed to permit the use of Fireworks in violation of the restrictions contained in 3 Pa.C.S.A. § 1104 including, but not limited to, the prohibition on the use of Fireworks within 150 feet of any buildings or vehicles.

SECTION 3: PROTANTO REPEAL

Unless otherwise specifically stated in this Ordinance, all ordinances or parts of ordinances, and all resolutions or parts of resolutions, in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

SECTION 4: EFFECTIVE DATE

This Ordinance shall become effective, in accordance with Section 3301.3 of the Code (8 Pa. C.S.A. § 3301.3), on the date when the Mayor approves the Ordinance, or the date of enactment by Council over the veto of the Mayor, or, if not returned by the Mayor at the next scheduled meeting of Council occurring at least ten (10) days after the meeting at which the Ordinance was enacted by Council, the date of the succeeding scheduled meeting of Council.

SECTION 5: SAVINGS CLAUSE

To the extent that any word, portion, or provision of the text hereof is found by any court of competent jurisdiction to be invalid or void on constitutional or other grounds, such word, phrase, portion, or provision shall, if possible, be deemed to be repealed and those remaining valid portions of the text shall remain in full force and effect if the same can be accomplished without the structure of the Ordinance having been destroyed by the elimination of that word, phrase, portion, or provision found to be invalid or void.

DULY ORDAINED AND ENACTED, this 21st day of June , 2023, in lawful session duly assembled.

[Voting Record and Signature Page Follows]

	Motion	2nd	Yes	No	Abstain	Absent
Philip Trabel	x		x			
Annamarie Jordan						x
Norman Blatt			x			
Will Rufe			x			
Jamie Johnson			x			
Doug Trotter			x			
Stew McCandless		x	x			
Mayor Johnson						

**BOROUGH OF FOUNTAIN HILL
LEHIGH COUNTY, PENNSYLVANIA**

Norman E. Blatt Jr, President of Council

ATTEST:

Jason Quarry, Interim Borough Mgr.

APPROVED:

Michael Johnson, Mayor
Date: