

West Brandywine Township

Board of Supervisors

Charles A. Dobson, *Chairman* Ryan A. McLaughlin, *Vice-Chairman* Carole Chappelle, *Member*

Dale Barnett., *Township Manager*

WEST BRANDYWINE TOWNSHIP CHESTER COUNTY, PENNSYLVANIA

ORDINANCE NO. 2024-01

AN ORDINANCE OF THE TOWNSHIP OF WEST BRANDYWINE TOWNSHIP, CHESTER COUNTY, PENNSYLVANIA, AMENDING THE CODE OF WEST BRANDYWINE TOWNSHIP TO ADD A NEW CHAPTER REGULATING FIREWORKS USE WITHIN THE TOWNSHIP TO PROTECT PERSONS AND PROPERTY, AND TO COMPLY WITH PENNSYLVANIA STATE STATUTES SETTING FORTH REGULATIONS REGARDING SAME.

BE IT ENACTED AND ORDAINED by the Board of Supervisors of West Brandywine Township that the Code of the Township of West Brandywine Township is hereby amended as follows:

SECTION 1. A new Chapter is hereby added to the Code of West Brandywine Township and shall be entitled, numbered and read as follows:

CHAPTER 81. FIREWORKS.

§81-1. AUTHORITY AND INTENT.

The Chapter is adopted pursuant to the authority granted under Pennsylvania's fireworks regulations and laws as adopted and codified by the Pennsylvania legislature at 3 Pa.C.S.A. §§ 1101-1115-, and pursuant to the authority to regulate fireworks as set forth in the Second Class Township Code at 53 P.S. §66534. This Chapter is adopted with the intent to comply with such state fireworks laws, properly regulate fireworks use within the Township, and to protect the health, safety and welfare of Township citizens.

§81-2. DEFINITIONS

The following words and phrases when used in this Chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

Animal Housing Facility – A roofed structure or facility, or a portion of the facility, used for occupation by livestock or poultry.

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, or any subsequent edition.

Consumer Fireworks –

(1) 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 sale, possession and use of which shall be permitted throughout this Commonwealth.

(2) 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 – 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 2 grains (130 mg) of explosive materials, aerial shells containing more than 40 grams of pyrotechnic compositions and other display pieces which exceed the limits of explosive materials for classification as “consumer fireworks.” Display fireworks are classified as fireworks UN0333, UN0334 or UN0335 by the U.S. Department of Transportation at 49 CFR 172.101. This term also includes fused setpieces containing components which together exceed 50 mg of salute powder.

NFPA 1124 – The National Fire Protection Association Standard 1124, *Code for the Manufacture, Transportation and Storage of Fireworks and Pyrotechnic Articles*, 2006 edition, or any subsequent edition.

Vehicle – Every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except devices used exclusively upon rails or tracks. The term does not include a self-propelled wheelchair or an electrical mobility device operated by and designed for the exclusive use of a person with a mobility-related disability.

§81- 3. USE, SALE AND STORAGE OF CONSUMER FIREWORKS.

- (A) Conditions. A person who is at least 18 years of age and meets the requirements of this Chapter may purchase, possess and use Consumer Fireworks.
- (B) Prohibitions. A person may not intentionally ignite or discharge Consumer Fireworks:
 - (1) On private property or 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.
 - (2) Within, directed at or directed from a vehicle or building.
 - (3) Directed at another person.
 - (4) While the person is under the influence of alcohol, a controlled substance or another drug.
 - (5) Within 150 feet of a building or vehicle, whether or not the building or vehicle is owned by the user of the consumer fireworks.
 - (6) Upon any Township roadway or Township property.
 - (7) Within 100 feet of any combustible material.
 - (8) Such that the sparks or any portion of the fireworks will land upon the property of another without the owner’s express permission.
- (C) Conditional Use. No person may use 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.
- (D) Limitations. Consumer Fireworks may not be used between the hours of 10:00 p.m. and 10:00 a.m. except:
 - (i) On July 2, 3, and 4 and December 31, when Consumer Fireworks may be used until 1:00 a.m. the following day; and
 - (ii) 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.
 - (iii) On Memorial Day, including the immediately preceding Saturday and Sunday
 - (iv) On Labor Day, including the immediately preceding Saturday and Sunday.

(E) Sale and Storage of Consumer Fireworks. Consumer Fireworks shall be sold only from facilities which are licensed by the Pennsylvania Department of Agriculture and that meet the following criteria:

- (1) The facility shall comply with the provisions of the act of November 10, 1999 (P.L. 491, No. 45), known as the Pennsylvania Construction Code Act.
- (2) The facility shall be a stand-alone, permanent structure.
- (3) Storage areas shall be separated from wholesale or retail sales areas to which a purchaser may be admitted by appropriately rated fire separation.
- (4) For a facility issued a license under 3 Pa.C.S.A. § 1108(a), the facility shall be located at least 2,500 feet from another facility licensed to sell consumer fireworks.
- (5) The facility shall have a monitored burglar and fire alarm system.
- (6) Quarterly fire drills and preplanning meetings shall be required as required by the primary fire department.
- (7) The sale of consumer fireworks may be conducted through online, mail-order or other transaction, but delivery of consumer fireworks to a purchaser shall take place at a facility licensed under 3 Pa.C.S.A. § 1108 and the sale shall be subject to the provisions of 3 Pa.C.S.A. § 1112.
- (8) Any facility that intends to sell or store Consumer Fireworks within the Township shall provide proof of licensure by the Pennsylvania Department of Agriculture prior to such use being conducted within the Township, in addition to compliance with all other applicable Township ordinances and regulations.

(F) Conditions for Facilities. A facility licensed by the Pennsylvania Department of Agriculture to sell Consumer Fireworks under 3 Pa.C.S.A. § 1108 shall be exclusively dedicated to the storage and sale of Consumer Fireworks and related items, and the facility shall operate in accordance with the following rules:

- (1) There shall be security personnel on the premises for the seven days preceding and including July 4 and on December 31.
- (2) No smoking shall be permitted in the facility.
- (3) No cigarettes or tobacco products, matches, lighters or any other flame-producing devices shall be permitted to be taken into the facility.
- (4) No minors shall be permitted in the facility unless accompanied by an adult, and each minor shall stay with the adult in the facility.
- (5) All facilities shall carry at least \$2,000,000 in public and product liability insurance.
- (6) A licensee shall provide its employees with documented training in the area of operational safety of a facility. The licensee shall provide to the Pennsylvania Department of Agriculture written documentation that each employee has received the training.
- (7) No Display Fireworks or federally illegal explosives under 49 CFR 173.54 (relating to forbidden explosives) shall be stored or located at a facility.
- (8) No person who appears to be under the influence of intoxicating liquor or drugs shall be admitted to the facility, and no liquor, beer or wine shall be permitted in the facility.
- (9) Emergency evacuation plans shall be conspicuously posted in appropriate locations within the facility.
- (10) Written notice shall be conspicuously posted or provided with each purchase of Consumer Fireworks that provides the conditions and prohibitions for use of Consumer Fireworks under 3 Pa.C.S.A. § 1104 (relating to use of Consumer Fireworks) and that additional conditions, prohibitions and limitations may be implemented by a municipality.

§81-4. DISPLAY FIREWORKS – PERMITS AND USE PROVISIONS

- (A) No Display Fireworks shall be ignited within 300 feet of a facility selling or dispensing gasoline, propane, or other flammable products, or within 300 feet of a facility selling Consumer Fireworks.
- (B) Permits are required to be issued by the Township prior to the use of Display Fireworks. Application for permits shall be made in writing at least 30 days in advance of the planned date of the use of Display Fireworks together with the permit fee. Permit fees shall be as established by resolution of the Board of Supervisors. After permission is granted under this Section, possession and use of Display Fireworks shall be lawful for that purpose only. Permits are not transferable.
- (C) Permits for Display Fireworks may only be issued to persons age 21 or older.
- (D) Each use of Display Firework shall be:
 - (i) Handled by a competent operator who demonstrates evidence of fireworks handling and safety training;
 - (ii) Of a character and so located, discharged or fired as, in the opinion of the Police Chief, Fire Chief, Fire Marshal or other appropriate officer, after proper inspection, to not be hazardous to property or endanger any person prior to the display occurring.
- (E) License Requirements. Any business entity which performs, provides or supervises Display Fireworks for profit shall provide to the Township as part of the permitting process proof of registration with the Pennsylvania Attorney General pursuant to 3 Pa.C.S.A. § 1111.
- (F) Display Fireworks may be possessed and used by a person (age 21 or older) holding a permit from the Township at the display covered by the permit, or when used as authorized by a permit for any of the following additional activities:
 - (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 public 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.

§81-5. DISPLAY FIREWORKS - INSURANCE AND EXTENSION REQUESTS

- (A) Liability Insurance. The Township shall require permittees to carry insurance in an amount not less \$1,000,000 conditioned for the payment of all damages which may be caused to a person or property by reason of the use of Display Fireworks and arising from an act of the permittee or an agent, an employee or a subcontractor of the permittee. The Township shall be an additional insured.
- (B) Extension of Permit.
 - (1) Authorization. If, because of unfavorable weather, the Display Fireworks for which a permit has been granted does not occur at the time authorized by the permit, the person to whom the permit was issued may within 24 hours apply, in writing, for a request for extension to the Township. The requested continuance of the permit shall be not later than one week after the date originally designated in the permit.

- (2) Conditions. The extension of time shall be granted without the payment of an additional fee given that the liability insurance for the original permit be extended to and cover all damages which may be caused by reason of the display occurring at the extended date and in the same manner and to the same extent as if the display had occurred at the date originally designated in the permit.

§81-6. PERMITS GRANTED FOR AGRICULTURAL PURPOSES.

- (A) Authorization. The Township may grant permits for the use of suitable Display Fireworks for agricultural purposes in connection with the raising of crops and the protection of crops from bird and animal damage.
- (B) Duration of permit. A permit under this section shall remain in effect for the calendar year in which it was issued.
- (C) Conditions. After a permit under this section has been granted, sales, possession and use of Display Fireworks of the type and for the purpose mentioned in the permit shall be lawful for that purpose only.

§81-7. AUTHORITY AND CONFISCATION OF MATERIALS

- (A) Any Pennsylvania State Police officer or Township police officer shall take, remove or cause to be removed, at the expense of the owner, all stocks of Consumer Fireworks, Display Fireworks or combustibles offered or exposed for sale, stored or held in violation of this Chapter. The owner shall also be responsible for the storage and, if deemed necessary, the destruction of these fireworks.
- (B) Any Pennsylvania State Police officer, Township police officer or Township Fire Chief is authorized to order the cessation of all fireworks activity when there is a determination that there is imminent or immediate danger to any person(s) or any property, buildings, structures or premises, take any steps necessary, within the reasonable performance of their duties to extinguish, mitigate and/or control any fireworks in order to preserve and protect the life, health, welfare or safety of any person(s) and to preserve and protect property, building structures or premises.

§81-8. PENALTIES

- (1) A person using Consumer Fireworks in violation of the provisions of this Chapter commits a summary offense and, upon conviction, shall, in addition to any other penalty authorized by law, be punishable by a fine of not more than \$500. A subsequent offense under this paragraph committed within three years of a prior conviction under this paragraph shall constitute a summary offense and, upon conviction, shall, in addition to any other penalty authorized by law, be punishable by a fine of not more than \$1,000.
- (2) A person selling Consumer Fireworks in violation of the provisions of this Chapter for the first offense commits a misdemeanor of the second degree and, upon conviction, shall, in addition to any other penalty authorized by law, be punishable by a fine of not less than \$10,000. A subsequent offense under this paragraph committed within three years of a prior conviction under this paragraph shall constitute a misdemeanor of the second degree and, upon conviction, in addition to any other penalty authorized by law, shall be punishable by a fine of not less than \$15,000 and a revocation of a license issued under 3 Pa.C.S.A. § 1108.
- (3) A person selling or using Display Fireworks in violation of the provisions of this act commits a felony of the third degree and, upon conviction, shall, in addition to any other penalty authorized by law, be punishable by a fine of not less than \$10,000. A subsequent offense under this paragraph committed within three years of a prior conviction under this paragraph shall constitute a felony of the third degree and, upon conviction, shall, in addition to any other penalty authorized by law, be punishable by a fine of not less than \$15,000.
- (4) A person selling federally illegal explosives such as devices as described in 49 CFR 173.54 (relating to forbidden explosives) or those devices that have not been tested, approved and labeled by the United States Department of Transportation, including, but not limited to, those devices commonly referred to as "M-80," "M-100," "blockbuster," "cherry bomb" or "quarter or half stick" explosive devices, in violation of the provisions of this Chapter for the first offense commits a

felony of the third degree and, upon conviction, shall, in addition to any other penalty authorized by law, be punishable by a fine of not less than \$10,000. A subsequent offense under this paragraph committed within three years of a prior conviction under this paragraph shall constitute a felony of the third degree and, upon conviction, shall, in addition to any other penalty authorized by law, be punishable by a fine of not less than \$15,000.

- (5) The Pennsylvania State Police and Township Police shall have the authority to enforce the penalty provisions of this Chapter against violators.

SECTION 2. Severability. If any term, condition, or provision of this chapter shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective.

SECTION 3. Repealer. All Ordinances or parts of Ordinances conflicting with any provisions of this Ordinance are hereby repealed insofar as the same affects this Ordinance.

SECTION 4. Effective Date. This Ordinance shall become effective as provided by law.

ENACTED this 2nd day of May, 2024.

ATTEST:

Tracy Stairs
Secretary

West Brandywine Township Board Of Supervisors

Charles A. Dobson
Charles A. Dobson, Chairman

Ryan A. McLaughlin
Ryan A. McLaughlin, Vice-Chairman

Carole Chappelle
Carole Chappelle, Member

