

**WHITEMARSH TOWNSHIP
MONTGOMERY COUNTY, PENNSYLVANIA**

ORDINANCE NO. 990

AN ORDINANCE OF WHITEMARSH TOWNSHIP, MONTGOMERY COUNTY, PENNSYLVANIA, REGULATING THE POSSESSION AND USE OF FIREWORKS WITHIN THE TOWNSHIP, PROHIBITING THE USE OF FIREWORKS ON TOWNSHIP STREETS, SIDEWALKS, PARKS, AND OTHER TOWNSHIP-OWNED PROPERTY; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; PROVIDING A SEVERABILITY CLAUSE AND EFFECTIVE DATE

WHEREAS, Section 1506 of the Second Class Township Code vests the Board of Supervisors with the authority to enact ordinances for the maintenance of peace, good government, health and welfare of the Township and its residents; and

WHEREAS, the Pennsylvania Fireworks Law, Act 43 of 2017 (the “Fireworks Law”), which took effect on October 30, 2017, allows individuals 18 years of age and older to purchase, possess and use consumer fireworks within the Commonwealth of Pennsylvania, subject to certain conditions; and

WHEREAS, the Fireworks Law prohibits a person from intentionally igniting or discharging consumer fireworks on public or private property without the express permission of the owner; and

WHEREAS, the Board of Supervisors expressly denies permission to people seeking to intentionally ignite or discharge consumer fireworks on Township streets, sidewalks, parks, and other Township-owned property; and seeks to adopt regulations governing the possession and use of fireworks within the Township; and

WHEREAS, the Board of Supervisors enacts this Ordinance in the interest of the peace, health and welfare of the Township and its residents.

NOW THEREFORE, IT IS HEREBY ORDAINED AND ENACTED by the Board of Supervisors of Whitemarsh Township as follows:

SECTION I: AMENDMENT TO CODE

The Code of Ordinances of Whitemarsh Township is hereby amended by adding the following Chapter:

Chapter 52: Fireworks

§ 52-1. Purpose.

To regulate the possession and use of fireworks in accordance with Pennsylvania law and the health, safety, and welfare of Township residents.

§ 52-2. Definitions.

“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.

- (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 or any successor standard, the sale, possession and use of which shall be permitted throughout this Commonwealth.
- (B) 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 sale, possession and use of which shall be permitted at all times throughout this Commonwealth.

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:

- (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 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).

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.

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.

OUTDOOR STORAGE UNIT. A Consumer Fireworks building, trailer, semitrailer, metal shipping container or magazine meeting the specifications of NFPA 1124.

TEMPORARY STRUCTURE. A structure, other than a permanent facility with fixed utility connections, which is in use or in place for a period of 20 consecutive calendar days or less and is dedicated to the storage and sale of Consumer Fireworks and related items. The term includes temporary retail sales stands, tents, canopies and membrane structures meeting the specifications of NFPA 1124. The term shall not include a facility that is not licensed to sell Consumer Fireworks under this article.

§ 52-3. 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, subject to the prohibitions set forth in Section §52-3(B) below.
- (B) Prohibitions. A person may not intentionally ignite or discharge:
 - 1. Consumer Fireworks on Township streets, sidewalks, parks, or other Township-owned property.
 - 2. Consumer Fireworks on private property without the express permission of the owner.
 - 3. Consumer Fireworks or sparkling devices within, or throw Consumer Fireworks or sparkling devices from, a motor vehicle or building.
 - 4. Consumer Fireworks or sparkling devices into or at a motor vehicle or building or at another person.
 - 5. Consumer Fireworks or sparkling devices while the person is under the influence of alcohol, a controlled substance or another drug.
 - 6. Consumer Fireworks within 150 feet of an occupied structure.
- (C) Time Restriction. No Consumer Fireworks shall be ignited or discharged two hours or later after sunset, as determined by the National Weather Service.
- (D) Sale and Storage of Consumer Fireworks. The sale and storage of Consumer Fireworks is licensed and regulated by the Pennsylvania Department of Agriculture. Any person who intends to sell or store Consumer Fireworks within the Township shall provide proof of such licensure prior to such use being conducted within the Township, in addition to compliance with all other applicable Township ordinances and regulations.

§ 52-4. Display Fireworks.

- (A) No Display Fireworks shall be ignited within 300 feet of a facility licensed by the Department of Agriculture to sell Consumer Fireworks, pursuant to the Fireworks Law.
- (B) Permits. The Board of Supervisors or its designee shall issue a permit to a person 21 years of age or older, for the possession and use of Display Fireworks subject to the following requirements.
 - 1. The permit shall cover an approved display, or any of the following uses:
 - 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.
 - 2. Permit Applications. Applications 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.
 - 3. Conditions. Each display shall be:
 - a. Handled by a competent operator; and
 - b. 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 designated by the Township, after proper inspection, to not be hazardous to property or endanger any person.
 - 4. License Requirements. Any business entity which performs, provides or supervises Display Fireworks for profit shall provide proof of registration with the Pennsylvania Attorney General to the Township as part of the permitting process.

5. After permission is granted under this section, possession and use of Display Fireworks shall be lawful for that purpose only.
 6. The permit shall be transferable.
- (C) Bond. The Township shall require a bond deemed adequate by it from the permittee in a sum not less than \$50,000 conditioned for the payment of all damages which may be caused to a person or property by reason of the display and arising from an act of the permittee or an agent, an employee or a subcontractor of the permittee.
- (D) Requests for an Extension.
1. Authorization. If, because of unfavorable weather, the display 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 for a request for extension to the Township.
 2. Contents of Request. The request for extension shall state under oath that the display was not made, provide the reason that the display was not made and request a continuance of the permit for a date designated within the request, which shall be not later than one week after the date originally designated in the permit.
 3. Determination. Upon receiving the request for extension, the Township, if it believes that the facts stated within the request are true, shall extend the provisions of the permit to the date designated within the request, which shall be not later than one week after the date originally designated in the permit.
 4. Conditions. The extension of time shall be granted without the payment of an additional fee and without requiring a bond other than the bond given for the original permit, the provisions of which shall extend 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.

§ 52-5. Violations and Penalties.

- (A) A 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 \$100, plus the costs of prosecution and actual attorney's fees.
- (B) A person selling Consumer Fireworks in violation of the provisions of this Chapter commits a misdemeanor of the second degree.
- (C) The Whitemarsh Township Police Department, Pennsylvania State Police, or Sheriff's deputy shall take, remove or cause to be removed at the expense of the

owner all stocks of Consumer Fireworks or 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.

- (D) A person selling Display Fireworks in violation of the provisions of this act commits a felony of the third degree.
- (E) 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 act commits a felony of the third degree.

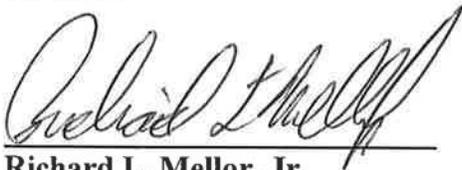
SECTION II: REPEALER. All ordinances or parts thereof inconsistent with the provisions of this Ordinance are hereby repealed to the extent of the inconsistency.

SECTION III: SEVERABILITY. It is hereby declared to be the legislative intent that if a court of competent jurisdiction declares any provision 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 and the Code of Ordinances of Whitemarsh Township shall continue to be separately and fully effective.

SECTION IV: EFFECTIVE DATE. This Ordinance shall be effective at the earliest possible date permitted by the provisions of the Whitemarsh Township Charter.

ORDAINED AND ENACTED this 25th day of October, 2018

ATTEST



Richard L. Mellor, Jr.
Secretary

**WHITEMARSH TOWNSHIP
BOARD OF SUPERVISORS**



Amy P. Grossman
Chair