

ORDINANCE NO. 1418

AN ORDINANCE OF THE BOROUGH OF TYRONE AMENDING THE BOROUGH OF TYRONE CODE OF ORDINANCES CHAPTER 98 ENTITLED "FIREWORKS", TO REQUIRE PERMITS FOR FIREWORKS DISPLAYS; TO SET FORTH DEFINITIONS; REQUIRE AN APPLICATION FOR A PERMIT FOR DISPLAY OF DISPLAY FIREWORKS; GRANT AUTHORITY TO BOROUGH COUNCIL TO GRANT OR DENY PERMITS; ESTABLISH RULES AND REGULATIONS FOR THE DETERMINATION OF A COMPETENT OPERATOR; ESTABLISH REGULATIONS GOVERNING DISPLAY LOCATIONS; ESTABLISH PERMIT CONDITIONS; PROVIDE FOR EXTENSIONS FOR UNFAVORABLE WEATHER; REQUIRE A BOND; ESTABLISH PERMIT REQUIREMENTS; PROVIDE FOR SEVERABILITY OF PROVISIONS, ESTABLISH ENFORCEMENT AND PENALTIES FOR VIOLATIONS; AND ESTABLISH AN EFFECTIVE DATE.

SECTION 1. AMENDMENT AND RESTATEMENT.

Chapter 98 of the Borough of Tyrone Code Ordinances entitled "Fireworks" is hereby amended and restated with all language to be added indicated by underlining and all language to be deleted indicated by ~~striking through~~ as follows:

§ 98-1. Permit required for fireworks display.

No person, amusement park, municipality, fair association, corporation, partnership, or other organization or group of individuals shall conduct or attempt to conduct any public display of Display ~~Fireworks~~ within the boundaries of the Borough of Tyrone or within such distance of a boundary of the Borough of Tyrone such that such display may affect the health, safety, welfare, or property of person or entities in the Borough of Tyrone, unless the person, amusement park, municipality, fair association, corporation, partnership, or other organization or group of individuals first applies and secures approval from the Borough of Tyrone for a permit authorizing such display.

§ 98-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

FIREWORKS

~~Defined as the term is defined in 35 Pa.C.S.A. § 1271, the Act of May 15, 1939, P.L. 134, § 1, as amended June 24, 1959, P.L. 486, § 1; November 9, 1973, P.L. 335, 112, § 1, as amended from time to time.~~

"Act" - shall mean Act 13 of 2017.

"Consumer Fireworks" - shall be as set forth in the Act which includes:

(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 provision for "consumer fireworks" as defined in APA 87-1 or any successor standard, the sale, possession and use of which shall be permitted at all times throughout the Commonwealth of Pennsylvania.

(2) 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 the Commonwealth of Pennsylvania.

(3) The Act allows any person at least eighteen (18) years of age to "purchase, possess and use Consumer Fireworks but such person may not intentionally ignite or discharge:

(a) Consumer Fireworks on public or private property without the express permission of the owner.

(b) Consumer Fireworks or sparkling devices within, or throw Consumer Fireworks or sparkling devices from a motor vehicle or building.

(c) Consumer Fireworks or sparkling devices into or at a motor vehicle or building or at another person.

(d) Consumer Fireworks or sparkling devices while the person is under the influence of alcohol, a controlled substance or another drug.

(e) Consumer Fireworks within 150 feet of an occupied structure.

"Display Fireworks" - shall be defined as 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 limit to:

(1) salutes that contain more than two grains or 130 milligrams of explosive materials;

(2) aerial shells containing more than 60 grams of pyrotechnic compositions; and

(3) 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).

"Temporary Structure" - shall mean 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 by the Commonwealth of Pennsylvania.

§ 98-3. Application for permit.

Applications for permitting approval for ~~such~~ a public display of Display Fireworks must be made, in writing, at the Borough offices at least 30 days in advance of the display date and shall indicate the name, address, and telephone number of the person or entity applying for the permit along with the other information as set forth below.

§ 98-4. Authority of Borough Council.

The Borough Council shall determine, in its discretion and in accordance with the provisions of this chapter, whether the permit shall be granted.

§ 98-5. Approval of applicant.

For the application to be approved and a permit issued, the applicant must furnish satisfactory documentation that the public display of Display Fireworks shall be handled by a competent operator.

§ 98-6. Determination of competent operator.

Any person who shall handle any public display of Display Fireworks, in addition to any other requirement set forth herein, shall be at least twenty-one (21) years of age and have experiences deemed satisfactory by the Chief of Police of the Borough in handling such displays which have complied with all regulations required at the location in which such displays have been held. To facilitate the decision of the Borough Council as to whether the operator is competent, the applicant shall submit the following in its application:

- A. The name, address, age and telephone number of said proposed operator.
- B. The experience of said operator in the public display of display fireworks, including the number of displays conducted by said proposed operator, educational degrees, courses, or other training with respect to the handling and display of display fireworks and/or explosives, and any license held by the operator.
- C. Whether the operator has been licensed by any governmental or private unit in the past with respect to the public display of display fireworks.
- D. The names and addresses of at least two references for which the proposed operator has conducted a public display of display fireworks.

- E. A statement as to whether at any previous public display of Display fFireworks conducted and/or supervised by said operator there occurred any injury to persons and/or property as a result of the public display of Display fFireworks-display.
- F. The application shall also set forth the proposed date, time and length of the display, and the proposed location for said display. Such application shall also include an alternate date, time, place and location in the event such original display of Display fFireworks display does not take place due to unforeseeable weather or other factors.
- G. The application should be signed by both the applicant and the proposed operator and shall state that all information contained in the application is true to the best of the signer's knowledge, information and belief.

§ 98-7. Display location.

Before approval of any application for a permit, the Borough Council shall inquire of the Chief of Police of the Borough of Tyrone and the Borough Fire Chief as to whether the proposed display of Display fFireworks display will be hazardous to property, or endanger any person or persons. Thereafter, and in the event that the Borough Council is of the opinion that the proposed operator is competent, and the Borough Council is otherwise satisfied that the issuance of said permit will not endanger the health, safety, welfare of any person or property, then the Borough Council in its discretion may authorize the issuance of said permit. Pursuant to the Act, in no event shall Display Fireworks be ignited within three hundred (300) feet of:

(a) Any stand alone permanent location licensed by the Pennsylvania Department of Agriculture to sell Consumer Fireworks; and

(b) Any Temporary Structure licensed by the Department of Agriculture licensed to sell Consumer Fireworks.

§ 98-8. Permit conditions.

Said permit, if issued, shall only authorize the applicant to conduct a public display of Display Fireworks with the proposed operator present to operate said display at the date or alternate date, time and location as set forth in the application.

§ 98-9. Extension for unfavorable weather.

Pursuant to 35 P.S. § 1274, ~~the Act of May 15, 1939, P.L. 134, § 3.1, added 1941, June 18, P.L. 432, § 4~~ the Act, if by reason of unfavorable weather the display for which a permit has been granted does not take place at the time or alternate time so authorized, the person or other entity to whom such permit was issued may within 24 hours apply to the Borough Council, setting forth under oath that such display was not made, giving the reason therefor, and requesting a continuance of such permit for a day designated therein not later than one week after the day fixed originally in said permit. Upon receiving such application for a continuance, the Borough Council may extend the provision of said permit to the day fixed in said application, and such extension of time shall be granted without the payment of any additional fee and without requiring any bond other than the one given for the original permit, the provisions of which shall extend to and cover all damages which may be caused by reason of 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.

§ 98-10. Bond required.

Pursuant to ~~35 P.S. § 1273, the Act of May 15, 1939, P.L. 134, § 3~~ the Act, the Borough of Tyrone, before a permit is issued, shall require a bond from the applicant in an amount of not less than \$1,000,000 for the payment of any and all liability, claims, causes of action, damages, costs, demands whatsoever, in law or equity to any person or persons or to property by reason of the permitted display, or arising from or in any way connected with said display or any acts of the permittee, permittee's agents, employees or subcontractors. The applicant's liability for any damages arising by reason of the permitted display shall not be limited to the amount of the bond.

§ 98-11. Permit Permissible Purposes and ~~Requirements~~.

1. Permissible Purposes - pursuant to the Act, Display Fireworks may be possessed and used by a person 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:

(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 Requirements. A permit issued pursuant to this chapter shall set forth the name of the applicant, the name of the proposed operator, the date, time and location of said display, and a clause whereby in consideration of the granting of the permit, the applicant agrees to defend and indemnify and save harmless the Borough of Tyrone and all its officers, agents and employees from any and all liability, claims, causes of action, damages, costs, demands whatsoever, in law or equity, against the Borough of Tyrone and all its officers, agents and employees, as a result or in any way connected with the public fireworks display.

§ 98-12. Enforcement; violations and penalties.

A. Enforcement. Any police officer and/or other person authorized by the Borough Council may enforce the provisions of this chapter.

B. Penalty. Any person who shall violate any provision of this chapter shall, upon conviction thereof, be sentenced to pay a fine of not less than \$500 and not more than \$1,000 plus the cost of prosecution, and/or be sentenced to imprisonment for a term not to exceed 90 days. Every day that a violation of this chapter continues shall constitute a separate and distinct offense which shall be subject to the aforesaid penalties.

SECTION 2. SEVERABILITY.

The provisions of this Ordinance are severable, and, if any of its provisions or exceptions shall be held illegal, invalid or unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions of this Ordinance. It is hereby declared to be the

legislative intent that this Ordinance would have been adopted if such illegal, invalid or unconstitutional provisions or exemptions had not been included herein.

SECTION 3. PURPOSE/AMENDMENT AND RESTATEMENT.

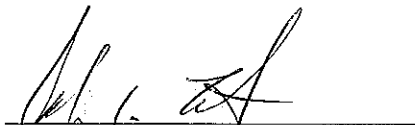
The primary purpose of this Ordinance is to amend and restate the current Chapter 98 of the Borough of Tyrone Code of Ordinances. Any prior enactment imposing such regulations is amended and restated in its entirety to read as stated in this Ordinance. Any other prior enactment or part of any prior enactment conflicting with the provisions of this Ordinance is rescinded insofar as the conflict exists. To the extent the same as any enactment in force immediately prior to adoption of this Ordinance, the provisions of this Ordinance are intended as a continuation of such prior enactment and not as a new enactment. If this Ordinance is declared invalid, any prior enactment for such regulations shall remain in full force and effect and shall not be affected by adoption of this Ordinance, and/or this Ordinance shall be considered to have been enacted under authority of any other law permitting this Ordinance to be valid. If any part of this Ordinance is declared invalid, the similar part of any prior enactment providing for such regulation or regulations shall remain in effect and shall not be affected by adoption of this Ordinance, and/or such part or parts of this Ordinance shall be considered to have been enacted under authority of any other law permitting any such part of this Ordinance to be valid. The provisions of this Ordinance shall not affect any act done or liability incurred, nor shall such provisions affect any suit or prosecution pending or to be initiated to enforce any right or penalty or to punish offense under the authority of any enactment in force prior to adoption of this Ordinance. Subject to the foregoing provisions of this Section, this Ordinance shall amend and restate on its effective date any enactment for such regulations in force immediately prior to its effective date.

SECTION 4. EFFECTIVE DATE.


This Ordinance shall become effective upon the earliest date provided by law.

ORDAINED AND ENACTED as an Ordinance of the Borough of Tyrone by the Borough Council on this 13th day of August, 2018.

ATTEST:


Ardean C. Latchford,
Borough Manager/Secretary

BOROUGH OF TYRONE

By 
William M. Latchford, Mayor/President