

TO THE RESIDENTS OF THE BOROUGH OF MIDDLETOWN

Notice is hereby given that the Borough Council of the Borough of Middletown will consider for adoption the following Ordinance at the Regular Business Meeting on November 6, 2019 at 7 P.M. in the Council Chambers of Middletown Borough Council located at Borough Hall, 60 West Emaus Street, Middletown, PA 17057.

ORDINANCE NO. 2019 - 1366

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE BOROUGH OF MIDDLETOWN, DAUPHIN COUNTY, PENNSYLVANIA, PART II, GENERAL LEGISLATION, CREATING THE NEW CHAPTER 157, FIREWORKS, TO REGULATE THE USE OF FIREWORKS WITHIN THE BOROUGH.

WHEREAS, the Council for the Borough of Middletown (the “Borough”) has determined a need to regulate the use of fireworks within the Borough as a matter of public safety and interest; and

WHEREAS, the Commonwealth of Pennsylvania enacted Act 2017-43, 72 P.S. §§ 9401-9416 regulating the sale and display of fireworks; and

WHEREAS, the Borough has been granted specific power under the Borough Code, 8 Pa. C.S.A. § 1202(17) to grant permits for the public display of fireworks and to regulate same within the Borough; and

WHEREAS, the Borough has considered the amendment to be in the best interest of Borough residents and visitors.

NOW, THEREFORE, IT IS HEREBY ORDAINED AND ENACTED, by the authority of the Borough Council of the Borough of Middletown, Dauphin County, Pennsylvania, pursuant to 8 Pa. C.S.A. § 1202(17) and the laws of the Commonwealth, that the Code of Ordinances of the Borough of Middletown, Part II, General Legislation, Chapter 157, be amended as follows:

SECTION 1. The Code of Ordinances of the Borough of Middletown, Part II, General Legislation, shall be amended and Chapter 157 be created and titled, Fireworks, and shall read as follows:

§ 157-1 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:

“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 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 within the Borough, unless otherwise provided in the Middletown Borough Code.

“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:

- (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).

“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.

§ 157-2 Permits.

(a) Permissible purposes. Display fireworks may be possessed and used by a person holding a permit issued by the Borough of Middletown at the display covered by the permit or when used as 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 a 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.

(b) Application. A permit may only be issued following the submission of written application to the Borough not less than 30 days before the date of the display fireworks. The Borough may adopt by resolution an official permit application and fee, which may be amended from time to time as may be determined by Borough Council.

(c) Age limitation. A display fireworks permit may not be issued to a person under 21 years of age.

(d) Bond. The Borough shall require a bond deemed adequate by the Middletown Borough Council 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.

§ 157-3 Request for extension.

(a) 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 Borough.

(b) 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.

(c) Determination. Upon receiving the request for extension, the Borough, 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.

(d) 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.

§ 157-4 Use of consumer fireworks.

(a) Conditions. A person who is at least 18 years of age and meets the requirements of this section may purchase, possess and use consumer fireworks.

(b) Prohibitions. A person may not intentionally ignite or discharge:

(1) Consumer fireworks on public or private property without the express permission of the owner.

(2) Consumer fireworks or sparkling devices within, or throw consumer fireworks or sparkling devices from, a motor vehicle or building.

(3) Consumer fireworks or sparkling devices into or at a motor vehicle or building or at another person.

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

(5) Consumer fireworks within 150 feet of an occupied structure.

(6) Consumer fireworks between the hours of 10:00 p.m. and 7:00 a.m., except that on New Year's Day, they shall be permitted between 12:00 midnight until 12:30 a.m.

§ 157-5 Use of display fireworks.

(a) Display fireworks shall be subject to following conditions:

(1) Each display shall be handled by a competent operator; and

(2) Each display shall be of a character and so located, discharged or fired as, in the opinion of the Chief of the Middletown Borough Volunteer Fire Department or other appropriate officer as may be designated by the Middletown Borough Council, after proper inspection, to not be hazardous to property or endanger any person.

(b) After permission is granted under this Chapter, possession and use of display fireworks for display shall be lawful for that purpose only.

(c) A permit issued under this Chapter shall be transferable upon approval of the Borough.

§ 157-6 Violation, penalties and enforcement.

(1) A person using consumer fireworks or display 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 \$100.00.

(2) Middletown Borough Police or other authorized law enforcement officials shall take, remove or cause to be removed at the expense of the owner all stocks of consumer fireworks or display fireworks 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.

SECTION 2. SEVERABILITY. If any section, provision, regulation, limitation, restriction, sentence, clause, phrase or word in this Ordinance is declared by any reason to be illegal, unconstitutional or invalid by any court of competent jurisdiction, such decision shall not affect or impair the validity of this Ordinance or Chapter 157 of the Code of the Borough of Middletown as a whole, or any other section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase, word or remaining portion of this Ordinance or Chapter 157 of the Code of the Borough of Middletown. Borough Council hereby declares that it would have adopted this Ordinance and each section, phrase and word thereof, irrespective of the fact that any one or more of those sections, provisions, regulations, limitations, restrictions, sentences, clauses, phrases or words may be declared illegal, unconstitutional or invalid.

SECTION 3. REPEALER. All ordinances or parts of ordinances that are inconsistent herewith shall be and the same expressly are repealed.

SECTION 4. EFFECTIVE DATE. This Ordinance shall become effective in accordance with applicable law.

BE IT DULY ORDAINED AND ENACTED into law this ____ day of _____ 2019, by the Borough of Middletown, Dauphin County, Pennsylvania, in lawful session duly assembled.

If you would like to obtain a copy of the proposed Ordinance prior to the Regular Business Meeting, please contact the Borough Secretary at 717-902-0706 or at gmler1@middletownborough.com.

BOROUGH OF MIDDLETOWN
Grace Miller, Borough Secretary