

Chapter 259

FIREWORKS

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[HISTORY: Adopted by the Borough Council of the Borough of South Waverly 6-4-2018 by Ord. No. 6-4-18. Amendments noted where applicable.]

§ 259-1. 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 —

- 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 Product 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 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.
- C. Consumer fireworks are "Class C" or "consumer grade fireworks" that include firecrackers, roman candles, bottle rockets, and similar fireworks that contain a maximum of 50 milligrams of explosive material.

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).

ILLEGAL EXPLOSIVES —

- A. Illegal explosives associated with the fireworks season are inherently dangerous because of their composition and unpredictability. Homemade explosives can pose a particular risk for injury because the people making them often lack knowledge and experience in manufacturing fireworks. Most law enforcement agencies consider devices such as M-80s, M-100s, quarter sticks, cherry bombs, silver salutes, etc., to be illegal because they exceed the Consumer Product Safety Commission's (CPSC) limits for consumer fireworks, in addition to being banned by many states.
- B. These devices meet no safety standards and often have a coating of dangerous explosive dust. Friction, heat, or being bumped can cause these devices to detonate. The U.S. Department of Transportation has classified these items as "forbidden explosives" because they have not been submitted for appropriate testing evaluation.

MUNICIPALITY — A city, borough, incorporated town or township. (For purposes of this chapter, the Borough of South Waverly.)

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 chapter.

§ 259-2. Permits.

- A. Permissible purposes. Display fireworks may be possessed and used by a person holding a permit from a Borough of South Waverly 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. Age limitation. A display fireworks permit may not be issued to a person under 21 years of age.
- C. Bond. The governing body of the municipality shall require a bond or insurance policy deemed adequate by it from the permittee in a sum not less than \$500,000 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.

§ 259-3. 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 municipality which granted the permit.
- 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 of South Waverly, 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 or insurance 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.

§ 259-4. Pennsylvania state law regulations for use 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:
 - (1) Consumer fireworks on public or private property without the express permission of the owner. (The Borough does not give permission for use of consumer fireworks on public property.)
 - (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.

§ 259-5. Use of display fireworks.

No display fireworks shall be ignited within 300 feet of a facility that meets the requirements of Section 2407 or Section 2410.¹

§ 259-6. Agricultural purposes.

- A. Authorization. The governing body of a municipality may, under reasonable rules and regulations adopted by it, grant permits for the use of suitable 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 fireworks of the type and for the purpose mentioned in the permit shall be lawful for that purpose only.

§ 259-7. Rules and regulations by municipality.

- A. Authorization. Permission shall be given by the governing body of a municipality under reasonable rules and regulations for displays of display fireworks to be held within the municipality.
- B. Conditions.

1. Editor's Note: Refers to Sections 2407 and 2410 of Act 43 of 2017; see 72 P.S. §§ 9407 and 9410.

- (1) 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 Chief of the Fire Department or other appropriate officer as may be designated by the governing body of the municipality, after proper inspection, to not be hazardous to property or endanger any person.
- (2) After permission is granted under this section, possession and use of display fireworks for display shall be lawful for that purpose only.
- (3) A permit shall be transferable.

§ 259-8. Permit required for display fireworks.

It shall be unlawful for any person, persons, firms or corporations, amusement parks, fair associations, farmer or agricultural operation, or any other organizations or groups of individuals, to have or to use display fireworks, as that term is defined in the October 30, 2017, Act 43 of 2017,² within the limits of the Borough of South Waverly unless a permit therefor is first granted by the Borough as hereafter provided for a display of display fireworks with a professional pyrotechnician with a United States Bureau of Alcohol, Tobacco, Firearms and Explosives permit and registration with the Pennsylvania Attorney General's Office on the designated Borough grounds, specifically the Richard L. Bentley Community Park.

§ 259-9. Exception.

- A. Any person, persons, firms or corporations, amusement parks, fair associations, or any other organizations or groups of individuals desiring to explode display fireworks, as defined in the above stated Act, in public as display fireworks shall request permission from the Borough Council to sponsor a display of display fireworks at the Borough's Richard L. Bentley Community Park and obtain a permit.
 - (1) This subsection does not apply to devices such as "ground and hand-held sparkling devices," "novelties" and "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 Borough.
- B. The permit application will contain at a minimum the following, or meet the following requirements:
 - (1) Name, address, telephone number, email address, and fax number (if applicable) of the applicant and, if the applicant is an organization, the name, address, telephone number, email address, and fax number (if applicable) of the contact person for the organization;

2. Editor's Note: See 72 P.S. § 9401 et seq.

- (2) Name of the individual or organization that will be responsible for providing the fireworks and detonation;
- (3) The operator must be registered with the Pennsylvania Attorney General's Office and have a permit from the United States Bureau of Alcohol, Tobacco, Firearms and Explosives Office.
- (4) Proposed date and time of the fireworks display;
- (5) Number and kinds of fireworks to be discharged;
- (6) The manner and place of storage of such fireworks prior to display;
- (7) The applicant shall acknowledge the fireworks will only be displayed in the Borough-designated display area.
- (8) A display fireworks permit may not be issued to a person under 21 years of age.
- (9) The application must be submitted two weeks before the event.
- (10) The applicant shall acknowledge that after the display they will be responsible for cleaning any debris and restoring the park grounds to their pre-fireworks condition, including reimbursement to the Borough for any Borough cleanup.

§ 259-10. Review and approval by Code Enforcement Officer.

- A. The Code Enforcement Officer, or his or her designee, shall designate the area where the display will originate from and allow fireworks to be detonated from that area only.
- B. The Code Enforcement Officer shall verify the applicant or has retained an operator who is a professional pyrotechnician for the display fireworks, with a registered permit from the United States Bureau of Alcohol, Tobacco, Firearms and Explosives Office and registered with the Pennsylvania Attorney General's Office.
- C. Any and all holders of fireworks display permits will be required to notify the Bradford County Emergency Management Center (at the nonemergency contact number) at least two hours in advance of the display, notifying them when and where fireworks will be displayed. The permit holders will also be required to notify the Bradford County Emergency Management Center (at the nonemergency contact number) at the conclusion of the display.
- D. The Code Enforcement Officer will not allow fireworks displays if there is a ban on open burning and/or a declared drought emergency or predicted dangerous weather conditions (high winds) in effect at the time of the notification telephone calls.
- E. The approval of the application by the Code Enforcement Officer will be required prior to the issuance of a fireworks display permit from the Borough or for permissible purposes.

§ 259-11. Insurance and liability.

- A. Applicants will be a professional pyrotechnician with registration with the Pennsylvania Attorney General and a permit from United States Bureau of Alcohol, Tobacco, Firearms and Explosives, and shall, at the time of the application, provide a certificate of insurance to the Borough with a minimum limit of bond or insurance of \$500,000 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 and naming the Borough as an additional insured.
- B. The permittee shall agree to hold harmless and indemnify the Borough and both of their officers, agents and/or employees from any liability arising from the display for which the permit is issued. This language shall appear on the permit as issued.

§ 259-12. Permit issuance.

- A. The Borough Manager, or his or her designee, will issue fireworks display permits after approval from the Code Enforcement Officer has been certified on the application, and the applicant has the required insurance. Permits will be required for each separate event for the display of fireworks.
- B. The cost of the permit will be set by resolution by Borough Council, payable to the Borough of South Waverly prior to the issuance of the permit. The Borough Council may waive all or a portion of the fee if it is appropriate based on the permittee. The Council may change the amount of the fee by resolution on their fee schedule. The initial fee for the application shall be \$100 until changed by Council resolution.

§ 259-13. Public notification.

The applicant shall be required to reimburse the Borough for a local newspaper advertisement displaying the date and time and place of fireworks. The Borough shall utilize social media and the Borough resources to publicize the date, time and place of the fireworks.

§ 259-14. Violations and penalties.

- A. A person using consumer fireworks in violation of provisions of this chapter commits a summary offense and upon conviction shall be punished by a fine of not more than \$100 under the state law.
- B. A person who intentionally ignites or discharges 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 \$500.

§ 259-15. Repealer.

The entire Borough of South Waverly Code Chapter 67, Fireworks,³ is repealed. Any ordinance or part thereof which is inconsistent herewith is hereby repealed to the extent of the inconsistency.

§ 259-16. Severability.

Should any part of this chapter be found to be unconstitutional, illegal or invalid, such parts shall not affect, impair or otherwise prevent the enforcement of the remainder of this chapter.

3. Editor's Note: Refers to Ch. 67 of the 1992 Code.