

CITY OF MONESSEN
FIREWORKS ORDINANCE
ORDINANCE NO. 5 - 2020

AN ORDINANCE ESTABLISHED THE PROCEDURE AND PROVIDING FOR THE PROMULGATION OF REGULATIONS FOR THE CITY'S ISSUANCE OF LICENSES AND PERMITS FOR DISPLAYS OF CONSUMER AND DISPLAY FIREWORKS WITHIN THE CITY, INCLUDING A BOND REQUIREMENT; PROMULGATING CERTAIN RESTRICTIONS REGARDING FIREWORKS DISPLAYS AND USE; PROVIDING FOR PENALTIES FOR THE VIOLATION THEREOF; REPEALING INCONSISTENT ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Monessen has the authority to issue permits and enforce restrictions relating to fireworks displays and uses within the City of Monessen pursuant to the Pennsylvania Tax Reform Code, as amended, 72 P.S. §§ 9401-9416;

WHEREAS, the City Council of the City of Monessen has the authority, in conformity with federal and state laws and regulations, to: (1) regulate and prohibit the manufacture of fireworks or inflammable or dangerous articles; (2) Grant permits for supervised public displays of fireworks and adopt rules and regulations governing the displays; (3) Adopt rules and regulations not inconsistent with State regulations relating to the storage of inflammable articles; and (4) Impose other safeguards concerning inflammable articles as may be necessary, pursuant to the Third Class City Code, 11 Pa.C.S.A. § 12412;

WHEREAS, the City Council of the City of Monessen has the authority to enact ordinances, resolutions, rules and regulations not inconsistent with or restrained by the Constitution of Pennsylvania and laws of this Commonwealth that are either of the following: (1) Expedient or necessary for the proper management, care and control of the city and its finances and the maintenance of the peace, good government, safety and welfare of the city and its trade, commerce and manufactures; or (2) Necessary to the exercise of the powers and authority of local self-government in municipal affairs, pursuant to the Third Class City Code, 11 Pa.C.S.A. § 12435;

WHEREAS, the City Council of the City of Monessen previously enacted Ordinance No. 7 of 2008 regarding the permitting and use of fireworks;

WHEREAS, the City Council of the City of Monessen desires to update its fireworks ordinance to comply with current law.

BE IT ENACTED AND ORDAINED by the City Council of the City of Monessen, Westmoreland County, Commonwealth of Pennsylvania, and it is hereby enacted and ordained as follows:

Section 1. Legislative Intent and Policy.

It is the legislative intent and policy of the City of Monessen to regulate the use and display of fireworks within the City of Monessen in order to protect the public and advance the purposes of public safety, including, without limitation, the avoidance of personal injuries and property damage.

Section 2. Definitions.

The following words and phrases when used in this ordinance shall have the meanings given to them in this section and shall be defined, in accordance with the Pennsylvania Tax Reform Code, 72 P.S. § 9401, as follows, unless the context clearly indicates otherwise. Where reference is made to another source, standard, regulation, or written material, such definition shall reference shall refer to such source, standard, regulation, or written material on the date of enactment of this ordinance.

“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.

“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) and complies with the provisions for “consumer fireworks” as defined in APA 87-1, the sale, possession and use of which shall be permitted throughout this Commonwealth.

(2) The term does not include devices as “ground and hand-held sparkling devices,” “novelties” or “toy caps” in APA 87-1, 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:

- (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).

“Municipality.” The City of Monessen, Westmoreland County, Commonwealth of Pennsylvania.

“NFPA 1124.” The National Fire Protection Association Standard 1124, *Code for the Manufacture, Transportation, and Storage of Fireworks and Pyrotechnic Articles*, 2006 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.

Section 3. Permits.

(a) **Permissible purposes.** Display fireworks may be possessed and used by a person holding a permit from the City 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 for a period of one calendar year.
- (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 City of Monessen 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) **Time of Display.** A permit may limit the hours during which display fireworks may be used. If a permit shall not specify any hour limitations, display fireworks may not be used outside of the hours of 10:00 a.m. and midnight on Memorial Day,

Juneteenth, Fourth of July, Labor Day, and New Years Eve (as observed) or outside of the hours of 10:00 a.m. and 10:00 p.m. on any other day.

(e) Lawful Uses. 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.

Section 4. Request for Permit 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 City.

(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 City, 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.

Section 5. Use of Consumer Fireworks.

(a) Conditions. A person who is at least 18 years of age and meets the requirements of this ordinance 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 outside of the hours of 10:00 a.m. and midnight on Memorial Day, Juneteenth, Fourth of July, Labor Day, and New Years Eve (as observed) or outside of the hours of 10:00 a.m. and 10:00 p.m. on any other day.

Section 6. Use of Display Fireworks.

No display fireworks shall be ignited within 300 feet of a sales facility or a temporary structure as defined in 72 P.S. § 9407 or 72 P.S. § 9410.

Section 7. Rules and Regulations.

(a) Authorization. Permission shall be given by the Code Enforcement Officer or such other designee of the City Council of the City of Monessen under reasonable rules and regulations for displays of display fireworks to be held within the City of Monessen.

(b) Conditions.

(1) Each display shall be:

(i) handled by a competent operator; and

(ii) of a character and so located, discharged or fired as, in the opinion of the Fire Chief or other appropriate officer as may be designated by the City Council of the City of Monessen, 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 upon application and with the approval of the Code Enforcement Officer or other appropriate officer as may be designated by the City Council of the City of Monessen.

(c) The City has no authority to issue, and shall not issue any license for the sale of consumer or display fireworks, and such sales shall be illegal within the City unless the seller possesses and prominently displays the appropriate license issued by the Commonwealth of Pennsylvania, in accordance with the Tax Reform Code, as amended.

(d) The City has no authority to issue, and shall not issue any license for the storage and storage of consumer and display fireworks, and such storage shall be illegal within the City unless the owner/operator/occupant possesses and prominently displays the appropriate license issued by the Commonwealth of Pennsylvania, in accordance with the Tax Reform Code, as amended.

(e) Any business entity or person which performs, provides, or supervises fireworks displays or exhibitions for profit shall possess and display evidence of any registration or licensure required by the Commonwealth of Pennsylvania.

Section 8. Enforcement. The City Council appoints and authorizes the City Police Department and the City Code Enforcement Officer to enforce the provisions of this ordinance.

Section 9. Penalties. The following penalties for the illegal use, sale, or storage of consumer or display fireworks, as defined herein, and the sale of federally illegal explosives, as described in 49 CFR 173.54, shall apply:

- (a) Any person, copartnership, association, or corporation using fireworks in violation of the provisions of this act commits a summary offense, and, upon conviction, shall be punished by a fine of not less than twenty-five dollars (\$25.00) and not more than one hundred dollars (\$100.00);
- (b) Any person, copartnership, association, or corporation selling consumer fireworks in violation of the provisions of the Pennsylvania Tax Reform Code commits a misdemeanor of the second degree.
- (c) Any person, copartnership, association, or corporation selling display fireworks in violation of the provisions of the Pennsylvania Tax Reform Code commits a felony of the third degree.
- (d) Any person, copartnership, association, or corporation 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 10. Municipal Liability.

The City Council, Code Enforcement Officer, and Police Department, and their agents, officials, and representatives, shall not under any circumstances be liable or responsible for damages caused to any person or property by reason of the use or display of fireworks in compliance or noncompliance with the terms and provisions hereof. The person or persons responsible for the use or display of fireworks shall bear sole liability for any damages caused as a result thereof.

Section 11. Repealer.

Any ordinance or part of any ordinance that conflicts with the provisions of this ordinance, including, without limitation, Ordinance 7 of 2008, is hereby repealed to the extent of any such conflict on the effective date of this ordinance.

Section 12. Severability.

If any provisions, sentence, clause, section, or part of this ordinance or application thereof to any person or circumstance is for any reason found to be unconstitutional, illegal or invalid by a court of competent jurisdiction, such unconstitutionality, illegality or invalidity shall

not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts of this ordinance. It is hereby declared as the intent of the City Council of the City of Monessen that this ordinance would have been adopted had such unconstitutional, illegal or invalid provision, sentence, clause, section, or part not been included herein.

Section 13. Effective Date.

This ordinance shall become effective ten (10) days after enactment.

ORDAINED AND ENACTED by the City Council of the City of Monessen, Westmoreland County, Pennsylvania, this _____ day of _____, 2020.

City of Monessen

Matthew T. Shorraw, Mayor

By: _____
John Harhai, City Clerk/City Administrator

