

Chapter 144

FIREWORKS

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[HISTORY: Adopted by the Borough Council of the Borough of Beech Creek at time of adoption of Code (see Ch. 1, General Provisions, Art. I). Amendments noted where applicable.]

§ 144-1. Scope.

In order to protect life and property in the Borough of Beech Creek, the Borough as authorized by the Fireworks Law, 72 P.S. § 9406, is promulgating rules on the issuance of permits.

§ 144-2. Definitions.

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

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: 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).

FIREWORKS LAW — Title 72 P.S. Article XXIV, 72 P.S. § 9401 et seq.

PUBLIC OFFICER — Any police officer, Mayor or elected official, sometimes herein referred to as "Public Officer," designated by the municipality to enforce the Borough ordinances.

§ 144-3. Discharge of consumer fireworks.

A. Restrictions; liability.

- (1) The possession and use of fireworks shall be conducted so as to be reasonably safe to persons and property. As such, the following restrictions will be enforced. Consumer fireworks cannot be ignited or discharged on a public or private property without express permission of the property owner; cannot be discharged from or within a motor vehicle or building; cannot be discharged toward a motor vehicle or building; cannot be discharged within 150 feet of an occupied structure; cannot be discharged while the person is under the influence of alcohol, a controlled substance, or another drug; cannot be discharged by a person younger than 18 years of age.
- (2) Further to the extent allowed by law the Borough shall have no liability for harm or injury and the applicant and permittee shall indemnify and hold harmless the Borough from all claims based upon the application composition, character, location, transportation, distribution, discharge or firing.

B. No consumer fireworks may be discharged after 11:00 p.m. or before 6:00 a.m. at any time

§ 144-4. Discharge of display fireworks.

A. Discharge of fireworks shall be by permit.

B. Permit for display fireworks.

- (1) Permits for display fireworks may be granted upon application to the Borough after approval of Council and filing of a bond and/or certificate of insurance by the applicants as provided in § 144-5. The application shall specify the composition, character, and proposed location, manner of discharge or firing, current registration with the Pennsylvania Attorney General inclusive of name of such entity/person. Every such display shall be handled by a competent operator registered as noted above and approved by the Borough Council and shall be of

such composition, character, and so located, discharged or fired as in the opinion of the Council, after consultation with the Council, and after proper inspection, and shall not be hazardous or endanger any person or persons. Further, the applicant must certify to the Borough Council that the possession, transportation, use and distribution of fireworks for display purposes will be conducted in accordance with the applicable standard specified in NFPA No 1122L, NFPA 1123 and 1126 as may be amended.

- (2) No such permit shall be issued to a person younger than 21 years of age, as provided under 72 P.S. § 9402. All permittees must be registered with the Pennsylvania Attorney General office under the Pennsylvania Fireworks Law 72 P.S. § 9411, as may be amended.
- C. Applications for permits shall be made in writing at least 30 days in advance of the date of the display. After such privilege has been granted, sale, possession, use and distribution of fireworks for such display shall be lawful for that purpose only. No permit granted hereunder shall be transferable. An extension shall be governed by 72 P.S. § 9403, as may be amended, when display prevented by unfavorable weather. The Borough may from time to time adopt an application and fees by resolution; the initial application fee shall be \$75 per permit.
- D. The possession and use of fireworks for display purposes shall be conducted so as to be reasonably safe to persons and property. Evidence by way of certification in the application that the possession, transportation, use and distribution of fireworks for display purposes will be conducted in accordance with the applicable standard specified in NFPA No 1122L, NFPA 1123 Code for Fireworks Display and NFPA Standard for the Use of Pyrotechnics Before a Proximate Audience 1126, as may be amended, shall be evidence that such design, construction, and use provide reasonable safety to persons and property. Further to the extent allowed by law the Borough shall have no liability for harm or injury based upon such certification and the applicant and permittee shall indemnify and hold harmless the Borough from all claims based upon the application composition, character, location, transportation, distribution, discharge or firing.
- E. No fireworks may be discharged after 11:00 p.m. or before 6:00 a.m. at any time.

§ 144-5. Bond and responsibility for display fireworks required.

- A. The Borough shall require a bond and/or a certificate of insurance from the permittee in a sum not less than \$250,000 conditioned on compliance with the provisions of this article, naming the Borough of Beech Creek as an additional insured (additional insured) with a notice of cancelation to the additional insured. Failure of the Borough to require or lapse of a bond/insurance shall not be grounds for liability to additional insured.
- B. Before any permit for a pyrotechnic display shall be issued, the person, firm or corporation making application therefor shall furnish proof of financial responsibility to satisfy claims for damages to property or personal injuries arising out of any act or omission on the part of such person, firm or corporation or any agent or employee thereof, in such amount, character and form as the Public Officer determines to be necessary for the protection of the public.

§ 144-6. Disposal of fireworks.

Any fireworks that remain unfired after the display is concluded shall be immediately disposed of in a way safe for the type of fireworks.

§ 144-7. Seizure of fireworks.

The Pennsylvania State Police, a sheriff or police officer may seize, take, remove or cause to be removed at the expense of the owner all stocks of fireworks offered or exposed for sale, stored or held in violation of state law as authorized under 72 P.S. § 9415.

§ 144-8. Authority for issuance of violation.

Upon finding a violation, any Public Officer, as previously defined herein, may proceed under 72 P.S. § 9414, as may be amended.

§ 144-9. Enforcement; violations and penalties.

- A. The provisions of this chapter shall be enforced by the Mayor, or Public Officer, or the Pennsylvania State Police.
- B. Any violation of the provisions of this chapter may be cause for a citation to be issued to the violator in conformance with law, with penalties to be as provided in 72 P.S. § 9414, as may be amended, as well as no limitation is intended under the Crimes Code or other law having application.

§ 144-10. Separate offenses.

Each day a violation continues or is permitted to continue may constitute a separate offense for which a separate fine may be imposed.

§ 144-11. Additional remedy or prosecution; continued violation.

- A. Any person who violates this chapter may be issued a citation for each offense as noted above; however, nothing herein limits the Public Officer(s)' ability to act under 72 P.S. § 9414, Pennsylvania Crimes Code or other law having application.
- B. Nothing herein is intended to impede or restrict the prosecution of any criminal offense for any person continuing to violate the terms of this chapter or any order to stop or desist from any illegal conduct or from being charged with any separate offense under the criminal codes or otherwise.

§ 144-12. Conflicting provisions.

All relevant ordinances, regulations, and policies of the Borough of Beech Creek, Pennsylvania, not amended shall remain in full force and effect. Any ordinance or part of an ordinance conflicting with the provisions of this ordinance shall be subordinate to this

ordinance to the extent of such conflict, and the language contained in the ordinance shall control. Nothing herein is intended to repeal the Beech Creek Borough Zoning Ordinance.¹

§ 144-13. Severability.

If any section, clause, provision or portion of this chapter shall be held invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect any other section, clause, provision or portion of this chapter so long as it remains legally enforceable minus the invalid portion. The Borough reserves the right to amend this chapter or any portion thereof from time to time as it shall deem advisable in the best interests of the promotion of the purposes and intent of this chapter, and the effective administration thereof.

§ 144-14. When effective.

This chapter shall be effective at the earliest time permitted by law after adoption.

§ 144-15. Legislative authority.

This chapter is enacted by the Council of the Borough of Beech Creek under the Borough Code and any other applicable law arising under the laws of the State of Pennsylvania, including but not limited to 72 P.S. § 9406.

1. Editor's Note: See Ch. 290, Zoning.

