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MARTINSBURG BOROUGH
BLAIR COUNTY, PENNSYLVANIA
ORDINANCE NO. 2019-617

AN ORDINANCE REGULATING THE DISPLAY AND DISCHARGE OF
FIREWORKS WITHIN THE LIMITS OF MARTINSBURG BOROUGH, BLAIR
COUNTY, PENNSYLVANIA

WHEREAS, Martinsburg Borough, Blair County, PA (“Borough”) is a political subdivision of the Commonwealth of Pennsylvania, which is entitled to the rights, privileges and immunities conferred under the Borough Code (“Code”); and

WHEREAS, under Sections 1005 and 1006 of the Code, the corporate powers of the Borough is vested in Borough Council (“Council”); and

WHEREAS, under Section 3301.1(a) of the Code, Council has the duty and authority to enact ordinances which it deems beneficial to the Borough; and

NOW, THEREFORE, it is hereby ordained and enacted by Council as follows:

Section 1. Scope – In order to protect life and property in the Borough, Council is adopting this Ordinance, which is in conformity with state law, specifically the Pennsylvania Fireworks Law.

Section 2. Definitions

Code officer – Such official designated by Council to carry out duties under this Ordinance.

Consumer fireworks – Shall mean the terms “Consumer-grade Fireworks” as defined in 35 Pa.C.S.A. § 1271 et seq., as may be amended; “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 – Shall mean the terms “Display-grade Fireworks” as defined in 35 Pa.C.S.A. § 1271 et seq., as may be amended; which are classified as including salutes that contain more than two grains or 130 milligrams of explosive material, and professional grade aerial shells containing more than 60 grams of pyrotechnic compositions.

Fireworks Law – Shall mean the Title 35, Chapter 13A, Refs. & Annotations, PA STATUTES, 35 P.S., Ch. 13A Fireworks Law, 35 P.S. 1271 et seq.

Fire Chief – The Fire Chief of the Martinsburg Volunteer Fire Company.

Public Officer – any Police Officer, Constable or Code Enforcement Officer, sometimes herein referred to as Public Officer, designated by the Borough to enforce Borough Ordinances.

Section 3. Discharge of Consumer Fireworks

- (a) Discharge of Consumer Fireworks shall be permitted during the following holidays which shall encompass the twenty four hour period prior to and immediately after the holidays itself: Memorial Day, Independence Day, Labor Day and Veterans Day, subject to the restrictions set forth in this Ordinance.
- (b) Consumer Fireworks may be set off only between the hours of 4:00 p.m. and 10:00 p.m.
- (c) The possession and use of Consumer Fireworks shall be conducted so as to be reasonably safe to persons and property.
- (d) Consumer Fireworks cannot be ignited or discharged on a public or private property without the express permission of the property owner.
- (e) Consumer Fireworks cannot be discharged from or within a motor vehicle or building.
- (f) Consumer Fireworks cannot be discharged toward a motor vehicle or building.
- (g) Consumer Fireworks cannot be discharged within 150 feet of an occupied structure.
- (h) Consumer Fireworks cannot be discharged while the person is under the influence of alcohol, a controlled substance, or another drug.
- (i) Consumer Fireworks cannot be discharged by a person younger than eighteen (18) years of age.

Section 4. Discharge of Display Fireworks

- (a) Discharge of fireworks shall be by permit.

- (b) Permits for Display Fireworks may be granted upon application to the Code Officer after approval of the Fire Chief and filing of a bond and/or certificate of insurance by the applicants as provided in Section 4(c).
- (c) The application shall specify the composition, character, and proposed location, manner of discharge of firing, current registration with the Pennsylvania Attorney General inclusive of the name of such entity/person. Every such display shall be handled by a competent operator registered as noted above and approved by the Code Officer and shall be of such composition, character, and so located, discharged or fired as in the opinion of the Code Officer, after consultation with the Fire Chief, and after proper inspection, and shall not be hazardous or endanger any person or persons. Further the Applicant must certify to the Code Officer and Fire Chief that the possession, transportation, use and distribution of the fireworks for display purposes will be conducted in accordance with the applicable standard specified in NFPA No. 1122L, NFPA 1123 and NFPA 1126 as may be amended.
- (d) No such permit shall be issued to a person younger than twenty-one (21) years of age as provided under 35 P.S. § 1275.

Section 5. Bond and Responsibility for Display Fireworks Required

- (a) The Code Officer shall require a bond and/or a certificate of insurance from the permittee in a sum not less than Two Hundred Fifty Thousand (\$250,000.00) Dollars conditioned on compliance with the provisions of this Article, naming the Code Officer, Fire Chief and Borough of Martinsburg as an additional insured (Additional Insured) with a notice of cancellation to the Additional Insured. Failure of the Borough to require or allow a 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 therefore 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.

Section 6. Disposal of Fireworks

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

Section 7. Seizure of Fireworks

The Public 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 35 P.S. § 1278.

Section 8. Authority for Issuance of Violation

Upon finding a violation, any Public Officer, as previously defined herein, may proceed under 35 PS. § 1277, as may be amended.

Section 9. Enforcement

- (a) The provisions of this Ordinance shall be enforced by the Public Officers assigned by the Borough of Martinsburg, and as such phrase is otherwise defined above, including but not limited to the Martinsburg Borough Police Department.
- (b) Any violation of the provisions of this Ordinance may be cause for a citation to be issues to the violator I conformance with law, with a fine of no less than One Hundred Dollars (\$100.00) and no more than Six Hundred Dollars (\$600.00); also, enforcement may include but no limited to 35 P.S. § 1277, as may be amended. The foregoing provisions are not intended to limit any applicable provisions of the Pennsylvania Crimes Code or other law having application.

Section 10. Separate Offense

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

Section 11. Fines and Penalties

- (a) Any person who violates this Ordinance may be issued a citation for each offense as noted above, however, nothing herein limits the Public Officers' ability to act under 35 P.S. § 1266, Pa. 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 Ordinance 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.

Section 12. Conflicting Ordinances

All relevant ordinances, regulations, and policies of the Borough of Martinsburg, Blair County, 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 Martinsburg Borough Zoning Ordinance. Further, nothing herein is intended on limiting the Public Officers authority under Title. 35 P.S., Ch. 13 A, Refs & Annos, PA ST T. 35 P.S., Ch. 13A, Fireworks Law. 35 P.S. 1271 et. seq.

Section 13. Severability

If any section, clause, provision, or portion of this ordinance shall be held invalid or unconstitutional by any Court of competent jurisdiction, such decision shall be affect any other section, clause, provision or portion of this ordinance so long as it remains legally enforceable minus the invalid portion.

Section 14. Effective Date

This Ordinance shall be effective upon adoption.

ENACTED this 24th day of June, 2019.

ATTEST:

MARTINSBURG BOROUGH

Jane Staily,
Borough Secretary/Treasurer

Connie L. Lamborn, President

Approved this 24th day of June, 2019.

Richard A. Brantner, Sr.
Mayor