

ORDINANCE NO. 0705-2023

AN ORDINANCE OF THE BOROUGH OF WEST PITTSTON REGULATING THE USE OF CONSUMER FIREWORKS AND DISPLAY FIREWORKS WITHIN THE BOROUGH AND PROVIDING FOR PERMITS IN CERTAIN CASES.

WHEREAS, Act 74 of 2022, House Bill 2157, P.N. 3332 was adopted by the General Assembly on July 6, 2022, was signed by the Governor on July 11, 2022, amends Title 3 Pa.CS. Chapter 11 (hereafter, "Fireworks Law" or "Law"), and became effective on September 9, 2022; and

WHEREAS, the Fireworks Law governs the sale, purchase and use of Consumer Fireworks and Display Fireworks in the Commonwealth; and

WHEREAS, the Fireworks Law authorizes Pennsylvania municipalities to prohibit or restrict certain uses of Consumer Fireworks as defined in the Law if the municipality determines that certain conditions are met; and

WHEREAS, the Fireworks Law authorizes the adoption of local rules and regulations by the Borough that govern permit approvals; and

WHEREAS, the West Pittston Borough Council has determined that the full authority provided by the Fireworks Law should be exercised in the interests of public safety; and

WHEREAS, the West Pittston Borough Council has determined after conducting appropriate inquiries during its meetings and after receiving public comment, that use of Consumer Fireworks within the Borough would violate the prohibition in the Fireworks Law and specifically Sections 6(a)(1.2) and 1104(b)(5) (relating to use of consumer fireworks), and would be contrary to the public interest and harmful to public safety; and

WHEREAS, the West Pittston Borough Council desires to regulate the use of Display Fireworks and Consumer Fireworks within Borough limits.

NOW, THEREFORE, BE AND IT IS HEREBY ORDAINED and enacted by the West Pittston Borough Council as follows:

SECTION 1.

Definitions:

For purposes of this Ordinance, the definitions of "Consumer Fireworks" and "Display Fireworks" shall be that set forth in Section 1 of the Fireworks Law, appearing here as Attachment "A" to this Ordinance, and any successor legislation. As set forth therein, the term "Consumer Fireworks" shall not include devices such as "ground and hand-held sparkling devices," "novelties," or "toy caps."

SECTION 2.

Display Fireworks:

- 2.1 In accordance with the Fireworks Law, a permit is required before any use of Display Fireworks within the Borough limits. Permit application forms are available through the Code Enforcement Office during normal business hours. The application must include facts sufficient to establish that the Display Fireworks will not be ignited within 300 feet of sales locations for Consumer Fireworks and that the Display Fireworks will be handled by a competent operator at least 21 years of age who demonstrates evidence of fireworks handling and safety training, all in accordance with Sections 1102 and 1107 of the Fireworks Law. The application must include the approval of the chief of the fire department or other appropriate official as may be designated by the Borough Council and that the Display Fireworks will not be located, discharged or fired in such a manner as to be hazardous to property or an endangerment to any person. The application shall be accompanied by a certificate of insurance in accordance with Subsection 1102(d) of the Law. The applicant must acknowledge acceptance of the requirements otherwise established by state and federal law, Permit extensions shall be permitted in accordance with Subsection 1102(e), provided the extension sought receives a renewed approval by the designated official that the extended use would not be hazardous to property or an endangerment to any person.
- 2.2 In accordance with Section 1105(a) of the Law, the West Pittston Borough Council may under this Ordinance grant permits for the use of Display Fireworks for agricultural purposes in connection with the raising of crops and the protection of crops from bird and animal damage. The application for such a permit must meet the requirements of this Section. A permit under Section 1105 shall be accompanied by a certificate of insurance in an amount not less than \$1,000,000.00 conditioned for the payment of all damages which may be caused to a person or property by reason of the use of display fireworks and arising from an act of the permittee or an agent, an employee or a subcontractor of the permittee. A permit shall remain in effect for the calendar year in which it was issued. Sales, possession and use of Display Fireworks for the purpose stated in the permit shall be lawful for that purpose only.
- 2.3 Applications for use of Display Fireworks shall be submitted at least three weeks (3) prior to the date of proposed use. Permits for the use of Display Fireworks may be granted by the West Pittston Borough Council, by the Borough Manager, or by such official or officials as are so designated by the West Pittston Borough Council, upon approval of the application and payment of a fee of \$300.00 Dollars (\$300.00).

SECTION 3.

Consumer Fireworks:

In accordance with the Fireworks Law, consumer fireworks are prohibited for use:

- (1) On private property or public property, including, but not limited to, streets, parking lots, sidewalks and parks, without the express permission of the owner or entity that controls the property.
- (2) Within, directed at or directed from a vehicle or building.
- (3) Directed at another person.
- (4) While the person is under the influence of alcohol, a controlled substance or another drug.
- (5) Within 150 feet of a building or vehicle whether or not the building or vehicle is owned by the user of the consumer fireworks.
- (6) Within 150 feet of any animal housing facility or fenced area designed to confine livestock owned or managed by another person in accordance with Section 1104(c) of the Law.
- (7) Between the hours of 10:00 p.m. and 10:00 a.m. except on July 2, 3 and 4 and December 31 when consumer fireworks may be used until 1:00 a.m. the following day. When July 4 falls on a Tuesday, Wednesday or Thursday, consumer fireworks may be used until 1:00 a.m. on the immediately preceding and following Friday and Saturday.
- (8) Nothing herein shall restrict or regulate the use of consumer fireworks on the following days: (a) the days listed in section (7) above; (b) Memorial Day, including the immediately preceding Saturday and Sunday; and (c) Labor Day, including the immediately preceding Saturday and Sunday.

SECTION 4.

Certified copies of this Ordinance shall be provided to the Judges of the Court of Common Pleas and all Magisterial Judges within the Borough, posted on the Borough's website, and made available to the public at the Borough's Municipal Building, 555 Exeter Avenue, West Pittston, Pennsylvania 18643.

SECTION 5.

Nothing in this Ordinance governs the sale of Consumer Fireworks for the period of one year from the effective date of the Fireworks Law in accordance with Section 1106(a)(2) of the Law.

SECTION 6.

6.1 In accordance with the provisions of Section 1114(1) of the Law, any person using Consumer Fireworks in violation of the provisions of this Ordinance, for the first offense commits a summary offense, and upon conviction shall, in addition or any other penalty authorized by law, be punishable by a fine of not more than Five Hundred (\$500.00) Dollars. A subsequent offense under this Ordinance committed within three years of a prior conviction shall constitute a summary offense, and upon conviction shall, in addition to any other penalty authorized by law, be punishable of a fine of not more than One Thousand (\$1 ,000.00) Dollars.

6.2 Any person selling Consumer Firework in violation of the Law is punishable in accordance with Section 1114(2) be punishable by a fine of not less than \$10,000.

6.3 Any person selling or using Display Fireworks in violation of the Law is punishable in accordance with Section 1114(3) by a fine of not less than \$10,000.00.

SECTION 7.

All ordinances or resolutions or parts ordinances or resolutions insofar as they are inconsistent herewith are hereby repealed and rescinded.

SECTION 8.

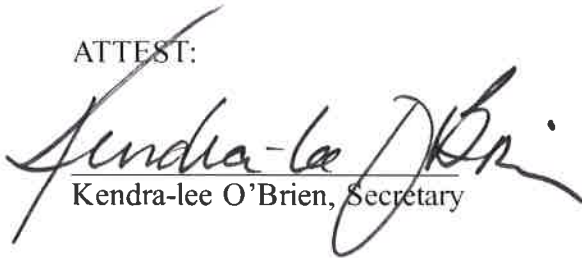
In the event any provision, section, sentence, clause or part of this Ordinance shall be held to be invalid, such invalidity shall not effect or impair any of the remaining provisions, sections, sentences, clauses or parts of this Ordinance; it being the intent of the Borough that the remainder of the Ordinance shall be and shall remain in full force and effect.

SECTION 9.

This Ordinance shall take effect in accordance with the Laws of the Commonwealth of Pennsylvania.

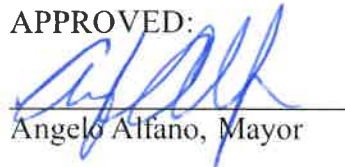
Duly enacted and ordained at a regular meeting of the West Pittston Council held the 5th day of July 2023.

ATTEST:


Kendra-lee O'Brien, Secretary


Ellen Quinn, President

APPROVED:


Angelo Alfano, Mayor

LEGAL NOTICE

NOTICE IS HEREBY GIVEN that at a regular meeting of the West Pittston Borough Council to be held on July 5, 2023, at 6:30 p.m. prevailing time, at the West Pittston Borough Building, 555 Exeter Avenue, West Pittston, Pennsylvania, a proposed Ordinance shall be considered and proposed for enactment and passage, and public comment is solicited. Said proposed Ordinance is entitled as follows:

FIREWORKS

In summary, the proposed Ordinance regulates the use, sale, distribution and possession of fireworks in the Borough. A copy of the full text of the said proposed Ordinance is available for examination at the Borough Building in the office of the Borough Secretary during regular office hours, Monday through Friday. Also, a copy of the proposed Ordinance has been provided to the newspaper of general circulation in which this legal notice is being published.

MARK W. BUFALINO, ESQUIRE
West Pittston Borough Solicitor
15 Public Square Suite 210
Wilkes-Barre, PA 18701

Please Publish on June 21, 2023