

**BOROUGH MOUNT POCONO
FIREWORKS ORDINANCE**

ORDINANCE NO. 3 OF 2020

**AN ORDINANCE REGULATING THE USE OF CONSUMER FIREWORKS AND PROVIDING
FOR THE GRANTING OF PERMITS FOR THE USE OF DISPLAY FIREWORKS,
PRESCRIBING SAFEGUARDS CONCERNING SAME, PROHIBITING THE USE OF DISPLAY
FIREWORKS WITHOUT OBTAINING A PERMIT THEREFORE, AND PRESCRIBING
PENALTIES FOR VIOLATIONS
TO BE KNOWN AS CHAPTER 99 OF THE MOUNT POCONO BOROUGH CODE**

WHEREAS, the Borough of Mount Pocono (hereafter, Borough) is a political subdivision of the Commonwealth of Pennsylvania, which is entitled to the rights, privileges and immunities conferred under The Borough Code (hereafter, Code), 8 Pa. C.S.A. §101 et seq.; and

WHEREAS, under Sections 1005 and 1006 of the Code, 8 Pa. C.S.A. §§1005 and 1006, the corporate power of the Borough is vested in the Borough Council; and

WHEREAS, under Section 1202 of the Code, Borough Council has the specific power to enact ordinances as may be necessary for the health, safety, morals, general welfare and cleanliness and beauty, convenience, comfort and safety of the Borough; and

WHEREAS, as additionally authorized by the Fireworks Law, Act 43 of 2017, 72 P.S. § 9401 et seq., the Borough may regulate the use of display and consumer fireworks within the Borough.

NOW, THEREFORE, it is hereby Ordained and Enacted by the Borough Council of Mount Pocono, Monroe County, Pennsylvania, that:

SECTION 1. DEFINITIONS.

"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) 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.

(2) 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 – Shall mean Act 43 of 2017, 72 P.S. § 9401 et seq., as may be amended.

Public Officer – Any Police Officer, Constable or Code Enforcement Officer, sometimes herein referred to as Public Officer, designated by the municipality to enforce the Borough ordinances, and also, to the extent permitted by Intra-jurisdictional Agreement(s), such other Police Officers duly authorized thereunder.

SECTION 2. No Consumer Fireworks may be discharged within the Borough of Mount Pocono before 9:00 a.m. or after 11:00 p.m. except for New Year's Eve, when 11:00 p.m. shall be extended to 1:00 a.m. New Year's Day. No Consumer Fireworks may be discharged within the Borough of Mount Pocono within 200 feet of an occupied structure which term is defined as a structure, vehicle or place adapted for overnight accommodation of persons or for conducting business whether or not a person is actually present.

SECTION 3. It shall be unlawful for any persons, firms, or corporations to possess or use Display Fireworks within the limits of the Borough unless a permit is first granted by the Borough.

SECTION 4. Holders of permits to possess and use Display Fireworks within the Borough must comply with and abide by all Pennsylvania and federal statutes and regulations governing the use and storage of Display Fireworks, including, but not limited to, the International Fire Code and the Uniform Construction Code (Act 45 of 1999, as amended) ("UCC"). In the event of an inconsistency between the aforementioned state and federal laws and regulations and this Ordinance, the more stringent statutes and regulations shall apply.

Before a permit for the possession and use of Display Fireworks may be issued, the applicant must apply to the Borough's building code official for a permit under the UCC. If the building code official indicates in writing that no UCC permit is required, the application shall be processed in accordance with this Ordinance. If a UCC permit is required, the applicant must present the valid UCC permit before a Display Fireworks permit may be issued under this Ordinance.

SECTION 5. Every use of Display Fireworks within the Borough shall be handled, arranged, managed, and directly supervised by a competent operator. The Borough Code Official, or other such officer designated by the Borough Council, shall inspect the proposed site prior to issuing a permit in accordance with the terms and conditions set forth in this ordinance and ensure that the site and proposed use of Display Fireworks are not hazardous to property, will not endanger any person(s) and will be in compliance with said regulations.

SECTION 6.

(A) An application for a permit shall be made in writing to the Borough at least 30 days in advance of the date of the proposed use of Display Fireworks, setting forth the proposed date, time, and location, the character and duration thereof, the name and address of the competent operator, and the name and address of the owner(s) of the grounds on which the Display Fireworks are to be used, with the written consent of such owner(s) and a copy of any permit application required by the International Fire Code and/or the UCC. The application shall contain copies of all state, federal, and local permits and/or licenses needed for the use of Display Fireworks. All applicants shall pay the Borough the appropriate permit fee identified on the Borough's duly enacted fee schedule and provide proof of liability insurance acceptable to the Borough and the required bond prior to issuance of a permit. The Borough Council or its designee may attach conditions and/or restrictions on any permit for the use of Display Fireworks as deemed necessary.

(B) Permits granted under this section shall be for the approved purpose, date, and time only, unless extended due to unfavorable weather under Section 8.

(C) No permit for the use of Display Fireworks shall be issued to an individual under the age of 21.

(D) No permit for the use of Display Fireworks shall be issued to an individual unless said individual provides written documentation that he or she has all necessary federal licenses and authorizations to possess, store, and use Display Fireworks.

(E) No Display Fireworks shall be ignited within 300 feet of a permanent or temporary fireworks facility licensed by the Pennsylvania Department of Agriculture.

(F) No permit shall be issued to a business entity which performs, provides or supervises the use of Display Fireworks for profit unless it provides proof of registration with the Pennsylvania Attorney General.

(G) Permits issued pursuant to this Ordinance may be transferred in accordance with Act 43 of 2017. Such transfers shall take effect only after (1) the permit holder provides written notice of the proposed transfer to the Borough; and (2) the transferee provides a written statement that he or she agrees to comply with the requirements stated in the permit and this Ordinance. Both must be provided to the Borough at least 10 days in advance of the transfer.

(H) Display Fireworks are not permitted during a Red Flag warning issued by the National Weather Service.

SECTION 7. The Borough shall require a bond from the applicant in an amount deemed appropriate by the Borough Council or its designee. The bond amount shall be no less than \$50,000 and shall be provided for the payment of any and all damages caused to any person(s) and property by reason of the display and arising from any acts of the permittee or the permittee's agents, employees, subcontractors, or volunteers. The bond shall be in a form acceptable to the Borough and no permit for the use of Display Fireworks shall be issued unless an acceptable bond is received by the Borough.

SECTION 8. If by reason of unfavorable weather the display for which a permit has been granted does not take place at the time authorized, the permittee may apply to the Borough within twenty-four (24) hours, setting forth under oath the fact that such display was not made, the reason, and request for a continuance of such permit for a specifically designated day, no later than one week after the day fixed originally in said permit. Upon receiving such application for a continuance, the Borough shall extend the provisions of the permit to the day fixed in the application, no later than one week after the original day designated in the permit, if it believes the facts to be true. Such extension of time shall be granted without the payment of any additional fee or requiring any bond other than the one given for the original permit. The provisions of the original bond shall extend to and cover all damages which may be caused by reason of said display taking place at the extended date in the same manner and to the same extent as if such display had taken place at the date originally fixed in the permit.

SECTION 9. Any person violating the provisions of this Ordinance shall be guilty of a summary offense, and upon conviction thereof, shall be punished by a fine not exceeding \$1,000.00 or by imprisonment not exceeding 30 days or by both such fine and imprisonment.

SECTION 10. 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 not affect any other section, clause, provision or portion of this ordinance so long as it remains legally enforceable minus the invalid portion. The Borough reserves the right to amend this ordinance or any portion thereof from time to time as it shall deem advisable in the best interests of the promotion of the purposes & intent of this ordinance, & the effective administration thereof.


SECTION 11. This Ordinance is effective immediately.

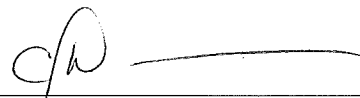
SECTION 12. This Ordinance is enacted the Council of the Borough of Mount Pocono under the Borough Code and any other applicable law arising under the Laws of the Commonwealth of Pennsylvania, including but not limited to the Fireworks Law.

ORDAINED AND ENACTED this 1st day of June 2020.

ATTEST:

THE BOROUGH OF MOUNT POCONO


Lori Noonan, Secretary/Treasurer



Claudette Williams, Council President

Approved this 1st day of June 2020.



Michael Penn, Mayor