

**BOROUGH OF ALBURTIS
LEHIGH COUNTY, PENNSYLVANIA**

Ordinance No. 548

(Duly Adopted September 12, 2018)

AN ORDINANCE ESTABLISHING REGULATIONS FOR THE USE OF FIREWORKS IN THE BOROUGH OF ALBURTIS, INCLUDING DEFINITIONS, TIME RESTRICTIONS PROHIBITING THE USE OF CONSUMER FIREWORKS ON ANY DAY BEFORE 10:00 A.M. OR AFTER 10:00 P.M., PROVISIONS ESTABLISHING THAT THE BOROUGH DOES NOT PERMIT THE USE OF CONSUMER FIREWORKS ON OR FROM PROPERTY OWNED, LEASED, OR CONTROLLED BY THE BOROUGH, PROVISIONS RELATING TO PERMITS FOR DISPLAY FIREWORKS, AND ESTABLISHING PENALTIES FOR VIOLATIONS.

Be it **ORDAINED** and **ENACTED** by the Borough Council of the Borough of Alburtis, Lehigh County, Pennsylvania, that the Codified Ordinances are hereby amended by adding the following new Chapter 95 to Part VIII, as follows:

Chapter 95 — Fireworks

Article I — Title, Intent, and General Definitions

§ 95-101 Short Title.

This Chapter shall be known, and may be cited, as the “Borough of Alburtis Fireworks Ordinance.”

§ 95-102 Legislative Intent.

Council finds that sudden or repeating late-night and early-morning noise and visual disturbances resulting from the ignition, discharge, or launch or consumer fireworks are detrimental to the physical, mental, and social well-being of Borough residents as well as to their comfort, living

conditions, general welfare, and safety, and peaceful enjoyment of their residences, and are therefore a public health and welfare hazard and noise pollution hazard. Accordingly, Council hereby declares it to be necessary to provide for the greater control and more effective regulation of such noise and visual disturbances within the Borough.

§ 95-103 Definitions—In General.

For purposes of this Chapter, the terms defined in the remaining Sections of this Article I shall have the meanings indicated therein, whether with or without initial capital letters, unless the context in which they are used clearly indicates a different meaning.

§ 95-104 Consumer Fireworks.

The term “consumer fireworks” shall have the same meaning as defined in section 2401 of the Tax Reform Code of 1971, as amended, 72 PA. STAT. ANN. § 9401, and as it may be amended from time to time. The term does not include devices such as “ground and hand-held sparkling devices,” “novelties,” or “toy caps” as excluded under section 2401, the sale, possession, and use of which shall be permitted at all times throughout the Borough.

§ 95-105 Display Fireworks.

The term “display fireworks” shall have the same meaning as defined in section 2401 of the Tax Reform Code of 1971, as amended, 72 PA. STAT. ANN. § 9401, and as it may be amended from time to time.

§ 95-106 Person.

The term “person” shall include individuals; corporations, companies, associations, firms, partnerships, limited liability companies, and other entities; and municipalities, authorities, and other governmental or quasi-governmental entities, agencies, departments, or instrumentalities of a state or a political subdivision of a state. Whenever used in any clause

prescribing and imposing a penalty, the term “person” includes the members, partners, officers, and managers of the aforementioned private or public entities.

Article II — Consumer Fireworks

§ 95-201 Time Restriction.

(a) No person who owns, possesses, or has control or supervision of consumer fireworks shall permit, make, or cause the ignition, discharge, or launch of such consumer fireworks with the Borough on any day before 10:00 A.M. or after 10:00 P.M.

(b) No person who is the owner or tenant of any property in the Borough shall permit the ignition, discharge, or launch of consumer fireworks on or from such property on any day before 10:00 A.M. or after 10:00 P.M.

§ 95-202 Borough Owned, Leased, or Controlled Property.

It is hereby established that the Borough does not permit, and hereby prohibits in accordance with section 2404(b)(1) of the Tax Reform Code of 1971, as amended, 72 PA. STAT. ANN. § 9404(b)(1), the intentional ignition or discharge of consumer fireworks by any person on or from property owned, leased, or controlled by the Borough, including, without limitation, parks, buildings, structures, streets, sidewalks, and rights-of-way.

§ 95-203 State Fireworks Law.

All possession and use of consumer fireworks in the Borough is subject to the conditions and prohibitions set forth in Article XXIV of the Tax Reform Code of 1971, as amended, 72 PA. STAT. ANN. § 9401 *et seq.*

Article III — Display Fireworks

§ 95-301 In General.

Permits may be granted by Council, under reasonable rules and regulations, for displays of display fireworks to be held within the Borough, in accordance with the conditions and limitations set forth in Article XXIV of the Tax Reform Code of 1971, as amended, 72 PA. STAT. ANN. § 9401 *et seq.*

§ 95-302 Rules and Regulations.

Permits under this Article III may only be granted for displays:

(a) of a character and so located, discharged, or fired, in the opinion of the Borough Fire Chief, so as to not be hazardous to property or endanger any person;

(b) which are handled by a competent operator, as reasonably determined by Council; and

(c) at such times and locations, and of such extent, as to minimize the detriments to the public health, safety, and welfare of the residents, businesses, and organizations of the community, including, but not limited to, the particular effects of each individual display and the cumulative effects of multiple displays in a calendar year, as reasonably determined by Council, and weighing the importance of the display as compared to the detriments involved. Council may determine that the detriments of a proposed display outweigh its benefits, and thereby deny a permit for the display.

Council may impose reasonable conditions and limitations in any permit granted under this Article III.

§ 95-303 Bond.

Council shall require each permittee under this Article III to provide a bond, in an amount deemed adequate by Council but in no event less than fifty thousand dollars (\$50,000.00), 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 employee.

§ 95-304 Requests for Extension.

Requests for the extension of a permit under this Article III to a different time may be made and granted in accordance with the provisions of section 2403 of the Tax Reform Code of 1971, as amended, 72 PA. STAT. ANN. § 9403.

Article IV — Violations and Penalties

§ 95-401 Violations and Penalties.

(a) **Criminal Penalty—Consumer Fireworks.** Any person who shall violate § 95-201 shall be subject to prosecution in the same manner as provided for a summary offense under the Pennsylvania Rules of Criminal Procedure and, upon conviction, shall be sentenced to pay a criminal fine of One Hundred Fifty Dollars (\$150.00) for each such violation.

(b) **Criminal Penalty—Display Fireworks.** Any person who shall ignite, discharge, or launch any display fireworks in the Borough without a permit for the specific activity engaged in issued by Council, or violate any provision of a permit issued under Article III, shall be subject to prosecution in the same manner as provided for a summary offense under the Pennsylvania Rules of Criminal Procedure and, upon conviction, shall be sentenced to pay a criminal fine of One Thousand Dollars (\$1,000.00) for each such violation.

(c) **Costs and Attorney Fees.** In addition to the fines provided in subsections (a) and (b), any person found to have committed such a violation shall be assessed court costs and reasonable attorney fees incurred by the Borough in the proceeding.

(d) Equitable Remedies. In addition to or in lieu of enforcement of this Chapter through a criminal proceeding, the Borough may enforce this Chapter through an action in equity brought in the Court of Common Pleas of Lehigh County. The Borough Solicitor shall have authority to commence the action in equity on behalf of the Borough without explicit authorization of Council in any situation where the Solicitor or the President of Council deems it advisable to act before the next regular Council meeting.

DULY ORDAINED and **ENACTED** by the Borough Council of the Borough of Alburtis, this 12th day of September, 2018, in lawful session duly assembled.

BOROUGH COUNCIL
BOROUGH OF ALBURTIS

Ronald J. DeIaco, President

Attest:

Sharon Trexler, Borough Manager

AND NOW, this 12th day of September, 2018, the above Ordinance is hereby
APPROVED.

Kathleen Palmer, Mayor