

**BOROUGH OF ALBURTIS
LEHIGH COUNTY, PENNSYLVANIA**

Ordinance No. 585

(Duly Adopted March 27, 2024)

AN ORDINANCE REVISING CHAPTER 95 OF THE ALBURTIS CODIFIED ORDINANCES (RELATING TO FIREWORKS) TO CONFORM TO CHANGES IN THE STATE FIREWORKS LAW.

Be it **ORDAINED** and **ENACTED** by the Borough Council of the Borough of Alburtis, Lehigh County, Pennsylvania, that Codified Ordinances Chapter 95 (relating to Fireworks) is amended as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

Chapter 95 — Fireworks

Article I — Title, Intent, and General Definitions

* * *

§ 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~~ 3 PA. CONS. STAT. § 1101, and as it may be amended from time to time, ~~or any successor legislation.~~ As of March 13, 2024, the term includes 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 American Pyrotechnics Association Standard 87-1 (Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics), 2001 edition (“APA 87-1”). ~~The~~ However, the term does not include devices such as “ground and hand-held sparkling devices,” “novelties,” or “toy caps” ~~as excluded under section 2401 in APA 87-1,~~ 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~~ 3 PA. CONS. STAT. § 1101 and 27 CFR 555.11, and as it may be amended from time to time, ~~or any successor legislation/regulation.~~ As of March 13, 2024, the term means large fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation, including, but not limited to, salutes containing more than 2 grains (130 mg) of explosive materials, aerial shells containing more than 40 grams of pyrotechnic compositions, and other display pieces which exceed the limits of explosive materials for classification as “consumer fireworks.” Display fireworks are classified as fireworks UN0333, UN0334 or UN0335 by the U.S. Department of Transportation at 49 CFR 172.101. This term also includes fused setpieces containing components which together exceed 50 mg of salute powder.

* * *

§ 95-107 Vehicle.

The term “vehicle” shall have the same meaning as defined in 3 PA. CONS. STAT. § 1101, as it may be amended from time to time, or any successor legislation. As of March 13, 2024, the term means every device in,

upon, or by which any person or property is or may be transported or drawn upon a highway, except devices used exclusively upon rails or tracks. The term does not include a self-propelled wheelchair or an electrical mobility device operated by and designed for the exclusive use of a person with a mobility-related disability.

Article II — Consumer Fireworks

§ 95-201 Time Restriction.

Except as provided in § 95-202 (relating to Special Holiday Celebrations)—

(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 Special Holiday Celebrations.

(a) **In General.** Consumer fireworks may be ignited, discharged, or launched at any time (subject to compliance with §§ 95-203 and 95-204) on each of the following days:

- (1) the Saturday immediately preceding Memorial Day;
- (2) the Sunday immediately preceding Memorial Day;
- (3) Memorial Day;
- (4) July 2;
- (5) July 3;
- (6) July 4 (*);

(7) When July 4 falls on a Tuesday, Wednesday, or Thursday:

(A) the Friday immediately preceding July 4 (*);

(B) the Saturday immediately preceding July 4 (*);

(C) the Friday immediately following July 4 (*);

(D) the Saturday immediately following July 4 (*);

(8) the Saturday immediately preceding Labor Day;

(9) the Sunday immediately preceding Labor Day;

(10) Labor Day;

(11) December 31 (*).

(b) **Extension to 1:00 A.M.** Consumer fireworks may also be ignited, discharged, or launched between midnight and 1:00 A.M. (subject to compliance with §§ 95-203 and 95-204) on the day immediately following those days marked with an asterisk (*) in subsection (a).

§ 95-202 § 95-203 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)~~ 3 PA. CONS. STAT. § 1104(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, parking lots, buildings, structures, streets, sidewalks, and rights-of-way.

§ 95-203 § 95-204 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.~~ 3 PA. CONS. STAT. § 1101 et seq. As of March 13, 2024, the state statute prohibits the intentional use of consumer fireworks:

- (a) by a person under the age of eighteen (18) years;
- (b) on public or private property without the express permission of the owner or entity that controls the property;
- (c) within, directed at, or directed from a vehicle or building;
- (d) directed at another person;
- (e) while the person is under the influence of alcohol, a controlled substance, or another drug;
- (f) within one hundred fifty (150) feet of a building or vehicle, whether or not the building or vehicle is owned by the user of the consumer fireworks;
- (g) within one hundred fifty (150) feet of an animal housing facility or fenced area designed to confine livestock owned or managed by another person; and
- (h) at a distance of one hundred fifty (150) feet to three hundred (300) feet from an animal housing facility or fenced area designed to confine livestock owned or managed by another person, unless the user of the consumer fireworks has notified the owner or manager of the livestock at least seventy-two (72) hours in advance of the use that consumer fireworks will be used in the area.

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.~~ 3 PA. CONS. STAT. § 1101 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, after reasonable inspection, ~~so as~~ to not be hazardous to property or endanger any person;

(b) which are handled by a competent operator at least twenty-one (21) years of age who demonstrates evidence of fireworks handling and safety training, as reasonably determined by Council; ~~and~~

(c) which are ignited no closer than three hundred (300) feet from any facility which is licensed by the Pennsylvania Department of Agriculture to sell consumer fireworks and meets the criteria of 3 PA. CONS. STAT. § 1107; and

~~(e)~~ (d) 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 rules, regulations, conditions and limitations in any permit granted under this Article III.

§ 95-303 ~~Bond~~ Insurance.

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

§ 95-304 Requests for Permit Extension.

~~Requests for the~~ The Borough Manager is hereby authorized, in his/her discretion, to grant an extension of a permit issued 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 new date for displays cancelled due to unfavorable weather or other circumstances beyond the control of the permittee, if the new date is before the next advertised meeting of Council. Otherwise, only Council may may grant an extension of such a permit.

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 for a summary offense and additional fines under 3 PA. CONS. STAT. § 1114(1), or, to the extent the violation cannot be prosecuted under the state statute, shall be subject to prosecution under this Chapter 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 not more than Five Hundred Dollars (\$500.00) or less than One Hundred Fifty Dollars (\$150.00) for each such violation.

(b) **Criminal Penalty—Display Fireworks.** Any person who shall ignite, discharge, ~~or~~ launch, or otherwise use 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~~ for a felony of the third degree and additional fines under 3 PA. CONS. STAT. § 1114(3).

(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 27th day of March, 2024, in lawful session duly assembled.

BOROUGH COUNCIL
BOROUGH OF ALBURTIS

Ronald J. DeIaco, President

Attest:

Stephen Nemeth, Borough Manager

AND NOW, this 27th day of March, 2024, the above Ordinance is hereby **APPROVED**.

Kathleen Palmer, Mayor