MAIDENCREEK TOWNSHIP SOLICITOR'S REPORT

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FEBRUARY 2019

draft Fireworks Ordinance – waiting to schedule hearing

draft Traffic Ordinance – waiting to schedule hearing

Maidencreek Township Authority Ordinance– waiting to schedule hearing - 1/7/2020 phone call from D. Becker, MTA solicitor – please table in January.

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWNSHIP OF MAIDENCREEK, BERKS COUNTY, PENNSYLVANIA, AMENDING THE CODE OF ORDINANCES (ORDINANCE NO. 223) OF THE TOWNSHIP, BY ADDING CHAPTER 114 ENTITLED "FIREWORKS" TO ESTABLISH REGULATIONS AND PERMITTING REQUIREMENTS FOR SALE AND USE OF FIREWORKS WITHIN THE TOWNSHIP OF MAIDENCREEK AND ESTABLISHING PROCEDURES FOR COMPLIANCE AND PENALTIES

WHEREAS, the Township of Maidencreek, Berks County, Pennsylvania (Township) is a political subdivision of the Commonwealth of Pennsylvania which is entitled to the rights, privileges, and immunities conferred under the Second Class Township Code (53 P.S. §65101 *et seq.*), as amended; and

WHEREAS, on March 11, 2010, the Board of Supervisors of the Township of Maidencreek, Berks County, PA adopted Ordinance 223 codifying the Township's Ordinances; and

WHEREAS, the Commonwealth of Pennsylvania, by and through 35 P.S. §1271, *et seq.*, authorizes the Township to grant permits for supervised public displays of fireworks and adopt rules and regulations governing the sale, use and display of fireworks in the Township; and

WHEREAS, Act 43 of 2017, amending the Tax Reform Code of 1971, 72 P.S. §7101, *et seq.*, added Article XXIV to the Tax Reform Code, 72 P.S. §§2401-2416, amending the Fireworks Law, effective October 30, 2017 (Fireworks Law); and

WHEREAS, the passage of Act 43 and the changes to the Fireworks Law prompted the Maidencreek Township Planning Commission to recommend amendment of the Maidencreek Township Code to provide for regulation of sale, use and display of fireworks within the Township; and

WHEREAS, pursuant to the above cited authority, and for the protection of the health, safety and welfare of the residents of the Township, visitors, and the traveling public, the Maidencreek Township Board of Supervisors (Board) hereby establishes the following regulations for the sale, use and display of fireworks in the Township.

NOW, THEREFORE, The Board of Supervisors of the Township of Maidencreek, Berks County, PA, in lawful session duly convened hereby ENACTS AND ORDAINS the following amendments to its Code of Ordinances (the Code) as follows:

Section 1. Amendment of Part II: General Legislation via Addition of Chapter 114 entitled "Fireworks"

A. Part II General Legislation of the Code, Chapter 114 entitled "Fireworks", Section 114-1 titled "Purpose, Intent and Authority" is hereby added as follows:

Visual, audible and secondary effects from the sale and use of fireworks can pose a serious threat to the comfort, convenience, health, safety, welfare, and overall quality of life of the residents of Maidencreek Township, Berks County, Pennsylvania. It is the intent of this chapter to establish requirements and criteria to prevent excessive noise and secondary effects from the sale and use of fireworks that may jeopardize the health and welfare of its residents or degrade their quality of life. Therefore, it intends hereby to establish regulations and permitting requirements subject to its police power in order to preserve, protect, and promote health, safety, welfare and the peace, quiet, comfort and safety of the residents, visitors and traveling public within Maidencreek Township limits. This chapter is enacted pursuant to the general powers of the Board of Supervisors, contained in the Second Class Township Code, 53 P.S. § 66506, and associated enforcement provisions related to health, public safety, and noise at 53 P.S. § 66601(c.1).

B. Part II General Legislation of the Code, Chapter 114 entitled "Fireworks", Section 114-2 titled "Definitions" is hereby added as follows:

BUILDING – Any structure used by human beings or animals for occupancy or storage and related activities including but not limited to houses, garages, sheds, barns, pol buildings, equipment sheds etc.

CONSUMER FIREWORKS - 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 (Code of Federal Regulations) (relating to commercial practices) or any successor regulation, and complies with the provisions for "consumer fireworks" as defined in American Pyrotechnics Association ("APA") Standard 87-1 or any successor standard, the sale, possession, and use of which is permitted throughout the Commonwealth of Pennsylvania.

The term "Consumer Fireworks" shall not include devices such as "ground and hand-held sparkling devices," "novelties," or "toy caps" as defined in APA Standard 87-1 or any successor standard, the sale, possession, and use of which shall be allowed. The term "Consumer Fireworks" shall further not include explosives which are illegal under federal law, such as devices described in 49 CFR 173.53 (relating to forbidden explosives) or those devices that have not been tested, approved and labeled by the United States Department of Transportation, including, but not limited to, those devices commonly referred to as "M-80," "M-100," "blockbuster," "cherry bomb," or "quarter or half stick" explosive devices.

DISPLAY – Any event, whether or not open to the general public, and whether or not admission is charged, at which fireworks are discharged, fired or otherwise activated.

DISPLAY FIREWORKS - Large fireworks to be used solely by professional pyro technicians and designed primarily to produce visible or audible effects by combustion, deflagration, or detonation. This term includes, but is not limited to, the following:

1. Salutes (fireworks designed to produce an explosive sound as its primary effect) that contain more than two grains or 130 milligrams of explosive materials;

2. Aerial shells containing more than 60 grams of pyrotechnic compositions;

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).

The term "Display Fireworks" shall not include explosives which are illegal under federal law, such as devices described in 49 CFR 173.53 (relating to forbidden explosives) or those devices that have not been tested, approved and labeled by the United States Department of Transportation, including, but not limited to, those devices commonly referred to as "M-80," "M-100," "blockbuster," "cherry bomb," or "quarter or half stick" explosive devices.

FIRE CHIEF – The Chief of the Fire Department(s) having jurisdiction in the Township, in the discretion of the Township, to render decisions on issues regarding fireworks, or the designee of the same.

OCCUPIED STRUCTURE – A structure, vehicle or place adapted for overnight accommodation of persons or for conducting business, whether or not a person is actually present.

PERSON – Any individual, partnership, firm, limited liability company, public or private corporation, incorporated or unincorporated association, enterprise, or any other legal entity and, including without limitation with respect to the above, any agent, servant, or employee thereof.

TOWNSHIP – The Township of Maidencreek, Berks County, Pennsylvania, and its Board of Supervisors.

C. Part II General Legislation of the Code, Chapter 114 entitled "Fireworks", Section 114-3 titled "Sale of Fireworks" is hereby added as follows:

Fireworks may be sold only by Persons and from facilities properly licensed by the Pennsylvania Department of Agriculture and operating in compliance with all applicable state laws and Pennsylvania Department of Agriculture regulations.

D. Part II General Legislation of the Code, Chapter 114 entitled "Fireworks", Section 114-4 titled "Use of Consumer Fireworks" is hereby added as follows:

1. A Person who is at least eighteen (18) years of age and meets the requirements of the Fireworks Act, as amended, and other applicable law, may purchase, possess, and use Consumer Fireworks, provided that a Person shall not intentionally ignite or discharge:

a. Consumer Fireworks on public property or private property without the express permission of the owner, with regard to private property, or governing authority with jurisdiction, with regard to public property;

b. Consumer Fireworks or sparking devices within, or throw Consumer Fireworks or sparking devices from, a motor vehicle or building;

c. Consumer Fireworks or sparking devices into or at a motor vehicle or building or at another Person;

d. Consumer Fireworks or sparking devices while the person is under the influence of alcohol, a controlled substance, or another drug;

e. Consumer Fireworks within one hundred fifty (150) feet of any Building or Occupied Structure;

f. Consumer Fireworks within the R-1 (Low Density Residential), R-2 (Moderate Density Residential), R-2A (High Density Residential), R-3 (Village Density Residential) or C-R (Commercial-Residential) Zoning Districts of the Township.

g. Consumer Fireworks between the hours of 10:00 p.m. and 6:00 a.m.

2. Every use of Consumer Fireworks within the Township shall be performed by a competent individual and shall be of such character and so located, discharged, fired or activated in such a manner so as not to be hazardous to property or endanger any person or persons.

E. Part II General Legislation of the Code, Chapter 114 entitled "Fireworks", Section 114-5 titled "Use of Display Fireworks" is hereby added as follows:

Every use of Display Fireworks within the Township shall be performed by a competent individual and shall be of such character and so located, discharged, fired or activated in such a manner so as not to be hazardous to property or endanger any person or persons. Applicant for use of Display Fireworks shall arrange with Fire Department having jurisdiction to have them present at the display or use and deployed in such a manner as to prevent injury to persons or damage to property. No Display Fireworks shall be ignited within 300 feet of a facility that meets the requirements of 72 P.S. §§2407 and 2410 (Sales locations and temporary sales locations for fireworks).

F. Part II General Legislation of the Code, Chapter 114 entitled "Fireworks", Section 114-6 titled "Permit Required" is hereby added as follows:

1. A Permit shall be required for the use of Display Fireworks. Issuance of such permit is subject to the following restrictions and conditions:

(A) Any use of Display Fireworks pursuant to a permit shall be in accordance with all applicable laws and regulations.

(B) Any use of Display Fireworks pursuant to a permit shall not occur between the hours of 10:00 p.m. and 6:00 a.m.

(C) The Township has the discretion to deny or suspend a permit for Display Fireworks if the Fire Chief deems denial or suspension to be in the best interests of the Township or its residents, including, but not limited to, where circumstances of adverse weather conditions exist or are forecasted, such as drought or high winds.

(D) Applications for permits must be submitted at least 14 days in advance of the proposed use of Display Fireworks.

(E) Applications for permits must include written approval of the owner of the property from which the Display Fireworks shall be used.

2. The Township shall require payment of a permit fee at the time of application for such permit, in an amount as established from time to time by resolution of the Township.

3. The permitting requirements of this section shall not be applicable to the following activities involving the use of fireworks or similar devices as defined herein:

(A) When the use is authorized under a permit from an agency of the state or federal government.

(B) When used as authorized by a permit for agricultural purposes in connection with the raising of crops and the protection of crops from bird and animal damage.

(C) Use by railroads or other transportation agencies for signal purposes or other illumination.

(D) When used in quarrying or for blasting or other similar industrial use.

(E) Use of blank cartridges for show or theatrical production or for signal or ceremonial purposes in athletics or sports.

(F) Use by military organizations composed of veterans of the United States Armed Forces.

G. Part II General Legislation of the Code, Chapter 114 entitled "Fireworks", Section 114-7 titled "Bond and Insurance Required" is hereby added as follows:

(A) After paying the appropriate permit fee and obtaining a Township permit to use display fireworks, the permit holder shall post with the Township a bond of not less than $1,000,000 intended to cover any personal injury and property damage caused by reason of the use of such display fireworks and arising from an act of the permit holder or an agent, employee, or subcontractor of the permit holder.

(B) The Permit Holder shall also furnish General Public Liability Insurance "all risk" type in an amount of not less than One Million ($1,000,000.00) naming the Township and any Fire Company onsite or responding to any call as additional insureds. Proof of Insurance shall be timely provided to the Township.

H. Part II General Legislation of the Code, Chapter 114 entitled "Fireworks", Section 114-8 titled "Disposal of Unfired Fireworks and Residuals" is hereby added as follows:

It shall be the responsibility of the Permitee (for Display Fireworks) and discharger (of Consumer Fireworks) to dispose of all unfired fireworks, misfired fireworks, trash, and any other residue or remains of firework use within twelve (12) hours following discharge. Any materials which are hazardous shall be immediately disposed of in a proper manner consistent with all state and local laws and regulations.

I. Part II General Legislation of the Code, Chapter 114 entitled "Fireworks", Section 114-9 titled "Violations and Penalties" is hereby added as follows:

1. A person or entity using Consumer Fireworks and/or Display Fireworks in violation of the provisions of this chapter, upon conviction thereof in an action brought before a Magisterial District Judge in the manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure, shall be sentenced to pay a fine of not less than One Hundred Dollars ($100) and not more than One Thousand Dollars ($1,000), plus costs and reasonable counsel fees incurred by the Township, and in default of payment, imprisonment for a term not to exceed thirty (30) days in Berks County Prison. Each separate day or portion thereof that a violation occurs shall be deemed a separate violation.

2. A person or entity selling Consumer Fireworks or Display Fireworks in violation of the provisions of this chapter commits a misdemeanor of the second degree.

3. These violations and remedies are not exclusive and are not intended to be cumulative to any civil or additional available remedies at law.

Section 2. Severability.

The provisions of this Ordinance are severable and in the event that any provision is held invalid, void, illegal, or unconstitutional by any court, it is the intent of the Board of Supervisors that such determination by the court shall not affect or render void the remaining provisions of this Ordinance. It is the declared intent of the Board of Supervisors that this Ordinance would have

been enacted if any provision subsequently declared to be void, invalid, illegal or unconstitutional had not been included at the time of enactment.

Section 3. Repealer.

All ordinances or parts of ordinances inconsistent with the provisions of the Ordinance are hereby repealed.

Section 4. Effective Date.

This Ordinance shall be effective five (5) days after enactment.

ORDAINED and ENACTED as an Ordinance by the Board of Supervisors of Maidencreek Township, County of Berks, Pennsylvania, in lawful session duly assembled, this _____ day of _____, 2020.

MAIDENCREEK TOWNSHIP
BOARD OF SUPERVISORS

By:_____
Heidi Fiedler, Chairperson

_____
David Franke, Supervisor

_____
Claude Beaver, Supervisor

Attest:

_____
Diane Hollenbach, Secretary