

ORDINANCE NO: _____

AN ORDINANCE AMENDING CHAPTER 75, SECTIONS 75-1, 75-2, 75-4, AND 75-5, OF THE CODE OF THE TOWNSHIP OF TOBYHANNA UPDATING THE DEFINITIONS OF CONSUMER FIREWORKS AND DISPLAY FIREWORKS, REQUIRING A PERMIT FOR PUBLIC DISPLAYS OF DISPLAY FIREWORKS, PROHIBITING THE IGNITION OF DISPLAY FIREWORKS WITHIN 300 FEET OF PERMANENT OR TEMPORARY FIREWORKS SALES LOCATIONS, AND SETTING FORTH THE REQUIREMENTS TO TRANSFER A DISPLAY FIREWORKS PERMIT.

WHEREAS, The Township of Tobyhanna is empowered to ensure the public safety and to define conduct that constitutes disturbing the peace pursuant to the Second Class Township Code, 53 P.S. §65101 et seq.;

WHEREAS, The Township is empowered to abate and prohibit nuisances on property pursuant to the Second Class Township Code, 53 P.S. §66529;

WHEREAS, The Board of Supervisors of Tobyhanna Township has determined that the use of fireworks can be detrimental to the health, safety and welfare of the Township's inhabitants and interfere with both the quiet enjoyment of residential and public property and the operation of business and therefore, should be controlled to the greatest extent possible;

WHEREAS, The Township previously adopted an ordinance governing the public display of fireworks;

WHEREAS, It is the purpose and scope of this Ordinance to amend the regulations governing the public display of fireworks within Tobyhanna Township; and,

The Tobyhanna Township Board of Supervisors hereby enacts an ordinance amending Chapter 75, Sections 75-1, 75-2, 75-4 and 75-5, of the Tobyhanna Township Code of Ordinances as follows:

ARTICLE I:

The following definitions in Chapter 75, Section 75-1 of the Code of the Township of Tobyhanna are hereby amended to read as follows:

CONSUMER FIREWORKS

Any combustible or explosive composition or any substance or combination of substances, intended to produce visible and/or audible effects by combustion and which is suitable for use by the public that complies with the construction, performance, composition and

labeling requirements promulgated by the Consumer Products Safety Commission in 16 CFR, as amended, or any successor regulation and which complies with the provisions for “consumer fireworks” as defined in the American Pyrotechnics Association (“APA”) Standard 87-1, as amended, or any successor standard, the sale, possession and use of which shall be allowed subject to: No one may intentionally ignite or discharge (1) consumer fireworks on public or private property without the express permission of the owner; (2) consumer fireworks or sparkling devices within, or throw consumer fireworks or sparkling devices from, a motor vehicle or building; (3) consumer fireworks or sparkling devices into or at a motor vehicle or building or at another person; (4) consumer fireworks or sparkling devices while the person is under the influence of alcohol, a controlled substance or another drug; and (5) consumer fireworks within 150 feet of an occupied structure. The term does not include devices such as “ground and hand-held sparkling devices”, “novelties” and “toy caps” in APA Standard 87-1, as amended. The sale and possession of which shall be permitted at all times within this Township.

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 or 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 hazardous materials table.

ARTICLE II:

Chapter 75, Section 75-2 of the Code of the Township of Tobyhanna is hereby amended to read as follows:

Unlawful to hold a display of display fireworks without a permit.

It shall be unlawful for any person, persons, firms or corporations, amusement parks, fair associations or other organizations or groups of individuals to have or to hold public displays of display fireworks within the limits of the Township of Tobyhanna, unless a permit therefor is granted by Tobyhanna Township, as hereinafter provided.

ARTICLE III:

Chapter 75, Section 75-4 of the Code of the Township of Tobyhanna is hereby amended to read as follows:

Competent operator and safe display location.

Every such fireworks display within the limits of the Township shall be handled, arranged, managed and directly supervised by a competent operator. Every such fireworks display within the Township shall be of such a character and so located, discharged or fired as not to be hazardous to property or endanger any person or persons in the opinion of the Board of Supervisors, or their duly authorized representative after proper inspection. No display fireworks

shall be ignited within 300 feet of a facility that meets the requirements of Section 2407 or 2410 (relating to permanent and temporary sales locations) of Pennsylvania Act 43 of 2017. The Township Fire Chief and Fire Code Official, or other such officer as may be designated by the Township, shall inspect the display site prior to the issuance of a permit in accordance with the International Fire Code and other applicable regulations and ensure that the site and proposed fireworks, display are compliant with said regulations and safe. No permit for the public display of fireworks shall be issued until the Township Fire Chief, or other such officer as may be designated by the Township, determines that the requested permit may be granted after inspecting the location for the requested display.

ARTICLE IV:

Chapter 75, Section 75-5, Subsections B. and C. of the Code of the Township of Tobyhanna are hereby amended to read as follows:

B. If and after such permit is granted by the Township Board of Supervisors or an authorized designee, the possession, use and display of display fireworks for the approved display shall be lawful for that purpose, date and time only. If by reason of unfavorable weather the fireworks display for which a permit has been granted does not take place at the time so authorized, the person to whom such permit was issued may the following business day apply to the Township, and set forth under oath the fact that such use and display was not made, the reason the use and display did not take place, and a request for a continuance of such permit for a day designated therein. The continuance date shall be no later than one week (7 days) after the day fixed originally in said permit. Upon receiving such application for a continuance, the Township, if it believes the facts stated therein are true, may extend the provisions of said permit to the day fixed in said application, no later than one week (7 days) after the original day designated in the permit, and such extension of time shall be granted without the payment of any additional fee and without requiring any insurance other than the certificate of insurance given for the original permit, provided that the provisions of the original certificate of insurance extend to and cover all damages which may be caused by reason of said use and display taking place at such extended date in the same manner and to the same extent as if such use and display had taken place at the date originally fixed in the permit. Upon application to the Township and subject to compliance with this Chapter 75, a permit granted hereunder shall be transferable.

C. No permit for the display of fireworks shall be issued to an individual under the age of 18.

ARTICLE V: Repeal

All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

ARTICLE VI: Severability

If any section, paragraph, sub-section, clause or provision of this Ordinance shall be declared invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of this Ordinance as a whole or any part thereof other than that portion specifically declared invalid.

ARTICLE VII: Effective Date

This Ordinance shall become effective five (5) days after its passage or adoption.

ENACTED AND ORDAINED this _____ day of _____ A.D., 2018.

**TOBYHANNA TOWNSHIP
BOARD OF SUPERVISORS**

ATTEST:

Anne M. Lamberton

By: _____
Julia Heilakka
Township Secretary

John J. Holahan III

Heidi A. Pickard

Brendon J.E. Carroll

David Carbone