

**UPPER MORELAND TOWNSHIP
MONTGOMERY COUNTY, PENNSYLVANIA**

ORDINANCE NO. 1711

AN ORDINANCE OF UPPER MORELAND TOWNSHIP, MONTGOMERY COUNTY, PENNSYLVANIA, AMENDING PART II: GENERAL LEGISLATION, TO ADD A NEW CHAPTER 149 “FIREWORKS” TO THE UPPER MORELAND TOWNSHIP CODE OF ORDINANCES REGULATING FIREWORKS USE WITHIN THE TOWNSHIP TO PROTECT PERSONS AND PROPERTY; REPEALING ALL INCONSISTENT ORDINANCES, OR PARTS THEREOF IN CONFLICT THEREWITH; AND PROVIDING FOR A SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

WHEREAS, Upper Moreland Township, Montgomery County, Pennsylvania (hereinafter “the Township”) is a Township of the First Class, organized and existing under the laws of the Commonwealth of Pennsylvania; and

WHEREAS, the Pennsylvania Fireworks Law, Act 43 of 2017, took effect on October 30, 2017 (the “Fireworks Law”); and

WHEREAS, the Board of Commissioners of Upper Moreland Township has determined that the use of consumer fireworks in an urban setting provides safety and health hazards if the terms of the Pennsylvania Fireworks Law are not specifically complied with.

NOW, THEREFORE, be it, and it is hereby **ORDAINED** by the Upper Moreland Township Board of Commissioners, and it is hereby **ENACTED** and **ORDAINED** by authority of same as follows:

SECTION 1: A new Chapter is hereby added to the Upper Moreland Township Code of Ordinances and shall be entitled, numbered and read as follows:

CHAPTER 149 – FIREWORKS

§ 149-1. AUTHORITY AND INTENT

This Chapter is adopted pursuant to the authority granted under Pennsylvania’s fireworks regulations and laws as adopted and codified by the Pennsylvania legislature at 72 P.S. § 9401-9416, and pursuant to the authority to regulate fireworks as set forth in the First Class Township Code at 53 P.S. § 56528. This Chapter is adopted with the intent to comply with such state fireworks laws, properly regulate fireworks use within the Township, and to protect the health, safety and welfare of Township citizens.

§ 149-2. DEFINITIONS

The following words and phrases when used in this Chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

APA 87-1 – The American Pyrotechnics Association Standard 87-1: Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics, 2001 edition, or any subsequent edition.

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 (relating to consumer practices) or any successor regulation and which complies with the provisions for “Consumer Fireworks” as defined in the American Pyrotechnics Association (APA) Standard 87-1, including but not limited to Sections *3.1 and *3.5, or any successor standard. The term does not include devices such as “ground and handheld sparkling devices” as defined in APA Standard 87-1, Section *3.1.1, “novelties” as defined in APA Standard 87-1, Section *3.2, or “toy caps” as defined in APA Standard 87-1, Section *3.3.

Display Fireworks: Defined as more fully set forth in 27 CFR 555.11 (Meaning of terms), which is incorporated herein by reference which meet the types of display fireworks devices set forth in the APA Standard 87-1, Section *4.1 which comply with requirements for display fireworks set forth in APA Standard 87-1.

Fireworks: Any composition or device for the purpose of producing a visible or an audible effect for entertainment purposes by combustion, deflagration or detonation that meets the definition of 1.4 G fireworks or 1.3 G fireworks as set forth in the 2003 International Fire Code including, but not limited to, those compositions or devices as defined in APA Standard 87-1.

NFPA 1124: The National Fire Protection Association Standard 1124, *Code for the Manufacture, Transportation and storage of Fireworks and Pyrotechnic Articles*, 2006 edition, or any subsequent edition.

Novelties: Articles of trade having amusement value and whose appeal is often transitory, and which is limited to those items for sale described in American Pyrotechnics Association (APA) Standard 87-1, Section *3.2.

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.

Temporary Structure: A structure, other than a permanent facility with fixed utility connections, which is in use or in place for a period of 20 consecutive calendar days or less and is dedicated to the storage and sale of Consumer Fireworks and related items. The term includes temporary retail sales stands, tents, canopies and membrane structures

meeting the specifications of NFPA 1124. The term shall not include a facility that is not licensed to sell Consumer Fireworks under this Chapter.

§ 149-3. USE SALE AND STORAGE OF CONSUMER FIREWORKS

- A. Conditions. A person who is at least 18 years of age and meets the requirements of this Chapter may purchase, possess and use Consumer Fireworks.
- B. Prohibitions. A person may not 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.
 - 5. Consumer Fireworks within 150 feet of any Occupied Structure.
 - 6. Consumer Fireworks within 100 feet of any combustible material.
 - 7. Consumer Fireworks such that the sparks or any portion of the fireworks will land upon the property of another without the owner's express permission.
 - 8. Consumer Fireworks two hours after dusk on the date the person intends to ignite the Consumer Fireworks, dusk being defined as the time as reported for Upper Moreland Township by the National Weather Service.
- C. It is hereby ordained and enacted that no permission is granted by the Township to any person to ignite or discharge consumer fireworks on the streets of the Township of Upper Moreland, the sidewalks of the Township of Upper Moreland or any property owned by the Township of Upper Moreland, including, without limitation, all of the Township's parks and public buildings unless otherwise authorized by a public vote of the Board of Commissioners.
- D. Sale and Storage of Consumer Fireworks: The sale and storage of Consumer Fireworks is licensed and regulated by the Pennsylvania Department of Agriculture. Any persons who intends to sell or store Consumer Fireworks within the Township shall provide proof of such licensure prior to such use being conducted within the Township, in addition to compliance with all other applicable Township ordinances, regulations or codes.

§ 149-4. CONSUMER FIREWORKS – TEMPORARY STRUCTURES

- A. Conditions. If a person is licensed by the Pennsylvania Department of Agriculture to store and sell Consumer Fireworks within a Temporary Structure as defined herein, such use shall be permitted within the Township provided all other applicable Township ordinances and regulations are met.
- B. The person authorized to store and sell Consumer Fireworks within such Temporary Structure shall comply with the regulations of the Pennsylvania Department of Agriculture and shall provide verification of such compliance prior to be permitted to conduct such use within the Township.

§ 149-5. DISPLAY FIREWORKS – PERMITS AND USE PROVISIONS

- A. No Display Fireworks shall be ignited within 300 feet of a facility selling or dispensing gasoline, propane, or other flammable products.
- B. Permits are required to be issued by the Township prior to the use of Display Fireworks. Application for permits shall be made in writing at least 30 days in advance of the planned date of the use of Display Fireworks together with the permit fee. Permit fees shall be as established by resolution of the Board of Commissioners.
- C. Permits for Display Fireworks may only be issued to persons age 21 or older.
- D. Each Display Firework shall be:
 - 1. Handled by a competent operator with the proper authorization to handle, operate or store Display Fireworks;
 - 2. Inspected by the Police Chief, Fire Chief, Fire Marshal or other appropriate officer, and after proper inspection, deemed to not be hazardous to property or endanger any person prior to the display occurring; and
 - 3. After permission is granted under this section, possession and use of Display Fireworks shall be lawful for that purpose only.
- E. License Requirements. Any business entity which performs, provides or supervises Display Fireworks for profit shall provide to the Township proof of registration with the Pennsylvania Attorney General as part of the permitting process.
- F. Display Fireworks may be possessed and used by a person (aged 21 or older) holding a permit from the Township at the display covered by the permit, or when used as authorized by a permit for any of the following additional activities:
 - 1. For agricultural purposes in connection with the raising of crops and the protection of crops from bird and animal damage.
 - 2. By railroads or other transportation agencies for signal purposes or illumination.

3. In quarrying or for blasting or other industrial use.
4. In the sale or use of blank cartridges for a public show or theater.
5. For signal or ceremonial purposes in athletics or sports.
6. By military organizations or organizations composed of veterans of the armed forces of the United States.

§ 149-6. DISPLAY FIREWORKS – BONDING AND EXTENTION REQUESTS

- A. Bond. The Township shall require a bond deemed adequate by the Board from the permittee in a sum not less than \$50,000 conditioned on the payment of all damages which may be caused to a person or property by reason of the Display Fireworks and arising from an act of the permittee or an agent, employee or subcontractor of the permittee. The bonding requirement may be deemed unnecessary or reduced by the Board of Commissioners for the additional activities listed under §10-804(6) above.
- B. Extension of Permit.
 1. Authorization. If, because of unfavorable weather, the Display Fireworks for which a permit has been granted does not occur at the time authorized by the permit, the person to whom the permit was issued may within 24 hours apply, in writing, for a request for extension to the Township. The requested continuance of the permit shall not be later than one week after the date originally designated in the permit.
 2. Conditions. The extension of time shall be granted without the payment of an additional fee and without requiring a bond other than the bond given for the original permit, the provisions of which shall extend to and cover all damages which may be caused by reason of the display occurring at the extended date and in the same manner and to the same extent as if the display had occurred at the date originally designated in the permit.

§ 149-7. PERMITS GRANTED FOR AGRICULTURAL PURPOSES

- A. Authorization. The Township may grant permits for the use of suitable fireworks for agricultural purposes in connection with the raising of crops and the protection of crops from bird and animal damage.
- B. Duration of permit. A permit under this section shall remain in effect for the calendar year in which it was issued.
- C. Conditions. After a permit under this section has been granted, sales, possession and use of fireworks of the type and for the purpose mentioned in the permit shall be lawful for that purpose only.

§ 149-8. AUTHORITY AND CONFISCATION OF MATERIALS

- A. Any Pennsylvania State Police officer or Township police officer shall take, remove or cause to be removed, at the expense of the owner, all stocks of Consumer Fireworks, Display Fireworks or combustibles offered or exposed for sale, stored or held in violation of this Chapter. The owner shall also be responsible for the storage and, if deemed necessary, the destruction of these fireworks.
- B. Any Pennsylvania State Police officer, Township police officer or Township Fire Chief is authorized to cease all fireworks activity when there is a determination that there is imminent or immediate danger to any person(s), property, buildings, structures or premises; and said police officer or Fire Chief may take any steps necessary, within the reasonable performance of their duties, to extinguish, mitigate and/or control any fireworks in order to preserve and protect the life, health, welfare or safety of any person(s) and to preserve and protect property, building structures or premises.

§ 149-9. PENALITIES

- 1. A person using Consumer Fireworks in violation of the provisions of this Chapter commits a summary offense and, upon conviction, shall be punished by a fine. Each section or provision of this Part that is violated shall constitute a separate offense, each of which shall be punishable by a separate fine imposed by the District Justice of not less than \$100 and not more than \$1,000.
- 2. A person selling Consumer Fireworks in violation of the provisions of this Chapter commits a misdemeanor of the second degree.
- 3. A person selling Display Fireworks in violation of the provisions of this act commits a felony of the third degree.
- 4. A person selling federally illegal explosives such as devices as described in 49 CFR 173.54 (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, in violation of the provisions of this Chapter commits a felony of the third degree.
- 5. All prosecutions related to this Part shall be the responsibility of the Township Police or, if warranted, the Pennsylvania State Police.

SECTION 2: SEVERABILITY.

The terms, conditions and provisions of this Ordinance are hereby declared to be severable, and, should any portion, part or provision of this Ordinance be found by a court of competent jurisdiction to be invalid, unenforceable or unconstitutional, the Upper Moreland Township Board of Commissioners hereby declares its intent that the Ordinance shall have been enacted without regard to the invalid, unenforceable, or unconstitutional portion, part or provision of this Ordinance.

SECTION 3: REPEALER.

Any and all other Ordinances or parts of Ordinances in conflict with the terms, conditions and provisions of this Ordinance are hereby repealed to the extent of such irreconcilable conflict.

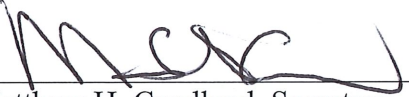
SECTION 4: EFFECTIVE DATE.

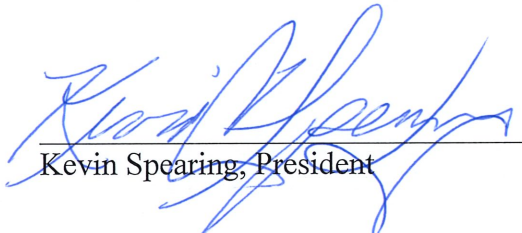
This Ordinance shall be effective five (5) days after enactment.

ORDAINED AND ENACTED by the Board of Commissioners of Upper Moreland Township, Montgomery County, Pennsylvania, this 14th day of September, 2020.

Attest:

**UPPER MORELAND TOWNSHIP
BOARD OF COMMISSIONERS**


Matthew H. Candland, Secretary


Kevin Spearing, President