

BEFORE THE COUNTY COUNCIL OF **BERKELEY COUNTY**,  
WEST VIRGINIA

IN RE: FIREWORKS DISCHARGE RESTRICTION

**Thru: Norwood Bentley, Berkeley County Administrator, Legal Counsel**

This Council hereby finds that the discharge of fireworks devices without restriction as to time of day or to proximity to residential and other venues of rest, relaxation, and sleep is a public nuisance.

Accordingly, pursuant to West Virginia Code § 7-1-3kk, the following Ordinance is adopted and shall be in full force and effect on and after July 9, 2017.

- (a) No person, firm, or legal entity of any kind shall use or discharge fireworks within the confines of Berkeley County, not including any incorporated municipality, except that such fireworks which are permitted by West Virginia Legislative Statute may be discharged on New Year's Eve, during the hours of 9:00 o'clock p.m. and 11:59 o'clock p.m. and on New Year's Day, during the hours of 12:00 o'clock a.m. and 12:30 o'clock a.m.; and, on July 3 between the hours of 9:00 o'clock p.m. and 11:59 o'clock p.m. and on July 4 from 12:00 o'clock a.m. until 12:30 o'clock a.m., and, again from 9:00 o'clock p.m. until 11:59 p.m., only. Discharge of approved fireworks as aforesaid may also be accomplished on the Friday and Saturday preceding and following New Year's Eve and on July 4, during the hours above referenced. In addition, such fireworks may be discharged between the hours of 5 o'clock p.m. and 10:00 o'clock p.m. on any other day of the year.
- (b) Discharge of such permitted fireworks during any of the times herein referenced is not permitted within 500 feet of any residence, motel, hotel, bed and breakfast, hospital, nursing home or other facility in which people live, sleep and rest.
- (c) **Firework or fireworks** means any composition or device designed for the purpose of producing a visible or audible effect by combustion, deflagration or detonation. Fireworks include consumer fireworks, display fireworks and special effects. Fireworks does not include sparkling devices, novelties, top caps or model rockets. **Consumer fireworks** means small fireworks devices that are designed to produce visible effects by combustion that are required to comply with the construction, chemical composition and labeling regulations promulgated by the United States Consumer Product Safety Commission pursuant to 16 C.F.R. Parts 1500 and 1507 (2014), and that are listed in APA Standard 87-1. **Display fireworks** means large fireworks to be used solely by

professional pyro-technicians licensed by the State Fire Marshal and designed primarily to produce visible or audible effects by combustion, deflagration or detonation and includes, but is not limited to, salutes containing more than two grains (one hundred thirty milligrams) of explosive materials, aerial shells containing more than forty grams of pyrotechnic compositions and other display pieces that exceed the limits of explosive materials for classification as consumer fireworks and are classified as fireworks UN0333, UN0334, or UN0335 pursuant to 49 C.F.R. § 172.101 (2014). **Special effects** means a combination of chemical elements or chemical compounds capable of burning independently of the oxygen of the atmosphere and designed and intended to produce an audible, visual, mechanical or thermal effect as an integral part of a motion picture, radio, television, theatrical or opera production or live entertainment. (Definitions pursuant to West Virginia Code § 29-3E-2).

- (d) Violation of the provisions of this Ordinance is a misdemeanor punishable, upon conviction thereof, by fine of \$1,000.00. Each discharge of a fireworks device in violation of this Ordinance shall be a separate offense.

This Ordinance shall become effective on July 9, 2017.  
All of the above is ORDERED, ADJUDGED and DECREED.  
Entered this the 29<sup>th</sup> day of June, 2017.

*REFERENCE:*

## **WEST VIRGINIA CODE**

### **§7-1-3kk. Authority to provide for the elimination of hazards to public health and safety; penalty.**

In addition to all other powers and duties now conferred by law upon county commissions, commissions are hereby authorized to enact ordinances, issue orders and take other appropriate and necessary actions for the elimination of hazards to public health and safety and to abate or cause to be abated anything which the commission determines to be a public nuisance. The ordinances may provide for a misdemeanor penalty for its violation. The ordinances may further be applicable to the county in its entirety or to any portion of the county as considered appropriate by the county commission.

*EPOHOA Received Document July 6, 2017*