

RESOLUTION NO. 2015084

RE: LOCAL LAW NO. OF 2015, A LOCAL LAW ALLOWING FOR THE SALE OF SPARKLING DEVICES AS DEFINED IN NEW YORK STATE PENAL CODE SECTION 270

Legislators BORCHERT, SAGLIANO, PULVER, WEISS, and KELSEY offer the following and move its adoption:

RESOLVED, that the Legislature of the County of Dutchess adopt Local Law No. _____ of 2015 which has been submitted this day for consideration by said Legislature.

CA-054-15
CAB/kvh/G-1630
03/06/2015

STATE OF NEW YORK

ss:

COUNTY OF DUTCHESS

This is to certify that I, the undersigned Clerk of the Legislature of the County of Dutchess have compared the foregoing resolution with the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 13th day of April 2015, and that the same is a true and correct transcript of said original resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Legislature this 13th day of April 2015.

CAROLYN MORRIS, CLERK OF THE LEGISLATURE

LOCAL LAW NO. _____ 2015
A LOCAL LAW ALLOWING FOR THE SALE OF SPARKLING DEVICES AS DEFINED IN
NEW YORK STATE PENAL CODE SECTION 270

Be it enacted by the County Legislature of the County of Dutchess, as follows:

Section 1. Legislative Intent

- A. Whereas on November 21, 2014, Governor Cuomo signed into law Chapter 477 of the Laws of 2014 (S.7888/A10141).
- B. Whereas this legislation amended the State Penal Law, the Executive Law and the General Business Law placing further restrictions on dangerous fireworks while at the same time recognizing that certain fireworks should not be labeled dangerous when they pose little to no danger to the public and by labeling them dangerous only restricts business and personal use.
- C. Whereas the Governor signed this version of the legislation into law in part due to its strong home rule authority, only allowing for the sale and use of “sparkling devices” in municipalities that affirmatively enact a local law authorizing such action.
- D. Whereas in keeping with Chapter 477 of the Laws of 2014, and Penal Law Section 405 (5) (b), this Legislature further finds and determines that “sparkling devices” may be sold, distributed and used within Dutchess County only in the manner described below.
- E. Whereas, this Legislature finds that allowing our residents the use of “sparkling devices” will benefit them and our local businesses.

Section 2. Definitions

“Sparkling Devices” are defined as follows:

“Sparkling Devices” which are ground-based or hand-held devices that produce a shower of white, gold, or colored sparks as their primary pyrotechnic effect. Additional effects may include a colored flame, an audible crackling effect, an audible whistle effect, and smoke. These devices do not rise into the air, do not fire inserts or projectiles into the air, and do not explode or produce a report (an audible crackling-type effect is not considered to be a report). Ground-based or hand-held devices that produce a cloud of smoke as their sole pyrotechnic effect are also included in this category. Types of devices in this category include:

(1) cylindrical fountain: cylindrical tube containing not more than seventy-five grams of pyrotechnic composition that may be contained in a different shaped exterior such as a square, rectangle, cylinder or other shape but the interior tubes are cylindrical in shape. Upon ignition, a shower of colored sparks, and sometimes a whistling effect or smoke, is produced. This device may be provided with a spike for insertion into the ground (spike fountain), a wood or plastic base for placing on the ground (base fountain), or a wood or cardboard handle to be hand held (handle fountain). When more than one tube is mounted on a common base, total pyrotechnic composition may not exceed two hundred grams, and when tubes are securely attached to a base and the tubes are separated from each other on the base by a distance of at least half an inch (12.7 millimeters), a maximum total weight of five hundred grams of pyrotechnic composition shall be allowed.

(2) cone fountain: cardboard or heavy paper cone containing not more than fifty grams of pyrotechnic composition. The effect is the same as that of a cylindrical fountain. When more than one cone is mounted on a common base, total pyrotechnic composition may not exceed two hundred grams, as is outlined in this subparagraph.

(3) wooden sparkler/dipped stick: these devices consist of a wood dowel that has been coated with pyrotechnic composition. Upon ignition of the tip of the device, a shower of sparks is produced. Sparklers may contain up to one hundred grams of pyrotechnic composition per item.

(4) novelties which do not require approval from the United States department of transportation and are not regulated as explosives, provided that they are manufactured and packaged as described below:

(a) party popper: small devices with paper or plastic exteriors that are actuated by means of friction (a string or trigger is typically pulled to actuate the device). They frequently resemble champagne bottles or toy pistols in shape. Upon activation, the device expels flame-resistant paper streamers, confetti, or other novelties and produces a small report. Devices may contain not more than sixteen milligrams (0.25 grains) of explosive composition, which is limited to potassium chlorate and red phosphorus. These devices must be packaged in an inner packaging which contains a maximum of seventy-two devices.

(b) snapper: small, paper-wrapped devices containing not more than one milligram of silver fulminate coated on small bits of sand or gravel. When dropped, the device explodes, producing a small report. Snappers must be in inner packages not to exceed fifty devices each, and the inner packages must contain sawdust or a similar, impact-absorbing material.

By enacting this Local Law, this Legislature specifically excludes “sparkling devices” from the definition of “fireworks” and “dangerous fireworks” as those terms are defined in New York State Penal Law Section 270 (1).

Section 3. Sale, Distribution and Use of Sparkling Devices

- A. This Legislature hereby determines that the sale and distribution of sparkling devices within Dutchess County is permitted in accordance with New York State Executive Law Section 156-h and General Business Law Section 392-j.
- B. Only persons over the age of eighteen (18) years old may purchase sparkling devices.
- C. All persons who use sparkling devices shall do so in accordance with all applicable federal, state and local laws, rules and regulations.

Section 4. Separability

If any part of or provisions of this law, or the application thereof to any person or circumstance, shall be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part of or provision of, or application directly involved in the controversy in which such the remainder of this law, or the application thereof to other persons or circumstances.

Section 5. Effective Date

This law shall take effect immediately upon filing with the Secretary of State.

(f) A diagram of the grounds on which the display is to be held showing the point at which the fireworks are to be discharged, the location of all buildings, highways and other lines of communication, the lines behind which the audience will be restrained and the location of all nearby trees, telegraph or telephone lines or other overhead obstructions.

(g) Such other information as the permit authority may deem necessary to protect persons or property.

3. Applications for permits. All applications for permits for the display of fireworks shall be made at least five days in advance of the date of the display and the permit shall contain provisions that the actual point at which the fireworks are to be fired be in accordance with the rules promulgated by the commissioner of labor pursuant to section four hundred sixty-two of the labor law and that all the persons in actual charge of firing the fireworks shall be over the age of eighteen years, competent and physically fit for the task, that there shall be at least two such operators constantly on duty during the discharge and that at least two approved type fire extinguishers shall be kept at as widely separated points as possible within the actual area of the display. For any applications made for the display of fireworks on state property, the state fire administrator shall coordinate the issuance of such permits with the head of the police or fire department or both, where there are such departments. The legislative body of a county park, city, village or town may provide for approval of such permit by the head of the police or fire department or both where there are such departments. No permit granted and issued hereunder shall be transferable. After such permit shall have been granted, sales, possession, use and distribution of fireworks for such display shall be lawful solely therefor.

3-a. Notwithstanding the provisions of subdivision three of this section, no permit may be issued to conduct a display of fireworks upon any property where the boundary line of such property is less than five hundred yards from the boundary line of any property which is owned, leased or operated by any breeder as defined in subdivision four of section two hundred fifty-one of the racing, pari-mutuel wagering and breeding law.

4. Bonds. Before granting and issuing a permit for a display of fireworks as herein provided, the permit authority shall require an adequate bond from the applicant therefor, unless it is a state entity, county park, city, village or town, in a sum to be fixed by the permit authority, which, however, shall not be less than one million dollars, conditioned for the payment of all damages, which may be caused to a person or persons or to property, by reason of the display so permitted and arising from any acts of the permittee, his or her agents, employees, contractors or subcontractors. Such bond shall run to the state if the permit is granted for a display on state property, or to the county park, city, village or town in which the permit is granted and issued and shall be for the use and benefit of any person or persons or any owner or owners of any property so injured or damaged, and such person or persons or such owner or owners are hereby authorized to maintain an action thereon, which right of action also shall accrue to the heirs, executors, administrators, successors or assigns of such person or persons or such owner or owners. The permit authority may accept, in lieu of such bond, an indemnity insurance policy with liability coverage and indemnity protection equivalent to the terms and conditions upon which such bond is predicated and for the purposes provided in this section.

5. Local ordinances superseded. (a) All local ordinances regulating or prohibiting the display of fireworks are hereby superseded by the provisions of this section. Every city, town or village shall have the power to enact ordinances or local laws regulating or prohibiting the use, or the storage, transportation or sale for use of fireworks in the preparation for or in connection with television broadcasts.

✓ (b) Further, no city or county shall be bound to include "sparkling device" in the definitions of "fireworks" and "dangerous fireworks" in section 270.00 of this chapter, if such city or county shall so authorize the exemption of "sparkling device" by law. If any such city or county so elects, it and such other local jurisdictions that lie within its geographical boundaries shall not enact any other local law that is inconsistent with the provisions of subparagraph (iv) of paragraph (c) of subdivision one

McKinney's Consolidated Laws of New York Annotated
Penal Law (Refs & Annos)
Chapter 40. Of the Consolidated Laws (Refs & Annos)
Part Three. Specific Offenses
Title P. Offenses Against Public Safety
Article 270. Other Offenses Relating to Public Safety

McKinney's Penal Law § 270.00

§ 270.00 Unlawfully dealing with fireworks and dangerous fireworks

Effective: December 21, 2014

Currentness

1. Definition of "fireworks" and "dangerous fireworks". (a) The term "fireworks," as used in this section, includes:

(i) display fireworks, which means fireworks devices in a finished state, exclusive of mere ornamentation, primarily intended for commercial displays which are designed to produce visible and/or audible effects by combustion, deflagration or detonation, including, but not limited to, salutes containing more than one hundred thirty milligrams (two grains) of explosive composition, aerial shells containing more than forty grams of chemical composition exclusive of lift charge, and other exhibition display items that exceed the limits of consumer fireworks contained in the American Pyrotechnic Association (APA) Standard 87-1, 2001 edition;

(ii) articles pyrotechnic, which means pyrotechnic devices for professional use similar to consumer fireworks in chemical composition and construction but not intended for consumer use and which articles meet the weight limits for consumer fireworks but are not labeled as such and are classified by the United States department of transportation in 49 CFR 172.101 as UN0431;

(iii) special effects, which means any 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;

(iv) consumer fireworks which are aerial in performance and are commonly referred to as sky rockets, bottle rockets, missile type rockets, helicopters, aerial spinners, roman candles, mines, shell devices, aerial shell kits, reloadables and audible ground devices which are commonly referred to as firecrackers and chasers, as well as metal wire handheld sparklers;

(v) any blank cartridge, blank cartridge pistol, or toy cannon in which explosives are used, firecrackers, or any preparation containing any explosive or inflammable compound or any tablets or other device commonly used and sold as fireworks containing nitrates, chlorates, oxalates, sulphides of lead, barium, antimony, arsenic, mercury, nitroglycerine, phosphorus or any compound containing any of the same or other explosives, or any substance or combination of substances, or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation, or other device containing any explosive substance, other than sparkling devices as defined in subparagraph (vi) of this paragraph; and

(vi) "sparkling devices," as used in this section, includes:

(1) sparkling devices which are ground-based or hand-held devices that produce a shower of white, gold, or colored sparks as their primary pyrotechnic effect. Additional effects may include a colored flame, an audible crackling effect, an audible whistle effect, and smoke. These devices do not rise into the air, do not fire inserts or projectiles into the air, and do not explode or produce a report (an audible crackling-type effect is not considered to be a report). Ground-based or hand-held devices that produce a cloud of smoke as their sole pyrotechnic effect are also included in this category. Types of devices in this category include:

(A) cylindrical fountain: cylindrical tube containing not more than seventy-five grams of pyrotechnic composition that may be contained in a different shaped exterior such as a square, rectangle, cylinder or other shape but the interior tubes are cylindrical in shape. Upon ignition, a shower of colored sparks, and sometimes a whistling effect or smoke, is produced. This device may be provided with a spike for insertion into the ground (spike fountain), a wood or plastic base for placing on the ground (base fountain), or a wood or cardboard handle to be hand held (handle fountain). When more than one tube is mounted on a common base, total pyrotechnic composition may not exceed two hundred grams, and when tubes are securely attached to a base and the tubes are separated from each other on the base by a distance of at least half an inch (12.7 millimeters), a maximum total weight of five hundred grams of pyrotechnic composition shall be allowed.

(B) cone fountain: cardboard or heavy paper cone containing not more than fifty grams of pyrotechnic composition. The effect is the same as that of a cylindrical fountain. When more than one cone is mounted on a common base, total pyrotechnic composition may not exceed two hundred grams, as is outlined in this subparagraph.

(C) wooden sparkler/dipped stick: these devices consist of a wood dowel that has been coated with pyrotechnic composition. Upon ignition of the tip of the device, a shower of sparks is produced. Sparklers may contain up to one hundred grams of pyrotechnic composition per item.

(2) novelties which do not require approval from the United States department of transportation and are not regulated as explosives, provided that they are manufactured and packaged as described below:

(A) party popper: small devices with paper or plastic exteriors that are actuated by means of friction (a string or trigger is typically pulled to actuate the device). They frequently resemble champagne bottles or toy pistols in shape. Upon activation, the device expels flame-resistant paper streamers, confetti, or other novelties and produces a small report. Devices may contain not more than sixteen milligrams (0.25 grains) of explosive composition, which is limited to potassium chlorate and red phosphorus. These devices must be packaged in an inner packaging which contains a maximum of seventy-two devices.

(B) snapper: small, paper-wrapped devices containing not more than one milligram of silver fulminate coated on small bits of sand or gravel. When dropped, the device explodes, producing a small report. Snappers must be in inner packages not to exceed fifty devices each, and the inner packages must contain sawdust or a similar, impact-absorbing material.

(b) The term "dangerous fireworks" means any fireworks capable of causing serious physical injury and which are: firecrackers containing more than fifty milligrams of any explosive substance, torpedoes, skyrockets and rockets including all devices which employ any combustible or explosive substance and which rise in the air during discharge, Roman candles, and bombs, provided, however, that in cities with a population of one million or more, the term "dangerous fireworks" shall also include sparklers

McKinney's Consolidated Laws of New York Annotated
Executive Law (Refs & Annos)
Chapter Eighteen. Of the Consolidated Laws
Article 6-C. Office of Fire Prevention and Control (Refs & Annos)

McKinney's Executive Law § 156-h

§ 156-h. Registration and fees for manufacturers, distributors, wholesalers, and retailers of sparkling devices

Effective: December 21, 2014

Currentness

1. Definitions. As used in this section, the term:

(a) "Distributor" means any person or entity engaged in the business of selling sparkling devices to wholesalers, specialty retailers, permanent retailers or temporary seasonal retailers for resale.

(b) "Manufacturer" means any person or entity engaged in the manufacture or construction of sparkling devices.

(c) "Specialty retailer" means any person or entity who, at a fixed place of business, is engaged solely in selling sparkling devices at retail. For purposes of this section, a person or entity is engaged solely in selling sparkling devices if fifty-one percent or more of such person's or entity's annual gross sales are from the sale of sparkling devices.

(d) "Permanent retailer" means any person or entity who, at a fixed place of business, is engaged in selling sparkling devices at retail.

(e) "Sparkling devices" means any item defined in subparagraph (vi) of paragraph (a) of subdivision one of section 270.00 of the penal law.

(f) "Temporary seasonal retailer" means any person or entity who, at a temporary stand or tent, is engaged in selling sparkling devices from June twentieth through July fifth or from December tenth through January second of each year at retail.

(g) "Wholesaler" means any person or entity engaged in the business of selling sparkling devices to specialty retailers, permanent retailers or temporary seasonal retailers at wholesale.

2. Registration requirements. Any manufacturer, distributor, wholesaler, specialty retailer, permanent retailer or temporary seasonal retailer of sparkling devices who wishes to do business in this state or to otherwise sell, ship, or assign for sale its products in this state must register annually with the office of fire prevention and control on forms prescribed by such office. Any specialty retailer, permanent retailer or temporary seasonal retailer that sells sparkling devices at more than one retail location may submit one registration form for all such locations but must provide the address of each location with the registration form; however, any retailer may submit multiple registration forms.

3. Registration form. The registration form filed with the office of fire prevention and control must be notarized and must include the following information: business name; address; telephone number; officers, if the business is a corporation; and an individual designated as a contact person.

4. Fees. (a) Each manufacturer, distributor or wholesaler must pay an annual registration fee to be set by the office of fire prevention and control not to exceed five thousand dollars. Each specialty retailer must pay an annual registration fee to be set by such office not to exceed two thousand five hundred dollars. Each permanent retailer shall pay an annual registration fee to be set by such office not to exceed two hundred dollars for each retail location registered. Each temporary seasonal retailer must pay a registration fee to be set by such office not to exceed two hundred fifty dollars per season. Each certificateholder wishing to have a duplicate certificate issued for one which is lost or to reflect a change of address shall request such duplicate in writing and shall pay a fee of five dollars.

(b) Revenue from registration fee payments shall be used for the purposes of implementing firefighter safety and training programs as well as registration and testing provisions of this chapter.

(c) No city, municipality or other local jurisdiction shall charge any fee or require any permit whatsoever for the sale and use of sparkling devices.

5. Record and reports. Each manufacturer, distributor and wholesaler shall maintain and make available to the state fire administrator, upon the state fire administrator's reasonable request, full and complete, true, and accurate records showing the name and quantity of any sparkling device produced in, imported to, exported from, or sold in this state.

6. Rules. The state fire administrator shall promulgate rules prescribing registration forms required by this section.

Credits

(Added L.2014, c. 477, § 4, eff. Dec. 21, 2014.)

McKinney's Executive Law § 156-h, NY EXEC § 156-h
Current through L.2015, chapters 1 to 13

McKinney's Consolidated Laws of New York Annotated General Business Law (Refs & Annos) Chapter 20. Of the Consolidated Laws Article 26. Miscellaneous (Refs & Annos)

McKinney's General Business Law § 392-j

§ 392-j. Sales of sparkling devices

Effective: December 21, 2014

Currentness

1. Sales of sparkling devices as defined in subparagraph (vi) of paragraph (a) of subdivision one of section 270.00 of the penal law shall be lawful only for business registered by the state under section one hundred fifty-six-h of the executive law between June first and July fifth or from December twenty-sixth through January second of each year.

2. Failure to comply with this section shall be deemed an offense as defined in subdivision two of section 270.00 of the penal law.

Credits

(Added L.2014, c. 477, § 5, eff. Dec. 21, 2014.)

McKinney's General Business Law § 392-j, NY GEN BUS § 392-j

Current through L.2015, chapters 1 to 13

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.