

Town of Berwick Fireworks Ordinance

I. Preamble

WHEREAS, an Act to Legalize the sale, possession, and use of fireworks was passed by the 125th Maine legislature and signed on 2011-07-01 (codified in 30-A M.R.S. § 223-A);

WHEREAS, the Town of Berwick recognizes the potential for fire, injury to persons and property, and nuisances created by the sale, possession, and use of fireworks;

THEREFORE, based upon the foregoing findings, be it hereby ordained that the Town of Berwick does enact the following Ordinance regulating the sale, possession, and use of fireworks and consumer fireworks in the Town of Berwick.

II. Title and Authority

This ordinance shall be known as the “Town of Berwick Fireworks Ordinance.” It is adopted pursuant to the enabling provisions of the Maine Constitution, the provisions of 30-A M.R.S. § 223-A

III. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1-A. Consumer fireworks. "Consumer fireworks" has the same meaning as in 27 Code of Federal Regulations, Section 555.11 or subsequent provision, but includes only products that are tested and certified by a 3rd-party testing laboratory as conforming with United States Consumer Product Safety Commission standards, in accordance with 15 United States Code, Chapter 47. "Consumer fireworks" does not include the following products:

- A. Missile-type rockets, as defined by the State Fire Marshal by rule;
- B. Helicopters and aerial spinners, as defined by the State Fire Marshal by rule;
- and
- C. Sky rockets and bottle rockets. For purposes of this paragraph, "sky rockets and bottle rockets" means cylindrical tubes containing not more than 20 grams of chemical composition, as defined by the State Fire Marshal by rule, with a wooden stick attached for guidance and stability that rise into the air upon ignition and that may produce a burst of color or sound at or near the height of flight.

2. Display. "Display" means an entertainment feature where the public or a private group is admitted or permitted to view the display or discharge of fireworks or special effects. "Display" includes a special effects display.

3. Fireworks. "Fireworks" means any:

- A. Combustible or explosive composition or substance;

B. Combination of explosive compositions or substances;

C. Other article that was prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, including blank cartridges or toy cannons in which explosives are used, the type of balloon that requires fire underneath to propel it, firecrackers, torpedoes, skyrockets, roman candles, bombs, rockets, wheels, colored fires, fountains, mines, serpents and other fireworks of like construction;

D. Fireworks containing any explosive or flammable compound; or

E. Tablets or other device containing any explosive substance or flammable compound. The term "fireworks" does not include consumer fireworks or toy pistols, toy canes, toy guns or other devices in which paper caps or plastic caps containing 25/100 grains or less of explosive compound are used if they are constructed so that the hand can not come in contact with the cap when in place for the explosion, toy pistol paper caps or plastic caps that contain less than 20/100 grains of explosive mixture, sparklers that do not contain magnesium chlorates or perchlorates or signal, antique or replica cannons if no projectile is fired.

4. Permit. "Permit" means the nontransferable permission granted by the authority having jurisdiction.

5. Person. "Person" means any natural person, combination of natural persons, association, municipality, amusement park or other legal or commercial entity.

6. Possession. "Possession" means the ownership, possession or control over an object that is the subject of this ordinance..

7. Sale or sell. "Sale" or "sell" means any transfer or delivery of fireworks or consumer fireworks to a person for consideration.

8. Use. "Use" means the action of using any fireworks or consumer fireworks.

IV. Prohibitions/Limitations:

A person may not use, sell or offer for sale, or possess with the intent to sell consumer fireworks, as defined in 8 M.R.S. § 221-A, in the Town of Berwick except as follows:

A. Use. Consumer fireworks may only be used under the following conditions:

(a) By a person 21 years of age or older

(b) Between 12:00 p.m. and 10 p.m. except on July 4th and December 31st when they may be used between 9:00 a.m. and 12 a.m. the following day;

(c) On the property of the person using the fireworks or on the property of a person who has consented to the use of consumer fireworks on that property. If the user is a tenant of a property then written consent from the landlord is required;

- (d) At least fifty (50) feet from any combustible structures; and
- (e) When the fire danger conditions, as determined by the Maine Forest Service, are Class 1, 2, or 3.

B. Sale. Consumer fireworks may only be sold, offered for sale, or possessed with the intent to sell by a person whom:

- (a) Holds a current federal permit to sell fireworks under 18 United States Code § 843;
- (b) Holds a current State license for sale of consumer fireworks; and,
- (c) Is in compliance with any permitting requirements or other regulations of the Berwick Land Use Ordinance.

V. Penalties and Enforcement. In addition to applicable penalties provided by 8 M.R.S. § 223-A, violation of the provisions of this ordinance is a civil violation for which fines will be issued as follows: 1st offense \$50.00, 2nd offense \$100.00, 3rd (and any subsequent) offense \$250.00. For this purpose of this section, each prohibited act shall constitute a separate violation. The Police Department is authorized to enforce this ordinance and may to seize consumer fireworks that are in violation of this ordinance subject to applicable laws. The Town is authorized to seek fines, penalties and fees (including attorney's fees) in accordance with 30-A M.R.S. § 4452 for violation of any permitting requirements and regulations of the Berwick Land Use Ordinance..

VI. Injunction. In addition to any other remedies available at law, the Town of Berwick may seek to enjoin any planned, anticipated, or threatened violation of this Ordinance.

VII. Exemption: Pursuant to 8 M.R.S. § 227-B, nothing in this ordinance shall be construed to limit or regulate fireworks displays, as defined in 8 M.R.S. § 221-A, or the issuance of permits for fireworks displays by the Maine Commissioner of Public Safety or designee.