



CITY OF CONCORD

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REPORT TO MAYOR AND THE CITY COUNCIL

FROM: James W. Kennedy, City Solicitor
DATE: June 30, 2020
SUBJECT: Consumer/Permissible Fireworks Ordinance

This report follows a June 8, 2020 City Council meeting and referral to the Legal Department regarding whether the City Council should adopt a fireworks ordinance restricting, and/or otherwise, prohibiting the use of consumer fireworks in Concord. As discussed at the June 8, 2020 City Council meeting, in 2015, the City Council considered and rejected the adoption of a consumer fireworks ordinance which would have prohibited the use of consumer fireworks between the hours of 11 pm and 10 am. In 2016, the Public Safety Advisory Board and the City Council reconsidered, and again, rejected the adoption of a consumer fireworks ordinance in Concord.

Please accept this report and consider whether to adopt a consumer fireworks ordinance to restrict or prohibit the use of consumer fireworks in Concord.

By way of background, New Hampshire RSA chapter 160-B and 160-C regulate the use and sale of all fireworks, including consumer fireworks also referred to as “permissible fireworks” or class C fireworks. This report does not address the sale and use of (display/commercial) class B fireworks which are regulated by the State and require a permit for use, which, by way of example, are the type of fireworks seen at City or town sponsored Fourth of July celebrations. Instead this report addresses consumer fireworks, which municipalities may regulate in accordance with RSA 160-C:6, which states as follows:

Any municipality in the state, by action of its local legislative body or local governing body, may vote to allow or to prohibit, within that municipality, the issuance of permits or licenses to sell permissible fireworks or the display or possession of permissible fireworks. If the municipality has voted to prohibit the issuance of permits or licenses or the display or possession of permissible fireworks prior to the effective date of this section, such decision shall remain in effect unless subsequent action is taken under this section.

In addition, RSA 160-C:11 provides as follows:

I. Notwithstanding RSA 160-B:4, a person who is 21 years of age or older may possess permissible fireworks except in a municipality which has voted to prohibit possession pursuant to RSA 160-C:6. A person who is 21 years of age or older may display permissible fireworks on private property with the written consent of the owner or in the owner's presence, except in a municipality which has voted to prohibit display of permissible fireworks pursuant to RSA 160-C:6.

II. Any person who violates the provisions of this section shall be guilty of a violation if a natural person, or guilty of a class B misdemeanor if any other person.

The New Hampshire Division of Fire Safety maintains a Fireworks Safety and Enforcement Unit which is a cooperative effort between the Office of the State Fire Marshal, local fire departments, and federal, state, and local law enforcement agencies. Investigators assigned to the unit conduct inspection and enforcement activities throughout the state, and issue permits and licenses for the manufacture, transportation, storage, handling and display of fireworks, pyrotechnics, flame effects, special effects and consumer fireworks. In addition, the Permissible Fireworks Advisory Committee works under the Division of Fire Safety, and among other tasks, maintains a Community Consumer Fireworks Restrictions list, which documents the regulation and non-regulation of consumer fireworks in municipalities throughout New Hampshire. The list is attached to this report. Examples of municipal consumer fireworks regulation includes: Manchester (sale, possession and display prohibited), Nashua (sale, possession and display prohibited), Merrimack (regulates time of day 11 pm – 10 am), Goffstown (permit required), Londonderry (permit required), Keene (permit required) and Hampton (sale, possession and display prohibited). For your information, I have attached the Londonderry and Keene ordinances which authorize consumer fireworks by permit.

Although Concord does not expressly regulate consumer fireworks by ordinance, it still has the authority to regulate the use and/or misuse of consumer fireworks under New Hampshire's disorderly conduct statute, RSA 644:2, and/or the City's noise ordinance, Article 13-6-1.

To the extent that the City Council wishes to regulate the use of consumer fireworks, it may do so *via* City ordinance. Such regulation(s) may: (1) restrict the display and possession of consumer fireworks to certain hours; (2) authorize the display and possession of consumer fireworks by permit only; (3) prohibit the sale, display and/or possession of consumer fireworks throughout the City; or (4) prohibit the display and possession of consumer fireworks on City property. To the extent that a regulatory ordinance is adopted, the City Council should consider what, if any, penalty should apply. In accordance with RSA 651:2, the penalty for a violation may not exceed \$1,000.