The Town Tea – Fireworks!

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Link to Recorded Webinar

Sale, Possession and Use of “Sparkling Devices.” In 2014, NYS authorized the sale, possession and use of “sparkling devices” in New York during certain timeframes: June 1 through July 5 and December 26 through January 2 (see General Business Law § 392-j). Sparkling devices, or sparklers, may be sold during those timeframes by any business registered with the state to sell such sparklers (see Executive Law § 156-h).

County Opt-In. The sale of sparkling devices can only occur in those cities and counties that affirmatively elect to exclude “sparkling devices” from the definition of fireworks or dangerous fireworks. That is, if a county or city enacts a local law excluding sparkling devices from the definition of fireworks or dangerous fireworks, registered businesses may sell sparklers throughout the county or city during the timeframes set forth above (see Penal Law § 405.00).

Sale of “Sparkling Devices” in Towns? If your town is located within a county that has enacted a local law “opting in” that excludes sparklers from the definition of fireworks, the town must allow for the sale of sparklers within its jurisdiction. If the county opts in, sparklers are thereafter excluded from the category of prohibited fireworks and dangerous fireworks and may be sold and possessed in the town.

Preemption. Additionally, the town may not attempt to regulate the sale or use of sparklers; it cannot require a permit nor can it charge any fees for the use of sparklers. The state has evidenced a clear intent to pre-empt the regulation of fireworks and sparklers, inasmuch as the law provides that any local ordinances regulating or prohibiting the display of fireworks are superseded (see Penal Law § 405.00).

Exception. Local governments are authorized to adopt local laws regulating or prohibiting the use, storage, transportation or sale for use of fireworks in preparation for or in connection with television broadcasts.

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Public Displays of Fireworks – Permit Requirements.

- Towns are the permitting authority for any public display of fireworks that occur in the town outside village area of the town.
- The town board designates the officer charged with administering the permits.
- Towns may grant a permit for the display of fireworks to municipalities, fair associations, amusement parks, persons, or organizations of individuals that submit an application in writing. The application for such permit shall set forth:
  - The name of the body sponsoring the display and the names of the persons in charge of the firing of the display who shall possess a valid certificate of competence as a pyrotechnician as required under the general business law and article 16 of the Labor Law. The permit application shall further contain a verified statement from the applicant identifying the individuals who are authorized to fire the display including their certificate numbers, and that such individuals possess a valid certificate of competence as a pyrotechnician;
  - The date and time of day at which the display is to be held;
  - The exact location planned for the display;
  - The number and kind of fireworks to be discharged;
  - The manner and place of storage of such fireworks prior to the display;
  - 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;
  - Such other information as the permit authority may deem necessary to protect persons or property (see Penal Law § 405.00).
- The application must be submitted at least five days in advance of the display, and the permit itself must demonstrate compliance with the requirements in the law.
- Permits cannot be issued for displays that will occur within 500 feet from the boundary lines of property owned by horse breeders.
- **Bonding.** The town MUST require a bond of a least $1 million or an indemnity insurance policy with liability coverage and indemnity protection in an amount equivalent to the bonding, unless the permittee is the state, county park, city, town or village.

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