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Can municipalities regulate fireworks?

"It [Independence Day] ought to be solemnized with Pomp and Parade, with Shews, Games, Sports, Guns, Bells, Bonfires and Illuminations from one End of this Continent to the other from this Time forward forever more."

—Letter from John Adams to Abigail Adams, July 3, 1776

Ahh, the 4th of July in Vermont! For most of us it means maple creemies dripping down our hands as we watch local high school bands, fire trucks, old cars, community groups, politicians running for reelection, and the Bread and Puppet Theater troupe make their annual promenade through our downtowns. For municipal officials it also means fielding calls from angry taxpayers about fireworks disturbing their sleep.

The State of Vermont gives local government specific authority to regulate fireworks, but after reading this article, local officials may not want to be overly strict in such regulation. That's because the state mostly takes a "if it ain't broke, don't fix it" approach to governing fireworks and it is difficult, at best, to adopt a common sense approach at the local level.

What are fireworks under the law? "The term 'fireworks' means any combustible or explosive composition, 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, including blank cartridges, toy pistols, toy cannons, toy canes, or toy guns in which explosives are used, balloons that are propelled by explosives, firecrackers, torpedoes, sky rockets, Roman candles, cherry bombs, or other fireworks of like construction and any fireworks containing any explosive or flammable compound, or any tablets or other device containing any explosive substance, except sparklers." 20 V.S.A. § 3131. In addition to sparklers, the law also excludes from its coverage novelty smoke devices (toys and other devices containing paper caps containing less than .25 grains of explosive materials).

The statement that perfectly captures the imperfect state of Vermont's fireworks laws comes from Vermont State Police Captain Paul White, who in a June 27, 2014, WCAX story on the issue by reporter Cat Viglienzoni, said, "[t]he consumer needs to be aware that although it's legal for the store to sell them to you, the moment you walk out the door into the parking lot with that bag of fireworks, you are breaking the law." The law that Captain White was referring to was 20 V.S.A. § 3132(a)(3) which states, "it shall be unlawful for any person ... to ... [t]ransport fireworks except in interstate commerce." So you can buy fireworks; you just can't leave the store with them.

The authority that the state has given to municipalities to regulate fireworks is also problematic. In addition to the prohibition against transporting fireworks, it is also against the law to "[u]se, possess, or explode any fireworks unless the person has been issued a permit to display

fireworks..." 20 V.S.A. § 3132(a)(2). This means that a permit to display fireworks is required not only before a person lights any fireworks, but also before one even possesses them. Display permits (which are required to "use, possess, or explode any fireworks…") must be **submitted** in writing 15 days in advance to the municipal fire chief or to the selectboard in those municipalities without a fire chief. The permit must be **approved** by the municipal fire chief ***and*** the municipal fire chief, but again, in those municipalities without a fire chief, then only by the selectboard.

Any permitted display (e.g., use of fireworks) must be handled by a competent operator. Unfortunately, there is no legal definition of a "competent operator." Who is a "competent operator?" Presumably, unless the permittee voluntarily admits to losing a finger setting off a roman candle, the basis for making this determination rests in the permittee's description of the display. A permissible display, the law demands, "shall be of a character, and so located, discharged or fired as, in the opinion of the chief of the fire department, or in a municipality with no fire department, the selectboard, after proper inspection, shall not be hazardous to property or endanger any person or persons." 20 V.S.A. § 3132(c). The law then apparently puts the focus of issuing a permit not solely upon the competence of the operator, but rather on the totality of the circumstances of the display itself, with the overall focus being on whether there is a likelihood that anyone will be hurt or property will be damaged. In doing so, however, it should be noted that the law *does* impose a duty of "proper inspection" upon the municipal authority that grants permits.

Violation of this law by any party constitutes a misdemeanor subject to a fine of not more than $100.00 for each violation or imprisonment for not more than 30 days or both. 20 V.S.A. § 3135(1).

And that's where the letter of the law and its intended purposes rub up against each other. Is your municipality going to fine someone for setting off a couple of bottle rockets and firecrackers at a family cookout without a permit? Probably not. But the public should be informed that larger public displays where there is an element of danger are the types of events for which a local permit is required. A permit in this instance will serve to put emergency services personnel on notice if a call comes in. To their credit, the state's Fire Safety Division of the Vermont Department of Public Safety has put together a Public Fireworks Display Checklist and Sample Municipal Fireworks Display Permit for your use, both of which are available at http://firesafety.vermont.gov/pubed/media/sparklers.

Regardless of whether or not your municipality issues fireworks permits, you may want to adopt a local nuisance or noise ordinance regulating public disturbances. Otherwise, there is a self-executing "noise in the nighttime" law which states that "[a] person who, between sunset and sunrise, disturbs and breaks the public peace by firing guns, blowing horns, or other unnecessary and offensive noise shall be fined not more than $ 50.00." 13 V.S.A. § 1022. Alternatively, and especially around the 4th of July, you may just want to recognize that a little sensible rebellion against overbearing laws is what Independence Day is all about.

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