

LOCAL LAW NO. 3-16
(Print 2)
CHAUTAUQUA COUNTY

A LOCAL LAW AUTHORIZING THE SALE AND USE
OF SPARKLING DEVICES AS PERMITTED
BY NEW YORK STATE PENAL LAW SECTION 405(5)(b)

BE IT ENACTED, by the County Legislature of the County of Chautauqua, New York, as follows:

Section 1. Legislative Findings and Intent.

- A. On November 21, 2014, Governor Cuomo signed into law Chapter 477 of the Laws of 2014.
- B. The aforementioned Chapter law amended the New York State Penal Law, Executive Law and 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.
- C. The Governor signed this law in part due to its strong home rule authority, only allowing for certain fireworks to be sold and used in municipalities that affirmatively enact a local law authorizing such action.
- D. It is the intent of this Local Law to allow the sale and use of “sparkling devices” in Chautauqua County which will benefit local residents and 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.

Section 3. Authorized Sale and Use of Sparkling Devices

- A. Pursuant to Penal Law § 270(3)(b)(v) and Penal Law § 405(5)(b), “sparkling devices” shall be excluded from the definition of “fireworks” and “dangerous fireworks” as those terms are defined by Penal Law § 270(1)(a) and Penal Law § 270(1)(b), respectively.
- B. The sale and use of “sparkling devices,” as defined in Penal Law § 270(1)(a)(vi) which is incorporated hereunder, shall be lawful in Chautauqua County provided such sale and use are not in violation of Penal Law § 270 or any rules and regulations thereunder.
- C. The sale and use of sparking devices is permitted subject to the following restrictions:

1. The sale of sparkling devices will only be permitted on and between June 1st and July 5th, and December 26th and January 2nd of each calendar year.
2. All distributors, manufacturers and retailers of sparkling devices must be licensed through the New York State Department of State.
3. Only persons 18 years of age or older may purchase sparkling devices.

Section 4. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, or business shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its specific application.

Section 5. Effective Date.

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

Emailed: 5/11/16

Adopted by Legislature: 5/25/16

Public Hearing by County Executive: 6/8/16

Mailed to State: 6/10/16

R/C Vote: 17 Yes; 2 Absent