

Washington Island PD

From: Pelrine, Raymond [Raymond.Pelrine@da.wi.gov]
Sent: Thursday, May 31, 2012 11:37 AM
To: Washington Island PD
Subject: [SPAM]RE: Fireworks
Attachments: Fireworks.memo.Ray.5.7.12.doc

Tyler-
Attached is a copy of a memo I sent recently to Terry Vogel and Arleigh Porter on this subject. I should have sent a copy to you too. Sorry for the oversight. I think it addresses your and the Town Board's questions. Bottom Line: The Town may issue permits, but whether and to what extent an issued permit allows a particular person to lawfully possess or use the fireworks will depend on the facts. Note the enlarged portion of the memo. That is a change in recent years from earlier law. Now individuals may get permits. Before permits could only be issued to groups.
Hope this helps.

Raymond L. Pelrine
Door County District Attorney
1215 South Duluth Ave.
Sturgeon Bay, WI 54235
(920)746-2284

From: Washington Island PD [<mailto:washingtonislandpd@gmail.com>]
Sent: Thursday, May 31, 2012 10:32 AM
To: Pelrine, Raymond
Cc: Joel R. Gunnlaugsson
Subject: Fireworks

Hi Ray,

Last month our town board discussed the use of fireworks and permits on Washington Island. The board received a complaint/ concern from a citizen that had contacted your office/department on fireworks in Door County. Our town for the past 5 years has issued permits from the Town Office/ Town Chairman. I've attached the permit form that we use: front and back. I've also attached two sheets from the Wis. DOJ website that the town feels that gives them the right to issue permits. I've also attached the County ord. # 31.18 that refers to fireworks and permits.

The question: The board has asked me to ask you your opinion on this matter and are "we" (the town chairman) allowed to issue permits?

Thank you,

Tyler Mc Grane

Chief of Police

Washington Island Police Department
P.O. Box 190/ 1721 Airport Road
Washington Island, WI 54246
Office: 920-847-2355 Fax: 920-847-2315
washingtonislandpd@gmail.com



County of Door
OFFICE OF THE DISTRICT ATTORNEY

County Justice Center
1215 S Duluth Avenue, Sturgeon Bay, WI 54235
Phone: (920) 746-2284 Fax: (920) 746-2381

RAYMOND L. PELRINE
District Attorney

Joan M. Korb
Assistant District Attorney

Cathie Schroeder
Victim/Witness Coordinator
(920) 746-2321

May 31, 2012

MEMO

TO: Terry Vogel – Door County Sheriff
Arleigh Porter – Sturgeon Bay Police Chief

FROM: Raymond L. Pelrine – Door County District Attorney

RE: Fireworks in Door County

Gentlemen:

The purpose of this letter is to set forth my opinion regarding the possession and/or sale of fireworks in Door County.

Wisconsin law strictly regulates the possession, transport, and use of fireworks. Section 167.10, Stats., sets forth the definition of fireworks and exceptions from that definition. The definition is listed in subsection (1), and the exceptions are listed in subparagraphs (a-n). Thus, not all fireworks are “fireworks” whose possession, use, and transport are subject to regulation. Law enforcement will have to examine the packaging and labeling to determine if the item in question qualifies. Also, at least one major fireworks supplier conceded that many of the typical fireworks such as firecrackers, bottle rockets, Saturn Missiles, and Artillery Shells are indeed “fireworks” subject to statutory regulation. *City of Wisconsin Dells v. Dells Fireworks, Inc.*, 197 Wis. 2d 1, 16-18, 539 N.W.2d 916 (Ct. App. 1995).

When an item qualifies as a “firework” under sec. 167.10(1), Stats., the seller must have a permit. This can be a federal or local permit. Just because someone has a federal permit does not mean they are in the clear. They will have to check local ordinances for the city, town, village, and county to see if more strict regulations have been enacted. Section 167.10(6), Stats. Also, holding a federal permit does not mean sellers are exempt from state law or more strict local ordinances.

Permits are also required of buyers. No person may possess fireworks without a valid permit from the mayor of the city, president of the village, chairperson of the town, or a designated employee of those entities. Section 167.10(3)(a), Stats. Permits cannot be issued to minors,

Sally Baudhuin
Office Administration/
Juveniles
(920) 746-2236

Lisa Mraz
Subpoenas/Transports
Fel Discovery/Billing
(920) 746-2388

Sally Hall
Traffic/Forfeiture/
Intake
(920) 746-2230

Lisa Giraud
Worthless Checks/
Reception/Discovery
(920) 746-2284

even if the parent consents. Section 167.10(3)(h), Stats. Thus, even with parental consent and permission, or even as an employee of a fireworks dealer, minors cannot possess anything that qualifies as a “firework.” Also, the governing body issuing the permit can only authorize the possession and use of the fireworks within its own jurisdiction. Section 167.10(3), Stats. In other words, the Town of Sevastopol cannot issue someone a permit to possess and use fireworks in the Town of Baileys Harbor.

Many fireworks sellers will sell someone a membership into a group that has been issued a permit. Alternatively, they will sell someone a “permit” which purportedly allows the buyer to possess fireworks. **This practice is not permissible under the statutes and has been expressly forbidden by the Wisconsin Court of Appeals in *Dells Fireworks*** (citation above). This violates the law in two ways. First, only those entities listed above can issue permits. Second, the law expressly states that permits can only be issued to (1) a public authority, (2) a fair association, (3) an amusement park, (4) a park board, (5) a civic organization, (6) **any individual or group of individuals**, (7) an agricultural producer for the protection of crops from predatory birds or animals. It is important that the individual or group has a properly issued permit and that the individual or group exercises control over the purchase and use of the fireworks by its members. If not, then it is not really the lawfully individual or group, but just some folks trying to claim the label of the permit holder in order to circumvent the law.

Permits must contain the following information: name and address of permit holder, the date on and after which fireworks may be purchased, the kind and quantity of fireworks which may be purchased, the date and location of permitted use, and other special conditions prescribed by ordinance.

If a violation is occurring or has occurred, officers are authorized to seize the fireworks that are the subject of the violation. If there is a conviction, those fireworks may then be destroyed. If there is no conviction, the fireworks “shall be returned to the owner in the same condition as they were when seized to the extent practicable.”

Sincerely,

Raymond L. Pelrine
District Attorney
Door County, Wisconsin

RLP/sb

TOWN OF WASHINGTON WASHINGTON ISLAND, WI

Fee (\$10.00 per event)

Rules:

IT SHALL BE UNLAWFUL FOR ANY PERSON, ORGANIZATION, BUSINESS OR CORPORATION TO LIGHT OR MAINTAIN ANY ILLEGAL FIREWORKS, EXCEPT FIREWORKS FOR PUBLIC DISPLAY IN COMPLIANCE WITH STATE LAW. THESE SHALL BE PERMITTED AFTER OBTAINING ALL STATE AND LOCAL PERMITS APPLICABLE.

- 1.) FIREWORKS MAY BE DISCHARGED ONLY ON THE ABOVE STATED PROPERTY.
- 2.) YOU MUST BE THE OWNER OF THE PROPERTY OR PRESENT WRITTEN PERMISSION FROM THE OWNER OF THE DESIGNATED PROPERTY BEFORE DISCHARGING FIREWORKS.
- 3.) FIREWORKS THAT WILL BE ALLOWED INCLUDE: SPARKLERS, GROUND SPINNERS, CONE FOUNTAINS, WHEELS, ROMAN CANDLES, AND OTHER NON-AERIAL DISPLAY FIREWORKS.
- 4.) FIREWORKS THAT ARE NOT ALLOWED INCLUDE: FIRECRACKERS, FIREWORKS CONTAINING MORE THAN 1.3 GRAMS OF EXPLOSIVE POWDER, AND ANY OTHER TYPE OF FIREWORK FOR WHICH A PERMIT FROM THE U.S. BUREAU OF ALCOHOL, TOBACCO AND FIREARMS IS REQUIRED.
- 5.) FIREWORKS CAN ONLY BE IGNITED BY PERSONS EIGHTEEN (18) YEARS OF AGE AND OLDER.
- 6.) FIREWORKS CAN ONLY BE DISPLAYED FROM 9:00 A.M. TO 11:00 P.M. ON DAYS OTHER THAN HOLIDAYS. ON DESIGNATED HOLIDAYS FIREWORKS CAN BE DISPLAYED FROM 9:00 A.M. UNTIL 12:00 P.M. (MIDNIGHT). THE DESIGNATED HOLIDAYS INCLUDE: MEMORIAL DAY, FOURTH OF JULY, LABOR DAY AND NEW YEARS EVE.
- 7.) FIREWORKS CAN NOT BE DISPLAYED DURING A FIRE OR BURNING BAN.
- 8.) IF ANY PERSON RECKLESSLY, KNOWINGLY, INTENTIONALLY OR OTHERWISE DISPLAYS FIREWORKS IN SUCH A MANNER AS TO CAUSE DAMAGE OR DEATH TO THEMSELVES, OTHERS OR THEIR PROPERTY, THE PERMIT HOLDER IS RESPONSIBLE FOR ALL COSTS, ASSOCIATED WITH THE DAMAGES.
- 9.) A PERSON UTILIZING FIREWORKS SHALL BE RESPONSIBLE FOR ALL FIRE SUPPRESSION COSTS AND ANY OTHER LIABILITY RESULTING FROM DAMAGE OR INJURY CAUSED BY THE FIRE, IRRESPECTIVE OF WHETHER A PERMIT IS ISSUED.
- 10.) NOTIFY YOUR NEIGHBORS OF THE DATE AND TIME OF YOUR FIREWORK DISPLAYS.

I, _____ HAVE READ ALL OF THE INFORMATION CONTAINED ON THIS PERMIT.

SIGNATURE OF PERMIT HOLDER

PERMIT FEE \$10.00: _____
PAID

DATE

TOWN OF MILTON, BUFFALO COUNTY, WI

SAMPLE

FIREWORKS PERMIT

TO: _____

_____ (name of person/organization receiving permit) of _____ (address) is/are granted permission to purchase fireworks on and after _____, 20__ (date on or after the date this permit is issued) of the kind and quantity listed below to be used on _____, 20__ at _____ (location). This permit is restricted to the above conditions.

You are also to adhere to the following special conditions in ordinance _____ for the Town of Milton, Buffalo County, Wisconsin. You must also abide by all federal, state and local laws and regulations relating to fireworks.

NOTE: A separate permit is required for each date that the fireworks will be lit off.

You are also required to file a [bond or liability policy, whichever requested] in the name of the Town of Milton, in the amount of \$ _____ that will indemnify other persons for any injuries to person or property arising out of the use of fireworks. **NOTE:** A town is not liable for damage caused by fireworks for the sole reason of issuing a fireworks permit. Wis. Stat. Sec. 167.10 (7m).

Date: _____, 20__

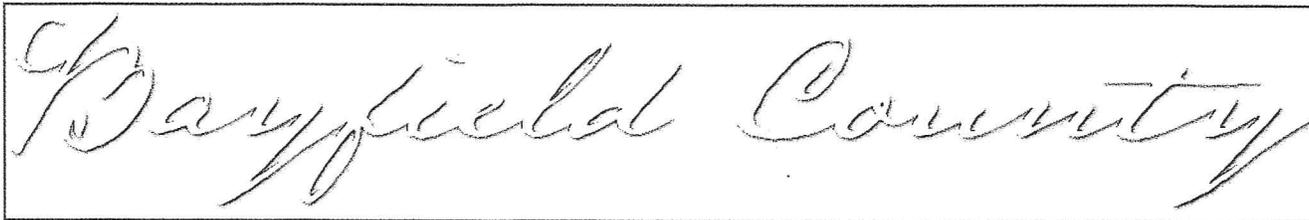
Town Chairperson Signature

Town Chairperson Printed Signature

NOTE: A copy of this permit must be given to a municipal fire or law enforcement official by the permit holder at least two days before the date of authorized use. Wis. Stat. Sec. 167.10(3)(g)

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Fireworks

Each year the Sheriff's Office receives more complaints about fireworks. Fireworks may be fun, a tradition on the Fourth of July, but also can be dangerous or annoying to others.

- If using fireworks remember....they are explosives. Injuries happen.
- Clean up your mess. On land and on the water.
- Alcohol and explosives don't mix.
- **Be courteous to your neighbors.** Many have pets that become scared. Fireworks at 2 AM is not appropriate. Neighbors do not like the debris on their property.

What is legal without a permit?

- Sparklers not exceeding 36 inches, stationary cones and fountains, toy snakes, smoke bombs, caps, noisemakers, and confetti poppers with less than 1/4 grain of explosive mixture.
- Check local ordinances before use.

What is illegal without a permit?

- **Possessing or using any other fireworks, including, for example, firecrackers, roman candles, bottle rockets and mortars, in Wisconsin without a valid permit is illegal.**
- A commonly used rule of thumb is that a permit is required if the explosive device explodes or leaves the ground.
- The sale of these restricted fireworks to person without a valid permit is also illegal, unless the person is a wholesale jobber selling fireworks to a non-resident for shipment out of state.

Fireworks Permits

- May **only** be issued by a Mayor, Village President, or Town Chair or a municipal employee or official they have designated. *Permits issued or sold by fireworks vendors bearing either a pre-printed, stamped, or printed signature of the local official in which the permittee's information is completed by the vendor or the buyer are not valid or legal*
- The permit is only valid in the jurisdiction it was issued.
- Permit may require a bond or insurance.
- Permit must specify the kind and quantity of fireworks allowed to be used or possessed.
- Permit must specify the location of where fireworks can be used or possessed.
- Permit must have a specific date of use for the fireworks.
- Permit must specify the date on which fireworks can be purchased.
- Persons with a valid permit may transport fireworks from the place they were purchased to the jurisdiction their use has been permitted.

Penalties

- Possession, use, or selling to a person without a valid permit is subject to a forfeiture of up to \$1000.00. Each firework used or possessed may be a separate violation.
- A parent or guardian allowing a minor to use or possess is subject to a forfeiture of up to \$1000.00. Not including fireworks that do not require a permit.

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The Fall Bayfield County delinquent property sale auction of five parcels in the County ended on October 10. 70 bids were submitted for the parcels.

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Permit to Possess and Display Fireworks

(Required by State of Wisconsin s. 101 (1) (J))

STATE OF WISCONSIN, Town of Clover, Bayfield County

TO WHOM IT MAY CONCERN – GREETINGS:

Application having been made in accordance with the laws of the State of Wisconsin,

this permit is issued to (name) _____

(address) _____

Giving them the right to exhibit display fireworks on the _____ day of _____ 20__

At _____ o'clock P.M. at _____ in said County,

in connection with _____ celebration.

Fireworks purchased on the _____ day of _____ 20__

include the following kind and quantity of fireworks: (attach receipt from licensed vendor after purchase)

Fireworks exhibit display is subject to Wisconsin DNR Fire Burning restrictions. Call 1-888-WIS-BURN (947-2876) for daily restrictions.

↳ GOOD IDEA!

Title:

Signature of Town Chairperson, Clerk, or Fire Chief

Note: See attached copy of Bayfield County Regulations and Licensing of Fireworks.

Send to: Town of Clover Clerk, P.O. Box 94, Herbster, WI 54844 for signature. Signed permit will be returned to you and must be in your possession at time of purchase, during transport, and when exhibiting display.

SAMPLE

Town of Casey Fireworks Permit

Wisconsin statute 167.10 prohibits the use or possession of fireworks, as defined under 167.10 (1), without a users permit issued by the mayor of a city, president of a village or chairperson of a town in which the possession or use is to occur. Permits can only be issued to one of the following; 1) A public authority; 2) A fair association; 3) An amusement park; 4) A park board; 5) A civic organization; 6) A group of resident or non resident individuals; 7) An agricultural producer for the protection of crops from predatory birds or animals. NOTE: Permits cannot be issued to a minor; they must be 18 years of age, under 167.10 (3) (h). A copy of this permit shall be on file with the clerk of the city, village or town.

This fireworks permit is issued to:

(Print the name and address of the public authority, fair association, amusement park, park board, civic organization, group of resident or non -resident individuals or agricultural producer of crops)

Name: _____

Address: _____

Contact Name: _____ Phone Number _____
(Print the name of the person authorized to represent the permit holder and their phone number)

Date on or after which fireworks may be purchased: _____
(Fireworks cannot be purchased or used prior to the issuing of this permit. Fireworks can be purchased anywhere in this state and the possession of the fireworks is allowed under this permit while the permit holder is transporting the permitted fireworks to the city, town or village where the possession and use is authorized by this permit. However, the permit holder must take the most reasonable direct route between the location of purchase and the location of the permitted use of fireworks indicated on this permit. Remaining in a non-permitted city, village or town for more than 12 hours means you are no longer "transporting" the permitted fireworks)

The kind and quantity of fireworks, which may be purchased and used: _____

(Attach list of fireworks or use the back of this form if needed)

Date/s and times authorized for the use of the permitted fireworks:

(dates must be between July 3rd^h thru July 5th between the hours of 9:00 pm and midnight only)

Location of the use of the permitted fireworks: _____
(Insert the physical address i.e. W4555 James Road)

Special conditions: _____

(The city, village or town may require an indemnity bond with sufficient sureties or policy of liability insurance for the payment of all claims that may arise by reason of injury to person or property from the handling, use or discharge of fireworks under this permit)

(OVER)

Other special conditions: _____

(The issuing authority may list other conditions, which will void this permit i.e. high fire danger. Or such other special requirements that the permit holder must adhere to prior to the use or during the use of the permitted fireworks)

This permit is null and void unless fire conditions are either "low" or "moderate". The permit holder is required to verify fire conditions within 48 hours prior to detonation by contacting the Wisconsin Dept. of Natural Resources at 635-4083 or via their website at http://www.dnr.state.wi.us/org/land/forestry/Fire/fire_danger/FireDanger.

The undersigned authorized person by their signature understands that any violation of this permit or the regulations set by state statute can result in the confiscation of fireworks and the issuing of citation/s that include a forfeiture not to exceed \$1,000. Further, should the use of fireworks of any kind start a forest fire, the responsible party will be liable for the fire suppression costs and may be issued a citations.

Issued to: _____
(Name of permit holder i.e. fair association, public authority or group of residents etc.)

Signed: _____ Date: _____
(Signature of and dated by the person authorized to represent the permit holder)

Do not write below this line, to be completed by permit issuer only.

Permit issued this date: _____

Issued by: (Print name and title) _____
(Chairperson Town of Casey)

Signature: _____
(Chairperson Town of Casey)