

## LOCAL LAW NO. "A" FOR 2016

### A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK, ALLOWING FOR COMMON, SAFE ITEMS TO BE EXCLUDED FROM THE DANGEROUS FIREWORKS DEFINITION AS PERMITTED BY NEW YORK STATE PENAL LAW SECTION 405 (b)

Introduced: 2/9/2016

By Mr. Clenahan and Ms. McLean Lane:

BE IT ENACTED by the Albany County Legislature as follows:

#### Section 1. Legislative Intent.

On November 21, 2014 Governor Andrew M. Cuomo signed into law Chapter 477 of the Laws of 2014 (S.7888/A10141) that amended the New York State Penal Law, the Executive Law and the 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, and labeling them dangerous only restricts business and personal enjoyment.

The Governor signed this bill into 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.

In keeping with Chapter 477 of the Laws of 2014, and Penal Law Section 405, this Legislature further finds and determines that "sparkler devices" may be sold and enjoyed, only in the manner described below, within Albany County.

This Legislature finds that allowing our residents the use of safe "sparkler devices" will benefit them and our local businesses.

The National Fire Protection Association ("NFPA") adopted a recommended safety code ("NFPA 1124") for the manufacture, transportation, storage and retail sales of fireworks. This Local Law and State Chapter 477 of the Laws of 2014 are compliant with the safety standards established in NFPA 1124.

Therefore, the purpose of this Local Law is to allow for common, safe items to be excluded from the dangerous fireworks definition as permitted by New York State Penal Law Section 405 (b).

#### Section 2. Definitions:

"Sparkling Devices" are defined as follows:

“Sparkling Devices” 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. Sale and Use of Sparkling Devices.

The sale and use of sparkling devices as defined in this Local Law is permitted in Albany County with the following restrictions:

- a) Sales and use of sparkling devices will only be permitted on or between June 1st through July 5<sup>th</sup> and December 26<sup>th</sup> and January 2<sup>nd</sup> of each calendar year;
- b) All distributors, manufacturers, and retailers of sparkling devices must be registered through the New York State Office of Fire Prevention and Control; and
- c) Only individuals over the age of 18 may purchase sparkling devices; and
- d) All distributors, manufacturers, and retailers of sparkling devices must conspicuously display signage stating that sparkling devices are present in the facility.

### Section 4. Safety Rules and Regulations.

This Local Law shall be subject to any and all rules and regulations set out in New York Codes, Rules and Regulations, Title 19, Part 1228, Section 1228.3.

This Local Law shall also be subject to any and all relevant rules and regulations regarding the manufacture, transportation, storage and retail sales of sparkling devices set out in NFPA 1124.

From time to time, the New York State Department of Environmental Conservation (DEC) publishes fire danger ratings for each fire danger rating area (FDRA) in New York State. The use of sparkling devices at any location within a FDRA designated by the DEC as having a fire danger rating of "Extreme" at any time when such designation is in effect is prohibited.

The use of sparkling devices at any location within a FDRA designated by the DEC as having a fire danger rating of "Very High" at any time when such designation is in effect may be temporarily suspended by any local fire department chief in his or her fire district based on a reasonable belief that the use of sparkling devices may cause a serious risk of fire.

Section 5. Separability.

If any part of or provisions of this law, or the application thereof to any person or circumstance, shall be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part of or provision of, or application directly involved in the controversy in which such the remainder of this law, or the application thereof to other persons or circumstances.

Section 6. State Environmental Quality Review Act compliance

This County Legislature determines that the adoption of this Local Law constitutes a “Type II action” as said term is defined in the State Environmental Quality Review Act (“SEQRA”), and that no further action with respect to same is required under SEQRA.

Section 7. Effective Date.

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

*Referred to Public Safety Committee. 2/9/16*

*Favorable Recommendation – Public Safety Committee. 3/30/16*

*On roll call vote the following voted in favor: Messrs. Beston, Bullock, Burgdorf, Ms. Chapman, Messrs. Clenahan, Commisso, Crouse, Ms. Cunningham, Messrs. Domalewicz, Drake, Ethier, Feeney, Fein, Higgins, Hogan, A. Joyce, R. Joyce, Ms. Lockart, Messrs. Mackey, Mayo, Mss. McKnight, McLean Lane, Messrs. O’Brien, Signoracci, Simpson, Smith, Touchette, Tunny, Ward and Ms. Willingham – 30.*

*Those opposed: Messrs. Dawson, Grimm, Ms. Lekakis, Messrs. Mauriello, Mendick, Miller and Stevens – 7.*

*Local Law was adopted. 4/11/16*