

## TOWN OF WINTHROP

### CONSUMER FIREWORKS ORDINANCE

**A. Purpose.** This Ordinance prohibits the sale and restricts the use of consumer fireworks to ensure the safety of the residents and property owners of the Town of Winthrop and of the general public.

**B. Title and Authority.** This Ordinance shall be known as the "Town of Winthrop Consumer Fireworks Ordinance." It is adopted pursuant to the enabling provisions of the Maine Constitution, the provisions of 30-A M.R.S.A. § 3001, and the provisions of P.L. 2011, ch. 416, § 5 (effective Jan. 1, 2012), *codified at* 8 M.R.S.A. § 223-A.

#### SECTION 2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

**Consumer Fireworks** – "Consumer fireworks" has the same meaning as in 27 Code of Federal Regulations, Section 555.11 or subsequent provision, but includes only products that are tested and certified by a 3rd-party testing laboratory as conforming with United States Consumer Product Safety Commission standards, in accordance with 15 United States Code, Chapter 47. "Consumer fireworks" does not include the following products:

- A. Missile-type rockets, as defined by the State Fire Marshal by rule;
- B. Helicopters and aerial spinners, as defined by the State Fire Marshal by rule; and
- C. Sky rockets and bottle rockets. For purposes of this definition, "sky rockets and bottle rockets" means cylindrical tubes containing not more than 20 grams of chemical composition, as defined by the State Fire Marshal by rule, with a wooden stick attached for guidance and stability that rise into the air upon ignition and that may produce a burst of color or sound at or near the height of flight.

#### SECTION 3. Sale of Consumer Fireworks Prohibited.

No person shall sell, possess with the intent to sell, or offer for sale consumer fireworks within the Town of Winthrop.

#### SECTION 4. Use of Consumer Fireworks Restricted

No person shall use, possess with the intent to use, display, fire, or cause to be exploded consumer fireworks within the Town of Winthrop except in compliance with all federal, state and local laws, ordinances, rules and regulations. Use of consumer fireworks within the Town of Winthrop is further restricted as follows:

**A. General Restrictions.**

- (1) The Town assumes no liability for injuries that result from the use of consumer fireworks.
- (2) A person shall use consumer fireworks only on that person's property or on the property of a person who has consented to the use of consumer fireworks on that property. The use of consumer fireworks on public property is prohibited.
- (3) A person shall not use consumer fireworks if the forest fire danger is Class "3" or greater, as determined by the Department of Conservation, Maine Forest Service.
- (4) Consumer fireworks shall not be used within 100 feet of any combustible structure or within 50 feet of overhead power lines.
- (5) Spectators shall be no closer than 75 feet from the discharge point of consumer fireworks.
- (6) Any person using consumer fireworks must provide for the cleanup and removal of all debris.
- (7) As provided for by 8 M.R.S.A. § 223-A, no person shall knowingly procure, or in any way aid or assist in procuring, furnish, give, sell or deliver consumer fireworks for or to a person under 21 years of age; or allow a person under 21 years of age under that person's control or in a place under that person's control to possess or use consumer fireworks.
- (8) It shall be unlawful for any person using consumer fireworks to consume alcohol, be under the influence of alcohol or be otherwise impaired while using consumer fireworks.
- (9) Means to extinguish any spot fires resulting from the use of consumer fireworks must be available, including but not limited to, fire extinguishers and garden hoses. Access to 9-1-1 by landline or mobile telephone also must be available during the use of consumer fireworks should an emergency arise.

**B. Hours of Use.**

Consumer fireworks may be used during the hours of 9 a.m. and 9 p.m.,

except that on the follow days they may be used between the hours of 9 a.m. and 12:30 a.m. the following day: (1) July 4th; (2) December 31st; and (3) the Saturday and Sunday immediately before and after July 4th and December 31st.

## **SECTION 5. Violation and Enforcement.**

- (a) Penalty for Sale Violation.** Any person who violates the provisions of Section 3 (Sale of Consumer Fireworks Prohibited) shall commit a civil violation punishable by a penalty of five hundred dollars (\$500.00) plus attorney's fees and costs for the first offense, and a penalty of one thousand dollars (\$1,000.00) plus attorney's fees and costs for subsequent offenses. Each day such violation occurs or continues to occur shall constitute a separate violation.
- (b) Penalty for Use Violation.** Any person who violates the provisions of Section 4 (Use of Consumer Fireworks Restricted) shall commit a civil violation punishable by a penalty of two hundred dollars (\$200.00) plus attorney's fees and costs for the first offense, and a penalty of one thousand dollars (\$1,000.00) plus attorney's fees and costs for subsequent offenses within six years of a use violation. Each day such violation occurs or continues to occur shall constitute a separate violation.
- (c) Enforcement.** This Ordinance shall be enforced by the Town of Winthrop Police Department.
- (d) Injunction.** In addition to any other remedies available at law or equity, the Town of Winthrop, acting through its Town Manager, may apply to any court of competent jurisdiction to enjoin any planned, anticipated or threatened violation of this Ordinance.
- (e) Seizure & Disposal of Consumer Fireworks.** The Town may seize consumer fireworks that the Town has probable cause to believe are used or sold in violation of this Ordinance and shall forfeit seized consumer fireworks to the State for disposal.

## **SECTION 6. Exceptions.**

This section does not apply to a person issued a fireworks display from the Maine Commissioner of Public Safety or his or her designee under the provisions of 8 M.R.S.A. §§ 221-237, and particularly Section 227-A. A fireworks display shall comply with all federal, state, and local laws, ordinances, and regulations.

## **SECTION 7. Annual Review.**

The Winthrop Town Council will hold an annual public hearing to decide if any further revision of this Ordinance is warranted.

**SECTION 8. Severability.**

In the event that any section, subsection or portion of this Ordinance shall be declared by any court of competent jurisdiction to be invalid for any reason, such decision shall not be deemed to affect the validity of any other section, subsection or portion of this Ordinance.

**SECTION 9. Effective Date.**

This Ordinance shall take effect and be in force 30 days after its adoption by the Town Council. Notwithstanding the provisions of 1 M.R.S.A. § 302, this Ordinance applies to any applications pending or approved on the date of its passage, whether or not such applications would constitute a "pending proceeding" under 1 M.R.S.A. § 302.

Adopted by Town Council: February 6, 2012