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TO: News Media
FROM: Chief David R Meeker Sr. *Chief David Meeker Sr.*
SUBJECT: Law changes regarding fireworks
DATE: June 10, 2015

With changes in the law regarding fireworks there have been several misconceptions and questions as to what fireworks are legal and what other restrictions apply.

First, municipalities have to enact a local law authorizing for certain fireworks to be sold and used which was done in Madison County. Sales are only permitted on or between June 1st through July 5th and December 26th through January 2nd of each calendar year. All distributors, manufacturers and retailers must comply with any and all state laws and regulations regarding registration requirements. Only those over the age of 18 may purchase said products. Local codes also have to be complied with for those operating a business that sells fireworks.

The law allows for “sparkling devices” to be sold and used. 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.) For a list of some of these devices and further regulations on sparkling devices you can check the Oneida City Police Facebook page.

A LOCAL LAW OF THE COUNTY OF MADISON, 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)

Be it enacted by the Board of Supervisors of the County of Madison as follows:

SECTION 1. LEGISLATIVE INTENT

- A. Whereas on November 21, 2014, Governor Cuomo signed into law Chapter 477 of the Laws of 2014 (S.788/A10141).
- B. Whereas this state law amended the 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 by labeling them dangerous only restricts business and personal enjoyment.
- C. Whereas the Governor signed this version of the 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.
- D. In keeping with Chapter 477 of the Laws of 2014, and Penal Code Section 405 this Board further finds and determines that "sparkler devices" may be sold and enjoyed, only in the manner described below, within Madison County.
- E. This Board finds that allowing our residents the use of safe "sparkler devices" will benefit them and our local businesses.
- F. This Board further finds that the same and use of "sparkler devices" is permitted with the following restrictions:
 1. Sales will only be permitted on or between June 1st through July 5th and December 26th through January 2nd of each calendar year.
 2. All distributors, manufacturers, and retailers must comply with any and all state laws and regulations regarding registration requirements.
 3. Only those over the age of 18 may purchase said products.

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: those 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 not contain 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. SEPARABILITY

If any part of or provision 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 4. EFFECTIVE DATE

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

TEXT
EFFECTIVE January 20, 2015
(Uniform Code – Sparkling Devices)

Part 1228 of Title 19 of the NYCRR is amended by adding a new section 1228.3, to read as follows:

1228.3 Sparkling devices.

(a) **Scope.** The provisions of this section 1228.3 shall govern the possession, manufacture, storage, handling, sale, and use of sparkling devices. Any building or structure where sparkling devices are manufactured, stored, handled, sold or used shall be subject to the provisions of this section 1228.3 and to all other provisions of the Uniform Code applicable to such building or structure.

(b) **Definitions.** In this section, the following terms shall have the following meanings unless a different meaning is clearly implied by the context:

(1) 2010 FCNYS. The term “2010 FCNYS” means the publication entitled “Fire Code of New York State” published by the International Code Council, Inc. (publication date: August 2010).

(2) APPROVED. The term “approved” means acceptable to the code enforcement official.

(3) CODE ENFORCEMENT OFFICIAL. The term “code enforcement official” means the officer or other designated authority charged with the administration and enforcement of the Uniform Code, or a duly authorized representative.

(4) HIGHWAY. The term “highway” means a public street, public alley or public road.

(5) LISTED. The term “listed” means equipment or materials included on a list published by an approved testing laboratory, inspection agency or other organization concerned with current product evaluation that maintains periodic inspection of production of listed equipment or materials, and whose listing states that equipment or materials comply with approved nationally recognized standards and have been tested or evaluated and found suitable for use in a specified manner.

(6) NFPA 495. The term “NFPA 495” means the publication entitled “Explosive Materials Code” published by the National Fire Protection Association (publication date: 2006).

(7) NFPA 1124. The term “NFPA 1124” means the publication entitled “Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles” published by the National Fire Protection Association (publication date: 2006).

(8) OPERATING BUILDING. The term “operating building” means a building occupied in conjunction with the manufacture, transportation or use of explosive materials, sparkling devices, or both. Operating buildings are separated from one another with the use of intraplant or intraline distances.

(9) SPARKLING DEVICES. The term “sparkling devices” shall have the meaning ascribed to that term by section 270.00(1)(a)(vi) of the Penal Law, and shall include “ground-based or hand-held devices” (as defined in subparagraph (i) of this paragraph) and “novelties” (as defined in subparagraph (ii) of this paragraph).

(i) Ground-Based or Hand-Held Devices. The term “ground-based or hand-held devices” shall include the category of devices described in section 270.00(1)(a)(vi)(1) of the Penal Law, i.e.: 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:

(A) 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.

(B) 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, and when cones are securely attached to a base and the cones 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.

(C) 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.

(ii) Novelties. The term "novelties" shall include the category of devices described in section 270.00(1)(a)(iv)(2) of the Penal Law, i.e.: 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.

(10) SPARKLING DEVICE DISPLAY. The term “sparkling device display” means presentation of the use of sparkling devices for a public or private gathering.

(c) Other Applicable Laws. The provisions of this section 1228.3 shall be in addition to, and not in limitation of, (1) all other provisions of the Uniform Code applicable to any building or structure where sparkling devices are manufactured, stored, handled, sold or used and (2) all other statutes, rules, regulations, local laws, and ordinances applicable to the possession, manufacture, storage, handling, sale and/or use of sparkling devices, including but not limited to sections 270.00 and 405.00 of the Penal Law; section 392-j of the General Business Law; section 156-h of the Executive Law; Part 225 of Title 9 of the NYCRR; Part 39 of Title 12 of the NYCRR (Industrial Code Rule 39); and local laws, ordinances or regulations relating to operating permits as contemplated by 19 NYCRR section 1203.3(g). Nothing in this section 1228.3 shall be construed as permitting the possession, manufacture, handling, sale and/or use of sparkling devices in violation of any other law, statute, rule, regulation, local law or ordinance

applicable to the possession, manufacture, storage, handling, sale and/or use of sparkling devices.

Nothing in this section 1228.3 shall be construed as permitting the possession, manufacture, handling, sale and/or use of sparkling devices in any jurisdiction where the possession, manufacture, handling, sale and/or use of sparkling devices has not been made legal in accordance with the provisions of section 405.00 of the Penal Law.

(d) Use of Sparkling Devices in or near Buildings or Structures.

(1) No sparkling device shall be used inside any building or structure unless (i) such sparkling device is listed for indoor use and (ii) the use of such sparkling device inside such building or structure has been approved.

(2) No sparkling device shall be used within 10 feet of any building or structure unless (i) such sparkling device is listed for indoor use or for use within 10 feet of a building or structure and (ii) the use of such sparkling device within 10 feet of such building or structure has been approved.

(e) Retail Sales.

(1) No persons shall construct a retail display of sparkling devices or offer sparkling devices for sale upon highways, sidewalks or public property or in a Group A or E occupancy.

(2) Any person or entity displaying sparkling devices for retail sale shall do so in a manner that will assure that no member of the public can reach, touch or handle the sparkling devices before he or she purchases them. This shall not prohibit displaying sparkling devices for retail sale in a manner that allows members of the public to see the sparkling devices (in their original packaging) prior to a sale.

(3) A minimum of one pressurized-water portable fire extinguisher complying with section 906 of the 2010 FCNYS shall be located not more than 15 feet (4572 mm) and not less than 10 feet (3048 mm) from each area where sparkling devices are stored or displayed for retail sale.

(4) "No Smoking" signs complying with section 310 of the 2010 FCNYS shall be conspicuously posted in each area where sparkling devices are stored or displayed for retail sale.

(f) Limit on Quantity. The code enforcement official is authorized to limit the quantity of sparkling devices permitted at a given location. In particular, but not by way of limitation, the code enforcement official is authorized to limit the quantity of sparkling devices permitted to be kept or stored at any one- or two-family dwelling, townhouse, or any building or structure containing any Group R occupancy.

(g) Sparkling Device Displays.

(1) No person or entity shall conduct a sparkling device display unless such person or entity shall have designated a person as the person in charge of such sparkling device display.

(2) The person in charge of a sparkling device display shall be not less than 21 years of age; shall demonstrate knowledge of all safety precautions related to the storage, handling, and use of sparkling devices; and at the time of such sparkling device display shall not be under the influence of alcohol or drugs that impair sensory or motor skills.

(3) Whenever in the opinion of the code enforcement official or the operator a hazardous condition exists, the sparkling device display shall be discontinued immediately until such time as the dangerous situation is corrected.

(h) Supervision. The code enforcement official is authorized to require any sparkling device display or any other use of sparkling devices to be supervised at any time by the code enforcement official in order to determine compliance with all safety and fire regulations.

(i) Removal and Disposal. Sparkling devices that are being manufactured, stored, handled, stored or used in violation of any provision of this section 1228.3 or in violation of any other applicable provision of the Uniform Code may be removed and disposed of in an appropriate manner, at the

expense of the owner of the sparkling devices. In a jurisdiction where the possession of sparkling devices has been made legal in accordance with the provisions of section 405.00 of the Penal Law, the code enforcement official is authorized to remove and dispose of the sparkling devices. In other jurisdictions, the sparkling devices shall be removed and disposed of by a police officer, peace officer, or other person authorized by law to do so.

(j) Report of Accidents. In the event of an accident involving the use of sparkling devices that result in death, personal injury or property damage, the person using the sparkling devices at the time of the accident (and, when applicable, the person who received approval to use such devices, as provided in subdivision (d) of this section) shall report the accident to the code enforcement official immediately.

(k) Hazard communication. Manufacturers of sparkling devices shall maintain records of chemicals, chemical compounds and mixtures required by the U.S. Department of Labor regulations set forth in 29 CFR Part 1910.1200 and Section 407 of the 2010 FCNYS.

(l) Manufacture, Assembly, and Testing of Sparkling Devices.

(1) The manufacture, assembly, and testing of sparkling devices, and facilities where the manufacture, assembly and/or testing of sparkling device occur, shall comply with the requirements of this subdivision and NFPA 495 or NFPA 1124.

(2) Emergency plans, emergency drills, employee training and hazard communication shall conform to the provisions of this section and Sections 404, 405, 406 and 407 of the 2010 FCNYS.

(3) Detailed Hazardous Materials Management Plans (HMMP) and Hazardous Materials Inventory Statements (HMIS) complying with the requirements of Section 407 of the 2010 FCNYS shall be prepared and submitted to the local emergency planning committee, the code enforcement official, and the local fire department. A copy of the required HMMP and HMIS shall be maintained on site and furnished to the code enforcement official on request.

(4) Workers who handle or dispose of sparking devices shall be trained in the hazards of the materials and processes in which they are to be engaged and with the safety rules governing such materials and processes.

(5) Approved emergency procedures shall be formulated for each facility where sparking devices are manufactured, assembled and/or tested. Such procedures shall include personal instruction in any emergency that may be anticipated. All personnel shall be made aware of an emergency warning signal.

(m) Hazardous Conditions. Whenever in the opinion of the code enforcement official or the operator a hazardous condition exists, the use of sparking devices shall be discontinued immediately until such time as the dangerous situation is corrected.

(n) Storage of Sparkling Devices. The storage or temporary storage of sparking devices shall comply with the applicable requirements of NFPA 1124 and, in addition, shall be subject to the provisions of subdivision (f) of this section 1228.3.

(o) Incorporation by reference.

(1) The 2010 FCNYS. The publication entitled "Fire Code of New York State" published by International Code Council, Inc. (publication date: August 2010) is hereby incorporated by reference in this section 1228.3. Copies of said publication (referred to herein as the 2010 FCNYS) may be obtained from the publisher at the following address: International Code Council, Inc., 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001. The 2010 FCNYS is available for public inspection and copying at New York State Department of State, 99 Washington Avenue, Albany, NY 12231-0001.

(2) NFPA 495. The publication entitled "Explosive Materials Code" published by the National Fire Protection Association (publication date: 2006) is hereby incorporated by reference in this section 1228.3. Copies of said publication (referred to herein as NFPA 495) may be obtained from the publisher

at the following address: National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. NFPA 495 is available for public inspection and copying at New York State Department of State, 99 Washington Avenue, Albany, NY 12231-0001.

(3) NFPA 1124. The publication entitled "Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles" published by the National Fire Protection Association (publication date: 2006) is hereby incorporated by reference in this section 1228.3. Copies of said publication (referred to herein as NFPA 1124) may be obtained from the publisher at the following address: National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. NFPA 1124 is available for public inspection and copying at New York State Department of State, 99 Washington Avenue, Albany, NY 12231-0001.