Wisconsin Fireworks Law 2014

Wisconsin Department of Justice

This memorandum is intended as an **advisory** to law enforcement to address recurring issues with respect to the possession, sale and use of fireworks in Wisconsin. It summarizes Wisconsin fireworks law, answers common questions and corrects common misunderstandings about the law. The applicable statute is *Wisconsin Statute § 167.10.* https://docs.legis.wisconsin.gov/statutes/statutes/167#/statutes/statutes/167/_5

The statutes do not give the Department of Justice direct authority to enforce the fireworks law. Enforcement responsibility and authority rest with local law enforcement and district attorneys, or municipal prosecutors in the case of local ordinance violations. **Therefore, law enforcement should consult their local district attorney and municipal prosecutors with respect to specific enforcement questions in their jurisdiction.**

Local ordinances may also regulate fireworks and may be stricter than state law, but cannot be less strict. This advisory discusses only state law, so some devices or materials described as legal in this advisory may be prohibited by a local ordinance.

Legal Without A Permit

State law allows the sale, possession and use, without a permit, of sparklers not exceeding 36 inches in length, stationary cones and fountains, toy snakes, smoke bombs, caps, noisemakers, confetti poppers with less than ¼ grain of explosive mixture, and novelty devices that spin or move on the ground. *Wis. Stat. § 167.10(1).* There is no age restriction on sale, possession or use of these devices and the statute does not classify them as fireworks. Local ordinances may be more restrictive than state statutes and may prohibit any of these items or limit their sale or use. **These are the only kinds of "fireworks," as that word is commonly used, that a person may use or possess without a permit or that may be sold to a person who does not have a permit.**

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. *Wis. Stat. § 167.10(3).* A commonly used rule of thumb is that a permit is required if the device explodes or leaves the ground. **The sale of these restricted fireworks to a resident of this state without a valid permit is also illegal.** *Wis. Stat. § 167.10(2).*

Conditions For A Valid Permit

The requirements for a valid permit are contained in *Wis. Stat. § 167.10(3)(a), (c) and (f)* and are detailed below.

A permit may be issued by a mayor, village president or town chair or any person designated by the mayor, village president or town chairperson. *Wis. Stat. § 167.10(3)(a).* If a city, village, or town requires that a user's permit be signed or stamped, a person who is authorized to issue the permit under par. (a) may sign or stamp the permit before the permit is issued rather than signing or stamping the permit at the time that it is issued. *Wis. Stat. § 167.10(3)(fm).*

A permit is valid only in the city, village or town of the official who issued it. A mayor, village president, town chair, or a person they have designated can only authorize possession or use of fireworks within their jurisdiction. *Wis. Stat. § 167.10(3)(a).* For example, a permit issued by the town chair of one town cannot and does not authorize possession or use of the fireworks in another town. **Transportation Exception:** A person who has a valid permit from one municipality may purchase fireworks in another municipality and transport them to the municipality in which the person has a permit. *Wis. Stat. § 167.10(3)(b)7.*

A permit may require a bond or insurance. *Wis. Stat. § 167.10(3)(e).* An official issuing a permit may require a bond or insurance policy to indemnify the issuing municipality for any damages that may result from the possession or use of the fireworks.

A permit may be issued to an individual or group of individuals. Permits, other than for crop protection, may be issued to a public authority, a fair association, an amusement park, a park board, a civic organization, an individual, or a group of individuals. *Wis. Stat. § 167.10(3)(c).*

Although individuals may obtain permits, a group may also obtain a permit in the group's name. A group with a permit may authorize an individual to make purchases on its behalf, but the permit must be in the name of the group. A person buying for a group should have both a copy of the group's permit and the authorization of the group. A group may not issue a blanket authorization to all of its members to purchase on behalf of the group. *City of Wisconsin Dells v. Dells Fireworks, Inc.,* 197 Wis. 2d 1, 21, 539 N.W.2d 916 (Ct. App. 1995). http://www.wicourts.gov/ca/opinions/94/pdf/94-1999.pdf. *Wis. Stat § 167.10* creates "strict regulations" on the sale and use of fireworks. *Id.* Based on all the circumstances the organization must actually exercise control over the purchase or use of the fireworks by its members. *Id.*

The authorized buyer may only buy the kind of fireworks specified in the group's permits. The total quantity purchased by all authorized buyers on behalf of the group cannot exceed the quantity of fireworks authorized by the permit. The fireworks

purchased on behalf of the group may only be possessed in the municipality which issued the group's permit, except while being transported from the point of sale to that municipality. The fireworks may only be used by the group on the date and location specified on the permit and subject to any other conditions on the permit.

A valid permit must specify the general kind and approximate quantity of fireworks which may be purchased. *Wis. Stat. § 167.10(3)(f)3.*

A permit must specify the location at which the fireworks may be possessed or used. *Wis. Stat. § 167.10(3)(f)4.* As noted above, this location must be within the jurisdiction of the official who issued the permit. It must be a specific location within that jurisdiction, rather than the entire jurisdiction. The statute uses "location" in the singular. A permit that specifies multiple locations is not valid.

The permit must specify the date of the permitted use. *Wis. Stat. § 167.10(3)(f)4.* The word "date" is in the singular in the statute. A permit that specifies multiple dates or a range of dates of permitted use is not valid. This, in combination with the specification of location, means that a separate permit is required for each date and location for which use is permitted.

The permit must specify the date on and after which the fireworks can be purchased. *Wis. Stat. § 167.10(3)(f)2.* Once a permit is issued, the permitee may purchase fireworks up to the date of the permitted use.

A copy of a permit for large fireworks *displays* must be given to a fire or law enforcement official in the municipality which issued the permit at least two days before the date of use. *Wis. Stat. § 167.10(3)(g).* This requirement does not apply to smaller *consumer* fireworks which require a permit, i.e. those classified as Division 1.4 explosives under CFR 173.50, or those items which fall outside the definition of fireworks e.g. those identified in *Wis. Stat. §167.10(1)(a)-(n).* (Display fireworks are those classified as Division 1.3 explosives under CFR 173.50.)

The permit may contain additional restrictions. *Wis. Stat. § 167.10(3)(f)5.* A municipality may adopt ordinances imposing special restrictions, e.g., times or manner of use, distances from buildings or spectators, etc. and a permit may specify these additional restrictions.

Permits may not be issued to minors. *Wis. Stat. § 167.10(3)(h).* Since minors may not be issued fireworks permits, there are no conditions under which it is legal for a minor to possess or use any fireworks except those allowed without a permit, e.g., sparklers, snakes, fountains, etc.

Fireworks vendors rather than only wholesalers or jobbers are now permitted to sell fireworks to a person who is not a resident of this state. *Wis. Stat. § 167.10(2)(bg).*

However, a nonresident person may not **possess or use** fireworks in Wisconsin without a valid Wisconsin permit. *Wis. Stat. § 167.10(3)(a).* See also *State v. Victory Fireworks, Inc.,* 230 Wis. 2d 721, 726-27, 602 N.W.2d 128 (Ct. App. 1999). A nonresident who lawfully purchases fireworks under a permit can possess and use those fireworks in Wisconsin pursuant to the terms of the permit or may transport them out of state. A nonresident without a valid Wisconsin permit may order fireworks from a fireworks vendor for shipping out-of-state. *Wis. Stat. § 167.10(4),* or may transport those fireworks from Wisconsin to another state. (See below)

Persons may transport fireworks from the place they were purchased to the city, town or village where their possession or use is authorized under a permit or ordinance. *Wis. Stat. § 167.10(3)(b)7.* However, persons transporting fireworks may not possess them in a city, town or village without a permit from that jurisdiction if they remain there for more than 12 hours. *Wis. Stat. § 167.10(3)(bm).*

Penalties

A person who possesses or uses fireworks without a valid permit, or who sells fireworks to a person who does not have a valid permit, is subject to a forfeiture of up to $1,000 per violation. *Wis. Stat. § 167.10(9)(b).* Each firework illegally possessed, used or sold may be a separate violation.

A parent or guardian who allows a minor to possess or use fireworks (not including those for which no permits are required) is subject to a forfeiture of up to $1,000 per violation. *Wis. Stat. § 167.10(9)(c).*

A city, village or town may obtain an injunction prohibiting a person from violating *Wis. Stat. § 167.10(8)(a).* Violations of such an injunction are criminal misdemeanors, subject to up to 9 months in jail and a $10,000 fine. *Wis. Stat. § 167.10(9)(a).*

Enforcement

The statutes do not give the Department of Justice direct authority to enforce the fireworks law. Enforcement responsibility and authority rest with local law enforcement and district attorneys, or municipal prosecutors in the case of local ordinance violations.

Therefore, law enforcement should consult their local district attorney and municipal prosecutors with respect to specific enforcement questions in their jurisdiction.

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(c) A permit under this subsection may be issued only to the following persons:

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. A permit issued to a group of individuals confers the privileges under the permit to each member of the group.

7. An agricultural producer for the protection of crops from predatory birds or animals.

(d) A person issued a permit for crop protection shall erect appropriate warning signs disclosing the use of fireworks for crop protection.

(e) The person issuing a permit under this subsection may require an indemnity bond with good and sufficient sureties or policy of liability insurance for the payment of all claims that may arise by reason of injuries to person or property from the handling, use or discharge of fireworks under the permit. The bond or policy, if required, shall be taken in the name of the city, village or town wherein the fireworks are to be used, and any person injured thereby may bring an action on the bond or policy in the person's own name to recover the damage the person has sustained, but the aggregate liability of the surety or insurer to all persons shall not exceed the amount of the bond or policy. The bond or policy, if required, together with a copy of the permit shall be filed in the office of the clerk of the city, village or town.

(f) A permit under this subsection shall specify all of the following:

1. The name and address of the permit holder.

2. The date on and after which fireworks may be purchased.

3. The general kind and approximate quantity of fireworks which may be purchased.

4. The date or dates and location of permitted use.

5. Other special conditions prescribed by ordinance.

(fm) If a city, village, or town requires that a user's permit be signed or stamped, a person who is authorized to issue the permit under par. (a) may sign or stamp the permit before the permit is issued rather than signing or stamping the permit at the time that it is issued.

(g) A copy of a permit under this subsection shall be given to the municipal fire or law enforcement official at least 2 days before the date of authorized use. This paragraph does not apply to a permit authorizing only the sale or possession of fireworks that are classified by the federal department of transportation as Division 1.4 explosives, as defined in 49 CFR 173.50.

(h) A permit under this subsection may not be issued to a minor.