AGENDA

ORDINANCE COMMITTEE

Thursday, May 4, 2017
4:00 p.m.
Council Chamber A

Item 1. Call to order.

Item 2. Attendance.

Item 3. Approval of Minutes: April 06, 2017.

Item 4. Discussion on Consumer Fireworks and possible action.

Item 5. Discussion on Fireworks Display Ordinance and possible action.

Item 6. Discussion on Sign Regulation- Content and Placement

Item 7. Discussion on Horse Beach Permits

Item 8. Identification of next agenda items.

Item 9. Adjournment.

Item 4

CHAPTER 608A
TOWN OF SCARBOROUGH
CONSUMER FIREWORKS ORDINANCE

BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that Chapter 608A- Consumer Fireworks of the Town of Scarborough, Maine is amended as follows:

Amend Section IV: Use of Consumer Fireworks Restricted by adding the underlined text and deleting the text shown in strikeover type, as shown below.

SECTION IV: Use of Consumer Fireworks Restricted

A person shall not use, display, fire, or cause to be exploded (collectively, "Setting Off") consumer fireworks within the Town of Scarborough or in or from any watercraft within waters of the Town except upon the following conditions: ~~on the following days and during the following times:~~

a) Upon submission of, a notification form to Scarborough Public Safety in the form appended hereto as Appendix A, or the on-line equivalent.
b) Only during the following days and times:
    i. July 3rd and 4th and December 31st and January 1st, beginning at 9:00 a.m. and ending at 10:00 p.m. ~~July 4th, beginning at 9:00 a.m. and ending at 12:30 a.m. the following day;~~

~~c) July 3rd and July 5th, beginning at 9:00 a.m. and ending at 12:30 a.m. the following day when July 3rd and July 5th fall on a weekend, and beginning at 9:00 a.m. and ending at 10:00 p.m. when July 3rd and July 5th fall on a weekday;~~

~~d) December 31st, beginning at 9:00 a.m. and ending at 12:30 a.m. the following day; and~~

~~e) January 1st, beginning at 9:00 a.m. and ending at 10:00 p.m.~~

Amend Section V: Violation and Enforcement by adding the underlined text, as shown below.

SECTION V: Violation and Enforcement

a) PENALTY FOR VIOLATION: Any person who violates the provisions of this Ordinance and the owner of any property upon which any violation of the ordinance occurs, shall commit a civil violation punishable by a penalty of not less than one hundred dollars ($100.00) and not more than five hundred dollars ($500.00) plus attorney's fees and costs to be recovered by the Town of Scarborough for its use. Each day such violation occurs or continues to occur shall constitute a separate violation.

b) ENFORCEMENT: This Ordinance shall be enforced by the Town of Scarborough Police Department.

c) INJUNCTION: In addition to any other remedies available at law or equity, the Town of Scarborough, acting through its Town Manager, may apply to any court of competent jurisdiction to enjoin any planned, anticipated or threatened violation of this Ordinance.

d) 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.

Add New Section VIII: Notice, as shown below:

SECTION VIII: Notice

Any authorized retailer for the sale of Consumer Fireworks in the Town of Scarborough shall provide written notice at the time of sale to all purchasers of Consumer Fireworks at their Scarborough retail stores that submission of a notification form is required for use in the Town of Scarborough as set forth in SECTION IV above.

Add New Appendix A, as shown below:

Appendix A

Consumer Fireworks Notification Form

Name _____ Date _____

Address _____ Phone _____

Location _____

Dates of Display _____

I understand that this Notification applies only to the dates listed. _____

_____

If the location is other than property owned by me, I have permission of the owner of the property.

I have liability insurance for any bodily injury or property damage that may result from fireworks use. _____

I have read the Respect Your Neighbors Guidelines of the Town of Scarborough, attached hereto, and agree to follow its terms.

_____ _____

Signature _____

Official Use Only

_____

Notification Received by _____ Date/Time _____

_____

_____

Town of Scarborough
Respect Your Neighbors Consumer Fireworks Guidelines

Use fireworks strictly in accordance with the submitted notification.

Do not use fireworks after 10:00 p.m. on the days allowed.

Do not use fireworks in any way that could unreasonably disturb your neighbors' comfort and repose or infringe upon your neighbors' safety or peaceful enjoyment of their property.

Inform your neighbors in advance where and when you are planning to use fireworks.

Do not use fireworks near animals or livestock that may become frightened.

Only set off fireworks in areas where no fireworks debris will fall on your neighbors' property or any environmentally sensitive areas (e.g., beaches, marshes, or wetlands

Do not permit anyone under the age of 21 to use fireworks.

Carefully follow the safety instructions provided by the Seller of the fireworks.

FW: Ch 608

Thomas Hall
Sent: Monday, May 01, 2017 2:48 PM
To: Tracy Cole

From: Mike Thurlow
Sent: Thursday, April 27, 2017 12:49 PM
To: William Donovan
Cc: Thomas Hall
Subject: Re: Ch 608

See below Bill.

Thanks,
Mike

From: William Donovan
Sent: Thursday, April 27, 2017 11:32 AM
To: B. Michael Thurlow
Cc: Thomas J. Hall

Thanks Mike. Couple of follow ups.

How long have we been issuing permits for private events like weddings and how many of these special event permits for private parties have been issued each year in recent years (worrying about how much this might grow and become a problem)?

I'm not in the office Bill, but anectodely I'm confident the volume has easily been less than 6/year on average. It really hasn't been a problem to date.

Is the professional standard for the operator presently required for a Ch 608 permit diminished at all by the changes proposed?

No they are required to be technicians licensed by the State and none of these changes diminish that.

Does the present permitting process cover the following Respect Your Neighbor points:

Do not use fireworks in any way that could unreasonably disturb your neighbors' comfort and repose or infringe upon your neighbors' safety or peaceful enjoyment of their property.
Inform your neighbors in advance where and when you are planning to use fireworks.
Do not use fireworks near animals or livestock that may become frightened.
Only set off fireworks in areas where no fireworks debris will fall on your neighbors' property or any environmentally sensitive areas (e.g., beaches, marshes, or wetlands

The permit review process does specifically deal with neighbor notification and the debris issue is

covered by the safety distances required in the NFPA standards that we evaluate for each application, so I'm pretty confident those are covered.
I'm not sure how to respond on the language in the respect your neighbor policy because the respect your neighbor points are so subjective in terms of unreasonably disturbing someone or their livestock or animals. Staff will need some guidance as to what those standards should be or whether you actually want to build in black and white standards into the ordinance. That is a much more difficult discussion.
Thanks.
Bill

On Apr 26, 2017, at 9:43 PM, Mike Thurlow <MThurl@ci.scarborough.me.us> wrote:

Hi Bill, I'm tied up at back to back meetings until around 2 tomorrow so let me try to answer your questions via email then if we need to try and schedule a conference call or meeting prior to you leaving we can later in the day Thursday. Please see my responses to your questions below in red.

Thanks,
Mike

From: William Donovan
Sent: Wednesday, April 26, 2017 5:03 PM
To: B. Michael Thurlow
Cc: Thomas J. Hall

Hi Mike
Tom asked me to read your edits to Ch 608. It appears the changes allow the use of Consumer Fireworks to be fired by a licensed technician holding a Scarborough Fire Dept permit. The additional State Fire Marshall's permit remains a requirement only for Explosives 1.3G.

Correct, when this ordinance was first crafted consumer fireworks weren't legal and the State Fire Marshal's office was permitting proximate shows as well as those using consumer or 1.4G fireworks. In order to be in compliance with our own ordinance we are proposing these few changes which allows the use of consumer grade fireworks for display shows so long as we permit them with all the notification and other requirements that go with that. Additionally we have clarified that a SFMO permit is not required if the show is using consumer fireworks as they no longer will process those permits (a relatively recent change in policy at the state level).

I have a couple of questions.

In Sec IV why are the words "or pyrotechnic devices" used rather than "Consumer Fireworks"? In this context are they the same thing?

Not necessarily, there are some pyrotechnic devices (special effects) that technicians use

for proximate shows that don't meet the State's definition of a consumer firework.

For events like a wedding that you are presently licensing, are the fireworks being used only Explosives 1.3G and are they more dramatic/powerful, noisier, etc. than Consumer Fireworks

As explained above these changes allow the use of the consumer grade, less powerful and less noisy shells as well as the normal 1.3G shells typically used for a show like Beech Ridge's 4th of July event. It is really the only way we can allow these types of shows outside of the days authorized for consumer use by anyone in ordinance Chapter 608A.

Do these changes make life easier for the fire dept? You still have to issue a permit. It seems to only make it easier for any private resident to have a fireworks display so long as they hire a licensed technician. By limiting the display to Consumer Fireworks no State permit is required resulting in less cost to hire a technician. Is it your belief that anyone who would go to the trouble of hiring a professional under these revisions would also do so without the changes and the changes make it easier for your dept to issue permits.

It really doesn't make it any easier or harder for the department. it is simply an effort to clean up the ordinance to reflect past practice and reflect the change in policy at the SFMO. There is a relatively small demand for pretty small shows for weddings and other corporate events that fell through the cracks under the current version. We don't get many requests, but it seems to be pretty important to those that want to do it and are willing to pay for a technician to do it right. We are simply proposing a reasonable solution that allows the use of the less expensive and less powerful product throughout the year to meet these needs, while maintaining the control of our local permitting process which takes care of the neighbor notification and safety requirements.

If we were to consider amending Ch 608 wouldn't we want to incorporate the "Respect Your Neighbor" rules contemplated for Ch 608A into the Ch 608 Permit process?

I'm not sure that is necessary since the permit process includes proper notification, insurance, and safety distance requirements already.

I'm around till 3:30 tomorrow and till 10 am on Friday if you and Tom and I need to talk.

Let me know if this answers your questions, and if you still want to talk, I should be back in the office by 2:00 Thursday afternoon.
Mike

Bill

CHAPTER 608

TOWN OF SCARBOROUGH

FIREWORKS DISPLAY ORDINANCE

ADOPTED OCTOBER 5, 1988
AMENDED JUNE 15, 2005
AMENDED MARCH 7, 2012
Draft revision April 25, 2017

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CHAPTER 608
TOWN OF SCARBOROUGH
FIREWORKS DISPLAY ORDINANCE

SECTION I Purpose & Title

This ordinance recognizes the need for regulation of the display of fireworks to assure the safety of the spectators, property owners, citizens, and visitors of the Town of Scarborough. This Ordinance shall be known as the "Town of Scarborough Fireworks Display Ordinance." [amended 03/07/2012]

SECTION II Definitions

Display Fireworks - Any combustible or explosive composition or substance; any combination of such compositions or substances; or any other article which was prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, including any device containing any explosive substance or flammable compound. Display fireworks are classed as Explosives, 1.3G and described as Fireworks, UN0335 by the U. S. Department of Transportation. For the purpose of this ordinance Display ~~f~~Fireworks ~~do not~~may include consumer fireworks as defined in 8 M.R.S.A§221-A. [amended 03/07/2012]

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.

Proximate Audience – An audience closer to pyrotechnic devices than permitted by NFPA 1123, Code for Fireworks Displays.

Pyrotechnic Device – Any device containing pyrotechnic materials and capable of producing visual or audible effects by combustion, deflagration, or detonation.

SECTION III Regulations & Codes

Fireworks storage, transportation, and displays are regulated through laws, codes and standards including:

a) State of Maine Laws for the Fire Service, 1997 edition, Title 8, section 222-227
b) NFPA 1123 Code for Fireworks Displays

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c) NFPA 1126 Use of Pyrotechnics before a proximate audience
d) Title 49 CFR, Federal Regulation for Transport
e) Title 27 CFR, Part 181 Commerce in Explosives

All display firework~~s~~ ~~display operators~~shows permitted under this ordinance shall be fired by a technician~~s~~ licensed by the State of Maine Fire Marshal's Office.

SECTION IV Permit Required

No person shall possess, store, arrange, or detonate Display Fireworks or pyrotechnic devices before a proximate audience within the Town of Scarborough after the effective date of this ordinance without holding a valid permit from the Scarborough Fire Department ~~and a valid permit from the State of Maine Fire Marshal's office~~.

~~No person shall possess, store, arrange, or detonate pyrotechnic devices before a proximate audience within the Town of Scarborough after the effective date of this ordinance without holding a valid permit from the Scarborough Fire Department and a valid permit from the State of Maine Fire Marshal's office.~~

The Scarborough Fire Department may issue a seasonal permit for outdoor pyrotechnic displays before a proximate audience that are regularly scheduled, are detonated from an approved location, and are similar in size and effect.

Any person applying for a Scarborough Fireworks Permit for a show containing display explosives (1.3G) must first possess a valid permit from the Maine State Fire Marshal's Office.

SECTION V Application Procedure

Application for a fireworks display permit shall be made to the Scarborough Fire Department by the responsible party for the display at least ten (10) days prior to the event as outlined below:

a) Prior to applying for a Scarborough Fire Department Fireworks Permit the applicant must have a valid State of Maine permit issued by the State Fire Marshal's office when required.
b) A copy of the State Fire Marshal's permit application and written State Fire Marshal's permit shall accompany the local permit application form when required.
c) Written permission from the local landowner of the property from where the fireworks will be detonated shall accompany the local permit application form.
d) The proper fee as outlined in the current Town of Scarborough Schedule of License, Permit, and Application Fees shall be paid prior to the issuance of a local fireworks display permit.

SECTION VI Fire Protection Coverage

The Chief of the Scarborough Fire Department, or his designee, shall determine what, if any, fire department resources will be required to stand by during the event based on the size of the display, the current weather conditions, and other safety factors. The Fire Chief or is designee

shall make the final decision as to the safety of the scene and weather conditions, and will either grant or deny permission for the display to proceed after evaluating the current conditions at the proposed time for the event.

SECTION VII Permit, Apparatus, & Manpower Fees

The Scarborough Fire Department shall collect a reasonable permit fee that is sufficient to offset the cost of administration and inspection of the site. The applicant shall also be responsible for reimbursing the Town of Scarborough for the required fire apparatus and manpower coverage to assure safety during the display as specified in Section VI and deemed appropriate by the Scarborough Fire Chief, or his designee. The permit amount and the rates for apparatus and manpower are published in the current Town of Scarborough Schedule of License, Permit, and Application Fees.

SECTION VIII Notifications

The applicant must submit a written notification plan that addresses how they intend to notify the neighbors and general public of the proposed event. This notification plan must be approved by the Police Chief, or his designee, prior to the issuance of a Fireworks Permit. Evidence that the notifications were made according to the approved plan must be presented before permission to proceed with the show will be given as outlined in Section VI.

SECTION IX Hours of Detonation

No person shall detonate or discharge or cause to be detonated or discharged or permit to be detonated or discharged on his property any fireworks within the Town of Scarborough after the hour of 10:30 P.M. daily, prevailing time.

SECTION X Violation and Enforcement

a) PENALTY FOR VIOLATION: Any person who violates the provisions of this Ordinance shall commit a civil violation punishable by a penalty of not less than $100.00 and not more than $500.00 to be recovered on complaint to the use of the Town of Scarborough. Each day such violation occurs or continues to shall constitute a separate violation.
b) PENALTY FOR WILLFUL VIOLATION: Any person who violates the provisions of this ordinance after having been informed by any officer or employee or agent of the Town of Scarborough that a planned or anticipated detonation or discharge of fireworks would violate this Ordinance shall be fined $10,000.00.
c) ENFORCEMENT: This Ordinance shall be enforced by the Town of Scarborough Police Department.
d) INJUNCTION: In addition to any other remedies available at law or equity, the Town of Scarborough, acting through its Town Manager, may apply to any court of competent jurisdiction to enjoin any planned, anticipated or threatened violation of this Ordinance.

SECTION XI 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 XII Consumer Fireworks.

The regulation of consumer fireworks used without a licensed technician is as enumerated in the Town of Scarborough Consumer Fireworks Ordinance, Chapter 608A, and any other applicable state or federal law or regulation. [adopted 03/07/2012]