

# TOWN OF WELLS

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Wells, Maine 04090

Offices of the  
Town Manager and  
Board of Selectmen

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December 27, 2011

Mr. John C. Dean  
State Fire Marshal  
State of Maine  
52 State House Station  
Augusta, ME 04333-0052

Dear John:

Enclosed is a copy of an ordinance entitled "An Ordinance to Enact Chapter 115 (Consumer Fireworks) of the Code of the Town of Wells to Prohibit the Sale and Use of Consumer Fireworks", that the Board of Selectmen adopted at their meeting on December 20, 2011. Per the Town Charter, this ordinance will become effective 30 days after adoption on January 20, 2012.

Sincerely,

Jonathan L. Carter  
Town Manager

Enclosure

cc: Board of Selectmen

**An Ordinance to Enact Chapter 115 (Consumer Fireworks) of the Code of the  
Town of Wells to Prohibit the Sale and Use of Consumer Fireworks**

**NOTE:**            **Proposed additions to existing Code sections are underlined.**  
                      **Proposed deletions of existing Code sections are ~~crossed-out~~.**  
                      **Other sections of the Ordinance are unchanged.**

**The Town of Wells hereby ordains and enacts “An Ordinance to Enact Chapter 115 (Consumer Fireworks) of the Code of the Town of Wells to Prohibit the Sale and Use of Consumer Fireworks” as follows:**

**Part 1:** The Code of the Town of Wells is hereby amended to enact Chapter 115 (Consumer Fireworks) as follows:

**§ 115-1. Purpose.**

The purpose of this Chapter is to prohibit the use and/or sale of consumer fireworks in order to protect public health, safety and welfare.

**§ 115-2. Authority.**

The Town has authority to enact an ordinance to prohibit or restrict the sale or use of consumer fireworks pursuant to Title 8 M.R.S. § 223-A.

**§ 115-3. Definitions.**

The terms used in this Chapter shall be as they are defined herein, and as in Title 8 M.R.S. § 221-A, as amended.

CONSUMER FIREWORKS. This term 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 3<sup>rd</sup>-party testing laboratory as conforming with the United States Consumer Product Safety Commission standards, in accordance with 15 United States Code, Chapter 47. However, “consumer fireworks” does not include the following products:

- A. Missile-type rockets, as defined by the State Fire Marshall by rule;
- B. Helicopters and aerial spinners, as defined by the State Fire Marshall by rule; and
- C. Sky rockets and bottle rockets. For purposes of this paragraph, “sky rockets and bottle rockets” means cylindrical tubes containing not more than 20 grams of chemical composition, as defined by the State Fire Marshall 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.

FIREWORKS – This term includes any:

- A. Combustible or explosive composition or substance;
- B. Combination of explosive compositions or substances;
- C. Other article that was prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, including blank cartridges or toy cannons in which explosives are used, the type of balloon that requires fire underneath to propel it, firecrackers, torpedoes, skyrockets, roman candles, bombs, rockets, wheels, colored fires, fountains, mines, serpents and other fireworks of like construction;
- D. Fireworks containing any explosive or flammable compound; or
- E. Tablets or other device containing any explosive substance or flammable compound.
- F. The term "fireworks" does not include consumer fireworks or toy pistols, toy canes, toy guns or other devices in which paper caps or plastic caps containing 25/100 grains or less of explosive compound are used if they are constructed so that the hand can not come in contact with the cap when in place for the explosion, toy pistol paper caps or plastic caps that contain less than 20/100 grains of explosive mixture, sparklers that do not contain magnesium chlorates or perchlorates or signal, antique or replica cannons if no projectile is fired.

USE OF CONSUMER FIREWORKS – The lighting or other setting off of consumer fireworks.

§ 115-4. Prohibition.

- A. The sale of consumer fireworks is prohibited anywhere within the Town of Wells.
- B. The use of consumer fireworks is prohibited anywhere within the Town of Wells.
- C. This Chapter does not apply to a person issued a fireworks display permit by the Town and/or State of Maine pursuant to 8 M.R.S. § 227-A, as may be amended from time to time.
- D. This Chapter is intended only to govern consumer fireworks. The use, sale, and possession of fireworks is governed by the applicable provisions of 8 M.R.S. § 221 et seq. THE POSSESSION, AND/OR SALE OF FIREWORKS IN MAINE IS ILLEGAL, except as permitted under 8 M.R.S. § 227-A, as may be amended from time to time.

§ 115-5. Administration and Enforcement.

- A. The Wells Police Department shall administer and enforce this Ordinance.

§ 115-6. Penalties.

- A. Use of Consumer Fireworks. Use of consumer fireworks in violation of this Chapter shall be subject to a fine of not less than \$100 nor more than \$250 plus attorney's fees and

costs for the first offense, or, a fine of not less than \$250 nor more than \$500 plus attorney costs for each subsequent offense.

**B. Sale of Consumer Fireworks.** Sale of consumer fireworks in violation of this Chapter shall be subject to a fine of not less than \$500 nor more than \$1,000 plus attorney's fees costs for the first offense, or, a fine of not less than \$1,000 nor more than \$2,500 plus attorney costs, for each subsequent offense.

**C. Seizure of Consumer Fireworks.** The Town may seize consumer fireworks that it has probable cause to believe are used or sold in violation of this Chapter. All consumer fireworks lawfully seized under this Chapter shall be forfeited to the State of Maine pursuant to Title 8 M.R.S. § 237(2).

**§ 115-7. Appeals.**

Any appeals with respect to decisions made under this Chapter shall be taken to York County Superior Court within 30 days of the decision being appealed.

**§ 115-8. Saving Clause.**

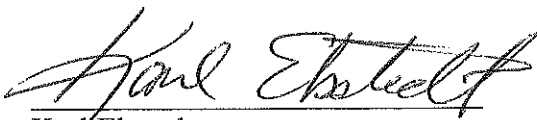
In the event any provision of this Chapter is found by a court of competent jurisdiction to be invalid, the remainder of this Chapter shall remain in effect.

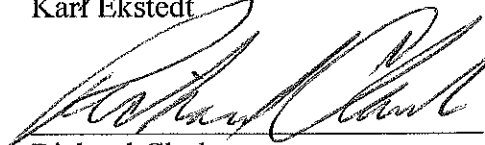
**Part 2. Effective Date**

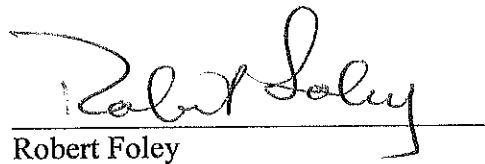
This Ordinance shall take effect 30 days after adoption by the Board of Selectmen.

Given under our hands this 20<sup>th</sup> day of December, 2011.

BOARD OF SELECTMEN OF THE TOWN OF WELLS:

  
Karl Ekstedt

  
Richard Clark

  
Robert Foley

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Christopher Chase

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Timothy Roche