

Vermont Supreme Court Clarifies Municipal Regulation of Fireworks

October 21, 2020

While Vermont law regarding fireworks is still confusing to read, the Vermont Supreme Court has at least clarified some aspects of it. In the case *Green Mountain Fireworks, LLC v. Town of Colchester*, 2020 VT 64, the Court held that municipalities may regulate fireworks by requiring a local permit for their sale, possession, and use. The Court also ruled that it is illegal to sell, possess, or use “consumer fireworks” – even with a permit.

The case arises out of Colchester where plaintiff Matthew Lavigne opened a retail store in 2018 with the purpose of selling fireworks for general consumer use. Lavigne had already obtained a federal license from the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and local building permits from the town zoning administrator. Soon thereafter, the town advised the plaintiff that, in addition to the zoning permit for the retail store, he also needed a municipal permit for the sale of fireworks pursuant to [20 V.S.A. § 3132\(a\)\(1\)](#). This law states that no person may “[o]ffer for sale, expose for sale, sell at retail or wholesale, or possess fireworks unless the person has been issued a permit by ... the municipality in which the person offers for sale and stores the fireworks.”

The plaintiff subsequently applied to the selectboard for a permit for the sale of fireworks, even though it had not yet created a formal fireworks permitting process. The selectboard denied the permit, “in part because [plaintiff] failed to ensure that their customers had valid permits to display or possess the fireworks.”

Lavigne, along with co-plaintiff Green Mountain Fireworks, brought a lawsuit in superior court against the town, claiming that the federal ATF permit, along with the retail building zoning permits, were sufficient to start his business. The plaintiffs also argued that the selectboard’s denial of their fireworks permit was arbitrary because it wasn’t based on any clear standards.

The superior court found in favor of the town, stating “it agreed [that] statute requires a distinct municipal permit to sell fireworks and that the zoning permits could not suffice.” Additionally, the court found the fact that the selectboard had not used a proper permitting process was not a significant issue because they had acted reasonably in denying the permit.

On appeal, much of the Supreme Court’s efforts were spent on deciphering Vermont’s confusing and seemingly conflicting fireworks law.

The Court ruled in favor of the town because it was clear from the plain language of the law that the sale of fireworks required “a permit by both the U.S. Bureau of Alcohol, Tobacco, and Firearms **and** the municipality.” [20 V.S.A. § 3132\(a\)\(1\)](#) (Emphasis added). The fact that the plaintiff received a zoning permit was irrelevant because it satisfied an entirely different regulatory process: local land use regulation.

Although the decision was overall favorable to the town, the Court noted that neither party had properly interpreted Vermont’s fireworks law in their legal arguments. Where the parties got it wrong, the Court said, was in misconstruing section 3132(a)(1) to presume that municipalities could issue permits “for the general retail sale of fireworks to any consumer without regard to whether the purchaser holds a permit to display those fireworks.” This reasoning was partially correct because while the Court said that municipalities could regulate fireworks via permit requirements, they could only regulate “public display” fireworks. The Court reached this conclusion “based on the text and history of the statute,” and found that the law “authorizes municipalities to issue permits to sell fireworks only for permitted “supervised public displays.” Consequently, because the plaintiffs were seeking to sell consumer fireworks generally, the Court ruled that, as a matter of law, the plaintiffs were not entitled to a permit.

In other words, the Court said that the law only allowed plaintiffs to sell fireworks to those individuals who were permitted *and* who intended to use them for “supervised public displays.” But since the plaintiff’s retail store was only for selling consumer fireworks as opposed to *display* fireworks there was no legal mechanism to receive such a consumer permit. In short, all sale and use of fireworks is prohibited *except* in connection to permitted, public displays.

The Court declined to address the question of what constitutes a valid municipal permitting process, e.g., what clear standards should selectboards use to evaluate applications for local fireworks permits. But in a footnote, the Court “emphasize[d] that the lack of clarity in this

statute is detrimental to both fireworks dealers and municipalities, and urge[d] the Legislature to remedy the lack of clarity and standards in the statute.”

The upshot for municipalities from this case is that they can regulate local fireworks by requiring permits for the sale, possession, and use of “public display” fireworks. Critically, the Court also makes it clear that it is illegal – with or without a permit – to sell, possess, or use “consumer” fireworks.

The decision is available [here](#).

Carl Andeer, Staff Attorney II
VLCT Municipal Assistance Center