

From: MDPD Legal Tip of the Day <mdpd-legal-tip-of-the-day@googlegroups.com>
Sent: Tuesday, July 3, 2018 12:04 PM
To: MDPD Legal Tip of the Day
Subject: Legal Tip of the Day - Tuesday, July 3, 2018 - Happy Fourth of July!!! - REISSUE
Attachments: LN 12-01.pdf

TODAY'S TIP

QUESTION: Is it a crime to possess fireworks?



Photo courtesy of: <http://www.miamianbeaches.com/events/fourth-of-july>

ANSWER: No, mere possession of fireworks is not a criminal offense.

It is unlawful, however, for any person, firm, copartnership or corporation to offer for sale, sell at retail, use, or explode any fireworks without first obtaining a permit from the Board of County Commissioners. [FSS 791.02](#) Such a violation is a first degree misdemeanor. [FSS 791.06](#)

Refer to Legal Note 2012-01 attached above for the definition of the term “fireworks” for enforcement purposes.

We hope that you liked this tip.

MDPD Police Legal Bureau



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Memorandum



Date: July 3, 2012

To: Distribution B+

From: William Lyons, Police Legal Advisor
Police Legal Bureau

A handwritten signature in black ink, appearing to read "William Lyons".

Subject: Fireworks
Legal Note 2012-01 (Supersedes Legal Note 2010-08, Legal Note 2007-10 and prior Legal Notes, same subject)

It is unlawful for any person, firm, co-partnership or corporation to offer for sale, expose for sale, sell at retail, use, or explode any fireworks without first obtaining a permit from the Board of County Commissioners. §791.02, Fla. Stat. (2011). Such a violation is a misdemeanor of the first degree. §791.06, Fla. Stat. (2011). However, mere possession of fireworks is not a criminal offense.

Fireworks are defined to include any combustible or explosive composition or substance or combination of substances prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation. Fireworks include blank cartridges and toy cannons in which explosives are used, the type of balloons which require fire underneath to propel them, firecrackers, torpedoes, skyrockets, roman candles, dago bombs, and any fireworks containing any explosives or flammable compound or any tablets or other device containing any explosive substance. §791.01(4)(a), Fla. Stat. (2011). The term "Fireworks" does not include sparklers approved by the Division of the State Fire Marshal, toy pistols, toy canes, toy guns, or other devices in which paper caps containing twenty-five hundredths grains or less of explosive compound are used, providing they are so constructed that the hand cannot come in contact with the cap when in place for the explosion; and toy pistol paper caps which contain less than twenty hundredths grains of explosive mixture, the sale and use of which shall be permitted at all times. §791.01(4)(b), Fla. Stat. (2011). Furthermore, "Fireworks" does not include the following novelties and trick noisemakers: snakes or glow worms, smoke devices, and trick noisemakers. §791.01(4)(c), Fla. Stat. (2011). Before taking any enforcement action, refer to the complete statutory definitions of these novelties and trick noisemakers in §791.01, Florida Statutes at <http://www.flsenate.gov/Statutes>, and also in the 2012 Florida Law Enforcement Handbook.

The law requires police officers to seize, take, remove or cause to be removed at the expense of the owner, all stocks of fireworks or combustibles offered or exposed for sale, stored, or held in violation of Chapter 791. 791.05, Fla. Stat. (2011). However, "[i]t may not be necessary, or legal, to seize all products in one location observed to engage in instances of unlawful retail sales of fireworks or illegal sparklers. Enforcement personnel may choose to only seize those items involved in an illegal transaction or exposed for sale in an illegal manner. Seizing an entire stock of product may be improper as an enforcement procedure if there are lawful wholesale transactions that may be occurring at an enforcement site." See the Division of State Fire Marshal's helpful pamphlet titled, "Fireworks and Sparkler Enforcement Law Enforcement and Inspections Guide," at [http://www.myfloridacfo.com/sfm/pdf/Fireworks Enforcement Guide 2004 text.pdf](http://www.myfloridacfo.com/sfm/pdf/Fireworks%20Enforcement%20Guide%202004%20text.pdf).

Miami-Dade Fire Rescue (MDFR) inspects all fireworks concessions located within the unincorporated areas and the municipalities that MDRF serves to insure that the fireworks being offered for sale are in compliance with Chapter 791. MDPD officers requiring assistance to verify statutory compliance may contact MDRF Captain McGregor Sheppard at (786) 331-4818. Also, the regulatory staff of the Division of State Fire Marshal is available to render guidance and assistance if necessary. Officers having any questions regarding fireworks may contact the Regulatory Licensing Section at (850) 413-3172.

MDPD officers having questions regarding this Legal Note should contact the Police Legal Bureau at (305) 471-2550. Officers from other law enforcement agencies should contact their respective legal advisors prior to taking action based on this Legal Note.

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