

C & C Fireworks, LLC
Revocation of Rutland Town Permit for the Sale of Fireworks
Findings of Fact, Conclusion of Law and Order

On July 7, 2021, the Rutland Town Select Board held a hearing on alleged violations by C & C Fireworks, LLC, [C & C] of fireworks sale permit [Permit], as amended, issued by the Town of Rutland Select Board [Town] to C & C Fireworks, LLC on June 15, 2021.

Appearing in person for C & C were Attorney Joseph O'Rourke, Charles "Chip" Greeno, and Charles "Chuck" Greeno; C & C employee Craig Hahn participated by phone.

Select Board members participating in the hearing were Mary Ashcroft and Sharon Russell in person and Joseph Denardo by phone.

Second Constable John Paul Faignant, appeared in that role and did not participate as a member of the Select Board nor in the deliberation or determination of this decision. Select Board member Don Chioffi did not participate in the hearing nor in the determination of this decision as he was recuperating from surgery.

JP Faignant, Chip Greeno and Crain Hahn were sworn in as witnesses by Select Board Chair Mary Ashcroft.

Findings of Fact

1. Following up on a complaint received from a town resident, on June 29, 2021, Second Constable JP Faignant conducted surveillance of the C & C Fireworks business at its location on Woodstock Avenue in the Town. After watching several vehicles enter and exit C&C parking area, including 5 vehicles with Vermont registrations, he approached Mr. Hahn, identified himself and asked to see copies of the public display permits which were required to be produced by any buyer at the time of sale.
2. According to Faignant, Mr. Hahn refused to produce copies of the required public display permits and instead called the owner of the business.
3. When the owner, Mr. Charles Chip Greeno, arrived, he told Second Constable Faignant that the store does not ask to see any permits from Vermont residents. The owner also stated that they did not ask for, nor retain any identification from purchasers.
4. Mr. Chip Greeno testified that he did not have any Vermont-issued public display permits because up until the time of Second Constable Faignant's visit on June 29th, nobody from Vermont had purchased any fireworks. Mr. Greeno said while customers may have arrived in cars with Vermont plates, they had out of state ID. Mr. Greeno presented as an exhibit 1 sale with an attached permit and stated all of the other sales were to people from out of state. Mr. Greeno said this proves that Vermonters can have out of state IDs and live out of state, or know someone from out of state, or have friends from out of state.

5. Greeno also stated that no one had asked him to keep track of out of state sales. After Constable Faignant's visit, Green stated that they took pictures of every ID with a sales agreement. He also said that since Mr. Faignant's visit, C & C Fireworks documented every single transaction and they had not sold to Vermonters.
6. Second Constable Faignant said that he re-visited the C & C Fireworks business again on the following day, June 30, 2021, and 5 sales were observed, 2 with Vermont registrations and others with out of state registrations.
7. Mr. Chip Greeno produced copies which he said showed sales transactions which were accepted and entered as exhibits. Constable Faignant's surveillance reports and photos were also accepted and entered as exhibits.
8. Mr. Greeno stated that he felt he was allowed to sell to out of staters and did not intend to violate his permit with the town.
9. Mr. Chip Green acknowledged that his attorneys had been present at the Select Board meeting on June 15, 2021 when the amended permit was issued to C & C Fireworks. A draft of the permit was provided to Mr. Greeno and his attorneys, which they reviewed and requested a few amendments which were made. Mr. Greeno agreed that neither he nor his attorneys requested clarification about selling Vermonters or to out of staters. Mr. Greeno felt that the permit clearly stated that he could sell to out of staters.
10. Ms. Ashcroft asked Mr. Greeno if his exhibits contained copies of any receipts for sales prior to the visit from Mr. Faignant. Mr. Greeno said there are none because he was not asked to keep them. Mr. Greeno stated that as soon as he was asked to keep them, he did. Mr. Faignant stated the permit clearly requires them to be kept. Mr. Greeno said yes, but only from Vermont residents, which he did. Ms. Ashcroft said the conditions do not say that. Mr. Greeno said he assumed out of staters are not what they were talking about.
11. Ms. Ashcroft read to Mr. Greeno Conditions #5 and #6 of the town's sale of fireworks permit issued to C & C. Those conditions prohibit sales of any fireworks to any person unless that person produces a supervised public display permit issued by either the Rutland Town Fire Chief for in-town displays, or the fire chief or select board of the municipality in which the display is located. Both conditions require keeping copies of any permits. Mr. Greeno replied that he had read these conditions and but did not think they applied because he only sold to out of staters.
12. Mr. Greeno said that there is no ATF or federal licensing involved with the types of fireworks that he sells.
13. Mr. Greeno's exhibits comprised numerous color photocopies of photo drivers' licenses laid over a one-page form entitled C & C Fireworks Purchase Certification. No actual sales receipts were produced. The form itself includes acknowledgement that the purchaser is 21 or older and not a member of any organization on the US Dept of State terrorist exclusion list, and that the purchaser will not use the fireworks for any terrorist activity. The form avers that all statements

given are true. The form contains disclaimer of liability for C & C Fireworks. The form also contains an acknowledgement that ...” all displays of fireworks in Vermont require a permit issued by the chief of the local fire department.” The permit form has spaces for purchaser to print their name, address, city, state and zip code phone number and e-mail. It also contains lines for purchaser’s signature and date.

14. Six of the Greeno exhibits show sales to Vermonters. Only one exhibit—issued to Jeremy Bishop of Clarendon--includes a fireworks display permit issued by the Town of Clarendon Select Board authorized on May 24, 2021, well in advance of the July 4 display date.

12. The five remaining exhibits indicating sales to Vermonters were as follows:

Zachary Aquistpace whose driver’s license was from California but who gave as an address 15 Deer Street, Rutland VT 05701; no public display permit from a local fire chief or select board was attached.

Michael Mondella whose driver’s license was from Vermont and who gave an address of 20 Chapel Street in West Rutland, VT 05777; no public display permit from a local fire chief or select board was attached.

Griffin Plank whose driver’s license was from Vermont but who gave as an address 22A Hampton, NY; no public display permit from a local fire chief or select board was attached.

Harry Brown whose driver’s license was from Texas but who gave as an address 23 Cardinal Blvd, Pownal, VT 05261; no public display permit from a local fire chief or select board was attached.

Rob Warzel whose driver’s license was from Vermont and who gave an address of 95 Spring Hill Road, Killington, VT 05751; no public display permit from a local fire chief or select board was attached.

None of the above certifications had a public display permit from a Vermont fire chief or Vermont select board attached.

13. Surveillance photographs produced by Second Constable JP Faignant showed people in C & C Firework’s parking lot loading bagged items into vehicles with Vermont license plates. Those vehicles included a van, a pick-up truck, and a blue passenger car.

Conclusions of Law

C & C Fireworks has operated a business selling fireworks in the Town of Rutland for approximately six years. The Town Select Board issued several permits to C & C authorizing these sales, including one issued June 23, 2020.

On August 7, 2020, the Vermont Supreme Court issued a ruling in the matter of Green Mountain Fireworks, LLC and Town of Colchester, et al., 2020 VT 64. In this ruling, the Court

declared that pursuant to 20 VSA Sec. 3132, “all sales of fireworks are prohibited, except in connection to permitted, public displays.” [Citations omitted here, but recited in the Permit to Sell Fireworks in the Town of Rutland dated June 15, 2021, to which reference is had.]

In that same decision, the Vermont Supreme Court ruled that “a distinct municipal permit is required for the sale of fireworks.” [Citation omitted here; see Permit.]

The Vermont Department of Fire Safety regulates the issuance of fireworks display permits. The DFS’s Fire and Building Safety Code says: “[i]t is unlawful for any person to offer to sale, sell at retail or wholesale, posses, use or explode any fireworks except as permitted for a supervised public display”. [Citations omitted here; see Permit.]

After becoming aware of the Supreme Court ruling cited above, and further aware that the legislature had not acted to change the underlying statute at 20 VSA Sec. 3132, the Rutland Town Select Board acted on May 25, 2021 to revoke C & C’s permit to sell fireworks which had been issued on 6-23-20.

At the request of C&C’s attorneys R. Joseph O’Rourke and Charles A. Romeo, Rutland Town Select Board convened a hearing to consider the matter on June 15, 2021, with notice to C & C and to their attorneys. [See minutes of Special Select Board Meeting of June 15th, 2021, available as a public record and posted on the Town of Rutland website.] Mr. Chip Greeno and Mr. Chuck Greeno appeared with Attorneys Romeo and O’Rourke; Town Attorney Kevin Brown appeared remotely, and Select Board members Mary Ashcroft, Sharon Russell, John Paul Faignant and Don Chioffi were present. A draft revised permit was considered, and after recess to discuss, C & C’s attorney presented a few minor amendments, which were agreed to. The Select Board immediately acted to adopt the revised Permit dated 6-15-21.

The revised Permit states that the Select Board “...revises the June 23, 2021 Fireworks Sale Permit to authorize C&C Fireworks, LLC to sell fireworks for supervised public displays only.” [Emphasis added.] Permit, Pages 1,2.

The revised Permit contained a number of conditions. The relevant ones are as follows:

“2. C&C shall comply with all applicable regulations of the State of Vermont and of the United States of America for the storage of fireworks and the sale of fireworks. [Emphasis added.]”

“5. For Supervised Public Displays to take place in the Town of Rutland, C&C shall not sell any fireworks to any person unless the purchaser produces to C&C at the time of sale a Supervised Public Display Permit issued by the Fire Chief of the Town of Rutland with a date of issuance no less than 15 days before the date of sale.” [Emphasis added.]

“6. For Supervised Public Displays to take place in a location other than the Town of Rutland, C&C shall not sell any fireworks to any person unless the purchaser produces to C&C at the time of sale, a permit from the Fire Chief or Selectboard of the municipality in which the

display is located, with a date of issuance no less than 15 days before the date of sale.”
[Emphasis added.]

“7. If and when C&C sells any fireworks pursuant to Conditions 5 or 6 above, C&C must obtain and keep a copy of the Supervised Public Display Permit and attach a copy of the sales receipt to the permit. C&C shall maintain copies of the Supervised Public Display Permit and the sales receipt attached thereto, for no less than three years from the date of sale.”

“The Selectboard of the Town of Rutland reserves the right to revoke this permit after notice and hearing in the event that C&C fails to abide by these permit conditions.”

C&C through Chip Greeno makes the following claims:

A) That C&C was allowed to sell fireworks to non-Vermonters even if they did not have a public display permit.

B) That C&C did not sell any fireworks to Vermont residents and so was not in violation of the town’s permit.

A) The Select Board concludes that C&C was not allowed to sell fireworks to any person—Vermonters or non-Vermonters--who did not hold a public display permit.

The Town of Rutland had limited authority to issue a permit for the sale of fireworks in town. The town was required to comply with state law at 20 VSA Sec. 3132, as interpreted by the Vermont Supreme Court in Green Mountain Fireworks. Id. In that decision the Court declared that “all sales of fireworks are prohibited, except in connection to permitted, public displays.” Id., at paragraph 22.

The permit issued by the Town of Rutland on June 15, 2021, was by necessity extremely limited. The language in the permit is clear: “to authorize C&C Fireworks, LLC to sell fireworks for supervised public displays only.” [Emphasis added.].

Permit conditions 5 and 6 both contain similar limiting language: “C&C shall not sell any fireworks to any person...” [emphasis added] unless that person produces a public display permit either from the Town of Rutland Fire Chief (for in-town public displays) or from a fire chief or select board in the municipality in which the display is located. The plain language of the Town’s Permit prohibits sales to any person, not merely any Vermonter as Mr. Greeno would argue. And of the many exhibits produced by Mr. Greeno, only one, the sale to Jeremy Bishop, had the necessary public display permit from the Clarendon Select Board.

Mr. Greeno’s assertions that first, he had authority to sell to out of staters without restriction, and secondly that no one told him he couldn’t, are contravened by the plain language of the Town’s Permit which he reviewed with his attorney before it was signed by the Select Board on June 15, 2021, and of which he had a copy before he left that meeting. Neither Mr. Greeno nor his attorney requested clarification of sales to in-state or out-of-state residents, although they requested clarification on a number of other points before the permit was issued.

C&C's attorney was invited to cite authority for their position that there was no restriction on the sale of fireworks to out of staters. He could not.

It is obvious from the dozens of copies of purchaser certifications with driver's licenses produced as C&C's exhibits, that dozens of fireworks sales were made to persons who did not have supervised public display permits. All such sales were in violation of Rutland Town Select Board permit to C&C dated 6-15-21.

B) The Select Board concludes that C&C did sell fireworks to Vermont residents in violation of the Town's permit.


Even assuming, *arguendo*, that C&C was somehow authorized to sell to out-of-staters but not Vermont residents, C&C's own exhibits confirm that they nevertheless sold to Vermont residents Michael Mondella of West Rutland, Vermont and Rob Warzel of Killington, Vermont. Both of these individuals not only gave an in-state address but also produced a Vermont driver's license to confirm residency. They did not produce the necessary public display permits. This contradicts Mr. Chip Greeno's sworn testimony that C&C did not sell to Vermont residents.

C&C also sold fireworks to Zachary Aquistpace whose driver's license was from California but who gave as an address 15 Deer Street, Rutland; Griffin Plank whose driver's license was from Vermont but who gave as an address 22A Hampton, NY; Harry Brown whose driver's license was from Texas but who gave as an address 23 Cardinal Blvd, Pownal, VT. It is unclear whether these men were residents of Vermont or not, but enough question was raised by the conflicting information given to call these sales into question.

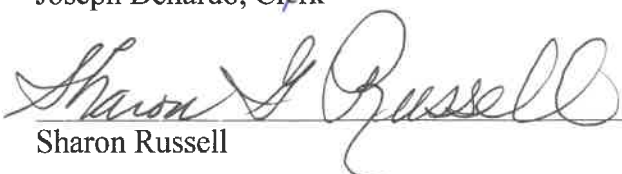
ORDER:

For failure of C&C Fireworks, LLC to abide by the Town of Rutland Select Board fireworks sales permit issued 6-15-21, the Select Board hereby revokes that permit as of July 7, 2021.

Select Board Members participating in the decision:


Mary C. Ashcroft, Chair


Joseph Denardo, Clerk


Sharon Russell