



CITY COUNCIL AGENDA REPORT

MEETING DATE: May 5, 2004

ITEM NUMBER: VII-2

SUBJECT: AMMENDMENT REGULATING FIREWORKS SALES

DATE: April 28, 2004

FROM: Fire Chief James M. Ellis
Acting City Attorney Tom Wood
City Manager Allan L. Roeder

PRESENTATION BY: Fire Marshal Tom MacDuff
Acting City Attorney Tom Wood
City Manager Allan L. Roeder

FOR FURTHER INFORMATION CONTACT: Fire Chief James M. Ellis (714/ 754-5106), Fire Marshal Tom MacDuff (714/327-7408), Acting City Attorney Tom Wood (714/754-5399), or City Manager Allan L. Roeder (714/754-5328)

RECOMMENDATION:

Give ordinance first reading; adopt resolution No. 04-__ and approve Council Policy 400-2.

BACKGROUND:

At the regular City Council Meeting of April 19, 2004, Council Member Mike Scheafer made a presentation regarding various proposed changes to the City's adopted regulations pertaining to the sale of fireworks. The contents of the Council Member's presentation were addressed in the staff report prepared for the meeting and is incorporated in this report as Attachment A. A motion was made to direct the City Attorney to prepare the desired ordinance revisions and to direct the Fire Department to conduct a "Question and Answer" session with representatives of the fireworks industry and organizations previously granted permits for fireworks stands. The motion carried on a 5-0 vote of the City Council.

ANALYSIS:

Staff of the Fire Department, City Attorney's Office and City Manager's Department initiated the required follow up actions to the City Council's direction of April 19, 2004. This has been accomplished by way of the three (3) documents identified as Attachments B, C and D to this report.

Attachment B is an ordinance that includes basic cleanup language to the City's current fireworks regulations, as well as specific language addressing the following:

Section 9-181 (a)

This Section requires that only bona fide non-profit organizations formed to benefit youth and students of the City are qualified to apply for a permit to sell fireworks.

Section 9-181 (c)

This Section raises the qualifying percentage (50% current, 80% proposed) of Costa Mesa residents who are legitimate members of a non-profit corporation seeking a permit to sell fireworks.

Section 9-190 (d)

This Section corrects the existing conflict between hours of sale and hours of discharge. Under existing code, fireworks can be sold until midnight on July 4 even though the code restricts discharge of fireworks to 10:00 p.m. on July 4. The code has been modified to conclude sales at 8:00 p.m. and discharge at 10:00 p.m. on July 4.

Attachment C is a resolution referencing Ordinance Section 9-179 through Section 9-190 of the Costa Mesa Municipal Code regulating the sale and discharge of safe and sane fireworks and incorporating Council Policy 400-2 by reference. It is recommended that the specific restrictions incorporated into Council Policy 400-2 be adopted by resolution for ease of future modification, should the City Council choose to do so.

Attachment D creates Council Policy 400-2 setting forth restrictions on certain types of fireworks, limitations on the numbers of fireworks stands, noticing requirements and a prohibition on the issuance of permits to non-profit organizations not previously holding a fireworks stand permit in 2003. The Policy specifically addresses the following elements of Council Member Scheafer's proposal:

Regulations

1. This section of the Policy prohibits the sale of any hand held fireworks as well as "spinners." It allows for the continued sale of these fireworks as part of a homogeneous package but prohibits individual sales. All sales of hand held fireworks and spinners would be prohibited by 2006. This section delegates to the Fire Chief the authority to update the list of fireworks that are hand held and spinners, as needed.
2. The Policy would prohibit the issuance of a permit to operate a fireworks stand to any organization that did not previously hold such a permit for the year 2003.
3. No more than four (4) fireworks stand permits would be issued annually to any organization based as a single school location under the Policy. In addition, the Policy requires that the subject schools have a student population of at least 50% Costa Mesa residents. As written, this would limit eligibility for fireworks permits applications by school organizations to Estancia, Costa Mesa and Newport Harbor High Schools.
4. The Policy establishes an annual lottery for the issuance of permits for fireworks stands if the number of qualified applicants exceeds forty (40) in number.
5. Finally, the Policy requires as a condition of the issuance of a permit for a fireworks stand that two requirements be met. The first requirement is the provision of flyers printed in both English and Spanish addressing fireworks safety and water quality protection. The flyers will be made available to all Costa

Mesa Schools and to purchasers of fireworks. The second requirement is the provision of signage for all public parks advising the public about the City's fireworks regulations. Verbiage for both the flyers and the signs is subject to review and approval by the Fire Chief.

The combination of the proposed Ordinance, Resolution and Council Policy address all of the elements presented to the City Council at its last meeting.

As noted in the Background section of this report, the City Council also directed the Fire Chief to organize a "Question and Answer" briefing with representatives of the fireworks industry and those organizations that previously held permits for fireworks stands. As suggested in the Conclusion section of the staff report of April 14, 2004, the briefing of the fireworks industry and non-profit organizations should occur prior to the implementing Ordinance being brought back to the City Council for first reading. As staff prepared the materials necessary for that briefing along with the Ordinance, Resolution and Council Policy, it became clear that conducting the briefing before returning to the City Council would put significant time constraints on all parties in the processing of fireworks permits for July 4, 2004. The briefing has been set for Wednesday, May 5, 2004 in the City Council Chambers from 5:00 p.m. to 10:00 p.m. Invitations to the briefing have been mailed to some seventy (70) fireworks industry representatives and prior holders of permits for fireworks stands. Because the subject changes have been discussed with the industry previously and given the time constraints in processing permits, the decision was made to bring this matter forward to your meeting of May 3, 2004. In the event there are significant issues raised at the May 5 briefing, staff will document those and forward them to the City Council in advance of the second reading of the Ordinance.

ALTERNATIVES CONSIDERED:

Based on City Council direction from the meeting of April 19, 2004, staff has not considered alternatives to the directed action. It requires notation, however, that the City Council did hear testimony at its meeting of April 19 from members of the community who would strongly prefer that the sale and discharge of all fireworks be prohibited within Costa Mesa. To the extent a majority of the City Council chooses to support continued sale and discharge of safe and sane fireworks, the specific provisions in this report strictly seek to further regulate that effort – not to prohibit fireworks outright. The provisions in this report may be adopted in whole or in part.

FISCAL REVIEW:

There is no significant, direct fiscal impact to the City on the basis of the proposed regulations. There may be fiscal impacts on certain non-profit organizations to the extent that the number of applicants for fireworks stand permits exceeds the restricted number of 40 permits.

LEGAL REVIEW:

The City Attorney's Office prepared the attached Ordinance, Resolution and Council Policy.

CONCLUSION:

Based on prior City Council direction, staff recommends that the proposed Ordinance receive first reading at this time. The City Council may also approve the Resolution and Council Policy at this time or defer action on these two items until after the “Question and Answer” meeting on May 5 and take action in conjunction with the 2nd reading of the Ordinance.

Allan L. Roeder
City Manager

Tom Wood
Acting City Attorney

- Attachments:
- A [Council Agenda Report for Meeting of 4-19-04 Attachment A](#)
 - B [Ordinance Amending Municipal Code Regulating Fireworks Sales
Ordinance Amending Municipal Code Regulating Fireworks Sales-
Draft](#)
 - C [Resolution No. 04 Regulating Fireworks Sales](#)
 - D [Council Policy No. 400-2, Regulations Governing Fireworks](#)

Agenda Rpt Regulating Fireworks Sales
5-3-04

| 4-28-04

| 1:43 p.m.