



CITY COUNCIL AGENDA REPORT

MEETING DATE: May 17, 2003

ITEM NUMBER: VIII-1

SUBJECT: Second Reading of Ordinance No. 04-5 and Proposed Amendments to City Council Policy 400-2 Pertaining to the Sale and Discharge of Fireworks.

DATE: May 12, 2004

FROM: City Council/Fire Department/City Attorney's Office

PRESENTATION BY: Council Member, Mike Scheafer
Acting City Attorney, Tom Wood

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) 754-5327

RECOMMENDATION:

Adopt Ordinance 04-5 and consider amendments to City Council Policy 400-2 as proposed by Council Member Mike Scheafer.

BACKGROUND:

At its regular meeting of May 3, 2004, the City Council approved the first reading of Ordinance 04-5, Resolution No. 04- 30 and Council Policy 400-2 amending regulations pertaining to the sale and discharge of fireworks. This action was a follow up to recommendations suggested at the April 19, 2004 regular City Council meeting by Council Member Mike Scheafer on this subject. Attachment A is an excerpt from the minutes of the regular meeting of May 3, 2004 on this subject (please note that minutes are unofficial until approved by the City Council) while Attachment B is a copy of the staff report prepared for this item.

On May 5, 2004, a public meeting with representatives of the fireworks industry, the local community and non-profit organizations that previously held permits for the sale of fireworks was conducted. The meeting was intended as a "Question & Answer" session regarding the proposed changes to local fireworks regulations. Approximately 35 representatives of the industry and the community were in attendance. Representing the City were Council Member Mike Scheafer, Fire Chief James Ellis, Fire Marshal Tom MacDuff, Acting City Attorney Tom Wood, Finance Director Marc Puckett, Assistant Finance Director Colleen O'Donoghue, Revenue Supervisor Judy Vickers and City Manager Allan Roeder.

Comments from those attending the “Questions & Answer” session covered a range of concerns regarding the proposed changes. Generally speaking, the majority of the concerns expressed related to the proposed regulations limiting the overall number of fireworks stands; limitations on the number of applications for fireworks stand permits by local high school groups, and the requirement that 80% of an applicant’s members must be Costa Mesa residents. There were other, more specific concerns raised such as an accommodation for Vanguard University and Orange Coast College; qualification of religious based organizations that may not meet the 80% residency requirement for its members, but where the proceeds of the sale of fireworks are dedicated to youth programs that do meet this standard; hours of operation and the required signage for City Parks. While the meeting was generally positive and attendees expressed appreciation for the opportunity to openly discuss concerns and identify solutions, neither Council Member Scheafer nor staff offered any assurances that all of the concerns would be addressed satisfactorily in the 2nd reading of Ordinance 04-5. The City Council can expect attendance at your meeting of May 17th by some of those participating in the “Question & Answer” session.

ANALYSIS:

Ordinance 04-5 (Attachment C) reflects the City Council’s approval of the 1st reading on May 3, 2004 with one minor change as provided by the Acting City Attorney. Section 9-179 (e) provides a clarified definition of “Youth” as “persons under 19 years of age” instead of “18 years and older.” Beyond this ministerial clarification, the ordinance is submitted for 2nd reading and adoption.

In response to many of the comments made at the “Questions & Answer” session last week, Council Member Scheafer met with City staff on Monday, May 10, 2004 to introduce some possible changes to Council Policy 400-2. The suggested changes focus specifically on the majority concern of limitations on high school organizations and the 80% qualifying language. It is expected that even with the suggested changes by the Council Member, the number of applicants will likely be reduced to the 40-stand limit. To the extent this does not occur, a lottery would be conducted as provided for in the Council Policy.

Council Policy 400-2 (Attachment D) includes the language as approved by the City Council at your meeting of May 3, 2004. A revised version of the Council Policy (Attachment E) has been included which reflects suggested changes offered by Council Member Scheafer based on last week’s community meeting. The following is a summary of his suggested changes:

Regulation 2

Limits to one the number of fireworks stand permits that may be issued to a single organization unless otherwise provided for in the Policy. This is intended to address concerns expressed about multiple permits to single groups, except youth athletic organizations that is addressed later.

Regulation 3

Changes the provisions in the Policy by increasing the number of fireworks stand permits from (4) to (6) per high school. The intent of this change is to respond to complaints that a limitation of only 4 permits per high school was overly restrictive. This revision would also require applicants representing high school organizations to obtain a letter from the School Principal or Activities Director certifying that the applicant is a recognized organization supporting school activities.

Regulation 4

This provision would define and limit the number of firework stand permits obtainable by any single youth athletic organization. Specifically, the suggested language would limit to 4 the number of firework stand permits for any Group 1 User as defined in the City's Athletic Field/Facility Use and Allocations Policy. This modification is intended to address concerns expressed that certain youth athletic groups received a disproportionate number of permits.

Regulation 5

Amendments to this section of the Policy include a redefinition of the 80% residency qualification and qualifying language for Vanguard University and Orange Coast College.

In terms of the 80% residency requirement, the Council Member proposes to amend existing language to allow for the issuance of fireworks stand permits to organizations previously holding permits who do not meet the 80% threshold, such as church organizations. This is accomplished through the requirement that funds raised through the sale of fireworks must be specified activities or events wherein 80% of the participating youth are residents of Costa Mesa.

This section also provides an exemption to the 80% requirement for post-twelfth grade schools located in Costa Mesa previously holding a fireworks stand permit, which addresses Orange Coast College and Vanguard University.

Regulation 7

This section addresses a number of procedural changes regarding obligations of the fireworks industry to provide public information and funding for signage in public parks. The language also addresses concerns expressed by the industry relative to time frames, process and the mutual obligations of the City and the industry.

Regulation 8

Requires applicants for fireworks stand permits to provide substantiating information upon request by the City. This language simply places applicants on notice that they may be asked to verify information on their application and that failure to do so may result in disqualification. It addresses a concern expressed at the community meeting about accuracy in completing applications and compliance with City requirements.

Regulation 9

This final, suggested revision would set a 10:00 p.m. curfew on sales on July 1st, 2nd and 3rd. At present, the sale hours are from July 1st to 8:00 p.m. on July 4th with no nightly curfew. While this language sets a nightly curfew that is generally a “matter of practice” for most sellers of fireworks, it does not address a requested lifting of the curfew to 10:00 p.m. on July 4th. The adopted curfew on July 4th is 8:00 p.m.

Council Member Scheafer will address each of the preceding in his comments to the public and the City Council.

ALTERNATIVES CONSIDERED:

Since this is a 2nd reading of the ordinance approved by the City Council at its meeting of May 3, 2004, no alternatives were considered.

In terms of Council Policy 400-2, Council Member Scheafer has suggested a number of possible changes based on the community meeting of May 5, 2004. While those are detailed in this report, there are numerous alternative provisions that could be considered. Staff has not attempted to develop a range of alternatives given the City Council’s prior adoption of Council Policy 400-2. If there are specific changes that the City Council would like to see in the Policy, staff should be given direction as to what those changes should be so they may be prepared for consideration at a future City Council meeting.

FISCAL REVIEW:

There is no direct fiscal impact to the proposed regulations. For purposes of clarification, there clearly are costs associated with allowing the sale and discharge of safe & sane fireworks. The assessment of no fiscal impact relates strictly to the action before the City Council and not the broader issue of banning fireworks.

LEGAL REVIEW:

The City Attorney's Office drafted the Ordinance and Council Policy submitted with this report.

CONCLUSION:

The original intent of the proposed modifications to the City's regulation of fireworks sales and discharge was to add a measure of control by the City with respect to these activities. As proposed these regulatory changes are not expected to reduce the total number of safe & sane fireworks sold; they will not stop the purchase and use of illegal fireworks (which is already addressed in State law); they will not eliminate or reduce the adverse impacts certain fireworks have on persons and pets in the community, nor will they eliminate the potential for residual fireworks material finding its way into local catch basins and storm drains. The changes will reduce the total number of fireworks stands; prohibit all hand-held fireworks and "spinners," increase the current level of effort to educate the public about fireworks safety and water quality implications and direct that funds raised from the sale of fireworks be directed to youth activities. They will neither satisfy those in favor of a prohibition on the sale and use of fireworks, nor those who support a much more limited regulatory environment.

ALLAN L. ROEDER
City Manager

TOM WOOD
Acting City Attorney

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- ATTACHMENTS:
- A [Excerpt from the Minutes of Council Meeting of 5/3/04](#)
 - B [Staff Report from 5/3/04](#)
 - C [Ordinance 04-5](#)
 - D [Council Policy 400-2](#)
 - E [Council Policy 400-2 with changes offered by Council Member Sheaffer based on 5/5/04 community meeting](#)

DISTRIBUTION: Fire Chief, James Ellis
Fire Marshal, Tom MacDuff