



## ***CITY COUNCIL AGENDA REPORT***

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MEETING DATE: April 19, 2004

ITEM NUMBER: IX-4

**SUBJECT:** REQUEST OF COUNCIL MEMBER SCHEAFER FOR CONSIDERATION OF PROPOSED CHANGES IN REGULATION OF FIREWORKS

**DATE:** April 14, 2004

**FROM:** Council Member Mike Scheafer

**PRESENTATION BY:** Council Member Mike Scheafer

**FOR FURTHER INFORMATION CONTACT:** Jim Ellis, Fire Chief (714/754-5680), Tom MacDuff, Fire Marshal (714/327-7408) or Allan L. Roeder, City Manager (714/754-5328)

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### **RECOMMENDATION:**

Consider request.

### **BACKGROUND:**

In 1990, the City Council appointed a "Blue Ribbon" Committee of nine members to study the fireworks issue and report back to them. The committee was made up of one member from the Fire Department, one from the Police Department, one from the fireworks industry, two from nonprofit organizations and four Costa Mesa residents. The resultant report submitted to the City Council from this committee made points for and against safe and sane fireworks and did not contain any compelling evidence supporting either side of the issue. The conclusions and recommendations contained in the report were as follows:

*Fireworks of all types (both "safe and sane" and illegal) can be dangerous when used improperly. No municipality can fully protect its residents by either permitting the sale of "safe and sane" fireworks or by banning the sale of fireworks; however, data indicates that cities which have banned all fireworks sales have significantly less fires and fire-related injuries than those cities which continue to allow the sales of "safe and sane" fireworks. More efforts should be concentrated on public education and media campaigns to achieve fireworks safety.*

*While certain nonprofit community organizations rely primarily on (or exclusively) on fireworks sales to generate their revenue, other community organizations rely on alternate fund-raising efforts with equal success in meeting their financial needs.*

The issue was then put before the voters in the form of an advisory measure in the November 6, 1990 General Election. Measure W read, "Should the City of Costa Mesa continue to permit the sale and discharge of State Safety Approved fireworks by nonprofit organizations within the City of Costa Mesa?" The actual vote tally was 11,925 (49.675%) "yes" votes and 12,081 (50.325%) "no" votes. Rounded to whole numbers,

this calculates to 50% “yes” and 50% “no.” The City Council felt that the vote was close enough that it did not give them any clear direction as to the desires of the voters.

In early 1991, the City Council considered the fireworks issue and on a 3-2 vote, decided to continue to allow safe and sane fireworks with additional restrictions as follows:

- Permit the discharge of fireworks only on July 4 between the hours of 4:00 p.m. and 10:00 p.m.
- Ban sparklers in the City of Costa Mesa. (Sparklers have since been banned statewide)
- Enact an ordinance against the throwing, tossing, etc., of fireworks
- Ensure that fireworks are sold only to people over the age of 18
- Stipulate that an adult must be present when fireworks are discharged

Shortly following the July 4, 2003 Independence Day holiday, Council Member Scheafer contacted the City Manager expressing various concerns with the City’s existing regulation of fireworks. The Council Member also expressed these concerns under “Council Member Comments” at the regular City Council Meeting of July 7, 2003. Over the ensuing months, periodic discussions were held involving Council Member Scheafer, Fire Chief Ellis, Acting City Attorney Wood, Fire Marshal MacDuff and City Manager Roeder to review data and discuss potential changes in the City’s current regulations. A meeting was held with representatives of the fireworks industry to obtain their thoughts and feedback on a range of possible changes to existing regulations. With the July 4, 2004 Independence Day holiday approaching, Council Member Scheafer requested that the matter be brought forward at this time for City Council consideration.

**ANALYSIS:**

While Council Member Scheafer will present his recommendations for revisions to the existing code regulating fireworks at your regular meeting of April 19, 2004, a synopsis of those recommendations is included below.

**Recommended Changes to Existing Fireworks Regulations**

The following recommendations would require preparation of an ordinance amending the Costa Mesa Municipal Code and changes in existing procedures relative to the issuance of permits for fireworks stands.

- Prohibit the sale of “hand held devices” and “spinners” in Costa Mesa, separate sales of these devices to be discontinued immediately and sale in prepackaged assortments to be prohibited in two years.
- Require fireworks distributors to prepare combined safety and water quality flyers in both English and Spanish at their expense for distribution to all Costa Mesa schools and to be handed out to all fireworks purchasers.
- Create new signs for posting in all City parks warning of the penalty for possession of dangerous fireworks (at the expense of the fireworks distributors).
- Reduce the number of fireworks stands over time by the following restrictions:

- Do not allow any new groups to obtain permits for fireworks stands.
- Require that 80% of the members of an organization applying for a permit reside in the City.
- Allow no more than four stands per local high school.
- Require that organizations applying for a permit are youth oriented.
- Reduce the number of stands to a maximum of 40 by an annual lottery.

The following is a general discussion of the key issues discussed by Council Member Scheafer, staff and representatives of the fireworks industry that evolved into the above recommendations.

### **Sales Duration**

The issue of sales duration was discussed because it is a well-known fact that discharge of fireworks begins as soon as they go on sale. State law allows fireworks sales from noon June 28 through noon July 6. Currently, sales duration in Costa Mesa is limited to 9:00 a.m. July 1 to midnight July 4 and discharge is limited to July 4 between the hours of 4:00 p.m. and 10:00 p.m. Consideration was given to limiting sales to two days. The fireworks industry suggested that profits to local organizations might decrease as patrons buy in other cities. The industry also suggested that problems might be encountered in getting fireworks stand inspections completed in a timely fashion. It was generally agreed that some difficulties might be encountered by limiting the number of days more than we already have.

### **Types of Devices**

Certain types of devices listed by the State Fire Marshal as safe and sane fireworks are considered more dangerous than others, specifically those classified as "hand held devices" and "spinners." Hand held devices are considered more dangerous because they are often held in close proximity to clothing and body parts. Spinners are considered more dangerous because they dart around on the ground erratically and can easily be modified into an explosive device.

Each manufacturer has different names for these devices. Currently, hand held devices include but are not limited to Blue Millenium Candle, EZ-Glow Torch, Jumbo California Candle, Morning Glory Torch, Purple Rain Candle, Thunder Shower Candle, Flash Ray Gun and Mystery Candle. Spinners include but are not limited to Fire Ant 3'S, Mighty Twirlers, Wild Dancers, Ground Flower Blooms, Bright Mined Balls, Gyro Blooms, Red Rose Blooms, Turbo Props, Dancing Fresh Flowers and Dancing Spinner Fireworks.

The industry stated that 2004 assortments were already assembled with these devices in them, but that a phase-out over time could be accomplished. It is suggested that separate sales of these types of devices be discontinued immediately and that they be phased out of prepackaged assortments within two years.

### **Roadway Discharge**

Discharge of fireworks on roadways results in debris that can reach storm drains, possibly in violation of Federal and State Water Quality Standards (NPDES). Consideration was given to limiting discharge to front lawns a minimum distance from structures. However, this idea was dropped from consideration for safety reasons and the fact that many residential areas do not have adequate setbacks. Instead, it is

suggested that fireworks manufacturers be required to prepare combined safety and water quality flyers in both English and Spanish (at their expense) for distribution to all Costa Mesa schools and to be handed out to all fireworks purchasers.

### **Discharge in Parks**

Fireworks, both safe and sane and illegal, are set off in City parks by both residents and non-residents. In fact, some parks resemble war zones on July 5, requiring a concerted effort by City personnel to clean up. The industry suggested that City parks be closed at dusk and City employees be present to enforce the closure. They also suggested prominent signage to deter people from discharging fireworks. Existing municipal code regulations (Sec. 12-23) already stipulates that parks are closed after dark except when authorized by permit. It was generally concluded that enforcement by City personnel would be prohibitively expensive. Signs indicating that discharge of fireworks in parks is illegal are currently posted. However, it was suggested that better signage warning of the potential penalties of discharging fireworks may deter some of the activity. The maximum penalty for possession of dangerous fireworks is imprisonment in the State prison or the County jail for not more than one year, or by a fine of not more than \$5,000, or by both the fine and imprisonment. It is also suggested that the signage be paid for by fireworks distributors.

### **Noise**

Some fireworks are excessively noisy and irritating to both residents and pets. It was suggested that certain fireworks such as "Piccolo Petes" be prohibited. Research into this idea revealed that "Piccolo Petes" fall into the broad category of fountains, which contains over 300 individually named items. Prohibiting those that are excessively noisy would require City testing all of the fountains against a noise standard. This concept was dropped from further consideration due to the time, expense and logistics of testing hundreds of fountains annually to ascertain those which would be permitted.

### **Number of Stands**

The number of fireworks stands has steadily increased to a high of 56 in 2003. Staff believes that 56 is too many and proposes to reduce the number to something closer to 40. In 2003, Newport Harbor High School and Estancia each had eight stands, Costa Mesa High School had twelve stands, and AYSO had nine stands. The remaining stands were run by various, individual, nonprofit organizations (Please see attachment A). The Municipal Code requires that organizations that sell fireworks must be recognized by the State of California as organized for charitable, fraternal, patriotic service or religious purposes with their principal and permanent meeting place within the City of Costa Mesa, and at least fifty (50%) percent of the current members residing within the City limits.

Following a great deal of discussion on this point, it is proposed that stands be limited by the following means:

- Do not allow any new groups to obtain a permit.
- Require that 80% of the members reside in Costa Mesa.
- Allow no more than four stands per high school.
- Require that the organizations be youth oriented.
- Reduce the number of stands to 40 by annual lottery.

**ALTERNATIVES CONSIDERED:**

None.

**FISCAL REVIEW:**

No Fiscal Review is required for this item.

**LEGAL REVIEW:**

No Legal Review is required for this item.

**CONCLUSION:**

Council Member Scheafer is bringing this matter forward for discussion and consideration by the full City Council. Notice has not been given to the various organizations who have obtained fireworks stand permits in the past nor to the fireworks industry pending direction from the City Council. Should the City Council choose to move forward with some or all of the Council Member's recommendations, staff would suggest the following steps be taken:

1. Direct City Attorney to prepare the desired ordinance revisions.
2. Direct the Fire Department to contact representatives of the fireworks industry and those organizations who obtained permits for fireworks stands in 2003 for a "Questions and Answer" session on the proposed changes to the ordinance. This briefing should occur before the ordinance is presented to the City Council for first reading. Minutes of the briefing are to be taken and submitted to the City Council along with the draft ordinance.

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Allan L. Roeder  
City Manager

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James M. Ellis  
Fire Chief

Attachments: A     2003 Fireworks Stands