



CITY COUNCIL AGENDA REPORT

MEETING DATE: APRIL 20, 2010

ITEM NUMBER:

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

DATE: APRIL 20, 2010

FROM: COUNCIL MEMBER GARY MONAHAN

PRESENTATION BY: COUNCIL MEMBER GARY MONAHAN

FOR FURTHER INFORMATION CONTACT: THOMAS R. HATCH, ASSISTANT CITY MANAGER
KELLY SHELTON, EXEC. ASSIST. TO CITY MANAGER

RECOMMENDATION:

That the City Council provide direction.

BACKGROUND:

The City Council has received requests from five non-profit organizations requesting that the closing time for fireworks booths on July 4th be modified from 8:00 p.m. to 9:00 p.m. These organizations include Costa Mesa Pop Warner Football, Costa Mesa Boy's Basketball, Orange Coast College Foundation (Men's and Women's Basketball), Mika Community Development Corporation, and Estanica High School Golf (see Attachment 1). In these tough economic times, they indicate that based on their past experiences, there is an opportunity to increase their sales with a later closing time as many of their stands still have patrons in line when they are required to close down.

In addition, Costa Mesa Pop Warner Football, Orange Coast College Foundation (Men's and Women's Basketball) have included in their closing time modification request a request for the reversal of the City Council's April 19, 2004 (see Attachment 2) decision to prohibit the sale of "hand held devices" in particular, the sale of the Morning Glory product. They indicate that adding Morning Glories back into the sales line-up would have an even greater effect on their profits, along with those of other Costa Mesa non-profits. Sale of these devices has been phased out over a two-year period beginning in 2004.

Notification of this issue on the City Council agenda has been made to those requesting the modifications and to those non-profit organizations that sponsored fireworks stands in 2009.

ANALYSIS:

City of Costa Mesa Municipal Code Section 9-190 states (see Attachment 3):

Section 9-190(d) Prohibitions; state permit required states that "No person shall sell or offer for sale fireworks within the city unless such sale occurs between July 1st and 8:00 p.m. on July 4th, inclusive."

Section 9-190(a) Prohibitions; state permit required states "No person shall discharge, sell or offer for sale, any fireworks within the city which are classified as dangerous fireworks, or wood core or metal core sparklers as those terms are defined by the California Health and Safety Code.

Council Policy 400-2 adopted by the City Council on May 18, 2009 (see Attachment 4) indicates that:

- "The sale of "spinners:" and similar fireworks and the sale of any fireworks that are intended to be "hand held" are prohibited. This prohibition shall be effective immediately for the sale of these devices individually or in homogeneous packages, and their sale within group packages containing an assortment of various fireworks devices shall be prohibited beginning in year 2006....."
- "Fireworks sales to the public on 7/1 through 7/3 shall be limited to between the hours of 10:00 a.m. and 10:00 p.m. each day. On 7/4, fireworks sales to the public shall be limited to between the hours of 9:00 a.m. and 8:00 p.m."

The Fire Chief and Police Chief have provided a memorandum for City Council consideration (see Attachment 5). The memorandum identifies the following concerns relative to the requested changes:

- Sunset on July 4, 2010 occurs at approximately 8:09 p.m. with darkness ensuing at 9:13 p.m. By extending the time of sale until 9:00 p.m., some residents and non-residents will be encouraged to drive their vehicles well into the dark hours of July 4 either to purchase last-minute devices or to restock on fireworks devices.
- Visibility on and adjacent to City streets is severely hampered by darkness combined with lingering smoke clouds created by the ignition of fireworks devices.
- Darkness and decreased visibility, created by lingering smoke, combined with increased traffic activity may lead to an increase in vehicle vs. pedestrian accidents, an increase in vehicle vs. vehicle accidents and an increase in the response time of emergency personnel.
- Alcoholic beverage consumption is common to 4th of July celebrations and extended sales hours would likely increase the number of alcohol impaired motorists driving to restock firework devices, in darkness and decreased visibility, which may result in an increase in both vehicle vs. pedestrian and vehicle vs. vehicle accidents. By keeping the time restrictions as they are will encourage people to be in their locations before dark and discourage driving in less than ideal conditions.

- Sparklers are responsible for the vast majority of legal fireworks-related injuries. The most common situation for injuries occurs when lit sparklers are given to unsupervised children, many of whom may not understand the risks. The devices burn at high temperatures, as hot as 1800°F to 3000°F depending on the fuel and oxidizer used, and are more than sufficient to cause severe skin burns or ignite clothing.
- Nearly half of all fireworks related injuries are sustained by children under the age of 15. Over half of fireworks related injuries sustained by children under the age of 5 are caused by sparklers. Sparklers cause more injuries to children under the age of 5 than any other type of firework device. Sparklers, fountains and novelties accounted for 36% of emergency room visits from firework devices in 2007.

Survey of Cities:

A survey including the four cities in Orange County that still allow safe and safe fireworks was conducted to see where they stand on the above two issues. The hand-held devices are described as those devices that have been deemed safe and sane by the State Fire Marshall.

<u>CITY</u>	<u>Closing Time – 4th of July</u>	<u>Hand-Held Devices Sold</u>
City of Santa Ana	8:00 p.m.	Yes
City of Garden Grove	10:00 p.m.	Morning Glories Only
City of Stanton	10:00 p.m.	Yes
City of Buena Park	8:00 p.m.	Yes

ALTERNATIVES CONSIDERED:

No alternatives proposed.

FISCAL REVIEW:

No Fiscal Review required.

LEGAL REVIEW:

If the City Council provides staff direction to move forward with the requested changes, the City Attorney would be required to review the revision to the current Fireworks Ordinance.

CONCLUSION:

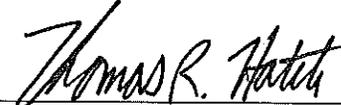
The attached memorandum from the Fire Chief and Police Chief identifies concerns and potential risks from authorizing the extension of the time for fireworks sales on the 4th of July and the sale of hand-held devices. The Police Department is currently operating twelve sworn positions below its authorized strength. The Fire Department is undergoing reduction to its minimum staffing levels. Both Departments do not have overtime allocated to handle the increased workload as it relates to these requested changes.

It is recommended that the City Council consider the reduced staffing levels, the recommendation from the Fire Chief and Police Chief, the results of the survey, the requests from the user groups and provide direction to staff.

If the City Council approves the modification(s) requested, both Council Policy 400-2 and Ordinance 04-5 would require revisions and approval at the next City Council meeting to be effective prior to this 4th of July holiday.

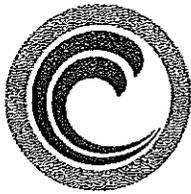


KELLY R. SHELTON
EXECUTIVE ASSISTANT TO THE
CITY MANAGER



THOMAS R. HATCH
ASSISTANT CITY MANAGER

ATTACHMENTS: 1 Request Letters
 2 April 19, 2004 Staff Report
 3 Ordinance 04-5
 4 Council Policy 400-2
 5 Memorandum from Fire Chief and Police Chief



ORANGE COAST COLLEGE FOUNDATION

2701 Fairview Rd., P.O. Box 5005, Costa Mesa, CA 92628-5005 • (714) 432-5749 • FAX (714) 432-5620

March 5, 2010

Officers

Chairman
David A. Gram
President Emeritus
Orange Coast College

Vice Chairman
A. Patrick Munoz
Bolin & Tucker

Treasurer
Jeff Teller
Telbitt

Secretary
Janet Terrell

Past Chairman
David J. Cline
Holt Research

Members

Mary Lynn Bergman-Rallis

Ed Favucci
Costa Mesa Chamber of Commerce

Peggy Fott
California Marketing Concepts

Margaret A. Gratton-Toner
President Emeritus
Orange Coast College

Patricia Madden

Ann Harmer
Orange Coast College

Marc Harper, CPA/ID
Deloitte & Touche

Rush N. Hill, II
The Hill Partnership, Inc.

Jeffrey Hyler
Simple Green

Douglas Meese
Merrill Lynch

Stephen R. Ostrin
Orange County Financial Services

Richard Pomas
AT&T

Gwyn P. Pany, MD
Hing Hospital

Jerrell T. Richards, Ed.D

Catherine Thyen

Ex-Officio

Robert Dees
President
Orange Coast College

Jess Craig
Vice President
Student Services
Orange Coast College

Melinda Nish
Vice President
Instruction
Orange Coast College

Richard T. Pugel
Vice President
Administrative Services
Orange Coast College

Sheena Pivette
President
Associated Students of
Orange Coast College

Douglas C. Bennett
Executive Director

Mayor Alan Mansoor
Mayor Pro Tem Wendy Leece
Councilmember Eric Bever
Councilmember Katrina Foley
Councilmember Gary Monahan
City Manager Alan Roeder
77 Fair Drive
Costa Mesa, CA 92626

Dear Mayor, Council and City Manager,

We are asking for consideration for two modifications to the current Costa Mesa fireworks ordinance.

In May of 2004, the city council modified the existing ordinance further restricting qualifications for permits, types of products allowed and finally times/dates for sale and use. One of the restrictions imposed was a closing time for all stands at 8:00 p.m. on the night of the Fourth of July.

This letter respectfully requests formally agendaizing a discussion that would change the closing time to 9:00 p.m. In order not to increase the total hours of sale from July 1-4, we would consider amending the opening times.

Furthermore, we would request the council agendaize a discussion on the sale of the Morning Glory product the California version of a sparkler. Sale of the product in Costa Mesa was phased out over a two-year period beginning in 2004.

It is no secret these are difficult economic times. Based on our experience, there is an opportunity to increase our sales with a 9:00 p.m. closing time. Many of our stands still have people in line when we have to close down. And, the re-introduction of Morning Glories to the sales line-up would have an even greater effect on our profits (plus other Costa Mesa non-profits) and the funds we raise to support the Men's and Women's Basketball Teams at Orange Coast College.

Thank you for your consideration and we look forward to the opportunity for further discussion.

Sincerely,

Steve Spencer
Head Men's
Basketball Coach

Mike Thornton
Head Women's
Basketball Coach

Doug Bennett
Executive Director



March 7, 2010

Mayor Alan Mansoor
Mayor Pro Tem Wendy Leece
Councilmember Eric Bever
Councilmember Katrina Foley
Councilmember Gary Monahan
City Manager Alan Roeder

Dear Mayor, Council and City Manager,

We are asking for consideration for a modification to the current Costa Mesa fireworks ordinance.

In May of 2004, the city council modified the existing ordinance further restricting qualifications for permits, types of products allowed and finally times/dates for sale and use.

One of the restrictions imposed was a closing time for all stands at 8:00 p.m. on the night of the Fourth of July.

This letter respectfully requests formally agendizing a discussion that would change the closing time to 9:00 p.m. In order not to increase the total hours of sale on July 4, we would be willing to open an hour later instead.

It is no secret these are difficult economic times. Based on our experience, there is an opportunity to increase our sales with a 9:00 p.m. closing time. Many of our stands still have people in line when we have to close down.

Thank you for your consideration and we look forward to the opportunity for further discussion.

Regards,


Effy Sanchez
Mika CDC



March 7, 2010

Mayor Alan Mansoor
Mayor Pro Tem Wendy Leece
Councilmember Eric Bever
Councilmember Katrina Foley
Councilmember Gary Monahan
City Manager Alan Roeder

Dear Mayor, Council and City Manager,

We are asking for consideration for a modification to the current Costa Mesa fireworks ordinance.

In May of 2004, the city council modified the existing ordinance further restricting qualifications for permits, types of products allowed and finally times/dates for sale and use.

One of the restrictions imposed was a closing time for all stands at 8:00 p.m. on the night of the Fourth of July.

This letter respectfully requests formally agendaizing a discussion that would change the closing time to 9:00 p.m. In order not to increase the total hours of sale on July 4, we would be willing to open an hour later instead.

It is no secret these are difficult economic times. Based on our experience, there is an opportunity to increase our sales with a 9:00 p.m. closing time. Many of our stands still have people in line when we have to close down.

Thank you for your consideration and we look forward to the opportunity for further discussion.

Regards,

Crissy Brooks
Mika CDC

March 7, 2010

Mayor Alan Mansoor
Mayor Pro Tem Wendy Leece
Councilmember Eric Bever
Councilmember Katrina Foley
Councilmember Gary Monahan
City Manager Alan Roeder

Dear Mayor, Council and City Manager,

We are asking for consideration for a modification to the current Costa Mesa fireworks ordinance.

In May of 2004, the city council modified the existing ordinance further restricting qualifications for permits, types of products allowed and finally times/dates for sale and use.

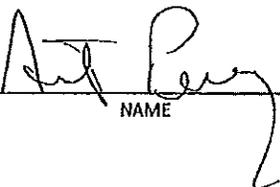
One of the restrictions imposed was a closing time for all stands at 8:00 p.m. on the night of the Fourth of July.

This letter respectfully requests formally agendizing a discussion that would change the closing time to 9:00 p.m. In order not to increase the total hours of sale on July 4, we would be willing to open an hour later instead.

It is no secret these are difficult economic times. Based on our experience, there is an opportunity to increase our sales with a 9:00 p.m. closing time. Many of our stands still have people in line when we have to close down.

Thank you for your consideration and we look forward to the opportunity for further discussion.

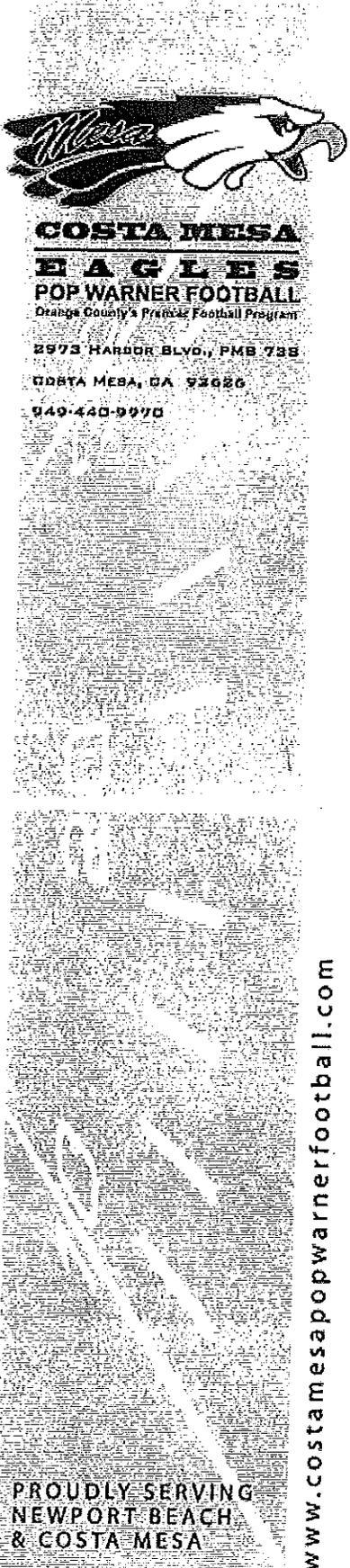
Regards,


NAME


ORGANIZATION

March 12, 2010

Mayor Alan Mansoor
Mayor Pro Tem Wendy Leece
Councilmember Eric Bever
Councilmember Katrina Foley
Councilmember Gary Monahan
City Manager Alan Roeder
77 Fair Drive
Costa Mesa, CA 92626



Dear Mayor, Council, and City Manager:

Costa Mesa Pop Warner and our 600 parents are asking for consideration for two modifications to the current Costa Mesa fireworks ordinance.

In May of 2004, the city council modified the existing ordinance further restricting qualifications for permits, types of products allowed, and finally times/dates for sale and use.

One of the restrictions imposed was a closing time for all stands at 8:00 pm on the night of the Fourth of July.

This letter respectfully requests formally agenzizing a discussion that would change the closing time to 9:00 pm. In order not to increase the total hours of sale from July 1st through the 4th, we would consider amending the opening times.

Furthermore, we would request the council agenzize a discussion on the sale of the Morning Glory product, the California version of a sparkler. Sale of the product in Costa Mesa was phased out over a two-year period beginning in 2004. There seems to be no logic for the ban.

It is no secret these are difficult economic times. Based on our experience, there is an opportunity to increase our sales with a 9:00 pm closing time. Many of our stands still have people in line when we have to close down. And, the re-introduction of Morning Glories to the sales line-up would have an even greater effect on our profits (plus other Costa Mesa non-profits) and the funds we raise to support Costa Mesa Pop Warner Youth Football and Cheer.

Thank you for your consideration and we look forward to the opportunity for further discussion.

Sincerely

Steve Mensinger
President
Costa Mesa Pop Warner

RECEIVED
CITY CLERK

2010 MAR -8 PM 12:18

CITY OF COSTA MESA
BY _____

March 5, 2010

Mayor Alan Mansoor
Mayor Pro Tem Wendy Leece
Councilmember Eric Bever
Councilmember Katrina Foley
Councilmember Gary Monahan
City Manager Alan Roeder

Dear Mayor, Council and City Manager,

We are asking for consideration for a modification to the current Costa Mesa fireworks ordinance.

In May of 2004, the city council modified the existing ordinance further restricting qualifications for permits, types of products allowed and finally times/dates for sale and use.

One of the restrictions imposed was a closing time for all stands at 8:00 p.m. on the night of the Fourth of July.

This letter respectfully requests formally agendizing a discussion that would change the closing time to 9:00 p.m. In order not to increase the total hours of sale from July 1-4, we would consider amending the opening times.

It is no secret these are difficult economic times. Based on our experience, there is an opportunity to increase our sales with a 9:00 p.m. closing time. Many of our stands still have people in line when we have to close down.

Thank you for your consideration and we look forward to the opportunity for further discussion.

Regards,

 CHARLES GORDON
COSTA MESA BOYS BASKETBALL

cc: City Attorney
Judy Vickers, Finance
Assistant City Mar.

Fire Dept.



CITY COUNCIL AGENDA REPORT

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)

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 Quallity 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.

Allan L. Roeder
City Manager

James M. Ellis
Fire Chief

Attachments: A 2003 Fireworks Stands

- (c) The purpose for which the applicant is primarily existing and for which it was organized;
 - (d) The names and addresses of the officers, if any, of the applicant;
 - (e) The location where the applicant will sell fireworks;
 - (f) When the applicant was organized and established;
 - (g) The location of the applicant's principal and permanent meeting place;
 - (h) The name, address, and state fire marshal's license number of any wholesaler or distributor from whom the retailer proposes to purchase fireworks for resale;
 - (i) The applicant's state board of equalization sales tax permit number;
 - (j) The manner, method and times, when and how the applicant proposes to sell safe and sane fireworks;
 - (k) Such other information as the director of finance may require to make his investigation.
- (Ord. No. 04-5, § 1, 5-17-04)

Sec. 9-183. Time for filing; non-transferability; duration.

An application shall be filed on or before June 1 of the calendar year for which the permit is sought. Any permit issued shall be valid for the premises or location for which issued, shall not be transferable, assignable or renewable, and shall be valid only for the dates specified in the permit. (Ord. No. 04-5, § 1, 5-17-04)

Sec. 9-184. Location approval.

Before granting the permit, the director of finance shall obtain clearance of the location from the fire department of the City of Costa Mesa. (Ord. No. 04-5, § 1, 5-17-04)

Sec. 9-185. Issuance of permit.

The director of finance shall, on satisfying himself that the applicant meets the requirements of this article, grant a permit, subject to any conditions the director deems necessary for the public's safety and general welfare. (Ord. No. 04-5, § 1, 5-17-04)

Sec. 9-186. Permit and clean-up fees.

(a) The permit fee for selling fireworks within the city shall be set by resolution of the city council. The permit fee must be paid at the time the application for a fireworks stand is filed.

(b) A separate fee shall be set by resolution of the city council for the city's fireworks clean-up fee. The fireworks clean-up fee shall be paid at the time the application for a fireworks stand is filed. (Ord. No. 06-3, § 2, 2-7-06)

Sec. 9-187. Compliance with permit restrictions.

Any person operating a temporary stand for the display and sale of fireworks shall abide by and comply with all the requirements set forth in the application for a permit to operate the same and all conditions and restrictions imposed by the director of finance in granting the permit. (Ord. No. 04-5, § 1, 5-17-04)

Sec. 9-188. Bond to ensure removal.

Prior to the erection of any temporary stand for the display and sale of fireworks, the permittee shall post with the city a cash deposit in a sum set by resolution of city council to be forfeited to the city in the event the permittee does not remove said stand, equipment and rubbish from the premises upon which the stand is located before midnight of July 7, of the year for which said permit is granted. The fire department shall make an inspection, and, if all equipment, rubbish and debris are removed by the permittee as aforesaid, it shall notify the director of finance and the cash bond shall thereupon be returned to the permittee. (Ord. No. 04-5, § 1, 5-17-04)

Sec. 9-189. Insurance required.

Prior to the erection of any temporary stand for the display and sale of fireworks, the permittee shall procure public liability and property insurance covering its operation in and about said stand and premises in a minimum amount of one million dollars (\$1,000,000) combined single limit. The permittee shall file a certificate of such insurance with the city clerk. (Ord. No. 04-5, § 1, 5-17-04)

Sec. 9-190. Prohibitions; state permit required.

(a) No person shall discharge, sell or offer for sale, any fireworks within the city which are classified as dangerous fireworks, or wood core or metal core sparklers as those terms are defined by the California Health and Safety Code.

(b) No person shall sell or offer for sale fireworks within the city without first having obtained a Retail Fireworks License from the Office of the State Fire Marshal as required under the laws of the State.

(c) No person shall sell or offer for sale fireworks within the city to a person under the age of eighteen (18) years.

(d) No person shall sell or offer for sale fireworks within the city unless such sale occurs between July 1st and 8:00 p.m. on July 4th, inclusive. *

(e) No person shall discharge any fireworks of any kind within the city, except on July 4th between 4:00 p.m. and 10:00 p.m. of such day.

(f) No person under the age of eighteen (18) years shall discharge any fireworks unless in the presence of an adult.

(g) No person shall throw, toss, project or position an ignited firework of any kind in such a manner as to cause the firework or contents thereof to come in contact with another person's body, private property or real property.

(h) No person shall sell or offer for sale any fireworks in violation of the regulations established by city council resolution for the protection of city residents.

(Ord. No. 04-5, § 1, 5-17-04)

CITY OF COSTA MESA, CALIFORNIA

COUNCIL POLICY

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
REGULATIONS GOVERNING FIREWORKS	400-2	5/17/04 REV: 1/17/06; 6/3/06, 5/6/08, 05/19/09	1 of 3

BACKGROUND

The Costa Mesa Municipal Code contains regulations governing the issuance of fireworks permits and the discharge of fireworks. These regulations are found in Sections 9-179 through 9-190. The City Council is authorized to enact further measures governing fireworks.

PURPOSE

The City Council wishes to adopt additional regulations governing the sale and discharge of fireworks in order to increase the protection and well-being of our citizens. The Council intends to tighten the safety regulations while still allowing our residents the limited use of fireworks.

POLICY

The City Council of Costa Mesa believes that the City residents can safely utilize fireworks to celebrate their patriotism when done according to reasonable safety regulations. Various youth oriented organizations should be permitted to sell fireworks to raise funds for support of valuable youth activities that contribute to the general strength, health and enjoyment of our residents. These goals can be obtained by limiting the number of fireworks and strictly prohibiting the sale of all dangerous fireworks.

REGULATIONS

1. The sale of "spinners" and similar fireworks and the sale of any fireworks that are intended to be "hand held" are prohibited. This prohibition shall be effective immediately for the sale of these devices individually or in homogeneous packages, and their sale within group packages containing an assortment of various fireworks devices shall be prohibited beginning in year 2006. The Fire Chief shall prepare (and update as needed) a list of the common names of the various fireworks devices that are "hand held" and "spinners." This list will be made available to fireworks manufacturers, distributors and other interested persons.
2. No more than one fireworks sales permit shall be issued to a single organization or school, unless more are expressly allowed in this Policy.
3. No more than 9 permits each year may be issued to organizations based at a single high school located within the City or where Costa Mesa residents constitute 50% or more of the students at a high school located within 1 mile of the City boundary. For an applicant based at a high school to qualify for a permit, the applicant must attach a letter to the application from the school's Principal or Activities Director certifying the applicant is a recognized organization supporting school activities.
4. No more than 2 permits each year may be issued to each K-8 private or public school within Costa Mesa city boundaries or to K-8 schools outside of the City's boundaries with enrollment of fifty percent (50%) or more Costa Mesa resident students,

CITY OF COSTA MESA, CALIFORNIA

COUNCIL POLICY

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
REGULATIONS GOVERNING FIREWORKS	400-2	5/17/04 REV: 1/17/06; 6/3/06, 5/6/08, 05/19/09	2 of 3

5. No more than 5 permits each year may be issued to a Group 1 User (or sponsored group) as defined in the City's Athletic Field/Facility Use and Allocations Policy.
6. The requirement in Costa Mesa Municipal Code Section 9-181(c) that a non-school applicant must have 80% of its "members" be residents of Costa Mesa may be satisfied if the applicant can show that the funds raised from the fireworks sales will be used for an activity or event where at least 80% of the participants or persons benefited are youths residing in Costa Mesa. The 80% requirement shall not apply to post-twelfth-grade schools located in Costa Mesa.
7. No more than 40 permits for fireworks sales stands shall be approved each year. The Finance Department will use a lottery system to allocate the permits if more than 40 qualified applicants file for permits in any year.
8. No permits shall be issued for any year unless the fireworks industry prepares flyers in both English and Spanish, explaining fireworks safety and water quality protection for distribution to all Costa Mesa schools for their students. A sample of the flyer shall be submitted to the City Fire Chief for his comments. The flyers shall be delivered to the Fire Chief by June 1st each year. A sufficient number of these flyers must also be provided to the operators of the fireworks stands for distribution to all buyers.
9. Permit applicants may be asked by the Director of Finance to submit information to verify statements made on the application form. Any applicant who is unable to verify such statements may be disqualified from obtaining any future permits. Permits are not transferrable.
10. Fireworks sales to the public on 7/1 through 7/3 shall be limited to between the hours of 10:00 am and 10:00 p.m. each day. On 7/4, fireworks sales to the public shall be limited to between the hours of 9:00 am and 8:00 p.m.
11. Discharge of safe and sane fireworks shall be limited to the Fourth of July (7/4), from 4:00 p.m. until 10:00 p.m.
12. The Costa Mesa Fire Chief has been granted the authority by the City Council to declare a moratorium on the use of fireworks if conditions of high winds or advanced drought conditions exist. The City Manager will be notified immediately and will determine how this will be communicated to the public.
13. All City parks shall be posted with appropriate signs advising the public that discharge of any fireworks is prohibited at Costa Mesa public parks, and that violators will be cited and fined. The Maintenance Services Manager or his/her designee shall ensure that all park sprinkler irrigation systems are functioning properly and set to go on for a period of time on the evening of July 4th to further discourage the use of fireworks at City parks.

CITY OF COSTA MESA, CALIFORNIA

COUNCIL POLICY

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
REGULATIONS GOVERNING FIREWORKS	400-2	5/17/04 REV: 1/17/06; 6/3/06, 5/6/08, 05/19/09	3 of 3

14. Notification signs to the public shall be strategically placed at access points of the City at least one week prior to July 4th. The signs shall advise the public of the City's zero tolerance of illegal fireworks and illegal use of legal fireworks as well as associated penalties.

CITY OF COSTA MESA
COSTA MESA FIRE DEPARTMENT
INTEROFFICE MEMORANDUM

DATE: APRIL 7, 2010

TO: ALLAN ROEDER, CITY MANAGER

FROM: MIKE MORGAN, FIRE CHIEF AND CHRIS SHAWKEY, &
POLICE CHIEF 

SUBJECT: FIRE CHIEF AND POLICE CHIEF POSITION AND DISCUSSION
REGARDING EXTENDING HOURS OF FIREWORKS SALES ON
JULY 4TH AND LIFTING THE CURRENT RESTRICTION ON
SALES OF HAND-HELD FIREWORK DEVICES.

Background:

Currently the City of Costa Mesa allows the sale of firework devices listed by the California State Fire Marshal as "safe and sane" with the exception of "hand-held" and "spinner" devices. The current timeframe for the sale of these devices is: July 1 through July 3 from 10:00 a.m. until 10:00 p.m., and July 4 from 9:00 a.m. until 8:00 p.m.

The City Council of Costa Mesa is considering changing these parameters to:

1. Extend the time of sale on July 4 from 8:00 p.m. to 9:00 p.m., and
2. Allow the sale of "hand-held" devices, specifically sparkler devices and morning glory devices.

Recommendation:

The Fire Chief and Police Chief of Costa Mesa recommend that the City Council reject both proposed changes based upon the following discussion:

1. Sunset on July 4, 2010 occurs at 8:09 p.m. with darkness ensuing at 9:13 p.m. By extending the time of sale until 9:00 pm, residents and nonresidents will be encouraged to drive their vehicles well into the dark hours of July 4 either to purchase last-minute devices or to restock on fireworks devices.

- a. Residents and visitors to the City historically celebrate and ignite firework devices on and adjacent to City streets.
 - b. Visibility on and adjacent to City streets is severely hampered by darkness combined with lingering smoke clouds created by the ignition of fireworks devices.
 - c. Darkness and decreased visibility, created by lingering smoke, combined with increased traffic activity will likely lead to:
 - i. An increase in vehicle vs. pedestrian accidents
 - ii. An increase in vehicle vs. vehicle accidents
 - iii. An increase in the response time of emergency personnel
 - d. Alcoholic beverage consumption is common to 4th of July celebrations and extended sales hours will likely increase the number of alcohol impaired motorists driving to restock firework devices, in darkness and decreased visibility, resulting in:
 - i. An increase in vehicle vs. pedestrian accidents
 - ii. An increase in vehicle vs. vehicle accidents
2. Sparklers are responsible for the vast majority of legal firework-related injuries. The most common situation for injuries occurs when lit sparklers are given to unsupervised children, many of whom may not understand the risks. The devices burn at high temperatures, as hot as 1800° F to 3000° F depending on the fuel and oxidizer used, are more than sufficient to cause severe skin burns or ignite clothing, and more closely resemble a welding rod than a toy! For comparison purposes: Water boils at 212° F, cakes bake at 350° F, wood ignites at 575° F, and glass melts at 900° F.
- a. Nearly half of all fireworks related injuries are sustained by children under the age of 15.
 - b. Over half of fireworks related injuries, sustained by children under the age of 5, are caused by sparklers – sparklers cause more injuries to children under the age of 5 than any other type of firework device.
 - c. Sparklers, fountains, and novelties accounted for 36% of emergency room visits from firework devices in 2007.



3. Staffing Considerations: The police department is currently operating twelve sworn positions below its authorized strength, and the fire department has reduced its minimum staffing levels. Both departments do not have overtime allocated to handle the increased workload the 4th of July holiday generates. Given our reduced staffing levels, it is not in the best interests of the city to discuss anything that would likely increase the use of fireworks. This would compromise the ability of on-duty personnel to respond to the already high volume of calls for service that day.

Summary:

The professional advice from the Fire Chief and Police Chief of the City of Costa Mesa is that we keep the time restrictions and hand-held device restrictions as they are – this will encourage people to be in their locations before dark, discourage driving in less than ideal conditions, and continue to reduce injuries to children and others caused by hand-held fireworks devices.

