CITY COUNCIL AGENDA REPORT

MEETING DATE: May 3, 2011 **ITEM NUMBER: _____**

SUBJECT: **AMENDING ARTICLE 8 OF THE COSTA MESA MUNICIPAL CODE REGULATING FIREWORKS AND COUNCIL POLICY 400-2**

DATE: **APRIL 29, 2011**

FROM: **CITY MANAGER'S OFFICE**

PRESENTATION: **DAN JOYCE, INTERIM PUBLIC AFFAIRS MANAGER**

FOR FURTHER INFORMATION CONTACT:

DAN JOYCE (714) 754-5667
danjoyce@ci.costa-mesa.ca.us

TOM DUARTE (714) 446-1400
tduarte@ci.costa-mesa.ca.us.

RECOMMENDATIONS:

1. Introduce and give first reading, and waive further reading, of an ordinance amending Section 9-190 of the Costa Mesa Municipal Code relating to the sale and discharge of fireworks.

2. Amend City Council Policy 400-2 to remove the prohibition on fireworks designated "spinners."

BACKGROUND:

Extension of Days for Sale of Fireworks:

Last year, at the request of a number of non-profit organizations, the City Council amended the Municipal Code and Council Policy 400-2 to extend the hours for the sale of fireworks on the 4th of July from 8:00 p.m. to 9:00 p.m. and to allow the sale of hand-held devices as deemed "safe and sane" by the California State Fire Marshall. Last year, twenty-eight (28) groups sold fireworks at permitted stands. These groups included youth organizations, high school sport teams and bands. Many of the groups used the proceeds to fund items that have been cut from their educational budgets.

This year the Council has received additional requests from two non-profit groups seeking the City's approval to begin selling fireworks one day earlier by changing the commencement date from the current date of July 1st to commence on June 30th. This request allows the non-profits one additional day to set up their stands and capture more sales over the extended weekend. See chart of neighboring municipalities below.

Extension of Days for Discharge of Fireworks:

The Council has also received requests to extend the days fireworks may be discharged. Currently, discharge may only be done on July 4th. Since, July 4th falls on a Monday this year, the new discharge days would be July 1st through July 4th, allowing discharge over the holiday weekend. Other municipalities allowing discharge over the same extended days include Garden Grove and Santa Ana.

Amendment of Council Policy to Allow sale of "Spinner" Fireworks:

Currently, the sale of ground spinners is prohibited under Council Policy 400-2. Ground spinners are the type of fireworks that spin on the ground making different noises and visual displays depending on the type. Spinners include "Crazy Eyeballs", "Fire Ants 3's", "Mighty Twirlers" and "Ground Bloom Flowers."

Mayor Pro Tem Righeimer has requested staff provide analysis on the removal of the prohibition on spinners so that the participating non-profit groups may increase their sales by offering the popular spinners type firework as deemed "safe and sane" by the California State Fire Marshall.

Currently, as set forth in the chart below, "ground spinners" are allowed in the cities of Buena Park, Santa Ana, Stanton and Westminster.

CITY	SELLING DATES/TIMES	PRODUCT RESTRICTIONS	DISCHARGE DATE/TIMES
City of Garden Grove	July 1 - 3 10:00 am -11:00 pm, July 4 10:00 am -10:00 pm	Ground Spinners	Same as selling dates/times
City of Santa Ana	July 1 noon - 10:00 pm, July 2 & 3, 9:00 am - 10:00pm, July 4 9:00 am - 8:00 pm	None	Same as selling dates/times
City of Stanton	July 1 noon - 10:00 pm July 2 - 4 9:00 am - 10:00 pm	None	July 4 10:00 am - 11:00 pm
City of Westminster	June 30 - July 3 10:00 am - 10:00 pm, July 4 10:00 am - 9:00 pm	None	July 4 10:00 am - 10:00 pm
City of Buena Park	July 1 - July 3 10:00 am - 10:00 pm, July 4 10:00 am - 9:00 pm	None	July 4, 10 am – 10:00 pm

ANALYSIS:

Adoption of Ordinance No. 11-XX would amend Section 9-190 of the Costa Mesa Municipal Code as follows:

1. Subsection (d) be amended to read, "No person shall sell or offer for sale fireworks within the city unless such sale occurs between June 30th and 9:00 p.m. on July 4th, inclusive."; and

2. Subsection (e) be amended to read, "No person shall discharge any fireworks of any kind within the city, except on the dates of July 1st through July 4th between the hours of 4:00 p.m. to 10:00 p.m. on such days."

In addition, Council Policy 400-2 should be amended to stay consistent with the Municipal Code as follows:

1. Delete Regulation No. 1 to remove prohibition on spinners and renumber remaining Regulations accordingly.

2. To allow sales of fireworks on June 30th, amend current Regulation No. 10 to read, "Fireworks sales to the public on 6/30 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 9:00 p.m."

3. To extend dates fireworks may be discharge, amend current Regulation No. 11 to read, "Discharge of safe and sane fireworks shall be limited to the First of July (7/1) through the Fourth of July (7/4) and during the hours of 4:00 pm to 10:00 pm each day."

Police Department Comments:

Selling dates/times: Adding an additional day to sell fireworks will have little to no impact on the operations of the Police Department.

Discharging dates/times: Adding three additional days (July 1-3) to discharge fireworks could have the following impacts on Police Department operations:

> The additional days to discharge fireworks will likely increase calls for service for both safe & sane and illegal fireworks. This could impact response times and potentially cause delays to responses to other incidents depending upon the magnitude of the firework call. There will also likely be an increase in the number of citizen complaints.

Fire Department Comments:

Selling dates/times: Adding an additional day (June 30) to sell fireworks will have little to no impact on the operations of the Fire Department.

Discharging dates/times: Adding three additional days (July 1-3) to discharge fireworks could have moderate to major impacts on the operations of the Fire Department:

- Increase call volume relating to fireworks will utilize fire resources which then will not be available for response to EMS, Fire and other emergencies.
- Increase call volume will also increase response times and delay responses to other emergency incidents since local resources are busy with fireworks incidents.
- Increase risk of possible fires and injuries resulting from the discharge of fireworks.
- Increase risk for use of illegal fireworks being discharged within our city limits.

- Increase in overtime costs if it is determined there is a need to increase staffing as a result of risk analysis based on weather and call volume.
- Increased citizen complaints.

Public Service Department Comments:

The extra days for the "sale" of fireworks will not impact Public Services Department. However, the extended time period for the **"discharge"** of fireworks will impact parks, parking lots and generally the cleanliness of the City due to discharge related material. Additional staff for Sunday July 3rd, Monday July 4th, and Tuesday July 5th (the busiest day for cleaning) at a total cost of $1,000 would be needed to provide cleaning services. If these changes are approved, funding of $1,000 will be included in next year's budget.

ALTERNATIVES CONSIDERED:

Council could take no action to amend the Municipal Code or Council Policy as it relates to firework sales and use, or provide further direction to staff.

FISCAL REVIEW:

Additional overtime may be needed if weather conditions and/or call volumes justify the use of overtime. It is anticipated that the $1,000 in additional clean-up services will be needed.

LEGAL REVIEW:

The City Attorney's Office has reviewed and approved the amendments to the Costa Mesa Municipal Code and Council Policy as to form.

CONCLUSION:

By extending the dates fireworks may be sold with the City, participating non-profit organizations will have an additional day to raise funds which are used to benefit City youth. The extension of sale days will have zero to little impact on City departments. Extending the dates fireworks may be discharged within the City allows residents to celebrate the Fourth of July over the weekend instead of only on Monday, July 4th. However, extending the dates fireworks may be discharged will impact the Police, Fire and Public Services departments.

Thomas R. Hatch for
DAN JOYCE
Interim Public Affairs Manager

Thomas R. Hatch for
THOMAS P. DUARTE
City Attorney

ATTACHMENTS:
1 Ordinance No. 11-XX
2 Council Policy 400-2
3 Letter From Estancia CHEER
4 Letter from Costa Mesa Pop Warner

ORDINANCE NO. 11-X

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA AMENDING TITLE 9 OF THE COSTA MESA MUNICIPAL CODE REGARDING FIREWORKS SALES

WHEREAS, the City Council has received numerous requests from non-profit organizations that sponsor fireworks stands to modify and extend the days allowed for fireworks sales to June 30th through July 4th, in order to have the opportunity to increase their sales over the holiday period; and

WHEREAS, this year July 4th falls upon a Monday, making celebration of the holiday difficult for many working families; and

WHEREAS, several other cities in Orange County allow for the discharge of fireworks for several days leading up to the Fourth of July and the City Council wishes to provide the same opportunity to City residents.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Subsection (d) of Section 9-190 of Title 9, Chapter II, Article 8 (Fireworks Sales) of the Costa Mesa Municipal Code is hereby amended as follows:

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

(d) No person shall sell or offer for sale fireworks within the city unless such sale occurs between June 30th and 9:00 p.m. on July 4th, inclusive.

Deleted: July 1st

Section 2. Subsection (e) of Section 9-190 of Title 9, Chapter II, Article 8 (Fireworks Sales) of the Costa Mesa Municipal Code is hereby amended as follows:

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

(e) No person shall discharge any fireworks of any kind within the city, except on the dates of July 1st through July 4th between 4:00 p.m. and 10:00 p.m. on such days.

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Section 3. Inconsistencies. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

Section 4. Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, State, or Federal law, regulation, or codes dealing with life safety factors.

Section 5. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published and posted pursuant to the provisions of law.

Section 6. This Ordinance shall take effect and be in full force thirty (30) days from and after the passage thereof, and prior to the expiration of fifteen (15) days from its passage shall be published once in the DAILY PILOT, a newspaper of general circulation, printed and published in the City of Costa Mesa or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post in the office of the City Clerk a certified copy of this Ordinance together with the names and member of the City Council voting for and against the same.

PASSED AND ADOPTED this ___ day of _____, 2011.

_____
Mayor of the City of Costa Mesa

ATTEST:

_____
City Clerk of the City of Costa Mesa

APPROVED AS TO FORM:

_____

City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE)ss
CITY OF COSTA MESA)

I, Julie Folcik, City Clerk and ex-officio clerk of the City Council of the City of Costa Mesa, hereby certify that the above and foregoing Ordinance No. 11-x was introduced and considered section by section at a regular meeting of said City Council held on the 3rd day of May, 2011, and thereafter passed and adopted as a whole at a regular meeting of said City Council held on the 3rd day of May, 2011, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of Costa Mesa this 3rd day of May, 2011.

_____
City Clerk and ex-officio Clerk of the
City Council of the City of Costa Mesa

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 5/4/10, 5/3/11	1 of 2

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. No more than one fireworks sales permit shall be issued to a single organization or school, unless more are expressly allowed in this Policy.

2. 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.

3. 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,

4. 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.

5. 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

Deleted: <#>The sale of "spinners" and similar fireworks 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 "spinners." This list will be made available to fireworks manufacturers, distributors and other interested persons.¶

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.

6. 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.

7. 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.

8. 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.

9. Fireworks sales to the public on 6/30 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 9:00 p.m.

10. Discharge of safe and sane fireworks shall be limited to the First of July (7/1) through the Fourth of July (7/4), and during the hours of 4:00 pm to 10:00 pm each day.

11. 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.

12. 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.

13. 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.

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April 19, 2011

City of Costa Mesa
City Council
Attn: Chris Goldworthy
77 Fair Drive
Costa Mesa, CA 92626

Dear Council:

Estancia Cheerleading is one of the over 30 non-profit groups that sell fireworks in Costa Mesa as a fund raising activity during 4th of July.

As we prepare for the 2011 event, we noticed the Fourth falls on a Monday this year. Our current Costa Mesa Fireworks Ordinance allows sales to begin at noon on July 1st; use is allowed only on July 4th from 4-10 p.m.

Can we begin selling a day early this year? We ask for two reasons:

1. We think City Hall is closed on Friday. When would we get inspections?
2. It would aid our group to set up a day early, get inspected, approved and be selling the entire day (July 1).

Second, can the council revisit the restriction allowing use of state approved on July fourth only? Many of our group's family/friends are planning activities on the weekend vs. Monday night – most of us are back to work on Tuesday.

Lastly, we know that neighboring O.C. cities allow spinning devices to be sold/use, commonly called Ground Bloom Flowers. Are they illegal to sell in Costa Mesa? Is it in our ordinance? Can that be changed?

All of these modifications would greatly assist Estancia Cheerleading in raising badly needed additional funds for this year.

Last year the additional hour and ability to sell Morning Glories helped our profits. Thank you for that.

Please consider our suggestions.

Sincerely,

Yumi Watanabe-Patterson
Cheer Advisor/Varsity Head Cheerleading Coach
Estancia High School
(714) 317-8350

April 19, 2011

City of Costa Mesa
City Council
Attn: Chris Goldworthy
77 Fair Drive
Costa Mesa, CA 92626

Dear Council:

Costa Mesa Pop Warner is one of the over 30 non-profit groups that sell fireworks in Costa Mesa as a fund raising activity during 4th of July.

As we prepare for the 2011 event, we noticed the Fourth falls on a Monday this year. Our current Costa Mesa Fireworks Ordinance allows sales to begin at noon on July 1st; use is allowed only on July 4th from 4-10 p.m.

Can we begin selling a day early this year? We ask for two reasons:

1. We think City Hall is closed on Friday. When would we get inspections?
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Second, can the council revisit the restriction allowing use of state approved on July fourth only? Many of our group's family/friends are planning activities on the weekend vs. Monday night – most of us are back to work on Tuesday.

Lastly, we know that neighboring O.C. cities allow spinning devices to be sold/use, commonly called Ground Bloom Flowers. Are they illegal to sell in Costa Mesa? Is it in our ordinance? Can that be changed?

All of these modifications would greatly assist Costa Mesa Pop Warner in raising badly needed additional funds for this year.

Last year the additional hour and ability to sell Morning Glories helped our profits. Thank you for that.

Please consider our suggestions.

Sincerely,

Chris Cox
President
Costa Mesa Pop Warner Football & Cheer