

EUGENE CITY COUNCIL

AGENDA ITEM SUMMARY



Work Session: Fireworks

Meeting Date: January 27, 2014
Departments: Fire and Police
www.eugene-or.gov

Agenda Item Number: B
Staff Contacts: Al Gerard; Scott Fellman
Contact Telephone Number: 541-726-2294; 541-682-5114

ISSUE STATEMENT

The City Council has requested information regarding the City's ability to manage the sale and use of fireworks. Impacts from the pervasive use of fireworks include the risk of injuries and property damages from fires, and the noise generated from them disrupts the quality of life for animals, senior citizens, military veterans, refugees, and community members at-large. The purpose of this work session is to provide the City Council with information on a series of options for consideration. It is believed that it will require a multi-year and multi-phase approach to make any significant changes to the community behavior relating to the sale and use of fireworks.

BACKGROUND

For Eugene, the purchase and use of Oregon legal fireworks is regulated through the Eugene Fire Code. The state regulates fireworks for storage, public viewing events and public use. There have been no local amendments to the Oregon Fire Code, therefore, ORS 480.110 through 480.165, and OAR 837-12-0600 through 837-12-0675, govern fireworks sales, storage and use, public display, and retail sales respectively, and apply in their entirety within the city of Eugene.

Retail sales of permitted fireworks and related products occur within the city of Eugene from June 23 through July 6 each year. After that period, sales cease and all unsold items must be returned to the wholesaler. All retail sales locations in the city are inspected by Eugene Springfield Fire Marshal's Office staff. Annually, there are about 43 retail outlets permitted and inspected, of which 28 are in Eugene and 15 are in Springfield. There are no state or local time restrictions on the use of Oregon legal fireworks. Authorized public displays also generate a variety of noise complaints and impact the quality of life for many residents.

Enforcement on the use of illegal fireworks in Eugene is handled by the Eugene Police Department. Additionally, the enforcement of this prohibition has been previously identified as a regional issue. As a result of the 8:0 vote at the last City Council work session regarding fireworks on May 27, 2008, staff from Eugene Springfield Fire, Eugene Police, Lane County Sheriff, Lane Rural Fire Protection, and the State Fire Marshal's Office met in September 2008, to discuss a regional approach to this issue, and a summary report of the results of that meeting is attached. Also attached, is a Fireworks Safety Memorandum from the Fire and Police Chiefs dated June 24, 2009. Following is some additional information, and details on options for the City Council to

consider.

Legal Fireworks versus Illegal Fireworks

Legal fireworks may be purchased only from Oregon-permitted fireworks retailers and stands. Oregon law bans possession, use or sale of fireworks that fly, explode or travel more than six feet on the ground or 12 inches in the air (e.g., firecrackers, bottle rockets, M-80s and similar devices).

Approaches by Other Communities

Following are a few examples of increased enforcement, as well as enhanced public education and public information efforts in other communities:

- A July 9, 2013, Portland Tribune article reported that over this past Fourth of July holiday, Portland, Oregon, Police and Portland Fire & Rescue partnered to create dedicated teams of Police Officers and Deputy Fire Marshals to increase their enforcement efforts against illegal fireworks. This increased enforcement in addition to enhanced public education efforts resulted in 135 citations with a total fine amount of \$70,500, in comparison to 2012, when 121 citations worth \$26,000 were written.^a
- The Fire Marshal's Office for Prince William County, Virginia, Department of Fire and Rescue has implemented a Fireworks Enforcement Campaign to stop possession and use of illegal fireworks. Similar to Portland, personnel from the Fire Marshal's Office partner with police officers to enhance public education and information efforts, as well as enforcement. In Prince William County, the discharge of illegal fireworks is a Class 1 misdemeanor punishable by fines up to \$2,500 and/or up to one year in jail.^b
- Under Municipal Code 15.28-070(C), the City of Ashland, Oregon, prohibits the use of retail fireworks year-round. More information can be found on their website at: http://www.pwccgov.org/government/dept/FR/Pages/PR_Zero-Tolerance-for-Illegal-Fireworks.aspx.

Statutory Fines Currently in Place

The following ORS related to fireworks enforcement with maximum penalties:

- ORS 480.120 Unlawful Sale/Possession of Fireworks (Class B Misdemeanor) six months jail, \$2,500
- ORS 164.315 Arson I/II (Class A/C Felony) 20 years prison, \$375,000/ five years, \$125,000
- ORS 164.335 Reckless Burning (Class A Misdemeanor) one year jail, \$6,250
- ORS 164.365 Criminal Mischief 1 (Class C Felony) five years, \$125,000
- ORS 166.384 Manufacture of a Destructive Device (Class C Felony) five years, \$125,000
- ORS 166.382 Possession of a Destructive Device (Class C Felony) five years, \$125,000

Public Education Campaigns

^a <http://www.pamplinmedia.com/pt/9-news/156226-citations-increase-for-illegal-fireworks>

^b http://www.pwccgov.org/government/dept/FR/Pages/PR_Zero-Tolerance-for-Illegal-Fireworks.aspx

For next year, an active public education campaign will be continued within existing departmental resources.

Challenges with Enforcing Discharges of Illegal Fireworks

The greatest challenge will be to overcome entrenched community behaviors that have developed through years of permissiveness relating to fireworks use. Enforcement on discharges of illegal fireworks would require resources from both the Police and Fire departments. Police would need to be available to assist in confrontational situations, which can be frequent when confiscating fireworks from individuals or parties. Citations should be issued when an individual is using illegal fireworks or is in the possession of illegal fireworks.

If banning the public use of fireworks in Eugene is proposed, a City ordinance will need to detail the following:

- That the public use of fireworks is illegal.
- That the use of fireworks for public display is permitted only when done in compliance with State and local permitting requirements and pyrotechnic licensing regulations.
- Whether the illegal use of fireworks should be an infraction, misdemeanor or if it only qualifies for the issuance of a citation.
- A fine structure for first offense, second offense, and third offense for citations.

Following are other factors to consider for supporting a proposed ordinance to ban the use of fireworks in Eugene, and how to enforce new regulations:

1. Is funding available for additional personnel to respond to fireworks complaints?
2. Will the public support the proposal?
3. Will fire and injury loss statistics, and costs associated to emergency response support the proposed ban?

Current enforcement and prevention activities include the Oregon State Fire Marshal's Office working with the U.S. Postal Service and other private parcel carriers to identify, confiscate and take enforcement actions on illegal shipments through the U.S. Mail. In addition, the Fire Department responds locally to suspicious shipments identified by the U.S. Postal Service, as well as other private parcel carriers and appropriate enforcement actions are taken against violators. During the evening hours of July 3 and 4 each year, all fire suppression companies are detailed to tour their respective areas, serving as a deterrent to inappropriate behaviors.

Enforcement Efforts

A limitation on the discharge period for legal fireworks, other than public displays permitted by the City, to December 31, January 1, July 4, and July 5 of each calendar year would help support enforcement for the majority of the year. In addition, there are two approaches available to the City for more restrictive regulation of fireworks. Both approaches are detailed in the City Code as listed below:

1. Section 2.019(1) authorizes the City Manager or designee to adopt rules for implementation. This is generally a several month process.

2. Section 2.019(6) authorizes the City Manager or designee to adopt an emergency rule without prior notice or hearing. The City Manager must issue: 1) A statement of findings that a failure to act will result in serious prejudice to public interest; 2) A citation of the City's legal authority; 3) A statement of need for the rule; and 4) A list of principle documents relied upon by the City in considering the need for the rule. The rule is effective for a limit of 180 days.

RELATED CITY POLICIES

This topic relates to the following City policies:

- City Code Section 2.019 (1) authorizes the City Manager or designee to adopt rules for implementation. This is generally a several month process.
- City Code Section 2.019 (5) authorizes the City Manager or designee to adopt an emergency rule without prior notice or hearing. The City Manager must issue: 1) A statement of findings that a failure to act will result in serious prejudice to public interest; 2) A citation of the City's legal authority; 3) A statement of need for the rule; and 4) A list of principle documents relied upon by the City in considering the need for the rule. The rule is effective for a limit of 180 days.

COUNCIL OPTIONS

Develop an ordinance that limits the discharge of fireworks during a specific period of time or prohibits the discharge of fireworks.

CITY MANAGER'S RECOMMENDATION

The City Manager's recommendation is to move forward with the suggested motion. It will require a multi-year and multi-phase approach to make any significant changes to the current process for managing the sale and discharge of fireworks. Progress can be monitored and then the issue revisited again next year.

SUGGESTED MOTION

Move to direct the City Manager to bring back for public hearing an ordinance that limits the discharge of fireworks, other than public displays permitted by the City, to December 31, January 1, July 4 and July 5 of each year.

ATTACHMENTS

- A. Report outlining recent fireworks issues throughout Oregon and Washington.
- B. September 18, 2008, Metro Area Law Enforcement and Fire Service Fireworks Workshop Report
- C. June 24, 2009, Fireworks Safety Memorandum from Fire Chief and Police Chief

FOR MORE INFORMATION

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Notable Fireworks related incidents**OREGON**

- July 4, 2007 Springfield boy, 4, killed in fireworks accident
The child died after setting off fireworks stored in a bedroom closet causing a fire in the duplex.
http://blog.oregonlive.com/breakingnews/2007/07/springfield_boy_killed_after_f.html
- July 5, 2013 Fireworks Cause House Fire
Eugene – Lakeview Drive house gutted by fire that spread from outside shrubbery to house. <http://www.kezi.com/fireworks-cause-house-fire/>
- June 29, 2013 Man Seriously Injured from Firework
A Medford man lost nearly his whole hand while trying to relight an illegal mortar rocket. <http://www.kdrv.com/man-seriously-injured-from-firework/>
- July 5, 2013 Minor Injuries from Illegal Fireworks
Medford – Several people suffered minor injuries and started a fire when an illegal mortar style firework exploded in a group of people.
<http://www.kdrv.com/minor-injuries-from-illegal-fireworks/>
- July 5, 2013 Man arrested after injuring 4 with illegal fireworks in NE Portland
4 people were injured when an illegal exploding rocket exploded over their heads.
<http://www.kgw.com/news/Man-arrested-after-injuring-4-with-illegal-fireworks-in-NE-Portland--214399711.html>
- April 17, 2013 Eli Wright Injured in Baker City, Oregon Fireworks Accident
12 year old boy seriously injured, losing his right hand, after a bag of fireworks ignited in his hand. <http://www.injuryblawg.com/4718/eli-wright-baker-city-or-injured-fireworks-accident.htm>
- Aug 28, 2013 3-alarm Gov. Island fire caused by fireworks
20 acre grass fire evacuated the island and restricted traffic on I-205
<http://www.kgw.com/news/Grass-fire-ignites-on-Government-Island--220252601.html>
- July 5, 2013 Crews Respond to Early Morning House Fire Caused by Fireworks
According to the West Linn homeowners, they enjoyed Oregon legal fireworks and collected the spent debris. Debris was placed in a plastic container near the side of the house and woke to the smell of smoke and a fire spreading up the exterior of the two-story home. <http://pdxtraffic.blogspot.com/2013/07/crews-respond-to-early-morning-house.html>

WASHINGTON

- July 5, 2013 Man dies in fireworks accident
61-year old Richland man died lighting off a mortar firework.
<http://nbcrightnow.com/story/18956003/man-dies-in-fireworks-accident>
- July 5, 2013 Smoldering fireworks cause garage fire in Village at Fisher's Landing
Vancouver - Smoldering fireworks that had been set off earlier in the evening and placed in a garbage can caused a fire damaging a garage and several vehicles.
<http://www.columbian.com/news/2013/jul/05/smoldering-fireworks-damages-garage-village-fisher/>
- July 4, 2013 Man severely injured as homemade firework explodes
26 year old critically injured when device made of at least 50 sparklers wrapped together with duct tape and wire exploded. The explosion was heard for several blocks and debris was found up to 125 ft away. <http://www.komonews.com/news/local/Man-severely-injured-when-firework-explodes-in-Renton-214275361.html>
- July 4, 2013 WA man has robot arm after fireworks accident
Tacoma man shares his experience of a New Year's Eve fireworks accident that took his left arm. <http://www.kgw.com/news/Wash-man-has-Terminator-hand-after-fireworks-accident-214295721.html>

**Metro Area Law Enforcement and Fire Service Fireworks Workshop Report
9/18/08**

Present:

Kristina Deschaine (SFMO)
Mike Thrapp (EFD)
Al Gerard (SF&LS)
Byron Trapp (LCSO)

Kevin Gent (LRFD)
Doug Perry (EFD)
Pete Deshpande (EPD)
Springfield PD unable to attend

Purpose:

During this forum, law enforcement and the fire service will discuss enforcement challenges and craft options for both City Councils and County Commissioners to consider regarding the use of legal and illegal fireworks in the metro area.

The intent is to determine what options may be available to curtail or minimize community fire loss, injuries, and neighborhood complaints resulting from the use of fireworks.

Problem Statements:

1. The use of fireworks, legal and illegal, causes citizen complaints, injuries, and fires throughout the metro area (Eugene, Springfield, UGB, and adjacent fire jurisdictions) on and around the 4th of July.
2. Currently, there is not a coordinated or effective approach to reduce the number of complaints, injuries, and fires associated with the use of fireworks.

Background:

The use of fireworks has generated citizen complaints related to noise disturbance, disorderly conduct, the illegality of fireworks being used, and property damage to name a few. Also, the use of legal and illegal fireworks has caused injuries and fires requiring actions by emergency responders. These complaints and emergency calls cause an additional demand on the limited resources of law enforcement, Fire, and EMS.

The increase in the number of incidents and complaints associated to the problem are predictable each year.

Enforcement Challenges:

Law Enforcement:

1. During the period of fireworks use, fireworks complaints are entered into the call queue and compete for resources. Usually fireworks complaints are low priority and seldom get a response as higher priority public safety calls continue to be queued and responded to.
2. The level of staffing is insufficient to respond to all public service calls.
3. Queued fireworks calls can become several pages in length during the use period.
4. By the time an officer can respond to a fireworks complaint, A) the situation no longer exists, or B) the people or crowd deny involvement, or C) the group discontinues the activity until law enforcement leaves.
5. There are different ordinances and codes between the three jurisdictions. It would be helpful to have a common set of regulations defining what situations would result in a misdemeanor or a violation and that a commensurate fine schedule be provided.
6. There is no current, effective, process for pulling fireworks related statistics from any of the local call volume and response databases.

Fire Service:

1. Personnel safety is the main concern because the types of situations that can be encountered exceed the training and authority given to fire personnel.
2. Even with a baseline of training provided, fire personnel would not be prepared to handle an escalating situation nor the authority to apply the next level of enforcement (arrest) if the citizen does not cooperate. They would be exposed to the risk of unnecessary harm and law enforcement officers would likely need to be diverted to the scene to assist.
3. Springfield Police and Fire Marshal's Office stopped seizing fireworks using joint patrols in 1996. Currently Springfield Fire Marshal's Office only seize fireworks on an occasional basis if circumstances are safe for Deputy Fire Marshals.

Law Enforcement and Fire:

1. During several public pyrotechnic display events where the citizens supplemented the show with their own illegal fireworks (such as at Fern Ridge and Dexter), confiscation was unenforceable due to the number of law enforcement personnel in relation to the number of citizens, their condition, and mood of celebration.
 - A. Fire service was at Fern Ridge and only had enough staff to respond to fires and provide EMS services.
 - B. Dexter Lake only had two Marine Deputies available to enforce boating safety and regulations.

Improve Existing Enforcement Tools:

1. Provide each law enforcement agency a common set of regulations and fines for application.
2. While working on a common set of regulations, request that the DA generate a letter, similar to last year's letter, authorizing all county law enforcement agencies to cite ORS fireworks related statutes as violations and without a sunset date.
3. Authorize additional funding for increased staffing during the busiest time of fireworks use.

Additional Solutions to Be Considered:

1. Restrict the use of fireworks to the day of July 4th or include the day before.
2. Restrict or reaffirm the use of legal fireworks occurs until 10 PM (if it is the common time metro-wide for noise regulations), use after that time violates existing noise disturbance codes.
3. Consider that noise disturbance codes would be applicable throughout the year therefore a full ban of legal fireworks is applicable.
4. Minimize neighborhood noise disturbance complaints by identifying the only locations specifically approved and permitted for the use of legal fireworks such as school yards, parks, etc.
5. Provide tri-government support to establish a joint public safety information campaign with PSA's and other media that emphasize the legal consequences when violating fireworks related regulations.
6. It is imperative that any adopted solution be applicable metro area wide in order to be effective.
7. Submit state legislation to ban the use of all fireworks except for professionally licensed pyrotechnic displays.
8. Develop a database of fireworks related complaints, responses, and injuries that can be used to effectively tailor area wide education and enforcement efforts.

Solutions Not Recommend:

1. Do not add more regulations unless there can be confidence that they are appropriate, enforceable, and will make a difference. There are already numerous regulations that are not being enforced with any regularity or consistency due to resource limitations or because they are de minimis or inappropriate.
2. The use of fire prevention officers for regulatory enforcement would not be practical or effective because of officer's lack of training and authority in situations that put them at risk during the period of fireworks use.
3. The use of an additional phone number to report fireworks related complaints seems too problematic.
 - A. There is potential a call should be a 9-1-1 call instead of the complaint number.
 - B. What would be the purpose of the additional phone number?
 - C. It would not provide useful information for statistical analysis.
 - D. If there was a useful purpose then it should be staffed 24 hours a day during the fireworks use period.
 - E. It would create an expectation by the public that action was being taken due to the specific nature of the phone number.

Public Perception:

1. Law enforcement and fire personnel are not responsive to public complaints.

Explanation:

- A. Law enforcement and fire resources must first respond to the higher priority public safety calls.
- B. Injuries and fires resulting from fireworks are responded to because they are a public safety priority.
- C. Law enforcement responds to noise complaints or illegal fireworks questions after the higher priority public safety calls have been acted upon. It seldom happens. Also, if a response to a domestic dispute involves illegal fireworks both are handled at that time.
- D. It is estimated that only about 1 percent of the fireworks complaint calls have been able to get a response as a result of competing priority public safety calls, staffing levels, and limited budgets.



MEMORANDUM

DATE: June 24, 2009

TO: Mayor Kitty Piercy and City Council Members

FROM: Fire & EMS Chief Randall B. Groves (682-7115)
Acting Police Chief Pete Kerns (682-5102)

SUBJECT: FIREWORKS SAFETY

Each year the City, through its Fire and Police departments, provides public education on the hazards of fireworks use, and implements measures to reduce illegal fireworks use within our community over the 4th of July holiday period. Although the City's financial condition has limited our ability to develop new and more aggressive programs to address problems associated with fireworks use this year, we want to communicate to you our plan for this year's 4th of July period that combines a strategy of prevention, deterrence and enforcement.

Fireworks Vendors: An inspection and permitting process will be conducted by the Fire Marshal's Office, as required by law, for vendors to sell legal fireworks in Eugene. This week, inspection of 34 retail sales outlets is occurring in our community. These outlets include temporary stands and existing retailers. The inspections ensure that all merchandise is legal for use in Oregon (i.e., cannot fly, emit sparks to a height greater than six feet, or travel along the ground), that proper fire safety measures are in place at the sales facility (fire-resistant construction elements, fire extinguishers, etc.), and that vendor sales staff have received proper training with regard to fireworks sales requirements, storage and handling.

Professional Fireworks Displays: This year two professional fireworks displays are scheduled in Eugene, with one taking place on July 3rd at Civic Stadium, and the other at Alton Baker Park on July 4th. In each case, the Fire Marshal's Office will conduct an inspection and issue a permit on the day of the show (unless there are reasons to deny the application). For the Alton Baker Park display an on-duty fire company will stand by during the display to protect the public and park property.

Community Presence: We have learned by experience that a visible presence of police officers and firefighters in our neighborhoods between the hours of 8:00 p.m. and 11:00 p.m. over the 3rd and 4th of July serves as our best means of encouraging responsible behavior with legal fireworks, and deterring

the use of illegal fireworks. Although both police officers and firefighters will be out in force, as the night progresses, response resources will be allocated to priority calls for service first and foremost. Even legal fireworks can create a disturbance in a neighborhood, cause distress to both people and pets, and generate 9-1-1 calls for service that tie up critical resources. The Eugene Police Department will respond by priority to dangerously-handled or continuous use of the illegal (aerial) variety. Last year, 9-1-1 received 28 calls that had a relationship to fireworks, which is similar to the call load from the previous year.

In addition, the Police Department's Metro Explosives Disposal Unit will be on duty throughout the 4th of July weekend to respond to incidents involving explosive material and illegal fireworks so that any such dangerous devices can be disposed of appropriately and safely. The Police Department has also restricted time off during the holiday to ensure full patrol staffing.

Community Awareness: Both departments are working with the local media to promote fireworks safety awareness for people and pets, and an informational flier has been forwarded to our community's neighborhood groups. Both departments are prepared to respond to requests for additional information from the community.

As you are aware, following last year's 4th of July period, Fire Department representatives sought to establish a regional approach to this year's fireworks season. However, we were unsuccessful in developing an agreed-upon regional strategy to address the issue.

Inappropriate fireworks use, which is often associated with alcohol abuse, remains an annual concern. Fortunately, over the years, Eugene has experienced an excellent 4th of July safety record with very few injuries and relatively little property damage.

If you would like additional information regarding the fireworks issue or our strategy for addressing this year's holiday period, please contact one of us.