

EUGENE CITY COUNCIL

AGENDA ITEM SUMMARY



Work Session: Fireworks

Meeting Date: May 12, 2014

Department: Fire; Police

www.eugene-or.gov

Agenda Item Number: 4

Staff Contact: Al Gerard; Scott Fellman

Contact Telephone Number: 541-726-2294; 541-682-5114

ISSUE STATEMENT

The City Council previously discussed the issue of fireworks possession and discharge in the City of Eugene on January 27, 2014, (see Attachment A – 1/27/2014 AIS). During the work session, the council requested additional information which was provided in a memorandum dated March 26, 2014, (see attachment B – 3/26/2014 memorandum). A public safety task team, comprised of personnel from Police and Fire, is now returning to the council with a range of options for public information, enhanced regulation and enforcement of existing laws pertaining to illegal and legal fireworks usage in the City. The goal is to reduce the adverse impacts and danger associated with fireworks discharge within the community.

BACKGROUND

The discharge of fireworks within the City of Eugene has progressively become a bigger issue of concern with the occurrence of these disturbances becoming more common. At the January 27 council work session, the council expressed concern over the state of this situation and requested additional information. A staff response to these questions was provided by memo on March 26, and since that time, additional conversations have taken place among staff in an attempt to refine potential strategies. These conversations included Judge Wayne Allen of the Eugene Municipal Court concerning appropriate penalties under existing statutes. From these discussions, staff has developed a public information option as well as a phased-in or graduated approach to enforcement for the council to consider.

COUNCIL OPTIONS

Staff has identified a strategy to educate and inform the community on the positive and negative effects of the use of fireworks. They have also identified an option list that the council can choose from to tailor the level of actions that the council would like the Police and Fire departments to engage in to address the issue and will present the options as a menu of actions with identified intended benefits as follows:

Option	Intended outcome	Explanation	Cost	Council action required
1. Include fireworks usage as a component of the Social Host Ordinance	Deter usage of fireworks and alcohol together in party settings.	Add unlawful use of fireworks to the list of offenses that, along with one other offense (e.g. noise disturbance, harassment, littering) and consumption of alcohol at the party, may trigger the social host liability	\$0	Amend the Social Host Ordinance
2. Limited enhanced enforcement of fireworks laws	Enforcement action to begin to eliminate widespread use and possession of illegal fireworks	Apply enforcement for existing and/or proposed fireworks laws for one day	\$13,500 in first year	Approve/provide funding: \$13,510
3. Illegal fireworks turn-in event	An event that allows community members to safely dispose of illegal fireworks in response to increased media attention and advertised law enforcement	Immunity for people turning in illegal fireworks, safe disposal of illegal fireworks (at a designated fire station)	2 Explosives Disposal Unit Technicians: \$ 800 one Deputy Fire Marshal : \$400	Approve/provide funding: \$1200
4. Public education campaign	Educate the community on the negative effects of fireworks usage		\$ 35,000	Approve/provide funding:
5. Limit usage period to July 3,4,5, and Dec 31, Jan 1 only	Limits impact of excessive and loud concussive or disturbing noise from fireworks to a predictable time period. Promotes compliance with noise ordinance	Veterans with PTSD, pets, elderly, wildlife, livestock all experience negative impacts. This action will at least limit impacts to predictable time frames	\$0, although increased calls for service and opportunities for enforcement will result	Adopt Ordinance

The council can choose to apply any or all options based on the perception of need to address

the issue.

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 can be revisited again next year.

CITY MANAGER'S RECOMMENDATION

The City Manager's recommendation is to schedule public hearings on the two draft ordinances and to focus this year's efforts on public education and targeted enforcement of current law on illegal fireworks.

SUGGESTED MOTION(s)

1. Move to amend the Social Host Ordinance to include unlawful fireworks usage as part of the list of offenses that may trigger the social host liability. (See Attachment 3.)
2. Move to limit the usage of all fireworks to the following days: January 1; July 3, 4, and 5, and December 31. (See Attachment 4)
3. Move to provide additional funding to the Police and Fire Department in the amount prescribed in the table above for public education and enforcement.

ATTACHMENTS

- A. Agenda Item Summary: "Fireworks Work Session" January 27,2014
- B. Memorandum on Fireworks, March 26,2014 - Work Session Response
- C. Draft Ordinance Concerning Unruly Gatherings and Amending Section 4.670 of the Eugene Code, 1971
- D. Draft Ordinance Concerning Restrictions on Fireworks

FOR MORE INFORMATION

Staff Contact: Al Gerard, Fire Marshal
Telephone: 541-726-2294
Staff E-Mail: agerard@springfield-or.gov

Staff Contact: Scott Fellman, Lieutenant
Telephone: 541-682-5114
Staff E-Mail: scott.r.fellman@ci.eugene.or.us

EUGENE CITY COUNCIL

AGENDA ITEM SUMMARY



Fireworks Work Session

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

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

ISSUE STATEMENT

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 City Council with information on a series of options for consideration. We believe 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 23rd through July 6th 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 of 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 City Council to consider.

Legal Fireworks verses 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-80's 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 the Fourth of July holiday, Portland, OR 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.¹
- The Fire Marshal's Office for Prince William County, VA 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.²
- Under Municipal Code 15.28-070(C), the City of Ashland, OR prohibits the use of retail fireworks year-round. More information can be found on their website at: http://www.pwcgov.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 Misd) 6months jail, \$2,500
- ORS 164.315 Arson I/II (Class A/C Felony) 20 years prison, \$375,000/ 5 years, \$125,000
- ORS 164.335 Reckless Burning (Class A Misdemeanor) 1 year jail, \$6,250
- ORS 164.365 Criminal Mischief 1 (Class C Felony) 5 years, \$125,000
- ORS 166.384 Manufacture of a Destructive Device (Class C Felony) 5 years, \$125,000
- ORS 166.382 Possession of a Destructive Device (Class C Felony) 5 years, \$125,000

Public Education Campaigns

¹ <http://www.pamplinmedia.com/pt/9-news/156226-citations-increase-for-illegal-fireworks>

² http://www.pwcgov.org/government/dept/FR/Pages/PR_Zero-Tolerance-for-Illegal-Fireworks.aspx

For next year we will continue with an active public education campaign 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.
- Identify a fine structure for 1st offence, 2nd offence, and 3rd offence 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 3rd and 4th 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. We can monitor progress and then revisit the issue again next year.

SUGGESTED MOTION

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

Staff Contact: Al Gerard, Fire Marshal
Telephone: 541-726-2294
Staff E-Mail: agerard@springfield-or.gov

Staff Contact: Scott Fellman, Lieutenant
Telephone: 541-682-5114
Staff E-Mail: scott.r.fellman@ci.eugene.or.us



MEMORANDUM

DATE: March 26, 2014

TO: Mayor Kitty Piercy and City Council Members

FROM: Al Gerard, Eugene Springfield Fire Marshal (541-726-2294)
Scott Fellman, Eugene Police Lieutenant (541-682-5114)

SUBJECT: **FIREWORKS WORK SESSION RESPONSE**

Fire Marshal Al Gerard and Lieutenant Scott Fellman presented the City Council with information regarding the City's ability to manage the sale and use of fireworks on January 27, 2014. That work session generated several questions from council members. This memo is in response to those questions and issues that were brought up during that work session.

Technology Component

A couple of comments were made regarding the possibility of adding a technology component in order to assist with tracking the instances of illegal fireworks usage. Currently, due to the lack of officers available for enforcement, all fireworks related complaints are logged into one computer aided dispatch (CAD) log. For the future, the calls could be separated into separate CAD logs which would allow for better tracking of statistics as to the number and location of fireworks related incidents. In addition, if the direction were chosen to begin investigating these complaints, each call would need to be placed on its own CAD log so the investigating officers would be able to follow up on each complaint. If each call were to be logged individually, it would require an increase of Central Lane Communications Center (911 Center) staffing to be on shift during the peak call periods, which historically have been July 3 and 4 of each year.

Banned Fireworks Program in Ashland

Assistant Fire Marshal Doug Perry made contact with Margueritte Hickman, Fire Marshal for the City of Ashland, regarding their banned fireworks program. There was a lot of community support for the total ban of the use and sale of fireworks within the City of Ashland. Since the ban was implemented in 2009, there was a surge of compliance in 2010 and 2011. However, the level of compliance dropped in 2012 and then surged again in 2013. During this same period of time, the City of Medford repealed their fireworks ban

as unenforceable and the City of Ashland did not see any reduction in the use of illegal fireworks after the ban was approved.

Increase of Fines/Issuance of Citations

Several comments included the desire to increase the fine amounts for firework citations. Currently, there is ORS 480.120, a Class B Misdemeanor for unlawful sale or possession of fireworks which carries a maximum fine is \$2,500.00 and/or six months in jail. There have been nine Class B Misdemeanor citations issued in the past three years. These citations did little to abate the use of illegal fireworks due to the lack of law enforcement officers to issue additional necessary citations. Lieutenant Fellman and city attorney Jerry Lidz have agreed to meet with Municipal Court Judges to determine what the base fine would be if there were officers available to issue additional citations. Basically, the increase in fines is not at issue, it is the enforcement of the existing laws that is at issue.

City Council Creation of an Ordinance

At this time, City Council does not have the authority to increase the maximum fines imposed on fireworks citations. Since the amount of the fine is not at issue, there is no reason to increase the fines. The City Council does, however, have the authority to impose an ordinance that restricts the use of fireworks inside the city limits by either banning their use or restricting the period of time that fireworks may be discharged. If a new ordinance is created, staff would work with Municipal Court judges on the implementation of the new ordinance. A new ordinance would not be needed in order to cite citizens into Municipal Court since the unlawful sale or possession of fireworks is a Class B Misdemeanor and is already cited into Municipal Court. One suggestion is to include fireworks as part of the Social Host ordinance.

Increase Permit Fees

The Eugene Springfield Fire Marshal's Office currently charges \$225 per permit for public displays, of which there are only 3 - 4 issued each year. Even if those fees were doubled, it would not generate enough revenue to cover the overtime costs needed to enforce the fireworks laws that are currently in effect. In addition, if the fees were increased, it could impact the public displays and could cause them to be discontinued, which the department would like to avoid.

Use of Volunteers for Enforcement – Similar to “Party Patrol”

Public education of the discharge of legal fireworks, the laws surrounding the discharge and possession of illegal fireworks and the ramifications of the discharge of all fireworks is an important aspect in controlling fireworks in Eugene. However, public education is only one component of the resources that are needed to bring this issue under control. The biggest challenge in reducing the discharge period for legal fireworks and preventing the discharge of illegal fireworks is the lack of resources available to enforce the laws that are already enacted. The police and fire departments do not have the resources available to respond to each violation of the laws regulating possession and discharge of fireworks. This lack of resources allows citizens to break the law without fear of reprisal. Utilizing a group to patrol area neighborhoods was one suggestion to help with enforcement. However, EPD does not feel comfortable asking their Volunteers in Policing (VIP) participants to engage members of the public in this type of enforcement. Enforcement of law needs to be conducted by law enforcement officers who are trained and skilled at enforcement.

Current Statutes with Maximum Penalties:

- ORS 480.120 Unlawful Sale/Possession of Fireworks (Class B Misd) 6months jail, \$2,500
 - This is cited into Municipal Court
- ORS 164.315 Arson I/II (Class A/C Felony) 20 years prison, \$375,000/ 5 years, \$125,000
- ORS 164.335 Reckless Burning (Class A Misdemeanor) 1 year jail, \$6,250
- ORS 164.365 Criminal Mischief 1 (Class C Felony) 5 years, \$125,000
- ORS 166.384 Manufacture of a Destructive Device (Class C Felony) 5 years, \$125,000
- ORS 166.382 Possession of a Destructive Device (Class C Felony) 5 years, \$125,000
 - The five statutes above are cited into Oregon State Court

ORDINANCE NO. _____

AN ORDINANCE CONCERNING UNRULY GATHERINGS AND AMENDING SECTION 4.670 OF THE EUGENE CODE, 1971.

THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:

Section 1. The definition of “Unruly gathering” in Section 4.670 of the Eugene Code, 1971, is amended to provide as follows:

4.670 Unruly Gatherings - Definitions. As used in sections 4.672, 4.990(1), and 4.996(5) and (6) of this code, the following words and phrases mean:

Unruly gathering. A party or gathering where alcohol is served or consumed, and where any two or more of the following behaviors occur on the property where the gathering takes place or on adjacent property:

- (a) Any violation of state or city of Eugene laws relating to the sale, service, possession or consumption of alcoholic liquor;
- (b) Assault, as defined in section 4.729 of this code;
- (c) Menacing, as defined in section 4.730 of this code;
- (d) Harassment, as defined in section 4.726 of this code;
- (e) Intimidation, as defined in section 4.731 of this code;
- (f) Disorderly conduct, as defined in section 4.725 of this code;
- (g) Noise disturbance, as defined in sections 4.080 – 4.084 of this code;
- (h) Criminal mischief, as defined in sections 4.780 and 4.782 of this code;
- (i) Public urination or defecation, as defined in section 4.770 of this code; [and]
- (j) Littering, as defined in section 6.805 of this code, by a person who attended the party or gathering[.]; **and**
- (k) ***Unlawful use or explosion of fireworks, as prohibited by ORS 480.120.***

Section 2. The City Recorder, at the request of, or with the consent of the City Attorney, is authorized to administratively correct any reference errors contained herein, or in other provisions of the Eugene Code, 1971, to the provisions added, amended or repealed herein.

Passed by the City Council this
____ day of _____, 2014

Approved by the Mayor this
____ day of _____, 2014

City Recorder

Mayor

ORDINANCE NO. _____

AN ORDINANCE CONCERNING RESTRICTIONS ON FIREWORKS; ADDING SECTION 4.934 TO THE EUGENE CODE, 1971; AND AMENDING SECTION 4.990 OF THAT CODE.

THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:

Section 1. Section 4.934 of the Eugene Code, 1971, is added to provide as follows:

4.934 ***Fireworks Restrictions.*** *In addition to restrictions on the sale, possession, use, detonation or explosion of fireworks under state law, it is unlawful to use, light, detonate, display or explode any fireworks anywhere in the city at any time except on January 1, July 3, 4, 5, and December 31. For purposes of this section, "fireworks" has the meaning given in Oregon Administrative Rule 837-012-0610 (2014).*

Section 2. Subsection (1) of Section 4.990 of the Eugene Code, 1971, is amended by adding the following entry to the list of penalties to provide as follows:

4.990 **Penalties - Specific.**

(1) Violation of the following sections is punishable by fine or confinement in jail, or both, up to the amounts indicated opposite each. In addition, the court may order any treatment, related to the violation, deemed necessary for rehabilitation of the offender and the safety of the community.

<u>Section</u>	<u>Penalty</u>
4.934	500 fine

Section 3. The City Recorder, at the request of, or with the consent of the City Attorney, is authorized to administratively correct any reference errors contained herein, or in other provisions of the Eugene Code, 1971, to the provisions added, amended or repealed herein.

Passed by the City Council this
____ day of _____, 2014

Approved by the Mayor this
____ day of _____, 2014

City Recorder

Mayor