

**CITY OF OAKLAND**  
**AGENDA REPORT**

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2004 MAY 13 PM 5:28

TO: Councilmember Ignacio De La Fuente  
Chair, Rules Committee  
FROM: Eugene Weaver, Legislative Analyst to Council  
DATE: May 18, 2004  
RE: AN ORDINANCE PROHIBITING THE SALE, TRANSFER, POSSESSION AND USE  
OF FIREWORKS WITHIN CITY LIMITS.

**SUMMARY**

At the request of Council President Ignacio De La Fuente, The Legislative Analyst Office has prepared this report to address City of Oakland's policy on the use, possession, transfer, and/or sale of illegal fireworks within the city limits. The Oakland Police and Fire Departments are the two primary agencies that respond to incidents as a result of the illegal use of fireworks. The Public Works Agency provides clean ups following periods of time when illegal fireworks tend to be used such as the Fourth of July and Chinese New Year.

**FISCAL IMPACT**

Costs incurred in response to the use of illegal fireworks by the Police and Fire departments are covered within annual baseline budget appropriations. No additional costs are associated with this modification of the Oakland Fireworks Ordinance.

Reductions in the use of illegal fireworks may result in an annual savings in cleanup costs for the Public Works Agency.

**BACKGROUND**

Currently, Oakland Municipal Code Title 8 Health and Safety Code, Chapter 8.06 – Explosives and Fireworks, Section 8.06.010 bans only the use of fireworks within the City limits, except as permitted.<sup>1</sup> With the adoption of this ordinance, Oakland implements an unambiguous policy that sets forth a complete prohibition on the sale, possession, transfer, and use of fireworks within City limits.

Twenty-one years ago the City of San Jose adopted an ordinance that banned the sale of fireworks within its City limits for the safety and protection of its citizens and their property.

<sup>1</sup> Oakland Muni. Code § 8.06.010 (Deering 2004). **It is unlawful for any person to at any time fire or explode, cause to be fired or exploded, any blank cartridge, bomb, rocket, firecracker, roman candle, squib, colored fire, torpedo, mine, torch, or any combustible or explosive device, or preparation, or fireworks, or firecrackers, of any kind whatsoever, or by whatever name known, within the limits of the city;** provided, that the use of fireworks at such public displays of fireworks inside the limits of the city as may be given with the joint written consent of the Director of Fire Services and the Chief of Police of said city, shall not be unlawful. Provided, further, however, that if such public display of fireworks is to be held within any public park or other property under the jurisdiction of the city, the written consent of the City Manager or a designee must also be obtained, and the City Manager or a designee shall have the right to require the posting of any bond, or taking out of any insurance, that it may deem necessary. (Emphasis added.)

The Police and Fire Chiefs are charged with the authority to approve written requests by experts to engage in public displays of fireworks. In addition, the State of California Penal Code Sections 836.5 and 853.6 and Section 1.24.020 to the Oakland Municipal Code provides the Oakland Police Department with citing authority to those individuals found to be in possession of fireworks.

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Fireworks manufacturers promptly sued the city. In February of 1984, a California Appellate Court struck down the San Jose ordinance in an opinion which stated that, “[t]he field of retail sale of safe and sane fireworks... is preempted by state law... [l]ocal ordinances which operate as a total ban on such sales are in conflict with the State Fireworks Law and are invalid.” *Ventura v. City of San Jose*, 151 Cal. App. 3d 1076, 1082 (1984). The following June, the State Assembly amended the California Health and Safety Code to include an express provision of authority to city and county governments affirming their right to prohibit the sale, use and discharge of fireworks, effectively reversing effect the of the *Ventura* opinion.

Effective June 19, 1984, the State of California Health and Safety Code Section 12541 provides California cities with explicit authority to adopt ordinances that ban or regulate the sale, use or discharge of fireworks within City limits.<sup>2</sup>

In the interim twenty years, municipalities have varied as to adopting an explicit prohibition on the sale of fireworks, although many, including Oakland, have banned their use. With the adoption of this ordinance Oakland makes an unequivocal statement of the City’s policy regarding fireworks. Within the Oakland City limits, fireworks may not be possessed, transferred, sold, used, or discharged, except at designated public displays, by the simultaneous approval of the Chief of Police, the Fire Commissioner, and the City Manager.

## **KEY ISSUES AND IMPACTS**

### **SOCIAL COSTS**

According to the US Consumer Product Safety Commission, the use of illegal fireworks or, the improper use of fireworks presents substantial risks that can result in deaths, blindings, amputations and severe burns. The U.S. Consumer Product Safety Commission preliminarily estimates that in 2003 about 9,700 people were treated in hospital emergency rooms for injuries associated with fireworks. Over half the injuries were burns and most of the injuries involved the hands, eyes, and head. About half of the victims were under 15 years of age. The National Fire Protection Association estimates that over \$20 million in property damage is caused by fireworks accidents annually. Yearly societal costs are estimated at \$100 million.

### **STATE, INTERSTATE, AND INTERNET SALES**

California remains among the thirty-seven (37) states that continue to allow the sale of consumer fireworks to its citizens.<sup>3</sup> Because consumer fireworks sales remain legal in California, municipalities that have adopted bans on the use of those fireworks are at a significant enforcement disadvantage in preventing the illegal inflow of both legal and illegal fireworks into those communities. Fireworks can be purchased in California communities that permit sales and/or use, or transported across state lines from New Mexico, Nevada, or Oregon. Additionally,

<sup>2</sup> Cal. Health and Safety Code § 12541(Deering 2004). Nothing in this part authorizes the sale, use, or discharge of fireworks in any city, county, or city and county in which the sale, use, or discharge is otherwise prohibited or regulated by law or ordinance.

<sup>3</sup> See Consumer Products Safety Commission Fireworks Publication #12 (Attached as A).

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the advent of Internet sales has put fireworks within the reach of any child, or unscrupulous adult, with access to a computer.<sup>4</sup>

#### CALLS FOR SERVICE

The significant number of calls for service to the Oakland Police Department and the Oakland Fire Department between June 16<sup>th</sup> and July 16<sup>th</sup> are an indication that fireworks enforcement, education, and deterrence procedures should begin in the May/June time period.

The normal number of Calls For Service received on the swing shift (3:30 p.m. to 1:30 a.m.) ranges between 50 and 60 calls. On July 4, 2000 the Communications Division received 117 fireworks related calls for service. On July 3, 2002 Oakland officers responded to 1,217 calls for service in which 110 were related to fireworks. During 2002 the Oakland Fire Department responded to 12 incidents related to fireworks between June 16 and July 16, 2002. Five of the calls were structure fires, two were notifications of smoke, one was a brush fire, two were small street fires, one was a vehicle fire, and one was a false alarm.

#### CITATION AUTHORITY

The proposed ordinance will expand Oakland Police Department and Fire Department citation authority to include possession, transfer, and sale (in addition to use) of fireworks within City limits.

#### INCREASED CLARITY, INCREASED PENALTY

This new ordinance clarifies the confusing and misleading state classifications of consumer fireworks as "safe and sane" for Oakland; all fireworks are potential health hazards; all fireworks are capable of starting fires and wildfires. Therefore all fireworks would be prohibited within city limits.

Penalties for the sale, possession, transfer, or use of illegal fireworks will be assessed according to the nature of the device and the age of the offender.

#### INCREASED ACCOUNTABILITY

While children under the age of sixteen will not be issued citations for violating Oakland's fireworks laws, the parents and guardians of those children may be issued citations by Police and Fire officers for those violations.

#### ACTION REQUESTED BY COUNCIL

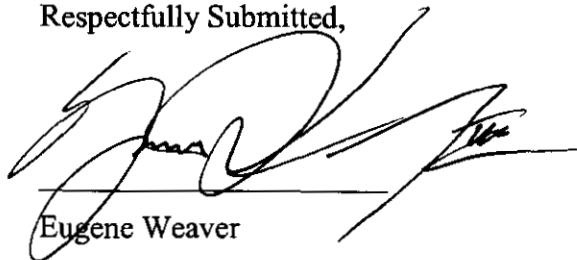
The Legislative Analyst to the Council recommends that the council accept the proposed amendment and adopt it as an Emergency Ordinance.

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<sup>4</sup>Massachusetts, one of only seven states to adopt a total ban on consumer fireworks, has been forced to resort to litigation in order to stem the flow of illegal fireworks into the state resulting from Internet sales. Massachusetts' Attorney General Tom Reilly filed suit against three online fireworks sellers who made deliveries into Massachusetts. Two of those companies agreed to judgments banning future sales and paid a civil penalty of \$5000. Reilly's office obtained an injunction against the third company, American Eagle Fireworks of Lansing, Michigan, and that case is still in litigation. Their undercover investigation revealed that all three of these companies refused to sell fireworks into Massachusetts in 2004.

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Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Eugene Weaver', written over a horizontal line.

Eugene Weaver

Legislative Analyst to the Council

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OAKLAND

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBER 2004 MAY 13 PM 5:16

City Attorney

**ORDINANCE No. \_\_\_\_\_ C.M.S.**

**EMERGENCY ORDINANCE REPEALING CHAPTER 8.06.010  
OF THE OAKLAND MUNICIPAL CODE WHICH PROHIBITS THE  
FIRING AND EXPLOSION OF FIREWORKS AND OTHER  
PYROTECHNICAL DEVICES AND ADDING CHAPTER 8.06.030  
PROHIBITING THE SALE, TRANSFER, POSSESSION AND USE OF  
FIREWORKS WITHIN CITY LIMITS**

WHEREAS, Chapter 8.06, entitled "Explosives and Fireworks" provides at section 8.06.010 that it is unlawful for any person to at any time fire or explode, cause to be fired or exploded, any blank cartridge, bomb, rocket, firecracker, roman candle, squib, colored fire, torpedo, mine, torch or any combustible or explosive device, or preparation, or fireworks, or firecrackers, of any kind whatsoever, or by whatever name known, within the limits of the City; and

WHEREAS, the City of Oakland finds that half of all injuries sustained each year in fireworks related accidents occur among those who are ages fifteen years and younger; and

WHEREAS, the City of Oakland is at risk of a particularly long and dangerous wildfire season; and

WHEREAS, Oakland communities are subjected to the inflow and use of fireworks in the months prior to July 4<sup>th</sup> Independence Day; and

WHEREAS, on a daily basis, the Oakland Fire Department and the Oakland Police Department are receiving calls for service and complaints from citizens and Neighborhood Services Coordinators that illegal fireworks are being detonated; and

WHEREAS, the City of Oakland desires to provide in one section of the Municipal Code provisions that prohibit not only the firing and explosion of explosives and fireworks, but also the possession, sale, and transfer of such materials and penalties for violations thereof; and

WHEREAS, in order to adequately protect the health and safety of Oakland residents during the upcoming fire season and Independence Day celebrations the Fire and Police Departments must immediately commence enforcement of these provisions; and

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**ORACOUNCIL**

**MAY 18 2004**

WHEREAS, for the forgoing reasons the City Council declares that it is necessary to pass this ordinance as an Emergency Ordinance pursuant to City Charter section 213 in order to preserve the public health and safety in an emergency;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

**Section 1.** Chapter 8.06.010 of Title 8, Health and Safety, of the Oakland Municipal Code hereby is repealed.

**~~8.06.010 Prohibited Exceptions.~~**

~~It is unlawful for any person to at any time fire or explode, cause to be fired or exploded, any blank cartridge, bomb, rocket, firecracker, roman candle, squib, colored fire, torpedo, mine, torch, or any combustible or explosive device, or preparation, or fireworks, or firecrackers, of any kind whatsoever, or by whatever name known, within the limits of the city; provided, that the use of fireworks at such public displays of fireworks inside the limits of the city as may be given with the joint written consent of the Director of Fire Services and the Chief of Police of said city, shall not be unlawful. Provided, further, however, that if such public display of fireworks is to be held within any public park or other property under the jurisdiction of the city, the written consent of the City Manager or a designee must also be obtained, and the City Manager or a designee shall have the right to require the posting of any bond, or taking out of any insurance, that it may deem necessary. (Prior code § 2-2.14)~~

**Section 2. Section 8.06.030 Sale, Transfer, Possession and Use of Fireworks Prohibited – Exceptions hereby is adopted to read as follows:**

**A. Prohibitions.**

1. It is unlawful for any person at any time to sell, or advertise for sale, any firework or pyrotechnical device as defined under state law, including but not limited to, California Health and Safety Code §§ 12505, 12508, 12511, 12512, 12526 and 12529, within the city limits.
2. It is unlawful for any person to at any time to transfer to another any firework or pyrotechnical device as defined under state law, including but not limited to, California Health and Safety Code §§ 12505, 12508, 12511, 12512, 12526 and 12529, within the city limits.
3. It is unlawful for any person at any time to possess any firework or pyrotechnical device as defined under state law, including but not limited to, California Health and Safety Code §§ 12505, 12508, 12511, 12512, 12526 and 12529, within the city limits.
4. It is unlawful for any person at any time to use or cause to be detonated any firework or pyrotechnical device as defined under state law, including

but not limited to, California Health and Safety Code §§ 12505, 12508, 12511, 12512, 12526 and 12529, within the city limits.

5. Any person found in violation of any provision of section 8.06.030, and fifteen (15) years of age or younger, may be delivered to their parent or guardian by the citing officer.
6. Any person found in violation of any provision of section 8.06.030, and sixteen (16) years of age or older may be issued a citation in accordance with the provisions of this section.
7. Every parent, guardian or other person, having the legal care, custody or control of any person under the age of eighteen years, who knows or reasonably should know that a minor is in violation of this Chapter, may be issued a citation in accordance with the provisions of this section.
8. Any person in violation of the provisions of section 8.06.030, involving any firework or pyrotechnical device designated as "Dangerous fireworks" within California Health and Safety Code § 12505, shall be subject to a fine of no less three hundred and fifty dollars (\$350.00) and no more than one thousand dollars (\$1000).
9. Any person in violation of the provision of section 8.06.030, involving any firework or pyrotechnical device designated "Safe and Sane" within California Health and Safety Code § 12529, or involving any fireworks or pyrotechnical devices designated "Exempt fireworks", "Fireworks", or "Fireworks Kits" within California Health and Safety Code §§ 12508, 12511, or 12512, or any device described under California Health and Safety Code § 12526, shall be subject to a fine of no less than two hundred and seventy dollars (\$270.00) and no more than three hundred and fifty dollars (\$350.00).

#### **B. Exceptions.**

1. Public displays of fireworks inside the limits of the City may only be given with the joint written consent of the Director of Fire Services and the Chief of Police of said city.
2. Further, if such public display of fireworks is to be held within any public park or other property under the jurisdiction of the city, the written consent of the City Manager or a designee must also be obtained, and the City Manager or a designee shall have the right to require the posting of any bond, or taking out of any insurance, that it may deem necessary.

#### **Section 3. Severability.**

This chapter shall be enforced to the full extent of the authority of the City. If any provision or clause of this chapter or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application; and to this

