



City Council Agenda Item

City Council Meeting Date: August 4, 2020

TO: Jim Throop, City Manager

FROM: Joseph Mariani, Chief of Police
Gerald Kuras, Fire Chief

SUBJECT: Update Concerning Fireworks and Fireworks Enforcement

Recommendation:

Staff recommends the City Council receive staff's presentation on fireworks and provide direction, if any.

Background:

On May 7, 2013, the City Council adopted and implemented Ordinance No. 1591(13), amending the Lompop Municipal Code Chapter 8.28, allowing for the sale and use of safe and sane fireworks.

A few of the highlights of Ordinance No.1591(13) pertaining to activity and enforcement:

- No person shall knowingly sell fireworks to any person under the age of eighteen;
- No person shall sell safe and sane fireworks earlier than noon on June 28 or after 9:00 pm on July 4 of the same year, and only from noon to 9:00 pm on June 28th and from 9:00 am to 9:00 pm daily on June 29th through July 4th;
- It is unlawful for any person to ignite, discharge, project, or otherwise fire or use any safe and sane fireworks, except during the hours of 9:00 am to 10:00 pm on the 4th of July;
- It is unlawful to discharge any safe and sane fireworks over or on another person's property;
- It is prohibited to ignite or discharge any safe and sane fireworks within 10 feet of a residence;
- It is prohibited to ignite or discharge any safe and sane fireworks over a public street, sidewalk, alley, City Park, or parking area;
- Administrative penalties from \$500 to \$3,500 per violation; and
- Guarantees funding of up to \$10,000 for "employee salary, overtime, and benefit costs, disposal costs, cleanup costs, and operational costs incurred by the Lompop Police, Fire, or other City Departments and authorized agencies".

Discussion:

Fire Department

This year was an exceptional year for fireworks, both legal and illegal. It is unknown whether it was due to the COVID-19 pandemic or the civil unrest across the country, but there were more calls for service involving fireworks than ever before. On July 4, 2020, Los Angeles County Fire had the 2nd busiest day in their department history with 1,676 calls for service, City of Santa Maria Fire Department had 53 calls for service, and Lompoc City Fire had 45 calls for service. Although not all of those calls were directly related to fireworks, many were the result of activities revolving around the use of fireworks.

Unfortunately, gathering data from the incident reporting system would not allow staff to accurately count fires or medical incidents related to fireworks without looking at each of the incident report narratives. However, staff was able to pull all calls from June 1st to mid-July for the last 5 years that were potentially a result of fireworks:

- 2020 – 20
- 2019 – 8
- 2018 – 11
- 2017 – 17
- 2016 – 20

FD Staffing and Enforcement:

During the week leading up to the 4th of July, the Fire Marshal spent 10 hours patrolling, and on the 4th of July, the Fire Chief spent 4 hours patrolling. The Engine crews were also out and about throughout the City, but due to the heavy call load, they were unable to do much in terms of direct enforcement. The typical scenario that played out over and over was that the illegal fireworks were mixed in with the safe and sane, and when Fire personnel arrived on scene, only legal fireworks would be visible. Fire personnel would then counsel the group and move on to the next illegal fireworks discharge.

No fireworks were confiscated or citations given by Fire personnel.

Community Danger:

Fireworks are a danger to our community. All fireworks are toxic and pollute our air, ground, and lungs with sulfides, nitrates, heavy metals, and perchlorates to name a few. Also, our community is surrounded by hillsides covered by easily ignitable fuels, such as grass and brush. If a wildland fire were to start within City limits and extend beyond them, then the resources needed to contain that fire would be substantial. That would necessitate requesting other fire departments and resources, such as helicopters and retardant dropping planes, to come to our aid. If that occurs, the City would be expected to share in the financial responsibility for all suppression efforts, costs of which could be in the millions of dollars.

Police Department

The City of Lompoc, as with most cities in the country, experienced a significant increase in illegal use of fireworks. In an effort to address the use of illegal fireworks, the Lompoc Police Department authorized overtime details to provide selective enforcement to address the problem. The hours of operation were 8:00 pm to Midnight each day from June 23, 2020, through July 4, 2020. A total of 5 two-Officer details were deployed and 2 three-Officer details. A total of 3 citations were issued during these operations. Assigned officers responded to an average of 15-20 fireworks calls during the designated details. During the month prior to the 4th of July the Department received in excess of 300 fireworks calls.

Historical Data:

<u>Year</u>	<u>Fireworks Calls for Service</u>	<u>Citations Issued</u>	<u>Citations Appealed or Waived</u>	<u>Administrative Fines Assessed</u>	<u>Amount Collected</u>
2015	No data	3	0	\$4,500	No data
2015	No data	1	0	\$500	No data
2016	283	9	1	\$11,500	\$4,000
2017	235	11	0	\$9,000	\$4,300
2018	144	0	0	\$0	\$0
2019	78	0	0	\$0	\$0
2020	324	3	0	\$3,500	Pending

The ordinance allows for collection of unpaid fines via Small Claims Court. In this manner, the City saves significant attorney's fees costs by having a non-attorney staff member (Paralegal) file the cases, conduct the hearings, and collect the fines. In February 2015, four unpaid citations were filed in the Small Claims Court resulting in two positive court judgments, one dismissal for lack of service (unable to locate defendant), and one dismissal for payment received prior to hearing. Likewise, in February 2017, eight cases were handled by staff resulting in one payment plan, three dismissals for failure to locate defendant, and four positive court judgments. During the 2017 processing, one 2016 citation was appealed and the City Manager upheld that appeal.

When a court rules for the City and enters judgment against a defendant, City staff can attempt to collect on the judgment, including sending the item to a collections agency. Court judgments on an individual's record can affect their ability to obtain loans or employment. Further efforts at collecting on the judgment, such as obtaining a court order for wage garnishment, are possible, but the cost to obtain such a court order could, in some cases, approach or exceed the amount of the citation. Other methods of collection, such as placing the citation amount on the violator's property tax bill, can be explored, but would only be effective against violators who own property.

In addition, effective January 1, 2016, State law requires that if dangerous fireworks are seized and a city should issue, and collect, an administrative penalty for the violation, then 65% of any funds collected must be forwarded to the State of California for deposit in the State Fire Marshal Fireworks Enforcement and Disposal Fund. (Cal. Health & Safety Code section 12726(c).) That Fund is used for statewide programs for the enforcement, prosecution related to, disposal, and management of seized dangerous fireworks, and for the education of public safety agencies in the proper handling and management of dangerous fireworks.

The fireworks issue in Lompoc mirrors that of the national issue with illegal fireworks. Given the ease for either receiving fireworks through online shipping (buy online and less than ethical businesses may ship to home), or the ability to purchase fireworks right on the Nevada/California border have made it extremely easy for people to bring illegal fireworks into the City. A case may be made that the cost of a citation is built into the business model of the person selling illegal fireworks. As an example, should a person bring illegal fireworks to Lompoc, they may expect to pay up to a \$1,500 fine for possessing/selling the fireworks. However, if they can sell the fireworks before they are caught and the fireworks confiscated, the \$1,500 is just built into their pricing. A fine sizeable enough to change the business model could be explored, if Council wishes to request a staff report and future agenda item on that.

A suggestion is for possibly increasing the penalties or fines may change the business model of illegal sellers and make it less advantageous for a person to import illegal fireworks into the City for sale. It is also suggested that the financial contribution received for fireworks enforcement from the distributors be increased to cover actual costs of a full enforcement team, should staffing allow for it. Currently, the \$10,000 does not cover a full enforcement team during the sales period of the safe and sane fireworks.

Another option that may be explored is a shift from administrative citation enforcement of the City's current fireworks ordinance, to criminal enforcement of the City's current fireworks ordinance. That would involve the City Attorney's Office filing criminal charges against the violator, presenting evidence to the court at an arraignment, including testimony in court by city fire or police personnel, negotiation of a plea deal or potentially a trial, and a maximum criminal penalty of \$1000 or six months in jail, at the judge's discretion (Government Code 36901). The cost to pursue this criminal enforcement process is generally the reason cities choose to issue administrative citations rather than criminal enforcement.

Criminal enforcement of state law fireworks regulations or amendments to the City's fireworks ordinance to improve deterrence of violations and improve collections could also be explored, should the City Council request a staff report on those or any other options. Lastly, in creating this staff report, it has been shown that a formal process for citations had not been created with the approval of sale for safe and sane fireworks in 2013. In order to move forward with proper tracking of a citation, from issuance to disposition, staff has created a procedure such that all citations will be directed immediately to the City Attorney's office. The City Attorney's office will then be responsible for the tracking and collection of all firework citations, and will also create, update, and maintain a history of all citations. During the period of 2013 to today, the City has experienced staffing turn-

over in the Fire chief, Police Chief, City Attorney, Management Services Director (finance), and City Manager positions. This turn-over in staffing is the main reason for the deficiency in citation processing and history.

Fiscal Impact:

The funds collected from the sales of safe and sane fireworks for law enforcement, since Fiscal Year 2014, totaled \$99,615. Those funds were deposited into a fiduciary trust account outside of the City's Financial. There was \$87,634 of substantiated law enforcement related cost that was withdrawn from the Trust and transferred to the General Fund as discretionary revenues. Any remaining funds will continue to be held in the fiduciary trust until needed.

Conclusion:

Illegal fireworks will be hard to control and contain given the ease in which they may be acquired in today's online purchasing, and that the State of Nevada allows for the sale of fireworks considered illegal in California and the City of Lompoc. It is suggested that by increasing the penalties or fines to a level that may affect the 'business model' of the resellers, as well as those who smuggle in product for their personal use. The increased fines should not be allowed to be waived or dismissed as this will also add to it being a deterrent. In addition, it is suggested that the contribution made by safe and sane fireworks companies for enforcement of the fireworks ordinance be increased such that it would cover the costs for a full enforcement team. Such suggested changes would require a modification to the current ordinance.

Respectfully submitted,

Joseph Mariani, Chief of Police

Gerald Kuras, Fire Chief

APPROVED FOR SUBMITTAL TO THE CITY COUNCIL:

Jim Throop, City Manager