

COUNCIL ACTION FORM

SUBJECT: FIREWORKS ORDINANCE REVISIONS

BACKGROUND:

The State of Iowa recently enacted SF 489, which is legislation that legalized the sale and use of consumer fireworks in Iowa -- both of which can begin as early as June 1, 2017. Cities and counties are allowed to "opt out" of the state law regarding fireworks use only, by passing an ordinance prohibiting use of consumer fireworks in their jurisdictions. The City of Ames has had an ordinance, Sect. 17.6, prohibiting the use or exploding of fireworks in Ames since 1987.

On Tuesday, May 16, 2017, the Ames City Council decided to keep City's prohibition on the use/exploding of fireworks in Ames. However, the Council directed the Legal Department staff to draft language making five changes or additions to the City's fireworks ordinance. The proposed ordinance achieves all five of these directives.

The proposed ordinance:

1. Changes the definitions of fireworks to be consistent with the definitions of fireworks in the new state law.
2. Amends the current ordinance to make clear that City permits for fireworks are only allowed for use/exploding of display (professional) fireworks, not use of consumer fireworks.
3. Removes the language allowing violations to be charged as municipal infractions, and specifying that violations will be charged as simple misdemeanors and subject to a \$250 minimum fine, as specified in the new state law.
4. Establishes a distance requirement or setback from temporary sales stands and existing buildings, for safety purposes.

The Ames Fire Department investigated such setback requirements in other states where fireworks have been legal for a long time, and the Fire Chief recommended a 25-foot setback from existing buildings.

5. Creates a requirement that consumer-fireworks vendors post a sign in plain sight of customers that the use of consumer fireworks in Ames is prohibited by City ordinance, and that violations are simple misdemeanors with a \$250 minimum fine.

It should be noted that after three readings, the ordinance, including the requirements for fireworks vendors in paragraphs #4 and #5 above, would

become effective after the fireworks-selling season had begun. Staff anticipates an informational sheet will be developed and handed to those applying for a peddlers/solicitors/transient merchant permit for fireworks stands, informing the vendors that the ordinance is under consideration by Council, and recommending that the vendors voluntarily abide by the provisions in paragraphs #4 and #5, although they are not yet in effect.

ALTERNATIVES:

1. The Council may adopt the ordinance making changes to the fireworks ordinance in Ames Municipal Code Section 17.6, and which retains the prohibition on use of consumer fireworks in Ames.
2. The Council may decline to adopt the ordinance making changes to the fireworks ordinance, and retain the current Ames Municipal Code Section 17.6.

CITY ATTORNEY'S RECOMMENDED ACTION:

Based on the policy direction given to the Legal Department staff on May 16, 2017, it is the recommendation of the City Attorney that the City Council approve Alternative #1 and adopt the ordinance making changes to the fireworks ordinance in Ames Municipal Code Section 17.6, and which retains the prohibition on use of consumer fireworks in Ames.

ORDINANCE NO.

AN ORDINANCE TO AMEND THE MUNICIPAL CODE OF THE CITY OF AMES, IOWA, BY REPEALING CHAPTER 17 SECTION 17.6 AND ENACTING A NEW SECTION 17.6 THEREOF, FOR THE PURPOSE OF FIREWORKS, USE AND SALES REGULATED; REPEALING ANY AND ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT TO THE EXTENT OF SUCH CONFLICT; PROVIDING A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ENACTED, by the City Council for the City of Ames, Iowa, that:

Section One. The Municipal Code of the City of Ames, Iowa shall be and the same is hereby amended by enacting a new Section 17.6 as follows:

“Sec. 17.6. FIREWORKS, USE AND SALES REGULATED.

(1) **Definitions.**

(a) *“Display fireworks”* includes any explosive composition, or combination of explosive substances, or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation, and includes fireworks containing any explosive or flammable compound, or other device containing any explosive substance. *“Display fireworks”* does not include novelties or consumer fireworks enumerated in chapter 3 of the American Pyrotechnics Association’s Standard 87-1.

(b) *“Consumer fireworks”* means first-class consumer fireworks as described in the American Pyrotechnics Association Standard 87-1, chapter 3, such as:

- (1) Aerial shell kits and reloadable tubes.
- (2) Chasers.
- (3) Helicopter and aerial spinners.
- (4) Firecrackers.
- (5) Mine and shell devices.
- (6) Missile-type rockets.
- (7) Roman candles.
- (8) Sky rockets and bottle rockets.
- (9) Multiple tube devices that are manufactured in accordance with APA 87-1, section 3.5.

(2) The use or exploding of consumer fireworks is prohibited.

(3) The use or exploding of display fireworks is prohibited except when done in accordance with a permit authorized by the City Council.

(Ord. No. 3936, 12-18-07)

(4) The City Council for the City of Ames may, upon receipt of a written application, permit the outdoor display and exploding of display fireworks by any group or organization if the fireworks will be handled by a competent operator.

(Ord. No. 3936, 12-18-07)

(5) However, nothing in this section shall be construed to prohibit any resident, dealer, manufacturer or jobber from selling consumer fireworks or the sale or use of blank cartridges for a show or the theater, or for signal purposes in athletic or sporting events or by railroads or trucks, for signal purposes, or by a recognized military organization; and provided further that nothing in this section shall apply to any substance or composition prepared and sold for medicinal or fumigation purposes.

(6) An insurance certificate naming the City of Ames, its officers, and employees as an additional insured with comprehensive general liability limits in the amount of \$1,000,000 combined single limit and with excess liability limits in the amount of \$5,000,000 shall be in full force and effect during the life of the display fireworks permit. The coverage shall be at least as broad as the ISO Form Number CG0001 covering commercial general liability written on an occurrence basis only. For permits authorized by the City Council for the outdoor display of fireworks on the property of Iowa State University, the university must also be named as an additional insured. A copy of the current insurance certificate shall be maintained on file with the City Clerk.

(Ord. No. 3746, 11-18-03; Ord. No. 3936; Ord. No. 3936, 12-18-07)

(7) A violation of a provision of this section pertaining to the use or exploding of fireworks shall be a simple misdemeanor punishable by a fine of not less than \$250.

(8) In addition to complying with all other City permitting or registration standards and approvals, temporary vendors of consumer fireworks shall not erect a consumer fireworks sales stand, structure or tent within twenty-five (25) feet of an existing building.

(9) Retail vendors of consumer fireworks shall post a sign in plain view of customers informing customers that the use of fireworks within the Ames city limits is prohibited by city ordinance, and that a violation is a simple misdemeanor punishable by a fine of not less than \$250.

(10) A violation of sub-section (8) or (9) of this section is a municipal infraction.

(Ord. No. 3746, 11-18-03) (Ord. No. 2646, Sec. 2, 3-7-78; Ord. No. 3003, Sec. 18, 2-23-88; Ord. No. 3497, Sec. 16, 8-25-98; Ord. No. 3551, 3-7-00)[State Law Ref. 727.2]

Section Two. Violation of the provisions of this ordinance shall constitute a municipal infraction punishable as set out by law.

Section Three. All ordinances, or parts of ordinances, in conflict herewith are hereby repealed to the extent of such conflict, if any.

Section Four. This ordinance shall be in full force and effect from and after its passage and publication as required by law.

Passed this _____ day of _____, _____.

Diane R. Voss, City Clerk

Ann H. Campbell, Mayor