

MEMO

To: Mayor Ann Campbell, Ames City Council Members

From: Mark Lambert, Assistant City Attorney and other city staff

Re: Information about fireworks for Council consideration

Date: May 12, 2017

Governor Branstad has now signed the legislation legalizing fireworks in Iowa, SF 489. It goes into effect immediately (but fireworks aren't allowed to be sold or exploded until June 1).

Cities are allowed to have ordinances prohibiting or limiting the use of consumer fireworks. The City of Ames already has such an ordinance, Section 17.6. So, as it now stands, it will be unlawful for people to use fireworks in Ames. The state law specifies that using fireworks in violation of a city ordinance prohibiting or limiting fireworks use is a simple misdemeanor with a \$250 minimum fine.

There are numerous issues the Council can consider in light of this new state law.

First, the overarching question is whether the Council wants to stay with the current prohibition, or whether the Council would prefer to repeal the ordinance in light of the new state law. Other issues include zoning considerations regarding sales (or use, if the Council decides to repeal the ordinance), and possible safety regulations.

Attached is a summary of the key provisions of the new state law.

Following is a list of some of the potential issues for Council consideration:

- Given the new state law legalizing the use of consumer fireworks, would the Council prefer to keep the existing ordinance prohibiting use of fireworks in the City limits or would the Council prefer to repeal the ordinance?
- Since the new state law does not allow the City to prohibit sales of consumer fireworks, would the Council like to add some safety or other requirements?
- Should the Council implement new zoning regulations regarding fireworks sales or use?

THE CITY ORDINANCE:

Ames Municipal Code section 17.6 makes the use of consumer or display fireworks illegal except with a permit from the City. Violations may be charged as a municipal infraction or a simple misdemeanor. The options for the Council include retaining the current ordinance, repealing the current ordinance, or amending the current ordinance in some way.

If the Council wants to retain the ordinance, the Legal Department would recommend:

- Removing municipal infraction language from the ordinance. The ordinance should specify that violations are a simple misdemeanor with a minimum \$250 fine (as specified in the new state law).
- Updating the reference to the 1987 Code of Iowa definition of fireworks. This would ensure the City's definition matches the new state law, which has new definitions of categories of fireworks.
- Consider removing the language in the ordinance which allows consumer fireworks use with a permit from the City (but retaining that provision for display fireworks).

SAFETY/OTHER REQUIREMENTS:

Whether the Council decides to retain the current ordinance or repeal it, there are safety regulations that the Council could consider putting in place. Some examples include

- Requiring a setback from temporary fireworks stands and nearby buildings
- Requiring fireworks retailers to inform customers that exploding fireworks within the City limits is prohibited and is a simple misdemeanor with a \$250 minimum fine

Other cities are considering ordinances that don't prohibit fireworks use, but would require such things as:

- Those under the age of 18 may not use consumer fireworks unless supervised by an adult
- No person who is intoxicated or otherwise impaired may purchase or discharge consumer fireworks. (See also, Fire Code and Building Code information, below).

ZONING CONSIDERATIONS:

Although the City has no specific Zoning Ordinances referencing fireworks sales, there are Zoning Ordinance standards that impact such sales. Fireworks would be viewed a Retail Sales and Service Trade Use. Retail Sales is permitted within all commercial zoning districts and for limited industrial areas. Residential zones would not permit retail sales; however, someone

could request Zoning Board of Adjustment approval of Special Home Occupation, although it would be difficult to meet the performance standards for a home occupation.

There is also an issue of how the City treats fireworks sales within structure versus as temporary uses. Some zoning districts permit outdoor sales, such as our common Highway Oriented Commercial (HOC) zoning district which would potentially allow for temporary uses to sell fireworks. By practice the City has applied requirements to temporary uses that they must occur on an improved lot and meeting development standards for parking and access. Site Plan review may or may not be triggered depending on the conditions of a site.

Typically, if a use or structure is present for more than 72 hours in one location it is viewed as a permanent structure, which then requires a site development plan review. However, the practice is not well established in the Zoning Ordinance and the City has not always required site plans in such situations. It may be appropriate to address temporary vendors, including fireworks vendors, with a clear approval process. Also, the Council may wish to consider regulations for safety, such as setbacks between the fireworks stands and other businesses and compatibility issues with proximity to residential areas.

PEDDLERS/SOLICITORS/TRANSIENT MERCHANT ORDINANCE:

Although the new state law does not allow the City to prohibit sales of fireworks, the Legal Department has determined that the law does not prohibit the City from enforcing our “Peddlers, Solicitors, and Transient Merchants” registration requirements under Ames Municipal Code section 17.26 for temporary fireworks vendors. They will be treated as any other temporary vendors.

BUILDING/FIRE CODE:

Following is a description of how the Building Code and Fire Code address fireworks:

The Building Code/ Fire Code have two classifications of fireworks: Division 1.4G and Division 1.3. The Div 1.3 are the professional/commercial fireworks and the Div 1.4G are the consumer fireworks. Under the requirements of these two model codes vendors are allowed to store or display in one control area up to 125 pounds of the 1.4G and 5 pounds of the 1.3 net pyrotechnic composition of the fireworks. If the actual amount of pyrotechnic composition of the fireworks is not known vendors are instructed to use 25% of the gross weight of the fireworks including the packaging.

If the building the fireworks are contained in has a fire sprinkler system throughout, the amount of fireworks that may be stored/displayed may be increased by 100%.

If the fireworks are stored in approved storage cabinets, day boxes, gas cabinets or exhausted enclosures or listed safety cans, that quantity may be increased by 100%

Both of these increases shall be applied accumulatively

So if the storage/display in a control area is less than the quantities listed above for the 1.3(5 lbs) and 1.4G (125 lbs) it is not considered by the Building code or Fire Code to be a hazardous condition and they could be sold anywhere (a stand-alone fireworks business, stand on private property or on the shelf of any retail store) without any additional precautions being required. Note: if properly constructed and separated by code requirements they are allowed up to 4 control areas in a single story building.

If the allowable quantities are exceeded for a control area then the occupancy would be considered an H3 hazardous location and the Building code and Fire code have special construction requirements for that type of occupancy.

Side note: Items stored inside of trucks are subject to DOT regulations

SUMMARY OF KEY PROVISIONS OF THE NEW STATE FIREWORKS LEGISLATION

Governor Branstad has now signed the legislation legalizing fireworks in Iowa, SF 489. It goes into effect immediately (but fireworks aren't allowed to be sold or used until later, starting June 1).

Following are the key points of the new state law:

1. Sales of "consumer fireworks" (such as firecrackers, bottle rockets, Roman candles, etc.) are now legal in Iowa. Cities may not prohibit sales of these items. The new state law defines categories of fireworks: "display" (professional), "consumer," and "novelties."
2. Fireworks may be sold and used (exploded) only on certain dates and at certain times.
3. Consumer fireworks sales and use is allowed June 1 to July 8, and Dec. 10 to January 3. Generally, they are only allowed to be used between the hours of 9:00 a.m. and 10:00 p.m. But, there are extended hours on certain dates: On July 4, and the Saturdays and Sundays immediately preceding and following July 4, use is allowed from 9:00 a.m. to 11:00 p.m. On December 31, use is allowed from 9:00 a.m. until 12:30 a.m. on January 1, and use is allowed on the Saturdays and Sundays immediately preceding and following Dec. 31 from 9:00 a.m. to 11:00 p.m.
4. **Cities are expressly allowed to prohibit the use of fireworks within the City limits.**
5. **The City of Ames already has an ordinance banning the use of fireworks. This ordinance remains valid under the new state law. Ames Municipal Code §17.6.**
6. Anyone using fireworks in violation of such a City ordinance, commits a simple misdemeanor, punishable by a minimum \$250 fine.

7. Violations of the ban on using fireworks in Ames would have to be charged by the police as a state crime (and not as a municipal infraction), simple misdemeanor, citing Iowa Code §727.2(3)(c)(1).
8. The City fireworks ordinance allows fireworks with a permit granted by the City. It does not distinguish between display (professional) and consumer fireworks. So, under our existing ordinance, someone could apply for a permit to use consumer fireworks. We need to decide as a policy matter how to handle any such applications.
9. Sales of consumer fireworks to minors (under 18) are unlawful. A minor who purchases consumer fireworks commits a violation. Both are simple misdemeanors (state crime) with a minimum fine of \$250. There is another section making it a simple misdemeanor (with no minimum fine specified) for a retailer to “transfer” (give) consumer fireworks to a minor. There is nothing in the law making it a crime for an adult who is not a retailer to give fireworks to a minor, and nothing in the law that makes mere possession or use of fireworks by a minor a crime.
10. Novelties, such as sparklers, flitter sparklers (the kind with no wire, where you light the paper on the end), and “snakes,” which were legal before the new legislation, would remain legal in Ames, under our ordinance.
11. Consumer fireworks can be sold beginning June 1 (to July 8) and Dec. 10 to Jan. 3 in permanent structures, and beginning June 13 (to July 8) in temporary structures. Any structure, permanent or temporary, has to meet standards set by the State Fire Marshall, based on National Fire Protection Association standards.

Senate File 489 - Introduced

SENATE FILE 489

BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO SF 236)

(SUCCESSOR TO SSB 1051)

A BILL FOR

1 An Act relating to the possession, sale, transfer, purchase,
2 and use of fireworks, providing penalties, and including
3 effective date provisions.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

FIREWORKS REGULATION

Section 1. Section 100.1, subsection 4, paragraph b, Code 2017, is amended to read as follows:

b. The storage, transportation, handling, and use of flammable liquids, combustibles, fireworks, and explosives;

Sec. 2. Section 100.1, Code 2017, is amended by adding the following new subsection:

NEW SUBSECTION. 8. To order the suspension of the use of consumer fireworks, display fireworks, or novelties, as described in section 727.2, if the fire marshal determines that the use of such devices would constitute a threat to public safety.

Sec. 3. NEW SECTION. 100.19 **Consumer fireworks seller licensing — penalty — fund.**

1. As used in this section:

a. "APA 87-1" means the American pyrotechnics association standard 87-1, as published in December 2001.

b. "Community group" means a nonprofit entity that is open for membership to the general public which is exempt from federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code or a fraternal benefit society, as that term is defined in section 512B.3.

c. "First-class consumer fireworks" means the following consumer fireworks, as described in APA 87-1, chapter 3:

(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 under this paragraph "c" that are manufactured in accordance with APA 87-1, section 3.5.

1 *d. "Retailer" means as defined in section 423.1.*

2 *e. "Second-class consumer fireworks" means the following*
3 *consumer fireworks, as described in APA 87-1, chapter 3:*

4 (1) Cone fountains.

5 (2) Cylindrical fountains.

6 (3) Flitter sparklers.

7 (4) Ground and hand-held sparkling devices, including
8 multiple tube ground and hand-held sparkling devices that are
9 manufactured in accordance with APA 87-1, section 3.5.

10 (5) Ground spinners.

11 (6) Illuminating torches.

12 (7) Toy smoke devices that are not classified as novelties
13 pursuant to APA 87-1, section 3.2.

14 (8) Wheels.

15 (9) Wire or dipped sparklers that are not classified as
16 novelties pursuant to APA 87-1, section 3.2.

17 2. *a.* The state fire marshal shall establish a consumer
18 fireworks seller license. An application for a consumer
19 fireworks seller license shall be made on a form provided
20 by the state fire marshal. The state fire marshal shall
21 adopt rules consistent with this section establishing minimum
22 requirements for a retailer or community group to be issued a
23 consumer fireworks seller license.

24 *b.* A person shall possess a consumer fireworks seller
25 license under this section in order to sell consumer fireworks.

26 3. *a.* The state fire marshal shall establish a fee schedule
27 for consumer fireworks seller licenses as follows:

28 (1) For a retailer at a permanent building who devotes fifty
29 percent or more of the retailer's retail floor space to the
30 sale or display of first-class consumer fireworks, an annual
31 fee of one thousand dollars.

32 (2) For a retailer at a temporary structure who devotes
33 fifty percent or more of the retailer's retail floor space
34 to the sale or display of first-class consumer fireworks, an
35 annual fee of five hundred dollars.

1 (3) For a retailer who devotes less than fifty percent of
2 the retailer's retail floor space to the sale or display of
3 first-class consumer fireworks, an annual fee of four hundred
4 dollars.

5 (4) For a community group that offers for sale, exposes for
6 sale, or sells first-class consumer fireworks, an annual fee
7 of four hundred dollars.

8 (5) For a retailer or community group that offers for sale,
9 exposes for sale, or sells second-class consumer fireworks,
10 but not first-class consumer fireworks, an annual fee of one
11 hundred dollars.

12 *b.* A license issued to a retailer or community group
13 pursuant to paragraph "a", subparagraph (1), (2), (3), or (4),
14 shall allow the licensee to sell both first-class consumer
15 fireworks and second-class consumer fireworks.

16 4. The state fire marshal shall adopt rules to:

17 *a.* Require that any retailer or community group offering
18 for sale at retail any consumer fireworks, as described in APA
19 87-1, chapter 3, shall do so in accordance with the national
20 fire protection association standard 1124, published in the
21 code for the manufacture, transportation, storage, and retail
22 sales of fireworks and pyrotechnic articles, 2006 edition.

23 *b.* Require that a retailer or community group to be issued
24 a license pursuant to this section provide proof of and
25 maintain commercial general liability insurance with minimum
26 per occurrence coverage of at least one million dollars and
27 aggregate coverage of at least two million dollars.

28 *c.* Permit a retailer or community group issued a license
29 pursuant to this section to sell consumer fireworks, as
30 described in APA 87-1, chapter 3, at the following locations
31 as specified:

32 (1) At a permanent building that meets the requirements of
33 paragraph "a", between June 1 and July 8 and between December 10
34 and January 3 each year, all dates inclusive.

35 (2) At a temporary structure that meets the requirements of

1 paragraph "a" between June 13 and July 8 each year, both dates
2 inclusive.

3 d. A retailer or community group shall not transfer consumer
4 fireworks, as described in APA 87-1, chapter 3, to a person who
5 is under eighteen years of age.

6 5. a. The state fire marshal shall adopt rules to provide
7 that a person's consumer fireworks seller license may be
8 revoked for the intentional violation of this section. The
9 proceedings for revocation shall be held before the division
10 of the state fire marshal, which may revoke the license or
11 licenses involved as provided in paragraph "b".

12 b. (1) If, upon the hearing of the order to show cause,
13 the division of the state fire marshal finds that the licensee
14 intentionally violated this section, then the license or
15 licenses under which the licensed retailer or community group
16 sells first-class consumer fireworks or second-class consumer
17 fireworks, shall be revoked.

18 (2) Judicial review of actions of the division of the
19 state fire marshal may be sought in accordance with the terms
20 of the Iowa administrative procedure Act, chapter 17A. If
21 the licensee has not filed a petition for judicial review in
22 district court, revocation shall date from the thirty-first
23 day following the date of the order of the division of the
24 state fire marshal. If the licensee has filed a petition for
25 judicial review, revocation shall date from the thirty-first
26 day following entry of the order of the district court, if
27 action by the district court is adverse to the licensee.

28 (3) A new license shall not be issued to a person whose
29 license has been revoked, or to the business in control of the
30 premises on which the violation occurred if it is established
31 that the owner of the business had actual knowledge of the
32 violation resulting in the license revocation, for the period
33 of one year following the date of revocation.

34 6. a. A consumer fireworks fee fund is created in the
35 state treasury under the control of the state fire marshal.

1 Notwithstanding section 12C.7, interest or earnings on
2 moneys in the consumer fireworks fee fund shall be credited
3 to the consumer fireworks fee fund. Moneys in the fund are
4 appropriated to the state fire marshal to be used to fulfill
5 the responsibilities of the state fire marshal for the
6 administration and enforcement of this section and section
7 100.19A and to provide grants pursuant to paragraph "b". The
8 fund shall include the fees collected by the state fire marshal
9 under the fee schedule established pursuant to subsection 3
10 and the fees collected by the state fire marshal under section
11 100.19A for wholesaler registration.

12 **b.** The state fire marshal shall establish a local fire
13 protection and emergency medical service providers grant
14 program to provide grants to local fire protection service
15 providers and local emergency medical service providers to
16 establish or provide fireworks safety education programming
17 to members of the public. The state fire marshal may also
18 provide grants to local fire protection service providers and
19 local emergency medical service providers for the purchase
20 of necessary enforcement, protection, or emergency response
21 equipment related to the sale and use of consumer fireworks in
22 this state.

23 **7.** The state fire marshal shall adopt rules for the
24 administration of this section.

25 **8.** A person who violates a provision of this section or a
26 rule adopted pursuant to this section is guilty of a simple
27 misdemeanor.

28 **Sec. 4. NEW SECTION. 100.19A Consumer fireworks wholesaler**
29 **— registration — penalty.**

30 **1.** For purposes of this section:

31 **a.** "*Consumer fireworks*" means first-class consumer fireworks
32 and second-class consumer fireworks, as those terms are defined
33 in section 100.19.

34 **b.** "*Wholesaler*" means a person who engages in the business
35 of selling or distributing consumer fireworks for the purpose

1 of resale in this state.

2 2. The state fire marshal shall adopt rules to require all
3 wholesalers to annually register with the state fire marshal.
4 The state fire marshal may also adopt rules to regulate the
5 storage or transfer of consumer fireworks by wholesalers and to
6 require wholesalers to maintain insurance.

7 3. The state fire marshal shall establish an annual
8 registration fee of one thousand dollars for wholesalers
9 of consumer fireworks within the state. Registration fees
10 collected pursuant to this section shall be deposited in the
11 consumer fireworks fee fund created in section 100.19.

12 4. A person who violates a provision of this section or a
13 rule adopted pursuant to this section is guilty of a simple
14 misdemeanor.

15 Sec. 5. Section 101A.1, subsection 3, Code 2017, is amended
16 to read as follows:

17 3. "*Explosive*" means any chemical compound, mixture
18 or device, the primary or common purpose of which is to
19 function by explosion with substantially instantaneous
20 release of gas and heat, unless such compound, mixture, or
21 device is otherwise specifically classified by the United
22 States department of transportation. The term "*explosive*"
23 includes all materials which are classified as a class 1,
24 division 1.1, 1.2, 1.3, or 1.4 explosive by the United States
25 department of transportation, under 49 C.F.R. §173.50, and all
26 materials classified as explosive materials under 18 U.S.C.
27 §841, and includes, but is not limited to, dynamite, black
28 powder, pellet powders, initiating explosives, blasting caps,
29 electric blasting caps, safety fuse, fuse lighters, fuse
30 igniters, squibs, cordeau detonative fuse, instantaneous fuse,
31 igniter cord, igniters, smokeless propellant, cartridges for
32 propellant-actuated power devices, cartridges for industrial
33 guns, and overpressure devices, but does not include "*fireworks*"
34 as "*consumer fireworks*", "*display fireworks*", or "*novelties*" as
35 those terms are defined in section 727.2 or ammunition or small

1 arms primers manufactured for use in shotguns, rifles, and
2 pistols. Commercial explosives are those explosives which are
3 intended to be used in commercial or industrial operations.

4 Sec. 6. Section 331.301, Code 2017, is amended by adding the
5 following new subsection:

6 NEW SUBSECTION. 17. The board of supervisors may by
7 ordinance or resolution prohibit or limit the use of consumer
8 fireworks or display fireworks, as described in section 727.2,
9 if the board determines that the use of such devices would
10 constitute a threat to public safety or private property, or
11 if the board determines that the use of such devices would
12 constitute a nuisance to neighboring landowners.

13 Sec. 7. Section 331.304, subsection 8, Code 2017, is amended
14 to read as follows:

15 8. The board, upon application, may grant permits for the
16 ~~display use of display~~ fireworks as provided in [section 727.2](#).

17 Sec. 8. Section 364.2, Code 2017, is amended by adding the
18 following new subsection:

19 NEW SUBSECTION. 6. A city council may by ordinance or
20 resolution prohibit or limit the use of consumer fireworks,
21 display fireworks, or novelties, as described in section 727.2.

22 Sec. 9. Section 461A.42, subsection 2, Code 2017, is amended
23 to read as follows:

24 2. The use of consumer fireworks or display fireworks,
25 as defined in [section 727.2](#), in state parks and preserves is
26 prohibited except as authorized by a permit issued by the
27 department. The commission shall establish, by rule adopted
28 pursuant to [chapter 17A](#), a fireworks permit system which
29 authorizes the issuance of a limited number of permits to
30 qualified persons to use or display fireworks in selected state
31 parks and preserves.

32 Sec. 10. Section 727.2, Code 2017, is amended to read as
33 follows:

34 **727.2 Fireworks.**

35 1. Definitions. For purposes of this section:

1 a. "Consumer fireworks" includes first-class consumer
 2 fireworks and second-class consumer fireworks as those terms
 3 are defined in section 100.19, subsection 1. "Consumer
 4 fireworks" does not include novelties enumerated in chapter
 5 3 of the American pyrotechnics association's standard 87-1
 6 or display fireworks enumerated in chapter 4 of the American
 7 pyrotechnics association's standard 87-1.

8 b. The term "fireworks" "Display fireworks" includes any
 9 explosive composition, or combination of explosive substances,
 10 or article prepared for the purpose of producing a visible
 11 or audible effect by combustion, explosion, deflagration,
 12 or detonation, and includes blank cartridges, firecrackers,
 13 torpedoes, skyrockets, roman candles, or other fireworks of
 14 like construction and fireworks containing any explosive or
 15 flammable compound, or other device containing any explosive
 16 substance. The term "fireworks" "Display fireworks" does not
 17 include goldstar-producing sparklers on wires which contain
 18 no magnesium or chlorate or perchlorate, flitter sparklers
 19 in paper tubes that do not exceed one-eighth of an inch in
 20 diameter, toy snakes which contain no mercury, or caps used
 21 in cap pistols novelties or consumer fireworks enumerated in
 22 chapter 3 of the American pyrotechnics association's standard
 23 87-1.

24 c. "Novelties" includes all novelties enumerated in chapter
 25 3 of the American pyrotechnics association's standard 87-1, and
 26 that comply with the labeling regulations promulgated by the
 27 United States consumer product safety commission.

28 2. Display fireworks.

29 a. A person, firm, partnership, or corporation who offers
 30 for sale, exposes for sale, sells at retail, or uses or
 31 explodes any display fireworks, commits a simple misdemeanor.
 32 In addition to any other penalties, the punishment imposed
 33 for a violation of this section shall include assessment
 34 of, punishable by a fine of not less than two hundred fifty
 35 dollars. However, the a city council of a city or a county

1 board of supervisors may, upon application in writing, grant a
2 permit for the display of display fireworks by municipalities,
3 fair associations, amusement parks, and other organizations
4 or groups of individuals approved by the city or the county
5 board of supervisors when the display fireworks ~~display~~ will
6 be handled by a competent operator, but no such permit shall
7 be required for the display of display fireworks at the Iowa
8 state fairgrounds by the Iowa state fair board, at incorporated
9 county fairs, or at district fairs receiving state aid. Sales
10 of display fireworks for such display may be made for that
11 purpose only.

12 b. (1) A person who uses or explodes display fireworks
13 while the use of such devices is prohibited or limited by an
14 ordinance or resolution adopted by the county or city in which
15 the firework is used commits a simple misdemeanor, punishable
16 by a fine of not less than two hundred fifty dollars.

17 (2) A person who uses or explodes display fireworks while
18 the use of such devices is suspended by an order of the state
19 fire marshal commits a simple misdemeanor, punishable by a fine
20 of not less than two hundred fifty dollars.

21 3. Consumer fireworks and novelties.

22 a. A person or a firm, partnership, or corporation may
23 possess, use, or explode consumer fireworks in accordance with
24 this subsection and subsection 4.

25 b. A person, firm, partnership, or corporation who sells
26 consumer fireworks to a person who is less than eighteen years
27 of age commits a simple misdemeanor, punishable by a fine of
28 not less than two hundred fifty dollars. A person who is less
29 than eighteen years of age who purchases consumer fireworks
30 commits a simple misdemeanor, punishable by a fine of not less
31 than two hundred fifty dollars.

32 c. (1) A person who uses or explodes consumer fireworks
33 or novelties while the use of such devices is prohibited or
34 limited by an ordinance adopted by the county or city in which
35 the fireworks are used commits a simple misdemeanor, punishable

1 by a fine of not less than two hundred fifty dollars.

2 (2) A person who uses or explodes consumer fireworks or
3 novelties while the use of such devices is suspended by an
4 order of the state fire marshal commits a simple misdemeanor,
5 punishable by a fine of not less than two hundred fifty
6 dollars.

7 4. Limitations.

8 a. A person shall not use or explode consumer fireworks on
9 days other than June 1 through July 8 and December 10 through
10 January 3 of each year, all dates inclusive.

11 b. A person shall not use or explode consumer fireworks at
12 times other than between the hours of 9:00 a.m. and 10:00 p.m.,
13 except that on the following dates consumer fireworks shall not
14 be used at times other than between the hours specified:

15 (1) Between the hours of 9:00 a.m. and 11:00 p.m. on July
16 4 and the Saturdays and Sundays immediately preceding and
17 following July 4.

18 (2) Between the hours of 9:00 a.m. on December 31 and 12:30
19 a.m. on the immediately following day.

20 (3) Between the hours of 9:00 a.m. and 11:00 p.m. on the
21 Saturdays and Sundays immediately preceding and following
22 December 31.

23 c. A person shall not use consumer fireworks on real
24 property other than that person's real property or on the real
25 property of a person who has consented to the use of consumer
26 fireworks on that property.

27 d. A person who violates this subsection commits a simple
28 misdemeanor. A court shall not order imprisonment for
29 violation of this subsection.

30 ~~3.~~ 5. Applicability.

31 a. This section does not prohibit the sale by a resident,
32 dealer, manufacturer, or jobber of such fireworks as are
33 not prohibited by this section, or the sale of any kind of
34 fireworks if they are to be shipped out of the state, or the
35 sale or use of blank cartridges for a show or the theater,

1 or for signal purposes in athletic sports or by railroads
2 or trucks, for signal purposes, or by a recognized military
3 organization.

4 **b.** This section does not apply to any substance or
5 composition prepared and sold for medicinal or fumigation
6 purposes.

7 **c.** Unless specifically provided otherwise, this section does
8 not apply to novelties.

9 DIVISION II

10 RULEMAKING

11 Sec. 11. EMERGENCY RULES. The state fire marshal shall
12 adopt emergency rules under section 17A.4, subsection 3, and
13 section 17A.5, subsection 2, paragraph "b", to implement
14 the provisions of this Act and the rules shall be effective
15 immediately upon filing unless a later date is specified in the
16 rules. Any rules adopted in accordance with this section shall
17 also be published as a notice of intended action as provided
18 in section 17A.4.

19 DIVISION III

20 EFFECTIVE DATE

21 Sec. 12. EFFECTIVE UPON ENACTMENT. This Act, being deemed
22 of immediate importance, takes effect upon enactment.

23 EXPLANATION

24 The inclusion of this explanation does not constitute agreement with
25 the explanation's substance by the members of the general assembly.

26 This bill relates to the regulation of fireworks.

27 The bill provides that the state fire marshal has the duty to
28 enforce all laws, and rules of the department of public safety
29 concerned with the storage, transportation, handling, and use
30 of fireworks.

31 Current law provides that a person, firm, partnership, or
32 corporation who offers for sale, exposes for sale, sells at
33 retail, or uses or explodes any fireworks, commits a simple
34 misdemeanor. Current law, however, also provides that a county
35 board of supervisors or the department of natural resources may

1 grant a permit for the display of fireworks if the fireworks
2 display will be handled by a competent operator. Current
3 law further provides that the term "fireworks" includes any
4 explosive composition, or combination of explosive substances,
5 or article prepared for the purpose of producing a visible
6 or audible effect by combustion, explosion, deflagration,
7 or detonation, including blank cartridges, firecrackers,
8 torpedoes, skyrockets, roman candles, or other fireworks of
9 like construction and fireworks containing any explosive or
10 flammable compound, or other device containing any explosive
11 substance with limited exceptions.

12 The bill maintains these restrictions for display fireworks
13 and provides that the term "display fireworks" shall not
14 include novelties or consumer fireworks. The bill provides
15 definitions for the terms "novelties" and "consumer fireworks".

16 The bill requires that the state fire marshal establish
17 a consumer fireworks seller license, and requires possession
18 of such a license to legally sell consumer fireworks in this
19 state. The state fire marshal is required to establish a fee
20 schedule for consumer fireworks seller licenses. The bill
21 establishes two classes of consumer fireworks and requires
22 a \$1,000 annual licensing fee for a retailer at a permanent
23 building who devotes 50 percent or more of the retailer's
24 retail floor space to the sale or display of first-class
25 consumer fireworks, and a \$500 annual licensing fee for a
26 retailer at a temporary structure who devotes 50 percent or
27 more the retailer's retail floor space to the sale or display
28 of first-class consumer fireworks. Retailers who devote less
29 than 50 percent of the retailer's retail floor space to the
30 sale or display of first-class consumer fireworks are required
31 to pay an annual licensing fee of \$400. A community group
32 that sells first-class consumer fireworks is required to pay
33 an annual licensing fee of \$400. The bill requires an annual
34 licensing fee of \$100 for retailers or community groups that
35 sell only second-class consumer fireworks.

1 The bill requires that the state fire marshal adopt rules
2 to require that licensed retailers and community groups only
3 offer consumer fireworks for sale in accordance with specified
4 industry standards. The bill also requires that retailers
5 and community groups provide proof of and maintain commercial
6 general liability insurance with specified coverage amounts.
7 Under the bill, the state fire marshal is required to adopt
8 rules to permit licensed retailers and community groups to sell
9 consumer fireworks at conforming permanent buildings between
10 June 1 and July 8 and between December 10 and January 3 each
11 year and at conforming temporary structures from June 13 to
12 July 8 each year.

13 The bill also provides for the revocation of a consumer
14 fireworks seller license for the intentional violation of
15 licensing requirements. The bill establishes procedures
16 for the revocation of such licenses and procedures for
17 review for such revocations. The bill also establishes a
18 consumer fireworks fee fund under the control of the state
19 fire marshal. The fund shall consist of the fees collected
20 for the licensing of retailers and community groups and the
21 registration of wholesalers. The fund is required to be used
22 for administration and enforcement of the state fire marshal's
23 consumer fireworks related duties and to provide grants to
24 local fire protection and emergency medical service providers.

25 The bill requires that the state fire marshal adopt rules
26 to require that wholesalers of consumer fireworks annually
27 register with the state fire marshal and allows the state fire
28 marshal to adopt rules related to wholesaler insurance and the
29 storage and transfer of consumer fireworks by wholesalers. The
30 state fire marshal is also required to establish an annual
31 \$1,000 wholesaler registration fee to be deposited in the
32 consumer fireworks fee fund.

33 Under the bill, a violation of a licensing or registration
34 provision established in Code or by rule is considered a simple
35 misdemeanor. A simple misdemeanor is punishable by confinement

1 for no more than 30 days or a fine of at least \$65 but not more
2 than \$625, or by both.

3 The bill provides that a person or a firm, partnership, or
4 corporation may possess consumer fireworks as provided in the
5 bill. The bill provides that a person, firm, partnership, or
6 corporation who sells any consumer firework to a person who
7 is less than 18 years of age commits a simple misdemeanor.
8 A person who is less than 18 years of age who purchases any
9 consumer fireworks commits a simple misdemeanor. A simple
10 misdemeanor is generally punishable by confinement for no more
11 than 30 days or a fine of at least \$65 but not more than \$625 or
12 by both, but the bill provides for a fine of at least \$250.

13 The bill provides that the state fire marshal may order the
14 suspension of the use of consumer fireworks, display fireworks,
15 or novelties if the fire marshal determines that the use of
16 such devices would constitute a threat to public safety. The
17 bill provides that a person who violates such an order by the
18 fire marshal commits a simple misdemeanor, punishable by a fine
19 of at least \$250.

20 The bill provides that a county board of supervisors may
21 adopt an ordinance or resolution to prohibit or limit the
22 use of consumer fireworks or display fireworks if the use of
23 such devices would constitute a threat to public safety or
24 a nuisance. The bill also provides that a city council may
25 adopt an ordinance or resolution to prohibit or limit the use
26 of consumer fireworks, display fireworks, or novelties if the
27 use of such devices would constitute a threat to public safety
28 or a nuisance to landowners. The bill provides that a person
29 who uses fireworks when the use is prohibited or limited by an
30 ordinance in the city or county in which the devices are used
31 commits a simple misdemeanor, punishable by a fine of at least
32 \$250.

33 The bill also provides certain restrictions on the use or
34 explosion of consumer fireworks. The bill prohibits the use
35 or explosion of consumer fireworks on days other than June

1 1 through July 8 and December 10 through January 3 of each
2 year. The bill prohibits the use or explosion of consumer
3 fireworks at a time other than between the hours of 9:00 a.m.
4 and 10:00 p.m. of those days, except as specified in the
5 bill. The bill further prohibits the use of fireworks by a
6 person on the real property of another person unless the owner
7 of the real property has consented to such use. Under the
8 bill, a violation of these restrictions is considered a simple
9 misdemeanor, provided, however, that a court shall not order
10 imprisonment for such a violation.

11 The bill requires the state fire marshal to adopt emergency
12 rules to implement the provisions of the bill, which shall be
13 effective immediately upon filing.

14 The bill takes effect upon enactment.

1

Ames Fireworks Ordinance

Michael Warnick

to:

Diane R Voss, jripperger

05/12/2017 02:14 AM

Hide Details

From: Michael Warnick <michael.warnick@gmail.com>

To: Diane R Voss <DVoss@city.ames.ia.us>, jripperger@city.ames.ia.us

To whom it may concern,

Currently Ames City Ordinance 17.6 prohibits the use of fireworks without a permit issued by the City of Ames. Recently with the passing of the Iowa Fireworks Bill, fireworks vendors will be selling consumer grade fireworks in nearby cities. This will allow the citizens of Ames easy access to purchase and use these fireworks with or without knowledge of the legality of use within city limits. I suggest amending the City Ordinance to include citizen use as allowed by the State and permit the sale of fireworks by reputable vendors for the following reasons:

1) Loss of Sales Revenue - By not allowing use by citizens, reputable fireworks vendors are likely not to sell in Ames. Ames citizens will drive a short commute and take their hard earned dollars elsewhere. This not only include what they would sell on fireworks but also food, drinks, and other merchandise used for parties and holiday celebrations held at family and friends residences in neighboring communities taking money out of the Ames economy and the loss of tax dollars for community use.

I can even attest that i have done this in years past where the state ban of use of fireworks other than sparklers and snappers and made a yearly trip with my family to the state of Nebraska where we would host a family get together where we could use a wide variety of fireworks. The only purchase in Iowa on those trips in the state of Iowa was for the fuel to make the drive.

Furthermore, many non-profits, schools, and organization will use fireworks sales for fundraising. If the non-profits do not do this of their own accord they will partner with for profit vendors to fundraise earning a percentage of sales in exchange for manning the retail locations and driving those sales. Non-profits within Ames could not take advantage of either or those options as the product they are selling are technically illegal to use in those communities.

2) General Public Safety - by not allowing the use by citizens for some you are forcing people to the edge of city limits and to remote locations to legally use fireworks. This is farther away from emergency services in the case of injury or fire. Any access to water will be limited and in the event of a dry season there will be plenty of dry brush and tinder to ignite making fires more likely.

For those not aware of the ordinance, they will tie up police services having to enforce the fireworks ban. For those unaware of the ban they will receive a ticket, causing embarrassment, and ruining a holiday party for the consumer which has the potential of creating distrust law enforcement officials who already have a taxing occupation serving the public.

Most firework laws were in place to prevent injuries and accidents. At one time there was a place for these laws but firework injuries are on the decline even as the sale of fireworks consumed are ever increasing. The injury rate from fireworks in 2015 is 42% lower than in 2000 (APA). This is due to not only safer products being manufactured but the safety education by reputable vendors provide to customers.

The injuries that do occur now are often from misuse of product and failing to abide by simple common sense safety rules which can easily be discussed and provided to the customer. By not allowing citizens the ability to buy these locally from reputable vendors, that push for safety and education will not be available and those who have not handled fireworks before are likely to misuse causing injury. Access to fireworks is now more readily available even if only purchased in neighboring communities and we need to be able to educate the Ames Community after generations no having the ability to legally handle this product or we risk losing all of the positive benefits (revenue, entertainment, etc.) in order to try protect a few uneducated and misguided.

4) Parental Supervision - As a parent I have kids, and their friends whom I have coached through sports activities and watched grow up whom i do not want to see injured by fireworks. With the City Ordinance parents will have a harder time supervising the use of fireworks if the kids are not able to use fireworks on their own property. Children between the ages of 5 and 18 are by nature adventurous & experimental; thus much more likely to take risks. Because of this, children in this age group require close adult supervision. Even though the law prevents the sale to minors, teenagers and kids may be able to acquire the fireworks without parental knowledge and go to a remote location to try avoid any legal encounters without any training.

I have been safely using fireworks legally as a consumer in the State of Nebraska for over 30 years around the 4th of July season. My parents taught me at a young age to respect and to use fireworks in a safe manner. They were able to do this due to the laws available at the time where they lived. In my early 20's I even had the pleasure to work with professional firework company putting on a Class B fireworks shows for a few small townships around the Lincoln Metro area for a season.

With the foundation that I received from my parents i have not been injured using fireworks far beyond the scale of which will be available for sale in the state of Iowa. This is not a matter of luck that I have avoided injury but by good choices instilled through education. By not allowing firework use in the Ames Community you are taking that choice away from many parents and the kids are farther away from help if needed.

My goal is to provide a safe experience for the 4th of July celebrations, to help create ever lasting memories for families and friends, to be able to provide consumer education from my knowledge and experience and industry standards, and to help the community through synergistic sales with local

businesses. To that end I am looking to become vendor selling fireworks within the City of Ames. This venture would includes a safety training program available for both adults and kids. For the safety and profit of the community because of the reasons I mentioned above I urge the City of Ames to consider amending City Ordinance 17.6 to allow the consumer use of fireworks as permitted by the State of Iowa.

Thank you for your consideration,

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Michael Warnick

(<http://www.americanpyro.com/assets/docs/FactsandFigures/consumpvinjuriesliberalizationgraph%201980-2010.pdf>)

Brad Powers
1226 N. Sand Cherry Cir.
Huxley, IA 50124
Bjpowers39@gmail.com | 515-451-6324

Sent via e-mail

Ames City Council
City Hall
515 Clark Ave
Ames, IA 50010

Dear Ames City Council Members,

I am writing to request a public hearing concerning Ames city code Section 17.6 and the recent state legislation concerning fireworks sales. I first came to Ames in 1996 and I currently live in Huxley where I am the father of three boys (eleven, six and five years old). I also care deeply about their friends and classmates – many of whom I have coached in various sports or chaperoned during various field trips and other school functions. As a parent and member of the community, I am concerned that recent changes in the legislation could pose a risk to these children and I believe that a public hearing would provide an opportunity to determine the best way to develop an approach to address this risk.

Starting in 1938, the State of Iowa banned fireworks. While this did not completely eliminate the use of consumer fireworks in the state, it created a high enough hurdle (driving to a different state to make the purchase) that fireworks have not been a significant concern for quite some time. The ban also had the effect of creating generations of parents with no experience on firework safety. The new law, which prevents cities from banning the sale of fireworks, has eliminated the hurdle to purchasing fireworks and has effectively brought fireworks into our community.

Ames currently has an ordinance prohibiting the “use or exploding” of fireworks within city limits.¹ While continuing this ban seems like the easiest way to address the topic, I have concerns that a ban may increase the likelihood that people will be harmed through the improper handling and misuse of fireworks.

Looking at a recent poll by the Des Moines Register, it appears that Iowans already have an appetite for fireworks.² On average, 65% of Iowans were in favor of the legalization of fireworks in Iowa. When only Iowans under 35 were considered, the number increased to 81% in favor. According to the last census, this demographic (35 and under) constitutes over 68% of the population in Ames.³ Looking at this data, it appears that the majority of Ames population believes that the use of fireworks should be legal and will now have ready access to fireworks.

¹ Ames City Ordinance 17.6

² <http://www.desmoinesregister.com/story/news/politics/iowa-poll/2017/02/23/iowa-poll-65-percent-say-yes-legal-fireworks/97906322/>

³ <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>

Given these statistics, it seems likely that the use of fireworks in Ames will dramatically increase in the city – notwithstanding the current ordinance. In turn, our police will be distracted from their regular duties to address complaints of firework use in the city. For many children, this will mean that their first serious interaction with a uniformed police officer will be the confiscation of their fireworks and the receipt of a citation.

Vigorous enforcement efforts will also have the effect of pushing usage of fireworks outside of city limits – to a place where the ordinance does not apply. While this does move the problem outside of the city. It also means that firework use would happen further from parental supervision, increasing the likelihood of an injury or accident. Further these injuries and accidents would occur further away from first responders – potentially increasing their severity.

However, it doesn't have to be this way. Data shows that fireworks are quite safe and used and handled properly. At present, 44 states permit the sale and use of at least some types of consumer fireworks.⁴ With this relatively broad usage of fireworks, the Consumer Products Safety Commission reports only 11,133 reported injuries from fireworks (including injuries which resulted from improper use of fireworks).⁵ By way of perspective, baseball equipment was responsible for 123,247 reported injuries and bicycles were responsible for 460,099 reported injuries.

As someone who grew up in a state (and city) that permitted the use of fireworks (Columbus, NE), my personal experience matches the statistics. I was fortunate enough to have parents who knew about firework safety, took the time to teach me and then supervised me to make sure that I followed their lessons. With their guidance, I started lighting off fireworks at age five and have not received injuries.

With this perspective, I sincerely want to help protect my children and their friends. Based on the statistics, facts and my own personal experience – education is the key to ensuring proper handling of fireworks and preventing needless injuries. To that end, I have been exploring the possibility of establishing a fireworks stand in the City of Ames. My vision is to have a stand that focuses on safety by providing classes on proper use and handling of fireworks as well as providing clear and well written instructions to purchasers.

Drawing on my experience, I believe this is one way that I could contribute back to a community that has provided me with so many opportunities. The recent change in state legislation has brought fireworks to our community, it is now up to us to determine the best way to protect our community. I believe a public hearing would provide an opportunity for myself and other citizens to help the City Council address the new state legislation concerning fireworks.

Please do not hesitate to contact me with any questions or comments.

Sincerely,



Brad Powers

⁴ http://www.americanpyro.com/assets/docs/State_Laws/2017%20state%20laws%20firework%20map.pdf

⁵ <https://www.cpsc.gov/cgibin/NEISSQuery/home.aspx> NEISS Codes: 1313 (Fireworks), 5040 (Bicycles), 5041 (Baseball)