Staff Report

Agenda Item: **WORKSESSION ON THE REGULATION OF FIREWORKS WITHIN THE TOWN BOUNDARIES** – Discussion regarding the local regulation of fireworks.

Sponsored By: Mayor Von Gausig

Prepared By: Gayle Mabery, Town Manager

Meeting Date: September 28, 2010

Background: HB2246 from the Second Regular Session of the 49th Arizona Legislature 2010 authorizes the sale of certain kinds of consumer and display fireworks in the state. It defines these fireworks and authorizes the State Fire Marshal to adopt rules regarding the sale of fireworks and requires retailers to comply with those rules. The legislation includes provisions allowing cities and towns flexibility to regulate the use of fireworks within their municipal boundaries. The bill is effective December 1, 2010.

As a result of significant interest expressed by cities and towns relating to the regulation of fireworks in their jurisdictions, the League of Arizona Cities and Towns put together a work group to develop guidelines for implementing HB2246, as well as a model ordinance that communities could customize depending in their level of interest in regulating fireworks. The Implementation Guide and the Model Ordinance are attached for your information.

As you will see the League's Model Ordinance is written to give cities and towns a menu of options to consider. The options are completely up to the individual cities and towns, and include a broad range of possibilities, including:

- Entirely banning the use, discharge or ignition of fireworks within the city/town
- Banning the use in most cases, but providing exceptions for:
  - ✓ The use, discharge or ignition of fireworks within the City/Town on certain days (i.e. Fourth of July and New Year's Eve) and during certain hours (i.e. 4:00 p.m. and 10:00 p.m.)
- Banning the use, discharge or ignition of fireworks on all public property including in all public parks and public right of way.
- Banning the use, discharge or ignition of fireworks on days specified by the Fire Marshall/Chief as presenting a high fire danger.
- Allowing Fireworks only with a permit issued by the Fire Marshal/Fire Chief, or a designee.

Several jurisdictions in the Verde Valley are considering the adoption of some sort of fireworks regulations, although it was not know at the time that this staff report was written what types of

regulations are being proposed locally. Town Manager Mabery and Mayor Von Gausig will introduce this issue as a topic for discussion at the September 17th Yavapai County Mayors/Managers meeting so that we can better understand how other local jurisdictions are approaching regulations. The Clarkdale Fire District is interested in seeing the Town of Clarkdale adopt an ordinance that regulates fireworks in some way, and are expected to discuss their recommendations at their September 16th Board Meeting. Chief Joe Moore will be present for the worksession with the Town Council to discuss the District's recommendations with regard to this issue.

It is important to note that, out of concern for increased fire dangers, the local Fire Districts/Departments are taking the lead role in advocating for the adoption of local ordinances regulating the use of fireworks. However, enforcement of any ordinance that is adopted will primarily fall to the law enforcement jurisdiction in the community … in our case, the Clarkdale Police Department.

Recommendation: Staff recommends that the Council direct staff to work with the Clarkdale Fire District to develop an ordinance regulating the use of fireworks in the Town of Clarkdale.

League of Arizona Cities and Towns

2010 HB2246 Regulation of Fireworks, Chapter 286
Implementation Guidelines for Cities and Towns

Note: Check with your attorney for specific advice about your city or town

Introduction
HB2246 from the Second Regular Session of the 49th Arizona Legislature 2010 authorizes the sale of certain kinds of consumer and display fireworks in the state. It defines these fireworks and authorizes the State Fire Marshal to adopt rules regarding the sale of fireworks and requires retailers to comply with those rules. Fireworks sales are prohibited to persons under the age of 16.

The new law also allows city or town councils to regulate the use of some or all of these fireworks within their corporate limits; counties may regulate them in unincorporated areas. The bill is effective December 1, 2010.

Consumer Fireworks Definition
The kinds of consumer fireworks that can be sold under this law include:

- Ground and hand-held sparkling devices
- Cylindrical fountains
- Cone fountains
- Illuminating torches
- Wheels
- Ground spinners
- Flitter sparklers
- Toy smoke devices
- Wire sparklers or dipped sticks
- Multiple tube fireworks devices and pyrotechnic articles
- Does NOT include:
    - Anything designed or intended to rise into the air and explode or to fly above the ground, such as:
        - Bottle rockets
        - Sky rockets
        - Missile-type rockets
        - Helicopters

- Torpedoes
- Roman candles
- Jumping jacks

See examples various kinds of consumer fireworks at:
http://www.fireworks.com/fireworks_gallery/

Note: Items not regulated by this law include:

- Toy pistols, canes or guns that use paper caps and paper caps themselves
- Federally deregulated novelty items such as snappers, snap caps, party poppers, glow worms, snakes, toy smoke devices and sparklers

Retail establishments that comply with the State Fire Marshal regulations may sell these kinds of consumer fireworks in Arizona.

Note: Display fireworks, authorized for sale in this law, are federally regulated and are for use only by professionals. Statutes authorizing their local regulation are found in ARS 36-1603 and 36-1604.

Municipal Regulation

A city or town may regulate the use of consumer fireworks within their corporate limits by passing a local ordinance or resolution (sample ordinance attached).
The local regulation cannot prohibit the sale of consumer fireworks within the city or town, but it can prescribe requirements for which items may be lawfully used and when they may be used including:

- Use may be limited only to specific dates or special events such as Fourth of July, New Year's Eve, Super Bowl Sunday, etc.
- Certain hours of the day or night
- Prohibition on use in public parks or other public space
- Prohibition during times of high fire danger
- Complete prohibition on use within the city or town limits

Additional Provisions

The bill permits counties to regulate the use of consumer fireworks during times of wildfire risk. It authorizes the State Fire Marshal to impose a fine of $1,000 for each incident of prohibited use of fireworks on state land. Fines are to be deposited into the Fire Suppression Revolving Fund established by HB2246.

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE [CITY/TOWN] OF _____, ARIZONA, AMENDING THE CITY/TOWN CODE CHAPTER ____, "_____" BY ADDING REGULATIONS FOR THE USE OF FIREWORKS.

WHEREAS, the Mayor and Council deem it necessary to adopt certain regulations to protect, enhance and promote the health, safety and welfare of the [City/Town] of _____ and its residents, and

WHEREAS, the Mayor and Council desire to prevent fire hazards which threaten the safety of individuals and private and public improvements, including residential, commercial and industrial dwellings,

WHEREAS, due to the [dry/desert like conditions, risk of wildfires,] and terrain of the community there is a danger of fire with the use of consumer fireworks in the community that can cause significant harm to the community and its residents.

NOW THEREFORE, BE IT ORDAINED by the Council of the City/Town of _____, Arizona, as follows:

Section 1. Article I of Chapter ____, "_____" of the City/Town Code is hereby added:

ARTICLE I. FIREWORKS.

Sec. 1-1 Definitions.

(A) The following words, terms and phrases, when used in this article, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) *Consumer firework* means those fireworks defined by Arizona Revised Statutes Section 36-1601.

(2) *Display firework* means those fireworks defined by Arizona Revised Statutes Section 36-1601.

(3) *Fireworks* means any combustible or explosive composition, substance or combination of substances, or any article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, that is a consumer firework, display firework or permissible consumer firework as defined by Arizona Revised Statute Section 36-1601.

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(4) *Novelty items* means federally deregulated novelty items that are known as snappers, snap caps, party poppers, glow worms, snakes, toy smoke devices, sparklers, and certain toys as defined in Arizona Revised Statute 36-1601.

(5) *Permissible consumer fireworks* means those fireworks as defined by Arizona Revised Statute Section 36-1601 that may be sold within the [City/Town] even where the use of those items has been prohibited.

(6) Supervised public display means a monitored performance of display fireworks open to the public and authorized by permit by the [Fire Marshall/ Fire Chief] or his designee.

Sec. 1-2 Fireworks prohibited; exceptions.

(A) The use, discharge or ignition of fireworks within the [City/Town] is prohibited. [If no exceptions are listed, then the municipality is banning the use of all fireworks, however, exceptions can be made for limited uses such as:] except as provided for in this section: [The use, discharge or ignition of fireworks within the City/Town is limited to (i.e. Fourth of July and New Year's Eve) between the hours of (i.e. 4:00 p.m. and 10:00 p.m.) **or** [The use, discharge or ignition of fireworks is prohibited on all public property including in all public parks and public right of way] **or** [The use, discharge or ignition of fireworks is prohibited on days specified by the Fire Marshall/Chief as presenting a high fire danger as identified by (i.e. posting on the City/Town website)] or [Permissible consumer fireworks may only be used with a permit issued by the [Fire Marshal/Fire Chief], or his designee. A permit shall not be issued, and may be revoked, during time periods of High Fire Danger warnings. The [Fire Marshal/Fire Chief] has authority to impose conditions on any permits granted].

(B) Nothing in this section or article shall be construed to prohibit the use, discharge or ignition of novelty items or the occurrence of a supervised public display of fireworks.

(C) Permits may be granted by the [Fire Marshal/Fire Chief] or designee for conducting a properly supervised public display of fireworks. Every such public display of fireworks shall be of such character and so located, discharged or fired, only after proper inspection and in a manner that does not endanger persons, animals, or property. A permit shall not be issued, and may be revoked, during time periods of High Fire Danger warnings. The [Fire Marshal/Fire Chief] has authority to impose conditions on any permits granted.

(D) Failure to comply with any permit requirements issued by the [Fire Marshal/Fire Chief] is a [civil/criminal] offense punishable by [flat civil fine for each violation or schedule of progressive fines for multiple permit violations].

Sec. 1-3 Sale of Fireworks.

(A) No person shall sell or permit or authorize the sale of permissible consumer fireworks to a person who is under sixteen years of age.

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(B) No person shall sell or permit or authorize the sale of permissible consumer fireworks in conflict with state law.

Sec. 1-4 Posting of signs by persons engaged in the sale of fireworks; civil penalty.

(A) Prior to the sale of permissible consumer fireworks, every person engaged in such sales shall prominently display signs indicating the following:

(1) The use of fireworks, except novelty items as defined by [City/Town] Code, including permissible consumer fireworks is prohibited.

(2) Consumer fireworks authorized for sale under state law may not be sold to persons under the age of 16.

(B) Signs required under this section shall be placed at each cash register and in each area where fireworks are displayed for sale.

(C) The Fire [Marshall/Chief] or designee shall develop regulations concerning the size and color of the required signs and shall develop a model sign. The required sign regulations and model sign shall be posted on the [City's/Town's] website and filed with the Clerk's office.

(D) Failure to comply with subparts A and B of this section is a [civil/criminal] offense punishable by [civil fine of $_____]

Sec. 1-5. Authority to enforce violations of this article; means of enforcement.

(A) The [Fire Chief/Fire Marshal] or designee, a [City/Town] police officer or marshal, or the [City/Town Attorney] may issue civil complaints to enforce violations of this article designated as civil offenses.

(B) Any person authorized pursuant to this section to issue a civil complaint may also issue a notice of violation specifying actions to be taken and the time in which they are to be taken to avoid issuance of a civil or criminal complaint.

(C) A [City/Town] police officer or marshal or the [City/Town Attorney] may issue criminal complaints to enforce this article.

Sec. 1-6 Liability for emergency responses related to use of fireworks; definitions

(A) A person who uses, discharges or ignites permissible consumer fireworks, fireworks or anything that is designed or intended to rise into the air and explode or to detonate in the air or to fly above the ground, is liable for the expenses of any emergency response that is required by such use, discharge or ignition. The fact that a person is convicted or found responsible for a violation(s) of this article is prima facie evidence of liability under this section.

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(B) The expenses of an emergency response are a charge against the person liable for those expenses pursuant to subpart A of this section. The charge constitutes a debt of that person and may be collected proportionately by the public agencies, for-profit entities or not-for-profit entities that incurred the expenses. The person's liability for the expense of an emergency response shall not exceed [Dollar Amount] for a single incident. The liability imposed under this section is in addition to and not in limitation of any other liability that may be imposed.

(C) For the purposes of this section:

(1) "Expenses of an emergency response" means reasonable costs directly incurred by public agencies, for-profit entities or not-for-profit entities that make an appropriate emergency response to an incident.

(2) "Reasonable costs" includes the costs of providing police, fire fighting, rescue and emergency medical services at the scene of an incident and the salaries of the persons who respond to the incident.

Sec. 1-7. Penalty.

The penalty for violating any prohibition or requirement imposed by this article is a class three misdemeanor unless another penalty is specifically provided for.

PASSED AND ADOPTED by the [City/Town] Council of _____ this ____ day of _____, 2010.

ATTEST:

CITY/TOWN OF _____, an Arizona municipal corporation

_____
"_____"
City/Town Clerk

_____
"_____"
Mayor

APPROVED AS TO FORM:

_____
"_____"
City/Town Attorney

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