

Fraser City Council - Regular Meeting
Thursday – August 9, 2012 - 7:00 P.M.
Municipal Building

A Regular Meeting of the Fraser City Council was conducted on the above date at the City Municipal Building, located at 33000 Garfield Road, Fraser, County of Macomb, Michigan.

Present: Mayor Hagerty and Council Members Accavitti, Blanke, Carnagie,
Cilluffo, Jennings and Morelli
Absent: None
Also Present: Richard E. Haberman, City Manager
Kathy Kacanowski, City Clerk
Jack Dolan, City Attorney

1. **Call Meeting to Order** - Mayor Hagerty called the regular meeting to order at 7:00 p.m.

2. **Pledge of Allegiance**

Following the pledge, there was a moment of silence for two Fraser residents, Todd Lambka and Ryan Roberts, who recently passed away.

3. **Approval of Agenda**

Member Cilluffo moved, seconded by Member Carnagie, to ADD UNDER PRESENTATIONS TO WELCOME DIRECTOR GEORGE ROUHIB TO SUMMARIZE THE RECENT MICHIGAN STATE POLICE INVESTIGATION. THIS WOULD ALLOW FOR TRANSPARENCY AND CLOSURE FOR THE RESIDENTS OF FRASER AND COUNCIL.

The motion carried unanimously.

Member Morelli moved, seconded by Member Accavitti, to APPROVE THE AGENDA AS AMENDED.

The motion carried unanimously.

4. **Citizen Participation on Agenda Items** - none

5. **Presentations**

Public Safety Director, George Rouhib, spoke regarding the recent Michigan State Police Investigation of Alameda degrees. Discussion followed regarding this issue.

6. **Public Hearings** - None

7. **Consent Agenda**

Member Morelli moved, seconded by Member Jennings, to APPROVE THE CONSENT AGENDA ITEMS AS PRESENTED.

- a. Approval of Minutes of the July 12, 2012 Regular Council meeting.
- b. Approval of Bills for the Month of July 2012 in the amount of \$1,076,976.07
- c. Receive and file the Minutes of the May 16, 2012 Planning Commission meeting.
- d. Proclamation declaring September 2012 as National Alcohol and Drug Addiction Recovery Month.
- e. Appointment of Joanne Barr to the Planning Commission.

The motion carried unanimously.

8. **Requests For Council Action**

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- a. **Request Council set the Public Hearing on the IFT request from SGC Enterprises, 17430 Malyn Blvd, in Fraser in the amount of \$4,453,613 for new equipment estimated to create 20 new jobs for September 13, 2012 at 7:00 pm.**

Member Morelli moved, seconded by Member Blanke, to APPROVE SETTING THE PUBLIC HEARING ON THE IFT REQUEST FROM SGC ENTERPRISES, 17430 MALYN, IN THE AMOUNT OF \$4,453,613 FOR NEW EQUIPMENT ESTIMATED TO CREATE 20 NEW JOBS FOR SEPTEMBER 13, 2012 AT 7:00 PM.

The motion carried unanimously.

- b. **Request Council waive bid requirements and approve purchase of property located at 33080 Groesbeck and vacant lot on Mulvey 03-11-31-380-001 in the amount of \$19,453.64 with properties to be sold to Mr. Anthony Girgenti, owner of adjacent parcel on Groesbeck to improve the parcel making it developable and providing economic development potential and increased property value to the City of Fraser. Mr. Girgenti will donate the Mulvey property to the City of Fraser for public use to be determined.**

Randy Warunek spoke regarding parking issues at 14 Mile and Groesbeck and Mr. Girgenti advised he does not intend to enter into a parking agreement again. Mr. Girgenti was asked of his plans for the property and he advised short term he plans to fix the building's roof and get a tenant with the possibility of selling to a larger franchise in the future.

Member Jennings moved, seconded by Member Morelli, TO ADOPT THE RESOLUTION TO WAIVE BID REQUIREMENTS AS PRESENTED. Attorney Dolan advised this is a two-part motion – first to waive the bid requirements and second to sell the property to Mr. Girgenti.

At this time, 9:00pm, Mayor Hagerty requested a break while the video tape was changed; meeting resumed at 9:15 pm.

Discussion continued with Council advising they need more time to review this item and stating that the City may want to keep the parcel and partner with Mr. Girgenti. Member Morelli inquired whether Mr. Girgenti had any concern with this and he stated he would like to have their decision at the next meeting. Randy suggested a city sign be erected at this corner. Member Jennings chose to amend her motion.

Member Jennings moved, seconded by Member Accavitti, TO POSTPONE THIS ITEM TO THE SEPTEMBER MEETING.

The motion carried unanimously.

- c. **Request Council approve the assignment of the contract dated on or about August 29, 2005 between the City and C & R Maintenance, d/b/a Rizzo Services, Inc. to Rizzo Services, Inc. contingent on Rizzo Services, Inc. providing notice to the City that all necessary steps have been completed for the assignment.**

Member Jennings moved, seconded by Member Accavitti, TO APPROVE THE ASSIGNMENT OF THE CONTRACT DATED ON OR ABOUT AUGUST 29, 2005 BETWEEN THE CITY AND C & R MAINTENANCE, d/b/a RIZZO SERVICES TO RIZZO SERVICES, INC. CONTINGENT ON RIZZO SERVICES, INC. PROVIDING NOTICE TO THE CITY THAT ALL NECESSARY STEPS HAVE BEEN COMPLETED FOR THE ASSIGNMENT.

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RIZZO SERVICES, INC. MUST COMPLY WITH ALL OF THE CONTRACTOR OBLIGATIONS OF THE CONTRACT AND THIS AUTHORIZATION FOR THE ASSIGNMENT WILL EXPIRE WITHIN 90 DAYS IF NOT COMPLETED BY THEN.

The motion carried unanimously.

d. Discussion with Council on outstanding issues regarding the upcoming water rate recommendations.

Manager Haberman provided a report regarding fixed costs and water/sewer rates proposed by Detroit Water and Sewer Department.

e. Request Council approve an Ordinance governing charitable collection in traffic intersections in Fraser.

Lt. Kolke briefly spoke regarding this item and suggested the inclusion of vests only. Mayor Hagerty inquired of location restrictions and frequency of days allowed. Member Accavitti suggested allowing City Manager the option to expand how often groups may solicit.

Mayor Hagerty noted it was discussed at the last meeting that money generated from this ordinance be included in the Public Safety budget. Attorney Dolan advised it does not need to be included in the ordinance. Manager Haberman advised it will be added to the fee schedule which is brought to Council.

Member Jennings moved, seconded by Member Carnagie, TO APPROVE THE ORDINANCE GOVERNING CHARITABLE COLLECTION IN TRAFFIC INTERSECTIONS IN FRASER AS AMENDED.

ORDINANCE NO. 359

AN ORDINANCE REGULATING SOLICITATION OR STANDING IN THE TRAVELED PORTION OF THE ROADWAY, PROVIDING FOR REPEALER, SEVERABILITY, PENALTIES AND EFFECTIVE DATE.

THE CITY OF FRASER ORDAINS:

Section 1. Preamble.

WHEREAS, in order to protect public health, safety and welfare and to advance legitimate and rational regulation of conduct within the traveled portion of streets and roads within the city, to avoid and limit injuries to pedestrians, automobile collisions, injuries to occupants of motor vehicles, in order to avoid traffic congestion and interruption and otherwise to promote and protect public health, safety and welfare, the city is desirous of regulating solicitation or standing in the traveled portion of the roadway by persons.

Section 2. Chapter 25 of the Code of Ordinances is amended and revised adding Article VIII as follows:

25-67. Definitions.

As used in this Article, unless the context requires a different meaning, the following words and phrases shall have a meaning ascribed by this Section.

- A. Roadway. Shall mean the area of a paved or unpaved private, or public street, highway or road designed for vehicular travel generally including the area from curb to curb, or if no curb is present, from shoulder to shoulder.
- B. Solicitation. Shall mean to, by words or other conduct, to request or invite the receipt of money or other personal property.
- C. Standing. Shall mean to remain within the traveled portion of the roadway other than is reasonably necessary to traverse across the

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roadway, or to complete activity within an area of the roadway necessitated by an emergency such as a traffic accident, mechanical breakdown, or other similar event.

25-68. Location Restrictions.

Solicitation or standing in the traveled portion of a roadway within the City of Fraser is only permitted at the intersection of 14 Mile Road and Garfield, any of the four quadrants, or the intersection of 14 Mile Road and Utica, any of the four quadrants.

25-69. Frequency of Solicitation or Standing.

Any individual or group may only solicit or stand at a permitted intersection on two occasions not more than three consecutive days in each calendar year (365 days January 1st through December 31st).

25-70. Required Attire.

All persons soliciting or standing as permitted under this section, shall be attired in light colored clothing, wearing a reflective vest which is of a character and quality approved by the United States Department of Transportation for Highway Workers. In the event that such persons are acting for or on behalf of any entity or agency, lettering identifying such entity or agency upon clothing, a hat, or any small container utilized by such individuals.

25-71. Reflective Cones.

Such persons shall attempt to move off the roadway portion of the road when traffic is moving and shall locate two highly reflective orange cones in the center of the roadway and attempt to operate within that area when engaged in activity and return to that area when not engaged in solicitation activity and traffic is not moving.

25-72. Minors Restricted.

Minors are prohibited from engaging in solicitation or standing pursuant to the provisions of this Article.

25-73. Restrictions Objects Carried.

Persons shall only carry or hold a container of a small size, shape and weight so as to not impede safe pedestrian and vehicular movement as determined by the City Manager. Signs and other objects are prohibited unless approved by the City Manager.

25-74. Approval Required.

Persons and entities shall obtain the approval of the City Manager who shall require a name, address and phone number and who shall grant approval unless such applicant has previously violated this ordinance within the last two years, or such approval would allow for violation of sections of this ordinance.

Section 3. Penalty. Any entity, organization, employee, or person who violates the terms and provisions of this Article shall be guilty of a civil infraction punishable by up to a \$500.00 fine plus costs. Each instance of solicitation or standing, is considered a separate offense subject to penalties under the provisions of this section.

Section 4. Repealer. All ordinances or parts of ordinances in conflict herewith are repealed only to the extent necessary to give this ordinance full force and effect.

Section 5. Severability. If any article, section, subsection, sentence, clause, phrase, or portion of this ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of remaining portions of the ordinance, it being the intent of the City that this ordinance shall be fully severable.

Section 6. Effective Date. This Ordinance shall be effective immediately after publication of notice of its adoption.

The motion carried unanimously

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- f. **Request Council approve amending Section 10.3-Fraser’s Code of Ordinance Chapter 10, by repealing certain provisions of the chapter regulating fireworks and replacing them with a new ordinance regulating fireworks in order to promote, preserve and protect the public health, safety and welfare of the residents of the City of Fraser.**

ORDINANCE NO. 360

TO AMEND THE CITY OF FRASER CODE OF ORDINANCES, CHAPTER 10, BY REPEALING THE CURRENT PROVISIONS OF THE CODE REGULATING FIREWORKS INCLUDING AMENDMENTS TO THE INTERNATIONAL FIRE CODE ADOPTED PURSUANT TO SEC. 10-3 AND REPLACING IT WITH A NEW ORDINANCE REGULATING FIREWORKS, TO PROVIDE FOR DEFINITIONS, SALE OF FIREWORKS, FIREWORKS USE AND DISCHARGE, PYROTECHNIC DISPLAYS, PERMITTING, APPLICATION PROCEDURES, PERMIT RENEWAL, PERMIT REVOCATION OR SUSPENSION, INVESTIGATION, PENALTIES, REPEALER, SEVERABILITY, AND EFFECTIVE DATE.

THE CITY OF FRASER ORDAINS:

Section 1. Preamble.

WHEREAS, an ordinance to amend the City of Fraser’s Code of Ordinances Chapter 10, by repealing certain provisions of the Chapter regulating fireworks and replacing them with a new ordinance, regulating fireworks, in order to promote, preserve, and protect the public health, safety and welfare of the residents of the City of Fraser and persons situated within the City, to protect and promote the peaceful enjoyment of property, to prevent disturbances of the peace, injury to persons, injury to property, fire hazards, litter and to provide for the regulation of fireworks, including that but not limited to use, discharge, pyrotechnic displays, manufacturing, sale, and storage and use of fireworks for the promotion and protection of public health, safety, and welfare.

Section 2. Chapter 10, fire prevention and protection, of the City of Fraser Code of Ordinances shall be and is hereby amended and revised adding Article II Fireworks as follows:

ARTICLE II. FIREWORKS

§ 10-10 Definitions.

For the purposes of this Chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACT. The Michigan Fireworks Safety Act, Public Act 256 of 2011, MCL 28.451 et seq.

APA STANDARD 87-1. APA standard 87-1, standard for construction and approval for transportation of fireworks, novelties, and theatrical pyrotechnics, published by the American pyrotechnics association of Bethesda, Maryland.

ARTICLES PYROTECHNIC. Pyrotechnic devices for professional use that are similar to consumer fireworks in chemical composition and construction but not intended for consumer use, that meet the weight limits for consumer fireworks but are not labeled as such, and that are classified as UN0431 or UN0432 under 49 CFR 172.101.

BUREAU. The Department of Licensing and Regulatory Affairs' Bureau of Fire Services.

CITY. The City of Fraser.

CONSUMER FIREWORKS. Firework devices that are designed to produce visible and audible effects by combustion, that are required to comply with the construction, chemical composition, and labeling regulations promulgated by the United States consumer product safety commission under 16 CFR parts 1500 and 1507, and that are listed in APA standard 87-1, 3.1.2, 3.1.3, or 3.5. Consumer fireworks are often commonly known as, but not limited to, sky rockets, bottle rockets, missile-type rockets, helicopters, aerial spinners, roman candles, mine and shell devices, aerial shell kits, firecrackers, chasers, and certain multiple tube fireworks devices. Consumer fireworks does not include low-impact fireworks.

CONSUMER FIREWORKS CERTIFICATE. The certificate issued by the Department which allows a person to sell consumer fireworks in accordance with the Act.

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DEPARTMENT. The Michigan Department of Licensing and Regulatory Affairs.

DISPLAY FIREWORKS. Large fireworks devices that are explosive materials intended for use in fireworks displays and designed to produce visible or audible effects by combustion, deflagration, or detonation, as provided in 27 CFR 555.11, 49 CFR 172, and APA standard 87-1, 4.1.

FIRE MARSHAL. The Fire Marshal of the City of Fraser or his or her designee.

FIREWORKS. Any composition or device, except for a starting pistol, a flare gun, or a flare, designed for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation. Fireworks consist of consumer fireworks, low-impact fireworks, articles pyrotechnic, display fireworks, and special effects.

LOW-IMPACT FIREWORKS. Ground and handheld sparkling devices as that phrase is defined in APA standard 87-1, 3.1, 3.1.1.1 to 3.1.1.8, and 3.5. Low impact fireworks are often commonly known as, but not limited to, sparklers, cylindrical fountains, cone fountains, illuminating torches, wheels, ground spinners, flitter sparklers, certain toy smoke devices, certain wire sparklers/dipped sticks, and certain multiple tube fireworks devices.

NATIONAL HOLIDAY. As used in this Article, a national holiday is any of the following: New Years Day (January 1); Birthday of Martin Luther King Jr. (third Monday in January); Washington's Birthday (third Monday in February); Memorial Day (last Monday in May); Independence Day (July 4); Labor Day (first Monday in September); Columbus Day (second Monday in October); Veterans Day (November 11); Thanksgiving Day (fourth Thursday in November); and Christmas Day (December 25).

NFPA. The National Fire Protection Association headquartered at 1 Batterymarch Park, Quincy, Massachusetts.

NOVELTIES. The term "novelties" shall have the same meaning as set forth in APA Standard 87-1, 3.2, 3.2.1, 3.2.2, 3.2.3, 3.2.4, and 3.2.5, often commonly known as, but not limited to, party poppers, snappers, toy smoke devices containing not more than 5g of pyrotechnic composition, snakes, glow worms, wire sparklers/dip sticks containing not more than 100g of pyrotechnic composition, and all of the following:

- (1) Toy plastic or paper caps for toy pistols in sheets, strips, rolls, or individual caps containing not more than .25 of a grain of explosive content per cap, in packages labeled to indicate the maximum explosive content per cap.
- (2) Toy pistols, toy cannons, toy canes, toy trick noisemakers, and toy guns in which toy caps as described in subparagraph (i) are used, that are constructed so that the hand cannot come in contact with the cap when in place for the explosion, and that are not designed to break apart or be separated so as to form a missile by the explosion.
- (3) Flitter sparklers in paper tubes not exceeding 1/8 inch in diameter.
- (4) Toy snakes not containing mercury, if packed in cardboard boxes with not more than 12 pieces per box for retail sale and if the manufacturer's name and the quantity contained in each box are printed on the box; and toy smoke devices.

PERMANENT BUILDING or PERMANENT STRUCTURE. Any building or structure that is affixed to a foundation on a site that has fixed utility connections and that is intended to remain on the site for more than 180 consecutive calendar days, including stores and Consumer Fireworks Retail Sales Area (CFRSA) facilities, as defined by NFPA 1124 (2006 edition).

PERSON. An individual, agent, association, charitable organization, company, limited liability company, corporation, labor organization, legal representative, partnership, unincorporated organization, or any other legal or commercial entity.

RETAILER. A person who sells consumer fireworks or low-impact fireworks for resale to an individual for ultimate use.

RETAIL LOCATION. A facility listed under NFPA 1124, 7.1.2.

SPECIAL EFFECTS. A combination of chemical elements or chemical compounds capable of burning independently of the oxygen of the atmosphere and designed and

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intended to produce an audible, visual, mechanical, or thermal effect as an integral part of a motion picture, radio, television, theatrical, or opera production or live entertainment.

TEMPORARY FACILITIES. A building or structure not meeting the definition of Permanent Building or Structure, at which consumer and low-impact fireworks are sold, including the following: consumer fireworks retail stands, tents, canopies, trailers, storage units, and membrane structures.

WAREHOUSE. A permanent building or structure used primarily for the storage of consumer fireworks or low-impact fireworks.

WHOLESALE. Any person who sells consumer fireworks or low-impact fireworks to a retailer or any other person for resale. Wholesaler does not include a person who sells only display fireworks or special effects.

SALE OF FIREWORKS.

§ 10-11. Consumer Fireworks Certificate; Applicable Codes and Standards.

(A) No person, business, corporation, or other entity shall sell, offer for sale, or permit to be sold any consumer fireworks without first having obtained an annual consumer fireworks certificate from the Department, as required by the Michigan Fireworks Safety Act. Violations of this subsection shall be prosecuted as state law misdemeanors punishable as provided in the Act.

(B) The issuance of a consumer fireworks certificate does not itself authorize the sale of fireworks at the certified retail location. Consumer fireworks shall not be sold at a retail location until the Bureau verifies compliance with Section 5 of the Act, NFPA 1124, and all applicable administrative rules promulgated by the Department. Verification can be accomplished by either a site inspection of the retail location by the Bureau, or by submission of a notarized affidavit signed by the person filing the certificate application stating that the certified retail location will be in compliance with Section 5 of the Act, NFPA 1124, and the applicable administrative rules, and that plans have been submitted in accordance with the administrative rules, including submission of a copy of the plans to the fire department for use in pre-incident review and planning, prior to selling consumer and low-impact fireworks.

(C) The holder of a consumer fireworks certificate shall prominently display the original or copy of the certificate in the retail location. Each day the consumer fireworks certificate is not displayed is a separate violation. A person who violates this subsection is responsible for a civil fine of \$100, to be cited and prosecuted as a municipal civil infraction.

(D) Consumer fireworks shall only be sold from a retail location if all of the following applicable conditions are met:

(1) Except as provided in subsection (2), a retail location satisfies the applicable requirements of NFPA 101 and NFPA 1124 not in conflict with the Act.

(2) Beginning January 1, 2013, a permanent building or structure shall be equipped with a fire suppression system in compliance with NFPA 1124.

(3) The retailer at that retail location is licensed under the General Sales Tax Act.

(4) The retailer has a valid federal taxpayer identification number issued by the federal department of the treasury, internal revenue service. However, this requirement does not apply to a retailer that is a sole proprietorship.

(E) A person that knows, or should know, that he or she is required to comply with subsection (D) and who fails or neglects to do so is responsible for a municipal civil infraction punishable by a fine of \$500 for each violation. Each day that a person is in noncompliance constitutes a separate violation. In the event of more than one violation, that person shall be guilty of a misdemeanor.

(F) During periods when consumer fireworks are sold, each retail location selling consumer fireworks either shall be added as an additional insured, or public liability and product liability insurance coverage shall be obtained and maintained, in an amount not less than \$10,000,000 per occurrence. A person that knows, or should know, that he or she is required to comply with this subsection and who fails or neglects to do so is liable

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for a municipal civil infraction punishable by a fine of not more than \$500.00 each day that a person is in noncompliance constitutes a separate violation. Proof of the insurance required by this subsection shall be in writing, be current, and available for inspection upon request.

(G) A person shall not sell low-impact fireworks unless he or she registers with the low impact fireworks retail registry not less than 10 days before selling the fireworks in each calendar year. A person who sells low-impact fireworks at retail and who fails to register shall cease the sale of low-impact fireworks until the person complies with this subsection.

(H) Retailers, wholesalers, and manufacturers are subject to the following codes and standards that are adopted by reference in the applicable administrative rules adopted by the Department, except as specifically amended therein: NFPA 1 (2006 edition); NFPA 101 (2009 edition); NFPA 1123 (2010 edition); NFPA 1124 (2006 edition); NFPA 1126 (2011 edition); and APA Standard 87.1 (2001 edition).

(I) Nothing within these requirements shall exempt retailers who have obtained a consumer fireworks certificate and/or registered online for the sale of low-impact fireworks from ensuring that the proposed site is in compliance with all property maintenance regulations and other applicable City ordinances, or from submitting to the City all applications and supporting documentation required by any other provisions of the City Code and/or the City's Zoning Ordinance pertaining generally, without specific reference to fireworks, to retail sales, permanent or temporary structures, temporary sales, and land use regulations.

§ 10-12. Age of Majority Required for Purchase; Supervision.

Consumer fireworks shall not sold to persons under the age of 18. Violation is a state civil infraction punishable by a civil fine of not more than \$500.

§ 10-13. Safety Review.

The Fire Marshal may, at any time, undertake a review of any fireworks sales or storage area for which a consumer fireworks certificate has been issued or is required, or any discharge of fireworks, to determine whether any violations of state law or local ordinance are occurring which might endanger the public health, safety, and welfare, or which might warrant revocation of the certificate or permit.

§ 10-14 – 10-19. Reserved.

MANUFACTURE AND STORAGE OF FIREWORKS

§ 10-20. Prohibition.

No person shall manufacture any fireworks within the City.

§ 10-21 – 10-23. Reserved.

FIREWORKS AND PYROTECHNIC DISPLAYS

§ 10-24. Ignition, Discharge, and Use of Consumer Fireworks.

(A) A person shall not ignite, discharge, or use consumer fireworks on public property, school property, church property, or the property of another person without that organization's or person's express permission to use those fireworks on those premises.

“Property of another person” includes hotel and motel property, apartment property, and condominium property, where an owner, management company, or association has or retains authority and control over the use of the property or common areas. A person who violates this subsection is responsible for a municipal civil infraction. A person who receives a civil infraction citation for violating this subsection and who commits another violation of this subsection within 72 hours of the first violation shall be guilty of a misdemeanor.

(B) An individual who uses, ignites, or discharges consumer fireworks or low-impact fireworks while under the influence of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance is guilty of a misdemeanor.

(C) An individual who violates the smoking prohibition under NFPA 1124, 7.3.11.1 (smoking within 50 feet of a consumer fireworks retail sales area) is guilty of a

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misdemeanor.

(D) Consumer fireworks shall not be used in the City, except on the day preceding, the day of, and the day after a national holiday. When using any fireworks within the City, a person shall not use them in a manner inconsistent with or contrary to the manufacturer's directions for use, or in a manner which could reasonably be foreseen to cause, or which actually causes, harm to another or to property, or within or upon public roads, walks, or rights-of-way, or within or upon private roads or private property of another without express permission, or which causes, creates, or perpetuates a violation of any provision of the City Code, including but not limited to:

- (1) Disturbing the public peace;
- (2) Violating the City's noise ordinances;
- (3) Violating the City's nuisance ordinances; or
- (4) Creating or depositing litter in violation of the City's littering ordinances.

All other City ordinances not adopted pursuant to the Act and not directly or specifically targeted at the use of consumer fireworks shall continue to apply and may be enforced at any time of the year, even on the day before, day of, or the day after a national holiday.

(E) No person shall ignite fireworks or novelties other than in a manner prescribed by the manufacturer's directions for use, or in the absence of directions, by the use of any ignition device other than a match, punk, or lighter. A "punk" is defined as a long, thin piece of wood covered in a substance that burns very slowly, producing only heat, with no flame. Blowtorches, open flames, bonfires, grills, and other sources of heat and fire and ignition with flames larger or stronger than those of a match or lighter are prohibited as sources of ignition for fireworks and novelties. No person under the age of 18 shall ignite consumer fireworks.

(F) No person shall discharge fireworks or novelties other than in a manner prescribed by the manufacturer's directions for use, and no person shall discharge consumer fireworks while within a building or enclosed space; within 50 feet of a flame or flammable surface; within 20 feet of a property line; within any public roadway or public right-of-way; within, upon, or from a motor vehicle; at any person, vehicle, or conveyance; within 500 feet of a gasoline service station; during weather conditions involving wind speeds in excess of 10 miles per hour; from any location not at ground level; from any surface that is not flat and level; without keeping a bucket of water or garden hose ready to address accidents; within 25 feet of a building; from within any type of container or other object that could reasonably be foreseen to impede the aerial progress of the firework, or to cause a fire or explosion, after its ignition; or between the hours of 11:00 p.m. and 7:00 a.m.

(G) An owner, occupant, or other person with control of the real property shall not allow, permit, or otherwise consent to the possession or display of fireworks on the property in violation of this Act or any other provision of the Code of Ordinances, or state law. An owner, occupant, or other person with control of the real property shall be presumed to have consented to the possession or display of fireworks on the property if law enforcement or fire officials observe and document the existence of unlawful fireworks on the premises, or the existence of the remnants of unlawful fireworks on the premises indicative of the use or display of such fireworks.

(H) Any individual who violates the restrictions in (D), (E), (F), or (G), or who aids, abets, perpetuates, participates in, or otherwise promotes the actions of the individual that violate said restrictions, may be cited and prosecuted for the applicable ordinance violation(s) and/or shall be responsible for a municipal civil infraction. If the unlawful activity does not cease or resumes within 72 hours after issuance of a municipal civil infraction citation, the owner, occupant, or other person with control of the real property where the violations are occurring and/or the person who has or shares control of the fireworks shall be guilty of a misdemeanor.

(I) A law enforcement officer and/or fire official may confiscate and impound all fireworks and fireworks paraphernalia involved in causing a violation of this article or which are found to be within the access and control of the violator(s). If the impounded items are lawful to possess, they may be retained as evidence until any court proceedings or citations have been adjudicated and any probationary periods have been completed. If the impounded items are unlawful to possess, the police department or fire department shall dispose of or destroy the items in accordance with evidence protocols that will still

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allow for effective prosecution of the charged offenses without actual retention of the items. If any fireworks are retained by the City, they shall be stored in compliance with the Act and rules promulgated under the Act. The person from whom fireworks are seized under the Act or this Article shall pay the actual costs of storage and/or disposal of the seized fireworks. The police department may dispose of the seized fireworks by providing them to a disposal organization approved by the chief of police or designee, or by allowing them to be used by City police, fire, and code enforcement agencies for training purposes.

(J) Unless otherwise specified herein, novelties are not subject to any of the regulations in this Article, except that they may not be utilized in such a manner as to cause, create, or perpetuate a violation of any other section of the City Code of Ordinances.

§ 10-25. Display Fireworks and Pyrotechnic Special Effects; Permit Required.

No person shall discharge any Display Fireworks without a permit issued by the City Council. Pyrotechnic special effects shall not be discharged or displayed without a permit issued by the Fire Marshal. Permit applicants shall follow the procedures set forth in §§ 20-21 through 20-125 of this article. Permits are not transferable and shall not be issued to a minor.

§ 10-26. Responsibility.

(A) An owner, occupant, or other person with control of real property shall not allow, permit, or otherwise assent to the possession or display of Display Fireworks on the property or an adjacent public way if such possession or display is in violation of this subdivision.

(B) An owner, occupant, or other person with control of real property shall be presumed to have assented to the possession or display of Display Fireworks on the property or adjacent public way in violation of this subdivision if law enforcement or fire officials observe and document the existence of unlawful fireworks on the premises or the adjoining public way, or the existence of the remnants of unlawful fireworks on the premises or adjoining public way indicative of the use or display of such fireworks.

(C) A person who pleads to or is found responsible for a violation of subsection (A) shall clean up any fireworks remnants on or adjoining the person's property, or pay the City's costs for such clean up, and reimburse the City's actual costs for destruction of any unlawful fireworks and materials impounded by law enforcement or fire officials during investigation of the unlawful activity under subsection (A).

(D) A violation of subsections (A) or (C) is a municipal civil infraction. If the unlawful activity does not cease after issuance of a municipal civil infraction citation, the owner, occupant, or other person with control of the real property shall be guilty of a misdemeanor.

§ 10-27 – 10-29. Reserved.

PERMIT PROCEDURES

§ 10-30. Application; Renewal.

(A) Every applicant for a permit to use or discharge Display Fireworks and/or pyrotechnic special effects shall submit to the Fire Department, with a nonrefundable application fee, current and fully completed application on a form provided by the Fire Department.

(B) The fees shall be set by the City's fee Resolution in an amount to cover the cost of investigation, review, and inspection by the City of the premises which will be used for the use or discharge of Display Fireworks and/or pyrotechnic special effects.

(C) A permit shall not be issued to a nonresident person, firm, or corporation for ignition of articles pyrotechnic or Display Fireworks until the person, firm, or corporation has appointed in writing a resident member of the bar of this state or a resident agent to be the legal representative upon whom all process in an action or proceeding against the person, firm, or corporation may be served.

(D) All applications shall contain the following information:

- (1) The name, residence address, and telephone number of a resident agent

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who is a natural person (no post office boxes will be accepted as legal addresses);

(2) The name, residence address, and telephone number of the applicant:

(a) If the applicant is a corporation, the name, residence address, and telephone number of each of the officers and directors of the corporation and of each stockholder owning more than 10% of the stock of the corporation if that individual is or will be involved in the management and/or operation of the business. The applicant shall also provide the name, residence address, and telephone number of each individual who will be involved in the management and/or operation of the business, as well as documentation that the corporation is in good standing in the state of incorporation;

(b) If the applicant is a partnership, the name of the partnership and the name, residence address, and telephone number of each of the partners having at least a 10% ownership interest, as well as any individual who is or will be involved in the management and/or operation of the business;

(c) If the applicant owns stock or has a financial interest in any other business which sells or manufactures fireworks, the name, address, and telephone number of the corporation and the name, address, and telephone number of each such business;

(3) The address and legal description of the property where the fireworks will be displayed, or where pyrotechnic special effects will be displayed;

(4) Authorization for the City, its agents and employees to seek information and conduct a safety inspection of the premises where fireworks will be displayed, or where pyrotechnic special effects will be displayed. The applicant shall give such additional information and identification necessary to discover the truth of the matters required to be set forth in the application; and

(5) The application shall be signed and sworn to by the applicant.

(E) Permits. In addition to the other conditions set forth in this section, permit applications shall be subject to background investigations to determine whether the applicant has ever been involved in criminal or fraudulent activities, or has ever had a license or permit suspended or revoked for cause.

(1) If, as a result of the investigation, the Fire Marshal or Public Works Director has reasonable cause to believe that the applicant may cause or present a danger to public safety if granted a fireworks display permit, the City Council may deny the application.

(2) If, as a result of the investigation, the Fire Marshal or Public Works Director has reasonable cause to believe that the applicant may cause or present a danger to public safety if granted a pyrotechnic special effects display permit, the Fire Marshal may deny the application.

(F) Applicants for a permit to use, discharge, or display fireworks or pyrotechnic special effects must demonstrate financial responsibility in the form of a bond or insurance policy in an amount, character, and form deemed necessary by the City Council for the protection of the public.

(G) Before granting a permit to use, discharge, or display fireworks, the City Council shall rule on the competency and qualifications of the operator of the display as required under NFPA 1123, and the time, place, and safety aspects of the display.

(H) Cost of policing. Fireworks displays vary in size and scope, and displays of large magnitude cause the City to incur significant additional expenses for police, fire, and emergency services. Therefore, in addition to the nonrefundable application fee, an applicant for a permit to use, discharge, or display fireworks shall deposit with the City, as a condition of enjoying the privileges inherent in receipt of a permit, an amount reasonably calculated to reimburse the City for the cost of additional police and emergency services. The City shall hold such amount, to be determined by the City Council at the time the permit application is considered, in escrow until after the fireworks display. In determining the amount, the City Council may utilize its past experiences and the experiences of other communities. The City shall itemize its additional police and

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emergency services expenses incurred as a result of the fireworks display and may draw from the escrowed funds to achieve full reimbursement. Remaining funds shall be returned to the permit applicant. In the event that the escrowed funds are insufficient to cover the City's actual costs under this division (H), the City shall serve an invoice upon the permit applicant with a demand for payment. Failure of a permit applicant to comply with any of the provisions of this division (H) shall be a misdemeanor.

(I) Term. Permits for the use or discharge of Display Fireworks or pyrotechnic special effects are valid only for the date(s) and time(s) stated on the permit itself. Each subsequent use or discharge of Display Fireworks or pyrotechnic special effects shall require a new permit, and the applicant shall follow the application process set forth in this article.

(J) Display permit conditions. The issuance of a permit for the use or discharge of Display Fireworks or pyrotechnic special effects shall be conditioned upon compliance with all of the terms and conditions of this article, as well as the provisions of Chapter 33 of the International Fire Code. In addition, the issuance of such a permit shall be conditioned upon the following:

(1) The applicant and property owner must execute a written agreement, in a form approved by the City Attorney, to allow police, fire, and emergency personnel designated by the City to be present on the premises before, during, and after the fireworks or pyrotechnic special effects display for purposes of supervising and inspecting the display and surrounding conditions for public safety hazards and violations of City codes and ordinances; and

(2) The applicant and property owner must execute an indemnification agreement, in a form approved by the City Attorney, to indemnify the City for any and all liability or damages incurred by any person or entity as a result of the fireworks or pyrotechnic special effects display.

§ 10-31. Investigation.

(A) Upon receipt of the fully completed application, fees, and such other information as may be required or requested by the Fire Department, the Fire Marshal shall schedule a safety inspection to examine the premises where fireworks will be displayed, or where pyrotechnic special effects will be displayed.

(B) If the Fire Marshal finds reasonable cause to believe that other code violations exist which are not fire safety related, the Fire Marshal may refer the application to the Building Official, or his or her designated representative, who shall cause a thorough inspection of the premises to be made to ensure that the premises are in compliance with all pertinent provisions of state law and local ordinances. The results of such inspections shall be returned to the Fire Marshal within 30 days of the date the application was referred.

(C) For fireworks display permits, the Fire Marshal shall forward his or her recommendation to the City Council for consideration of the permit application within 120 days of receipt of the properly completed application. For pyrotechnic special effects display permits, the Fire Marshal shall issue a decision to grant or deny the permit within 60 days of receipt of the properly completed application.

§ 10-32. Certificate or Permit; Refusal, Suspension, Revocation, or Nonrenewal.

A permit issued under this article may be refused by the Fire Marshal or suspended, revoked, or not renewed by the City Council for cause. The term CAUSE as used in this Article, shall include the doing or omitting of any act or permitting any condition to exist on the premises for which a permit is issued, which act, omission, or condition is contrary to the health, safety, and welfare of the public, is unlawful, irregular, or fraudulent in nature, is unauthorized or beyond the scope of the permit issued, or is forbidden by this Article or any applicable law. Cause shall include but not be limited to:

(A) Fraud or material misrepresentation in the application;

(B) Fraud or material misrepresentation in the operation of the business or during a safety inspection;

(C) Any material violation of this article or of the regulations authorized herein;

(D) Any violation of federal or state law or local ordinance which creates a risk to the health, safety, or welfare of the community;

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(E) Conducting the business in an unlawful manner or in such a manner as to constitute a maintenance of a nuisance upon or in connection with the premises for which a permit is issued. For purposes of this Article, NUISANCE shall be given its normal and customary meaning and shall include the nuisances found within Chapter 203 of this code as well as, but not be limited to, the following:

- (1) Existing violations of building, electrical, mechanical, plumbing, zoning, health, fire, or other applicable regulatory codes;
- (2) A pattern or practice of patron conduct which is in violation of the law and/or interferes with the health, safety, and welfare of the properties in the area.

(F) Failure by the owner or operator to permit inspection of the premises by the City's agents or employees in connection with the enforcement of this Article;

(G) Failure to pay personal property taxes, other City obligations and real property taxes by February 14 of each year.

§ 10-33. Procedure for Nonrenewal, Revocation, or Suspension.

(A) Before any action is taken concerning revocation or suspension of a permit, the City shall serve the holder of the permit by personal service or first class mail, served or mailed at least ten days prior to a hearing, with notice of hearing before the City Council or a hearing panel designated by the City Council to conduct a hearing and forward a recommendation to the City Council, which notice shall contain the following:

- (1) Date, time, and place of the hearing;
- (2) Notice of the proposed action;
- (3) Reasons for the proposed action;
- (4) Names of witnesses known at the time who will testify;
- (5) A statement that the holder of the permit may be represented by legal counsel, present evidence and testimony, and confront and cross-examine adverse witnesses;
- (6) A statement requiring the holder of the permit to notify the City Attorney's office at least three days prior to the hearing date if he, she, or it intends to contest the proposed action and to provide the names of witnesses known at that time who will testify on his, her, or its behalf.

(B) Upon completion of the hearing, and after a decision by the City Council, the City shall submit to the holder of a permit a written statement of the findings and determination of the City Council within 30 days.

(C) Revocation may occur prior to hearing if there is an immediate and significant risk of harm to persons or property as determined by the Fire Marshal, or his or her designee.

§ 10-34. Denial; Hearing.

(A) Any person whose initial request for a pyrotechnic special effects display permit, is denied by the Fire Marshal shall have a right to a hearing before the City Council, provided a written request for such a hearing is filed with the City Manager within ten days following such denial. The City Council shall have the right to affirm and sustain any refusal to issue a permit or the City Council may grant any such permit.

(B) In addition to the information required in this article, an applicant whose permit under this article was denied by the Fire Marshal should be prepared to submit and discuss any additional information required by the City Council for the appeal hearing.

§ 10-35 - 1039 Reserved.

PENALTIES

§ 10-36. Violations and Penalties.

(A) Unless otherwise provided in this Chapter, if a person knowingly, intentionally, or recklessly violates this Chapter, the person is guilty of a misdemeanor punishable by

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imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

(B) In addition to any other penalty imposed for the violation of the Act or this Article, a person who tenders a plea of guilty, no contest, or responsible to a violation of this Article shall be required to reimburse the City for the costs of storing and disposing of seized fireworks that the City confiscated for a violation of the Act or this Article.

Section 3. Repealer. All ordinances or parts of ordinances including, but not limited to parts of §10-3 in conflict herewith are repealed only to the extent necessary to give this ordinance full force and effect.

Section 4. Severability. If any article, section, subsection, sentence, clause, phrase, or portion of this ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of remaining portions of the ordinance, being the intent of the City that this ordinance shall be fully severable.

Section 5. Effective Date. Provisions of this Ordinance shall become effective twenty (20) days following adoption.

The motion carried unanimously.

9. Report of City Administration/Pending Items

Manager Haberman advised he is in the process of finalizing the union contracts.

10. Report of Mayor and City Council/New Business

Mayor and Council spoke on various topics.

11. Citizen Participation

The following residents voiced their opinions:

Dave Stouder, Linden

Dori Guoin, 33171 Utica

Kent Stonebreaker, 32309 Oxford Ct.

Anna Cameron, 34373 Garfield Circle

Deborah Wright, 15535 Kingston

Pat Harris, 15863 Kingston

12. Adjournment

Member Carnegie moved, seconded by Member Morelli, to ADJOURN
THE REGULAR COUNCIL MEETING OF THURSDAY, AUGUST 9, 2012
AT 10:46 P.M.

The motion carried unanimously.

Respectfully submitted,

Kathy Kacanowski, City Clerk

Doug Hagerty, Mayor