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CITY ADMINISTRATOR'S OFFICE MEMO
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To: Mayor and City Council

From: City Administrator, Kim Downs

Date: May 9, 2017

RE: SF489 Fireworks Bill

A state law signed Tuesday allows merchants to sell and consumers to set off fireworks in time for fourth of July. SF489 Fireworks Regulations Bill reverses decades of a prohibition that allowed only novelty fireworks like sparklers and snakes and now bottle rockets, firecrackers, roman candles and other consumer-grade fireworks during two yearly time Periods-June 1st through July 8th, and December 10th through January 3rd.

Although the bill restricts local governments from banning the sales of fireworks it does give local control over whether they're actually used in a community. In other words, we can decide not to allow any use of fireworks in our community or to allow some, and how much. The state fireworks regulations bill even sets provisions as to what times fireworks can be used 9:00 AM to 10:00 PM, daily during the time periods above with the 4th of July and the Saturdays and Sundays immediately preceding and following with an extra hour-11:00 PM and December 31 and the Saturday and Sundays preceding and following getting an extra hour and a half-12:30 PM. See attached SF489 Fireworks Regulations Bill.

As I read and understand the city's fire code we require an operational permit for both temporary/membrane structures (tents) policy-$35. As for the use of fireworks, that is essentially up to the City Council to amend our city ordinance and/or increase the fee for a temporary/membrane structures (tent).

The Fireworks Regulation Bill has communities going in all different directions. Charles City plans to continue to prohibit usage as they have in the past through zoning restrictions. Nevada plans to prohibit or limit the use of consumer fireworks within their jurisdictions, if determined a public safety risk or a nuisance to neighbors. Newton is prepared to opt out of allowing use within the city limits. Des Moines and Cedar Rapids are considering opting out as well.

Our city code today-160.35 Seizure of Fireworks is as follows:

The Hiawatha Fire Code is hereby amended by adding sections 5601.7.1, as follows:

5601.7 Seizure of fireworks. It shall be unlawful for any person to possess, store, to offer for sale, sell at retail or use or explode any fireworks. The Fire Code Official may issue an Operational Permit for Explosives and/or Pyrotechnic Special Effects Materials for the use of fireworks by artisans in pursuit of their trade in accordance with the Fire Code. Every such use or display shall be handled by a competent operator approved by the Fire Code Official and after proper investigation, not be hazardous to property or endanger any person.

The Fire Code Official shall seize, take, remove, or cause to be removed, at the expense of the owner, all stock of fireworks offered or exposed for sale, stored, or held in violation of the section.

The International Fire Code 2012 (our adopted version) standards and requirements for temporary and permanent tents and membrane structures stay intact and has no need to be amended at this time.

Chief's Marks and Nesslage, Community Development Director, City Attorney Mark Parmenter and I have reviewed the state's Fireworks Regulation Bill and are suggesting the following changes to our 5601.7 Seizure of fireworks:

5601.7 Seizure of fireworks. It shall be unlawful for any person, *or entity*, to possess, store, to offer for sale, sell at retail or use or explode any fireworks, *except as allowed by State law. It shall be unlawful for any person, or entity, to use or explode any fireworks on any City owned or leased property without a permit approved by City Council.*

We are open for further discussion unless you are in agreement with the suggested amended changes to 5601.7 Seizure of Fireworks we ask for you to set a public hearing date for June 7, 2017 at 5:30 PM to begin formal action.

Senate File 489 - Enrolled

Senate File 489

AN ACT

RELATING TO THE POSSESSION, SALE, TRANSFER, PURCHASE, AND USE OF FIREWORKS, PROVIDING PENALTIES, AND INCLUDING EFFECTIVE DATE PROVISIONS.

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.

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

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

(1) Cone fountains.

(2) Cylindrical fountains.

(3) Flitter sparklers.

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

(5) Ground spinners.

(6) Illuminating torches.

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

(8) Wheels.

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

2. *a.* The state fire marshal shall establish a consumer

fireworks seller license. An application for a consumer fireworks seller license shall be made on a form provided by the state fire marshal. The state fire marshal shall adopt rules consistent with this section establishing minimum requirements for a retailer or community group to be issued a consumer fireworks seller license.

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

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

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

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

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

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

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

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

4. The state fire marshal shall adopt rules to:

a. Require that any retailer or community group offering for sale at retail any consumer fireworks, as described in APA 87-1, chapter 3, shall do so in accordance with the national fire protection association standard 1124, published in the code for the manufacture, transportation, storage, and retail

sales of fireworks and pyrotechnic articles, 2006 edition.

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

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

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

(2) At a temporary structure that meets the requirements of paragraph *"a"* between June 13 and July 8 each year, both dates inclusive.

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

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

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

(2) Judicial review of actions of the division of the state fire marshal may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A. If the licensee has not filed a petition for judicial review in district court, revocation shall date from the thirty-first day following the date of the order of the division of the state fire marshal. If the licensee has filed a petition for judicial review, revocation shall date from the thirty-first

day following entry of the order of the district court, if action by the district court is adverse to the licensee.

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

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

b. The state fire marshal shall establish a local fire protection and emergency medical service providers grant program to provide grants to local fire protection service providers and local emergency medical service providers to establish or provide fireworks safety education programming to members of the public. The state fire marshal may also provide grants to local fire protection service providers and local emergency medical service providers for the purchase of necessary enforcement, protection, or emergency response equipment related to the sale and use of consumer fireworks in this state.

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

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

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

1. For purposes of this section:

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

b. "Wholesaler" means a person who engages in the business of selling or distributing consumer fireworks for the purpose of resale in this state.

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

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

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

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

3. *"Explosive"* means any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion with substantially instantaneous release of gas and heat, unless such compound, mixture, or device is otherwise specifically classified by the United States department of transportation. The term *"explosive"* includes all materials which are classified as a class 1, division 1.1, 1.2, 1.3, or 1.4 explosive by the United States department of transportation, under 49 C.F.R. §173.50 , and all materials classified as explosive materials under 18 U.S.C. §841, and includes, but is not limited to, dynamite, black powder, pellet powders, initiating explosives, blasting caps, electric blasting caps, safety fuse, fuse lighters, fuse igniters, squibs, cordeau detonative fuse, instantaneous fuse, igniter cord, igniters, smokeless propellant, cartridges for propellant-actuated power devices, cartridges for industrial guns, and overpressure devices, but does not include ~~*"fireworks"*~~

~~as~~ *"consumer fireworks"*, *"display fireworks"*, or *"novelties"* as those terms are defined in section 727.2 or ammunition or small arms primers manufactured for use in shotguns, rifles, and pistols. Commercial explosives are those explosives which are intended to be used in commercial or industrial operations.

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

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

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

8. The board, upon application, may grant permits for the ~~display~~ use of display fireworks as provided in section 727.2.

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

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

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

2. The use of consumer fireworks or display fireworks, as defined in section 727.2, in state parks and preserves is prohibited except as authorized by a permit issued by the department. The commission shall establish, by rule adopted pursuant to chapter 17A, a fireworks permit system which authorizes the issuance of a limited number of permits to qualified persons to use or display fireworks in selected state parks and preserves.

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

727.2 Fireworks.

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

a. "Consumer fireworks" includes first-class consumer fireworks and second-class consumer fireworks as those terms

are defined in section 100.19, subsection 1. *"Consumer fireworks"* does not include novelties enumerated in chapter 3 of the American pyrotechnics association's standard 87-1 or display fireworks enumerated in chapter 4 of the American pyrotechnics association's standard 87-1.

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

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

2. *Display fireworks.*

a. A person, firm, partnership, or corporation who offers for sale, exposes for sale, sells at retail, or uses or explodes any display fireworks, commits a simple misdemeanor ~~. In addition to any other penalties, the punishment imposed for a violation of this section shall include assessment of~~, punishable by a fine of not less than two hundred fifty dollars. However, ~~the~~ a city council of a city or a county board of supervisors may, upon application in writing, grant a permit for the display of display fireworks by municipalities, fair associations, amusement parks, and other organizations or groups of individuals approved by the city or the county board of supervisors when the display fireworks ~~display~~ will be handled by a competent operator, but no such permit shall

be required for the display of display fireworks at the Iowa state fairgrounds by the Iowa state fair board, at incorporated county fairs, or at district fairs receiving state aid. Sales of display fireworks for such display may be made for that purpose only.

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

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

3. *Consumer fireworks and novelties.*

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

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

c. (1) A person who uses or explodes consumer fireworks or novelties while the use of such devices is prohibited or limited by an ordinance adopted by the county or city in which the fireworks are used commits a simple misdemeanor, punishable by a fine of not less than two hundred fifty dollars.

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

4. *Limitations.*

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

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

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

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

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

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

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

~~3.~~ 5. *Applicability.*

a. This section does not prohibit the sale by a resident, dealer, manufacturer, or jobber of such fireworks as are not prohibited by this section , or the sale of any kind of fireworks if they are to be shipped out of the state, or the sale or use of blank cartridges for a show or the theater, or for signal purposes in athletic sports or by railroads or trucks, for signal purposes, or by a recognized military organization.

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

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

DIVISION II

RULEMAKING

Sec. 11. EMERGENCY RULES. The state fire marshal shall adopt emergency rules under section 17A.4, subsection 3, and section 17A.5, subsection 2, paragraph "b", to implement the provisions of this Act and the rules shall be effective

immediately upon filing unless a later date is specified in the rules. Any rules adopted in accordance with this section shall also be published as a notice of intended action as provided in section 17A.4.

DIVISION III
EFFECTIVE DATE

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

JACK WHITVER President of the Senate	LINDA UPMEYER Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 489, Eighty-seventh General Assembly.

W. CHARLES SMITHSON
Secretary of the Senate

Approved _____, 2017

TERRY E. BRANSTAD
Governor

DRAFT

RESOLUTION NO. 17-
City Council

RESOLUTION SETTING A PUBLIC HEARING DATE TO CONSIDER AMENDING HIAWATHA CODE OF ORDINANCES CHAPTER 160 FIRE CODE §160.35 SEIZURE OF FIREWORKS

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HIAWATHA, IOWA to direct staff to proceed with notification of a public hearing that will be held in the Hiawatha Council Chambers, 101 Emmons Street, before the Hiawatha City Council on Wednesday, June 7, 2017 at 5:30 P.M. regarding amending Hiawatha Code of Ordinances Chapter 160 Fire Code §160.35 Seizure of Fireworks to add language setting Hiawatha's regulations for possessing, storing and selling fireworks due to State Code changes.

AYES:
NAYS:
ABSENT:

PASSED AND APPROVED this 17th day of May, 2017.

_____
Bill Bennett, Mayor

ATTEST:

_____
Kari Graber, Deputy Clerk