City of Carroll

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MEMO TO: Honorable Mayor and City Council Members

FROM: Mike Pogge-Weaver, City Manager MSP-W

DATE: May 18, 2017

SUBJECT: Fireworks

On May 9, 2017, Governor Branstad sign into law Senate File 489 that permits the sale of consumer fireworks in Iowa. Previously only "novelty" fireworks like sparklers were permitted in Iowa. The legislation specifically defines new first-class and second-class fireworks that were previously illegal in Iowa.

Current city ordinance prohibits the sale and use of fireworks in the City of Carroll. Without a change in the ordinance, these prohibitions will remain in place. While the City can clearly regulate the use of fireworks in the city limits, it is questionable if a city can completely prohibit the sale of fireworks in their city limits. It would seem a discussion by the City Council is appropriate at this point. A few items the council should discuss and provide direction to staff on includes:

1. Use of fireworks
    a. Does the City allow the use of first-class consumer fireworks?
    b. Does the City allow the use of second-class consumer fireworks?
    c. Do we add additional date and time restrictions on the use of fireworks?
2. Sale of fireworks
    a. Need to remove prohibition on the sale of fireworks.
    b. Does the City regulate were they are sold?
        i. Ban sales in temporary structures?
        ii. Restrict sales to certain zoning districts?
        iii. Ban sales in residential districts?

Attached to this memo is a copy of Senate File 489, a copy of the current City Ordinance on fireworks and an information sheet showing the various types of consumer fireworks in Iowa by class.

Summary of Senate File 489

New type of permitted fireworks

First-class
Aerial shell kits and reloadable tubes.
Chasers.
Helicopter and aerial spinners.
Firecrackers.
Mine and shell devices.
Missile-type rockets.
Roman candles.
Sky rockets and bottle rockets.
Multiple tube.

Second-class
Cone fountains.
Cylindrical fountains.
Flitter sparklers.
Ground and hand-held sparkling devices.
Ground spinners.
Illuminating torches.
Toy smoke devices that are not classified as novelties.
Wire or dipped sparklers that are not classified as novelties.

State Fire Marshal Role
The state's fire marshal will "establish a consumer fireworks seller license."

- Fireworks sales allowed in permanent structure between June 1 and July 8 and December 10 and January 3 each year.
- Fireworks sales allowed in temporary structure between June 13 and July 8 each year.
- Fire marshals can also call bans on fireworks sales during droughts.
- Fireworks sellers will have to pay a fee in order to sell product, and any individual, company or organization selling fireworks must do so according to national fire protection standards.

Time and date restrictions
Bill sets time and date restrictions on fireworks use as follows:

- **General dates and hours:** 9 a.m. to 10 p.m. from June 1 to July 8 and from Dec. 10 through Jan. 3
- **Special July 4th hours:** 9 a.m. to 11 p.m. on July 4th and the preceding Saturday and Sunday
- **Special NYE hours:** 9 a.m. to 12:30 a.m. on NYE and 9 a.m. to 11 p.m. on Saturdays & Sundays preceding & following NYE

Only authorized to shoot fireworks on your property or on the property of someone who says it's okay to shoot on their land.

Violations of these rules, the bill says, are a simple misdemeanor.

STAFF RECOMMENDATION: That the City Council review and discuss the use and sales of fireworks in the City of Carroll and provide direction on how to proceed forward on the issue.

First Class

Sky rockets/
Bottle rockets

Roman Candle

Aerial Shell devices/
Reloadable Tubes

Firecrackers

Missile—type rockets

Helicopter & aerial
spinners

Chasers

Second Class

Cone Fountains

Cylindrical
Fountains

Flitter Sparklers

Ground Sparklers

Wheels

Ground
Spinners

Sparklers/Novelties

Novelties

Sparklers

Print

Carroll, IA, Iowa Code of Ordinances

41.13 FIREWORKS.

The sale, use and exploding of fireworks within the City are subject to the following:

(Code of Iowa, Sec. 727.2)

1. Definition. The term "fireworks" includes any explosive composition, or combination of explosive substances, or articles prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, and specifically includes blank cartridges, firecrackers, torpedoes, skyrockets, roman candles, or other fireworks of like construction and any fireworks containing any explosive or flammable compound, or other device containing any explosive substance.

2. Regulations. It is unlawful for any person to offer for sale, expose for sale, sell at retail, or use or explode any fireworks; provided the City may, upon application in writing, grant a permit for the display of fireworks by a City agency, fair associations, amusement parks and other organizations or groups of individuals approved by City authorities when such fireworks display will be handled by a competent operator. No permit shall be granted hereunder unless the operator or sponsoring organization has filed with the City evidence of insurance in the following amounts:

A. Personal Injury: $250,000 per person

B. Property Damage: $50,000

C. Total Exposure: $1,000,000

3. Exceptions. This section does not prohibit the sale by a resident, dealer, manufacturer or jobber of such fireworks as are not prohibited; or the sale of any kind of fireworks if they are to be shipped out of State; or the sale or use of blank cartridges for a show or theatre, or for signal purposes in athletic sports or by railroads or trucks for signal purposes, or by a recognized military organization. This section does not apply to any substance or composition prepared and sold for medicinal or fumigation purposes.

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	LINDA UPMEYER
President of the Senate	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