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TO: Mayor and City Council
FROM: Scott E. Simpson, City Attorney
DATE: August 18, 2020
RE: Fireworks Regulations

* * M E M O R A N D U M * *

In the 2020 Legislative Session, the Florida Legislature passed a law, which was signed into law by the Governor, that exempted fireworks from the State law regulations on Independence Day (July 4th), New Year's Eve (December 31st) and New Year's Day (January 1st). Based on this new law City staff did a review of the City's current fireworks regulations. The reason for the review was because in the past it was common knowledge fireworks were illegal in Florida, but there were loopholes in the law that allowed illegal fireworks to be purchased or fireworks could be purchased in other states. However now with the fireworks being exempt from regulation on those three (3) days, which are the days when fireworks are typically used, the wording of the City's regulations becomes very important and the City would have to use only its regulations to restrict fireworks on those days. The City can no longer rely on State law.

There are two (2) problems I see with the City's current fireworks regulations. First, the wording is very poor. The City's regulations prohibit the following: "*fireworks called rockets, crackers, squibs, serpents, Roman candles, smoke bombs, or any other explosive liable to set fire to buildings.*" These terms are not defined and does not adequately describe the prohibited fireworks. Compare our language to just the definition section under State law which reads as follows:

(1) "*Distributor*" means any person engaged in the business of selling sparklers to a wholesaler.

(2) "*Division*" means the Division of the State Fire Marshal of the Department of Financial Services.

(3) "*Explosive compound*" means any chemical compound, mixture, or device the primary or common purpose of which is to function by the substantially instantaneous release of gas and heat.

(4)(a) "*Fireworks*" means and includes any combustible or explosive composition or substance or combination of substances or, except as hereinafter provided, any article prepared for the

purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation. The term includes blank cartridges and toy cannons in which explosives are used, the type of balloons which require fire underneath to propel them, firecrackers, torpedoes, skyrockets, roman candles, dago bombs, and any fireworks containing any explosives or flammable compound or any tablets or other device containing any explosive substance.

(b) "Fireworks" does not include sparklers approved by the division pursuant to s. 791.013; toy pistols, toy canes, toy guns, or other devices in which paper caps containing twenty-five hundredths grains or less of explosive compound are used, providing they are so constructed that the hand cannot come in contact with the cap when in place for the explosion; and toy pistol paper caps which contain less than twenty hundredths grains of explosive mixture, the sale and use of which shall be permitted at all times.

(c) "Fireworks" also does not include the following novelties and trick noisemakers:

1. A snake or glow worm, which is a pressed pellet of not more than 10 grams of pyrotechnic composition that produces a large, snakelike ash which expands in length as the pellet burns and that does not contain mercuric thiocyanate.

2. A smoke device, which is a tube or sphere containing not more than 10 grams of pyrotechnic composition that, upon burning, produces white or colored smoke as the primary effect.

3. A trick noisemaker, which is a device that produces a small report intended to surprise the user and which includes:

a. A party popper, which is a small plastic or paper device containing not more than 16 milligrams of explosive composition that is friction sensitive, which is ignited by pulling a string protruding from the device, and which expels a paper streamer and produces a small report.

b. A booby trap, which is a small tube with a string protruding from both ends containing not more than 16 milligrams of explosive compound, which is ignited by pulling the ends of the string, and which produces a small report.

c. A snapper, which is a small, paper-wrapped device containing not more than four milligrams of explosive composition coated on small bits of sand, and which, when dropped, explodes, producing a small report. A snapper may not contain more than 250 milligrams of total sand and explosive composition.

d. A trick match, which is a kitchen or book match which is coated with not more than 16 milligrams of explosive or pyrotechnic composition and which, upon ignition, produces a small report or shower of sparks.

e. A cigarette load, which is a small wooden peg that has been coated with not more than 16 milligrams of explosive composition and which produces, upon ignition of a cigarette containing one of the pegs, a small report.

f. An auto burglar alarm, which is a tube which contains not more than 10 grams of pyrotechnic composition that produces a loud whistle or smoke when ignited and which is ignited by use of a squib. A small quantity of explosive, not exceeding 50 milligrams, may also be used to produce a small report.

The sale and use of items listed in this paragraph are permitted at all times.

(5) "Manufacturer" means any person engaged in the manufacture or construction of sparklers in this state.

(6) "Retailer" means any person who, at a fixed place of business, is engaged in selling sparklers to consumers at retail.

(7) "Seasonal retailer" means any person engaged in the business of selling sparklers at retail in this state from June 20 through July 5 and from December 10 through January 2 of each year.

(8) "Sparkler" means a device which emits showers of sparks upon burning, does not contain any explosive compounds, does not detonate or explode, is handheld or ground based, cannot propel itself through the air, and contains not more than 100 grams of the chemical compound which produces sparks upon burning. Any sparkler that is not approved by the division is classified as fireworks.

(9) "Wholesaler" means any person engaged in the business of selling sparklers to a retailer.

As is evident, State law provides far more specificity and detail as to what is prohibited than the City's current regulations.

I would also point out that the City's regulations prohibit certain items that State law allows, such as smoke bombs and arguably any form of firework that could set fire to a building, which brings me to my second concern. Is the City uniformly enforcing its current regulations, which not only prohibit use of the listed fireworks but also selling those items. Every TNT box that is sold contains an item technically prohibited by the City's regulation and these TNT boxes are sold in Publix and many other retail stores in the City.

Based on the above, I recommend repealing the City's fireworks regulations. I do not recommend the City attempt to amend the existing regulations because the new State law contains a preemption that effectively only allows local governments to enforce City rules that were in effect as of March 8, 2007. What will be the impact of repealing the City's regulations? Fireworks, as defined by State law, will still be prohibited except for the three (3) exempt days, unless the State law is amended in the future.

ORDINANCE NO. 2020-06

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SOUTH DAYTONA, FLORIDA; REPEALING SECTION 10-13 (FIREWORKS); PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTING ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Florida Statute Chapter 791 (Sale of Fireworks.) regulates the sale and use of fireworks, which is more thorough, detailed and in some situation preempts and supersedes local government regulations.

WHEREAS, the City Council believes it is in the best interest of the City and for the consistency of regulations to repeal the City's fireworks regulations.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF SOUTH DAYTONA, FLORIDA:

Section 1. The City Council of the City of South Daytona hereby repeals Section 10-13 (Fireworks).

Section 2. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or application hereof, is for any reason held invalid or unconstitutional by any Court, such portion or application shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions or application hereof.

Section 3. That all ordinances made in conflict with this Ordinance are hereby repealed.

Section 4. That this Ordinance shall become effective

immediately upon its adoption.

PASSED upon first reading at a regular meeting of the City Council of the City of South Daytona held in the City of South Daytona, Florida, on the ____ day of _____, 2020.

PASSED AND ADOPTED upon second and final reading at a regular meeting of the City Council of the City of South Daytona held in the City of South Daytona, Florida, on the _____ day of _____, 2020.

Bill Hall,
Mayor

ATTEST:

James L. Gillis, Jr.
City Manager