

CLARK COUNTY STAFF REPORT

DEPARTMENT: Community Development – Fire Marshal

DATE: May 23, 2018

REQUESTED ACTION: Modification of Clark County Code 5.28 (Fireworks) to address concerns regarding consistent laws for fireworks use, fire safety, noise, and litter issues, enabling the Council to restrict fireworks use during times of extreme fire risk, and allowing for fees to be implemented for fireworks retailers using tents.

____ Consent XX Hearing ____ County Manager

BACKGROUND

Following two work sessions (October 2017 and April 2018) and two meetings with a group of fireworks stakeholders in 2018, the Fire Marshal was directed by the Council to bring several ordinance change options to hearing for consideration.

These meetings were to discuss a number of concerns raised by the Council as well as by the general public through complaints regarding fireworks. These code change options are to address standardization of fireworks use county-wide (where today the county is divided in half, each with different rules), safety, noise and litter issues related to the use of aerial fireworks devices, enabling the Council to prohibit fireworks during times of extreme fire risk, and allow for fees to be implemented to offset the cost of enforcing fireworks laws.

COUNCIL POLICY IMPLICATIONS

To help offset the cost of enforcement and other activities related to fireworks, the county has the ability to charge fees for retailers that choose to use tents for their sales locations. This is not something that the county has done in the past, however, input from the fireworks industry at the stakeholder meetings has supported the \$156 tent permit fee on top of the \$100 allowed to be charged for permitting under Washington State law. This recommendation was made to the Council at the work sessions.

ADMINISTRATIVE POLICY IMPLICATIONS

During the meetings mentioned above, the Council has expressed an interest in establishing a more robust enforcement method than what has been done in the past. Specifically mentioned was more emphasis placed on the issuance of citations to violators than has been done previously. Citable violations include using fireworks outside of the allowed dates / times, use or possession of illegal devices, and reckless use of fireworks (deliberately aiming at people or property). Depending upon the final decisions made by the Council, code enforcement personnel may be in the field for more evenings or longer hours than before. Additionally, if more emphasis is to be placed on the issuance of citations, it is strongly suggested to have law enforcement personnel accompany Fire Marshal staff during enforcement activities for safety purposes. Based on these variables, the potential exists for the cost of fireworks enforcement to increase.

COMMUNITY OUTREACH

As indicated above, a group of stakeholders was assembled and two meetings were held to discuss these issues. The stakeholder group consisted of fireworks retailers and wholesalers, citizens representing neighborhood associations, and policy makers from Clark County as well as several of the cities within the county. Each meeting had approximately 25 people attending. During those meetings, issues related to fire hazards, noise, differences in city and county codes, enforcement, and public education were discussed. Each attendee had opportunities to express their opinions and positions on the issues.

BUDGET IMPLICATIONS

YES	NO	
	XX	Action falls within existing budget capacity.
		Action falls within existing budget capacity but requires a change of purpose within existing appropriation
		Additional budget capacity is necessary and will be requested at the next supplemental. If YES, please complete the budget impact statement. If YES, this action will be referred to the county council with a recommendation from the county manager.

BUDGET DETAILS


Local Fund Dollar Amount	
Grant Fund Dollar Amount	
Account	
Company Name	

DISTRIBUTION:

Board staff will post all staff reports to The Grid. <http://www.clark.wa.gov/thegrid/>



Jonathan Dunaway
Clark County Fire Marshal



Mitch Nickolds
Director, Clark County Community
Development Department

APPROVED: _____
CLARK COUNTY, WASHINGTON
CLARK COUNTY COUNCIL

DATE: _____

SR# _____

APPROVED: _____
Jim Rumpeltes, Interim County Manager

DATE: _____

BUDGET IMPACT ATTACHMENT

Part I: Narrative Explanation

I. A – Explanation of what the request does that has fiscal impact and the assumptions for developing revenue and costing information

Part II: Estimated Revenues

Fund #/Title	Current Biennium		Next Biennium		Second Biennium	
	GF	Total	GF	Total	GF	Total
Total						

II. A – Describe the type of revenue (grant, fees, etc.)

Part III: Estimated Expenditures

III. A – Expenditures summed up

Fund #/Title	FTE's	Current Biennium		Next Biennium		Second Biennium	
		GF	Total	GF	Total	GF	Total
Total							

III. B – Expenditure by object category

Fund #/Title	Current Biennium		Next Biennium		Second Biennium	
	GF	Total	GF	Total	GF	Total
Salary/Benefits						
Contractual						
Supplies						
Travel						
Other controllables						
Capital Outlays						
Inter-fund Transfers						
Debt Service						
Total						

ORDINANCE NO. 2018-__ - ____

AN ORDINANCE amending portions of Chapters 5.28 and 32.04 of the Clark County Code to address purchase and ignition times, safety and litter related to fireworks.

WHEREAS, the purchase and ignition of fireworks is permitted within the boundaries of Clark County under limited conditions; and

WHEREAS, the conditions that limit purchase and ignition vary depending on the specific location of purchase and/or ignition; and

WHEREAS, the County has received complaints and comments in public meetings regarding the varying conditions, safety and litter related to the purchase and ignition of fireworks; and

WHEREAS, the Council is considering the matter at a duly-advertised public hearing and concludes that adoption will further the public health, safety and welfare; now, therefore,

BE IT ORDERED, RESOLVED AND DECREED BY THE CLARK COUNTY COUNCIL, STATE OF WASHINGTON, AS FOLLOWS:

Section 1. Amendatory. Clark County Code 5.28.010, as most recently amended by Sec. 1 of Ord. 1999-12-01, is hereby amended as follows:

5.28.010 Permit required.

It shall be unlawful for any person, firm or corporation within unincorporated areas of the county of Clark to manufacture, import, possess or sell at wholesale or retail for any use, to discharge fireworks at any place, to make a public display of fireworks, to use a tent from which to sell fireworks at retail or to transport fireworks except as a public carrier delivering to a licensee without first having obtained ((a)) the required permits pursuant to the provisions of this chapter; provided, that no permit is required for the sale and use of agricultural and wildlife fireworks exempted from licensing by the State Fire Marshal by the provisions of Chapter 70.77 RCW; and provided further, that no permit is required for the private possession, transportation or discharge of common fireworks as defined in WAC 212-17-035 during authorized use periods.

Section 2. Amendatory. Clark County Code 5.28.015, as most recently amended by Sec. 1 of Ord. 2006-04-07, is hereby amended as follows:

5.28.015 Application requirements.

(1) Applications for permits required by this chapter shall be submitted in such form and detail as reasonably prescribed by the fire marshal. Such applications shall include at a minimum the applicable permit fees ~~((and debris deposit(s)))~~; state license(s), a drawing of the stand and other key features on the site, insurance certificate(s), storage sites and arrangements; and the names, addresses and phone numbers of the applicant(s) and responsible party(ies).

(2) No later than 5:00 p.m. on the last official county workday of May in the calendar year for which the applicant is seeking a permit, the applicant shall file a fully complete application for the retail sale of fireworks; provided, all persons who held a permit the previous year who seek reissuance of permits shall file with the fire marshal a written “confirmation of intent to apply” by the last business day of January of the year for which a permit is sought to maintain their priority status. Those permit holders who do not follow this procedure will forfeit their priority status and the permit will automatically be set aside to be awarded through a lottery process; provided, that available permits will first be allocated to satisfy the requirements of Section 5.28.060(1). All persons interested in applying for available permits shall file with the fire marshal a fireworks lottery application by the last business day of January of the year for which a permit is sought.

(3) Fully complete applications for a public display or other discharge of common or special fireworks must be received by the fire marshal no later than 5:00 p.m. fourteen (14) calendar days prior to the intended display.

Section 3. New. A new section is added to Chapter 5.28 of the Clark County Code as follows:

5.28.035 Possession, sale, or use of certain fireworks unlawful

Whether permitted by state law or not, it shall be unlawful for any person to sell, store, offer for sale, expose for sale, use, possess, fire or discharge firecrackers, salutes, chasers, skyrockets and missile-type rockets and mortar-type fireworks, or those fireworks not specifically listed, that fly, explode, or travel more than one (1) foot into the air or more than six (6) feet on the ground in the county, except as allowed by this chapter. All lawful consumer fireworks must bear the California State Fire Marshal “Safe and Sane” seal as follows:



or an equivalent “Safe and Sane” marking approved by the Fire Marshal.

Section 4. Amendatory. Clark County Code 5.28.040, as most recently amended by Sec. 1 of Ord. 2014-09-04, is hereby amended as follows:

5.28.040 Dates when sale permitted. [Option I]

No common fireworks shall be sold or offered for sale at retail except from 12:00 noon on the 28th day of June to 11:00 p.m. on the 4th day of July of any year. Further, the sale of common fireworks is expressly prohibited at any time surrounding the New Year, including December 31st.

5.28.040 Dates when sale permitted. [Option II]

No common fireworks shall be sold or offered for sale at retail except from 9:00 a.m. on July 1st to 11:00 p.m. on July 4th. ~~((12:00 noon on the 28th day of June to 11:00 p.m. on the 4th day of July of any year.))~~ Further, the sale of common fireworks is expressly prohibited at any time surrounding the New Year, including December 31st.

5.28.040 Dates when sale permitted. [Option III]

No common fireworks shall be sold or offered for sale at retail, except from 9:00 a.m. ~~((12:00 noon on the 28th day of June))~~ to 11:00 p.m. on each day from the 1st day of July through the 4th day of July of any year. However, when July 4th occurs sometime between Wednesday through Friday, the sales period will be extended to allow sales to begin the preceding Saturday at 9:00 a.m. to allow for one full weekend of sales, EXCEPT when July 4th occurs on a Saturday, in which case sales will begin on June 28th at 9:00 a.m. Further, the sale of common fireworks is expressly prohibited at any time surrounding the New Year including December 31st.

Section 5. Amendatory. Clark County Code 5.28.050, as most recently amended by Sec. 2 of Ord. 2014-09-04, is hereby amended as follows:

5.28.050 Dates when use permitted. [Option I]

No person shall use or explode any fireworks within the unincorporated areas of the county of Clark except from 9:00 a.m. to 11:00 p.m. on July 3rd, 9:00 a.m. to midnight on July 4th, and on December 31st from 6:00 p.m. to 1:00 a.m. ~~((as shown in Tables 5.28.050(1) and 5.28.050(2); provided, that this prohibition shall not apply to duly authorized public displays where the same are authorized pursuant to the laws of the state of Washington. The north/south boundary is the east/west extension of the line made up by a NE/NW 219th Street across the county.~~

Table 5.28.050(1) Allowed Dates and Times for Use of Fireworks (South of 219th Street)

Date/Time	2015	2016 and Beyond
June 28, Noon to 11:00 p.m.	Allowed	Not Allowed
June 29, 9:00 a.m. to 11:00 p.m.	Allowed	Not Allowed
June 30, 9:00 a.m. to 11:00 p.m.	Allowed	Not Allowed
July 1, 9:00 a.m. to 11:00 p.m.	Allowed	Not Allowed
July 2, 9:00 a.m. to 11:00 p.m.	Allowed	Not Allowed
July 3, 9:00 a.m. to	Allowed	Not

Date/Time	2015	2016 and Beyond
11:00 p.m.		Allowed
July 4, 9:00 a.m. to Midnight	Allowed	Allowed
December 31, 6:00 p.m. until 1:00 a.m.	Not Allowed	Allowed

Table 5.28.050(2) Allowed Dates and Times for Use of Fireworks (North of 219th Street)

Date/Time	2015	2016 and Beyond
June 28, Noon to 11:00 p.m.	Allowed	Allowed
June 29, 9:00 a.m. to 11:00 p.m.	Allowed	Allowed
June 30, 9:00 a.m. to 11:00 p.m.	Allowed	Allowed
July 1, 9:00 a.m. to 11:00 p.m.	Allowed	Allowed
July 2, 9:00 a.m. to 11:00 p.m.	Allowed	Allowed
July 3, 9:00 a.m. to 11:00 p.m.	Allowed	Allowed
July 4, 9:00 a.m. to Midnight	Allowed	Allowed
December 31, 6:00 p.m. until 1:00 a.m.	Not Allowed	Allowed

5.28.050 Dates when use permitted. [Option II]

No person shall use or explode any fireworks within the unincorporated areas of the county of Clark except from 9:00 a.m. to midnight on July 4th and on December 31st from 6:00 p.m. to 1:00 a.m. ((as shown in Tables 5.28.050(1) and 5.28.050(2))); provided, that this prohibition shall not apply to duly authorized public displays where the same are authorized pursuant to the laws of the state of Washington. ((The north/south boundary is the east-west extension of the line made up by a NE/NW 219th Street across the county.))

Table 5.28.050(1) Allowed Dates and Times for Use of Fireworks (South of 219th Street)

Date/Time	2015	2016 and Beyond
------------------	-------------	------------------------

Date/Time	2015	2016 and Beyond
June 28, Noon to 11:00 p.m.	Allowed	Not Allowed
June 29, 9:00 a.m. to 11:00 p.m.	Allowed	Not Allowed
June 30, 9:00 a.m. to 11:00 p.m.	Allowed	Not Allowed
July 1, 9:00 a.m. to 11:00 p.m.	Allowed	Not Allowed
July 2, 9:00 a.m. to 11:00 p.m.	Allowed	Not Allowed
July 3, 9:00 a.m. to 11:00 p.m.	Allowed	Not Allowed
July 4, 9:00 a.m. to Midnight	Allowed	Allowed
December 31, 6:00 p.m. until 1:00 a.m.	Not Allowed	Allowed

Table 5.28.050(2) Allowed Dates and Times for Use of Fireworks (North of 219th Street)

Date/Time	2015	2016 and Beyond
June 28, Noon to 11:00 p.m.	Allowed	Allowed
June 29, 9:00 a.m. to 11:00 p.m.	Allowed	Allowed
June 30, 9:00 a.m. to 11:00 p.m.	Allowed	Allowed
July 1, 9:00 a.m. to 11:00 p.m.	Allowed	Allowed
July 2, 9:00 a.m. to 11:00 p.m.	Allowed	Allowed
July 3, 9:00 a.m. to 11:00 p.m.	Allowed	Allowed
July 4, 9:00 a.m. to Midnight	Allowed	Allowed
December 31, 6:00 p.m. until 1:00 a.m.	Not Allowed	Allowed

Section 6. New. A new section is added to Chapter 5.28 of the Clark County Code as follows:

5.28.055 Prohibition due to extreme fire danger.

The Clark County Council Chair, after consulting with the Fire Marshal, may prohibit the discharge and sale of all fireworks during periods of extreme fire danger. For the purposes of this chapter, the term “extreme fire danger” shall mean a period of hot, dry weather, accompanied by low fuel moistures. It is during this period that wildland fires can be expected, and fire growth would be accelerated.

For consideration of imposing a ban, the following thresholds must have been reached in Clark County as reported by the Washington State Department of Natural Resources:

1. The Burning Index is Extreme as determined for the entire county; and
2. The Fuel Moisture Content of the 10 hour fuels is below 8 anywhere in the county; and
3. The Energy Release Component is in the 90th percentile

Section 7. Amendatory. Clark County Code 5.28.100, as most recently amended by Sec. 3 of Ord. 2014-09-04, is hereby amended as follows:

5.28.100 Temporary stands. [Option I]

Temporary stands, structures or facilities used for the retail sale or temporary storage of common fireworks shall be in accordance with the applicable portions of Chapter 70.77 RCW and Chapter 212-17 WAC. In addition to the above requirements, each retail fireworks stand shall provide signage indicating the dates and times fireworks may be legally discharged in Clark County. Such signage must be placed where it is easily readable by the public where the sales transactions occur. The sign shall contain the following information: Fireworks may be discharged in Clark County only during the following dates and times – (~~June 28th from 12:00 noon to 11:00 p.m.; June 29th through~~) July 3rd from 9:00 a.m. to 11:00 p.m.; July 4th from 9:00 a.m. to midnight and on December 31st from 6:00 p.m. to 1:00 a.m. (~~For the sales year 2016 and after, the signs shall contain the following information:~~

~~NORTH OF 219TH STREET~~

- ~~• June 28th, from 12:00 noon to 11:00 p.m.; June 29th through July 3rd from 9:00 a.m. to 11:00 p.m.; July 4th from 9:00 a.m. to midnight.~~
- ~~• December 31st, from 6:00 p.m. until 1:00 a.m. on New Year’s Day.~~

~~SOUTH OF 219TH STREET~~

- ~~• July 4th from 9:00 a.m. to 12:00 midnight.~~
- ~~• December 31st from 6:00 p.m. until 1:00 a.m. on New Year’s Day.))~~

Letters for the sign must be at least one (1) inch tall on a contrasting background.

5.28.100 Temporary stands. [Option II]

Temporary stands, structures or facilities used for the retail sale or temporary storage of common fireworks shall be in accordance with the applicable portions of Chapter 70.77 RCW and Chapter 212-17 WAC. In addition to the above requirements, each retail fireworks stand shall provide signage indicating the dates and times fireworks may be legally discharged in Clark County. Such signage must be placed where it is easily readable by the public where the sales transactions occur. The sign shall contain the following information: Fireworks may be discharged in Clark County only during the following dates and times – ((~~June 28th from 12:00 noon to 11:00 p.m.; June 29th through July 3rd from 9:00 a.m. to 11:00 p.m.;~~)) July 4th from 9:00 a.m. to midnight and on December 31st from 6:00 p.m. to 1:00 a.m. ((For the sales year 2016 and after, the signs shall contain the following information:

NORTH OF 219TH STREET

- ~~June 28th, from 12:00 noon to 11:00 p.m.; June 29th through July 3rd from 9:00 a.m. to 11:00 p.m.; July 4th from 9:00 a.m. to midnight.~~
- ~~December 31st, from 6:00 p.m. until 1:00 a.m. on New Year's Day.~~

SOUTH OF 219TH STREET

- ~~July 4th from 9:00 a.m. to 12:00 midnight.~~
- ~~December 31st from 6:00 p.m. until 1:00 a.m. on New Year's Day.))~~

Letters for the sign must be at least one (1) inch tall on a contrasting background.

Section 7. Amendatory. Clark County Code 32.04.050, as most recently amended by Sec. 4 of Ord. 2017-08-08, is hereby amended as follows:

32.04.050 Civil penalty.

In addition to or as an alternative to any other judicial or administrative remedy provided herein or by law, any person who violates any land use or public health ordinance, or rules and regulations adopted thereunder, or by each act of commission or omission procures, aids or abets such violation, shall be subject to a civil penalty as provided in Table 32.04.050; however, civil infractions of Chapter 17.10 RCW shall be subject to civil penalty as provided in WAC 16-750-020 and shown in Table 32.04.050-1. Each day may constitute a new violation. All civil penalties assessed will be enforced and collected in accordance with the lien, personal obligation, and other procedures specified in this title or as authorized by law.

TABLE 32.04.050

The penalties assessed against the violations are grouped for first and subsequent violations within any five (5) year period as follows:		
Violation	First Violation	Subsequent Violation

Building without permit	\$250	\$500
Occupancy without approval	250	500
Dangerous structure	250	500
Grading without permit	100	250
No erosion control	500	1,000
Wetland protection	500	1,000
Surface mining	500	1,000
Water quality controls	250	500
Site plan	250	500
Auto wrecking	250	500
Setback	100	250
Sign	100	250
Occupancy of travel trailer	100	250
Nuisance	100	250
Home business/occupation	250	500
Shoreline	500	1,000
Habitat	250	500
Violation of stop work order	500	1,000
Fireworks	<u>500</u>	<u>1000</u>
All other violations	250	500

TABLE 32.04.050-1

Any owner knowing of the existence of any noxious weeds on the owner's land who fails to control the noxious weeds will be assessed the following monetary penalties. The penalties are assessed per parcel, per noxious weed species, per day after expiration of the notice to control filed pursuant to RCW 17.10.170:		
Any Class A noxious weed:		
	1st offense within five (5) years	750
	2nd and any subsequent offense	1,000
Any Class B designated noxious weed in the noxious weed control region in which the land lies:		
	1st offense within five (5) years	500
	2nd offense	750
	3rd and any subsequent offense	1,000
Any Class B nondesignated noxious weed in the noxious weed control region in which the land		

lies; or any Class C noxious weed:		
	1st offense within five (5) years	250
	2nd offense	500
	3rd offense	750
	4th and any subsequent offense	1,000

Section 7. Effective Date. This ordinance shall be effective on the 10th day following adoption.

Section 8. Instructions to Clerk. The Clerk of the Council shall:

- A. Record a copy of this Ordinance with the Clark County Auditor; and
- B. Cause notice of adoption of this Ordinance to be published forthwith, pursuant to Clark County Code 1.02.140.
- C. Provide a copy of this Ordinance to Code Publishing with instructions to publish.

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

Section 9. Roll Call Vote. The following persons voted in favor of adopting the above ordinance, noting that *sections* and/or *options* that are circled and struck through with an "X" are excluded from the vote.

The following persons voted in opposition to the adoption of the above ordinance, noting that *sections* and/or *options* that are circled and struck through with an "X" are excluded from the vote:

ADOPTED on this _____ day of _____, 2018.

Attest:

CLARK COUNTY COUNCIL
CLARK COUNTY, WASHINGTON


Clerk to the Council

Marc Boldt, Chair

Approved as to Form Only:
ANTHONY GOLIK
Prosecuting Attorney

Jeanne E. Stewart, Councilor

By:



Bill Richardson
Deputy Prosecuting Attorney

Julie Olson, Councilor

John Blom, Councilor

Eileen Quiring, Councilor