



MUNICIPAL OFFICE COMPLEX
8401 W. MONROE STREET
PEORIA, AZ 85345

**CITY COUNCIL SPECIAL MEETING
AND STUDY SESSION
NOTICE & AGENDA
Tuesday, September 20, 2011
5:00 PM
CITY COUNCIL CHAMBER**

**CONVENE:
ROLL CALL:**

CITY COUNCIL:

Mayor

Bob Barrett

Mesquite District

Cathy Carlat, Vice Mayor

Acacia District

Tony Rivero

Ironwood District

Dave Pearson

Palo Verde District

Ron Ames

Pine District

Carlo Leone

Willow District

Joan Evans

**FINAL CALL TO SUBMIT SPEAKER REQUEST
FORMS:**

CONSENT AGENDA

CONSENT AGENDA: All items listed with "C" are considered to be routine or have been previously reviewed by the City Council, and will be enacted by one motion. There will be no separate discussion of these items unless a Councilmember so requests; in which event the item will be removed from the General Order of Business, and considered in its normal sequence on the Agenda.

CONSENT – New Business:

1C Authorization to Hold an Executive Session

Pursuant to A.R.S. § 38-431.03: Discussion and possible action to authorize the holding of an Executive Session for the purpose of discussion with legal counsel for legal advice on appeal of Solberg vs. Arizona State Retirement System. (Pursuant to A.R.S. § 38-431.03(A)(3)).

STUDY SESSION AGENDA

Subjects for Discussion Only:

1. Fireworks Update
2. Amendment, Council Policy 1-8, Evaluation Format, Charter Officers

City Manager

Carl Swenson

CALL TO THE PUBLIC: (NON-AGENDA ITEMS)

Your comments pertaining to City Council business are welcome. However, if you wish to address the City Council, please complete a Speaker Request Form and return it to the clerk before the call to order for this meeting. The City Council is not authorized by state law to discuss or take action on any issue raised by public comment until a later meeting.

ADJOURNMENT

NOTE: Documentation (if any) for items listed on the Agenda is available for public inspection, a minimum of 24 hours prior to the Council Meeting, at any time during regular business hours in the Office of the City Clerk, 8401 W. Monroe Street, Room 150, Peoria, AZ 85345.

Accommodations for Individuals with Disabilities. *Alternative format materials, sign language interpretation, assistive listening devices or interpretation in languages other than English are available upon 72 hours advance notice through the Office of the City Clerk, 8401 West Monroe Street, Room 150, Peoria, Arizona 85345 (623)773-7340, TDD (623)773-7221, or FAX (623) 773-7304. To the extent possible, additional reasonable accommodations will be made available within the time constraints of the request.*

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATION**

SS#1

Date Prepared: September 15, 2011

Council Meeting Date: September 20, 2011

TO: Honorable Mayor and Council
FROM: Stephen M. Kemp, City Attorney
SUBJECT: Update on Fireworks

Purpose:

This is an update to City Council on fireworks in the City of Peoria.

Background/Summary:

In 2010, the Arizona Legislature enacted legislation legalizing the sale of consumer fireworks, but providing that a city could prohibit their use inside the city. The Fire Department at that time recommended that the City proceed with the status quo, which would provide that use of such fireworks would be illegal inside the City.

Separately, the Planning and Community Development Department revised the temporary use provisions of the zoning code to address consumer fireworks sales facilities as a temporary use in the same manner as other seasonal temporary uses such as Christmas tree lots. The City Attorney's Office coordinated these items and indicated to the Council that we would report back in 2011 as to how these provisions have worked, together with recommendations for any changes.

In the area of Planning and Community Development, the temporary use provisions have worked without problems. An unforeseen area was the number of quasi permanent structures that would be erected and left up on these temporary use sites. Staff will be recommending an amendment to the temporary use provisions to prohibit such quasi permanent structures.

In the area of Fire, we have not had any significant incidents of wildland or desert fires resulting from consumer fireworks use. There appears to be some confusion with the public as to the fact that consumer fireworks are sold in the City, but may not be used here. The largest period of sales and use of fireworks appears to be late December, early January (New Year's) and early July (Independence Day).

Previous Actions:

November 2011 adoption of amendments to City Code.

Options:

- A. That the Council direct staff to take no further actions in which case the existing codes will remain in place.
- B. That the Council direct staff to bring before Council a modification to the code that would regulate quasi-permanent facilities under temporary uses and would modify the code to permit fireworks usages in the City for the following periods: December 30 – January 3 and July 1 – July 4.
- C. That the City permits the unrestricted use of consumer fireworks.

Staff’s Recommendation:

If Council is satisfied with the current prohibitions, then direct staff to bring back the changes to the temporary use permit sections of the code. In the event Council would like to permit the use of consumer fireworks on a limited basis, then direct staff to bring back changes to permit consumer fireworks usages in the City for the following periods: December 30 – January 3 and July 1 – July 4. If Council proceeds in this direction, staff would recommend that we report back at this time next year with specific information on the City’s experience.

Fiscal Analysis:

N/A

Narrative:

The decision to permit fireworks is a policy decision. Staff will implement the policy that Council decides upon and proceed to bring back changes to implement as directed by Council.

Exhibit(s):

- A. Review of Fireworks and Zoning Memorandum
- B. Fire Report (Additional background information is in City Attorney’s Office)

Contact Name and Number:

Stephen M. Kemp, City Attorney (623) 773-7321



Planning & Community Development

MEMORANDUM

Community Development Division

DATE: August 29, 2011

TO: Steve Kemp, City Attorney

FROM: Chris M. Jacques, AICP, Acting Planning Director

SUBJECT: Review of Fireworks and Zoning

As a result of the passage of HB 2246 during the 2010 Arizona Legislative Session, the sale and use of certain types of fireworks ("Permissible Consumer Fireworks") were legalized in Arizona effective December 1, 2010. Although the Statute included provisions allowing municipalities the flexibility to regulate the *use* of permissible consumer fireworks within their jurisdictional boundaries, it did not permit the ability to prohibit the *sales* of fireworks. In response, Planning & Community Development staff studied the bill in consultation with the CAO, Fire, Police and EDS (Building) and prepared language addressing the land use associated issues. Ordinance 2011-03 was adopted by the City Council on 1/18/2011.

A. Zoning Regulations

The sale of Permissible Consumer Fireworks was delineated into two (2) formats: (a) retail sales within existing commercial buildings; and (b) temporary retail sales. Accordingly, the zoning regulatory highlights are as follows:

1. Retail sales of fireworks are prohibited as home occupations.
2. The sale of Permissible Consumer Fireworks within permanent buildings was added as an outright permitted use in the C-1, PC-1, PC-2, C-2, C-3, C-4 and C-5 commercial districts. This aligns with the manner in which general retail sales are treated. The regulatory distinctions are that fireworks sales are only permitted in buildings with a Mercantile (M) occupancy; and specified signage required at the point-of-sale outlining usage in the City of Peoria per City Code 9-49.
3. Outdoor temporary sales of Permissible Consumer Fireworks are permitted with the issuance of a Temporary Use Permit in the same manner that we address seasonal sales such as Christmas trees and halloween pumpkins, craft shows, carnivals and the like.
4. TUP's are an administrative review that provides oversight for vehicular access, parking, dust control measures, site lighting, generators, safety and hours of operation. TUP's may be granted to a business at a specified location up to 60 days in length with renewals dependent on the length of the event. For example, events lasting less than 30 days may be renewed twice annually; events between 30-60 days may be renewed once annually.

B. Observations

Fireworks sales occurred around the New Years Eve and Fourth of July holidays as expected. Several existing grocers and retail stores carried fireworks as part of their stock-in-trade for a limited time.

Additionally, during the period January-July 2011, the City approved 17 TUP's for temporary outdoor fireworks sales – all related to the 4th of July holiday. Most of the outdoor sales for fireworks occurred within tents in commercial parking lots. However, a few occurred within temporary structures. The latter was utilized by one vendor and was the source of many complaints from the public namely due to their 'shanty' appearance, rooftop inflatables (not permitted) and to their lack of compliance to the TUP requiring removal upon expiration of the permit. In many cases, this non-compliance went on for several months as Code Enforcement sought procedural recourse. The problem was finally abated when criminal charges were filed after initial and final notices were disregarded.

Overall, the TUP process is well structured to address the type of physical and site issues that arise from these sales events – as they are functionally similar to other outdoor seasonal sales. With that said, we are recommending changes to the Zoning Ordinance to address design issues with the temporary structures. Staff believes that the use of tents are a preferred design solution and generally in keeping with the maintenance of a positive appearance for these types of events.

C. Recommendations

1. Amend Article 14-39-13 (TUP's) prohibiting the use of temporary structures for permitted temporary uses.
2. Bolster review and approval criteria for TUP's including 'maintenance of a positive appearance.'
3. Explore language recognizing non-compliance to TUP (citations) for a vendor as grounds for denial of a future TUP at this location.

Cc: Susan J. Daluddung
Shawn Kreuzwiesner
Rob Gubser



City of Peoria Fire Department

8401 West Monroe Street, Peoria, Arizona 85345
Phone: 623-773-7279 Fax: 623-773-7295

To: Steve Kemp
City Attorney

Steve in our research we sent out an e-mail to almost all of the Valley City Fire Departments asking to forward their responses to both Fire and Police in regards to the use of consumer fireworks. Some responded with information, others were not able to provide us the information. Here are the statistics we were able to compile from the Valley departments. I am also including National statistics from NFPA, The Consumer Product safety Commission and the International Fire Chiefs Association.

Valley Statistics

- 1) Peoria Fire Prevention. We conducted inspections of all sites selling consumer fireworks within the city totaling 60 hours of inspection time. Almost all of the people selling these consumer fireworks had no training or supervision from the major firework distributors. We also encountered numerous non approved fireworks being sold.
- 2) Valley wide firework related incidents that were reported where Fire units responded totaled 94. These range from structural fires, emergency medical burn injuries, eye and face injuries, brush and debris fires. These statistics came from the Phoenix cad system from January 1st to July 4th. Mesa Fire dispatch responded to 29 calls over a 7 day period during the week of July 4th. Mesa allowed the use of consumer fireworks.
- 3) Glendale police department responded to 425 calls related to fireworks. From January 1st to July 4th. Other Cities including Peoria Police Department could not give me there response information do to the lack of a specified code related to fireworks in there system. Glendale allowed the use of fireworks on private property.

National Statistics

National Fire Protection Association Fire Analysis and Research Division Report dated June of 2011.

- In 2009 an estimated 18,000 fires where reported do to fireworks, including 1300 structure fires, 400 vehicle fires, and 16,300 outside and other fires. Resulting in \$38 million in direct property damage

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- An estimated 8,800 were treated in US hospital emergency rooms for firework related injuries.
- 51% of injuries were burn injuries.
- Sparklers and novelty items accounted for 32% of all emergency room visits.
- 84% of all firework injuries treated in hospital emergency rooms involved fireworks that Federal regulations allow. (Consumer fireworks)
- 39% of people injured by fireworks are under the age of 15.
- Sparklers burn at over 1200 degrees Fahrenheit which can result in 2nd and 3rd degree burns
- 65% of all reported fires due to fireworks occur during the period around 4th of July (June 18th to July 18th)

Steve please have Council review the documentation I have forwarded to you. If you any questions regarding the information I have provided please contact me so that we can discuss our findings.

Daniel DeMaio
Fire Marshal
Peoria Fire Department
City of Peoria

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATION**

Date Prepared: September 13, 2011

Council Meeting Date: September 20, 2011

TO: Honorable Mayor and Council**FROM: Steve Kemp, City Attorney****SUBJECT: Evaluation of Charter Officers**

Purpose:

That the Mayor and Council amend the City Council Policy pertaining to the evaluation of Charter Officers.

Background/Summary:

In 1998, the Mayor and Council initially adopted the policy pertaining to the evaluation of Charter Officers, other than the City Manager. (City Attorney and Presiding Municipal Judge). Subsequently in 2005, the policy was amended. The proposed action is to amend the policy to reflect proposed practice.

There are two major changes. First the entire council will have the option of participating in the evaluation. Second, the evaluations, particularly that of the City Attorney will be done in at the same time as that of the City Manager and may use a facilitator used by the City Manager.

Previous Actions:

No prior actions

Options:

A: That the Mayor and Council adopt the proposed policy to reflect the current practice.

B: That the Mayor and Council not adopt the proposed policy.

Staff's Recommendation:

That the Mayor and Council adopt the proposed amendments to the policy pertaining to the evaluation of Charter Officers to reflect current practice.

Fiscal Analysis:

No Fiscal Impact

Narrative:

If Council amends the policy, the City Policy manual will be updated accordingly. The evaluations will be held on the same time frame as that of the City Manager.

Exhibit(s):

Exhibit 1: Proposed Revised Policy pertaining to the evaluation of Charter Officers.

Contact Name and Number:

Steve Kemp, City Attorney, 623-773-7331

 <p style="text-align: center;">CITY COUNCIL POLICY</p>	CP 1-8
	Category: General Department: Office of the City Attorney
TITLE: Evaluation Format for Charter Officers	Approved:

A. Purpose

As required by City Charter Art. III, § 1(B), the City Council in City Code § 2-62 adopted a detailed process for the annual evaluation of the City Manager. For its annual evaluation of the City Attorney and Presiding Municipal Judge, the Council in City Code § 2-78 adopted a general process. The intent of this Policy is to reference the City Manager's detailed procedures and provide additional specificity on the annual evaluation processes for the City Attorney and Presiding Municipal Judge.

B. Definitions

The following terms shall have the following meanings:

1. "Charter Officer" shall mean the positions of City Manager, City Attorney, and Presiding Municipal Judge as they are defined under the Peoria City Charter.
2. "City Council" shall mean the governing body of the City of Peoria, consisting of the Mayor and six Council members and that is responsible for the oversight of the Charter Officers.
3. "Evaluation" shall mean the concept of discussion and review of the performance of a Charter Officer in their position as set forth in this policy.

C. Evaluation Process for the City Manager

The evaluation process for the City Manager shall be as prescribed in City Code § 2-62 as it may be amended.

D. Commencement of the Evaluation Process for City Attorney and Presiding Municipal Judge -- Self-Appraisal.

On or before October 1 of each year, the City Attorney and Municipal Judge shall prepare a written outline to be transmitted to the City Council directly or through the facilitator performing the City Manager Evaluation and containing the following:

Category: General

Title: Evaluation Format for Charter Officers

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1. A list of goals and objectives for the next year outlining the major areas of work for the office headed by the Charter Officer, specific time frames for completion and specific outcomes need to meet the objective.
2. A list of goals and objectives established previously that have been met during the past year and a list of goals and objectives that have not been met.
3. In the particular area of the Charter Officer's responsibility, an outline consisting of recommended City goals for the Council to evaluate and consider an outline on how these City goals could be achieved.
4. An evaluation instrument that would permit individual Council members to rate the overall performance of the charter officer and their office in the areas of service delivery | responsiveness; innovation and planning and organization.

E. City Council Review for City Attorney and Presiding Municipal Judge

1. The Mayor with the consent of the Council may designate a subcommittee for the evaluation of Charter Officers, if the Mayor does not designate a subcommittee the evaluation shall be performed by the entire Council.
2. Within thirty (30) calendar days following the receipt of the City Attorney's and Presiding Municipal Judge's goals and objectives, the City Council or its designated Subcommittee for the evaluation of Charter Officers shall place on an open or executive session agenda, if legally permitted, an item to discuss the goals and objectives and the Charter Officer's performance in regards to the goals and objectives.
3. As a result of the Council discussion, the Charter Officer shall prepare and transmit such additional information, including but not limited to meeting concerns expressed in the evaluation instrument and review by the City Council Subcommittee for the evaluation of Charter Officers. The final outline shall be provided to the Council within thirty (30) days following the last subcommittee meeting on the goals and objectives.
4. Nothing in this section shall be construed as prohibiting additional Council review of any Charter Officer as it determines to be appropriate.
5. The facilitator performing the City Manager Evaluation may be used to any other charter officer evaluation.

Category: General
Title: Evaluation Format for Charter Officers
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APPROVED:

/S/
Bob Barrett, Mayor

APPROVED AS TO FORM:

/S/
Stephen M. Kemp, City Attorney

Adopted: 12/19/95, CC #95-383 [Prior Numbering: PPR Section 1-6]
Amended: 7/10/07, CC #SS3B