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CITY OF CONCORD

REPORT TO MAYOR AND THE CITY COUNCIL

FROM: James W. Kennedy, City Solicitor

DATE: February 20, 2015

SUBJECT: Consumer/Permissible Fireworks Ordinance

Recommendation:

Accept this report and set the attached ordinance amending the following ordinances for a public hearing on April 13, 2015:

- 1) Amending the Code of Ordinances, Title I, General Code; Chapter 14, Morals and Conduct, by adding a new Article 14-6, entitled Use of Consumer/Permissible Fireworks; and
- 2) Amending the Code of Ordinances, Title I, General Code; Chapter 1, Government Organization; Article 1-5, Fees, Fines, and Penalties; Schedule II by adding a penalty for violations of Article 14-6

On August 19, 2014, pursuant to a referral from the City Council regarding complaints for fireworks being discharged in the City, the Council requested a report regarding whether the City should adopt an ordinance regulating the use of fireworks. This request was sent to the Legal Department, Police Department, Community Development and Code Administration.

Discussion

New Hampshire statute RSA chapter 160-B regulates the use and sale of all commercial fireworks. RSA chapter 160-C regulates the use and sale of consumer fireworks also referred to as "permissible fireworks."

To the extent that a municipality endeavors to regulate the sale of fireworks, it may only regulate the sale of consumer/permissible fireworks, and not the sale of commercial fireworks in a municipality. *See* RSA 160-C:6. The sale of commercial fireworks is regulated by the State of New Hampshire. Under State law, it is necessary to obtain a permit from a municipality before displaying commercial fireworks. RSA 160-B:3, I(b). By way of example, this permit is required for municipal Fourth of July firework celebrations.

With respect to consumer/permissible fireworks, RSA chapter 160-C does not require permits to display such fireworks, but instead, the municipality may determine whether to require

permitting. A municipality may also adopt regulations that prohibit the use of consumer/permissible fireworks altogether, or otherwise regulate the time of day and/or location that fireworks may be used. *See* RSA 160-C:6.

Various municipalities regulate the use of consumer/permissible fireworks, including for example, Manchester (prohibits the use), Nashua (prohibits the use), Merrimack (regulates time of day 11pm – 10am), Alton (prohibits the use), Goffstown (prohibits the use), Londonderry (permit required to use), Portsmouth (permit required to use) and Hampton (prohibits the use). To the extent a municipality elects to regulate the use of consumer/permissible fireworks, State law already requires that a person be at least 21 years of age to use such fireworks.

Attached to this report, please find an ordinance for your consideration which regulates the time of day that consumer/permissible fireworks may be used in the City. In order to enforce the penalty for the discharge of fireworks during the prohibited hours, there is also an ordinance to amend Schedule II of the Code of Ordinances, Title I, General Code; Chapter 1, Government Organization; Article 1-5, Fees, Fines, and Penalties. The proposed ordinance is similar to the penalty imposed by some other New Hampshire municipalities for similar fireworks violations, which range from \$500 to \$1000.