



CITY OF COSTA MESA

CALIFORNIA 92628-1200

P.O. BOX 1200

FROM THE OFFICE OF THE MAYOR

July 16, 2008

The Honorable Nancy Wieben Stock
Presiding Judge of the Superior Court
700 Civic Center Drive West
Santa Ana, California 92701

Dear Judge Wieben Stock:

This letter is in response to the 2007-2008 Orange County Grand Jury Report entitled "The Anatomy of Safe and Sane Fireworks Sales in Orange County." I am formally submitting this letter in response to the various Findings and Recommendations made in the Report. The Mayor of the City of Costa Mesa was asked to respond to Findings F-1 to F-13 and Recommendations R-1 to R-9. Each Finding and Recommendation includes a response that meets the specific requirements for permissible responses:

As a preface to our comments in the following, the City does not believe we can either "agree" or "disagree" with many of the statements made by the Grand Jury with respect to practices in other cities or comments by unnamed Safety Officials. To a certain degree, we believe this is a continuing flaw throughout the report as it seeks to group all cities that presently allow for the sale & discharge of State approved fireworks as being the same. Likewise, we would disagree with the supposition that the sale & discharge of safe & sane fireworks is only about fundraising for community non-profit organizations. Because the Grand Jury choose not to ask about other motivations such as bringing neighborhoods together through celebration, the report focuses exclusively on fundraising. We know the Grand Jury worked very hard on this report but likewise feel it came up well short in this regard.

Below are the Findings/Recommendations along with the specific Response:

FINDING F-1: Not all cities that allow the sale of legal fireworks require applicants to show proof of a valid Seller's Permit issued by the State of California Board of Equalization.

RESPONSE: We agree with this finding. The City of Costa Mesa already requires applicants to show proof of a valid Seller's Permit.

FINDING F-2: Cities have varying requirements for legal fireworks applicants' liability amounts that need to be re-examined for appropriate coverage.

RESPONSE: We agree with this finding. The City of Costa Mesa periodically reviews its insurance requirements to ensure appropriate levels of coverage. The City of Costa Mesa presently requires a \$1,000,000 policy.

FINDING F-3: Cities do not require legal fireworks sellers to file a post-sales report to the city documenting gross and net sales of fireworks detailing the manner and in what amounts the net profits are spent to benefit the community and ensuring that the cities receive their one percent share of the sales tax.

RESPONSE: We agree with this finding.

FINDING F-4: Cities do not provide sufficient information and encouragement to fireworks sellers to seek other methods of fundraising.

RESPONSE: We disagree with this finding. The Costa Mesa City Council has extensively discussed in public forums the subject of alternative means of fundraising. What we consistently hear from community groups that sell fireworks is that no other form of fundraising generates as much revenue in such a short a period of time. Further, we question the responsibility and qualifications of municipal government to provide expertise to non-profit and community-based organizations on fundraising.

FINDING F-5: Some cities are reluctant to put the issue of legal fireworks sales to the voters in their cities.

RESPONSE: We disagree with this finding. The City of Costa Mesa had a citizen advisory vote regarding the ban of legal fireworks sales on November 16, 1990.

FINDING F-6: Some cities are reluctant to sponsor free public displays of fireworks or to solicit sponsoring partners from businesses or neighboring cities in lieu of the sale of fireworks.

RESPONSE: We partially agree with this finding. Some cities may consider many factors which inhibit the ability to provide free public fireworks displays, such as the costs for planning and conducting the display, the difficulty in generating sufficient fundraising revenue for local non-profit groups from these displays, the lack of an appropriate venue to conduct the event, the fact that some members of the community may want to celebrate at home with neighbors/family, or other factors.

FINDING F-7: Fireworks sellers do not share the financial burden of added law enforcement, fire safety and public works costs incurred by cities, in large part due to the sale of legal fireworks.

RESPONSE: We partially disagree with this finding. In Costa Mesa, fireworks permit holders are required to pay a permit fee, a clean-up fee and make a deposit. The City Council understands that not all costs incurred over the July 4th Holiday can be ascribed to legal fireworks. The use of illegal fireworks, DUI enforcement and a range of other activities are also a key focus of enforcement activity for our public safety personnel during the timeframe in which legal fireworks are sold.

FINDING F-8: Cities do not require fireworks sellers to advise all purchasers that it is illegal to detonate legally sold fireworks in any area of Orange County other than in the incorporated city limits of Buena Park, Costa Mesa, Garden Grove, Santa Ana, and Stanton.

RESPONSE: We agree with this finding.

FINDING F-9: Safety officials cannot enforce all laws and municipal ordinances regarding the illegal use of fireworks due to the large volume of activity on the Fourth of July.

RESPONSE: We agree with this finding.

FINDING F-10: The use of illegal fireworks is significantly greater in cities that allow the sale of legal fireworks.

RESPONSE: We agree with this finding.

FINDING F-11: The use of fireworks can mask the use of illegal fireworks.

RESPONSE: We agree with this finding.

FINDING F-12: Safety officials are of the opinion that legal fireworks sales should be banned in the interest of public safety.

RESPONSE: We partially disagree with this finding. While some safety officials in California have expressed an opinion that legal fireworks should be banned, others have not. In Costa Mesa, our Fire Chief and Police Chief are supportive of a ban on fireworks.

FINDING F-13: Safety officials can significantly curb the use of illegal fireworks in these cities within three years if the sale of legal fireworks were banned.

RESPONSE: We disagree with this finding. There is no evidence or correlation between a three-year time period and the ability to “significantly curb” the use of illegal fireworks. A variety of factors in addition to time may either contribute to or impede the ability to reduce illegal fireworks use.

RECOMMENDATION R-1: Require all fireworks applicants, as part of the permit application process, to show proof of a valid Seller’s Permit issued by the California Board of Equalization.

RESPONSE: This recommendation has already been implemented by the City of Costa Mesa through the permit application process.

RECOMMENDATION R-2: Require all fireworks applicants, as part of the permit application process, to show proof of current liability insurance in amounts not less than \$1,000,000.

RESPONSE: This recommendation has already been implemented by the City of Costa Mesa.

RECOMMENDATION R-3: Require all fireworks applicants to file an accurate after-sales financial report with the city documenting gross sales and net profits of fireworks detailing the manner and amount in which the net profit is spent to benefit the community.

RESPONSE: The recommendation is not warranted. The City Council recently considered a similar approach but decided not to require an after-sales report at this time. It is not the responsibility of municipal government to monitor how private non-profit organizations spend their funding.

RECOMMENDATION R-4a: Require all fireworks applicants, as part of the permit application process, to file a detailed accounting of additional fundraising efforts conducted over the course of the previous year other than fireworks sales.

RESPONSE: The recommendation will not be implemented because it is not warranted. It is not the responsibility of municipal government to monitor the fundraising efforts of community nonprofit organizations.

RECOMMENDATION R-4b: Encourage cities to become more proactive in encouraging fireworks applicants to find other fundraising options, in lieu of fireworks sales.

RESPONSE: The recommendation will not be implemented because it is not warranted. It is not the responsibility of municipal government to advise community non-profit organizations how to fundraise. However, the City Council recently approved limiting the number of stands in the future by using a floating cap, that can only be adjusted downward, and is determined by the number of the previous year's approved applications. The prior cap was 40 stands and the approved applications for 2008 total 33. Therefore, the new cap on the number of authorized stands for 2009 will be 33 down from 40 in 2008.

RECOMMENDATION R-5: Let the issue of legal fireworks sales be decided by the voters in each city.

RESPONSE: The recommendation will not be implemented because it is not warranted. This matter was placed before the voters in 1990 and requested to be put in front of the voters again in 2007. The City Council reviewed the policy question of whether to put this issue on the ballot and decided not to proceed with putting it on the ballot. Finally, voters have the right of the initiative process should they believe the matter belongs on the ballot.

RECOMMENDATION R-6: Invite area businesses, civic groups and/or neighboring communities to join with the city to sponsor a public fireworks display in lieu of fireworks sales.

RESPONSE: The recommendation will not be implemented because it is not reasonable. The City has not budgeted for costs related to planning or conducting a fireworks display. It is highly unlikely that a sponsored fireworks display will generate the equivalent amount of revenue as fireworks sales for community non-profits. There are already many established fireworks displays in the immediate area. The City Council has decided to continue to allow fireworks sales.

RECOMMENDATION R-7: Increase the permit fee to offset the extra costs of law enforcement services, fire services and public works services in the enforcement of municipal codes and subsequent clean-up of debris of fireworks detonation in public areas.

RESPONSE: The recommendation will not be implemented because it is not reasonable. Some of the increased costs that are incurred by the City of Costa Mesa are related to the enforcement of illegal fireworks. In May of this year, the

City Council considered additional fees to offset the additional costs related to fireworks and decided to continue with the same permit fee and not fully offset the costs related to fireworks enforcement and clean-up.

RECOMMENDATION R-8: Require all fireworks sellers to advise all purchasers both verbally and in written form that it is illegal to detonate legally purchased fireworks in any area of Orange County, other than in the incorporated city limits of Buena Park, Costa Mesa, Garden Grove, Santa Ana and Stanton.

RESPONSE: The recommendation will not be implemented because it is unwarranted and unreasonable. The recommendation is unwarranted because cities other than Buena Park, Costa Mesa, Garden Grove, Santa Ana, and Stanton engage in information campaigns to remind their residents not to detonate legally purchased fireworks in their community. The recommendation is unreasonable because it would create an undue burden to enforce.

RECOMMENDATION R-9: Declare a moratorium of fireworks sales for at least three or more consecutive years in the cities of Buena Park, Costa Mesa, Garden Grove, Santa Ana and Stanton to allow law enforcement and fire officials in these cities the opportunity to curb the escalating use of illegal fireworks activity.

RESPONSE: This recommendation will not be implemented because it is not warranted. There is no evidence of a correlation between a three-year time period and the ability to "significantly curb" the use of illegal fireworks.

Thank you for the opportunity to respond to this report.

Sincerely,



ERIC R. BEVER
Mayor

c: Costa Mesa City Council
City Staff