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July 21, 2008

The Honorable Nancy Wieben Stock
Presiding Judge of the Superior Court
700 Civic Center Drive West
Santa Ana, CA 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." The Mayor has authorized me to respond to Findings F-1 through F-13 and Recommendation R-1 through R-9 on his behalf.

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: Based on the Grand Jury's report, we agree with this finding. However, the City of Santa Ana does require applicants to show proof of a valid Seller's Permit issued by the State of California Board of Equalization, consistent with the Grand Jury's Recommendation R-1.

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, based on the Grand Jury's Report. However, the City of Santa Ana requires liability insurance amounts of \$1 million, consistent with the Grand Jury's Recommendation R-2, and periodically reviews its insurance requirements to ensure appropriate levels of coverage.

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: Based on the Grand Jury's report, 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 partially with this finding, particularly the use of the phrase “sufficient information and encouragement.” We do not believe it is the role of municipal government to provide information to non-profit and community based organizations on how to raise funds for community purposes. In addition, many of our non-profit organizations have shared with us that they are aware of other fundraising methods but prefer the sale of fireworks as a more efficient and successful method.

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

RESPONSE: We disagree partially with this finding, specifically the use of the word “reluctant.” A number of factors contribute to the decision to place items before the voters, including the potential cost of elections, the potential divisiveness of an issue, and the extent to which the issue is of significant community concern as compared with other issues.

In Santa Ana, the use of legal fireworks has not been a significant matter of concern in the community. The estimated cost to put an issue on the ballot ranges from \$150,000 to \$200,000, depending on whether it is part of a consolidated election or special election. In either case, this is a considerable cost, particularly in light of the budgetary constraints most cities face today. In fact, some would say that the decision of a City Council to retain its legislative authority as granted by the voters and avoid ballot measures to decide issues that have limited community concern is being fiscally prudent.

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 disagree partially with this finding, specifically the use of the word “reluctant.” There may be many factors which compromise the ability to provide free public fireworks displays as an alternative to the sale of legal fireworks. One reason the City of Santa Ana has traditionally allowed the use of legal fireworks is that there are few viable venues in the City for a public fireworks display. Santa Ana has 353,000 residents, many thousands of whom would want to attend a public fireworks display, particularly if legal fireworks were no longer allowed. There is no single public park or school facility in the City that can sufficiently accommodate a gathering of substantial size. Concentrating a large group of people in an inadequate area could increase the risk of significant public safety issues for police, fire and the general public. Finally, providing fireworks displays free to the public has budgetary implications, and in light of the financial constraints that most cities face today, there simply may be more important community priorities that warrant funding.

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 disagree with this finding. For 2007, permit fees collected by the City of Santa Ana related to the legal sale of fireworks covered virtually all of the added law enforcement, fire safety, and public works costs. We anticipate that the permit fees will cover all added costs for 2008 as well.

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 disagree partially with this finding. The City of Santa Ana has an Administrative Citation process in place, which comes with a \$1,000 fine for the use of illegal fireworks. In 2007, 59 such citations were issued. Each year the City of Santa Ana implements a comprehensive public awareness campaign, via banners, signs, billboards, media releases, etc. Both the public awareness efforts and the Administrative Citation program contribute to a reduction in the use of illegal fireworks. Also, the Santa Ana Police Department implements an Illegal Fireworks Suppression Team during the 4th of July holiday to confiscate illegal fireworks.

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

RESPONSE: We disagree partially with this finding. In our opinion, the extent to which illegal fireworks are used is proportional to the level of enforcement and extent of public awareness about the dangers of using illegal fireworks. The City of Santa Ana has both a comprehensive public awareness campaign in the months leading up to the Fourth of July and an enforcement program, which impact the level of illegal fireworks usage.

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 disagree partially with this finding. While some safety officials in California have expressed an opinion that legal fireworks should be banned, others have not.

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 partially with this finding, because there is no evidence of a correlation between a three-year time period and the ability to “significantly curb” the use of illegal fireworks. A variety of factors may either contribute to or impede the ability to reduce illegal fireworks use. While forbidding legal State approved fireworks may be one effective approach, we believe that the active enforcement and imposition of significant fines against those who use illegal fireworks, coupled with effective public awareness campaigns can also be highly effective.

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 been implemented, and has been a City of Santa Ana requirement since 1984.

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 been implemented and has been a City of Santa Ana requirement since 1984.

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 has not yet been implemented, but will be implemented within the next 12 months.

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 fund raising efforts of community nonprofit organizations. Furthermore, 501(c) 3 non-profit organizations are already obligated to provide financial information annually to the Internal Revenue Service related to their income and expenditures.

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 City routinely encourages our non-profit organizations to seek a variety of fundraising options.

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. As noted previously, a number of factors must be considered when determining whether to place items before the voters, including the potential cost of elections, the potential divisiveness of an issue, and the extent to which the issue is of significant community concern as compared with other issues. In Santa Ana, the use of legal fireworks has not been a significant matter of concern in the community. The normal representative government process provides an opportunity for voters to elect candidates based on their positions on various issues, including the sale and use of fireworks.

The estimated cost to put the issue on the ballot could range from \$150,000 to \$200,000 depending on whether it is part of a consolidated election or special election. In either case, this is a considerable cost, given the relatively few objections to legal fireworks the City has received. The Santa Ana City Council prefers to retain its legislative authority as granted by the voters and avoid the expense of ballot measures to decide issues that have limited community concern.

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. One reason the City of Santa Ana has traditionally allowed the use of legal fireworks is that there are few viable venues in the City for a public fireworks display. Santa Ana has 353,000 residents, many thousands of whom would want to participate in a public firework display as a replacement for home firework celebrations. There is no single public park or school facility in the City that could sufficiently accommodate a gathering of substantial size. Concentrating a large group of people in an inadequate area may create other public safety issues for police, fire and the general public.

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 warranted. For 2007, permit fees collected by the City of Santa Ana related to the legal sale of fireworks covered virtually all of the added law enforcement, fire safety, and public works costs. We anticipate that the permit fees will cover all additional costs for 2008 as well. Local governments are prohibited by law for charging more than the cost of providing a service.

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.

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RESPONSE: The recommendation will not be implemented because it is both unwarranted and unreasonable. 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, and are in the best position to advise their citizens. Furthermore, enforcement of such a requirement would be extremely difficult.

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. In addition, the City of Santa Ana has an Administrative Citation in place which imposes a fine of \$1,000 on those who use illegal fireworks. While forbidding legal State approved fireworks may be one effective approach, we believe that the active enforcement of administrative fines against those who use illegal fireworks, coupled with effective public awareness campaigns are also effective in reducing illegal fireworks activity.

Thank you for the opportunity to respond to the Grand Jury's report.

Sincerely,



DAVID N. REAM
City Manager