



Staff Report

For City Council Meeting - 9/1/2021

Subject - Old Business - Discussion - Fireworks in Gearhart

Synopsis: The Council expressed interest in pursuing a fireworks ban in the City of Gearhart. City staff researched firework bans in other municipalities in Oregon. Attached is a partial ordinance **draft** for discussion. The version incorporates the beach dune areas owned by the City. It does not extend through the urban growth boundary because only zoning code applies to the UGB. Another item to consider is whether the municipal code should be amended or not. Currently, penalties all fall under Section 10.99 no matter the violation, which states a maximum fine of \$500 per day each day the offense occurs. Cannon Beach, for example, amended its municipal code to “enhance” firework violations with penalty increases, and a separate violation for each firework discharged. Another consideration is the sale of fireworks within Gearhart.

Recommended Motion: Staff has no recommendation. The Council needs to decide to either direct staff to officially submit a **draft** ordinance to Council in the future, or to include the draft in a worksession for further discussion.

Legal Analysis: N/A

Financial Analysis: N/A

Respectfully Submitted,

Chad



CITY OF
GEARHART
ORDINANCE NO. XXX

A DRAFT ORDINANCE TO PROHIBIT ALL FIREWORKS WITHIN CITY LIMITS.

Draft for discussion

1. All fireworks within Gearhart city limits and city beach dune boundaries are banned.
2. Exhibit A is attached to this ordinance and incorporated by reference.
3. Penalties are defined in Section 10.99 of the Gearhart Municipal Code – GENERAL PENALTY:
 - (A) Any person violating any provision of this code for which no other specific penalty is provided shall, upon conviction, be punished by a fine not to exceed \$500, subject to division B of this section.
 - (B) Any person violating any provision of this code which is identical to a state statute containing a penalty shall, upon conviction, be punished by the penalty prescribed by state statute.
 - (C) Each calendar date on which a violation occurs constitutes a separate violation.

~~Passed by the City Council of Gearhart this _____ day of September, 2021.~~

~~Yeas: _____~~

~~Nays: _____~~

~~Absent: _____~~

~~Abstain: _____~~

~~Approved and signed by the Mayor of Gearhart this _____ day of XXX, 2021.~~

EXHIBIT A

FIREWORKS PROHIBITED

Possessing, discharging, or causing to be discharged, any fireworks is prohibited within Gearhart city limits, including city boundary beach dunes, without the written permission of the Oregon State Parks and Recreation Department manager of the beach area in which the permittee wishes to discharge such devices.

DEFINITIONS

Definitions used in this Exhibit and Ordinance have the following meanings:

"Fireworks" means any combustible or explosive composition or substance, or any combination of such compositions or substances, or any article which was prepared for the purpose of providing a visible or audible effect by combustion, explosion, deflagration or detonation, and includes blank cartridges or toy cannons in which explosives are used, balloons which require fire underneath to propel the same, firecrackers, torpedoes, sky-rockets, Roman candles, bombs, rockets, wheels, colored fires, fountains, mines, serpents or any other article of like construction or any article containing any explosive or inflammable compound, or any tables or other device containing any explosive substances or inflammable compound and includes, but is not limited to, the following:

A. Ground and Hand-Held Sparkling Devices:

1. Dipped Stick Sparkler. Stick or wire coated with pyrotechnic composition that produces a shower of sparks upon ignition. Total pyrotechnic composition may not exceed five grams of pyrotechnic composition per item. Note: wire sparklers that contain no magnesium, less than one hundred grams of composition per and are less than ten inches in length are considered novelties in subsection E below.
2. Cylindrical Fountain. Cylindrical tube not more than three quarters of an inch (19mm) inside diameter, containing up to seventy-five grams of pyrotechnic composition. Upon ignition, a shower of colored sparks, and sometimes a whistling effect, is produced. This device may be provided with a spike for insertion into the ground (spike fountain), a wood or plastic base for placing on the ground (base fountain), or a wood or cardboard handle, if intended to be hand-held (handle fountain).
3. Cone Fountain. Cardboard or heavy paper cone containing up to fifty grams of pyrotechnic composition. The effect is the same as that of a cylindrical fountain.
4. Illuminating Torch. Cylindrical tube containing up to one hundred grams of pyrotechnic composition. Upon ignition, colored fire is produced. May be spike, base or hand-held.
5. Wheel. Pyrotechnic device attached to a post or tree by means of a nail or string. Each wheel may contain up to six-inch driver units: Tubes not exceeding one-half inch (12.7 mm) inside diameter and containing up to sixty grams of pyrotechnic

composition. Upon ignition, the wheel revolves, producing a shower of color and sparks and sometimes a whistling effect.

6. Ground Spinner. Small device similar to a wheel in design and effect and placed on a ground and ignited. A shower of sparks and color is produced by the rapidly spinning device.

7. Flitter Sparkler. Narrow paper tube filled with pyrotechnic composition that produces color and sparks upon ignition. This device does not have a fuse for ignition. The paper at one end of the tube is ignited to make the device function.

B. Aerial Devices:

1. Sky Rocket (Stick Rockets). Tube not exceeding one-half inch (12.7 mm) inside diameter that may contain up to twenty grams of pyrotechnic composition. Sky rockets contain a wooden stick for guidance and stability and rise into the air upon ignition. A burst of color or noise or both is produced at the height of the light.

2. Missile-type Rocket. A device similar to a sky rocket in size, composition, and effect that uses fins rather than a stick for guidance and stability.

3. Helicopter, Aerial Spinner. A tube not more than one-half inch (12.7 mm) inside diameter and containing up to twenty grams of pyrotechnic composition. A propeller or blade is attached, which upon ignition, lifts the rapidly spinning device into the air. A visible or audible effect is produced at the height of flight.

4. Roman Candles. Heavy paper or cardboard tube not exceeding three-eighths inch (9.5 mm) inside diameter and containing up to twenty grams of pyrotechnic composition. Upon ignition, up to ten "stars" (pellets of pressed pyrotechnic composition that burn with bright color) are individually expelled at several-second intervals.

5. Mine Shell. Heavy cardboard or paper tube up to two and one-half inch (63.5 mm) inside diameter attached to a wood or plastic base and containing up to forty grams of pyrotechnic composition. Upon ignition, 11 stars, "firecrackers, or other devices are propelled into the air. The tube remains on the ground.

C. Audible Ground Devices:

1. Firecracker. Small paper-wrapped or cardboard tube containing not more than one hundred thirty milligrams of pyrotechnic composition. Upon ignition, noise and flash of light are produced.

2. Chaser. Small paper or cardboard tube that travels along the ground upon ignition. A whistling effect, or other noise, often is produced. The explosive composition used to create the noise may not exceed fifty milligrams.

D. Combination Items: Fireworks devices containing combinations of two or more of the effects described in subsections A, B and C of this section.

E. Novelties and Trick Noisemakers:

1. Snake, Glow Worm. Pressed pellet of pyrotechnic composition that produces a large, snake-like ash upon burning. The ash expands in length as the pellet burns. These devices may not contain mercuric thiocyanate.

2. Smoke Device. Tube or sphere containing pyrotechnic composition that, upon ignition, produces white or colored smoke as the primary effect.

3. Trick Noisemaker. Item that produces a small report intended to surprise the user. These devices include:

a. Party Popper. Small plastic or paper item containing not more than sixteen milligrams of explosive composition that is friction-sensitive. A string protruding from the device is pulled to ignite it, expelling paper streams, and producing a small report.

b. Booby Trap. Small tube with string protruding from both ends, similar to party popper in design. The ends of the string are pulled to ignite the friction-sensitive composition, producing a small report.

c. Trick Match. Kitchen or book match that has been coated with a small quantity of explosive or pyrotechnic composition. Upon ignition of the match, a small report or a shower of sparks is produced.

d. Cigarette Load. Small wooden peg that has been coated with a small quantity of explosive composition. Upon ignition of a cigarette containing one of the pegs, a small report is produced.

e. Auto Burglar Alarm. Tube that contains pyrotechnic composition that produces a loud whistle and/or smoke when ignited. A small quantity of explosive, not exceeding fifty milligrams, also may be used to ignite the device.

f. Snapper. Small paper-wrapped item containing a minute quantity of explosive composition coated on small bits of sand. When dropped, the device explodes, producing a small report.



698 PACIFIC WAY • P. O. BOX 2510 • GEARHART, OREGON 97138 • (503) 738-5501

August 27, 2021

TO: CHAD SWEET; CITY ADMINISTRATOR

SUBJECT: LEGAL FIREWORKS BAN

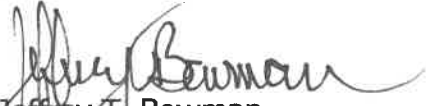
So, we are now going to make family gatherings that use Legal Fireworks sold in the State of Oregon, violators?

These families normally are not reckless in nature as they don't want any of their family members or friends injured. Nor do they want their neighborhood catching on fire. The fireworks are generally set-off in the street with little chance that anything will catch on fire. And since the discarded fireworks are in front of their residence, they generally clean it up.

State Parks has never enforced their fireworks ban on the beach and that is where most of the citizens go to discharge the illegal type of fireworks. I have worked the last 37 Fourth of July's and there are few illegal ones being discharged in town. Some reports of illegal fireworks being discharged, were found to be legal ones. The city council can pass an ordinance or not, but it will not stop the discharging of illegal fireworks. The logic of making something illegal so it will stop illegal actions, does not make sense.

Some citizens that either cause a problem or have a solution to their own problem, would rather have someone else take care of their problem no matter how many other persons are affected in doing so. There seems to be a lot of this attitude now a days.

WELCOME TO CANNON BEACH ANNEX.


Jeffrey T. Bowman
Chief of Police



Gearhart Volunteer Fire Department
P.O. BOX 2530 / 670 Pacific Way
Gearhart, Oregon 97138
(503) 738-7838 / (503) 738-9385 (fax)
JoshComo@cityofgearhart.com / www.gearhartfire.com

August 27, 2021

RE: Fireworks Ban

This new fireworks band ordinance will not benefit the citizens or the city of Gearhart and if this ordinance goes into effect, it will further limit our abilities for the following reasons.

- This does not affect or change what happens on the beach. (The beach adjacent to the City of Gearhart is an Oregon State Park. In which all fireworks are already illegal.)
- This year, out of the 25 calls we ran on the 4th none of them were caused by being a direct relation to illegal fireworks.
- we conducted a search dating back to 2001, we came up with a total of 4 calls that related to fireworks. In which case the fireworks used were already deemed illegal.
- people will hide when lighting off fireworks in fear of getting fined, will resort to hiding in the dune grass and back yards, which will increase the threat of dune grass fires, brush fires, and which carries a heavy threat of turning into structure fires.
- If someone gets hurt lighting fireworks which may happen more due to the public hiding them, they may fear calling 911 for help as they would not want to get a fine on top of their injury.

Some possible solutions to help within our city limits and the use of fireworks may be to ensure the noise curfew is adhered by. As well as possible confiscation or fines if fireworks are used recklessly.

In Oregon, Firefighters do have the authority to seize illegal fireworks. The Fire Department along with the Police Department cannot seize and or write fines for fireworks unless setting the fireworks off is witnessed by fire and/or law-enforcement. As I have stated it will be hard to witness people setting them off when they will be hiding to enjoy their outdoor activities. Creating this ordinance will only hurt the core City of Gearhart, the people that are recreating safely, where legal fireworks have not been a threat or harm to the public or had a Fire Department issues with legal fireworks. We have station coverage all day during the 4th as well as do our best to make sure the city is covered with personnel. This is already a great challenge as we are already stretched thin, especially on the 4th. By placing this Fireworks Ban into effect will create a greater strain in which we will not be able to handle the extra threat dune grass fires as well as structure fires present.

Sincerely,

A handwritten signature in black ink that reads "Joshua M. Como".

Joshua M. Como
Interim Fire Chief

Fireworks FAQ

What type of fireworks can I use in Oregon?

Retail: A permit from our office is not required to use Oregon consumer legal fireworks, also sometimes referred to as retail fireworks. Commonly known Oregon consumer legal fireworks are fountains, flitter sparklers, and ground spinners just to name a few.

Limited: 1.4g products, also known as consumer fireworks in the fireworks industry, may be used in Oregon only with a valid permit issued by our office. Common 1.4g fireworks are bottle rockets, Roman candles, firecrackers, and certain aerial fireworks. For more information on the permitting process, visit our website at <https://www.oregon.gov/osp/programs/sfm/Pages/Fireworks.aspx>.

Where can I purchase Oregon consumer legal fireworks, also called retail fireworks?

They can be purchased at an Oregon permitted retail fireworks sales location during the retail fireworks sale dates of June 23 through July 6. For approved locations, visit our website at <https://www.oregon.gov/osp/programs/sfm/Pages/Fireworks-Retail-Permits.aspx>.

When can I use Oregon consumer legal fireworks, also called retail fireworks?

Under Oregon law, the Office of State Fire Marshal has no regulations on when you can use retail fireworks purchased during the retail fireworks sale dates of June 23 through July 6; however, you need to check with local government for any local regulations.

Where can I use Oregon consumer legal fireworks, also called retail fireworks?

You can use Oregon consumer legal fireworks, also called retail fireworks where fireworks, are not prohibited.

Some prohibited locations are Oregon State beaches, parks, campgrounds, and State and Federal forest lands. You may also want to check for any local regulations. For more information visit their websites.

Oregon State Parks: <https://oregonstateparks.org>

Oregon Department of Forestry: <https://www.oregon.gov/odf/Pages/index.aspx>

Bureau of Land Management: <https://www.blm.gov/oregon-washington>

U.S. Forest Service: <https://www.fs.fed.us>

Can I bring fireworks to Oregon from another state?

No, fireworks must be purchased from an Oregon permitted retail fireworks sales location.

Can I use fireworks that fly in the air?

Fireworks that fly in the air, explode or behave in an uncontrolled and unpredictable manner are not allowed to be used in Oregon without the proper permit issued by our office. A limited fireworks display permit would allow you to use 1.4g fireworks, commonly known as bottle rockets, Roman

candles, firecrackers, and certain aerial fireworks. For more information on the permitting process, visit our website at <https://www.oregon.gov/osp/programs/sfm/Pages/Fireworks.aspx>.

Can I use sky lanterns in Oregon?

No, the law prohibits the use of sky lanterns in Oregon at all times.

Can I use fireworks at a private event?

Retail: You can use Oregon consumer legal fireworks, also called retail fireworks where fireworks, are not prohibited.

Some prohibited locations are Oregon State beaches, parks, campgrounds, and State and Federal forest lands. You may also want to check for any local regulations. For more information visit their websites.

Oregon State Parks: <https://oregonstateparks.org>

Oregon Department of Forestry: <https://www.oregon.gov/odf/Pages/index.aspx>

Bureau of Land Management: <https://www.blm.gov/oregon-washington>

U.S. Forest Service: <https://www.fs.fed.us>

Limited: Yes, you can, if you have completed the permitting process for a limited display permit allowing you to have a fireworks display using 1.4g also known as consumer fireworks in the fireworks industry. Common 1.4g fireworks are bottle rockets, Roman candles, firecrackers, and certain aerial fireworks. For more information on the permitting process, visit our website at, <https://www.oregon.gov/osp/programs/sfm/Pages/Fireworks.aspx>.

Fireworks and the Impacts of COVID-19 in Oregon

Are legal fireworks going to be for sale in Oregon during the sale period (June 23-July 6) this summer?

OSFM has been receiving and processing applications for retail sales of consumer fireworks, therefore we anticipate residents will see Oregon consumer legal fireworks for sale this year.

Will the state's rules and other measures implemented by local governments prevent organized fireworks displays?

Check with your local jurisdiction for updates on organized fireworks displays. Gov. Brown's plan for reopening Oregon bans large gatherings such as conventions, festivals, and major concerts and live audience sporting events through September.

Can a local jurisdiction ban the sale and/or use of legal fireworks?

There could be local restrictions in place. Always check with your local city, county, and other local authorities jurisdictions before using any fireworks.

Why are the sale and use of legal fireworks being allowed as the state addresses COVID-19?

Gov. Kate Brown's [Executive Order](#) to stay home and save lives does not specifically ban the sale and use of legal fireworks in Oregon due to COVID-19. Oregon law provides for the regulation of

fireworks at the local community level since that is where they are sold and used. Check with your local authorities if any restrictions are in place before buying or using fireworks.

Consequences

What can happen if I get caught using fireworks in prohibited areas?

Under Oregon law, officials may seize fireworks and you maybe charge with a class B misdemeanor, which could result in a fine of up to \$2,500 per violation and a civil penalty up to \$500.

Can I be held liable for damage and costs incurred in suppressing fires caused by use of fireworks, by myself or my child?

Yes, those who misuse fireworks or allow fireworks to cause damage may be held liable and required to pay fire suppression costs or other damage. For more information, visit our website at <https://www.oregon.gov/osp/programs/sfm/Pages/Fireworks.aspx>.

<https://www.oregon.gov/osp/Docs/ParentBookEnglish.pdf>

How can I report illegal fireworks usage?

Do Not Call 911 unless it's an Emergency!

You can report illegal usage of fireworks by calling the non-emergency dispatch telephone number of your local law enforcement agency. Under Oregon law they are authorized to enforce the fireworks laws in Oregon.

Oregon Fireworks laws and rules:

<https://www.oregon.gov/osp/programs/sfm/Pages/Fireworks.aspx#one>



Chad Sweet <chadsweet@cityofgearhart.com>

Fwd: [#FireSafeOregon] Firework Messaging from OSFM

Josh Como <joshcomo@cityofgearhart.com>
To: Chad Sweet <chadsweet@cityofgearhart.com>

Tue, Jun 29, 2021 at 5:10 PM

----- Forwarded message -----

From: **#firesafeOregon** <fireprevention@omls.oregon.gov>
Date: Tue, Jun 29, 2021, 13:13
Subject: [#FireSafeOregon] Firework Messaging from OSFM
To: fireprevention@omls.oregon.gov <fireprevention@omls.oregon.gov>

Good Afternoon All,

There have been quite a few discussions about fireworks this year. Our Office wanted to offer some additional information and clarification on statutory authorities.

Statute does not give OSFM or Fire Districts the authority to ban fireworks. Our Office is mandated to issue a permit for fireworks sales and the use of fireworks if we receive a completed and correct application for those activities. Permitted fireworks displays conducted by professionals may be postponed by either the local fire authority or law enforcement authority for unsafe conditions. **(ORS 480.140)**

Who has the authority to regulate or ban fireworks at the local level? Statute does not prohibit local governments (city, municipal, county) from regulating or banning fireworks in their local jurisdiction. These entities should work with their legal counsel to establish firework regulations.

Some areas in Oregon have banned the sale of fireworks within their jurisdiction, others have banned their use, and others have restricted the timeframe they may be used. Some of those municipalities or jurisdictions are Portland, Tualatin, Vernonia, and Bend. Our Office encourages residents to work with their elected officials, both at the state and local level, if they'd like changes in how fireworks are used in Oregon.

For jurisdictions supporting the legal use of fireworks, please continue to promote prevention tips, encourage residents not to use fireworks until conditions are safer, and safe firework usage. Attached are graphics, prevention messaging, and a Frequently Asked Question document.

Thank you,

Alison Green

Public Affairs Director

Office of State Fire Marshal

Oregon State Police



FIREWORKS

The Roles of OSFM & Local Agencies

Oregon Revised Statute 480.111-480.165 grants authority to specific entities to conduct certain activities. Under these ORS's the OSFM is mandated to issue licenses for the wholesale of fireworks, permits for retail sales of consumer fireworks and for using fireworks in displays, the entertainment industry, and pest control (agricultural) purposes. The OSFM Regulatory Services Branch also provides information regarding the fireworks statutes and rules; helps facilitate assistance from OSP when appropriate; provides guidance and information to local law enforcement agencies regarding seizure, storage, and pick up of fireworks; and helps facilitate the destruction of seized fireworks.



The fireworks statutes provide for local authorities to control fireworks in their communities.

- **ORS 480.140** places the supervision of fireworks displays under the local fire and police agency or in unprotected areas, the county court.
- **ORS 480.160** has provisions for local regulation of fireworks.
- **OR 837-012-0860 (9-11)** requires displays to be postponed or discontinued by the local authority if there are adverse conditions, lack of crowd control, or significant weather conditions that affect safety recognized by the local fire or law enforcement authority.
- **ORS 480.120 (2)** requires law enforcement agencies of the state, county, or municipality to enforce the provisions of ORS 480.111-480.165.

On the reverse is a matrix that summarizes the roles of OSFM and local authorities relating to the retail sales of consumer fireworks, fireworks displays, and enforcement activities.

Consumer Fireworks Sales, Displays, & Enforcement Activities Matrix

Fireworks	Local Role		Office of State Fire Marshal	
	Protected Areas	Unprotected Areas	OSFM Deputy Role	OSFM Role
Retail sales of consumer fireworks (includes storage of consumer fireworks)	Local fire approval signature on application; (does not include private fire departments)	None	Fire authority approval signature on application in unprotected areas only	Issues the permit
Display of fireworks	Local fire (does not include private fire departments) and law enforcement approval signatures on application	Approval signature on application by County court or their designee	Can provide technical assistance to the court or designee	Issues the permit
Enforcement/seizure-small quantities of illegal fireworks	Local law enforcement	Local law enforcement	None	None
Enforcement/seizure-large quantity of illegal fireworks	Local law enforcement or OSP Explosives Unit	Local law enforcement or OSP Explosives Unit	None	Can help facilitate OSP assistance when appropriate
Improvised devices handling and seizure	Local law enforcement/explosives unit or OSP Explosives Unit	Local law enforcement/explosives unit or OSP Explosives Unit	None	Can help facilitate OSP assistance when appropriate

Fire & Rescue

Always Ready, Always There



Phone: 503-823-3700 Fax: 503-823-3710 55 SW Ash Street, Portland, OR 97204
More Contact Info (<http://www.portlandoregon.gov/fire/article/165859>)

Fireworks General Information

KEEP IT LEGAL - KEEP IT SAFE LEGAL FIREWORKS

State of Oregon Fireworks Chart:

Includes:

- Novelty Device
- Wheel
- Flitter Sparkler
- Fountains
- Smoke Device
- Ground Spinner



OREGON OFFICE OF STATE FIRE MARSHAL

503-934-8274 | oregon.gov/osp/sfm | sfm.lp@state.or.us | [fb.com/OregonStateFireMarshal](https://www.facebook.com/OregonStateFireMarshal) | twitter.com/OSFM

KEEP IT LEGAL - KEEP IT SAFE ILLEGAL FIREWORKS

State of Oregon Fireworks Chart:

ILLEGAL: Any firework that flies into the air, explodes, or behaves in an uncontrollable and unpredictable manner.

Warning label may say:
"Shoots Flaming Balls."

Oregon Laws Violated:
ORS 480.120

Violation Charged:
Class B Misdemeanor



Contact OSFM or the OSP Explosives Unit at 503-378-3720 for assistance with disposing illegal fireworks.



OREGON OFFICE OF STATE FIRE MARSHAL

503-934-8274 | oregon.gov/osp/sfm | sfm.jp@osp.oregon.gov | fb.com/OregonStateFireMarshal | twitter.com/OSFM

Each year in the United States, we celebrate the Fourth of July with community parades, picnics, barbecues, and fireworks - the things of which happy memories are made. But sadly, Independence Day also includes tragic events and injuries resulting from illegal fireworks use and is both traumatizing and harmful to children, animals, and a growing number of war veterans who deserve our loyalty the most.

Completely aside from the danger (both legal and personal) of exploding illegal fireworks, there's a huge risk of fire and property damage.

Legal fireworks may be purchased only from Oregon permitted fireworks retailers and stands. Oregon law forbids possession, use or sale of fireworks that fly, explode or travel more than six feet on the ground or 12 inches in the air. Bottle rockets, Roman candles, and firecrackers are ILLEGAL in Oregon.

Under Oregon law, officials may seize illegal fireworks fining offenders up to \$1000 per violation including possession of illegal fireworks and endangering life and property. Offenders may also be arrested. Any fireworks causing damage or misuse of fireworks carries a liability for the offender, who may be required to pay for resulting fire or other damage. Parents are liable for fireworks-caused damage by their children. Costs may include assessed fines as well as the cost of suppressing fireworks-caused fires.

Portland Fire & Rescue and our partner agencies ask you to consider the negative effects of illegal fireworks on our community and encourages participation in one of the numerous professional fireworks displays in our region, which are put on for all citizens to enjoy in a safe and legal manner. At PF&R, our goal is to make the 4th of July safer for our community one neighborhood at a time. Thank you for your support.