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Cc: [City Manager- Mail](#); [City Clerk](#); [Speaker, Joseph](#); [Bartee, Rick](#); [Cindy Dronberger \(dronbergerc@tntfireworks.com\)](#); [Jim Castilone](#); [John Castilone](#); [Bergstrom, Troy](#)
Subject: City Council Meeting /Wednesday, January 17, 2024/Agenda Item: SPECIAL REQUESTS/REPORTS/PRESENTATION/Item #8.2.
Date: Wednesday, January 17, 2024 9:38:35 AM
Attachments: [If you are not Part of the Solution You are part of the problem interactive flyer \(00045048xB1573\).pdf](#)
[What Happens in Nevada---Should Stay in Nevada!!! \(00049978xB1573\).pdf](#)
[Illegal Fireworks - Recreation or Wreckreation \(00052373xB1573\).docx](#)
[Addition of Public Right of Way to Social Host Ordinance \(00051745xB1573\).docx](#)
[San Jose Illegal Fireworks Spectator Liability \(00052374xB1573\).pdf](#)

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January 17, 2024

The Honorable Bruce Houdesheldt and
Members of the City Council
City of Roseville
311 Vernon Street
Roseville, CA 95678

Re: City Council Meeting

Date: Wednesday, January 17, 2024

Time: 6:00 pm

Agenda Item: SPECIAL REQUESTS/REPORTS/PRESENTATION
Item #8.2.

Memo from Assistant City Attorney Joseph Speaker recommending the City Council provide direction on future action related to illegal fireworks enforcement. There is no fiscal impact associated with this particular request.

Our Client: TNT Fireworks

Dear Mayor Houdesheldt and Councilmembers,

As you may know, since 1989 Revell Communications has served as the public relations/public affairs representative for American Promotional Events, Inc. (TNT Fireworks), the state's leading wholesale distributor of State Fire Marshal-Approved Fireworks. We assist TNT Fireworks with its community liaison activities as well as with the development and implementation of both local and statewide Fireworks Safety & Education

Programs that it coordinates and/or underwrites in conjunction with local and state fire departments and law enforcement agencies. We also assist our client as well as the State of California and many local communities with the collection, tabulation and analysis of local fire and injury data as it relates to illegal, state-approved and unknown fireworks and act as a resource library for those same entities on emerging enforcement and public education techniques throughout the country as we all battle with the growing menacing problem of illegal fireworks. (For further general information please see the attached "[If You Are Not Part of the Solution, You Are Part of the Problem!!](#)").

The purpose of this communication is to voice both our support for staff's recommendations moving forward for 2024, more specifically, we support for all parts of OPTION 1 and OPTION 2, and to offer some constructive suggestions for your City Council and the Roseville Fire and Police Departments to consider as adjustments to those recommendations which will further meet the goals of a safer and less costly 4th of July. I will be happy to address any of these suggestions or comments in person tonight or speak with any staff or Councilmember in advance of the meeting regarding them. **But first, let me set the scene that Roseville, and every other community in California, is faced with right now.**

WHAT IS THE PROBLEM?

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For days on end for the months leading up to this last 4th of July and other holidays, Californians are being treated to a cacophony of booms, bangs and amateur illegal aerial fireworks displays. Local fire and law enforcement agencies who are kept busy responding nightly to residents' complaints about these illegal aerial displays and celebratory explosives, continue to assert it was one of the most prolonged and intense periods of illegal, intermittent neighborhood bombardments they had ever witnessed. While no community was immune from these insane illegal displays this year, the rampant use of illegal fireworks was particularly crazy in communities where no fireworks are allowed.

So many California communities have been experiencing an annual, growing, rampant use of illegal fireworks, because until recently, little or nothing was being done to stop the interdiction of these illegal, dangerous items into California. As a result, local jurisdictions have become not only the "first line of defense", but the "only line of defense" against illegal fireworks! Communities throughout the state are being confronted with the scope of an illegal fireworks problem that requires a level of enforcement personnel that their budgets and police and fire departments cannot support.

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For the better part of the last two decades, there has been no border integrity or inspections for illegal fireworks like there used to be. As a result, there are both hordes of individual criminal entrepreneurs as well as large commercial operations smuggling these dangerous, illegal fireworks into the state without fear of being caught or suffering any criminal consequences.

WHO IS THE SOURCE OF MOST OF THESE ILLEGAL FIREWORKS?

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Currently, there are six fireworks stores in Southern Nevada in the city of Pahrump and seven stores immediately northeast of Reno. These stores sell the full range of federally-approved fireworks that are illegal in California. **Most informed estimates suggest that these thirteen stores account for at least 60 to 70 percent of the illegal fireworks used in California.** One of these stores (Area 51 Fireworks), according to press reports and prosecutorial records, was the retailer for the illegal fireworks, found or involved in the massive explosions and busts in

Ontario and the City of Los Angeles in 2021.

The California resident defendant in the Los Angeles case, testified in court that he made up to five trips over a nine day period in a large rental truck to the Area 51 Fireworks' store in Pahrump and purchased massive amounts of illegal fireworks by the carton, loaded them into his rental truck and brought them back to Los Angeles where he stored them at his residence along with handmade explosives he claimed he bought from someone in AREA 51 Fireworks' parking lot.

It is the universal general policy of most, if not all, of these stores to:

- Require the purchaser to show their driver's license which the store scans and downloads;
- Require the purchaser to buy a "Shooter's Permit" and say they are going to take these fireworks to a place out in the middle of nowhere to use them, or sign a form that states they will not use these fireworks in the town where they were purchased and will only take them somewhere where their possession and use are legal; and
- Require the purchaser to state that they are buying these fireworks for personal use only.

Area 51 Fireworks had to know that the defendant in the Los Angeles incident was violating California criminal statutes and regulations by buying massive quantities of fireworks illegal in California and bringing them back into California. Given the volumes purchased and the frequency of those purchases over just nine days, AREA 51 Fireworks was on actual notice that these fireworks were not for personal use but for resale in a location where they were illegal to possess, use or sell without a proper California license from the State Fire Marshal. **The reality is, the only reason to have a fireworks store in Pahrump, NV is to sell illegal fireworks to California residents.** Otherwise, it would mean that every man, woman, and child in this highly remote desert town of 38,390 people, immediately adjacent to the California border, would each have to buy thousands of dollars of fireworks that by Nye County ordinance says they are not allowed to set off in Pahrump.

Lest you doubt these rough sales dollars estimates, in a letter to the Chair and Members of the Nevada Senate Committee on Government Affairs, dated 3/28/21, from Douglas Burda, CEO of Red Apple Fireworks in Pahrump, Mr. Burda stated the following:

"We, on average, pay nearly \$1,000,000 a year in state and local taxes and fees."

The state and local tax rate in Pahrump, NV is 7.6%! **That would mean, by Mr. Burda's own admission, "on average", the Red Apple Fireworks store in Pahrump sold almost \$14 million of fireworks every year and it's safe to assume the vast amount of those annual sales were knowingly made to California residents. And that's only one store out of thirteen.**

I respectfully urge you to check out the attached flyer titled: "What Happens in Nevada--Should Stay in Nevada!!!!". Use the links or QR codes on this flyer to look at the U.S. Attorney's records and the defendant's testimony in the incident that resulted in the destruction of the Los Angeles Police Department's Bomb Containment Vehicle and 17 homes and businesses. View the You Tube video posted by one of the thousands of California residents who regularly go these Nevada stores and buy illegal fireworks by the carton, not by the individual item, and bring them back into California!

SO WHAT CAN BE DONE TO ATTACK THIS PROBLEM? ----- AB 1403 (Dem-Garcia)??

I helped draft AB 1403. When it was introduced, among other things, it was designed to address the growing crisis of the illegal importation and sales of dangerous, illegal fireworks into California and how the Office of the State Fire Marshal (OSFM), local jurisdictions, and California licensed Safe and Sane Fireworks wholesalers are trying to put a stop to this growing menace. Regrettably, because consultants for the two policy committees in the State Assembly lacked confidence in the state's ability to tackle the illegal fireworks problem, they forced the removal of many of the bill's components that would have provided the financial resources for the state to begin to tackle the problem. The balance of AB 1403, which included increasing illegal fireworks violator fine levels for large volumes of illegal fireworks, became law on January 1, 2024.

WHY IS STATE ACTION NEEDED?

The California Department of Justice and the State Fire Marshal stopping the bulk sales of illegal fireworks to California residents at their source is a more proactive and effective approach to addressing the issue in local communities across California. By focusing on the out-of-state sources of these illegal fireworks, state officials can work to disrupt the supply chain of illegal fireworks and prevent them from ever reaching communities like Roseville in the first place. Relying solely on local fire and law enforcement agencies to contain the use of illegal fireworks is a reactive approach that everyone acknowledges is not sufficient to address the scale and scope of the problem.

- Most recently, we have requested that the California State Fire Marshal initiate discussions with the California Department of Justice, the Governor's Office of Emergency Services, the California Fire Chiefs Association and the Fire Districts Association of California, and the undersigned on behalf of TNT Fireworks, to explore an Interstate Compact or an Interstate Agreement between California and Nevada requiring all Nevada Fireworks Retail Store locations to contemporaneously download their records, into a secure website controlled by the State of Nevada, of all sales made to and the items purchase by any individual presenting a valid state ID with a resident address location where the products purchased are not allowed to be possessed or used. The compact or agreement between the two states should make the State of Nevada' website accessible to any fire and/or law enforcement agency in the State of Nevada or California and ATF and US DOT.

WHAT CAN THE CITY OF ROSEVILLE DO IN THE INTERIM, UNTIL STATE AND FEDERAL ACTION IS TAKEN, TO IMPACT THE SUPPLY CHAIN OF ILLEGAL FIREWORKS INTO CALIFORNIA?

- Below, please find a list of City Staff's recommendations for 2024, along with our client's position on each, and my suggestions for any future adjustments to or considerations in the implementation of those recommendations:

OPTION 1

- **Increase the first offense fine to \$750 for a first offense and then \$1,000 for every offense thereafter..**

Position: Support, but increase the fine to \$1,000 for the first offense with multipliers for every subsequent offense (i.e., 2nd offense - \$2,000; 3rd offense--\$3,000). Utilize “stacking” citations where appropriate.

Recommendation: Roseville is a “charter city” and thus can impose an administrative fine in excess of \$1,000 per violation. Staff’s proposal calls for a violation fine of \$750 for the first violation for illegal fireworks. The vast majority of violators who put on massive illegal fireworks displays will have spent upwards of ten times that amount to purchase illegal fireworks and will look at any fine of less than \$1,000 as the mere cost of having fun. Furthermore, every other jurisdiction in the Greater Sacramento Area has their first offense citation amount at \$1,000. We would further recommend that Roseville employ a citation practice that is commonly referred to as “stacking” for illegal fireworks violations that occur in the City. This would permit the City to treat the lighting of each individual illegal firework as a separate violation rather than collectively citing all ignitions as one violation. Salinas does this very effectively. The best analogy for this is, if a criminal suspect has barricaded himself in a house and five police officers approach the house and the suspect shoots in the direction of the five officers, the suspect would be charged with at least five separate offenses. (See Rationale for Administrative Fine Procedure in attached “*Illegal Fireworks—Recreation—OR---Wreckreation?*”)

- **Remove the section of the Roseville Municipal Code that caps a violation at an infraction when a person possesses 25 lbs. or less, and instead allow the violation to be cited as a misdemeanor.**

Position: Support

Recommendation: This would make the City consistent with every other jurisdiction in the region.

- **Allow for law enforcement to charge a person the actual costs for responding to a call for an illegal firework in addition to the fine amounts.**

Position: Support

Recommendation: It is critical that Roseville amend its ordinance to include a provision that allows the City to recover the actual costs of its illegal fireworks enforcement efforts from violators as well as any costs associated with the collection, transportation and/or disposal of the violator’s seized illegal fireworks that are not covered by the State of California. Some jurisdictions have also chosen to issue additional “noise violation citations” in addition to the ones for possession or use when the use of the illegal fireworks has been during the early morning hours protected by their noise ordinance. Typically, the minimum cost recovery amount begins at \$250 in addition to the fine amount, for each violation. (See Rationale for Response Cost Recovery Ordinance in attached “*Illegal Fireworks—Recreation—OR---Wreckreation?*”)

OPTION 2

- **In addition to any part or all of Option 1, also implement a “Host” ban that**

punishes the property owner who knowingly allows someone to violate our ordinance on their property.

Position: Support, with a consideration of whether the City should also include a “public right-of-way” and/or a “spectator liability” provision to its Fireworks Social Host Ordinance (FSHO) and/or deploying trained, civilian patrols to assist with FSHO citations.

Recommendation: Both fire and police representatives will tell you that while the discharge of illegal fireworks can be tied to a particular residence or property, it is often difficult to tell who at the residence or property discharged the illegal fireworks. The owner or tenant of the premises is often in the best position to control and knows or should know of the possession, manufacture, storage, sale, handling and/or use of illegal fireworks on his/her residence or commercial premises. Many of the jurisdictions who have adopted social hosts ordinances have concluded that those persons who have possession or control of private property where dangerous illegal fireworks are being stored, sold or used, have failed to ensure that this activity is not taking place on their property.

In addition, many police and fire agencies are reluctant to send their personnel into an environment, particularly in the case of only one or two officers on the scene, that would pose a serious threat to that officer’s safety given the participants in the illegal activity and the violator’s level of intoxication or other impaired behavior. Thus, the ability to cite the “Responsible Person” without subjecting that officer to potential threat or harm, is a preferable, safer response to handling the situation. (See Rationale for Social Host Ordinance in attached “*Illegal Fireworks—Recreation—OR---Wreckreation?*”).

The City may also want to consider adding a provision to its Social Host Ordinance similar to the attached ordinance section from Fresno’s ordinance that addresses illegal fireworks violations in the public right-of-way adjacent to a Social Host’s property – and/or--a provision similar to the attached ordinance section from San Jose’s ordinance that addresses “spectator liability” at illegal fireworks displays much like many jurisdictions are now fining spectators at illegal driving demonstrations that take over streets and highways.

The City can greatly increase the number of citations it issues and impact its illegal fireworks use if it implements its Fireworks Social Host Ordinance (FSHO) by deploying unmarked patrols consisting of a combination of “trained” City employees, CERT volunteers (Community Emergency Response Team), Code Enforcement personnel, and fire inspectors equipped with 4K, night vision binocular cameras (https://www.amazon.com/Hiacinto-Night-Vision-Binoculars-Infrared/dp/B0BKRO3WBR/ref=sr_1_1?keywords=hiacinto+night+vision+4K+binocular+camera&sr=8-1) to document Fireworks Social Host Ordinance violations pursuant written policies on how to file a citation request, the necessary documentation for a citation, and how these individuals must conduct themselves in order to not put themselves or others at risk. Keep in mind, a FSHO does not require that the violation be committed in the presence of an officer. Third party reporting, that properly documents a FSHO violation, are sufficient

grounds to issue a citation to a “Responsible Person” under the City’s FSHO. An administrative citation needs only proof of just enough evidence to make it more likely than not that the illegal fireworks violation the City claims occurred is true. (See Rationale for Social Host Ordinance in attached “*Illegal Fireworks—Recreation—OR--Wreckreation?*”).

I would welcome the opportunity to speak with you about the above recommendations before this evening’s City Council meeting and answer any questions you have.

Very Truly Yours,

REVELL COMMUNICATIONS

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