

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
MARCH 3, 2009 AGENDA**

Subject:	Type:	Submitted By:
FIREWORKS PERMITS	◆ RESOLUTIONS ORDINANCE RECEIVE/FILE	PAM BUETHE CITY CLERK

SYNOPSIS

Two resolutions have been prepared for approval of issuing conditional 2009 retail fireworks sales permits. The first resolution establishes the number of permits the City will issue. The second resolution conditionally grants permits to the organizations approved by Council.

Applications have been received from:

- La Vista Youth Football and Cheerleading
- La Vista Area Chamber of Commerce
- La Vista Youth
- La Vista Lancers Soccer Club
- La Vista Vipers Wrestling Club
- La Vista Youth Baseball Association
- St. Columbkille Shepherds, Inc.

FISCAL IMPACT

A \$2,500 permit fee is required of each applicant. Additionally, a tent permit fee of \$150, temporary sign permit fee of \$30/sign (maximum of four), and an explosive materials storage permit fee of \$100 are required. The City has received a \$500 application deposit and the additional required permit fees from each of the applicants. For each permit issued, the remaining \$2,000 fireworks sales permit fee balance is due no later than noon on June 25, 2008.

RECOMMENDATION

Approval of the applications submitted by the La Vista Youth Football and Cheerleading, La Vista Area Chamber of Commerce, La Vista Youth, La Vista Lancers Soccer Club, and La Vista Vipers Wrestling Club, stipulating their compliance with requirements made by the Chief Building Official regarding their site plan and compliance with City Code.

Denial of the application submitted by La Vista Youth Baseball Association as their location is within a Light Industrial (I-1) zoning district which does not allow fireworks stands as a temporary use.

Denial of the application submitted by St. Columbkille Shepherds, Inc. as they are not in compliance with Municipal Code Section 111.17 (C) (2) which states in part, that the use of the net proceeds from the sale of fireworks shall be for community betterment purposes within the city.

BACKGROUND

The Municipal Code Section 111.17 (A) states in part, that "Each year the City Council shall, by resolution, establish the maximum number of permits to be issued, however this number shall not in any event exceed six.

In September of 2006 a criteria/point system was created as part of the evaluation of the applications. There were no deductions to the five applications based on this point system. The two applications recommended for denial were in violation of the City Zoning regulations and City Code.

Permits will be subject to receipt of all appropriate application materials and compliance with recommendations made by City Staff.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, ESTABLISHING THE MAXIMUM NUMBER OF FIREWORKS STANDS TO BE PERMITTED IN THE CITY OF LA VISTA FOR CALENDAR YEAR 2009.

WHEREAS, Section 111.17 and Section 111.18 of the Municipal Code establish criteria that must be met for the issuance of fireworks stand permits, and

WHEREAS, Section 111.17 (A) of the Municipal Code states in part that, "Each year the City Council shall, by resolution, establish the maximum number of permits to be issued."

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of La Vista, Nebraska, that the maximum number of fireworks stand permits to be issued in calendar year 2008 shall not exceed five (5).

BE IT FURTHER RESOLVED, that per Section 111.17 (C) (10) of the Municipal Code, permit holders shall provide the City of La Vista with a certificate of insurance for their fireworks stand in the type and amount outlined.

BE IT FURTHER RESOLVED, that the written statement of income and expenses, which is required by Section 111.17 (C) (3) of the Municipal Code, be detailed and provide the City with a breakdown of specific expenditures related to the fireworks operation, income from the sale of fireworks, net profit, and specific community betterment expenditures.

BE IT FURTHER RESOLVED, that the issuance of a fireworks permit is conditional upon compliance with the Municipal Code, the Zoning Ordinance, and any other applicable regulations.

PASSED AND APPROVED THIS 3RD DAY OF MARCH 2009.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Bueth, CMC
City Clerk

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA APPROVING THE FIREWORKS STAND PERMIT APPLICATION OF THE, LA VISTA YOUTH FOOTBALL AND CHEERLEADING, LA VISTA AREA CHAMBER OF COMMERCE, LA VISTA YOUTH, LA VISTA LANCERS SOCCER CLUB, LA VISTA VIPERS WRESTLING CLUB

WHEREAS, the City of La Vista requires City approval of the sale of fireworks within the City limits, and

WHEREAS, the guidelines for application and sale of fireworks in La Vista are specified in the La Vista Municipal Code, Section 111.17 and Section 111.18; and

WHEREAS, five (5) non-profit organizations have applied for permission to sell fireworks in the City of La Vista in conformance with the Municipal Code, the Zoning Ordinance and any other applicable regulations; and

WHEREAS, City staff has reviewed all applications received in 2009 for the purpose of determining which applications were compliant with the Municipal Code, the Zoning Ordinance or any other applicable regulations.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and City Council of La Vista, Nebraska, hereby conditionally grant a permit to:

La Vista Youth Football and Cheerleading, La Vista Area Chamber of Commerce, La Vista Youth, La Vista Lancers Soccer Club, La Vista Vipers Wrestling Club

to sell fireworks within the City of La Vista for the 2009 calendar year subject to receipt of all appropriate application materials and compliance with recommendations made by the Chief Building Official regarding their site plan; compliance with the Municipal Code, the Zoning Ordinance and any other applicable regulations; and attendance by an official of the nonprofit organization which applied for the permit at a meeting with City staff (date and time to be established).

PASSED AND APPROVED THIS 3RD DAY OF MARCH 2009.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

2009 Fireworks Application Review

La Vista Youth Football and Cheerleading (20 points) (7302 Harrison Street)

- Police Chief stated that the site has been used in the past and concerns have been with access to the site. No traffic collisions reported last year at the sight. Concern with proximity of their tent to the La Vista Lancers Soccer Club tent.
- No complaints reported in 2008
- Building Official did not state any concerns.
- Fire Chief did not state any concerns

La Vista Area Chamber of Commerce (20 points) (7200 So. 84th Street – Mortgage Express)

- Police Chief had no concerns with the proposed site.
- No complaints reported in 2008.
- Building Official stated that it is mandatory and they must verify the signage is off the 84th Street Right-of-Way.
- Fire Chief did not state any concerns

La Vista Youth (20 points) (8011 S 83rd Street)

- Police Chief had no concerns with the proposed site.
- No complaints reported in 2008.
- Building Official stated that it is mandatory they keep parking off 83rd Street and off of the grass.
- Fire Chief did not state any concerns

La Vista Lancers Soccer Club (20 points) (7302 Harrison Street)

- Police Chief stated the site has been used in the past and concerns have been with access to the site. No traffic collisions were reported last year at the site. He is concerned with proximity of the tent to the La Vista Youth Football tent.
- No complaints reported in 2008.
- Building Official did not state any concerns.
- Fire Chief did not state any concerns

La Vista Vipers Wrestling Club (20 points) (8110 So. 84th Street – Brentwood Square)

- Police Chief had no concerns with the proposed site.
- No complaints reported in 2008.
- Building Official stated that it is mandatory they must keep signage off of the 84th Street Right-of-Way and maintain all required setbacks.
- Fire Chief did not state any concerns

La Vista Youth Baseball Association (20 points) (108th & Giles Road, Lot 40 Brook Valley Business Park)

- Location is within a Light Industrial (I-1) zoning district which does not allow fireworks stands as a temporary use. Therefore denial is recommended.

Other review comments:

- Did not sell fireworks in La Vista previous to this year.
- Police Chief had no concerns with the proposed site.
- Building Official stated that parking needs some sort of surfacing – gravel/rock.
- Building Official stated that they need a 25' setback between storage trailers and any other structure.
- Fire Chief did not state any concerns

St. Columbille Shepherds, Inc. (20 points) (8501 Granville Parkway – Reruns Event Center)

- Application is not in compliance with Municipal Code Section 111.17 (C) (2) which states in part that the use of the net proceeds from the sale of fireworks shall be for community betterment purposes within the city. Therefore denial is recommended.

Other review comments:

- Did not sell fireworks in La Vista previous to this year.
- Police Chief had no concerns with the proposed site.
- Building Official stated that the proposed strobe lights are prohibited.
- Building Official stated that it is mandatory that there be a 10' setback on all signs.
- Fire Chief did not state any concerns

(C) No provisions hereof shall be construed to authorize the use of mailboxes for the depositing of handbills, samples or other materials prohibited by federal postal law or regulations. ('79 Code, § 10-203) (Ord. 466, passed 9-20-88) Penalty, see § 10.99

Cross-reference:

For related provisions, see § 130.02

FIREWORKS

§ 111.15 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

FIREWORKS. Any composition or device designed for the purpose of producing a visible or audible effect by combustion, deflagration or detonation and which meets the definition of common or special fireworks set forth by the United States Department of Transportation in Title 49, Code of Federal Regulations.

PERMISSIBLE FIREWORKS. Sparklers, vesuvius fountains, spray fountains, torches, color fire cones, star and comet type color aerial shells without explosive charge for the purpose of making a noise, color wheels and lady fingers not exceeding seven-eighths inch in length or one-eighth inch in diameter and which do not contain more than 50 milligrams each in weight of explosive material. The provisions of this section shall not apply to any fireworks to be used for purpose of public exhibitions or display under authorization of the city or to fireworks furnished for agricultural purposes pursuant to written authorization from the State Fire Marshal.

(Neb. RS 28-1241) ('79 Code, § 10-312) (Ord. 75, passed - -; Am. Ord. 470, passed 10-18-88)

§ 111.16 SALE AND DISCHARGE OF NONPERMISSIBLE FIREWORKS PROHIBITED.

It shall be unlawful for any person to sell, hold for sale or offer for sale, ignite or cause to be exploded within the corporate limits of the city any fireworks or any other dangerous or combustible substance; provided, however, permissible fireworks may be sold and discharged in accordance with the following sections of this subchapter; and provided further that the City Council may authorize fireworks displays at special public gatherings under such circumstances that they will do no damage to person or property upon issuance of a display permit.

('79 Code, § 10-312) (Ord. 75, passed - -) Penalty, see § 10.99

Statutory reference:

Statutory provisions, see Neb. RS 28-1237, 28-1239.01, 28-1241, 28-1244, 28-1245, and 28-1249

§ 111.17 SALE OF PERMISSIBLE FIREWORKS; PERMIT REQUIRED; APPLICATION; PERMIT FEE.

(A) Each year the City Council shall determine whether or not to allow fireworks stands to operate in the city. If the City Council determines that fireworks stands will be permitted, the Council shall, by resolution, establish the maximum number of permits to be issued, however this number shall not in any event exceed six.

(B) It shall be unlawful for any person to sell, hold for sale or offer for sale any permissible fireworks within the corporate limits of the city unless such person has first obtained a permit from the City Council to do so.

(C) Application for said permit shall be made in the following manner:

(1) Application shall be made on such form as shall be prescribed by the City Council and shall be filed with the City Clerk by noon on January 15 of the year for which the permit is sought. If January 15 falls on a weekend or a holiday when city offices are closed, the deadline will move to noon on the next business day. The city shall, by publication, give notice each November of the procedure and deadline for submitting a permit application.

(2) Only nonprofit organizations and associations using volunteer sales persons and which will use the net proceeds from the sale of fireworks for community betterment purposes within the city shall be eligible for a permit.

(3) If the applicant organization has held a permit in any of the three preceding years, it must file with its application a written statement of the income and expenses from the sale of its fireworks within the city for each of such years, together with a statement of its community betterment type expenditures made from the net proceeds from the sale of fireworks in each said year.

(4) The applicant shall state the nature of the community betterment purpose for which the net proceeds from the current year's sale of fireworks will be utilized if the permit be granted.

(5) The application organization must identify the proposed location for the retail fireworks stand in the permit application. A signed statement from the property owner granting the application organization permission to utilize the property must accompany the application.

(6) All applications for permits must be approved by the City Council. The City Clerk shall be responsible for reviewing applications, tallying points and making recommendations to the Council for permits. Applications will be evaluated on the following criteria/point system:

(a) Each year all applications will start out with a total of 20 points.

(b) Applications shall be automatically disqualified if they are received after the application deadline of January 15; if they are incomplete based on the checklist that is included on the application form; or if the applicant organization is a prior-year permit holder that has displayed and/or sold or attempted to sell illegal fireworks or has otherwise violated the law regarding the operation of their fireworks stand.

(c) 1. Applications that are not disqualified will be reviewed by the City Clerk and will lose points according to the following schedule:

<i>Point Deduction</i>	<i>Infraction</i>
2	Information missing from the fireworks application permit
2	Information missing from the tent permit application
2	Information missing from the sign permit application
2	Information missing from the explosive materials storage permit application
2	Information missing from the site plan
5	Lack of sufficient detail regarding proposed community betterment expenditures
5	Lack of sufficient detail regarding previous years income and expenditures
5 - 20	Concerns with proposed location based on recommendation from public safety personnel

2. In the event of a tie(s) after ranking, first preference shall be given to those eligible organizations that identify community betterment acquisitions, services or programs which will benefit the city as a whole. Those that benefit only particular areas or neighborhoods of the city shall have second preference. If all other application requirements are met, special consideration will be given to organizations agreeing to co-locate and operate a fireworks stand.

(7) Permits will be valid only for the period specified on the face of the permit and will automatically terminate on the specified ending date. Permit holders shall not have any right to or expectation of receiving a permit or operating a fireworks stand in the city in any future year or period. Notwithstanding anything herein to the contrary, permits are revocable at the will of the city, at anytime, with or without cause.

(8) As used herein, the following terms have the following meaning:

(a) **COMMUNITY BETTERMENT** shall mean that which generally betters or enhances the community of the city, such as:

1. The acquisition, improvement and maintenance of parks and recreational facilities, public equipment and other items for community use and enjoyment or to be used by the city in service to the community;
2. The recruitment and attraction of new businesses and jobs to the city community;
3. Athletic programs for the community; and
4. Other acquisitions, services or programs of general benefit to the city community.

(b) **NET PROCEEDS** shall mean gross sales less the cost of fireworks, permit fee, rental or lease expense, advertising and similar costs of operation of the fireworks stand. Volunteer salespersons shall be used and any remuneration paid or given to persons performing services in connection with the sale of fireworks shall not be deemed a cost of operation.

(9) A permit fee to sell, hold for sale or offer for sale permissible fireworks in such amount as set from time to time by the Mayor and City Council and a current record of which shall be maintained by the City Clerk, shall be collected by the city. A permit application deposit of \$500 must accompany the permit application; and, if a permit is issued, the remaining balance shall be due and payable no later than June 25 of the year for which the permit has been issued. If the permit is denied, \$400 of the deposit will be refunded.

(10) Prior to issuance of the permit, applicant shall supply to the city a copy of a certificate of insurance issued by an insurance company in good standing, authorized to do business in Nebraska, providing combined liability coverage for bodily injury and property damage in a minimum amount of \$300,000 per occurrence and \$1,000,000 in aggregate coverage and naming the City of La Vista as an additional insured.

('79 Code, § 10-313) (Ord. 75, passed - -; Am. Ord. 721, passed 3-17-98; Am. Ord. 777, passed 5-18-99; Am. Ord. 792, passed 10-19-99; Am. Ord. 885, passed 11-19-02; Am. Ord. 1005, passed 9-5-06) Penalty, see § 10.99

§ 111.18 SALE OF PERMISSIBLE FIREWORKS REGULATED.

Persons holding a permit to sell permissible fireworks:

(A) May only sell the same beginning 12:01 a.m. June 25 and ending midnight on July 4 of the year for which the permit is issued. Within this period, permissible fireworks may be sold only between the hours of 8:00 a.m. and 11:00 p.m.

(B) Shall at no time sell within the city limits any fireworks or other pyrotechnics other than permissible fireworks.

(C) Shall during such times as fireworks are being sold have an adult in charge of his or her stand or retail outlet and shall display therein the required permit in a conspicuous manner and place.

(D) Shall at all times comply with all regulations passed by the City Council pertaining to the permissible size, location, equipping and operation of fireworks stands and retail outlets.

(E) Shall at no time sell any fireworks or other pyrotechnics to any person under 12 years of age. ('79 Code, § 10-314) (Am. Ord. 792, passed 10-19-99) Penalty, see § 10.99

§ 111.19 DISCHARGE OF PERMISSIBLE FIREWORKS REGULATED.

(A) *Prohibition as to time of discharge.* Except as may be otherwise provided herein or authorized by special permit approved by the City Council, no person shall ignite or discharge any permissible fireworks except between the hours of 7:00 a.m. to 10:00 p.m. from June 25 through July 3 inclusive and between the hours of 7:00 a.m. and midnight on July 4 of each year.

(B) *Dangerous environmental conditions.* In the event that in the determination of the Fire Chief, general weather or ground cover conditions are such as create an unacceptable risk of fire should there be discharge of fireworks, including permissible fireworks, within the city limits, then in such event the Fire Chief shall advise the City Administrator and Mayor of such determination and shall communicate a recommendation to them for any preventative action or measures the Fire Chief deems necessary, including what limitations should be placed upon the time period for discharge of fireworks or the extent to which the discharge of fireworks should be prohibited. The Mayor, with the advice of the Council President, the City Administrator, the Fire Chief, and the Chief of Police, or such of them as may be readily available, shall order such action, if any, the Mayor shall deem necessary or appropriate in the situation, including partial or total bans on discharge of fireworks on such dates and during such times as the Mayor may determine necessary or appropriate. Should the Mayor determine that prohibitive or preventative action is required, the Mayor shall issue a proclamation to that effect and shall advise the City Administrator, who shall advise the members of the City Council, the Fire Chief, the Chief of Police, and the media of the Mayor's proclamation and shall cause same to be conspicuously posted throughout the city. Discharge of fireworks in violation of such proclamation shall constitute a violation of this section and shall be punishable as such. As used herein, references to the Mayor and other officials shall, in the case of their absence or inability to act, include persons empowered to act in their stead.

(C) *Prohibition as to manner and place of discharge.* In no event shall any person ignite or discharge any fireworks, even though same be permissible fireworks:

- (1) In or from any motor vehicle;
- (2) On any street, highway, or sidewalk;
- (3) Near any person or group of persons;
- (4) In any building;
- (5) In any public park, except as may be authorized by special permit;
- (6) In any public building;
- (7) In any school or on any school grounds; and

(8) In any other manner or place that is likely to inflict or increase the risk of property damage or bodily harm to any person or persons or place any of them in danger of bodily harm.

(D) *Special permit for community fireworks show.*

(1) The City Clerk may authorize the issuance of special permits for fireworks displays to be conducted by or under the auspices of the city or by or under the auspices of a nonprofit organization, organized for purposes of service to or betterment of the city, its businesses, or residents, for the purpose of putting on an admission-free public fireworks display for the benefit of the residents of the city at such place, during such times and under such terms, conditions, and security measures as the City Clerk may prescribe for such display.

(2) The permit holder shall obtain the required approval of the State Fire Marshal. By way of specification and not of limitation, as a condition of any permit hereunder, the permit holder shall obtain and maintain in effect, for the maximum limitations and repose periods under any and all products liability or tort laws in the State of Nebraska, insurance for any and all liabilities arising out of or resulting from any permitted fireworks or fireworks display, written by an insurer authorized to do business in the state, in such amount and upon such other terms as satisfactory to the city in its sole discretion. The city shall be an additional named insured on each such policy provided.

('79 Code, § 10-315) (Ord. 75, passed - - ; Am. Ord. 340, passed 6-21-83; Am. Ord. 571, passed 8-17-93 Am. Ord. 792, passed 10-19-99; Am. Ord. 813, passed 7-18-00) Penalty, see § 10.99