

11/01/04
11/15/04

ORDINANCE NO. M-3672

AN ORDINANCE regulating the sale, purchase, use, and possession of consumer fireworks within the City of Vancouver; providing for civil and criminal enforcement of consumer fireworks regulations; reducing opportunities to sell, purchase, use, and possess consumer fireworks around New Year's Eve and New Year's Day, to be effect December, 2005 and January, 2006; repealing VMC 16.20.040 and 16.20.050; adding a new chapter, VMC 16.30, Consumer Fireworks; amending VMC 16.04.220, 22.01.030, 22.02.010, 22.02.020, 22.02.040, and 22.03.050; and providing for savings, severability, and an effective date.

WHEREAS, the City of Vancouver is a first class charter city with broad police powers under Article XI, section 11 of the state constitution and RCW 35.22.280(22); and

WHEREAS, the City of Vancouver possesses authority under Article XI, section 11 of the state constitution, RCW 35.22.280(22), and RCW 70.77.240 to adopt and enforce laws that regulate consumer fireworks; and

WHEREAS, RCW 70.77.547 allows for the civil enforcement of fireworks regulations; and

WHEREAS, as related in Staff Report _____, the City of Vancouver may utilize both civil and criminal enforcement options to deter violations of Vancouver's consumer fireworks regulations;

WHEREAS, a copy of this ordinance is on file in the office of the city clerk as required by RCW 35.21.180; and

NOW THEREFORE,

BE IT ORDAINED BY THE CITY OF VANCOUVER:

Section 1. The following sections of the VMC are hereby repealed:

A. Section 4 of Ordinance M-666, codified as VMC 16.20.040, as last amended by section 3 of Ordinance M-3642.

B. Section 5 of Ordinance M-666, codified as VMC 16.20.050, as last amended by section 4 of Ordinance M-3642.

Section 2. A new chapter, designed VMC Chapter 16.30, is hereby added to read as follows:

**VMC Chapter 16.30
CONSUMER FIREWORKS**

- 16.30.010 Findings.**
- 16.30.020 Purpose and scope.**
- 16.30.030 Definitions.**
- 16.30.040 Illegal consumer fireworks.**
- 16.30.050 Legal consumer fireworks.**
- 16.30.060 Enforcement.**

16.30.010 Findings.

A. The lawful, safe and responsible use of consumer fireworks decreases the chances of injury to persons and property and helps to preserve the livability and tranquility of the City of Vancouver.

B. The unlawful sale, purchase, possession or use consumer fireworks within the City of Vancouver, WA constitutes a public nuisance, and violators of this chapter may be subject to civil or criminal enforcement, or any other remedy allowed by law.

16.30.020 Purpose and scope.

A. In order to protect the public's health, safety, and welfare, this chapter regulates the possession and use of consumer fireworks and the dates and times when legal consumer fireworks may be sold and purchased within the City of Vancouver.

B. The City of Vancouver reserves the right to utilize and enforce any applicable state fireworks statute or regulation.

C. Any duty created by this chapter is a general duty, running in favor of the public.

16.30.030 Definitions.

A. "Consumer fireworks" means any small firework device designed to produce visible effects by combustion and which must comply with the construction, chemical composition, and labeling regulations of the United States Consumer Product Safety Commission, as set forth in 16 C.F.R. Parts 1500 and 1507 and including some small devices designed to produce audible effects, such as whistling devices, ground devices containing 50 mg or less of explosive materials, and aerial devices containing 130 mg or less of explosive materials and classified as fireworks UN0336 by the United States Department of Transportation at 49 C.F.R. Sec. 172.101 as of June 13, 2002, and not including fused setpieces containing components which together exceed 50 mg of salute powder.

B. "Illegal consumer fireworks" means consumer fireworks that cannot be sold to the public pursuant to RCW 70.77.401 or consumer fireworks not approved for sale to the public under WAC 212-17-198.

C. "Legal consumer fireworks" means consumer fireworks not prohibited for sale to the public pursuant to RCW 70.77.401 and that may be sold to the public under WAC 212-17-198.

16.30.040 Illegal consumer fireworks.

Except as provided in RCW 70.77.311, no person may possess or use illegal consumer fireworks within the City of Vancouver, WA. Illegal consumer fireworks include sky rockets, missile-type rockets, firecrackers, salutes, or chasers as defined by the United States Department of Transportation and the Federal Consumer Products Safety Commission.

16.30.050 Legal consumer fireworks.

A. Sale and purchase of legal consumer fireworks. Except as provided in RCW 70.77.311, legal consumer fireworks may only be sold and purchased within the City of Vancouver, WA on the following dates and times:

1. From twelve o'clock noon to eleven o'clock p.m. on June 28th of any year; and
2. From nine o'clock a.m. to eleven o'clock p.m. on each day from the June 29th through July 4th of any year; and
3. From nine o'clock a.m. to nine o'clock p.m. on July 5th of any year; and
4. From twelve o'clock noon to eleven o'clock p.m. on each day from December 27, 2004 through December 31, 2004.

B. Use or discharge of legal consumer fireworks. Except as provided in RCW 70.77.311, legal consumer fireworks may only be used or discharged within the City of Vancouver, WA on the following dates and times:

1. Between the hours of twelve o'clock noon and eleven o'clock p.m. on June 28th of any year; and
2. Between the hours of nine o'clock a.m. and eleven o'clock p.m. on June 29th through July 3rd of any year; and
3. Between the hours of nine o'clock a.m. and twelve o'clock midnight on July 4th of any year; and
4. Between the hours of nine o'clock a.m. and eleven o'clock p.m. on July 5th of any year, and
5. Between six o'clock p.m. on December 31, 2004 until one o'clock a.m. on January 1, 2005.

C. Possession of legal consumer fireworks. Except as provided by state law, no person may possess legal consumer within the City of Vancouver, WA on days other than those in VMC 16.30.050(B).

16.30.060 Enforcement.

A. This chapter shall be enforced according to the provisions of VMC Title 22, Uniform enforcement code.

B. The Fire Chief of the City of Vancouver, or his or her designee, is responsible for the interpretation and civil enforcement of this chapter. The Fire Chief may designate members of other City departments to enforce the civil enforcement provisions contained in VMC Title 22 that apply to this chapter.

C. Seizure and forfeiture of consumer fireworks. In addition to the enforcement provisions contained in VMC Title 22, enforcement personnel from the Vancouver Fire Department or Vancouver Police Department may seize and dispose of consumer fireworks that are sold, purchased, used or possessed in violation of this chapter according to the seizure and forfeiture procedures contained in RCW 70.77.435 and RCW 70.77.400.

Section 3. Section 1 of Ordinance M-3659, codified as VMC 16.04.220, is hereby amended to read as follows:

16.04.220 Amendments to IFC Section 3301.1 – Explosives and fireworks – Scope.

IFC Section 3301.1 adopted in VMC 16.04.010 is amended to read as follows:

3301.1 Scope. The provisions of this chapter shall govern the possession, manufacture, storage, handling, sale and use of explosives, explosive materials, and small arms ammunition. The manufacture, storage, handling, sale, ~~and use~~ and possession of fireworks shall be governed by chapter 70.77 RCW, and by chapter 212-12 WAC and chapters 16.20 and 16.30 of the VMC.

Exceptions:

1. The Armed Forces of the United States, Coast Guard or National Guard.
2. Explosives in forms prescribed by the official United States Pharmacopoeia.
3. The possession, storage and use of small arms ammunition when packaged in accordance with DOT packaging requirements.
4. The possession, storage and use of not more than 1 pound (0.454 kg) of commercially manufactured sporting black powder, 20 pounds (9 kg) of smokeless powder and 10,000 small arms primers for hand loading of small arms ammunition for personal consumption.
5. The use of explosive materials by federal, state and local regulatory, law enforcement and fire agencies acting in their official capacities.
6. Special industrial explosive devices which in the aggregate contain less than 50 pounds (23 kg) of explosive materials.
7. The possession, storage and use of blank industrial-power load cartridges when packaged in accordance with DOT packaging regulations.
8. Transportation in accordance with DOT 49 CFR Parts 100-178.
9. Items preempted by federal regulations.

Section 4. Section 32 of Ordinance M-3638, codified as VMC 22.01.030, as last amended by section 28 of Ordinance M-3663, is hereby amended to read as follows:

22.01.030 Applicability.

The enforcement provisions of title 22 shall apply to the following substantive VMC chapters and titles:

- A. VMC chapter 5.62, Commercial recycling;
- B. VMC chapter 6.12, Garbage disposal;
- C. VMC chapter 8.20, Nuisances;
- D. VMC chapter 11.12, Sidewalk construction;
- E. VMC chapter 11.20, Driveways;
- F VMC chapter 11.28, Excavations;
- G VMC chapter 11.36, Protection of pavement;
- H VMC chapter 11.40, Snow and ice removal;
- I VMC chapter 11.44, Sidewalk openings;
- J. VMC chapter 11.48, Street oiling permit;
- K VMC chapter 11.52, Curb, sidewalk, and driveway construction;
- L VMC chapter 11.80, Street standards – general;
- M VMC chapter 11.90, Street standards – development regulations;
- N VMC chapter 14.24, Erosion control;
- O VMC chapter 14.25, Stormwater control;
- P VMC chapter 16.04, Firecode;
- Q VMC chapter 16.20, Fireworks;
- R VMC 16.30, Consumer fireworks;

¶§ All chapters in Title 17 of the VMC, but not including VMC Chapter 17.32 and Chapter 17.39. Title 22 shall not limit any corrective actions or remedies contained in Title 17 of the VMC;

sT VMC Title 20, Development code, except that title 22 shall not apply to VMC chapter 20.770, Tree Conservation; and VMC chapter 20.775, Wetlands and Water Bodies Protection.

Section 5. Section 32 of Ordinance M-3638, codified as VMC 22.02.010, is hereby amended to read as follows:

22.02.010 Responsibility for code violations.

A. In addition to the person who violates any code provision referenced in VMC 22.01.030
~~Unless otherwise defined in the code,~~ there is a rebuttable presumption that the owner of a vehicle, building, structure, premises, personal property or land upon or within which a violation has occurred or is occurring is responsible for the violation, so long as the owner has actual or constructive knowledge of the violation.

B. A parent or guardian who has care or supervision of a juvenile less than sixteen (16) years of age is responsible for any violation of the codes referenced in VMC 22.01.030 that is committed by the juvenile, as allowed by state law.

Section 6. Section 32 of Ordinance M-3638, codified as VMC 22.02.020, as last amended by section 29 of Ordinance M-3663, is hereby amended to read as follows:

22.02.020 Enforcement provisions.

It shall be unlawful to violate the code. Whenever the city official determines that a violation has occurred or is occurring, the city official, in response to the seriousness and severity of the violation, may utilize one or a combination of the enforcement mechanisms in this section. The following enforcement mechanisms may be used instead of, or in addition to, the summary abatement procedures provided in VMC 22.02.050 and any other remedies available under law:

A Correction notice. The city official may issue a correction notice to the person responsible for a violation. The correction notice shall conform to the requirements in VMC 22.02.030. The correction notice shall not impose civil or criminal penalties, and the correction notice is not subject to appeal.

B Notice of civil violation and order. The city official may issue a notice of civil violation and order to the person responsible for a violation. The notice of civil violation and order may require corrective action or actions and impose monetary penalties according to VMC 22.02.040(c).

1. Required corrective action may include an order to vacate a building, structure or premises when vacation is necessary in the interest of health, safety and welfare.

2. The city may abate a violation in accordance with applicable law, if required corrective action is not commenced or stopped within the time specified in the notice of civil violation and order.

3. Non-compliance with the corrective action noted in the notice of civil violation and order constitutes a second or subsequent violation and may result in the issuance of an additional notice of civil violation and order.

4. The notice of civil violation and order shall conform to the requirements in VMC 22.02.040.

C Order to revoke permit. The city official may issue an order to revoke a permit. An order to revoke a permit may be appropriate if the permittee is not complying with the terms of the permit or approved plans; or if the permit is issued in error; or if a permit is issued based upon incorrect information; or if the work is, in the city official's judgment, adversely affecting or about to adversely affect adjacent property or rights-of-way, a drainageway, watercourse, critical area or stormwater facility, city water system; or if the issuance of the permit is a hazard to the public health, safety, or welfare; or if a permit is contrary to law. An order to revoke a permit shall conform to the requirements in VMC 22.02.040.

D Criminal prosecution. The city official may refer a violation to the city prosecutor for criminal prosecution.

1. As specified in this subsection, a violation of the code may be classified as a misdemeanor or gross misdemeanor:

VMC CHAPTER	CRIMINAL CLASSIFICATION
VMC chapter 5.62, Commercial recycling	Gross misdemeanor
VMC chapter 6.12, Garbage disposal	Gross misdemeanor
VMC chapter 8.20, Nuisances	Misdemeanor
VMC chapter 11.12, Sidewalk construction	Misdemeanor
VMC chapter 11.20, Driveways	Misdemeanor
VMC chapter 11.28, Excavations	Misdemeanor
VMC chapter 11.36, Protection of pavement	Misdemeanor
VMC chapter 11.40, Snow and ice removal	Misdemeanor
VMC chapter 11.44, Sidewalk openings	Misdemeanor
VMC chapter 11.48, Street oiling permit	Misdemeanor
VMC chapter 11.52, Curb, sidewalk and	Misdemeanor

driveway construction	
VMC chapter 11.80, Street standards – general	Misdemeanor
VMC chapter 11.90, Street standards – development regulations	Misdemeanor
VMC chapter 14.24, Erosion control	Misdemeanor
VMC chapter 14.25, Stormwater control	Misdemeanor
VMC chapter 16.04, Firecode	Misdemeanor
VMC chapter 16.20, Fireworks	Misdemeanor
<u>VMC chapter 16.30, Consumer fireworks</u>	<u>Misdemeanor, for possession of one pound or less of illegal consumer fireworks, exclusive of external packaging; Gross misdemeanor for possession of more than one pound of illegal consumer fireworks, exclusive of external packaging; Misdemeanor for use of illegal consumer fireworks; Misdemeanor for unlawful use or possession of legal consumer fireworks.</u>
All chapters in title 17 of the VMC, but not including VMC Chapters 17.32 and 17.39	Misdemeanor
VMC title 20, except that title 22 shall not apply to VMC chapter 20.770, Tree conservation; VMC chapter 20.775, Wetlands and water bodies protection; VMC 20.960.090, Portable Signs in the Public Right of Way.	Misdemeanor

2. It shall be a separate offense for each and every day or portion thereof during which any violation is committed.

3. The city official may refer a violation to the city attorney’s office for criminal prosecution without first attempting to achieve compliance through a notice of civil violation and order or order to revoke permit civil enforcement, so long as the city official issues at least one correction notice under the following circumstances:

a When a repeat violation occurs; or

b When the person acted with malicious intent, reckless indifference to the law or knew or reasonably should have known that the condition, act, failure to act or omission that prompted enforcement is in violation of the code; or

c When in the opinion of the city official and city attorney a notice of civil violation and order or order to revoke permit will not be effective or timely.

4. The procedures contained in VMC 22.02.020(d)(3) shall not apply to members of the Vancouver Police Department who possess general law enforcement authority to issue criminal citations.

Section 7. Section 32 of Ordinance M-3638, codified as VMC 22.02.040, as last amended by section 30 of Ordinance M-3663, is hereby amended to read as follows:

22.02.040 Notice of civil violation and order – Order to revoke permit.

A Content. Except as provided in VMC 22.02.040(a)(15), aA notice of civil violation and order or order to revoke permit under this section shall be in writing, and shall include the following information contained in VMC 22.02.040(a)(1) – (a)(14):

1. The first date of the violation. If the notice of civil violation and order or order to revoke permit concerns a continuing violation that has not resulted in compliance with a first notice of civil violation and order or order to revoke permit, the date of the second or subsequent violation shall correspond to the issuance date of the second or subsequent order; and

2. The name and address of the person responsible for the violation. If the person cannot be found or ascertained after consulting the county assessor's records, the notice of civil violation and order or order to revoke permit may be conspicuously affixed or posted on the building, structure, premises, personal property or land upon or within which the violation has occurred or is occurring; and

3. The street address or description sufficient for identification of the building, structure, premises, personal property or land upon or within which the violation has occurred or is occurring; and

4. A description of the violation and a reference to the violated substantive code section or sections; and

5. The required actions to be taken to obtain compliance with the code and a date by which the actions must be completed; and

6. A statement whether the violation is a first or repeat violation, and if a repeat violation, whether it is a second or subsequent violation; and

7. The initial monetary penalty according to the monetary penalty schedule in VMC 22.02.040(c)(3); and

8. A statement that the person responsible for a violation shall automatically incur a daily monetary penalty, pursuant to whether the violation is a first, second or subsequent violation and according to the monetary penalty schedule in VMC 22.02.040(c)(3), if the person responsible for a violation fails to comply with the corrective action or actions in a

notice of civil violation and order or order to revoke permit by the corrective date specified in the order; and

9. A statement that non-compliance with the corrective action noted in the notice of civil violation and order or order to revoke permit constitutes a second or subsequent violation and may result in the issuance of an additional notice of civil violation and order or order to revoke permit; and

10. A statement advising that the city may abate the violation in accordance with applicable law, if required corrective action is not commenced or stopped within the time specified in the notice of civil violation and order or order to revoke permit; and

11. If abatement by the city is necessary, a statement that the city may use all legal means to recover necessary and reasonable costs of abatement from the responsible person; and

12. A notice that the notice of civil violation and order or order to revoke permit may be appealed only as provided in VMC 22.03.020. The notice shall summarize the requirements of VMC 22.03.020 and state that failure to appeal constitutes a waiver of all right to an administrative hearing and determination of the matter and that the non-prevailing party may be responsible for the hearings examiner's costs; and

13. A statement that payment of any monetary penalties associated with the violation does not relieve the person to whom the notice of civil violation and order or order to revoke a permit is directed of the duty to correct the violation; and

14. A statement that monetary penalties under VMC 22.02.040(c)(2) shall accrue during the appeal period unless the appellant prevails on appeal; and that accrued monetary penalties shall not exceed three (3) times the amount of the daily monetary penalty set by VMC 22.02.040(c)(3) for any single violation from the first date of the violation through the date the hearings examiner renders a final decision.

15. Violations of VMC chapter 16.30.

a In the case of a violation of VMC chapter 16.30, Consumer fireworks, the notice of civil violation and order need only contain the elements listed in VMC 22.02.040(a)(1), (2), (4), (7), and (12).

b The city official may issue a notice of civil violation and order for each violation of VMC chapter 16.30.

c A notice of civil violation and order issued for a violation of VMC chapter 16.30 shall only impose an initial monetary penalty as provided in VMC 22.02.040(c)(3).

B Service of notice of civil violation and order or order to revoke permit.

1. Service. The city official shall cause the notice of civil violation and order or order to revoke permit to be served upon the person to whom it is directed, either personally or by

mailing a copy of it to the person's last known address. The city official may also cause the notice of civil violation and order or order to revoke permit to be conspicuously affixed or posted on the building, structure, premises, personal property or land upon or within which the violation has occurred or is occurring.

2. Persons to be served. If known or disclosed from the county assessor's office, one copy of the notice of civil violation and order or order to revoke permit shall be served on the holder of any mortgage or deed of trust or other lien or encumbrance of record or any lease of record or the holder of any other estate or legal interest of record in any building, structure, land, personal property or premises on which a violation has occurred or is occurring.

3. Failure to effect service. The failure of the city official to effect service on any person required to be served according to VMC 22.02.040(b)(2) shall not invalidate any proceeding under this title as to any other person duly served or relieve any such person from any duty or obligation imposed by this title.

4. Service requirements for nuisance vehicles. A notice of civil violation and order concerning a nuisance vehicle must be served upon:

a The nuisance vehicle's last registered and legal owner of record, unless the nuisance vehicle is in such a condition that identification numbers are not available to determine ownership; and

b The property owner of record upon which the nuisance vehicle is located.

5. Service by posting. If the person to whom the notice of civil violation and order or order to revoke permit is directed cannot be personally served within Clark County and if an address for mailed service cannot be ascertained by reference to public records, the notice of civil violation and order or order to revoke permit may be conspicuously affixed or posted on the vehicle, building, structure, premises, personal property or land upon or within which the violation has occurred or is occurring.

6. Proof of service. Proof of service shall be made by a written declaration under penalty of perjury executed by the person effecting service, declaring the time and date of service, the manner by which service was made, and, if by posting, the facts showing the efforts used in attempting to serve the person personally or by mail.

C Monetary penalties.

1. The person responsible for a violation shall incur an initial monetary penalty, pursuant to whether the violation is a first, second or subsequent violation and according to the monetary penalty schedule in VMC 22.02.040(c)(3).

2. In addition to the monetary penalty in VMC 22.02.040(c)(1), the person responsible for a violation shall automatically incur a daily monetary penalty, pursuant to whether the violation is a first, second or subsequent violation and according to the monetary penalty schedule in VMC 22.02.040(c)(3), if the person responsible for a violation fails to comply with the corrective action or actions in a notice of civil violation and order or order to revoke permit by the corrective date specified in the order. The daily penalty shall begin to accrue after the corrective date specified in the notice of civil violation and order or order to revoke permit.

3. The monetary penalties for first, second and subsequent violations of the code enforced through this title, within any two (2) year period, shall be as follows:

VMC TITLE	FIRST VIOLATION	SECOND VIOLATION	SUBSEQUENT VIOLATIONS
VMC chapter 5.62, Commercial Recycling	\$250	\$500	\$1000
VMC chapter 6.12, Garbage disposal	\$250	\$500	\$1000
VMC chapter 8.20, Nuisances	\$250	\$500	\$500
VMC chapter 11.12, Sidewalk construction	\$100	\$200	\$200
VMC chapter 11.20, Driveways	\$100	\$200	\$200
VMC chapter 11.28, Excavations	\$100	\$200	\$200
VMC chapter 11.36, Protection of pavement	\$100	\$200	\$200
VMC chapter 11.40, Snow and ice removal	\$100	\$200	\$200
VMC chapter 11.44, Sidewalk openings	\$100	\$200	\$200
VMC chapter 11.48, Street oiling permit	\$100	\$200	\$200
VMC chapter 11.52, Curb, sidewalk, and driveway construction	\$100	\$200	\$200
VMC chapter 11.80, Street standards – general	\$100	\$200	\$200
VMC chapter 11.90, Street standards – development regulations	\$100	\$200	\$200
VMC chapter 14.24, Erosion control	\$250	\$500	\$1000
VMC chapter 14.25, Stormwater control	\$250	\$500	\$1000
VMC Chapter 16.04, Firecode, excluding false alarms under VMC	\$500	\$500	\$1000

16.04.140			
VMC chapter 16.20, Fireworks	\$500	\$1,000	\$1,000
VMC 16.30.040, <u>Illegal consumer fireworks</u>	<u>\$500</u>	<u>\$1000</u>	<u>\$1,500</u>
VMC 16.30.050, <u>Legal consumer fireworks</u>	<u>\$250</u>	<u>\$500</u>	<u>\$1,000</u>
International Fire Code Section 503.4	\$100	\$100	\$100
All chapters in title 17 of the VMC, but not including VMC Chapters 17.32 and 17.39	\$250	\$500	\$1000
Violation of a stop work order	\$250	\$500	\$1000
VMC title 20, except that title 22 shall not apply to VMC chapter 20.770, Tree conservation; VMC chapter 20.775, Wetlands and water bodies protection; VMC 20.960.090, Portable Signs in the Public Right of Way	\$250	\$500	\$1000

4. In the event of an appeal, monetary penalties under VMC 22.02.040(c)(2) shall accrue during the appeal period unless the appellant prevails on appeal. Accrued monetary penalties shall not exceed three (3) times the amount of the daily monetary penalty set by VMC 22.02.040(c)(3) for any single violation from the first date of the violation through the date the hearings examiner renders a final decision.

5. Payment of any monetary penalties associated with the violation does not relieve the person to whom the notice of civil violation and order or order to revoke a permit is directed of the duty to correct the violation.

D Collection of monetary penalties and necessary and reasonable costs.

1. Payment. Monetary penalties and necessary and reasonable costs are due and payable to the applicable city department or service area ten (10) calendar days after the city personally serves the cited person with a written demand for payment, itemizing the costs the city incurred. If not served personally, monetary penalties and necessary and reasonable costs are due fifteen (15) calendar days after the city deposits in the U.S. mail such a demand and itemized costs. If a violation is appealed as provided herein, monetary penalties and necessary and reasonable costs are due fifteen (15) calendar days after the date the city deposits in the U.S. mail a copy of the hearings examiner's final order. The provisions of VMC 3.08.060 for dishonored checks and VMC 3.08.080 for late fees and interest shall apply to payments due under this title.

2. Approved collection methods. The city attorney or the city attorney's designee is authorized to take any appropriate legal action to collect monetary penalties and necessary and reasonable costs, including liens, personal obligations, assignment of claims to collection agencies, and other collection methods authorized by law.

3. Authority to negotiate settlement. The city official and the city attorney or the city attorney's designee may negotiate a settlement, compromise or otherwise dispose of an action when to do so would be in the best interest of the city.

Section 8. Section 32 of Ordinance M-3638, codified as VMC 22.03.050, is hereby amended to read as follows:

22.03.050 Decisions of the hearings examiner.

A Final order. The hearings examiner shall determine whether the city has established by a preponderance of evidence that a violation occurred and that the required corrective action conforms to the requirements of the code. The hearings examiner shall affirm, vacate, or modify the city's decision regarding the alleged violation; the required corrective action with or without written conditions; deadlines for compliance; and shall impose monetary penalties in accordance with VMC 22.02.040(c).

B Modified corrective action. The hearings examiner may approve alternative materials or methods for any corrective action, provided that the hearings examiner finds, in writing, that the design, use or operation thereof satisfactorily complies with the requirements of the code and that the method of work performed or operation is, for the purpose intended, at least equivalent to that prescribed by the code in quality, strength, effectiveness, fire resistance, durability and safety.

C Cost of appeal. Upon motion of the city, the hearings examiner may assess the costs of an appeal hearing under this title, including, but not limited to, the hearings examiner's fees and reasonable costs of staff time, if the hearings examiner finds the appeal was frivolous. Any appellant who fails to appear at his or her appeal hearing, unless for good cause shown, shall be responsible for the hearings examiner's costs.

D Decisions concerning nuisance vehicles. If the hearings examiner determines that a vehicle is a nuisance vehicle, the hearings examiner shall direct the Vancouver Police Department to dispose of the nuisance vehicle, or part thereof, under applicable law, and to give notice to the Washington State Patrol and the Washington Department of Licensing that the nuisance vehicle has been wrecked.

E Contents of final order. Except as provided in VMC 22.03.050(f), ~~the~~ hearings examiner shall issue a written final that contains the following information:

1. The hearings examiner's decision; and

2. Findings of fact and conclusions of law supporting the decision; and
3. The required corrective action, if any; and
4. The date and time by which the corrective action, if any, must be completed; and
5. If corrective action is required, the date on which monetary penalties shall continue to accrue; and
6. To the extent the appellant does not prevail in the appeal, the past and future monetary penalties according to VMC 22.02.040(c); and
7. A statement itemizing the cost of the appeal hearing or hearings examiner or both, if applicable under VMC 22.03.050(c); and
8. The date and time when the city may abate the unlawful condition if the required corrective action is not taken within the time provided in the final order and that the appellant will be responsible for the city's necessary and reasonable costs.

F In respect to violations of VMC chapter 16.30, the hearings examiner shall affirm or dismiss the notice of civil violation and order after the City and appellant present their respective cases by signing a standard form prescribed by the City Clerk. If the City prevails, the hearings examiner may impose the costs of the appeal, if the conditions of VMC 22.03.050(c) apply, in addition to the monetary penalty imposed by the notice of civil violation and order.

fG Appeal of final order. The decision of the hearings examiner shall be final unless appealed by the appellant or the city to a court of competent jurisdiction within twenty-one (21) days of the date of the city's service of the final order on the appellant as specified in VMC 22.030.050(gh).

gH Notice of decision. The hearings examiner shall mail the final order to the city within fourteen (14) calendar days after the close of the public record. The city shall serve the appellant with a copy of the final order as it would serve notice of the appeal hearing according to VMC 22.03.030(a).

hI Failure to appear. If the appellant or the appellant's representative fails to appear at the scheduled hearing, the hearings examiner shall issue and send or transmit to the city a final order containing the following:

1. A determination that a violation occurred; and
2. An assessment of the appropriate monetary penalties according to the criteria in VMC 22.02.040(c); and
3. A statement itemizing the cost of the appeal hearing or hearings examiner or both, if applicable under VMC 22.03.050(c); and

4. A determination of the appropriate corrective action and that the appellant may be responsible for the city's necessary and reasonable costs.

Section 9. Savings. Those ordinances or parts of ordinances which are amended or repealed by this ordinance shall remain in full force and effect until the effective date of this ordinance.

Section 10. Severability. If any clause, sentence, paragraph, section, or part of this ordinance or the application thereof to any person or circumstance shall be adjudged by any court of competent jurisdiction to be invalid, such order or judgment shall be confined in its operation to the controversy in which it was rendered and shall not effect or invalidate the remainder of any parts thereof to any person or circumstances and to this end the provisions of each clause, sentence, paragraph, section or part of this law are hereby declared to be severable.

Section 11. Effective date. This ordinance shall become effective thirty (30) days following the date of final adoption.

Read first time:

Ayes: Councilmembers

Nays: Councilmembers

Absent: Councilmembers

Read second time:

PASSED by the following vote:

Ayes: Councilmembers

Nays: Councilmembers

Absent: Councilmembers

SIGNED this _____ day of _____, 2004.

Royce E. Pollard, Mayor

Attest:

Carrie Lewellen, Interim City Clerk

Approved as to form:

Ted H. Gathe, City Attorney

ORDINANCE SUMMARY

ORDINANCE NO. _____

An ordinance regulating the sale, purchase, use and possession of consumer fireworks; reducing the opportunities for the sale, purchase, use and possession of consumer fireworks around New Year's Eve and New Year's Day, to be effective December 2005 and January 2006; providing for civil and criminal enforcement of the City of Vancouver's consumer fireworks regulations; and providing an efficient civil enforcement appeals process that protect an individual's due process rights.