

**Illegal Fireworks Task Force
September 21, 2010**

MINUTES

I. Meeting called to order - 10:06 AM

Members present -

Voting members:

Co-chair Will Espero, Senator, Chair of the Senate Committee on Public Safety and Military Affairs

Co-chair Faye Hanohano, Representative, Chair of the House Committee on Public Safety

Vic Angoco, representative of the shipping industry

David Chang, appointee of the Governor

Chad Cloutier, representative of the fireworks industry

Amy Cocanour, Coast Guard

Jerald Farley, representative of the fireworks industry

Velma Fish, Federal Aviation Administration

Clayton Frank, Hawaii Department of Public Safety

Ray Galas, appointee of the Senate President

Lynne Goto Uyema, City and County of Honolulu Office of the Prosecuting Attorney

Peter Hanano, County of Maui, Office of the Prosecuting Attorney

Harry Kubojiri, County of Hawaii Police Department

Mar Labrador, appointee of the Speaker of the House of Representatives

Jordan Lowe, Bureau of Alcohol, Tobacco, Firearms and Explosives

Hilda Mantoya, on behalf of Bruce Murley, U.S. Customs and Border Protection

Danny Matsuura, County of Maui Police Department

Michael Moses, City and County of Honolulu Police Department

Darryl Oliveira, County of Hawaii Fire Department

Darryl Perry, County of Kauai Police Department

Gareth Sakakida, representative of the trucking industry

Edward Texeira, Hawaii Department of Defense

Davis Yogi, Hawaii Department of Transportation

Non-voting members:

Socrates Bratakos, City and County of Honolulu Fire Department

Michelle N. Kidani, Senator, 17th District

Enriqueta Tanaka, representative of the shipping industry

Dustin Widman, Coast Guard

Members not present:

Domingo Cravalho, Jr., Hawaii Department of Agriculture

Joseph Dietrick, Federal Aviation Administration

Manuel Neves, City and County of Honolulu Fire Department
Duane Okamoto, Hawaii Department of Agriculture
Ty Torco, Bureau of Alcohol, Tobacco, Firearms and Explosives

Others present:

David Cheng, U.S. Consumer Product Safety Commission; Marlene Uesugi, Office of Senator Will Espero; Kaliko Chun, Office of Representative Faye Hanohano; Sharon Lum Ho, Office of Senator Kalani English; Charlotte Carter-Yamauchi and Terrence Lee, Legislative Reference Bureau; members of the public.

II. General Business

- The minutes from the August 24, 2010, meeting were adopted by the task force with no amendments
- During the meeting, Senator Espero acknowledged and welcomed students in attendance from Waipahu Intermediate School

III. Substantive Matters

- A. Presentation by the County of Hawaii by Police Chief Harry Kubojiri and Fire Chief Darryl Oliveira

Highlights of the presentation:*

- Hawaii County presented a report of police and fire department statistics for fireworks incidents from 2005-2010
 - The Fire Department has a comprehensive view of the fireworks problem on the Big Island because it fields most of those calls and all such data is funneled to them
 - The report did not distinguish between incidents involving illegal fireworks and those involving illegal uses of legal fireworks
 - Fireworks complaints rose dramatically in 2006 from the year before and have held steady in recent years, with 140 complaints in 2009 and 109 so far in 2010. Known fires associated with fireworks use over the same period peaked at 4 in 2005 and then averaged 1-2 fires through 2010. There have been 8 criminal investigations initiated for fireworks violations since January 1, 2005

* Copies of the materials from all presentations at this meeting are available on the Capitol website at <http://www.capitol.hawaii.gov/>.

- Illegal fireworks ads circulating throughout the county illustrate the prevalence of the problem
- Hawaii County lacks sufficient resources for fireworks enforcement, especially for dates like New Year's Eve. Current fireworks licensing fees do not generate enough funding for enforcement
- The most common fireworks complaints in Hawaii County involve aerial fireworks, noise, times of use, and health concerns relating to smoke, child endangerment, and traffic safety

B. Presentation by the Maui County Police Department by Assistant Chief Danny Matsuura

Highlights of the presentation:

- From 2005 through 2010, fireworks-related calls to Maui police have increased dramatically, jumping from a low of 60 in 2006 to 273 in 2008, and 80 so far in 2010. Most of these calls did not generate criminal cases
- The statistics do not include cases classified in other ways, such as endangerment of a minor
- By the time police report to a fireworks scene, the offenders are usually gone
- There have been more police warnings issued than arrests on Maui
- There needs to be consistency between various county ordinances and state laws on fireworks, to make enforcement easier and more effective

C. Presentation by the Kauai County Police Department by Police Chief Darryl Perry

Highlights of the presentation:

- From 2006-2010, there has been only 1 fireworks-related arrest and 2 citations, both in 2009. Most calls resulted in warnings issued. Although calls to police jumped from a low of 84 in 2006 to a high of 129 in 2007, there have been only 465 total fireworks calls from 2006-2010
- Kauai does not have a huge fireworks problem like on Oahu
 - Fireworks incidents have been relatively minor in relation to the overall calls to Kauai police. Calls involving more serious crimes routinely receive priority over fireworks calls
 - Most fireworks complaints result in police warnings rather than citations
 - Long-time officers cannot remember ever having major fireworks violations on Kauai

D. Presentation by the Honolulu Police Department (HPD) by Major Michael Moses

Highlights of the presentation:

- HPD provided statistics for fireworks incidents from New Year's Eve 2005 through 2009, and July 4th in 2006 through 2010
 - The statistics were taken from the 6 days prior to the event date (New Year's, July 4, etc.), and 2 days after
 - The report did not distinguish between incidents involving illegal fireworks and those involving illegal uses of legal fireworks
 - New Year's Eve statistics: While the number of arrests for fireworks incidents remained consistently scant in all covered years (between 1-3 per year), the number of citations increased dramatically from 14 in 2008 to 93 in 2009. There was also a noticeable increase in reported incidents, from 1,361 in 2008 to 1,840 in 2009
 - July 4 statistics: There were considerably less fireworks incidents reported to police for July 4 as compared to New Year's Eve. Reported incidents remained below 400 in each of the last 3 years, and there were no arrests in the last four years. No more than 11 citations were issued in each year since 2006
- The major challenges HPD has encountered in addressing fireworks are:
 - Burden of proof for criminal convictions is high: proof beyond a reasonable doubt
 - Insufficient amount of staff to handle overwhelming number of violations occurring island-wide
 - Insufficient qualified staff to conduct forensic analysis of explosives. As noted at the last task force meeting, HPD recently added several personnel that can conduct these analyses
 - The only fireworks storage available to HPD and that meets specifications is a small bunker that costs \$1,500/month to rent
 - Authority to inspect cargo containers is limited to only those containers for which police can obtain search warrants or when there are exigent circumstances
 - Lack of community cooperation in identifying illegal importers and distributors. On a related note, HPD has not encountered as many illegal fireworks ads in recent years. Illegal fireworks businesses have gone underground, and it is now harder to get leads
- Past HPD strategies have included:
 - Having each patrol district dedicating officers exclusively to fireworks enforcement. In practice, however, these officers would often get diverted to other calls with higher priority. HPD has also tried concentrating manpower in fireworks "hot spots" (i.e., areas in which a greater concentration of complaints have been received in the past) but the wide range of areas were difficult to cover

- Undercover officers attempting to purchase fireworks without permits from licensed vendors. In these instances, HPD encountered no violations
- Developing intelligence and leads through cooperation with state and federal agencies can be beneficial but the entire process of prosecuting fireworks violators takes a long time. Even when significant arrests occur, they are so few and far between that the public forgets about them and they lose their preemptive effect

E. Issues Discussed

1. Storage and disposal of seized fireworks

- Seized fireworks accumulate in Hawaii for a number of reasons
 - Shipments of fireworks back to where they came from are sometimes refused
 - There is an issue of who pays the return shipping costs
 - Returning fireworks to the point of origin is usually at the cargo owner's expense, but it is often difficult to prove who the legal owner is
 - Seized fireworks are stored as evidence until cases are adjudicated or otherwise disposed of
 - Transport of fireworks is minimized because of the substantial risk of triggering explosions
- Storage issues and challenges
 - Seized fireworks may need to be stored for a long time. As an example, it was noted that an ongoing fireworks case has been open for approximately 8 years
 - Rental costs for storage sites are substantial
 - Storage sites must be large enough to accommodate the amount of seized fireworks and meet specifications for safe storage
 - Stored fireworks present a consistent risk of exploding
 - Fireworks tend to dry out over time, causing packaging to deteriorate and powder to leak out
 - Water-doused fireworks are even more prone to exploding because their contents become unsettled
- Disposal issues and challenges
 - Fireworks disposal can be expensive. For example, in 2008, HPD spent \$26,333 to destroy 5,000 pounds of seized fireworks over 6 days
 - Disposals are complicated by federal protocols and standards designed to address inherent dangers. These standards vary depending upon the type of fireworks involved
 - Disposals require the expertise of bomb technicians, who generally must be brought in from the mainland

- The military will not take seized fireworks for disposal because the types and quantities of substances in these explosives are often unknown and potentially hazardous
- Law enforcement has lost lives during explosives/fireworks disposals
- Hawaii's environmental laws make disposals difficult because they are restricted to above-ground facilities that must comply with pollution laws
 - H-Power will not dispose of fireworks because of clean-air standards
- Alternatives and solutions to storage or disposal
 - One option used by federal agencies is to take samples from the seized fireworks and then destroy the rest, as it is often cheaper to reimburse for the value of destroyed fireworks than it is to store fireworks pending adjudication
 - Legal resale of seized fireworks is another alternative
 - Controlling supply by enhancing cargo inspections and increasing the penalties for illegal import, possession, sale, and use of fireworks will help avoid the mounting piles of illegal fireworks that are seized and later stored or destroyed

2. Enforcement issues

- Insufficient resources
 - Fines for violations and fees for licenses and permits can be increased and directed toward enforcement and education efforts
 - It is uncertain how much of a difference more resources would actually make in enforcement because fireworks violations involve many different issues, from investigations to arrests, seizure, storage, convictions, and disposals
 - Providing additional personnel to address fireworks enforcement is problematic
 - Even if police personnel is increased, more serious crimes will always receive priority over fireworks complaints
 - Police are not comfortable with using volunteers from the public in a fireworks law enforcement role
 - Such volunteers would be unarmed and lack the training necessary to deal with potentially dangerous and confrontational fireworks situations
 - Prosecutors may object to using non-trained volunteers to testify in fireworks cases
 - There are also concerns with using volunteers in non-confrontational roles in which they merely patrol areas and report to police what they witness

- As a practical matter, increasing the volume of complaints received by police on New Year's Eve would only strain police dispatch resources, as most of the calls would occur within a 4-hour time frame
 - Members of the National Guard would probably not be able to participate in fireworks enforcement unless it involves a national or state emergency
 - Establishing a statewide police task force on fireworks would require significant overtime pay on top of regular pay
- Prosecution
 - Hawaii has stricter constitutional requirements than the federal government for proving guilt for criminal offenses. The legal issues are very complex
 - Civil citations and fines would be easier to impose than criminal sanctions
 - Federal prosecutors will not usually go after a person setting off just 1 or 2 illegal fireworks, as it is not an efficient use of government resources
 - The decision whether to pursue a federal prosecution depends upon factors such as an offender's criminal history, information the offender can offer, and the potential to turn offenders against higher-ups in the criminal food chain
- Cooperation between affected parties
 - Greater collaboration and communication among the various county, state, and federal agencies and other affected parties, such as the shipping and fireworks industries, will keep every party involved and eliminate gaps at each stage of fireworks enforcement
 - State law requires the importer/wholesaler to inform the appropriate county official (for example, on Oahu, it is the City and County fire chief) when cargo contains fireworks, but the shipper is not similarly required. However, shippers routinely inform law enforcement about suspicious shipments under an informal arrangement
 - Requiring shippers to inform authorities about fireworks shipments would not address parties sneaking in illegal fireworks
- The need to focus on the supplier rather than the user was emphasized
 - Addressing the user will not help solve the problem of illegal fireworks
 - Many fireworks shipments are domestic rather than foreign; therefore, state enforcement authority and resources need to be strengthened

- Enforcement needs to be more proactive. The State needs greater authority to inspect containers
- Significantly increasing penalties/fines to make it so painful to import or sell illegal fireworks would discourage importation of these goods in the first instance
- Reducing supply of illegal fireworks would also help address the problems with storage and disposal of seized fireworks
- The Task Force noted that the Honolulu City Council was considering legislation (Bill 34) to limit the supply of fireworks in Hawaii by banning all consumer fireworks except for firecrackers purchased with a permit
- Violations of laws regarding fireworks importation
 - Federal licenses are required to import certain consumer fireworks, and there may be cases where someone may have a fireworks license from the State but not the necessary federal license
 - Display fireworks are sometimes disguised as consumer fireworks
 - Intentional mislabeling of consumer fireworks
 - Overloaded consumer fireworks are basically display fireworks
 - Mixing display fireworks with consumer fireworks in containers that are only labeled as consumer fireworks
- Higher penalties would help deter misconduct
- Education on appropriate consumer uses of fireworks promotes compliance with the law
 - Targeted education efforts, similar to public education campaigns for the seatbelt law, can be ramped up during holiday periods

F. The following remaining task force meeting dates and topics of discussion were noted:

- October 19 - Fireworks industry; Hawaii Civil Defense
- November 16 - Shipping industry; container inspectors; Federal Aviation Administration; Coast Guard
- December 14 - Cultural organizations

The task force identified the following points, among others, for discussion at the October 19 meeting:

- Revenue information demonstrating the scope of the fireworks industry
- Approaches adopted by the fireworks industry in other states

IV. Public Comments

There were no comments or questions from members of the public present at the meeting.

V. Adjournment - The meeting was adjourned at 11:42 a.m.