



## Model Guidance on Fireworks Legislation – HB 419

### SUMMARY

Governor Nathan Deal signed House Bill 419 into law on May 3, 2018. HB 419 amends the state laws governing use or ignition of consumer fireworks and represents another step in recouping some local control over the use of fireworks in Georgia.

The legislation alters the times during which local control through the enforcement of noise ordinances can be utilized on the use of fireworks, amends the dates by which such local control will not be allowed, provides the Governor with certain powers in times of drought, sets forth in the law the process for adopting a noise ordinance that seeks to be enforceable against the use of fireworks, and provides for specific notices to be posted by licensed distributors of consumer fireworks.

This model guidance will provide an analysis and explanation to each of these new provisions. It is important to note that the effective date for HB 419 is July 1, 2018.

**PLEASE NOTE: IF YOUR CITY WISHES TO HAVE FULL LOCAL CONTROL ON OR AFTER JULY 1, 2018, ON THE USE OR IGNITION OF CONSUMER FIREWORKS, YOUR CITY WILL NEED TO ENACT OR RE-ENACT A NOISE ORDINANCE COMPLIANT WITH THE PROVISIONS OF HB 419**

### TIMES OF USE

Prior to July 1, 2018, the law specifically allowed consumer fireworks to be used or ignited at the following times:

- (1) Any day beginning at 10:00 a.m. and ending at 9:00 p.m.;
- (2) Any day from 9:00 p.m. to 11:59 p.m. if such use or ignition was lawful pursuant to the local noise ordinance in effect in that jurisdiction;
- (3) The enforcement of a noise ordinance as provided in (2) would not be effective on January 1<sup>st</sup>, July 3<sup>rd</sup>, July 4<sup>th</sup>, and December 31<sup>st</sup> during such 9:00 p.m. to 11:59 p.m. time period; and
- (4) The enforcement of a noise ordinance or any other ordinance preventing use or ignition of consumer fireworks would not be effective on January 1<sup>st</sup> from 12:00 a.m. (midnight) to 1:00 a.m.

On and after July 1, 2018, the law will be changed to allow consumer fireworks to be used or ignited at the following times:

- (1) Any day beginning at 10:00 a.m. and ending at 11:59 p.m. unless such use or ignition during such times is not in compliance with the local noise ordinance in effect in that jurisdiction;
- (2) The enforcement of a noise ordinance as provided in (1) would not be effective on January 1<sup>st</sup>, the last Saturday and Sunday in May (before Memorial Day), July 3<sup>rd</sup>, July 4<sup>th</sup>, the first Monday in September (Labor Day), and December 31<sup>st</sup> during such 10:00 a.m. to 11:59 p.m. time period; and
- (3) The enforcement of a noise ordinance or any other ordinance preventing use or ignition of consumer fireworks would not be effective on January 1<sup>st</sup> from 12:00 a.m. (midnight) to 1:00 a.m.

Effectively, the new law, HB 419 traded some local control on specific holidays or holiday weekends for far more local control on other days of the year. However, it is important to note that the enforcement of a noise ordinance on the use or ignition of fireworks under the framework created in HB 419 requires the enactment or re-enactment of a noise ordinance.

### **ENACTMENT OF A NOISE ORDINANCE**

HB 419 is very clear that in order for a noise ordinance to have an effect on the use or ignition of fireworks between 10:00 a.m. and ending at 11:59 p.m. on or after July 1, 2018, the noise ordinance will have to be enacted or re-enacted on or after July 1, 2018.

It is important to remember that July 3<sup>rd</sup> and July 4<sup>th</sup> are not dates by which such a noise ordinance can have an effect. July 1, 2018, also happens to be a Sunday, making it unlikely that a city council will schedule a meeting to adopt or re-adopt such an ordinance on the first such available date. It is also unlikely that a city would be able to adopt or re-adopt such an ordinance on July 2, 2018, a Monday, and have the ordinance available for enforcement for that entire day. (Such an act would require the meeting to be held before 10:00 a.m., which is possible, but somewhat unlikely in most jurisdictions.) Effectively, in most cases, if adoption or re-adoption occurs on July 2, 2018, the first full day of enforcement on the use or ignition of fireworks would not be until July 5, 2018.

Before enacting or re-enacting a noise ordinance that seeks to be enforceable against the use or ignition of fireworks, HB 419 requires that notice of the meeting in which such noise ordinance is to be adopted be published in the legal organ of the county one time at least 15 days in advance of such meeting. Additionally, HB 419 requires notice of such meeting to be posted for at least 72 hours (3 full days) at least 15 days in advance of the meeting on the city's official website. Strangely, the law is silent as to how such notice is to be accomplished in jurisdictions which do not have an official website. Both of these notices are required to state the date, time, and place of the meeting and are required to state that the noise ordinance will affect the use of consumer fireworks in the jurisdiction.

Finally, the noise ordinance cannot only address fireworks but has to be a general noise ordinance concerning all manners of noises. This actually may help in the adoption of an ordinance because the city and city attorney will not have to craft language specifically addressing fireworks but instead should be able to re-use a current noise ordinance by re-adopting such ordinance.

Noise ordinances typically come in two major types, noises by the decibel, or noises by the reasonable man standard. GMA will not provide legal advice on the effectiveness of one type of ordinance over another and recommends that city officials consult with their city attorney to determine which type of noise ordinance is best for the community and passes and legal hurdles that may be presented.

### **DISTRIBUTOR NOTICES**

In addition to powers granted to local governments in the enforcement of noise ordinances, HB 419 also creates requirements for licensed distributors selling consumer fireworks. These distributors will be required to have at least one sign that is at least 22 inches by 28 inches in size and printed in at least 40 point boldface in plain sight that provides the following information:

'PLEASE CHECK YOUR LOCAL ORDINANCES PRIOR TO USING ORIGNITING CONSUMER FIREWORKS';

'PLEASE USE CONSUMER FIREWORKS IN ACCORDANCE WITH THEIR AFFIXED CAUTION AND WARNING LABELS'; and

'PLEASE BE A GOOD NEIGHBOR AND BE MINDFUL THAT UNANNOUNCED IGNITION NEAR SOME MILITARY VETERANS AND OTHER PERSONS AND NEAR SOME PETS CAN BE TRAUMATIC'.

### **DROUGHT**

Finally, HB 419 also grants powers to the Governor as to enacting further regulations and restrictions on the use and ignition of consumer fireworks in areas suffering from a drought which reaches a level of 700 or above in the Keetch-Byram Drought Index. The Governor would be required to consult with the State Forestry Commission and Department of Natural Resources in enacting any further regulations or restrictions. There would be no restrictions as to date of the year for these restrictions but they would stand repealed by law if the Index goes below 700.