

ORDINANCE 1158

AN ORDINANCE OF THE CITY OF TRACY ADDING CHAPTER 3.04, ENTITLED “FIREWORKS”, TO THE TRACY MUNICIPAL CODE

Whereas, the City Council wishes to add Chapter 3.04 to the Tracy Municipal Code to allow for the sale, use and discharge of “Safe and Sane” Fireworks in the City of Tracy:

NOW, THEREFORE, The City Council of the City of Tracy hereby ordains as follows:

SECTION 1: Chapter 3.04 of Title 3 (Public Safety) of the Tracy Municipal Code is hereby added to read as follows:

“TITLE 3 - PUBLIC SAFETY

Chapter 3.04 - FIREWORKS

Sections:

3.04.010	Definitions
3.04.015	Public Displays-Effective Date
3.04.020	Public Displays-Permits Required
3.04.030	Sale-Discharge Time Limit-Dangerous Fireworks
3.04.040	Permit to Sell and Store Safe and Sane Fireworks
3.04.050	Maximum Number of Safe and Sane Fireworks Permits Issued
3.04.060	Applications for Safe and Sane Fireworks Sales Permit Lottery
3.04.070	Documents and Fees Required for Fireworks Sales Permit Issuance
3.04.080	Operation of Safe and Sane Fireworks Stand Only by Permittee
3.04.090	Safe and Sane Fireworks Sales Stand Requirements
3.04.100	Locations for Discharge
3.04.110	Sales and Use by Minors
3.04.120	State Law
3.04.130	Violation
3.04.140	Enforcement

3.04.010 – Definitions

“Fireworks” means any device containing chemical elements and chemical compounds capable of burning independently of the oxygen of the atmosphere and producing audible, visual, mechanical, or thermal effect which are useful as pyrotechnic devices or for entertainment.

The term “fireworks” includes, but is not limited to devices designated by the manufacturer as fireworks, Heath and Safety Code both as “dangerous fireworks” and as “safe and sane fireworks” and shall include firecrackers, torpedoes, skyrockets, roman candles, bombs, sparklers, chasers, snakes or other fireworks containing any explosives or flammable substance. This definition does not include ammunition used for target shooting or hunting, nor does it include what is ordinarily known as cap pistol caps, party popper or snap caps.

“Safe and Sane Fireworks” also known as “State Approved Fireworks” means any fireworks which do not come within the definition of “dangerous fireworks” or “exempt fireworks”

as defined by section 12505 of the Health & Safety Code of the State of California and the sections of Title 19, Code of Regulations, Subchapter 6 pertaining to "Safe and Sane Fireworks" which are hereby incorporated by reference.

"Dangerous fireworks" means any fireworks classified as such as defined by Sections 12505 and 12561 of the Health & Safety Code of the State of California and the sections of Title 19, Code of Regulations, Subchapter 6 pertaining to dangerous fireworks which are hereby incorporated by reference;

"Public Display of Fireworks" means an entertainment feature where the public or private group is admitted or permitted to view the display or discharge of dangerous fireworks.

"Fireworks Sales Stand" means any building, counter, or other structure of a temporary nature used in the sale, offering for sale, or display for sale of "Safe and Sane Fireworks"

3.04.015 – Public Displays-Effective Date

The provisions of this chapter pertaining to public displays shall be effective as of July 5, 2011.

3.04.020 – Public Displays-Permits Required

(a) Notwithstanding the prohibitions on Dangerous and Safe and Sane Fireworks set forth in this chapter, this section shall not prohibit public fireworks displays which may be allowed upon issuance of a permit therefore under the provisions of the Health and Safety Code of the State of California. This chapter also does not prohibit the use of railroad or other transportation agencies for signal purposes or illumination of torpedoes, flares or fuses; nor the sale of use of blank cartridges for theatrical or ceremonial purposes, athletic events, or military ceremonials or demonstrations.

(b) Fireworks Display Permits are required to conduct a fireworks display as required by local and state regulations. Permit application shall be made not less than 60 days prior to the scheduled date of the display. The permit application shall include a diagram of the grounds on which the display is to be held showing the point at which the fireworks are to be discharged; the location of buildings, highways and other lines of communication; the lines behind which the audiences will be restrained; and the location of nearby overhead obstructions. At the time of permit application, the Fire Chief or his/her designee shall be consulted regarding reasonable conditions or requirements for standby personnel and fire apparatus. Fireworks Display Permits shall only be granted to licensed pyrotechnic operators.

(c) Fireworks Display Permits may be secured by application to the Fire Chief with the concurrence of the Police Chief. The Fire Chief and Police Chief may deny issuance of such permits provided such denial is reasonably based on public health and safety concerns, including but not limited to an application for another event to be held on the same date as that requested has been previously filed or approved, and the other event is so close in time and location to the event proposed as to cause undue traffic congestion or to place the City in a position of being unable to meet the needs for Fire, Police or Public Works services for both

events. Any decision regarding such permits may be appealed to the City Manager as set forth in Section 1.12.010 of this code.

(d) Fireworks Displays may also require a special events permit pursuant to Chapter 4.40 of this code.

(e) The Fireworks Display Permit fee, requisite deposits, time of payment shall be set by resolution of the City Council.

3.04.030 – Sale-Discharge-Time Limit-Dangerous Fireworks

Subject to the permitting provisions of this chapter, the provisions of the State Fireworks Law, sections 12500 through 12726 of the Health and Safety Code of the State of California and any regulations promulgated there under and notwithstanding the portions of section 9.06.080 of this code that address fireworks, safe and sane fireworks, as defined in Section 12529 and 12562 of the Health and Safety Code of the State of California, may be sold and discharged within the city limits of the City of Tracy during the period from noon and ending at 10:00 p.m. on the twenty-eighth day of June through the third day of July and from noon to midnight on the fourth of July, each year. It is unlawful and shall be a misdemeanor to possess, sell or discharge fireworks classified as “dangerous fireworks” by Section 12505 of the Health and Safety Code of the State of California within the City of Tracy.

(a) Safe and Sane fireworks may only be sold between the hours of 12:00 p.m. and 8:00 p.m. on June 28, between 8:00 a.m. and 8:00 p.m. from June 29 through July 3, and 8:00 a.m. and 9:00 p.m. on July 4.

3.04.040 – Permit to Sell and Store Safe and Sane Fireworks

(a) The City Council shall establish, by resolution, the process by which the City will issue annual permits to sell Safe and Sane Fireworks and the conditions that applicants must satisfy to receive the permits.

(b) It is unlawful for any person to engage in the sale or distribution of fireworks within the City of Tracy without first having secured a permit to do so from the fire department.

(c) It is unlawful to store fireworks within the City of Tracy without first having secured a permit to do so from the fire department.

(d) The annual permit fee for the sale of Safe and Sane Fireworks shall be set by resolution of the City Council and payable prior to permit issuance.

(e) A temporary use permit is required per 10.08.4240

(f) Permit applications shall be made prior to the end of May of each year.

3.04.050 – Maximum Number of Safe and Sane Fireworks Permits Issued

(a) The maximum number of permits to sell Safe and Sane Fireworks which the City may issue during any one calendar year shall not exceed one permit for each ten thousand resident population or portion thereof. No more than one Safe and Sane Fireworks stand can be operated under each permit.

(b) Prior to June 8, 2011, City Council shall provide the process, by City Council resolution, for selection of non-profit organizations that will be eligible to apply for permits to sell and store Safe and Sane Fireworks. After July 5, 2011, City Council shall provide, by City Council resolution, a process for a lottery to determine which non-profit organizations will be eligible to apply for an annual permit to sell and store Safe and Sane Fireworks.

3.04.060 – Applications for Safe and Sane Fireworks Sales Permit Lottery

After July 5, 2011, applications for the lottery to be eligible to apply for a permit to store or sell Safe and Sane Fireworks may be filed during normal business hours from November 1st of each year up to and including the first Friday of December of the same year, at which time the filing period for that year will close. All applications shall be submitted in writing to the Fire Chief or his designee, on forms provided by the City and meet the following conditions:

(a) The applicant is a local nonprofit organization which shall mean any nonprofit association, club, or corporation organized for veteran, patriotic, welfare, religious, civic betterment, youth or charitable purposes as defined by Section 501 (c) of the Internal Revenue Code of the United States. Each organization shall provide the City with a copy of their "Letter of Incorporation" as proof of their nonprofit status and establish status as a 501(c)(3) tax-exempt organization as recognized by the Secretary of State.

1. Public school organizations shall provide current written verification from an affiliation from the school each year.

Each organization may file an application for one sales permit for which there is only one tax ID number.

(b) The organization must possess a nonprofit identification number. However, a given identification number may not be used by more than one organization. Should the Fire Chief or designee determine that more than one organization has submitted the same nonprofit identification number; the Fire Chief's office shall notify the organizations in writing and give each of them the opportunity to correct the situation to ensure compliance with this section. If such compliance is not achieved, none of the affected nonprofits organizations shall be eligible to receive a permit.

(c) A local nonprofit organization must have its principal and permanent meeting place in the City of Tracy. The organization must have obtained nonprofit status and have been organized and established in the City for a minimum of one continuous year preceding the filing of the application for permit. The organization must also have a bona fide membership of at least twenty members who reside in the City, which will be verified each year. Applications shall

be signed by two bona fide officers of the eligible organization, wherein the officer, on behalf of the organization and its agents, agrees to abide by state laws, administrative regulations, and all stipulation of this code and the permit if permission to operate a Safe and Sane Fireworks stand is granted to the organization.

(d) Should the Fire Chief or designee determine that a lottery awardee does not satisfy these requirements or otherwise comply with requirements of this chapter; the lottery awardee's application shall be denied.

3.04.070 – Documents and Fees Required for Fireworks Sales Permit Issuance

(a) In addition to all other requirements contained in this chapter, each lottery awardee shall comply with each of the following requirements:

(1) Apply for a permit to store or sell Safe and Sane Fireworks on a form approved by the Fire Chief with the required permit fee as established by City Council resolution paid prior to permit issuance.

(2) State of California Fire Marshal's firework retail license:

(3) Provide proof of a temporary sellers permit from the State Board of Equalization;

(4) Sign a form provided by the City whereby the lottery awardee agrees to indemnify and hold harmless the City, its, officers, employees, volunteers and agents from any and all claims, damages, demands, liability, costs, losses, and expenses, including without limitation court costs and reasonable attorneys' fees, arising out of or in connection with the permittee's sale of fireworks, except such loss or damage which was solely caused by the active negligence, sole negligence, or willful misconduct of the City, its officers, employees, or agents.

(5) Furnish to the City proof of coverage by a policy of public liability and property damage insurance. The policy shall provide limits of bodily injury and property damage liability of not less than five million dollars combined single limit for each occurrence annually as payment for damages to persons or property which may result from or be caused by the public sale or storage of fireworks, or any negligence on the part of the permittee or his or her agents, servants, employees or subcontractors relating thereto.

(6) Obtain a Temporary Use Permit from the City of Tracy and provide any other information as may be required by the Fire Chief.

(7) Booth location with the exact placement of fireworks.

(8) Plot plan of storage.

(b) The Fire chief, or designee, may revoke, immediately and without notice or hearing, the Safe and Sane Fireworks sales permit of any organization when any of the provisions of this code, Health and Safety Code, Uniform Fire Code or the California Code of Regulations are violated. The Fire Chief shall inform the permittee that permittee may seek

review of the Fire Chief's decision, by the City Manager, on the next business day. At the earliest opportunity on the next business day after revocation, the Fire Chief shall provide the City Manager with written notice that a permit for retail sales of Safe and Sane Fireworks has been revoked, including the name of the permittee and a brief statement of the grounds for revocation. If requested by the permittee, the City Manager, or designee, shall meet with the permittee and the Fire Chief, or designee, that day to review the Fire Chief's decision. The decision of the City Manager shall be final.

(c) Revocation of any permit will be effective for that calendar year.

(d) Permits for retail sales of Safe and Sane Fireworks issued pursuant to the provisions of this section are not transferable to any other person or organization and is issued for the purpose of operating a single Safe and Sane Fireworks sales booth at the approved location. The permit may be used only by the organization to which it is issued.

(e) Each applicant that has been granted a permit shall have no less than two members of its sales staff attend an operator safety seminar approved and supervised by the Tracy Fire Department.

3.04.080 – Operation of Safe and Sane Fireworks Stand Only by Permittee

(a) It is unlawful for the permittee organization to allow any person or entity other than the permittee organization to operate the Safe and Sane Fireworks stand for which the permit is issued, whether by agreement, assignment or otherwise. Violations will result in the immediate loss of the organization's permit.

(b) It is unlawful for any nonprofit organization to pay any consideration to any person for selling or otherwise participating in the sale of Safe and Sane Fireworks at such fireworks stand, except the hiring of a night watchman or security officer.

(c) Each sales stand must have a minimum of one adult 21 years of age or older in attendance and in charge thereof while fireworks are stored therein.

(d) No person may sleep in or remain in the stand after close of business.

(e) All unsold fireworks must be removed from the stand during non-sale hours and stored in a centrally located locked metal container or other secure and fire safe structure during non-sale periods. Each fireworks distributor shall provide a single storage location and container for storage of its stand's fireworks. The container shall be approved by the Fire Chief and located in an M1 or M2 zoned location approved by the Development and Engineering Services Director and the Fire Chief.

(f) Each sales stand must have on duty at all times during the sales period, at least one salesperson who attended the City of Tracy Fire Department operator safety seminar, required pursuant to Section 3.04.070.

(g) Permittees shall require all persons who appear to be under the age of 30 years to provide proof of age and shall make no sales of fireworks to persons younger than 18 years of age.

3.04.090 – Requirements of Safe and Sane Fireworks Sales Stand

All retail sales of Safe and Sane Fireworks shall be made from within a temporary fireworks sales stand only, and sales from any other building or structure is hereby prohibited. Safe and sane fireworks sales stands are subject to the following requirements:

- (a) No fireworks sales stand shall be put in place by the permittee any earlier than 8:00 a.m. on June 24 of each year.
- (b) No fireworks sales stand shall be located within 25 feet of any building or structure, within five feet of any curb line, or within 100 feet of any gasoline pump.
- (c) A minimum of 100 feet shall be maintained from any building used as a school, day care, hospitals, place of detention, public garage or place of assembly that can accommodate 300 or more occupants and the fireworks booth.
- (d) A minimum of twenty feet of separation shall be provided between the fireworks booths and the parked vehicles of the public.
- (e) No fireworks sales stand shall interfere with required site access, circulation, fire lanes or fire hydrants.
- (f) No weeds or other combustible materials are permitted within 25 feet of any fireworks sales stand.
- (g) No generators shall be allowed within 25 feet of any fireworks sales stand.
- (h) Smoking and the consumption of alcoholic beverages shall not be allowed within 50 feet of any fireworks sales stand and "No Smoking" signs shall be displayed on and in the fireworks sales stand.
- (i) Each fireworks sales stand shall be provided with two, two-and-one half gallon pressurized water type fire extinguishers, or two 2A10BC dry chemical/powder type fire extinguishers, in good working order, and easily accessible for use.
- (j) The permit to sell fireworks shall be displayed in a prominent place within the fireworks sales stand and shall at all times be visible to members of the public.
- (k) Fireworks sales stands shall be either 24 or 32 feet long by eight feet wide. Stands 24 feet in length shall have two exits and a maximum occupancy of six people. Stands 32 feet in length shall have three exits and a maximum occupancy of eight people.
- (l) All fireworks sales stands shall be built and maintained in accordance with the safety requirements of the City prior to opening for business.

(m) All unsold fireworks and accompanying litter shall be cleared from the location by 5:00 p.m. on July 5, and the fireworks sales stand shall be removed from the temporary location by 12:00 p.m. on July 9 of each year. If the permittee does not remove the stand and/or clean the sales site as required, the City may do so, or cause the same to be done, and the reasonable cost thereof shall be charged against the permittee.

3.04.100 – Locations for Discharge

(a) It shall be unlawful and a misdemeanor to discharge any fireworks including Safe and Sane Fireworks on public, semi-public or private open areas such as parking lots, vacant properties, or open commercial or industrial areas except in those areas approved by the Fire Chief as provided in section 3.04.020 of this ordinance.

(b) It is unlawful for any person to ignite, explode, project, or otherwise fire or use, any fireworks, or to permit the ignition, explosion or projection thereof, upon or over or onto the property of another without his or her consent.

(c) It is unlawful for any person to discharge any fireworks within one hundred feet of a fireworks booth.

(d) When discharging Safe and Sane Fireworks, a water source must be within 100 feet of discharge location.

3.04.110 – Sales and Use by Minors

(a) It is unlawful for any person under the age of eighteen to sell, or handle for sale, any classification of fireworks.

(b) It is unlawful for any person under the age of eighteen to purchase or be allowed to purchase any classification of fireworks.

(c) It is unlawful for any person having the care, custody or control of a minor under the age of eighteen to permit such minor to discharge, explode, fire, or set off any fireworks, as defined herein, unless such minor does so under the direct supervision of a parent or guardian, or such other person having care, custody or control of such minor.

3.04.120 – State Law

The provisions of this chapter are in addition to applicable state and federal law, including, but not limited to, the State Fireworks Law (California Health and Safety Code Section 12500 through 12726), the State Fireworks Regulations (Title 19, California Code Regulations, Chapter 6), and any and all other state or federal laws or regulations pertaining to the sale or use of fireworks.

3.04.130– Violation

Any violation of any of the provisions of this chapter is a misdemeanor, and may be enforced by any of the methods provided in Chapter 1.04 of this Code.

3.04.140 – Enforcement

Sworn Peace Officers and other City staff with training in the Powers of Arrest and designated by the Police Chief or Fire Chief are authorized to enforce this Chapter pursuant to section 3.04.130 above.”

SECTION 2: Title, chapter, and section headings contained herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of any title, chapter, or section hereof.

SECTION 3: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION 4: This Ordinance shall take effect thirty (30) days after its final passage and adoption.

SECTION 5: A summary of this ordinance shall be published and a certified copy of the full text posted in the office of the City Clerk at least five days before the City Council meeting at which the proposed ordinance is to be adopted. Within 15 days after adoption, the City Clerk shall publish a summary, and shall post in her office a certified copy, of the ordinance with the names of those Council Members voting for and against the ordinance. (Government Code section 36933(c)(1).)

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The foregoing Ordinance 1158 was introduced at a regular meeting of the Tracy City Council on the 3rd day of May 2011, and finally adopted on the 17th day of May, 2011, by the following vote:

AYES: COUNCIL MEMBERS: ELLIOTT, MACIEL, RICKMAN, IVES

NOES: COUNCIL MEMBERS: ABERCROMBIE

ABSENT COUNCIL MEMBERS: NONE

ABSTAIN COUNCIL MEMBERS: NONE