

ORDINANCE 1263

AN ORDINANCE OF THE CITY OF TRACY AMENDING CHAPTER 3.04 OF THE TRACY MUNICIPAL CODE PERTAINING TO "FIREWORKS"

WHEREAS, the City Council wishes to amend Chapter 3.04 of the Tracy Municipal Code which allows 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: Amendment of Chapter 3.04. The Tracy Municipal Code is hereby amended, notwithstanding any provision, ordinance, resolution or Tracy Municipal Code section to the contrary, by amending Chapter 3.04 of Title 3 (Public Safety) as follows:

"TITLE 3 – PUBLIC SAFETY

Chapter 3.04 - FIREWORKS

3.04.010 - Definitions.

"Dangerous 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 effects which are useful as pyrotechnic devices or for entertainment and any fireworks classified as such as defined by Sections 12505 and 12561 of the Health and 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. 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 poppers or snap caps.

"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.

"Nonprofit organization" means 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. A local nonprofit organization must have its principal and permanent meeting place within the City of Tracy, or be within a one-mile radius of the city limits of the City of Tracy, or be a school with a student body that includes City of Tracy residents and is within the Tracy Unified School District or the Jefferson School District. Non-school organizations that have their principal meeting place outside the City limits as allowed above, must show documented proof that a majority of its members are City of Tracy residents. The organization must have nonprofit status and have been organized and established for a minimum of two continuous years preceding the filing of the application for permit. The organization must have a bona fide membership of at least twenty (20) members who reside in the City, which will be verified each year. The organization must also provide direct and regular community services and benefits to the residents of the City.

"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.

"Principal and permanent meeting place" means a location that serves as the nonprofit organization's primary, fixed site for meetings.

"Safe and sane fireworks" also known as *"state-approved 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 effects which are useful as pyrotechnic devices or for entertainment and any fireworks which do not come within the definition of "dangerous fireworks" or "exempt fireworks" as defined by Section 12505 of the Health and 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. 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 poppers or snap caps.

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 display of fireworks 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 by railroad or other transportation agencies, for signal purposes or illumination, of torpedoes, flares or fuses; nor the sale or 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 public display of fireworks as required by local and state regulations. Permit application shall be made not less than sixty (60) days prior to the scheduled date of the display. The permit application shall be in accordance with the California Fire Code and the National Fire Protection Association codes and standards 1123 and 1124 and 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 City Manager or 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 City Manager or designee. The City Manager or designee 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 Council as set forth in section 1.12.020 of this Code.
- (d) A public display of fireworks 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, and insurance requirements shall be set by resolution of the City Council.

3.04.030 - Sale, discharge, time limit, dangerous fireworks.

- (a) Subject to the permitting provisions of this chapter, the California Fire Code, 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 thereunder, safe and sane fireworks may be 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.
- (b) It is unlawful and shall be a misdemeanor to possess, sell or discharge dangerous fireworks within the City of Tracy.

- (c) As an alternative to charging possession, sale, or discharge of dangerous fireworks as a misdemeanor as provided under subsection (b) of this section, the City may issue administrative citations pursuant to chapter 1.28 of this Code.
- (d) 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 to protect health, safety, aesthetics, and such other conditions the City Council finds reasonably necessary that applicants must satisfy to receive the permits.
- (b) The City Council shall establish, by resolution, an application fee for the lottery to be eligible for an annual permit to store or sell safe and sane fireworks.
- (c) It is unlawful for any person to engage in the sale or distribution of safe and sane fireworks within the City of Tracy without first having secured an operational fire permit and a temporary use permit to do so from the City Manager or designee.
- (d) It is unlawful to store safe and sane fireworks within the City of Tracy without first having secured an operational fire permit and a temporary use permit to do so from the City Manager or designee.
- (e) 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.
- (f) A temporary use permit and City business license is required pursuant to this Code.
- (g) Lottery awardees and alternates, as defined by the process set forth in a Council resolution pursuant to section 3.04.050(b), may apply for an operational fire permit prior to the end of April of each year.

3.04.050 - Maximum number of safe and sane fireworks permits issued—Selection procedure.

- (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 10,000 resident population or portion thereof. No more than one safe and sane fireworks stand can be operated under each permit. Only nonprofit organizations, as defined in this chapter, are eligible for such permits.
- (b) City Council shall provide, by City Council resolution, a process for a lottery to determine which nonprofit organizations, including alternates, 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.

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 Thursday 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 City Manager or designee, on forms provided by the City and meet the following conditions:

- (a) The applicant is a nonprofit organization as defined in this chapter. Each nonprofit organization shall establish status as a 501(c) tax-exempt organization and provide a certificate of good status from the California Secretary of State and an entity status letter showing good status with the California Franchise Tax Board at the time of application. The letters shall be dated within sixty (60) days of application. The letters are required to be submitted with the application and if not submitted, the application will be rejected.
 - 1. Public school organizations shall provide current written verification of an affiliation from the school each year. Public school organizations shall establish status as a 501(c) tax-exempt organization as a separate entity from the school and must possess a nonprofit identification number.
 - 2. Each nonprofit organization may file an application for one sales permit for which there is only one tax ID number.
- (b) The nonprofit organization must possess a nonprofit identification number. However, a given identification number may not be used by more than one organization. Should the City Manager or designee determine that more than one organization has submitted the same nonprofit identification number, the City Manager or designee shall notify the organizations in writing and give each of them the opportunity to correct the situation prior to the deadline provided in this section to ensure compliance with this section. If such compliance is not achieved, none of the affected nonprofit organizations shall be eligible to receive a permit.
- (c) Applications shall be signed by two (2) bona fide officers of the eligible nonprofit organization, wherein the officer, on behalf of the organization and its agents, agrees to abide by state laws, administrative regulations, and all requirements of this Code and the permit if permission to operate a safe and sane fireworks stand is granted to the organization, and both:
 - (1) has not been found by any court of competent jurisdiction or City administrative hearing officer to be in violation of any civil or criminal, local, state or federal law relating to fireworks within twenty-four (24) calendar months prior to the organization's submittal of an application for a permit to sell safe and sane fireworks, and
 - (2) has not had a permit to sell safe and sane fireworks revoked within twenty-four (24) calendar months prior to the organization's submittal of an application for a permit to sell.
- (d)
 - (1) Should the City Manager 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.
 - (2) If an awardee is found to have falsified or misrepresented its status as an eligible organization as defined by this Chapter, or provided false information on the approved application, the organization will be ineligible to apply for a safe and sane fireworks sales permit for a period of two (2) years.

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 an operational fire permit to store or sell safe and sane fireworks on a form approved by the City Manager or designee 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 safe and sane 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 (\$5,000,000.00) 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 safe and sane 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 City Manager or designee.
 - (7) A site plan of the fireworks sales stand area, to scale, shall be provided. The site plan shall include site location, fireworks sales stand location, parking areas, access to and from the fireworks sales stand area, all equipment to be used at the fireworks sales stand and the locations for the equipment, location of trash area, location of trailer parking area, and any additional information as requested by the City Manager or designee, in compliance with the operational fire permit requirements.
- (b) The City Manager 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, the Health and Safety Code, the Uniform Fire Code, the California Code of Regulations, or any other applicable law or regulation are violated. The decision of the City Manager, or designee, 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 are 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 (2) members of its sales staff attend an operator safety seminar approved and supervised by the City Manager or designee.

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 sales 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 sales stand, except the hiring of a night watchman or security officer.
- (c) Each fireworks sales stand must have a minimum of one adult twenty-one (21) years of age or older in attendance and in charge thereof while safe and sane fireworks are stored therein.
- (d) No person may sleep in or remain in the fireworks sales stand after close of business.
- (e) All unsold safe and sane fireworks must be removed from the fireworks sales stand during nonsale hours and stored in a centrally located, locked metal container or other secure and fire-safe structure during nonsale periods. Each permittee shall provide a storage location and container for storage of its stand's fireworks. The container shall be approved by the City Manager or designee and located in an M-1 or M-2 zoned location approved by the Development and Engineering Services Director and the City Manager or designee. Such storage shall comply with all requirements of this Code,

including applicable additional permit requirements. Permittees may satisfy these storage requirements through the use of a safe and sane fireworks wholesaler, provided such wholesaler also complies with all requirements of this Code, including additional permit requirements.

- (f) Each fireworks sales stand must have on duty at all times during the sales period at least one salesperson who attended the City of Tracy operator safety seminar, required pursuant to section 3.04.070.
- (g) Permittees shall require all persons who appear to be under the age of thirty (30) years to provide proof of age and shall make no sales of safe and sane fireworks to persons younger than eighteen (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 are 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 20 of each year, provided there is no sale or storage of safe and sane fireworks prior to the time periods set forth in section 3.04.030.
- (b) No fireworks sales stand shall be located within twenty-five (25) feet of any building or structure, within five (5) 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, hospital, place of detention, public garage or place of assembly that can accommodate 300 or more occupants and the fireworks sales stand.
- (d) A minimum of twenty (20) feet of separation shall be provided between the fireworks sales stand 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 twenty-five (25) feet of any fireworks sales stand.
- (g) No generators shall be allowed within twenty-five (25) feet of any fireworks sales stand.
- (h) Smoking and the consumption of alcoholic beverages shall not be allowed within fifty (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 (2), two and one-half (2.5) gallon pressurized water-type fire extinguishers, or two (2) 2A10BC dry chemical/powder-type fire extinguishers, in good working order, and easily accessible for use.
- (j) The permit to sell safe and sane 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 twenty-four (24) or thirty-two (32) feet long by eight (8) feet wide. Fireworks sales stands twenty-four (24) feet in length shall have two (2) exits and a maximum occupancy of six (6) people. Firework sales stands thirty-two (32) feet in length shall have three (3) exits and a maximum occupancy of eight (8) 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 safe and sane 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 fireworks sales 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 dangerous or safe and sane fireworks, on public, semipublic or private open areas such as parking lots, vacant properties, or open commercial or industrial areas, except in those areas approved by the City Manager or designee as provided in section 3.04.020 of this chapter.
- (b) It is unlawful for any person to ignite, explode, project, or otherwise fire or use, any safe and sane fireworks, or to permit the ignition, explosion or projection thereof, upon or over or onto the property of another without his or her consent, or to ignite, explode, project, or otherwise fire or make use of, any safe and sane fireworks within ten (10) feet of any residential dwelling or other structure.
- (c) It is unlawful for any person to discharge any safe and sane fireworks within 100 feet of a fireworks sales stand.
- (d) When discharging safe and sane fireworks, a water source must be within 100 feet of the discharge location.

3.04.110 - Sales and use by minors.

- (a) It is unlawful for any person under the age of eighteen (18) to sell, or handle for sale, any classification of fireworks.
- (b) It is unlawful for any person under the age of eighteen (18) 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 (18) to permit such minor to discharge, explode, fire, or set off any safe and sane 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, Sections 12500 through 12726), the State Fireworks Regulations (Title 19, California Code Regulations, Chapter 6), the California Fire Code 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: This Ordinance shall either (1) be published once in a newspaper of general circulation, within 15 days after its final adoption, or (2) be published in summary form and posted in the City Clerk’s office at least five days before the Ordinance is adopted and within 15 days after adoption, with the names of the Council Members voting for and against the Ordinance. (Government Code section 36933)

The foregoing Ordinance 1263 was introduced at a regular meeting of the City Council of the City of Tracy on the 4th day of September, 2018, and finally adopted on the 18th day of September, 2018, by the following vote:

AYES: COUNCIL MEMBERS: DEMENT, RANSOM, YOUNG, VARGAS, RICKMAN
NOES: COUNCIL MEMBERS: NONE
ABSENT: COUNCIL MEMBERS: NONE
ABSTAIN: COUNCIL MEMBERS: NONE


MAYOR

ATTEST:


CITY CLERK