

Handout - Agenda Item 4 October 6, 2015, Council Meeting

October 6, 2015

Tracy City Council Member:

In exchange for the taxes paid by the citizens to the government, that government is expected to ensure a safe environment for the citizens to live in – one especially free from man-caused dangers threatening people and property.

The City of Tracy failed in this regard on July 4, 2015.

On that night illegal firework explosions went on unchecked in my neighborhood for hours, endangering people and property. Burning, spent, illegal firecracker casings rained down on my back and front yards for hours. As a result, I was forced to retreat inside my house.

I have never been so afraid in my 27 years of living in Tracy, as I was that night! I felt I was caught in a war zone! The worst part of it was that civil authorities were incapable of stopping it – despite hundreds of emergency calls to 911, which flooded and eventually shut down the system.

On July 5, 2015, I took to the TFD office a bag full of burnt-out, illegal fire work casings.

Captain Vargas advised me that there were 2 possible corrective actions which the City Council could take to prevent a future recurrence:

#1: Authorize hiring an additional police force to combat the use of illegal fireworks on July 4, 2016. Publicize this hiring, and publicize the price of the fines, which the police would hand-out to users of illegal fireworks;

#2: Forbid the use of all fireworks (safe and sane, and illegal). Apparently, legalization of some fireworks makes some people think that any firework is okay. To enforce this policy, an additional police force would have to be hired for July 4, 2016. Publicize their presence, and the price of citations they would hand out.

I am requesting the City Council do whatever it takes to prevent a recurrence of the dangerous and out-of-control use of illegal fireworks on July 4, 2015.

I and other law-abiding citizens in Tracy should never again be forced to hide in our homes for safety on a National Holiday!

Thank you.

Marla Israel

:

**Handout - Agenda Item 4
October 6, 2015, Council Meeting**

From: DeDe <deders3@yahoo.com>
Sent: Tuesday, October 06, 2015 5:32 PM
To: Council
Subject: Sales of safe and sane fireworks

As part of a non profit here in Tracy that has had the privilege to sale safe and sane fireworks here in Tracy twice in the last three years. We were able to help feed the homeless, build our church, send our youth to camp, and help out with many out reaches in our community. We are all for keeping the non-profit fundraising going in our town. It is a one week a year event and feel it was an awesome way to get to know many of the people in our community including our great firefighters. Please consider keeping this event going.

Blessings,
Fred & DeDe Lievano

With God All Things Are Possible

**Handout - Agenda Item 4
October 6, 2015, Council Meeting**

Adrienne Richardson

Subject: FW: Tracy City Council Meeting / Tuesday, October 6, 2015 / Agenda Item #4
-----PLEASE DISTRIBUTE TO ALL MEMBERS OF THE CITY COUNCIL

Attachments: Tracy Exhibit A (00023732xB1573).pdf; Tracy Exhibit B (00023733xB1573).pdf; Tracy Exhibit C (00023730xB1573).pdf; Tracy Exhibit D (00023734xB1573).pdf

Importance: High

From: Dennis Revell [<mailto:DCR@revellcommunications.com>]
Sent: Monday, October 05, 2015 1:55 PM
To: Web - City Manager; Web - City Clerk; Gary Hampton; Council; David Bramell; David Bramell
Cc: Louis Linney; Don Pascarella; Jennifer Schnell
Subject: Tracy City Council Meeting / Tuesday, October 6, 2015 / Agenda Item #4 -----PLEASE DISTRIBUTE TO ALL MEMBERS OF THE CITY COUNCIL
Importance: High

October 5, 2015

VIA EMAIL

The Honorable Michael Maciel
Mayor, City of Tracy
Tracy City Council
333 Civic Center Plaza
Tracy, CA 95376

Re: Our Client: American Promotional Events, Inc. (TNT Fireworks)

**Subject: Tracy City Council
Tuesday, October 6, 2015
Agenda Item 4
"DISCUSS AND PROVIDE DIRECTION ON POSSIBLE AMENDMENTS TO TRACY
MUNICIPAL CODE CHAPTER 3.04 REGARDING PARTICIPATION REQUIREMENTS
FOR LOCAL NON-PROFIT ORGANIZATIONS SELLING "SAFE AND SANE"
FIREWORKS"**

Dear Mayor Maciel:

As I am sure you and many of the current City Councilmembers are aware, Revell Communications is the public relations/public affairs representative for American Promotional Events, Inc., the state's leading wholesale distributor of State Fire Marshal-Approved Fireworks (TNT Fireworks). In addition, we assist TNT Fireworks as well as many local communities with the collection, tabulation and analysis of local fire and injury data as it relates to illegal, State-Approved and unknown consumer fireworks as well as assist many jurisdictions with the drafting and updating of their local fireworks ordinances.

Currently, TNT Fireworks is the wholesale distributor for approximately 2,600 out of the 3,000+ non-profit organizations that sell State-Approved Fireworks each 4th of July in over 296 communities (<http://ca-fireworks.presskit247.com/content/content-article.asp?ArticleID=508>) throughout the state. In 2015, TNT Fireworks was the wholesale distributor for 6 out of the 9 Tracy non-profit organizations who were selected in the lottery process and TNT represented 29 out of the 45 non-profit organizations who competed in that lottery process.

Based upon the City Council's agenda and staff report for Item #4 posted online, it was our understanding that the discussion of this agenda item was going to be limited to the qualifications of the Tracy non-profit organizations in order to participate in the sale of State-Approved Fireworks as a fundraiser. However, based upon the article that appeared in the Friday, October 2, 2015 edition of the *Tracy Press*, City Manager Troy Brown was reported to have said that the Council would also likely discuss whether to continue to allow the sale of Safe and Sane Fireworks following the *Tracy Press* report on July 10th that the city's 911 system was blocked for 15 minutes on July 4th because of fireworks calls.

I would like to respectfully submit for your consideration some discussion on both the agenda item as it was noticed as well as it has apparently now been expanded by Mr. Brown, and separate these discussions accordingly.

I. Qualifications of Non-Profit Organizations to Participate in Fireworks Program

In 2011, when the Tracy City Council amended its Municipal Code to allow for the sale and use of State-Approved Fireworks within the city limits of Tracy, we assisted city staff in the drafting and preparation of that ordinance. During that process we made a number of recommendations which at the time city staff felt were unnecessary provisions to include in the ordinance that moved forward. Among those were several definitions, several operational components and several enforcement components.

Definitions:

We recommended the inclusion of the following definitions in the Tracy ordinance:

- “**‘Nonprofit organization’** shall mean any nonprofit association, charity or corporation organized primarily for veteran, patriotic, welfare, civic betterment, religious, athletic or charitable purposes pursuant to the Internal Revenue Code or California Revenue and Taxation Code, or a group which is an integral part of a recognized national organization having such tax-exempt status or an organization affiliated with and officially recognized by an elementary, junior high and/or high school and/or school district that serves, in whole or in part, the residents of the City of Tracy or public and/or private community college, college and/or university which is located within the boundaries of the City of Tracy.”
- “**‘Principal and permanent meeting place’** shall include, but not be limited to, a permanent structure, playing field, geographic area or service population which resides in or is located within the City of Tracy.”
- “**‘Qualified Applicants’** shall mean any group or organization which has met all of the following criteria for a continuous period of not less than one full year preceding submittal of an application for a permit to sell required by this Chapter and which continues to meet the criteria for the duration of any permit to sell issued by the City of Tracy pursuant to this Chapter:
 - i. The organization shall be a nonprofit organization pursuant the Internal Revenue Code or California Revenue and Taxation Code; or a group which is an integral part of a recognized national organization having such tax-exempt status or an organization affiliated with and officially recognized by an elementary, junior high and/or high school and/or school district

that serves, in whole or in part, the residents of Tracy or public and/or private community college, college and/or university which is located within the boundaries of the City of Tracy. Only one application per school will be allowed. If an organization is affiliated with a recognized educational institution as defined in this Section, but maintains a separate tax exempt status with the Internal Revenue Service or the California Franchise Tax Board, said nonprofit organization shall be allowed a separate application.

- ii. The organization shall be organized primarily for veterans, patriotic, welfare, civic betterment, religious, athletic, educational, youth development or charitable purposes;
- iii. The organization must have its principal and permanent meeting place within the City;
- iv. The organization must be one which provides direct and regular community services and benefits to the residents of the City;
- v. Has a minimum bona fide membership of at least twenty (20) members who either reside in the City, are employed in the City, or are owners or operators of a business or other establishment located in the City;
- vi. 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 calendar months prior to the organization's submittal of an application for a permit to sell;
- vii. Has not had a permit to sell revoked within twenty-four months prior to the organization's submittal of an application for a permit to sell."

Operational Components

Because of the anticipated number of non-profit organizations who would participate in the lottery selection process, we recommended provisions similar to the following that would allow for the "joint venture operation of a fireworks booth" by two or more eligible non-profit organizations:

- "Two (2) or more eligible nonprofit organizations may jointly submit an application pursuant to this Chapter and may jointly receive a permit to sell fireworks pursuant to this Chapter. In addition, if a qualified applicant is selected in the lottery as a permittee, it may select one or more other qualified applicants who participated in that year's lottery selection process to join it in a joint venture operation of the fireworks stand and jointly receive a permit to sell fireworks pursuant to this Chapter. All organizations participating in such joint ventures will be required to separately file individual Nonprofit Organization Financial Statements as required by Section _____ of this Chapter."

As noted above, we recommended that every non-profit organization who was issued a permit or a joint venture permit be required to file a "Nonprofit Organization Financial Statement" and suggested a provision in the ordinance which would read as follows:

"On or before September 1st of any year authorized pursuant to a permit, the permittee shall submit to the City Clerk a financial statement by the Treasurer or financial officer of the permittee setting forth the total gross receipts from the fireworks stand operated by the permittee; all expenses incurred and paid in connection with the purchase of fireworks and the sale thereof; and to whom and for what purpose the net proceeds were or will be dispersed along with the most recent report filed by the permittee to the State Board of Equalization. The filing of such statements shall be a condition precedent to the granting of any subsequent permit."

Attached hereto at Exhibit A please find a copy of several blank non-profit organization financial statement forms that other cities have developed and require as part of their ordinance.

Enforcement

In the 2007 Legislative session, the California Legislature adopted and then Governor Schwarzenegger signed SB 839 which provided for cities, counties, and special districts to impose administrative fines for possession and use for up to 25 pounds gross weight of illegal fireworks (please see the following link for an explanation of SB 839 <http://ca-fireworks.presskit247.com/content/content-article.asp?ArticleID=496>). In 2011 we recommended the inclusion of such a provision in the Tracy ordinance. Attached hereto at Exhibit B please find language similar to what we proposed for inclusion in the City's ordinance at that time.

As you can see from Exhibit C attached hereto, there is a distinct benefit to having a citation/administrative fine process over the current criminal citation process set forth in the Tracy fireworks ordinance. Furthermore, the administrative citation process would allow the City of Tracy to take advantage of additional provisions we would recommend being amended into the Tracy ordinance to provide for a Fireworks Social Host Liability and the utilization of citizen reports and complaints via a smart phone app that would allow citizens to take pictures of violations that would be geo-coded, date-stamped and then sent anonymously to the City for enforcement actions.

RECOMMENDATIONS

With respect to the noticed subject of this agenda item, i.e., qualifications of nonprofit organizations to participate in fireworks program, we are of the opinion that the incorporation of the above definition and operational components would go a long way to addressing the concerns raised by Councilmember Young that formed the basis of this agenda item. With respect to the enforcement provisions we recommended in 2011 we would like to address those in our discussion below.

II. Should Tracy Continue to Allow the Sale of Safe and Sane Fireworks?

In light of the potential expanded discussion on this agenda item below please find arguments which are often raised as reasons for banning State-Approved fireworks sale and use in a community:

EXPLODING THE MYTHS: EVERYTHING WILL BE BETTER IF WE JUST BAN STATE-APPROVED FIREWORKS!

MYTH #1: State-Approved Fireworks are as dangerous and troublesome as illegal fireworks.

State-Approved Fireworks do not explode, go up in the air or move about the ground uncontrollably. The most commonly encountered illegal fireworks are bottle rockets, firecrackers, M-80's and cherry bombs. *According the California State Fire Marshal, the use of these illegal items is now being dwarfed by the heavy importation of illegal aerial shells... rivaling or surpassing those used in most public displays.*

State-Approved Fireworks consist of primarily ground-based fountains, some handheld items, a few spinners and novelty items. All these undergo extensive testing and must meet the most stringent construction, performance, labeling and safety requirements.

MYTH #2: The use of illegal fireworks increases when State-Approved Fireworks are available.

The availability of State-Approved Fireworks gives people an opportunity to celebrate without turning to illegal products. Repeatedly, jurisdictions have seen illegal activity reduced once State-Approved Fireworks are authorized - especially when combined with meaningful administrative fines and illegal fireworks enforcement and education.

MYTH #3: There are no illegal fireworks problems of any significant magnitude in cities that ban all fireworks.

For over 23 years, the Los Angeles County Fire Department has been rigorous in its record keeping on the cause of 4th of July holiday fire damages. The bottom line: State-Approved Fireworks cause almost no problems and the cities that allow State-Approved Fireworks have better safety records than those that do not. If you look its latest report (<http://ca-fireworks.presskit247.com/content/content-article.asp?ArticleID=503>) you will see that virtually 100% of the fireworks-caused damages over the years have been caused by dangerous illegal fireworks, and they are almost exclusively happening in communities where no fireworks are allowed.

Implicit in the argument to ban State-Approved Fireworks is the suggestion that things will be better in Tracy if you would just ban State-Approved Fireworks. Let's look at three communities which have staffing ratios for its Police and Fire Departments and equipment far superior to that of Tracy and with the investigative resources to attempt to crack down on people selling illegal fireworks in advance of the time period where they are generally used, and see how safe these communities were in 2015:

San Jose

"Illegal Fireworks Keep San Jose Firefighters Busy Over The Weekend In San Jose....In a text book example of what can and frequently does happen when laws and warnings about illegal fireworks are flouted, a home on Yerba Buena Road suffered heavy damage when what is thought to have been a bottle rocket or other airborne firework landed in the backyard."

(San Jose: KRON Channel, 4 7/5/15)

Vacaville

"Fireworks Likely Cause Of Fourth of July Blaze...A blackened hillside is the backdrop for Keating Park in Vacaville on Monday. An investigation into what caused the Fourth of July fire preliminarily indicates it was likely caused by someone setting off illegal fireworks, police said.... Investigators have determined that fireworks are the likely cause of the fire that burned 325 acres in Vacaville during the Fourth of July holiday weekend." (Vacaville: The Reporter, 7/6/15)

Los Angeles

“Illegal Fireworks Eyed As Cause Of California Wildfires. Three fires that broke out on the July Fourth holiday in California were possibly sparked by the use of illegal fireworks....The Los Angeles Sheriff’s Department said in a statement that witnesses reported seeing a group shooting fireworks into a mattress outside a Los Angeles warehouse that eventually went up in flames. Fireworks debris was found on the scene.

The blaze spread to two other warehouses, causing as much as \$3 million in damage, and injured four firefighters, the department said.” (Los Angeles: The Reuters News Service, 7/5/15)

MYTH #4: Police and Fire Departments in Communities that allow State-Approved Fireworks are unable to protect their communities from illegal fireworks with meaningful enforcement.

Also implicit in the argument to ban is the suggestion that the presence of State-Approved Fireworks makes it difficult for the public safety agencies in Tracy to either issue citations or accomplish illegal fireworks busts of any significant proportion. Here are just a handful of examples to show you the success that other communities that permit State-Approved Fireworks are having when they are determined to make a difference and protect their communities:

Kern County

“Task Force Writes 93 Citations For Illegal Fireworks...Ninety three illegal fireworks citations were issued. Each misdemeanor citation carries a maximum fine of 15-hundred dollars. Seven people were arrested and 25 pounds of roman candles confiscated.” (Kern County Fireworks Task Force, kerngoldenempire.com)

Watsonville

“Record Amount Of Illegal Fireworks Seized In Watsonville... Watsonville Police seized 323 pounds of illegal fireworks from July 1 to Sunday, which was the most the agency has confiscated in that period....Watsonville Police also fielded 304 calls for service on Independence Day, including 62 calls that were related to fireworks.” (Watsonville: Santa Cruz Sentinel 7/8/15)

Huntington Beach

“H.B. Collects More Than 300 Pounds Of Illegal Fireworks Over The Weekend...Over the weekend, police made 20 DUI arrests, 34 alcohol-related arrests, impounded 68 vehicles, issued 228 alcohol-related citations and made 39 citations for illegal fireworks use.” (Huntington Beach: Huntington Beach Independent 7/7/15)

Fontana

“The Illegal Fireworks Enforcement Operation... on the fourth of July resulted in 32 citations for illegal fireworks, six arrests and officers also confiscated fireworks from 47 individuals.

Officers issued 32 citations for prohibiting possession, sale or use of illegal fireworks, which carries a fine of \$2,500 for the first offense, \$5,000 for the second and \$10,000 for the third.

Officers also confiscated fireworks from 47 individuals, two of which had truck beds full of illegal fireworks.” (Fontana: The Inland News Today 7/6/15)

Visalia

“Illegal Fireworks Seized, Citations Issued In Enforcement Details.... An enforcement detail over the Fourth of July holiday seeking to deter the use of illegal fireworks in Tulare resulted in 40 administrative citations being issued.” (Tulare and Visalia: The Visalia Times Delta 7/6/15)

Sacramento

“Anonymous Tip Leads To Once Of The Largest Illegal Fireworks Bust In Sacramento Region History....Thousands of pounds of consumer and professional grade fireworks were found sitting in a home in a quiet Fair Oaks neighborhood....While some of the products are sold to the public in other states, others are professional grade, making them that more dangerous.”: (Sacramento: CBS Channel 13 7/2/15)

Santa Ana

“3 Men Cited As Santa Ana Police Seize 3,000 Pounds Of Illegal Fireworks In Undercover Bust.” (Santa Ana: Orange County Register 6/26/15)

Garden Grove

“Half-Ton of Illegal Fireworks Confiscated From Shed In Garden Grove...Authorities confiscated a half-ton of illegal fireworks from a shed in Orange County as part of an effort to increase safety for the 4th of July holiday. ‘We’re going to go after you, we’re going to arrest you, and you will get booked in Orange County jail for felonies,’ Garden Grove Police Sgt. Carl Whitney said. ‘We’ve seized over a thousand pounds of illegal fireworks with a street value of close to ten thousand dollars.’” (Garden Grove: CBS Channel 2 Los Angeles 6/24/15)

Gilroy

“Gilroy: Illegal Fireworks Raid Nets 100 Pounds Of Explosive Powder”...KNTV reports Friday that the Santa Clara County Sheriff’s bomb squad raided a home in Gilroy late

Thursday. They also found equipment to make illegal fireworks....The suspect was in possession of 200 M-1000s, which look like a quarter-stick of dynamite.” (Gilroy: San Jose Mercury News 6/19/15)

- **SO WHY WAS THE ILLEGAL FIREWORKS PROBLEM SO BAD THIS YEAR?**

Regrettably, I believe 2015 will go down as one of the worst years in California 4th of July history for the volume of and problems caused by illegal fireworks. The State of California has primary, and in some instances, exclusive jurisdiction for dealing with this problem. Instead of dealing with it as they should and at a minimum containing the problem, they have abdicated their responsibility and made local government not only the “**first line of defense**” ... they have made them the “**only line of defense**” against illegal fireworks.

How has this happened? Here are just a few insights.

- Fireworks come into the United States through four Western ports, three of which are in California (Oakland, Long Beach and Los Angeles). They leave those ports in two ways, by rail or by truck. Both our client and the U.S. Department of Transportation have argued to the California State Fire Marshal for some time that there are operations that pick up product at those ports that is illegal in California, but is legal elsewhere, that supposedly is bound to be trucked to a legal location outside of California. Instead these products are drop shipped to locations here in California. In 2014, there were three seizures of illegal fireworks in Southern California warehouses that ranged from 15 to 25 tons each which were drop shipments from the ports.
- There is no border integrity or inspections for illegal fireworks like there used to be. As a result, there are both hordes of individual criminal entrepreneurs as well as large commercial operations smuggling these dangerous illegal fireworks into this state without fear of being caught or suffering any criminal consequences. One of those operations openly brags that it makes somewhere in the neighborhood of \$5 million each year from illegal fireworks sales in Southern California alone.
- To my knowledge, over the last two decades there has not been any state or federal prosecutions of any individual or entity for engaging in or facilitating the importation and/or sale of dangerous illegal fireworks in California.
- Despite its mandatory statutory duty to pick up illegal fireworks that local jurisdictions have seized, in January 2015, the State Fire Marshal advised cities and counties that they would not, and it would now be the local jurisdiction’s responsibility to dispose of them at a cost of as much as \$23.00 per pound. As a result, in part of our advocacy on this issue on behalf of local governments across the state, we were able to convince both the Brown Administration and the State Legislature to appropriate an additional \$5 million in the May Budget Revise to take care of the 2014 backlog of seized fireworks across the state as well as to cover those seized in 2015.

Unfortunately, what Tracy experienced was not a rare occurrence this year. By all media reports, the illegal fireworks problem was much more perverse in 2015 and resulted in even more significant losses in those cities where no fireworks were allowed to be used or sold. We are currently working on legislation

with the Brown Administration that we hope will result in an increased level of enforcement actions by the State in 2016 (SB 522).

RECOMMENDATIONS

With respect to the expanded subject of this agenda item, i.e., whether or not Tracy should ban the sale and use of State-Approved fireworks, we would respectfully suggest that the City Council do the following:

- Amend the City Fireworks Ordinance to provide for an Administrative Citation and Fine process.
- Include in that Administrative Citation and Fine process a Fireworks Social Host Liability provision (please see Exhibit D attached hereto which is a Fireworks Social Host Liability Ordinance recently passed by Santa Clara County).
- Consider accepting and utilizing the smart phone app reporting process to be provided by TNT Fireworks free of charge to your jurisdiction.
- Pass a resolution requesting that the Brown Administration and more specifically the Office of the State Fire Marshal and CAL FIRE ensure that there are increased levels of enforcement and funding in Senate Bill 522 so as to avoid cities like Tracy not only being the first line of defense but the only line of defense against illegal fireworks.

We respectfully suggest that the City Council engage the Tracy community, the Tracy non-profit organizations, the State-Approved Fireworks industry and the City's Police and Fire Departments to work together to find a solution for Tracy's illegal fireworks problems. We also suggest that this City Council insist that the State of California do its job to stop the influx of illegal fireworks into your community.

Very Truly Yours,

REVELL COMMUNICATIONS

Dennis C. Revell
President/CEO

Cc: All members of the Tracy City Council
City Manager, Troy Brown
City Clerk, Nora Pimentel
Chief Gary Hampton

Fire Division Chief David Bramell

EXHIBIT

A



CITY OF STOCKTON



2011 FIREWORKS SALE GROSS RECEIPTS REPORT

Must be filed with the Office of the City Clerk not later than September 1, 2011
Any organization that files the written financial statement and/or the State Board of Equalization report after September 1 shall not be eligible to apply for the 2012 Fireworks Lottery and Sales.

Pursuant to Stockton City Municipal Code, Title 8 Health and Safety, Chapter 8.92.160 all nonprofit organizations and school organizations which sell "Safe-and-Sane" fireworks within the City of Stockton pursuant to a permit issued by the City of Stockton must file a Financial Statement signed by the Treasurer or Financial Officer of the organization setting forth the total gross receipts from the fireworks stand operated by the organization; all expenses incurred and paid in connection with the purchase of fireworks and the sale thereof; and to whom and for what purpose the net proceeds were or will be disbursed, along with the most recent report filed by the organization to the State Board of Equalization. The filing of such statement shall be a condition precedent to the granting of any subsequent permit. (Ord. 007-10 C.S. § 2, eff. 6-10-10).

Reporting Period Calendar Year: 2011

Name of Non-Profit Organization: _____

Total Gross Receipts: \$ _____

Expenses Incurred and Paid In Connection with the Purchase and Sale of Fireworks (attach additional sheets if needed): _____

Name of Fireworks Wholesaler/Distributor: _____

Briefly describe to whom and for what purpose the net proceeds were or will be distributed (attach additional sheets if needed): _____

Attach a copy of the report filed by your organization with the State Board of Equalization associated with the sale of fireworks during this reporting period.

Under penalty of perjury, I certify that the above-stated gross revenue report for the period stated is true and correct to the best of my knowledge.

Signature of Authorized Representative

Print Name

Date

CITY OF SAN BERNARDINO

Fireworks Financial Statement for Year 2015



This statement must be completed, signed and filed with the City Clerk's Office no later than August 31 of the calendar year. A cashier's check or money order must be submitted with application to be considered complete. Each application shall have receipts attached for all expenses for each stand as well as any incentive payments, gifts, or other financial consideration provided to members of the licensee or its volunteers. Licensees failing to file this form shall be ineligible to receive a license the following year.

Organization: (If joint venture, please list names of both organizations)	Contact Name:	Telephone Number:
Stand Location:		
Fireworks Supplier:		

Enter the Total Gross Sales (Total collected from product sales, sales tax, regulatory fee, and credit card transactions)	Line 1 \$
Calculate Total Net Sales (Divide the amount indicated on line 1 by 1.1325)	Line 2 \$
Calculate Total Sales Tax (Multiply the amount from line 2 by .0825)	Line 3 \$
Calculate Total Regulatory Fee (Multiply the amount in line 2 by .05)	Line 4 \$

EXPENSES:

Total Paid to Supplier: (Fireworks Cost, company charges, licenses)	Line 5 \$
Total Paid to Other: (Security, Power supply, advertising, etc.)	Line 6 \$
Miscellaneous Paid: (Food, supplies, give-away fireworks, etc.)	Line 7 \$
Total Expenses Paid: (Total of line 5 through 7)	Line 8 \$

PROFIT:

Total Net Profit/Loss (Subtract line 8 from line 2, if loss include in parenthesis)	Line 9 \$
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Service projects already funded- Briefly describe the projects and disclose expenditures (attach additional sheets as needed):
1)
2)
3)

Service projects to be funded- Briefly describe the projects and disclose expenditures (attach additional sheets as needed):	
1)	
2)	
3)	
Total amount of projects funded and/or proposed:	\$

Signature of Authorized Representative	Title	Date
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CITY OF RIALTO

FIREWORKS FINANCIAL STATEMENT

YEAR: 2015

GROUP: _____

LOCATION: _____

PROFIT: _____

PROPOSED DISTRIBUTION OF FUNDS

ITEM: _____ \$ _____

ITEM: _____ \$ _____

ITEM: _____ \$ _____

ITEM: _____ \$ _____

ITEM: _____ \$ _____

ITEM: _____ \$ _____

ITEM: _____ \$ _____

ITEM: _____ \$ _____

TOTAL \$ _____

PREPARED BY: NAME: _____

TITLE: _____ DATE: _____

EXHIBIT

B

ADMINISTRATIVE FINES AND PENALTIES.

1. PURPOSE

- (a) This Chapter authorizes the imposition of administrative fines on any person who violates any provision of this ordinance in order to encourage and obtain compliance with the provisions of this ordinance for the benefit and protection of the entire community. This Chapter governs the imposition, enforcement, collection and administrative review of all administrative fines, related to: the possession, use, storage, sale and/or display of those fireworks classified as "Dangerous Fireworks" in California Health and Safety Code Section 12500, et seq., with the exception of a pyrotechnic licensee when operating pursuant to that license; and the use of "Safe and Sane Fireworks" as defined in California Health and Safety Code Section 12500 et seq on or at dates, times and/or locations other than those permitted by this ordinance. Said administrative fines are imposed under authority of Government Code Section 53069.4, Health and Safety Code Section 12557, and the police power of the City.
- (b) The issuance of citations imposing administrative fines may be performed at the discretion of the officials of the City authorized hereunder; and the issuance of a citation to any person constitutes but one remedy of the City to redress violations of this code by any person. By adopting this chapter, the City does not intend to limit its authority to employ any other remedy, civil or criminal, to redress any violation of this code by any person, which this City may otherwise pursue.
- (c) The imposition of fines related to "Dangerous Fireworks" under this chapter shall be limited to persons who possess, sell, use and/or display, or the seizure of, less than 25 pounds (gross weight) of such "Dangerous Fireworks".
- (a) Fines collected pursuant to this Chapter related to "Dangerous Fireworks" shall not be subject to Health and Safety Code Section 12706, which section provides that certain fines collected by a court of the state be deposited with, and disbursed by, the County Treasurer. However, the City shall provide cost reimbursement to the State Fire Marshal pursuant to regulations to be adopted by the State Fire Marshal addressing the State Fire Marshal's cost for the transportation and disposal of "Dangerous Fireworks" seized by the City, which costs will be part of any administrative fine imposed. Unless and until said regulations have been adopted by the State of California, the City shall hold in trust \$250 or 25% of any fine collected, whichever is greater, to cover the cost reimbursement to the State Fire Marshal for said cost of transportation and disposal of the "Dangerous Fireworks."
- (b) Because of the serious threat of fire or injury posed by the use of "Dangerous Fireworks" that can result from persistent or repeated failures to comply with the provisions of this code and the effect of such conditions or activities on the safety and the use and enjoyment of surrounding properties and to the public health, safety and welfare, this Chapter imposes strict civil liability upon the owners of residential real property for all violations of this code existing on their residential real property. Each contiguous use, display and/or possession shall constitute a separate violation and shall be subject to a separate administrative fine.
- (c) At least 50% of the fines collected pursuant to this Chapter must be placed in a segregated fund entitled "_____ Illegal Fireworks Enforcement Fund". The sole and exclusive purpose of this fund is to pay for increased fire and police deployment, protection and investigation of and against illegal fireworks in the City for the thirty-day period surrounding the 4th of July (June 17 through July 16).

2. ISSUANCE OF ADMINISTRATIVE CITATION-CONTENTS.

- (a) Whenever a Code Enforcement Officer (CEO) determines that a violation of the code has occurred, the CEO may issue an administrative citation on a City-approved form listing the code

violation(s) and the amount of the administrative fine required to be paid by the responsible person(s) in accordance with the provisions of this chapter.

- (a) Each administrative citation shall contain the following information:
- i. The name, mailing address, date of birth, CDL number, and home or business telephone number of the responsible person charged with any violation of this code;
 - ii. The address or description of the location of the violation;
 - iii. The date or dates on which the person violated this code;
 - iv. The section or sections of this code that were violated;
 - v. A description of the violation(s);
 - vi. The amount of the administrative fine for each violation, the procedure in place to pay the fines, and any late fee and interest charge(s), if not timely paid, and notice that if the City is required to take action to collect such fines, the responsible person may be charged costs and attorney's fees;
 - vii. Notice of the procedure to request an administrative hearing to contest the citation (including the form to be used, how to obtain the form, and the period within which the request must be made in order for it to be considered timely);
 - viii. The name and signature of the CEO who issued the citation and the name and signature of the citee, if he or she is physically present and will sign the citation at the time of its issuance. The refusal of a citee to sign a citation shall not affect its validity or any related subsequent proceedings, nor shall signing a citation constitute an admission that a person is responsible for a violation of the code;
 - ix. Any other information deemed necessary by the director for enforcement or collection purposes.

3. ADMINISTRATIVE FINES.

- (a) Each person who violates any provision of this code as it relates to the possession, use, storage, sale and/or display of "Dangerous Fireworks" shall be subject to the imposition and payment of an administrative fine or fines as provided below:

Number of offense in 1 year period	Amount of Administrative Penalty	Late Charge	Total Amount of Penalty plus Late Charge
First	\$ 1,000	\$ 150	\$ 1,150
Second	\$ 2,000	\$ 250	\$ 2,250
Third	\$ 3,000	\$ 500	\$ 3,500

- (b) Each person who uses "Safe and Sane Fireworks" on or at dates, times and/or locations other than those permitted by this ordinance shall be subject to the imposition and payment of an administrative fine or fines as provided below:

Number of offense in 1 year period	Amount of Administrative Penalty	Late Charge	Total Amount of Penalty plus Late Charge
First	\$ 250	\$ 50	\$ 300
Second	\$ 500	\$ 100	\$ 600
Third	\$ 750	\$ 200	\$ 950

- (c) In the case of a violation of any of the provisions listed above, the administrative fine(s) shall be due and payable within 30 calendar days from the issuance of the administrative fine citation, and the citee shall be required to abate the violation, and surrender all "Dangerous Fireworks" to the CEO, immediately. For penalties not paid in full within that time, a late charge in the amount set forth above is hereby imposed and must be paid to the City by the citee. Fines not paid within the time established by this ordinance shall accrue interest at the prevailing established rate. On the

second and each subsequent time that a person is issued a citation for the same violation in any 12-month period, the fine is increased as indicated above and the citee shall be liable for the amount of the new fine until it is paid, in addition to being responsible for payment of previous fines.

- (a) All administrative fines and any late charges and interest due shall be paid to the City at such a location or address as stated on the citation, or as may otherwise be designated by the City Manager. Payment of any fine or fines shall not excuse the citee from complying with the provision of the code so violated. The issuance of the citation and/or payment of any fine shall not bar the City from employing any other enforcement action or remedy to obtain compliance with the provisions of the code so violated including the issuance of additional citations and/or criminal prosecution.
- (b) Upon confirmation of the citation or when the citation is deemed confirmed, all unpaid administrative fines, late fees and/or interest shall constitute a judgment which may be collected in any manner allowed by law for collection of judgments including but not limited to recordation to create a lien on any real property owned by the responsible person. The City shall be entitled to recover its attorney's fees and costs incurred in collecting any administrative fines, late charges and/or interest.
- (c) Payment of the administrative fine shall not excuse or discharge a citee from the duty to immediately abate and correct a violation of this Chapter, nor from any other responsibility or legal consequences for a continuation or a repeated occurrence(s) of a violation of this Chapter.

4. RIGHT TO AN ADMINISTRATIVE HEARING.

- (a) Any citee may contest the violation(s), or that he or she is a responsible person, by filing a request for an administrative hearing on a City-approved form with the City Clerk within 30 calendar days from the issuance date of a citation. If the City Clerk does not receive the request in the required time period, the citee shall have waived a right to a hearing and the citation shall be deemed confirmed and final.
- (b) No fees shall be charged for the filing of a request for a hearing.
- (c) Citees must deposit the full amount of the penalty listed on the citation on or before the request for a hearing is filed. Failure to deposit the full amount of all penalties within the required time period, or the tender of a non-negotiable check, shall render a request for an administrative hearing incomplete and untimely. Penalties that are deposited with the City shall not accrue interest. Penalties deposited shall be returned to the person who deposited them if the citation is overturned.
- (d) A request for a hearing shall contain the following:
 - i. The citation number;
 - ii. The name, address; telephone number and any facsimile numbers and e-mail addresses of each person contesting the citation;
 - iii. A statement of the reason(s) why a citation is being contested;
 - iv. The date and signature of the citee(s).
- (e) The City will notify all persons who filed a request for a hearing in writing by First Class Mail of the date, time and place set for the hearing at least 10 calendar days prior to the date of the hearing. Service of this notice is deemed complete at time of mailing. The failure of a citee to receive a properly addressed notice shall not invalidate the citation or any hearing, City action or proceeding conducted pursuant to this chapter.
- (f) The hearing will be conducted within 60 days of the date a timely and complete request is received by the City Clerk.
- (g) If the CEO submits an additional written report concerning the citation to the City for consideration at the hearing, the CEO shall also serve a copy of such report by First Class Mail on

the person requesting an administrative hearing no less than 7 calendar days prior to the date of the hearing. Failure to receive said report shall not invalidate the citation or any hearing, City action or proceeding pursuant to this Chapter.

5. ADMINISTRATIVE HEARING – PROCEDURES.

- (a) The hearing officer designated or appointed by the City Manager shall hear all requests for administrative hearings of administrative fines in accordance with the procedures established herein.
- (a) Administrative hearings are informal, and formal rules of evidence and discovery do not apply. The City bears the burden of proof to establish a violation and responsibility therefore by a preponderance of evidence. The citation is prima facie evidence of the violation, however, and the CEO who issued the citation is not required to attend or participate at the hearing. The citee(s) and CEO, if present, shall have an opportunity to present evidence and witnesses and to cross-examine witnesses. A citee may bring an interpreter to the hearing provided there is no expense to the City therefore. The hearing officer may question any person who presents evidence or who testifies at any hearing.
- (b) A citee may appear at the hearing in person or by written declaration executed under penalty of perjury. Said declaration and any documents in support thereof shall be tendered to and received by the City at least 7 business days prior to the hearing. If the citee fails to attend or does not submit a written declaration in a timely manner, he or she shall be deemed to have waived the right to a hearing. In such an instance, the hearing officer shall cancel the hearing and not render a decision. In such instances, the citation shall be deemed confirmed.
- (c) Hearings may be continued once at the request of a citee or the officer who issued the citation. The hearing officer may also continue the hearing for cause.

6. HEARING DECISION – RIGHT OF APPEAL.

- (a) After considering all the testimony and evidence submitted at the hearing, the hearing officer shall issue a written decision to uphold or overturn the citation and shall state the reasons therefore.
- (b) The hearing officer shall serve citee(s) by First Class Mail with a copy of the written decision. The date the decision is deposited with U.S. Postal Service shall constitute the date of its service. The failure of a citee to receive a properly addressed decision shall not invalidate any hearing, City action or proceeding conducted pursuant to this Chapter.
- (c) Decisions of the hearing officer may be appealed to the City Council within 30 days after the date of their service. Each decision shall contain a statement advising the citee of this appeal right and the procedure for its exercise. A citee shall file a notice of appeal with the City within 20 calendar days after the date of service of the hearing officers decision.
- (d) If a hearing officer's decision is not appealed in a timely manner, the decision shall be deemed confirmed.
- (d) The City Council is the sole reviewing authority and an appeal from a hearing officer's decision is not appealable to the Superior Court. If a responsible person prevails on appeal, the City shall reimburse his or her fine deposit within 30 calendar days of the City Council's decision on the appeal.⁸

EXHIBIT

C

Overview

❖ Criminal Citation

- Arrest (cite & release)
- Must be Committed in Presence of Officer
- Court Hearings
- Jury Trail
- Post Conviction (sentencing)
- Infraction/Misdemeanor
- Fines up to \$1,000
- Beyond a Reasonable Doubt
- Court Collects Fine

❖ Administrative Citation

- No Arrest
- Committed in Presence of Officer Not Required
- Administrative Hearings
- Hearing Officer
- Appeal to City Council and/or Superior Court
- No Criminal Record
- Fines up to \$1,000 for General Law Cities
- Preponderance of the Evidence
- City Collects Fine

Citation Process

Criminal vs. Administrative

❖ Criminal Citation

- The crime or violation must be committed in the presence of the enforcement officer

❖ Administrative Civil Citation

- The violation does not have to be committed in the presence of enforcement officer

EXHIBIT

D

ORDINANCE NO. NS-300.882

AN ORDINANCE OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA CLARA
AMENDING SECTION A33-62 AND ADDING SECTION A33-62.5 OF ARTICLE
II OF CHAPTER III OF DIVISION A33 OF THE COUNTY OF SANTA CLARA
ORDINANCE CODE RELATING TO FIREWORKS

Summary

This Ordinance amends Article II of Chapter III of Division A33 of the County of Santa Clara Ordinance Code to establish liability and penalties for those who cause, allow, permit, aid, or abet any discharge of fireworks without a permit or illegally store fireworks within the unincorporated County.

THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA
ORDAINS AS FOLLOWS:

SECTION 1. Section 62 of Division A33 of the Ordinance Code of the County of Santa Clara relating to Permits is hereby amended to read as follows:

Sec. A33-62. Permits

The Fire Marshal may issue a permit for the use or discharge of fireworks and pyrotechnic devices only where the persons in charge of the display have obtained a license from the State Fire Marshal for a public display or special effects. The application, investigation and decision process shall be as follows:

(a) *Definitions.* For the purposes of this chapter, the following definitions shall apply:

- (1) "Fireworks" shall mean 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. The term "fireworks" includes, but is not limited to, devices designated by the manufacturer as fireworks, torpedoes, skyrockets, roman candles, rockets, Daygo bombs, sparklers, party poppers, paper caps, chasers, fountains, smoke sparks, aerial bombs, and fireworks kits. For the purposes of this chapter, "fireworks" includes both "dangerous fireworks" and "safe and sane fireworks" as defined by the California Health and Safety Code.

- (2) "Property" shall mean private property, rented residential premises, or rented commercial residences; including, but not limited to, a home, yard, or field, whether occupied on a temporary or permanent basis, whether or not occupied as a dwelling and whether owned, leased, rented, or used with or without compensation.
- (3) "Response costs" means those reasonable and necessary costs directly incurred by public safety personnel for a response to an unpermitted discharge or illegal storage of fireworks, and include the cost of providing law enforcement, firefighting, and/or other emergency services at the scene of the unpermitted discharge or illegal storage of fireworks including, but not limited to:
- a) Salaries and benefits of public safety personnel for the amount of time spent responding to, remaining at, or otherwise dealing with the unpermitted discharge or illegal storage of fireworks, and the administrative costs attributable to the response(s); and
 - b) The cost of any medical treatment to or for any public safety personnel injured responding to, remaining at or leaving the scene of the unpermitted discharge or illegal storage of fireworks; and
 - c) The cost of repairing any public safety equipment or property damage, and the cost of the use of any such equipment, in responding to, remaining at, or leaving the scene of an unpermitted discharge or illegal storage of fireworks.
- (4) "Responsible party" includes but is not limited to:
- a) The person(s) who owns, rents, leases, or otherwise has possession of the residence or other private property;
 - b) The person(s) in immediate control of the residence or other private property; and
 - c) The person(s) who organizes, supervises, sponsors, conducts, allows, controls, or controls access to the illegal discharge or illegal storage of fireworks.

If the residence or other private property is rented or leased, the landlord or lessor is not covered by this chapter unless they fall within the category of persons described under [category] (b) or (c) herein. A landlord or lessor can only be held responsible under category (c) if they have knowledge that

fireworks (including a public display) are being discharged or illegally stored on the property without obtaining a permit therefor from the Fire Marshal.

- (5) "Residence or other private property" means a home, yard, apartment, condominium, hotel or motel room, other dwelling unit, a hall or meeting room, or commercial property, whether occupied on a temporary or permanent basis, whether occupied as a dwelling, party or other social function, and whether owned, leased, rented, or used with or without compensation.
- (b) *Permit Application.* All permit applications shall include the following:
- (1) The name of the person or organization sponsoring the proposed activities, together with the names and license numbers of persons actually in charge of the activity;
 - (2) A full description of all proposed activities;
 - (3) The date and time of day the proposed activities would occur;
 - (4) The exact location of the activities;
 - (5) The size and number of all fireworks to be involved in the proposed activities, including the number of set pieces, shells and other items. Shells shall be designated by diameter specifying single, multiple break or salute;
 - (6) The manner and place of storage of all fireworks;
 - (7) A diagram of the grounds on which the activities are proposed to occur showing all points at which fireworks are proposed to be stored or discharged, the location of all buildings, roads, and other means of transportation to and from the site, the lines behind which the audience will be restrained, and the location of all nearby trees, telegraph or telephone lines and other overhead obstructions;
 - (8) Proof that satisfactory workers' compensation insurance is carried for all employees in compliance with Labor Code Section 3700;
 - (9) Documentary proof of conformance with the insurance requirements of Health and Safety Code sections 12610 and 12611;

- (10) A State Fire Marshal license for the public display of fireworks or special effects; and
 - (11) The name and license number of the wholesaler(s) supplying all items used in the display.
- (c) *Investigation.* When evaluating whether a permit should be granted, the Fire Marshal shall evaluate the following:
- (1) Whether the proposed activity will be of such character or so located that it may be hazardous to property or dangerous to any person.
 - (2) Whether the activity will comply with all requirements of the California Fire Code, and the State Fireworks Law (Health and Safety Code Section 12500 et seq.) and regulations promulgated thereunder.
- (d) *Grant or denial.* The Fire Marshal shall exercise reasonable discretion to either grant or deny the permit, and may impose any conditions he or she deems necessary or appropriate to ensure there is no adverse impact to the public health, safety or general welfare.
- (e) It shall be a violation of this Code and a public nuisance pursuant to Section A1-33, et seq., for any person to cause, allow, permit, aid, or abet any discharge of fireworks (including a public display) without having first obtained a permit therefor from the County Fire Marshal, including a property owner who knows or should know of the violation.
- (f) It shall be a violation of this Code and a public nuisance pursuant to Section A1-33, et seq., for any person to store fireworks, including those classified as Safe and Sane by the California State Fire Marshal, except as expressly allowed by Section B7-15 of this Code.
- (g) As a public nuisance, an unpermitted discharge or illegal storage of fireworks may be summarily abated by law enforcement by all reasonable means, singularly or in combination, including, but not limited to:
- (1) Issuance of an administrative citation or written notice that a violation of this chapter has occurred, as set forth in Section A33-62.5, subdivision (b);
 - (2) Issuance of a citation for recovery of response costs for repeated violations as set forth in Section A33-62.5, subdivision (e);

- (3) Public nuisance abatement procedures as set forth in Section A1-33, et seq.;
and
- (4) Any other remedy provided by law.

SECTION 2. Article II of Division A33 of the Ordinance Code of the County of Santa Clara relating to Fireworks is hereby amended by adding a new Section to be numbered and titled and to read as follows:

Sec. A33-62.5. Penalties

- (a) Any person who allows, permits, aids, or abets any discharge of fireworks (including a public display) without having first obtained a permit therefor from the Fire Marshal shall be in violation of this section, unless otherwise permitted by Ordinance.
- (b) Any person who stores fireworks, including those classified as Safe and Sane by the California State Fire Marshal, except as expressly allowed by this Section B7-15 of this Code, shall be in violation of this section.
- (c) Administrative citation. Upon identification of an unpermitted discharge or illegal storage of fireworks, law enforcement may issue an administrative citation or a notice of violation to all responsible person(s) present at the unpermitted discharge of fireworks. Law enforcement shall notify those responsible persons present at the unpermitted discharge or illegal storage that further violation of the Ordinance may result in the issuance of increased fines and assessment of response costs.

The administrative fines shall be:

- (1) Three hundred fifty dollars for the first administrative citation issued to the responsible person(s).
- (2) Seven hundred dollars for the second administrative citation issued to the responsible person.
- (3) One thousand dollars for the third and/or each subsequent administrative citation issued to the responsible person.
- (d) Upon identification of an unpermitted discharge of fireworks, law enforcement may also issue a written notice to all other identifiable responsible persons not present at the unpermitted discharge of fireworks that a violation of the fireworks ordinance has occurred and that further violations may result in the assessment of response costs.

- (e) Nothing in this chapter shall be intended to limit any of the penalties provided for under the California Health and Safety Code or Penal Code with regard to the sale, use, possession, delivery, storage, and/or transportation of dangerous fireworks.
- (f) In addition to the penalties described above, any person described in Section A33-62(e), in addition to the penalties described in Section A33-62.5, shall be guilty of a misdemeanor punishable by a fine of not more than \$1,000.00, imprisonment in the county jail for a period not exceeding six months, or both, if the discharge of fireworks:
 - (1) Is a substantial factor in causing harm to persons or property; and
 - (2) Causes serious bodily injury to persons, defined as the serious impairment of physical condition, and may include but is not limited to loss of consciousness, concussion, bone fracture, protracted loss or impairment of function of any bodily member or organ, a wound requiring extensive suturing, and/or serious disfigurement; and/or
 - (3) Causes damage to real or physical property in excess of \$1,000.

The penalties set forth herein are intended to be nonexclusive and are intended to be in addition to any other remedies provided in this chapter or any other law, statute, ordinance or regulation.

- (g) Response costs. A responsible person(s) who has been issued a second administrative citation and/or written notice of violation of this ordinance may be liable for response costs incurred in responding to the unpermitted discharge or illegal storage of fireworks. All responsible persons shall be jointly and severally liable for the response costs incurred in the response and all subsequent responses.

If a responsible person is a juvenile, then the parents or guardians of that juvenile and the juvenile will be jointly and severally liable for the response costs incurred pursuant to this chapter. To incur liability for response costs imposed by this chapter, the responsible person for the unpermitted discharge or illegal storage of fireworks need not be present at the event that causes the response giving rise to the imposition of response costs. This chapter therefore imposes vicarious as well as direct liability upon a responsible person.

- (h) Enforcement officer, defined.

- (1) For purposes of this chapter, "enforcement officer" shall mean any County employee, agent of the County, or law enforcement officer with the authority to enforce any provision of this Code.
 - (2) Whenever an enforcement officer charged with the enforcement of any provision of this Code determines that a violation has occurred, the enforcement officer shall have the authority to issue an administrative citation to any person responsible for the violation.
- (i) Payment of administrative fines.
- (1) The administrative fines and/or response costs shall be paid to the County within 30 days from the date of service of the citation, unless the person charged in the citation requests a hearing as set forth in Section A33-62.5, subdivision (j), below.
 - (2) Payment of a fine and/or response costs under this chapter shall not excuse or discharge any continuation or repeated occurrence of the Code violation that is the subject of the administrative citation.
- (j) Hearing request.
- (1) Any recipient of an administrative citation may contest that there was a violation of the code or that he or she is the responsible person by writing to the County Executive, or his/her designee, at 70 W. Hedding Street, East Wing, San Jose, California 95110, within 30 days from the date of service of the citation. The contesting party shall identify the date and location of the alleged violation and indicate in the letter that he or she is requesting a hearing. The contesting party shall attach a copy of the citation to the letter requesting a hearing.
 - (2) The person requesting the hearing shall be notified of the time and place set for the hearing at least ten days before the date of the hearing.
 - (3) If the enforcement officer submits an additional written report concerning the administrative citation to the hearing officer for consideration at the hearing, then a copy of this report also shall be served on the person requesting the hearing at least five days before the date of the hearing.
- (k) Hearing officer. The County Executive shall designate the hearing officer for the administrative citation hearing.
- (l) Hearing procedure.

- (1) A hearing before the hearing officer shall be set for a date that is not less than 15 days and not more than 60 days from the date that the request for hearing is filed in accordance with the provisions of this chapter.
 - (2) At the hearing, the party contesting the administrative citation shall be given the opportunity to testify and to present evidence concerning the administrative citation.
 - (3) The failure of any recipient of an administrative citation to appear at the administrative citation hearing shall constitute a failure to exhaust administrative remedies.
 - (4) The administrative citation and any additional report submitted by the enforcement officer shall constitute prima facie evidence of the respective facts contained in those documents.
 - (5) The hearing officer may continue the hearing and request additional information from the enforcement officer or the recipient of the administrative citation before issuing a written decision.
- (m) Hearing officer's decision.
- (1) After considering all of the testimony and evidence submitted at the hearing, the hearing officer shall issue a written decision to uphold or cancel the administrative citation and shall list in the decision the reasons for that decision. The decision of the hearing officer shall be final.
 - (2) If the hearing officer determines that the administrative citation should be upheld, then the responsible person shall pay the fine amount within 30 days.
 - (3) The recipient of the administrative citation shall be served with a copy of the hearing officer's written decision.
 - (4) The employment, performance evaluation, compensation, and benefits of the hearing officer shall not be directly or indirectly conditioned upon the amount of administrative citation fines upheld by the hearing officer.
- (n) Late payment charges.
- (1) Unless otherwise provided in this Code, any person who fails to timely pay, in full, any fine imposed pursuant to the provisions of this chapter, on or

before the date that fine is due, shall also be liable for the payment of a late payment charge of ten percent of the amount of the delinquent fine.

- (2) Any person who fails to timely pay, in full, any fine imposed pursuant to the provisions of this chapter, on or before 30 days after its due date shall also pay a second penalty of ten percent of the delinquent amount.
- (o) Recovery of administrative fines and costs.
- (1) The County may collect any past due administrative citation fine or late payment charge by use of all available legal means, including filing a civil lawsuit.
 - (2) Any person who fails to pay any obligation shall be liable in any action brought by the County for all costs incurred in securing payment of the delinquent amount, including, but not limited to, administrative costs, and attorneys' fees.
 - (3) Collection costs shall be in addition to any penalties, interest, and/or late charges imposed upon the delinquent obligation.
 - (4) Collection costs imposed under this provision shall be added to and become a part of the underlying obligation.
- (p) Right to judicial review. Any person aggrieved by an administrative decision of a hearing officer on an administrative citation may obtain review of the administrative decision by filing a petition for review with the Superior Court in accordance with the timelines and provisions set forth in California Government Code §53069.4.
- (q) Notices
- (1) The administrative citation required to be given by this chapter shall be served on the responsible person in the same manner as summons in a civil action in accordance with Article 3 (commencing with § 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. All subsequent notices shall be served on the responsible person by personal delivery or by deposit in the United States mail, in a sealed envelope postage prepaid, addressed to such person to be notified at his last-known business or residence address as the same appears in the public records or other records pertaining to the matter to which such notice is directed. Service by mail shall be deemed to have been completed at the time of deposit in the post office.

- (2) Failure to receive any notice specified in this chapter does not affect the validity of proceedings conducted hereunder.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California, on JUN 23 2015 by the following vote:

AYES: **CHAVEZ, CORTESE, ~~SIMITIAN~~, WASSERMAN, YEAGER**

NOES: **SIMITIAN**


ABSENT: **NONE**

ABSTAIN: **NONE**



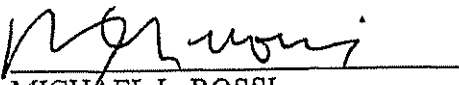
DAVE CORTESE, President
Board of Supervisors

ATTEST:



MEGAN DOYLE
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:



MICHAEL L. ROSSI
Deputy County Counsel

REVISED MINUTES

Agenda Item 1.A

JOINT MEETING OF THE TRACY CITY COUNCIL
AND THE SUCCESSOR AGENCY TO THE CITY OF
TRACY COMMUNITY DEVELOPMENT AGENCY

REGULAR MEETING
MINUTES

September 15, 2015, 7:00 p.m.

City Council Chambers, 333 Civic Center Plaza

Web Site: www.ci.tracy.ca.us

Mayor Maciel called the City Council meeting to order at 7:26 p.m. and led the Pledge of Allegiance.

Invocation was led by Pastor Kal Waetzig, Saint Paul's Lutheran Church.

Roll call found Council Members Mitracos, Vargas, Young, Mayor Pro Tem Rickman and Mayor Maciel present.

Mayor Maciel announced that item three was pulled to a future date.

Mayor Maciel presented Certificate of Recognition to outgoing Youth Advisory Commissioner Serena Cho.

Mayor Maciel presented Certificates of Appointment to incoming Youth Commissioners Sim Bhatia, Yash Taneja, Connie Chan, Michelle Cho, and Joseph Sales.

Darren Kumar, Regional Manager, Rising Sun Energy Center provided an update on the first Rising Sun Energy Center's California Youth Energy Services Program in partnership with PG&E who provided to a limited number of Tracy residents no-cost energy and water conservation services.

1. CONSENT CALENDAR

ACTION Following the removal of item 1.D, 1.F, 1.N and 1.P; it was moved by Mayor Pro Tem Rickman and seconded by Council Member Vargas to adopt the Consent Calendar. Roll call vote found all in favor; passed and so ordered. Motion carried 5:0

- A. Accept City Treasurer's Annual Review and Approve Revised City Investment Policy – Resolution 2015-148 approved revised City Investment Policy.
- B. The City Council of the City of Tracy Acting as the Governing Body of the Successor Agency for the Community Development Agency of the City of Tracy Approving the Recognized Obligation Payment Schedule (ROPS) – Resolution 2015-149 approved the ROPS.
- C. Authorize Amendment of the City's Position Control Roster by Approving the Reclassification and Reallocation of a Part-Time Clerical Position to Full-Time Accounting Assistant and Adding a New Position of Executive Assistant in the

- Administrative Services Department and Approve a General Fund Appropriation in the Amount of \$117,800 for the Changes – Resolution 2015-150 authorized amendment of the City’s Position Control Roster.
- E. Authorize the Purchase of Three Vehicles (Ford Taurus) from Tracy Ford of Tracy, California – Resolution 2015-151 authorized the purchase of vehicles.
- G. Authorization to Award the Purchase of Five 35-Foot Low Floor Buses For Tracer Fixed Route Service to Gilliq Corporation Under the Central Contra Costa Transit Authority Contract 2012-MA-02, Authorize a Supplemental Appropriation to CIP 77550 in the Amount of \$2,000,000, and Approve a Contingency amount of \$50,000 for any Change Orders Needed During Production – Resolution 2015-152 authorized the purchase of five 35-foot low floor buses, a supplemental appropriation to CIP 77550 and a contingency amount of \$50,000 for change orders needed.
- H. Approve Amendment No. 1 to Memorandum of Understanding Between the City of Tracy and the Girl Scouts Heart of Central California and Authorize the Mayor to Execute the Amendment – Resolution 2015-153 approved amendment No. 1 to Memorandum of Understanding.
- I. Approval for Renewed Support of the Recycling Market Development Zone (RMDZ) Program and Activities in San Joaquin County – Resolution 2015-154 approved Recycling Market Development Zone Program.
- J. Acceptance of the Animal Shelter Project - CIP 71064, Completed by D. G. Granada Inc. of Shingle Springs, California, and Authorization for the City Clerk to File the Notice of Completion – Resolution 2015-155 accepted the animal shelter project.
- K. Acceptance of the Asphalt Concrete Pavement Reconstruction of the Northern Half of Grant Line Road from Holly Drive to Approximately 600 Feet East of MacArthur Drive, Constructed by Pacific Gas and Electric (PG&E) – Resolution 2015-156 accepted the asphalt concrete pavement reconstruction.
- L. Acceptance of the Police Radio Equipment Room Cooling System Project - CIP 71050A, Completed by Comfort Air, Inc. of Stockton, California, Authorization for the City Clerk to File the Notice of Completion, and Authorization for the City Engineer to Release the Bonds and Retention Payment – Resolution 2015-157 accepted the police radio equipment room cooling system project.
- M. Acceptance of Trinity Lane Subdivision Improvements, Tract 3820, Completed by Pulte Homes Corporation, a Michigan Corporation – Resolution 2015-158 accepted the Trinity Lane subdivision improvements.
- O. Authorize Amendment Number One to the Master Professional Services Agreement with Renne Sloan Holtzman Sakai LLP for Special Counsel to Conduct Labor Negotiations with Multiple Employee Groups and Authorize the Mayor to Sign the Agreement – Resolution 2015-159 authorized amendment number one to a Master Professional Services Agreement.

D. Authorize the Purchase of Emergency Equipment and Installation from Lehr Auto Electric of Sacramento, California

Robert Tanner pulled item 1D and asked for clarification on the purchase of equipment as stated in the resolution.

ACTION Motion was made by Mayor Pro Tem Rickman and seconded by Council Member Mitracos to adopt Resolution 2015-160 authorizing the purchase of emergency equipment and installation. Voice vote found all in favor; passed and so ordered.

F. Approval of a General Services Agreement, Not To Exceed \$285,000, with Contract Sweeping Services, for Services Required for Street, Alley, and Parking Lot Sweeping; Authorize the City Manager to Execute Extensions and any Minor Amendments Associated with this Agreement; and Authorize the Mayor to Execute the Agreement

Council Member Young pulled this item for clarification and suggested that staff find ways to notice residents regarding the street sweeping schedule.

Trina Anderson spoke about the airport needing sweeping services and inquired if the airport was included in this agreement.

ACTION Motion was made by Mayor Pro Tem Rickman and seconded by Council Member Vargas to adopt Resolution 2015-161 approving a General Services Agreement. Voice vote found all in favor; passed and so ordered.

N. Adopt a Resolution Rescinding Resolution 2015-144 and Directing that a Proposed Ordinance be Submitted to the Voters at a Special Election to be Held on December 8, 2015 and Appropriating \$275,776 from the City's General Fund for the Costs Associated with Verifying Signatures and Holding the Special Election

Council Member Mitracos recused herself from discussion and vote on this item due to a conflict of interest.

Robert Tanner pulled this item to inquire about the fiscal impact related to the upcoming special election and to ask for some clarification on the measure to be voted on come December 8. Jeff Schroeder, Ponderosa Homes, restated that the offer to reimburse the City at the appropriate time for the full election cost still stands.

ACTION Motion was made by Mayor Pro Tem Rickman and seconded by Council Member Vargas to adopt Resolution 2015-162 rescinding Resolution 2015-144 and directing to hold a special election on December 8, 2015. Voice vote found Council Members Vargas, Young Mayor Pro Tem Rickman and Mayor Maciel in favor. Council Member Mitracos abstained from the vote; passed and so ordered.

- P. Award a Construction Contract to Tracy Grading and Paving of Tracy, Ca for 11th Street Gateway Fountain Renovation Project – CIP 73151, Authorize an Appropriation of Funds From Gas Tax Fund 245 and Authorize the Mayor to Execute the Contract

Council Member Vargas pulled this item for further discussion related to branding. The Council requested that the fountain reflect the City colors and City seal.

ACTION Motion was made by Mayor Pro Tem Rickman and seconded by Council Member Vargas to adopt Resolution 2015-163 awarding construction contract for 11th Street Gateway Fountain renovation project. Voice vote found all in favor; passed and so ordered.

2. ITEMS FROM THE AUDIENCE

Ann Marie Fuller, Chair and Danette Poole, Vice Chair of the Tracy Arts Commission, reported that the first Tracy Arts Cultural Festival which took place in August 2015, at Lincoln Park was a success and thanked all those who came out in support. Ms. Fuller mentioned a few locations where folks could make donations to the victims affected by the Valley fire.

Marvin Rothschild stated that his inquiry about the homeless situation and his request to utilize the Fire Station has not been formally addressed and requested that it be agendaized for the next meeting for discussion.

3. CITY COUNCIL DISCUSSION AND DIRECTION REGARDING LAND USE, DEVELOPMENT STANDARDS, AND DESIGN GUIDELINES ALONG INTERSTATE 205 (I-205) FROM TRACY BOULEVARD TO THE EAST CITY LIMIT, AND INTRODUCTION AND ADOPTION OF AN INTERIM ORDINANCE PROHIBITING THE ISSUANCE OF ANY LAND USE ENTITLEMENT OR BUILDING PERMIT FOR CERTAIN WAREHOUSE AND DISTRIBUTION USES ALONG THE I-205 CORRIDOR BETWEEN TRACY BOULEVARD TO THE EASTERN CITY LIMIT – This item was pulled to be brought back at a future date.

4. RECEIVE STATUS REPORT ON THE CITY'S AQUATIC CENTER DESIGN

Ed Lovell, Management Analyst, Public Works, presented the staff report.

Dennis Berkshire, Aquatics Design Group provided an update on the aquatic center conceptual design.

David Anderson inquired if the consultant has been informed that the potential site for the pool is under the Tracy Airport flight path. Mr. Anderson suggested that this item be presented to the Transportation Commission and Airport Land Use Commission.

Michell Bazinet expressed gratitude to see that there is a detailed plan for the project and to see it move forward.

Marsha McCray was pleased to hear that the City has continued to move forward with the project but voiced her concern about going through the process again and ending up

in square one again as occurred 10 years ago. Ms. McCray looks forward to hearing that there is a concept and dollar amount six months from now for the project.

Council comments and questions followed. Upon consensus the Council accepted the report.

Mayor Maciel called for a recess at 8:50 p.m.

Mayor Maciel reconvened the meeting at 9:00 p.m.

5. AWARD A CONSTRUCTION CONTRACT FOR THE JOE WILSON POOL RECONSTRUCTION PROJECT - CIP 78152, TO THE LOWEST RESPONSIVE BIDDER, AUTHORIZE AN ALLOCATION OF FUNDS FROM THE GENERAL FUND 301, AND AUTHORIZE THE MAYOR TO EXECUTE THE CONTRACT

Kul Sharma, Utilities Director, presented the staff report.

David Anderson expressed being in favor of approving the project.

Council comments and questions followed.

ACTION Motion was made by Mayor Pro Tem Rickman and seconded by Council Member Vargas to adopt Resolution 2015-164 awarding construction contract for the Joe Wilson Pool reconstruction project with the addition of additives A1, A3, A4 and A5. Voice vote found Council Members Mitracos, Vargas, and Mayor Pro Tem Rickman in favor. Council Member Young and Mayor Maciel opposed; passed and so ordered.

6. AUTHORIZATION FOR THE CITY TO ENTER INTO AMENDMENT NO. 1 TO THE LEASE AGREEMENT WITH AGRA TRADING FOR THE LEASE OF THE HOLLY SUGAR SOUTHERLY PAVED DRYING BED AND AUTHORIZE THE MAYOR TO EXECUTE THE AMENDMENT

Steve Bayle, Project Specialist, Public Works, presented the staff report.

ACTION Motion was made by Mayor Pro Tem Rickman and seconded by Council Member Mitracos to adopt Resolution 2015-165 authorized the City to enter into amendment No. 1 to Lease Agreement. Roll call vote found all in favor; passed and so ordered.

7. INTRODUCTION OF AN ORDINANCE AMENDING CHAPTER 9.52, FLOODPLAIN REGULATIONS, OF THE TRACY MUNICIPAL CODE

Kevin Jorgensen, Floodplain Administrator, Development Services presented the staff report.

Nora Pimentel, City Clerk read the title of the Ordinance into the record.

ACTION Motion was made by Mayor Pro Tem Rickman and seconded by Council Member Young to waive reading of the full text of the ordinance. Voice vote found all in favor; passed and so ordered.

ACTION Motion was made by Mayor Pro Tem Rickman and seconded by Council Member Young to introduce Ordinance 1199. Voice vote found all in favor; passed and so ordered.

8. INTRODUCTION OF AN ORDINANCE ADOPTING A NEW CHAPTER 9.66 OF THE TRACY MUNICIPAL CODE ENTITLED "SMALL RESIDENTIAL ROOFTOP SOLAR SYSTEMS"

Kevin Jorgensen, Chief Building Official, presented the staff report.

Council comments and questions followed. Council Member Mitracos wanted to be assured that the application and checklist are on the website.

Nora Pimentel, City Clerk read the title of the Ordinance into the record.

ACTION Motion was made by Mayor Pro Tem Rickman and seconded by Council Member Young to waive reading of the full text of the ordinance. Voice vote found all in favor; passed and so ordered.

ACTION Motion was made by Mayor Pro Tem Rickman and seconded by Council Member Young to introduce Ordinance 1200. Voice vote found all in favor; passed and so ordered.

9. ITEMS FROM THE AUDIENCE – There were no speakers.

10. COUNCIL ITEMS

Mayor Pro Tem Rickman announced the following upcoming events: September 26, 2015 the Downtown Tracy Wine Stroll from 6:00 p.m. – 9:00 p.m. presale tickets are \$25 and \$35 at the door; St. Bernard's Harvest Festival September 25-27, 2015. Mayor Pro Tem Rickman mentioned that there are some great upcoming attractions at the Grand Theatre.

Council Member Vargas expressed that there are deficiencies that need to be addressed related to the level of public safety services which are not being met. The City is projected to grow and the impact to public safety is a concern. Council Member Vargas asked the City Manager when this item would be brought to Council's attention

Troy Brown, City Manager, responded that over the next several weeks Council will be inundated with consultants, meetings, and reports from staff on what the City is going to do with the Fire Governance Structure and develop ways for Standard of Cover.

Council Member Vargas added she had reviewed the information and did not see a succession plan for replacement of stations or major ticket items.

Mr. Brown responded that there will be heavy discussions regarding the implementation of the Facilities Master Plan which was not included in the Council packet and there would be more extensive discussions on the Fire Standard of Cover.

Council Member Mitracos reported that there was a fire on her street over the weekend and expressed her gratitude to the Fire Department who responded quickly, Council Member Mitracos also expressed her gratitude to the Public Works Department and Police Department.

Council Member Young announced an upcoming event taking place on Saturday, September 19, 2015 from 7:00 p.m. to 11:00 p.m. at the Tracy Community Center, tickets are \$50.

11. ADJOURNMENT- Time 10:12 p.m.

ACTION Motion made by Mayor Pro Tem Rickman and seconded by Council Member Young, to adjourn the meeting. Voice vote found all in favor; passed and so ordered.

The above agenda was posted at the Tracy City Hall on September 8, 2015. The above are action minutes. A recording is available at the Office of the City Clerk.

Mayor

ATTEST:

City Clerk