

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
PACIFICA REPEALING ARTICLE 2 OF CHAPTER 3 OF TITLE 4 OF THE
PACIFICA MUNICIPAL CODE AND REPLACING IT WITH A NEW ARTICLE
2 REGULATING THE POSSESSION, SALE, USE AND DISCHARGE OF
FIREWORKS**

The City Council of the City of Pacifica does ordain as follows:

SECTION I. FINDINGS. The City Council of the City of Pacifica hereby finds and declares as follows:

WHEREAS, an estimated 10,800 fireworks-related injuries were treated at United States hospital emergency rooms in 2005, the second highest total in the decade covering 1996-2005; and

WHEREAS, according to this study the highest rate of injuries were for children aged 10 to 14; and

WHEREAS, in 2004 an estimated 2,200 reported structure and vehicle fires were started by fireworks; and

WHEREAS, in 2007 the California Legislature recognized the dangers of illegal fireworks and enacted SB 839 that imposes additional regulations including, but not limited to, the following:

- The legislature realized the penalties set forth in existing law did not address the amount of fireworks that were in a violator's possession; however the legislature has remedied this by placing weight limits and establishing penalties related to the weight (Health & Safety Code 12700); and
- State law currently prohibits the sale of fireworks to minors under the age of 16, however the legislature added more stringent penalties for subsequent convictions, including limiting the judges' options; and
- State law allows for the suspension of the driving privileges of anyone transporting more than 10,000 lbs. of unaltered dangerous fireworks; and
- State law further mandates that fines and/or forfeitures imposed by or collected in any court enforcing these regulations is to be distributed to the local public safety agency to defray the costs of handling, processing, photographing, and storing seized dangerous fireworks;

WHEREAS, in 2007, the California Legislature enacted SB 839 amending the State Fireworks Law to authorize local jurisdictions, as of January 1, 2008, to prohibit the possession of dangerous fireworks in the amount of 25 pounds or less and to assess a civil fine for the unlawful possession of 25 pounds or less of dangerous fireworks;

WHEREAS, SB 839 mandates the amendment of any ordinance of a local jurisdiction in effect on or after January 1, 2008, that is related to dangerous fireworks to:

- Include provisions for cost reimbursement to the Office of the State Fire Marshal and the collection of disposal costs as part of an administrative fine; and
- Provide that fines collected pursuant to the ordinance shall not be subject to the disbursement required by section 12706 of the California Health & Safety Code; and
- Limit the prohibition on the possession of dangerous fireworks to those persons who possess 25 pounds or less;

WHEREAS, in the last several years the City of Pacifica has experienced an increase in the use of illegal fireworks to the point that the Police Department cannot control the activities; and

WHEREAS, the City of Pacifica has a substantial interest in promoting compliance with the federal, state and local laws intended to safeguard the members of the community especially protecting children from being influenced by the misconduct of adults; and

WHEREAS, the State of California authorizes local government to regulate the sale, use, and/or discharge of fireworks;

WHEREAS, the City of Pacifica recognizes that all fireworks, including those designated as "Safe and Sane", create potential hazards to the public's health, safety and general welfare; and

WHEREAS, the City of Pacifica recognizes the need to implement reasonable regulations for the sale, use, discharge and display of fireworks in order to protect the safety of spectators, property owners, residents, and visitors of the City; and

WHEREAS, it is the intent of the City Council, in enacting this ordinance, to encourage responsible use of legal fireworks and to discourage the possession, use, sale or distribution or discharge of illegal fireworks, but not to reduce the degree to which the acts regulated by federal or state law are criminally proscribed or to alter the penalties provided therein; and

WHEREAS, it is the intent of the City Council to reasonably regulate the sale, use, display and discharge of Safe and Sane Fireworks within the City to protect the public health, safety and general welfare; and

WHEREAS, the City Council determines that the adoption of this urgency ordinance regulating the possession, sale, use, and discharge of fireworks is necessary in

order to comply with the State Fireworks Law, and, in light of the concerns noted herein, to immediately preserve the public peace, health, safety, and general welfare.

NOW, THEREFORE, THE CITY COUNCIL HEREBY ORDAINS AS FOLLOWS:

SECTION 2: Article 2 of Chapter 3 of Title 4 is hereby repealed and replaced with the following:

Article 2 – Fireworks

Sec. 4-3.201 – Definitions

The most current adopted definitions set forth in the State Fireworks Law (California Health and Safety Code Sections 12500 et seq.) will define the terms used in this Article unless otherwise modified herein.

A. “City” means the City of Pacifica.

B. “Dangerous Fireworks” means any fireworks specified as such in the State Fireworks Law, section 12505 of the Health and Safety Code of the State of California, and such other fireworks as may be determined to be dangerous by the State Fire Marshal.

C.. “Eligible Organization” means an 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 Article and which continues to meet the criteria for the duration of any Permit to Sell issued by the City of Pacifica pursuant to this Article:

1. The organization shall be a non-profit organization pursuant to Internal Revenue Code Sections 501 (c) 3, 4, 6, 7, 8, 10, 19, 23, or 26, Section 501 (d), Section 501 (e); 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 Pacifica;

2. The organization shall be organized primarily for veterans, patriotic, welfare, civic betterment, or charitable purposes;

3. The organization must have its principal and permanent meeting place within the City;

4. The organization must be one which provides direct and regular community services and benefits to the residents of the City;

5. 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;

6. 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;

7. 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.

D. "Fireworks 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.

E. "Minor" shall mean a person under the age of 18 years.

F. "Permit to Sell" means a permit issued by the City pursuant to this Section 4-3.205.

Sec. 4-3.202 – General Prohibition Against Possession, Sale, Use, Display or Discharge of Dangerous Fireworks

a. Except as otherwise provided in this Article, no person shall use, discharge, sell, offer for sale, or display for sale any Dangerous Fireworks or any altered Safe and Sane Fireworks within the City limits.

b. Except as otherwise provided in this Article, no person shall possess 25 pounds or less (gross weight including packaging) of any dangerous fireworks.

Sec. 4-3.203 – Sale, Use, Display or Discharge of Safe and Sane Fireworks

Except as otherwise provided in this Article, no person shall use, discharge, sell, offer for sale, or display for sale any Safe and Sane Fireworks within City limits. It shall also be unlawful for any person having care, custody, or control of real property to suffer or permit any person to use, discharge, sell, offer for sale, or display for sale any fireworks thereon unless in accordance with the provisions of this Article.

a. **Hours of Discharge:** Except as otherwise provided in this Article, it shall be unlawful for any person to use or discharge any Safe and Sane Fireworks except during the hours of 12:00 p.m. (noon) to 11:00 p.m. on June 28th, and 9:00 a.m. to 11:00 p.m. on June 29th through July 5th of the same year.

b. **Location Limitations of Discharge:** Except as otherwise provided in this Article, it shall be unlawful for any person to ignite, discharge, project or otherwise fire or use any Safe and Sane Fireworks upon or over or onto the property of another without

his/her consent or within ten (10') feet of any residence, dwelling or other structure used as a place of habitation by human beings or within any City park, mini-park or tot lot. No person shall ignite, discharge, project or otherwise fire or use any Safe and Sane Fireworks within fifty feet (50') of any Fireworks Stand.

c. **Discharge by Minors Prohibited:** It shall be unlawful for any minor to use, discharge, explode, fire, or set off any Safe and Sane Fireworks unless under the direct supervision and in the immediate presence of a parent, legal guardian, or other custodial adult 18-years of age or older and during the hours and days permitted by this Article.

It shall also be unlawful for any person having the care, custody or control of a minor to permit such minor to use, discharge, explode, fire or set off any Dangerous Fireworks or any altered Safe and Sane Fireworks, at any time, or to permit such minor to use, discharge, explode, fire or set off any Safe and Sane Fireworks unless such minor does so under the direct supervision and in the immediate presence of a parent, legal guardian, or other custodial adult 18-years of age or older and during the hours and days permitted by this Article.

Sec. 4-3.204 – Permit for Public Displays of Fireworks and/or Special Effects

It shall be unlawful to cause, allow, permit, aid, abet, or suffer any discharge of Dangerous Fireworks (including a public display) or any use of special effects without having first obtained a permit therefor from the Fire Chief.

The Fire Chief shall have authority to adopt reasonable rules and regulations for the granting of permits for those activities contained in Section 12640 of the California Health and Safety Code, including supervised public displays of fireworks by a jurisdiction, fair association, amusement park, other organization, or for the use of fireworks by artisans in pursuit of their trade. Each such use or display shall be handled by a licensed pyrotechnic operator (as defined by Section 12527 of the California Health and Safety Code) in accordance with a City-issued permit, and shall be of such character and so located, discharged or fired as in the opinion of the Fire Chief or his designee, after proper investigation, will not be hazardous or endanger any person.

Sec. 4-3.205 – Sale of Safe and Sane Fireworks

a. **Permit Required:** It shall be unlawful for any person to sell, offer for sale, or display for sale any Safe and Sane Fireworks within the City limits without having first procured a valid Permit to Sell in accordance with the provisions of this Article.

1. Permits shall be issued on in accordance with the provisions of this Article and Administrative Policy #68 (or any subsequently amended or adopted policy relating to fireworks permits). The maximum number of permits that may be issued

pursuant to the provisions of this Article during any one calendar year shall not exceed 15.

b. **Approved Fireworks Stand Required:** It shall be unlawful for any person to sell, offer for sale, or display for sale Safe and Sane Fireworks unless the sale, display for sale or offer for sale occurs within an approved Fireworks Stand in accordance with the provisions of this Article and Administrative Policy #68 (or any subsequently amended or adopted policy relating to fireworks permits).

c. **Hours of Sale:** It shall be unlawful to sell, offer for sale, or display for sale any Safe and Sane Fireworks within the City limits except between the hours of 12:00 p.m (noon) to 10:00 p.m. on June 28th, and 9:00 a.m. to 10:00 p.m. on June 29th through July 4th of the same year.

d. **Sale to Minors Prohibited:** It shall be unlawful for any person to cause, permit, allow, aid, abet, or suffer the sale of any Safe and Sane Fireworks to a minor at any time.

Sec. 4-3.206 – Permits to Sell: Application Form

Any Eligible Organization, as defined by this Article, desiring to sell, offer for sale, or display for sale any Safe and Sane Fireworks shall submit an application for a Permit to Sell to the City Manager, on a City-approved form after the first Monday of January and before the first Monday of February of each calendar year. All applications for a Permit to Sell shall contain, at a minimum, the following information:

a. The full name and address of the applicant and, if incorporated, the names and addresses of the officers thereof;

b. The proposed location of the Fireworks Stand;

c. An assurance that, if the permit is to be issued, the applicant, not later than June 15, shall deliver to the City Manager a certificate evidencing a policy of insurance for public liability and property damages with a minimum of One Million and no/100ths (\$1,000,000.00) Dollars combined single limit with an endorsement attached thereto designating the City of Pacifica as an additional insured hereunder. The endorsement shall be executed by a company authorized to carry on an insurance business in the State of California, the financial responsibility of which company shall theretofore have an A.M. Best's Rating of A:VIII;

d. A written statement from the owner of record of the real property which is the proposed location of the Fireworks Stand that the owner consents to the applicant placing a fireworks stand and conducting fireworks sales on his or her real property;

e. The Eligible Organization agrees to hold harmless, indemnify and defend the City of Pacifica against any and all claims arising from the Eligible Organizations activities.

Sec. 4-3.207 – Permits to sell: Granting or Rejecting Notices

The City Manager shall notify the applicant of the granting or rejecting of his/her application for a Permit to Sell on or before the first Monday in March of each year. Permits shall be issued on a rotation/ranking basis and in accordance with Administrative Policy #68 (or any subsequently amended or adopted policy relating to fireworks permits). No permit shall be issued to any applicant unless said applicant qualifies as an “Eligible Organization” (as defined by this Article) and unless said applicant has complied with the provisions of §4-3.206 of this Article.

Sec. 4-3.208 – Permits to sell: Fees

Each Eligible Organization for which an application for a Permit to Sell has been granted shall tender the permit fee (as set forth in Administrative Policy #2 or any subsequently adopted Policy or Council Resolution) to the Pacifica Finance Department on or before March 31st of the year authorized pursuant to the Permit to Sell. Failure of any Eligible Organization to tender the permit fee shall result in the Permit to Sell not being issued or being revoked.

Sec. 4-3.209 – Fireworks Stands: Construction, Location, Operating Requirements

a. **Construction Requirements:** It shall be unlawful for any person to erect, install, use, operate, or maintain a Fireworks Stand unless the stand complies with the following:

1. Fireworks Stands shall not be erected on any property sooner than June 21st of the year in which fireworks sales have been authorized pursuant to a Permit to Sell.

2. The erection of a Fireworks Stand need not comply with the provisions of the Pacifica Building Code, however, the installation, use, and maintenance of any utilities therein shall comply with the Pacifica Municipal Code and/or codes adopted therein.

3. All stands shall be inspected by the Fire Department and/or the City’s Building Inspector or Building Official to ensure that the stand is constructed in a manner which will reasonably insure the safety of attendants and patrons and that the stand meets the requirements of this Article.

4. No Fireworks Stand shall have a floor area in excess of 750 square feet.

5. Each Fireworks Stand in excess of twenty-four feet (24') in length shall have at least three (3) exits spaced approximately an equal distance apart; provided, however, in no event shall the distance between exits exceed twenty-four feet (24').

6. Exit doors shall swing in the direction of egress.

7. The front of Fireworks Stands shall be completely enclosed from the counter to the roof with hardwire cloth, the openings of which shall not exceed one-fourth inch (1/4") in size, except for openings to permit the delivery of merchandise to the prospective customer, which openings shall not be larger than twelve inches (12") by eighteen inches (18") in size.

8. Each Fireworks Stand shall be provided with two (2) minimum 2A fire extinguishers, recently serviced, in good working order, and easily accessible for use in case of fire.

9. "No Smoking" signs (prohibiting smoking within twenty-five feet (25') of the stand) shall be prominently displayed on the exterior of each stand.

b. **Location Requirements:** It shall be unlawful for any person to erect, install, use, operate, or maintain a Fireworks Stand unless the stand complies with the following:

1. No Fireworks Stand shall be located within twenty-five feet (25') of any other building. Any location upon which an approved Fireworks Stand was erected in 2007 shall be considered a legal, non-conforming location (with respect to this provision) through July 5, 2013. All Fireworks Stands erected after July 5, 2013, shall comply with this subsection irrespective of prior approvals.

2. No Fireworks Stand shall be located within fifty feet (50') of any gasoline storage tank or dispensing unit.

c. **Operating Requirements:** It shall be unlawful for any person to use, operate or maintain a Fireworks Stand without complying with all of the following:

1. On or before June 15th of any year authorized pursuant to a Permit to Sell, each permittee shall obtain the following and submit copies of same to the Pacifica Finance Department:

a) State Fire Marshal's License;

b) Temporary Sales Tax Permit from the California State Board of Equalization; and,

c) Insurance in the amount and manner described in Section 4-3.206 of this Article.

2. No person other than a member of the Eligible Organization or of a non-profit organization with whom they partner (or spouse, adult child, or parent of a member who is a minor), shall operate the Fireworks Stand for which the permit is issued or share or otherwise participate in the profits of the operation of such stand.

3. No person under the age of eighteen (18) years shall sell or participate in the sale of fireworks from the stand

4. No person shall be allowed in the interior of a Fireworks Stand, except those directly employed in the sales of fireworks or those conducting bona fide business within.

5. Each Fireworks Stand shall have an adult over the age of 18 years in attendance and in charge thereof when fireworks are stored therein (including during hours when fireworks are not being actively sold, offered for sale, or displayed for sale).

6. Each permittee shall post its City of Pacifica Permit to Sell, temporary sales tax permit from the California State Board of Equalization, State Fire Marshal Retail Sales Permit, and proof of insurance (as required pursuant to the provisions of this Article) in a prominent place inside of the Fireworks Stand.

7. No permittee shall permit or suffer smoking within twenty-five feet (25') of the Fireworks Stand.

8. No permittee shall permit or suffer the use or discharge of fireworks within fifty feet (50') of the Fireworks Stand.

9. All weeds, litter, trash, and combustible materials shall be cleared from the location of Fireworks Stands, including a distance of at least twenty feet (20') surrounding the stand, and each permittee shall maintain the location of the Fireworks Stand in a neat, clean, and sanitary condition at all times.

10. Approved rubbish and/or recycling containers in accordance with City standards shall be provided at each Fireworks Stand location.

11. All unsold stock and accompanying litter shall be removed from the location of the Fireworks Stand by 12:00 p.m. (noon) on July 6th of the year authorized pursuant to the Permit to Sell.

12. Fireworks Stands shall be removed from their temporary locations, along with all accompanying litter, by 12:00 p.m. (noon) on July 18th of the year authorized pursuant to the Permit to Sell.

13. On or before September 1st of any year authorized pursuant to a Permit to Sell, the permittee shall submit to the Finance Department a financial statement

by the treasurer or financial officer of the permittee setting forth the total gross receipts from each 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 disbursed, along with the most recent report filed by the permittee to the State Board of Equalization. The filing of such statement shall be a condition precedent to the granting of any subsequent Permit to Sell.

Sec. 4-3.210 – Penalties for Violations.

a. With the exception of a violation of section 4-3.202(b), each violation of this Article shall be a misdemeanor and shall be punishable by a fine not exceeding \$1000 and/or 6 months in jail.

b. Each violation of this Article shall also be punishable by a civil fine in accordance with Title 1, Chapter 6 of this Code.

1. Any civil fine assessed and collected for a violation of section 4-3.202(b) of this Article, shall include the actual costs associated with the collection, transportation and disposal of any seized fireworks, in accordance with regulations duly adopted by the State Fire Marshal. Moreover, civil fines assessed and collected for a violation of section 4-3.202(b) of this Article shall not be subject to California Health & Safety Code section 12706.

c. Failure to comply with the requirements of §4-3.206 shall constitute grounds for denial of a Permit to Sell.

d. Failure to comply with the requirements §§ 4-3.208 and 4-3.209 shall constitute grounds for revocation of a Permit to Sell.

e. The remedies provided by this Article are cumulative and in addition to any other remedy available at law or in equity.

f. Any violation of this Article is hereby declared to be a public nuisance.

g. Causing, permitting, aiding, abetting or concealing a violation of any provision of this Article shall also constitute a violation.

Sec. 4-3.211 – Concurrent Authorities

This Article is not the exclusive regulation for fireworks within the City of Pacifica. This Article shall supplement and be in addition to the other regulatory codes, statues, regulations, and ordinances heretofore and hereinafter enacted by the City of Pacifica, the State of California, or any other legal entity or agency having jurisdiction.

Where allowed by law, this Article supersedes any conflicting provisions of the California Fire Code and Building Code.

SECTION 3: SEVERABILITY. It is the intent of the City Council of the City of Pacifica to supplement applicable state and federal law and not to duplicate or contradict such law and this Ordinance shall be construed consistently with that intention. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of Pacifica hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

SECTION 4: URGENCY ENACTMENT. This urgency ordinance is enacted pursuant to the authority conferred upon the City Council of the City of Pacifica by sections 56934 and 56937 of the California Government Code and shall be in full force and effect immediately upon its adoption by a four-fifths (4/5) vote of the City Council as if and to the same extent that such ordinance has been adopted pursuant to each of the individual sections set forth hereinabove.

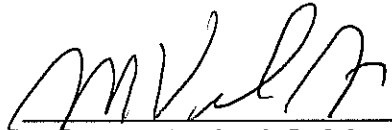
SECTION 5: PUBLICATION. The City Clerk shall cause this Ordinance to be published once within fifteen (15) days after its passage in the Pacifica Tribune, a newspaper of general circulation, published and circulated in the City of Pacifica in accordance with California Government Code Section 36933, and shall cause this Ordinance to be entered into the Pacifica Municipal Code.

The foregoing was introduced on May 27, 2008 and passed and adopted as an urgency ordinance at a regular meeting of the City Council of the City of Pacifica on the 27th day of May, 2008, by the following vote:

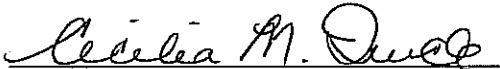
AYES: COUNCILMEMBERS: DeJarnatt, Digre, Lancelle & Vreeland

NOES: COUNCILMEMBERS: None

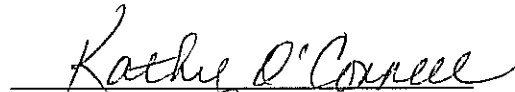
ABSENT: COUNCILMEMBERS: Hinton


James M. Vreeland, Jr. Mayor

APPROVED AS TO FORM:


Cecilia M. Quick, City Attorney

ATTEST:


Kathy O'Connell, City Clerk