

RESOLUTION NO. 202~~26-018~~XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FULLERTON, CALIFORNIA, ADOPTING RULES AND REGULATIONS FOR THE RETAIL SALE, POSSESSION AND DISCHARGE OF "SAFE AND SANE" FIREWORKS PURSUANT TO FULLERTON MUNICIPAL CODE SECTION 7.26.010

City of Fullerton voters approved Ordinance No. 3183 allowing for the use, possession and discharge of "safe and sane" fireworks for private display within the City at the November 6, 2012 General Municipal Election.

Ordinance No. 3183 repealed and replaced the then-existing Fullerton Municipal Code. Title 7 (Public Safety and Morals), Chapter 7.26 (Fireworks Prohibited).

Fullerton Municipal Code Section 7.26.010, as established by Ordinance No. 3183, provides that the City shall permit the sale, possession and discharge of "safe and sane" fireworks for private display within the City, in accordance with rules and regulations adopted by ordinance or resolution of the City Council, relating to the following: who may sell fireworks, the limited dates and times for the sale and discharge of such fireworks, the manner, location and any required permits for the sale, storage, possession, discharge and/or disposal of such fireworks etc.

City Council desires to adopt this Resolution to update the rules and regulations for the retail sale, possession and discharge of "safe and sane" fireworks pursuant to Fullerton Municipal Code Section 7.26.010, as established by Ordinance No. 3183.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FULLERTON, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

1. Permits to sell fireworks. No person, firm or corporation shall sell at retail or offer for retail sale any fireworks within the city without first obtaining a permit from the City. Each year, the City will issue a maximum of fifteen permits to qualifying applicants as set forth in this resolution. The City shall select qualifying applicants to receive permits via lottery.
2. Qualifying applicants.
 - A. To qualify to receive a permit, an applicant must meet the requirements of one of the following categories:
 - 1) Organizations. A tax-exempt charity, nonprofit or other organization pursuant to the Internal Revenue Code or the California Revenue and Taxation Code or the local chapter of any such group that:
 - a. is established at least one year prior to the filing of the application

- b. is formed primarily for veteran, patriotic, welfare, civic or business betterment, religious, athletic, youth or charitable purposes specifically to benefit the citizens of the City
- c. Has its principal and permanent meeting place, office or service facility in the City and has operated at that location for at least one year
- d. Provides benefits and/or services to the citizens of the City as its primary operation.

or

- 2) Schools. A school, as recognized by the State of California, including elementary, junior high, high school, colleges and universities located within the boundaries of the City or any student group, club, booster group or organization formed to support any program, even if operating under a separate tax identification number, of such a school and officially recognized by the school.
- B. A qualifying organization or school may only submit one application for a fireworks sale permit. The City shall treat an application from a student group, club, booster group or other school organization as an application from the school to which it belongs. A letter from the head of the institution (principal, dean, etc.) recognizing the group as the school's designated applicant must accompany the lottery application. Fullerton high schools (Troy High School, Sunny Hills High School and Fullerton High School) may designate one group to submit an application for a High School Athletics Program sales permit and one non-athletic program affiliated group to submit a lottery application for the general lottery.
- C. An applicant must meet all application requirements to qualify for fireworks lottery eligibility.
- 3. Lottery application requirements. The City Clerk's Office will make application forms available throughout the month of March. Each applicant shall file a completed lottery application with the City Clerk's Office by the last business day in March, at which time the application period for that year will close. An application must comply with all instructions on the application form. Lottery application requirements may include, but are not limited to, submittal of proof of qualifying applicant status, a list of names and addresses of organization officers and a letter from a school designating a representative school group as the school's applicant, when applicable. Applicants must submit a nonrefundable application fee in an amount set by resolution with a completed application. The City may ask applicants for additional documentation verifying the information submitted in an application. If an applicant does not provide such documentation, the City will

deem the application incomplete and ineligible for the lottery.

4. Lottery. The City will hold a lottery after the close of the application period, to randomly select permit recipients from all qualified applicants who submitted complete applications and the application fee by the application deadline.

Youth Sports Partner League Lottery. The City will randomly select five applications from all qualified youth sports partner league (as identified by the City of Fullerton Parks and Recreation Department) organization applications to advance to the permit phase and then draw five youth sports partner league applications as youth sports partner league sales permit alternates. In the event that any of the five youth sports partner league applicants selected to advance to the permit phase fails to obtain a sales permit by the sales permit application deadline, the City will give the alternate youth sports partner league applicants, in order drawn, the opportunity to apply for a youth sports partner league fireworks sales permit.

D. *High School Athletic Programs:* Fullerton high schools (Troy High School, Sunny Hills High School and Fullerton High School) may designate one group to apply for a High School Athletics Program sales permit. Proceeds must support a high school athletic program.

E. *All Other Organizations ~~General~~ Lottery.* The City will randomly select ~~ten~~ seven applications from the applications of all qualified organizations other than the youth sports partner league organizations and high school athletic programs to advance the permit phase and then draw five additional ~~non-youth sports partner league~~ applications as ~~the non-youth sports partner league organizations~~ general sales permit alternates. ~~One non-athletic program-affiliated high school group may submit a lottery application for the general lottery.~~

In the event that any of the ~~seven general lottery~~ ten non-youth sports partner league applicants selected to advance to the permit phase fails to obtain a sales permit by the permit application deadline, the City will give the alternate ~~non-youth sports partner league~~ general lottery applicants, in order drawn, the opportunity to apply for a ~~non-youth sports~~ general fireworks sales permit.

Should any high school not apply for an athletic program permit, the City will invite the general alternates, in the order drawn, to apply for that sales permit.

Should all alternates from either the youth sports partner or general lottery alternate list advance to the permit phase, staff will invite alternates, in the order drawn, from the remaining alternate list to advance to the permit phase for any spot that comes available.

5. Permit application requirements. A selected applicant must submit a completed permit application to the Fire Marshal and pay all necessary fees (as set by resolution) to receive a fireworks sales permit. An application must comply with all instructions on the application form. Permit application requirements may include, but are not limited to, identification of the proposed fireworks stand location, a copy of a retail fireworks permit issued by the State Fire Marshal, a copy of a temporary sales tax permit issued by the State Board of Equalization and a copy of a City business license. A permit holder may operate no more than one fireworks stand, in an approved location. Permits are non-transferrable. A permit holder may not share a permit or profits with any other entity except another lottery drawing applicant from that same year.
6. Fireworks Safety Training Class: Vendors must invite a representative of the Fire Department to attend a fireworks safety training class before issuance of the sales permit.
7. Fireworks stands operation. All permit holders shall comply with the conditions set forth in the permit. All permit holders shall also comply with the Minimum Requirements for Fireworks Stands provided upon permit issuance. Permit holders may sell fireworks between the hours of 12:00 p.m. and 10:00 p.m. on July 1, 2 and 3 and between the hours of 10:00 a.m. and 9:00 p.m. on July 4.
8. Insurance. All permit holders shall pay for and maintain in full force and effect throughout the term of the permit public liability and property damage insurance covering a permit holder's operations in and about its fireworks stand with a minimum one million dollars per occurrence, two million dollars general aggregate and naming the City as an additional insured. Permit holders must pay any deductible or self-insured retention and declare to and receive approval from the City. A permit holder shall file certificates of such insurance with the Fire Marshal at the time applicant submits the permit application.
9. Financial Report: Permit holders shall submit a financial report using the form provided with the Permit Application to the City Clerk's Office by September 1. Failure to submit the Financial Report will disqualify the organization from future lottery participation.
10. Noncompliance: Failure to comply with the rules and regulations governing the sale, possession and discharge of Safe and Sane Fireworks will result in the immediate invalidation of any current permit and forfeiture of eligibility for the lottery drawing in the next sales cycle. Applicants may appeal any dispute with staff determination of noncompliance to the Parks and Recreation Commission.
11. Fireworks discharge. Individuals who have purchased safe and sane fireworks from an approved fireworks stand may discharge such fireworks on July 4th of

every year between the hours of 10:00 a.m. and 10:00 p.m. Any person discharging permitted fireworks shall adhere to the following:

- A. No person under the age of sixteen (16) years shall discharge any fireworks.
 - B. No person shall throw, toss, project or position an ignited firework of any kind in such a manner as to cause the firework or contents thereof to come in contact with their own or any other person's body, personal property or real property.
 - C. The discharge of fireworks shall not be permitted on private property without the property owner or occupant's permission, whichever is applicable.
 - D. The discharge of fireworks shall not be permitted on public property, including, but not limited to, parks, sidewalks, streets and alleys.
 - E. The discharge of fireworks shall not be permitted in any area within the Very High and High Fire Hazard Severity Zones as designated in the map issued by the California Department of Forestry and Fire Protection. This map may be viewed at the Fire Department, City Clerk's Office, on the City's website and at fireworks stands.
 - F. The discharge of fireworks shall not be permitted in any oil or gas station or on any premises where gasoline or other flammable liquids are stored or dispensed.
 - G. The discharge of fireworks shall not be permitted within ten feet of any building or structure.
 - H. The discharge of fireworks shall not be permitted underneath any tree or combustible structure.
12. Seizure of Fireworks. The Fire Chief, or designee, may seize any fireworks pursuant to and in accordance with Health and Safety Code Sections 12721 et seq. and any other applicable law, in the event that any person possesses, sells, or discharges fireworks in an illegal manner and/or in a manner that poses an imminent threat to public health or safety.

Fred Jung
Mayor

ATTEST:

Lucinda Williams, MMC
City Clerk

Date