

CITY COUNCIL AGENDA: OCTOBER 15, 2013

PUBLIC HEARING

SUBJECT: FIREWORKS ORDINANCE: AN AMENDMENT TO THE MUNICIPAL CODE RELATED TO THE APPLICATION PROCESS, REGULATIONS, AND PENALTIES

SOURCE: FIRE DEPARTMENT

COMMENTS: On June 11 and 13, 2013, the Fire Department held fireworks safety meetings with non-profit groups eligible to sell "safe and sane" fireworks. During those meetings, several groups indicated interest in revising timelines for the pre-application and lottery to be held earlier in the year. They also inquired about the acceptable use of canopies adjacent to booths to provide shade for volunteers and patrons.

On August 14, 2013, the Fire Department invited all locally-represented non-profit groups who have historically been involved in fireworks sales, hereafter referred to as fireworks stakeholders, to a meeting to discuss potential changes to the fireworks ordinance. During that meeting, fireworks stakeholders reiterated that holding the application period and lottery earlier in the year would allow more time to coordinate and recruit sufficient numbers of volunteers and would also coincide with each group's annual budgeting process. All stakeholders again expressed their interest in the use of canopies to provide shade.

Fire Department staff have reviewed stakeholder requests to revise dates for the pre-application and lottery and find no negative impact from the proposed revision. Staff contacted other jurisdictions and found that they approve the use of canopies for shade provision, and have not encountered fire hazards as a result. The Department has responded to heat-related medical emergencies at fireworks booths and recommends that canopies labeled by the manufacturer as fire-resistant be allowed.

Fire Department staff have researched City ordinances, California Health and Safety Code, Title 19 of the California Government Code, and the California Fire Code (Title 24, Part 9 of the California Government Code). The proposed changes present no conflicts with any local or state ordinance.

In 2011, penalties were defined for unlawful possession or discharge of dangerous fireworks. To more accurately reflect the existing prohibitions defined within the ordinance, staff recommend that penalties be assessed for the manufacture, possession, sale, delivery, use, or discharge of illegal fireworks.

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APPROPRIATED/FUNDED MPB

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ITEM NO. 13

A summary of proposed revisions is as follows:

1. The definition of "safe and sane" fireworks revised to more accurately correlate with Health and Safety Code 12529.
2. Pre-application period revised from January 15 - March 15 to January 1 through the last business day in January.
3. Fireworks lottery date revised from between March 16 - 31 to February 16 - 28.
4. Permit application period revised from the month of April to the month of March.
5. A safety regulations poster, including all minimum setback distances, will be provided by the Department and required in all fireworks stands in lieu of one person from each group attending a safety meeting.
6. Canopies up to 200 square feet and labeled by the manufacturer as fire-resistant will be allowed within 25 feet of a booth.
7. Violations and penalties will be revised to include all prohibitions within the ordinance, including the manufacture, possession, sale, delivery, use, or discharge of dangerous fireworks.

RECOMMENDATION: That the City Council:

1. Approve the proposed amendments to the fireworks ordinance and give first reading to the draft ordinance;
and
2. Waive further reading and order the Ordinance to print.

ATTACHMENTS:

1. Draft Ordinance
2. Edited copy of proposed amendments

FIREWORKS ORDINANCE PROPOSED AMENDMENTS

12-2.1 DEFINITIONS:

SAFE AND SANE FIREWORKS: ~~Shall mean and include any fireworks not designated as dangerous fireworks, except that in any case, only end fuses may be used. Shall mean any fireworks which do not fall within the definition of "dangerous fireworks" or "exempt fireworks" per Health and Safety Code Section 12529.~~ The California State Fire Marshal's seal of registration shall be applied to all classified fireworks and pyrotechnic devices by a licensed manufacturer, importer, exporter or wholesaler and shall indicate the classification assigned by the State Fire Marshal.

12-2.4: NUMBER OF PERMITS LIMITED/PREAPPLICATION:

The maximum number of permits to sell "safe and sane" fireworks which may be issued pursuant to this article during any one calendar year shall not exceed one permit for each four thousand (4,000) residents of the city, or major fraction thereof, based on the most recent population figure as determined by the federal decennial census and updated annually by the California State Department of Finance. If the number of pre-applications received up to and including the last day for making applications pursuant to this article exceeds the number of permits to be issued for the city, the fire chief shall thereafter supervise a public drawing to determine an order of priority for each pre-application. ~~All applicants will be assigned a number in the order in which the pre-application is received and applicants for permits will be notified of date and time of drawing. Pre-applications can be obtained at the fire department between January 15 and March 15 each year. The drawing will be held between March 16 and March 31 each year. With the exception that the application time lines for the calendar year 2001 shall be set by separate resolution. (Ord. 1650 § 3, 4-6-2004) Pre-applications can be obtained at the Fire Department or online at the City of Porterville's web site between January 1 and the last business day of January. All applicants will be assigned a number in the order in which the pre-application is received. The drawing will be held between February 16 and 28 of each year.~~

12-2.5: SALES OF "SAFE AND SANE" FIREWORKS; APPLICATIONS FOR PERMITS:

Permits to sell "safe and sane" fireworks shall be issued by the fire chief. Application packets for a permit will be furnished to eligible organizations whose number has been drawn in the lottery. Each organization must meet all the applicable requirements set forth in the application for permits section and the permit issuance section.

- A. ~~Any eligible organization desiring to sell safe and sane fireworks in the City of Porterville shall obtain and return a permit application during the period commencing on the first business day of April and ending on the last business day of April each year at the fire department. Any eligible organization desiring to sell "safe and sane" fireworks in the City of Porterville shall obtain a permit application from the fire department. Permit applications shall be obtained during the period commencing the first business day of March and ending the last business day in March.~~
- B. Such applications shall be signed by a *bona fide* officer of the eligible organization, wherein the officer, on behalf of the organization and its agents, shall agree to abide by state laws and administrative regulations and all the stipulations of this code and

the permit if permission to operate a fireworks stand shall be granted to the organization.

1. Completed applications shall be returned to the fire department no later than five o'clock (5:00) P.M. on the last business day of ~~April~~ March each year. Any eligible organization making an application for such permit to sell "safe and sane" fireworks that fails to return the completed application prior to five o'clock (5:00) P.M. on the last regular business day ~~in April~~ of March shall not be issued a permit to sell "safe and sane" fireworks.

12-2.6: PERMIT ISSUANCE BASED ON DRAWING SELECTIONS:

A. All eligible organizations shall obtain and submit to the fire department the following forms supplied by the fire department. Forms will be supplied to those organizations whose drawn assigned number is sequentially within the total number of permits to be issued. All other applicants will be placed on a waiting list in the sequence of their drawn assigned number. If an applicant does not satisfy the requirements of this section within the time periods identified in this section, the next drawn assigned number on the waiting list will be notified and provided with the following paperwork:

1. The property owner's release form signed by the property owner authorizing permission to erect a fireworks stand on his property;
2. The fireworks storage form indicating where and how the fireworks will be stored when not in the approved stand;
3. The state fire marshal's license to sell "safe and sane" fireworks;
4. A copy of the temporary seller's permit issued by the state board of equalization; and
 - a. The certificate of insurance required by section 12-2.14 of this article.
 - b. A statement of organization eligibility.
 - c. A site plan indicating location of stand, distance to nearest building, ingress, egress, parking, etc.

B. These forms must be returned to the fire department ~~between the first working day of April and the last business day of April.~~ by the last business day of March.

12-2.11: REGULATIONS

A. No person other than a member (or their spouse) of the organization or a volunteer who is associated with the organization having a permit shall be permitted to sell or otherwise participate in the sale of fireworks. ~~At least one individual participating in the sale of fireworks in a stand must have attended a safety meeting~~ All fireworks stands shall have the safety regulations posted inside the stand in an approved location. The size of the safety poster will be approved and provided by the fire department. A maximum of one member for every four (4) linear feet of stand is permitted within the stand at any one time (i.e. if the stand is 32 feet long, 32 divided

by 4 equals 8 members allowed in the stand), and all persons selling fireworks must be at least eighteen (18) years old.

12-2.12: FIREWORKS STANDS; REQUIREMENTS:

All retail sales of "safe and sane" fireworks shall be permitted only from within a temporary fireworks stand and sales from any other building or structure is prohibited. Temporary stands shall be subject to the following provisions:

- A. No fireworks stand shall be located within twenty-five feet (25') of any other building or within one hundred feet (100') of a gasoline pump, or within one hundred feet (100') of another fireworks stand, when measured closest point to closest point. Canopies within ten feet (10') of a stand shall be considered an extension of the stand for measurement of setback distances. Minimum setback from the street curbing, alley, or driveway shall be ten feet (10'). Stands shall not cover or impede any public rights of way.
- R. ~~Canopies within twenty five feet (25') of a stand shall meet the requirements set forth in the California Code of Regulations Title 24, Part 9, Chapter 24 and Title 19, Division 1. (Ord. 1650 § 4, 4-6-2004; Ord. 1776, 4-5-2011)~~ Canopies within twenty-five feet of a stand must be labeled by the manufacturer as fire resistive. The total allowable canopy area within twenty-five feet of a stand shall be no larger than 200 square feet.

12-2.20: VIOLATIONS; PENALTIES:

Fines for the manufacture, possession, sale, delivery, use, or discharge of dangerous fireworks within the city of Porterville shall be one thousand five hundred dollars (\$1,500.00).

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE
AMENDING THE MUNICIPAL CODE, CHAPTER 12: FIREWORKS ORDINANCE
RELATED TO APPLICATION PROCESS, REGULATIONS, AND PENALTIES

WHEREAS: The City allows sale and discharge of "safe and sane" fireworks within the City limit in honor of the Independence Day holiday (June 28 through July 4, annually); and

WHEREAS: The fireworks stakeholders group, comprised of locally represented non-profit groups, had requested a meeting to voice concerns related to the application timeframes and regulations; and

WHEREAS: The group noted that additional time after the annual lottery is held, and before fireworks sales were authorized, would allow for additional planning and coordination of volunteer efforts; and

WHEREAS: The group requested additional flexibility regarding regulations on canopies for use as shade structures adjacent to the sales stand. Additionally, the stakeholder group requested that in lieu of the annual safety meeting, a poster identifying fireworks safety regulations be located inside each stand; and

WHEREAS: Clarification of the actions meriting assessment of penalties was needed for enforcement purposes; and

WHEREAS: A public hearing was held before the City Council on October 15, 2013, pursuant to the Municipal Code of the City.

NOW, THEREFORE, BE IT ORDAINED: That the Council of the City of Porterville does ordain as follows:

SECTION 1. *Purpose*: The purpose of this ordinance is to address issues that have arisen since the writing of the ordinance. It is also the intent to address grammatical issues that have been discovered.

SECTION 2. Chapter 12, Article II, Section 2.1: DEFINITIONS is amended as follows:

Paragraph 7, Line 2: SAFE AND SANE FIREWORKS: Shall mean any fireworks which do not fall within the definition of "dangerous fireworks" or "exempt fireworks" per Health and Safety Code Section 12529. The California State Fire Marshal's seal of registration shall be applied to all classified fireworks and pyrotechnic devices by a licensed manufacturer, importer, exporter or wholesaler and shall indicate the classification assigned by the State Fire Marshal.

SECTION 3. Chapter 12, Article II, Section 12-2.4 NUMBER OF PERMITS LIMITED/PRE-APPLICATION is amended as follows:

The maximum number of permits to sell "safe and sane" fireworks which may be issued pursuant to this article during any one calendar year shall not exceed one permit for each four thousand (4,000) residents of the city, or major fraction thereof, based on the most recent population figure as determined by the federal decennial census and updated annually by the California State Department of Finance. If the number of pre-applications received up to and including the last day for making applications pursuant to this article exceeds the number of permits to be issued for the city, the fire chief shall thereafter supervise a public drawing to determine an order of

priority for each pre-application. Pre-applications can be obtained at the Fire Department or online at the City of Porterville's web site between January 1 and the last business day of January. All applicants will be assigned a number in the order in which the pre-application is received. The drawing will be held between the 16th and 28th of February each year.

SECTION 4. Chapter 12, Article II, Section 12-2.5 SALES OF "SAFE AND SANE" FIREWORKS; APPLICATIONS FOR PERMITS is amended as follows:

- A. Any eligible organization desiring to sell "safe and sane" fireworks in the City of Porterville shall obtain a permit application from the fire department. Permit applications shall be obtained during the period commencing the first business day of March and ending the last business day in March.
- C. Completed applications shall be returned to the fire department no later than five o'clock (5:00) P.M. on the last business day of March each year. Any eligible organization making an application for such permit to sell "safe and sane" fireworks that fails to return the completed application prior to five o'clock (5:00) P.M. on the last regular business day in March shall not be issued a permit to sell "safe and sane" fireworks.

SECTION 5. Chapter 12, Article II, Section 12-2.6 PERMIT ISSUANCE BASED ON DRAWING SELECTIONS is amended as follows:

- B. These forms must be returned to the fire department by the last business day of March.

SECTION 6. Chapter 12, Article II, Section 12-2.11 REGULATIONS is amended as follows:

No person other than a member (or their spouse) of the organization or a volunteer who is associated with the organization having a permit shall be permitted to sell or otherwise participate in the sale of fireworks. All fireworks stands shall have the safety regulations posted inside the stand in an approved location. The size of the safety poster will be approved and provided by the fire department. A maximum of one member for every four (4) linear feet of stand is permitted within the stand at any one time, (i.e., if the stand is 32 feet long, 32 divided by 4 equals 8 members allowed in the stand) and all persons selling fireworks must be at least eighteen (18) years old.

SECTION 7. Chapter 12, Article II, Section 12-2.12 FIREWORKS STANDS; REQUIREMENTS is amended as follows:

A. No fireworks stand shall be located within twenty-five feet (25') of any other building or within one hundred feet (100') of a gasoline pump, or within one hundred feet (100') of another fireworks stand, when measured closest point to closest point. Canopies within ten feet (10') of a stand shall be considered an extension of the stand for measurement of setback distances. Minimum setback from the street curbing, alley, or driveway shall be ten feet (10'). Stands shall not cover or impede any public rights of way.

B. Canopies within twenty-five feet of a stand must be labeled by the manufacturer as fire-resistive. The total allowable canopy area within twenty-five feet of a stand shall be no larger than 200 square feet.

SECTION 8. Chapter 12, Article II, Section 12-2.20 VIOLATIONS; PENALTIES of the Porterville Municipal Code is amended as follows:

Fines for the manufacture, possession, sale, delivery, use, or discharge of dangerous fireworks within the City of Porterville shall be one thousand five hundred dollars (\$1,500.00).

SECTION 9. This ordinance shall be in full force and effect thirty (30) days from and after its publication and passage.

PASSED, APPROVED, AND ADOPTED this 15th day of October, 2013.

Cameron J. Hamilton, Mayor

ATTEST:

John D. Lollis, City Clerk

By _____
Patrice Hildreth, Chief Deputy City Clerk