

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA,
AMENDING SECTION 10-55602 OF THE FRESNO
MUNICIPAL CODE

SECTION 1. Section 10-55602.2 of the Fresno Municipal Code is amended to read:

5602.2. Findings and Intent.

(a) This Section 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 12505 et seq. or the possession, use, storage, sale and/or display of Safe and Sane fireworks on or at dates, times, and/or locations other than those permitted by this Section. The 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 of Fresno.

(b) The issuance of an administrative citation to any person constitutes but one remedy of the City to redress violations of this Section. By adopting this Section, the City does not intend to limit its authority to employ any other remedy, civil or criminal, to redress any violation of this Section which the City may otherwise pursue.

(c) The imposition of administrative fines under this Section shall be limited to persons who possess, use, sell, ~~and/or~~ display, [and/or permit the use of,] or the seizure of 25 pounds or less of dangerous fireworks or persons

1 of 7

Date Adopted:

Date Approved

Effective Date:

City Attorney Approval:



Ordinance No.

who possess, use, sell, ~~and/or display~~, and/or permit the use of, Safe and Sane fireworks on or at the dates, times, and/ or locations other than those permitted by this Section.

(d) Administrative fines collected pursuant to this Section shall not be subject to Health and Safety Code, Section 12706. The administrative fines collected shall be allocated in compliance with Health and Safety Code, Section 12557, which requires the City to provide cost reimbursement to the California State Fire Marshal for reimbursement of costs, including, but not limited to transportation, and disposal. Regulations are to be adopted by the California State Fire Marshal setting forth this allocation. Unless and until such regulations have been adopted by the State of California, the City shall hold in trust a \$250.00 fee in addition to any fine collected to cover the reimbursement to the California State Fire Marshal for the cost of transportation and disposal of the dangerous fireworks. This fee is non-refundable.

(e) Due to the serious threat of fire or injury posed by the use of dangerous fireworks or Safe and Sane fireworks on or at dates, times, and/or locations other than those permitted by this Section, this Section imposes strict civil liability upon the owners of residential real property for all violations of this Section existing on that property. Each contiguous use, display, and/or possession shall constitute a separate violation and shall be subject to a separate administrative fine.

(f) The fire code official (or designee) may seek cost recovery for any costs imposed on the Fire Department due to negligence, an intentional wrongful

act, carelessness, or malice as set forth in Fresno Municipal Code, Chapter 1, Article 5, Section 10-50109.5 of this Code, and the Master Fee Schedule.

(g) This section shall not apply to the public display of fireworks in accordance with Section 5608.

(h) This section shall not apply to the storage and handling of Safe and Sane fireworks in accordance with the California Building Code for Class 1.4G fireworks.

SECTION 2. Section 10-55602.3 of the Fresno Municipal Code is amended to read:
5602.3. Definitions.

(a) "Dangerous fireworks" shall include any items or materials listed as such in California Health and Safety Code, Section 12505.

(b) "Eligible organizations" means an organization or corporation, which has met all of the following criteria continuously for a minimum of one year preceding the filing of the application for a permit to display for sale or sell Safe and Sane fireworks.

(i) The organization and/or corporation must be a duly organized non-profit and tax-exempt charitable, religious, civic, patriotic, or community service organization or corporation with a current and valid 26 U.S.C. Section 501(c)(3)(19) tax exemption from the Internal Revenue Service.

(ii) The organization must be headquartered within and clearly affiliated or identified with the City of Fresno.

(iii) The organization must be one which provides direct and regular community services and benefits to the citizens of the City of Fresno.

(iv) The organization must hold its regularly scheduled meetings within the

City of Fresno.

(c) "Exempt fireworks" means any special item containing pyrotechnic compositions which the California State Fire Marshal, with the advice of the State Fire Advisory Board, has investigated and determined to be limited to industrial, commercial, and agricultural use, or religious ceremonies when authorized by a permit granted by the authority having jurisdiction.

(d) "Fireworks" means any device containing chemical elements and chemical compounds capable of burning independently of the oxygen of the atmosphere and producing audible, visual, mechanical, or thermal effects which are useful as pyrotechnic devices or for entertainment. These items include, but are not limited to:

(i) Devices designated by the manufacturer as fireworks.

(ii) Torpedoes, skyrockets, roman candles, rockets, Daygo bombs, sparklers, party poppers, paper caps, chasers, fountains, smoke sparks, aerial bombs, and fireworks kits.

[(e) "Host" means any person who either:

(i) owns, leases, rents, or is otherwise in lawful possession of private property within the City of Fresno; or

(ii) organizes, supervises, officiates, conducts, controls, or is otherwise in charge of the activity on the property.]

~~(e)~~ [(f)]

"Ineligible organizations" means an organization or corporation, which holds a permit to display for sale or sell Safe and Sane fireworks in the North Central Fire Protection District, Fig Garden Fire Protection District or County

of Fresno area which is serviced by the City of Fresno Fire Department. It shall be the duty of the permit applicant to inform the Fresno Fire Department of any other permits held by the organization in any of the areas noted above.

(f) [(g)]

"Safe and Sane fireworks" means any fireworks which do not come within the definition of "dangerous fireworks" or "exempt fireworks." All Safe and Sane fireworks shall be labeled with the Safe and Sane fireworks seal as authorized by the California State Fire Marshal.

SECTION 3. Section 10-55602.4 of the Fresno Municipal Code is amended to read:

5602.4. General Prohibition Against Possession, Sale, Use and/or Display of Fireworks. ~~Except as otherwise provided in this Section, no person shall possess, sell, use, display, explode or discharge any fireworks within the City of Fresno.~~

[(a) Except as otherwise provided in this Article, no person shall possess, sell, use, display, explode or discharge any fireworks within the City of Fresno.

(b) Except as otherwise provided in this Article, no Host shall permit the possession, sale, use, display, explosion or discharge of any fireworks on the Host's property, in a public right-of-way adjacent to the Host's property, or in a road, street, or highway adjacent to the Host's property, within the City of Fresno.

(1) Whenever a Host is present at the private property while another person violates a provision of this chapter, there shall be a rebuttable presumption

that the Host knew or should have known of the violation.

(2) This provision shall not apply to a Host who initiates contact with law enforcement or fire officials to assist in removing any person from the property or terminating the activity in order to comply with this chapter, if the request for assistance is made before any other person contacts law enforcement or fire officials to complain about the violation of this chapter.

(c) any person violating any of the provisions of this Section shall be guilty of a misdemeanor.]

SECTION 4. Section 10-55602.11 of the Fresno Municipal Code is amended to read:

5602.11. Administrative Fines. In addition to any other remedy available at law, any person or entity who possesses, uses, stores, sells and/or displays dangerous fireworks, or any person or entity who possesses, uses, sells and/or displays Safe and Sane fireworks on or at dates, times, or locations other than those permitted by this Section[, or any Host who permits any of the aforementioned upon the Host's property, in a public right-of-way adjacent to the Host's property, or in a road, street, or highway adjacent to the Host's property,] are subject to an administrative fine ~~of not less than one thousand dollars (\$1,000.00).~~ [as follows:

(a) For the first violation, Two Thousand Dollars (\$2,000);

(b) For the second violation of this article within a rolling 12 month period, Three Thousand Dollars (\$3,000);

(c) For the third or subsequent violation of this article within a rolling 12 month period, Five Thousand Dollars (\$5,000).]

SECTION 5. This ordinance shall become effective and in full force and effect at 12:01

a.m. on the thirty-first day after its final passage.

* * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, TODD STERMER, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____ 2022.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2022
Mayor Approval/No Return: _____, 2022
Mayor Veto: _____, 2022
Council Override Vote: _____, 2022

TODD STERMER, CMC
City Clerk

BY: _____
Deputy Date

APPROVED AS TO FORM:
DOUGLAS T. SLOAN,
City Attorney

BY: _____
Christina Roberson Date
Assistant City Attorney