



REPORT TO THE CITY COUNCIL

AGENDA ITEM NO.	1M
COUNCIL MEETING	12/2/08
APPROVED BY	
DEPARTMENT DIRECTOR	<i>Randy R. Bruegman</i>
CITY MANAGER	<i>Andrew T. Young</i>

December 2, 2008

FROM: RANDY R. BRUEGMAN, Fire Chief
Fire Department

BY: KERRI L. DONIS, Deputy Chief
Fire Prevention Division

SUBJECT: REPEALING SECTION 10-53302 OF ARTICLE 5, CHAPTER 10 OF THE
FRESNO MUNICIPAL CODE RELATING TO FIREWORKS AND ADDING
SECTION 10-53302 OF ARTICLE 5, CHAPTER 10.

Presented to City Council
 Date 12/2/08
 Disposition Bill S-71
introduced &
paid over

KEY RESULT AREA 0209002000

RECOMMENDATION

Approve the proposed amendment to the FMC relating to fireworks in order to bring the City into compliance with the requirements of state law regarding local fireworks ordinances.

EXECUTIVE SUMMARY

On October 12, 2007 the Governor signed Senate Bill 839 which became effective on January 1, 2008. The bill amended provisions of the Health & Safety Code regulating fireworks. The main features of SB 839 are: 1) creation of new offenses regarding possession of specific amounts of dangerous fireworks; 2) authorization for Fire Marshal to charge costs associated with transportation, storage, and handling of dangerous fireworks to individual from whom they were seized; 3) splitting of all fines and forfeitures imposed by a court for a violation of the fireworks possession law at a ratio of 65/35 between the State Fire Marshal and local public safety agency where the offense occurred; 4) requirement that the State Fire Marshal develop a model ordinance that permits local jurisdictions to adopt a streamlined enforcement and administrative fine procedure related to the unlawful possession of 25 pounds or less of dangerous fireworks with specific provisions for reimbursing the State Fire Marshal for costs associated with disposal of the seized fireworks.

The agenda item includes amendments to administrative enforcement procedures in order to comply with state law. The item also includes changes to reflect Fire Department Policy regarding organizations eligible to become fireworks vendors and Risk Management policies regarding insurance coverage.

KEY OBJECTIVE BALANCE

This proposal provides gains in all three Key Objectives of Customer Satisfaction, Employee Satisfaction, and Financial Management. Customer Satisfaction is achieved through creating safer communities by reducing the use of illegal fireworks. Employee Satisfaction is enhanced by reducing the number of fire emergencies to which fire personnel respond. Financial Management is in alignment as both departments staffing requirements and the educational efforts needed to implement the enforcement action may be offset by the revenue generated through the increased fine/citations issued for using illegal fireworks.

BACKGROUND

The passage of Senate Bill 839 brought about changes to state law which prompted staff to review and amend the Fresno Municipal Code Fireworks Ordinance. SB 839 added, among other things, Health & Safety Code section 12557(a) which requires the State Fire Marshal to adopt a streamlined enforcement and administrative fine procedure related to the unlawful possession of 25 pounds or less of dangerous fireworks with specific provisions for reimbursing the State Fire Marshal for costs associated with disposal of the seized fireworks. Health & Safety Code section 12557(b) requires a local jurisdiction that has not adopted the model ordinance to amend its own local fireworks ordinance to comply with the following provisions as soon as is practicable: 1) The ordinance must be amended to include provisions for cost reimbursement to the State Fire Marshal and collection of disposal costs as part of an administrative fine; 2) The ordinance must be amended so as to limit its application to possession or seizure of 25 pounds or less of dangerous fireworks, and; 3) The ordinance shall be amended to provide that the fines collected pursuant to the ordinance shall not be subject to Health & Safety Code section 12706 (65/35 split of fines between State and local agency).

Staff reviewed the provisions of the model ordinance and determined that that appropriate action was to amend the FMC Fireworks Ordinance pursuant to the provisions of Health & Safety Code 12557(b). Proposed FMC section 10-53302.2(c) and (d) contain the provisions required by state law pertaining to cost reimbursement, limitation of the offense to possession or seizure of 25 pounds or less of dangerous fireworks, and exemption of administrative fines/penalties from the provisions of Health & Safety Code section 12706. Although the State Fire Marshal has yet to issue regulations to specify a procedure for collection of the costs or a method for the calculation of the actual costs, FMC 10-53302(d) provides that the City shall hold \$250.00 in trust from every fine collected in order to cover disposal costs of the State. The \$250.00 figure is based on preliminary indications from the State Fire Marshal as to the anticipated cost of disposal.

It should be noted that SB 839 has preempted current FMC section 10-50109.3 which allows the City to issue an administrative citation for violation of the Fireworks Ordinance. If the proposed ordinance is not adopted the City would not have authority to issue administrative citations for illegal fireworks possession. Instead, Fire Department or Police Department members would have to issue criminal citations for violations of the Health & Safety Code provisions regarding possession of illegal fireworks. The Fresno County District Attorney's Office would have jurisdiction over the prosecution of these cases in Superior Court. Any fines imposed by the Superior Court would be subject to the fee-splitting provisions of the Health & Safety Code 12706 (65% to the state, 35% to the local agency).

It is in the City's interest to continue to have the option of issuing administrative citations for illegal fireworks possession rather than resorting solely to criminal prosecution. Under the proposed ordinance the City would collect at least \$1000.00 in administrative fines and collect an additional \$250.00 on behalf of the State for costs related to disposal of seized fireworks, a ratio of 80% to 20 % in favor of the City, as opposed to the 65% to 35% ratio in favor of the State that would result from criminal prosecution.

The Fireworks Ordinance has also been amended to reflect the Fresno Fire Department's policies regarding the types of organizations that will be permitted to sell safe and sane fireworks at fireworks stands. Current FMC section 10-53302.3(a)(2)(i) defines an "eligible organization" as a duly organized not-for-profit charitable, religious, civic, patriotic, or community service organization. Due to the revenue associated with the sale of safe and sane fireworks, the Fire Department wishes to impose more exacting requirements for organizations to qualify as "eligible organizations" to avoid the possibility of misrepresentation by groups/individuals seeking to take economic advantage of the situation by posing as a non-profit. Consequently, proposed FMC section 10-53302.3(b) requires an "eligible organization" to present proof of tax exempt status through a letter from the IRS or a valid business certificate from the City.

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The proposed amendment also contains insurance provisions relating to fireworks vendors that reflect the Risk Management Department's insurance requirements. The current ordinance does not specify the type of insurance that organizations must carry in order to obtain a permit to sell safe and sane fireworks. Proposed section 10-53302.9(c) would require applicants to sign an Indemnification and Hold Harmless Agreement wherein the applicant would agree to indemnify and defend the City in the event of liability arising from the operation of their fireworks booth. Proposed section 10-53302.9(d) imposes a requirement on an applicant to maintain insurance approved by the Risk Manager which also covers the City its officers, officials, agents, employees and authorized volunteers.

Finally, the review process also provided an opportunity to review and address the Appeals Hearing process for illegal fireworks. Along with the amendments required by SB 839, the agenda item provides for an increased administrative fine for possession of illegal fireworks in an amount no less than \$1,250.00 in proposed section 10-53302.15. This amount reflects the sum of the current \$1000.00 administrative fine which was established by Council in 2005 plus the anticipated cost for disposal of the fireworks that will have to be retained on behalf of the State Fire Marshal. The amount of the fine is intended to serve as a deterrent to illegal fireworks use and possession and also reflects the costs associated with enforcement by City staff.

Over the course of the past two years, the Fresno Police and Fire Departments have worked together in a joint task force each Fourth of July season in an effort to reduce the use of illegal fireworks. Those efforts have resulted in over 131 illegal fireworks citations issued. Staff invests a significant amount of time, resources, and funding into the Fourth of July task force and subsequent administrative appeal process. Indeed, the cost of firefighter overtime from involvement in the task force and testimony at administrative hearings is approximately \$5000.00. It is the Department's position that the administrative fine plays an important role in funding future enforcement efforts as well as serving as a deterrent to future violations.

Additionally, proposed section 10-53302.17 sets forth the administrative appeal process for fireworks citations. In response to a number of cases wherein minors have been cited for possession of illegal fireworks, 10-53302.17(c) provides that parents or guardians of a minor will be jointly and severally liable for the administrative fine. This is based on the Department's position that parents and/or guardians must also be held responsible for failure to properly supervise their minor children. Finally, 10-53302.17(d) provides that an administrative fine may become a lien or special assessment against the property of someone who is cited for a violation of the Fireworks Ordinance. This provision allows for imposition of a lien or special assessment to recover costs associated with enforcement of the code as provided in Chapter 1, Article 5 of the FMC.

FISCAL IMPACT

Administrative fines for violation of Fireworks Ordinance are integral to covering the costs associated with annual Fourth of July Enforcement efforts.

OPTIONS

Council may take the following action with respect to this item:

- 1) Adopt the ordinance;
- 2) Modify the ordinance;
- 3) Take no further action on this matter.

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ATTACHMENTS

- 1) Ordinance
- 2) Copy of Senate Bill 839

RRB/KLD/amg:mc 06/03/08

BILL NUMBER: SB 839 CHAPTERED
BILL TEXT

CHAPTER 563
FILED WITH SECRETARY OF STATE OCTOBER 12, 2007
APPROVED BY GOVERNOR OCTOBER 12, 2007
PASSED THE SENATE SEPTEMBER 10, 2007
PASSED THE ASSEMBLY SEPTEMBER 7, 2007
AMENDED IN ASSEMBLY AUGUST 31, 2007
AMENDED IN ASSEMBLY AUGUST 20, 2007
AMENDED IN ASSEMBLY JUNE 25, 2007
AMENDED IN SENATE JUNE 4, 2007
AMENDED IN SENATE MAY 10, 2007
AMENDED IN SENATE MAY 1, 2007
AMENDED IN SENATE APRIL 19, 2007
AMENDED IN SENATE APRIL 16, 2007
AMENDED IN SENATE APRIL 9, 2007

INTRODUCED BY Senator Calderon

FEBRUARY 23, 2007

An act to amend Sections 12551, 12552, 12700, 12702, and 12726 of, and to add Sections 12556, 12557, 12703, 12704, 12706, 12727, and 12728 to, the Health and Safety Code, and to add Section 15301 to the Vehicle Code, relating to fireworks.

LEGISLATIVE COUNSEL'S DIGEST

SB 839, Calderon. Fireworks.

(1) The State Fireworks Law requires the State Fire Marshal to adopt regulations relating to fireworks as may be necessary for the protection of life and property, and requires the State Fire Marshal to appoint deputies and employees as may be required to carry out the provisions of that law. That law provides that the State Fire Marshal, his or her salaried deputies, or a chief of a fire department, or his or her authorized representatives, a fire protection agency, or any other public agency authorized by statute to enforce the State Fire Marshal's regulations, may seize any fireworks, as described, and may charge a person whose fireworks are seized with specified costs of transporting, storing, and handling the seized fireworks. That law also makes it unlawful for a person to, among other matters, transport fireworks unless those fireworks have been classified and registered by the State Fire Marshal.

This bill would make it unlawful for a person to possess a specified amount of dangerous fireworks, and upon conviction, is guilty of a public offense punishable by a fine or by imprisonment, as specified. By creating a new crime, the bill would impose a state-mandated local program. The bill would require the State Fire Marshal, on or before July 1, 2008, to identify and evaluate specified data relating to fireworks, and require the State Fire Marshal to furnish a copy of the evaluation methods to any interested person upon request. The bill would require the State Fire Marshal, in conjunction with the Attorney General, to send notices regarding unauthorized shipments of fireworks in California, as specified.

The bill would create the State Fire Marshal Fireworks Enforcement and Disposal Fund. The bill would provide that 65% of the penalty imposed by these provisions, except for administrative fines imposed by local jurisdictions, shall be deposited in the fund for use by the State Fire Marshal, upon appropriation by the Legislature, to enforce, prosecute, dispose of, and manage dangerous fireworks and to educate public safety agencies in the proper handling and management of dangerous fireworks. The bill would also provide that 35% of the penalty, except for administrative fines imposed by local jurisdictions, will remain with the public safety agency for specified expenses. The bill would require the county treasurer in the county where the offense was committed to forward those penalties as specified in these provisions. By imposing a higher level of service on a local agency, the bill would impose a state-mandated local program.

The bill would require the Office of the State Fire Marshal, consulting with public safety agencies and other stakeholders, to develop a model ordinance that permits local jurisdictions to adopt a streamlined enforcement and administrative fine procedures related to the possession of 25 pounds or less of dangerous fireworks, as specified. The bill would also require the State Fire Marshal, in consultation with local jurisdictions, to develop regulations, in conjunction with the model ordinance, to specify a procedure on how to reimburse the Office of the State Fire Marshal for the actual costs associated with the disposal of seized dangerous fireworks and to recover those costs, as part of an administrative fine, from any person who violates that ordinance, as specified. The bill would require a local ordinance in effect on or after January 1, 2008, that is not the model ordinance to comply with these provisions. By requiring a higher level of service on a local agency, the bill would impose a state-mandated local program.

The bill would further require the State Fire Marshal, pursuant to the requirements and procedures established by the Office of Administrative Law, to establish regulations to assess fees on all import and export, wholesale, and retail fireworks licensees in California, as specified. The bill would provide that these fees shall be deposited in the State Fire Marshal Fireworks Enforcement and Disposal Fund for use by the State Fire Marshal, upon appropriation by the Legislature, to carry out specified statewide programs.

(2) Existing law prohibits a driver of a commercial motor vehicle from operating a commercial motor vehicle for one year if the driver is convicted of a first violation of specified vehicle-related offenses or convicted of other specified crimes.

This bill would require the Department of Motor Vehicles, in conjunction with the State Fire Marshal, to develop regulations and procedures to temporarily suspend the commercial motor vehicle license of a person who is operating a commercial motor vehicle while transporting dangerous fireworks having a gross weight of 10,000 pounds or more. The bill would also prohibit a driver of a commercial motor vehicle from operating a commercial motor vehicle for 3 years if the driver is convicted of transporting dangerous fireworks having a gross weight of 10,000 pounds or more.

(3) This bill would also make various technical, nonsubstantive changes to these provisions.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the

state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 12551 of the Health and Safety Code is amended to read:

12551. The State Fire Marshal shall appoint deputies and employees as may be required to carry out the provisions of this part, subject to approval in the annual Budget Act.

SEC. 2. Section 12552 of the Health and Safety Code is amended to read:

12552. The State Fire Marshal shall adopt regulations relating to fireworks as may be necessary for the protection of life and property not inconsistent with the provisions of this part. These regulations shall include, but are not limited to, provisions for the following:

(a) Granting of licenses and permits for the manufacture, wholesale, import, export, and sale of all classes of fireworks.

(b) Classification of fireworks and pyrotechnic devices.

(c) Registration of employees of licensees.

(d) Licenses and permits required for presentation of public displays.

(e) Granting of licenses and permits for research or experimentation with experimental or model rockets and missiles.

(f) Investigation, examination, and licensing of pyrotechnic operators of all classes.

(g) Registration of emergency signaling devices and the classification and use of exempt fireworks.

(h) Transportation of all classifications of fireworks, model rockets, emergency signaling devices, and exempt fireworks.

SEC. 3. Section 12556 is added to the Health and Safety Code, to read:

12556. In addition to the obligations described in Section 13110.5, on or before July 1, 2008, the State Fire Marshal shall identify and evaluate methods to capture more detailed data relating to fires, damages, and injuries caused by both dangerous fireworks and safe and sane fireworks. These evaluation methods shall include a cost analysis related to capturing and reporting the data and shall meet or exceed the specificity, detail, and reliability of the data captured under the former California Fire Incident Reporting System (CFIRS). The State Fire Marshal shall furnish a copy of these evaluation methods to any interested person upon request.

SEC. 4. Section 12557 is added to the Health and Safety Code, to read:

12557. (a) The Office of the State Fire Marshal shall consult with public safety agencies and other stakeholders as deemed necessary by the State Fire Marshal and develop a model ordinance that permits local jurisdictions to adopt a streamlined enforcement and administrative fine procedures related to the possession of 25

pounds or less of dangerous fireworks. These procedures shall be limited to civil fines and as authorized pursuant to Section 53069.4 of the Government Code, and provide that the fines collected pursuant to this section shall not be subject to Section 12706. The model ordinance shall include provisions for reimbursing the Office of the State Fire Marshal for the costs associated with the disposal of seized fireworks and collecting these disposal costs as part of an administrative fine as described in subdivision (c).

(b) An ordinance of a local jurisdiction in effect on or after January 1, 2008, that is related to dangerous fireworks and is not the model ordinance described in subdivision (a) shall, as soon as practicable, comply with all of the following:

(1) The ordinance shall be amended or adopted 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 as described in subdivision (c).

(2) The ordinance shall be amended or adopted to provide that the ordinance shall be limited to a person who possesses or the seizure of 25 pounds or less of dangerous fireworks.

(3) The ordinance shall be amended or adopted to provide that the fines collected pursuant to the ordinance shall not be subject to Section 12706.

(c) The State Fire Marshal shall, in consultation with local jurisdictions, develop regulations to specify a procedure on how to cover the cost to the Office of the State Fire Marshal for the transportation and disposal of dangerous fireworks that are seized by local jurisdictions. The regulations shall include, but are not limited to, all of the following:

(1) A cost recovery procedure to collect, as part of an administrative fine, the actual cost for transportation and disposal of dangerous fireworks from any person who violates a local ordinance related to dangerous fireworks.

(2) The method by which the actual cost for transportation and disposal by the Office of the State Fire Marshal will be calculated.

(3) The method, manner, and procedure the local jurisdiction is required to follow to forward the amounts collected pursuant to paragraph (1) to the State Fire Marshal.

SEC. 5. Section 12700 of the Health and Safety Code is amended to read:

12700. (a) Except as provided in Section 12702 and subdivision (b), a person who violates any provision of this part, or any regulations issued pursuant to this part, is guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than five hundred dollars (\$500) or more than one thousand dollars (\$1,000), or by imprisonment in the county jail for not exceeding one year, or by both that fine and imprisonment.

(b) A person who violates any provision of this part, or any regulations issued pursuant to this part, by possessing dangerous fireworks shall be subject to the following:

(1) A person who possesses a gross weight, including packaging, of less than 25 pounds of unaltered dangerous fireworks, as defined in Section 12505, is guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than five hundred dollars (\$500) or more than one thousand dollars (\$1,000), or by imprisonment in the county jail for not exceeding one year, or both that fine and imprisonment. Upon a second or subsequent conviction, a person shall be punished by a fine of not less than one thousand dollars (\$1,000)

or by imprisonment in a county jail not exceeding one year or by both that fine and imprisonment.

(2) A person who possesses a gross weight, including packaging, of not less than 25 pounds or more than 100 pounds of unaltered dangerous fireworks, as defined in Section 12505, is guilty of a public offense, and upon conviction shall be punished by imprisonment in the county jail for not more than one year, or by a fine of not less than one thousand dollars (\$1,000) or more than five thousand dollars (\$5,000), or by both that fine and imprisonment.

(3) A person who possesses a gross weight, including packaging, of not less than 100 pounds or more than 5,000 pounds of unaltered dangerous fireworks, as defined in Section 12505, is guilty of a public offense, and upon conviction shall be punished by imprisonment in the state prison or the county jail for not more than one year, or by a fine of not less than five thousand dollars (\$5,000) or more than ten thousand dollars (\$10,000), or by both that fine and imprisonment.

(4) A person who possesses a gross weight, including packaging, of more than 5,000 pounds of unaltered dangerous fireworks, as defined in Section 12505, is guilty of a public offense, and upon conviction shall be punished by imprisonment in the state prison or the county jail for not more than one year, or by a fine of not less than ten thousand dollars (\$10,000) or more than fifty thousand dollars (\$50,000), or by both that fine and imprisonment.

(c) Subdivision (b) shall not apply to a person who holds and is operating within the scope of a valid license as described in Section 12516 or valid permit as described in Section 12522.

SEC. 6. Section 12702 of the Health and Safety Code is amended to read:

12702. Notwithstanding the provisions of Section 12700:

(a) A person who violates this part by selling, giving, or delivering any dangerous fireworks to any person under 18 years of age is guilty of a misdemeanor and upon a first conviction shall be punished as prescribed in subdivision (b) of Section 12700.

(b) Upon a second or subsequent conviction of the offense, the person shall be punished by an additional fine of five thousand dollars (\$5,000), or by imprisonment in a county jail for up to one year or by both that fine and imprisonment. The person shall not be granted probation and the execution of the sentence imposed upon the person shall not be suspended by the court.

SEC. 7. Section 12703 is added to the Health and Safety Code, to read:

12703. (a) The State Fire Marshal shall, in conjunction with the Department of Motor Vehicles, develop regulations and procedures to temporarily suspend the commercial motor vehicle license of a person who is operating a commercial motor vehicle while transporting unaltered dangerous fireworks, as defined in Section 12505, having a gross weight, including packaging, of 10,000 pounds or more.

(b) A driver of a commercial motor vehicle shall not operate a commercial motor vehicle for three years if the driver is convicted of transporting unaltered dangerous fireworks, as defined in Section 12505, having a gross weight, including packaging, of 10,000 pounds or more, as described in Section 15301 of the Vehicle Code.

(c) This section shall not apply to a person who holds and is operating within the scope of a valid license as described in Section 12516 or valid permit as described in Section 12522.

SEC. 8. Section 12704 is added to the Health and Safety Code, to

read:

12704. The State Fire Marshal, at least once a year and in consultation with the Attorney General, shall serve notice to any individual or business known to supply fireworks that any unauthorized shipments of fireworks into California will result in an immediate report to federal authorities with a request for any relevant federal prosecution.

SEC. 9. Section 12706 is added to the Health and Safety Code, to read:

12706. Notwithstanding Section 1463 of the Penal Code, all fines and forfeitures imposed by or collected in any court of this state, except for administrative fines described in Section 12557, as a result of citations issued by a public safety agency, for any violation of subdivision (b) of Section 12700 or of any regulation adopted pursuant to subdivision (b) of Section 12700, shall be deposited, as soon as practicable after the receipt of the fine or forfeiture, with the county treasurer of the county in which the court is situated. Amounts deposited pursuant to this section shall be paid at least once a month as follows:

(a) Sixty-five percent to the Treasurer, by warrant of the county auditor drawn upon the requisition of the clerk or judge of the court, for deposit in the State Fire Marshal Fireworks Enforcement and Disposal Fund, as described in Section 12728, on order of the Controller. At the time of the transmittal, the county auditor shall forward to the Controller, on the form or forms prescribed by the Controller, a record of the imposition, collection, and payments of the fines or forfeitures.

(b) Thirty-five percent to the local public safety agency in the county in which the offense was committed to reimburse the local public safety agency for expenses, including, but not limited to, the costs for handling, processing, photographing, and storing seized dangerous fireworks.

SEC. 10. Section 12726 of the Health and Safety Code is amended to read:

12726. (a) The dangerous fireworks seized pursuant to this part shall be disposed of by the State Fire Marshal in the manner prescribed by the State Fire Marshal at any time after the final determination of proceedings under Section 12724, or upon final termination of proceedings under Section 12593, whichever is later. If no proceedings are commenced pursuant to Section 12724, the State Fire Marshal may dispose of the fireworks after all of the following requirements are satisfied:

(1) A random sampling of the dangerous fireworks has been taken, as defined by regulations adopted by the State Fire Marshal pursuant to Section 12552.

(2) The analysis of the random sampling has been completed.

(3) Photographs have been taken of the dangerous fireworks to be destroyed.

(4) The State Fire Marshal has given written approval for the destruction of the dangerous fireworks. This approval shall specify the total weight of the dangerous fireworks seized, the total weight of the dangerous fireworks to be destroyed, and the total weight of the dangerous fireworks not to be destroyed.

(b) To carry out the purposes of this section, the State Fire Marshal shall acquire and use statewide mobile dangerous fireworks destruction units to collect and destroy seized dangerous fireworks from local and state agencies.

(c) If dangerous fireworks are seized pursuant to a local ordinance that provides for administrative fines or penalties and these fines or penalties are collected, the local government entity collecting the fines or penalties shall forward 65 percent of the collected moneys to the Controller for deposit in the State Fire Marshal Fireworks Enforcement and Disposal Fund, as described in Section 12728.

SEC. 11. Section 12727 is added to the Health and Safety Code, to read:

12727. (a) The State Fire Marshal shall establish regulations pursuant to the requirements and procedures established with the Office of Administrative Law to assess fees on all import and export, wholesale, and retail fireworks licensees in California to be deposited in the State Fire Marshal Fireworks Enforcement and Disposal Fund.

(b) In determining the appropriate amount of the fees described in subdivision (a), the State Fire Marshal shall consult with the fireworks industry and import and export, wholesale, and retail fireworks licensees.

(c) The total amount of the fees collected shall not exceed the reasonable costs of the statewide programs described in subdivision (c) of Section 12728.

SEC. 12. Section 12728 is added to the Health and Safety Code, to read:

12728. (a) The State Fire Marshal Fireworks Enforcement and Disposal Fund is hereby established in the State Treasury.

(b) All of the moneys collected pursuant to Section 12706 shall be deposited in the fund and shall be available, upon appropriation by the Legislature, to the State Fire Marshal for the exclusive use in statewide programs for the enforcement, prosecution related to, disposal, and management of seized dangerous fireworks, and for the education of public safety agencies in the proper handling and management of dangerous fireworks.

(c) All of the moneys collected pursuant to Section 12727 shall be deposited in the fund and shall be available, upon appropriation by the Legislature, to the State Fire Marshal for the exclusive use in statewide programs for all of the following:

(1) To further assist in statewide programs for the enforcement, prosecution related to, disposal, and management of seized dangerous fireworks.

(2) The education of public safety agencies in the proper handling and management of dangerous fireworks as well as safety issues involving all fireworks and explosives.

(3) Assist the State Fire Marshal in identifying and evaluating methods to capture more detailed data relating to fires, damages, and injuries caused by both dangerous and safe and sane fireworks, and to assist with funding the eventual development and implementation of those methods.

(4) To further assist in public safety and education efforts within the general public as well as public safety agencies on the proper and responsible use of safe and sane fireworks.

SEC. 13. Section 15301 is added to the Vehicle Code, to read:

15301. The Department of Motor Vehicles, in conjunction with the State Fire Marshal, shall develop regulations and procedures to temporarily suspend the commercial motor vehicle license of a person who is operating a commercial motor vehicle while transporting dangerous fireworks having a gross weight of 10,000 pounds or more. A

driver of a commercial motor vehicle shall not operate a commercial motor vehicle for three years if the driver is convicted of transporting dangerous fireworks having a gross weight of 10,000 pounds or more.

SEC. 14. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO,
CALIFORNIA, REPEALING SECTION 10-53302 OF
ARTICLE 5, CHAPTER 10 AND ADDING SECTION 10-
53302 OF ARTICLE 5, CHAPTER 10, RELATING TO
FIREWORKS.

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 10-53302 of Article 5, Chapter 10 of the Fresno Municipal Code is repealed.

SECTION 2. Section 10-53302 of Article 5, Chapter 10 is added to the Fresno Municipal Code to read:

SECTION 10-53302.1. SHORT TITLE.

This Section shall be known and cited as the "Fireworks Ordinance."

When used, "this Section" means the Fireworks Ordinance.

SECTION 10-53302.2. 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 sections 12500 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, or the seizure of, 25 pounds or less of dangerous fireworks or persons who possess, use, sell and/or display 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 State Fire Marshal for reimbursement of costs, including, but not limited to transportation, and disposal. Regulations are to be adopted by the 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 \$250.00 from any fine collected to cover the reimbursement to the State Fire Marshal for the cost of transportation and disposal of the dangerous fireworks.

(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.

SECTION 10-53302.3. DEFINITIONS.

(a) "Dangerous fireworks" shall include any items or materials listed as such in California Health & 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.

(1) 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 tax exemption letter from the Internal Revenue Service or a current and valid business license certificate issued by the City of Fresno.

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

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

(4) 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 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:

(1) Devices designated by the manufacturer as fireworks.

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

(e) "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 Marshall.

SECTION 10-53302.4. 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.

SECTION 10-53302.5. SAFE AND SANE FIREWORKS –
EXCEPTIONS.

(a) The sale and/or display of safe and sane fireworks shall be permitted only during that period beginning at noon on June 28th and ending at 6:00 p.m. on July 6th of that same year.

(b) The use and discharge of safe and sane fireworks within the City of Fresno is permitted only on July 4th beginning at 8:00 p.m. and ending at midnight on July 4th of the same year.

SECTION 10-53302.6. SAFE AND SANE FIREWORKS – PERMITS
REQUIRED.

It is unlawful for any person to sell safe and sane fireworks within the City of Fresno without a permit issued by the Fire Chief or the Fire Chief's designee.

SECTION 10-53302.7. SAFE AND SANE FIREWORKS- INTEREST
CARD.

(a) All organizations or corporations interested in obtaining a permit to sell safe and sane fireworks must meet all the provisions set forth in this Section.

(b) An interest card may be submitted beginning February 1st or the first business day thereafter, and ending the last business day of February.

(c) No organization shall submit more than one interest card. Submittal of more than one interest card shall be grounds for denial of all interest cards.

(d) Interest cards are used to select 30 new participants for the upcoming fireworks season.

(e) Participants are selected by lottery which takes place the first week of March.

(f) The 30 newly selected participants, as well as the 30 "old" participants (second year permit holders), will then be ready to move to the permit application process.

SECTION 10-533-2.8. SAFE AND SANE FIREWORKS -

PREREQUISITE FOR ISSUANCE OF PERMITS.

(a) No permit to sell safe and sane fireworks shall be issued to any person except nonprofit and tax-exempt organizations or corporations organized primarily for charitable, religious, civic, patriotic, or community service.

(b) Each such organization or corporation shall have its principal and permanent meeting place within the city limits and shall have been organized and established in an area which is presently within the city limits continuously for a minimum of one year preceding the filing of the application of the permit and shall have a bona fide membership of at least twenty (20) members. The membership list shall be provided upon request.

(c) No organization shall submit more than one application to sell safe and sane fireworks within the City of Fresno. Submittal of more than one application shall be grounds for denial of all applications.

(d) The organization shall have a current and valid tax exemption letter from the Internal Revenue Service or a current and valid business license certificate issued by the City of Fresno.

SECTION 10-53302.9. SAFE AND SANE FIREWORKS – PERMIT APPLICATIONS.

(a) All applications for permits to sell and/or display fireworks shall be in writing to the Fire Chief or the Fire Chief's designee on forms supplied by the City of Fresno Fire Department. Applications may be filed beginning the third Monday in March of each year, up to and including the second Monday in May of the same year, at which time the filing period for that year will close. Applications shall set forth the proposed location of the fireworks stand being applied for, and other information as may be required by the Fire Chief or the Fire Chief's designee.

(b) Every application for a permit shall be accompanied by a nonrefundable application fee established by resolution of the city council and set forth in the Master Fee Schedule. This application fee shall be in addition to any fee or tax imposed by any other chapter or article of the Fresno Municipal Code.

(c) Each applicant shall execute an Indemnification and Hold Harmless Agreement as required by the City's Risk Manager or the Risk Manager's designee.

(d) Throughout the life of the permit, the applicant shall pay for and maintain in full force and effect policies of insurance as required by the City's Risk Manager or Risk Manager's designee. The policies of insurance shall name

the City, its officers, officials, agents, employees and authorized volunteers as additional insureds. The applicant shall submit proof of insurance in a manner authorized by the City's Risk Manager or Risk Manager's designee.

(e) Applicants shall be notified on June 1st or the next business day of each calendar year by the Fire Chief or the Fire Chief's designee of the disapproval of the applications for a permit. The actual permit shall be issued once the organization has had an inspection and received approval for the fireworks stand.

SECTION 10-53302.10. OPERATOR SAFETY SEMINAR.

Each year, one or more representatives from each organization or corporation that is granted a permit to sell and/or display fireworks shall attend a stand operator safety seminar conducted by the City of Fresno Fire Department and/or the fireworks industry. Failure of an organization or corporation to have a responsible individual attend the seminar shall result in the revocation of the permit to sell and/or display fireworks.

SECTION 10-53302.11. OPERATION OF FIREWORK STAND.

(a) No person shall sell fireworks to any person under the age of eighteen (18).

(b) The sale of safe and sane fireworks shall begin no earlier than noon on June 28th and shall not continue after 6:00 p.m. on July 6th of the same year. The sale of safe and sane fireworks shall be permitted only from 9:00 a.m. to 10:00 p.m. daily, except June 28th when the hours shall be twelve noon to 10:00 p.m. and July 6th when the hours shall be 9am to 6:00 p.m.

(c) No person other than the permittee organization or corporation shall operate the stand for which the permit is issued or share or otherwise participate in the profits of the operation of such stand.

(d) No person other than the individuals who are members of the permittee organization or corporation or the wives, husbands, parents or adult children of such members shall sell or otherwise participate in the same and/or display of safe and sane fireworks at such stand.

(e) No person under the age of eighteen (18) shall sell or participate in the sale of fireworks or be in the fireworks stand.

(f) No person shall be paid any consideration by the permittee or any wholesale distributor of safe and sane fireworks for selling or otherwise participating in the sale of fireworks at such stand; provided, however, that compensation may be paid for security personnel during non-sale hours and to the party authorizing location of the stand on its property.

SECTION 10-53302.12. TEMPORARY FIREWORKS STAND.

All retail sales of safe and sane fireworks shall be permitted only from within a temporary fireworks stand. The sale 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 thirty (30) feet of any adjacent buildings or property lines, burnable materials, grass, paper, or vegetation, or within one hundred (100) feet of any gasoline pump or distribution point. Stands are preferred on paved surfaces; however, unpaved surfaces are acceptable. A ten (10) foot area surrounding the stand must be cleared of dried

vegetation and maintained. No other items, such as food or drinks shall be sold in conjunction with or within thirty (30) feet of a fireworks stand. No firework stand shall be located more than ten (10) feet from any public roadway, public sidewalk, or in any location which does not otherwise meet with the approval of the Fire Department.

(b) Fireworks stands need not comply with the provisions of the building code of the City of Fresno or State of California; provided, however, all stands shall be erected under the supervision of the firework vendor, who shall require that stands be constructed in a manner which will reasonably insure the safety of attendants and patrons.

(c) If stands are operated at night, only electric lights may be used and the wiring must be installed by a licensed electrical contractor and shall meet the minimum requirements of the California Electrical Code and the Fresno Municipal Code. Open splices are prohibited and all wiring must be protected from physical damage and weather. No "Christmas" lights shall be used in or around the fireworks stands. Exposed light bulbs shall be protected with covers, cages or screens.

(d) No stand shall have a floor area in excess of seven hundred fifty (750) square feet.

(e) Each stand shall have at least two exits. Each stand in excess of forty (40) feet in length shall have at least three exits spaced approximately equidistant apart; provided; however, that in no case shall the distance between exits exceed twenty (20) feet apart. Exit doors shall be not less than twenty-four

(24) inches wide and six feet in height and shall swing in the direction of exit travel.

(f) Each stand shall be provided with one approved 2A:10BC, multipurpose ABC fire extinguisher with an up-to-date inspection tag that shows the fire extinguisher has been serviced within the past year.

(g) All temporary fireworks stands shall be disassembled and removed no later than July 8th at 5:00 p.m.

(h) Firework stands shall be located on currently developed commercial zoned parcels. The approved zone designations are as follows:
Zoning code: C1-C6 and CP.

SECTION 10-53302.13. GENERAL REQUIREMENTS FOR
PERMITTEES.

(a) Stands shall not be located closer than six hundred (600) feet apart, unless separated by a principal arterial roadway.

(b) All weeds and combustible material shall be cleared from the location of the stand, including a distance of at least thirty (30) feet surrounding the stand.

(c) "NO SMOKING" signs shall be prominently displayed on all sides of the fireworks stand, in both English and Spanish. Each sign shall have the words "NO SMOKING" in red letters not less than two (2) inches in height with a minimum one-half (1/2) inch stroke on a white background.

(d) No fuel-powered generator or similar equipment shall be allowed within ten (10) feet of a fireworks stand.

(e) Permits are valid for two (2) years and organizations that receive a permit shall not re-submit an interest card until their current permit has expired.

(f) Permits are not transferable to any other organization.

(g) On site storage of fireworks shall be permitted in approved metal cargo style containers only, at a distance of no less than thirty (30) feet from the firework stand. Storage of fireworks in trucks or vans will be permitted during hours of sale only. The truck or van carrying or storing the fireworks shall be removed from the sales area and placed at a pre-approved and secure location. The pre-approval of such location will be by the California State Fire Marshal or the Fire Chief or the Fire Chief's designee.

SECTION 10-53302.14. REVOCATION OF PERMIT.

The Fire Chief or the Fire Chief's designee may revoke, immediately and without notice or hearing, the permit of any permittee who violates this Section.

SECTION 10-53302.15. 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, and/or locations other than those permitted by this Section are subject to an administrative fine of not less than one-thousand two-hundred fifty dollars (\$1,250.00) for each such offense.

SECTION 10-53302.16. SEIZURE OF FIREWORKS.

The Fire Chief or the Fire Chief's designee shall seize, take, remove or cause to be removed, at the expense of the owner, all stocks of fireworks offered or exposed for sale, stored or held in violation of this Section.

SECTION 10-53302.17. APPEAL.

(a) A citation issued for failure to comply with the provisions of this Section shall be appealed pursuant to Chapter 1, Article 4 of the Fresno Municipal Code.

(b) The denial of an application for a fireworks permit shall be appealed pursuant to Chapter 1, Article 4 of the Fresno Municipal Code. If no appeal is filed within the time prescribed, the action of the Fire Chief or the Fire Chief's designee shall be final.

(c) A minor and the parent(s) or guardian(s) having custody and control of said minor, are jointly and severally liable to the City for any administrative citation and/or penalty issued for failure to comply with the provisions of this Section.

(d) The administrative citation penalty may become a special assessment or a lien against the property of any person who is issued a citation for violation of the provisions of this Section. This shall include the property of a minor who is issued a citation and/or the property of the parent(s) or guardian(s) having custody and control of the minor. The procedures set forth in Section 1-506 shall be followed for the imposition of a special assessment or lien.

SECTION 3. If any section, subsection, subdivision, sentence, clause, or phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid, ineffective by any court or competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council hereby declares that it would have adopted each section irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, or phrases be declared unconstitutional, invalid, or ineffective.

SECTION 4. SEVERABILITY. The Council declares that the provisions of this ordinance are severable. If, for any reason, any sentence, paragraph, or section of this ordinance is determined by a court of competent jurisdiction to be invalid, such determination will not affect the validity of the remaining provisions of this ordinance.

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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.

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

I, REBECCA E. KLISCH, 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 _____, 2008.

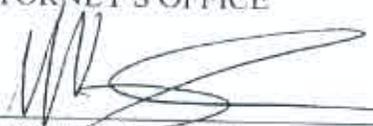
AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2008
Mayor Approval/No Return: _____, 2008
Mayor Veto: _____, 2008
Council Override Vote: _____, 2008

REBECCA E. KLISCH
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

BY: 
Michael G. Vigilia, Deputy

CMH:cs [45999cs\ord]-ns/cmh-mgv] - 10/23/08

