

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA, ADDING
CHAPTER 8.22, "FIREWORKS," AND
AMENDING SECTION 17.32.120, "CHAPTER 56,
EXPLOSIVES AND FIREWORKS," OF THE
MERCED MUNICIPAL CODE**

**THE CITY COUNCIL OF THE CITY OF MERCED DOES ORDAIN
AS FOLLOWS:**

SECTION 1. ADDITION TO CODE. Chapter 8.22, "Fireworks," of the Merced Municipal Code is hereby added to read as follows:

**"CHAPTER 8.22
FIREWORKS**

Section:

- 8.22.010 Short Title.**
- 8.22.020 Findings and Intent.**
- 8.22.030 Definitions.**
- 8.22.040 Permits for Public Displays of Fireworks.**
- 8.22.050 Permits for the Sale of Safe and Sane Fireworks.**
- 8.22.060 Applications for Permits to Sell and Store Safe and Sane Fireworks.**
- 8.22.070 Issuance of Permits.**
- 8.22.080 Permits.**
- 8.22.090 Operating Hours of Fireworks Stands.**
- 8.22.100 Prohibitions.**
- 8.22.110 Revocation of Permits.**
- 8.22.120 Seizure of Fireworks.**
- 8.22.130 Penalties for Violations.**
- 8.22.140 Number of Fireworks Stands Allowed In the City.**

8.22.010 Short Title.

This Section shall be known and cited as the ‘Fireworks Ordinance.’ When used in this Chapter, the phrase ‘this Section’ means the Fireworks Ordinance.

8.22.020 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; California Health and Safety Code, Section 12557; and, the police power of the City of Merced.

(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 California Health and

Safety Code, Section 12706. The administrative fines collected shall be allocated in compliance with California 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 two-hundred-fifty dollar (\$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 Chief 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 Merced Municipal Code Master Fee Schedule.

(g) In addition to any other remedy available by 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 are subject to an administrative fine of not less than one-thousand dollars

(\$1,000.00) for first violation, one-thousand-five-hundred dollars (\$1,500) for second violation and two-thousand dollars (\$2,000) for any subsequent violation in a twelve (12) month period.

8.22.030 Definitions.

For the purposes of this Section, unless otherwise apparent from the context, certain words and phrases used in this Section are defined as follows:

- a. 'Dangerous fireworks' means any fireworks specified as such in the State Fireworks Law, California Health and Safety Code Sections 12505 and 12561, and such other fireworks as may be determined to be dangerous by the State Fire Marshal.

- b. 'Eligible organization' means an organization which has met all of the following criteria for a continuous period of not less than one full year preceding submittal of an application for the permit required by this Section (and which continues to do so thereafter):
 - (1) The organization is exempt from federal income tax pursuant to the provisions of Internal Revenue Code Sections 501 (c) (3), (4), (6), (7), (8), (10), (19), (23), or (26), or Section 501 (d), or Section 501 (e);
 - (2) The organization must be headquartered within and clearly affiliated or identified with Merced;
 - (3) The organization must be one which provides direct and regular community services and benefits to the citizens of the City; and,
 - (4) The organization must hold its regularly scheduled meetings within the City.

‘Eligible organization’ also means an organization which has met criteria set out in subdivisions (1), (2) and (3) of this subsection, for a continuous period of not less than one full year preceding submittal of an application for the permit required by this section (and which continues to do so thereafter) and which demonstrates at the time of each application that criteria set out in subdivision (4) of this subsection is not met only because adequate and appropriate facilities for the organization’s regular meetings are not available for such purposes within city limits.

‘Eligible organization’ also means any for-profit organization that obtained a permit to sell safe and sane fireworks and actually operated a fireworks stand in the City during the 2013 season with future eligibility being contingent upon obtaining successive, annual permits, and operating each successive season. A for-profit organization shall become permanently ineligible if the organization fails to obtain a permit and/or to operate a fireworks stand in any given year.

c. ‘Exempt fireworks’ means any special item containing pyrotechnic compositions which the California State Fire Marshal, with the advice of the State 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:

- Devices designated by the manufacturer as fireworks.
- Torpedoes, skyrocket, roman candles, rockets, Daygo bombs, sparklers, party poppers, papercaps, chasers, fountains, smoke sparks, aerial bombs, and fireworks kits.

e. 'Safe and sane fireworks' as defined in California Health and Safety Code Section 12529, 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 seals as authorized by the California State Fire Marshal.

f. 'Stand' means any building, counter, or other structure of a temporary nature used in the sale or offering for sale of fireworks pursuant to a permit duly issued.

8.22.040 Permits for Public Displays of Fireworks.

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

8.22.050 Permits for the Sale of Safe and Sane Fireworks.

It shall be unlawful for any person to possess, store, to offer for sale, or sell at retail any fireworks in the City other than safe and sane fireworks, with the exception of those activities provided for in Section 8.22.040 of this Section. It shall be unlawful to possess, store, offer for sale, or sell at retail safe and sane fireworks in the City without first obtaining a permit therefore. The Fire Chief shall have the authority to adopt reasonable rules and regulations for the granting of permits for the sale of safe and sane fireworks by eligible organizations. The Fire Chief shall also have the authority to adopt reasonable rules and regulations for the safe operation of firework stands. Such rules and regulations shall be made available upon request from the Fire Department.

8.22.060 Applications for Permits to Sell and Store Safe and Sane Fireworks.

Permits to sell and store safe and sane fireworks shall be issued by the Fire Department.

- (a) All applications for permits shall be in writing and delivered to the Fire Chief on forms supplied by the Fire Department, and shall include all documentation and proof required by the rules and regulations established by the state fire marshal and the Fire Chief. All application materials must be complete to be received.
- (b) Applications may be filed beginning the first regular business day of February of each year up to and including five p.m. on the 1st day of May of the same year. No applications shall be received after five p.m. on the 1st day of May, unless that day falls on a holiday or weekend – then the

deadline shall be five p.m. on the next business day.

- (c) 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 all state laws, all administrative regulations, all City ordinances, all rules and regulations promulgated by the Fire Chief and the terms and conditions of the permit if permission to operate a fireworks stand shall be granted to the organization.
- (d) Applications shall identify the name of the organization, the organization form, the address of the principal meeting place, number of members, the purpose of the organization or corporation and the date it came into existence within the City.
- (e) Application Fees. There is a non-refundable 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 other chapter or article of the Merced Municipal Code.

8.22.070 Issuance of Permits.

- (a) Only eligible organizations as defined in Section 8.22.030(b) will be permitted to sell and store safe and sane fireworks. Each of the eligible organizations that were issued permits and operated a stand in the year 2013 (including for-profit organizations), and that submit the required fee and a complete application acceptable to the Fire Chief or designee by the filing deadline in 2014 pursuant to Section 8.22.060, shall be granted a permit to operate a stand in the year 2014. Thereafter, an organization granted a permit in any

given year shall be granted a permit in each subsequent year, so long as this Section remains in effect and the organization continues to: (1) be an eligible organization, (2) timely submit complete applications annually, and (3) operate annually without the occurrence of any act or omission that could subject the permittee to revocation of a permit pursuant to Section 8.22.110.

- (b) In order for the Fire Chief or designee to issue permits to additional organizations when additional permits become available, the Fire Chief or designee shall establish and maintain a priority list of eligible organizations. The Fire Chief or designee shall issue available permits based upon the ranking of organizations on the priority list. The organization ranked first on the priority list shall be issued the next available permit. The priority list in any given year shall include the names of the organizations that did not operate a stand in the previous year and have submitted a complete application for a permit prior to the application deadline for that given year. The order of placement on the priority list shall be determined by lottery conducted pursuant to reasonable rules and regulations promulgated by the Fire Chief. The rules shall provide for the type of lottery to be used, the date and time the lottery shall be conducted, notice to the participating organizations, and any other terms that the Fire Chief deems to be appropriate.
- (c) Once the priority list is established, an organization on the list shall maintain its priority position from year to year with respect to organizations in a lesser position of priority on the list and with respect to organizations being added to the list through subsequent lotteries so long as this Section remains in effect and the organization

continues to (1) be an eligible organization, and (2) timely submit complete applications annually.

- (d) Each year, upon notification that the organization has been selected to participate in the upcoming fireworks season, each organization shall provide additional information as required by the Fire Department including, but not limited to:
 - (1) Each approved organization shall submit a permit fee or additional fees recommended by the Fire Chief and approved by the City Council by Resolution to cover all of the costs and expenses of the City related to the permitting of the sales of fireworks, including, but not limited to, 'standby' and cleanup costs incurred by the City. Any permit issued pursuant to this Section shall be nontransferable, and shall be valid only as to the applicant and location provided on the application for such permit.
 - (2) An executed Indemnification and Hold Harmless Agreement as required by the City's Risk Manger or the Risk Manger's designee.
 - (3) 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 Insurance Division. The policies of insurance shall name the City, its officers, officials, agents, employees and authorized volunteers as additional insured. The applicant shall submit proof of insurance to the Fire Department.
 - (4) Other information as may be required by the rules and regulations of the City Fire Department.

- (5) Prior to issuance of a fire permit for the sales and storage of safe and sane fireworks, each year, one or more representatives from each organization shall attend a stand operator safety seminar conducted by the Fire Department. Failure of an organization to have a responsible individual attend the seminar shall disqualify the organization from receiving a fireworks sales permit.
- (6) **Fireworks Stands.** When all the application requirements have been completed, fees have been paid and the fireworks stand location has been approved, the Fire Department shall authorize the erection of a fireworks stand. A fireworks stand must be inspected and approved by the Fire Chief, or designee, prior to the sale of any fireworks from such stand. No retail sales of safe and sane fireworks shall be permitted except from approved temporary fireworks stands. The sale from any other building or structure is prohibited.

8.22.080 Permits.

Permits will be effective only when delivered by the Fire Department after the final inspection of the stand shows compliance with all the requirements established by the Fire Chief for the operation of a fireworks stand and the applicant has paid the required permit fee. Each approved organization shall submit to the finance office a permit fee or additional fees recommended by the Fire Chief and approved by the City Council by resolution to cover all of the costs and expenses of the City related to the permitting of the sales and storage of fireworks, including, but not limited to, 'standby' and cleanup costs incurred by the City. Any permit issued pursuant to this Section shall be nontransferable, and shall be valid only as to the applicant and location provided on the permit issued by the City Fire Department.

8.22.090 Operating Hours of Fireworks Stands.

Fireworks stands may be operated only from the hours of six a.m. until ten thirty p.m. on and between Sundays and Thursdays with the exception of the third and fourth day of July, and may be operated from six a.m. until twelve a.m. on Fridays, Saturdays, and on the third and fourth day of July.

8.22.100 Prohibitions.

It shall be unlawful to:

- (a) Obtain or use more than one permit or to operate more than one stand in the City per year;
- (b) Sell fireworks in the City earlier than noon on the 28th day of June or later than noon on the 6th day of July;
- (c) Use or explode any fireworks in the City earlier than noon on the 28th day of June or later than noon on the 6th day of July without a permit issued by the Fire Chief or designee for public displays of fireworks;
- (d) Sell fireworks to persons under the age of sixteen years old;
- (e) Sell, assign, or in any way transfer a permit to operate a fireworks stand, or a place or position on the permit waiting list, to another organization, individual, or entity;
- (f) Use or explode any fireworks inside a building other than an outdoor stadium; or,
- (g) Fail to dismantle and remove any stand or structure of any nature where fireworks are sold or offered

for sale no later than the 8th day of July at 5:00 p.m.

8.22.110 Revocation of Permits.

Any violation of this Section or other City ordinances or policies, or the terms and conditions of the permit, or state laws or administrative regulations, or safety rules of the Fire Department, shall be grounds for the immediate revocation of the permit. All officers, agents, and employees of the eligible organization shall be responsible for compliance with all of the provisions of this Section.

8.22.120 Seizure of Fireworks.

The Fire Chief, or the designee thereof, 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.

8.22.130 Penalties for Violations.

Any person violating any provisions of this Section shall be guilty of a misdemeanor and shall be subject to criminal prosecution, civil remedies, administrative fines and penalties, and any other remedies available to the City for enforcement of this Code.

8.22.140 Number of Fireworks Stands Allowed In the City.

There shall be allowed no more than one fireworks stand for every two thousand five hundred residents in the City. The number of residents shall be determined based on the most recent annual population figures provided by the state to the City as of the 1st day of May of each year. The number of stands allowed shall increase according to increases in population.”

SECTION 2. AMENDMENT TO CODE. Section 17.32.120, “Chapter 56, Explosives and Fireworks,” of the Merced Municipal Code is hereby added to read as follows:

“17.32.120 Chapter 56, Explosives and Fireworks.

Section 5608.2 of the California Fire Code, 2013 Editions is amended to read as follows:

Section 5608.2 Fireworks Prohibited Except as authorized by Chapter 8.22 of the Merced Municipal Code.

The use and sale of ‘safe and sane’ fireworks for public display shall be permitted within the City, in accordance with the rules and regulations set forth in Chapter 8.22 of the Merced Municipal Code. It is unlawful for any person to possess, store, to offer for sale, sell at retail or use or explode any fireworks except as provided in Chapter 8.22 of the Merced Municipal Code.”

SECTION 3. EFFECTIVE DATE. This Ordinance shall be in full force and effect thirty (30) days after its adoption.

SECTION 4. SEVERABILITY. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 5. PUBLICATION. The City Clerk is directed to cause a summary of this Ordinance to be published in the official newspaper at least once within fifteen (15) days after its adoption showing the vote thereon.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Merced on the ____ day of _____, 2014, and was passed and adopted at a regular meeting of said City Council held on the ____ day of _____, 2014, by the following called vote:

AYES: Council Members:

NOES: Council Members:

ABSTAIN: Council Members:

ABSENT: Council Members:

APPROVED:

Mayor

**ATTEST:
JOHN M. BRAMBLE, CITY CLERK**

BY: _____
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:

Kelly J. McNeer *3/24/14*
City Attorney **Date**