

ORDINANCE NO. 1088

AN ORDINANCE OF THE CITY OF FOLSOM REPEALING AND RE-ENACTING CHAPTER 9.36 OF THE FOLSOM MUNICIPAL CODE PERTAINING TO FIREWORKS

The City Council of the City of Folsom hereby does ordain as Follows:

SECTION 1 PURPOSE

The purpose of this ordinance is to repeal and re-enact Chapter 9.36 of the Folsom Municipal Code (the "Code") pertaining to fireworks. Chapter 9.36 will be repealed in its entirety and re-enacted to codify provisions contained in this ordinance. This ordinance contains provisions of Emergency Ordinance No. 1082 and makes improvements in the permitting process based on stakeholder input.

SECTION 2

Chapter 9.36 is repealed and re-enacted to the Folsom Municipal Code to read as follows:

9.36.010 Fireworks prohibited generally.

Except as otherwise provided, no person shall possess, sell, use, display or explode any rocket, firecracker, roman candle, squib, torpedo, torpedo cane, fire balloon, wire core sparkler, wooden core sparkler, black cartridge or other combustible device or explosive substance, or any kind of fireworks, by whatsoever name known, within the city. The prohibition set forth in this section includes, without limitation, those fireworks classified as "dangerous fireworks" in the State Fireworks Law, Health and Safety Code Section 12500 et seq.

9.36.020 Public fireworks display—City Council approval.

Public displays of fireworks may only be given when authorized by resolution of the city council, after recommendation of the fire chief, and when under the supervision of a licensed pyrotechnic operator.

9.36.030 Fireworks use—Special occasions.

- A. The city council may alter in any given year the dates and/or times for which a person may sell, use or discharge any safe and sane fireworks as set forth in section 9.36.040.
- B. The City Manager may, with the advice of the fire chief, review and approve or deny requests for the use of safe and sane fireworks on special occasions, including for ceremonial or religious events where such events occur outside the dates upon which safe and sane fireworks are permitted. The City Manager may impose terms and conditions upon the use of the fireworks with his/her approval.

The foregoing instrument is a correct copy of the original on file in this office.

9.36.040 Safe and sane fireworks permitted.

A. Such fireworks as are defined and classified as "safe and sane fireworks" in the State Fireworks Law, Health and Safety Code Section 12500 et seq. of the state of California may be sold and displayed as permitted by this chapter.

B. No person shall sell or offer to sell or expose for sale any of such safe and sane fireworks to any person under the age of eighteen years.

C. Nothing in this section shall be construed to prohibit the transfer without consideration of such safe and sane fireworks to persons under the age of eighteen years.

D. No person shall sell, use or discharge any safe and sane fireworks within the City of Folsom after midnight on July 4th through noon on June 28th of the following year.

E. A violation of Section 9.36.040(D) shall be a misdemeanor punishable as provided in state law.

9.36.050 Safe and sane fireworks-Prohibited locations.

A. It is unlawful to possess, use or discharge "safe and sane" fireworks, as defined in the State Fireworks Law, Health and Safety Code Section 12500 et seq., in the following areas:

1. The civic center complex to include each of these locations and the streets, driveways, walkways and parking lots between and among these locations:
 - a. Folsom City Lions Park (401 Stafford Street);
 - b. Folsom City Zoo and Sanctuary (403 Stafford Street);
 - c. Rodeo Park;
 - d. Folsom Public Library, Georgia Murray Building (411 Stafford Street);
 - e. Folsom Community Center (52 Natoma Street);
 - f. Folsom City Hall (50 Natoma Street);
 - g. Folsom Seniors and Arts Center (48 Natoma Street); and
 - h. Folsom Police Department (46 Natoma Street).
 - i. Stafford Street (back of sidewalk to back of sidewalk) from the intersection of Natoma Street to Rodeo Park.
2. Kemp Park
3. B.T. Collins Park
4. Lew Howard Park
5. Hinkle Creek Nature Area
6. Lembi Community Park – except parking lot
7. Willow Springs Reservoir
8. Livermore Community Park
9. Hazel McFarland Park
10. Phillip C. Cohn Park
11. Catlin Park
12. Nisenan Park
13. Folsom Kids Play Park
14. City bike trails
15. Private property that has been posted by the owner.

16. Any other city park or property as determined by the city manager where this prohibition is posted at each entrance to the park or property.

B. Notwithstanding any other provision of this chapter, the violation of this section shall be an infraction punishable by a fine not to exceed one hundred dollars.

9.36.060 Permits required.

It is unlawful for any person, firm or corporation to sell safe and sane fireworks within the city without having first applied for and received permits from the Fire and Finance Departments therefore, in addition to the required state license.

9.36.070 Permittee requirements.

No permit to sell safe and sane fireworks shall be issued to any person or business entity except nonprofit organizations or corporations, as defined in 26 USC 501(c) and/or the California Corporations Code, located within the City of Folsom and organized primarily for charitable, religious, educational, athletic, veteran, patriotic, welfare, civic betterment or similar purposes.

Each such non-profit organization or corporation shall have a principal meeting place within the Folsom City limits and shall have been organized and established in an area which is presently within the Folsom city limits for a minimum of one (1) year continuously preceding the filing of the application for the permit and shall have a bona fide membership of at least twenty (20) Folsom residents over the age of seventeen years.

A principal meeting place shall include, but not be limited to, a structure, playing field, geographic area or service population which resides in or is located within the Folsom city limits. A Folsom mailing address or post office box, in and of itself, does not meet the requirements of this definition.

9.36.080 Application requirements.

The following are requirements for the preliminary application for a permit to sell safe and sane fireworks in the city:

A. All preliminary applications for a permit shall be in writing to the fire chief on forms supplied by the city and shall be accompanied by the fee specified in the City of Folsom Master Fee Schedule for application to operate a firework stand.

B. Applications must be filed ninety days prior to the actual sale or display.

C. Applicants shall furnish such other data or information as may be required relating to the issuance of such fireworks permits.

D. Applications shall identify the name, organization form, address of the principal meeting place, names and physical address of officers, names and physical address of twenty resident members, total number of members, the purpose of the organization or corporation and the date it came into existence within the city.

E. Every application shall designate a minimum of one individual (21 years of age or older) for each stand to be operated by the organization as the fireworks stand safety officer.

F. False or deceptive statements made on the application shall disqualify the applying organization from current and future firework sales in the City of Folsom.

9.36.090 Permit issuance.

A. Except as otherwise provided in this chapter, the fire chief shall grant a permit to a nonprofit organization or corporation that has complied with the requirements of this chapter. For the purposes of this chapter, an organization or corporation granted such a permit is a licensed organization. The permit is issued to and valid only to that organization and is not transferable to any other organization or corporation. If the permit is not issued, notice shall be served on the applicant in writing with the reasons stated.

B. The fire chief shall collect fees as specified in the current City of Folsom Master Fee Schedule for the permitting and inspection of a fireworks stand from each permittee upon the issuance of a permit, which shall be used to defray the expense of administering the provisions of this chapter.

C. The final permit application shall set forth the proposed location of the fireworks stand subject to approval of the fire chief. A scaled or dimensioned site plan that is a true and accurate representation of the location shall be included with the application. No fireworks stands shall be permitted in a location which restricts or endangers the free flow of traffic on city streets or roadways

D. The applicant shall provide a copy of the certificate or evidence of insurance, the State Fire Marshal sales license, and any additional information as required by the fire chief prior to issuing the permit.

9.36.100 Contents of permit.

A. The permit shall include the name of the licensed organization, a description of the activity for which it is issued, the location for which it is issued, the date of issuance, the date of expiration, and any and all conditions upon which the permit has been issued. The permit shall be kept at the site during the activity for which the permit was issued.

B. The fire chief may at the time of issuance of the permit impose such conditions as are necessary to ensure compliance with this chapter, or other city ordinances, or state or federal laws, or are reasonably calculated to protect the public health, safety, and general welfare.

C. The permit shall include, as a minimum, the following conditions:

1. Prior to the sale of any fireworks, a certificate or evidence of insurance in a form approved by the city attorney showing public liability insurance coverage in the amount of \$1,000,000 must be delivered to the fire chief;

2. Prior to the sale of any fireworks, a license issued by the State Fire Marshal in accordance with the State Fireworks Law, Health and Safety Code Section 12500 et seq of the state of California shall be delivered to the fire chief.

9.36.110 Maximum allowable permits.

Not more than one permit for each 6,000 residents of the city or fraction thereof shall be issued during any one calendar year.

9.36.120 Selection of permittees

The issuance of permits shall be determined by the fire chief as follows:

A. All applicants meeting the requirements of Sections 9.36.060 and 9.36.070 shall be grouped into one of the following categories of organizations: educational

organizations, religious organizations, fraternal/service/veterans organizations, athletic, and arts/cultural/other organizations. Permits shall be distributed in the categories by utilizing the ratio of qualified applicants to the number of total authorized permits. A drawing shall be held and permits will be drawn for each category in turn.

B. After the authorized number of permits has been drawn, all qualified applicants shall be combined into one group; and one applicant shall be drawn as the first alternate and one applicant shall be drawn as the second alternate. The alternates shall be offered a permit if one of the original permittees cannot meet the requirements of this section or if a permittee voluntarily surrenders the permit.

9.36.130 Sales—Personnel.

A. Individuals designated as a fireworks stand safety officer shall be required to attend a fireworks stand operator's safety seminar and orientation session conducted by the Folsom Fire Department prior to issuance of the permit. The designated individual must attend the seminar each year they are designated as a fireworks stand safety officer regardless of whether or not they have previously attended such a seminar. Failure to attend this seminar may be cause to revoke the permit.

B. Those wholesale or retail vendors of safe and sane fireworks providing fireworks to organizations in the City of Folsom must participate in the firework safety seminar.

C. Each person participating in the sales of fireworks shall be 18 years of age or older and shall be required be knowledgeable fire safety and emergency procedures for fireworks stands as instructed by the fireworks stand safety officer.

9.36.140 Sales—Commissions prohibited.

No person shall be paid on a commission basis for selling or otherwise participating in the retail sale of fireworks.

9.36.150 Sales—Stand specifications.

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

A. Fireworks stands shall be located only on property zoned commercial (C-1, C-2 or C-3), industrial (M-1, M-2 or M-3), or on commercial or industrial designated areas within the SP zone, and where the operation of a stand will not create a fire hazard to surrounding properties.

B. No fireworks stand shall be located within 25 feet of any other building or within 100 feet of any gasoline station.

C. Fireworks stands may be erected without obtaining a building permit; however, all stands shall be constructed to reasonably insure the safety of attendants and patrons. The city building inspector and fire inspector shall inspect all firework stands for compliance with all applicable fire and electrical codes and installation requirements.

D. No stand shall have a floor area in excess of 750 square feet.

E. Each stand shall have at least 2 exits. Each stand in excess of 40 feet in length shall have at least 3 exits spaced approximately equal distance apart, provided however, that in no case shall the distance between exits exceed 20 feet.

F. Each stand shall be provided with two 2-1/2-gallon pressurized water type fire extinguishers, in good working order and easily accessible for use in case of fire.

G. All stands shall be subject to fire safety inspections by the city without notice at any time. Safety deficiencies will be required to be corrected immediately.

9.36.160 Sales—Safety requirements.

A. Permits issued pursuant to this chapter shall be subject to the following conditions:

1. Stands shall not be located closer than 600 feet apart, unless separated by a roadway 4 lanes wide or greater.

2. All weeds and combustible material shall be cleared from a 25-foot radius around the stand.

3. "NO SMOKING" signs shall be prominently displayed on all sides of the fireworks stand.

4. Signs shall be conspicuously posted that identify those locations within the City where the use or discharge of fireworks is prohibited. The signs shall be provided by the city fire marshal.

5. Each stand must have at least one individual designated as a fireworks safety officer in attendance and in charge thereof when the stand is being used for the sale, dispensing or storage of fireworks.

6. Stands shall be open no earlier than nine a.m. and no fireworks shall be sold after nine p.m. unless otherwise specified in the permit, the sale dates of operation of the stand shall be from noon on June 28th until nine p.m. on July 4th.

7. All unsold stock and accompanying litter shall be removed from the city within 48 hours of expiration of the permit.

8. Unless otherwise specified in the permit, the fireworks stand shall be removed from the temporary location by twelve noon on the twelfth day of July, and all accompanying litter shall be cleared from the location by said time and date.

9. No fuel powered generators or similar equipment shall be allowed within 50 feet of the stand.

10. No vehicles shall be parked or operated within 25 feet of the stand. When the stand is adjacent to a drive aisle, this distance may be reduced to no less than 10 feet when approved, substantial barriers are provided and "NO PARKING – FIRE LANE" signs are prominently posted.

B. The fire chief is authorized to modify any of the above permit conditions for any specific permit upon a finding that there are practical difficulties in the imposition of the condition, and a finding that modification of the conditions meets the intent and purpose of this chapter, and that such modification does not lessen health, life or fire safety standards or impair public health or welfare.

9.36.170 Enforcement.

A. This chapter shall be enforced pursuant to the provisions of chapters 1.08 through 1.10, inclusive, of the Folsom Municipal Code.

B. The fire chief or his/her designee shall enforce the provisions of this chapter.

9.36.180 Penalties.

A. A violation of this chapter shall be an administrative violation as defined in Section 1.08.020.

B. Each of the sanctions for administrative violations identified in Section 1.09.013 shall be available for enforcement of the provisions of this chapter. In addition to any other enforcement remedy authorized by Title 1, any organization may be disqualified from obtaining a permit for a period of up to 2 years.

C. Based upon the criteria for the imposition of administrative sanctions set forth in Section 1.09.014, a violation of this chapter shall be deemed a Level C violation, as that term is described in Section 1.09.012. The range of monetary sanctions available for a violation of this chapter shall be as set forth in Section 1.09.012(A) (3).

D. Nothing in this section prohibits the use of criminal penalties as provided in this chapter.

9.36.190 Enforcement procedures—Suspension and revocation—Notice of administrative violations.

A. The fire chief may immediately suspend or revoke any permit upon a determination that the licensed organization, its members, or any person selling or otherwise participating in the sale of fireworks by the licensed organization, has violated any of the provisions of this chapter and is creating an imminent threat of harm to person or property.

1. The fire chief shall provide a factual description of the activities that create the imminent threat of harm to person or property and shall deliver the information in a notice of administrative violation. The notice of administrative violation shall contain such other information as required by Section 1.09.024.

2. When a notice of administrative violation is served pursuant to this subsection, the licensee shall be entitled to an appeal hearing no later than 72 hours after service of the notice. The request for an appeal hearing and the procedures pursuant to which such an appeal is conducted shall otherwise be subject to the procedures set forth in Sections 1.09.030 through 1.09.048, inclusive, of the Folsom Municipal Code.

B. Except for violations that create an imminent threat of harm to person or property, prior to the suspension, revocation or denial of any license or permit, or the assessment of any fee, penalty or charge, or the commencement of any other enforcement action pursuant to this chapter, the fire chief or his/her designee shall follow the procedures set forth in Sections 1.09.020 through 1.09.048, inclusive, of the Folsom Municipal Code. The rights to judicial review set forth in Sections 1.09.050 through 1.09.059, inclusive, of the Folsom Municipal Code shall apply. A notice to correct shall not be required to commence the administrative hearing procedures set forth in chapters 1.08 through 1.10, inclusive, of the Folsom Municipal Code. Pursuant to Section 1.09.024(A), a notice of administrative violation shall be served in accordance with the provisions of Section 1.09.027.

9.36.200 Appeal.

A. There shall be no appeal of any enforcement action taken pursuant to this chapter to the city council.

B. Whenever the fire chief disapproves an application or refuses to grant a permit applied for, the applicant may appeal the decision in writing to the city council within ten calendar days of the action. Such appeal shall be accompanied by a nonrefundable fee of two hundred dollars to cover the administrative cost of the appeal.

C. As to those appeals allowed by subsection B of this section, the city council shall conduct a hearing for the purpose of determining whether the appeal should be granted not later than the next regularly scheduled meeting following thirty calendar days after the date of filing an appeal within the time and in the manner prescribed by this section. Written notice of the time, date and place of the hearing shall be served by the city clerk upon the applicant or permittee, not later than ten days preceding the date of the hearing. At the conclusion of the hearing, the city council shall either grant or deny the appeal, and shall adopt findings of fact and conclusions in support thereof. The written findings, including a copy thereof, shall be filed with the city clerk. The clerk shall serve such findings on the applicant or permittee. The decision of the city council shall become final upon the date of filing and service with respect to any appeals.

9.36.210 Fines related to dangerous fireworks.

Pursuant to Health and Safety Code section 12557, the following provisions shall apply to fines related to dangerous fireworks imposed pursuant to this chapter:

1. The City shall provide cost reimbursement to the State Fire Marshal pursuant to regulations adopted by the State Fire Marshal addressing the State Fire Marshal's cost for the transportation and disposal of dangerous fireworks seized by the City, which costs will be part of any administrative fine imposed.

2. Imposition of fines related to dangerous fireworks under this chapter shall be limited to persons who possess, or the seizure of, twenty-five pounds or less of such dangerous fireworks.

3. Fines collected pursuant to this chapter related to dangerous fireworks shall not be subject to Health and Safety Codes section 12706, which section provides that certain fines collected by a court of this state be deposited with, and disbursed by, the county treasurer.

SECTION 3 SEVERABILITY

If any section, subsection, clause, phrase, or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court or 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, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases or portions be declared invalid or unconstitutional.

SECTION 4 EFFECTIVE DATE

This ordinance shall become effective thirty (30) days from and after its passage and adoption, provided it is published in full or in summary within (20) days after its adoption in a newspaper of general circulation in the City of Folsom.

This ordinance was introduced and the title thereof read at the regular meeting of the City Council on November 13, 2007 and the second reading occurred at the regular meeting of the City Council on November 27, 2007.

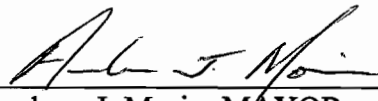
On a motion by Council Member Miklos, seconded by Council Member Starsky, the foregoing ordinance was passed and adopted by the City Council of the City of Folsom, State of California, this 27th day of November, 2007 by the following vote, to wit:

AYES: Council Member(s): King, Miklos, Starsky, Morin

NOES: Council Member(s): None

ABSTAIN: Council Member(s): None

ABSENT: Council Member(s): Howell



Andrew J. Morin, MAYOR

ATTEST:



Tina McVay, DEPUTY CITY CLERK

Effective: December 27, 2007