MEMORANDUM

TO: CITY COUNCIL

FROM: JAMES A. BERGMAN, CITY MANAGER

BY: STEPHEN C. LIEBERMAN, FIRE CHIEF

SUBJECT: CONSIDERATION OF AN ORDINANCE AMENDING CHAPTER 8.08 OF TITLE 8 OF THE ARROYO GRANDE MUNICIPAL CODE REGARDING FIREWORKS

DATE: APRIL 9, 2019

SUMMARY OF ACTION:
The proposed ordinance would amend the Arroyo Grande Municipal Code with regard to the discharge and possibly the sale of “safe and sane” fireworks.

IMPACT ON FINANCIAL AND PERSONNEL RESOURCES:
No funding impacts to this staff report.

RECOMMENDATION:
It is recommended the City Council: 1) introduce an Ordinance amending the Arroyo Grande Municipal Code Chapter 8.08 relating to the discharge of safe and sane fireworks; and 2) provide direction to staff regarding a social host liability for fireworks ordinance.

BACKGROUND:
At the February 12, 2019 meeting, the City Council directed staff to revise the Arroyo Grande Municipal Code (“AGMC”) to only allow the discharge of “safe and sane” fireworks on July 4th of each year. The City Council also agreed it would consider including a modification to the City’s fireworks ordinance related to the sale of “safe and sane” fireworks. In addition, the Council directed staff to engage in a robust public education campaign with an emphasis on the proper disposal of safe and sane fireworks and the fines and prosecution associated with violating the City’s fireworks ordinance. Lastly, the Council directed staff to explore a social host liability for fireworks ordinance.

ANALYSIS OF ISSUES:
Discharge of “Safe and Sane Fireworks”
Municipal Code Section 8.08.100 currently states, “[D]ischarge of ‘safe and sane’ fireworks may only occur from the 3rd day of July through midnight of July 5th and shall be in legally
permitted locations. No person under eighteen (18) years of age may possess or discharge safe and sane fireworks except when under the direct supervision of a person twenty-one (21) years of age or older.” When the Five Cities Fire Authority (FCFA) was formed in 2010 and assumed management of the annual fireworks concessions program, Arroyo Grande and Grover Beach modified their municipal codes in an effort to allow for more consistent program management. Prior to the code change, the City allowed fireworks to be discharged only on July 4\textsuperscript{th} from 6 until 10 p.m.

The proposed Ordinance reflects the Council's direction on February 12, 2019 to restrict the discharge of "safe and sane fireworks" to July 4\textsuperscript{th} only.

Sale of “Safe and Sane” Fireworks
Pursuant to AGMC Section 8.08.070.A the sale of “safe and sane” fireworks is currently allowed between noon on June 28\textsuperscript{th} through July 5\textsuperscript{th} at noon. Sales during the allowable timeframe may only be conducted between 9 a.m. and 9 p.m. each day. Prior to the revisions to the code that occurred in 2010, the allowable timeframe for the sale of “safe and sane” fireworks was limited to 9 a.m. on July 1\textsuperscript{st} through 9 p.m. on July 4\textsuperscript{th}.

Should the City Council wish to revise the current provisions of the AGMC regarding sales, a section could be inserted into the proposed ordinance setting forth revised regulations regarding sales. The section would read as follows:

**SECTION 2.** Section 8.08.070.A of Chapter 8.08 of Title 8 of the Arroyo Grande Municipal Code is hereby amended to read as follows:

8.08.070 Sales.

Fireworks stands shall comply with the following requirements related to sales:

A. Fireworks shall not be sold before _____ on the _______ of _________ and such sales shall cease at _____ on the _______ day of _________. Sales during this time period will be limited to nine a.m. to nine p.m. each day. Any permittee failing to observe these hours designated for sale may have their permit revoked or be ineligible for a permit in subsequent years.

Should the City Council approve revisions to the AGMC, the administrative impacts to the Five Cities Fire Authority will be limited in scope. Application forms and supporting documents have been modified to disclose potential changes to the “Arroyo Grande Program,” and FCFA staff will schedule booth inspections according to the differing dates of sale.
Social Host Liability for Fireworks Ordinance
The City Council also requested that staff provide information pertaining to social host liability for fireworks ordinances that have been adopted by several cities to discourage the use of illegal fireworks. As previously shared by the Police Chief, it is extremely difficult for a police officer to issue a citation for the discharge of illegal fireworks as offenders use lookouts to watch for fire or police vehicles, or discharge the fireworks from a backyard. A police officer must witness an individual “in the act” of discharging or possessing illegal fireworks in order to issue a misdemeanor citation. The social host liability for fireworks ordinance allows for the citing of homeowners, tenants, or “persons responsible for the property” where illegal fireworks violations occur. This type of ordinance acknowledges that the owner or tenant of the premises is often in the best position to control activity taking place on the property, and knows or should know of the possession, storage, sale, handling and use of illegal fireworks on their property. Enforcement of the ordinance could be initiated by an officer’s observations or a neighborhood disturbance complaint. The City may choose to adopt an ordinance imposing civil liability on hosts for fireworks discharged on their premises. The City would also need to adopt an administrative civil penalty ordinance in order to impose civil fines ($1,000 is common) in accordance with State laws. Some communities also include a “cost recovery” component of the ordinance in order to recover the costs of a response for an emergency medical incident or fire related to the discharge of illegal fireworks.

Should the Council provide direction to develop a social host liability ordinance, staff would return with the ordinance for consideration at a later date.

ALTERNATIVES:
The following alternatives are provided for potential Council consideration:

1. Introduce the Ordinance amending Chapter 8.08 related to the discharge of “safe and sane” fireworks, and provide direction regarding a social host liability for fireworks ordinance;
2. Introduce the Ordinance amending Chapter 8.08 related to the discharge of “safe and sane” fireworks, with the additional modification to the rules governing the sale of “safe and sane” fireworks, and provide direction regarding a social host liability for fireworks ordinance; or
3. Provide other direction to staff.

ADVANTAGES:
Limiting the number of days upon which “safe and sane” fireworks may be discharged may reduce the negative effects associated with fireworks such as fire danger, risk of injury and other annoyances associated with fireworks.
DISADVANTAGES:
Limiting the number of days upon which “safe and sane” fireworks may be discharged may decrease the sales of fireworks, which could impact the local nonprofits that depend on those sales for funding.

ENVIRONMENTAL REVIEW:
No environmental review is required for this item.

PUBLIC NOTIFICATION AND COMMENTS:
The Agenda was posted at City Hall and on the City’s website in accordance with Government Code Section 54954.2.

ATTACHMENTS:

1. Current Municipal Code Chapter 8.08 (Fireworks)
2. Social Hosting Liability Ordinance – City of Desert Hot Springs
ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARROYO GRANDE AMENDING CHAPTER 8.08 OF THE ARROYO GRANDE MUNICIPAL CODE RELATING TO THE DISCHARGE OF SAFE AND SANE FIREWORKS

WHEREAS, Arroyo Grande Municipal Code Chapter 8.08 of Title 8 regulates the sale and use of “safe and sane” fireworks and establishes a process for the issuance of the necessary permits; and

WHEREAS, the City Council finds it is in the best interest of the City and its residents to amend the fireworks ordinance in order to reduce the number of days "safe and sane fireworks" may be discharged.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ARROYO GRANDE DOES ORDAIN AS FOLLOWS:

SECTION 1. The above recitals and findings are true and correct and are incorporated herein by this reference.

SECTION 2. Section 8.08.100 of Chapter 8.08 of Title 8 of the Arroyo Grande Municipal Code is hereby amended in its entirety to read as follows:

8.08.100 Public discharge.

Discharge of "safe and sane fireworks" may only occur on July 4th in legally permitted locations. No person under eighteen (18) years of age may possess or discharge "safe and sane fireworks" except when under the direct supervision of a person twenty-one (21) years of age or older.

SECTION 3. This Ordinance is not a “project” under the California Environmental Quality Act (CEQA) pursuant to CEQA Guideline Section 15378(b)(5), which applies to organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

SECTION 4. A summary of this Ordinance shall be published in a newspaper published and circulated in the City of Arroyo Grande at least five (5) days prior to the City Council meeting at which the proposed Ordinance is to be adopted. A certified copy of the full text of the proposed Ordinance shall be posted in the office of the City Clerk. Within fifteen (15) days after adoption of the Ordinance, the summary with the names of those City Council members voting for and against the Ordinance shall be published again, and the City Clerk shall post a certified copy of the full text of such adopted Ordinance. This Ordinance shall take effect and be in full force and effect thirty (30) days after its passage.
SECTION 5. This Ordinance shall take effect and be in full force and effect thirty (30) days after its passage.

SECTION 6. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a 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 passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

On motion by Council Member ______, seconded by Council Member _______, and by the following roll call vote to wit:

AYES:
NOES:
ABSENT:

the foregoing Ordinance was adopted this _____ day of ________, 2019.
ORDINANCE NO.

CAREN RAY RUSSOM, MAYOR

ATTEST:

KELLY WETMORE, CITY CLERK

APPROVED AS TO CONTENT:

JAMES A. BERGMAN, CITY MANAGER

APPROVED AS TO FORM:

HEATHER K. WHITHAM, CITY ATTORNEY
Chapter 8.08 - FIREWORKS

Sections:

8.08.010 - Title 19 of the California Code of Regulations.

Storage, use, retail sales and handling of fireworks shall be in accordance with Title 19 of the California Code of Regulations and this chapter.

(Ord. 588 § 2 (part), 2007)

8.08.020 - Amendment to Fire Code.

California Fire Code Chapter 56 is amended to add the following provisions regarding the sale and use of fireworks, Class C ("Safe and Sane").

(Ord. 594 § 7, 2007: Ord. 588 § 2 (part), 2007)

(Ord. No. 657, § 12, 10-8-2013)

8.08.030 - Sale.

No person shall sell or offer for sale any fireworks within the city except in a temporary stand or structure used specifically for the display and sale of fireworks operated and maintained by a recognized charitable, civic or patriotic group or organization with the permit of the director of building and fire.

(Ord. 588 § 2 (part), 2007)

8.08.040 - Permits—Applications.

All applicants for a permit to sell fireworks shall:

A. Submit a written eligibility application to sell fireworks on a form provided by the city.

B. Applications for eligibility shall be accepted by the department of building and fire between March 1st and April 15th and shall state the name of the applicant, the name of the organization, its address, the president or head of the organization, and a complete account of the proposed disposition of all gross receipts of fireworks to be sold at the proposed stand. Failure of such account to show that at least fifty (50) percent of the net profits from the sale of fireworks will be expended for the benefit of the city or its residents shall cause such application to be denied.

C. No organization may receive more than one permit to sell fireworks sale during any one calendar year. One permit may be issued to two or more qualifying applicants as a joint venture.

D. The maximum number of permits shall be based on one permit per each three thousand (3,000) residents of the city or fraction thereof, based on the official city census. Should the number of applications exceed the number of available permits, an initial drawing shall be conducted by the city clerk and all applicants shall be placed on an eligibility list in the order drawn. Permits shall be issued to applicants in the order of the list and the eligibility list shall be maintained by the department of building and fire on an ongoing basis and made available to the public. In any year succeeding the initial drawing, permits shall be issued to applicants in order of the list beginning with the first applicant after the last applicant issued a permit the prior year. Applicants filing an application that are not on the existing list will be placed at the end of the list at the time the application is filed.
E. On an annual basis, eligible applicants shall be those on the list equal to the number of available permits beginning at the start of the list and working downward. If an applicant withdraws their application, the next succeeding applicant on the list shall be deemed eligible. Eligible applicants shall file a fireworks stand permit application with the department of building and fire between March 1st and April 15th of the year for which the permit is requested and shall state the name of the applicant, the name of the organization, its address, president or head of the organization, the location of the proposed stand, the names of the persons who will actually staff the stand on behalf of the applicant and a complete account of the proposed disposition of all gross receipts of fireworks to be sold at the proposed stand for that year.

F. Each applicant must include a "letter of agreement" signed by the property owner or their authorized agent permitting the organization to erect a fireworks stand on the owner's property. Failure to do so shall cause such application to be denied.

G. Applicants that are issued a permit are required to file with the city a "fireworks stand financial statement" form, which is due by October 31st of the calendar year in which the permit is issued. On this form each applicant must certify that at least fifty (50) percent of the prior year's net profits from the sale of fireworks were expended for the benefit of the city and its residents. Failure to so certify prior to submitting a fireworks stand permit application shall cause such renewal application to be denied.

H. If any applications from eligible applicants are either denied or not received by April 15th, the next applicant(s) on the list shall be deemed eligible. The city shall attempt to provide notice to the applicant; however, it shall be the absolute duty of the applicant to stay apprised of its position on the list. Such eligible applicants shall file an application for a permit with the department of building and fire no later than May 15th.

I. Each applicant organization must have its principal general membership and/or governing board meeting place within the corporate limits of the city of Arroyo Grande and must have been established within the city for a minimum of two years continuously preceding the filing of the application for permit and must have a bona fide membership of at least fifteen (15) members.

J. Insurance. The city council shall, by resolution, establish appropriate insurance requirements and conditions related to the sale of fireworks.

K. No permit shall be issued unless the applicant organization represents to the city that all aspects of the sale of fireworks, including the application for all necessary permits, will be conducted by a member of the applicant organization. All application fees shall be paid by the applicant organization. Such fees shall not be paid by any other affiliated organization, including a seller, distributor, or vendor of fireworks. Applicants will neither hire nor use independent contractors or other persons who are not members of the organization in connection with any aspect of the sale of fireworks. Only members of the applicant organization shall staff the fireworks stand, except spouses, parents and children or members who are eighteen (18) years of age or older, may also staff such stand, subject to the provisions of this subsection. All members of the organization must have a valid identification, which verifies that such person is a valid member of the organization, on their person or inside the fireworks stand. Organizational membership records for fireworks stand workers should also be retained in the stand for reference.

L. Permit Fees and Conditions. The city council shall, by resolution, establish appropriate fees and conditions related to the sale of fireworks.

(Ord. 588 § 2 (part), 2007)

8.08.050 - Meeting.

There shall be a meeting the first Monday of June at seven-thirty p.m. of every year. This meeting is mandatory for the representatives of the permittee organizations. Safety practices, legal issues and
explanation of the laws, rules and regulations will be discussed. At this meeting, the applications, certificates of insurance and letters of permission will be submitted and the permits issued. Wholesale distributors, or their bona fide agents, shall also be present at this meeting.

(Ord. 588 § 2 (part), 2007)

8.08.060 - Fireworks stands—Construction and placement.

Retail sales of fireworks shall be made only from temporary fireworks stands. Sale of fireworks from any other building or structure is prohibited. Temporary stands will be subject to the following provisions:

A. No fireworks stands shall be located within fifty (50) feet of any other building, within one hundred (100) feet of a gasoline or other type of flammable fuel pump or storage area, within five hundred (500) feet of another fireworks stand or less than one-eighth of a mile from the city's boundary with another jurisdiction.

B. All fireworks stands shall be erected or constructed on commercial or industrial-zoned property. No fireworks stands will be constructed or erected on residential property.

C. Fireworks stands need not comply with the building code of the city. Stands requiring electrical service shall be required to obtain an electrical permit from the building and life safety division. Stands shall be constructed or erected in a manner that will reasonably ensure the safety of attendants and patrons. The stands shall be subject to inspection by representatives of the department of building and fire at any time.

D. Each stand shall have a minimum of two marked exits or as otherwise directed by the director of building and fire.

E. Each stand shall have a minimum of two fire extinguishers of a type designated by the director of building and fire.

(Ord. 588 § 2 (part), 2007)

8.08.070 - Sales.

Fireworks stands shall comply with the following requirements related to sales:

A. Fireworks shall not be sold before noon on the twenty-eighth of June and such sales shall cease at noon on the fifth day of July. Sales during this time period will be limited to nine a.m. to nine p.m. each day. Any permittee failing to observe these hours designated for sale may have their permit revoked or be ineligible for a permit in subsequent years.

B. Sales to individuals under the age of eighteen (18) is prohibited. The permittee shall require that each person who purchases fireworks produce identification proving that such person is eighteen (18) years of age or older.

C. Each person who purchases fireworks must be provided with handouts that contain information related to where “safe and sane fireworks” can legally be discharged and the associated hazards. The contents of this document will be reviewed and approved by the director of building and fire.

(Ord. 588 § 2 (part), 2007)

8.08.080 - Fireworks stands—General requirements.
A. Each stand shall provide temporary sanitary facilities or obtain permission to use either private or public facilities during the hours of operation. Proof of sanitation facilities shall be documented in written form.

B. All weeds, trash, and debris shall be cleared for a distance of at least twenty-five (25) feet surrounding the fireworks stand.

C. Doors of the stand shall not be locked on the outside of the door while anyone is inside the stand. The door may be latched in such a manner that will not cause any undue delay to anyone exiting in an emergency.

D. An aisle or passageway in the fireworks stand will be kept clear and unobstructed so as not to impede anyone leaving the stand in an emergency.

E. The use of electrical or fuel-operated heaters in the fireworks stand is prohibited.

F. The temporary fireworks stand will be dismantled and removed from its location not later than the Sunday of the weekend following the 5th of July of each year. It shall be the responsibility of the permittee to remove the stand. If the removal of the stand is not accomplished by this deadline, the city of Arroyo Grande may remove and store it at permittees’ cost and expense until it is redeemed by the payment of appropriate fees and interest thereon. In addition, the permittee failing to meet this deadline will be ineligible for a permit the following year.

G. Each stand shall have adequate temporary parking acceptable to the director of the department of building and fire.

(Ord. 588 § 2 (part), 2007)

8.08.090 - Delivery.

A. The wholesale distributors will make all deliveries and end of sale season pick-ups. Excess storage of fireworks will not be permitted.

B. Reserved.

(Ord. 588 § 2 (part), 2007)

(Ord. No. 627, § 13, 12-14-2010)

8.08.100 - Public discharge.

Discharge of "safe and sane fireworks" may only occur from the 3rd of July through midnight of July 5th and shall be in legally permitted locations. No person under eighteen (18) years of age may possess or discharge "safe and sane fireworks" except when under the direct supervision of a person twenty-one (21) years of age or older.

(Ord. 588 § 2 (part), 2007)

(Ord. No. 627, § 13, 12-14-2010)

8.08.110 - Violations.

Persons violating any provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed one thousand ($1,000) dollars or by imprisonment in the county jail for a period not to exceed six months or by both such fine and
imprisonment. Any violations of these provisions shall constitute a separate offense for each and every
day during which such violation is committed or continued.

(Ord. 588 § 2 (part), 2007)
Desert Hot Springs

Administrative Citation and Social Host
REPORT TO THE CITY COUNCIL

DATE: June 7, 2016

TITLE: Ordinance to Impose Fines and Establish Task Force to Abate Discharge of Illegal Fireworks in City Limits

Sponsored by: Council Member, Russell Betts
Mayor Pro Tem, Joe McKee

RECOMMENDATION

1) Introduce for First Reading, an Ordinance of the City Council amending Section 8.28.150 "Administrative Citation" and Section 8.28.160 "Administrative Fine" and adding Section 8.28.180 "Deputization" to Chapter 8.28 "Fireworks" of the Desert Hot Springs Municipal Code; or

2) Take whatever action the City Council deems appropriate.

DISCUSSION

Illegal fireworks in the city have made the Independence Day Holiday a bad experience for city residents. Residents complain that a barrage of illegal fireworks in the weeks leading up and Independence Day itself presents a danger to persons and property and has become an unbearably stressful time for family pets. A ban on illegal fireworks in the city hasn’t stopped scofflaws from setting off illegal pyrotechnics. In recent years there has been a significant escalation in the amount of illegal fireworks being discharged in the city resulting in growing frustration of city residents.

This proposal before asks the Council to take steps to significantly reduce the use of illegal fireworks in the city by making it easier to punish offenders, increasing fines for the discharge of illegal fireworks and establishing a task force to specifically seek out, catch and cite those people setting off illegal fireworks within the city limits.

This measure (1) modifies the existing city municipal code to provide for fines of $1,000.00 for a first offence, (2) provides for the deputized city officials capable of issuing administrative fines and (3) creates a task force operating for a set duration with the singular focus of catching those individuals setting off illegal fireworks. The measure keeps in place the legal status for fireworks identified by the State of California as "Safe and Sane" within the city limits.

Specific measure components:

1. Imposes a $1,000.00 fine for a first offense issued on sight by deputized city officials operating as a task force.

2. Creates a task force consisting of two deputized officials and/or city employees on duty during night-time hours to actively monitor the city and seek out violators in the act of setting off illegal fireworks.

3. Deputizes city employees to provide the ability for citations to be issued and that will be enforceable even if a police officer or fire department official is not available at the time the citation is issued, much the same as is the present situation with code enforcement efforts.

4. Ability to issue fines against homeowner separately and additionally to fines issued to individuals caught setting off illegal fireworks.
5. Task force officers are to be clearly identified as working in an official city capacity.

6. The task to operate for a total of 12 days from June 23 to ending July 4, 2016, operating each day for three (3) hours per day between the hours of 8:00 p.m. to 11:00 p.m. and giving discretion to the city manager to adjust times if he determines doing so will increase the effectiveness of the task force.

7. The council to establish a total budget of $2,500.00 to be used to pay the wages of task force members and to cover associated support costs.

8. Fines collected will first be used to offset the cost of the program with revenue from fines, if any, to be deposited to the General Fund.

9. Deputized task force members will be provided training as required as needed.

FISCAL IMPACT
Initial cost of $2,500.00, offset by the amount of fines collected, if any. Depending on effectiveness of the task force, it is possible excess revenue through fines could be realized and used to supplement the City General Fund.

EXHIBIT(S)
1) Draft Ordinance.
ORDINANCE NO. ______


WHEREAS, the City of Desert Hot Springs Municipal Code (“DHSMC”) states that “safe and sane” fireworks, as defined by Section 12529 of the California Health and Safety Code, may be sold and discharged within the City of Desert Hot Springs (“City”) pursuant to the provisions of Chapter 8.28 of the DHSMC; and

WHEREAS, pursuant to DHSMC Section 8.28.010(E), it is unlawful to discharge or cause to be discharged within City limits any fireworks not designated by the state as “safe and sane” fireworks, in violation of any provision of Chapter 8.28 of the DHSMC; and

WHEREAS, currently Section 8.28.160 “Administrative Fine”, Chapter 8.28 “Fireworks,” of the DHSMC establishes that the City can impose administrative fines for the discharge of any fireworks not designated as “safe and sane” within the City in the amount of $100 for the first offense, $250 for the second offense within 12 months of the first offense, and $500 for the third offense within 12 months of the first offense; and

WHEREAS, in order to further deter the discharge of any fireworks not designated as “safe and sane” within the City, this Ordinance shall amend DHSMC Section 8.28.160 “Administrative Fines” to increase the amount of the fines imposed for discharging or causing to be discharged within City limits any non “safe and sane” fireworks, with the first violation to be $1,000, and $1,000 for every subsequent offense; and

WHEREAS, this Ordinance shall amend DHSMC Section 8.28.150(A) “Administrative citation” to provide that where any violation of Chapter 8.28 “Fireworks” occurs on property, the owners, lessees, or persons in lawful possession of the property in which the offense occurred can be issued an administrative fine, in addition to any other person issued an administrative fine for violation of any provision of Chapter 8.28; and

WHEREAS, this Ordinance shall add Section 8.28.180 “Deputization” to Chapter 8.28 “Fireworks”, and shall provide the City Manager or his or her designee with the power to deputize persons, including employees, to enforce Chapter 8.28, pursuant to all applicable laws; and

WHEREAS, the City Council finds that the passage of this Ordinance is in the best interest of the public health, safety, and welfare.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Desert Hot Springs as follows:

Section 1. RECITALS

The above recitals are true and correct and are incorporated herein by this reference.
Section 2. AMENDMENT OF CHAPTER 8.28 "FIREWORKS"

Chapter 8.28 "Fireworks" shall be amended to read as follows:

Chapter 8.28 Fireworks

8.28.010 Sale and discharge of safe and sane fireworks permitted exclusively.

A. "Safe and sane" fireworks as defined by Section 12529 of the California Health and Safety Code may be sold and discharged within the City pursuant to the provisions of this chapter.

B. It is unlawful to offer for sale or to sell, or to discharge or cause to be discharged, within City limits any fireworks not designated by the state as "safe and sane" fireworks.

C. It is unlawful to offer for sale or to sell within City limits any "safe and sane" fireworks without first obtaining a validly issued permit as required by this chapter.

D. It is unlawful to offer for sale or to sell within City limits any "safe and sane" fireworks in violation of any provision of this chapter.

E. It is unlawful to discharge or cause to be discharged within City limits any "safe and sane" fireworks in violation of any provision of this chapter. (Prior code § 101.01)

8.28.020 Definitions.

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

"Based in Desert Hot Springs" means based and primarily operating within the jurisdictional limits or boundaries of the City of Desert Hot Springs and comprised of and for the benefit of the residents of the City. However, an organization which otherwise qualifies for a permit, has been active in providing substantial services within the City limits for a period of not less than five years, but is not based in the City, is eligible to apply.

"Church" means a state-certified, tax-exempt religious organization which has a permanent meeting place within the City limits.

"Civic/services organization" means a state-certified nonprofit organization organized primarily for charitable purposes that has as its principal and permanent meeting place a location within the City limits, maintains a bona fide membership of at least 20 members, and has been organized, and meeting within the City limits for a minimum of five years continuously preceding the filing of the application for the permits issued pursuant to this chapter.

"Fire Chief" means to include the authorized representative of the City's Fire Chief.

"Lottery" means random drawing from a pool of qualified youth groups, churches or civic/service organizations for selection by the City Council for firework permits issued pursuant to this chapter.
"Person" means any natural person and/or any organization or joint venture, or a member thereof.

"Safe and sane fireworks" mean those fireworks defined as "safe and sane" by Section 12529 of the California Health and Safety Code and any other applicable state law.

"School-based youth group" means a youth group comprised exclusively of individual members whose maximum age does not exceed 18 years of age and who regularly attend a private or public school located within the City limits.

"Youth group" means a private organization based in Desert Hot Springs and organized for the purpose of participating in organized sports or civic activities consisting of at least 20 individual members whose maximum age does not exceed 18 years of age. (Prior code § 101.02)

8.28.030 Permits required to sell safe and sane fireworks.

No person shall offer for sale or sell at retail any safe and sane fireworks in the City without having first applied for and received the following permits:

A. Permits Required.

1. Fireworks Program Permit. No person shall offer for sale or sell at retail any safe and sane fireworks in the City without having first applied for and received a fireworks program permit issued by the City's Fire Department.

2. Fireworks Safety Permit. No person shall offer for sale or sell at retail any safe and sane fireworks in the City without having first applied for and received a fireworks safety permit issued by the City's Fire Department.

3. No permit shall be issued to any organization not qualified under the provisions of this chapter.

B. Permit Fees.

1. The cost of the fireworks program permit fee shall be established by resolution of the City Council and shall be no less than $500 per permit. Proceeds of said fee shall be used to defray the City's inspection, enforcement, public education and clean up costs for the fireworks program.

2. The cost of the fireworks safety permit fee shall be no less than $100, as established by resolution of the City Council. Proceeds of said fee shall be used to defray the City's costs for compliance with applicable laws and regulations pertaining to the sale and storage of fireworks.

3. In the case of a joint venture, as permitted under Section 8.28.040(E), only one fireworks program permit and/or one fireworks safety permit fee shall be required to be paid.

C. Zoning Restrictions. Each fireworks stand must be on private property located in a commercial or industrial zone and may include vacant lots or otherwise unimproved real property.
D. Permit Application Process.

1. An application for a fireworks program permit and an application for a fireworks safety permit (collectively, “fireworks permits”) shall be submitted together, on forms provided by the City’s Fire Department.

2. Applications for fireworks permits shall include a detailed and specific description of the operation of and the location of the proposed site for a fireworks stand and shall identify whether the proposed site is to be located on improved or unimproved private property. The Fire Marshal or designee shall have the sole discretion to approve the proposed site for a fireworks stand in accordance with applicable safety requirements and the requirements for a fireworks stand set forth in this chapter. The Fire Marshal or designee shall have the sole discretion to impose mitigation measures on an applicant based on site access, dust control, or any other fire or life safety considerations.

3. Applicants for fireworks permits that propose a site for a fireworks stand on unimproved private property shall comply with Desert Hot Springs Municipal Code Chapter 15.84, titled “Control of (PM10) Fugitive Dust Emissions” and any other applicable City regulations, by submitting to the City a PM10 plan for fugitive dust mitigation measures and by submitting to the City the applicable administrative review fees for said plan. Applicants for fireworks permits shall submit a City-approved PM10 plan for fugitive dust mitigation measures to the City’s Fire Department, together with the application for fireworks permits.

4. Applications for fireworks permits shall be accompanied by the following:
   
   a. A nonrefundable application fee of $100 which shall be used to defray the administrative costs of processing the permit application;
   
   b. A City-approved PM10 plan for fugitive dust mitigation measures if the proposed site for a fireworks stand is to be located on unimproved private property;
   
   c. Payment, in full, of the fireworks program permit fee and the fireworks safety permit fee;
   
   d. Written permission of the owner of record and lessee, if applicable, where the stand is to be located which provides the owner’s and lessee’s consent to the construction and operation of a fireworks stand at said location;
   
   e. Written assurance that, if the fireworks permits are issued to applicant, applicant shall, at the time of receipt of the permits, deliver to the City’s Fire Department, $1,000,000 public liability and $1,000,000 property damage insurance certificates designating the City as an additional insured there under, and a certified copy of the requisite license from the State Fire Marshal;
   
   f. Bylaws and other written evidence of the organization’s tax exempt status;
g. A cash deposit, certificate of deposit or a surety bond made payable to the City in the amount of $150 to assure compliance with the provisions of this chapter. Such deposit, certificate, or bond shall be refundable immediately to those applicants who are denied issuance of fireworks permits. Deposits, certificates, or bonds shall be refunded to applicants who are issued fireworks permits upon compliance with the provisions and requirements of this chapter, including, but not limited to, the removal of the stand and the cleaning up of the site. In the event the permitted applicant/organization does not so comply or remove the stand or clean up the site to the Fire Marshal's or designee's reasonable satisfaction, the City may remove the stand and/or clean the site, or cause the same to be done by other persons, and the reasonable cost thereof shall be a charge against the permitted applicant/organization and its surety and the deposit, certificate or bond.

5. Applications for fireworks permits must be submitted between the 30th day of March and the sixth day of April of each year, except that for the year 2009, applications must be submitted no later than June 10, 2009.

6. Applications for fireworks permits shall be reviewed for compliance with this chapter by a committee consisting of one representative from the Fire Department, one representative from the City's Finance Department and one representative from the City Manager's Office ("Fireworks Committee"). All applications for the fireworks permits approved by the Fireworks Committee shall be forwarded to the City Council for consideration and approval by resolution, together with the Fireworks Committee's report of its findings and recommendations.

7. Each calendar year, the City Council may issue up to four fireworks permits.

8. Notice of Grant or Denial. Applicants for fireworks permits shall be notified of the acceptance or rejection of the applications for said permits by the City's Fire Department within ten days of the City Council's decision on the applications, but no later than the second regular City Council meeting scheduled in the month of May.

9. Refund of Fees. Any applicant whose application was rejected by the City shall be entitled to a full refund of the fireworks program permit and the fireworks safety permit fees.

10. Unclaimed Permits. In the event that any fireworks permits issued by the City Council go unclaimed, the Fire Chief may randomly select from the pool of the applications for fireworks permits that were submitted to but not approved by the City Council and may issue fireworks permits to the randomly selected organization(s) specified in subsection (D)(7) of this section.

E. Firework permits are not transferable.

F. Only one set of fireworks permits shall be issued per organization IRS identification number, even in the case of a joint venture as permitted by Section 8.28.040(E). The organization providing the IRS identification number shall be primarily responsible to the City for any breach of law or act of negligence. The other organization in the joint venture is not, because of this provision, relieved of any liability to the City.
G. The cash deposit, certificate of deposit or surety bond made payable to the City in the amount of $150 shall be refunded to the permittee pursuant to subsection (D)(4)(g) of this section. (Prior code § 101.03)

8.28.040 Organizations qualified for receipt of fireworks permits.

A. An organization applying for fireworks permits shall represent the undivided entirety or base group and shall not be permitted to separate into an aggregation of subgroups or clubs affiliated with the parent organization. The entire individual group, club or organization associated with an institution or organization shall be considered as one single applicant. The intent and purpose for treating all organizations as a single entity is to ensure that the selection process is equitable and that no one organization with multiple subgroups will have an unfair advantage over other single purpose organizations. Notwithstanding the foregoing, subgroups of a single entity may be eligible for a permit in cases where there are available unused permits.

B. Where such organization's principal purpose is the advancement of youth's interests such as sports organizations, only bona fide, currently registered youth members of such organization shall be counted as "members" for the purposes of this section.

C. No less than 90 percent of the proceeds derived from the sale of fireworks in the City by the organization shall be utilized for the direct advancement of charitable, religious, youth or civic purposes of such organization.

D. An organization shall be entitled to operate only one fireworks stand during any one calendar year.

E. Fireworks permits may be issued to two or more qualifying applicants as a joint venture. Each of the members of the joint venture must provide the insurance certificate required by Section 8.28.030(D)(4)(e). The joint venture shall be required to pay only one application fee (Section 8.28.030(D)(4)(a)), one form of security deposit (Section 8.28.030(D)(4)(g)), one fireworks program permit fee (Section 8.28.030(B)(1)), and one fireworks safety permit fee (Section 8.28.030(B)(2)). The joint venture may file one PM10 plan, if such a plan is required under Section 8.28.030(D)(3). Except as specifically provided in this chapter, both members of the joint venture must separately qualify and separately satisfy the provisions of this chapter. (Prior code § 101.04)

8.28.050 Mandatory attendance at pre-sale meeting and distribution of educational materials.

A. Prior to the set up of fireworks stands and the sale and distribution of safe and sane fireworks in the City, the City's Fire Department shall schedule one mandatory meeting which shall be attended by an authorized representative of each participating distributor (or potential distributor) of safe and sane fireworks, two authorized representatives of each participating organization to which fireworks permits are issued, and an authorized representative of the City's Fire Department.

B. At the mandatory meeting, each participating distributor of safe and sane fireworks shall provide to the City's Fire Department and to each participating organization to which fireworks permits are issued educational materials for distribution during the sale of said fireworks.
regarding the use of safe and sane fireworks and the prohibition of dangerous and other types of fireworks. (Prior code § 101.05)

**8.28.060 Payment of sales tax—Temporary sales tax permit required.**

A. Organizations to which fireworks permits have been issued shall obtain a temporary sales tax permit from the regional office of the State Board of Equalization.

B. All sales of safe and sane fireworks shall be subject to sales tax. No fireworks permit holder shall seek an exemption from the payment of sales tax which applies to the sale of safe and sane fireworks. (Prior code § 101.06)

**8.28.070 Display of permits.**

All state- and City-issued permits required pursuant to this chapter and state law shall be displayed in a prominent place in the fireworks stand of each permittee. (Prior code § 101.07)

**8.28.080 Regulation of the sale of fireworks.**

A. It is unlawful to sell or permit to be sold safe and sane fireworks prior to 12:00 p.m. on the 28th day of June and after 10:00 p.m. on the fourth day of July.

B. After the 28th day of June, daily hours of operation for sales will be permitted from 8:00 a.m. to 10:00 p.m.

C. No person other than the permitted organization or joint venture shall operate a fireworks stand for which fireworks permits have been issued or share or otherwise participate in the profits of the operation of such fireworks stand.

D. No person shall be paid any consideration for selling or otherwise participating in the sale of safe and sane fireworks at a fireworks stand.

E. No person under the age of 18 years shall be allowed to purchase or sell safe and sane fireworks.

F. The only persons permitted to remain in a fireworks stand and/or to sell or offer to sell safe and sane fireworks from within the fireworks stand shall be adult members of the permitted organization or joint venture organizations, or the parent, spouse or adult children of such members.

G. All retail sales of safe and sane fireworks shall be permitted only from within the fireworks stand for which fireworks permits have been issued. Sales from any other building or structure are prohibited.

H. No person shall sell or offer to sell safe and sane fireworks to any person who is reasonably observed or known to be under the influence of drugs or alcohol. (Prior code § 101.08)

**8.28.090 Fireworks stand and storage container requirements.**

A. Fireworks stands, City-approved storage containers, and the sites whereupon the stands and containers are located shall be subject to the following provisions:
1. Sites upon which safe and sane fireworks will be sold shall be no closer than 250 feet from each other measured from the closest property lines, except upon the written approval of the Fire Marshal and all other interested parties including the property owner.

2. Fireworks stands and any City-approved storage containers shall be no closer than ten feet from each other and no farther than 25 feet from each other.

3. No fireworks stand and no City-approved storage container shall be located within 25 feet of any other building, overhang or other fixture as defined by the Fire Marshal, or within 100 feet of any fuel dispensing operations.

4. Fireworks stands and City-approved storage containers need not comply with the provisions of the building code of the City; provided, however, that all stands and storage containers shall be erected under the supervision of the Director of the Department of Building and Safety, who shall require that stands and containers be constructed in a manner that will reasonably insure the safety of attendants and patrons.

5. Fireworks stands and storage containers shall be constructed of metal or other material as approved by the Fire Chief or designee, and may have metal or other approved flooring attached.

6. No fireworks stand and no storage container shall have a floor area in excess of 400 square feet.

7. Fireworks stands in excess of 24 feet in length must have at least two exits; and each stand in excess of 40 feet in length must have at least three exits spaced equal distant apart; provided, however, that in no case shall the distance between exits exceed 24 feet.

8. Storage containers shall have a single door or a pair of doors that are lockable at one end of the container.

9. Each fireworks stand shall have electrical outlets and electrical wiring of conduit and shall have power provided from on site sources in such a manner as deemed safe by the Fire Department. Fireworks stands with power provided by generators shall be inspected and approved by the Fire Department prior to operation. Portable generators when used for temporary electrical service shall be located a minimum of 25 feet from the fireworks stand when in operation.

10. Storage containers shall have no internal power of any kind.

11. Each fireworks stand shall be provided with a minimum of two, two and one-half gallon pressurized water-type portable fire extinguishers.

12. Legible signs reading "No Discharge of Fireworks Within One Hundred Feet of the Fireworks Stand" and "No Smoking" shall be posted on the fireworks stand and the storage container.

13. All weeds and combustible material shall be cleared from the location of the fireworks stands and storage containers including a distance of at least 25 feet surrounding all stands and containers.
14. Each fireworks stand must have an adult in attendance and in charge thereof while fireworks are stored therein, for the purpose of providing supervision and security. Each storage container shall also be located near the fireworks stand, but within the permissible distances set forth in this chapter, for security purposes.

15. Each fireworks stand and storage container shall be secured with a Fire Department approved padlock when not occupied.

16. Each fireworks stand shall have a means of telephone communication provided within 25 feet of the stand.

17. Sleeping or remaining within the fireworks stands or storage containers after close of business each day is prohibited. However, permittees shall provide a security plan for approval by the Chief of Police or designee. The security plan shall ensure that the site is monitored by the permittee or designee at all times.

18. Inventory collection shall be completed during the daylight hours on the fifth day of July and all unsold stock and accompanying litter, refuse, trash and debris shall be removed from the location by 5:00 p.m. on the fifth day of July.

19. All fireworks stands and storage containers shall be removed from the site location by 12:00 p.m. on the 14th day of July and all accompanying litter, refuse, trash and debris shall be cleared from the location by said date and time.

20. A clear space of 25 feet shall be maintained around all portions of the fireworks stands and storage containers by the use of barrier tape, signs, or other suitable means as approved by the Fire Chief. No vehicles shall be parked within 25 feet of either a stand or a container.

21. All accumulated litter, refuse, trash and debris shall be removed daily from each fireworks stand.

22. Consumption or use of alcohol in the fireworks stands or storage containers or within 25 feet of the stands or containers is prohibited. (Prior code § 101.09)

8.28.100 Fireworks stand and storage container inspections.

A. All fireworks stands and storage containers shall be inspected by the City’s Fire Department no later than 10:00 a.m. on June 28th. An organization representative shall be available to provide access for inspections of stands and containers as early as 8:00 a.m. on June 28th.

B. The City’s Fire Department shall have a right to randomly inspect without notice any fireworks stand and storage container throughout the sales and operations period. (Prior code § 101.10)

8.28.110 Regulation of the discharge of fireworks.

A. It is unlawful for any person to ignite, explode, project, or otherwise fire or use, any fireworks, or permit the ignition, explosion or projection thereof, upon or over or onto the property of another without his/her/its consent, or to ignite, explode, project or otherwise fire or make use
of, any fireworks within ten feet of any residence, dwelling or other structure used as a place of
habitation by human beings.

B. The discharge of fireworks within the City shall be limited to private property except as
otherwise provided herein. No fireworks shall be discharged on public, semipublic or private
open areas such as parking lots, vacant lots and those areas not approved by the City’s Fire
Chief.

C. It is unlawful to discharge fireworks within the City prior to 12:00 p.m. on June 28th and after
midnight on July 4th.

D. It is unlawful for any person to allow or permit a fire nuisance as defined by Section 12510 of
the California Health and Safety Code. No fireworks shall be discharged in any high fire hazard
areas within the City as determined by the City’s Fire Chief. (Prior code § 101.11)

8.28.120 Provisions of chapter additional to state law.

The provisions of this chapter are in addition to applicable state law, including Title 19, Article 5,
Section 993 of the California Code of Regulations, which requires a license from the State Fire
Marshal. Each package of fireworks shall be marked as “safe and sane” fireworks and shall
bear the State Fire Marshal’s classification label. (Prior code § 101.12)

8.28.130 Infraction violation.

Any violation of this chapter by any person responsible for committing, causing or maintaining
such violation shall constitute an infraction violation and the violator shall be subject to the
provisions set forth in Chapter 4.28 of the Desert Hot Springs Municipal Code, including, but not
limited to, the imposition of any and all criminal penalties set forth therein. (Prior code § 101.13)

8.28.140 Civil fine.

Any person convicted of an infraction shall, for each separate violation of the provisions of this
chapter, be subject to: (1) a fine in an amount not to exceed $250 for the first conviction of an
offense; (2) a fine in an amount not to exceed $500 for a second conviction of the same offense
within a 12-month period of the date of the first offense; and (3) a fine in an amount not to
exceed $750 for the third conviction of the same offense within a 12-month period of the date of
the first offense. The fine for a fourth and subsequent convictions of the same offense within a
12-month period of the date of the first offense shall be $1,000. (Prior code § 101.14)

8.28.150 Administrative citation.

A. In lieu of issuing an infraction citation, the City may issue an administrative citation, pursuant
to Chapter 4.24 of the Desert Hot Springs Municipal Code, to any person responsible for
committing, causing or maintaining the subject violation, and to any person who owns,
leases, or is otherwise in lawful possession of the property on which any person
commits, causes, or maintains the subject violation.

B. Nothing in this section shall preclude the City from also issuing an infraction citation upon the
occurrence of the same subject offense on a separate day. (Prior code § 101.15)
8.28.160 Administrative fine.

**A.** Any person issued an administrative citation under this chapter, except for an administrative citation issued pursuant to section 8.28.010(E) of this chapter, for each separate violation, shall be subject to a fine as follows: (1) an administrative fine in an amount not to exceed $100 for the first violation; (2) an administrative fine in an amount not to exceed $250 for a second violation of the same offense within a 12-month period of the date of the first offense; and (3) a fine in an amount not to exceed $500 for a third and any subsequent violation of the same offense within a 12-month period of the date of the first offense.

**B.** Any person issued an administrative citation under section 8.28.010(E) of this chapter, for each separate violation, shall be subject to a fine as follows: (1) an administrative fine in an amount not to exceed $1,000 for the first violation; and (2) a fine in an amount not to exceed $1,000 for any subsequent violation.

8.28.170 Additional remedies.

A. Any violation of this chapter by the holder of fireworks permits issued pursuant to this chapter shall constitute grounds for modification, suspension and/or revocation of said permits.

B. Any organization whose fireworks permits are revoked shall not be eligible for issuance of fireworks permits the following year.

C. Nothing in this chapter shall preclude the City from pursuing other remedies provided by the Desert Hot Springs Municipal Code or other laws, including, but not limited to, issuance of stop work orders and injunctive relief. (Prior code § 101.17)

8.28.180 Deputization.

Pursuant to applicable law, the City Manager or his or her designee shall have the power to deputize persons, including employees, to enforce this chapter.

**Section 4. SEVERABILITY**

The City Council declares that, should any provision, section, paragraph, sentence or word of this ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this ordinance as hereby adopted shall remain in full force and effect.

**Section 5. REPEAL OF CONFLICTING PROVISIONS**

All the provisions of the Municipal Code as heretofore adopted by the City of Desert Hot Springs that are in conflict with the provisions of this ordinance are hereby repealed.

**Section 6. AMENDING OF BAIL SCHEDULE**

The City Attorney's Office is hereby directed to determine whether this ordinance necessitates amendment of the City's Bail Schedule and to cause such necessary amendments to be made and filed with the local branches of the Superior Court of the County of Riverside.
Section 7. EFFECTIVE DATE

This ordinance shall take effect thirty (30) days after its second reading.

Section 8. CERTIFICATION

The City Clerk shall certify to the passage of this ordinance and shall cause the same to be published according to law.

PASSED AND ADOPTED by the City Council of the City of Desert Hot Springs at a regular meeting held on the ___ day of June, 2016 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

[SIGNATURES FOLLOW ON THE NEXT PAGE]
ATTEST:

Jerryl Soriano, City Clerk

APPROVED:

Scott Matas, Mayor

APPROVED AS TO FORM:

Steven B. Quintanilla, City Attorney