

DATE SUBMITTED 3/1/2018
 SUBMITTED BY City Manager's Office
 DATE ACTION REQUIRED 3/7/2018

COUNCIL ACTION (X)
 PUBLIC HEARING REQUIRED ()
 RESOLUTION ()
 ORDINANCE 1ST READING ()
 ORDINANCE 2ND READING ()
 CITY CLERK'S INITIALS JS

**IMPERIAL CITY COUNCIL
 AGENDA ITEM**

SUBJECT: DISCUSSION/ACTION: ORDINANCE NO. 799 AMENDING CHAPTERS EIGHT AND TWELVE OF THE IMPERIAL MUNICIPAL CODE TO ALLOW FOR THE SALE AND DISCHARGE OF FIREWORKS

1. APPROVAL OF ORDINANCE NO. 799 AMENDING CHAPTERS EIGHT (8) AND TWELVE (12) OF THE IMPERIAL MUNICIPAL CODE FOR THE SALE AND DISCHARGE OF SAFE AND SANE FIREWORKS WITHIN THE CITY OF IMPERIAL DURING SPECIFIED PERIODS OF TIME.

DEPARTMENT INVOLVED: CITY MANAGER'S OFFICE

BACKGROUND/SUMMARY:

As per the direction of the City Council on February 7, 2018 during the Regular Meeting, the City Manager and City Attorney drafted the attached ordinance to amend chapters eight (8) and twelve (12) of the City of Imperial Municipal Code to allow for the sale and discharge of safe and sane fireworks within Imperial City Limits. As directed, the attached ordinance defines the dates that such sales and/or discharge may take place within the City. In addition, the ordinance identifies that the sale of fireworks will only be permitted for up to, and not to exceed, three (3) non-profit organizations.

FISCAL IMPACT: N/A

FINANCE INITIALS VB

STAFF RECOMMENDATION:

DEPT. INITIALS JA

MANAGER'S RECOMMENDATION: It is the City Manager's recommendation for the City Council to consider the draft ordinance to amend chapters 8 and 12 of the Imperial Municipal Code.

CITY MANAGER'S INITIALS JS

MOTION:

SECONDED: APPROVED () REJECTED ()
 AYES: DISAPPROVED () DEFERRED ()
 NAYES:
 ABSENT: REFERRED TO:

REVISED

ORDINANCE NO. 799

AN ORDINANCE OF THE CITY OF IMPERIAL AMENDING CHAPTERS 8 AND 12 OF THE IMPERIAL MUNICIPAL CODE TO ALLOW FOR SALES AND DISCHARGE OF SAFE AND SANE FIREWORKS DURING SPECIFIED PERIODS OF TIME

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

SECTION 1: Section 8-2 OF Article II of Chapter 8 of the Imperial Municipal Code is hereby amended to read as follows:

Section 8-2. Prohibited Generally. It shall be unlawful for any person in the City to burn any brush, grass, weeds paper or other rubbish or material or vegetation of any kind whatsoever, or to make, build or burn any material within any street, alley, park, private property or place in the City.

SECTION 2: Sections 8-30 through 8-51 of Article V of Chapter 8 of the Imperial Municipal Code are hereby enacted to read as follows:

ARTICLE V

FIREWORKS

Section 8-30. Purpose and Authority.

Section 8-31. Title.

Section 8-32. Administration.

Section 8-33. Definitions.

Section 8-34. Fireworks unlawful

Section 8-35. Permits for public fireworks displays.

Section 8-36. Application fee for public fireworks displays.

Section 8-37. Defense and indemnity of City.

Section 8-38. Liability insurance.

- Section 8-39. Discharge of safe and sane fireworks permitted.
- Section 8-40. Sale of safe and sane fireworks.
- Section 8-41. Applications for fireworks sales permits.
- Section 8-42. Fireworks sales permit requirements.
- Section 8-43. Denial of permit and appeals process.
- Section 8-44. Fireworks stands requirements..
- Section 8-45. Sales to minors.
- Section 8-46. Revocation of fireworks sales permits and appeal.
- Section 8-47. Seizure of fireworks.
- Section 8-48. Public education.
- Section 8-49. Administrative regulations.
- Section 8-50. Violation unlawful-Administrative citations.
- Section 8-51. Conflict with Imperial Municipal Code.
- Section 8-52. Severability.

Section 8-30. Purpose and authority.

The purpose of this chapter is to regulate the discharge and sale of fireworks within the City of Imperial. The city council enacts this chapter pursuant to its general police powers and the State of California Fireworks Law, Sections 12500 through 12728 of the California Health and Safety Code, and State of California Fireworks Regulations, Chapter 6 of Title 19 of the California Code of Regulations.

Section 8-31. Title.

This Article may be cited as the "Imperial Fireworks Ordinance."

Section 8-32. Administration.

This chapter shall be administered by the Imperial Fire Department.

Section 8-33. Definitions.

For the purposes of this chapter, the following definitions shall apply:

"City" means the City of Imperial.

"City Clerk" means the city clerk of the City or the City Clerk's designee.

"City Manager" means the city manager of the City or the City Manager's designee.

"Dangerous fireworks" means dangerous fireworks as defined in Health and Safety Code Section 12505.

"Fire Chief" means the Fire Chief of the City or the Fire Chief's designee.

"Fireworks sales permit" means a permit issued in accordance with Article.

"Fireworks stand" means a structure of a temporary nature used in the sale, offering for sale, or display for sale of safe and sane fireworks.

"Fireworks wholesaler" means any person who sells fireworks to other persons for resale by such persons.

"Nonprofit organization" means any nonprofit association, charity or corporation organized primarily for veterans, patriotic, welfare, civic betterment, educational, youth development or charitable purposes which is tax exempt pursuant to Internal Revenue Code Sections 501(c)3, 4, 6, 7, 8, 9, 10, 19, 23, or 26, that serves, in whole or in part, the residents of the City of Imperial. The City will issue permits for up to, and not to exceed, three (3) non-profit organizations per year. A nonprofit organization having its principal place of business in the City of Imperial will have priority in the issuance of a permit, all other factors being equal. All qualified applicants will be subject to a lottery selection process.

"Police Chief" means the Police Chief of the City or the Police Chief's designee.

"Qualified applicant" means any nonprofit 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 a fireworks sales permit and which continues to meet the criteria for the duration of the fireworks sales permit.

- (a). The nonprofit organization must have a minimum bona fide membership of at least ten adult members who either reside in the City, are employed in the City or who are owners or operators of a business located in the City. The organization shall upon request provide documentation demonstrating the minimum bona fide membership to the satisfaction of the Fire Chief.
- (b). The nonprofit organization shall not have been found by any court of competent jurisdiction or city administrative hearing officer to be in violation of any civil or criminal local, state or federal law relating to fireworks, including this Article within thirty-six months prior to the nonprofit organization's submittal of an application for a fireworks sales permit.
- (c). The nonprofit organization must not have had a permit to sell fireworks revoked by any jurisdiction within thirty-six months prior to the nonprofit organization's submittal of an application for a fireworks sales permit.

"Safe and sane fireworks" means safe and sane fireworks as defined in Health and Safety Code Section 12529 and 12562.

"Responsible person" means a person who causes a violation of this chapter to occur or who allows a violation to exist or continue, by his or her action or failure to act, or whose agent, employee or independent contractor causes a violation to occur or allows a violation to exist or continue. Provided, that:

- (a). There is a rebuttable presumption that the record owner of a residential parcel, as shown on the county's latest equalized property taxes assessment rolls, and any lessee of a residential parcel, has notice of any violation existing on said property.
- (b). More than one person may be a responsible person for a single violation.
- (c). Any person, regardless of age may be a responsible person. However, every parent, guardian or other person, having the legal care, custody or control of any minor person (defined as any person under eighteen years of age) is a responsible person for violations committed by such minor, in addition to the minor him or herself, if such parent, guardian or other person knows or reasonably should know that a minor is in violation of this Article. There is a rebuttable presumption that any such parent, guardian or other person having the legal care custody or control of a minor person knows or reasonably should know whether such minor is in violation of this Article.

Section 8-34. Fireworks unlawful.

Except as otherwise provided in this chapter, no person shall possess, sell, use, display or explode any "dangerous fireworks," within the City of Imperial.

Section 8-35. Permits for public fireworks displays.

It shall be unlawful to cause, allow, permit, aid, abet, or suffer any discharge of "dangerous fireworks" (including a public display) or any use of special effects without having first obtained a permit from the Fire Chief as provided herein.

The Fire Chief may grant permits for those activities enumerated in Section 12640 of the California Health and Safety Code, including supervised public displays of fireworks by a public agency, fair association, amusement park, or other organization, 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 Section 12527 of the California Health and Safety Code), and shall be of such character and so located, discharged or fired following the receipt of the recommendation by the fire chief, will not be hazardous or endanger any property or persons.

Section 8-36. Application fee for public fireworks displays.

Every application for permit to conduct a public display of fireworks or for other use of fireworks as permitted by ordinance shall be accompanied by a nonrefundable fee.

Section 8-37. Defense and indemnity of City.

Every applicant for a permit to conduct a public display of fireworks or for other use of fireworks as permitted by Section 8-35 shall agree to defend, indemnify and hold the City of Imperial, its officers and employees, harmless from any and all claims for damages or other costs arising out of the activity authorized by the permit.

Section 8-38. Liability insurance.

Every recipient of a permit to conduct a public display of fireworks or for other use of fireworks as permitted by section 8-35 shall maintain a corporate surety bond or policy of public liability and property damage insurance. The policy shall provide coverage for bodily injury (including death) and property damage with policy limits of not less than \$5,000,000.00 combined single limits. Such policies shall contain a provision which includes the City, its officers, officials, agents, and employees as additional insured's and provides that said insurance provides primary coverage as to the City without contribution by other City policies or self-insured retentions. Such policies shall also contain an endorsement that the company issuing such policy or policies will not allow the same to be cancelled without serving, by first class mail, ten days' notice of cancellation upon the City Clerk.

Following approval of the permit by the Fire Chief as provided in section 8-35, no permit shall be issued until the permittee furnishes the City Clerk a "certificate of insurance" for each insurance policy required by this Section, in a form approved by the city attorney.

Notwithstanding any other provision of this chapter, the failure of the permittee to carry such policy or policies in force shall result in the automatic revocation of the permit as of the date of expiration of such insurance policy or policies. Should a permit be automatically revoked as a consequence of this provision, the payment of the full amount of the permit fee required by this Article shall be made to the City before the revoked permit may be reinstated.

Section 8-39. Possession and discharge of safe and sane fireworks permitted.

Notwithstanding any provisions of this Article to the contrary, the possession of safe and sane fireworks shall be lawful during the period of 12:00 noon on the 28th of June through 12:00 noon on the 6th of July of the same calendar year; provided, however, that it shall be unlawful to possess any modified or altered safe and sane fireworks. It shall be lawful to use or discharge any safe and sane fireworks; provided, however such use and discharge shall only take place on private property with permission of the owner of the property. Discharge may also take place on publicly owned, controlled

and maintained rights of way. Discharge shall not occur in or about public parks or other public property. The discharger of the safe and sane fireworks shall be responsible for removal of all trash and debris associated with the discharge and it shall be unlawful to fail to remove such debris.

Section 8-40. Sale of safe and sane fireworks.

Notwithstanding any provisions of this chapter to the contrary, the possession and retail sale to the public of safe and sane fireworks is permitted between 12:00 noon and 10:00 p.m. on the 28th of June of each year and from 9:00 a.m. through 10:00 p.m. on June 29th through the 4th of July of the same calendar year, by those nonprofit organizations possessing a current firework sales permit.

Section 8-41. Applications for fireworks sales permits and lotteries.

- (a) Submission of applications by qualified applicants.
 - 1. No nonprofit organization shall submit more than one application for a fireworks sales permit. If the City receives two or more applications containing the same tax identification number, only one application shall be accepted.
 - 2. Each application will be screened by the Fire Chief to determine if the nonprofit organization submitting it meets the criteria to be classified as a "qualified applicant."
- (b) Every application for a fireworks sales permit shall be accompanied by a nonrefundable pyrotechnics and special effects California Fire Code permit application fee.
- (c) All applications for fireworks sales permits shall be submitted in writing to the Community Development Department on forms supplied by the City. Applications may be filed from, May 1 through May 30, inclusive. Applications filed before or after these periods will not be accepted.
 - 1. If there are more qualified applicants than the maximum number of fireworks sales permits available, then the Fire Chief shall conduct a random drawing to determine to whom the available fireworks sales permits shall be issued.

The drawing shall occur in March of each year. Those qualified applicants which have been successful in being awarded a fireworks sales permit shall have up to thirty calendar days to submit all information required by the fire chief.

- 2. Applications for fireworks sales permits will be reviewed by the Fire Department, Police Department and the City Clerk, as needed, pursuant to this chapter. Fireworks sales permits shall be issued by the Fire Chief.

Section 8-42. Fireworks sales permit requirements.

- (a) Each fireworks sales permit recipient may operate only one fireworks stand. The maximum number of fireworks sales permits which may be issued during any one calendar year shall be no greater than five.
- (b) Other provisions regarding fireworks sales permit applications.
 - 1. After the maximum number of fireworks sales permit recipients has been chosen, the remaining qualified applicants shall be drawn and assigned as alternates according to the order drawn. Each alternate, according to the order drawn, shall be offered a fireworks sales permit if one of the original permittees fails to meet the requirements of this Article, or if a permittee voluntarily surrenders its fireworks sales permit, or if a fireworks sales permit is revoked.
 - 2. Two or more eligible nonprofit organizations may jointly submit an application pursuant to this chapter and may receive a single fireworks sales permit to jointly sell fireworks, provided that each must be a qualified applicant. Fireworks sales permit recipients may select one or more other qualified applicants to join it in a joint venture operation of the fireworks stand, provided

that any such joint venture must have been a qualified applicant that applied unsuccessfully for a fireworks sales permit that same year.

3. Fireworks sales permits are valid only during the calendar year issued.
- (c) Each nonprofit organization receiving a fireworks sales permit must have a least one representative attend a fireworks stand operator safety seminar, approved by the Fire Chief, for the same year in which the fireworks sales permit is issued. Failure of a nonprofit organization to attend the seminar shall result in the revocation of the fireworks sales permit.
- (d) Subsequent to selection for issuance of fireworks sales permit, but prior to the issuance of a fireworks sales permit, and in addition to those other requirements set forth in this Article or on the permit application, each permittee shall provide or demonstrate compliance with all of the following:
 1. A copy of the permittee's retail fireworks license issued by the office of the California State Fire Marshal.
 2. A copy of the permittee's California State Board of Equalization Temporary Sellers Permit.
 3. Payment of a refundable City of Imperial fireworks sales permit application fee.
 4. Insurance coverage as required by the provisions of this Article.
 5. Pyrotechnics and Special Effects California Fire Code Permit issued by the Imperial Fire Department.

Section 8-43. Denial of permit and appeals process.

- (a) After conducting an investigation consistent with Health and Safety Code Section 12640 et seq., the Fire Chief shall issue a fireworks sales permit to qualified applicants chosen unless:

The Fire Chief finds, in writing, that the applicant has failed to provide sufficient plans, information or data necessary to safely and/or responsibly achieve compliance with the requirements of this Article.

The Fire Chief finds, in writing, that the applicant is not in compliance with any of the requirements of this Article.

- (b) Any denial of a fireworks sales permit application to sell fireworks issued pursuant to the fireworks code may be appealed to the City Council consistent with Health and Safety Code Section 12647 within ten calendar days in writing.

Section 8-44. Fireworks stands.

- (a) All retail sales of safe and sane fireworks shall be permitted from within a temporary fireworks stand only. The retail sale of fireworks from any other building or structure is prohibited.
- (b) No fireworks stand may be erected more than seven calendar days prior to July 4 by any person not affiliated with a nonprofit organization to which a fireworks sales permit has been issued.
- (c) Fireworks stands must be located on lots that have an all-weather surface and adequate off-street parking to meet the requirement of any existing use or uses as well as the fireworks stand.
- (d) Fireworks stands are permitted only in the following zoning districts, as defined and delineated in the Imperial City Code:
 1. Neighborhood Commercial (C1).
 2. Medium Commercial (C2).
 3. Heavy Commercial (C3).
 4. Light Manufacturing (M1).
 5. Heavy Manufacturing (M2).
- (e) Each fireworks stand must post each of the following in a prominent place inside the fireworks stand:

1. Fireworks sales permit issued by the City of Imperial Fire Department.
 2. Temporary seller's permit issued by California State Board of Equalization.
 3. Retail fireworks license issued by California State Fire Marshal.
 4. Proof of insurance.
 5. "No Smoking" signs.
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- (f) Fireworks stands shall not be located closer than three hundred feet apart, unless separated by a major arterial roadway.
 - (g) Fireworks stands shall comply with current National Fire Protection Association standard NFPA 1124 for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles.
 - (h) Fireworks stands shall not be located within twenty-five feet of any other building or structure.
 - (i) No fireworks shall be located within one hundred feet of a location where gasoline or any other flammable liquids are stored or dispensed.
 - (j) Each fireworks stand shall comply with fire prevention standards as adopted and enforced by the Fire Chief.
 - (k) All fireworks stands shall be inspected and approved by the Fire Chief prior to the sale of any fireworks.
 - (l) All weeds or other vegetation, and combustible material shall be cleared from the location of the fireworks stand to at least a twenty-five-foot radius surrounding the fireworks stand.
 - (m) No fireworks stand shall have a floor area in excess of five hundred square feet or a length greater than fifty feet.
 - (n) Each fireworks stand shall have at least two exits. Each fireworks stand in excess of forty feet in length shall have at least three exits, equally spaced. In no case shall the distance between exits required by this section exceed twenty feet. Exit doors shall be not less than twenty-four inches wide, six feet in height and must open in the direction of exit travel.
 - (o) "NO SMOKING" signs shall be prominently displayed on all sides of the fireworks stand. Smoking is prohibited within fifty feet any fireworks stand.
 - (p) Each fireworks stand shall have two, currently certified, dry chemical fire extinguishers in good working order that are easily accessible in case of fire.
 - (q) Each fireworks stand must have an adult in attendance and in charge thereof when the fireworks stand is open to the public for sale or dispensing of fireworks and when fireworks are being delivered to, or taken from, the fireworks stand.
 - (r) No person may remain inside the fireworks stand after close of business.
 - (s) When the fireworks stand is not being used for the sale and/or display of fireworks, all fireworks shall be stored in a manner consistent with one of the following:
 1. Within a reinforced, heavy metal, fully-enclosed container, a walk-in type drop box, or equivalent, as approved by the fire chief.
 2. Returned daily to a fireworks wholesaler for storage at an approved and properly zoned location.
 - (t) No fuel-powered generator or similar equipment shall be allowed within fifty feet of a fireworks stand.
 - (u) No person other than individuals who are bona fide members of the nonprofit organization which holds the fireworks sales permit, and/or joint venture nonprofit organization(s), or the spouses, registered domestic partners, parents or adult children of such members, shall sell or otherwise participate in the sale of fireworks.

- (v) No minor (defined as any person under the age of eighteen years) shall sell or participate in the sale of safe and sane fireworks or handle any fireworks.
- (w) Drinking or possession of alcoholic beverages in a fireworks stand or within one hundred feet of a fireworks stand is prohibited, except within a permanent business establishment unaffiliated with the fireworks stand and which preexisted the fireworks stand.
- (x) No person shall be paid any consideration by the permittee or any fireworks wholesaler for selling or otherwise participating in the sale of safe and sane fireworks. Notwithstanding the foregoing, compensation may be paid for licensed security personnel and to any person permitting or leasing the location of the fireworks stand on its property as a payment for such permit or lease.
- (y) All fireworks shall be retained at the fireworks stand. In no event shall unsold fireworks be removed from the approved location to any other place without written approval of the Fire Chief.
- (z) All unsold stocks of fireworks in the hands of the permittee after 10:00 P.M. on the 4th day of July shall be returned to the fireworks wholesaler by 12:00 P.M. on July 6 of the same calendar year.
- (aa) No later than July 10 of each calendar year, each fireworks stand shall be completely removed and the premises upon which it was located shall be cleared of all debris and restored to the condition it was in prior to the establishment of the fireworks stand.
- (bb) Fireworks stands shall be permitted to have no more than two double-sided signs with a maximum area of sixty-four square feet per side. All such signs shall be located on the same site as the fireworks stand they identify or advertise. Signs may not be placed in such a manner as to interrupt the normal flow of vehicle or pedestrian traffic or to cause any sight distance problems for such traffic. Placement of such signs shall be subject to the review and approval of the fire chief, the community development department and the police department. In no case shall the sign placement interfere with traffic or any other safety related concern. The above-described signs may be displayed seven calendar days prior to July 4.

Section 8-45. Sales to minors.

It is unlawful to sell fireworks to minors.

Section 8-46. Revocation of fireworks sales permits and appeal.

- (a) The Fire Chief may revoke the fireworks sales permit of any permittee who violates any of the provisions of this Article. The Fire Chief shall inform the permittee that it may seek review of the decision by the City Manager on the next business day. The decision of the City Manager, or his or her designee, shall be final.
- (b) Any permittee whose fireworks sales permit has been revoked shall be barred from receiving a future fireworks sales permit under this Article or under any subsequent ordinance establishing a fireworks sales permit for up to three years from the date of the revocation.

Section 8-47. Seizure of fireworks.

The Fire Chief or Police Chief may seize, take, remove or cause to be removed, at the expense of the holder of a fireworks sales permit or licensed fireworks wholesaler, all stock of fireworks offered or exposed for sale, stored or held in violation of this Article when such violation creates an imminent danger and a grave threat to public health or safety. The official removing such fireworks shall provide written notice to the owner thereof, and an opportunity within two business days to be heard by the Fire Chief with respect to such seizure.

In the event the violation does not pose imminent danger and a grave threat, the Fire Chief or Police Chief shall provide written notice and an opportunity to be heard prior to any seizure.

Section 8-48. Public education.

Each fireworks wholesaler supplying one or more permittees under this article shall annually submit a public education plan to the Fire Chief no later than 5:00 p.m. on June 1. Said public education plan shall outline the public safety and education efforts for that year that have been initiated, supported and/or delivered, by each fireworks wholesaler within the City.

Section 8-49. Administrative regulations.

The Fire Chief is authorized to promulgate administrative regulations and procedures necessary for the successful and effective implementation of this Article including, but not limited to, rules and procedures governing the submission and random selection of applications to sell safe and sane fireworks and rules and procedures governing situations where two or more fireworks sales permit recipients propose to establish fireworks stands within three hundred feet of each other, in violation of section 8-44(f) of this Article.

Section 8-50. Violation unlawful—Administrative citations.

- (a) It is unlawful, and a misdemeanor, to violate any provision of this chapter, provided, however, that a violation of this chapter may, at the discretion of the Police Chief, Fire Chief or prosecuting attorney, be charged and prosecuted as an infraction.
- (b) In addition to any other enforcement mechanism prescribed by law, this chapter may be enforced by the issuance of administrative citations pursuant to the Imperial Municipal Code.

Section 8-51. Conflict with Imperial Municipal Code.

In the event that any provision of this chapter conflicts with any provision of the Imperial Municipal Code, the provisions of this Article shall prevail.

Section 8-52. Severability.

If any section, subsection, paragraph, sentence, clause or phrase of this chapter for any reason shall be held to be invalid or unconstitutional, the decision shall not affect the remaining portions of the Article. The Council of the City of Imperial hereby declares that it would have passed this chapter and each article, section, subsection, paragraph, sentence, clause or phrase which is a part thereof, irrespective of the fact that any one or more articles, sections, subsections, paragraphs, sentences, clauses or phrases are declared to be invalid or unconstitutional.

SECTION 3: Section 12-49(b) of Article I of Chapter 12 of the Imperial Municipal Code is hereby amended to include Safe and Sane Fireworks Sales

SECTION 4: Effective Date. This ordinance shall take effect and shall be in force thirty (30) days after the date of adoption, and prior to the expiration of fifteen (15) days from the passage thereof, shall be published at least once in a newspaper of general circulation printed and published in the County of Imperial, together with the names of the members of the City Council voting for and against the same.

PASSED, ADOPTED AND APPROVED by the City Council of the City of Imperial, this ____ day of _____, 2018

Mayor of the City of Imperial

ATTEST:

by _____

City Clerk