

RESOLUTION NO. 5844-21

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UNION CITY
AMENDING RESOLUTION NO. 2537-03 AND SUBSEQUENT RESOLUTIONS REGULATING
THE USE OF STATE-APPROVED FIREWORKS**

WHEREAS, Chapter 15.20.140 of the Union City Municipal Code provides that “[t]he sales and use of safe and sane and/or State-Approved fireworks shall be in accordance with Union City Municipal Code and the Fireworks Regulations adopted by the City Council, Resolution No. 2537-03, as they may from time to time be amended;” and

WHEREAS, the use of fireworks within the City presents a danger to public safety and is difficult to police; and

WHEREAS, the City currently regulates the sale of safe and sane fireworks pursuant to Resolution No. 2537-03 (the “Resolution”) as previously amended; and

WHEREAS, certain provisions of the Resolution, as previously amended, are outdated and require clarification; and

WHEREAS, City staff engaged in a detailed review of the Resolution, as previously amended, which led to the amendments to Resolution; and

WHEREAS, the City desires to clarify the provisions in the Resolution, as previously amended, and revise existing provisions to reflect actual practice in the administration of the Fireworks Regulations and to modernize and more effectively administer the Fireworks Regulations; and

WHEREAS, the amendments to the Fireworks Regulations are shown in Exhibit A, which is attached and incorporated herein by reference.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Union City does hereby approve the amendments to the Resolution, as previously amended, by amending the Fireworks Regulations as shown in attached Exhibit A, which is incorporated herein by reference.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Union City at a regular meeting held on the 26th day of October 2021, by the following vote:

AYES:	Councilmembers Duncan, Patiño, Singh, Vice Mayor Gacoscos, Mayor Dutra-Vernaci
NOES:	None
ABSTAIN:	None
ABSENT:	None

APPROVED:


CAROL DUTRA-VERNACI
Mayor

ATTESTED:


ANNA M. BROWN
City Clerk

APPROVED AS TO FORM:



KRISTOPHER J. KOKOTAYLO
City Attorney



Exhibit A

Fireworks Regulations

A. Fireworks.

1. State-approved fireworks (also known as “Safe and Sane Fireworks”) as defined by California Health and Safety Code Section 12529 may be sold within the City of Union City pursuant to these Fireworks Regulations.
2. Fireworks may not be used in City parks, on City streets or City property.
3. Fireworks may not be used east of Mission Boulevard within the City.
4. The City Manager is authorized to make and impose administrative interpretations and guidelines pursuant to these Regulations.

B. Definitions.

1. “Applicant” shall mean an organization that applies for a permit.
2. “City” shall mean the City of Union City.
3. “City Manager” shall mean the City Manager the City or his or her designee.
4. “Distributor” shall mean the fireworks vendor utilized by an organization for the sale of safe and sane fireworks pursuant to a permit.
5. “Fire Chief” shall mean the Fire Chief of the City or his or her designee.
6. “License” shall mean the “retails sales license” granted by the State Fire Marshal in accordance with California Health and Safety Code Section 12574.
7. “Police Chief” shall mean the Chief of Police of the City or his or her designee.
8. “Permit” shall mean that document issued by the City that authorizes the sale of safe and sane fireworks pursuant to these Fireworks Regulations.
9. “Permit Administrator” shall mean the person designated by the City Manager to administer the permit.
10. “Permittee” shall mean an organization issued a permit.

11. “State-approved fireworks” or “safe and sane fireworks” shall mean safe and sane fireworks as set forth in California Health and Safety Code Sections 12529 and 12562, as may be amended from time to time, and the relevant sections of Title 19, California Code of Regulations, Subchapter 6, as may be amended from time to time, which are hereby incorporated by reference.

12. “Non-profit organization” or “organization” shall mean the following:

- a. Any non-profit association, religious, charity or corporation organized primarily for veteran, patriotic, welfare, civic betterment and/or charitable purposes having active 501(c)(3) status or corporations which have obtained tax exempt status from the State Franchise Tax Board under Section 27301(b), (d), (f), (g), or (l) of the Revenue and Taxation Code; or
- b. An organization affiliated with and officially recognized by a school district that services in whole or in part the residents of Union City or a religious non-profit school located within the boundaries of Union City.

C. Permit Required.

Except as provided herein, no person or organization shall offer any fireworks for sale in the City without a permit. The permit requirement is in addition to the requirements imposed pursuant to California Health and Safety Code Section 12574 *et seq.*, as may be amended from time to time, with respect to the license issued by the State Fire Marshal.

1. Eligibility.

A permit shall only be issued to an organization. Only one organization per non-profit identification number and only one organization per school district/religious non-profit school shall receive a permit.

Each non-profit organization must maintain a membership of at least 20 members, 50% of members must be City residents, and the organization must have been organized and established within the City for a minimum of one year continually preceding the filing of the application for the permit.

The City reserves the right to require the applicant or permittee to submit a roster.

2. Application and Permit Requirements.

a. Application for permit.

Applications for a permit shall be accepted by the City between April 1 and May 1 of each calendar year. The completed application and other required

materials must be received by the City no later than 5:00 p.m. on May 1 of each calendar year.

Applicants that are rejected following the initial review will have until June 15 to submit required application materials. If the application is rejected following resubmittal, no permit will be issued to that applicant for the current year. If the permittee or distributor has materially falsified any statement in the application, has failed to provide any document, perform any agreement, assurance or representation made in connection with the application, or fails to adequately complete all required documentation, the Permit Administrator may reject the application and no permit for a will be issued to that organization for the current year.

The application shall meet City requirements including, but not limited to, the following:

- (1) Be completed in writing on a form supplied by the City; and
- (2) Be accompanied by a non-refundable annually adjusted application fee; and
- (3) Be accompanied with a completed declaration of compliance certifying the applicant's status as a Section 501(c)(3) organization or as a Section 27301 organization as applicable; and
- (4) Be accompanied by two (2) copies of a plot plan showing the location of the temporary fireworks stand to the public right-of-way; curb cuts and/or driveways and identifying the nearest available fire hydrants; and
- (5) Be accompanied by a license; and
- (6) Be accompanied by a verification form regarding the accounting of the funds derived from the sale of fireworks from the previous year on a form provided by the Permit Administrator. The form shall verify that funds received from the sale of safe and sane fireworks were expended in compliance with these Fireworks Regulations and shall include a complete written statement of the applicant's intended use for any funds realized from the sale of safe and sane fireworks; and
- (7) Be accompanied by a signed, written approval of the current property owner and/or leasing agent for the proposed fireworks stand location that the fireworks stand shall be allowed on the property owner's property and include contact information for the property owner or leasing agent; and
- (8) Post a \$200.00 clean-up deposit which will be forfeited in the event the permittee fails to remove rubbish from the designated clean-up area by 5:00 p.m. on July 5 and/or if the permittee has not removed said fireworks stand equipment and rubbish from the premises upon which the stand is located by 5:00 p.m. on July 7; and

- (9) Provide insurance in an amount and form required by the City that is endorsed to name the City of Union City, its City Council, and all City officers, agents, employees, volunteers and representatives as additional insured; and
- (10) Indemnify the City of Union City, its City Council, and all City officers, agents, employees, volunteers and representatives in a form required by the Permit Administrator.

b. Issuance of Permit.

- (1) The Permit Administrator shall issue the permit unless:
 - a) The applicant fails to submit any information or documents required by these Fireworks Regulations; or
 - b) The Permit Administrator finds that the applicant is not in compliance with the requirements of these Fireworks Regulations.
- (2) Prior to the installation of any fireworks stand for which a permit has been obtained:
 - a) The Fire Chief shall review the proposed location and may disapprove of the location if, in his or her sole discretion, a traffic hazard will be created by the proposed location; and
 - b) The Fire Chief shall review the proposed location and may disapprove of the location if, in his or her sole discretion, the location would pose a fire hazard or if the location is not in compliance with fire regulations.
- (3) If the Fire Chief disapproves of the location, the applicant shall have 5 business days to propose an alternate location with signed authorization from the landowner consenting to such use.

3. Revocations/Denials. The Permit Administrator, may reject an application and/or revoke immediately and without notice or hearing, the permit of any permittee who violates any of the following provisions: Section C.2.a.; Section D; or Section E.

The Permit Administrator, may, after reasonable notice and opportunity to correct, revoke the permit of any permittee who violates any other provision of these Fireworks Regulations.

4. Appeal. Applicants or permittees that are aggrieved by a decision of the Permit Administrator to reject applications or deny or revoke a permit may seek review by immediately submitting a written request to the City Manager. Within 15 business days of the decision by the Permit Administrator, the City Manager shall meet with the permittee and the Permit Administrator to review the decision. The decision of the City Manager is final and shall be made within 5 business days of the meeting with the Permit Administrator and the permittee or applicant.

D. General Provisions.

1. Compliance with All Laws and Regulations. Permittees shall comply with all federal, state and local laws and regulations.
2. Closing Invoice. Permittees shall submit a copy of the annual closing invoice from the distributor to the City Clerk within ten (10) business days of receipt.
3. Gross Revenue. Permittees shall only use gross fireworks sale revenue to pay fireworks supplier costs invoiced to the organization selling the fireworks including fees paid to City on behalf of organization selling fireworks, sales tax obligations, other itemized expenses related directly to fireworks sales incurred by the permittee, and as provided below.
4. Proceeds. The licensee shall use the net proceeds derived from its operations under the permit for only non-profit, charitable, or religious service projects that shall be of direct benefit to the residents of the City. Such net proceeds shall not be used: (1) to support political activities; (2) for property-related expenditures related to properties located outside of the City; (3) for contributions to national or regional; or (4) for any other purpose unrelated to a service project that directly benefits the City. The Permit Administrator shall have sole authority to determine whether the use of net proceeds complies with this provision.
5. Permits Issued Per Organization and Existing Permittees. No organization may receive more than one permit during any calendar year. Organizations that have received a permit prior to the effective date of Resolution No. 2537-03 and organizations with existing permits issued in excess of one permit per every 4,000 residents of the City as of the date of these Fireworks Regulations shall be permitted to reapply for and renew permits for the ensuing years until the organization fails to apply for any one year or otherwise fails to comply with these Fireworks Regulations or any provisions of the Union City Municipal Code.
6. Total Number of Permits. The maximum number of permits to be issued by City shall be equal to a ratio of one permit for every 4,000 residents of the City. No permits shall be issued to other organizations until the number of outstanding permits falls below the one permit per 4,000 residents ratio. At such time, additional permits shall be issued, but at no time shall the number of permits exceed this ratio. In the event that the number of permits issued falls below one permit per 4,000 residents, new organizations may submit applications. The vacancies shall be filled by an impartial drawing supervised by the Permit Administrator if the number of new applications exceeds the number of vacancies.
7. Fee. Following July 4 of each calendar year, distributors shall receive an invoice for the permit fee as calculated by Section D.5 directly from the City for each respective organization receiving fireworks from the distributor. The City shall also send a courtesy notice to the organization that failure to receive payment will result in forfeiture of the permit for subsequent years. The invoice must be paid within 30 days of the date of invoice. Permittees shall forfeit any permit issued for a distributor's failure to pay within 30 days of the date of invoice. The City shall send notice to the organization of a distributor's failure to pay at least 5 days prior to the due date of the invoice. Nothing herein shall prevent the organization

from paying the invoice in lieu of the distributor. Permittees may reapply for a permit only after payment of the invoice in full. Permittees may appeal a decision to revoke a permit for failure to pay pursuant to the provisions in Section C.4.

8. Fee Calculation. The permit fee shall be calculated each year by the City and shall be based on a percentage of the permittee's (or its predecessor's) gross revenues during the current year from the sale of fireworks. The percentage shall be derived from the City's estimated reasonable cost of public services for administering the permits and shall include, but not be limited to, staff time administering permits, staff time preparing the Public Education Plan and related materials, staff time related to the regulation of the sales, use, and cleanup of fireworks in the City, and business license fees for the organization, divided by the gross revenues derived from sale of fireworks, as disclosed by the applications for fireworks-sales permits for the current year. *Example:* The City's costs for staff time related to the permits is \$51,500. Gross revenues derived from fireworks sales in the City is calculated at \$1,000,000. The permit fee would be 5.15% of each permittee's gross revenues.
9. Fireworks Stand Staffing and Roster. No person other than individuals who are members of the organization, or the parents, wives or husbands or adult children of such members shall participate in the sale of fireworks at a fireworks stand. Fireworks stand operators must be at least 18 years of age. The organization shall not subcontract operation of the fireworks stand. On or before the first business Monday following July 4, the distributor must submit a roster on a form provided by the City of individuals that staffed the fireworks stand for that year and a signed statement from each volunteer attesting to understand fireworks booth safety procedures and to being a volunteer for the organization holding the booth permit. A violation of this provision shall result in the immediate revocation of the fireworks permit by the Permit Administrator.
10. Hours of Operation. Fireworks may be sold pursuant to these Fireworks Regulations between the hours of 8:00 a.m. and 10:00 p.m. on July 1-3 and between the hours of 8:00 a.m. and 9:00 p.m. on July 4.

E. Regulations for Fireworks Retail Structures.

1. Administrative Fireworks Stand Requirements.
 - a. The City will provide all permittees with a copy of a fireworks stand "Fire Life Safety Checklist," prepared by the Fire Department, prior to the fireworks stand inspection.
 - b. All fireworks stands shall be erected in a manner approved by the Fire Chief in order to reasonably ensure the safety of attendants and patrons. The Fire Chief, or designated representative, will permit the sales to begin and/or continue if each item shown or stated in the application packet is consistent with the conditions observed. A site inspection is required after the structure has been erected and prior to the commencement of sales. The first booth inspection to determine if the booth meets all safety criteria to sell fireworks shall be completed by June 30th.

If the Fire Department approves the first booth inspection, sales may commence July 1. The permittee will not be allowed to begin operating if there are inconsistencies, omissions or changes from the approved plot plan or fire/life safety hazards are observed.

- c. Each fireworks stand is subject to at least one (1) fire safety inspection during each day of sales. If, in the opinion of the Fire Chief fire life safety designee, the construction or the location of a stand, or the conduct of operations therein do not conform to these provisions, the Fire Chief may order the stand immediately closed until such time as the stand does conform to the provisions herein. Among the items that are subject to inspection include but are not limited to: a fire extinguisher, safety signage, roster for daily booth staffing, statements from each volunteer staffing the booth attesting to understanding the rules for safe booth operation and to being a volunteer in the organization holding the permit for the booth.
- d. Merchandise shall be displayed in a manner that it cannot be handled by patrons reaching over the selling counter or through other openings in the fireworks stand.
- e. Fireworks shall not be sold to anyone under 18 years of age. The organization shall require that a purchaser show proof of age when the purchaser appears to be under 30 years old. Sign(s) shall be posted on the outside of the fireworks stand indicating that there are no sales to minors. The sale or transfer of safe and sane fireworks to a person under 18 years of age shall result in immediate revocation of the permit. Such decision shall be immediately appealable in writing to the City Manager who shall conduct an informal hearing at the earliest opportunity during normal business hours.

2. Electrical Requirements.

- a. Any lighting appliances used in the fireworks stand must be safe and in good condition. All bulbs or fluorescent tubes must be shielded against accidental breakage or contact. No heating devices of any kind are permitted in or near fireworks stands.
- b. All electrical wiring, including the power source shall be maintained to the satisfaction of the City. Electrical wiring shall be at least twelve (12) feet above the ground when subject to foot traffic and sixteen feet (16) above the ground when subject to vehicle traffic.

3. Fireworks Stand Structural & Life Safety Requirements.

- a. Safe and sane fireworks shall only be sold from within a temporary fireworks stand.
- b. Each fireworks stand twenty-four feet in length and greater must have at least two exits. Each fireworks stand in excess of thirty-two feet in length must

- have at least three exits spaced equally along the length of the fireworks stand. In no case shall the distance between exits exceed twenty-four feet.
- c. No supplies or other materials shall be stored in front of exit doors. All exit doors shall remain unlocked and free of obstruction when the fireworks stand is occupied. Doors of the fireworks stand shall not be locked on the outside while anyone is inside the fireworks stand. The door(s) may be placed in the closed position but not latched should there be a need to exit the booth immediately.
 - d. The aisle or passageway in the fireworks stand must be kept clear and unobstructed so as not to impede anyone leaving the fireworks stand in an emergency.
 - e. Decorative material, canvas tops, screening, and other similar items, shall be treated with an approved and/or listed flame retardant or otherwise treated.
 - f. No fireworks stand shall have a floor area in excess of 300 square feet.
 - g. The permit must be prominently displayed inside the fireworks stand at all times.
 - h. Each fireworks stand shall have one 2A pressurized water fire extinguisher and one 2A10BC dry chemical extinguisher with current approved State Fire Marshal's inspection tags affixed to the extinguishers. The extinguishers shall be located near each exit.
 - i. No smoking shall be allowed in any structure used for the sale and display of fireworks or within 50 feet of said structure.

4. Required Signage.

- a. All signage required by this Section E.4 shall have lettering that is red in color on a white background and letters that are at least 3 inches in height with a stroke of at least ½ inch.
- b. Permittees shall place signs on each fireworks stand that warn that illegal fireworks are prohibited in the City, that violators will be cited, the amount of citations and that the law will be strictly enforced. The signs shall also include a listing of areas within the City where fireworks cannot be used.
- c. "No Smoking" signs shall be posted inside and on the exterior entrance of fireworks stands.
- d. Signs stating the permitted operating hours of the fireworks stand shall be posted on the interior and exterior of the fireworks stand.
- e. No signage shall be posted in the public right-of-way.

5. Location & Placement.

- a. No vehicles shall be parked within 25 feet of a fireworks stand unless loading or unloading fireworks. The fireworks vendor shall identify a 25 foot circumference around the booth and provide the operator with the means to prevent vehicles from parking within 25 feet of the booth during the hours the booth is in operation.

- b. No fireworks stand and fireworks storage container shall be located within 30 feet of any other building.
- c. No combustible vegetation or storage is permitted within 25 feet of the fireworks stand and fireworks storage container.
- d. Any generators used for lighting shall be at least 25 feet away from the fireworks stand and fireworks storage container. The fireworks vendor shall identify a safe location for the generator and identify a safe path of travel for the cable from the generator through the back of the booth to the lights that power the lights in the booth.
- e. No flammable liquids, flammable gas storage or gasoline dispensing units are permitted within 100 feet of any fireworks stand and fireworks storage container.
- f. Fireworks storage containers must be fireproof and have a secure lock approved by the Fire Department.

6. Fireworks Handling & Cleanup.

- a. All unsold fireworks shall be removed from the fireworks stand each night by 12:00 a.m. and taken to the approved and secure overnight storage location.
- b. If a fireworks storage container is stored on the same property as the fireworks stand, the fireworks stand and the fireworks storage container must be at least 20 feet apart.
- c. Fireworks may not be removed from the overnight storage site until 7:00 a.m. each day. Each permittee must check all fireworks into the overnight storage site by 12:00 a.m. each day.
- d. All litter from assigned clean-up areas shall be removed by 5:00 p.m. on July 5. All fireworks stands and accompanying litter shall be removed from the location by 5:00 p.m. on July 7.
- e. All drivers who transport fireworks must be hazmat certified with current approved licenses, and comply with hazardous materials regulations.
- f. Fireworks vendors shall comply with policies outlined in fireworks storage application and policies prepared by the City's staff.

7. Public Education.

- a. Permittees shall issue safety instructions with each sale that describes proper use of safe and sane fireworks and general safety practices for handling fireworks.
- b. The City shall prepare education materials for every school within the City for distribution to every student. These materials shall contain all information deemed necessary by the Permit Administrator and be provided to every school at least one month prior to the end of the school year.
- c. The City shall annually prepare a Public Education Plan related to the sale of safe and sane fireworks in the City. The plan shall illustrate how the public will be educated about the City's no tolerance policy for illegal fireworks and the proper use of State-approved fireworks. The plan shall: graphically

identify all locations throughout the City where public education messages are to be displayed and/or posted; include education materials distributed to every school in the City; and provide that City approved signs will be posted on public property at all entrances to the City. These signs shall illustrate the City's "No Tolerance" position on illegal fireworks, that violators will be cited, what the citation fees are and that violations of the law will be strictly enforced. The signs shall also include a listing of areas within the City where fireworks are prohibited.

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