

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA,
AMENDING CHAPTER 8.22 (FIREWORKS) TO
ADD FIREWORKS HOST LIABILITY; ENFORCE
STRICTER PENALTIES; AND
REORDER/RENUMBER CERTAIN SECTIONS**

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

SECTION 1. AMENDMENT TO CODE. Section 8.22.020,
“Findings and intent,” is hereby amended in the Merced Municipal Code to read as
follows:

“8.22.020 Findings and intent.

(a) This chapter governs the imposition, enforcement, collection and administrative review of all administrative fines related to: the possession, use, storage, sale and/or display of those fireworks classified as dangerous fireworks in California Health and Safety Code Section 12505 et seq. or the possession, use, storage, sale and/or display of safe and sane fireworks on or at dates, times, and/or locations other than those permitted by this chapter. The administrative fines are imposed under the authority of California Government Code Section 53069.4; California Health and Safety Code Sections 12700 and 12557; and the police power of the City of Merced.

(b) The issuance of an administrative citation to any person constitutes but one (1) remedy of the city to redress violations of this chapter. By adopting this chapter, the city does not intend to limit its authority to employ any other remedy, civil or criminal, to redress

any violation of this chapter which the city may otherwise pursue.

(c) The imposition of administrative fines under this chapter shall be limited to:

1. Persons who possess, use, sell and/or display dangerous fireworks in a quantity of twenty-five (25) pounds or less, or
2. Persons who possess, use, sell and/or display safe and sane fireworks on or at the dates, times, and/or locations other than those permitted by this chapter.

(d) Administrative fines collected pursuant to this chapter shall not be subject to California Health and Safety Code Section 12706. The administrative fines collected shall be allocated in compliance with California Health and Safety Code Section 12557, which requires the city to provide cost reimbursement to the California State Fire Marshal for reimbursement of costs, including, but not limited to transportation, and disposal.

Regulations are to be adopted by the California State Fire Marshal setting forth this allocation. Unless and until such regulations have been adopted by the State of California, the city shall hold in trust a two-hundred-fifty dollar (\$250.00) fee in addition to any fine collected to cover the reimbursement to the California State Fire Marshal for the cost of transportation and disposal of the dangerous fireworks. This fee is non-refundable.

(e) Due to the serious threat of fire or injury posed by the use of dangerous fireworks in the city, or safe and sane fireworks on or at dates, times, and/or locations in the city other than those permitted by this chapter, this chapter also imposes strict civil liability upon the owners of real property for all violations of this chapter that occur on that property. Each individual use, display, and/or possession of a dangerous firework or a safe and sane firework on a property at a time and/or location other than those permitted by this chapter shall constitute

a separate violation and shall be subject to a separate administrative fine.

(f) The fire chief or designee may seek cost recovery for any costs imposed on the fire department due to negligence, an intentional wrongful act, carelessness, or malice as set forth in Merced Municipal Code Master Fee Schedule.

(g) In addition to any other remedy available by law, any person or entity who possesses, uses, stores, sells and/or displays dangerous fireworks in the city, or any person or entity who possesses, uses, sells and/or displays safe and sane fireworks on or at dates, times, or locations in the city other than those permitted by this chapter are subject to an administrative fine of not less than one thousand dollars (\$1,000.00) that may be issued for a first violation, and not less than two thousand dollars (\$2,000.00) for a second violation in a twelve-month period and not less than three thousand dollars (\$3,000.00) for each subsequent violation in a twelve-month period.”

SECTION 2. AMENDMENT TO CODE. Section 8.22.030, “Definitions,” is hereby amended in the Merced Municipal Code to read as follows:

“8.22.030 Definitions.

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

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

b. "Eligible organization" means an organization which has met all of the following criteria for a continuous period of not less than one (1) full year preceding submittal of an application for the permit

required by this chapter (and which continues to do so thereafter):

1. The organization is exempt from federal income tax pursuant to the provisions of Internal Revenue Code Sections 501(c) (3), (4), (6), (7), (8), (10), (19), (23), or (26), or Section 501(d), or Section 501(e);
2. The organization must be headquartered within and clearly affiliated or identified with Merced;
3. The organization must be one which provides direct and regular community services and benefits to the citizens of the city; and,
4. The organization must hold its regularly scheduled meetings within the city.
 - i. "Eligible organization" also means an organization which has met criteria set out in subdivisions (1), (2) and (3) of this subsection, for a continuous period of not less than one (1) full year preceding submittal of an application for the permit required by this chapter (and which continues to do so thereafter) and which demonstrates at the time of each application that criteria set out in subdivision (4) of this subsection is not met only because adequate and appropriate facilities for the organization's regular meetings are not available for such purposes within city limits.
 - ii. "Eligible organization" also means any for-profit organization that obtained a permit to sell safe and sane fireworks and actually operated a fireworks stand in the city during the 2013 season with future eligibility being contingent upon obtaining successive, annual permits, and operating each successive season. A for-profit organization shall become permanently ineligible if the organization fails to obtain a permit and/or to operate a fireworks stand in any given year.
 - c. "Exempt fireworks" means any special item containing pyrotechnic compositions which the California State Fire Marshal, with the advice of the state advisory board, has investigated and determined to be limited to industrial, commercial, and agricultural use, or

religious ceremonies when authorized by a permit granted by the authority having jurisdiction.

d. "Fireworks" means any device containing chemical elements and chemical compounds capable of burning independently of the oxygen of the atmosphere and producing audible, visual, mechanical, or thermal effects which are useful as pyrotechnic devices or for entertainment. These items include but are not limited to:

1. Devices designated by the manufacturer as fireworks.
2. Any devices as defined in California Health and Safety Code Section 12511 (b).

e. "Fireworks Host" means a person who either:

1. Has control of the property where a violation of this chapter occurs, including, but not limited to, an owner, landlord, lessee, tenant, or property manager; or
2. Otherwise organizes, supervises, officiates, conducts, controls, or is otherwise in charge of the non-fireworks related activity on a property.

f. "Safe and sane fireworks" as defined in California Health and Safety Code Section 12529, means any fireworks which do not come within the definition of 'dangerous fireworks' or 'exempt fireworks.' All safe and sane fireworks shall be labeled with the safe and sane fireworks seals as authorized by the California State Fire Marshal.

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

SECTION 3. AMENDMENT TO CODE. Section 8.22.070, "Issuance of permits," is hereby amended in the Merced Municipal Code to read as follows:

"8.22.070 Issuance of permits.

(a) Only eligible organizations as defined in Section 8.22.030(b) will be permitted to sell and store safe and sane fireworks. Each of the eligible organizations that

were issued permits and operated a stand in the year 2013 (including for-profit organizations), and that submit the required fee and a complete application acceptable to the fire chief or designee by the filing deadline in 2014 pursuant to Section 8.22.060, shall be granted a permit to operate a stand in the year 2014. Thereafter, an organization granted a permit in any given year shall be granted a permit in each subsequent year, so long as this section remains in effect and the organization continues to: (1) be an eligible organization, (2) timely submit complete applications annually, and (3) operate annually without the occurrence of any act or omission that could subject the permittee to revocation of a permit pursuant to Section 8.22.120.”

SECTION 4. AMENDMENT TO CODE. Section 8.22.090, “Operating hours of fireworks stands,” is hereby amended in the Merced Municipal Code to read as follows:

“8.22.090 Strict liability for unlawful ignition, use, discharge, or display of fireworks on a controlled property by another person.

a. Ignition, Use, Discharge, or Display by Minors. Any person having the care, custody, or control of a person under eighteen (18) years of age shall be strictly liable for any unlawful ignition, use, discharge, or display of dangerous fireworks or safe and sane fireworks within the city in violation of Sections 8.22.40, 8.22.100, and 8.22.110. Nothing in this subsection shall limit the liability of any fireworks host for a violation of this chapter.

b. Fireworks Host Liability. Any Fireworks Host shall be liable for any unlawful ignition, use, discharge, or display of any dangerous fireworks or safe and sane fireworks within the city in violation of Sections 8.22.40, 8.22.100, and 8.22.110 at the property they

control pursuant to Section 8.22.030(e) or any gathering they organize or control; except that:

1. No person who has the right to use, possess or occupy a unit in a multifamily residential property under a lease, rental agreement or contract shall be liable under this subsection for violations of Sections 8.22.40, 8.22.100, and 8.22.110 occurring in the common areas of the property, or in another unit, unless that person is in violation of this chapter.

2. No Fireworks Host shall be liable under this subsection if they have initiated contact with law enforcement or fire officials to assist in removing any person from the property or terminating the activity to comply with this chapter if the request for assistance is made before the arrival of law enforcement or fire officials to the property to investigate a reported violation of this Chapter.

3. No owner of private property shall be liable under this section for a violation of Sections 8.22.40, 8.22.100, and 8.22.110 on that property if that owner can demonstrate that at the time of such violation the violator(s) unlawfully trespassed onto the property.

c. Violations in the Right-of-Way. No Fireworks Host shall aid or abet another person's violation of a provision of this chapter in a public right-of-way adjacent to the Fireworks Host's property. A Fireworks Host aids and abets another person's violation of this chapter if they know the other person's unlawful purpose and the social host specifically intends to, and does in fact, aid, facilitate, promote, encourage, or instigate the other person's commission of that violation in the Public Right-of-Way.”

SECTION 5. AMENDMENT TO CODE. Section 8.22.130, “Penalties for violations,” is hereby amended and renumbered in the Merced Municipal Code to read as follows:

“8.22.140 Penalties for violations.

Any person violating any provisions of this section shall be guilty of a misdemeanor and shall be subject to

criminal prosecution, civil remedies, administrative fines and penalties, and any other remedies available to the city for enforcement of this code. In addition, an administrative fine of not less than one thousand dollars (\$1,000.00) that may be issued for a first violation, and not less than two thousand dollars (\$2,000.00) for a second violation in a twelve-month period and not less than three thousand dollars (\$3,000.00) for each subsequent violation in a twelve-month period.”

SECTION 6. AMENDMENT TO CODE. Chapter 8.22, “Fireworks,” is hereby amended in the Merced Municipal Code to be reordered and renumbered as follows:

Sections 8.22.090; 8.22.100; 8.22.110; 8.22.120; 8.22.130; 8.22.140 shall be renumbered to 8.22.100; 8.22.110; 8.22.120; 8.22.130; 8.22.140, respectively.

SECTION 7. EFFECTIVE DATE. This Ordinance shall be in full force and effect thirty (30) days after its adoption.

SECTION 8. SEVERABILITY. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 9. CEQA. The City Council finds that this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

SECTION 10. PUBLICATION. The City Clerk is directed to cause a summary of this Ordinance to be published in the official newspaper at least once within fifteen (15) days after its adoption showing the vote thereon.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Merced on the ____ day of _____, 2024, and was passed and adopted at a regular meeting of said City Council held on the ____ day of _____, 2024, by the following called vote:

AYES: **Council Members:**

NOES: **Council Members:**

ABSTAIN: **Council Members:**

ABSENT: **Council Members:**

[SIGNATURE PAGE TO FOLLOW]

APPROVED:
MATTHEW SERRATTO, MAYOR

Mayor

ATTEST:
D. SCOTT MCBRIDE, CITY CLERK

BY: _____
Assistant/ Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:
CRAIG J. CORNWELL, CITY ATTORNEY

Craig Cornwell 10/25/2024

City Attorney Date