

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CATHEDRAL CITY AMENDING CATHEDRAL CITY MUNICIPAL CODE CHAPTER 5.80 "SALE AND DISCHARGE OF SAFE AND SANE FIREWORKS" OF TITLE V "BUSINESS REGULATIONS" TO PERMIT THE SALE AND DISCHARGE OF SAFE AND SANE FIREWORKS FOR THE JULY 4TH HOLIDAY

WHEREAS, the City Council of the City of Cathedral City (the "City") desires to permit the sale and discharge of safe and sane fireworks for the July 4th holiday; and

WHEREAS, Section 12643 of the California Health and Safety Code, Title 19 of the California Code of Regulations, and the California Fire Code regulate the firework permit application process and the storage and the sale of safe and sane fireworks; and

WHEREAS, in 2003, 2005, 2007, 2009, 2010 and 2013, the City Council adopted Ordinance Nos. 575, 601, 638, 669, 694, and 723 respectively, which allowed for the lawful sale and discharge of safe and sane fireworks for the subsequent July 4th holidays within the jurisdictional boundaries of the City; and

WHEREAS, Chapter 5.80.030(D)(8) of the Municipal Code authorizes up to six permits to sell safe and sane fireworks to be approved, and provides preference to three entities in the permitting process; and

WHEREAS, the City Council desires to eliminate preference in permitting for safe and sane fireworks, and to make other non-substantive clean up revisiosn to Chapter 5.80.

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

Section 1. AMENDING CHAPTER 5.80 "SALE AND DISCHARGE OF SAFE AND SANE FIREWORKS" OF TITLE V "BUSINESS REGULATIONS" OF THE CATHEDRAL CITY MUNICIPAL CODE

Chapter 5.80 "Sale and Discharge of Safe and Sane Fireworks" of Title V "Business Regulations" of the Cathedral City Municipal Code shall be amended in its entirety to read as follows, with additions underlined and deletions struck-through:

Chapter 5.80

SALE AND DISCHARGE OF SAFE AND SANE FIREWORKS

Section 5.80.010. 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 shall be 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 shall be 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 shall be 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 shall be unlawful to discharge or cause to be discharged within City limits any "Safe and Sane" fireworks in violation of any provision of this Chapter.

Section 5.80.020. 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 Cathedral City" means based and primarily operating within the jurisdictional limits or boundaries of the City of Cathedral City and comprised of and for the benefit of the residents of the City.

"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 within the City limits, maintains a bona fide membership of at least twenty (20) members, and has been organized, and meeting within the City limits for a minimum of five (5)

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” means 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 eighteen (18) years of age and who regularly attend a private or public school located within the City limits.

“Tax exempt” means a group with a Federal Tax Identification Number which can be verified as a 501(c), 501(c)(4), or 501(c)(6) classification, in good standing.

“Youth group” means a private organization based in Cathedral City and organized for the purpose of participating in organized sports or civic activities consisting of at least twenty (20) individual members whose maximum age does not exceed eighteen (18) years of age.

Section 5.80.030. 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 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 ordinance.

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 Two Thousand Seven Hundred Forty Nine Dollars (\$2,749.00) 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 Three Hundred Forty Two Dollars (\$342.00). 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 5.80.040.E, only one (1) Fireworks Program Permit and /or one (1) 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 Chief or his/her 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 Chief or his/her 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 Cathedral City Municipal Code Chapter 6.16 titled "Fugitive Dust Emissions" and any other applicable City regulations, by submitting to the City a PM-10 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 PM-10 plan for fugitive dust mitigation measures to the City's Fire Department, upon selection as set forth herein, prior to the issuance of any Fireworks Permits.
4. Applications for Fireworks Permits shall be accompanied by the following:
 - (a) A nonrefundable application fee of One Hundred Dollars (\$100.00) which shall be used to defray the administrative costs of processing the permit application;
 - (b) Bylaws and other written evidence of the organization's tax exempt status; and
5. Fireworks Permits shall be issued to the selected groups only upon receipt of the following:
 - (a) A City approved PM-10 plan for fugitive dust mitigation measures if the proposed site for a fireworks stand is to be located on unimproved private property;
 - (b) Payment, in full, of the Fireworks Program Permit fee and the Fireworks Safety Permit fee;
 - (c) 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;

- (d) 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, One Million Dollar (\$1,000,000.00) public liability and One Million Dollar (\$1,000,000.00) property damage insurance certificates designating the City as an additional insured thereunder, and a certified copy of the requisite license from the State Fire Marshal;
 - (e) A cash deposit, certificate of deposit in the amount of One Hundred Fifty Dollars (\$150.00) to assure compliance with the provisions of this Chapter. Such deposit shall be refundable immediately to those applicants who are denied issuance of Fireworks Permits. Deposits 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 FireChief's or his/her 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.
6. The City's Fire Department will publicly announce the availability of permit applications, via its website and other places that the City normally posts announcements. The announcement will indicate the deadline to submit permit applications.
7. Applications for Fireworks Permits shall be reviewed for compliance with this Chapter by a committee consisting of one (1) representative from the Fire Department, one (1) representative from the City's Finance Department and one (1) 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.

8. Each calendar year, the City Council may issue up to six (6) Fireworks Permits.

All permits shall be issued by lottery from among those qualified Churches, Civic/services organizations, School-based youth groups, and/or Youth groups that have submitted timely and completed applications.

9. 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 (10) 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.

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 Paragraph 7 above.

E. Firework Permits are not transferable.

F. Only one set of Fireworks Permits shall be issued per organization IRS identification number.

G. The cash deposit in the amount of One Hundred Fifty Dollars (\$150.00) shall be refunded to the permittee pursuant to Section 5.80.030(D)(4)(g).

Section 5.80.040. 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 insure that the selection process is equitable and that no one organization with multiple subgroups will have an unfair advantage over other single purpose organizations.

- 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 ninety percent (90%) 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 (1) fireworks stand during any one calendar year.

Section 5.80.050. 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 (1) mandatory meeting which shall be attended by an authorized representative of each participating distributor (or potential distributor) of safe and sane fireworks, two (2) authorized representatives of each participating organization to which Fireworks Permits are issued, and an authorized representative of the City's Fire Department.
- B. At both 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.

Section 5.80.060. 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.

Section 5.80.070. 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.

Section 5.80.080. Regulation of the Sale of Fireworks.

- A. It shall be unlawful to sell or permit to be sold safe and sane fireworks prior to twelve (12:00) p.m. on the twenty-eighth day of June and after ten (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 08:00AM to 10:00PM.
- 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 eighteen (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.

Section 5.80.090. Firework 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 two hundred fifty (250) feet from each other measured from the closest property lines, except upon the written approval of the Fire Chief and all other interested parties including the property owner.
 2. Fireworks stands and any City approved storage containers shall be no closer than ten (10) feet from each other and no farther than twenty five (25) feet from each other.
 3. No fireworks stand and no City approved storage container shall be located within twenty five (25) feet of any other building, overhang or other fixture as defined by the FireChief, or within one hundred (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 his/her 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 four hundred (400) square feet.
 7. Fireworks stands in excess of twenty four (24) feet in length must have at least two (2) exits; and each stand in excess of forty (40) feet in length must have at least three (3) exits spaced equal distant apart; provided, however, that in no case shall the distance between exits exceed twenty four (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 twenty five (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 (2), two and one-half (2.5) gallon pressurized water type portable fire extinguisher.
12. Legible signs reading "No Discharge of Fireworks within one hundred (100) 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 twenty five (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, during the hours of operation for the purpose of providing supervision and security. Failure to provide at least one alert and awake adult for supervision and security purposes may result in forfeiture of Fireworks Permits and/o any additional fines, penalties, citations, or remedies provided herein. 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 Pad Lock when not occupied.
16. Each fireworks stand shall have a means of telephone communication provided within twenty five (25) feet of the stand.

17. Sleeping or remaining within the fireworks stands or storage containers after close of business each day is prohibited.
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 five (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 twelve (12:00) p.m. on the fourteenth 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 twenty five (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 twenty five (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 twenty five (25) feet of the stands or containers is prohibited.

Section 5.80.100. Firework Stand and Storage Container Inspections.

- A. All fireworks stands and storage containers shall be inspected by the City's Fire Department no later than ten (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 eight (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.

Section 5.80.110. Regulation of the Discharge of Fireworks.

- A. It shall be 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 (10) 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 shall be unlawful to discharge fireworks within the City prior twelve (12:00) p.m. on June 28th and after twelve midnight (12:00) a.m. on July 4th.
- D. It shall be 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.

Section 5.80.120. 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 981 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.

Section 5.80.130. 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 13.65 of the Cathedral City Municipal Code, including, but not limited to, the imposition of any and all criminal penalties set forth therein.

Section 5.80.140. Civil Fine.

Any person convicted of an infraction shall, for each separate violation of the provisions of this Chapter, be subject to: (a) a fine in an amount not to exceed two hundred fifty dollars (\$250.00) for the first conviction of an offense; (b) a fine in an amount not to exceed five hundred dollars (\$500.00) for a second conviction of the same offense within a twelve (12) month period of the date of the first offense; and (c) a fine in an amount not to exceed seven hundred fifty dollars (\$750.00) for the third conviction

of the same offense within a twelve (12) month period of the date of the first offense. The fine for a fourth and subsequent convictions of the same offense within a twelve (12) month period of the date of the first offense shall be one thousand dollars (\$1,000.00).

Section 5.80.150. Administrative Citation.

- A. In lieu of issuing an infraction citation, the City may issue an administrative citation, pursuant to Chapter 13.58 of the Cathedral City Municipal Code, to any person responsible for committing, causing or maintaining 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.

Section 5.80.160. Administrative Fine.

Any person issued an administrative citation under this Chapter, for each separate violation, shall be subject to a fine as follows: (a) an administrative fine in an amount not to exceed one hundred dollars (\$100.00) for the first violation; (b) an administrative fine in an amount not to exceed two hundred fifty dollars (\$250.00) for a second violation of the same offense within a twelve (12) month period of the date of the first offense; and (c) a fine in an amount not to exceed five hundred dollars for a third and any subsequent violation of the same offense within a twelve (12) month period of the date of the first offense.

Section 5.80.170. 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 Cathedral City Municipal Code or other laws, including, but not limited to, issuance of stop work orders and injunctive relief.

Section 2. 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 of competent jurisdiction or by reason of any preemptive legislation, the remaining provision, sections, paragraphs, sentences or words of this ordinance as hereby adopted shall remain in full force and effect.

Section 3. EFFECTIVE DATE

This ordinance shall take effect thirty (30) days after its second reading by the City Council.

Section 4. CERTIFICATION

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

The foregoing Ordinance was approved and adopted at a meeting of the City Council held on _____, 2017 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Stan Henry, Mayor

ATTEST:

Gary Howell, City Clerk

APPROVED AS TO FORM

APPROVED AS TO CONTENT:

Eric Vail, City Attorney

Paul S. Wilson, Fire Chief

REVIEWED:

Charles McClendon, City Manager

