

ORDINANCE NO. 04-5

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, AMENDING CHAPTER II, ARTICLE 8, OF TITLE 9 AND SEC. 7-19 OF THE COSTA MESA MUNICIPAL CODE REGULATING FIREWORKS SALES

THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter II, Article 8 of Title 9 of the Costa Mesa Municipal Code is hereby amended to read as follows:

ARTICLE 8. FIREWORKS SALES

Secs. 9-177 – 9-178. Reserved.

Sec. 9-179. Definitions.

(a) *Fireworks* means blank cartridges, toy pistols, toy cannons, toy canes, or toy guns in which explosives are used, fire balloons (balloons of a type which have burning material of any kind attached thereto or which require fire underneath to propel them), firecrackers, torpedoes, sky rockets, roman candles, daygo bombs, sparklers, or other fireworks of like construction and any fireworks containing any combustible or explosive substance for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation, but does not include toy pistols, toy canes, toy guns, or other similar devices in which paper caps containing not more than twenty-five hundredths (0.25) grain of explosive compound per cap, is used.

(b) *Dangerous fireworks* means every fireworks article which does not bear the safe and sane classification label of the state fire marshal, or whose sale is prohibited by City Council resolution.

(c) *Safe and sane fireworks* means only those fireworks articles that have been classified and registered as safe and sane by the state fire marshal, and which have not been altered or been tampered with or used in other than the manner prescribed by the Manufacturer and State Fire Marshall.

(d) *Principal and permanent meeting place* means a place that is owned, rented, or leased by the organization, or a meeting room, hall, or facility where the organization has a right to demand exclusive occupancy at specific times and dates for regularly scheduled meetings.

(e) *Youth* means persons under 19 years of age.

Sec. 9-180. Permit required.

No person, firm or corporation shall sell or offer for sale any fireworks within the City of Costa Mesa without first obtaining a permit from the director of finance.

Sec. 9-181. Permits, issuance.

Permits for the sale of safe and sane fireworks shall be issued only if:

(a) The applicant is a bona fide non-profit organization as recognized by the State of California that was formed to benefit the youth and students of the city.

(b) The applicant has its principal and permanent meeting place within the City of Costa Mesa.

(c) The applicant has at least eighty (80) per cent of its current members residing within the city limits.

(d) The director of finance determines, after considering the applicant's qualifications, that it has available and will utilize the necessary personnel, material and equipment to protect the health and safety of the citizens of the city.

(e) The permits issued comply with the regulations established by City Council resolution governing the number of fireworks stands and their allocation among various types of applicant organizations.

Sec. 9-182. Application requirements.

Each applicant for a permit shall file its application with the department of finance, which application shall show the following:

- (a) Name and address of applicant;
- (b) The applicant's status as a nonprofit, charitable, religious or eleemosynary corporation or association;
- (c) The purpose for which the applicant is primarily existing and for which it was organized;
- (d) The names and addresses of the officers, if any, of the applicant;
- (e) The location where the applicant will sell fireworks;
- (f) When the applicant was organized and established;
- (g) The location of the applicant's principal and permanent meeting place;
- (h) The name, address, and state fire marshal's license number of any wholesaler or distributor from whom the retailer proposes to purchase fireworks for resale;
- (i) The applicant's state board of equalization sales tax permit number;
- (j) The manner, method and times, when and how the applicant proposes to sell safe and sane fireworks;
- (k) Such other information as the director of finance may require to make his investigation.

Sec. 9-183. Time for filing; non-transferability; duration.

An application shall be filed on or before June 1 of the calendar year for which the permit is sought. Any permit issued shall be valid for the premises or location for which issued, shall not be transferable, assignable or renewable, and shall be valid only for the dates specified in the permit.

Sec. 9-184. Location approval.

Before granting the permit, the director of finance shall obtain clearance of the location from the fire department of the City of Costa Mesa.

Sec. 9-185. Issuance of permit.

The director of finance shall, on satisfying himself that the applicant meets the requirements of this article, grant a permit, subject to any conditions the Director deems necessary for the public's safety and general welfare.

Sec. 9-186. Permit fee.

The fee for the issuance of the permit required by this chapter shall be set by resolution of city council.

Sec. 9-187. Compliance with permit restrictions.

Any person operating a temporary stand for the display and sale of fireworks shall abide by and comply with all the requirements set forth in the application for a permit to operate the same and all conditions and restrictions imposed by the director of finance in granting the permit.

Sec. 9-188. Bond to ensure removal.

Prior to the erection of any temporary stand for the display and sale of fireworks, the permittee shall post with the city a cash deposit in a sum set by resolution of city council to be forfeited to the city in the event the permittee does not remove said stand, equipment and rubbish from the premises upon which the stand is located before midnight of July 7, of the year for which said permit is granted. The fire department shall make an inspection, and, if all equipment, rubbish and debris are removed by the permittee as aforesaid, it shall notify the director of finance and the cash bond shall thereupon be returned to the permittee.

Sec. 9-189. Insurance required.

Prior to the erection of any temporary stand for the display and sale of fireworks, the permittee shall procure public liability and property insurance covering its

operation in and about said stand and premises in a minimum amount of one million dollars (\$1,000,000) combined single limit. The permittee shall file a certificate of such insurance with the city clerk.

Sec. 9-190. Prohibitions; state permit required.

(a) No person shall discharge, sell or offer for sale, any fireworks within the city which are classified as dangerous fireworks, or wood core or metal core sparklers as those terms are defined by the California Health and Safety Code.

(b) No person shall sell or offer for sale fireworks within the city without first having obtained a Retail Fireworks License from the Office of the State Fire Marshal as required under the laws of the State.

(c) No person shall sell or offer for sale fireworks within the city to a person under the age of eighteen (18) years.

(d) No person shall sell or offer for sale fireworks within the city unless such sale occurs between July 1st and 8:00 p.m. on July 4th, inclusive.

(e) No person shall discharge any fireworks of any kind within the city, except on July 4th between 4:00 p.m. and 10:00 p.m. of such day.

(f) No person under the age of eighteen (18) years shall discharge any fireworks unless in the presence of an adult.

(g) No person shall throw, toss, project or position an ignited firework of any kind in such a manner as to cause the firework or contents thereof to come in contact with another person's body, private property or real property.

(h) No person shall sell or offer for sale any fireworks in violation of the regulations established by City Council resolution for the protection of City residents.

Section 2. Section 7-19 of the Costa Mesa Municipal Code is hereby amended to read as follows:

Sec. 7-19. Amendments to Article 78 of code, Fireworks and Pyrotechnic Special Effects Material.

Section 7802.3 is amended by adding Exception No. 3 as follows:

Section 7802.3. Exception No. 3.

The sale and use of safe and sane fireworks is allowed as set forth in Chapter II, Article 8 of Title 9 of the Costa Mesa Code.

Section 7804 is added as follows:

Sec. 7804. Requirements for fireworks stands.

All temporary stands for the display and sale of fireworks shall be located, maintained and operated subject to the following provisions:

7804.1. No fireworks display or stand shall be erected within one hundred (100) feet of any gasoline dispensing device or room in which vehicles containing gasoline are repaired or within thirty-five (35) feet of any other structure. Minimum setback from a public sidewalk shall be five (5) feet; setback from street curbing shall be not less than ten (10) feet where no sidewalk exists.

7804.2. There shall be maintained in each premises or stand within which fireworks are sold or offered for sale, a fire extinguisher with a minimum rating of 2A, 10BC located adjacent to each exit.

7804.3. No person shall light or cause or permit to be lighted any fireworks, match, lighter, or any other article or material within any such stand or within fifty (50) feet thereof.

7804.4. No smoking shall be allowed in any structure used for the sale and display of fireworks or within fifty (50) feet of said structure. "No Smoking" signs shall be displayed prominently and in a number prescribed by the fire chief.

7804.5. All such temporary stands shall be constructed to existing city requirements and specifications.

7804.6. All such temporary stands for the display and sale of fireworks shall obtain an electrical permit from the City of Costa Mesa prior to performance of any electrical work.

7804.7. No arc or klieg light shall be located within seventy-five (75) feet of any temporary stand selling fireworks.

7804.8. Reserved.

7804.9. Reserved.

7804.10. The permittee shall strictly comply with all of the provisions of the State Fireworks Law, Sections 12500 et seq. of the Health and Safety Code of the State of California.

7804.11. Fireworks shall be stored and kept only in the permittee's sale booth. It shall be unlawful to store any fireworks intended for sale in any building, residence, garage, home or automobile within the City of Costa Mesa.

7804.12. There shall be at least one (1) adult in attendance during any open or sale hours of the fireworks stand. No person under the age of eighteen (18) years, and no person who is physically or mentally unable to move himself shall be permitted within a fireworks stand.

7804.13. The permittee shall provide an adult night watchman to act and serve during the hours of storage. Under no circumstances shall any night watchman sleep within any fireworks stand.

7804.14. No alcoholic beverages shall be allowed on the premises.

7804.15. All fireworks fuses shall be taped.

7804.16. All permits must be posted in a conspicuous place.

Section 3. Severability.

If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person, 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 portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of

this Ordinance shall supersede any local, State, or Federal law, regulation, or codes dealing with life safety factors.

Section 4. Publication.

This Ordinance shall take effect and be in full force and effect thirty (30) days from and after its passage and, before the expiration of fifteen (15) days after its passage, shall be published once in the NEWPORT BEACH-COSTA MESA PILOT, a newspaper of general circulation printed and published in the City of Costa Mesa, or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post in the office of the City Clerk a certified copy of this Ordinance together with the names of the members of the City Council voting for and against the same.

PASSED AND ADOPTED this 17th day of May, 2004.

ATTEST:

Deputy City Clerk of the City of Costa Mesa

Mayor of the City of Costa Mesa

APPROVED AS TO FORM

City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF COSTA MESA)

I, JULIE FOLCIK, Deputy City Clerk and ex-officio clerk of the City Council of the City of Costa Mesa, hereby certify that the above and foregoing Ordinance No. 04-5 was introduced and considered section by section at a regular meeting of said City Council held on the 3rd day of May, 2004, and thereafter passed and adopted as a whole at a regular meeting of said City Council held on the 17th day of May, 2004, by the following roll call vote:

AYES: Monahan, Steel, Scheafer

NOES: Mansoor, Cowan

ABSENT: None

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of Costa Mesa this 18th day of May, 2004.

Deputy City Clerk and ex-officio Clerk of
the City Council of the City of Costa Mesa