

[PROPOSED] ORDINANCE NO. 3183

AN ORDINANCE OF THE PEOPLE OF THE CITY OF FULLERTON
AMENDING CHAPTER 7.26 OF THE FULLERTON MUNICIPAL CODE
REGARDING SALES, POSSESSION AND USE OF FIREWORKS

WHEREAS, in 1990 the voters of the City of Fullerton approved Ordinance No. 2747 which repealed the then-existing chapter of the Fullerton Municipal Code which permitted the sale, possession and use of fireworks in the City of Fullerton; and

WHEREAS, in 1996, the City Council of the City of Fullerton adopted Ordinance No. 2898 to affirmatively prohibit the sale, possession and use of fireworks in the City of Fullerton, in accordance with Ordinance No. 2747; and

WHEREAS, the ban on fireworks has been difficult for the City of Fullerton to enforce over the years, due to the widespread availability of fireworks, and the legality of such fireworks, in neighboring areas; and

WHEREAS, if a ban on “safe and sane” fireworks is lifted, public safety officers can focus their efforts on illegal, dangerous fireworks, which some people have been using in the City despite the City’s total ban on all fireworks; and

WHEREAS, at the time of the passage of Ordinance No. 2747, many cities in Orange County were banning fireworks; recently, some cities have lifted those bans, such as Westminster, Huntington Beach, and other cities also presently permit “safe and sane” fireworks, such as Costa Mesa, Santa Ana, Garden Grove, Stanton and Buena Park; and

WHEREAS, only “safe and sane” fireworks are sold in California for private use (Cal. Health & Saf. Code § 12574);

WHEREAS, fireworks are often sold by local civic and youth organizations for fundraising, and the City’s ban currently prevents such groups from participating in such fundraising activities;

WHEREAS, “safe and sane” fireworks are considered less dangerous to individuals and are less of a risk of causing fire and damage to property, since such fireworks do not fly, explode, shoot projectiles, travel, or leave the ground and such fireworks usually exclude very large firecrackers or other dangerous devices like rockets and aerial shells; and

WHEREAS, the State of California permits cities to regulate or prohibit by ordinance the sale, use, or discharge of fireworks (Cal. Health & Saf. Code § 12541); and

WHEREAS, according to the American Pyrotechnic Association:¹ “Consumption of fireworks in the United States has risen dramatically during the past three decades, from 41 million pounds in 1980 to over 205 million pounds in 2010. During this period of unprecedented growth, fireworks injuries have declined dramatically due to industry safety education efforts and the ever improving quality of its products. Over the most recent decade, this downward injury trend continues even as an increasing number of states & municipalities have relaxed their consumer fireworks laws – in fact the injury rate was 43% lower in 2010 compared to 2000.”; and

WHEREAS, there are many unsafe products and activities, which are safe when properly handled or if engaged in properly, and a complete ban on such products or activities is unnecessary and overly intrusive to an ordinary citizen’s ability to safely use such products or engage in such activities; and

WHEREAS, fireworks are largely a once-a-year tradition for the Fourth of July, and the freedom

¹ See <http://www.americanpyro.com/pdf/consumption-vs-injuries-graph-2000-2010.pdf>

to express one's patriotism should not be unnecessarily curtailed simply because some individuals may occasionally be irresponsible in their use of fireworks; and

WHEREAS, if the ban cannot be adequately enforced, and does not presently serve to promote the safety of fireworks use, then it is only fair to law-abiding citizens that the ban be removed, so that all can safely, and legally, enjoy private fireworks celebrations;

NOW, THEREFORE, the People of the City of Fullerton HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Chapter 7.26 (Fireworks Prohibited) of Title 7 (Public Safety and Morals) of the Fullerton Municipal Code, regarding the use, possession and discharge of fireworks, is hereby repealed and replaced in its entirety with the following:

Chapter 7.26 FIREWORKS

7.26.010 Fireworks prohibited except as authorized herein.

It is unlawful for any person to possess, store, to offer for sale, expose to sale, sell at retail, or use or explode any fireworks, except as provided herein. The sale, possession and discharge of "safe and sane" fireworks for private display shall be permitted within the City, in accordance with rules and regulations adopted by ordinance or resolution of the City Council, relating to the following: who may sell such fireworks; the limited dates and times when such fireworks may be sold and discharged; the manner, location, and any required permits for the sale, storage, possession, discharge and/or disposal of such fireworks; etc.

For purposes of this Chapter, "safe and sane" shall include those fireworks bearing the seal of the State Fire Marshal and that are "safe and sane fireworks" within the provisions of California Health and Safety Code Section 12529, or any successor provision thereto, and/or any other relevant provisions of State Law relevant thereto, including the California Code of Regulations, State Fire Marshal Regulations or Guidelines, etc.

Notwithstanding the above, the Fire Chief shall have the power to adopt reasonable rules and regulations for the granting of permits for supervised public displays of fireworks by a jurisdiction, fair, association, amusement park, other organizations or for the use of fireworks by artisans in pursuit of their trade. Every such use or display shall be handled by a competent operator approved by the Fire Chief and shall be of such character and so located, discharged or fired so as, in the opinion of the Fire Chief, after proper investigation, not to be hazardous to property or endanger any person.

SECTION 2. Should any section, subsection, clause or provision of this ordinance for any reason be held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, then the remainder of the ordinance shall be deemed valid, it being hereby expressly declared that this ordinance, and each and every section, subsection, sentence, clause and phrase hereof would have been prepared, proposed, approved, adopted and/or ratified even if any other section, subsection, sentence, clause or phrase of this ordinance were declared invalid.

SECTION 3. The City Clerk shall certify to the passage and adoption of this ordinance and shall cause the same to be posted and/or published in the manner required by law. This ordinance shall become effective immediately from and after its passage.

PASSED, APPROVED AND ADOPTED this ____ day of _____, 2012.