

ORDINANCE NO. 006-23

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF YUBA CITY
REGULATING THE USE OF FIREWORKS BY ADDING SECTION 4-11.02 (DISCHARGE OF
FIREWORKS) OF CHAPTER 11, AMENDING SECTION 4-17.20 (EXEMPTIONS [NOISE
REGULATIONS]) OF CHAPTER 17 AND SUBSECTION 5602 OF SECTION 4-5.02 OF
CHAPTER 5 (FIRE PREVENTION), AND ADDING SECTION 5602.2 (DANGEROUS
FIREWORKS) TO SECTION 4-5.02 OF CHAPTER 5, ALL OF TITLE 4 OF THE YUBA CITY
MUNICIPAL CODE**

WHEREAS, the City of Yuba City has the authority, under its police power, to enact regulations for the public peace, morals, and welfare of the city, Cal. Const. Art. XI, section 7; and

WHEREAS, the City Council of the City of Yuba City finds that certain conditions constitute a public nuisance and are a threat to the public peace, safety and welfare of the City; and

WHEREAS, Health and Safety Code Section 12541 authorizes the City Council to establish local fireworks regulations; and

WHEREAS, the use or possession of dangerous or illegal fireworks continues to increase within the City limits; and,

WHEREAS, dangerous fireworks pose a serious risk to the public's safety, given the potential for personal bodily injury and property damage and loss, and the unknown material composition of these fireworks and lack of safeguards; and

WHEREAS, fireworks pose a serious fire hazard which can result in injuries and/or property damage; and

WHEREAS, apart from fire hazards, the noise from fireworks has negative impacts upon the quality of life including infants and small children, the infirm, and persons with post-traumatic stress disorder. Animals, such as house pets and wildlife, are easily terrified by fireworks. Pets are prone to panic, and commonly escape from their owners because of this noise; and

WHEREAS, complaints about fireworks place a strain on public safety resources, especially on the Independence Day holiday when there is an excess of fireworks disturbance calls; and

WHEREAS, the City recognizes the need to adopt further restrictions and increase penalties for the possession, sale, use or discharge of dangerous fireworks; and

WHEREAS, it is the intent of the City Council to reasonably regulate the possession, sale, use or discharge of dangerous fireworks within the City to protect the public health, safety, and general welfare of its residents.

WHEREAS, the City periodically updates its ordinances to ensure that they are achieving their aims, while continuing to adhere to legal requirements; and

WHEREAS, the City Council now desires to update the Municipal Code to modify the period of time to sell and discharge "safe and sane fireworks," to ensure that the same do not constitute a noise violation during lawful periods of discharge, and to hold parties responsible for illegal discharge and possession.

NOW THEREFORE, the City Council of the City of Yuba City does hereby ordain as follows:

SECTION 1. The above recitals are incorporated are hereby by reference.

SECTION 2. Section 5602 of Section 4-5.02 of Chapter 5 of Title 4 of the Yuba City Municipal Code is amended to read as follows:

Section 5602.

Fireworks - Prohibition.

Except as otherwise provided in this chapter, no person shall possess, sell, use, display or explode within the City any kind of fireworks as defined in Section 12511 of the Health and Safety Code, including, but not limited to, any rocket, firecracker, roman candle, squib, torpedo, torpedo cane, fire balloon, wire core sparkler, wooden core sparkler, black cartridge or other combustible device or explosive substance. Discharge, igniting, exploding, projecting, or otherwise firing or using any kind of fireworks is prohibited except as otherwise authorized in Section 4-11.02 or Section 5602.2 of this Section 4-5.02.

Fireworks - Exception.

It shall not be unlawful to sell within the City those fireworks as are defined and classified as "safe and sane fireworks" in the State Fireworks Law (Sections 12500, et seq. of the Health and Safety Code) during that time period as follows:

June 28: Beginning at 12:00 noon and ending at 11:00 p.m.

June 29 through July 4: Beginning at 8:00 a.m. and ending at 11:00 p.m.

Permit required.

It shall be unlawful for any person to sell "safe and sane fireworks" within the City without having first applied for and receiving a City permit.

Prerequisite for permit issuance.

- (a) No permit to sell fireworks shall be issued to any person, except nonprofit organizations or corporations organized primarily for veteran, patriotic, welfare, civic betterment or charitable purposes.
- (b) Each such organization shall have its principal and permanent meeting place within Sutter County limits and shall have been organized and established in an area which is presently within the limits for a minimum of one (1) year continuously preceding the filing of the application for the permit.
- (c) No organization shall submit more than one (1) application for permit to sell fireworks within the City of Yuba City. Submittal of more than one (1) application shall be grounds for denial of all applications.

The number of available permits which includes any permits issued pursuant will be limited to one (1) per two thousand (2,000) population based on the latest survey available to the City of Yuba City. If necessary, a lottery system will be used to fill permit vacancies. Only one (1) permit to sell fireworks pursuant to this chapter shall be issued to an eligible applicant.

Permit application.

- (a) All applications for permits to sell fireworks shall be in writing to the Fire Marshal. Applications may be filed beginning March 1 of each year up to and including March 31 of same year, at which time the filing period for that year will close. Applications shall set forth the proposed location of the fireworks stand being applied for, and other information as may be required by the Fire Marshal.
- (b) Any person, firm, corporation, or organization applying for a permit to sell fireworks shall furnish to the Yuba City Fire Department a policy of public liability and property damage insurance. This policy shall have no deductible, with a limit of bodily injury of not less than one million (\$1,000,000) dollars and a limit of property damage not less than one million (\$1,000,000) dollars. The City of Yuba City and its agents and employees shall be named as coinsured on the policy.
- (c) Applicants for such permits shall be notified by April 15 of each calendar year by the Fire Marshal of the approval or disapproval of such applications for such permit. All organizations whose permits have been approved shall have up to and including July 1st of that year to pick up such permit.
- (d) Every application for a permit shall be accompanied by the established permit fee for the sales of fireworks. The permit fee will be refunded if the application is not approved.

Fireworks stand.

All retail sales of "safe and sane" fireworks shall be permitted only from within a temporary firework stand, and the sale from any other building or structure is hereby prohibited. Temporary stands shall be subject to the following provisions:

- (a) No fireworks stand shall be located within fifty (50') feet of any other building or within one hundred (100') feet of any gasoline pump or distribution point or within one hundred (100') feet of any other fireworks booth, unless separated by a roadway four (4) lanes wide or greater.
- (b) Fireworks stands need not comply with the provisions of the Building Code of the City; provided, however, that all stands shall be erected under the supervision of the Fire Inspector, who shall require that stands be constructed in a manner which will reasonably insure the safety of attendants and patrons; and provided further that any electrical installations shall comply with all applicable codes.
- (c) Each stand shall be provided with two (2) two and one-half (2 1/2) gallon "water type" (minimum rating 2A) fire extinguishers in good working order and easily accessible for use in case of fire.

- (d) No stand shall have a floor area in excess of seven hundred fifty (750) square feet.
- (e) Each stand shall have at least two (2) exits. Each stand in excess of forty (40') feet in length shall have at least three (3) exits spaced approximately equidistant apart; provided, however, that in no case shall the distance between exits exceed twenty four (24') feet. Exit doors shall be not less than twenty-four (24") inches wide and six feet and two (6'2") inches in height and shall swing in the direction of exit travel.

Operation of stand.

- (a) No person shall sell fireworks to any person under the age of eighteen (18).
- (b) Sale of fireworks shall begin no earlier than 12:00 noon on June 28th and shall not continue after 11 p.m. on July 4th of the same year.
- (c) No person other than the permittee organization shall operate the stand for which the permit is issued or share or otherwise participate in the profits of the operation of such stand.
- (d) No person other than the individuals who are members of the permittee organization or the wives, husbands, parents or adult children of such members shall sell or otherwise participate in the sale of fireworks at such stand.
- (e) No person under the age of eighteen (18) shall sell or participate in the sale of fireworks.
- (f) Each stand shall have an adult watchperson in attendance while the stand is being used for the sale, display or storage of fireworks. In lieu of a night watchperson, a Class IV magazine or equivalent, as approved by the Fire Marshal, may be used to store fireworks.
- (g) All fireworks shall be retained at the approved location. In no event shall unsold fireworks be removed from the approved location to any other place without written approval of the Fire Marshal.
- (h) Stands may not be located on public or residential property.

General requirements for permittees.

All weeds and combustible material shall be cleared from the location of the stand, including a distance of at least twenty-five (25') feet surrounding the stand.

"NO SMOKING" signs shall be prominently displayed on and in the fireworks stand.

No fuel-powered generator or similar equipment shall be allowed within fifty (50') feet of a fireworks stand.

SECTION 3. Subsection 5602.2 of Section 4-5.02 of Chapter 5 of Title 4 of the Yuba City Municipal Code is amended to read as follows:

Section 5602.2.

Dangerous Fireworks – Prohibition.

- (a) For purposes of this section, dangerous fireworks are those fireworks specified as such in the State Fireworks Law, Section 12505 of the California Health and Safety Code, and such other fireworks as may be determined to be dangerous by the State Fire Marshal. All other types of fireworks are regulated by Section 5602 of Section 4-5.02 of this chapter, and Section 4-11.02.
- (b) It shall be unlawful for any person or responsible party to possess, sell, use or discharge dangerous fireworks unless a permit authorizing such possession, sale, use or discharge has been issued by the Fire Chief or Fire Marshal to the person or responsible party using, selling, discharging or found in possession of said fireworks, and unless such person is in possession of a valid pyrotechnic operator's license issued by the Office of the State Fire Marshal and obtain a fireworks permit for use or discharge from the Fire Chief or Fire Marshal. The Fire Chief or Fire Marshal may establish reasonable rules and regulations for governing issuance of a firework permit and may issue the same subject to payment of a fee as established by the City Council from time to time.

Definitions.

For the purposes of this section, the following definitions shall apply:

- (a) "Enforcement officer" means any City officer, employee, or law enforcement officer of the City designated by the Municipal Code or the City Manager to enforce any provision of the Municipal Code or any Code adopted by the City, and includes the City's Fire Chief, Fire Marshal, Building Official, Development Services Director, enforcement officer, and their respective designees. Whenever an enforcement officer charged with the enforcement of any provision of this code determines that a violation has occurred, the enforcement officer shall have the authority to issue an administrative citation to any person responsible for the violation.
- (b) "Property" means private property, rented residential premises, or rented commercial residences; including, but not limited to, a home, yard, or field, whether occupied on a temporary or permanent basis, whether or not occupied as a dwelling and whether owned, leased, rented, or used with or without compensation.
- (c) "Residence or other private property" means a home, yard, apartment, condominium, hotel or motel room, other dwelling unit, a hall or meeting room, or commercial property, whether occupied on a temporary or permanent basis, whether occupied as a dwelling, party or other social function, and whether owned, leased, rented, or used with or without compensation.
- (d) "Responsible party" includes, but is not limited to:
 - 1. The person(s) who owns, rents, leases, or otherwise has possession of the residence or other private property;
 - 2. The person(s) in immediate control of the residence or other private property; and

3. The person(s) who organizes, supervises, sponsors, conducts, allows, controls, or controls access to the illegal discharge or illegal storage of fireworks.

If the residence or other private property is rented or leased, the landlord or lessor is not covered by this section unless they fall within the category of persons described under paragraph 2 or 3 of this definition. A landlord or lessor can only be held responsible under paragraph 3 of this definition if he or she has knowledge that fireworks are being discharged or illegally stored on the property without obtaining a permit therefor from the Fire Chief or Fire Marshal.

Violations and Penalties.

- (a) Misdemeanor. Any person or responsible party who violates any of the provisions of this section shall be guilty of a misdemeanor.
- (b) Administrative Citation. An administrative citation may be issued by an enforcement officer to any person or responsible party who violates any of the provisions of this section pursuant to the procedures as set forth in Chapter 6, Title 1 of the Yuba City Municipal Code.
 1. Notwithstanding Section 1-6.040, all violators and responsible parties shall be subject to an administrative fine in an amount not to exceed \$1,000 for the first violation; and a fine in an amount not to exceed \$1,000 for any subsequent violation.
 2. The imposition of administrative fines shall be limited to persons or responsible parties who possess, sell, use or discharge or seizure of 25 pounds or less of dangerous fireworks.
 3. Administrative fines collected pursuant to this section shall not be subject to Health and Safety Code Section 12706.

Penalties Not Exclusive.

Nothing in this section shall be intended to limit any of the penalties provided for under the California Health and Safety Code or Penal Code with regard to the sale, use, possession, delivery, storage, and/or transportation of dangerous fireworks. The penalties set forth herein are intended to be nonexclusive and are intended to be in addition to any other remedies provided in the Yuba City Municipal Code or any other law, statute, ordinance or regulation, including those regulating nuisances.

SECTION 4. Section 4-11.02 of Chapter 11 of Title 4 of the Yuba City Municipal Code is added to read in its entirety as follows:

Sec. 4-11.02. – Discharge of Fireworks

It is unlawful for any person to discharge, ignite, explode, project, or otherwise fire or use any fireworks, or permit the discharge, ignition, explosion or projection thereof, unless having first obtained a special permit in writing from the Fire Chief or Fire Marshal. Such unlawful use is an infraction, is also deemed a nuisance pursuant to chapter 8, title 4, and is subject to enforcement remedies identified in Section 4-8.501.

Notwithstanding the foregoing, discharge and use of "safe and sane fireworks" as classified and defined in the State Fireworks Law (Sections 12500, et seq. of the Health and Safety Code) is authorized between June 29th and July 4th from noon to 11:00 p.m. each day. However, "safe and sane fireworks" shall not be discharged, ignited, exploded, projected, or otherwise fired or used within ten feet of any residence dwelling or other structure used as a place of habitation by human beings, which shall constitute a nuisance.

SECTION 5. Section 4-17.20 of Chapter 17 of Title 4 of the Yuba City Municipal Code is amended to read in its entirety as follows:

Sec. 4-17.20. Exemptions.

The term "loud and raucous noise" as used in this chapter does not include noise or sound generated by the following:

- (a) Cries for emergency assistance and warning calls.
- (b) Radios, sirens, horns and bells on police, fire and other emergency response vehicles.
- (c) Parades, fireworks displays and other special events for which a permit has been obtained from the City are exempted provided there is compliance with all conditions which have been noted in writing on the permit. That loud and raucous noise produced as a result of noncompliance with any condition specified on the permit is not exempted from the requirements of this chapter.
- (d) Activities on or in publicly owned property and facilities, or by public employees while in the authorized discharge of their responsibilities, are exempt provided that such activities have been authorized by the owner of such property or facilities or its agent or by the employing authority.
- (e) Religious worship activities, including but not limited to, bells, organs, singing and preaching.
- (f) Locomotives and other railroad equipment and aircraft.
- (g) The collection of solid waste by employees of a company engaged in the waste disposal business.
- (h) Organized activities at the Yuba Sutter Fair.
- (i) Organized sports events.
- (j) The discharge of "safe and sane fireworks" during the times authorized in Section 4-11.02, and the discharge of fireworks for which a special permit has been issued per Section 5602 of Section 4-5.02 of this chapter or Section 4-11.02.

SECTION 6: SEVERABILITY. If any article, section, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Chapter. The Council hereby declares that it would have adopted this chapter and adopted each article, section,

sentence, clause or phrase thereof, irrespective of the fact that any one or more articles, sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 7: EFFECTIVE DATE. This ordinance shall take effect and be in full force and effect from and after thirty (30) calendar days after its final passage and adoption. Within fifteen (15) calendar days after its adoption, the ordinance, or a summary of the ordinance, shall be published once in a newspaper of general circulation.\

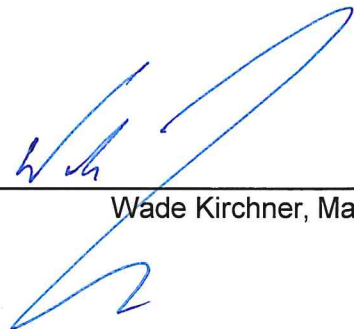
I HEREBY CERTIFY that the foregoing Ordinance was introduced by the City Council after waiving reading, except by Title, at a regular meeting thereof held on the 18th day of April 2023, and adopted the Ordinance after the second reading at a regular meeting held on the 2nd day of May 2023, by the following roll call vote:

AYES: Councilmembers Boomgaarden, Pasquale, Shaw, and Mayor Kirchner

NOES: None

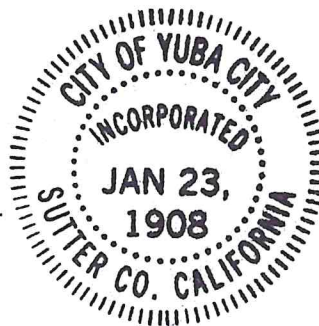
ABSENT: Councilmember Harris

CITY OF YUBA CITY



Wade Kirchner, Mayor

ATTEST:


Ciara Wakefield, Deputy City Clerk

APPROVED AS TO FORM:



Shannon Chaffin, City Attorney
Aleshire & Wynder, LLP