

Exhibit "A"
Chapter 8.08
FIREWORKS

Article I

Fireworks—Administrative Provisions

§ 8.08.010 Prohibition on sale, use or discharge of fireworks without permit.

The sale, use, possession or discharge of any fireworks or pyrotechnic devices, including, but not limited to, "safe and sane" fireworks, anywhere within the incorporated area of the city of Manteca is prohibited unless otherwise allowed by this chapter/article.

(Ord. 1590 § 2, 2016)

§ 8.08.020 Sales and use by minors.

- A. It is unlawful for any person under the age of eighteen to sell, or handle for sale, any classification of fireworks.
- B. It is unlawful for any person under the age of eighteen to purchase or be allowed to purchase any classification of fireworks.
- C. It is unlawful for any person having the care, custody or control of a minor under the age of eighteen to permit such minor to discharge, explode, fire, or set off any fireworks, as defined herein, unless such minor does so under the direct supervision of a parent or guardian, or such other person having care, custody or control of such minor.

(Ord. 1590 § 2, 2016)

§ 8.08.030 Locations for discharge.

- A. No fireworks shall be discharged on public property, streets, sidewalks, or a right-of-way, except in those areas approved by the fire chief.
- ~~B.~~ No fireworks shall be discharged in semi-public or private open areas, such as parking lots, shopping centers, vacant properties, or open commercial or industrial areas, except in those areas approved by the fire chief.
- ~~C.~~ It is unlawful for any person to ignite, explode, project, or otherwise fire or use, any fireworks, or to permit the ignition, explosion or projection thereof, upon or over or onto the property of another without his or her consent.
- ~~D.~~ It is unlawful for any person to discharge any fireworks within one hundred feet of a fireworks booth.
- E. The discharge of fireworks permitted by this chapter shall be limited to private property or residential streets.

(Ord. 1590 § 2, 2016)

§ 8.08.040 Dangerous fireworks.

No fireworks classified as "dangerous fireworks" by Section 12505 of the Health and Safety Code of the state of California or listed in Section 8.08.090 may be sold or discharged within the city.

(Ord. 1590 § 2, 2016)

§ 8.08.050 **Violation to discharge fireworks except as permitted by Fire Marshal.**

It is a violation of this code for any person to cause, allow, permit, aid, or abet any discharge of fireworks (including a public display) without having first obtained a permit therefor from the Fire Marshal, including a property owner who knows or should know of the violation, or a responsible party as defined in this chapter, unless allowed otherwise by this chapter.-

(Ord. 1590 § 2, 2016)

§ 8.08.060 **Improper storage of fireworks—Violation.**

It is a violation of this code for any person to store fireworks, including those classified as safe and sane by the California State Fire Marshal, except as expressly allowed by Section 8.08.110 of this code.

(Ord. 1590 § 2, 2016)

§ 8.08.070 **Abatement.**

As a public nuisance, an unpermitted discharge or illegal storage of fireworks may be summarily abated by law enforcement by all reasonable means, singularly or in combination, including, but not limited to:

- A. Issuance of an administrative citation or written notice that a violation of this chapter has occurred, as set forth in Section 8.08.180(C); and
- B. Issuance of a citation for recovery of response costs for violations as set forth in Section 8.08.180(H); and
- C. Public nuisance abatement procedures as set forth in Section 1.10.300, et seq.; and
- D. Any other remedy provided by law.

(Ord. 1590 § 2, 2016)

§ 8.08.080 **State definitions adopted.**

For purposes of this chapterarticle, all words not herein defined shall have the same meanings ascribed to them as under the State Fireworks Law (Health and Safety Code Section 12500 et seq.) and regulations promulgated thereunder.

(Ord. 1590 § 2, 2016)

§ 8.08.090 Definitions._[DR1]

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

"Enforcement officer" means any city employee, or law enforcement officer with the authority to enforce any provision of this code. 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.

"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. The term "fireworks" includes, but is not limited to, devices designated by the manufacturer as fireworks, torpedoes, skyrockets, roman candles, rockets, Daygo bombs, sparklers, party poppers, paper caps, chasers, fountains, smoke sparks, aerial bombs, and fireworks kits. For the purposes of this chapter, "fireworks" includes both "dangerous fireworks" and "safe and sane fireworks" as defined by the California Health and Safety Code.

~~"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.~~

"Response costs" means those reasonable and necessary costs directly incurred by public safety personnel for a response to an unpermitted discharge or illegal storage of fireworks, and include the cost of providing law enforcement, firefighting, and/or other emergency services at the scene of the unpermitted discharge or illegal storage of fireworks including, but not limited to:

1. Salaries and benefits of public safety personnel for the amount of time spent responding to, remaining at, or otherwise dealing with the unpermitted discharge or illegal storage of fireworks, and the administrative costs attributable to the response(s); and
2. The cost of any medical treatment to or for any public safety personnel injured responding to, remaining at or leaving the scene of the unpermitted discharge or illegal storage of fireworks; and
3. The cost of repairing any public safety equipment or property damage, and the cost of the use of any such equipment, in responding to, remaining at, or leaving the scene of an unpermitted discharge or illegal storage of fireworks.

~~"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.~~

~~"Responsible party" includes, but is not limited to, a person who causes a violation of this chapter to occur or allows a violation to exist or continue, by his or her action or failure to act, or whose agents, employee, or independent contractor causes a violation of this chapter to occur, or allows a violation to exist or continue. There is a rebuttable presumption that the record owner of real property, as shown on the county's latest equalized property taxes assessment rolls, and a lessee of real property has a notice of any violation existing on said property. For purposes of this chapter, there may be more than one responsible person for a violation.~~

~~Any person, irrespective of age, found in violation of any provision of this chapter may be issued a citation in accordance with the provisions of this code. Every parent, guardian, or other person having the legal care, custody, or control of any person under the age of eighteen years, who knows or reasonably should know that a minor is in violation of this chapter, may be issued a citation in accordance with the provisions of this chapter, in addition to any citation that may be issued to the offending minor.[DR2]:~~

- ~~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 chapter 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 (including a public display) are being discharged or illegally stored on the property without obtaining a permit therefor from the Fire Marshal.~~

"Safe and sane fireworks", are defined in Sections 12529 and 12562 of the Health and Safety Code of the

(Ord. 1590 § 2, 2016)

Article II
Discharge of Public Fireworks Display

§ 8.08.100 Permits.

The Fire Marshal, or designee, may issue a permit for the use or discharge of fireworks and pyrotechnic devices only where the persons in charge of the display have obtained a license from the State Fire Marshal for a public display or special effects. The application, investigation and decision process shall be as follows:

- A. Permit Application. All permit applications shall include the following:
1. The name of the person or organization sponsoring the proposed activities, together with the names and license numbers of persons actually in charge of the activity;
 2. A full description of all proposed activities;
 3. The date and time of day the proposed activities would occur;
 4. The exact location of the activities;
 5. The size and number of all fireworks to be involved in the proposed activities, including the number of set pieces, shells and other items. Shells shall be designated by diameter specifying single, multiple break or salute;
 6. The manner and place of storage of all fireworks;
 7. A diagram of the grounds on which the activities are proposed to occur showing all points at which fireworks are proposed to be stored or discharged, the location of all buildings, roads, and other means of transportation to and from the site, the lines behind which the audience will be restrained, and the location of all nearby trees, telegraph or telephone lines and other overhead obstructions;
 8. Proof that satisfactory workers' compensation insurance is carried for all employees in compliance with Labor Code Section 3700;
 9. Documentary proof of conformance with the insurance requirements of Health and Safety Code Sections 12610 and 12611; and additional insurance requirements identified by the city;
 10. A State Fire Marshal license for the public display of fireworks or special effects; and
 11. The name and license number of the wholesaler(s) supplying all items used in the display.
- B. Investigation. When evaluating whether a permit should be granted, the Fire Marshal, or designee, shall evaluate the following:
1. Whether the proposed activity will be of such character or so located that it may be hazardous to property or dangerous to any person.
 2. Whether the activity will comply with all requirements of the California Fire Code, and the State Fireworks Law (Health and Safety Code Section 12500 et seq.) and regulations promulgated thereunder.
- C. Grant or Denial. The Fire Marshal, or designee, shall exercise reasonable discretion to either grant or deny the permit, and may impose any conditions he or she deems necessary or appropriate to ensure

there is no adverse impact to the public health, safety or general welfare. ^{Exhibit "A"}

(Ord. 1590 § 2, 2016)

Article III
State Fire Marshal Approved—Safe and Sane

§ 8.08.110 Permit—Sales of State Fire Marshal approved.

- A. The city council is authorized to establish, by resolution or ordinance, the process by which the city will issue permits and the condition that permit applicants and permittees must satisfy in order to receive the permits.
- B. It is unlawful for any person to engage in the sale or distribution of fireworks within the city without first having secured a permit to do so from the fire department.
- C. It is unlawful to store fireworks within the city without first having secured a permit to do so from the fire department.
- D. The annual permit fee for the sale of fireworks and/or the public display of fireworks as may be authorized under this chapter shall be three hundred fifty dollars per year, per fireworks stand or public display, payable in advance.
- E. Organizations selected for permits shall produce and distribute to each customer, at their cost, fireworks rules and regulations and informational flyers, as directed by the fire chief or designee.

(Ord. 1590 § 2, 2016)

§ 8.08.120 Time limit.

Subject to the provisions of the State Fireworks Law, Sections 12500 through 12726 of the State Health and Safety Code, and any regulations promulgated thereunder, safe and sane fireworks, as defined in Sections 12529 and 12562 of the Health and Safety Code of the state of California, may be sold and discharged within the city limits of the city of Manteca during the period beginning at noon on the twenty-eighth day of June and ending at midnight on the fourth of July, each year.

(Ord. 1590 § 2, 2016)

§ 8.08.130 Maximum number firework sales booths—Permits issued.

- A. The maximum number of permits which the city may issue during any one calendar year shall not exceed one sales permit for each five thousand population or portion thereof, in addition to one permit for the city, based on the fire chief's approval.
- B. The city council is hereby authorized to establish, by resolution, a lottery process for which the permits will be issued. The permit will be effective for the year in which it is issued.

(Ord. 1590 § 2, 2016)

§ 8.08.140 Applications.

Applications to store or sell safe and sane registered fireworks may only be filed during normal business hours from November 1st of each year up to and including first Friday of December of the same year, at which time the filing period for that year will close. All applications shall be submitted in writing to the fire chief, or designees, on forms provided by the city and meet the following conditions:

- A. The applicant is a local nonprofit organization which shall mean any nonprofit association, club, or corporation organized for veteran, patriotic, welfare, religious, civic betterment, youth or charitable

purposes as defined by Section 501(c) of the Internal Revenue Code of the United States, or affiliated with a public school located within the city limits of Manteca. Each organization shall provide the city with a copy of their "Letters of Incorporation" as proof of their nonprofit status and establish status as a 501(c)(3) tax-exempt organization as recognized by the Internal Revenue Service, or equivalent documentation from the Secretary of State. Equivalent documentation shall be determined by the city attorney.

1. Public school organizations shall provide current written verification from affiliation from the school each year.
2. Each organization may file an application for one sales permit for which there is only one tax ID number.
- B. The organization must possess a nonprofit identification number; however, a given identification number may not be used by more than one organization. Should the city determine that more than one organization has submitted the same nonprofit identification number; the fire chief's office shall notify the organizations in writing and give each of them the opportunity to correct the situation to ensure compliance with this section. If such compliance is not achieved, none of the affected nonprofits organizations shall be eligible to receive a permit.
- C. A local nonprofit organization must have its principal and permanent meeting place in the city. The organization must have obtained nonprofit status and have been organized and established in the city for a minimum of one continuous year preceding the filing of the application for permit. The organization must also have a bona fide membership of at least twenty members who reside in the city, which will be verified each year. Applications shall be signed by two bona fide officers of the eligible organization, wherein the officer, on behalf of the organization and its agents, agrees to abide by state laws, administrative regulations, and all stipulations of this code and the permit if permission to operate a fireworks stand is granted to the organization.
- D. Should the city determine that an organization selected for permit issuance does not satisfy these requirements or otherwise comply with the intent of the requirements of this chapter; the organization's application shall be denied.

(Ord. 1590 § 2, 2016)

§ 8.08.150 Documents and fees required for permit issuance.

- A. In addition to all other requirements contained in this chapter, each permittee shall comply with each of the following requirements:
 1. Apply for a permit to store or sell fireworks on a form approved by the fire department with the required permit fee as established by city council resolution before five p.m. on May 1st of each year.
 2. State Fire Marshal's firework retail license.
 3. Provide proof of a temporary sellers permit to the State Board of Equalization.
 4. Sign a form provided by the city whereby the permittee agrees to indemnify and hold harmless the city, its officers, employees, and agents from any and all claims, damages, demands, liability, costs, losses, and expenses, including without limitation court costs and reasonable attorneys' fees, arising out of or in connection with the permittee's sale of fireworks pursuant to a city-issued permit, except such loss or damage which was caused by the active negligence, sole negligence, or willful misconduct of the city, its officers, employees, or agents.
 5. Furnish to the city proof of coverage by a policy of public liability and property damage insurance. The

policy shall provide limits of bodily injury and property damage liability of not less than five million dollars combined single limit for each occurrence annually as payment for damages to persons or property which may result from or be caused by the public sale or display of fireworks, or any negligence on the part of the permittee or his or her agents, servants, employees or subcontractors relating thereto.

6. Identification of the proposed location of the sale booth, and storage of same, including the seven digit parcel number (APN) of the San Joaquin county assessor and other information as may be required by the fire chief.
 7. Property owner's, or designee's, written permission to sell fireworks at the location shall accompany the permit application.
 8. Booth location with the exact placement of fireworks.
 9. Plot plan of storage.
- B. Permits for retail sales of safe and sane fireworks issued pursuant to the provisions of this section is not transferable to any other person or organization and is issued for the purpose of operating a single fireworks sales booth at the approved location. The permit may be used only by the organization to which it is issued.

(Ord. 1590 § 2, 2016)

§ 8.08.160 Operation of fireworks stand only by permittee.

- A. It is unlawful for the permittee organization to allow any person or entity other than the permittee organization to operate the fireworks stand for which the permit is issued, whether by agreement, assignment or otherwise, or to otherwise participate in the profits of the operations of such fireworks stand. Violations will result in the immediate loss of the organization's permit.
- B. It is unlawful for a nonprofit organization to allow any person other than the individuals who are members of the permittee organization, their spouses or adult children, to sell or otherwise participate in the sale of fireworks at such fireworks stand. Individuals under the age of eighteen are not allowed in the fireworks stand.
- C. It is unlawful for any nonprofit organization to pay any consideration to any person for selling or otherwise participating in the sale of fireworks at such fireworks stand, except the hiring of a night watchman or security officer.
- D. A minimum of one hundred feet shall be maintained from any building used as a school, day care, hospitals, place of detention, public garage or place of assembly that can accommodate three hundred or more occupants and the fireworks booth.
- E. A minimum of twenty feet of separation shall be provided between the fireworks booths and the parked vehicles of the public.

(Ord. 1590 § 2, 2016)

§ 8.08.170 Permit—Revoke.

- A. The fire chief, or designee, may revoke, immediately and without notice or hearing, the safe and sane fireworks permit of any location or organization when any of the provisions of this code, Health and Safety Code, International Fire Code or the California Code of Regulations are violated. The fire chief shall inform the permittee that permittee may seek review of the fire chief's decision, by the city manager, on the next business day. At the earliest opportunity on the next business day after revocation,

the fire chief shall provide the city manager ^{Exhibit "A"} with written notice that a fireworks permit has been revoked, including the name of the permittee and a brief statement of the grounds for revocation. If requested by the permittee, the city manager, or designee, shall meet with the permittee and the fire chief, or designee, that day to review the fire chief's decision. The decision of the city manager shall be final.

B. Revocation of any permit will be effective for that calendar year.

(Ord. 1590 § 2, 2016)

**Article IV
Enforcement**

§ 8.08.180 Penalties.

- A. Any person who allows, permits, aids, or abets any discharge of fireworks (including a public display) without having first obtained a permit therefor from the Fire Marshal, or designee, shall be in violation of this section, unless otherwise permitted by ordinance.
- B. Any person who stores fireworks, including those classified as "safe and sane" by the California State Fire Marshal, except as expressly allowed by this code, shall be in violation of this section.
- C. Administrative Citation. Upon identification of an unpermitted discharge or illegal storage of fireworks, law enforcement may issue an administrative citation as set forth in Section 1.10.010, and/or a notice of violation to all responsible person(s). ~~Law enforcement shall notify those responsible persons present at the unpermitted discharge or illegal storage that further violation of the ordinance may result in the issuance of increased fines and assessment of response costs.~~

The administrative fines shall be:

- 1. ~~One thousand dollars (\$1,000) for each violation. DR3] Seven hundred fifty dollars for the first administrative citation issued to the responsible person.~~
- 2. ~~An administrative citation may be issue to the individual in violation of this chapter or a responsible party as defined in Section 8.08.090. One thousand dollars for the second and/or each subsequent administrative citation issued to the responsible person.~~
- D. Upon identification of an unpermitted discharge of fireworks, law enforcement may also issue a written notice to all other identifiable responsible persons, as defined in Section 8.08.090, not present at the unpermitted discharge of fireworks that a violation of the fireworks ordinance has occurred and that further violations may result in the assessment of response costs.
- E. Nothing in this chapter 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.
- F. The penalties set forth herein are intended to be nonexclusive and are intended to be in addition to any other remedies provided in this chapter or any other law, statute, ordinance or regulation.
- G. Any person who violates this ~~chapter~~section shall be guilty of a misdemeanor.
- H. Response Costs. A responsible person(s), as defined in Section 8.08.090, -who has been issued a second administrative citation and/or written notice of violation of this chapter may be liable for response costs incurred in responding to the unpermitted discharge or illegal storage of fireworks. All responsible persons shall be jointly and severally liable for the response costs incurred in the response and all

subsequent responses.

Exhibit "A"

ATTACHMENT 2

If a responsible person is a juvenile, then the parents or guardians of that juvenile and the juvenile will be jointly and severally liable for the response costs incurred pursuant to this chapter. To incur liability for response costs imposed by this chapter, the responsible person for the unpermitted discharge or illegal storage of fireworks need not be present at the event that causes the response giving rise to the imposition of response costs. This chapter therefore imposes vicarious as well as direct liability upon a responsible person.

I. Payment of Administrative Fines.

1. The administrative fines and/or response costs shall be paid pursuant to Chapter 1.10, Administrative Enforcement Provisions.
 2. Payment of a fine and/or response costs under this chapter shall not excuse or discharge any continuation or repeated occurrence of the code violation that is the subject of the administrative citation.
- J. Hearing Request. Any recipient of an administrative citation may contest that there was a violation of the code or that he or she is the responsible person per the procedures outlined in Chapter 1.10, Administrative Enforcement Provisions.

Advanced deposit of the fine shall not be required if the administrative citation was issued pursuant to Section 8.08.190.

(Ord. 1590 § 2, 2016)

§ 8.08.190 Third-party administrative citations.

- A. Whenever one or more private persons observe a violation of this code, they may request that an administrative citation be issued to a responsible party (as defined in Section 8.08.090 of this code) by any of the officers or employees named in Section 8.08.090 of this code, or any other officer designated by the city attorney. The private persons will be required to sign an affidavit under penalty of perjury verifying that they personally observed a violation of this code by a responsible party, and may be required to testify at an administrative hearing as provided in Section 1.10.440 if the administrative citation is appealed. Failure of the private persons to testify at an administrative hearing if required by the department prosecuting the violation on behalf of the private parties may result in a ~~dismissal~~ of the administrative citation. The officer or employee shall have the authority to issue an administrative citation to the responsible party upon the basis of this affidavit.
- B. Each third-party administrative citation shall contain:
1. The date of the violation;
 2. The address or a definite description of the location where the violation occurred;
 3. The section of this code violated and a description of the violation;
 4. The amount of the fine for the code violation;
 5. A description of the fine payment process, including a description of the time within which and the place to which the fine must be paid;
 6. An order prohibiting the continuation or repeated occurrences of the code violation described in the administrative citation;

7. A description of the administrative citation ^{Exhibit "A"} review process, including the time within which the administrative citation may be contested and the place from which a request for hearing to contest the administrative citation may be obtained;
8. The name, signature and department issuing the citation on behalf of the private persons.
- C. Each third-party administrative citation shall be accompanied by an affidavit from the private persons setting forth a description of the violation as observed by the private persons signed under penalty of perjury.

~~D. Third Party Administrative Citation. Upon identification of an unpermitted discharge or illegal storage of fireworks, law enforcement may issue an administrative citation or a notice of violation to all responsible person(s) present at the unpermitted discharge of fireworks. Law enforcement shall notify those responsible persons present at the unpermitted discharge or illegal storage that further violation of this chapter may result in the issuance of increased fines and assessment of response costs.~~

~~D.E.~~ The administrative fines for third-party administrative citations shall be the same as in Section 8.08.180.

(Ord. 1590 § 2, 2016)

§ 8.08.200 Compliance with other federal, state and county laws and regulations.

In addition to obtaining a permit from the fire marshal, any use or discharge of any fireworks and pyrotechnic devices shall comply with all other applicable federal, state and local laws and regulations. The issuance of a permit from the fire marshal, or designee, pursuant to this article shall not obviate the need for a permit for an entertainment event if such a permit is required.

(Ord. 1590 § 2, 2016)