



STAFF REPORT
7/22/2020

TO: Honorable Mayor and City Council Members

FROM: Best Best & Krieger LLP, City Attorney

SUBJECT: Ordinance No. 1166 amending various sections of Chapter 8.32 of the Coachella Municipal Code regarding the use, sale possession, storage and discharge of fireworks in the City's territorial limits in order to prohibit the use, sale, possession and discharge of dangerous fireworks as that term is defined in the California Health and Safety Code and authorizing the imposition of administrative fines for certain violations of Chapter 8.32's regulations. (*First Reading*)

STAFF RECOMMENDATION:

Staff recommends that the City Council review and approve the following Ordinance:

Ordinance No. 1166 an Ordinance of the City Council of the City of Coachella, California, Amending Coachella Municipal Code Chapter 8.32 Regarding the Use, Sale, Possession, Storage, and Discharge of Fireworks.

BACKGROUND:

Subject to the regulations and procedures set forth in the current version of the Coachella Municipal Code ("CMC") chapter 8.32, the City of Coachella ("City") currently permits the sale, use, possession, and discharge of "Safe and Sane Fireworks," as that term is defined by California Health & Safety Code sections 12529 and 12652. The current regulations contained in Chapter 8.32 include, but are not limited to, requiring that all persons apply for and receive a permit before selling Safe and Sane Fireworks, limiting those organizations, which may receive a permit, to certain non-profit organizations, and restricting the time period within which Safe and Sane Fireworks may be sold. These regulations were adopted with the intention of limiting the sale, use, and discharge of fireworks within the City limits to only those fireworks that meet the aforementioned definition of "Safe and Sane Fireworks" and to thereby prohibit the sale, use, possession, and discharge of "Dangerous Fireworks," as that term is defined in California Health & Safety Code sections 12505 and 12561.

However, despite the regulations contained in Chapter 8.32, every year City Staff and Officials continue to receive complaints from City residents of the use and discharge of fireworks—some legal, some illegal—in violation of Chapter 8.32's regulations. Besides creating a nuisance and potential hazard for City residents with certain physical and mental health conditions, the use and

discharge of Dangerous Fireworks and even the use of Safe and Sane Fireworks outside the allotted time period creates a serious fire hazard in the middle of California's fire season. Moreover, responding to calls regarding the unlawful use of fireworks within the City can place an additional burden on City Police Staff and County Fire Department Personnel thereby inhibiting their capacity to respond to other calls.

In an effort to alleviate some of these increased risks and hazards, Staff has reviewed Chapter 8.32 to determine whether there are any additional restrictions and/or penalties that may be imposed to enable the City to further deter and enforce the intended prohibition on the use, sale, possession, and discharge of Dangerous Fireworks within the City's limits. This review revealed that, with the exception of the phrase "...and not otherwise" in the Legislative Intent Section, Chapter 8.32 does not contain an explicit prohibition against the use, sale, possession, and discharge of Dangerous Fireworks or an explicit prohibition against the use and discharge of Safe and Sane Fireworks outside the restricted timeframe for the sale of Safe and Sane Fireworks. Thus, Staff recommends that the City Council consider adopting the attached Ordinance, which contains more explicit prohibitions against the use, sale, possession, and discharge of Dangerous Fireworks and against the use and discharge of Safe and Sane Fireworks outside of the timeframe set forth for the sale of Safe and Sane Fireworks, as well as authority for the issuance of administrative citations with fines for certain violations of these prohibitions.

In the alternative, the City Council may wish to adopt an Ordinance banning the use, sale, possession, and/or discharge of all fireworks, including Safe and Sane Fireworks, within the City's territorial limits. A blanket ban on all fireworks could potentially simplify enforcement efforts and thereby save Police and Fire Personnel time and financial resources. However, because the State has preempted much of the field of Firework regulation, the City's ability to ban certain firework related activities beyond the use, sale, and possession of fireworks may be limited with respect to Safe and Sane Fireworks.

The particular amendments, which would be adopted to Chapter 8.32, were the City Council to adopt the attached Ordinance, are discussed in more detail below.

DISCUSSION/ANALYSIS:

SUMMARY

The enclosed Ordinance has been prepared by staff to amend the City's regulations of the sale, use, possession, storage, and discharge of fireworks contained in Chapter 8.32.

AMENDMENT OF COACHELLA MUNICIPAL CODE ("CMC" OR "CODE") SECTION 8.32.010— LEGISLATIVE INTENT

CMC section 8.32.010 sets out the purpose and intent of Chapter 8.32. Currently, this Section describes the legislative intent as the regulation of the sale, discharge and storage of Safe and Sane Fireworks pursuant to the permitting procedures and time restrictions set forth in the Chapter. The amendments to this Section clarify that, additionally, this Chapter is intended to prohibit the sale, possession, use, manufacture, and discharge of Dangerous Fireworks. This amendment was added to dispel any confusion or difficulty in interpreting the subsequent

provisions of Chapter 8.32 as not only regulating Safe and Sane Fireworks, but also prohibiting Dangerous Fireworks.

ADDITION OF NEW CMC SECTION 8.32.020—DEFINITIONS

In total, seven (7) definitions have been included in this new version of Section 8.32.020, including, but not limited to, definitions for the “Building Official,” “Director of Finance,” and “Qualifying Coachella Organizations.” The definitions added for “Dangerous Fireworks” and “Safe and Sane Fireworks” are discussed in more detail below.

“Dangerous Fireworks”

Because, as amended, the Chapter will draw a distinction between Safe and Sane Fireworks and Dangerous Fireworks, it was necessary to define both terms. The term “Dangerous Fireworks” has been defined with reference to California Health and Safety Code section 12505. By adopting this definition the sale, use, and discharge of the following types of fireworks will be explicitly prohibited by Chapter 8.32:

- “(a) Any fireworks which contain any of the following:
 - (1) Arsenic sulfide, arsenates, or arsenites.
 - (2) Boron.
 - (3) Chlorates, except:
 - (A) In colored smoke mixture in which an equal or greater amount of sodium bicarbonate is included.
 - (B) In caps and party poppers.
 - (C) In those small items (such as ground spinners) wherein the total powder content does not exceed 4 grams of which not greater than 15 percent (or 600 milligrams) is potassium, sodium, or barium chlorate.
 - (4) Gallates or Gallic acid.
 - (5) Magnesium (magnesium-aluminum alloys, called magnalium, are permitted).
 - (6) Mercury salts.
 - (7) Phosphorous (red or white except that red phosphorus is permissible in caps and party poppers).
 - (8) Picrates or picric acid.
 - (9) Thiocyanates.
 - (10) Titanium, except in particle size greater than 100-mesh.
 - (11) Zirconium.
- (b) Firecrackers.
- (c) Skyrockets and rockets, including all devices which employ any combustible or explosive material and which rise in the air during discharge.
- (d) Roman candles, including all devices which discharge balls of fire into the air.
- (e) Chasers, including all devices which dart or travel about the surface of the ground during discharge.
- (f) Sparklers more than 10 inches in length or one-fourth of one inch in diameter.
- (g) All fireworks designed and intended by the manufacturer to create the element of

surprise upon the user. These items include, but are not limited to, auto-foolers, cigarette loads, exploding golf balls, and trick matches.

(h) Fireworks known as devil-on-the-walk, or any other firework which explodes through means of friction, unless otherwise classified by the State Fire Marshal pursuant to this part.

(i) Torpedoes of all kinds which explode on impact.

(j) Fireworks kits.

(k) Such other fireworks examined and tested by the State Fire Marshal and determined by him, with the advice of the State Board of Fire Services, to possess characteristics of design or construction which make such fireworks unsafe for use by any person not specially qualified or trained in the use of fireworks.” (Cal. Health & Saf. Code §12505.)

“Safe and Sane Fireworks”

The current version of Chapter 8.32 references the definition for “Safe and Sane Fireworks” contained in the California Health and Safety Code in Section 8.32.010 “Legislative Intent,” but does not explicitly so define “Safe and Sane Fireworks” for purposes of this Chapter. The amended version of Section 8.32.020 includes this definition, which, for reference, defines “Safe and Sane Fireworks” as follows: “[A]ny fireworks which do not come within the definition of ‘dangerous fireworks’ or ‘exempt fireworks.’” (Cal. Health & Saf. Code §12529.)

AMENDMENT OF SECTION 8.32.020—‘SAFE AND SANE’ FIREWORKS PERMITTED (AMENDED TO SECTION 8.32.030—‘SAFE AND SANE’ FIREWORKS’ PERMITTED)

Addition of Subsection 8.32.030(A)

In an effort to clarify the distinctions between the City’s regulation of “Safe and Sane Fireworks” and the City’s intended prohibition of “Dangerous Fireworks,” this Subsection has been added to state that, subject to other Code requirements, the possession, use, display, and discharge of Safe and Sane Fireworks within the City is permitted *only* during the time period beginning at 12:00 p.m. on June 28 and ending at 12:00 p.m. on July 5 of that same year.

This Section is partially repetitive of newly amended Section 8.32.080, which defines the duration period for the sale of Safe and Sane fireworks. However, the two Sections do not overlap as to the possession, use, display, and discharge regulations, which are not included outside of the Legislative Intent Section of the current version of the Chapter. Therefore, if the City wishes to delete one of these Sections, it is recommended that Section 8.32.080 be removed so that these additional regulations as to the lawful time period for the possession, use, display, and discharge of safe and sane fireworks remain.

Addition of Subsection 8.32.030(B)

The current Chapter does not explicitly authorize the Director of Finance to issue permits for the sale of Safe and Sane Fireworks despite the fact that his involvement in the permitting process is referenced by other Code Sections. (*See* current CMC §8.32.020(A), (E), §8.32.030(C)-(D), §8.32.040.) Accordingly, this Subsection has been added to clarify the Director of Finance’s role in accepting permit applications and issuing permits for the sale of

Safe and Sane Fireworks.

Addition of Subsection 8.32.030(C).

Current Subsection 8.32.020(A) states that “[n]o person shall sell...any fireworks within...the city without a fireworks permit first being issued to a qualifying Coachella organization.” The wording of this Subsection could be argued to require only that any one qualifying Coachella organization be issued a permit before any other person or entity may engage in the sale of Safe and Sane Fireworks with or without a permit.

Thus, Subsection 8.32.030(C) has been added, to state explicitly that it is unlawful for “any person or organization to sell Safe and Sane Fireworks within the City without having first met the prerequisites for issuance of a fireworks permit contained in Section 8.32.060 of this Chapter and having applied for and been issued a permit therefore from the director of finance or his/her designee.”

AMENDMENT OF SECTION 8.32.070—DURATION OF FIREWORKS SALES (AMENDED TO SECTION 8.32.080—DURATION OF FIREWORKS SALES)

This Subsection has been amended to further clarify that only Safe and Sane Fireworks may be sold during the time period between noon on the twenty-eighth day of June and noon of the fifth day of July. As discussed above, this Section is partially repetitive of Section 8.32.030(A), and, if the City wishes to remove one of these two Sections, it is recommended that this Section 8.32.080 be removed.

AMENDMENT OF SECTION 8.32.090—PROHIBITION ON DISCHARGE (AMENDED TO SECTION 8.32.100—PROHIBITIONS)

Currently, this Subsection prohibits only the ignition, explosion, projection, or use of any fireworks upon, over, or onto the property of another or within twenty-five (25) feet of any residence, dwelling, or other structure. A clarification has been added to the prohibition against the discharge of fireworks onto the property of another such that this act is prohibited only without the property owner’s permission. Additionally, the prohibition against the possession, use, discharge, manufacture, and sale, within the City, of any and all Dangerous Fireworks has been added to this Section.

ADDITION OF NEW CMC SECTION 8.32.140—ADMINISTRATIVE FINES

The Health and Safety Code authorizes the adoption of local ordinances imposing administrative fines for unlawful activities related to the unlawful use, possession, sale, and discharge of fireworks. (Cal. Health & Saf. Code §12557; See also Cal. Gov. Code §53069.4.) Pursuant to requirements set forth in the State Fireworks Law, the State Fire Marshall has developed a model ordinance for the imposition, enforcement, collection, and administrative review of these administrative fines. (Cal. Health & Saf. Code §12557(a).) This proposed version of CMC Section 8.32.140 has been modeled off of the State Fire Marshall’s Model Ordinance authorized by Health & Safe. Code section 12557(a) and tailored to fit the City’s current Code.

A. Addition of Subsection 8.32.140(A)—Purpose

In addition to setting forth the general purpose of the Section as authorizing the issuance of administrative fines, this Subsection contains an exemption for pyrotechnic licensees and clarifies that administrative fines issued under authority of this Section shall not preclude the City from imposing any other authorized penalty. Additionally, pursuant to Health & Saf. Code section 12557(b)(2), this Section states that the imposition of fines related to dangerous fireworks shall be limited to amounts of twenty five (25) pounds or less of such fireworks. And, pursuant to Health & Saf. Code section 12726, this Section requires that sixty five (65) percent of all administrative fines collected related to dangerous fireworks be forwarded to the State Controller for deposit in the Fireworks Enforcement and Disposal Fund. Finally, this Section also imposes strict liability on the owners of residential real property for violations of the Code and renders each contiguous use, display and/or possession a separate violation subject to a separate fine.

B. Addition of Subsection 8.32.140(B)—Issuance of Administrative Citations

This Section authorizes Code Compliance Officers to issue the administrative citations and directs Code Compliance Officers to issue administrative citations on forms in compliance with the requirements set forth in Section 3.20.040 of the CMC.

C. Addition of Subsection 8.32.140(C)—Administrative Fines

This Section sets forth the fine amounts for violations related to the possession use, storage, safe, and/or display of dangerous fireworks and for the use of safe and sane fireworks on or at dates, times and/or locations outside those permitted by the Chapter.

The fine amounts have been taken directly from the State Fire Marshall Model Ordinance and range from \$250.00—first offense violation of the Safe and Sane Fireworks regulations—to \$3,000.00—third offense violation related to the use of dangerous fireworks.

D. Addition of Subsection 8.32.140(D)—Administrative Appeal

This Section directs the administration of appeal hearings to be conducted in accordance with the procedures set forth in CMC chapters 3.20 and 3.28.

FISCAL IMPACT:

None.

ALTERNATIVES:

1) Continue this item and provide staff with direction.

RECOMMENDED ALTERNATIVE(S):

Staff recommends approval of this Ordinance No. 1166, or Alternative #1 above.

Attachments:

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