

ORDINANCE NO. 815 C.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFICA  
AMENDING ARTICLE 2 OF CHAPTER 3 OF TITLE 4 OF THE PACIFICA  
MUNICIPAL CODE RELATING TO FIREWORKS

**WHEREAS**, the use of safe and sane fireworks displays are part of a longstanding tradition by which citizens celebrate Fourth of July festivities; and

**WHEREAS**, the illegal use of fireworks is an immediate and imminent hazard and threat to the health, safety, and general welfare of the users, spectators, and general public, as well as property; and

**WHEREAS**, the United States Consumer Product Safety Commission has determined that the highest rate of injury from fireworks is to children ages five to nine; and

**WHEREAS**, Article 2 of Chapter 3 of Title 4 of the Pacifica Municipal Code ("Fireworks Ordinance") prohibits the use of dangerous fireworks and permits the use of safe and sane fireworks within the City during the period of June 28 through July 5 of each year in certain locations and in certain circumstances; and

**WHEREAS**, the City amended the Fireworks Ordinance in 2008 and 2013 to better protect against the adverse effects of fireworks and to provide additional tools to law enforcement to prevent the illegal use of fireworks; and

**WHEREAS**, there have been ongoing concerns from the community regarding the illegal use of fireworks on private property within the City; and

**WHEREAS** the City Council wishes to encourage greater responsibility by persons responsible for, or having control of, properties or gatherings for ensuring that there is no illegal use, discharge, or ignition of fireworks, and to provide law enforcement with additional tools to prevent the illegal use of fireworks; and

**WHEREAS** the City Council wishes to update its application process for permits to sell safe and sane fireworks to better reflect the needs of the community;

**NOW, THEREFORE**, the City Council of the City of Pacifica does ordain as follows:

**Section 1.** The above recitations are true and correct and material to this Ordinance.

**Section 2. Environmental Review.** The City Council finds that this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15060(c)(2) of the CEQA Guidelines, California Code of Regulations, Article 5, Title 14, Chapter 3, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment and Section 15060(c)(3) of the CEQA Guidelines as it is not a project as defined by CEQA per Section 15378.

**Section 3. Amendment of Article 2 of Chapter 3 of Title 4.** Article 2 of Chapter 3 of Title 4 of the Pacifica Municipal Code is amended as shown in Exhibit "A" attached hereto and incorporated by reference.

**Section 4. Severability.** If any section, subsection, clause, or phrase of this

ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would subsequently be declared invalid or unconstitutional.

**Section 5. Effective Date.** This ordinance shall go into effect thirty (30) days after its adoption and shall be published and posted as required by law.

This ordinance was introduced on the 8th day of May, 2017 and scheduled for consideration or adoption on the 22nd day of May 2017.

**DULY AND REGULARLY ADOPTED** this 22nd day of May 2017 by a vote of the City Council as follows:

AYES: Martin, Vaterlaus, Digre, Keener, O'Neill

NOES: None

ABSENT: None


ABSTAIN: None

CITY OF PACIFICA



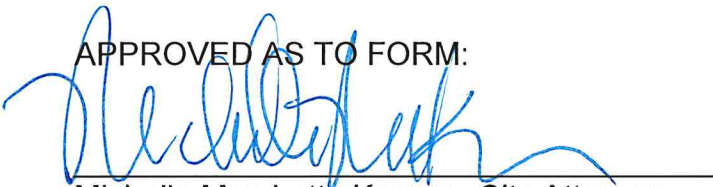
Mike O'Neill, Mayor

ATTEST:




Kathy O'Connell, City Clerk

APPROVED AS TO FORM:



Michelle Marchetta Kenyon, City Attorney



 <p style="text-align: center;"><b>CITY OF PACIFICA</b> ADMINISTRATIVE POLICY</p>	No. 68
<b>FIREWORKS PERMIT PROCESS</b>	DATE ISSUED: 05/XX/17

**PERMITTING PROCEDURES FOR PERMITS TO SELL, OFFER FOR SALE, OR  
DISPLAY FOR SALE SAFE AND SANE FIREWORKS IN THE CITY OF PACIFICA**

**PURPOSE**

To define the application procedures to obtain a permit to sell, offer for sale, or display for sale safe and sane fireworks.

**POLICY**

1. **Application Deadline:** Applicants for a permit to sell under Article 2 of Chapter 3 of Title 4 of the Municipal Code must complete their applications and return them to the Finance Department at 170 Santa Maria Avenue after the first Monday of January and **before the first Monday in February.**
  
2. **Application Requirements:** Applicants must meet all of the following requirements for one full year prior to submitting an application for a permit to sell, and maintain compliance with all requirements for the duration of the permit:
  - a. An applicant must be at least one of the following:
    - (i) A non-profit organization pursuant to Internal Revenue Code Sections 501 (c) 3, 4, 6, 7, 8, 10, 19, 23, or 26, Section 501 (d), or Section 501 (e);
    - (ii) A group which is associated with an organization meeting the requirements of section 4-3.201(c)(1)(i)(A);
    - (iii) An organization affiliated with and officially recognized by an elementary school, junior high school, high school, or school district that serves, in whole or in part, the residents of Pacifica;

An applicant registered with the Federal Government as a charity or other public benefit organization, must include the organization's Federal or State ID number on its application;

An applicant affiliated with a school or school district must include proof of its recognition by the school or school district.

- b. An applicant shall be organized primarily for veterans, patriotic, welfare, civic betterment, or charitable purposes;
  - c. An applicant must be one which provides direct and regular community services and benefits to the residents of the City;
  - d. An applicant shall have its principal and permanent meeting place in the City of Pacifica, and the address of such meeting place must be included on the application form;
  - e. An applicant shall have been organized and established in the City of Pacifica for a minimum of one year continuously preceding the filing of the application for the permit;
  - f. An applicant shall have a bona fide membership of at least twenty (20) members who reside in the City, are employed in the City, or are owners or operators of a business, or other establishment located in the City, and whose names should be listed on the sheet attached to the application form.
  - g. Applicants must provide the City with an assurance that, if granted a permit, they will provide to the Finance Department proof of insurance meeting the requirements stated in Section 4-3.205(c) not later than June 15.
  - h. Applicants must agree to hold harmless, indemnify, and defend the City against any and all claims arising from their sale of fireworks.
  - i. Applicants shall agree to perform twenty (20) hours of clean-up related community service prior to August 31 at the times and locations specified by the City as a condition of receiving a permit to sell fireworks.
2. Prior Violations: Within the twenty-four (24) months prior to the submittal of the application, an applicant shall not have A) had a permit to sell fireworks revoked; or B) been cited or found by any court of competent jurisdiction or City administrative hearing officer to be in violation of any civil or criminal local, state, or federal law relating to fireworks. Applicants must provide a list of any complaints, citations, or notices of revocation related to fireworks received within the past twenty-four (24) months, and describe the resolution of each matter.
  2. Filing of Applications: In order to be eligible for a permit, applications must be completed, signed, and filed in person at the Finance Department.
  3. Number of Permits: Fifteen (15) fireworks permits to sell will be awarded each year.
  4. Assignment of Permits: Preliminary permits shall be assigned according to the following priority:
    - a. Guaranteed Permits: Two eligible organizations affiliated with and recognized by Terra Nova High School and one eligible organization

affiliated with and recognized by Oceana High School shall receive permits every year. If more eligible organizations from a school apply for permits than the school has guaranteed permits, the school shall determine which eligible organization shall receive the guaranteed permits. Any additional eligible organizations shall be eligible to receive a permit to sell through the permit drawing.

- b. Prior Year Waiting List: Eligible organizations from the previous year's waiting list who have submitted a complete application will then receive permits according to their ranks.
  - c. Drawing: The remaining permits shall be assigned by drawing.
  - d. Waiting List: Any eligible organization that submits a complete application and is not assigned a permit for the current year will be assigned a rank on the waiting list by an additional drawing.
5. Re-Application: All organizations on the waiting list must apply again the following year to be eligible for a permit. If an organization fails to reapply, it will lose its spot on the waiting list.
  6. Preliminary Permit: The City Manager shall notify successful applicants of the preliminary approval of their applications for a permit to sell on or before the first Monday in March of each year, and issue each successful applicant a preliminary permit. The preliminary permit shall not become effective unless and until the permittee has timely provided the City with the required licenses, permits, and authorizations; paid the applicable fees; and pass an inspection by the Fire Department.
  6. Permit Fee (Part 1): Permittees must pay Part 1 of the permit fee in the amount listed in the City's current "Master Fee and Charges Schedule" by **March 31**.
  7. Verification of Licenses, Permits, and Insurance: Permittees must obtain and provide copies of the following documents to the Pacifica Finance Department by **June 15**:
    - a. State Fire Marshal's Retail Fireworks License  
A State Fire Marshal's Retail Fireworks License is obtained from the State Fire Marshal's Office, 2300 Merced Street, Marina-Merced Office Complex, San Leandro, CA 94577, telephone (510) 357-8173.
    - b. Certificate of insurance meeting the requirements of Section 4-3.205(c) of the Municipal Code
    - c. California State Board of Equalization Temporary Sales Tax Permit
    - d. Proof of permission to sell fireworks from the property owner on whose property the fireworks stand will be located.
  8. Fire Department Inspection: No fireworks stand shall be located or erected **before June 21**. Prior to beginning sales, all fireworks stands must pass inspection by the Fire Department to determine their compliance with the requirements of the Municipal Code and any other applicable regulations. **It is the responsibility of each permittee to set up an appointment with the North County Fire Authority for inspection.**

9. Date and Time of Sales: No sales are permitted except between the hours of 12:00 p.m. (noon) to 10:00 p.m. on June 28th, and 9:00 a.m. to 10:00 p.m. of each day from June 29th through July 4th.
10. Clean Up (Part 1): On July 5, each permittee must perform ten (10) hours of clean-up related community service at the times and locations specified by the City.
11. Removal of Unsold Stock and Fireworks Stands: Unsold stock and litter must be removed by **12 noon on July 6**. Fireworks stands must be removed by **12 noon on July 18**.
12. Clean Up (Part 2): In addition to the July 5 clean up, the City shall assign each permittee times and locations to perform an additional ten (10) hours of clean-up related community service, which the permittee must perform prior to August 31.
13. Final Report: On or before **September 1**, each permittee must submit a financial statement to the Finance Department setting forth the total gross receipts from each fireworks stand operated by the permittee, all expenses incurred and paid in connection with the purchase of fireworks and the sale thereof, and to whom and for what purpose the net proceeds were disbursed, along with the most recent report filed by the permittee to the State Board of Equalization.
14. Permit Fee (Part 2): On or before **September 1**, each permittee must submit to the Finance Department Part 2 of the permit fee in the amount set forth in the current "Master Fee and Charges Schedule".

Any organization that does not adhere to the requirements of this Policy and the Municipal Code will not be eligible to apply for future fireworks permits for twenty-four (24) months.

<b>Timeline</b>	
First Monday in January	Permit applications available from the City
First Monday in February	Permit applications due to City
First Monday in March	Successful applicants issued preliminary permits; unsuccessful applicants notified of rank on waiting list
March 31	Permit fee (part 1) due to City
June 15	Proof of permits, license, permission to sell from property owner, and insurance due to City
June 21	First day to erect fireworks stands
June 28 (noon)	Fireworks sales start
July 4 (10 p.m.)	Fireworks sales end
July 5	Permittees perform first 10 hours of community service
July 6 (noon)	All fireworks removed from fireworks stands
July 18 (noon)	Fireworks stands disassembled
August 31	Deadline to finish additional 10 hours of community service
September 1	Financial statements due to City
September 1	Permit fee (part 2) due to City





## EXHIBIT A

### Article 2. - Fireworks

#### Sec. 4-3.201. - Definitions

The most current adopted definitions set forth in the State Fireworks Law (California Health and Safety Code Sections 12500 et seq.) will define the terms used in this article unless otherwise modified herein.

- (a) "City" means the City of Pacifica.
- (b) "Dangerous fireworks" means any fireworks specified as such in Section 12505 of the California Health and Safety Code, including any safe and sane fireworks altered in a manner such that they fall within the definition of dangerous fireworks.
- (c) "Eligible organization" means an organization which has met all of the following criteria and which continues to meet the criteria for the duration of any permit to sell issued by the City pursuant to this article:
  - (1) For a continuous period of not less than one full year preceding submittal of an application for a permit to sell (as defined herein):
    - (i) The organization shall be at least one of the following:
      - (A) A non-profit organization pursuant to Internal Revenue Code Sections 501 (c) 3, 4, 6, 7, 8, 10, 19, 23, or 26; Section 501 (d); or Section 501 (e);
      - (B) A group which is associated with an organization meeting the requirements of Section 4-3.201(c)(1)(i)(A);
      - (C) An organization affiliated with and officially recognized by an elementary school, junior high school, high school, or school district that serves, in whole or in part, the residents of Pacifica;
    - (ii) The organization shall be organized primarily for veterans, patriotic, welfare, civic betterment, or charitable purposes;
    - (iii) The organization must have its principal and permanent meeting place within the City;
    - (iv) The organization must be one which provides direct and regular community services and benefits to the residents of the City;
    - (v) The organization must have a minimum bona fide membership of at least twenty (20) members who either reside in the City, are employed in the City, or are owners or operators of a business, or other establishment located in the City;
  - (2) The organization must not have been cited for or found by any court of competent jurisdiction or City administrative hearing officer to be in violation of any civil or criminal local, state, or federal law relating to fireworks within twenty-four (24) calendar months prior to the organization's submittal of an application for a permit to sell;

- (3) The organization must not have had a permit to sell revoked within twenty-four (24) months prior to the organization's submittal of an application for a permit to sell.
- (d) "Fireworks stand" means any building, counter, or other structure of a temporary nature used in the sale, offering for sale, or display for sale of safe and sane fireworks.
- (e) "Minor" shall mean a person under the age of eighteen (18) years.
- (f) "Permit to sell" means a permit required by Section 4-3.204(a).
- (g) "Public display of fireworks" is defined in Section 12524 of the California Health and Safety Code.
- (h) "Social host" shall mean any of the following:
  - (1) Any owner of private property as listed on the most recent assessment roll;
  - (2) Any person who has the right to use, possess, or occupy a public or private property under a lease, permit, license, rental agreement, or contract;
  - (3) Any person who hosts, organizes, supervises, officiates, conducts, or accepts responsibility for a gathering on public or private property.
- (i) "Safe and sane fireworks" means any fireworks specified as such in the State Fireworks Law, Section 12529 of the California Health and Safety Code.
- (j) "Special effects" is defined in Section 12532 of the California Health and Safety Code.
- (k) "Strictly liable" means liability for a wrongful act irrespective of such person's intent, knowledge, negligence, or lack thereof in committing the wrongful act.

**Sec. 4-3.202. - General prohibition against ignition, use, discharge, possession, sale, offer for sale, or display of dangerous fireworks.**

- (a) No person shall ignite, use, discharge, sell, offer for sale, or display for sale any dangerous fireworks, or take any action requiring a permit under Section 12640 of the California Health and Safety Code, without a permit from the Fire Chief.
- (b) No person shall possess dangerous fireworks in the amount of twenty-five (25) pounds or less (gross weight including packaging) within City limits without a permit from the Fire Chief.
- (c) The Fire Chief shall have authority to adopt reasonable rules and regulations for the granting of permits for those activities listed in Section 12640 of the California Health and Safety Code, including public displays of dangerous fireworks and special effects.
- (d) Each use or display of dangerous fireworks or special effects shall be handled by a licensed pyrotechnic operator (as defined by Section 12527 of the California Health and Safety Code) in accordance with a City-issued permit, and shall be ignited, used, or discharged in a manner and location that, in the opinion of the Fire Chief or his or her designee, will not be hazardous to any person.

**Sec. 4-3.203. - Ignition, use, or discharge of safe and sane fireworks.**

- (a) Permissible hours of discharge: It shall be unlawful for any person to ignite, use, or discharge any safe and sane fireworks within City limits except between the hours of 12:00 p.m. (noon) to 11:00 p.m. on June 28, and 9:00 a.m. to 11:00 p.m. of each day from June 29 through July 5, inclusive, of the same year.
- (b) Location limitations of discharge: No person shall ignite, use, or discharge any safe and sane fireworks in any of the locations set forth below:
  - (1) Upon, over, or onto any property without the consent of the owner.
  - (2) Within ten (10) feet of any residence, dwelling, or other structure used as a place of habitation by human beings.
  - (3) Within any City park, mini-park, or tot lot.
  - (4) Within fifty (50) feet of any fireworks stand.
  - (5) Upon, over, or onto any beach within the City except for that designated portion of beach immediately west of the north Pacifica State Beach/Linda Mar Parking Lot located at 5150 Coast Highway, to approximately ten (10) feet east of the tide line and immediately north of the property located at 5200 Coast Highway to the prolongation of the north end of the north Pacifica State Beach/Linda Mar Parking Lot.
- (c) Discharge by unsupervised minors prohibited: It shall be unlawful for any minor to ignite, use, or discharge any safe and sane fireworks unless under the direct supervision and in the immediate presence of a parent, legal guardian, or other custodial adult eighteen (18) years of age or older.

**Sec. 4-3.204. - Sale, offer for sale, or display of safe and sane fireworks.**

- (a) Permit required: It shall be unlawful for any person to sell, offer for sale, or display for sale any safe and sane fireworks within the City limits without having first procured a valid permit to sell in accordance with the provisions of this article and Administrative Policy #68, as amended from time to time. The maximum number of permits to sell that may be issued during any calendar year shall not exceed fifteen (15).
- (b) Approved fireworks stand required: It shall be unlawful for any person to sell, offer for sale, or display for sale safe and sane fireworks except from within an approved fireworks stand in accordance with the provisions of this article and Administrative Policy #68, as amended from time to time.
- (c) Hours of sale: It shall be unlawful to sell, offer for sale, or display for sale any safe and sane fireworks within the City limits except between the hours of 12:00 p.m. (noon) to 10:00 p.m. on June 28th, and 9:00 a.m. to 10:00 p.m. of each day from June 29th through July 4th, inclusive, of the same year.
- (d) Sale to minors prohibited: It shall be unlawful for any person to cause, permit, allow, aid, abet, or suffer the sale of any safe and sane fireworks to a minor at any time.

**Sec. 4-3.205. – Application for permits to sell, offer for sale, or display safe and sane fireworks.**

Any eligible organization, as defined by this article, desiring to sell, offer for sale, or display for sale any safe and sane fireworks shall submit a complete application for a permit to sell to the City Manager, on a City-approved form, after the first Monday of January and before the first Monday of February. All applications for a permit to sell shall contain the following:

- (a) The full name and address of the applicant and, if incorporated, the names and addresses of the officers thereof;
- (b) The proposed location of the fireworks stand;
- (c) An assurance that, if granted a preliminary permit to sell, the applicant, not later than June 15th, shall deliver to the Finance Department a certificate evidencing a policy of insurance for public liability and property damages with a minimum of One Million and no/100ths Dollars (\$1,000,000.00) combined single limit with an endorsement attached thereto designating the City of Pacifica as an additional insured hereunder. The endorsement shall be executed by a company authorized to carry on an insurance business in the State of California, and having an A.M. Best's Rating of at least A:VIII;
- (d) An agreement to hold harmless, indemnify, and defend the City of Pacifica, its officials, officers, employees, and agents, against any and all claims arising from the applicant's sale of fireworks.
- (e) An agreement stating that, if granted a permit to sell, the applicant will perform not less than twenty (20) hours of clean-up related community service prior to August 31st at the times and locations designated by the City.
- (f) Any other information deemed necessary by the City Manager.

**Sec. 4-3.206. – Notice of approval for permits to sell, offer for sale, or display safe and sane fireworks.**

The City Manager shall notify successful applicants of their selection, and issue to each successful applicant a preliminary permit to sell on or before the first Monday in March of each year. The preliminary permit shall not become final until the applicant has timely complied with Section 4-3.207(a), Section 4-3.208(c)(1), and Section 4-3.208(a)(3) of this article.

**Sec. 4-3.207. – Fees for permits to sell, offer for sale, or display safe and sane fireworks.**

Each permittee shall tender a permit fee to the Pacifica Finance Department in two parts. The amount of each part of the fee shall be as stated in the City's Master Fee and Charges Schedule, as amended from time to time.

- (a) The permittee shall pay Part 1 of the fee on or before March 31st of the year authorized pursuant to the permit to sell.
- (b) The permittee shall pay Part 2 of the fee on or before September 1st of the year authorized pursuant to the permit to sell.

**Sec. 4-3.208. - Fireworks stands: construction, location, operating, clean-up, and reporting requirements.**

- (a) Construction requirements: It shall be unlawful for any person to erect, install, use, operate, or maintain a fireworks stand unless the stand complies with the following:
- (1) Fireworks stands shall not be erected on any property sooner than June 21st of the year in which fireworks sales have been authorized pursuant to a permit to sell.
  - (2) The erection of a fireworks stand need not comply with the provisions of the Pacifica Building Code; however, the installation, use, and maintenance of any utilities therein shall comply with the Pacifica Municipal Code and/or codes adopted therein.
  - (3) All fireworks stands shall be inspected by the Fire Department to ensure that the stand is constructed in a manner which will reasonably ensure the safety of attendants and patrons and that the fireworks stand meets the requirements of this article.
  - (4) No fireworks stand shall have a floor area in excess of 750 square feet.
  - (5) Each fireworks stand in excess of twenty-four (24) feet in length shall have at least three (3) exits spaced approximately an equal distance apart; provided, however, in no event shall the distance between exits exceed twenty-four (24) feet.
  - (6) Exit doors shall swing in the direction of egress.
  - (7) Except for openings to permit the delivery of merchandise to the prospective customer, which openings shall not be larger than twelve (12) inches by eighteen (18) inches in size, the front of each fireworks stands shall be completely enclosed from the counter to the roof with 1) hardwire cloth, the openings of which shall not exceed one-fourth (1/4) inch in size; or 2) Plexiglas.
  - (8) Each fireworks stand shall have at least two (2) fire extinguishers with minimum 2A-10B:C capacity, mounted, recently serviced, in good working order, and easily accessible for use in case of fire.
  - (9) "No smoking" signs prohibiting smoking within twenty-five (25) feet of the stand shall be prominently displayed on the exterior of each fireworks stand.
  - (10) A sign with letter size of at least 1" high on contrasting background stating "NO PERSON UNDER THE AGE OF 18 YEARS SHALL BE PERMITTED TO PURCHASE FIREWORKS" shall be posted on the outside of the fireworks stand in a conspicuous location.
  - (11) A sign with letter size of at least 1" high on contrasting background stating "NO PERSON UNDER THE AGE OF 18 YEARS SHALL SELL, OR HANDLE FOR SALE, ANY CLASSIFICATION OF FIREWORKS" shall be posted on the inside of the fireworks stand in a conspicuous location.
- (b) Location requirements: It shall be unlawful for any person to erect, install, use, operate, or maintain a fireworks stand unless the stand complies with the following:
- (1) No fireworks stand shall be located within twenty-five (25) feet of any other building.

- (2) No fireworks stand shall be located within fifty (50) feet of any gasoline storage tank or dispensing unit.
- (c) Operating requirements: It shall be unlawful for any person to use, operate, or maintain a fireworks stand without complying with all of the following:
- (1) On or before June 15<sup>th</sup> of any year authorized pursuant to a permit to sell, each permittee shall obtain each of the following and submit copies of the same to the Pacifica Finance Department:
    - (i) State Fire Marshal's Retail Fireworks License;
    - (ii) Temporary sales tax permit from the California State Board of Equalization;
    - (iii) Insurance in the amount and manner described in Section 4-3.205 of this article; and,
    - (iv) Written consent from the owner of record of the real property which is the proposed location of the fireworks stand to the placement of the fireworks stand and conduct of fireworks sales on the real property.
  - (2) No person other than an adult member of the eligible organization, spouse of a member, adult child of a member, or parent of a member who is a minor shall operate the fireworks stand. Only eligible organizations shall share or otherwise participate in the profits of the operation of such stand.
  - (3) No person under the age of eighteen (18) years shall sell or handle for sale fireworks from a fireworks stand.
  - (4) During the hours of sale, no person shall be allowed in the interior of a fireworks stand, except those directly engaging in the sale of fireworks.
  - (5) Each fireworks stand shall have an adult over the age of eighteen (18) years in attendance and in charge thereof when fireworks are stored therein (including during hours when fireworks are not being actively sold, offered for sale, or displayed for sale).
  - (6) Each permittee shall post its City of Pacifica permit to sell, temporary sales tax permit from the California State Board of Equalization, State Fire Marshal's Retail Fireworks License, and proof of insurance (as required pursuant to the provisions of this article) in a prominent place inside of the fireworks stand.
  - (7) No permittee shall permit or suffer smoking within twenty-five (25) feet of the fireworks stand.
  - (8) No permittee shall permit or suffer the use or discharge of fireworks within fifty (50) feet of the fireworks stand.
  - (9) All weeds, litter, trash, and combustible materials shall be cleared from the location of fireworks stands, including a distance of at least twenty (20) feet surrounding the stand, and each permittee shall maintain the location of the fireworks stand in a neat, clean, and sanitary condition at all times.
  - (10) Approved rubbish and/or recycling containers in accordance with City standards shall be provided at each fireworks stand location.
- (d) Clean-up and reporting requirements: All permittees shall comply with all of the following:

- (1) All unsold stock and accompanying litter shall be removed from the location of the fireworks stand, and from related storage containers, by 12:00 p.m. (noon) on July 6th of the year authorized pursuant to the permit to sell.
- (2) Fireworks stands and related storage containers shall be removed from their temporary locations by 12:00 p.m. (noon) on July 18th of the year authorized pursuant to the permit to sell.
- (3) On or before August 31st, the permittee shall perform twenty (20) hours of clean-up related community service according to the agreement signed pursuant to Section 4-3.205(e) at the times and locations determined by the City. Each permittee shall perform ten (10) hours of clean-up related community service on July 5th, and an additional ten (10) hours prior to August 31st.
- (4) On or before September 1st of any year authorized pursuant to a permit to sell, the permittee shall submit to the Finance Department a financial statement by the treasurer or financial officer of the permittee setting forth the total gross receipts from each fireworks stand operated by the permittee, all expenses incurred and paid in connection with the purchase of fireworks and the sale thereof, and to whom and for what purpose the net proceeds were disbursed, along with the most recent report filed by the permittee to the State Board of Equalization.

**Section 4-3.209 – Strict liability for unlawful ignition, use, or discharge of fireworks by another person.**

- (a) Ignition, use, or discharge by minors: Any person having the care, custody, or control of a minor shall be strictly liable for any unlawful ignition, use, or discharge of dangerous fireworks or safe and sane fireworks in violation of Sections 4-3.202 or Section 4-3.203 by such minor.
- (b) Social Host Liability: Any social host shall be strictly liable for any unlawful ignition, use, or discharge of any dangerous fireworks or safe and sane fireworks in violation of Sections 4-3.202 or Section 4-3.203 at his or her property or gathering; except that
  - (1) No owner of private property shall be liable under this subsection (b) for a violation of Sections 4-3.202 or Section 4-3.203 on that property if that owner can demonstrate that at the time of such violation he or she (i) had rented or leased the property to another, (ii) was not present, and (iii) had no prior knowledge of the violation.
  - (2) No person who has the right to use, possess, or occupy a unit in a multifamily residential property under a lease, rental agreement, or contract shall be liable under this subsection (b) for violations of Sections 4-3.202 or Section 4-3.203 occurring in the common areas of such property.
  - (3) Nothing in this subsection (b) shall limit the liability of any social host for a violation of Section 4-3.202 or Section 4-3.203 of this article by the social host.

**Sec. 4-3.210. - Penalties for violations.**

- (a) Except for violations of Section 4-3.202 for which a penalty is prescribed in Section 12700 et seq. of the California Health and Safety Code, each violation of this article, including the rules and regulations promulgated by the Fire Chief under Section 4-3.202(c), shall be a misdemeanor and shall be punishable by a fine not exceeding One Thousand and no/100ths Dollars (\$1,000.00) and/or six (6) months in jail.
- (b) Each violation of this article, including the rules and regulations promulgated by the Fire Chief under Section 4-3.202(c), shall also be punishable by a civil fine in accordance with Title 1, Chapter 6 of this Code, and subject to appeal through the procedures stated therein.
  - (1) Notwithstanding Section 1-6.04(b), no warning is required prior to the issuance of an administrative citation for the violation of this article.
  - (2) Any civil fine assessed and collected for a violation of Section 4-3.202(b) of this article shall include the actual costs associated with the collection, transportation and disposal of any seized fireworks, in accordance with regulations duly adopted by the State Fire Marshal, which costs shall be forwarded to the State Fire Marshal. Moreover, civil fines assessed and collected for a violation of Section 4-3.202(b) of this article shall not be subject to California Health and Safety Code Section 12706.
- (c) Failure to comply with the requirements of Section 4-3.208 shall constitute grounds for revocation of a permit to sell.
  - (1) An enforcement officer revoking a permit to sell shall provide the permittee with a notice of revocation containing the following information: 1) The name of the permittee; 2) The address or description of the location of the violation(s); 3) The date and approximate time of commission of the violation(s); 4) The code section(s) violated; 5) A description of the violation(s); 6) A description of the appeal process for revocation of permits; 7) The name and signature of the officer.
  - (2) Any permittee whose permit to sell has been revoked shall be entitled to a copy of the evidence supporting the revocation upon request to the Police Department within twenty-four (24) hours of the receipt of the request.
  - (3) Before July 2, any permittee whose permit has been revoked is entitled to contest the revocation by filing a request for an expedited appeal with the Police Department. A permittee's failure to file a complete request for an expedited appeal prior to July 2 shall constitute a waiver of the right to an expedited appeal.
  - (4) A request for an expedited appeal must contain the following: 1) The name, address, telephone, and any facsimile numbers, of the permittee contesting the revocation; 2) A statement of the reason(s) why the revocation is being contested; 3) Any evidence in support of the permittee's argument; 4) The date and signature of an officer of the permittee.
  - (5) Upon receipt of a request for an expedited appeal, the City Manager, or his or her designee, shall issue a written decision based on evidence upholding or overturning the revocation of the permit and shall state the reasons therefor. The City Manager, or his or her designee, shall serve the decision on the permittee by first class mail, postmarked not less than two (2) business days after the receipt of the expedited appeal. The



decision of the City Manager, or his or her designee, on an expedited appeal of a revocation shall be final.

- (6) Any permittee whose permit to sell has been revoked, and who has not filed an expedited appeal, may contest the revocation in accordance with the appeal procedures set out in Section 1-6.07 et seq. of this Code. A permittee who has not filed a complete expedited appeal prior to July 2, and who has not filed a complete timely appeal pursuant to this Section shall be deemed to have waived its right to an appeal of the revocation of the permit to sell.
- (d) Any violations of Sections 4-3.202, 4-3.203, 4-3.204, 4-3.208, or 4-3.209 of this article are hereby declared to be public nuisances and subject to abatement in accordance with Title 5, Chapter 25 of this Code or emergency abatement in accordance with Section 1-2.08 of this Code. All such violations are further declared to be an immediate or imminent hazard or threat to life, limb, health, property, safety or welfare such that it would be unreasonable and dangerous to persons or property to expend the time necessary to seek City Manager approval and allow for voluntary abatement prior to emergency abatement. Any actions to recover costs of abating violations of this article shall be subject to the procedures in Section 5-25.13 et seq. and may include the actual costs associated with the collection, transportation, and disposal of any seized fireworks. Appeals of the City's determination of nuisance, determination to use emergency abatement procedures, or amount of recoverable costs shall be subject to appeal pursuant to Title 5, Chapter 25, Article 2 of this Code. Appeals of the amount of recoverable costs must be filed within ten days of the responsible party's receipt of the City's statement of costs pursuant to Section 5-25.13.
- (e) Causing, permitting, aiding, abetting or concealing a violation of any provision of this article shall also constitute a violation.
- (f) The remedies provided by this article are cumulative and in addition to any other remedy available at law or in equity.

**Sec. 4-3.211. - Concurrent authorities.**

This article is not the exclusive regulation for fireworks within the City of Pacifica. This article shall supplement and be in addition to the other regulatory codes, statutes, regulations, and ordinances heretofore and hereinafter enacted by the City of Pacifica, the State of California, or any other legal entity or agency having jurisdiction.

Where allowed by law, this article supersedes any conflicting provisions of the California Fire Code and Building Code.