

RESOLUTION NO. 2018-023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF ANAHEIM ADOPTING RULES AND REGULATIONS
FOR THE RETAIL SALE, POSSESSION, AND DISCHARGE
OF "SAFE AND SANE" FIREWORKS PURSUANT TO
ANAHEIM MUNICIPAL CODE CHAPTER 6.40 AND
REPEALING RESOLUTION NO. 2017-071

WHEREAS, in the General Municipal election on June 3, 2014, the voters of the City of Anaheim approved Measure E, which repealed Section 6.40.30 of the Anaheim Municipal Code, prohibiting the retail sale, possession or use of safe and sane fireworks in the City and authorized the Anaheim City Council to regulate safe and sane fireworks by ordinance; and

WHEREAS, the Anaheim City Council subsequently adopted Ordinance Nos. 6323 and 6366 thereby repealing and replacing the previous Chapter 6.40.30 (Fireworks Prohibited) of Title 6 (Public Health and Safety) of the Anaheim Municipal Code and, among other things, allowing the sale of safe and sane fireworks at the Honda Center and in West Anaheim; and

WHEREAS, on April 25, 2017, the City Council adopted Ordinance No. 6407 amending Chapter 6.40 (Fireworks) of the Anaheim Municipal Code and implementing the intent of City Council to expand the sale of safe and sane fireworks to commercial properties west of SR-57 in order to provide additional opportunities for non-profit organizations to host fireworks booths for community fundraising purposes; and

WHEREAS, Chapter 6.40 of the Anaheim Municipal Code provides that the sale, possession, and discharge of " safe and sane" fireworks for private display shall be permitted within the City, in accordance with rules and regulations adopted by resolution of the City Council, relating to the following: who may sell safe and sane fireworks; the limited dates and times when such fireworks may be sold and discharged; the manner, location, and any required permits for the sale, storage, possession, discharge and/ or disposal of such fireworks; and

WHEREAS, the City Council desires to adopt this Resolution to establish rules and regulations for the retail sale, possession and discharge of "safe and sane" fireworks pursuant to Chapter 6.40 of the Anaheim Municipal Code.

NOW, THEREFORE, the City Council of the City of Anaheim does hereby resolve as follows:

SECTION 1. The City Manager is hereby authorized to implement this resolution and adopt reasonable policies and procedures to implement Chapter 6.40 of the Anaheim Municipal Code.

SECTION 2. Permits to sell safe and sane fireworks. No person or entity shall sell at retail or offer for retail sale any safe and sane fireworks within the city without first obtaining an annual permit to sell safe and sane fireworks from the city. On an annual basis, the Fire Chief will issue

a maximum of sixteen (16) permits as provided for in this resolution. Permits shall be issued as follows:

Each of the eight (8) public high schools in Anaheim will be provided one permit for a maximum number of eight (8) permits. The permit for each public high school is intended to incorporate all of the high school sports teams and affiliated civic groups and each public high school shall be responsible for how the permit is administered and utilized. An additional eight (8) permits will be distributed via lottery to qualified organizations throughout the City. A qualified organization is a non-profit civic or charitable organization operating within the City for at least three (3) years prior to applying for a permit whose purpose is i) civic betterment, ii) charitable or religious purposes to and for the citizens of Anaheim, and/or iii) youth sports organizations operating within the City whose main purpose is to benefit a youth sports activity. In the event that any of the eight public high schools elects not to participate in the sale of safe and sane fireworks then, at the discretion of the City Manager, the permit will be included as an additional lottery permit available to qualified organizations.

SECTION 3. Lottery application requirements. Applications for participation in the lottery will be available to qualified organizations at the City Clerk's office beginning March 26th, continuing up to 5:00 p.m. on Friday April 20th, at which time the filing period for that year will be closed. An application must comply with all applicable instructions and requirements which may include, but are not limited to, submittal of proof of qualifying applicant status and a list of names and addresses of the organization's officers. Applicants may be asked for additional documentation verifying the information submitted in an application. If an applicant is unable to provide such documentation, the application will be deemed incomplete and disqualified from the annual lottery. Each qualified organization may submit one lottery application. If more than one application is submitted on behalf of any qualified organization, the City may disregard one or all of the applications at its sole discretion. Any attempt to transfer an application shall void that application and may preclude an applicant from participating in the lottery in future years. To promote an even distribution of annual permits among qualified organizations, no qualified organization may apply for participation in the lottery if it obtained an annual permit in the immediately preceding year. For example, the eight permit recipients from the 2017 lottery are ineligible to apply and participate in the 2018 lottery. Public high schools in Anaheim do not need to fill out an application for the lottery since each high school will automatically receive one permit for fireworks sales.

SECTION 4. Lottery. The City will hold a lottery to select eight (8) permit recipients after the close of the application period. Permit recipients shall be randomly selected from a pool of all qualified applicants who have submitted complete and timely applications. The first eight applicants to be randomly selected shall be granted a permit pursuant to this resolution upon completion of all permit application requirements. An additional number of applicants shall be randomly selected to be granted a permit in the event that one or more of the initial eight applicants drawn fails to obtain a permit. All selected applicants shall be considered for a permit in the order in which they were drawn.

SECTION 5. Permit application requirements. In order to receive a permit, all lottery-selected applicants and Anaheim Public High Schools must submit a completed permit application to the

Fire Marshal and pay all necessary fees, which shall be set by resolution. An application must comply with all instructions on the application form. Permit application requirements may include, but are not limited to, an identification of the proposed location for the fireworks stand, a copy of a retail fireworks permit issued by the State Fire Marshal, a copy of a temporary sales tax permit issued by the State Board of Equalization and a copy of a City business license. A permit holder shall be entitled to operate no more than one fireworks stand, in an approved location. Permits are non-transferrable.

In addition to the information required on the application, permittees shall provide the following:

- A. A written and signed statement that, prior to receipt of a permit, a certificate evidencing policies of insurance as required by the City shall be provided to the City.
- B. Proof that the permittee meets the requirements of Chapter 6.40 of the Anaheim Municipal Code.
- C. Signature of an authorized officer or representative attesting to the veracity of all statements in the permit application.

SECTION 6. Operation of fireworks stands. All permit holders shall comply with the conditions set forth in the permit. All permit holders shall also comply with the Minimum Requirements for Fireworks Stands, a copy of which shall be distributed to each permit holder upon permit issuance. Fireworks may be sold by permit holders during the hours set forth in Chapter 6.40 of the Anaheim Municipal Code.

SECTION 7. Insurance. Permittees shall provide evidence of insurance evidencing the following minimum coverage and limits. Insurance shall be provided by an insurer authorized to do business in California with a current A.M. Best's rating of no less than an A-:

- A. General Liability: Commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000.00) per occurrence, two million dollars (\$2,000,000.00) general aggregate, for bodily injury, personal injury, and property damage without limitation, blanket contractual liability. General liability policies shall provide or be endorsed using Insurance Services Office forms CG 20 26 or equivalent, to provide that the City and its officers, elected or appointed officials, employees, agents and volunteers shall be additional insured. There shall be no exclusions, included in or added to the policy, for fireworks sales or similar activities allowable under this permit.
- B. The insurance coverage and limits set forth herein are minimum requirements and are not intended to limit the permittee's indemnification obligations under Section 8 below, nor do the indemnity obligations limit the rights of the insured parties to the coverage afforded by their insured status. Requirements of specific coverage features or limits contained in this Section 7 are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by

any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

- C. Any deductibles, self-insured retentions or similar forms of coverage limitations or modifications must be declared to and approved by the City.
- D. A permittee shall include all subcontractors, if any, as insureds under its policies and/or require all Contractors to meet the same requirements herein and shall furnish separate certificates and endorsements for each Contractor.
- E. A permittee shall provide to the City, certificates of insurance and endorsements, as required, as evidence of the insurance coverage required herein.

SECTION 8. Indemnity. As a condition of permit issuance and to the fullest extent permitted by law, permit holders shall agree to indemnify, defend (at City's option), and hold harmless the City, its officials, officers, employees, agents, and representatives from and against any and all claims, losses, damages, defense costs, or liability, of any kind or nature (collectively referred to hereinafter as "Claims"), arising out of or in connection with a permittee's (or permittee's contractors' or subcontractors', if any) (i) acts, errors, or omissions, (ii) performance or failure to perform, (iii) goods or services provided, or (iv) work performed by, or on behalf of, permittee, relative to a permit; except for those Claims which arise out of the sole active negligence or willful misconduct of the City.

The obligation to indemnify the City (i) shall be in effect without regard to whether or not the City, the permit holder, or any other person maintains, or fails to maintain, insurance coverage, or a self-insurance program, for any such Claims; and (ii) shall survive expiration or termination of the permit.

SECTION 9. Noncompliance. Failure to comply with the rules and regulations governing the sale, possession and discharge of safe and sane fireworks will result in the immediate invalidation of any current permit and forfeiture of eligibility for the lottery drawing in the next sales cycle.

SECTION 10. Reporting. Each licensed wholesale business, as defined in Chapter 6.40 (Fireworks) of the Anaheim Municipal Code, shall provide the City with a report listing the fireworks stand locations in the City to which they supplied fireworks and the collective total wholesale sales from those locations. Additionally, each safe and sane fireworks sale permittee and public High School shall provide a report to the City no later than August 1st, outlining the amount of gross sales, net profit, and how the organization plans to use the proceeds.

SECTION 11. Effective Date. This Resolution shall be effective upon its adoption by the City Council of the City of Anaheim.

SECTION 12. Repeal of Resolution No. 2017-071. Resolution No. 2017-071 adopted on April 25, 2017, is hereby repealed.

THE FOREGOING RESOLUTION is approved and adopted by the City Council of the City of Anaheim this 6th day of March, 2018, by the following vote:

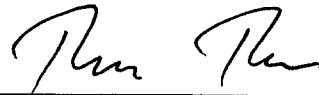
AYES: Mayor Tait and Council Members Murray, Vanderbilt, Barnes, Kring, and Faessel

NOES: None

ABSENT: Mayor Pro Tem Moreno

ABSTAIN: None

CITY OF ANAHEIM



MAYOR OF THE CITY OF ANAHEIM

ATTEST:



CITY CLERK OF THE CITY OF ANAHEIM
(Acting)

126840/LHM


CLERK'S CERTIFICATE

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF ANAHEIM)

I, THERESA BASS, Acting City Clerk of the City of Anaheim, do hereby certify that the foregoing is the original Resolution No. 2018-023 adopted at a regular meeting provided by law, of the Anaheim City Council held on the 6th day of March, 2018 by the following vote of the members thereof:

- AYES: Mayor Tait and Council Members Murray, Vanderbilt, Barnes, Kring, and Faessel
- NOES: None
- ABSTAIN: None
- ABSENT: Mayor Pro Tem Moreno

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of March, 2018.



ACTING CITY CLERK OF THE CITY OF ANAHEIM

(SEAL)