

RESOLUTION NO. 2008 - 67

RESOLUTION AMENDING RULES AND REGULATIONS PERTAINING
TO TEMPORARY FIREWORKS STANDS PURSUANT TO
SAN BRUNO MUNICIPAL CODE SECTION 6.50.060

WHEREAS, California Health and Safety Code section 12500, *et seq.*, provides that cities may authorize the sale, use and discharge of "safe and sane" fireworks, as defined by state law;

WHEREAS, San Bruno Municipal Code Chapter 6.50 provides for the limited sale, use and discharge of "safe and sane" fireworks;

WHEREAS, San Bruno Municipal Code §6.50.050 provides that it is unlawful for any person to possess for sale or to sell "safe and sane" fireworks within the city without having first applied for and received a city permit authorizing such sale;

WHEREAS, San Bruno Municipal Code §6.50.060 provides that the city council shall establish by resolution the rules and regulations pertaining to temporary fireworks stands;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of San Bruno that all previous rules and regulations pertaining to fireworks are hereby rescinded.

BE IT FURTHER RESOLVED that the following new rules and regulations for issuance of permits for temporary fireworks stands are hereby:

- Section 1 Definitions.
- Section 2 Eligible applicants.
- Section 3 Application requirements.
- Section 4 Cost recovery fee.
- Section 5 Location for temporary fireworks stands.
- Section 6 Eligibility requirements.
- Section 7 Maximum number of permits.
- Section 8 Notice of application deadline and lottery.
- Section 9 Application review process.
- Section 10 Permits – lottery process.
- Section 11 Post lottery permit requirements.
- Section 12 Temporary fireworks stand general requirements.
- Section 13 Fire Department general safety requirements.
- Section 14 Permit suspension, revocation, and automatic revocation.
- Section 15 Permanently ineligible.
- Section 16 Permit expiration.
- Section 17 Seizure of fireworks.

Section 1. Definitions.

The following words and phrases are defined as follows:

A. "Fireworks," "dangerous fireworks," and "safe and sane" fireworks shall have the meanings ascribed to them in Sections 12505, 12511, and 12529 of the California Health and Safety Code.

B. "Grandfathered Permittees" refers only to the following local serving organizations that have traditionally been so recognized by the City: San Bruno Lowen 83 Soccer, San Bruno Police Association, San Bruno Girls Softball, San Bruno Colts Baseball, American Youth Soccer (AYSO), San Bruno Pony Baseball, Capuchino Sports Boosters, San Bruno Rotary Club, American Legion & VFW, Booster's 71, Booster's 72, and Portola Highlands. These organizations must apply for a permit and have a temporary fireworks stand each year in order to retain grandfathered status.

C. "Local serving organization" means a "non-profit organization" as hereinafter defined, which provides a substantial benefit to the local San Bruno community, as determined by the city council. Factors to be considered in making determinations of substantial benefit to the local San Bruno community include, but are not limited to:

1. The number or percentage of San Bruno residents served by the organization;
2. The amount of monies expended for the benefit of San Bruno residents;
3. The number or percentage of organization members who are residents of San Bruno or local business owners; and
4. The number or percentage of primary functions, meetings, or events of the organization which occur in San Bruno.

D. "Lottery permittees" shall mean all non-grandfathered permittees that are local serving organizations. Lottery permittees are not eligible to become "grandfathered permittees."

E. "Non-profit organization" shall mean an organization or association that has been issued a tax-exempt certificate, and whereby it is demonstrated to the city council that the organization or association is organized primarily for civic betterment or charitable purposes and not-for-profit.

F. "Prohibited fireworks use hours" means anytime other than from noon until 10 p.m. on June 28th through July 3rd and from noon until midnight on July 4th.

Section 2. Eligible applicants.

Eligible applicants are limited to "grandfathered permittees" that applied for a permit and had a temporary fireworks stand the previous year and "local serving organizations." An applicant is ineligible for a permit if it has been previously deemed ineligible as provided herein.

Section 3. Application requirements.

A. *City Form.* All applications for permits to sell "safe and sane" fireworks shall be submitted in writing to the city clerk on city-provided form.

B. *Application deadline.* In order to be considered for a permit, an application shall be filed by the deadline designated by the city clerk.

C. *One application only.* No applicant shall submit more than one application for a permit to sell "safe and sane" fireworks within the city. If more than one application is submitted by or on behalf of any organization, including through any affiliate of such local serving organization, only the first application received shall be processed. All additional requests shall be deemed void. Any attempt to transfer an application shall void any and all applications filed by or on behalf of both the transferor/local serving organization and the transferee/local serving organization.

D. *Application information and documents.* Each applicant shall provide the following the information and documentations:

1. Permit Application- Required Information. Each applicant shall provide the following information on a city-provided application form proscribed by the city:

- a. Identifying information of the organization (name, mailing address, and any other information designated on the form);
- b. Identification of principal officers of the organization (name, title, and city of residence);
- c. Statement of tax-exempt status including tax identification number or declaration that organization's primary purpose is charitable and not for profit;
- d. Street address or description of the site where stand is proposed to be located; and
- e. Property owner's name and valid phone number for a contact person.

2. Application Permit- Required Documentation. Each applicant shall provide the following documentation attached to an application form proscribed by the city:

- a. Written authorization from the property owner or designated agent granting permission to the applicant to use the site for this purpose;

- b. A description of the major activities and functions of the organization;
- c. A statement describing how this organization meets the criteria of a "local serving organization" as stated in Section (C) of the definition section of this Resolution and relevant documentation to support each factor;
- d. A description of how monies earned from fireworks sales will be used;
- e. If applying for a grandfathered permit, a photocopy of the prior year's permit;
- f. Acknowledgment and agreement by the authorized representative of the applicant to the indemnification/hold harmless agreement (revised from time to time by the city attorney) as stated on the application;
- g. Any additional information or documentation that the city may request to verify an applicant's permit request; and
- h. Verification by the authorized representative of the applicant that the information and documentation provided is complete and accurate and submitted under penalty of perjury.
- i. Copy of paid invoice from Finance Department as proof of payment for pro rata share of cost recovery fee from prior fireworks use period.

Section 4. Cost recovery fee.

A non-refundable application fee established by resolution of the city council shall accompany every application for a permit. In addition to the application fee and any other required fees, each applicant receiving a permit shall be required to pay, each year, to the city a pro rata portion of the costs incurred by the city for fireworks public education, enforcement of the requirements of San Bruno Municipal Code Chapter 6.50 and this resolution, and fireworks clean-up. The pro rata share of the costs shall be determined using gross sales as shown on each permittee's Sales and Use Tax Return for the applicable period. Copies of each permittee's Return shall be submitted to the City no later than September 30 following July 4 of the same year.

Section 5. Location for temporary fireworks stands.

Permittees shall locate temporary fireworks stands: (1) within a commercial zoning district or within a planned development district whose development plan provides that the predominant use of the district is retail commercial; (2) on property where permittee has written consent of property owner; and (3) in a location that is approved by the San Bruno fire chief or his or her designee, and further no stand shall be changed from the location set forth on the license without prior written permission of the San Bruno fire chief or the fire chief's designee.

Section 6. Eligibility requirements.

In order to be eligible for a permit, the applicant shall be an eligible applicant (Section 2), shall meet all of the application requirements (Section 3), shall submit the cost recovery fee (Section 4), and shall designate an appropriate location for a stand (Section 5). Failure to meet all eligibility requirements shall result in the application being denied.

Section 7. Maximum number of permits.

The total maximum number of grandfathered and lottery permits that may be issued and the maximum number of temporary "safe and sane" fireworks stands that will be permitted during any one calendar year shall not exceed eighteen. The "grandfathered permittees" shall be allocated first, and then the difference remaining between eighteen and the number of "grandfathered permittees" allocated shall be awarded to the "lottery permittees."

Section 8. Notice of application deadline and lottery.

Notice of the application deadline and lottery shall be provided by the city clerk by mail to those groups that have previously requested such notice in writing within the past year and also to those groups that were granted permits the previous year. Notice shall also be provided pursuant to San Bruno Municipal Cable TV.

Section 9. Application review process.

A. The city clerk shall receive all applications and make an initial review to determine whether the applicant has met all the eligibility requirements.

B. The city clerk shall separate all applications into grandfathered and lottery stand permit requests and shall forward the applications with his/her findings as to eligibility to a subcommittee of the city council.

C. A city council subcommittee may review the applications and the city clerk findings and make recommendations to the city council.

D. At a regularly scheduled public meeting, the city council shall determine which applicants shall be granted permits and whether as a "grandfathered permittee" or "lottery permittee."

E. At the meeting at which the permits are granted, the city council may require a representative from each organization to inform the public of the services provided to the San Bruno community by each permit holder, the facts that support a finding that the organization qualifies as a "local serving organization" and how fireworks-generated funds will be spent.

Section 10. Permits – Lottery.

A. The city council shall first determine whether an application meets the criteria for approval as "grandfathered permittee." In the event that the city council finds a particular application has failed to meet the eligibility requirements, the application shall be denied, and its grandfather status (if any) shall permanently cease. In such case, that spot may be made available to the lottery applicants.

B. Following approval of grandfathered stands, a lottery shall be held to award the remaining spots to eligible lottery permit applicants. Qualified applicants shall each be assigned a number. A random drawing shall then be held until all available lottery stand permits have been awarded. If there are eighteen or fewer applicants, the city council may dispense with the lottery procedure and grant all the eligible applicants a permit.

Section 11. Post lottery permit requirements.

After being granted a permit, a permittee is subject to automatic permit revocation as provided for herein for failure to adhere to the following requirements:

A. *Insurance.* Each applicant shall be required to secure, maintain, and provide proof of insurance including additional insured endorsements which shall be provided to the city clerk by June 1 of each year. The city's designated risk manager and/or city attorney may permit minor modifications to the insurance requirements and/or time frame for providing the insurance documents upon approval in writing. If the insurance contract ends prior to one year from the date the permit is issued, the permittee and/or wholesaler shall submit timely evidence of renewal to the city clerk bringing the permittees into compliance with the insurance requirements stated above. Failure to submit such proof of insurance on a timely basis shall result in the permit being automatically revoked as provided for herein.

1. Each fireworks stand permittee through its wholesaler shall procure, maintain, and renew for a period of one year from the date of permit issuance insurance against claims for injuries to persons and/or damages to property which may arise from or in connection with the permittee's fireworks operations. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence form CG0001) in an amount not less than \$5,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other forms with a general aggregate is used, either the general aggregate limit should apply separately to the location for which the permit is issued or the general aggregate limit shall be twice the required occurrence limit.

2. Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

3. City, its officers, officials, employees, and agents are to be covered as insureds as respects each of the following: liability arising from or in connection with permittee's operations, including the insured's general supervision of permittee; products and completed operations of permittee; premises owned, occupied or used by permittee; or automobiles owned, leased, hired, or borrowed by permittee. The coverage shall contain no special limitations on the scope of protection afforded to city, its officers, officials, agents, or employees.

4. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

5. An endorsement must state that coverage is primary insurance and that no other insurance affected by the city will be called upon to contribute to a loss under the coverage.

6. Any failure of permittee to comply with the reporting provisions of the policy shall not affect coverage provided to city, its officers, officials, agents, and employees.

7. Insurance is to be placed with a California-admitted insurer with a Best's rating of no less than A:VII. In the event coverage with a California-admitted insurer is not available, coverage with a California-approved insurer with a Best's rating of no less than A+IX is permissible.

B. *Acknowledgement of Conditions.* Permits are granted subject to compliance with all of the conditions detailed in this resolution and in San Bruno Municipal Code Chapter 6.50 which the permittee shall acknowledge in writing. This resolution shall be attached to the permit.

C. *Temporary sales tax permit.* Permittees are required to obtain a temporary sales tax permit from the local office of the California State Board of Equalization.

D. *Safety Seminar.* After being awarded a permit, at least one member of the local serving organization, preferably the responsible adult(s) listed on the permit application, shall attend a "safe and sane" fireworks stand operator safety seminar conducted by the fire department and the licensed fireworks wholesaler that is supplying the "safe and sane" fireworks to the local serving organization.

Section 12. Temporary fireworks stand general requirements.

A. Every stand shall have and prominently display a State Fire Marshal Retail Sales Permit, a permit from the San Bruno Fire Department, a temporary sales tax permit from the California State Board of Equalization, and proof of the permittee's required insurance.

B. The retail sales of "safe and sane" fireworks shall be permitted only within an approved temporary fireworks stand, and the retail sales from any other building or structure is hereby prohibited.

C. No person other than the "local serving organization" permittee shall operate the stand for which the permit is issued or share or otherwise participate in the profits of the operation of such stand.

D. **Absolutely NO person under the age of 18 shall be in any fireworks stand at any time.**

E. No person shall knowingly sell "safe and sane" fireworks to any person under the age of 18. All persons selling "safe and sane" fireworks shall demand and require from the purchaser bona fide evidence of age and identity. For purposes of this section, bona fide evidence of age and identity of purchaser is a document issued by a federal, state, county or municipal government which contains a photograph of the purchaser including, but not limited to, a valid California driver's license.

F. Each permittee shall be responsible for ensuring that every person selling fireworks from that permittee's stand shall distribute with each sale a city flier containing information on applicable laws and corresponding penalties concerning fireworks. It shall be the responsibility of every permittee to produce a sufficient number of city fliers.

G. All unsold stock of "safe and sane" fireworks in the hands of the permittee after 9:00 p.m. on July 4th shall be returned to the wholesaler/ distributor and removed from the city within 10 days.

Section 13. Fire Department safety conditions.

All permittees shall comply with the following requirements for temporary fireworks stands:

A. All weeds and combustible materials shall be cleared from the location of the "safe and sane" fireworks stand to a distance of at least 25 feet surrounding the stand. All trash resulting from the operation of the stand must be removed on a daily basis.

B. All grass and rubbish shall be cleared from in and around each fireworks stand as directed by the San Bruno fire chief or the fire chief's designee.

C. Approved fire extinguishers shall be installed BEFORE fireworks are placed in stands.

D. An approved fire extinguisher is a minimum 3A20BC dry-chemical portable fire extinguisher.

E. No fireworks shall be ignited in the vicinity of a fireworks stand.

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

G. "**NO SMOKING**" signs shall be posted conspicuously. Under no circumstances shall people smoke in the booth or in the immediate vicinity thereof.

H. No person shall smoke within 25 feet of any "safe and sane" fireworks stand. No person shall light, cause to be lighted or permit to be lighted any "safe and sane" fireworks or combustible material within 50 feet of any "sane and sane" fireworks stand.

I. No fuel-powered generator or similar equipment shall be allowed within 50 feet of a "safe and sane" fireworks stand.

J. Each "safe and sane" fireworks stand must have an adult in attendance and in charge thereof at all times while "safe and sane" fireworks are available for sale. Sleeping or remaining in the stand after close of business each day is forbidden.

K. On closing of the "safe and sane" fireworks stand, the permittee shall cause all litter to be removed from the premises.

L. In case of emergencies, San Bruno Fire Department recommends that cellular telephones be available in all fireworks stands during times of operation. The cellular phone should be available to all salespersons. Cellular phone users should report "Emergencies" to San Bruno Police at **877-8989**.

M. No stand shall be changed from the location set forth on the license without prior written permission of the San Bruno fire chief or his designee

N. Booklets describing the hazards of fireworks shall be provided with all packaged fireworks and placed in two (2) locations on fireworks stands.

O. When stands are not open for business, fireworks shall be stored in fireproof containers in accordance with the directions of the San Bruno fire chief or his designee. Fireworks shall not be stored in areas zoned as Residential.

P. All lighting, other than battery-operated, shall be in compliance with the National Electric Code as adopted by the City of San Bruno. Any electrical devices powered by a portable emergency generator or by a 110 AC power source shall apply for an electrical permit issued by the San Bruno Building Department.

Q. Fireworks stands shall be operated in accordance with all applicable laws, rules, and regulations in place at the time of permit issuance, or as may be amended from time to time.

R. Any violations of this regulation shall be reported to the San Bruno Police Department business line (650) 616-7100, or in the event of an emergency call 911 or (650) 877-8989.

Section 14. Permit suspension, revocation, automatic revocation.

A. *Permit suspension.* In the event the fire chief or the fire chief's designee determines that a violation of any federal, state, or local law or regulation or other condition constitutes an immediate danger to persons or property, the fire chief or the fire chief's designee shall suspend a permit, without notice or a hearing, and order the temporary fireworks stand closed immediately until city authorities determine such immediate danger is no longer present.

B. *Permit revocation.* In the event the fire chief or the fire chief's designee determines that a permittee has violated any federal, state, or local law or regulation or other condition, the fire chief or the fire chief's designee may revoke a permit, without notice or hearing. The fire chief or designee shall inform the permittee that the permittee may seek review of the fire chief's decision by the city manager or the city manager's designee, as soon as practical. The fire chief shall provide the city manager 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. Upon the permittee's written request and as soon as practical, the city manager or the city manager's designee shall meet with the permittee and the fire chief to review the fire chief's decision. The decision of the city manager or the city manager's designee shall be final.

C. *Automatic revocation.* As determined by the city manager or city manager's designee, whose decision is final, a permit shall be automatically revoked for failure to comply with any of the post-lottery permit requirements.

Section 15. Permanently ineligible.

An applicant or permittee shall be ineligible on a permanent basis for future temporary fireworks stands permits when its permit has been revoked or automatically revoked, commits a violation of San Bruno Municipal Code Chapter 6.50, fails to comply with the rules and regulations established by this resolution, or fails to remit no later than December 31 following July 4 of the same year its pro rata share of the city's incurred costs.

Section 16. Permit expiration.

A permit shall expire at noon on July 6th of the year it was issued.

Section 17. Seizure of fireworks.

The fire chief or his or her designee, may seize, take, remove, or cause to be removed at the expense of the permittee or licensed fireworks wholesaler, whichever is applicable, all stock of fireworks offered or exposed for sale, stored or held in violation of federal, state, or local law or regulation when such violation creates an imminent threat to public health or safety.

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I hereby certify that foregoing **Resolution No. 2008 - 67** was introduced and adopted by the San Bruno City Council at a regular meeting on June 24, 2008, by the following vote:

AYES: Councilmembers: Ibarra, Medina, Ruane, O'Connell, Mayor Franzella

NOES: Councilmembers: None

ABSENT: Councilmembers: None



Vicky S. Hasha, Deputy City Clerk