

**CITY OF HUGHSON
CITY COUNCIL
ORDINANCE NO. 2018-05**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
HUGHSON, ADDING CHAPTER 8.18 OF THE HUGHSON MUNICIPAL
CODE CONCERNING THE SALE AND DISTRIBUTION OF
FIREWORKS**

WHEREAS, the City of Hughson desires to amend its Municipal Code in order to regulate the sale and distribution of fireworks within the City; and

WHEREAS, after consultation with the Hughson Fire Protection District (District), this Ordinance coordinates the permitting process for the sale and distribution of fireworks with the District who enforces fire code regulations within the City; and

WHEREAS, the City desires to add Chapter 8.18 to regulate and limit the sale and storage of legal fireworks within the City;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HUGHSON DOES
ORDAIN AS FOLLOWS:**

Section 1 Section 8.18 of the Hughson Municipal Code is added to read in full as follows:

“Chapter 8.18.

FIREWORKS

“8.18.010 Manufacturing, storage, sale and public display of fireworks.

(a) The manufacture of fireworks within the City of Hughson is prohibited. “Fireworks” means “Agricultural and Wildlife Fireworks” as defined in Health and Safety Code Section 12503, “Dangerous Fireworks” as defined in Health and Safety Code Section 12505, “Emergency Signaling Device” as defined in Health and Safety Code Section 12506, “Exempt Fireworks” as defined in Health and Safety Code Section 12508, and “Fireworks” as defined in Health and Safety Code Section 12511

(b) It shall be unlawful for any person to engage in the sale or distribution of fireworks within the City of Hughson without first having secured a permit from the Hughson Fire Protection District and/or designee, and a business license from the City.

(c) It shall be unlawful to store fireworks within the City of Hughson without first having secured a permit to do so from the Hughson Fire Protection District and/or designee.

(d) Operator safety. Each year, one (1) or more representatives from each organization that is granted a permit to sell fireworks shall attend a stand operator safety seminar conducted by the Fire Department and the fireworks industry. Failure to attend the seminar shall result in the revocation of the organization's permit and license to sell fireworks for that calendar year. Licensee will be notified at time of application with dates and time of seminar.

“8.18.020 Definitions.

(a) “Fire Chief” shall be defined in accordance with Hughson Municipal Code Section 8.10.010(A).

(b) “Fire Department” shall refer to the Hughson Fire Protection District.

(c) “Local nonprofit organization” shall mean “nonprofit organization” as defined herein, which has a primary meeting place within the City, has been organized and established within the City for a minimum of one (1) year preceding the filing of the application for a permit, and has a bona fide membership of at least ten (10) members who reside in the City.

(d) “Nonprofit organization” shall mean any nonprofit association or corporation which, according to its articles of incorporation, has been organized primarily for veteran, patriotic, welfare, religious, civic betterment, or charitable purposes and currently possesses a status of active, good standing, and exempt with the California Franchise Tax Board or has been granted tax-exempt status by the Internal Revenue Service as evidenced by a letter of determination.

(e) “Person” shall mean any individual, firm, partnership, joint venture, association, concern, corporation, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit.

“8.18.030 Permit requirements.

(a) A permit to store or sell fireworks shall be issued if all of the following conditions are met:

(1) The applicant is a local nonprofit organization, or a nonprofit organization affiliated with a school district, as these terms are defined in HMC 8.18.050;

(2) A completed application and the required fee established by City Council resolution are submitted to the City on or before 5:00 p.m., June 15th;

(3) The fireworks to be sold are California State Fire Marshal approved and labeled Safe and Sane fireworks as defined in Health and Safety Code Section 12529; and

(4) The applicant is currently licensed as a fireworks wholesaler/retailer by the State of California.

(b) The total number of sales permits issued in any given year shall be limited to 1 for 1,000 residents and shall be apportioned for local nonprofit organizations, or nonprofit organizations affiliated with the Hughson Unified School District.

(c) Each organization is limited to one (1) booth.

“8.18.040 Non-transferability of permit.

Permits for retail sales of “safe and sane” fireworks issued pursuant to the provisions of this article are not transferable to any other person or organization and are issued for the purpose of operating a single fireworks sales booth at the approved location. The permit may be used only by the organization to which it is issued.

“8.18.050 Applications.

(a) The application shall be on a form approved by the Fire Department and shall establish the applicant’s status as a local nonprofit organization or a nonprofit organization affiliated the Hughson Unified School District, identify the proposed location of the sale booth, and storage of same, including the seven (7) digit parcel number (APN) of the Stanislaus County Assessor and other information as may be required by the Fire Chief and City. The completed application and the required fee established by City Council resolution are submitted to the Finance/Administrative Services Department by 5:00 p.m., June 15th. Every application shall be accompanied by:

- (1) Application cover letter;
- (2) State Fire Marshal’s Fireworks Retail License;
- (3) Proof of insurance;
- (4) Plot plan of storage;
- (5) Plot plan of booth location with exact placement of fireworks;
- (6) Property owner’s, or his/her designee’s, written permission to sell fireworks at the location shall accompany the permit application;
- (7) Resale or seller’s permit issued by the California State Board of Equalization; and
- (8) Completed business license application and current proof of local nonprofit status.

(b) Permit will be issued after inspection of the place of storage and stand reveals compliance with all conditions of this article.

(c) The Fire Chief, or his/her designee, may revoke, immediately and without notice or hearing, the “safe and sane” fireworks permit of any location or organization when any of the provisions of this code, Health and Safety Code, International Fire Code, or the California Code of Regulations is violated. The Fire Chief shall inform the permittee that permittee may seek review of the Fire Chief’s decision, by the City Manager, on the next business day. At the earliest opportunity on the next business day after revocation, the Fire Chief shall provide the City Manager with written notice that a fireworks permit has been revoked, including the name of the permittee and a brief statement of the grounds for revocation. If requested by the permittee, the City Manager, or his/her designee, shall meet with the permittee and the Fire Chief, or his/her designee, that day to review the Fire Chief’s decision. The decision of the City Manager shall be final.

(d) Revocation of any permit will be effective for that calendar year.

“8.18.060 Period of operation.

The sale of fireworks within the City shall be limited to the period commencing at June 28th and ending on July 6th for the hours of operation as designated in California Code of Regulation Title 19.

“8.18.070 Fire Department review.

The Fire Department shall review all applications to ensure compliance with the requirements of this section and shall consult with the Community Development Department to ensure the proposed locale meets existing zoning regulations and does not create a traffic hazard.

“8.18.080 Fireworks displays.

(a) A special permit is required to conduct a fireworks display. A non-refundable fee, as established by resolution of the City Council from time to time, shall accompany every application for permission to conduct a public display of fireworks. This fee shall be in addition to any other fee or tax imposed.

(b) Permit applications, together with the permit fee established by resolution of the City Council, shall be submitted to the City not less than fourteen (14) days prior to the scheduled date of the display. After such privilege shall be granted, sale and possession, use and distribution of fireworks for such display shall be lawful for that purpose only and non-transferable. The decision of the City Manager shall be made

after consultation with the Fire Chief and shall be in writing and shall be mailed, postage prepaid, to the applicant. The decision of the City Manager, in acting on an application for permission to conduct a public display in accordance with the provisions of this section, may be appealed to the City Council. Applicant shall file a Notice of Appeal of the City Manager's decision with the City Clerk within ten (10) days after the date of the decision. Upon failure to file such notice within the ten-day (10-day) period, the action of the City Manager, or his/her designee, shall be final and conclusive.

(c) The application shall include a diagram of the grounds on which the display is to occur which shows the point at which the fireworks are to be discharged, the location of the buildings, streets, electrical wires, trees and other overhead obstructions. At the time of application, the Fire Department shall be consulted regarding requirements for standby apparatus.

(d) The permit shall be granted unless it is determined that to do so would be contrary to public health, safety or welfare.

(e) Pyrotechnic operator. Fireworks display operations shall be under the direct supervision of a State of California licensed pyrotechnic operator. The pyrotechnic operator shall be responsible for all aspects of the display related to pyrotechnics.

(f) Insurance. The permittee/licensee shall carry general liability insurance with a minimum limit of liability per occurrence of one million dollars (\$1,000,000.00) for bodily injury and one hundred thousand dollars (\$100,000.00) for property damage, or one million dollars (\$1,000,000.00) combined single limit. The certificate of insurance shall include the following coverages and indicate the policy aggregate limit applying to: premises and operations, broad form contractual, and products and complete operations. The permittee/licensee shall provide at its own expense and maintain at all times the specified insurance policies with insurance companies approved by the City Attorney and shall provide evidence of such insurance to the City as may be required. The policies or certificates thereof shall provide that, thirty (30) days prior to cancellation or material change in policy, notices of same shall be given to the City Clerk of the city by registered mail, return receipt requested.

(g) Indemnification. The permittee/licensee shall agree to hold the City of Hughson, its agents, officers, employees, and volunteers harmless from, and save, defend, and indemnify them against any and all claims, losses, liabilities, and from every cause, including but not limited to injury to person or property or wrongful death, with the indemnity to include reasonable attorney fees and all costs and expenses arising directly or indirectly out of any act or omission of permittee arising out of any activity authorized by the permit.

“8.18.090 Sales, storage, use and handling of fireworks.

(a) General. Sales, storage, use and handling of fireworks shall be in accordance with this division.

(1) Sales. Retail sale or display with the intent to sell fireworks is limited to State of California Fire Marshal approved and labeled “Safe and Sane” fireworks within the City of Hughson by State of California licensed retailers, provided a permit to sell those fireworks has been approved and obtained from the Fire Chief.

(2) Storage. The storage of fireworks within the City of Hughson is limited to State of California Fire Marshal approved and labeled “Safe and Sane” fireworks by State of California licensed wholesalers and retailers.

(3) Wholesalers storage. Wholesalers may store “Safe and Sane” fireworks within the City of Hughson solely during the period of June 1 through July 31 of each year. Storage facilities shall comply with H1 occupancy classification requirements as defined by the Uniform Building Code.

(4) Retailers storage. Retailers may store “Safe and Sane” fireworks within the City of Hughson solely during the period of June 22 through July 15 of each year. “Safe and Sane” fireworks that are not being sold or displayed with the intent to sell, shall be stored solely in the following manner.

(i) Within the permitted fireworks stand with a responsible adult on the premises at all times.

(ii) In a completely enclosed and locked utility type trailer constructed of 1/4 inch plywood or other approved noncombustible material.

(iii) In a completely detached garage on residential property. There shall be no open flame or spark producing equipment, or Class 1 flammable liquids stored or used within the garage.

(5) Fireworks shall not be stored within forty (40) feet of any building classified or used as a public or private school, day care facility, residential care facility, hospital, or place of detention or public garage, or any place of public assembly that can accommodate fifty (50) or more persons.

(6) Storage location and description of storage type will be required submitted information and will require Fire Chief approval.

(b) Fireworks not allowed in the City. Piccolo Petes, Whistling Petes and similar devices shall not be sold, possessed or used in the City limits. The Fire Chief shall have final determination regarding decisions pertaining to similar devices.

“8.18.100 Temporary fireworks stands.

- (a) All retail sales of “Safe and Sane” fireworks shall be permitted only from within a temporary fireworks stand and sales from any other building or structure are hereby prohibited.
- (b) The fireworks stands shall be located at least twenty (20) feet from other structures.
- (c) Zoning of property in which the fireworks stand will be located shall be in accordance with Title 17, Chapter 17.03 of this Code.
- (d) Fireworks shall not be stored, sold, offered for sale, or discharged within one hundred (100) feet of the property where gasoline, LPG, other class 1 flammable liquids or flammable gasses are stored or dispensed.
- (e) All unsold stock and accompanying litter shall be removed from the location by 5:00 p.m. on the 6th day of July.
- (f) Temporary fireworks stands shall not be set up before June 14.
- (g) The fireworks stand shall be removed from the temporary location by 12:00 noon on the 12th day of July, and all accompanying litter shall be cleared from said location by said time and date. Any booth not removed by the permittee selling in such booth by 12:00 noon on the 12th day of July will be charged an additional fee of One Hundred and no/100ths (\$100.00) Dollars per day.
- (h) Safety precautions.
 - (1) No person under the age of eighteen (18) shall sell, or handle for sale, any classification of fireworks.
 - (2) No person under the age of eighteen (18) shall purchase or be allowed to purchase any classification of fireworks.
 - (3) Smoking, open-flame, and spark-producing equipment shall be prohibited for a distance of twenty (20) feet around any fireworks stand.
 - (4) Dry grass, weeds, trash, and other combustible material shall be removed for a distance of twenty (20) feet around any fireworks stand.
 - (5) No fireworks shall be set off within fifty (50) feet of any fireworks booth.
- (i) Stand construction. Merchandise may be displayed in approved glass enclosed counters or showcases, or merchandise may be displayed in stands constructed in the following manner:
 - (1) Walls shall be of plywood at least 1/4" thick or of an approved noncombustible material.
 - (2) Each fireworks stand shall have a roof covering of aluminum or sheet iron.

(3) Walls shall extend to minimum height of six (6') feet eight (8") inches, on at least three (3) sides. These three (3) sides shall be without openings, except for an exit door. If merchandise is stored within three (3) feet of an opening in an exterior wall and not in a glass counter, such merchandise shall be separated from the outside of the stand by a solid wall.

(4) An exit door with a minimum size of twenty-four (24") inches in width and six (6') feet in height shall be provided in each stand. Exits shall be maintained clear and unobstructed at all times.

(5) The front wall of the stand shall provide a physical barrier (i.e., screen, chicken wire) not less than eighteen (18") inches in height between the public and the merchandise on display.

(6) Approved "NO SMOKING" signs shall be prominently displayed in and on the stand.

(7) Approved "NO SALES TO PERSONS UNDER THE AGE OF 18 YEARS OF AGE" signs shall be prominently displayed in the stand.

(j) An approved 2A10BC-fire extinguisher shall be located in the stand near the exit, readily accessible.

(k) Sellers of fireworks shall comply with all rules and regulations of Title 19 of the California Code of Regulations and with the rules and regulations of the Fire Chief.

(l) Operations of fireworks stands shall be by permittee only. It is unlawful for the permittee organization to allow any person other than the permittee organization to operate the fireworks stand for which the permit is issued or to otherwise participate in the profits of the operation of such fireworks stand.

(m) It is unlawful for a non-profit organization to allow any person other than the individuals who are members of the permittee organization, their spouses or adult children, or volunteers to whom no compensation is paid, to sell or otherwise participate in the sale of fireworks at such fireworks stand.

(n) It is unlawful for a non-profit organization to pay any consideration to any person for selling or otherwise participating in the sale of fireworks at such fireworks stand, except the hiring of a night watchman or security officer.

"8.18.110 Dangerous fireworks prohibited: Penalties.

(a) A person shall not sell, use, possess, manufacture, or discharge dangerous fireworks within the City. Dangerous fireworks are defined as set forth in California Health and Safety Code Section 12505.

(b) Every owner, occupant, lessee, tenant, or holder of any possessory interest of a residence or other private property within the City is required to maintain, manage and supervise property and all persons thereon in a manner so as not to violate the provisions of this chapter. A responsible party need not be present at the time dangerous fireworks are possessed, manufactured, sold, used, or discharged in order for the City to issue an administrative citation under this section.

(c) For the purposes of this section, the term “responsible party” means any person with an ownership interest or right of possession of the real property where unpermitted fireworks are possessed, sold, used, manufactured or discharged, including but not limited to:

(1) Any owner-occupant.

(2) Any lessee, subtenant, licensee, or other person having possessory control over a property, structure, or parcel of land.

(3) Any person that organizes, supervises, officiates, conducts, or controls the gathering or any other person accepting responsibility for such a gathering.

(d) Penalties.

(1) Violations of this section shall be punished pursuant to remedies under Title 1, Chapter 1.17 of the Hughson Municipal Code.

(2) In addition to any other remedies set forth in subsection (d)(1) of this section, administrative citations may be imposed against any responsible party for violations of this section.

(3) Nothing in this section shall be intended to limit any of the penalties provided for under the California Health and Safety Code or Penal Code.”

Section 2 Within fifteen (15) days after its final passage, the City Clerk shall cause this Ordinance to be published in full in accordance with California Government Code section 36933.

Section 3 This Ordinance shall become effective thirty (30) days from and after its final passage and adoption, provided it is published in a newspaper of general circulation at least fifteen (15) days prior to its effective date.

The foregoing Ordinance was introduced and the title thereof read at the regular meeting of the City Council of the City of Hughson held on _____, _____, 2018, and by a vote of the Council members present, further reading was waived.

On motion of Councilperson _____, seconded by _____, the foregoing Ordinance was passed by the City

Council of the City of Hughson at a regular meeting held on _____, _____, 2018, by the following votes:

PASSED AND ADOPTED by the Hughson City Council at a regular meeting thereof held on _____, 2018, by the following vote:

AYES: _____

NOES: _____

ABSTENTIONS: _____

ABSENT: _____

JERAMY YOUNG, Mayor

ATTEST:

ASHTON GOSE, Deputy City Clerk