

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UNION CITY ADDING CHAPTER 7.26, FIREWORKS, TO THE UNION CITY MUNICIPAL CODE AND DELETING UNION CITY MUNICIPAL CODE SECTION 15.20.140 TO INCREASE PENALTIES RELATED TO ILLEGAL FIREWORKS

WHEREAS, the City of Union City allows the sale and use of Safe and Sane Fireworks, as defined and classified in Sections 12529 and 12562 of the Health and Safety Code, around the Fourth of July holiday; and

WHEREAS, the sale and use of Safe and Sane Fireworks is regulated by the City; and

WHEREAS, the use of illegal fireworks poses a significant public health, safety, and welfare risks to those that discharge the illegal fireworks as well as members of the public in the surrounding areas; and

WHEREAS, the use of illegal fireworks creates a significant fire danger, which is exacerbated by ongoing drought conditions within the City; and

WHEREAS, the use of illegal fireworks has increased significantly over recent years, which has increased the significant public health, safety, and welfare risks such fireworks cause; and

WHEREAS, the City Council desires to increase the penalties for illegal fireworks by classifying such conduct as a misdemeanor and increasing the maximum fine for violations; and

WHEREAS, the City Council also desires to slightly modify the hours of use for Safe and Sane Fireworks by prohibiting their use after 10:00 p.m. on July 4; and

WHEREAS, the City's current fireworks regulations are contained Section 15.20.140 of the Union City Municipal Code, and the City Council desires to relocate those regulations to Title 7, Health and Sanitation, of the Union City Municipal Code; and

WHEREAS, the California Constitution, Article XI, Section 7, provides cities and counties with the authority to enact ordinances to protect the health, safety, welfare, and morals of their citizens.

THE CITY COUNCIL OF THE CITY OF UNION CITY DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals.

The above recitals are true and correct and made a part of this Ordinance.

SECTION 2. Deletion of Section 15.20.140.

Section 15.20.140, “Chapter 56, Explosives and Fireworks,” of the Union City Municipal Code is deleted in its entirety.

SECTION 2. Addition of Chapter 7.26,

Chapter 7.26, “Fireworks,” is hereby added to the Union City Municipal Code to read as follows:

“Chapter 7.26 Fireworks.

Section 7.26.010 Definitions.

The following definitions shall apply to this Chapter

A. “Safe and Sane Fireworks” means those fireworks defined and classified in Sections 12529 and 12562 of the Health and Safety Code, as those sections may be amended from time to time.

- B. “Social host” means any of the following:
1. Any owner of private property as listed on the most recent Alameda County 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; or
 3. Any person who hosts, organizes, supervises, officiates, conducts, or accepts responsibility for a gathering on public or private property.

C. “Strictly liable” means liability for a wrongful act irrespective of such person’s intent, knowledge, negligence or lack thereof in committing the wrongful act.

Section 7.26.020 Prohibited.

It is unlawful for any person, corporation, or entity to possess, store, to offer for sale, expose for sale, sell at retail or wholesale, use, discharge, or explode any fireworks as described in Section 12505 of the Health and Safety Code without a permit and approval from the fire code official.

Section 7.26.030 Safe & Sane Fireworks Permitted; Applicable Regulations.

The sale and use of Safe and Sane Fireworks is permitted in accordance with applicable regulations contained in the Union City Municipal Code or pursuant to Resolution No. 2537-03 adopted by the City Council, as may be amended from time to time.

Section 7.26.040 Fees.

Entities engaged in the retail sale of Safe and Sane Fireworks shall pay a license fee in an amount established by Resolution 2537-03 as may be amended from time to time.

Section 7.26.050 Permit.

No entity may engage in the retail sale of Safe and Sane Fireworks, as permitted by this Chapter, without first obtaining a permit from the City in accordance with Resolution No. 2537-03, as may be amended from time to time, and any applicable regulations.

Section 7.26.060 Use.

A. Fireworks other than Safe and Sane Fireworks are prohibited. Except as permitted by the City, it is unlawful for any person, corporation, or entity to possess, store, offer for sale, expose for sale, sell at retail or wholesale, use, discharge, or explode, or allow the use on their property or property under their control, any fireworks except Safe and Sane Fireworks.

B. Use of Safe and Sane Fireworks. It is unlawful for any person to use, discharge, or explode Safe and Sane Fireworks in any of the following locations, or in any of the following manners:

1. Any City park, building, or land owned by the City, except for City sponsored public fireworks displays;
2. Any public roadway within the City. A “roadway” shall be the portion of the street improved, designed, or ordinarily used for vehicular travel (i.e., curb to curb), except for block parties as permitted by the City;
3. Within ten feet of any residence, dwelling, or other structure used as a place of habitation by human beings;
4. Upon, over, or onto the property of another without his or her consent;
5. In any manner inconsistent with the direction provided by the manufacturer of the product;
6. Any area east of Mission Boulevard. This prohibition is justified by virtue of the higher fire danger in this area because the area: (a) has impacted ingress and egress due to dead end streets and limited entry/exit routes; (b) contains significant amounts of dry vegetation during the summer months when fireworks use is prevalent; (c) has mostly wood frame structures, in close proximity to each other; (d) contains slopes which make it difficult to do complete weed abatement; (e) contains structures intertwined with hazardous wild land areas; (f) contains many wood shake roofs (with high fire danger) in the residential areas.
7. Dates and Hours of Use. It is unlawful for any person to use, discharge, or explode Safe and Sane Fireworks except during the hours of eight a.m. to ten p.m. on the days during which such Safe and Sane Fireworks may be sold pursuant to applicable regulations.

C. Parks Closures on the Fourth of July. All City parks shall close at seven-thirty p.m. on the Fourth of July, except for City sponsored public fireworks displays.

Section 7.26.070 Social Host Liability

Any Social Host shall be Strictly Liable for any unlawful ignition, use, discharge or display of any dangerous fireworks, or Safe and Sane Fireworks in violation of this Chapter, at their property or gathering; except that:

A. No owner of private property shall be liable under this Section for a violation of this Chapter if the property owner can demonstrate that at the time of such violation they:

1. had rented or leased the property to another,
2. was not present, and
3. had no prior knowledge of the violation.

B. 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 Section for violations of this Chapter occurring in the common areas of the property.

Section 7.26.080 Penalty.

A. Any person or entity who violates this Chapter shall be guilty of a misdemeanor, punishable by any remedy authorized by this Municipal Code or applicable law, at the election of the City.

B. Notwithstanding anything in this Code to the contrary, a violation of this Chapter may be punishable by a fine of up to one thousand (\$1,000) per violation. For the purposes of this Section, each use or discharge of a firework in violation of this Chapter shall be a separate violation.

C. A fine for violating this section may be issued to administratively in accordance with Chapter 1.18 (Administrative Enforcement).”

SECTION 4. CEQA. Approval of the ordinance is exempt from further environmental review under the general rule in California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) that CEQA only applies to projects that have the potential for causing a significant effect on the environment. As a series of text amendments and additions that do not authorize any new activity, it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment.

SECTION 5. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION 6. Publication and effective date. Within fifteen (15) days from and after adoption, this Ordinance shall be published once in the Tri-City Voice, a newspaper of general circulation printed and published in Alameda County and circulated in the City of Union City, in accordance with California Government Code Section 36933. This Ordinance shall take effect and be enforced thirty (30) days after its adoption.