

Agenda Report Reviewed by:
City Manager: 

CITY OF SEBASTOPOL
CITY COUNCIL
AGEND ITEM

Meeting Date: May 18, 2021
To: Honorable Mayor and City Councilmembers
From: Fire Chief Bill Braga
Subject: Adoption of Ordinance Number 1133 – Ordinance Titled: An Ordinance of the City Council of the City of Sebastopol Repealing and Replacing Chapter 8.44, Uniform Fire Code 1971 Edition Relating to Fireworks, of the Sebastopol Municipal Code, to Prohibit the Sale and Use of Fireworks and All Resolutions or parts thereof in conflict herewith are, to the extent of such conflict, are hereby Repealed, and shall have no further force or effect.
Recommendation : That the Council Approve Second Reading, Waiving of Further Reading and Adoption of Ordinance
Funding: Currently Budgeted: _____ Yes _____ No XX N/A
Net General Fund Cost: N/A
Amount: \$0

Account Code/Costs authorized in City Approved Budget (if applicable) AK (verified by Administrative Services Department)

INTRODUCTION/PURPOSE:

The item before the City Council tonight is to adopt Ordinance Number 1133.

BACKGROUND:

At its May 4th, 2021, the City Council received the staff report and presentation, held the public hearing and discussed an ordinance to repeal and replace Chapter 8.44, Uniform Fire Code 1971 Edition Relating to Fireworks, of the Sebastopol Municipal Code, to Prohibit the Sale and Use of Fireworks and All Resolutions or parts thereof in conflict herewith are, to the extent of such conflict, are hereby Repealed, and shall have no further force or effect. The ordinance was amended to include the following language:

- Only one such permit may be granted in any calendar year.

DISCUSSION:

Tonight’s item is to approve Second Reading, Waiving of Further Reading and Adoption of Ordinance.

PUBLIC COMMENT:

As of the writing of this staff report, the City has not received any public comment. However, staff anticipates receiving public comment from interested parties following the publication and distribution of this staff report. Such comments will be provided to the City Council as supplemental materials before or at the meeting. In addition, public comments may be offered during the public comment portion of the agenda item.

PUBLIC NOTICE:

This item was noticed in accordance with the Ralph M. Brown Act and was available for public viewing and review at least 72 hours prior to scheduled meeting date.

FISCAL IMPACT:

There is no direct fiscal impact associated with the recommended action tonight.

RECOMMENDATION:

That the City Council approve Second Reading, Waiving of Further Reading and Adoption of Ordinance Titled: An Ordinance of the City Council of the City of Sebastopol Repealing and Replacing Chapter 8.44, Uniform Fire Code 1971 Edition Relating to Fireworks, of the Sebastopol Municipal Code, to Prohibit the Sale and Use of Fireworks and All Resolutions or parts thereof in conflict herewith are, to the extent of such conflict, are hereby Repealed, and shall have no further force or effect.

Attachments:

Ordinance

ADOPTION OF ORDINANCE/SECOND READING

ORDINANCE NO. 1133

An Ordinance of the City Council of the City of Sebastopol Repealing and Replacing Chapter 8.44, Uniform Fire Code 1971 Edition Relating to Fireworks, of the Sebastopol Municipal Code, to Prohibit the Sale and Use of Fireworks and All Resolutions or parts thereof in conflict herewith are, to the extent of such conflict, are hereby Repealed, and shall have no further force or effect.

WHEREAS, the City of Sebastopol has regulated fireworks since 1931; and

WHEREAS, Chapter 15.04.120 California Fire Code of the Sebastopol Municipal Code currently states that During the period beginning at noon on June 28th and ending at midnight July 4th, fireworks classified as "Safe and Sane" by the California State Fire Marshal's Office, may be possessed and discharged within the City Limits of Sebastopol in compliance with all applicable State and Local regulations, including Council Resolution 3082; and

WHEREAS, on April 6, 2021, the City Council directed staff amend the Sebastopol Municipal Code to exclude all private sale, use, or possession of all fireworks, including safe and sane, within the City at any time.

WHEREAS, pursuant to the police powers set forth in Article XI, Section 7 of the California Constitution, the City of Sebastopol ("City") may make and enforce laws that promote the public health, safety and general welfare of its residents; and

WHEREAS, by Ordinance No. 348, adopted March 5, 1951 and Ordinance Number 1158, adopted December 17, 2019, the City of Sebastopol enacted Chapter 8.44 and Amended Chapter 15.04 of the Sebastopol Municipal Code to regulate the sale and use of fireworks within the City of Sebastopol. The City of Sebastopol currently allows the use and sale of "safe and sane" fireworks during regulated hours; and

WHEREAS, on March 4, 2020, the Governor declared a statewide state of emergency pursuant to Government Code section 8625 due to the existence and spread of COVID-19, and

WHEREAS, in response to the threat of COVID-19 and the use of fireworks, the City Council of Sebastopol on May 19, 2020, suspended the sale of safe and sane fireworks to minimize large gatherings; and

WHEREAS, large gatherings to set off fireworks result in conditions where illegal fireworks are likely to be used, as large gatherings make it more difficult for law enforcement officers to enforce prohibitions on illegal fireworks; and

WHEREAS, illegal and dangerous fireworks create a significant risk of fire, and prohibiting the use of all fireworks in the City, including safe and sane fireworks, is necessary to deter the use of illegal and dangerous fireworks; and

WHEREAS, the widespread use of any fireworks, including safe and sane fireworks, increases litter deposited into the environment, as well as increases the risk of fire; and

WHEREAS, the County as a whole has seen large fires, as evidenced by such examples as the 2017 Tubbs and Nuns Fires, the 2019 Kincade Fire, and 2020 Glass Fire, and the risk posed by wildfire is anticipated to magnify due to climate change; and

WHEREAS, the Sebastopol General Plan states the Safety Element provides the framework to reduce risks associated with a range of environmental and human-caused hazards that may pose a risk to life and property in Sebastopol.

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

Section 1. Recitals. The above recitals are adopted as findings of the City Council in enacting this ordinance.

Section 2. Repeal and Replacement of Chapter 8.44 - Chapter 8.44 of the Sebastopol Municipal Code is hereby repealed, and replaced to read in its entirety as follows:

Chapter 8.44 - FIREWORKS REGULATIONS

8.44.010 - Purpose and scope.

- A. The City of Sebastopol has deemed the use of dangerous and safe and sane fireworks, as defined in Health and Safety Code sections 12500, et seq., to pose a risk to public health and safety, and prohibits the use of any kind of firework by members of the general public. The provisions of this chapter are intended to regulate the use of all fireworks to provide for the safety of the community and the prevention of fires.
- B. This chapter provides for the regulation of the manufacture, transportation, possession, use, and sale of fireworks within the City of Sebastopol and the imposition, enforcement, collection, and administrative review of administrative fines, related to the possession, use, storage, sale and/or display of fireworks, including those classified as "dangerous fireworks" and "safe and sane fireworks" as defined in California Health and Safety Code Sections 12500 et seq., with the exception of the use of fireworks with a pyrotechnic licensee when operating pursuant to and accordance with the terms of that license;
- C. The issuance of citations imposing administrative fines may be performed at the discretion of the officials of the city authorized under this chapter; and the issuance of a citation to any person constitutes but one remedy to redress violations of this Code by any person. By adopting this chapter, the city does not intend to limit its authority to employ any other remedy, civil or criminal, to redress any violation of this Code or state law by any person.
- C. The imposition of fines related to "dangerous fireworks" under this chapter shall be limited to persons who possess, sell, use and/or display, or the seizure of, twenty-five pounds or less (gross weight) of such dangerous fireworks.
- D. Fines collected pursuant to this chapter related to "dangerous fireworks" shall not be subject to Health and Safety Code Section 12706. However, the city shall provide cost reimbursement to the state fire marshal for the transportation and disposal of "dangerous fireworks" seized by the city where applicable. These costs will be included in addition to any administrative fines imposed under this chapter.

As provided in Section 15.04:

- E. The City's Fire Official shall have the power to adopt reasonable rules and regulations for the granting of a single permit for a supervised public display of fireworks by a jurisdiction, fair association, amusement parks, other organizations, or for the use of fireworks by artisans in pursuit of their trade. Such use or display shall be handled by a competent operator approved by the City's Fire Official and shall be of such character and so located, discharged, or fired, as in the opinion of the City's Fire Official after proper investigation, so as not to be hazardous to property or endanger any person.

F. The permittee shall furnish a bond or certificate of insurance in an amount deemed adequate by the City's Fire Official for the payment of all damages which may be caused either to persons or property by reason of the permitted display and arising from any acts of the permittee, his agents, employees, or subcontractors.

8.44.020 - Definitions.

As used in this chapter, the following words and phrases shall have the following meanings:

- A. "Dangerous fireworks" shall mean dangerous fireworks as defined in Health and Safety Code Sections 12505 and 12561 and the relevant sections of Title 19, Code of Regulations, Subchapter 6 which are hereby incorporated by reference.
- B. "Fireworks" shall mean either dangerous fireworks or safe and sane fireworks.
- C. "Pyrotechnic Display" means public fireworks display used in conjunction with special effects, for motion pictures, theatrical and group entertainment productions operated by a professional California state licensed pyrotechnician, provided such display secure a permit from the fire code official and meet all applicable requirements of California Health and Safety Code.
- E. "Safe and Sane Fireworks" and "State-Approved Fireworks" shall mean state-approved fireworks defined in Health and Safety Code Sections 12529 and 12562 and the relevant sections of Title 19, Code of Regulations, Subchapter 6, which are hereby incorporated by reference.
- F. "Strictly liable" means liable for a wrongful act irrespective of such person's intent, knowledge, negligence or lack thereof in committing the wrongful act.

8.44.030 – Manufacturing and transport of fireworks.

The manufacturing and/or transportation of any fireworks is prohibited, except by a person who has been issued a permit by the office of the state fire marshal or is otherwise permitted to do so pursuant to provisions of state law, and such manufacturing or transportation is being performed in compliance with applicable requirements of the California Fire Code and Vehicle Code. Travel outside of state-approved routes shall be subject to the approval of a permit issued by the fire code official in accordance with Health and Safety Code section 12652.

8.44.040 – Prohibition on possession, storage, sale or use of fireworks.

The possession, storage, sale and use of any dangerous or safe and sane fireworks, shall be prohibited by any person throughout the City of Sebastopol except when a permit is issued, in advance, by the fire code official or his or her designee for the exceptions below:

- (i) Storage and handling of fireworks in accordance with Section 5605 of the California Fire Code.
- (ii) The use of fireworks for pyrotechnic displays in accordance with Section 5608 of the California Fire Code.
- (iii) Only one such permit may be granted in any calendar year.

The prohibition on the possession of fireworks in this section shall not apply to manufacturing and transportation activities permitted under section 8.44.030.

8.44.050 - Supervision of minors.

- A. It shall be unlawful for any person having the care, custody or control of a minor (under eighteen years old) to permit such minor to discharge, explode, fire or set off any fireworks, at any time.
- B. Any person having the care, custody, or control of a minor shall be strictly liable for any unlawful ignition, use, or discharge of any fireworks.

8.44.060 - Enforcement.

- A. This chapter shall be enforced pursuant to the procedures set forth in Chapter 1.04 of this Code. The amount of the administrative penalty for violations of this chapter pertaining to fireworks shall be governed by Section 8.44.070.
- B. The fire code official or his/her designee shall enforce the provisions of this Chapter 8.44.

8.44.070 – Determining violations; Penalties for violations.

- A. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this chapter.
- B. Each person who violates any provisions of this chapter by possessing, using, storing, and/or selling, displaying of any dangerous firework, or violates sections 8.44.040 or 8.44.050 and such violation involves dangerous fireworks, is guilty of a misdemeanor. Except in cases where a different punishment is prescribed by any ordinance of the City, any person convicted of a misdemeanor under the ordinances of the City shall be punished by a fine not exceeding \$5,000, or by imprisonment for any term not exceeding one year, or by both such fine and imprisonment.
- C. Each person who violates any provisions of this chapter by possessing, using, storing, and/or selling, displaying of any safe and sane fireworks or state-approved fireworks, or violates sections 8.44.040 or 8.44.050 and such violation involves any safe and sane fireworks or state-approved fireworks, is guilty of a misdemeanor. Except in cases where a different punishment is prescribed by any ordinance of the City, any person convicted of a misdemeanor under the ordinances of the City shall be punished by a fine not exceeding \$5,000, or by imprisonment for any term not exceeding one year, or by both such fine and imprisonment.
- D. In addition to such administrative penalties, each violator shall be liable for all costs incurred by the office of the state fire marshal for the transportation and disposal of any fireworks seized from the person. The costs incurred by the office of the state fire marshal will be calculated based upon the regulations promulgated by that office. If those regulations have not been adopted by the office of the state fire marshal at the time a person is cited for possession of dangerous fireworks under this Code, the city will reserve twenty-five percent of any fine collected under this provision to cover the actual cost of disposal to the office of the state fire marshal.
- E. 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 with regard to the sale, use, possession, delivery, storage, and/or transportation of dangerous fireworks. The penalties set forth herein are intended to be nonexclusive and are intended to be in addition to any other remedies provided in this article or any other law, statute, ordinance or regulation.

Section 4. Environmental Review. The City Council finds the approval of this ordinance is exempt under Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that there is no possibility that the adoption of this ordinance may have a significant effect on the environment. In the alternative, the City Council determines that the basic purpose of this action is to prohibit the use of safe and sane fireworks in the City, which will reduce litter and lessen the risk of fire,

and therefore is an action for the protection of the environment and is categorically exempt pursuant to CEQA Guidelines section 15308 (actions by regulatory agencies for the protection of environment).

Section 5. Severability. The City Council hereby declares that every section, paragraph, sentence, clause, and phrase of this ordinance is severable. If any section, paragraph, sentence, clause or phrase of this ordinance is for any reason found to be invalid or unconstitutional, such invalidity, or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses, or phrases.

Section 6. Effective Date. This ordinance shall be in full force and effective 30 days after its adoption.

Section 7. Publication. The City Clerk is directed to cause this ordinance to be published in the manner required by law.

APPROVED FOR WAIVING OF FIRST READING AND INTRODUCTION OF ORDINANCE at the Regular City Council Meeting of May 4, 2021.

APPROVED FOR SECOND READING AND ADOPTION OF ORDINANCE at the May 18, 2021 Regular City Council Meeting.

VOTE:

Ayes:

Noes:

Absent:

Abstain:

APPROVED: _____
Mayor Una Glass

ATTEST: _____
Mary Gourley, Assistant City Manager/City Clerk, MMC

APPROVED AS TO FORM: _____
Larry McLaughlin, City Attorney