

ORDINANCE NO. 02-06

AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE  
SAN MIGUEL COMMUNITY SERVICES DISTRICT  
ESTABLISHING A “SAFE AND SANE” FIREWORKS PROGRAM  
AND AUTHORIZING THE SALE AND USE OF  
“SAFE AND SANE” FIREWORKS IN SAN MIGUEL

BE IT ORDAINED by the Board of Directors of the San Miguel Community Services District as follows:

Section 1. Purposes.

Pursuant to sections 7801, et al of the 2000 edition of the Uniform Fire Code and the 2001 edition of the California Fire Code, California Code of Regulations, Title 24, Part 9 the Board of Directors of the San Miguel Community Services District ("District") desires to make certain amendments and exceptions and to adopt rules and regulations governing the sale at retail and use of “safe and sane” fireworks within the boundaries of the District.

Section 2. Amendments and Exceptions to the 2001 Edition of the California Fire Code.

Sections 7801.1, et al of the 2001 edition of the California Fire Code are hereby amended as follows: the possession, storage (for purposes of sale at retail and use only), sale at retail and use of “safe and sane” fireworks within the District is permitted in accordance with the rules and regulations set forth herein.

A. Regulations and Rules Pertaining to the Retail Sale and Use of “Safe and Sane” Fireworks.

1. Definition of “Safe and Sane” Fireworks.

“Safe and Sane” fireworks shall mean those fireworks defined as “safe and sane” in California Health and Safety Code Section 12529 and classified by the State Fire Marshall as “safe and sane” in accordance with Section 12562 of the Health and Safety Code.

2. Application.

No permits for the sale of “safe and sane” fireworks will be issued to any person, entity, organization or corporation except those recognized as non-profit associations or corporations (IRC 501(c)3 status) organized primarily for veteran, patriotic, welfare, civic betterment, or other similar charitable purposes. Proof of non-profit status shall be required by producing copies of incorporation documents as registered with the Secretary of the State of California. All applicants desiring to sell at retail “safe and sane” fireworks within the District must first make written application for a permit to the District Fire Chief. Applications for permits shall be made in writing on a form provided by the District, and submitted to the District during the period of January 1 to March 31 each year. If March 31 falls on a Saturday or Sunday, then the filing period will be extended to the next business day. ***Two (2)*** permits will be issued per year by the District and issuance shall be based on a first come, first serve basis. ***A third permit may be issued by special approval of the Board of Directors.*** Only non-profit organizations with their principal meeting place located within the District boundary are eligible for permit approval..

***Each permittee applicant shall be limited to a single temporary firework stand or structure (hereinafter “stand”)booth, however multiple organizations may share a single stand.***

The District reserves the right to maintain a list of additional eligible willing applicants, should a permittee fail to perform consistent with the permit terms and conditions and these regulations during any part of the allowed selling period.

Applicants shall be advised of approval or denial of their application within ten (10) business days of the close of the application period.

3. License as a Prerequisite.

The Fire Chief shall not accept an application for a permit from any person who does not possess, and present at the time of application, evidence of a valid license to perform those acts specified on the application for a permit, as such license is defined in Health and Safety Code Section 12517.

4. Investigation and Report.

The Fire Chief shall undertake an investigation and prepare a report of his/her findings and determination concerning the issuance of the permit, together with the reasons thereof.

5. Grant or Denial of Permit.

The Fire Chief may approve or deny the permit or approve the permit, subject to such reasonable conditions, if any, as he/she shall prescribe. Such conditions may include, but are not limited to:

(a) Prepayment of a clean-up fee , in an amount set by Resolution of the District Board of Directors, which may be refunded in whole or in part, if the sale location and public areas where “safe and sane” fireworks are used, are free of used and spent fireworks and related materials by July 5, as determined by the Fire Chief;

(b) Requiring the permittee to provide each purchaser of “safe and sane” fireworks with a copy of the restrictions and safety

guidelines for the use of “safe and sane” fireworks in San Miguel, and to sign a receipt of acknowledgement agreeing to said provisions. Permittees may also be required to have each purchaser agree and provide evidence that he/she is eighteen (18) years of age or older, and that such fireworks will not be used by anyone less than that eighteen (18) year s of age;

(c) Notwithstanding any other provision of law, the permittee will be required to furnish to the District Fire Chief with a policy of public liability and property damage insurance, with no deductible, with limits and terms set by Resolution of the District Board of Directors. The District and its officers, directors, and employees shall be named as additional insured under such public liability policy. A certificate of insurance shall be presented consistent with the above prior to sale and shall provide that the insurer will not cancel or reduce the coverage without thirty (30) days prior written notice to the District.

(d) A non-refundable permit fee set by Resolution of the District Board of Directors may be required to cover the District's costs in administering and enforcing the provisions of this Ordinance. The permit fee shall be paid to the District upon approval of the permit.

(a) Designation of Location for Sale of “Safe and Sane” Fireworks.

Permits issued shall designate the location at which the permittee may sell at retail “safe and sane” fireworks.

Applicants shall obtain, at their sole cost, all other necessary permits or licenses from the County of San Luis Obispo or other public entity, including but not limited to, building and use permits, for the operation of a retail fireworks stand or equipment.

**Stands shall be separated by a linear distance of at least 1200 feet.**

7. Revocation.

The Fire Chief may revoke a permit for just cause where a fire nuisance exists, or for other violation of the terms herein described, or where personal injury may occur. This determination may be appealed to the District General Manager, and subsequently, to the Board of Directors.

8. Signage

Any approved retail location that sells “safe and sane” fireworks will be required to post a banner which shall read, “this fireworks stand is sponsored by (name of organization) located in (City or District organization is headquartered)”. The banner shall be of a fire resistant material and shall have a twelve inch (12”) white background with six-inch (6”) solid black-block letters. The banner design and material shall be approved by the Fire Chief prior to granting permission to sell “safe and sane” fireworks. The banner shall be clearly posted above the retail area of the stand in a conspicuous location and shall be posted during the regular hours of retail operation.

9. Salespersons.

No person under the age of 18 shall sell, or handle for sale, any “safe and sane” fireworks. No persons convicted of selling fireworks, firearms, liquor and/ or tobacco, to persons under the age of 18 within the three (3) prior to the date of permit issuance years shall sell, or handle for sale any “safe and sane” fireworks.

10. Location of Use of “Safe and Sane” Fireworks.

“Safe and Sane” fireworks may be used only within the District boundaries, and may only be discharged when all of the following conditions are met:

- (a) There is at least a 50’ radius (100’ in diameter) clear of all combustible materials;
- (b) There is an adequate water supply provided, consisting of at least a 5/8” garden hose with an adjustable charged pressure nozzle;
- (c) There is an adult (over the age of 18) in attendance at all times.
- (d) If over 21 years of age, persons igniting the “safe and sane” fireworks are not over the legal alcohol limit of .08 blood alcohol concentration.
- (e) All fireworks shall be removed from sales stands by 9 a.m. on July 5<sup>th</sup>.

11. **Time. Permitted sales of “safe and sane” fireworks shall be limited to 7:00 a.m. to 10:00 p.m. and shall not unreasonably annoy or otherwise cause nuisance to the surrounding area.**

**Permitted discharge or use of “safe and sane” fireworks shall be in legally permitted locations on the 4<sup>th</sup> day of July from 6 p.m. until 10 p.m.**

12. Additional Regulations

The District Board of Directors may, by Resolution, establish additional regulations related to the possession, storage, use and sale of “safe and sane” fireworks.

13. Violations.

In addition to any other violations provided by law, the following shall constitute violations related to the possession, storage, sale and use of “safe and sane” fireworks within the District:

- (a) To sell or offer for sale, “safe and sane” fireworks at any time outside of the period established by Resolution of the Board of Directors.
- (b) To use or discharge “safe and sane” fireworks at any time outside of the period established herein.
- (c) To store any “safe and sane” fireworks without having in his/her possession a valid permit as required by this Ordinance.
- (d) To store or possess any “safe and sane” fireworks for which a license is required and which has been revoked or surrendered or any license which has not been renewed, and such storage or possession is held beyond the period provided for in Section 12604 of the Health and Safety Code.
- (e) To store, sell, or discharge any “safe and sane” fireworks in or within one-hundred (100) feet of a location where gasoline or any other Class 1 flammable liquids are stored or dispensed.
- (f) To place, throw, discharge or ignite, or fire any “safe and sane” fireworks at any person.
- (g) To sell or transfer any “safe and sane” fireworks to a consumer or user thereof other than at a permitted stand for which all necessary licenses and permits have been issued.

(h) To allow or permit a fire nuisance, as defined in Section 12510 of the Health and Safety Code, to exist on any premises where any “safe and sane” fireworks are sold or stored.

(i) To conduct a public display without possessing a valid permit for this purpose.

(j) To advertise to sell “safe and sane” fireworks without a valid license and permit.

(k) To sell, give, or deliver any “safe and sane” fireworks to a person who is under 18 years of age.

(l) To perform any act, or transact or attempt to transact any business, with an expired license or an expired permit where a license or permit is required for the performance of such act or transaction.

14. Penalties.

Except as provided in Section 12702 of the Health and Safety Code, any person who violates any provision of this Ordinance, or any regulations issued pursuant thereto, is guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than five-hundred (\$500.00) and no more than one-thousand (\$1,000.00), or by imprisonment in the San Luis Obispo County jail for no more than one year, or by both such fine and imprisonment.

In addition to all other penalties, the Fire Chief may deny an application to sell “safe and sane” fireworks if the applicant has previously



violated any provision of this Ordinance, or any regulations issued pursuant thereto.

B. Violation of Ordinance.

The Fire Chief, or his or her duly authorized representative, is hereby authorized to issue citations for the misdemeanors specified in Section 13871 of the Health and Safety Code and for violations of this Ordinance. The provisions of Chapter 5C (commencing with Section 853.5) of Title 4 of Part 2 of the Penal Code shall apply.

Section 3. Inconsistency.

To the extent that the terms and provision of this Ordinance may be inconsistent or in conflict with the terms or conditions of any prior District ordinance, motion, resolution, rule or regulation governing the same subject, the terms of this Ordinance shall prevail with respect to the subject matter thereof, and such inconsistent and conflicting provisions of prior ordinances, motions, resolutions, rules or regulations are hereby repealed.

Section 4. Severability.

If any provision of this Ordinance or application thereof to any person or circumstance is held invalid or otherwise unconstitutional, no other provisions of this Ordinance shall be affected thereby and shall be considered in full force and effect.

Section 5. Posting.

The District Manager is directed to post a copy of this Ordinance in three (3) public places in the District within ten (10) days after its adoption.

Section 6. Effective Date.

This Ordinance shall take effect thirty (30) days after its adoption.

PASSED AND ADOPTED by the Board of Directors of the San Miguel Community Services District, after its second reading, this \_\_\_ day of \_\_\_\_\_ by the following roll call vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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Dale Hamblin, President  
SAN MIGUEL COMMUNITY SERVICES DISTRICT

ATTEST:

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J. M. Ellison, General Manager  
and Secretary to the Board of Directors