

ORDINANCE NO. 2021- 3

**AN URGENCY ORDINANCE OF THE COUNCIL OF THE CITY OF SELMA
REPEALING TITLE VII CHAPTER 3 AND ADOPTING A NEW TITLE VII
CHAPTER 3 TO THE SELMA CITY CODE RELATING TO FIREWORKS**

WHEREAS, the sale and use of fireworks within the city presents fire safety challenges and directly impacts the health and safety of the residents, local property and local public safety resources; and

WHEREAS, regulating the sale and use of fireworks within the city is a necessary and beneficial public purpose; and

WHEREAS, the upcoming July 4th, 2021 Independence Day holiday presents one of the biggest holidays for firework usage, potential for fires, property damage and fire-related injury to residents; and

WHEREAS, limited city public safety resources require the immediate adoption and effective date of fireworks regulations to minimize fire safety threats created by the sale and use of fireworks; and

WHEREAS, California is facing another drought exacerbating current potential fire hazards within the city; and

WHEREAS, Government Code section 36937 allows the adoption of urgency ordinances that can take immediate effect for the preservation of the public peace, health or safety, containing a declaration of facts constituting an emergency and passed by a four-fifths majority vote of the Council.

WHEREAS, on June 21, 2021, the Council took public testimony, reviewed the staff report, other written evidence presented and testimony contained in the record.

**NOW THEREFORE THE CITY COUNCIL OF THE CITY OF SELMA,
CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:**

Section 1. FINDINGS

- A. The facts set forth in the recitals, along with the public testimony, reports and related evidence are true and correct and are an adequate evidentiary basis for the actions taken in this ordinance.
- B. The Ordinance is consistent with the General Plan, Selma City Code and applicable law.
- C. The Ordinance is not detrimental to the public interest, health, safety, convenience or welfare.

- D. The Ordinance is necessary to provide the necessary public safety enforcement and regulatory tools to address the health and safety concerns, potential property damage and drain on limited city resources.

Section 2. ENVIRONMENTAL REVIEW

Pursuant to California Resources Code Section 21065, the Council finds that this Ordinance is not a “project” because its adoption is not an activity that has the potential for a direct physical change or reasonably foreseeable indirect physical change in the environment. This Ordinance amends the Selma City Code to authorize regulations related to fireworks. Accordingly, there is no possibility that this Ordinance will have a significant impact on the physical environment and the Ordinance is not subject to CEQA under CEQA Guidelines Section 15061(b)(3).

Section 3. Title VII Chapter 3 Fireworks of the Selma Municipal Code is repealed.

Section 4. Title VII Chapter 3 is adopted as follows:

Title VII Chapter 3 FIREWORKS

7-3-1 Purpose.

The City of Selma has determined that in order to protect the health, safety and welfare of the citizens within the City and metropolitan area, it is necessary to regulate the sale and discharge of safe and sane fireworks.

7-3-2 Sale of fireworks.

(A) It is unlawful for any person to sell, offer for sale, or display for sale any "safe and sane fireworks" as defined with Section 12529 of the California Health and Safety Code (hereinafter referred to as "fireworks"), within the City of Selma and metropolitan area without first obtaining a permit therefor from the City Manager of the City of Selma, or designee, as provided herein.

(B) Fireworks may be sold within the City of Selma and metropolitan area only from June 28 to July 4 of any year. The hours of operation of any fireworks stand shall be limited to 12:00 noon to 10:00 p.m. on June 28 and 9:00 a.m. to 10:00 p.m. daily during the other days identified above. The sale of any fireworks shall be made strictly in accordance with the provisions of this chapter and the laws of the State of California.

7-3-3 Discharge of fireworks.

It shall be unlawful for any person to fire, set off, discharge, explode, use to, cause to, or permit to be fired, set off, discharged, exploded or used, any fireworks within the City of Selma and metropolitan area except for that period beginning at 12:00 noon on June 28 and ending at 10:00 p.m. on July 4 of any year.

7-3-4 Applicants.

Applicants for a City of Selma fireworks permit must satisfy the following requirements:

- (A) No permit shall be issued to any person, except nonprofit associations or corporations organized primarily for civic betterment or youth activities.
- (B) Each such organization must have its principal and permanent meeting place in the City's sphere of influence limits; must maintain a bona fide membership of at least ten (10) members; and, must have been organized and established in the City's sphere of influence limits for a minimum of one year continuously preceding the filing of the application for the permit.
- (C) No organization may receive more than one permit for fireworks sales during any one calendar year. One permit may be issued to two (2) or more qualifying applicants as a joint venture. The maximum number of permits that may be issued during any one calendar year shall be ten (10) permits, until the City's population has increased to thirty five thousand (35,000). Once the City's population has increased to thirty five thousand (35,000), the maximum number of permits that may be issued during any one calendar year shall be increased by one for each additional population increase of three thousand five hundred (3,500) persons.
- (D) If the number of applicants exceed the number of permits to be issued, the permittees during the preceding year shall have first priority for the available permits, provided each permittee retains the same participating organizations that operated under the permit during the preceding year. Each participating organization in a joint venture shall be deemed a co-permittee with the same duties and liabilities under the permit. If there are any additional permits available, such additional permits shall be granted by a drawing supervised by the City Clerk. (Ord. 99-4, 4-19-1999)

7-3-5 Permits for retail sale of fireworks.

All applications for a fireworks permit shall comply with the provisions of Section 12500 et. seq. of the California Health and Safety Code, Subchapter 6, Article V, of Title 19 of the California Administration Code, and any and all rules and regulations established by the State of California

and the City of Selma. In addition, each applicant shall be governed by the following:

- (A) An application for a fireworks permit shall be filed with the City Manager, or designee, between March 1 and March 31 of each year, along with payment of a nonrefundable permit fee established by Resolution of the City Council, fireworks permits are not transferable.
- (B) The City Manager, or designee, shall issue permits. Permits denied for failure to comply with Sections 7-7-4, 7-7-5 or 7-7-6 may be appealed to the City Manager or designee, and thereafter to the City Council.

(C) No fireworks permit will be granted to an applicant if the following items are not properly and completely prepared and presented to the City Manager, or designee, on or before March 31 of the calendar year during which the fireworks will be sold:

- (1) State Fire Marshall's license;
- (2) Temporary seller's permit from the State Board of Equalization;
- (3) Property owner's permission form (original) signed and currently dated;
- (4) Storage of safe and sane fireworks form;
- (5) Address of property where stand will be located;
- (6) Certificate of insurance as required by the City of Selma; and
- (7) Certification of compliance with all applicable local laws.

The City Manager, or designee, may extend the March 31 filing date if the City Manager, or designee, determines in his or her sole discretion, that an applicant has attempted in good faith and with due diligence to satisfy all of the requirements in subsections (A) and:

(C) Of this section and that as a result of action or inaction on the part of other persons or entities, which are beyond the applicant's control, the applicant has been unable to satisfy the requirements of subsections (A) and (C) within the required time periods.

(D) No change of stand locations will be permitted without the prior approval of the City Manager, or designee,

(E) All fireworks stands must be removed on or before 12:00 noon on July 7 of each respective year provided, however, that all unsold fireworks stock and accompanying litter shall be removed from the stand on or before 10:00 p.m. on the last day.

(F) No person shall sell, or offer for sale, any fireworks within a distance of one hundred (100') feet of any pump or dispensing device of any flammable liquids.

(G) No fireworks stand shall be located within thirty (25) feet of any adjacent buildings, burnable materials, grass, paper, or like flammable materials.

(H) No fireworks stand shall be located closer than ten (10) feet from any public roadway or back of curb, or in any location which does not otherwise meet the approval of the City Manager, or designee,

(I) No sale or display of fireworks will be allowed inside any permanent building.

(J) Each fireworks stand shall have minimum of two (2) exits which shall be located and provided on opposite sides. Each shall be at least thirty-two (32) inches wide. Fireworks stands with only three (3) sides and open from the back will not require exits.

(K) If stands are operated at night, only electric lights may be used.

(L) "No Smoking" signs shall be located on all sides of the stand. Each sign all have the words "No Smoking" in red letters, not less than two (2) inches in height, with a minimum one and one-half (1-½) inch stroke on a white background.

(M) One approved two and one-half (2-½) gallon pressurized, water-type fire extinguisher and/or one five (5) pound multi-purpose ABC fire extinguisher or garden hose fully charged with shutoff nozzle attached, shall be provided in the stand's sale area. There shall be no exceptions to this requirement. The fire extinguisher must be in operating condition, with an up-to-date inspection tag indicating that the fire extinguisher has be serviced within the past year.

(N) Fireworks signs shall not create a traffic hazard and must be approved by the City Manager, or designee.

(O) All permittees shall instruct all employees and persons who handle fireworks in any capacity, of the hazards of fireworks and with these rules and safety precautions governing fireworks.

(P) All persons selling fireworks shall be trained in emergency procedures, including the use of fire extinguishers.

(Q) Persons employed for the sale of fireworks shall be at least eighteen (18) years of age. Proof must be shown at any time when requested by the City Manager, or designee.

(R) No person under sixteen (16) years of age shall purchase fireworks.

(S) No sleeping inside the fireworks stand will be permitted at any time.

(T) The stand and surrounding area shall be maintained in a clean, neat and orderly condition at all times and be free from any condition that would create a "fire nuisance."

(U) No person shall use or handle fireworks while under the influence of intoxicating liquids or narcotics. Alcohol and narcotics are prohibited within the fireworks stands.

(V) Smoking shall be prohibited where fireworks are stored or handled.

(W) No person, other than a member of the organization or a volunteer who is associated with the organization having a permit, shall be permitted to sell or to otherwise participate in the sale of fireworks.

(X) No permit issued or authorized shall be transferable or assignable.

(Y) No person shall light, or cause to be lighted, any fireworks or other combustible article within any stand or within two hundred (200) feet thereof.

(Z) The applicant's state license, City fireworks permit, and temporary sales permit issued by the State Board of Equalization shall be displayed in a prominent place in the fireworks stand.

7-3-6 Insurance.

Prior to the issuance of a permit, the eligible organization shall procure a certificate of insurance acceptable to the City of Selma. The certificate shall name the City of Selma, its officers, agents and employees as additional insureds in an amount of not less than one million dollars (\$1,000,000.00) combined bodily injury and property damage for each occurrence. The certificate must specify the time, location and dates to be covered by the policy.

7-3-7: STORAGE:

Safe and sane fireworks may be stored within the City pursuant to the following provisions:

(A) Buildings or parts of buildings used for storage shall meet the zoning requirements of the County and a permit to store shall be issued by the County.

(B) Signs with the wording "Fireworks - No Smoking", in letters a minimum of four inches (4") high, shall be conspicuously located throughout the building.

(C) Fire extinguishers, of the water pressure type, shall be located so there is not more than fifty feet (50') of travel to any fireworks storage.

(D) Stacks of merchandise shall be limited in size to twelve thousand (12,000) cubic feet, and each stack shall be separated from other stacks by eight feet (8') wide aisles. (Ord. 99-4, 4-19-1999)

7-3-8 Revocation.

Any violation of these provisions, or any other City ordinance, or the terms and conditions of the permit, of state law or administrative regulations, or safety rules of the City Manager, or designee, shall be grounds for immediate revocation of the permit. Any such violation shall be determined in the sole discretion of the City manager, or designee. The decision of the City Manager, or designee, with regards to revocation may be appealed consistent with Selma City Code section 1-20-1 et.seq.

DANGEROUS FIREWORKS

7-3-9- Purpose.

(A) This section authorizes the imposition of administrative fines on any person who violates any provision of this article in order to encourage and obtain compliance with the provisions of this article for the benefit and protection of the entire community. This article governs the imposition, enforcement, collection and administrative review of all administrative fines, related to: the possession, use, storage, sale and/or display of

those fireworks classified as "dangerous fireworks" with the exception of a pyrotechnic licensee when operating pursuant to that license; and the use of "safe and sane fireworks" as defined in California Health and Safety Code Section 12500, et seq. Said administrative fines are imposed under authority of Government Code Section 53069.4, Health and Safety Code Section 12557, the police power of the City, and pursuant to California Attorney General Opinion (No. 07-503, December 20, 2011).

- (B) The issuance of citations imposing administrative fines may be performed at the discretion of the officials of the City authorized hereunder; and the issuance of a citation to any person constitutes but one remedy of the City to redress violations of this article by any person. By adopting this article, the City does not intend to limit its authority to employ any other remedy, civil, or criminal, to redress any violation of this article by any person, which this City may otherwise pursue.

7-3-10- Definitions.

The following definitions apply to the use of these terms for the purposes of this article:

- (A) "*Dangerous fireworks*," as defined in California Health and Safety Code Sections 12505, includes the following:
- (1) Any fireworks which contain any of the following:
 - a. Arsenic sulfide, arsenates, or arenites.
 - b. Boron.
 - c. Chlorates, except:
 - i. In colored smoke mixture in which an equal or greater amount of sodium bicarbonate is included.
 - ii. In caps and party poppers.
 - iii. In those small items (such as ground spinners) wherein the total powder content does not exceed four grams of which not greater than 15 percent (or 600 milligrams) is potassium, sodium, or barium chlorate.
 - d. Gallates or gallic acid.
 - e. Magnesium (magnesium-aluminum alloys, called magnalium, are permitted).
 - f. Mercury salts.
 - g. Phosphorous (red or white except that red phosphorus is permissible in caps and party poppers).
 - h. Picrates or picric acid.
 - i. Thiocyanates.
 - j. Titanium, except in particle size greater than 100-mesh.
 - k. Zirconium.
 - (2) Firecrackers.
 - (3) Skyrockets and rockets, including all devices which employ any combustible or explosive material and which rise in the air during discharge.

- (4) Roman candles, including all devices which discharge balls of fire into the air.
 - (5) Chasers, including all devices which dart or travel about the surface of the ground during discharge.
 - (6) Sparklers more than ten inches in length or one-fourth of one inch in diameter.
 - (7) All fireworks designed and intended by the manufacturer to create the element of surprise upon the user. These items include, but are not limited to, auto-foolers, cigarette loads, exploding golf balls, and trick matches.
 - (8) Fireworks known as devil-on-the-walk, or any other firework which explodes through means of friction, unless otherwise classified by the state fire marshal pursuant to this part.
 - (9) Torpedoes of all kinds which explode on impact.
 - (10) Fireworks kits.
 - (11) Such other fireworks examined and tested by the state fire marshal and determined by him, with the advice of the state board of fire services, to possess characteristics of design or construction which make such fireworks unsafe for use by any person not specially qualified or trained in the use of fireworks.
- (B) "*Citee*" means any person served with an administrative citation charging him or her as a responsible person for violation.
- (C) "*Citation*" means an administrative citation issued pursuant to this article to remedy a violation.
- (D) "*Code*" means the Selma City or Municipal Code.
- (E) "*Code enforcement officer*" (*CEO*) shall include, but not be limited to, the Selma City Fire Chief, Fire Marshal, Police Chief, or their agents, designees or assigns designated to enforce any provision of this article.
- (F) "*Person*" means a natural person or a legal entity that is also an owner, tenant, lessee and/or other person with any right to possession or control of the property where a violation of this article occurred.
- (G) "*Responsible person*" means:
- (1) The person(s) who owns, rents, leases, or otherwise has possession of the residence or other private property;
 - (2) The person(s) in immediate control of the residence or other private property; and
 - (3) The person(s) who organizes, supervises, sponsors, conducts, allows, controls, or controls access to the illegal discharge or illegal storage of fireworks."
- (4) Every parent, guardian or other person, having the legal care, custody or control of any person under the age of 18 years may be issued a citation in accordance with the

provisions of this article, in addition to any citation that may be issued to the offending minor.

- (H) "*Violation*" or "*violates*" refers to any violation of any provision of this article, and/or the failure to comply with any additional requirement imposed under California Health and Safety Code Sections 12500, et seq.

7-3-11- Ban on dangerous fireworks.

(A) The City of Selma hereby prohibits the possession, use, storage sale, display, giving, delivery, and/or transporting of 25 pounds or less of "dangerous fireworks" in all zones in the City; with the exception of:

- (1) A pyrotechnic licensee operating pursuant to a valid City or state issued license;
- (2) Or the use of "safe and sane fireworks" as defined in this article and Health and Safety Code Section 12500 et seq.

(B) Because of the serious threat of fire or injury posed by the use of "dangerous fireworks" that can result from persistent or repeated failures to comply with the provision of this article and the effect of such conditions or activities on the safety and the use and enjoyment of surrounding properties and to the public health, safety and welfare, this section imposes strict civil liability upon the owners of residential real property for all violation of this article existing on their residential real property. Each contiguous use, display and/or possession shall constitute a separate violation and shall be subject to a separate administrative fine.

7-3-12 - Issuance of administrative citation; service procedures.

Upon determining that a violation exists with respect to any property within the incorporated area of the City, the code enforcement officer shall serve an administrative citation upon one or more of the responsible persons. Service shall be completed utilizing one of the below methods of service:

(A) *Service.* An administrative citation shall be served on the responsible person by an enforcement officer in one of the following ways:

- (1) *Personal service.* In any case where an administrative citation has been issued, the enforcement officer may personally serve the responsible person and obtain the signature of the responsible person on the administrative citation. If personal service is affected, but the responsible person served refuses or fails to sign the administrative citation, the failure or refusal to sign shall not affect the validity of the service of the administrative citation or of any of the subsequent proceedings. The enforcement officer shall note on the administrative citation the failure or refusal of the responsible person to sign the citation. The date of service under this subsection shall be the date of actual service.
- (2) *Service of citation by mail.* As an alternative to personal service, the enforcement officer may serve the administrative citation by mail as hereinafter set forth. The administrative citation shall be mailed to the responsible person by certified mail, postage prepaid with a return receipt requested. Simultaneously, the citation may be sent by first class mail. If the citation is sent by certified mail and returned unsigned, then service shall be deemed effective pursuant to first class mail, provided the citation sent by first class mail is not returned by

the United States Postal Service undelivered. In the case of service by certified mail for which a signed receipt is returned, the date of service shall be the date of signing of the receipt. In the case of service by regular first-class mail, the date of service shall be the date upon which such mail was deposited in the United State Mail with postage prepaid, plus three days.

(3) *Service of citation by posting notice.* If the enforcement officer does not succeed in serving the responsible person by personal service or by mail as set forth above, the enforcement officer shall post the administrative citation on any real property within the City in which the City has knowledge that the responsible person has a legal interest, and such posting shall be deemed effective service. The date of service of a posted notice or citation shall be the date of actual posting, plus five days.

(4) The form of the administrative citation shall be approved by the City Council.

(B) Administrative citations issued pursuant to this section shall be considered citations issued to correct immediate dangers to health and/or safety concerns of the City. Pursuant to this article, a citee shall not be provided a notice of violation, or given a chance to abate the violation, prior to issuance of an administrative citation.

7-3-13 - Issuance of administrative citation; content.

(A) *Content.* Each administrative citation may contain the following information:

- (1) Date, approximate time, and address or definite description of the location where the violation was observed;
- (2) The Code sections or provisions violated and a description of the violation;
- (3) The date the notice of violation was served on the responsible person and the time specified thereon to correct the violation;
- (4) A statement that the violation has not been corrected within a given correction period, if any;
- (5) The amount of the fine;
- (6) An explanation of how and where the fine may be paid and the time period within which it must be paid;
- (7) Consistent with Selma City Code section 1-20-1 et. seq. an explanation of rights of appeal, including the time within which the citation may be contested and the place to obtain a notice of appeal form to contest the administrative citation; and
- (8) The name and signature of the enforcement officer and, if possible, the signature of the responsible person;
- (9) The amount of the administrative fine for each violation, the procedure in place to pay the fines, and any late fee and interest charge(s), if not timely paid, and notice that if the City is required to take action to collect such fines, the responsible person may be charged costs and attorney's fees;
- (10) Any other information deemed necessary by the director for enforcement or collection purposes.

(11) In the event that the Selma Police Department is the issuing agency for a violation of this ordinance, a crime report will be submitted along with the citation.

7-3-14 - Administrative fines for dangerous fireworks.

(A) Each person who violates any provision of this article as it relates to "dangerous fireworks" shall be subject to the imposition and payment of an administrative fine(s) as provided below:

Number of Offense in 1-Year Period	Amount of Administrative Penalty	Late Charge	Total Amount of Penalty plus Late Charge
First	\$1,000.00	\$100.00	\$1,100.00
Second	\$1,500.00	\$200.00	\$1,700.00
Third	\$2,000.00	\$300.00	\$2,300.00

(B) In the case of a violation of any of the provisions listed above, the administrative fine(s) shall be due and payable within 30 calendar days from the issuance of the administrative fine citation, and the citee shall be required to abate the violation, and surrender all dangerous fireworks to the City, immediately. For penalties not paid in full within that time, a late charge in the amount set forth above is hereby imposed and must be paid to the City by the citee.

(C) On the second and each subsequent time that a person is issued a citation for the same violation in any 12-month period, the fine is increased as indicated in section 7-7-13(A) and the citee shall be liable for the amount of the new fine until it is paid, in addition to being responsible for payment of previous fines.

(D) Upon confirmation of the citation or when the citation is deemed confirmed, either by exhaustion of administrative remedies or by the citee's own admission, all unpaid administrative fines, late fees and/or interest shall constitute a judgment which may be collected in any manner allowed by law for collection of judgments including but not limited to recordation to create a lien on any real property owned by the responsible person. The City shall be entitled to recover its attorney's fees and costs incurred in collecting any administrative fines, late charges and/or interest.

(E) Payment of the administrative fine shall not excuse or discharge a citee from the duty to immediately abate and correct violations of this article, nor from any other responsibility or legal consequences for a continuation or the repeated violations of this article.

Section 5. SEVERABILITY

The City Council declares that (1) the sections, paragraphs, sentences, clauses and phrases in this Ordinance are severable; and (2) if any sections, paragraphs, sentences, clauses and phrases in this Ordinance, or its application to any person, entity or circumstance, be

determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other sections, paragraphs, sentences, clauses and phrases in this Ordinance or the application of this Ordinance to any other person, entity or circumstance.

Section 6. EFFECTIVENESS

This Ordinance shall take effect immediately. This Ordinance will remain effective until any repealing or superseding ordinance becomes effective.

Section 7. PUBLICATION

The City Council directs the City Clerk to cause this Ordinance to be published in the manner required by law.

PASSED, APPROVED AND ADOPTED this 21st day of June 2021, by the following vote:

AYES: 5 COUNCIL MEMBER: Trujillo, Guerra, Mendoza-Navarro, Cho, Robertson
NOES: 0 COUNCILMEMBER: None
ABSENT: 0 COUNCILMEMBER: None
ABSTAIN:0 COUNCILMEMBER: None

ATTEST:

/s/
Scott Robertson, Mayor

/s/
Reyna Rivera, City Clerk