

RESOLUTION NO. 2024-08

A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF HUNTINGTON BEACH REVISING AND RESTATING
RESOLUTION NO. 2016-01 RELATED TO IMPLEMENTING
CHARTER SECTION 805 AND MUNICIPAL CODE CHAPTER 5.90
REGARDING SAFE AND SANE FIREWORKS

WHEREAS, the voters of the City of Huntington Beach approved an amendment to the Huntington Beach Charter adding Section 805 permitting the sale and discharge of Safe and Sane Fireworks subject to City Council regulations; and

The Council finds that orderly distribution and sale of Safe and Sane Fireworks will be accomplished by setting forth rules and procedures via resolution,

NOW, THEREFORE, the City Council of the City of Huntington Beach does hereby resolve as follows:

SECTION 1. The City Manager is hereby authorized to implement this Resolution, Huntington Beach Municipal Code (HBMC) Chapter 5.90 and Charter Section 805.

SECTION 2. No Permit, as defined by the HBMC, shall be issued to any Qualified Organization that does not satisfy the requirements provided in this Resolution or HBMC Chapter 5.90.

- A. The maximum number of Permits that may be issued shall be sixteen (16) Permits during any one calendar year as follows: one (1) Permit issued to a City Foundation and a maximum of five Permits shall be issued to Qualified Organizations in each of the three categories provided below, to which an applicant may apply for only one of the categories:

Youth Sports – Youth sports organizations operating within the City whose main purpose is to benefit a valid youth sports activity. Examples include but are not limited to Little League, "AYSO" soccer, youth football, basketball, tennis, or golf. This category does not include individual club or travel sports teams, or high school extracurricular activities/sports.

High School – High schools operating within the City that agree to use the proceeds for the benefit of valid student extracurricular activities/sports shall be allowed to submit one application.

Civic Organizations – Civic organizations operating within the City whose sole purpose is for civic betterment, or charitable or religious purposes to and for the citizens of Huntington Beach, shall be allowed to submit one application. This category does not include high school extracurricular activities or youth or adult sports organizations.

- B. Each year, one (1) Permit shall be issued to a Foundation which directly financially supports City operations through a Memorandum of Understanding between the Foundation and the City. Sixty percent of the proceeds from this booth will be given to the Foundation and forty percent will be provided to the City of Huntington Beach to help offset the costs related to the City's Independence Day festivities. The awarded Foundation will rotate annually, with applicable Foundations eligible to apply for other categories during non-award years. No Foundation may be awarded or operate two booths in the same year. Foundations will not be entered into the annual lottery.
- C. Applications may be filed with the City Clerk beginning March 1st, continuing up to 5:00 p.m. on the last business day in March of the same year, at which time the filing period for that year will be closed.
- D. The City Clerk shall conduct a lottery to choose fifteen qualified Permittees that may sell fireworks in the City pursuant to HBMC Chapter 5.90. The lottery will be conducted during a City Council meeting with the City Clerk using some means of random selection.
- E. In addition to the requirements of HBMC Chapter 5.90, Qualified Applicants must be organized primarily for veterans, patriotic, welfare, civic betterment, religious, athletic, educational, youth development or charitable purposes; must have their principal and permanent meeting place within the City; and provide direct and regular community services and benefits to the residents of the City.
- F. If more than one application is submitted on behalf of any nonprofit organization or affiliated organization, the City may disregard one or all of the applications at its sole discretion. Any attempt to transfer an application shall void that application and may preclude an applicant from participating in the lottery in future years.
- G. On a form provided by the City, Qualified Organizations shall provide: the proposed location of the fireworks stand; the name, address and 24-hour telephone number of one or more responsible adults who will be in charge of and responsible for the fireworks stand during the period fireworks are sold, displayed or stored at such location; and written permission from the owner of record and/or lessor and/or management company of the property upon which said fireworks stand is proposed to be located; the proof of the applicant's status as a qualified organization; date when the applicant was organized and established; the names and addresses of the officers, if any, of the applicant; the name, address, and California State Fire Marshal's license number of any wholesaler or distributor from whom the Qualified Applicant or retailer proposes to purchase for resale; the applicant's State Board of Equalization sales tax permit number; the manner, method and times regarding how the applicant proposes to sell Safe and Sane Fireworks; a copy of the requisite retail sales permit issued by the Office of the California State Fire Marshal; and evidence of a temporary sales tax permit from the California State Board of Equalization.

SECTION 3. Permittees shall provide certificates of insurance evidencing the following minimum coverage and limits. Insurance shall be provided by an insurer authorized to do business in California with a current A.M. Best's rating of no less than an A-VI.

- A. General Liability: Commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000.00) per occurrence, two million dollars (\$2,000,000.00) general aggregate, for bodily injury, personal injury, and property damage without limitation, blanket contractual liability. General liability policies shall provide or be endorsed using Insurance Services Office forms CG 20 26 or equivalent, to provide that City and its officers, elected or appointed officials, employees, agents and volunteers shall be additional insureds under such policies. There shall be no exclusions, included in or added to the policy, for fireworks sales or similar activities allowable under this permit.
- B. The insurance coverage provided and limits required hereunder are minimum requirements and are not intended to limit Permittee's indemnification obligations under Section 4 below, nor do the indemnity obligations limit the rights of the insured parties to the coverage afforded by their insured status. Requirements of specific coverage features or limits contained in this Section 3 are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.
- C. Any deductibles, self-insured retentions or similar forms of coverage limitations or modifications must be declared to and approved by the City.
- D. Permittee shall include all sub-Permittees or subcontractors, if any, as insureds under its policies or shall furnish separate certificates and endorsements to each sub-Permittee.
- E. Permittee shall provide to City, certificates of insurance and endorsements, as required, as evidence of the insurance coverage required herein.

SECTION 4. Permittees agree, as a condition of receiving a Permit, to protect, defend, indemnify, and hold harmless, the City, the City Council, its officers, elected or appointed officials, employees, agents, and volunteers from and against any and all third party claims, damages, losses, expenses, judgments, demands and defense costs, however caused, resulting from death or injury to Permittee employees, volunteers, customers, and/or any third party, and/or damage to Permittee property, arising directly or indirectly out of the obligations or operations undertaken by Permittee by virtue of the Permit issuance, caused in whole or in part by any act or omission of the Permittee, any subcontractors, anyone directly or indirectly employed or volunteers or anyone for whose acts any of them may be liable, including but not limited to, concurrent active negligence, except where caused by the sole active negligence, or willful misconduct of the City.

In the event of an injury, claim, lawsuit, or any other dispute, the Permittee will conduct all legal defenses to those injuries, claims, lawsuits, or any other disputes, including the defense of the City if applicable, at its sole cost and expense, and at no cost or expense to the City.

The City shall approve selection of Permittee's counsel. This defense and indemnity obligation shall apply to all claims and liability regardless of whether any defenses and insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Permittee.

SECTION 5. Each Permittee shall provide the City with a listing of reported profit from its Firework Stand located in the City.

SECTION 6. City Council Resolution No. 2016-01, and all other resolutions in conflict herewith, are hereby repealed.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the 20th day of February, 2024.

Mayor

REVIEWED AND APPROVED:

APPROVED AS TO FORM:

City Manager

City Attorney *PAC*

INITIATED AND APPROVED:

Ashley Wyg

Director of Community & Library Services