

**LODI CITY COUNCIL
SHIRTSLEEVE SESSION
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, MARCH 1, 2011**

A. Roll Call by City Clerk

An Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was held Tuesday, March 1, 2011, commencing at 7:00 a.m.

Present: Council Member Katzakian, Council Member Nakanishi, and Mayor Johnson
Absent: Council Member Hansen, and Mayor Pro Tempore Mounce
Also Present: City Manager Bartlam, City Attorney Schwabauer, and City Clerk Johl

B. Topic(s)

B-1 Discussion on the Sale and Use of State Fire Marshal Approved Fireworks Within the City Limits of Lodi (FD)

City Manager Rad Bartlam provided a brief introduction to the subject matter of the sale and use of certain fireworks within the City limits.

Fire Chief Kevin Donnelly provided a brief presentation regarding the sale and use of State Fire Marshal approved fireworks within the City of Lodi as set forth in the staff report. Specific topics of discussion included national and state fireworks regulations, risks associated with the use of fireworks, perspective of neighboring cities in the County, SB 839 which allows for fee collection for education and enforcement, involvement by non-profit organizations, and efforts related to program administration and enforcement.

In response to Mayor Johnson, Chief Donnelly and Mr. Bartlam stated the Fire Department will use an hourly rate to apply to the model, which essentially includes the creation and administration of the program, site inspections, and enforcement efforts, which could also involve the Police Department.

Dennis Revell of TNT Fireworks provided a brief presentation and specifically discussed fireworks regulations, community trends in permitting fireworks, non-profit involvement, program administration, and operations.

In response to Council Member Nakanishi, Mr. Revell stated Stockton generated approximately \$1.2 million in gross sales revenue for its non-profits last year.

In response to Mr. Bartlam, Mr. Revell stated there are approximately 24 to 26 registered fireworks wholesalers in the State and 4 in the Central Valley. He stated he is not sure about the operations of other wholesalers as the operations outlined in the presentation (on file) are those for TNT only.

In response to Council Member Nakanishi, Mr. Bartlam stated there are approximately 300 non-profits operating in the City. He stated that, while the City Council can set up the program, it would not want to choose which non-profits are involved and therefore could use the lottery system instead.

In response to Council Member Katzakian, Chief Donnelly confirmed that the ordinance could restrict certain areas such as riverfront.

In response to Mayor Johnson, City Attorney Schwabauer stated he will get back to the Council on the question of whether a request for proposals would be necessary since there are several fireworks distributors throughout the State.

In response to Council Member Katzakian, Mr. Bartlam stated the earliest an ordinance could come up for first reading is April, with a second reading in mid-April, and an effective date in mid-May. Mr. Bartlam stated the administration and lottery would be held around the same time.

The following individuals spoke in support of permitting Safe and Sane fireworks in the City based on the overall financial benefits to the community, non-profit organizations, City, and selected vendor:

Dennis Revell, TNT Fireworks
Richard Jones, Boys and Girls Club
Arlene Farley, Project Thank You
Grant Fletcher, Lodi Lions Club
Merle Gooler, Swenson Golf Course Fireworks Booth Operator
Rita Sperling, Children's Dreamworks
Elizabeth Westphal, Project Thank You
Carl Cox, parent in community
Louis Franklin, Tokay High School Athletics
Rick Engelhardt, Boosters of Boys/Girls Sports Organization
Rudy Gutierrez, First Baptist Church Ministries
Pat Patrick, Chamber of Commerce
Ryan Conner, Phantom Fireworks
Linda Wigam, TNT supporter
Stan Fendrich, Kiwanis

The City Council provided general direction to pursue an ordinance modification allowing for Safe and Sane fireworks within the City.

C. Comments by Public on Non-Agenda Items

None.

D. Adjournment

No action was taken by the City Council. The meeting was adjourned at 8:17 a.m.

ATTEST:

Randi Johl
City Clerk



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Discussion on the Sale and Use of State Fire Marshal Approved Fireworks Within the City Limits of Lodi
MEETING DATE: March 1, 2011
PREPARED BY: Fire Chief

RECOMMENDED ACTION: Discuss the sale and use of State Fire Marshal approved fireworks within the city limits of Lodi.

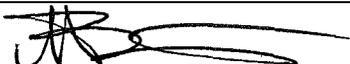
BACKGROUND INFORMATION: This meeting is to inform Council and allow for discussion of the merits and issues related to allowing "Safe and Sane" fireworks to be sold and discharged within the city limits of Lodi. There is a national, state, and local perspective to this issue. There can be some benefit derived from such a change, but it comes with some risks and other considerations.

National and State regulations are less stringent on the issue than the Lodi Municipal Code. Nationally there is a wide variety of fireworks regulations. Four states do not allow fireworks at all. Many states allow the use of fireworks that comply with federal regulation.

The California State Fire Marshal (CSFM) evaluates fireworks for compliance with the California Code of Regulations Title 19 and the Health and Safety Code. Compliant items are marked by the CSFM seal and are termed "Safe and Sane." The fireworks have been evaluated and tested by the CSFM and are required to be used according to the directions and with adult supervision. These fireworks can be approved by the local Authority Having Jurisdiction (AHJ) for sale and use within their community. Decisions are based on the assessment of local risks and issues pertinent to that community. In Lodi it is unlawful for any ordinary citizen to sell or discharge fireworks that produces a spark or flame. This prohibits most types of fireworks except for a few novelty items.

In San Joaquin County there has been a tidal change in recent years. At one time most of San Joaquin County banned the use of fireworks. Today, most of the cities allow for the sale and use of these fireworks, although they remain illegal in Lodi, Tracy, and the unincorporated areas of the County. In Lodi we issue permits to licensed professionals when they conduct fireworks displays. The Fire Department charges a fee for that permit to cover the cost of inspections that must be conducted. This is the type of display that has been sponsored by the City for many years at Lodi Lake. Every year the question is posed if "Safe and Sane" fireworks will be allowed in Lodi.

Since the passage of SB 839 there has been a growing push from the fireworks industry. The law that was passed in 2008 allows for the AHJ to collect fees for the purpose of education and enforcement on the CSFM approved type of fireworks and the safe use of these items. In California there are approximately 271 AHJs; cities, counties, and special districts that allow the use of "Safe and Sane"

APPROVED: 
Konradt Bartlam, City Manager

Discussion on the Sale and Use
of State Fire Marshal Approved
Fireworks Within the City Limits
of Lodi

March 1, 2011

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fireworks. Sale of fireworks in these communities has been marketed to nonprofit organizations as fund raisers.

The single greatest community benefit for many nonprofit organizations is funding their work in the community. The sale of the fireworks is done by the nonprofit at the expense of the fireworks distributors. The profits are split by contract agreement and the nonprofit group receives payment for their labor based on the amount of sales. This has proven to be a very attractive offer for the nonprofit groups in recent years.

The fact remains that an increase in the availability of fireworks increases the potential for incidents to occur. A 2008 report by the National Fire Protection Association (NFPA) found the health risks of consumer fireworks are greater than cigarettes. Based on that report, the NFPA adopted a position that consumer fireworks are not safe and encourages everyone to enjoy public displays that are conducted by professional trained and certified in the use of such materials.

In addition to the added risk factors there are issues and costs associated with implementing a plan to allow the sale and use of fireworks in our community. Issues include enforcement of the law, the program design and the cost of staff hours required to conduct the work of implementing any program. Workload impacts could be felt across other city departments along with the fire department. Enforcement is key to compliance and the code should reflect the desires of the Council and community. It should be stressed that best practices show zero tolerance for violations to the adopted code whether it allows for "Safe and Sane" fireworks or not. Staffing in most departments is impacted and the additional tasks could be a factor in each. The Fire Department Prevention Bureau is currently understaffed. The additional workload would require recognition of this through some funding mechanism.

FISCAL IMPACT: Not applicable at this time.

FUNDING AVAILABLE: Not applicable at this time.


Kevin D. Donnelly, Fire Chief

KDD/lh

TNT FIREWORKS

FUNDRAISING



ARE FIREWORKS LEGAL- YES



HEALTH AND SAFETY CODE FIREWORKS VIOLATIONS SAFE AND SANE FIREWORKS

12672 - Sell Safe and Sane Fireworks other than from noon June 28 - noon July 6

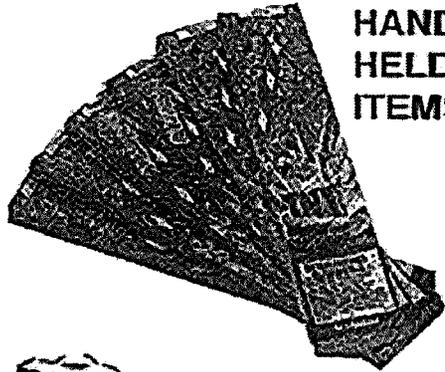
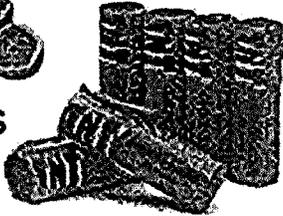
You might be asking yourself, "Aren't fireworks illegal in California?" In the State of California all fireworks are illegal with the exception of the sale of state-approved fireworks (aka Safe and Sane) from June 28th – noon July 6th each year. The sale of Safe and Sane fireworks is available to all cities in California at the discretion of local city government to opt-in and regulate the program.



WHAT ARE STATE-APPROVED FIREWORKS?



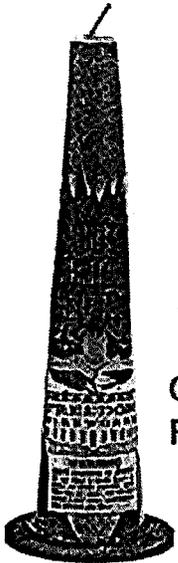
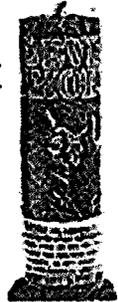
SPINNERS



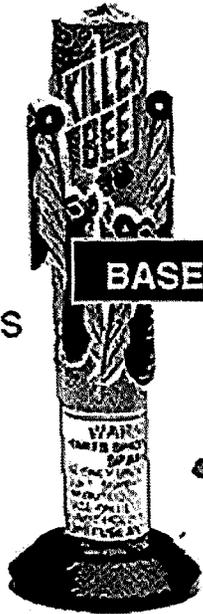
HAND-HELD ITEMS



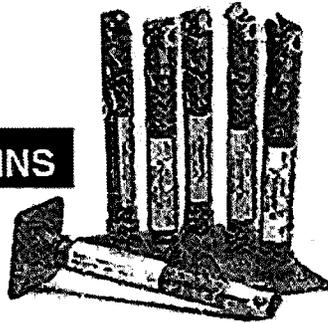
SMOKE ITEMS



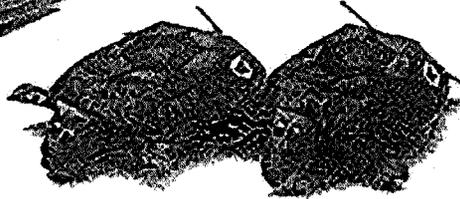
CONE FOUNTAINS



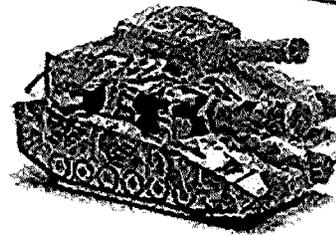
BASE FOUNTAINS



BOX OR TUBE FOUNTAINS



NOVELTIES



SAFE & SANE PRODUCTS

Every item we sell must undergo individual safety testing before it is approved with the State Fire Marshal seal. Every year, dangerous and illegal items such as Cherry Bombs, Bottle Rockets and Roman Candles cause thousands of dollars in property damage as well as numerous injuries. These items are illegal, not state-approved and are not sold in licensed retail stands in California.



IF AN ITEM DOES NOT BEAR THIS SEAL, IT IS ILLEGAL!

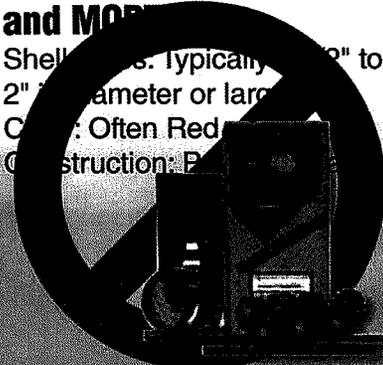
CHERRY BOMBS

7/8" in Diameter
Color: Red



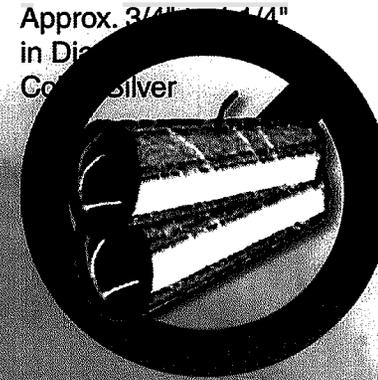
AERIAL SHELLS

and MORTARS
Shells: Typically 1 1/2" to 2" in diameter or larger
Color: Often Red
Construction: Paper or Plastic



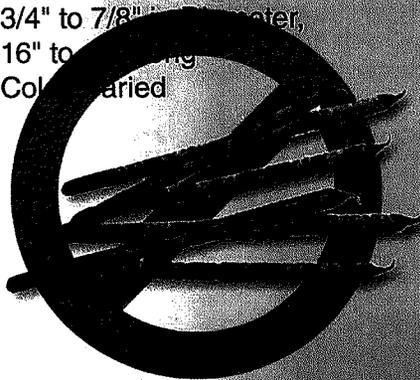
SILVER SALUTES

Approx. 3/4" to 1 1/4" in Diameter
Color: Silver



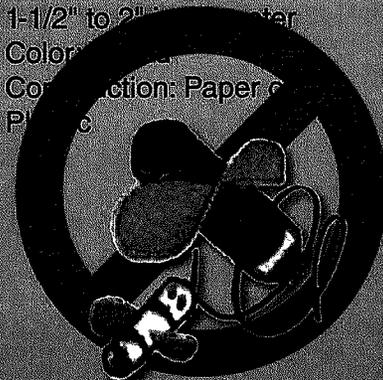
ROMAN CANDLES

3/4" to 7/8" in Diameter, 16" to 24" Long
Color: Varied



HELICOPTERS

1-1/2" to 2" in Diameter
Color: Varied
Construction: Paper or Plastic



FIRECRACKERS

1/4" in Diameter
1-1/2" Long
Color: Varied, Often Red & White or Blue & White



BOTTLE ROCKETS

1/4" in Diameter, 1-1/2" Long
Stick: 1/2" to 1" Long
Color: Varied



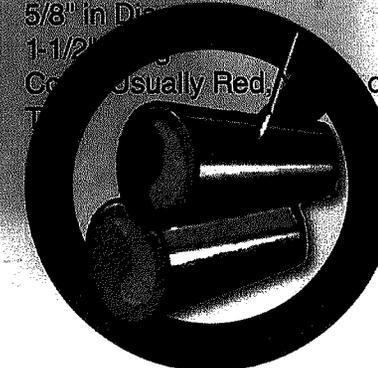
M-100's

3/4" in Diameter
2" Long
Color: Red or Tan



M-80's

5/8" in Diameter
1-1/2" Long
Color: Usually Red, Green or Tan



These sizes and colors are the most common, but you may come across illegal fireworks that are different in size and color.



Since 1992, every State Fire Marshal has consistently stated, “Illegal fireworks remain Public Enemy #1 for the Fire Service!” Both state and local fire statistics show that the problems from illegal fireworks are most prevalent in communities that do not allow State-Approved Fireworks.

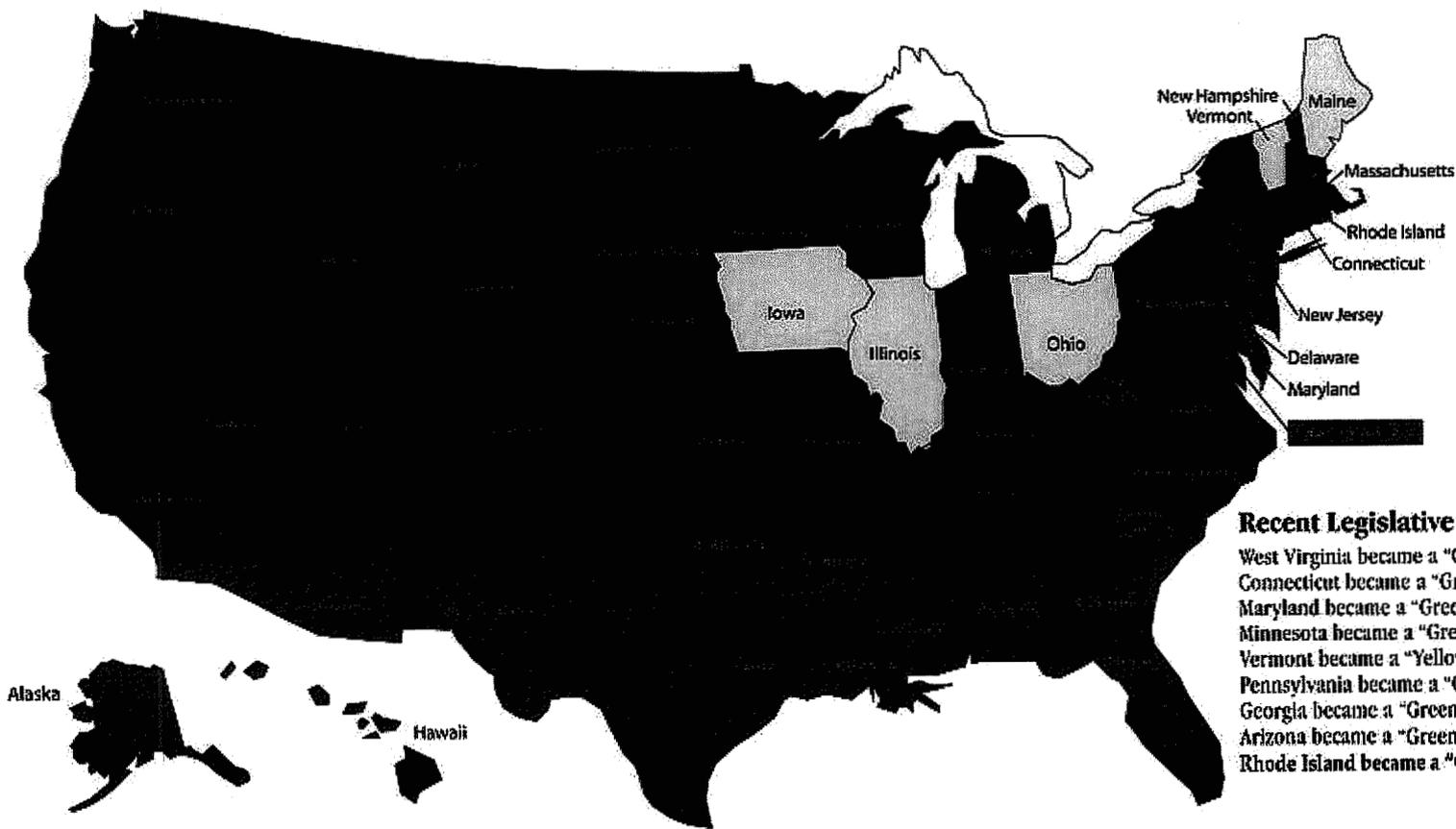
CALIFORNIA FIREWORKS

TNT Fireworks is the state's largest wholesale distributor of state-approved fireworks. Over 3,000 non-profit organizations in over 280 communities across the state look forward to the 4th of July as the single largest fund-raising event for their organization.



STATE LAWS

Fireworks in America



Recent Legislative Activity

West Virginia became a "Green" state as of June 11, 1995
 Connecticut became a "Green" state as of June 1, 2000
 Maryland became a "Green" state as of October 1, 2001
 Minnesota became a "Green" state as of April 29, 2002
 Vermont became a "Yellow" state as of May 6, 2003
 Pennsylvania became a "Green" state as of November 30, 2004
 Georgia became a "Green" state as of May 2, 2005
 Arizona became a "Green" state as of May 10, 2010
 Rhode Island became a "Green" state as of June 11, 2010

GREEN - Family safe and sane sparklers & fireworks. Hand-held and ground based sparklers (fountains), trick noisemakers, toy smoke devices and snakes. Fireworks sold by retailers - supermarkets, discount stores, drug stores, convenience stores and not-for-profit stands and tents.

YELLOW - Sparklers and/or trick noisemakers, toy smoke devices and snakes. Fireworks sold by retailers - supermarkets, discount stores, drug stores, convenience stores.

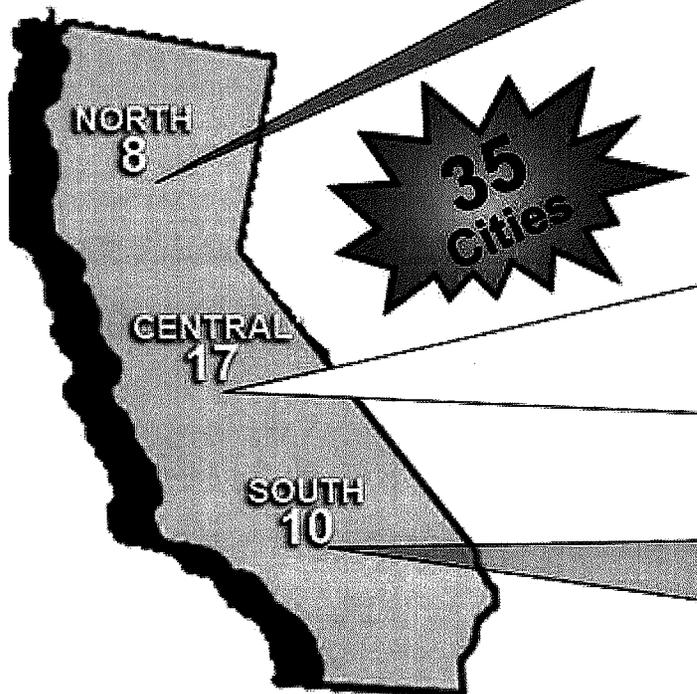
GREEN - Most fireworks permitted. (Firecrackers, aerials, Roman candles, sky rockets, etc.) Fireworks sold primarily by licensed fireworks stores and temporary parking lot stands and tents.

RED - Fireworks not permitted for sale to/or use by consumer.

WHAT IS THE TREND?

Many people think the number of communities in California that permit the sale and use of state-approved fireworks is shrinking. Quite the contrary!

Without taking into consideration all of the communities that have reaffirmed at the ballot box their desire to continue to permit the sale and use of state-approved fireworks, the trend is the exact opposite. Since 1993, there have been 35 communities that have decided to reverse, by City Council action, their longstanding prohibition against these backyard, family celebrations of our nation's birthday.



| | |
|--------------------|------|
| Maxwell | 1993 |
| Yolo County | 2001 |
| Wearl | 2002 |
| Sutter Creek | 2003 |
| Montague | 2004 |
| Copperopolis | 2005 |
| Salinas | 2009 |
| King City | 2010 |
| Chowchilla | 1995 |
| Arroyo Grande | 1996 |
| Selma | 1996 |
| Corcoran | 1997 |
| Grover Beach | 1998 |
| Rippon | 1999 |
| Escalon | 2000 |
| Fresno | 2000 |
| Lindsey | 2000 |
| Porterville | 2001 |
| San Miguel | 2001 |
| Sanger | 2001 |
| Tulare County | 2003 |
| Los Banos | 2005 |
| Manteca | 2005 |
| Lathrop | 2010 |
| Stockton | 2010 |
| Cudahy | 1993 |
| Stanton | 1994 |
| Indio | 1996 |
| Coachella | 1996 |
| Grand Terrace | 1998 |
| Gardena | 1999 |
| Cathedral City | 2003 |
| Desert Hot Springs | 2009 |
| Westminster | 2010 |
| Calexico | 2010 |

NORTHERN CA OPEN COMMUNITIES

118 Northern California Communities benefit from State Approved Fireworks

Alameda County

Dublin
New ark
Union C i

Amador County

Ione
Jackson
Sutter Creek

Butte County

Gridley
Oroville

Calaveras County

Angels Camp
Calaveras County
Murphys
San Andreas
Valley Springs
Copperopolis
Mokelumne Hill

Colusa County

Arbuckle
Colusa
Maxwell
Williams

Del Norte County

Crescent City
Fort Dicks
Klamath
Del Norte County

Glenn County

Hamilton City
Orland
willows

Humboldt County

Alder Point
Arcata
Carlotta
Eureka
Ferndale
Fieldbrook
Hydesville
Fortuna
Garberville
Hoopa
Humboldt County
McKinleyville
Orick
Redway
Rio Del
Trinidad

Lake County

Lakeport

Lassen County

Susanville

Modoc County

Adin
Alturas

Monterey County

Gonzales
Greenfield
King C i
Salinas
Soledad
Seaside
Marina

Napa County

St. Helena

Nevada County

Nevada C i

Placer County

Lincoln
Rocklin
Roseville

Sacramento County

Citrus Heights
Elk Grove
Elverta
Folsom
Galt

Isleton

Rancho Cordova
North Highlands
Carmichael
Fair Oaks
Antelope
Rio Linda
Sacramento City
Sacramento County
Walnut Grove

San Benito County

Hollister
San Juan Bautista

San Mateo County

Pacifica
San Bruno

Santa Clara County

Gilroy

Santa Cruz County

Watsonville

Shasta County

Cottonwood

Siskiyou County

Dorris
Dunsmuir
Fort Jones
McCloud
Mt. Shasta
Siskiyou County
Tulelake
Weed
Yreka
Montague

Solano County

Rio Vista

Sonoma County

Cloverdale
Petaluma
Rohnert Park
Sebastopol

Sutter County

East Nicholas
Live Oak
Sutter
Sutter County
Yuba C i

Tehama County

Corning
Gerber
Los Molinos
Roberta
Red Bluff
Tehama County

Yolo County

Esparto
Knights Landing
Madison
willow Oak
Winters
Woodland
Yolo County

Yuba County

Linda
Marysville
Olivehurst
Wheatland
Yuba County

CENTRAL CA OPEN COMMUNITIES

102 Central California Communities benefit from State Approved Fireworks

Fresno County

Clovis
Coalinga
Easton
Firebaugh
Fowler
Fresno
Fresno County
Huron
Kerman
Kingsburg
Laton
Mendota
Orange Cove
Parlier
Reedley
Riverdale
Sanger
San Joaquin
Selma

Inyo County

Big Rne
Bishop
Independence
Lone Rne
Inyo County

Kern County

Arvin
Bakersfield
California City
Delano
Kern County
Lamnt
Maricopa
McFarland
Mojave
Oildale
Ridgecrest
Rosamnd
Shafter
Taft
Wasco

Kings County

Armna
Avenal
Corcoran
Kings County
Hanford
Kettleman City
Lemore
Stratford

Madera County

Chowchilla
Madera
Madera County

Merced County

Atw ater
Dos Palos
Gustine
Merced
Livingston
Los Banos

Mono County

Bridgeport
Mono County

San Joaquin County

Ripon
Vernalis
Escalon
Manteca
Lathrop
Stockton

San Luis Obispo County Tulare County

Arroyo Grande
Grover Beach
Oceano
San Miguel
Templeton

Santa Barbara County

Guadalupe
Santa Maria

Stanislaus County

Ceres
Denair
Empire
Hughson
Keyes
Modesto
New man
Oakdale
Patterson
Riverbank
Salida
Stanislaus County
Turlock
Waterford
Westley

Dinuba
Earlimart
Exeter
Farmersville
Goshen
Lindsay
Pixley
Porterville
Strathmre
Terra Bella
Tulare
Tulare County
Visalia
Woodlake
Orosi
Ivanhoe

SOUTHERN CA OPEN COMMUNITIES

62 Southern California Communities benefit from State Approved Fireworks

Alhambra
Artesia
Azusa
Baldwin Park
Bell
Bell Gardens
Bellflower
Carson
Commerce
Compton
Cudahy
Downey
Duarte
El Monte
Gardena
Hawaiian Gardens
Hawthorne
Huntington Park
Industry

Inwindale
La Mirada
La Puente
Lakewood
Lawndale
Lynwood
Maywood
Montebello
Monterey Park
Norwalk
Palmdale
Paramount
Pico Rivera
Rosemead
Santa Fe Springs
South El Monte
South Gate
Temple City
Vernon

Calexico
Calipatria
Westmorland
Winterhaven
Orange County
Buena Park
Costa Mesa
Garden Grove
Santa Ana
Stanton
Westminster
San Bernardino County
Adelanto
Chino
Colton
Fontana
Grand Terrace
Rialto
San Bernardino

Blythe
Cathedral City
Coachella
Desert Hot Springs
Indio
Ventura County
Fillmore

NON-PROFIT ORGANIZATIONS

501C3 organizations within the city can qualify.

These are some examples of groups that we work with:

1: Youth Athletic Groups

- PAL
- AYSO
- Little League
- Pop Warner
- Swim Clubs

2: Youth Service Organizations

- Boys & Girls Club
- *YMCA
- Teen Challenge
- Camp Fire

3: Service Clubs

- Rotary
- Lions
- Kiwanis
- Soroptimists
- Exchange Clubs
- Optimists
- Active 20-30 Clubs
- Jaycees

4: Fraternal and Veterans Organizations

- American Legion
- VFW
- Elks Lodges

5: Community and Social Service Organizations

- Food Closets
- LULAC
- Victory Outreach
- Knights of Columbus
- Trauma Intervention
- Battered Women's Shelters
- Rape Crisis Centers

6: High School Athletic Boosters

7: High School Band Boosters

8: Churches

9: Fire Departments/Auxiliaries and Police Department Associations

THE OPERATION

- TNT secures the use of a parking lot through the property owner
- TNT erects a stand on the lot, usually **24** or **32** feet in length
- TNT delivers the product to the stand and checks the order. All merchandise is given on full consignment. There is no upfront cost for the fireworks merchandise
- The organization is asked to provide the volunteers and sell in the stand for the selling period of June 28th – July 4th
- The organization counts the merchandise and returns all unsold product to a designated drop-off area for a 100% refund
- TNT fronts all of the costs and bills the group at the end of the sale for expenses and the cost of the fireworks



BENEFITS OF THE PROGRAM

- The non-profits can rely on fireworks sales for much needed revenue
- A quick 7 day profitable fundraiser
- Generates sales tax for the city (Each organization has to collect and pay sales tax) as well as licensing fees
- Potentially brings new business to existing businesses around fireworks stands
- Safe and Sane fireworks deter citizens from using illegal fireworks
- Due to budget cuts and decreased donations, many non-profit organizations need to find alternative fundraising opportunities to raise the necessary funds to keep their program afloat
- Setting and administering fines for illegal fireworks will help pay for increased patrols on the holiday
- Industry works together with the city to develop and implement a fireworks safety and education program
- Celebrating our nation's independence with safe State Fire Marshal approved fireworks for the 4th of July

What would SB839 administrative fines mean for the City of Lodi?

1. If incorporated into its ordinance, the City of Lodi would be permitted to issue administrative fines, in lieu of criminal court prosecution, for possession and use of dangerous, illegal fireworks and/or misuse of State-Approved Fireworks (i.e., use of them beyond the permissible days, hours or locations of permissible use).
2. California cities may be organized pursuant to a charter or the general laws of the State. Generally speaking, in light of California Government Code Section 36901, a General Law City may not impose administrative fines that exceed one thousand dollars (\$1,000.00) and/or imprisonment exceeding six months. The City of Lodi is a General Law City and thus, the maximum fine it may impose for first time violators using or possessing less than 25 pounds of illegal fireworks is \$1,000.00. There are a number of Charter Cities which are imposing fines in excess of this \$1,000.00 with the highest being \$2,500.00 for the first violation, \$5,000.00 for the second violation and \$10,000.00 for the third violation within a year.
3. Adding the administrative fine citation process to Lodi's ordinance in no way limits or restricts the city to this remedy alone. It may still pursue other legal remedies against a violator, including criminal prosecution.

How successful have SB839 administrative fines been in the illegal fireworks problem?

A growing list of communities are amending their City's Municipal Code to provide for administrative fines for the possession and use of less than 25 pounds of illegal fireworks or the misuse of State-Approved Fireworks outside the parameters of their City's fireworks ordinance.

These cities are experiencing success no matter how small or large a community they are and are finding that the administrative fine process is an extremely effective way to battle illegal fireworks.

| <u>City</u> | <u>Total Fines Levied</u> |
|--------------------|---------------------------|
| Fontana | \$223,750 |
| Bellflower | \$181,000 |
| Pacifica | \$31,000 |
| Petaluma | \$13,250 |
| Rohnert Park | \$7,000 |
| Salinas | \$6,000 |
| Watsonville | \$103,000 |

Are things better/safer once a community reverses a long-standing prohibition against all fireworks and allows a community to use and sell State-Approved Fireworks?

**“The benefit, we found is that it’s an alternative
to illegal and dangerous fireworks.”**

**- Salinas Fire Chief Jesse Piñon
January 23,2011**

“Operationally, it went off without a hitch. No problem!”

“Hittle conceded he had qualms about resuming this wonderful tradition. ‘I’ll be the first to say it; I wasn’t sure how it was going to work.’

Hittle’s staff researched Los Angeles County’s giant fire department, among other things. Its statistics attribute 97 percent of Fourth of July-related fires to illegal fireworks.

‘The things that catch on fire are the things that blow up and fly,’ Hittle said. ‘Safe and sane has nothing to do with those things.’

In addition to a good public safety outcome, the fiscal component shows benefits, too.

Gross sales of legal fireworks raised just under \$1.2 million, city records show. The 30 nonprofits that staffed fireworks booths earned between \$4,000 and \$22,000.

The average range for most groups was \$9,000 to \$12,000: much-needed money for good causes during tough times.

‘We came home with \$7,887.36,’ wrote Bernice Bass of the South Stockton Vikings youth football team. ‘We make sure every child can play or cheer with uniforms and equipment.’”

Does not allowing State-Approved Fireworks
make it easier to enforce the law against
illegal fireworks?