

ORDINANCE NO. 1591 (13)

**An Ordinance of the Council of the City of Lompoc,
County of Santa Barbara, State of California, Adding Chapter 8.28 to the Lompoc
Municipal Code Relating to Fireworks**

WHEREAS, the City Council of the City of Lompoc deems it beneficial to the public health and welfare to adopt regulations related to fireworks and to allow the sale of "Safe and Sane Fireworks" consistent with the State Fireworks Law (Health and Safety Code sections 12500 *et seq.*); and

WHEREAS, the sale of "Safe and Sane Fireworks" will help fund City events, help fund local nonprofits, and become a sustainable source of funds for both.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LOMPOC DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Chapter 8.28 is added to the Lompoc Municipal Code to read as set forth in Exhibit A, attached hereto.

SECTION 2. This Ordinance shall be effective thirty (30) days after its adoption.

This Ordinance was introduced on April 16, 2013 and duly adopted by the City Council of the City of Lompoc, at its regular meeting on May 7, 2013, by the following electronic vote:

AYES: Councilmember(s):

NOES: Councilmember(s):

John H. Linn, Mayor
City of Lompoc

ATTEST:

Stacy Alvarez, City Clerk
City of Lompoc

EXHIBIT A
to
ORDINANCE NO. 1591(13)

Chapter 8.28
FIREWORKS

8.28.010 DEFINITIONS.

The following words and phrases, as used in this chapter, are defined as follows:

- (a) "Affiliated organizations" shall mean the following:
 - i. Organizations incorporated under the same charter or organization and their auxiliaries if the auxiliary is incorporated under the same charter;
 - ii. Organizations sharing the same officers or national parent organization; and
 - iii. Subdivisions or fractional divisions however named or delineated by organizations.
- (b) "Citation" means an administrative citation issued pursuant to this section to remedy a violation.
- (c) "Citee" means any person served with an administrative citation charging him or her as a responsible person for violation.
- (d) "Code enforcement officer" (CEO) means any employee or agent of the City designated by the City Administrator to enforce any provision of this chapter.
- (e) "Consumer Price Index" means the Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers U.S. City Average published by the U.S. Department of Labor, Bureau of Labor Statistics, for the immediately preceding calendar year. If the foregoing index is at any time no longer available, then a comparable economic indicator shall be used to determine the annual rent adjustment.
- (f) "Dangerous fireworks" shall mean those items as defined in Health and Safety Code sections 12505 and 12561 and the relevant sections of Title 19, Code of Regulations, and Subchapter 6 which are hereby incorporated by reference.
- (g) "Fireworks stand" means any building, counter, or other structure of a temporary nature used in the sale, offering for sale, or display for sale of "Safe and Sane Fireworks."
- (h) "Fireworks task force costs" means those employee salary, overtime and benefit costs, disposal costs, clean-up costs, and operations costs incurred by the Lompoc police, fire, or other authorized agencies to operate a task

force to monitor and enforce the provisions of this chapter between June 28 and July 7 of each calendar year; provided, that during the first calendar year after the effective date of this chapter, fireworks task force costs shall not exceed \$10,000.00 and, thereafter, that not-to-exceed amount shall be subject only to annual increases, based on the Consumer Price Index, as defined in this chapter.

- (i) "Fireworks wholesaler" means any person, other than an importer, exporter or manufacturer, who purchases fireworks from a manufacturer, importer or exporter for resale to a retailer or any other person for resale or any person who sells fireworks to other wholesalers or retailers for resale.
- (j) "Hearing officer" means the person appointed by the City Administrator to serve as the hearing officer for administrative hearings hereunder.
- (k) "Issuance" or "issued" means any of the following:
 - i. The preparation and service of an administrative fine citation to a citee in the same manner as a summons in a civil action in accordance with Article III (commencing with section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure, as amended;
 - ii. Mailing of administrative fine citation to the citee by certified mail with return receipt, to the address shown on the official records of the County Assessor; or
 - iii. By personally serving the responsible party by personal delivery of the administrative fine citation.
- (l) "Nonprofit organization" shall mean:
 - i. Any nonprofit association, charity or corporation organized primarily for veteran, patriotic, welfare, civic betterment, religious, athletic or charitable purposes pursuant to the Internal Revenue Code or California Revenue and Taxation Code;
 - ii. A group which has received recognition from the California Secretary of State;
 - iii. A group which is an integral part of a recognized national organization having such tax-exempt status; or
 - iv. An organization affiliated with and officially recognized by a school or school district that serves, in whole or in part, the residents of the City.
- (m) "Person" means a natural person or a legal entity that is also an owner, tenant, lessee or other person with any right to possession or control of the property where a violation of this code occurred.
- (n) "Principal and permanent meeting place" shall include, but not be limited to, a permanent structure, playing field, geographic area which is located within the City of Lompoc.

- (o) "Public display of fireworks" shall mean an entertainment feature where the public is admitted or permitted to view the display or discharge of fireworks, including but not limited to, those defined above.
- (p) "Qualified applicant" shall mean any nonprofit organization which has met all of the following criteria for a continuous period of not less than one full calendar year preceding submittal of an application for a permit to sell required by this Chapter and which continues to meet the criteria for the duration of any permit to sell issued by the City pursuant to this Chapter:
- i. The nonprofit organization must either (1) have its principal and permanent meeting place within the City and have a non-profit City-business license or (2) be a public school or an organization affiliated with a public school that is part of the Lompoc Unified School District;
 - ii. The nonprofit organization must be one which provides direct and regular community services and benefits to the residents of the City;
 - iii. The nonprofit organization must have a minimum bona fide membership of at least twenty (20) members who either reside in the City, the Lompoc Valley or are owners or operators of a business or other establishment located in the City;
 - iv. The nonprofit organization must not have had a permit to sell revoked within twenty-four months prior to the nonprofit organization's submittal of an application for a permit to sell.
- (q) "Responsible Person" means a person who causes a violation of this Chapter to occur or allows a violation to exist or continue, by his or her action or failure to act, or whose agent, employee or independent contractor causes a violation to occur, or allows a violation to exist or continue. There is a rebuttable presumption the record owner of a residential parcel, as shown on the County's latest equalized property tax assessment rolls, and a lessee of a residential parcel has a notice of any violation existing on that property. For purposes of this Chapter, there may be more than one responsible person for a violation. Any person, irrespective of age, found in violation of any provision of this Chapter may be issued a citation in accordance with the provisions of this Chapter. Every parent, guardian or other person, having the legal care, custody or control of any person under the age of 18 years, who knows or reasonably should know that minor is in violation of this Chapter, may be issued a citation in accordance with the provisions of this Chapter, in addition to any citation that may be issued to the offending minor.
- (r) "Safe and sane fireworks" (a.k.a. "state-approved fireworks") shall mean those items as set forth 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.
- (s) "Violation" or "violates" refers to any violation of any provision of this chapter.

8.28.020 SAFE AND SANE FIREWORKS - PERMITS REQUIRED.

It shall be unlawful for any person to sell safe and sane fireworks within the City without having first applied for and received a permit from the City, pursuant to this chapter.

8.28.030 SAFE AND SANE FIREWORKS - APPLICATION.

- (a) No nonprofit organization shall submit more than one application for a permit to sell safe and sane fireworks within the City. If more than one application is submitted on behalf of any nonprofit organization, including an affiliated organization, then any or all such applications could be voidable at the discretion of the Fire Chief; and the Fire Chief, or his/her designee, shall provide written notice to the affiliated applicants of his/her decision within ten City-working days after receipt of the affiliated applications. If any recipient of that notice disagrees with that decision, then, if a written appeal has been filed by that recipient and received by the City Clerk within five days after that notice has been transmitted to that recipient, the City Council shall, at a duly noticed public meeting, decide whether the organizations or groups are affiliated. The appeal shall include the reasons that recipient disagrees with the Fire Chief's decision. Any attempt to transfer an application shall void any and all applications filed by or on behalf of the transferor/nonprofit organization and the transferee/nonprofit organization. Notwithstanding the foregoing, if the nonprofit organization is affiliated with a school or school district, but maintains a separate tax exempt status with the Internal Revenue Service or the California Secretary of State, then that nonprofit organization shall be allowed a separate application.
- (b) All applications for permits to sell safe and sane fireworks shall be in writing to the Fire Chief on forms supplied by the City. Applications may be filed beginning January 15th of each year, up to and including February 1. For the year 2013, applications, contingent on this Chapter being effective as of June 6, 2013, shall have been filed no earlier than April 22, 2013, and no later than 5:00 p.m. on May 6, 2013.
- (c) Applicants shall be notified by February 15th of each year by the Fire Chief, or his/her designee, of the disapproval of any applications. The lottery to be held for determining which nonprofit organizations are eligible for such permits will occur on or before March 1st of each year. All nonprofit organizations whose applications have been selected shall have up to and including March 31st of that year to submit all information required by Section 8.28.060 of this Chapter. For the year 2013, notification shall be by May 13th with the lottery to be held May 17th.

8.28.040 SAFE AND SANE FIREWORKS - DENIAL OF APPLICATION.

- (a) The Fire Chief, or his/her designee, shall issue a permit to a qualified applicant to sell safe and sane fireworks unless:

- i. The Fire Chief finds, in writing, the applicant has failed to provide sufficient plans, information or other data necessary to permit a determination respecting compliance with the requirements of this Chapter;
 - ii. The Fire Chief finds, in writing, the applicant is not in compliance with any of the requirements of this Chapter; and
 - iii. The Fire Chief must advise all qualified applicants of that determination no later than February 15th of each year, as well as advise them of the date of the drawing.
- (b) Any denial of a permit issued pursuant to this section may be appealed pursuant to the procedures set forth in subsection 8.28.160 (f) of this Chapter.

8.28.050 SAFE AND SANE FIREWORKS - DEADLINES FOR APPLICATIONS AND ALL OTHER FILINGS.

If any deadline established by this Chapter for submitting any type of application, payment of any administrative fine, filing of a notice of appeal or similar submittal falls on a day City Hall is closed, then that deadline shall automatically be extended to the close of business of the next day City Hall is open.

8.28.060 SAFE AND SANE FIREWORKS - PREREQUISITE FOR ISSUANCE OF PERMIT.

- (a) The maximum number of permits which may be issued to all qualified applicants and the maximum number of safe and sane fireworks stands that will be permitted pursuant to this Chapter per year shall not exceed one permit for each 7,500 residents of Lompoc, or fraction thereof, based on the latest State of California Census Estimate. Each permit issued is effective for one year, unless revoked.
- (b) If the number of qualified applicants exceeds the number of permissible permits under this section, then the qualified applicants to be issued permits shall be determined by a lottery conducted by the Fire Chief, or his/her designee, pursuant to subsection 8.28.030 (c), and in accordance with the following:
 - i. After the authorized number of permits has been drawn, the remaining qualified applicants shall be drawn and assigned as alternates according to the order drawn. Each alternate, according to the order drawn, shall be offered a permit if one of the qualified applicants whose name was drawn cannot meet the requirements of this Chapter or if a qualified applicant voluntarily surrenders its permit;
 - ii. In addition, if a qualified applicant's name is drawn, then it may select one or more other qualified applicant(s) to join it in a joint venture operation of the fireworks stand and jointly receive a permit to sell fireworks pursuant to this chapter ("joint venture qualified applicant");

- iii. Permits issued pursuant to this section are valid during the calendar year issued, unless revoked.
- (c) Prior to the issuance of a permit pursuant to this Chapter, and in addition to those other requirements set forth in this Chapter or on the permit application, in order for a permit to be issued, a qualified applicant and each joint venture qualified applicant shall, to the reasonable satisfaction of the Fire Chief, provide all of the following:
- i. A copy of the requisite retail sales permit issued by the Office of the California State Fire Marshal;
 - ii. The name of the applicant, name of the organization, address of the organization, the president and/or head of the organization and a complete account of the proposed disposition of all gross receipts of fireworks to be sold at the proposed stand;
 - iii. Payment of the Fifty Dollar (\$50.00) permit/license processing fee;
 - iv. Certificate of Insurance evidencing an occurrence-based policy of insurance naming the City and each of its officers, employees and agents as an additional insured thereunder, with the following minimum limits: \$1,000,000 public liability and property damage and general aggregate coverage of \$2,000,000 with a deductible not greater than \$1,000.00 for each covered incident;
 - v. The written consent of the owner of record in control of the property upon which the proposed sales stand will be located;
 - vi. A site plan, with dimensions indicating the location of all existing buildings, structures, driveways, flammable materials, and rights-of-way where the proposed sales stand will be located;
 - vii. Proof of a temporary sales tax permit from the State Board of Equalization or proof of application;
 - viii. Reimbursement Agreement. An agreement in a form to be obtained from the city attorney's office between the City and the qualified applicant/joint venture qualified applicant's fireworks wholesaler, requiring the distributor to indemnify the City for that distributor's pro rata share of all fireworks strike team costs incurred during the period that fireworks may be sold by the applicable permit under this Chapter, as well as indemnify, defend and hold harmless the City and each of its officers, employees and agents from any and all liabilities, damages, awards, judgments and costs, including reasonable attorney's fees and court costs, that may arise from the qualified applicant's/joint venture qualified applicant's sales of fireworks; and
 - ix. One condition for each permit issued pursuant to this Chapter to continue to be valid is, during the month of June in which the applicable permit is issued, all individuals who will be staffing the sales sites attend a safe and sane fireworks stand operator safety seminar conducted by either the Fire Department or each licensed fireworks wholesaler that is supplying the safe and sane fireworks to the qualified applicant(s)/joint venture qualified applicant(s) being provided fireworks for sale pursuant to the applicable permit. The failure of a qualified applicant/joint venture qualified

applicants to have all individuals attend the safety seminar shall result in the revocation of the applicable permit.

8.28.070 SAFE AND SANE FIREWORKS - OPERATION OF FIREWORKS STAND.

- (a) No person shall knowingly sell fireworks to any person under the age of eighteen.
- (b) No person shall sell safe and sane fireworks earlier than 12:00 noon on June 28th or after 9:00 p.m. on July 4th of the same year and only from 12:00 noon to 9:00 p.m. on June 28th and from 9:00 a.m. to 9:00 p.m., daily on June 29th through July 4th.
- (c) No person, other than the individuals who are members of the qualified applicant/joint venture qualified applicants or the wives, husbands, registered domestic partners, parents, step-parents, adult children or adult step-children of such members shall sell or otherwise participate in the sale of safe and sane fireworks inside such stand. Each stand shall post a roster of the individuals within their organization who have completed the mandated safety seminar.
- (d) Individuals staffing and/or in attendance within the stands shall not be under the influence of alcohol or any controlled substance. Violation will result in immediate revocation of qualified applicant's permit and closure of the stand.
- (e) No person under the age of eighteen shall sell or participate in the sale of safe and sane fireworks within any stand.
- (f) No person shall be paid any consideration by the qualified applicant/joint venture qualified applicant or any wholesaler/distributor of safe and sane fireworks for selling or otherwise participating in the sale of safe and sane fireworks at such stand; provided, however, that compensation may be paid for licensed security personnel.
- (g) All fireworks shall be stored and retained at the approved location. In no event shall unsold fireworks be removed from the approved location to any other place without written approval of the Fire Chief.
- (h) When the stand is not being used for sale and/or display of safe and sane fireworks, a reinforced, heavy metal, fully-enclosed container, similar to a SAWDOC, walk-in type drop box, or its equivalent, as approved by the Fire Chief, may be used to store fireworks.
- (i) Pedestrian and vehicular access and circulation shall not be significantly impaired, as determined by the Fire Chief.
- (j) No off-site signs advertising the fireworks stand may be displayed.

- (k) Compliance with all applicable Federal, State, County, and local regulations and ordinances shall be maintained.

8.28.080 SAFE AND SANE FIREWORKS - TEMPORARY FIREWORKS STAND.

All retail sales of safe and sane fireworks shall be permitted only from within a temporary fireworks stand, and the retail sales from any other building, structure or location is hereby prohibited. Temporary fireworks stands shall be subject to NFPA 1124 Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles, 2006 Edition.

8.28.090 SAFE AND SANE FIREWORKS - GENERAL REQUIREMENTS FOR QUALIFIED APPLICANTS.

Each qualified applicant shall ensure all the following requirements are met:

- (a) All unsold stock of fireworks in the control of a qualified applicant after 9:00 p.m. on the 4th day of July of the applicable year shall be returned to the fireworks wholesaler that provided the qualified applicant the fireworks and removed from the City's jurisdictional boundaries on or before 9:00 p.m. on the 5th day of July. On closing of the fireworks stand each evening it is permitted to be open, the qualified applicant shall remove all litter, trash and debris from the premises. Stands shall be removed no later than July 9th of the applicable year.
- (b) Each qualified applicant must post in a prominent place at its fireworks stand its City permit to sell safe and sane fireworks, its temporary sales tax permits from the California State Board of Equalization, its State Fire Marshal Retail Sales Permit, approved roster and proof of their required insurance in a prominent place inside the fireworks stand.
- (c) No fireworks stands shall be located within fifty feet (50') of any other building, within one hundred feet (100') of a gasoline station or other type of a gasoline or other type of flammable fuel pump or storage area, within five hundred feet (500') of another fireworks stand or less than one-quarter mile from any of the City's jurisdictional boundaries.
- (d) All weeds and combustible material shall be cleared from the location of the stand, including a distance of at least fifty feet (50') surrounding the fireworks stand.
- (e) "NO SMOKING" signs shall be prominently displayed on the fireworks stand.
- (f) No fuel-powered generator or similar equipment shall be allowed within fifty feet (50') of a fireworks stand.

- (g) Each stand shall provide sanitary facilities or obtain permission to use either private or public facilities during the hours of operation. Proof of sanitary facilities shall be documented and provided with application.
- (h) Doors of each fireworks stand shall not be locked on the outside of the door while anyone is inside the stand. The door may be latched from the inside in such a manner that will not cause any undue delay to anyone exiting in an emergency.
- (i) The use of electrical or fuel operated heaters in fireworks stands is prohibited.
- (j) Each stand will have adequate temporary parking as approved by the City's Planning Director. A minimum of twenty-five feet (25') clear space shall be maintained between the fireworks stand and vehicle parking.
- (k) Signage notifying of the fact fireworks may not be ignited, discharged, projected or otherwise fired or used within one hundred feet (100') of a fireworks stand shall be posted in a manner clearly visible from and to the parking area.
- (l) Use of tents, pop-up tents, shade structures or other add-on structures to the fireworks stand must be inspected and approved by the Fire Department.
- (m) Each fireworks stand shall be equipped with no less than two fire extinguishers of a type determined by the Fire Chief.
- (n) No person shall sleep or remain in the fireworks stand after the close of daily business.

8.28.100 NONPROFIT ORGANIZATION FINANCIAL STATEMENT.

On or before November 1st of any year for which a permit was issued, pursuant to this Chapter, the qualified applicant shall submit to the City Clerk a financial statement signed by the treasurer or financial officer of the qualified applicant, setting forth the total gross receipts from the fireworks stand operated by the qualified applicant, all expenses incurred and paid in connection with the purchase of fireworks and the sale, thereof, and to whom and for what purpose the net proceeds were or will be disbursed, along with the most recent report filed by the qualified applicant to the State Board of Equalization. The filing of such statement shall be a condition precedent to the granting of any subsequent permit.

8.28.110 SAFE AND SANE FIREWORKS - REVOCATION OF PERMIT; APPEAL.

- (a) The Fire Chief, or his/her designee, may revoke, immediately and without notice or hearing, the permit of any qualified applicant who violates any provision of this Chapter in a manner that causes an immediate danger to public health and safety or required for the orderly administration of this chapter. If the revocation occurs between June 22 and July 5, the Fire Chief,

or his/her designee, shall inform the qualified applicant of the qualified applicant's option to seek review of the Fire Chief or his/her designee's decision by the City Administrator, or her/his designee, on the next City business day. At the earliest opportunity on that next City business day after the revocation, the Fire Chief, or his/her designee, shall provide the City Administrator with written notice a fireworks permit has been revoked, including the name of the qualified applicant and a brief statement of the grounds for revocation. The City Administrator, or her/his designee, shall meet with the qualified applicant and the Fire Chief, or his/her designee, on that day, upon the qualified applicant's request to review the decision. The decision of the City Administrator, or his/her designee, shall be final. If the revocation occurs before or after the specified period, then the appeal procedures of Subdivision (b) shall apply.

- (b) The Fire Chief, or his/her designee, may revoke the permit of any qualified applicant who violates any provision of this Chapter not specified in Subdivision (a). Such revocation shall not take effect for five (5) days, during which time the qualified applicant may seek review of the Fire Chief, or his/her designee's, decision by submitting a written request for review to the City Administrator, or her/his designee. The Fire Chief, or his/her designee, shall provide the City Administrator, or her/his designee with written notice a fireworks permit has been revoked, including the name of the qualified applicant and a brief statement of the grounds for revocation. The City Administrator, or her/his designee, shall meet with the qualified applicant and the Fire Chief, or his/her designee, to review the Fire Chief or his/her designee's decision. The decision of the City Administrator shall be final.
- (c) Any permittee whose permit has been revoked, pursuant to Subdivision (a) or (b) hereof, shall be barred from receiving a permit under this Chapter for up to five (5) years after the date of revocation.

8.28.120 SAFE AND SANE FIREWORKS - LIMITATION ON PLACES AND HOURS OF DISCHARGE.

It shall be unlawful for any person to:

- (a) Ignite, discharge, project or otherwise fire or use any safe and sane fireworks, except during the hours of 9:00 a.m. to 10:00 p.m. on the 4th of July;
- (b) Possess safe and sane fireworks other than when the sales of safe and sane fireworks are allowed under this Chapter or by a qualified applicant pursuant to a permit issued under this Chapter;
- (c) Ignite, discharge, project or otherwise fire or use any safe and sane fireworks, or permit the ignition, discharge or projection thereof, upon or over or onto the private property of another without his/her/its written consent; provided, that no permission may be granted to ignite, discharge, project or

otherwise fire or use safe and sane fireworks on any private parking lots used for retail or commercial businesses;

- (d) Ignite, discharge, project or otherwise fire or make use of any safe and sane fireworks within ten feet (10') of any residential structure, dwelling or other structure used as a place of habitation by human beings;
- (e) Ignite, discharge, project or otherwise fire or make use of safe and sane fireworks within one hundred feet (100') of the fireworks stand; and
- (f) Ignite, discharge, project or otherwise fire or make use of any safe and sane fireworks on, over or in any public street, sidewalk alley, park or parking area, without prior written permission of the Fire Chief or his/her designee.

8.28.130 SAFE AND SANE FIREWORKS - SUPERVISION OF MINORS.

It shall be unlawful for any person having the care, custody or control of a minor (under 18 years of age) to permit such minor to discharge, explode, fire or set off any dangerous fireworks, at any time, or to permit such minor to discharge or set off any safe and sane fireworks, unless such minor does so under the direct supervision of a person over 18 years of age and only during the hours and on the days permitted by this Chapter.

8.28.140 SEIZURE OF FIREWORKS.

The Fire Chief, or his/her designee, may seize, take, remove or cause to be removed, at the expense of the qualified applicant or fireworks wholesaler, whichever is applicable, all stock of fireworks offered or exposed for sale, stored or held in violation of this Chapter when such violation creates an imminent threat to public health or safety.

8.28.150 FIREWORKS WHOLESALER PUBLIC EDUCATION PLAN.

Each fireworks wholesaler who is supplying one or more of the qualified applicants with safe and sane fireworks for sale, pursuant to this chapter, shall annually submit to the Fire Chief, by no later than 5:00 p.m. on June 1 of each year that wholesaler sells safe and sane fireworks within the City, a Public Education Plan. The Public Education Plan should outline the public safety and education efforts that will be delivered by the fireworks wholesaler that year. The Public Education Plan shall include, but is not limited to, samples of all the materials and the extent of distribution of all of the safety and educational materials discussed in that wholesaler's plan.

8.28.160 ADMINISTRATIVE FINES AND PENALTIES.

(a) Purpose

- i. This section authorizes the imposition of administrative fines on any person who violates any provision of this Chapter in order to encourage and obtain compliance with the provisions of this Chapter for the benefit

and protection of the entire community. This Chapter governs the imposition, enforcement, collection and administrative review of all administrative fines, related to: the possession, use, storage, sale or display of dangerous fireworks, with the exception of a pyrotechnic licensee when operating pursuant to that license and the use of safe and sane fireworks at dates, times and locations permitted by this Chapter. The administrative fines are imposed under authority of Government Code section 53069.4, Health and Safety Code section 12557, and the police power of the City.

- ii. 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 Chapter 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 Chapter by any person, which the City may otherwise pursue.
- iii. The imposition of fines related to dangerous fireworks under this Chapter shall be limited to persons who possess, sell, use or display, or the seizure of, less than 25 pounds (gross weight) of dangerous fireworks.
- iv. Fines collected pursuant to this Chapter related to dangerous fireworks shall not be subject to Health and Safety Code section 12706, which section provides certain fines collected by a court of the state be deposited with, and disbursed by, the County Treasurer. However, the City shall provide cost reimbursement to the State Fire Marshal pursuant to regulations to be adopted by the State Fire Marshal addressing the State Fire Marshal's cost for the transportation and disposal of dangerous fireworks seized by the City, which costs will be part of any administrative fine imposed. Unless and until said regulations have been adopted by the State of California, the City shall hold in trust \$250.00 or 25 percent of any fine collected, whichever is greater, to cover the cost reimbursement to the State Fire Marshal for said cost of transportation and disposal of the dangerous fireworks.
- v. 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 provisions of this Chapter 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 Chapter imposes strict civil liability upon the owners of residential real property for all violations of this Chapter existing on their residential real property. Each contiguous use, display or possession shall constitute a separate violation and shall be subject to a separate administrative fine.
- vi. At least 50 percent of the fines collected pursuant to this Chapter must be placed in a segregated fund entitled "Lompoc Illegal Fireworks

Enforcement Fund.” The sole and exclusive purpose of this fund is to pay for increased fire and police deployment, protection and investigation of and against illegal fireworks in the City for the thirty-day period surrounding the 4th of July (June 17 through July 16).

(b) Issuance of Administrative Citation - Contents.

- i. Whenever a CEO determines a violation of this Chapter has occurred, the CEO may issue an administrative citation on a City-approved form, listing the code violation(s) and the amount of the administrative fine required to be paid by the responsible person(s) in accordance with the provisions of this Chapter.
- ii. To the extent feasible, each administrative citation shall contain the following information:
 1. The name, mailing address, date of birth, CDL number, and home or business telephone number of the responsible person charged with any violation of this code;
 2. The address or description of the location of the violation;
 3. The date or dates on which the person violated this code;
 4. The section or sections of this code that were violated;
 5. A description of the violation(s);
 6. 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 if the City is required to take action to collect such fines, the responsible person may be charged costs and attorney’s fees;
 7. Notice of the procedure to request an administrative hearing to contest the citation (including the form to be used, how to obtain the form, and the period within which the request must be made in order for it to be considered timely);
 8. The name and signature of the CEO who issued the citation and the name and signature of the citee, if he or she is physically present and will sign the citation at the time of its issuance. The refusal of a citee to sign a citation shall not affect its validity or any related subsequent proceedings, nor shall signing a citation constitute an admission that a person is responsible for a violation of the code;
 9. Any other information deemed necessary by the director for enforcement or collection purposes.

(c) Administrative fines.

- i. Each person who violates any provision of this code as it relates to the possession, use, storage, sale or display of dangerous fireworks shall be

subject to the imposition and payment of an administrative fine or fines as provided below:

Number of offense(s) in one year period	Amount of Administrative Penalty	Late Charge	Total Amount of Penalty plus Late Charge
First	\$ 1,500	\$ 150	\$ 1,650
Second	\$ 2,500	\$ 250	\$ 2,750
Third and subsequent	\$ 3,500	\$ 500	\$ 4,000

- ii. Each person who sells, stores, possesses or uses safe and sane fireworks other than as may be permitted by this Chapter shall be subject to the imposition and payment of an administrative fine or fines as provided below:

Number of offense(s) in one year period	Amount of Administrative Penalty	Late Charge	Total Amount of Penalty plus Late Charge
First	\$ 1,000	\$ 50	\$ 1,050
Second	\$ 1,500	\$ 100	\$ 1,600
Third and subsequent	\$ 2,000	\$ 200	\$ 2,200

- iii. In the case of a violation of any of the provisions listed above, the administrative fine(s) shall be due and payable to the City within 30 calendar days after the issuance of the administrative fine citation, and the citee shall be required to abate the violation, and surrender all dangerous fireworks to the CEO, 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. Fines not paid within the time established by this Chapter shall accrue interest at the prevailing established rate. 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 above 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.
- iv. All administrative fines and any late charges and interest due shall be paid to the City at such a location or address as stated on the citation, or as may otherwise be designated by the City Administrator. Payment of any fine or fines shall not excuse the citee from complying with the provision of the code so violated. The issuance of the citation and payment of any fine shall not bar the City from employing any other enforcement action or remedy to obtain compliance with the provisions of

the Chapter so violated, including the issuance of additional citations, civil remedies or criminal prosecution.

- v. Upon confirmation of the citation or when the citation is deemed confirmed, all unpaid administrative fines, late fees and 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.
- vi. Payment of the administrative fine(s) shall not excuse or discharge a citee from the duty to immediately abate and correct a violation of this Chapter, nor from any other responsibility or legal consequences for a continuation or a repeated occurrence(s) of a violation of this Chapter.

(d) Right to an Administrative Hearing

- i. Any citee may contest any citation, or that he or she is a responsible person, by filing a request for an administrative hearing on a City-approved form with the City Clerk within 30 calendar days after the issuance date of a citation. If the City Clerk does not receive the request in the required time period, then the citee shall have waived a right to a hearing and the citation shall be deemed confirmed and final.
- ii. No fees shall be charged for the filing of a request for a hearing.
- iii. Citees must deposit the full amount of the penalty listed on the citation, on or before the request for a hearing is filed. Failure to deposit the full amount of all penalties within the required time period, or the tender of a non-negotiable check, shall render a request for an administrative hearing incomplete and untimely. Penalties that are deposited with the City shall not accrue interest. Penalties deposited shall be returned to the person who deposited them if the citation is overturned.
- iv. A request for a hearing shall contain the following:
 - 1. The citation number;
 - 2. The name, address, telephone number and any facsimile numbers and e-mail addresses of each person contesting the citation;
 - 3. A statement of the reason(s) why a citation is being contested; and
 - 4. The date and signature of the citee(s).
- v. The City will notify all persons who filed a request for a hearing in writing by First Class Mail of the date, time and place set for the hearing at least 10 calendar days prior to the date of the hearing. Service of this notice is deemed complete at time of mailing. The failure of a citee to receive a

properly addressed notice shall not invalidate the citation or any hearing, City action or proceeding conducted pursuant to this Chapter.

- vi. The hearing will be conducted within 60 days after the date a timely and complete request is received by the City Clerk.
- vii. If the CEO submits an additional written report concerning the citation to the City for consideration at the hearing, then the CEO shall also serve a copy of such report by First Class Mail on the person requesting an administrative hearing no less than seven calendar days prior to the date of the hearing. Failure to receive that report shall not invalidate the citation or any hearing, City action or proceeding pursuant to this Chapter.

(e) Administrative Hearing – Procedures

- i. The hearing officer shall hear all requests for administrative hearings of administrative fines in accordance with the procedures established herein.
- ii. Administrative hearings are informal, and formal rules of evidence and discovery do not apply. The City bears the burden of proof to establish a violation and responsibility therefore by a preponderance of evidence. The citation is prima facie evidence of the violation; however, and the CEO who issued the citation is not required to attend or participate at the hearing. The citee and CEO, if present, shall have an opportunity to present evidence and witnesses and to cross-examine witnesses. A citee may bring an interpreter to the hearing, provided there is no expense to the City therefore. The hearing officer may question any person who presents evidence or who testifies at any hearing.
- iii. A citee may appear at the hearing in person or by written declaration executed under penalty of perjury. The declaration and any documents in support thereof shall be tendered to and received by the City at least seven business days prior to the hearing. If the citee fails to attend or does not submit a written declaration in a timely manner, then he/she/it shall be deemed to have waived the right to a hearing. In such an instance, the hearing officer shall cancel the hearing and not render a decision. In such instances, the citation shall be deemed confirmed.
- iv. Hearings may be continued once at the request of a citee or the CEO who issued the citation. The hearing officer may also continue the hearing for cause.

(f) Hearing Decision – Right of Appeal

- i. After considering all the testimony and evidence submitted at the hearing, the hearing officer shall issue a written decision to uphold or overturn the citation and shall state the reasons therefore.

- ii. The hearing officer shall serve the citee by First Class Mail with a copy of the written decision. The date the decision is deposited with U.S. Postal Service shall constitute the date of its service. The failure of a citee to receive a properly addressed decision shall not invalidate any hearing, City action or proceeding conducted pursuant to this Chapter.
- iii. A decision of the hearing officer may be appealed to the City Administrator within 30 days after the date of its service. Each decision shall contain a statement advising the citee of this appeal right and the procedure for its exercise. A citee shall file a notice of appeal with the City Clerk within 20 calendar days after the date of service of the hearing officer's decision.
- iv. If a hearing officer's decision is not appealed in a timely manner, then the decision shall be deemed confirmed.
- v. The City Administrator shall conduct an appeal hearing and provide notice of any decision in the same manner as established for the hearing officer pursuant to subsection (b), above. The City Administrator's decision is final. If a citee or responsible person prevails on appeal, then the City shall reimburse his or her fine deposit within 30 calendar days after the City Administrator's decision on the appeal.

8.28.170 CONCURRENT AUTHORITIES.

This Chapter is not the exclusive regulation for fireworks within the City. It shall supplement and be in addition to the other regulatory codes, statutes, regulations and ordinances heretofore and hereinafter enacted by the City or any other legal entity or agency having jurisdiction.

Only during the time periods identified in this Chapter and only to the extent the possession, use or sale of safe and sane fireworks are regulated by this Chapter, this Chapter supersedes the provisions of subsection K of section 15.12.020 of this code.