

Mayor Linn,

Thank you for allowing TNT Fireworks to participate in your planning. Here are some of the “highlights” of the attached ordinance.

- One application per non-profit group (Specifies what a group needs in order to be eligible)
- **One license per 7,500 residents or portion thereof (6 licenses)**
- **Guarantees one license to the Parks & Recreation Department**
- **Guarantees funding of up to \$7,000 for “employee salary, overtime and benefit costs, disposal costs, clean up costs, and operations costs incurred by the Lompoc police, fire, or other authorized agencies”**
- Lottery only in odd number of years. Each license is for two years. If a group elects to back out after the first year that license goes fallow. This does two things
  - Less work for staff in holding the lottery & qualifying groups + not retraining new groups in safety & regulatory issues annually.
  - Groups are able to utilize a two year budgeting process & better plan their year.
- Timeline in a “regular year”
  - Application period of January 15<sup>st</sup>-February 1st
  - Notification to any group of a defect in their application February 15<sup>th</sup>
  - Drawing March 1st
  - All paperwork required of lottery winners due back by March 31<sup>st</sup>
- Proposed timeline for 2013 (all depends on when the ordinance is adopted)
  - Application period April 15<sup>th</sup>-30th
  - Drawing May 15th
- Age to purchase 18 and above (State allows 16)
- Financial statements are required of all groups by Nov 1<sup>st</sup>
- All wholesalers doing business in the city are required to file a public education plan with the city prior to June 1<sup>st</sup>
- All organizations must attend an industry sponsored & paid for safety and education training seminar. We refer to ours as TNT U.
- Requires supervision of minors using Safe-N-Sane Fireworks

**Chapter \_\_\_\_\_  
FIREWORKS**

**§ \_\_\_\_\_ DEFINITIONS.**

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

- (a) "Affiliated organizations", for purposes of this Chapter, shall be presumed to be 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 and/or place of meetings and/or national parent organization;
  - iii. Subdivisions and/or fractional divisions however named or delineated of 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) "City" shall mean the City of Lompoc;
- (e) "Code" means the City of Lompoc Municipal Code.
- (f) "Code Enforcement Officer" (CEO) means any employee or agent of the City of Lompoc designated by the City Council to enforce any provision of this code.
- (g) "Dangerous Fireworks" shall mean "Dangerous Fireworks" 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.
- (h) "Director" means the City Administrator or his or her designee.
- (i) "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".
- (j) "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 enforce the provisions of this chapter between June 28 and July 7 of each calendar year. Fireworks task force costs shall not exceed seven thousand dollars in the first year after the effective date of this chapter, adjusted by The Consumer Price Index, San Francisco, All Consumers, annually thereafter.

- (k) "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.
- (l) "Hearing Officer" means the person appointed by the City Administrator to serve as the hearing officer for administrative hearings hereunder.
- (m) "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 Procedures; or
  - 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.
- (n) "Nonprofit organization" shall mean 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, or a group which has received recognition from the California Secretary of State, or a group which is an integral part of a recognized national organization having such tax-exempt status or an organization affiliated with and officially recognized by a school and/or school district that serves, in whole or in part, the residents of the City of Lompoc.
- (o) "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 code occurred.
- (p) "Principal and permanent meeting place" shall include, but not limited to, a permanent structure, playing field, geographic area which is located within the City of Lompoc.
- (q) "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.
- (r) "Qualified Applicants" shall mean any organization which has met all of the following criteria for a continuous period of not less than one full 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 of Lompoc pursuant to this Chapter:
- i. The organization shall be a nonprofit organization. Only one application per school will be allowed. If an organization is affiliated with a recognized educational institution as defined in this Section, but maintains a separate tax

exempt status with the Internal Revenue Service or the California Secretary of State, said nonprofit organization shall be allowed a separate application.

- ii. The organization must have its principal and permanent meeting place within the City;
  - iii. The organization must be one which provides direct and regular community services and benefits to the residents of the City;
  - iv. Has a minimum bona fide membership of at least twenty (20) members who either reside in the City or are owners or operators of a business or other establishment located in the City;
  - v. Has not had a permit to sell revoked within twenty-four months prior to the organization's submittal of an application for a permit to sell.
- (s) "Safe and Sane Fireworks" (a.k.a. "state-approved fireworks") shall mean "Safe and Sane Fireworks" 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.
- (t) "Violation" or "Violates" refers to any violation of any provision of this Chapter.

**§ \_\_\_\_\_ 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 therefore, from the City.

**§ \_\_\_\_\_ SAFE AND SANE FIREWORKS - APPLICATION.**

- (a) No nonprofit organization shall submit more than one (1) application for a permit to sell "Safe and Sane Fireworks" within the City. If more than one (1) application is submitted on behalf of any nonprofit organization, including an affiliated organization, all such requests could be voidable at the discretion of the Fire Chief. If a question arises as to whether organizations and/or groups are affiliated, the City Council shall have ultimate authority to decide said question. 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.
- (b) All applications for permits to sell "Safe and Sane Fireworks" shall be in writing to the City Clerk on forms supplied by the City. Applications may be filed beginning January 15<sup>th</sup> of each year up to and including February 1. For the year 2013, applications may be filed beginning April 15<sup>th</sup> up to April 30<sup>th</sup>, 2013.
- (c) Applicants shall be notified by February 15<sup>th</sup> of by the Fire Chief of the disapproval of any applications. Drawing for such permits will occur on or before March 1st of each year. All organizations whose applications have been selected shall have up to and including March 31<sup>st</sup> of that year to submit all information required by Section \_\_\_\_\_ of this Chapter. For the year 2013, the above dates will be notification by May 7<sup>th</sup> with the lottery held May 15<sup>th</sup>.

§ \_\_\_\_\_ **SAFE AND SANE FIREWORKS - DENIAL OF APPLICATION.**

- (a) The Fire Chief shall issue a permit to a qualified applicant to sell "Safe and Sane Fireworks" unless:
- i. The Fire Chief finds, in writing, that 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, that the applicant is not in compliance with any of the requirements of this Chapter; or
  - iii. The Fire Chief must advise all qualified applicants of this determination no later than February 15<sup>th</sup> as well as advise them of the date of the drawing. For the year 2013 this requirement will be modified to May 15<sup>th</sup>.
- (b) Any denial of a permit pursuant to this Section may be appealed pursuant to the procedures set forth in Section \_\_\_\_\_ of this Chapter.

§ \_\_\_\_\_ **SAFE AND SANE FIREWORKS - DEADLINES FOR APPLICATIONS AND ALL OTHER FILINGS.**

If the deadline for submitting any type of application, payment of any administrative fine, filing of a notice of appeal, etc. called for within this Chapter falls on a day City Hall is closed, the deadline shall automatically be extended to the close of business of the next day City Hall is open.

§ \_\_\_\_\_ **SAFE AND SANE FIREWORKS - PREREQUISITE FOR ISSUANCE OF PERMIT.**

- a) The maximum number of permits which may be issued to qualified applicants and the maximum number of "Safe and Sane Fireworks" stands that will be permitted pursuant to this Chapter year shall not exceed one permit for each 7,500 residents of the City of Lompoc or fraction thereof, based on the latest State of California Census Estimate. Each permit issued is good for two years. Should a group elect not to run in the second year that license will be void and not reissued.
- b) One of the above licenses is reserved for the Lompoc Department of Parks and Recreation. Parks and Recreation is not required to participate in the lottery process; however if they wish to sell fireworks they must notify the fire department of that decision within the application period. Should Parks and Recreation elect to not participate in the sale of fireworks that license will be available to any qualified non-profit through the normal application process contained in this ordinance.

- c) If the number of qualified applicants exceeds the number of permissible permits under this Section, the City Council shall select the nonprofit organizations to which permits shall be issued by the lottery following this method:
- 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 original permittees cannot meet the requirements of this Chapter or if a permittee voluntarily surrenders its permit.
  - ii. In addition, if a qualified applicant is selected as a permittee, it may select one or more other qualified applicants to join it in a joint venture operation of the fireworks stand and jointly receive a permit to sell fireworks pursuant to this Chapter.
  - iii. Permits issued pursuant to this Section are valid during the calendar year issued and the following year. Each license issued is a two year license.
- (d) 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 nonprofit organization shall demonstrate compliance with all of the following:
- i. A copy of the requisite retail sales permit issued by the Office of the California State Fire Marshal;
  - ii. Payment of the permit/license fee at the amount established by resolution of the City Council;
  - iii. Certificate of Insurance evidencing an occurrence-based policy of insurance naming the "City of Lompoc" 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.
  - iv. The written consent of the owner of record and/or lessor in control of the property upon which the proposed sales stand will be located;
  - v. 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
  - vi. Proof of a temporary sales tax permit from the State Board of Equalization or proof of application;
  - vii. Reimbursement Agreement. An agreement in a form to be obtained from the city attorney's office between the city of Lompoc and the permittee's fireworks distributor, 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 under this chapter.
- (e) The continued validity of any City permit issued pursuant to this Chapter shall be subject to the requirement that at least one or more representatives of each nonprofit organization shall attend a "Safe and Sane Fireworks" stand operator safety seminar conducted by the fire department or each licensed fireworks wholesaler that is supplying the "Safe and Sane Fireworks" to the nonprofit organization. The failure of a nonprofit organization to have a responsible individual(s) attend the safety seminar shall result in the revocation of its permit to sell "Safe and Sane Fireworks."

**§ \_\_\_\_\_ SAFE AND SANE FIREWORKS - OPERATION OF FIREWORKS STAND.**

- (a) No person shall knowingly sell fireworks to any person under the age of eighteen.
- (b) The sale of "Safe and Sane Fireworks" shall begin no earlier than 12:00 noon on June 28th and shall not continue after 10:00 pm on July 4th of the same year. Sale of fireworks shall be permitted only from 12:00 noon to 10:00 pm on June 28<sup>th</sup> and from 9:00 am to 10:00 pm, daily, on June 29<sup>th</sup> thru July 4th.
- (c) No person other than the individuals who are members of the permittee and/or joint venture nonprofit organization(s) or the wives, husbands, parents or adult children of such members shall sell or otherwise participate in the sale of "safe and sane fireworks" inside such stand.
- (d) No person under the age of eighteen (18) shall sell or participate in the sale of "Safe and Sane Fireworks" within such stand.
- (e) No person shall be paid any consideration by the permittee nonprofit organization(s) 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.
- (f) All fireworks shall be 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.
- (g) When the stand is not being used for sale and/or display of 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.

**§ \_\_\_\_\_ SAFE AND SANE FIREWORKS - TEMPORARY FIREWORKS STAND.**

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

**§ \_\_\_\_\_ SAFE AND SANE FIREWORKS - GENERAL REQUIREMENTS FOR PERMITTEES.**

- (a) All unsold stock of fireworks in the hands of the permittee after 10:00 pm on the 4th day of July shall be returned to the wholesaler/distributor and removed from

the City of Lompoc within ten (10) days. On closing of the "Safe and Sane Fireworks" stand, all litter shall be removed from the premises.

- (b) Each "Safe and Sane Fireworks" stand must post 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 and proof of their required insurance in a prominent place inside the "Safe and Sane Fireworks" stand.
- (c) All weeds and combustible material shall be cleared from the location of the stand, including a distance of at least twenty-five (25) feet surrounding the stand.
- (d) "NO SMOKING" signs shall be prominently displayed on the fireworks stand.
- (e) No fuel-powered generator or similar equipment shall be allowed within 25 (25) feet of a fireworks stand.

**§ \_\_\_\_\_ NONPROFIT ORGANIZATION FINANCIAL STATEMENT.**

On or before November 1<sup>st</sup> of any year authorized pursuant to a permit, the permittee shall submit to the City Clerk a financial statement by the treasurer or financial officer of the permittee setting forth the total gross receipts from the fireworks stand operated by the permittee; 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 permittee to the State Board of Equalization. The filing of such statement shall be a condition precedent to the granting of any subsequent permit.

**§ \_\_\_\_\_ SAFE AND SANE FIREWORKS - REVOCATION OF PERMIT; APPEAL.**

- (a) The Fire Chief or the Fire Chief's designee, may revoke, immediately and without notice or hearing, the permit of any permittee who violates any of the following provisions: Section Subdivisions (a), (b) and (e) of Section \_\_\_\_\_ and Subdivision (b) of Section \_\_\_\_\_. If the revocation occurs between June 22 and July 5, the Fire Chief shall inform the permittee that the permittee may seek review of the Fire Chief's decision by the City Administrator, or the City Administrator's designee, on the next business day. At the earliest opportunity on the next business day after the revocation, the Fire Chief shall provide the City Administrator with written notice that a fireworks permit has been revoked, including the name of the permittee and a brief statement of the grounds for revocation. The City Administrator, or the City Administrator's designee, shall meet with the permittee and the Fire Chief on that day, upon the permittees request, to review the Fire Chief's decision. The decision of the City Administrator shall be final. If the revocation occurs before or after the specified period, the appeal procedures of Subdivision (b) shall apply.
- (b) The Fire Chief, or the Fire Chief's designee, may revoke the permit of any permittee 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



permittee may seek review of the Fire Chief's decision by submitting a written request for review to the City Administrator. The Fire Chief shall provide the City Administrator with written notice that a fireworks permit has been revoked, including the name of the permittee and a brief statement of the grounds for revocation. The City Administrator, or the City Administrator's designee, shall meet with the permittee and the Fire Chief to review the Fire Chief'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 from the date of revocation.

**§ \_\_\_\_\_ SAFE AND SANE FIREWORKS - LIMITATION ON PLACES AND HOURS OF DISCHARGE.**

- (a) It shall be unlawful to discharge any "Safe and Sane Fireworks" except during the hours of 9:00 am to 11:00 pm on the days on which said "Safe and Sane Fireworks" may be sold.
- (b) It shall be unlawful for any person to 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 property of another without his/her consent or to ignite, discharge, project or otherwise fire or make use of any "Safe and Sane Fireworks" within ten (10) feet of any residence, dwelling or other structure used as a place of habitation by human beings.

**§ \_\_\_\_\_ 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-old) 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 during the hours and on the days permitted by this Chapter.

**§ \_\_\_\_\_ SEIZURE OF FIREWORKS.**

The Fire Chief, or the Fire Chief's designee, may seize, take, remove or cause to be removed, at the expense of the permittee or licensed 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.

**§ \_\_\_\_\_ FIREWORKS WHOLESALER PUBLIC EDUCATION PLAN.**

Each fireworks wholesaler who is supplying one or more of the Lompoc nonprofit organizations shall annually submit a Public Education Plan to the City by no later than 5:00 pm on June 1. Said Public Education Plan should outline the public safety and education efforts for that year

that will be delivered by the fireworks. Said public education plan should include, but is not limited to, samples of all the materials and the extent of distribution of all of the safety and education materials discussed in that wholesaler's plan.

§ \_\_\_\_\_ **ADMINISTRATIVE FINES AND PENALTIES.**

**1. PURPOSE**

- (a) This Chapter authorizes the imposition of administrative fines on any person who violates any provision of this ordinance in order to encourage and obtain compliance with the provisions of this ordinance 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 and/or display of those fireworks classified as "Dangerous Fireworks" in California Health and Safety Code Section 12500, et seq., 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 on or at dates, times and/or locations other than those permitted by this ordinance. Said 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.
- (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 code 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 code by any person, which this City may otherwise pursue.
- (c) The imposition of fines related to "Dangerous Fireworks" under this chapter shall be limited to persons who possess, sell, use and/or display, or the seizure of, less than 25 pounds (gross weight) of such "Dangerous Fireworks".
- (c) Fines collected pursuant to this Chapter related to "Dangerous Fireworks" shall not be subject to Health and Safety Code Section 12706, which section provides that 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 or 25% 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."

- (d) 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 code 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 code 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.
- (e) At least 50% 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 4<sup>th</sup> of July (June 17 through July 16).

## **2. ISSUANCE OF ADMINISTRATIVE CITATION-CONTENTS.**

- (a) Whenever a Code Enforcement Officer (CEO) determines that a violation of the code 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.
- (b) Each administrative citation shall contain the following information:
  - i. 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;
  - ii. The address or description of the location of the violation;
  - iii. The date or dates on which the person violated this code;
  - iv. The section or sections of this code that were violated;
  - v. A description of the violation(s);
  - vi. 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;
  - vii. 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);
  - viii. 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;

- ix. Any other information deemed necessary by the director for enforcement or collection purposes.

**3. ADMINISTRATIVE FINES.**

- (a) Each person who violates any provision of this code as it relates to the possession, use, storage, sale and/or display of “Dangerous Fireworks” shall be subject to the imposition and payment of an administrative fine or fines as provided below:

<b>Number of offense in 1 year period</b>	<b>Amount of Administrative Penalty</b>	<b>Late Charge</b>	<b>Total Amount of Penalty plus Late Charge</b>
First	\$ 1,000	\$ 150	\$ 1,150
Second	\$ 2,000	\$ 250	\$ 2,250
Third	\$ 3,000	\$ 500	\$ 3,500

- (b) Each person who uses “Safe and Sane Fireworks” on or at dates, times and/or locations other than those permitted by this ordinance shall be subject to the imposition and payment of an administrative fine or fines as provided below:

<b>Number of offense in 1 year period</b>	<b>Amount of Administrative Penalty</b>	<b>Late Charge</b>	<b>Total Amount of Penalty plus Late Charge</b>
First	\$ 250	\$ 50	\$ 300
Second	\$ 500	\$ 100	\$ 600
Third	\$ 750	\$ 200	\$ 950

- (c) 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 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 ordinance 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.
- (d) 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/or 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 code so violated including the issuance of additional citations and/or criminal prosecution.

- (e) Upon confirmation of the citation or when the citation is deemed confirmed, 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.
- (f) Payment of the administrative fine 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.

#### **4. RIGHT TO AN ADMINISTRATIVE HEARING.**

- (a) Any citee may contest the violation(s), 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 from the issuance date of a citation. If the City Clerk does not receive the request in the required time period, the citee shall have waived a right to a hearing and the citation shall be deemed confirmed and final.
- (b) No fees shall be charged for the filing of a request for a hearing.
- (c) 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.
- (d) A request for a hearing shall contain the following:
  - i. The citation number;
  - ii. The name, address; telephone number and any facsimile numbers and e-mail addresses of each person contesting the citation;
  - iii. A statement of the reason(s) why a citation is being contested;
  - iv. The date and signature of the citee(s).
- (e) 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.

- (f) The hearing will be conducted within 60 days of the date a timely and complete request is received by the City Clerk.
- (g) If the CEO submits an additional written report concerning the citation to the City for consideration at the hearing, the CEO shall also serve a copy of such report by First Class Mail on the person requesting an administrative hearing no less than 7 calendar days prior to the date of the hearing. Failure to receive said report shall not invalidate the citation or any hearing, City action or proceeding pursuant to this Chapter.

## **5. ADMINISTRATIVE HEARING – PROCEDURES.**

- (a) The hearing officer designated or appointed by the City Administrator shall hear all requests for administrative hearings of administrative fines in accordance with the procedures established herein.
- (b) 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(s) 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.
- (c) A citee may appear at the hearing in person or by written declaration executed under penalty of perjury. Said declaration and any documents in support thereof shall be tendered to and received by the City at least 7 business days prior to the hearing. If the citee fails to attend or does not submit a written declaration in a timely manner, he or she 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.
- (d) Hearings may be continued once at the request of a citee or the officer who issued the citation. The hearing officer may also continue the hearing for cause.

## **6. HEARING DECISION – RIGHT OF APPEAL.**

- (a) 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.
- (b) The hearing officer shall serve citee(s) 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.

- (c) Decisions of the hearing officer may be appealed to the City Council within 30 days after the date of their 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 within 30 calendar days after the date of service of the hearing officers decision.
- (d) If a hearing officer's decision is not appealed in a timely manner, the decision shall be deemed confirmed.
- (e) The City Council is the sole reviewing authority and an appeal from a hearing officer's decision is not appealable to the Superior Court. If a responsible person prevails on appeal, the City shall reimburse his or her fine deposit within 30 calendar days of the City Council's decision on the appeal.

§ \_\_\_\_\_ **CONCURRENT AUTHORITIES.**

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

Any provisions of the City of Lompoc Municipal Code in conflict herewith are hereby repealed. This Chapter supersedes any conflicting provisions of the Uniform Fire Code and Uniform Building Code.

If any section, subsection, sentence, clause or phrase of this Chapter that is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have passed this Chapter and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.