



City Council Agenda Item

City Council Meeting Date: February 2, 2021

TO: Honorable Mayor and City Councilmembers

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SUBJECT: Discussion of Fireworks Enforcement and Introduction of Ordinance No. 1678(21) Amending Chapter 8.28 (Fireworks) of the Lompoc Municipal Code Related to Enforcement of Fireworks Regulations

Recommendation:

Staff recommends the City Council:

- 1) Review and discuss the issues presented in this staff report and provide direction to staff regarding how the City Council would like to proceed; and
- 2) If the draft ordinance (attached) reflects the conclusions of the Council's discussion, then introduce, for first reading by title only with further reading waived, Ordinance No. 1678(21) related to enforcement of fireworks regulations; or
- 3) Provide other direction to staff.

Background:

At its meeting on August 4, 2020, the City Council received a staff report regarding enforcement of fireworks regulations before, during, and after the July 4th holiday, including a discussion of challenges to effective enforcement. Following discussion, the City Council directed staff to consider several items related to strengthening the City's fireworks enforcement capacity and to bring back recommendations for the City Council's consideration. This report addresses each of the issues raised by the City Council at the August 4 meeting, as well as other items staff believes are relevant.

Discussion:

1. Clarification that Fireworks Violations are Misdemeanors

The City’s Fire Code makes violations of Lompoc Municipal Code (LMC) Chapter 8.28 (Fireworks) a misdemeanor, but this is not actually stated in LMC Chapter 8.28. (See LMC Section 15.12.020 revising Fire Code Sections 109.4 and 5601.1.9.) In order to clarify that these violations are, in fact, misdemeanors, staff recommends language to this effect be added to Chapter 8.28. This revision is included in the draft ordinance attached to this staff report.

2. Increased Fines for Fireworks Violations

One option discussed at the previous City Council meeting was the possibility of increasing fines for fireworks violations. The Municipal Code at LMC 8.28.160(C) currently sets the following administrative fines for fireworks violations:

Violations Related to Dangerous (Illegal) Fireworks

Number of offense(s) in one-year period	Amount of Administrative Penalty	Late Charge	Total Amount of Penalty plus Late Charge
First	\$ 1,500.00	\$ 150.00	\$ 1,650.00
Second	\$ 2,500.00	\$ 250.00	\$ 2,750.00
Third and subsequent	\$ 3,500.00	\$ 500.00	\$ 4,000.00

Violations Related to Safe & Sane Fireworks

Number of offense(s) in one-year period	Amount of Administrative Penalty	Late Charge	Total Amount of Penalty plus Late Charge
First	\$ 500.00	\$ 50.00	\$ 550.00
Second	\$ 1,000.00	\$ 100.00	\$ 1,100.00
Third and subsequent	\$ 1,500.00	\$ 200.00	\$ 1,700.00

State law does not place any specific limit on the administrative fines the City may charge for a violation of its municipal code so long as the municipal code makes the violation a misdemeanor. (Government Code § 53069.4(a)(1).) However, both the US Constitution and the California Constitution prohibit “excessive fines.” (US Const., Eight Amendment; Cal. Const., art. I, § 17.)

“Excessive fines” is not well-defined. When courts consider whether a fine is excessive, they generally weigh four factors: “(1) the defendant’s culpability; (2) the relationship

between the harm and the penalty; (3) the penalties imposed in similar statutes; and (4) the defendant's ability to pay." (*People v. Braum*, 49 Cal. App. 5th 342, 360 (2020).)

Factor (1) will depend on the facts of the particular case. As to factor (2), the potential harms caused by illegal use of fireworks include fire hazards, severe bodily injury, and excessive noise. These harms, especially the first two, are very serious and would weigh in favor of large fines.

Factor (3) – the analysis of penalties imposed in similar statutes – indicates that the City's current fines are higher than those in similar statutes and ordinances. When cities enforce code violations through *criminal* actions (rather than administrative fines), they are generally not permitted to impose fines of more than \$1,000. (Government Code § 36901.) However, state law also allows for an escalating scale of fees for repeat offenses. For example, state law provides that a violation of local building and safety codes – even violations that are an *infraction* – can be penalized with a fine of up to \$1,300 when there are three or more violations in one year, or up to \$2,500 for three or more violations within two years for commercial properties for failure to remove visible refuse or prohibit unauthorized use of the property. (Government Code § 36900.)

Furthermore, the State Fire Marshall has adopted a model fireworks ordinance for cities to use, if desired. The fines imposed by the model ordinance are as follows (1st/2nd/3rd offense in one-year period): violations related to "dangerous fireworks" – \$1,000/\$2,000/\$3,000; violations related to "safe and sane fireworks" – \$250/\$500/\$750.

For local reference, Santa Maria does not have a specific fee schedule for fireworks violations, so an administrative fine would likely not exceed the default fine of \$1,000 assessed for all violations of the Santa Maria municipal code that would otherwise be charged as misdemeanors.

Finally, factor (4) – the ability to pay – will be based on the individual cited.

Overall, Lompoc's fines for fireworks violations are currently higher than those in similar state and local statutes. However, given the severe potential hazards and costs caused by fireworks violations, higher administrative fines are likely legally defensible since state law does not impose any specific cap on these fines, so long as they are punishable as misdemeanors. The main concern from a legal perspective is that increasing the fees might result in fewer people actually being able to pay the fees. If a citee could demonstrate to a court that they were unable to pay the fee, the court might have discretion to reduce the fee to an amount the citee could pay.

If the City Council wishes to increase the current fines, it may direct staff to add the new fine amounts to the proposed ordinance, prior to approving the first reading of the ordinance.

3. Enforcement Against Property Owners

One of the many challenges of fireworks enforcement is that illegal fireworks are often ignited from locations that are not visible from the public right-of-way. An enforcement officer witnesses or is informed of the launch of an illegal firework from someone's backyard but cannot see who set it off. One solution to this problem is enforcement against property owners. At the August 2020 meeting, a member of the public suggested that the City adopt a "Social Host Ordinance" in its fireworks regulations. A Social Host Ordinance is an ordinance that makes property owners responsible, and citable, for violations that occur on their property, even if the violation was not perpetrated by them personally. The municipal code currently includes a Social Host Ordinance prohibiting responsible persons from allowing gatherings on their property where minors consume alcohol. (LMC Chapter 9.40.)

The City, in fact, already has the power to cite property owners for fireworks violations that occur on their property. LMC 8.28.160(A)(5) states:

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.

However, staff recommends adding additional language to Chapter 8.28 to make this clearer. Proposed language is included in Section 8.28.130 of the attached proposed ordinance.

4. Third-Party Administrative Citations

At the August 2020 meeting, the City Council discussed a provision in Santa Maria's municipal code that allows city enforcement officers to issue citations based on the sworn statements of residents that they witnessed a fireworks violation. Specifically, Section 1-9.03a(a) of the Santa Maria Municipal Code provides that:

Whenever two or more private persons observe a violation of this Code, they may request that an administrative citation be issued to a responsible party ... by [an enforcement officer]. Alternatively, a request that an administrative citation be issued to a responsible party may be submitted by only one private person (as opposed to two or more) where the request is accompanied by documentary evidence (such as photographs or video) which is sufficient to establish a violation by a preponderance of the evidence. The private person(s) will be required to sign an affidavit under

penalty of perjury verifying that they personally observed a violation of this Code by a responsible party, and may be required to testify at an administrative hearing ... if the administrative citation is appealed. For affidavits submitted with documentary evidence, sufficient information to determine the authenticity of the documentary evidence, including the time of its creation, the method used, the person responsible for creating the documentary evidence and any other information necessary to lay a proper foundation for the documentary evidence, must be described in the affidavit. For documentary evidence to be considered by the officer or employee, the creator of the documentary evidence must submit an affidavit under this Section. Failure of the private person(s) to testify at an administrative hearing if required by the Department prosecuting the violation on behalf of the private party(ies) may result in a dismissal of the administrative citation. The officer or employee shall have the authority to issue an administrative citation to the responsible party upon the basis of this affidavit, but the officer or employee will have the discretion not to issue the administrative citation if, based on a totality of the facts and circumstances, the officer or employee does not believe that a violation of this Code actually occurred or could be proven to have occurred at an administrative hearing. The officer or employee also shall have the sole discretion to determine the amount of the fine associated with the administrative citation in accordance with this Code.

Notably, the Santa Maria code provision applies to *all* violations of the municipal code, not just violations of fireworks laws. One of the difficulties of fireworks enforcement is that it is difficult to catch someone in the act, and it is also difficult to prove a violation after it has occurred as the evidence is destroyed and the perpetrators may have left the scene. A third-party reporting process could potentially create another avenue for enforcement.

However, it seems that this approach has not been effective in Santa Maria. Chief Mariani was recently informed by the Santa Maria Police Department that the third-party citation process resulted in zero citations last year. Santa Maria also set up a website where residents could post video of people lighting illegal fireworks, but this effort resulted in zero postings. This suggests that creating a third-party citation process in Lompoc may be similarly ineffective and require an expenditure of City resources without any real benefit. If the City Council would like to pursue this option, language similar to that found in Santa Maria's code could also be added to the LMC. If the City Council pursues this option, staff request that the City Council clarify whether the provision will apply to all violations of the LMC, or only fireworks violations.

5. Payment of Portion of Collected Fines to State Fire Marshal

Pursuant to Health & Safety Code Section 12726, "If dangerous fireworks are seized pursuant to a local ordinance that provides for administrative fines or penalties and these fines or penalties are collected, the local government entity collecting the fines or penalties shall forward 65 percent of the collected moneys to the Controller for deposit in

the State Fire Marshal Fireworks Enforcement and Disposal Fund.” During the August 2020 meeting, a member of the public suggested that the amount due to the State Fire Marshal was actually 25 percent rather than 65. The member of the public was incorrect.

However, it should be noted that this state law only applies to fines assessed for the seizure of dangerous fireworks. It does not apply to violations involving safe and sane fireworks, or to violations involving dangerous fireworks where dangerous fireworks are not seized.

It appears that the funds transferred to the State Fire Marshal are used to pay for the destruction of seized dangerous fireworks, which is done by the State Fire Marshal.

6. Police Department App & “Nail ‘Em” App

At the August meeting, the City Council asked staff to assess whether any improvements could be made to the Police Department’s fireworks reporting app and also asked staff to assess whether the “Nail ‘Em” app could help enforce fireworks violations. “Nail ‘Em” is an app used by some other local jurisdictions to assist with fireworks enforcement. It allows for reporting of fireworks violations along with photos and GPS location.

At this time, staff does not believe that changes to the City’s current app or adoption of the Nail ‘Em app would significantly enhance the City’s enforcement efforts.

7. Longer Enforcement Period

There was some discussion at the August 2020 City Council meeting of a need for a longer enforcement period for fireworks violations. For purposes of clarity, there is no need to amend any ordinance or policy to provide for a longer period of fireworks enforcement. Fireworks violations can be enforced at any time of the year.

8. Statement from Lompoc Fire Department

The Fire Department feels that it is imperative that the City Council, as well as the community, understand that while we may add more language, or mechanisms for enforcement, it still does not provide the resources to bring about the needed change. Often times we seem to only focus on those events and activities on the 4th of July, and while significant, what is not captured is the increase in activity in the months preceding and following the Holiday. Since 2013, the Fire Department has worked as diligently as possible to help educate and enforce where applicable. Unfortunately, we have witnessed the action of a few, compromise the majority. The calls for service and the pleas for assistance from community members who feel helpless, is truly heartbreaking for us.

It is our mission and commitment to ensure the vitality, safety, and well-being of our community, but it is equally important that we are open and honest so as to not leave a false impression that these changes will provide the needed aid in curbing the negative

impacts to our community. In our attempts to provide education and enforcement, we have had to pull many of our members away due to safety concerns following overcrowding, visibility issues, violence, threats, and shootings. This is extremely troubling, and has left us at a crossroads with respect to effective enforcement to ensure our mission.

Fiscal Impact:

If this City Council adopts increased fines for fireworks violations, this could increase revenue generated by fines.

Conclusion:

This report suggests some possible options for strengthening fireworks enforcement and clarifying tools already present in the City's ordinance. Staff seeks direction from the City Council regarding whether to (a) increase fines for fireworks citations, (b) create a third-party administrative citation process, and staff recommends adoption of the remaining changes described above.

Respectfully submitted,



Jeff Malawy, City Attorney

Jim Throop, City Manager

Attachment: Ordinance No. 1678(21).