

Ordinance No. 1678(21)

**An Ordinance of the City Council of the City of Lompoc,
County of Santa Barbara, State of California,
Amending Chapter 8.28 of the Lompoc Municipal Code to Revise Provisions
Related to Enforcement of Fireworks Violations**

WHEREAS, Chapter 8.28 of the Lompoc Municipal Code establishes regulations for the sales and use of fireworks in the City; and

WHEREAS, the City Council desires to amend those regulations to enhance the City's capacity to take enforcement action against fireworks violations.

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

SECTION 1. Section 8.28.120 (Safe and Sane Fireworks – Limitation on Places and Hours of Discharge) of the Lompoc Municipal Code is hereby revised to read as follows (additions in **bold underline**, deletions in **~~bold strikethrough~~**):

Section 8.28.120 ~~Safe and Sane Fireworks – Limitation on Places and Hours of Discharge.~~ **Restrictions on Discharge and Possession.**

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 or 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, unless also approved as part of a block party permit;
- D. Ignite, discharge, project or otherwise fire or make use of any safe and sane fireworks within ten feet 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 100 feet of ~~the a~~ 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 designee; provided, that this

subsection shall not apply to any public street or parking area located within an area for which the City has issued a permit to allow a 4th of July block party; or

G. Possess, store, sell, display, ignite, discharge, project, or otherwise fire or make use of dangerous fireworks anywhere in the City at any time, except in accordance with a license issued by the state fire marshal for a City-permitted fireworks display.

SECTION 2. Section 8.28.130 (Safe and Sane Fireworks – Supervision of Minors) of the Lompoc Municipal Code is hereby revised to read as follows (additions in **bold underline**, deletions in **~~bold strikethrough~~**):

Section 8.28.130 ~~Safe and Sane Fireworks~~ – Supervision of Minors; **Liability of Persons in Control of Property.**

A. It shall be unlawful for any person having the care, custody or control of a minor (under 18 years of age) to:

- (1)** permit such minor to **possess,** discharge, explode, fire or set off any dangerous fireworks at any time, or
- (2)** 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.

B. Persons in Control of Property.

- 1. For purposes of this Subsection B, the person in control of a property is the owner(s) of the property if the property is not leased. If the property is leased, then the tenant(s) is the person in control of the property.**
- 2. The person in control of a property shall be in violation of this Chapter if any person sells, possesses, ignites, explodes, projects, or otherwise fires or makes use of fireworks on the property in violation of this Chapter, regardless of the intent, knowledge, or negligence of the person in control of the property. A violation under this Subsection B is a strict liability offense.**
- 3. Notwithstanding Subsection B.2, a person in control of a property shall not be in violation of this Subsection B if he or she immediately reports the illegal activity to the Lompoc Police Department, Lompoc Fire Department, or City Code Enforcement.**
- 4. As an alternative to any other method of enforcement, a CEO may enforce this Subsection B by issuing a citation to the property owner. In addition to the information required under Subsection B of Section 8.28.160, a citation issued under this Subsection B.4 shall include a Tenant Information Statement for the property owner to complete and**

sign, if applicable, stating (i) the property was leased on the date the violation occurred, (ii) the name(s) of the tenant(s), (iii) the property owner was not on the property at the time the violation occurred, and (iv) a true and accurate copy of the current lease agreement for the property is attached to the Tenant Information Statement. If the property owner returns a completed and executed copy of the Tenant Information Statement, along with a copy of the current lease agreement for the property, to the City within 20 business days of the date of the violation, then the citation shall be dismissed and a new citation may be issued to the tenant(s) of the property. The submission of a Tenant Information Statement shall not be considered an appeal, shall not require payment of an appeal fee, and shall not require a deposit of the citation penalty, as otherwise required by Subsection D.2 of Section 8.28.160. A citation issued under this Subsection B.4 shall also provide information to the property owner regarding how to comply with this subsection and a return address where the Tenant Information Statement and copy of the lease agreement should be mailed.

SECTION 3. Subsection A of Section 8.28.160 (Administrative Fines and Penalties) of the Lompoc Municipal Code is hereby revised to read as follows (additions in **bold underline**, deletions in **~~bold strikethrough~~**):

A. Purpose.

1. 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.
2. 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.
3. 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.

4. 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.

~~5. 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.~~

~~6~~ **5.** 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 30-day period surrounding the 4th of July (June 17th through July 16th).

SECTION 4. Subsection B of Section 8.28.160 (Administrative Fines and Penalties) of the Lompoc Municipal Code is hereby revised to read as follows (additions in **bold underline**, deletions in **~~bold strikethrough~~**):

B. Issuance of Administrative Citation—Contents.

1. 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.
2. To the extent feasible, each administrative citation shall contain the following information:

- a. 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;
- b. The address or description of the location of the violation;
- c. The date or dates on which the person violated this code;
- d. The section or sections of this code that were violated;
- e. A description of the violation(s);
- f. 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 shall** be charged costs and attorneys' fees, **to the full extent permitted by law**;
- g. 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);
- h. 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;
- i. Any other information deemed necessary by the director for enforcement or collection purposes.

SECTION 5. A new Subsection G is hereby added to Section 8.28.160 (Administrative Fines and Penalties) of the Lompoc Municipal Code to read as follows:

G. Attorney's Fees.

1. In any action or administrative proceeding to abate any violation of this Chapter or collect any administrative fine imposed by this Chapter, the prevailing party in the action or proceeding shall be entitled to recover reasonable attorney's fees to the full extent permitted by law; however, the amount of attorney's fees awarded to a prevailing party shall not exceed the amount of attorney's fees incurred by the City in the action or proceeding.
2. Pursuant to Government Code § 38773.5, an award of attorney's fees in compliance with this Subsection G shall only be allowed where the City elects, at the initiation of the action or proceeding, to seek recovery of its own attorney's fees.

SECTION 6. Section 8.28.180 (Criminal Penalty) is hereby added to Chapter 8.28 of the Lompoc Municipal Code and shall read as follows:

8.28.180 Criminal Penalty.

Any person violating any provision of this Chapter shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail for a period not exceeding six months, or a fine not exceeding one thousand dollars, or by both such imprisonment and fine.

SECTION 7. Effective Date. This Ordinance shall be effective on the thirty-first day after its adoption.

This Ordinance was introduced on _____, 2021, and duly adopted by the City Council of the City of Lompoc at its duly noticed regular meeting on _____, 2021, by the following electronic vote:

PASSED AND ADOPTED this ___ day of _____, 2021, by the following electronic vote:

AYES: Council Member(s):
NOES: Council Member(s):
ABSENT: Council Member(s):

Jenelle Osborne, Mayor
City of Lompoc

Attest:

Stacey Haddon, City Clerk
City of Lompoc