



City Council Agenda Item

City Council Meeting Date: March 16, 2021

TO: Honorable Mayor and City Councilmembers

FROM: Jeff Malawy, City Attorney
Jmalawy@awattorneys.com

SUBJECT: Introduction of Ordinance 1678(21) Amending Chapter 8.28 (Fireworks) of Lompoc Municipal Code to Add Provisions Regarding Enforcement Against Property Owners and Tenants, and Make Other Amendments

Recommendation:

Staff recommends the City Council:

- 1) Decide whether to introduce, for first reading by title only with further reading waived, Ordinance 1678(21) amending Chapter 8.28 of the Lompoc Municipal Code to add provisions regarding enforcement against property owners and tenants, and making other amendments; or
- 2) Provide other direction to staff.

Background:

At its meeting on February 2, 2021, the City Council received a staff report regarding options for strengthening the City's fireworks enforcement capacity, including proposed ordinance amendments. Following discussion, the City Council directed staff to bring back a new draft ordinance incorporating the direction provided by the Council, and to bring back additional information regarding notification to property owners of violations by their tenants, procedures for processing complaints through a potential third-party citation program, and other related issues.

This staff report addresses the amendments to the fireworks ordinance the City Council requested. City staff is continuing to work on the City Council's other requests from the February 2 City Council meeting, including developing a staff-recommended enforcement plan for July 4 and analysis of a potential third-party witness citation program.

Discussion:

1. Proposed Ordinance

The proposed ordinance is an amended version of the ordinance considered at the February 2 City Council meeting. The proposed ordinance would make the following changes to the municipal code:

- (a) **Misdemeanors.** Clarify that violations of Chapter 8.28 (Fireworks) are misdemeanors. As discussed in the previous staff report on this item, the City's Fire Code makes fireworks violations a misdemeanor, but now this designation will also be included in Chapter 8.28, for clarity.
- (b) **Enforcement Against Property Owner or Tenant.** Add language allowing the City to cite a property owner or, if the property is leased, the tenant, for any fireworks violation on the property, regardless of whether the violation was actually committed by the owner or tenant. There is an exception if the person in control of the property, whether the owner or the tenant, immediately reports the illegal activity to the Lompoc Police Department or Lompoc Fire Department.

Staff anticipates the citation process would work as follows: If an enforcement officer has sufficient evidence that a fireworks violation has occurred on a property, but does not know who committed the violation, the officer may mail a citation to either (1) the property owner or (2) to the tenant if the property is leased and the tenant's identity is known. Many times the City will not know if a property is leased and will not know a tenant's name.

If a citation is mailed to the property owner, then the citation would include a Tenant Information Statement, which the property owner could fill out, sign, and return to the City if the property was being leased at the time the violation occurred. The Tenant Information Statement would state (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 will be dismissed and a new citation will be issued to the tenant(s) of the property. The submission of a Tenant Information Statement will not require any filing fee or a deposit of the citation amount. This process is intended to give property owners a simple procedure for having the citation dismissed in the event a tenant, not the property owner, was in control of the property at the time of the violation.

For fireworks violations on the grounds of a multi-unit apartment complex, this method is unlikely to succeed in holding tenants responsible, because it will almost never be possible to know which tenant committed or is responsible for the violation. If the City

Council does not wish to hold property owners responsible for violations on leased properties, then fireworks violations on the property of multi-unit apartment complexes will likely continue to be enforced only if an enforcement officer witnesses a violation and issues a citation in person to the violator. An idea is to hold landlords responsible for violations in multi-unit complexes, but not responsible in single-unit leased properties, but there does not seem to be a legal rational basis for holding one type of landlord responsible but not the other.

- (c) **Attorney Fees.** A clarification that the administrative citation shall state that if the City is required to take action to collect administrative fines, the responsible person shall, rather than may, be charged costs and attorneys' fees.

The proposed amendments also add a provision stating that "In any action or administrative proceeding to abate any violation of this Chapter or collect any administrative fine imposed by the 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."

Staff notes that collection actions to recover fireworks fines have always been brought in small claims court, where the City is represented by the City's in-house paralegal, Teri Schwab, so there are no attorney's fees. However, the code revisions will apply in the unlikely event that an attorney is required to appear in court to collect or enforce a fireworks fine.

- (d) **Minor Clean-Up Changes.** Make minor changes for clarity and clean-up purposes.

2. Notifying Property Owners of Violations by Tenants.

The City Council asked staff to provide information regarding whether the City could inform property owners when their tenants receive fireworks citations. There does not seem to be any legal issue with providing such notifications. However, out of fairness to tenants, staff would recommend the City not provide notice to a property owner until the time to appeal the fireworks citation has expired.

If the City Council would like to add this notice process to the Municipal Code, staff recommends adding the following or similar new provision as Subsection B.5 of Section 8.28.130 in the proposed ordinance:

5. If a citation is issued to a tenant under this Subsection B, a notice of the citation shall be mailed to the property owner informing the property owner of the citation. This notice is for informational purposes only and is not a separate citation. The notice of citation provided to the property owner shall not be mailed until the time to appeal the citation has expired, and if an appeal is timely filed, the notice shall only be provided

if the citation is upheld following the appeal process and any subsequent court action.

Fiscal Impact:

There is no fiscal impact for updating the Fireworks Ordinance.

Conclusion:

Staff recommends the City Council decide whether to adopt the proposed ordinance.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Jeff Malawy", is written above a horizontal line.

Jeff Malawy, City Attorney

Attachment: Ordinance No. 1678(21)