

ADMINISTRATIVE FINE MODEL ORDINANCE

SECTION 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, 25 pounds or less (gross weight) of such dangerous fireworks.
- D. 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.”
- E. Every person who applies for and receives a “block party permit”, or similar license or approval required by the city to close a street or otherwise reserve or use a piece of city property shall comply with all conditions imposed upon the issuance of such permit, license or approval, including but not limited to taking all reasonable efforts necessary to ensure that “dangerous fireworks” are not used at said event. A violation of this condition of such permit, license or approval shall be subject to a separate administrative fine under the

provisions of this chapter. Likewise, any person who fails to obtain any “block party permit”, license or other such approval from the city when such person is so required by the code shall be subject to a separate administrative fine under this chapter as well as an additional administrative fine if “dangerous fireworks” are used at and during said event.

- F. 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.

SECTION 2 DEFINITIONS

The following definitions apply to the use of these terms for the purposes of this section:

- A. “Citee” means any person served with an administrative citation charging him or her as a responsible person for violation.
- B. “Citation” means an administrative citation issued pursuant to this section to remedy a violation.
- C. “Code” means the *(name of city)* Municipal Code.
- D. “Code Enforcement Officer” (CEO) means any employee or agent of the City of *(name of city)* designated by the City Council to enforce any provision of this code.
- E. “Director” means the City Manager or his or her designee.
- F. “Issuance” or “Issued” means any of the following:
- a. 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
 - b. 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
 - c. By personally serving the responsible party by personal delivery of the administrative fine citation or by substituted service. Substituted service may be accomplished as follows:
 1. By leaving a copy at the recipient’s dwelling or usual place of abode, in the presence of a competent member of the household, and thereafter mailing by First Class Mail, postage pre-paid, a copy to the recipient at the address where the copy was left; or
 2. In the event the responsible party cannot be served by First Class Mail, postage pre-paid, or cannot be personally served

and has a property manager or rental agency overseeing the premises, substituted service may be made upon the property manager or rental agency or may be affected by posting the property with the administrative fine citation and mailing a copy by First Class Mail, postage pre-paid, to the responsible party in violation at the address of the property where the violation exists.

- G. "Hearing Officer" means the person appointed by the City Manager to serve as the hearing officer for administrative hearings hereunder.
- H. "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.
- I. "Responsible Person" means a person who causes a code violation 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 that the record owner of a residential parcel, as shown on the county's latest equalized property taxes assessment rolls, and a lessee of a residential parcel has a notice of any violation existing on said 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 a 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.
- J. "Violation" or "Violates" refers to any violation of any provision of this code as well as means the failure to comply with any additional requirement imposed on any "block party permit", license and/or approval issued to a person under or pursuant to a city ordinance.

SECTION 3 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. Furthermore, an administrative fine or fines may be imposed on any person for failure to comply with any condition or requirement imposed on any "block party permit", license and/or approval issued under or pursuant to this code.
- C. 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 that if the city is required to take action to collect such fines, the responsible person may be charged costs and attorney's fees;
- 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 names, addresses and telephone numbers of any witnesses to the violation(s);
- i. 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;
- j. Any other information deemed necessary by the director for enforcement or collection purposes.

SECTION 4 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:

Number of offense in 1 year period	Amount of Administrative Penalty	Late Charge	Total Amount of Penalty plus Late Charge
First	\$ 1,000	\$ 250	\$ 1,250
Second	\$ 2,000	\$ 500	\$ 2,500
Third	\$ 3,000	\$ 1,000	\$ 4,000

B. A person who fails to obtain a "block party permit", license or approval from the city when such a person is required by the code shall be subject to administrative fine or fines under this chapter.

Number of offense	Amount of	Late Charge	Total Amount of
--------------------------	------------------	--------------------	------------------------

in 1 year period	Administrative Penalty		Penalty plus Late Charge
First	\$ 500	\$ 125	\$ 625
Second	\$ 1,000	\$ 250	\$ 1,250
Third	\$ 1,500	\$ 500	\$ 2,000

- C. Any person who does obtain a “block party permit”, license or approval from the city as required by this code where there was a condition imposed upon the issuance of such “block party permit”, license or approval requiring the person to make all reasonable efforts necessary to ensure that “dangerous fireworks” are not used at said event and said person is said to be in violation of the permit by virtue of the fact that there were “dangerous fireworks” used at said event shall be subject to the imposition and payment of an administrative fine or fines as provided below:

Number of offense in 1 year period	Amount of Administrative Penalty	Late Charge	Total Amount of Penalty plus Late Charge
First	\$ 1,500	\$ 375	\$ 1,875
Second	\$ 3,000	\$ 750	\$ 3,750
Third	\$ 5,000	\$ 2,000	\$ 7,000

- D. 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:

Number of offense in 1 year period	Amount of Administrative Penalty	Late Charge	Total Amount of Penalty plus Late Charge
First	\$ 250	\$ 75	\$ 325
Second	\$ 500	\$ 150	\$ 650
Third	\$ 750	\$ 300	\$ 1,050

- E. 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.

- F. 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 Manager. 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.
- G. 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.
- H. Payment of the administrative fine shall not excuse or discharge a citee from the duty to immediately abate and correct a violation of the code, nor from any other responsibility or legal consequences for a continuation or a repeated occurrence(s) of a violation of the code.

SECTION 5 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 (city office) within 30 calendar days from the issuance date of a citation. If the (city office) 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:
 - a. The citation number;
 - b. The name, address; telephone number and any facsimile numbers and e-mail addresses of each person contesting the citation;
 - c. A statement of the reason(s) why a citation is being contested;
 - d. 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 (*city office*).
- 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.

SECTION 6 ADMINISTRATIVE HEARING - PROCEDURES

- A. The hearing officer designated or appointed by the City Manager 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.

SECTION 7 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 20 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.

DRAFT