

# SB 839 Fact Sheet

## Illegal Fireworks in California. Then and Now!

### 10 Years Ago

### Today

<p>The primary focus of the state and most local police and fire agencies was illegal bottle rockets and firecrackers.</p>	<p>The use of illegal bottle rockets and firecrackers are dwarfed by the heavy importation and use of aerial shells rivaling or surpassing those used at most public fireworks displays.</p>
<p>It was just a local entrepreneurial crook who would go into a neighborhood and sell illegal fireworks out of the trunk of his car. This was a situation that local law enforcement could easily contain.</p>	<p>Large, out-of-state operations are shipping massive quantities of aerial displays and exploding items directly into California using independent truckers or via the internet.</p>
<p>It was just the occasional user of illegal fireworks that we had to be concerned about.</p>	<p>Many people are using illegal fireworks, in every community, because of the sheer volume of illegal product available and their accessibility, but also, because in many communities, they don't fear any repercussion or consequences for their illegal actions.</p>
<p>This was a problem that local government could be expected to handle and control by itself.</p>	<p>It will now take a massive, coordinated effort between state, federal and local agencies if we are to stem the growing tide of illegal fireworks use in California.</p>
<p>Until the mid-90's, the SFM utilized the California Fire Incident Reporting System (CFIRS) to collect data on fires in California, including fireworks-related fires. Under CFIRS, a local fire department was required to detail and specify, where circumstantial or direct evidence confirmed, the actual type of fireworks device which served as either the "source of ignition" or a "contributing factor" to the fire.</p>	<p>Effective January 1, 2003, the SFM made a mandatory transition to the California All Incident Reporting System (CAIRS) which utilizes the National Fire Incident Reporting System (NFIRS), a modular, "paper-less", nationally recognized reporting system designed by the U.S. Fire Administration (USFA). The NFIRS system does <u>not</u> have the same degree of specificity, detail and/or reliability, as it relates to fireworks-related fires, as the data captured under the former CFIRS system. Unfortunately, NFIRS software lumps all fireworks (public display, illegal, state-approved and unknown/homemade explosives) into one broad category, with no detail as to what the device was, let alone whether it was illegal or state-approved.</p>
<p>California Health and Safety Code Section 12726 requires the SFM to dispose of "dangerous fireworks" and any fireworks that have been seized by a local fire and/or law enforcement agency within 60 days upon notification to the SFM or 10 days following legal proceedings. For years, the SFM and/or most local jurisdictions disposed of these products in either open pit burns or closed incinerator burns.</p>	<p>Due to environmental issues raised by Department of Toxic Substances Control (DTSC), past practices of open burning for the disposal of seized dangerous fireworks were found to be in violation of state environmental laws and regulations. As a result, stockpiles of seized fireworks continued to grow in bunkers or storage facilities maintained by local departments. In the years 2003-2004, approximately 143 tons of seized dangerous fireworks were disposed of at a cost of approximately \$900,000, with \$700,000 of that cost coming in a one-time grant from the federal government. Pursuant to a written agreement with US EPA, California was required to come up with a long-term solution to the disposal of the seized dangerous fireworks problem or be in jeopardy of having to pay back the \$700,000 they received from the federal government. No local or state agency ever pursued cost-recovery from a criminal defendant for monies needed to pay for the proper disposal costs of these dangerous, illegal fireworks.</p>



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## SB 839 A New Day for Fireworks in California

- Targets large, illegal fireworks distribution operations with increased fines.
- Provides for state/local government sharing of criminal fines and penalties levied against illegal fireworks violators.
- Provides for a model ordinance that permits local jurisdictions to adopt a streamlined enforcement and administrative fine procedure relating to the possession and use of less than 25 pounds of dangerous fireworks.
- Requires the Department of Motor Vehicles, in conjunction with the State Fire Marshal, to develop regulations for the suspension of a commercial motor vehicle license when the license holder was involved in the transportation of illegal fireworks.
- Requires the State Fire Marshal, in conjunction with the Attorney General, to serve notice of unauthorized shipments of fireworks into California.
- Allows the State Fire Marshal to establish regulations through the Office of Administrative Law, in consultation with the fireworks industry, to assess a fee on all fireworks licensees in California to support statewide enforcement and public education regarding fireworks.
- Requires the State Fire Marshal to acquire and use mobile fireworks destruction units to comply with recent state environmental protection regulations and establish a long-term solution to the costly destruction of seized dangerous fireworks.
- Requires the State Fire Marshal, on or before July 1, 2008, to identify and evaluate more detailed data collection methods relating to injuries and loss of property involving fireworks.



# Penalties for illegal fireworks possession and use in California

## LAW PRIOR TO PASSAGE OF SB 839



**THRESHOLD AMOUNT OF FIREWORKS:** 1 pound net weight pyrotechnic composition (approximately 1 mortar and 8 re-loadable shells)

**VIOLATION:** A wobbler (may either be prosecuted as a misdemeanor or felony under the California Health and Safety Code).

**PUNISHMENT:** A fine of not more than \$5000 or by imprisonment in the state prison, or county jail for not more than 1 year, or by both such fine and imprisonment.

## New violations amounts and penalties under SB 839

### LAW AFTER PASSAGE OF SB 839



**LESS THAN 25 LBS.**

**THRESHOLD AMOUNT OF FIREWORKS:** Less than 25 pounds gross weight, including packaging.

**VIOLATION:** A misdemeanor.

**PUNISHMENT:** A fine of not less than \$500 or more than \$1,000 or imprisonment in the county jail for not more than 1 year or by both such fine and imprisonment.

These amounts should be handled by a local administrative fine ordinance, not by criminal prosecution under the Health and Safety Code.





**NOT LESS THAN 25 LBS.**

**THRESHOLD AMOUNT OF FIREWORKS:**

**VIOLATION:**

**PUNISHMENT:**



**NOT MORE THAN 100 LBS.**

Not less than 25 pounds but not more than 100 pounds gross weight, including packaging.

A misdemeanor.

Imprisonment in the county jail for not more than 1 year or by a fine of not less than \$1,000 or more than \$5,000 or by both that fine and imprisonment.



**NOT LESS THAN 100 LBS.**

**THRESHOLD AMOUNT OF FIREWORKS:**

**VIOLATION:**

**PUNISHMENT:**



**NOT MORE THAN 5,000 LBS.**

Not less than 100 pounds but not more than 5,000 pounds gross weight including packaging.

A wobbler (may either be prosecuted as a misdemeanor or felony under the California Health and Safety Code).

Imprisonment in the state prison or the county jail for not more than 1 year or by a fine of not less than \$5,000 or more than \$10,000 or by both such fine and imprisonment.



**MORE THAN 5,000 LBS.**

**THRESHOLD AMOUNT OF FIREWORKS:**

**VIOLATION:**

**PUNISHMENT:**

More than 5,000 pounds gross weight including packaging.

A wobbler (may either be prosecuted as a misdemeanor or felony under the California Health and Safety Code)

Imprisonment in the state prison or the county jail for not more than 1 year or by a fine of not less than \$10,000 or more than \$50,000 or by both that fine and imprisonment.



# Administrative Fine Ordinance

- The State Fire Marshal shall consult with public safety agencies and other stakeholders, as deemed necessary by the State Fire Marshal, and develop a model ordinance that permits local jurisdictions to adopt a streamlined enforcement and administrative fine procedure relating to the possession of less than 25 pounds of dangerous fireworks. These procedures shall be limited to civil fines and is authorized pursuant to Section 53069.4 of the California Government Code. These fines shall not be subjected to the 65% / 35% split set forth under the new Health and Safety Code Section 12706.
- The model ordinance shall include provisions for reimbursing the Office of the State Fire Marshal for the costs associated with the disposal of seized fireworks and collecting these disposal costs as part of an administrative fine.
- Any local jurisdiction which has an ordinance in effect on or after January 1, 2008 that is related to dangerous fireworks and is not the model ordinance described above shall, as soon as practical, comply with all of the following:
  - The ordinance shall be amended or adopted to include a provision for cost reimbursement to the Office of the State Fire Marshal and the collection of disposal costs as part of an administrative fine;
  - The ordinance shall be amended or adopted to provide that the ordinance shall be limited to a person who possesses or the seizure of less than 25 pounds of dangerous fireworks;
  - The ordinance shall be amended or adopted to provide that the fines collected pursuant to the ordinance shall not be subject to the 65% / 35% split contemplated under the new Health and Safety Code Section 12706.

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## Key Points to Include when Amending Ordinances

- 1) Per CA Govt Code Section 36900-36904 a violation of a city ordinance is a misdemeanor unless, by ordinance, it is made an infraction. It is important that a violation for possession or use of dangerous fireworks not be an infraction because, if it is, it is only punishable by a fine not exceeding \$100 for a first violation, \$200 for a second violation and \$500 for each subsequent violation of the same ordinance within one year.
- 2) The new administrative fine ordinance must state that it will provide cost reimbursement to the State Fire Marshal pursuant to regulations adopted by the State Fire Marshal addressing the State Fire Marshal's cost for transportation and disposal of dangerous fireworks seized by that jurisdiction, which costs will be part of any administrative fine imposed. Arguably, unless and until those regulations are passed, a local jurisdiction may keep 100% of those fine revenues.
- 3) The ordinance must state that imposition of administrative fines related to use or possession of dangerous fireworks are limited to persons who possess, or the seizure of, 25 pounds or less of dangerous fireworks.
- 4) The ordinance must state fines collected pursuant to this administrative fine process, are not subject to California Health and Safety Code Section 12706 (the 65%/35% split that applies to all criminal/superior court conviction/fines).
- 5) Any local jurisdiction which already has in place as of 1/1/08 an administrative fine ordinance which permits levying a fine for the use or possession of dangerous fireworks within that jurisdiction must, as soon as practical, comply with the following:
  - a. Amend it to provide for cost reimbursement to the State Fire Marshal addressing SFM's cost for transportation and disposal of the dangerous fireworks seized by that jurisdiction, which costs will be part of any administrative fine imposed;
  - b. Amend it to provide that the ordinance shall be limited to a person who possesses, or the seizure of, 25 pounds or less of dangerous fireworks; and
  - c. Amend it to provide that the fines collected pursuant to that administrative fine ordinance are not subject to the 65%/35% split contemplated under new Health and Safety Code Section 12706.

