

ORDINANCE NO. 8-2013

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE ADDING ELK GROVE MUNICIPAL CODE CHAPTER 17.06 *FIREWORKS VIOLATIONS TO TITLE 17 FIRE PREVENTION*

WHEREAS, a significant number of people are injured by illegal fireworks every year, and state law is currently used to enforce the prohibition of illegal fireworks; and

WHEREAS, allowing this type of violation to be enforced through an administrative citation would grant the City of Elk Grove (City) and the Cosumnes Community Services District (CCSD) Fire Department an additional layer of flexibility in deciding what should be prosecuted criminally or administratively, thereby removing any complication that may be encountered should the District Attorney elect not to prosecute the offense; and

WHEREAS, 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,

WHEREAS, the penalties included herein will serve as an additional deterrent to those considering buying, selling, possessing, or using illegal fireworks.

NOW, THEREFORE, the City Council of the City of Elk Grove does ordain as follows:

Section 1: Add Chapter 17.06 – Fireworks Violations

Elk Grove Municipal Code Chapter 17.06 *Fireworks Violations* is hereby added to read:

Chapter 17.06

FIREWORKS VIOLATIONS

Sections:

17.06.010 Definitions

17.06.020 Purpose

17.06.030 Issuance of Administrative Citation

17.06.040 Fireworks Violations; Fines.

17.06.050 Appeals

17.06.010 Definitions

- 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 City of Elk Grove Municipal Code.
- D. "Code Enforcement Officer" means any employee or agent of the City of City of Elk Grove designated by the City Council to enforce any provision of this code.
- E. "Issuance" or "Issued" means service of notices as provided in EGMC Section 1.12.150.
- F. "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.
- G. "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 eighteen (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.
- H. "Violation" or "Violates" refers to any violation of any provision of this code.
- I. "Dangerous Fireworks" are defined as:

1. Any fireworks which contain any of the following:
 - a. Arsenic sulfide, arsenates, or arsenites.
 - b. Boron.
 - c. Chlorates, except:
 - i. In colored smoke mixture in which an equal or greater amount of sodium bicarbonate is included.
 - ii. In caps and party poppers.
 - iii. In those small items (such as ground spinners) wherein the total powder content does not exceed four (4 g) grams of which not greater than fifteen (15%) percent (or six hundred (600 mg) milligrams) is potassium, sodium, or barium chlorate.
 - d. Gallates or Gallic acid.
 - e. Magnesium (magnesium-aluminum alloys, called magnalium, are permitted).
 - f. Mercury salts.
 - g. Phosphorous (red or white except that red phosphorus is permissible in caps and party poppers).
 - h. Picrates or picric acid.
 - i. Thiocyanates.
 - j. Titanium, except in particle size greater than 100-mesh.
 - k. Zirconium.
2. Firecrackers.
3. Skyrockets and rockets, including all devices which employ any combustible or explosive material and which rise in the air during discharge.

4. Roman candles, including all devices which discharge balls of fire into the air.
 5. Chasers, including all devices which dart or travel about the surface of the ground during discharge.
 6. Sparklers more than ten (0' 10") inches in length or one-fourth of one (0' 0.25") inch in diameter.
 7. All fireworks designed and intended by the manufacturer to create the element of surprise upon the user. These items include, but are not limited to, auto-foolers, cigarette loads, exploding golf balls, and trick matches.
 8. Fireworks known as devil-on-the-walk, or any other firework which explodes through means of friction, unless otherwise classified by the State Fire Marshal pursuant to this part.
 9. Torpedoes of all kinds which explode on impact.
 10. Fireworks kits.
 11. Such other fireworks examined and tested by the State Fire Marshal and determined by him, with the advice of the State Board of Fire Services, to possess characteristics of design or construction which make such fireworks unsafe for use by any person not specially qualified or trained in the use of fireworks.
- J. " Safe and Sane Fireworks" are as defined in Health and Safety Code Section 12529.

17.06.020 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" as defined 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, twenty-five (25 lbs) 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 Two Hundred Fifty and no/100ths (\$250.00) or twenty-five (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.”

E. This chapter imposes a duty upon the owners of all real property to ensure that there are no violations of this code on such real property. Each violation of this code, whether on the same day or different day, shall constitute a separate violation and shall be subject to a separate administrative fine.

17.06.030 Issuance of Administrative Citation

Whenever a Code Enforcement Officer, police officer, or other person authorized to enforce this code determines that a violation of the code has occurred, the officer 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 and EGMC Chapter 1.12.

17.06.040 Fireworks Violations; Fines.

A. Each person who is found to be in the possession of, use, store, sell and/or display "dangerous fireworks" in the amount of twenty five (25 lbs) pounds or less shall be subject to an administrative citation, as set forth herein.

B. Administrative fine(s) issued pursuant to this Chapter shall be due and payable in accordance with EGMC Chapter 1.12, and the citee shall be required to abate the violation, and surrender all dangerous fireworks to the Code Enforcement Officer, immediately. For penalties not paid in full within that time, a late charge in the amount set by resolution of the City Council may be imposed and must be paid to the City by the citee.

C. 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.

17.06.050 Appeals

Appeals for administrative citations issued in conjunction with this section will be handled in accordance with Elk Grove Municipal Code Chapter 1.11.

Section 2: Severability.

If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. This City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance be enforced.

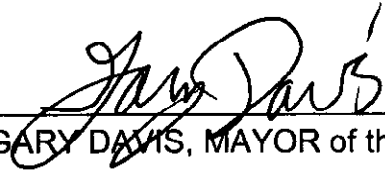
Section 3: No Mandatory Duty of Care

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 4: Effective Date and Publication

This Ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage, a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the City Council and a certified copy shall be posted in the Office of the City Clerk, pursuant to GC 36933(c)(1).

ORDINANCE NO. 8-2013
INTRODUCED: May 22, 2013
ADOPTED: June 12, 2013
EFFECTIVE: July 12, 2013



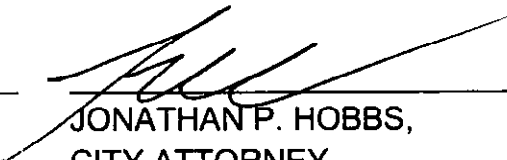
GARY DAVIS, MAYOR of the
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:



JASON LINDGREN, CITY CLERK



JONATHAN P. HOBBS,
CITY ATTORNEY

Date signed: June 18, 2013

**CERTIFICATION
ELK GROVE CITY COUNCIL ORDINANCE NO. 8-2013**

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss
CITY OF ELK GROVE)

I, Jason Lindgren, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing ordinance, published and posted in compliance with State law, was duly introduced on May 22, 2013 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on June 12, 2013 by the following vote:

AYES : **COUNCILMEMBERS:** *Davis, Detrick, Cooper, Hume, Trigg*

NOES: **COUNCILMEMBERS:** *None*

ABSTAIN: **COUNCILMEMBERS:** *None*

ABSENT: **COUNCILMEMBERS:** *None*

A summary of the ordinance was published pursuant to GC 36933(c) (1).



**Jason Lindgren, City Clerk
City of Elk Grove, California**