



CITY COUNCIL OF THE CITY OF ATWATER

ORDINANCE NO. CS 1062

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ATWATER AMENDING SECTIONS 5.54.120 AND 5.54.130, AND ADDING SECTIONS 5.54.160, 5.54.170, 5.54.180, 5.54.190, 5.54.200, AND 5.54.210, TO THE ATWATER MUNICIPAL CODE REGARDING FIREWORKS, AND DETERMINING THE ORDINANCE TO BE EXEMPT FROM CEQA

WHEREAS, the City of Atwater, California ("City") is a municipal corporation, duly organized under the constitution and the laws of the State of California; and

WHEREAS, the City currently regulates the all matters pertaining to fireworks within the City through Atwater Municipal Code ("AMC") Chapter 5.54; and

WHEREAS, until recent changes in the state law, cities were limited to enforcing fireworks violations through criminal citations only, which entailed arrests, court hearings, and the City having to meet the burden of showing a violation through "proof beyond a reasonable doubt," all of which made fireworks enforcement difficult and expensive at the local level; and

WHEREAS, in 2007, the California Legislature approved, and the Governor signed into law, Senate Bill 839, which authorized cities to adopt an administrative citation and fine process in addition to criminal enforcement mechanisms; and

WHEREAS, in light of the danger to the safety and persons and property in the City, including risks of severe, expensive fires and related City emergency responses, the City wishes to enhance its enforcement efforts by updating its fireworks regulations; and

WHEREAS, the City further desires to amend its fireworks regulations to include a "social host" component, allowing the City to cite for violations that occur on a responsible person's property, and to clarify the City's cost recovery procedure for State Fire Marshal expenses relating to the transportation and disposal of fireworks seized by the City; and

WHEREAS, in accordance with the California Environmental Quality Act (Pub.

Resources Code, § 21000 et seq.) ("CEQA") and the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.), the City has determined that the revisions to the [City] Municipal Code are exempt from environmental review; and

WHEREAS, all legal prerequisites to the adoption of the Ordinance have occurred.

NOW, THEREFORE, the City Council of the City of Atwater does hereby ordain as follows:

SECTION 1. Recitals. The recitals above are each incorporated by reference and adopted as findings by the City Council.

SECTION 2. CEQA. This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The City Council further finds, under Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Ordinance is nonetheless exempt from the requirements of CEQA in that the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

SECTION 3. Section 5.54.120 Amended. Section 5.54.120 (Violations) of the AMC is hereby amended to read in full as follows (deletions shown in ~~strike through~~, additions shown in underline):

5.54.120 – Violations.

- A. It shall be unlawful for any person to violate, or to permit the violation of, any provision of this chapter. All owners, occupants, and other persons at or on the property or premises where fireworks are possessed, sold, ignited, exploded, discharged, projected, fired, or used may be cited for and convicted of violations of this chapter as well as any other applicable laws.
- B. A violation of this chapter shall constitute a misdemeanor and shall be punishable as set forth in California Health and Safety Code Sections 12700 and 12702, as may be amended from time to time. In addition, conviction under this chapter shall be punishable as follows: the first conviction shall be punishable by a fine not to exceed the amount of \$500.00, the second and any subsequent conviction within a 12-month period shall be punishable by a fine not to exceed the amount of \$1,000.00 or by imprisonment in the county jail for not to exceed one year, or by both the fine and imprisonment. These punishments may be increased in accordance with Section 12702 based on the amount of fireworks possessed.
- C. Violations shall be prosecuted by the City Attorney through the provisions of this chapter, administrative code enforcement mechanisms, any other enforcement procedures provided in the Atwater Municipal Code, or any combination thereof.
- D. In addition to any other remedy available at law, any person in violation of this chapter is subject to an administrative fine as follows:

Number of Offense	Amount of	Late Charge	Total Amount of
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<u>in a 1 Year Period</u>	<u>Administrative Penalty</u>		<u>Penalty plus Late Charge</u>
<u>First</u>	<u>\$1,000</u>	<u>\$250</u>	<u>\$1,250</u>
<u>Second</u>	<u>\$2,000</u>	<u>\$500</u>	<u>\$2,500</u>
<u>Third and Subsequent</u>	<u>\$3,000</u>	<u>\$1,000</u>	<u>\$4,000</u>

- E. 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 must be deposited with and disbursed by the County Treasurer.

SECTION 4. Section 5.54.130 Amended. Section 5.54.130 (Seizure – Destruction) of the AMC is hereby amended to read in full as follows (deletions shown in ~~striketrough~~, additions shown in underline):

5.54.130 – Seizure – Destruction.

- A. Any condition caused or permitted to exist in violation of this chapter constitutes a threat to public health, safety, and welfare, and is declared and deemed a public nuisance, which may be summarily abated or restored by the City at the violator's expense and the City may institute a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance.
- B. Pursuant to the state fireworks law, the Fire Chief, his or her authorized representatives, and law enforcement officers may seize in any fireworks described in Health and Safety Code section 12722 (as may be amended or renumbered from time to time), including but not limited to:
1. Dangerous fireworks, including fireworks kits, used, possessed, stored, manufactured, or transported by a person who does not possess a valid permit;
 2. Safe and sane fireworks stored in violation of the conditions required by a permit;
 3. Safe and sane fireworks sold or offered for sale at retail that do not bear the State Fire Marshal label of registration and firing instructions;
 4. Safe and sane fireworks sold or offered for sale at retail that are in unsealed packages or containers that do not bear the state fire marshal label of registration and firing instructions; and
 5. Fireworks still possessed by a person who has just thrown any ignited fireworks at a person or group of persons.
- C. In addition to all other amounts which are authorized to be collected by the City for fines, late charges, penalties, interest, or costs, a responsible party shall pay to the City, which shall in turn remit to the State Fire Marshal, the actual cost for transportation and disposal of the seized fireworks, in an amount determined by adopted regulations, rules, policies, or procedures of the State of California or State Fire Marshal’s office.”

SECTION 6. New Sections. Sections 5.54.160, 5.54.170, 5.54.180, 5.54.190, 5.54.200, and 5.54.210 are hereby added to Chapter 5.54 of the AMC, to read in full as follows:

5.54.160 – Social Host Liability.

- A. For purposes of this section, "Social Host" means:
 - 1. Any owner of private property, as listed on the most recent county tax assessment roll;
 - 2. Any person who has the right to use, possess or occupy a public or private property under a lease, permit, license, rental agreement, or contract; or
 - 3. Any person who hosts, organizes, supervises, officiates, conducts, or sponsors a gathering on public or private property, and if such person is a minor, then that person's parents or legal guardians.
- B. No Social Host shall permit any persons to use fireworks in violation of this chapter:
 - 1. On property that is either owned by the Social Host or occupied or otherwise used by the Social Host pursuant to a lease, permit, license, rental agreement, or contract, or
 - 2. At any gathering on public or private property that is hosted, organized, supervised, officiated, conducted, or sponsored by the Social Host.
- C. It is the duty of any Social Host who knowingly hosts, permits, or allows any gathering to take place to take all reasonable steps to prevent the unlawful use of fireworks by that Social Host's guests or invitees.
- D. No Social Host shall, with respect to private property where fireworks are unlawfully used, be liable for a violation of this section if the Social Host can demonstrate that at the time of such violation, the Social Host (i) had rented or leased the property to another; (ii) was not present, and (iii) had no prior knowledge of the violation.
- E. No person who has the right to use, possess, or occupy a unit in a multifamily residential property under a lease, rental agreement, or contract shall be liable under this section for violations occurring in the common areas of the property.

5.54.170 – Contents of Administrative Citation.

- A. When a person responsible for enforcing this chapter determines that a violation of this chapter has occurred, that person may issue an administrative citation on a City-approved form listing the nature of the violation 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. Each administrative citation issued under this section shall contain the following information:
 - 1. The name, mailing address, date of birth, California Driver's License number (if available), and home or business telephone number of the responsible person charged with any violation of this chapter;
 - 2. The address or description of the location of the violation;
 - 3. The date or dates on which the person violated this chapter;
 - 4. The section or sections of this chapter that were violated;
 - 5. A description of the violation(s);
 - 6. 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;

7. 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);
8. The names, addresses, and telephone numbers of any witnesses to the violation(s);
9. The name and signature of the person 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 failure or refusal of a citee to sign a citation or provide the information required on the 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 this chapter; and
10. Any other information deemed necessary by the director for enforcement or collection purposes.

5.54.180 – Administrative Hearing – Procedures.

- A. Any citee may contest the violation(s), or the fact that he or she is a responsible person, by filing a request for an administrative hearing on a city-approved form with the Atwater Police Department's office within thirty calendar days from the issuance date of a citation. If the police chief 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:
 1. The citation number;
 2. The name, address, telephone number, and any facsimile numbers and e-mail addresses of each person or responsible person contesting the citation;
 3. A statement of the reason(s) why a citation is being contested; and
 4. The date and signature of the citee(s).

5.54.190 – Administrative Citation Review Process.

- A. Once a request for administrative hearing that meets the requirements of section 5.54.190 is received, the city will set a date for the hearing that is within sixty

- calendar days from receipt of the timely and complete application by the police chief.
- B. The city will notify all persons or responsible person(s) who file a request for a hearing in writing by first class mail of the date, time, and place set for the hearing at least ten 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.
 - C. If the city representative handling the code enforcement matter submits any additional written reports or materials concerning the citation to the city for consideration at the hearing, those materials will also be served by first class mail on the person who requested the administrative hearing, no less than seven calendar days prior to the date of the hearing. Failure to receive such materials shall not invalidate the citation or any hearing, city action, or proceeding pursuant to this chapter.
 - D. The City Manager shall designate or appoint a hearing officer, who shall hear all requests for administrative hearings on administrative fines in accordance with the procedures established by this section.
 - E. Administrative hearings are informal, and formal rules of evidence and discovery do not apply. Photographs of seized fireworks shall be admissible evidence of the violation. 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, the person who issued the citation is required to attend or participate at the hearing. The citee(s) and issuing person, if present, shall have an opportunity to present evidence and witnesses and to cross-examine witnesses.
 - F. 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 seven 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.
 - G. After considering all of the testimony and evidence submitted at the appeal hearing, the hearing officer shall issue a written decision to uphold or dismiss the administrative citation, and shall list in the decision the reasons therefor.
 - 1. If the hearing officer determines that the administrative citation should be upheld, the hearing officer may increase the fine amount. The appellant shall pay any increased amount within thirty days of receiving the hearing officer's decision.
 - 2. If the hearing officer determines that the administrative citation should be dismissed or the fine reduced, city shall refund the appropriate amount of the pre-deposited fine within thirty days of the hearing.
 - H. 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.

5.54.200 – Administrative Hearing – 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. The decisions of the hearing officer may be appealed by the citee to the city council within thirty calendar days after the date of service of the decision. Each decision shall contain a statement advising the citee of this appeal right and the procedure for its exercise.
- D. If a hearing officer's decision is not appealed in a timely manner, the decision shall be deemed confirmed.
- E. If a responsible person prevails on appeal, the city shall reimburse his or her fine deposit within thirty calendar days of the city council's decision on the appeal.

5.54.210 – Provisions Supplementary to Fire Code.

The provisions of this chapter are supplementary to the provisions of the Fire Code of the City of Atwater. In case of a direct conflict between the provisions of the Fire Code of the city, and the provisions of this chapter, the provisions of this chapter shall prevail. Except with respect to such direct conflict, the provisions of the Fire Code of City of Atwater shall remain in full force and effect.”

SECTION 6. Publication; Effective Date. Within 15 days from and after adoption, this Ordinance, or a summary thereof, shall be published once in a newspaper of general circulation printed and published in Merced County and circulated in Atwater, in accordance with California Government Code Section 36933. This Ordinance shall take effect and be enforced 30 days after its adoption.

SECTION 7. 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 8. Record of Proceedings. The custodian of records for this Ordinance is City Clerk and the records comprising the administrative record for this Ordinance are located at 1160 Fifth Street, Atwater, CA 95301.

PASSED AND ADOPTED by the City Council of the City of Atwater on the 24th day of April 2023, by the following vote:

INTRODUCED: April 10, 2023
ADOPTED: April 24, 2023
AYES: Cale, Ambriz, Raymond, Button, Nelson
NOES: None
ABSENT: None

APPROVED:

MIKE NELSON, MAYOR

ATTEST:

KORY J. BILLINGS, CITY CLERK