

CITY OF RIVERBANK

ORDINANCE NO. 2018-007

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA,
AMENDING CHAPTER 92: FIRE PROTECTION AND PREVENTION OF TITLE IX:
GENERAL REGULATIONS BY REPEALING THIS CHAPTER IN ITS ENTIRETY AND
REPLACING IT WITH A NEW CHAPTER 92: FIRE PROTECTION AND PREVENTION OF
THE CITY OF RIVERBANK CODE OF ORDINANCES**

WHEREAS, it is the City's intent to update the regulations on the permit process for the sale of "safe and sane fireworks", and to add regulations that will address the possession, use, storage, sale, and/or display of "dangerous fireworks", commonly referred to as "illegal fireworks" within the city and

WHEREAS, the City provides the opportunity for eligible nonprofit or tax-exempt organizations to sell fireworks during the 4th of July Holiday as a fundraising opportunity to support their respective activities that benefit the Riverbank community; and

WHEREAS, the City desires to update its process, procedures, and regulations to ensure all Riverbank nonprofit or tax-exempt organizations who are permitted to sell safe and sane fireworks will carry out the storage, transportation, handling, and sale of fireworks as required by the state and local regulations, laws, and requirements; and

WHEREAS, the amended regulations will further clarify the dates and times when the sale and use of safe and sane fireworks may be conducted for the enjoyment of the community, and for the peace and tranquility thereafter; and

WHEREAS, the City Council further desires to address the community's concerns of the serious threat of fire and injury posed by the use of illegal fireworks classified as "dangerous fireworks", which affects the public's health, safety, and welfare; and

WHEREAS, the use of dangerous fireworks is considered an illegal activity which is currently prohibited, and of which violations are enforced pursuant to State law; and

WHEREAS, SB 839 (Sen. Calderon), which became effective January 1, 2008, provides for a State Health and Safety Code provision that directs the State Fire Marshal to provide a model ordinance that permits local jurisdictions to adopt a streamlined enforcement and administrative fine procedure that addresses the *possession and use* of less than 25 pounds of dangerous fireworks; as well as enforcement for the sale or discharge of safe and sane fireworks during unpermitted dates, times, and locations.

WHEREAS, amending Chapter 92: Fire Protection and Prevention, of the Riverbank Municipal Code to include an updated subsection on the sale and discharge of safe and sane fireworks, and a new subsection on the enforcement and penalization of dangerous fireworks, will facilitate the ability of the City to levy penalties against violators, and ultimately serve as a deterrent for future violations.

NOW, THEREFORE THE CITY OF RIVERBANK CITY COUNCIL DOES ORDAIN AS FOLLOWS:

SECTION 1: Riverbank Municipal Code Chapter 92: Fire Protection and Prevention of Title IX: General Regulations, shall be amended by repealing in its entirety, Chapter 92, and replacing it with a new Chapter 92 as follows:

CHAPTER 92: FIRE PROTECTION AND PREVENTION

Section

Fire Code Regulations

92.01 California fire code adopted by reference

Fire Protection District

92.10 City included in Stanislaus county fire protection district

Fireworks Sales and Discharge

- 92.20 Definitions
- 92.21 Purpose
- 92.22 Administration
- 92.23 Permitted types of fireworks
- 92.24 Permit required
- 92.25 Qualification for issuance of a permit
- 92.26 Application requirements
- 92.27 Time for filing
- 92.28 Issuance of permit; non-transferability; duration
- 92.29 Compliance with permit restrictions; city regulations
- 92.30 Prohibitions of use or display, discharge of fireworks
- 92.31 Fireworks stand specifications
- 92.32 Failure to comply
- 92.33 Appeal for denial of permit

Fireworks Regulations and Enforcement

- 92.40 Definitions
- 92.41 Purpose
- 92.42 Issuance of administrative citation
- 92.43 Administrative fines
- 92.44 Administrative appeal hearing

Smoking Restrictions

95.50 Smoking restrictions in city owned buildings

Cross-reference:

Adoption of Uniform Fire Code, see § 150.11

FIRE CODE REGULATIONS

§ 92.01 CALIFORNIA FIRE CODE ADOPTED BY REFERENCE.

The City Council adopts the California Fire Code as declared in municipal code chapter 150: Building Regulations, Fire Code.

FIRE PROTECTION DISTRICT

§ 92.10 CITY INCLUDED IN STANISLAUS COUNTY FIRE PROTECTION DISTRICT.

In accordance with the Health and Safety Code Section 13950 et. seq., the City Council hereby declares and determines its intention and desire to have the City of Riverbank's entire territory and its established jurisdiction boundaries included within the Stanislaus County Consolidated Fire Protection District, and become a part thereof.

(67 Code, § 8-1-1) (Ord. 35½, passed 5-1-31)

FIREWORKS SALES AND DISCHARGE

§ 92.20 DEFINITIONS.

CITY MANAGER shall mean the City Manager or designee.

PROGRAM ADMINISTRATOR shall mean the City Manager's designated department or division staff member that is assigned the responsibilities to administer the fireworks sales program.

DANGEROUS FIREWORKS shall mean every fireworks article which does not bear the safe and sane classification label and as further defined in Section 12505 and Section 12561 of the California Health and Safety Code (HSC).

EXEMPT FIREWORKS as defined in Section 12508 of the HSC means any special item containing pyrotechnic compositions which the State Fire Marshal, with the advice of the State Fire Advisory Board, has investigated and determined to be limited to industrial,

commercial, agricultural use or religious ceremonies when authorized by a permit granted by the authority having jurisdiction.

FIREWORKS shall mean any device containing chemical elements and chemical compounds that capable of burning independently of the oxygen of the atmosphere and producing audible, visual, mechanical, or thermal effects which are useful as pyrotechnic devices for entertainment. The term includes, but is not limited to, devices designated by the manufacturer as fireworks, torpedoes, skyrockets, roman candles, rockets, Daygo bombs, sparklers, party poppers, paper caps, chasers, fountains, smoke sparks, aerial bombs, and fireworks kits.

FIREWORKS STAND means any building, counter, or other structure of a temporary nature used in the sale, offering for sale, or display for sale of safe or sane fireworks.

FIREWORKS WHOLESALER means any person, other than an importer, exporter or manufacturer selling directly to wholesalers, who sells fireworks to a retailer or any other person for resale.

PERMIT means a certificate issued by the city that allows a qualified applicant to temporarily sell fireworks pursuant to the regulations set forth. A permit does not confer to any property rights and the city at its sole discretion, without notice or opportunity for a hearing, may revoke the permit.

PERMITTEE means any applicant that has met the eligibility requirements and has been issued a permit for the sale of safe and sane fireworks, or a City Council approved state licensed pyrotechnic operator as defined under HSC Section 12578.

SAFE AND SANE FIREWORKS as defined in Section 12529 and 12562 of the HSC means any fireworks which do not come within the definition of “dangerous fireworks” or “exempt fireworks.”

§ 92.21 PURPOSE.

The purpose of this subsection is to restrict the sale and use of fireworks or the public display of fireworks within the city for the health, safety, and welfare of all persons and properties of the city.

§ 92.22 ADMINISTRATION.

The City Manager shall designate the Program Administrator responsible for the temporary sale of safe and sane fireworks permit program. The City Manager may adopt reasonable processes and procedures to implement this subsection in a manner consistent with any applicable rules and regulations set forth by ordinance of the City Council. The City Manager reserves the right to immediately revoke, without notice or hearing, the permit to

sell fireworks when it is determined that a state or local regulation, law, or requirement has been violated or an immediate danger situation that arises; this action shall be final.

§ 92.23 PERMITTED TYPES OF FIREWORKS.

(A) Fireworks labeled as “safe and sane fireworks” are permitted pursuant to the provisions of this section.

(B) It shall be unlawful for any person, firm, or corporation to possess, sell, store, use, display or offer or make available for sale or expose for sale at retail, fireworks for use within the city that is not classified as “safe and sane fireworks” including altered safe and sane fireworks, or other combustible device or explosive substance or any kind of fireworks by another name.

(C) *Public display by state licensed pyrotechnic operator.* Notwithstanding (A) and (B), the City Council may for a one-time city conducted special event or celebratory occasion, allow for the issuance of a city fireworks permit for the public display of “dangerous fireworks” conducted by a state licensed pyrotechnic operator, who shall meet all the state and local regulations, laws, and requirements to ensure the safety and welfare of all persons and properties.

§ 92.24 PERMIT REQUIRED.

(A) It shall be unlawful for any person, firm, or corporation to engage in the sale or distribution of fireworks within the City without first securing a permit from the city, the Fire Protection District, State Fire Marshall, and any other required state or local agency.

(B) *State licensed pyrotechnic operator.* A City Council approved state licensed pyrotechnic operator who is approved to provide a public display of fireworks by the discharge of dangerous fireworks for a one-time city conducted special event or celebratory occasion, shall apply for a permit to ensure that all state and local regulations, laws, and requirements for the safety and welfare of persons and properties are met.

§ 92.25 QUALIFICATION FOR ISSUANCE OF PERMIT.

Permits for the sale of safe and sane fireworks shall be issued only if:

(A) The applicant is a bona fide nonprofit organization or corporation, as recognized by the State of California, or a tax-exempt organization or corporation recognized by the Federal Internal Revenue Service that was formed primarily for veteran, patriotic, welfare, civic betterment, charitable, or charitable purposes; or

(B) The applicant is a nonprofit or tax-exempt organization affiliated with the Riverbank Unified School District, located within the city limits of the City of Riverbank, or

(C) The applicant is a nonprofit or tax-exempt organization from a school within six (6) miles of the city limits that has a student body consisting of at least fifty (50) percent Riverbank residents.

(1) Said applicant from a school outside the city limits shall not be eligible for a permit if a permit is granted or is expected to be granted by another jurisdiction.

(D) The nonprofit or tax-exempt organization shall provide proof of:

(1) Having a minimum of ten (10) members of which at least 80 percent of its current members reside within the city limits of Riverbank, and

(2) Having been established within the city's postal area for at least a period of one (1) year, and

(3) Having its principal and permanent meeting place in the city's postal area; and

(4) Having demonstrated its purpose for existence, and its direct and continuous services and benefits to the city in the past twelve (12) months.

(5) An applicant from a school outside the city limits that may not meet all the aforementioned criteria shall meet criteria that are satisfactory to the Program Administrator.

(E) *State licensed pyrotechnic operator.* The City Council shall first approve the display and use of dangerous fireworks for a one-time city conducted special event or celebratory event, and said operator shall then apply for a permit with the designated Program Administrator.

§ 92.26 APPLICATION REQUIREMENTS.

(A) Any organization or person(s) interested in obtaining a temporary permit for a fireworks stand and sale of safe and sane fireworks shall first obtain and file an application form provided by the city's Program Administrator.

(B) Requirements shall include, but are not limited to:

(1) Providing proof of tax exemption that is active and in good standing; and

(2) Providing a certificate of liability insurance that shall indicate the limit amount as determined by the city's risk management authority for liability coverage per occurrence for bodily injury, property damage, including premises, operations, and product liability; that shall name the City of Riverbank as certificate holder; that shall contain an attached separate endorsement to the policy naming the City of Riverbank as an additional insured; and shall indicate that a 30-day advance notice will be given to the city prior to cancellation or material change of the policy; and

(3) Providing a copy of the applicant's current license as a fireworks wholesaler/retailer by the State of California.

(C) The application may require any other information and additional documentation as deemed necessary to make an adequate determination of eligibility.

(D) *State licensed pyrotechnic operator.* Application requirements shall be established as deemed necessary by the City Manager to ensure appropriate liability coverage and documentation has been secured and all state and local regulations, laws, and requirements are met.

(E) A nonrefundable permit processing fee of \$50.00, or an amount as amended by City Council resolution, shall be paid at the time of submittal of an application. An exception of a refund may occur if a limit on the number of permits allowed to be issued is declared by the City Manager, and as a result of conducting a lottery the applicant is not selected.

(F) *Business license and tax payment.* Pursuant to Riverbank Municipal Code Section 110.08(I) license fees for eligible nonprofit or tax-exempt organizations shall be waived.

§ 92.27 TIME FOR FILING.

(A) Applications shall be made available by March 1st and shall be filed by the applicant no later than the close of business on March 31st, or if offices are closed, the close of business on the next open business day. Applications submitted after the indicated deadline will not be accepted. Failure to meet the requirements of the application for a permit will be reason for denial.

(B) *State licensed pyrotechnic operator.* A City Council approved operator shall file an application for a permit not less than fifteen (15) days prior to the event.

§ 92.28 ISSUANCE OF PERMIT; NON-TRANSFERABILITY; DURATION.

(A) The Program Administrator, upon satisfaction that the applicant met the requirements, may grant a permit, subject to any other conditions deemed necessary for the public's health, safety, and general welfare.

(B) The City Manager shall have the discretion to set a maximum number of permits that may be issued each calendar year to sell safe and sane fireworks. If the number of applications received exceeds the number of permits allowed for the year, a random lottery system will be conducted by the Program Administrator, and applicants will be notified accordingly.

(C) To allow various Riverbank nonprofit and tax-exempt organizations an opportunity to sell fireworks, no more than one (1) permit per organization shall be issued for the sale of fireworks during any one calendar year; any affiliates will not be eligible for a permit. One (1) issued permit allows for one (1) temporary stand for the sale of fireworks.

(D) The temporary city permit issued shall only be valid for the organization named, the premises or address indicated, and for the dates specified on the permit. The permit shall not be transferable, assignable, or renewable.

(E) Applicants for a permit shall be notified by the Program Administrator of the granting or denial of a permit no later than May 15th of each year.

(F) *Transportation and storage.* The permittee shall comply with all state and local regulations and laws for the transportation and storage of fireworks to be sold, used, or displayed.

(G) The city issued permit shall be posted at the stand for clear public view, along with the State Fire Marshal's retail fireworks license permit, and any other permit or sign required by state or local regulations or laws.

(H) The sale of fireworks may begin no earlier than 12 noon on June 28th, and may be sold daily thereafter from 9:00 a.m. to 9:00 p.m., and shall cease by 9:00 p.m. on July 4th. All unsold stock shall be removed from the location no later than 12 noon July 5th.

§ 92.29 COMPLIANCE WITH PERMIT RESTRICTIONS; CITY REGULATIONS.

(A) Any applicant who is issued a city permit to operate a temporary stand for the sale of fireworks shall abide by and comply with all the regulations, laws, requirements, conditions, and restrictions set by state and local regulations and laws, which shall include:

(1) No person other than the official members of the organization, their spouses, parents, or adult children shall sell or otherwise participate in the sale of fireworks at the stand.

(2) No person other than the permitted organization shall operate the stand or participate in the profits of the operation of the stand.

(3) No person shall be paid any consideration for selling or otherwise participate in the sale of fireworks at the stand.

(4) No person under the age of eighteen (18) shall sell or participate in the sale of fireworks, and no person under the age of sixteen (16) shall be sold or given fireworks.

(5) All retail sales of safe and sane fireworks shall be conducted only within the permitted temporary fireworks stand; sale from any other building or structure is prohibited.

(B) Should the dates and times allowed by the state fire marshal or local fire protection district exceed the dates and times set by the city's code, all permittees shall comply with the city's jurisdictional regulations.

§ 92.30 PROHIBITIONS OF USE OR DISPLAY; DISCHARGE OF FIREWORKS.

(A) It shall be unlawful to sell or offer for sale any fireworks in violation of the regulations established by the city's code.

(B) It shall be unlawful to possess, discharge, sell or offer for sale, any fireworks within the city which are classified as "dangerous fireworks" as defined by the California Health and Safety Code.

(C) It shall be unlawful for any person having the care, custody or control of a person under the age of 16 years to permit such person to discharge any safe and sane fireworks unless such minor does so under the direct supervision of a person over 18 years of age, and during the hours and on the days permitted by this subsection.

(D) It shall be unlawful to throw, toss, project or position an ignited firework of any kind in such a manner as to cause the firework or contents thereof to come in contact with another person's body, private property, or real property.

(E) It shall be unlawful for any person to discharge or permit the discharge of any safe or sane fireworks within any public property, buildings, or facilities, except by the approval of the City Council.

(F) It shall be unlawful to discharge any safe or sane fireworks during any other time except during the period beginning June 28th through July 6th between the hours of 12 noon and 10:00 p.m. of each year; or as amended by City Council resolution.

§ 92.31 FIREWORKS STAND SPECIFICATIONS.

Temporary stands are subject to the requirements as forth in the application and this code, including:

(A) A stand shall meet all the requirements for construction and maintenance as to ensure the safety of the attendants and patrons as required by the Chief Building Official or designee or the Fire Protection District.

(B) Fireworks stands may be erected no earlier than June 26th and shall be removed, along with any related litter, no later than July 7th of each year.

§ 92.32 FAILURE TO COMPLY.

Any violations of this section shall be subject to the fine(s) and appeal hearing process as stated under the fireworks regulations and enforcement subsection.

§ 92.33 APPEAL FOR DENIAL OF PERMIT.

If the Program Administrator denies the issuance of a permit or the submittal of an application, the applicant making the request may appeal such action by filing a written notice of appeal with the City Council. Such written appeal notice shall be filed with the City Clerk within (5) days from the date of notification of denial. The notice of appeal shall set forth the reasons for the applicant's requested appeal. Upon receipt of a notice of appeal form, a hearing shall be set before the City Council at the next regularly scheduled meeting. Upon such hearing the Council may deny the application or grant the application with such conditions as the Council shall deem proper.

FIREWORKS REGULATIONS AND ENFORCEMENT

§ 92.40 DEFINITIONS.

ADMINISTRATIVE CITATION. An administrative citation is a "ticket" issued when the Code Enforcement Officer has determined that a violation of the city's code has occurred. It is an official notification, on an appropriate form as established by the city, to include 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. Administrative citations are not part of the judicial process unlike infraction or misdemeanor citations.

BLOCK PARTY shall mean a festive gathering event, only sponsored by persons such as owners, residents, or tenants of a neighborhood, which will temporarily close no more than one (1) city block to vehicular traffic. The event shall not be for commercial or advertising purposes or profit.

BLOCK PARTY PERMIT shall mean the city's permitting process in which the city will issue residents a permit to temporarily close streets, other than arterial or collector streets, and to establish appropriate and safe conditions for the purpose of conducting a block party.

CITEE shall mean any person served with an administrative citation charging him or her as a responsible person for the violation.

CITATION shall mean an administrative citation issued pursuant to this section to remedy a violation.

CODE shall mean the City of Riverbank Municipal Code.

CODE ENFORCEMENT OFFICER (CEO) shall mean any employee or agent or public safety officer of the City of Riverbank designated by the City Council to enforce any provision of this code.

DANGEROUS FIREWORKS as defined under Health and Safety Code Section 12505 and Section 12561 are:

(A) Any fireworks which contain any of the following:

(1) Arsenic sulfide, arsenates, or arsenites.

(2) Boron.

(3) Chlorates, except:

(a) In colored smoke mixture in which an equal or greater amount of sodium bicarbonate is included.

(b) In caps and party poppers.

(c) 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 one hundred (100) mesh.

(k) Zirconium.

(B) Firecrackers.

(C) Skyrockets and rockets, including all devices which employ any combustible or explosive material and which rise in the air during discharge.

(D) Roman candles, including all devices which discharge balls of fire into the air.

(E) Chasers, including all devices which dart or travel about the surface of the ground during discharge.

(F) Sparklers more than ten (10") inches in length or one-fourth of one (0.25") inch in diameter.

(G) 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.

(H) 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 section.

(I) Torpedoes of all kinds which explode on impact.

(J) Fireworks kits.

(K) 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.

EXEMPT FIREWORKS as defined in Section 12508 of the Health and Safety Code means any special item containing pyrotechnic compositions which the State Fire Marshal, with the advice of the State Fire Advisory Board, has investigated and determined to be limited to industrial, commercial, agricultural use, or religious ceremonies when authorized by a permit granted by the authority having jurisdiction.

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 residence, in the presence of a competent member of the household, and thereafter mailing by First Class Mail 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 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 to the responsible party in violation at the address of the property where the violation exists.

PERSON shall mean 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.

RESPONSIBLE PERSON shall mean 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, or any person with an ownership interest or right of possession of the real property where unpermitted fireworks are possessed, sold, used, manufactured or discharged, including, but not limited to:

(A) Any owner-occupant.

(B) Any lessee, subtenant, licensee, or other person having possessory control over a property, structure, or parcel of land.

(C) Any person that organizes, supervises, officiates, conducts, or controls the gathering or any other person accepting responsibility for such a gathering.

(D) Every owner, occupant, lessee, tenant, or holder of any possessory interest of a residence or other private property within the city is required to maintain, manage and supervise property and all persons thereon in a manner so as not to violate the provisions of this subsection. A responsible party need not be present at the time dangerous fireworks are possessed, manufactured, sold, used, or discharged in order for the city to issue an administrative citation under this subsection.

(E) 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 subsection. 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 section, in addition to any citation that may be issued to the offending minor.

(F) For purposes of this chapter, there may be more than one responsible person for a violation.

SAFE AND SANE FIREWORKS are as defined in Section 12529 and Section 12562 of the Health and Safety Code means any fireworks which do not come within the definition of “dangerous fireworks” or “exempt fireworks.”

VIOLATION or **VIOLATES** refers to any violation of any provision of this code.

§ 92.41 PURPOSE.

(A) This section authorizes the imposition of administrative fines on any person who violates any provision of this code in order to encourage and obtain compliance with the provisions of this code for the benefit and protection of the entire community.

(B) This section 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 Section 12500 et seq. of the California Health and Safety Code, with the exception of a pyrotechnic licensee when operating pursuant to that license; and the use of “safe and sane fireworks” as defined in Section 12500 et seq. of the California Health and Safety Code on or at dates, times and/or locations other than those permitted by this code. Said administrative fines are imposed under authority of Section 53069.4 of the Government Code, Section 12557 of the Health and Safety Code, and the police power of the city.

(C) This section imposes a duty upon the owners of all real property to ensure that there are no violations of this code on such real property.

§ 92.42 ISSUANCE OF ADMINISTRATIVE CITATION.

(A) The issuance of citations imposing administrative fines may be performed at the discretion of the authorized officials of the city; and the issuance of a citation to any person constitutes but one (1) remedy of the city to redress violations of this code by any person. By adopting this code, 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.

(B) Whenever a Code Enforcement Officer determines that a violation of the code has occurred, the officer may issue an administrative citation 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 fines set forth.

(C) 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.

(D) The citee shall be required to abate the violation, and immediately surrender all dangerous fireworks to the Code Enforcement Officer.

(E) The imposition of fines related to “dangerous firework” 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), including packaging, of such dangerous fireworks.

§ 92.43 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 follows:

Number of Offense in (1) Year Period	Amount of Administrative Penalty	(30-day) Late Payment Charge	Total Amount of Penalty plus Late Charge
1 st Offense	\$1,000	\$250	\$1,250
2 nd Offense	\$2,000	\$500	\$2,500
3 rd Offense	\$3,000	\$1,000	\$4,000

(B) A person who fails to obtain a “block party permit”, license or approval from the city when required by Section 95.01(C) of the city code shall be subject to administrative fine or fines under this chapter as follows:

Number of Offense in (1) Year Period	Amount of Administrative Penalty	(30-day) Late Payment Charge	Total Amount of Penalty plus Late Charge
1 st Offense	\$ 500	\$ 175	\$ 625
2 nd Offense	\$1,000	\$ 250	\$1,250
3 rd Offense	\$1,500	\$ 500	\$2,000

(C) Any person, firm, or corporation who applies for and receives an administratively issued “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. Any person, firm, or corporation 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 follows:

Number of Offense in (1) Year Period	Amount of Administrative Penalty	(30-day) Late Payment Charge	Total Amount of Penalty plus Late Charge
1 st Offense	\$1,500	\$ 375	\$1,875
2 nd Offense	\$3,000	\$ 750	\$3,750
3 rd Offense	\$5,000	\$2,000	\$7,000

(D) Any person that fails to obtain a permit from the city to sell “safe or sane fireworks” as required under this chapter, or any person who uses or discharges any safe and sane fireworks on or at dates and times or at locations other than what is allowed, are in violation of this chapter and shall be subject to the following fine or fines:

Number of Offense in (1) Year Period	Amount of Administrative Penalty	(30-day) Late Payment Charge	Total Amount of Penalty plus Late Charge
1 st Offense	\$ 250	\$ 75	\$ 325
2 nd Offense	\$ 500	\$ 150	\$ 650
3 rd Offense	\$ 750	\$ 300	\$1,050

(E) The administrative fine(s) for violations of any of the above provisions shall be due and payable to the City of Riverbank within thirty (30) calendar days from the date of issuance of the administrative fine citation. Failure to pay the penalties in full within that time, shall have a late charge imposed in the amount as set forth above and shall begin accruing interest at the prevailing established rate until fully paid.

(F) *Recovery of Administrative Penalties.* The city may collect the assessed administrative fine(s) and related administrative costs incurred such as attorney fees, costs to collect fine(s), late fees, and interest, in any manner allowed by law, including but not limited to recordation of a lien on any real property owned by the responsible person.

(G) 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.

(H) 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, and any incurred associated late charges and interest, until it is paid, in addition to being responsible for payment of previous fines.

(I) Nothing in this section shall be intended to limit any of the penalties provided for under the California Health and Safety Code or Penal Code.

(J) Fines collected pursuant to this administrative fine process for dangerous fireworks violations:

(1) Shall not be subject to Section 12706 of the Health and Safety Code, which provides that certain fines collected by a court of the State be deposited with, and disbursed by, the County Treasurer; and

(2) Shall include 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; and

(3) 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) Dollars 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.

§ 92.44 ADMINISTRATIVE APPEAL HEARING.

(A) Any citee may contest the violation(s) and the issued administrative citation by filing a request for appeal hearing form with the City Clerk within thirty (30) days of the citation. No fees shall be charged for the filing of a request for an appeal hearing, unless an appeal processing fee has been established by resolution. Failure to timely file a request for appeal form with the City Clerk, along with the processing fee if required, shall constitute a waiver of the right to an appeal hearing and the citation shall be deemed confirmed and final.

(B) The citee must deposit the full amount of the fine indicated on the citation on or before the request for a hearing is filed; failure to deposit the full amount of all fines within the required time period, shall constitute the request for the appeal hearing incomplete and untimely. Payments that are deposited with the city shall be returned to the person who deposited the funds if the citation is overturned.

(C) 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.

(D) The hearing will be conducted within sixty (60) days of the date that a timely and complete request is received by the City Clerk.

(E) Appeal Hearing Procedures:

(1) The Appeals Board shall hear all requests for administrative appeal hearings in accordance with the procedures established herein.

(2) Administrative appeal hearings are informal, and formal rules of evidence and discovery do not apply. The citee and CEO 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. The Appeals Board may question any person who presents evidence or who testifies at any hearing.

(3) Hearings may be continued once at the request of a citee, the CEO, or the Appeals Board for cause.

(F) Hearing Decision:

(1) After consideration of all testimony and evidence submitted at the hearing, the Appeals Board shall issue a decision to uphold or overturn the citation and shall state the reasons therefore.

(2) The City Clerk shall within seven (7) business days of the decision affirm in writing to the citee by First Class Mail the Boards decision and reasons, and the ability to exercise appeal rights to the City Council, and the procedures. Failure of the citee to receive a properly addressed decision shall not invalidate any hearing, action, or proceeding conducted pursuant to this chapter.

(3) Decisions of the Appeals Board may be appealed to the City Council within fifteen (15) calendar days from the date of the City Clerk's letter of affirmation by filing a request for appeal form with the City Clerk, with an appeals processing fee that has been set by resolution.

(4) If the Board's decision is not appealed in a timely manner as required, the decision shall be deemed confirmed and final.

(5) The City Council is the sole reviewing authority and an appeal of the Appeals Board's decision is not appealable to the Superior Court. If a responsible person prevails on appeal, the city shall reimburse the person's deposit within thirty (30) calendar days of the City Council's final decision on the appeal.

SMOKING RESTRICTIONS

§ 92.50 SMOKING RESTRICTIONS IN CITY OWNED BUILDINGS.

(A) *Purpose.* Every citizen has the right to choose for himself or herself whether to smoke tobacco or marijuana and it is not the intention of the city to interfere with such freedom of choice. Further, every citizen who chooses to not smoke has the right to be free from offensive tobacco or marijuana smoke and to be free from the health hazard of tobacco or marijuana smoke when employed by the city or conducting business with the city in specified areas.

('67 Code, § 4-8-1)

(B) *Definition. SMOKE or SMOKING.* As used in this section means the carrying, holding, possession or smoking of a lighted pipe, cigar, cigarette, joint or the lighting of a pipe, cigar, cigarette or joint.

('67 Code, § 4-8-2)

(C) *Areas subject to nonsmoking regulations.* Areas subject to nonsmoking regulation are:

(1) All city offices and conference rooms.

(2) Elevators which are generally used by and open to the public.

(3) Council Chambers of the City Hall.

(4) Public waiting rooms, hallways and lobbies except those which may be specifically designated as smoking areas.

(5) Riverbank Community Center, Riverbank Teen Center, and Riverbank Pool.

('67 Code, § 4-8-3)

(D) *Duty to post signs or notices.* Appropriate "No Smoking" signs shall be conspicuously posted in each area of those city buildings where smoking is prohibited by this chapter. The city official in charge of the building in which areas have been closed to smoking shall ensure that signs are posted and remain posted advising city employees and the public of designated nonsmoking areas.

('67 Code, § 4-8-4)

(E) *Enforcement.* The city official in charge of the building in which areas have been closed to smoking shall make a report to the City Council in the event voluntary compliance by members of the public becomes ineffective.

('67 Code, § 4-8-5) (Ord. 91-04, passed 3-11-91; Am. Ord. 2017-004, passed 2-28-17)

Statutory reference:

State smoking regulations generally, see Cal. Health & Safety Code §§ 118875 et seq.

SECTION 2: Severability. The City Council of the City of Riverbank hereby declares that 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 provision 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 enforced.

SECTION 3: This Ordinance shall become effective thirty (30) days from and after its final passage (01/12/2019), provided it is published pursuant to GC § 36933 in a newspaper of general circulation within fifteen (15) days after its adoption.

The foregoing ordinance was given its first reading and introduced by title only at a regular meeting of the City Council of the City of Riverbank on November 13, 2018. Said ordinance was given a second reading by title only and adopted.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Riverbank at a regular meeting on the 11th day of December, 2018; motioned by Councilmember Leanne Jones Cruz, seconded by Vice Mayor (CM-D4) Darlene Barber-Martinez, and moved said ordinance by a City Council roll call vote of 5-0:

AYES: Fosi, Campbell, Jones Cruz, Barber-Martinez, and Mayor O'Brien
NAYS: None
ABSENT: None
ABSTAINED: None

ATTEST:

APPROVED:

ORIGINAL DOCUMENT ON FILE WITH THE CITY CLERK

Annabelle H. Aguilar, CMC
City Clerk

Richard D. O'Brien
Mayor

APPROVED AS TO FORM:

XXXXXXXXXXXXXXXXXXXX

Tom P. Hallinan, City Attorney