

CITY OF RIVERBANK

ORDINANCE NO. 2020-005

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA, AMENDING SECTION 92.28: ISSUANCE OF PERMIT; NON-TRANSFERABILITY; DURATION, UNDER THE FIREWORKS SALES AND DISCHARGE SUBSECTION, AND SECTION 92.43: ADMINISTRATIVE FINES, AND SECTION 92.44: ADMINISTRATIVE APPEAL HEARING UNDER FIREWORKS REGULATIONS AND ENFORCEMENT SUBSECTION, OF CHAPTER 92: FIRE PROTECTION AND PREVENTION UNDER TITLE IX: GENERAL REGULATIONS OF THE CITY OF RIVERBANK CODE OF ORDINANCES

WHEREAS, Chapter 92 of Title IX of the Riverbank Municipal Code (“RMC”) was repealed in its entirety and replaced with a new Chapter 92 by passage of Ordinance No 2018-007 to provide for the enforcement of the sale of “safe and sane fireworks” as well as enforcement for the use of illegal fireworks classified as “dangerous fireworks”; and

WHEREAS, the City provides the opportunity for eligible Riverbank nonprofit or tax-exempt organizations to sell safe and sane 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 Council further desired to address the community’s concerns of the serious threat of fire and injury posed by the use of illegal fireworks, which affects the public’s health, safety, and welfare; and

WHEREAS, it was anticipated that after the enforcement of the new ordinance during the first 4th of July Holiday of 2019, amendments to the Code would be proposed; and

WHEREAS, the amended code will increase the time allowed for the sale of fireworks by one hour, changing the time from 9:00 p.m. to 10:00 p.m., which is beneficial for the nonprofit organizations as well as the community’s enjoyment of the 4th of July Holiday season; and

WHEREAS, to assist with payment of fines imposed, the City would allow for the ability to request payments be made under a payment plan, if feasible; and

WHEREAS, to assist with payment of the deposit to request for an appeal hearing, the deposit would be reduced to half of the amount of the citation fine; and

WHEREAS, enforcement of the Code for fireworks is administered by the City's Code Enforcement Division, with the assistance of Police Services, and other Departments as needed, the language to conduct the appeals hearing process is amended to best reflect the language of the appeals hearing process conducted for nuisance abatement.

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

SECTION 1: Riverbank Municipal Code Section 92.28: Issuance of permit; Non-Transferability; Duration, Section 92.43: Administrative Fines, and Section 92.44: Administrative Appeal Hearing of Chapter 92: Fire Protection and Prevention of Title IX: General Regulations, shall be amended as follows:

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

[...]

(H) The sale of fireworks may begin no earlier than 12 noon and end by 10:00 p.m. on June 28th, and may be sold daily thereafter from 9:00 a.m. to 10:00 p.m., and shall cease by 10:00 p.m. on July 4th. All unsold stock shall be removed from the location no later than 12 noon July 5th.

[...]

§ 92.43 ADMINISTRATIVE FINES.

[...]

(E) The administrative fine(s) for violations of any of the above provisions shall be due and payable to the City of Riverbank within 30 calendar days from the date of issuance of the administrative 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. Late charges may be suspended if the City has agreed to a payment plan, however, will be reinstated upon failure to make a payment.

(1) *Payment Plan.* The Citee may request to pay a fine through a payment plan. The Director of Finance or designee will have the discretion to

determine if it is feasible to do so, and may request documentary evidence to make a determination if paying the fine in full would cause undue financial hardship. A payment plan will include a payment processing fee to cover costs for this special service. The processing fee will be set by resolution, and is subject to change from time to time by the City Council.

[...]

§ 92.44 ADMINISTRATIVE APPEAL HEARING.

(A) *Requesting an Appeal Hearing.*

(1) Any Citee may contest the violation(s) and the issued administrative citation by filing an appeal hearing request form with the City Clerk within 30 days of the date of the citation. A filing fee, if established by City Council resolution, shall be charged.

(2) *Deposit.* The Citee must pay a deposit equal to half of the full amount of the fine indicated on the citation on or before the request for a hearing is filed; failure to deposit half of the amount of all fines appealed within the 30-day filing period, shall constitute the request for an appeal hearing incomplete and untimely and therefore not accepted.

(3) Failure to timely file an appeal hearing request form with the City Clerk, along with the filing fee, if required, and deposit shall constitute a waiver of the right to any appeal hearing, and the citation shall be deemed confirmed and final.

(4) *Hardship waiver.* If within the 30-day filing period, the appealing party establishes to the satisfaction of the Director of Finance or designee, by means of tax returns, pay stubs or other similar documentary evidence, and submits a declaration under penalty of perjury that paying the filing fee and/or deposit amount would cause undue financial hardship to the appealing party, the Director of Finance or designee may grant a waiver of the filing fee, and/or waiver or reduction of the deposit amount required. The Director of Finance's determination is not appealable and shall be final as to the hardship waiver request.

(B) *Hearing body.* The appeal shall be heard by an Appeals Board. The Planning Commission, in accordance with § 32.35(F) of this Code of Ordinances, shall act as the Appeals Board. Members of the Appeals Board shall not have had any responsibility for the investigation, prosecution or enforcement of nuisances under this chapter and shall not have any personal involvement with the appellant or with the appeal to be heard.

(C) *Setting the appeal hearing.*

(1) The Appeals Board hearing shall be set in accordance with the regularly scheduled Planning Commission meeting, but shall be opened as a separate and distinct body.

(2) At least 10 calendar days prior to the hearing, the City Clerk will notify all persons in writing indicating the date, time, and place to appear for their scheduled appeal hearing, and include a notice to their right to appeal to the City Council and the number of days to so. First Class Mail or email service of this notice is deemed complete at the time sent.

(3) The failure of an appellant to receive a properly addressed notice shall not invalidate the citation or any hearing, city action or proceeding, which is conducted pursuant to this chapter.

(4) The City Clerk shall notify the Code Enforcement staff of the filed appeal request; who shall then submit copies of any documentation to the City Clerk of the administrative citation(s), fines, and reasons for issuance.

(5) The hearing will be conducted within sixty (60) days of the date that a timely and complete appeal request is received by the City Clerk. However, this time may be extended due to the constraints posed by the Planning Commission's meeting schedule.

(D) *Appeal Hearing Procedures.* The Appeals Board shall hear all requests for administrative appeal hearings in accordance with the procedures established herein.

(1) *Testimony at the hearing.* At the time set for the appeal hearing, the Appeals Board shall proceed to hear testimony from the City's representative, the appellant, and any other competent persons or witnesses.

(2) *Oath of sworn testimony.* The Appeals Board shall consider sworn testimony. The Chairperson or Clerk of the Board shall administer the oath or affirmation to anyone testifying or providing any evidence for the Board to consider.

(3) *Evidence rules.* Cal. Gov't Code § 11513(a), (b), and (c) shall apply to all administrative hearings. At the sole discretion of the Appeals Board Chair, other relevant evidence may be admissible and hearsay evidence may be used for the purpose of supplementing and explaining other evidence.

(4) *Continuances.* Hearings may be continued once for extreme or unusual cause at the request of City staff, the appellant, or upon the Appeals Board's own motion.

(5) *Record of oral evidence at hearing.* The proceedings at the hearing shall be recorded by video and audio or by audio recording. Either party may provide a certified shorthand reporter to maintain a record of the proceedings at the requesting party's own expense.

(6) *Burden of proof.* The accuracy of the notice and order containing the description of the violations and/or public nuisance and the actions required to abate such nuisance or violation is deemed a rebuttable presumption and the burden is on the appellant to provide such facts and information to overcome such presumption by a preponderance of the evidence.

(E) *Rights of parties.*

(1) Each party shall have the following rights among others: To call and examine witnesses on any matter relevant to the issues of the hearing; to introduce documentary and physical evidence; to cross-examine opposing witnesses on any matter relevant to the issues of the hearing; to impeach any witness regardless of which party first called that witness to testify; to rebut the evidence against him or her; to represent himself or herself or to be represented by anyone of his or her choice.

(2) *Use of interpreter.* If a party does not proficiently speak or understand the English language, that party may provide an interpreter, at that party's own cost, to translate for the party. An interpreter shall be:

(a) At least 18 years of age;

(b) Shall not have been a resident of the premises at issue;

(c) Shall not have had any personal relationship with or involvement in the party's case prior to the hearing; and

(d) Shall have the ability to translate the Oath of Sworn Testimony.

(F) *Official notice.* In reaching a decision, the Appeals Board may take official notice, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this state or which may appear in any of the official records of the city or county or any of their departments.

(G) *Hearing Decision.*

(1) After consideration of all testimony and evidence submitted at the hearing, the Appeals Board shall issue a decision to uphold or reverse the notice of violation and citation imposed by the city, and shall state the reasons therefore. The Appeals Board may not reduce, waive or conditionally reduce the fines established by the City.

(2) The City Clerk shall affirm in writing the Appeals Board's decision and reasons, within seven (7) business days to the appellant, and include the ability to exercise appeal rights before the City Council. Notice of the decision will also be provided to the Code Enforcement Division and the Finance Department. Failure of the appellant to receive a properly addressed written decision shall not invalidate any hearing, action, or proceeding conducted pursuant to this chapter.

(3) *Refund.* If the decision of the administrative citation is reversed, a refund of the deposit shall be made by the City in accordance with the City's customary refund and payment process.

(4) *Payment of fine.* If the decision of the administrative citation is upheld, full payment by the appellant is due by the 11th calendar day following the date of the Appeal's Board decision. If a complete and timely appeal hearing request before the City Council has been filed with the City Clerk, the payment shall be suspended until a final decision by the Council has been made. Full payment is not required if a payment plan has been agreed upon with the City. Late charges may be suspended with an agreed upon payment plan, however, will be reinstated upon failure to make a payment.

(a) *Payment Plan.* The appellant may request to pay a fine through a payment plan. The Director of Finance or designee will have the discretion to determine if it is feasible to do so, and may request documentary evidence to make a determination if paying the fine in full would cause undue financial hardship. A payment plan will include a payment processing fee to cover costs for this special service. The processing fee will be set by resolution, and is subject to change from time to time by the City Council.

(H) *Finality of appeal's decision.*

(1) If an appellant is not satisfied with the action of the Appeals Board a request for an appeal hearing before the City Council may be made by filing an appeal request form, and a filing fee established by resolution, with the City Clerk within (10) calendar days following the date of the Board's decision.

(2) If the Appeals Board's decision is not appealed in a timely manner as required, the decision shall be deemed confirmed and final. Full payment of the fine shall immediately be due, unless a payment plan with the City has been agreed upon.

(3) *Setting the appeal hearing.* The process to set an appeal hearing before the City Council will be process as set for an appeal hearing under Section 92.44 (C) of this Chapter.

(4) *Appeal Hearing Procedures.* The City Council shall hear all requests for administrative appeal hearings in accordance with the procedures established under Section 92.44 (D), (E), (F), and (G) of this Chapter; except for the right to appeal the matter further. The term Appeal's Board shall be replaced by the term City Council where applicable.

(5) The City Council of the City of Riverbank is the final reviewing authority and an appeal of the City Council's final decision is not appealable to the Superior Court.

SECTION 2: Severability. If any section, subsection, subdivision, paragraph, sentence, clause, phrase or portion of this chapter, or any part thereof is for any reason held to be unconstitutional, by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase be declared unconstitutional.

SECTION 3: This Ordinance shall become effective thirty (30) days from and after its final passage (05/15/2020), 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 March 24, 2020. 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 14th day of April, 2020; motioned by Councilmember District 3 Cal Campbell, seconded by Councilmember District 2 Cindy Fosi, and moved said ordinance by a City Council roll call vote of *4-0:

AYES: Campbell, Fosi, Vice Mayor Uribe, and Mayor O'Brien
NAYS: None
ABSENT: None
ABSTAINED: None

*Councilmember Barber-Martinez recused herself.

ATTEST:

APPROVED:

(THE ORIGINAL IS FILED WITH THE CITY CLERK)

Annabelle H. Aguilar, CMC
City Clerk

Richard D. O'Brien
Mayor

APPROVED AS TO FORM:

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Tom P. Hallinan, City Attorney