



CITY OF CITRUS HEIGHTS

CITY COUNCIL STAFF REPORT MEMORANDUM

DATE: June 24, 2021

TO: Mayor and City Council Members
Christopher W. Boyd, Interim City Manager

FROM: Jason Russo, Commander, Citrus Heights Police Department
Ryan Jones, City Attorney

SUBJECT: Urgency Ordinance – Fireworks Regulation and Enforcement

Summary and Recommendation

At the City Council meeting on June 10, 2021, the City Council gave direction for staff to draft an urgency ordinance related to the regulation and enforcement of fireworks in the City. At that meeting, staff made a presentation as to the current language in the City's fireworks ordinance (Citrus Heights Municipal Code Chapter 38, Article III). The City's current fireworks ordinance contains certain mandates such as the requirement that all fireworks must be "safe and sane fireworks" as defined in Health and Safety Code § 12500 et seq., and that only licensed vendors may sell fireworks. The Council was particularly interested in the enforcement of the ordinance, and as it is currently written, the City may only cite the individual who ignited the firework. Staff stated that obtaining evidence to show who ignited the firework is difficult. To deal with this enforcement issue, surrounding cities such as Sacramento and Folsom have enacted what is known as a "social host" ordinance. Under this language, the person hosting an event where an illegal firework is being used can be cited even if they are not the individual who lit the firework. This statutory framework provides the City with a greater ability to enforce the fireworks ordinance to assist in making the community safe.

In addition to the social host language, the Council discussed adding a quiet hour provision to the ordinance to cap a time when fireworks can no longer be used. The draft ordinance prohibits the use of fireworks between the hours of 11PM and 9AM.

In light of the extremely dry conditions and resulting fire danger, an urgency exists to enact this ordinance should the Council choose to adopt it. Cities in the Sacramento region have also seen an increase in the amount of illegal fireworks activity, which places an increased risk of fire related property loss, personal injury, and death. Moreover, with the 4th of July holiday coming in less than one month, the timing for adoption of the ordinance is imperative.

An urgency ordinance is initially in force and effect for 45 days from its adoption per Government Code 65858. A 4/5th vote of the City Council is required to enact an urgency ordinance. City Council may extend an urgency ordinance for an additional 10 months and 15 days, and subsequently may extend the ordinance for one year by another four-fifths vote extending the urgency ordinance.

Staff recommends that the City Council adopt Ordinance No. 2021-____, An Urgency Ordinance of the City of Citrus Heights, Amending Chapter 38 of the Citrus Heights Code Relating to Fireworks.

Fiscal Impact

None

Attachment

- (1) Ordinance No. 2021-____ An Urgency Ordinance of the City of Citrus Heights, California, Amending Chapter 38 Citrus Heights Code Relating to Fireworks

ORDINANCE NO. 2021-__

**AN URGENCY ORDINANCE OF THE CITY OF CITRUS HEIGHTS AMENDING
CHAPTER 38 OF THE CITRUS HEIGHTS CODE RELATING TO FIREWORKS**

WHEREAS, the regulation of fireworks is within the purview of the City Council, it is regulated in the Citrus Heights Municipal Code at Chapter 38, Article III.

WHEREAS, the City Council has authority to modify that ordinance and is hereby choosing to do so to help the City in regulating and enforcing illegal usage of fireworks. This urgency ordinance provides an enforcement tool whereby the social host of an event which ignites illegal fireworks can be cited, whereas the previous ordinance only allowed the city to cite the person who personally used the firework illegally. The urgency ordinance also modifies the hours of usage, the fines associated with illegal usage, and updates the hearing procedures.

WHEREAS, the City Council finds that an urgency ordinance related to fireworks is needed for the City for its protection and welfare given the unique fire dangers presented by the drought conditions. Moreover, the usage of illegal fireworks in the region is on the rise and these amendments are critical for the City's ability to regulate and enforce illegal firework activity.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF CITRUS
HEIGHTS DOES ORDAIN AS FOLLOWS:**

The provisions of Chapter 38 of the City of Citrus Heights Code are amended, as follows:

SECTION 1. Amendment. Section 38.67 of the Citrus Heights Code is hereby amended to read as set forth below:

Sec. 38-67 - Definitions

(a) The term "host" in this Section shall mean any of the following:

An owner of any private residential or non-residential real property in the City; or

Any person who has the right to use, possess, or occupy public or private property under a lease, permit, license, rental agreement, or contract; or

Any person who hosts, organizes, supervises, officiates, conducts, or accepts responsibility for a gathering on public or private property.

(b) The term "strictly liable" in this Section shall mean liability for a wrongful act regardless of a person's intent, knowledge, negligence, or lack thereof in committing the wrongful act.

(c) The term "Response costs" means those reasonable and necessary costs directly incurred by public safety personnel for a response to an unpermitted

discharge or illegal storage of fireworks, and include the cost of providing law enforcement, firefighting, and/or other emergency services at the scene of the unpermitted discharge or illegal storage of fireworks including, but not limited to:

Salaries and benefits of public safety personnel for the amount of time spent responding to, remaining at, or otherwise dealing with the unpermitted discharge or illegal storage of fireworks, and the administrative costs attributable to the response(s); and

The cost of any medical treatment to or for any public safety personnel injured responding to, remaining at or leaving the scene of the unpermitted discharge or illegal storage of fireworks; and

The cost of repairing any public safety equipment or property damage, and the cost of the use of any such equipment, in responding to, remaining at, or leaving the scene of an unpermitted discharge or illegal storage of fireworks.

SECTION 2. Amendment. Section 38.68 of the Citrus Heights Code is hereby amended to read as set forth below:

Sec. 38-68. - Exception for certain public displays.

Public displays of fireworks may be given with a written permit issued by the fire chief, or the fire chief's designee, of the fire district within which the display is to be given so long as such display takes place under the supervision and direction of a state-licensed operator.

SECTION 3. Amendment. Section 38.69 of the Citrus Heights Code is hereby amended to read as set forth below:

Sec. 38-69. - Exception for safe and sane fireworks.

It shall not be unlawful to possess, sell within the city those fireworks as are defined and classified as "safe and sane fireworks" in Health and Safety Code § 12500 et seq., during that time period beginning at 12:00 noon on June 28 and ending at 11:00 p.m. on July 5 of the same year.

It shall not be unlawful to use or discharge safe and sane fireworks during either of the following time periods:

Between the hours of noon and 11 p.m. on June 28th, or

Between the hours of 9 a.m. and 11 p.m. from June 29 through July 5 of the same year.

SECTION 4. Amendment. Section 38.70 -77 of the Citrus Heights Code is hereby amended to read as set forth below:

Sec. 38-70. - License to sell required.

It shall be unlawful for any person to sell safe and sane fireworks within the city without a valid business license authorizing such sales.

Sec. 38-71. - Wholesale storage.

The wholesale storage of fireworks shall be unlawful in the city without valid permits for such storage from the fire district in which jurisdiction the storage site is located and the building inspection division. Any such storage is limited to the period from June 1 through July 15 of each year.

Sec. 38-72. - License restricted.

(a) No business license authorizing the sale of safe and sane fireworks shall be issued to any person or group, other than organizations which are exempted from the payment of the bank and corporation tax by Revenue and Taxation Code § 23701a, 23701b, 23701d, 23701e, 23701f, 23701g, 23701h or 23701w, provided that the organization satisfies the following criteria:

- (1) It has its principal and permanent meeting place in the city;
- (2) It has been organized and established in the city for a continuous period of at least one year immediately preceding the application for a permit; and
- (3) It has a bona fide membership of at least 20 members.

(b) No organization shall submit more than two applications for licenses to sell fireworks within the city. Submittal of more than two such applications shall be grounds for denial of all applications.

(c) Business licenses authorizing the sale of safe and sane fireworks shall not be transferable to another organization.

(d) Transfer of temporary stands from the location for which the license was initially issued may be made, provided that the application is made to the finance director on or before June 1, and provided, further, that any such location change has been approved in writing by the fire district having jurisdiction and the chief building official and otherwise complies with all sections of this article regulating the location of temporary fireworks stands.

Sec. 38-73. - License application.

(a) Each application for a business license to sell fireworks shall be in writing to the finance director on forms supplied by the city. Applications shall be received and filed with the finance director on or before the second Tuesday in April of each year.

Applications shall:

- (1) Specify the proposed location of the fireworks stand;
 - (2) Specify the name, address and telephone number of one or more responsible adults who will be in charge of and responsible for the fireworks stand during the period fireworks are sold, displayed or stored;
 - (3) Contain such other information as may be required by the finance director; and
 - (4) Be accompanied by an application fee in the amount of \$25.00.
- (b) The application shall be made in triplicate. The original of the application shall be retained by the finance director, one copy shall be transmitted to the fire district in which jurisdiction the proposed fireworks stand will be located, and one copy shall be sent to the building inspection division.
- (c) The applicant for a license shall be notified by the finance director of the tentative approval or denial of the application for a business license by the first Monday in May of each year. Within two weeks of the notification of the tentative approval of the business

license, the applicant shall furnish to the finance director evidence of insurance providing comprehensive general liability coverage written on an occurrence basis, including but not limited to premises/operations, personal injury, contractual liability, independent contractors, and products/completed operations, with a combined single limit for bodily injury and property damage of \$1,000,000.00. The insurance policy shall designate the city, its officers, agents, employees and volunteers as additional insureds as to products, premises/operations of the named insured. The insurance policy shall further be endorsed to provide that any insurance and/or self-insurance maintained by the city shall apply in excess of, and not contribute with, insurance provided by the applicant. The risk manager shall be the certificate holder. For nonrenewal or cancellation of the insurance policy, 30 days' advance notice shall be provided to the finance director. The insurance policy shall be limited to the specific location for which the business license is issued. The finance director shall issue the license to the applicant upon the presentation of required proof of insurance.

(d) A copy of the business license shall be transmitted to the fire district in which jurisdiction the proposed fireworks stand will be located.

(e) The continued validity of any business license issued pursuant to this article shall be subject to the requirement that at least one of the responsible adults listed in the licensee's application shall attend a fireworks stand operator seminar conducted by the fireworks industry and approved by a fire department or fire district within the county. The failure of a licensee to have such a responsible individual attend such safety seminar shall subject the business license to revocation.

Sec. 38-74. - Denial of license.

(a) The finance director shall issue the business license to sell fireworks unless:

(1) The finance director finds in writing that the applicant has failed to provide sufficient or adequate plans, information or other data necessary to permit a determination respecting compliance with the requirements of this article;

(2) The finance director finds in writing that the applicant is not in compliance with any of the requirements of this article;

(3) The finance director finds in writing that the applicant falls within section 38-78(c); or

(4) Either the fire district in which jurisdiction the proposed stand will be located or the building inspection division fails to approve the application.

(b) Any denial of a license pursuant to this section may be appealed pursuant to the procedures set forth in section 38-79(b).

Sec. 38-75. - Operation of stand.

(a) No person shall sell fireworks to any person under the age of 18 years.

(b) Sale of fireworks shall begin no earlier than 12:00 noon on June 28 and shall not continue after 10:00 p.m. on July 5 of the same year. Sale of fireworks shall be permitted only from 9:00 a.m. to 10:00 p.m. daily.

(c) No person other than the licensee organization shall operate the stand for which the license is issued or share or otherwise participate in the profits of the operation of such stand.

- (d) No person other than the individuals who are members of the licensee organization or the wives, husbands, parents or adult children of such members shall sell or otherwise participate in the sale of fireworks at such stand.
- (e) No person under the age of 18 years shall sell or participate in the sale of fireworks.
- (f) No person shall be paid any consideration by the licensee or any wholesale distributor of safe and sane fireworks for selling or otherwise participating in the sale of fireworks at such stand; provided, however, that compensation may be paid for security personnel during non-sale hours and to the party authorizing location of the stand on its property.
- (g) Fireworks stands shall be removed from the temporary locations by 12:00 noon on July 18, and all accompanying litter shall be cleared from such locations by that date and time.

Sec. 38-76. - Temporary fireworks stand.

All retail sales of safe and sane fireworks shall be permitted only from within a temporary fireworks stand, and the sale from any other building or structure is hereby prohibited. Temporary stands shall be subject to the following:

- (1) No fireworks stand shall be located within 25 feet of any other building or within 100 feet of any gasoline pump or distribution point.
- (2) Fireworks stands need not comply with the provisions of the building code; provided, however, that all stands shall be erected under the supervision of the chief building official, who shall require that stands be constructed in a manner which will reasonably ensure the safety of attendants and patrons and provided, further, that any electrical installations shall comply with all applicable codes.
- (3) No stand shall have a floor area in excess of 750 square feet.
- (4) Each stand shall have at least two exits. Each stand in excess of 40 feet in length shall have at least three exits spaced approximately equidistant apart; provided, however, that in no case shall the distance between exits exceed 20 feet. Exit doors shall be not less than 24 inches wide and six feet two inches in height and shall swing in the direction of exit travel.
- (5) Each stand shall be provided with two 2½-gallon water-type (minimum rating 2A) fire extinguishers in good working order and easily accessible for use in case of fire.
- (6) Fireworks stands shall be located on property zoned SC, LC, GC, AC, TC, M-1 or M-2, or in any other zoning classification if the chief building official certifies in writing to the finance director that the operation of a fireworks location in such other zoning classification will not endanger the health and safety of the community or create a fire hazard to surrounding properties.

Sec. 38-77. - General requirements for licensees.

- (a) Fireworks stands shall not be located closer than 600 feet apart, unless separated by a principal arterial roadway.
- (b) All weeds and combustible material shall be cleared from the location of the stand to a distance of at least 25 feet surrounding the stand.
- (c) No smoking signs shall be prominently displayed on and in the fireworks stand.

- (d) Each stand must have an adult watchman in attendance and in charge thereof when the stand is being used for sale, dispensing or storage of fireworks.
- (e) All unsold stock of fireworks in the hands of the retailer after 10:00 p.m. on July 5 shall be returned to the distributor or wholesaler and removed from the city within ten days. On closing of stands, all litter shall be removed from the premises.
- (f) No fuel-powered generator or similar equipment shall be allowed within 50 feet of a fireworks stand.

SECTION 5. Amendment. Section 38.78 of the Citrus Heights Code is hereby amended to read as set forth below:

Sec 38-78 - Host's liability.

No host shall knowingly allow any person to violate a provision of this chapter on the host's private property.

- (a) The provisions this section shall not apply to:
 - 1. The possession, manufacture, storage, display, sale, use, or discharge of fireworks as permitted under federal or state law;
 - 2. A host who initiates contact with law enforcement or fire officials to assist in removing any person from the property or terminating the activity in order to comply with this chapter, if the request for assistance is made before any other person contacts law enforcement or fire officials to complain about the violation of this chapter.

No host shall aid or abet another person's violation of a provision of this chapter in a public right of way adjacent to the host's private property. A host aids and abets another person's violation of a provision of this chapter if he or she knows of the other person's unlawful purpose and the host specifically intends to, and does in fact, aid, facilitate, promote, encourage, or instigate the other person's commission of that violation.

SECTION 6. Amendment. Section 38.79 of the Citrus Heights Code is hereby amended to read as set forth below:

Sec. 38-79. - Enforcement.

The division of authority for enforcement of this article shall be as follows:

- (1) The chief of any fire protection district or his/her designated representatives shall have authority to enforce this article and issue citations for violations in their respective districts.
- (2) The city fire warden shall have authority to enforce this article in any area lying without any fire protection district.
- (3) The city fire warden shall have authority to enforce this article in any fire protection district upon request of the chief of the fire protection district or the governing body thereof.
- (4) The Chief of Police and his or her designated officers, staff and or code enforcement officers of the city of Citrus Heights.

Sec. 38-80. - Revocation of license; appeal.

(a) The finance director may revoke, immediately and without notice or hearing, the license of any licensee who violates section 38-73(e); 38-75(a), (b) or (e); or 38-77(d). If the revocation occurs between June 22 and July 5, the finance director shall inform the licensee that the licensee may seek review of the finance director's decision by the city manager on the next business day. At the earliest opportunity on the next business day after the revocation, the finance director shall provide the city manager with written notice that a fireworks business license has been revoked, including the name of the licensee and a brief statement of the grounds for revocation. If requested by the licensee, the city manager shall meet with the licensee and the finance director on that day to review the finance director's decision. The decision of the city manager shall be final. If the revocation occurs before or after the specified period, the appeal procedures of subsection (b) of this section shall apply.

(b) The finance director may revoke the license of any licensee who violates any section of this article not specified in subsection (a) of this section. Such revocation shall not take effect for five days, during which time the licensee may seek review of the finance director's decision by submitting a written request for review to the city manager. The finance director shall provide the city manager with written notice that a fireworks license has been revoked, including the name of the licensee and a brief statement of the grounds for revocation. The city manager shall meet with the licensee and the finance director to review the finance director's decision. The decision of the city manager shall be final.

(c) Any licensee whose license has been revoked pursuant to subsection (a) or (b) of this section shall be barred from receiving a license under this article for five years from the date of revocation.

SECTION 7. Amendment. Section 38.81 of the Citrus Heights Code is hereby amended to read as set forth below:

Sec. 38-81. - Penalty for violation.

(a) Any person who allows, permits, aids, or abets any discharge of fireworks (including a public display) without having first obtained a permit therefor from the Fire Marshal, or designee, shall be in violation of this section, unless otherwise permitted by ordinance.

(b) Any person who stores fireworks, including those classified as "safe and sane" by the California State Fire Marshal, except as expressly allowed by this Code, shall be in violation of this section.

(c) Administrative Citation. Upon identification of an unpermitted discharge or illegal storage of fireworks, law enforcement may issue an administrative citation or a notice of violation to all responsible person(s) present at the unpermitted discharge of fireworks. Law enforcement shall notify those responsible persons present at the unpermitted discharge or illegal storage that further violation of the ordinance may result in the issuance of increased fines and assessment of response costs.

The administrative fines shall be:

1. Seven hundred and fifty dollars for the first administrative citation issued to the responsible person.
 2. One thousand dollars for the second and/or each subsequent administrative citation issued to the responsible person.
- (d) Upon identification of an unpermitted discharge of fireworks, law enforcement may also issue a written notice to all other identifiable responsible persons not present at the unpermitted discharge of fireworks that a violation of the fireworks ordinance has occurred and that further violations may result in the assessment of response costs.
- (e) Nothing in this chapter shall be intended to limit any of the penalties provided for under the California Health and Safety Code or Penal Code with regard to the sale, use, possession, delivery, storage, and/or transportation of dangerous fireworks.
- (f) The penalties set forth herein are intended to be nonexclusive and are intended to be in addition to any other remedies provided in this chapter or any other law, statute, ordinance or regulation.
- (g) Any person who violates this section shall be guilty of a misdemeanor.
- (h) Response Costs. A responsible person(s) who has been issued a second administrative citation and/or written notice of violation of this ordinance may be liable for response costs incurred in responding to the unpermitted discharge or illegal storage of fireworks. All responsible persons shall be jointly and severally liable for the response costs incurred in the response and all subsequent responses. The amount of response costs constitutes a debt owed to the city.
- If a responsible person is a juvenile, then the parents or guardians of that juvenile and the juvenile will be jointly and severally liable for the response costs incurred pursuant to this chapter. To incur liability for response costs imposed by this chapter, the responsible person for the unpermitted discharge or illegal storage of fireworks need not be present at the event that causes the response giving rise to the imposition of response costs. This chapter therefore imposes vicarious as well as direct liability upon a responsible person.
- (i) Notice of the response costs shall be served by first-class mail on the hosts liable for such costs. The notice shall contain the following information:
1. The name of the host who is liable for the response costs;
 2. The address of the private property where the incident occurred;
 3. The date and time of the response;
 4. The law enforcement, fire, or other emergency response personnel who responded
 5. An itemized list of the response costs.
- (j) Payment for response costs shall be remitted to the city of Citrus Heights within 30 calendar days of the date of the notice. The payment of any such costs shall be stayed upon the filing of a timely appeal.
- (k) A host charged with response costs may, within 10 calendar days of the date of the notice of response costs, appeal the response costs. The appeal hearing shall be scheduled and conducted in the manner prescribed in this chapter.
- (l) Failure to timely file an appeal constitutes a failure to exhaust available administrative remedies, and bars any further review or administrative appeal of the response costs.
- (m) Violations of this chapter are hereby declared to be a public nuisance.

- (n) Any person who violates a provision of this chapter is liable for civil penalties of not less than \$750 or more than \$25,000 for each day the violation continues.
- (o) All remedies prescribed under this chapter are cumulative and the election of one or more remedies does not bar the city from the pursuit of any other remedy to enforce this chapter.
- (p) Any recipient of an administrative citation may appeal the citation by completing a request for hearing form and returning it to city within thirty days from the date of the administrative citation, together with an advance deposit of the fine.
- (q) Any recipient of an administrative citation may appeal the citation by completing a request for hearing form and returning it to city within thirty days from the date of the administrative citation, together with an advance deposit of the fine.

SECTION 8. Amendment. Section 38.82 of the Citrus Heights Code is hereby amended to read as set forth below:

Sec. 38-82. – Administrative Citation Review.

- (a) Any administrative citation fine, or portion thereof, paid pursuant to this chapter shall be refunded if it is determined, after a hearing, that the person charged in the administrative citation was not responsible for the violation or that there was no violation as charged in the administrative citation.
 - 1. No appeal hearing to contest an administrative citation shall be held unless the fine has been deposited in advance.
 - 2. An appeal hearing shall be set for a date that is not less than fifteen days and not more than sixty days from the date that the request for hearing is filed.
 - 3. The appellant shall be notified of the time and place set for the hearing at least ten calendar days prior to the date of the hearing.
 - 4. At the hearing, the appellant shall have the opportunity to testify and to present evidence concerning the administrative citation.
 - 5. The failure of the appellant to appear at the appeal hearing shall constitute a forfeiture of the fine and a failure to exhaust their administrative remedies.
 - 6. The administrative citation and any additional report submitted by the enforcement officer shall constitute prima facie evidence of the respective facts contained in those documents.
 - 7. The hearing officer may continue the hearing and/or request additional information from the enforcement officer or the recipient of the administrative citation prior to issuing a written decision.
 - 8. Any person aggrieved by an administrative decision of a hearing officer on an administrative citation appeal may obtain review of the administrative decision by filing a petition for review with the City Clerk for an appeal to the City Council

SECTION 9. Amendment. Section 38.83-84 of the Citrus Heights Code is hereby amended to read as set forth below:

Sec. 38-83. - Seizure of fireworks.

The chief or the chief's designee of the fire district in which jurisdiction a fireworks stand is located may seize, take, remove or cause to be removed, at the expense of the licensee, all stocks of fireworks offered or exposed for sale, stored or held in violation of this article when such violation creates an imminent threat to public health or safety.

Sec. 38-84. - Concurrent authorities.

This article is not the exclusive regulation for fireworks within the city. This article shall supplement and be in addition to the other regulatory codes, statutes, and ordinances enacted by the county, the state, or any other legal entity or agency having jurisdiction.

Secs. 38-85—38-110. - Reserved.

SECTION 10. Immediate Effect. Consistent with Government Code Section 65858, this ordinance shall take effect immediately and will last for a period of 45 days. The ordinance may be extended further for a period totaling two years pursuant to action of the City Council consistent with the requirements of California Government Code Section 65858.

SECTION 11. Severability. Should any provision of this Ordinance is found to be unenforceable, each such provision shall be severed, and all remaining portions of this Ordinance shall be enforced to the maximum extent legally permissible.

SECTION 12. Certification. The City Clerk shall certify to the passage and adoption of this Ordinance as required by law.

PASSED AND ADOPTED by the City Council of the City of Citrus Heights this 24th day of June 2021 by the following vote:

AYES: **Council Members:**
NOES: **Council Members:**
ABSENT: **Council Members:**
ABSTAIN: **Council Members:**

Steve Miller, Mayor

ATTEST:

Amy Van, City Clerk