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## **8.22.010 Procedures**

The director of public safety, or their designee, may, upon due application and approval of the City Manager or their designee, issue to properly qualified persons and organizations a permit for the retail sale of safe and sane fireworks. Applicants must be community-benefit, nonprofit associations or nonprofit corporations organized primarily for veteran, patriotic, welfare, religious, youth or eleemosynary purposes. Each such organization must have its principal and permanent meeting place within the corporate boundaries of the city of Lindsay. There shall be no more than one retail stand/booth for each permittee.

(Ord. 591, 2021, Ord. 490 § 1 (part), 1998)

## **8.22.020 Permit Issuance**

Upon verification of the application by the director of public safety or their designee, the City Manager or their designee may authorize a permit to be issued. Such permit shall be issued or denied at the discretion of the City Manager or their designee and subject to such other reasonable conditions as the City manager or their designee deems necessary to protect the public health, safety and welfare. Permits shall be issued only to persons who are twenty-one years of age or older at the time of application.

(Ord 591 2021, Ord. 490 § 1 (part), 1998)

## **8.22.030 Hours Of Operation; Sales; Discharge**

- A. Safe and sane fireworks as defined by Section 12529 of the state of California Health and Safety Code may be sold within the city limits only during the period beginning at twelve noon on the twenty-ninth day of June and ending at eleven-thirty p.m. on the fourth day of July, pursuant to the provisions of this chapter and not otherwise.
- B. Safe and sane fireworks may be discharged (ignited, exploded) within the city only between the hours of five p.m. and eleven p.m. on the fourth day of July.

(Ord. 490 § 1 (part), 1998)

## **8.22.040 Vendor Liability Insurance Required**

Prior to issuance of a permit, the applicant must, at his own expense, secure from, a reputable insurance company permitted to do business in the state, a policy of public liability and property damage insurance, with minimum limits of one hundred thousand dollars/three hundred thousand dollars bodily injury and fifty thousand dollars property damage, and provide evidence of same to the administrative authority.

- A. The policy shall name the city and its officers, agents and employees as additional insured and shall protect them from claims for damage or injury suffered by any person arising from the sale and/or use of safe and sane fireworks.
- B. The insurance shall be in full force and effect on the date of issuance of the fireworks permit and shall expire not less than one year after the last date of fireworks sales established by the city council each year.

(Ord. 490 § 1 (part), 1998)

### **8.22.050 Compliance With Local, State And Federal Regulations**

Permittees must comply with all local, state and federal regulations relating to the sale and disposition of fireworks.

(Ord. 490 § 1 (part), 1998)

### **8.22.060 Temporary Use Permit**

Permittees must obtain a temporary use permit from the Lindsay planning department. Applicants for the temporary use permit must identify the proposed site and show written permission from the owner authorizing use of said site for the stated purpose. Applications for temporary use permits are limited to authorized representatives of the individual nonprofit entities.

(Ord. 490 § 1 (part), 1998)

### **8.22.070 Temporary Sales Tax Permit Required**

Organizations selling fireworks are required to obtain a temporary sales tax permit from the State Board of Equalization.

(Ord. 490 § 1 (part), 1998)

### **8.22.080 Booth Dimensions; Temporary Status Only**

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

- A. No fireworks stand shall be located within twenty-five feet of any building nor within one hundred feet of any gasoline pump or liquid propane storage area.
- B. All stands shall be erected under the supervision of the Lindsay building inspector who shall require that stands be constructed in a manner to reasonably ensure the safety of attendants and customers. Strict adherence to the Lindsay building code need not apply.
- C. No stand shall have a floor area in excess of four hundred square feet. The width and length of each stand shall be a maximum of ten feet by forty feet, respectively.
- D. Each stand must have at least two exits located on separate walls.

- E. Each stand shall keep easily accessible a minimum of one two-and-one-half gallon water pressure type fire extinguisher and one 2A10BC rated dry chemical fire extinguisher and each shall be in good working order and bear a current inspection sticker. Extinguishers must be of a type approved for such use by the Lindsay fire department.

(Ord. 490 § 1 (part), 1998)

### **8.22.090 General Requirements**

- A. Each stand must be located in an area clear of all weeds and combustible materials within fifty feet in all directions.
- B. "NO SMOKING" signs shall be prominently displayed on the front, back and sides of the fireworks stand.
- C. Each stand must be attended at all times by a supervising adult of at least twenty-one years of age whenever fireworks are inside the stand. Remaining inside the stand for any reason between the hours of eleven p.m. to nine a.m. is strictly prohibited.
- D. The sale of fireworks shall not begin before twelve noon on the twenty-ninth day of June and shall not continue beyond eleven p.m. on the fourth day of July.
- E. Hours of operation shall be limited to nine a.m. to eleven p.m. daily.
- F. All unsold stock and any litter shall be removed from the location by five p.m. on the fifth day of July.
- G. The fireworks stand shall be removed from the temporary location by eight p.m. on the sixth day of July, and any resulting litter shall be cleared from said location by said time and date.
- H. Prior to the issuance of a permit, each applicant shall deposit one hundred dollars (cash, certificate of deposit or a surety bond made payable to the city of Lindsay) with the public safety director or his designee, under the provisions of this chapter. Such deposit shall be refundable upon full compliance with the provisions and requirements of this chapter, including but not limited to the removal of the stand and cleaning of the site. In the event the permittee does not so comply in the manner required by the Lindsay building inspector, the city may do so, or cause the same to be done by other persons, and the reasonable cost thereof shall be a charge against the permittee and his deposit or surety bond.

(Ord. 490 § 1 (part), 1998)

### **8.22.100 Operation Of Stand**

- A. No entity other than the organization named on the permit shall operate the stand for which the permit is issued.
- B. No person other than members of the organization named on the permit, or the wives or husbands or members' children at least twenty-one years of age shall sell or otherwise participate in the sale of fireworks at such stand.
- C. No person shall be paid any consideration for selling or otherwise participating in the sale of fireworks at any stand.

(Ord. 490 § 1 (part), 1998)

### **8.22.110 Fireworks Limitations And Prohibitions**

- A. All fireworks sold and/or discharged within the city limits must be of a type permitted by law and described as "Safe and Sane" and shall bear the caption "approved by the State Fire Marshal."
- B. No person shall ignite, light or cause to be lighted any fireworks or other combustible material within the stand or within two hundred feet thereof.
- C. It is unlawful for any person to ignite, explode, project or otherwise fire or use, or permit the ignition, explosion or projection of any fireworks upon, over or onto the property of another, or to ignite, explode, project or otherwise fire or make use of any fireworks within ten feet of any residence, dwelling or other structure.

(Ord. 490 § 1 (part), 1998)

### **8.22.120 Fire Department Inspection**

Fireworks stands will be inspected at least twice daily during the days of operation. Each inspection and report will consist of not less than one-half hour, which time will be billed to the permittee at the time of application in accordance with fees established for said inspections.

(Ord. 490 § 1 (part), 1998)

### **8.22.130 Enforcement; Penalties**

If, in the judgment of the director of public safety or his designee, the construction of the stand, materials offered for sale, or the conduct of the operations therein do not conform to the provisions of this chapter, said director or his designee may order the stand immediately closed.

(Ord. 490 § 2, 1998)

### **8.22.140 Violations**

- A. This chapter authorizes the imposition of administrative fines or penalties on any person who violates any provision of this chapter. Its purpose is to encourage and obtain compliance with the provisions of this chapter for the benefit and protection of the entire community. Said administrative fines are imposed under authority of Government Code Section 53069.4, Health and Safety Code Section 12557, and the police power of the city.
  - 1. The issuance of citations imposing administrative fines may be performed at the discretion of the officials of the City of Lindsay; and the issuance of a citation to any person constitutes but one remedy of the city to redress violations of this code by any person. By adopting this chapter, the city does not intend to limit its authority to employ any other remedy, civil or criminal, to redress any violation of this code by any person, which this city may otherwise pursue.
  - 2. The adoption of this chapter does not in any way affect or repeal the California Fire Code, as adopted by the City of Lindsay.
  - 3. The imposition of fines related to "dangerous fireworks" under this chapter shall be limited to persons, including responsible persons, who possess, sell, use and/or display, or the seizure of, 25 pounds or less (gross weight) of such dangerous fireworks.
  - 4. Fines collected pursuant to this chapter related to "dangerous fireworks" shall not be subject to Health and Safety Code Section 12706, which section provides that certain fines collected by a court of the state be deposited with, and disbursed by, the County Treasurer.

5. The city shall provide cost reimbursement to the State Fire Marshal if required pursuant to regulations to be adopted by the State Fire Marshal addressing the State Fire Marshal's cost for the transportation and disposal of "dangerous fireworks" seized by the city, which costs will be part of any administrative fine imposed. However, such cost reimbursement shall not be required unless and until the State Fire Marshal provides services for the disposal of "dangerous fireworks."
6. Because of the serious threat of fire or injury posed by the use of "dangerous fireworks" that can result from persistent or repeated failures to comply with the provisions of this code and the effect of such conditions or activities on the safety and the use and enjoyment of surrounding properties and to the public health, safety and welfare, this chapter imposes strict civil liability upon the owners of residential real property for all violations of this code existing on their residential real property. Each contiguous use, display and/or possession shall constitute a separate violation and shall be subject to a separate administrative fine.

B. Issuance of Administrative Citations. Whenever a Code Enforcement Officer (CEO) determines that a violation of the code has occurred, the CEO may issue an administrative citation on a city-approved form listing the code violation(s) and the amount of the administrative fine required to be paid by the responsible person(s) in accordance with the provisions of this chapter and Lindsay Municipal Code Title 1, Chapter 1.13.

C. Administrative Fines. Each person who violates any provision of this code, or any provision of state law, as it relates to the possession, use, storage, sale and/or display of "dangerous fireworks" or each person that is considered to be a "responsible person" for a location where dangerous fireworks are possessed, used, stored, sold, or displayed, shall be subject to the imposition and payment of an administrative fine or fines as provided below:

Number of offenses	Amount of Administrative Penalty
First	\$1,000
Second	\$2,000
Third and subsequent violation	\$3,000

1. 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.
2. For purposes of this chapter, in calculating the amount of an administrative fine, the number of offenses shall include every offense documented in the last three years, unless the citation was vacated pursuant to an appeal.

D. Right to an Administrative Hearing. Any citee may contest the violation(s) by filing a request for an administrative hearing on a city-approved form with Code Enforcement within 20 calendar days from the issuance date of a citation. Any applicable administrative hearing fee imposed by the City of Lindsay shall apply at the then applicable rate. If Code Enforcement 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.

E. Administrative Hearing Procedures. The issuance of any citation pursuant to this chapter, the conduct of any administrative hearing therefor, and any other matter of procedure not addressed

herein shall be conducted in accordance with Lindsay Municipal Code Chapter 1.13, except as otherwise provided herein.

F. Administrative Hearing-Mitigating Factors.

1. In cases where the citation is issued to a property owner, a lessee, or a holder of a special events permit, parent or guardian of minors caught with dangerous fireworks, as the responsible person, and the citee was not present on the property at the time the citation was issued, it is a defense to the citation that the citee, as the responsible person, did not explicitly or implicitly consent to or condone the use of dangerous fireworks on his or her property and could not, in spite of the exercise of reasonable care and diligence, control the use of dangerous fireworks on his or her property and/or at his or her special event. The hearing officer may consider the following factors in determining if the citee exercised reasonable care and diligence:
  - a. Whether the citee provided express notice to relevant persons that the use of dangerous fireworks is strictly prohibited at all times;
  - b. Whether, based on the circumstances known to the citee at the time of the violation, the citee could have reasonably foreseen that dangerous fireworks might be used, including, but not limited to, whether the citee, any individual occupying the property, or any individual attending the special event, has received, or otherwise been involved in, any citation issued for the use of dangerous fireworks in the past five years;
  - c. Whether the citee took any reasonable measures designed to ensure that dangerous fireworks would not be used, and if so, the extent and effectiveness of such measures;
  - d. Any other information reasonably related to the citee's culpability, or lack thereof, with respect to permitting or allowing the use of dangerous fireworks.
  - e. If, based on the considerations above, the hearing officer determines that the citee took reasonably prudent action to prevent and discourage the use of dangerous fireworks on the property, then the hearing officer may vacate the citation or modify the amount of the penalty, as appropriate.

(Ord. 490 § 3, 1998)

HISTORY

Amended by Ord. [564](#) on 5/22/2018