



OFFICE OF THE CITY ATTORNEY
Long Beach, California

CHARLES PARKIN
City Attorney

MICHAEL J. MAIS
Assistant City Attorney

ORD-13

June 8, 2021

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Recommendation to declare an ordinance of the City Council of the City of Long Beach adding Long Beach Municipal Code Chapter 8.81 relating to fireworks and by repealing Chapter 16.08.600, and declaring the urgency thereof, read the first time and laid over to the next regular meeting of the City Council for final reading. (Citywide)

DISCUSSION

Pursuant to your request on July 14, 2020, this Ordinance has been prepared and is submitted for your consideration and approval.

Over the past several years, the City of Long Beach has seen a significant increase in the amount of illegal fireworks activity, particularly in the time period leading up to and during both the July 4th and New Year's holiday celebrations and also year-round. Both the Long Beach Police Department and the Long Beach Fire Department have incurred increased costs in order to respond to illegal fireworks calls during these time periods. The increased illegal fireworks activity has caused a significant negative impact on the public health, safety, and general welfare of the City's residents. In particular, there is a disproportionate detrimental impact on veterans and other survivors of PTSD, small children, as well as on pets.

The City's Fireworks Task Force is committed to finding ways to address these issues. Without additional enforcement tools, the City's efforts to mitigate illegal fireworks will be less effective. In addition, recently introduced fireworks legislation may impose a state-mandated local program. During its meeting on October 13, 2020, City Council directed the Fireworks Task Force to develop an amended ordinance to provide additional enforcement tools and an increase in penalties to effectively reduce the negative impact of illegal fireworks on the community. The concept of a social host ordinance for illegal fireworks activities has been used successfully in many jurisdictions in California, including Kern County, Redwood City,

Rohnert Park, Lemoore, and Hanford. State fireworks legislation suggests local jurisdictions may include "social host liability" language in their enforcement and administrative fine ordinances.

The discharge of all fireworks within the City's jurisdiction is not permitted except for the use allowed pursuant to the City Fire Code outlined in Long Beach Municipal Code Chapter 18.48.720. However, California law requires a law enforcement officer to personally observe a person discharging an illegal firework in order to issue a citation for a violation.

This new amended ordinance provides for social host liability for illegal fireworks, allowing fire department, law enforcement and code enforcement personnel to hold the owner or person in charge of real property or conducting an illegal fireworks event responsible for any response costs associated with the presence of emergency personnel, the discharge of illegal fireworks on private property, and any aiding and abetting the discharge of illegal fireworks on an adjacent public right of way.

This ordinance is not meant to place a burden on property owners. Persons cited for this offense can appeal pursuant the relevant provisions of Long Beach Municipal Code Chapter 9.65 et seq. In addition to the appeal process, responsible parties who immediately seek the City's assistance in removing noncompliant individuals will not be considered in violation of this new City ordinance.

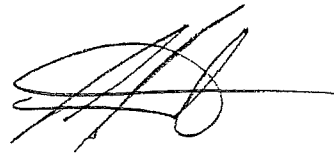
SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,

CHARLES PARKIN, City Attorney

By



Arturo D. Sanchez
Deputy City Attorney

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ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LONG BEACH AMENDING THE LONG BEACH MUNICIPAL CODE BY ADDING CHAPTER 8.81 RELATING TO FIREWORKS; AND BY REPEALING SECTION 16.08.600 OF THE LONG BEACH MUNICIPAL CODE; DECLARING THE URGENCY THEREOF; AND DECLARING THAT THIS ORDINANCE SHALL TAKE EFFECT IMMEDIATELY

WHEREAS, during the past two years, the City of Long Beach has seen an unacceptable increase in the use of illegal fireworks leading to increased strain on emergency services, its dispatch center, and the overall quality of life of its residents.

WHEREAS, during the 24-hour period of July 4, 2020, there were 779 fireworks-related calls to the City's dispatch center alone which was a 67% increase in calls compared to an average day. The City's dispatch center staff received 3,854 calls, which included 9-1-1 calls and calls to the non-emergency line, and which resulted in 1,301 calls-for-service. By comparison, on an average day, the City's dispatch center handles approximately 2,301 calls, both 9-1-1 and non-emergency calls, and roughly 566 calls-for-service. During the peak time of 8:30 p.m. to 9:15 p.m., on the 4th of July, the City's dispatch center received 449 calls, both 9-1-1 and non-emergency calls, which was an average of 10 calls per minute.

WHEREAS, the use of illegal fireworks begins well before July 4th and continues well after New Year's celebrations and has increasingly occurred in times of the year outside of the periods immediately preceding and following these major holidays, the City seeks to take action to protect its residents, their pets, and their property from these illegal explosives.

1 caps, chasers, fountains, smoke sparks, aerial bombs, and firework kits.”

2 B. “Host” means a person who either:

3 1. Is in charge of private property, including, but not
4 limited to, an owner, tenant, landlord, or property manager of the property;

5 or

6 2. Organizes, supervises, officiates, conducts, controls, or
7 is otherwise in charge of the activity on the property.

8 C. “Response costs” means costs associated with law
9 enforcement, fire, medical, or other emergency personnel responding to,
10 remaining at, and leaving the scene of a gathering, including but not limited
11 to:

12 1. Salaries and benefits of law enforcement, fire, medical,
13 or other emergency personnel;

14 2. Administrative costs;

15 3. The cost of any medical treatment of injuries to any law
16 enforcement, fire, medical or other emergency personnel;

17 4. The cost of using any city equipment;

18 5. The cost of repairing any damaged city equipment or
19 property; and

20 6. Any other costs related to enforcement of this article.

21 D. “Dangerous Fireworks” has the same meaning as in California
22 Health and Safety Code Section 12505.

23
24 8.81.020 General prohibition against possession, sale or use of Fireworks.

25 Except as otherwise provided in Chapter 18.48.720, no person shall
26 possess, sell, use, display or explode any Fireworks as defined in section
27 8.81.010 A. or any kind of fireworks, by whatsoever name known, within the
28 City of Long Beach.

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8.81.030 General prohibition against possession, sale or use of Dangerous Fireworks.

No person shall possess, sell, use, display or explode any Dangerous Fireworks within the City of Long Beach.

8.81.040 Seizure of fireworks.

The Police Chief, Fire Chief, or designee, may seize, take, remove or cause to be removed, at the expense of the owner, all fireworks possessed or displayed in violation of this Chapter.

8.81.050 Host's liability.

A. No host shall allow any person to violate a provision of this Chapter on the host's private property, except as provided below in Subsection A.2.

1. Whenever a host is present at the private property while another person violates a provision of this Chapter, there shall be a rebuttable presumption that the host knew or should have known of the violation.

2. The provisions of this Section shall not apply to 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.

B. 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

1 provision of this Chapter if he or she knows of the other person's unlawful
2 purpose and the host specifically intends to, and does in fact, aid, facilitate,
3 promote, encourage, or instigate the other person's commission of that
4 violation.

5
6 8.81.060 Violation - penalty.

7 A. In addition to any other remedy allowed by law, any person
8 who violates a provision of this Chapter is subject to criminal sanctions, civil
9 actions, and administrative penalties pursuant to Chapter 1.32.

10 B. Notwithstanding the provisions of Section 1.32.060 or
11 9.37.120(a), the amount of an administrative penalty for a violation of this
12 Chapter is one thousand dollars (\$1,000.00) for each violation. In the event
13 the fireworks are confiscated and have to be disposed of by the Fire
14 Marshall, there shall be an additional charge of two hundred and fifty dollars
15 assessed for disposal fee. Each day of recurrence of any violation shall
16 constitute a separate offense and may be treated as such pursuant to this
17 Section.

18 C. Any person who violates Sections 8.81.020 or 8.81.030 and
19 any host who violates Section 8.81.050 shall be liable for the response
20 costs relating to the violation. All hosts who violate Section 8.81.050 in the
21 same incident are jointly and severally liable for the response costs relating
22 to the violation. The amount of response costs constitutes a debt owed to
23 the city.

24 1. Notice of the response costs shall be served by first-
25 class mail on the person or hosts liable for such costs. The notice shall
26 contain the following information:

27 a. The name of the person or host who is liable for
28 the response costs;

- b. The address of the private property where the incident occurred;
- c. The date and time of the response;
- d. The law enforcement, fire, or other emergency response personnel who responded; and
- e. An itemized list of the response costs.

2. Payment for response costs shall be remitted to the City of Long Beach within thirty (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.

3. A person or host charged with response costs may, within ten (10) calendar days of the date of the notice of response costs, appeal the response costs in accordance with Chapter 9.65. The appeal hearing shall be scheduled and conducted in the manner prescribed in Chapter 9.65. 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.

D. Violations of this Chapter are hereby declared to be a public nuisance.

E. 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.

Section 2. This ordinance is an emergency ordinance duly adopted by the City Council by a vote of five of its members and shall take effect immediately. The City Clerk shall certify to a separate roll call and vote on the question of the emergency of this ordinance and to its passage by the vote of five members of the City Council of the City of Long Beach, and cause the same to be posted in three conspicuous places in the

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1 City of Long Beach, and it shall thereupon take effect and shall operative immediately.

2 Section 3. This ordinance shall also be adopted by the City Council as a
3 regular ordinance, to the end that in the event of any defect or invalidity in connection
4 with the adoption of this ordinance as an emergency ordinance, the same shall,
5 nevertheless, be and become effective on the thirty-first (31st) day after it is approved by
6 the Mayor. The City Clerk shall certify to the passage of this ordinance by the City
7 Council of the City of Long Beach and shall cause the same to be posted in three-(3)
8 conspicuous places in the City of Long Beach.

9 Section 4. Section 16.08.600 of the Long Beach Municipal Code is
10 hereby repealed.

11 I hereby certify that on a separate roll call and vote which was taken by the
12 City Council of the City of Long Beach upon the request of emergency of this ordinance
13 at its meeting of _____, 2021, the ordinance was declared to be
14 an emergency by the following vote:

15
16 Ayes: Councilmembers: _____

17 _____

18 _____

19 _____

20 Noes: Councilmembers: _____

21 _____

22 Absent: Councilmembers: _____

23 _____

24 Recusal(s): Councilmembers: _____

25 _____

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1 I further certify that thereafter, at the same meeting, upon a roll call and
2 vote on adoption of the ordinance, it was adopted by the City Council of the City of Long
3 Beach by the following vote:

4
5 Ayes: Councilmembers: _____

6 _____

7 _____

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9 Noes: Councilmembers: _____

10 _____

11 Absent: Councilmembers: _____

12 _____

13 Recusal(s): Councilmembers: _____

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I further certify that the foregoing ordinance was thereafter adopted on final reading by the City Council of the City of Long Beach at its meeting of _____, 2021 by the following vote:

Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

Recusal(s): Councilmembers: _____

City Clerk

Approved: _____
(Date)

Mayor