

ORDINANCE NO. 06-2024

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE AMENDING ELK GROVE MUNICIPAL CODE CHAPTER 17.06 FIREWORKS VIOLATIONS RELATED TO DANGEROUS FIREWORKS ENFORCEMENT (CEQA EXEMPT)

WHEREAS, a significant number of people are injured, and significant property damage occurs every year as a result of dangerous fireworks; and

WHEREAS, because 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; and

WHEREAS, the penalties and misdemeanor classification included herein for persons and hosts responsible for dangerous fireworks violations will serve as an additional deterrent to those considering the purchase, sale, possession, or use of illegal fireworks.

NOW, THEREFORE, the City Council of the City of Elk Grove does hereby ordain as follows:

Section 1: Purpose

The purpose of this Ordinance is to amend Elk Grove Municipal Code Chapter 17.06 Fireworks Violations related to dangerous fireworks enforcement.

Section 2: Findings

This Ordinance is adopted based upon the following findings:

California Environmental Quality Act (CEQA)

Finding: The adoption of this ordinance is exempt from environmental review under CEQA pursuant to 14 CCR section 15061(b)(3) of the CEQA Guidelines.

Evidence: CEQA requires analysis of agency approvals of discretionary “projects.” A “project,” under CEQA, is defined as “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” Section 15061(b)(3) of the CEQA Guidelines describes the Common Sense Exemption that CEQA only applies to projects that “have the potential for causing a significant effect on the environment; where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.”

The proposed changes are not related to any specific project or action. Because these changes, individually and cumulatively, do not have the potential to result in individually or cumulatively significant effects on the environment, the actions on the proposed ordinance are exempt from review under CEQA. Therefore, these changes are not subject to CEQA review under the Common Sense Exemption and, therefore, no further environmental review is necessary.

Section 3: Amend Elk Grove Municipal Code Chapter 17.06 Fireworks Violations

Elk Grove Municipal Code Chapter 17.06 is hereby amended as shown in Exhibit A, attached hereto and incorporated herein by reference.

Section 4: Severability.

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 provisions 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 be enforced.

Section 5: No Mandatory Duty of Care

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 6: Savings Clause

The provisions of this ordinance shall not affect or impair an act done or right vested or approved or any proceeding, suit or prosecution had or commenced in any cause before such repeal shall take effect; but every such act done, or right vested or accrued, or proceeding, suit or prosecution shall remain in full force and effect to all intents and purposes as if such ordinance or part thereof so repealed had remained in force. No offense committed and no liability, penalty or forfeiture, either civilly or criminally incurred prior to the time when any such ordinance or part thereof shall be repealed or altered by said Code shall be discharged or affected by such repeal or alteration; but prosecutions and suits for such offenses, liabilities, penalties or forfeitures shall be instituted and proceeded with in all respects as if such prior ordinance or part thereof had not been repealed or altered.

Section 7: Effective Date and Publication

This Ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage, a summary of the ordinance may be published at least five days prior to and 15 days after adoption by the City Council and a certified copy shall be posted in the Office of the City Clerk, pursuant to GC 36933(c)(1).

ORDINANCE: **05-2024**
INTRODUCED: April 24, 2024
ADOPTED: May 8, 2024
EFFECTIVE: June 7, 2024




BOBBIE SINGH-ALLEN, MAYOR of the
CITY OF ELK GROVE

ATTEST:



JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:



JONATHAN P. HOBBS,
CITY ATTORNEY

Date signed: May 9, 2024

EXHIBIT A

Elk Grove Municipal Code Chapter 17.06 Fireworks Violations is amended as follows:

Additions are shown as **bold text**, deletions in ~~strikethrough~~.
Previously adopted text that is unmodified by this amendment is represented by an ellipsis (...).
See prior adopted ordinance for full text.

Chapter 17.06 FIREWORKS VIOLATIONS

Sections:

- 17.06.010 Definitions.
- 17.06.020 Purpose.
- 17.06.030 Issuance of administrative citation.
- 17.06.035 Host Liability.**
- 17.06.040 Fireworks violations – Fines.
- 17.06.050 Appeals.
- 17.06.060 Misdemeanor.**

17.06.010 Definitions.

A. "Citee" means any person served with an administrative citation charging ~~him or her~~ **them** as a responsible person for violation.

B. "Citation" means an administrative citation issued pursuant to this section to remedy a violation.

C. "Code" means the City of Elk Grove Municipal Code.

D. "Code Enforcement Officer" means any employee or agent of the City of Elk Grove designated by the City Council to enforce any provision of this code.

E. "Host" means any person who either:

(i) Owns, leases, rents, or is otherwise in lawful possession of private property within the City of Elk Grove; or

(ii) Organizes, supervises, officiates, conducts, controls, or is otherwise in charge of the activity on the property located within the City of Elk Grove.

~~EF.~~ "Issuance" or "issued" means service of notices as provided in EGMC Section 1.12.150.

~~FG.~~ "Person" means a natural person, **trust, corporation, limited liability company, partnership**, or a **other** 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.

~~GH.~~ "Responsible person" means a person or **host** who causes a code violation to occur, or allows a violation to exist or continue, by ~~his or her~~ **their** 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. There is a rebuttable presumption that the record owner of a residential parcel, as shown on the County's latest equalized property taxes assessment rolls, and a lessee of a residential parcel has a notice of any violation existing on said property.~~ For purposes of this chapter, there may be more than one (1) responsible person for a violation. 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 chapter. 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 chapter, in addition to any citation that may be issued to the offending minor.

- HI. "Violation" or "violates" refers to any violation of any provision of this code.
- IJ. "Dangerous fireworks" are defined as:
1. Any fireworks which contain any of the following:
 - a. Arsenic sulfide, arsenates, or arsenites.
 - b. Boron.
 - c. Chlorates, except:
 - i. In colored smoke mixture in which an equal or greater amount of sodium bicarbonate is included.
 - ii. In caps and party poppers.
 - iii. 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.
 2. Firecrackers.
 3. Skyrockets and rockets, including all devices which employ any combustible or explosive material and which rise in the air during discharge.
 4. Roman candles, including all devices which discharge balls of fire into the air.
 5. Chasers, including all devices which dart or travel about the surface of the ground during discharge.
 6. Sparklers more than ten (10") inches in length or one-fourth of one (0.25") inch in diameter.
 7. 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.
 8. 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.
 9. Torpedoes of all kinds which explode on impact.
 10. Fireworks kits.
 11. 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.
- JK. "Safe and sane fireworks" are as defined in Section 12529 of the Health and Safety Code.

17.06.020 Purpose.

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

B. The issuance of citations imposing administrative fines may be performed at the discretion of the officials of the City authorized hereunder; and the issuance of a citation to any **responsible** person constitutes but one (1) remedy of the City to redress violations of this code by any **responsible** 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 **responsible** person, which this City may otherwise pursue.

C. The imposition of fines related to dangerous fireworks under this chapter shall be limited to **responsible** persons who possess, sell, use and/or display, or the seizure of, twenty-five (25 lbs) pounds or less (gross weight) of such dangerous fireworks.

D. Fines collected pursuant to this chapter related to dangerous fireworks shall not be subject to Section 12706 of the Health and Safety Code, which section provides that certain fines collected by a court of the State be deposited with, and disbursed by, the County Treasurer. However, the City shall provide 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, which costs will be part of any administrative fine imposed. Unless and until said regulations have been adopted by the State of California, the City shall hold in trust Two Hundred Fifty and no/100^{ths} (\$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.

E. This chapter imposes a duty upon the owners of all real property to ensure that there are no violations of this code on such real property. 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.

17.06.030 Issuance of administrative citation.

Whenever a Code Enforcement Officer, police officer, or other person authorized to enforce this code determines that a violation of the code has occurred, the officer 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 EGMC Chapter 1.12.

17.06.035 Host Liability

A. Except as may be permitted by state law or as provided in subsection (E)(2), no Host shall permit or fail to prevent the possession, sale, use, display, explosion or discharge of any dangerous firework on the host’s property, or on an adjacent public or private street or sidewalk, within the City of Elk Grove.

B. A host who permits or fails to prevent any discharge of dangerous fireworks on a property under their possession or control, or on an adjacent public or private street or sidewalk, shall be deemed to have actual or constructive knowledge that dangerous fireworks have been discharged if the host has not taken all reasonable steps to prevent the discharge of dangerous fireworks.

C. There is a rebuttable presumption that the record owner of a private property, as shown on the County's latest equalized property taxes assessment rolls, and a lessee of the property has notice of any violation existing on or from said property.
D. It is the duty of any host to take all reasonable steps to prevent the discharge of dangerous fireworks on the host's property, or on an adjacent public or private street or sidewalk, within the City of Elk Grove.

E. The provisions this section shall not apply to:

1. The possession, manufacture, storage, display, sale, use, or discharge of safe and sane 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, or dangerous fireworks, from the host's 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.

17.06.040 Fireworks violations – Fines.

A. Each person who is found to be in the possession of, use, store, sell and/or display dangerous fireworks in the amount of twenty-five (25 lbs) pounds or less shall be subject to an administrative citation, as set forth herein.

B. Administrative fine(s) issued pursuant to this chapter shall be due and payable in accordance with EGMC Chapter 1.12, and the citee shall be required to abate the violation, and **immediately** surrender all dangerous fireworks to the Code Enforcement Officers, **law enforcement personnel, and/or fire personnel**,—~~immediately~~. For penalties not paid in full within that time, a late charge in the amount set by resolution of the City Council may be imposed and must be paid to the City by the citee.

C. 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.

17.06.050 Appeals.

Appeals for administrative citations issued in conjunction with this chapter will be handled in accordance with EGMC Chapter 1.11.

17.06.060 Misdemeanor.

Any person who violates the provisions of this chapter shall be guilty of a misdemeanor which shall be enforced pursuant to the provisions of EGMC Chapter 1.04.

**CERTIFICATION
ELK GROVE CITY COUNCIL ORDINANCE NO. 06-2024**

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) **ss**
CITY OF ELK GROVE)

I, Jason Lindgren, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing ordinance, published and posted in compliance with State law, was duly introduced on April 24, 2024, and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on May 8, 2024, by the following vote:

AYES: COUNCILMEMBERS: Singh-Allen, Brewer, Robles, Spease, Suen

NOES: COUNCILMEMBERS: None

ABSTAIN: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: None

A summary of the ordinance was published pursuant to GC 36933(c) (1).



**Jason Lindgren, City Clerk
City of Elk Grove, California**