



# City of Stockton

## Legislation Text

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### **CONSIDERATION OF AN ORDINANCE AMENDING TITLE 8, CHAPTER 8.92, SECTIONS 8.92.010 AND 8.92.090 AND ADDING SECTIONS 8.92.140 AND 8.92.150 OF THE STOCKTON MUNICIPAL CODE RELATING TO ADMINISTRATIVE PENALTIES FOR UNLAWFUL FIREWORKS AND STRICT LIABILITY FOR THE UNLAWFUL IGNITION, USE, DISCHARGE, OR DISPLAY OF FIREWORKS BY OTHER PERSONS**

#### RECOMMENDATION

It is recommended that the City Council adopt an urgency ordinance amending Title 8, chapter 8.92 Section 8.92.010 and 8.92.090 and adding sections 8.92.140 and 8.92.150 of the Stockton Municipal Code relating to administrative penalties for unlawful fireworks and strict liability for the unlawful ignition, use, discharge, or display of fireworks by other persons.

#### Summary

Existing City law prohibits the use of illegal fireworks and imposes penalties on the individuals who use them. The proposed ordinance extends that liability to those in charge of property, like property owners and tenants, for violations which occur on their property. The proposed ordinance also revises the penalties for illegal firework use.

#### DISCUSSION

##### Background

The Stockton Municipal Code (SMC) at Chapter 8.92 governs the sale, possession, and use of fireworks. Under current law, a person cannot possess or use dangerous fireworks within the City. Sale and use of "safe and sane fireworks," as defined by state law, is permitted but regulated by the SMC concerning location, dates, and times. The SMC imposes \$1,000 administrative penalties for all relevant violations, including illegal use and sale.

City staff report difficulty in enforcing the current prohibitions on illegal use. Due in large part to the temporary nature of the illegal activity, the high frequency by which the activity occurs on and around July 4th of each year, and number of officers able to respond to calls results in a comparatively low number of issued citations relative to the number of violations reported or heard by residents.

##### Present Situation

On May 18, 2022, the Council Legislative and Environmental Committee and Planning Commission considered an ordinance imposing strict liability upon property owners where the illegal activity occurs and increasing administrative penalties for fireworks violations. Via Motion 2022-05-18-0303 the Committee voted unanimously to recommend the adoption of the proposed ordinance.

The proposed ordinance introduces the following regulations into SMC Chapter 8.92.

### **Social Host Liability**

A social host is defined in proposed subsection 8.92.010(L) as anyone either “in charge of property” (including owners, tenants, landlords, and property managers) or anyone in charge of an activity on a property. These social hosts would be responsible for illegal firework activity which occurs on their property or at their events.

### **Exceptions to Liability**

Proposed section 8.92.140(B) places strict liability on social hosts for illegal firework use on their property, unless the following exceptions apply:

8.92.140(B)(1): An exemption for tenants in multifamily properties where the violations occur in common areas of their property.

8.92.140(B)(2): An exception for social hosts who contact law enforcement or fire officials prior to those officials arriving at a scene or receiving a complaint of a violation.

8.92.140(B)(3): An owner exception where the property owner can demonstrate that at the time of the violation, (a) the property was rented/leased to another person, (b) the owner was not present at the property, and (c) the owner had no knowledge of the violation.

### **Violations in the Right-of-Way**

Proposed section 8.92.140(C) includes a provision that social hosts may also be held liable for violations in the public rights-of-way adjacent to their private property where the social host aided or abetted in the violation. Two of the cities surveyed by Staff included this provision, Sacramento and Long Beach.

### **Penalties for Violation - Fines**

Staff reviewed the administrative penalties of eleven jurisdictions and included the information in “Attachment B”. With the exception of City of Fresno who recently increased its penalties in May of 2022, no surveyed cities levied more than \$1,000 for a first violation. Among the surveyed cities, the most severe penalties for third and further violations were \$5,000, levied by Sacramento and San Bernardino.

The SMC currently imposes \$1,000 fines for violations of the chapter on fireworks. The proposed ordinance at 8.92.090(A) provides for a three-tier system with penalties of \$1,000, \$2,000, and \$3,000 for each successive violation. As drafted, the penalty would apply to all violations of the fireworks chapter: not just social hosts.

### **Penalties for Violation - Cost Recovery**

Consistent with Committee direction, this proposed ordinance includes a definition for “response

costs” at 8.92.010(J) and implements response costs as a penalty at 8.92.090(B). As drafted, the response cost penalty would apply to any person using fireworks unlawfully: not just social hosts. All offenders from a single response would be jointly and severally liable for the cost.

## **Reward Fund**

Proposed section 8.92.150 permits the City Manager to create and administer a reward fund consisting of penalties from fireworks violations, and authorizes rewards of up to \$250 to any person who provides information leading to the identification and successful prosecution of an offender. Of the surveyed cities, San Bernardino uses such a reward fund.

## **Process**

Violation of the social host ordinance, like other violations of the firework ordinance, would typically be enforced through issuance of an administrative citation, not initiation of criminal proceedings: though the ordinance does not foreclose the option for the City to prosecute a violation as a criminal matter.

Non-criminal violations would be served by mail, would specify that offenders have 30 days to pay, and would state that persons charged have 10 days to file a notice of appeal to dispute the violation according to the City’s standard appeal policy at Chapter 1.44. The mailed violation would also include an itemized statement of response costs being charged to the offender.

The notices of violation would, as a practical matter, be mailed to the record owner of the property unless the citing officials, at the time of violation, knew the identity of the tenant or other responsible social host. If an exception applied, a property owner would be able to provide the City a lease agreement or other documents as evidence there was an active lease at the time of violation, and the notice of violation could then be re-issued in the name of the tenant social host.

## **FINANCIAL SUMMARY**

There are no General Fund costs associated with adoption of the ordinance as drafted. Expanding liability to property owners for firework violations may increase the amount of penalties received for those violations. Due to the cost recovery component, the City may recover some costs currently expended during firework enforcement.

Attachment A - Proposed Social Host Ordinance (redline)

Attachment B - Administrative Penalties in Select Jurisdictions

**ORDINANCE NO.**

**AN URGENCY ORDINANCE AMENDING TITLE 8, CHAPTER 8.92, SECTIONS 8.92.010 AND 8.92.090 AND ADDING SECTIONS 8.92.140 AND 8.92.150 OF THE STOCKTON MUNICIPAL CODE RELATING TO ADMINISTRATIVE PENALTIES FOR UNLAWFUL FIREWORKS AND STRICT LIABILITY FOR THE UNLAWFUL IGNITION, USE, DISCHARGE, OR DISPLAY OF FIREWORKS BY OTHER PERSONS**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

**SECTION I. DECLARATION OF URGENCY**

Pursuant to Section 508 of the City of Stockton Charter, the City Council of the City of Stockton has determined that the provisions contained herein are necessary for the immediate preservation of the public peace, health, or safety within the incorporated areas of the City. This determination is based on the following facts and circumstances:

1. Fireworks can cause significant anxiety in adults and children, especially veterans and others with post-traumatic stress, as well as pets; and
2. Fireworks pose a serious risk of fire and the City historically experiences an increase of fire damage as result of the use of fireworks on or around the Fourth of July Holiday; and
3. During the period of June 28 to July 5, 2021, the City experienced three building fires, twenty-four grass fires, twenty-one outside rubbish and trash fires, and numerous other fireworks related fires; and
4. There is a need for deterrence and enforcement tools with which emergency responders can hold those posing a significant risk to public health and safety accountable for the unlawful possession and detonation of fireworks in this City.

**SECTION II. AMENDMENT OF CODE**

Title 8, Chapter 8.92, section 8.92.010 of the Stockton Municipal Code is amended and shall read as follows:

**8.92.010 Definitions.**

The following words and phrases, as used in this chapter, are defined as follows:

- A. "Applicant" means a nonprofit organization that applies for a fireworks sales permit as provided in this chapter.

B. "City Manager" means the City Manager of the City of Stockton and/or designee or designees.

C. "Dangerous fireworks" mean: (1) dangerous fireworks as set forth in California State Fireworks Law (Sections 12505 and 12561 of the Health and Safety Code and the relevant sections of Title 19, Code of Regulations, Subchapter 6), as hereinafter may be amended from time to time, which are hereby incorporated by reference; or (2) safe and sane fireworks, as defined in subsection J below, that have been modified in any respect from their original design

D. "Fire Chief" means the Fire Chief of the City of Stockton or the Fire Chief's designee.

E. "Nonprofit organization" means:

1. Any organization that: (a) has been created for charitable, religious, philanthropic or educational purposes, (b) has obtained tax exempt status from the Internal Revenue Service or the State Franchise Tax Board, (c) has had a Stockton zip code mailing address for more than 12 consecutive months immediately prior to filing an application, and (c) primarily serves City residents;

2. An organization that: (a) itself has not obtained tax exempt status from the Internal Revenue Service or the State Franchise Tax Board but is an integral part of a recognized national organization that has obtained such tax exempt status, (b) has had a Stockton zip code mailing address for more than 12 consecutive months immediately prior to filing an application, and (c) primarily serves City residents;

3. Any organization that: (a) has not obtained tax exempt status from the Internal Revenue Service or the State Franchise Tax Board but has been created for charitable, religious, philanthropic or educational purposes and the net proceeds of such organization are committed to the promotion of the objectives of the organization and not for private gain, (b) has had a Stockton zip code mailing address for more than 12 consecutive months immediately prior to filing an application, and (c) primarily serves City residents.

F. "Permit" means a fireworks sale permit.

G. "Permittee" means an applicant to which the City has issued a permit.

H. "Person" means and includes any individual, firm, partnership, joint venture, association, concern, corporation, state, trust, business trust, receiver, syndicate, or any other group of combination acting as a unit.

I. "Residents of the City" or "City residents" mean and include owners of businesses and/or property in the City as well as occupants of residential dwellings.

J. “Response costs” means costs associated with law enforcement, fire, medical, or other emergency personnel responding to, remaining at, and leaving the scene where dangerous fireworks, or safe and sane fireworks at a prohibited date, time, or location, were used or discharged, including but not limited to:

1. Salaries and benefits of law enforcement, fire, medical, or other emergency personnel;
2. Administrative costs;
3. The cost of any medical treatment of injuries to any law enforcement, fire, medical, or other emergency personnel;
4. The cost of using any city equipment;
5. The cost of repairing any damaged city equipment or property; and
6. Any other costs related to enforcement of this chapter.

~~JK~~. “Safe and sane fireworks” or “fireworks” mean safe and sane fireworks as set forth in California State Fireworks Law (Sections 12529 and 12562 of the Health and Safety Code and the relevant sections of Title 19, Code of Regulations, Subchapter 6), as hereinafter may be amended from time to time, which are hereby incorporated by reference.

L. “Social host” means a person who either:

1. Is in charge of a property, including, but not limited to, an owner, tenant, landlord, or property manager; or
2. Organizes, supervises, officiates, conducts, controls, or is otherwise in charge of the activity on a property.

~~KM~~. “Stockton zip code” means those zip codes as established from time to time by the Fire Chief.

### **SECTION III. AMENDMENT OF CODE**

Title 8, Chapter 8.92, section 8.92.090 of the Stockton Municipal Code is amended and shall read as follows:

#### **8.92.090 Administrative penalties—Appeals.**

A. In addition to any other remedy available at law, any person ~~who possess, uses, stores, and/or displays dangerous fireworks or any person who sells, possesses, uses or discharges safe and sane fireworks on or at dates, times, and/or locations other than~~

~~those permitted by this chapter, or any permittee~~ who violates any provision of this chapter, is subject to an administrative penalty, in an amount as provided below:

1. \$1,000 for a first violation;
2. \$2,000 for a second violation within one year of a previous violation; and
3. \$3,000 for each additional violation within one year of two or more previous violations

~~A. The amount of the administrative penalty shall be \$1,000.00 dollars for each violation.~~

~~B. Appeals of administrative penalties shall be made and heard in accordance with Chapter 1.44 of this Code. (Ord. 2017-03-28-1502 § 3; Ord. 2012-02-28-1601 C.S. § 1)~~

B. Any person who ignites, uses, discharges, or displays any dangerous firework or safe and sane firework in violation of 8.92.015 shall be liable for the response costs relating to the violation. The amount of response costs constitutes a debt owed to the City. All persons, including strictly liable social hosts and those with the care, custody or control of offending minors, who violate this chapter in the same incident are jointly and severally liable for response costs.

C. This chapter may be enforced by the officials provided in section 1.24.020.

D. Violations of this chapter may be served by first-class or certified mail.

E. Payment for violations of this chapter shall be remitted to the City within 30 calendar days of the date of the notice. Payment of any such costs may be stayed upon the filing of a timely appeal.

F. A person charged under this chapter may, within 10 calendar days of the date of the notice, appeal in accordance with Chapter 1.44 of this Code. Failure to timely file an appeal constitutes a failure to exhaust available administrative remedies and bars any further review or appeal of the violation.

G. Violations of this chapter are hereby declared to be a public nuisance.

H. 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 IV. AMENDMENT OF CODE**

Title 8, Chapter 8.92, section 8.92.140 is added to the Stockton Municipal Code and shall read as follows:

**8.92.140 Strict liability for unlawful ignition, use, discharge, or display of fireworks by another person.**

A. Ignition, Use, Discharge, or Display by Minors. Any person having the care, custody, or control of a person under 18 years of age shall be strictly liable for any unlawful ignition, use, discharge, or display of dangerous fireworks or safe and sane fireworks in violation of section 8.92.015. Nothing in this subsection A shall limit the liability of any social host for a violation of this chapter.

B. Social Host Liability. Any social host shall be strictly liable for any unlawful ignition, use, discharge, or display of any dangerous fireworks or safe and sane fireworks in violation of 8.92.015 at their property or gathering; except that:

1. No person who has the right to use, possess or occupy a unit in a multifamily residential property under a lease, rental agreement or contract shall be liable under this subsection B for violations of section 8.92.015 occurring in the common areas of the property.

2. No social host shall be liable under this subsection B 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 the arrival of law enforcement or fire officials to the property and before any other person contacts law enforcement or fire officials to complain about the violation of this chapter.

3. No owner of private property shall be liable under this subsection B for a violation of section 8.92.015 on that property if that owner can demonstrate that at the time of such violation they:

- a. Rented or leased the property to another;
- b. Were not present; and
- c. Had no prior knowledge of the violation.

C. Violations in the Right-of-Way. No social host shall aid or abet another person's violation of a provision of this chapter in a public right-of-way adjacent to the social host's property. A social 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 social host specifically intends to, and does in fact, aid, facilitate, promote, encourage, or instigate the other person's commission of that violation.



**SECTION V. AMENDMENT OF CODE**

Title 8, Chapter 8.92, section 8.92.150 is added to the Stockton Municipal Code and shall read as follows:

**8.92.150 Reward Fund.**

The City Manager may establish a special fund consisting of penalties collected from violations of this chapter to pay rewards in the amount of no more than \$250 to individuals providing information leading to the identification of, and successful criminal or civil action against, any person violating this chapter. The City Manager may create rules concerning administration of the fund and eligibility for rewards.

**SECTION VI. SEVERABILITY**

If any section of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given without the invalid provisions or application, and to this end the provisions of this act are severable.

**SECTION VII. EFFECTIVE DATE**

This ordinance shall take effect and be in full force immediately after its passage.

ADOPTED: \_\_\_\_\_

EFFECTIVE: \_\_\_\_\_

\_\_\_\_\_  
KEVIN J. LINCOLN II  
Mayor of the City of Stockton

ATTEST:

\_\_\_\_\_  
ELIZA R. GARZA, CMC  
City Clerk of the City of Stockton

**Administrative Penalties in Select Jurisdictions**

<b>City</b>	<b>County</b>	<b>1st Offence</b>	<b>2nd Offence</b>	<b>3rd Offence</b>
Anaheim*	Orange	\$1,000	\$2,000	\$3,000
Bakersfield	Kern	\$1,000	\$1,000	\$1,000
Fresno	Fresno	\$2,000	\$3,000	\$5,000
Livermore	Alameda	\$500	\$500	\$500
Lodi	San Joaquin	\$1,000	\$2,000	\$3,000
Long Beach	Los Angeles	\$1,000	\$1,000	\$1,000
Manteca	San Joaquin	\$750	\$1,000	\$1,000
Merced	Merced	\$1,000	\$1,500	\$2,000
Modesto**	Stanislaus	\$1,000	\$1,000	\$1,000
Sacramento	Sacramento	\$1,000	\$2,500	\$5,000
San Bernardino	San Bernardino	\$1,000	\$2,500	\$5,000

\*Fines represent violations for “dangerous fireworks,” violations for improper use of “safe and sane” fireworks are \$250, \$500, \$1,000.

\*\*Fines represent violations for “dangerous fireworks,” violations for improper use of “safe and sane” fireworks are \$250, \$500, \$750.