



STAFF REPORT

DATE: May 28, 2021

TO: Joshua McMurray,
Interim City Manager

Approved and Forwarded to the City Council

FROM: Derek P. Cole, City Attorney

SUBJECT: An Urgency Ordinance of the City of Oakley Repealing and Reenacting Article 1 of Chapter 1 of Title 4 of the Oakley Municipal Code Concerning Fireworks **[FOUR-FIFTHS VOTE REQUIRED]**

Background

The Oakley Municipal Code currently prohibits the manufacturing, sale, use, or discharge of fireworks within City limits. This prohibition is generally enforced through the City’s administrative citation procedures. Fines are authorized in the amount of \$100 for first violations, \$250 for second violations, and \$500 for third and additional violations.

In past Fourth of July holiday cycles, the City has conducted education and outreach campaigns to advise residents of the fireworks prohibition and the intention of the City Police Department to enforce the violation where violations occur. Enforcement has been difficult, however, because Police officers must identify the specific person who is responsible for the violation to properly cite. Given the large gatherings during the Fourth of July holiday, particularly in residential areas, securing such identifications has been difficult. When large crowds gather outside a particular residence, for instance, officers are often unable to determine the specific person responsible for discharging fireworks.

Oakley is not the only city to experience this problem. In response, many California cities have amended their municipal codes to adopt a “social host” approach to enforcement of their fireworks prohibitions. These ordinances not only prohibit discharge of fireworks, but hold homeowners or tenants responsible for the activities occurring at their residences. These cities have found that holding property owners and tenants accountable in this way—which is the common approach for enforcement of many other municipal codes—has resulted in greater compliance.

Proposed Ordinance

The proposed ordinance would repeal the City's existing fireworks prohibition and reenact code language implementing the "social host" approach to enforcement. The prohibition on manufacture, use, and discharge of fireworks would be continued, but liability for such activities would be expanded to include property owners, tenants, or others in control of residences who allow such activities to occur on their properties. Fines would also be increased to \$1,000 per violation, even for first violations.

Those cited for violations would continue to enjoy the due-process protections the Oakley Municipal Code currently provides. (These provisions of the Code are not proposed to be amended.) Among these protections, those cited for would have a right to appeal the citations to a City hearing officer and potentially to the City Council.

If the ordinance is enacted, significant education and outreach to the public will be made in the weeks before the upcoming July Fourth holiday.

Urgency Ordinance: Four-Fifths Vote Required

The proposed ordinance is requested to be adopted as an urgency ordinance due to the short time remaining before the upcoming July Fourth holiday cycle. Generally, ordinances must be adopted following separate readings at two separate meetings. Such ordinances also take effect 30 days after enactment. Urgency ordinances, in contrast, may be enacted at a single meeting, and take effect immediately, when adoption is necessary for the immediate preservation of the public peace, health or safety, and when passed by a four-fifths vote.

Fiscal Impact

The City would incur Police Department staffing and resources costs in enforcing this ordinance. However, it is likely such costs would be incurred even if the proposed ordinance is not adopted as Police officers already enforce the fireworks prohibition as currently adopted. If the proposed ordinance is enacted, a greater share of enforcement costs may be recovered due to the increased fine of \$1,000 per violation.

Recommendation

Staff recommends the City Council enact the Urgency Ordinance of the City of Oakley Repealing and Reenacting Article 1 of Chapter 1 of Title 4 of the Oakley Municipal Code Concerning Firework.

Attachments

1. Proposed Ordinance