



Folsom City Council Staff Report

MEETING DATE:	5/25/2021
AGENDA SECTION:	Consent Calendar
SUBJECT:	Ordinance No. 1313 – An Ordinance of the City of Folsom Adding Section 9.36.220 to the Folsom Municipal Code Pertaining to Host Liability for Fireworks Ordinance Violation (Second Reading and Adoption)
FROM:	Fire Department

RECOMMENDATION / CITY COUNCIL ACTION

Staff recommends the City Council adopt Ordinance No. 1313 – An Ordinance of the City of Folsom Adding Section 9.36.220 to the Folsom Municipal Code Pertaining to Host Liability for Fireworks Ordinance Violation.

BACKGROUND / ISSUE

California-approved “Safe and Sane” fireworks are currently allowed in nearly 300 communities across the state, including all communities in Sacramento County. Safe and Sane fireworks (approved by the State of California) are not explosive, not aerially launched, and are tested and approved by the Office of the State Fire Marshal. Fireworks sales/usage, in the City of Folsom, is currently limited to June 28th through July 4th. The discharge of fireworks within the City of Folsom is not permitted except for the use of safe and sane fireworks as allowed by Section 9.36.040 of the Folsom Municipal Code.

Ordinance No. 1313 was introduced at the May 11, 2021 City Council meeting. No changes have been made to the ordinance since the first reading.

POLICY / RULE

The City Council is vested with authority to adopt Ordinances pursuant to Section 2.12 of the Folsom City Charter. Amendments to the Folsom Municipal Code require approval of the City Council.

ANALYSIS

Similar to many cities in the Sacramento region and throughout California, the City of Folsom has seen an increase in the amount of illegal fireworks activity during the 4th of July period, some resulted in injuries and fires. This can become a great risk to public safety as it impacts the number of 911 calls for service resulting in longer response times for other critical emergencies. At the same time placing an increased risk of fire related property loss, personal injury, and death on the community. Fire danger from illegal fireworks to structures and open space vegetation is real and poses clear threat to the public health, safety, and the general welfare of the City's residents and businesses.

Fire investigators in the Folsom Fire Department, together with Folsom police officers, have been tackling illegal fireworks through public education and awareness campaigns. Educational messaging reminding the public of what types of fireworks are permitted, when and where they can be used, and how to safely use them. Structure and vegetation fires caused by firework activities are generally the result of using fireworks that are explosive or aerially launched. These types of fireworks are illegal in California and are often purchased outside the state or obtained via mail order. Officers from the Fire and Police Departments continue to work towards proactively reducing the number of illegal fireworks in Folsom by stopping the sales of illegal fireworks and responding to firework related complaints during the 4th of July holiday and the weeks leading to it.

State law generally requires that a law enforcement officer personally observe the person discharging illegal fireworks prior to issuing a citation; however, educational and enforcement campaigns against setting off illegal fireworks through a social host ordinance has been successfully implemented in many jurisdictions in California such as, for example, Kern County, Redwood City, Pacifica, Rohnert Park, Cloverdale, Arroyo Grande, Lemoore, and Hanford.

The proposed update to the Folsom Municipal Code provides for social host liability for illegal fireworks, allowing fire department, law enforcement, and code enforcement personnel to hold the owner or person in possession of real property, or the host of a gathering on public or private property, responsible for the discharge of illegal fireworks. Persons cited under the proposed social host ordinance can request a hearing per Section 1.09.030 of the Folsom Municipal Code.

This ordinance would improve enforcement capabilities in several ways. Typically, it is not difficult for enforcement officers to identify the specific location an aerial firework originates. The challenge lies in identifying the specific individual user or possessor of the firework. The "Social Host Liability" ordinance greatly simplifies this difficulty and allows an officer to focus on a particular person (or multiple persons) responsible for the property or event. The adoption of this new ordinance accompanied with social media outreach to inform the public of its existence and potential penalties are likely to have a significant impact on reducing illegal fireworks.

The ordinance is crafted in a manner to avoid narrow application to property owners only. It is designed to apply to any person who has the right to use, possess or occupy a public or private

property under a lease, permit, license, rental agreement, or contract. Additionally, the ordinance could be applied to any person who hosts, organizes, supervises, officiates, conducts, or accepts responsibility for a gathering on public or private property. The ordinance does not apply to responsible parties who immediately seek the City's assistance in removing noncompliant individuals.

FINANCIAL IMPACT

This action has minimal impact on the City's General Fund. Both Fire and Police Department personnel costs for enforcement during the 4th of July holiday are reimbursed by the Greater Sacramento Area Fireworks Task Force (GSAFTF) in cooperation with fireworks manufactures. The addition of section 9.36.220 will improve the ability of enforcement officers to administer violations for illegal fireworks used within the City of Folsom.

ENVIRONMENTAL REVIEW

The proposed action is not a project under Section 15061(b)(3) of the California Environmental Quality Act Guidelines, and as such is exempt from environmental review.

ATTACHMENT

Ordinance No. 1313 – An Ordinance of the City of Folsom Adding Section 9.36.220 to the Folsom Municipal Code Pertaining to Host Liability for Fireworks Ordinance Violation

Submitted,



Ken Cusano, Fire Chief

ORDINANCE NO. 1313

**AN ORDINANCE OF THE CITY OF FOLSOM ADDING
SECTION 9.36.220 TO THE FOLSOM MUNICIPAL CODE PERTAINING TO
HOST LIABILITY FOR FIREWORKS ORDINANCE VIOLATION**

The City Council of the City of Folsom does hereby ordain as follows:

SECTION 1 PURPOSE

The purpose of this Ordinance is to add Section 9.36.220 to Chapter 9.36, "Fireworks", of the Folsom Municipal Code to impose liability upon property owners, residents, and social hosts for violating the Folsom Fireworks Ordinance in order to protect the public's health, life, and safety from the danger of fireworks.

SECTION 2 ADDITION TO CODE

Section 9.36.220 is hereby added to the Folsom Municipal Code to read as follows:

9.36.220 Host liability.

- A. The term "host" in this Section shall mean any of the following:
1. An owner of any private residential or non-residential real property in the City; or
 2. Any person who has the right to use, possess, or occupy public or private property under a lease, permit, license, rental agreement, or contract; or
 3. Any person who hosts, organizes, supervises, officiates, conducts, or accepts responsibility for a gathering on public or private property.
- B. The term "strictly liable" in this Section shall mean liability for a wrongful act regardless of a person's intent, knowledge, negligence, or lack thereof in committing the wrongful act.
- C. Any host shall be strictly liable for any unlawful ignition, explosion, discharge, use, or display of any fireworks in violation of this Chapter on their property or at their gathering, except that 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 for a violation of this Chapter occurring in the common area of the property unless the person hosts, organizes, supervises, officiates, conducts, or accepts responsibility for a gathering at which the violation occurs.

D. Any person having the care, custody, or control of a minor shall be strictly liable for any unlawful ignition, explosion, discharge, use, or display of fireworks by the minor in violation of this Chapter.

E. Except as provided below in subsection F, no host shall permit or allow another person on private property, or at a gathering on public property, where the host knows or reasonably should know that the person is engaged in a violation of this Chapter.

F. The provisions this Section shall not apply to:

1. Conduct involving display, use, or discharge of 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 from the property or gathering in order to comply with this Chapter.

G. Chapter 1.09 and Section 9.36.180 apply to a violation of this Section, except that a violation of this Section shall be subject to a fine of \$1,000.

SECTION 3 SCOPE

Except as set forth in this Ordinance, all other provisions of the Folsom Municipal Code shall remain in full force and effect.

SECTION 4 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 5 SEVERABILITY

If any section, subsection, sentence, clause, or phrase in this Ordinance or any part thereof is for any reason held to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council declares that it would have passed each section irrespective of the fact that any one or more section, subsection, sentence, clause, or phrase be declared unconstitutional, invalid, or ineffective.

SECTION 6 EFFECTIVE DATE

This Ordinance shall become effective thirty (30) days from and after its passage and adoption, provided it is published in full or in summary within twenty (20) days after its adoption in a newspaper of general circulation in the City.

This Ordinance was introduced, and the title thereof read at the regular meeting of the City Council on May 11, 2021, and the second reading occurred at the regular meeting of the City Council on May 25, 2021.

On a motion by Council Member _____ seconded by Council Member _____, the foregoing Ordinance was passed and adopted by the City Council of the City of Folsom, State of California, this ____ day of _____, 2021 by the following roll-call vote:

AYES: Councilmember(s):

NOES: Councilmember(s):

ABSENT: Councilmember(s):

ABSTAIN: Councilmember(s):

Michael D. Kozlowski, MAYOR

ATTEST:

Christa Freemantle, CITY CLERK