

**ORDINANCE NO. 2017-05**

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DINUBA AMENDING TITLE 1, CHAPTER 1.18 AND TITLE 5, CHAPTER 5.34 OF THE DINUBA MUNICIPAL CODE REGARDING THE SALES, STORAGE AND USE OF FIREWORKS AND PROVIDING FOR THE ENACTMENT AND PUBLICATION THEREOF.**

**WHEREAS**, the possession, sale and use of illegal fireworks is a concern and danger to the health, welfare and safety of the residents of Dinuba.

**WHEREAS**, in recent years, the City of Dinuba has witnessed a marked increase in the sales, storage and use of fireworks that are determined by the California State Fire Marshal to be illegal and dangerous.

**WHEREAS**, citizens have been seriously injured by dangerous fireworks.

**WHEREAS**, these dangerous fireworks pose a risk to our community, our citizens and properties located in the City of Dinuba and decrease quality of life for our citizens.

**WHEREAS**, it is necessary to adopt the urgency ordinance that will amend the Municipal Code to address the increased risks to public welfare, health, life property and peace caused by the sales, storage and use of dangerous fireworks.

**NOW, THEREFORE**, The City Council of the City of Dinuba does hereby ordain as follows:

**SECTION I:** Title 1, Chapter 1.18 and Title 5, Chapter 5.34 are hereby amended, shall read as follows:

**CHAPTER 1.18**

**ADMINISTRATIVE CITATIONS**

**1.18.040      Violations, Penalties and Enforcement**

The City Council of the City of Dinuba intends to secure compliance with the provisions of the Dinuba Municipal Code, and State Codes specifically adopted by reference in the applicable chapters of the Dinuba Municipal Code. To the extent that such compliance may be achieved by less drastic methods of enforcement the following alternate, separate and distinct methods may be utilized. Each method set forth herein is intended to be mutually exclusive and does not prevent concurrent or consecutive methods being used to achieve compliance against continuing violations. Each and every day any such violations exist constitutes a separate offense. Notwithstanding any other provision of the Dinuba Municipal Code, and State Codes specifically adopted by reference in the applicable chapters of the Dinuba Municipal Code, each violation of the provisions of this Code may be enforced alternatively as follows:

**A. Infraction.** Any person violating any of the provisions or failing to comply with any of the mandatory requirements of the Dinuba Municipal Code, and State Codes specifically adopted by reference in the applicable chapters of the Dinuba Municipal Code, may be prosecuted for an infraction. Written citations for infractions may be issued by police officers, firefighters, or non-safety employees designated by Dinuba Municipal Code Title 14 and Chapters 1.12, 1.16, 5.34, 6.16, 7.24, 9.44, 9.54, and 17.98.

Fines shall be assessed in the amounts specified as follows:

With the exception of violations that are automatically deemed infractions under the Municipal Code, and with the exception of certain violations pertaining to the possession or use of dangerous or illegal fireworks and graffiti identified in this section, the amount of the fine assessed for each administrative citation issued for the same violation(s) within one calendar year shall be as follows:

- (1) First Administrative Citation---one hundred dollars (\$100.00);
- (2) Second Administrative Citation---two hundred dollars (\$200.00);
- (3) Third Administrative Citation---five hundred dollars (\$500.00).

For violations of the Municipal Code Chapter 5.34 pertaining to the possession, storage or discharge of dangerous or illegal fireworks, the amount of the fine assessed for each administrative citation issued for the same violation within one calendar year shall be one thousand five hundred dollars (\$1,500).

For violations of the Municipal Code Section 9.58.010 et. seq. pertaining to graffiti removal, the amount of the fine assessed for each administrative citation issued for the same violation within one calendar year shall be as follows:

- (1) First Administrative Citation---Five hundred dollars (\$500.00)
- (2) Second administrative citation---One thousand dollars (\$1,000.00)
- (3) Third Administrative Citation---One thousand dollars (\$1,000.00)

**B. Misdemeanor.** In the alternative, with the concurrence of the City Attorney, any person violating any of the provisions or failing to comply with any of the mandatory requirements of the Dinuba Municipal Code, and State Codes specifically adopted by reference in the applicable chapters of the Dinuba Municipal Code, may be prosecuted for a misdemeanor. Written citations for misdemeanors may be issued by police officers, firefighters, or by non-safety employees designated by Dinuba Municipal Code Title 14 and Chapters 1.12, 1.16, 5.34, 6.16, 7.24, 9.44, 9.54, and 17.98. Any person convicted of a misdemeanor under the provisions of the Dinuba Municipal Code, and State Codes specifically adopted by reference in the applicable chapters of the Dinuba Municipal Code, shall be punished by a fine not exceeding one

thousand dollars (\$1,000.00) or imprisonment for a term not exceeding six months, or by both such fine and imprisonment.

C. Civil Action. The City Attorney, or an Attorney hired for such purposes by and at the request of the City Council, may institute an action in any court of competent jurisdiction to restrain, enjoin or abate the condition(s) found to be in violation of the provisions of the Dinuba Municipal Code, or State Codes specifically adopted by reference in the applicable chapters of the Dinuba Municipal Code, as provided by law.

D. Administrative Citation. Upon a finding by the city official vested with the authority to enforce the various provisions of the Dinuba Municipal Code, or State Codes specifically adopted by reference in the applicable chapters of the Dinuba Municipal Code, that a violation exists, he or she may issue an Administrative Citation under the provisions of this Chapter.

## **Chapter 5.34**

### **FIREWORKS**

#### **5.34.005 Definitions**

##### **Response Costs –**

Response costs means those reasonable and necessary costs directly incurred by public safety personnel for a response to an unpermitted discharge or illegal storage of dangerous fireworks, and include the cost of providing law enforcement, firefighting, and/or other emergency services at the scene of the unpermitted discharge or storage of dangerous fireworks including, but not limited to:

A. Salaries and benefits of public safety personnel for the amount of time spent responding to, remaining at, or otherwise dealing with the unpermitted discharge or storage of dangerous fireworks, and the administrative costs attributable to the response(s); and

B. The cost of any medical treatment to or for any public safety personnel injured responding to, remaining at, or leaving the scene of the unpermitted discharge or storage of dangerous fireworks; and

C. The cost of repairing any public safety equipment or property damage, and the cost of the use of any such equipment, in responding to, remaining at, or leaving the scene of an unpermitted discharge or storage of dangerous fireworks.

##### **Responsible Party –**

Responsible party included, but is not limited to:

A. The person(s) who owns, rents, leases, or otherwise has possession of the residence or other private property;

- B. The person(s) in immediate control of the residence or other private property; and
- C. The person(s) who organizes, supervises, sponsors, conducts, allows, controls, or controls access to the discharge or storage of dangerous fireworks.

**5.34.110 General requirements for the sale of fireworks.**

- A. All weeds and combustible material shall be cleared from the location of the stand, including a distance of a least fifty feet surrounding the stand.
- B. "No Smoking" signs shall be prominently displayed on the front, back and sides of the fireworks stand.
- C. Each stand must have an adult in attendance and in charge while fireworks are stored therein. Sleeping or remaining in stand after close of business each day is forbidden.
- D. The sale of fireworks shall not begin before twelve noon on the twenty-eighth of June and shall not continue after ten p.m. on the fourth day of July.
- E. Hours of operation shall be limited to nine a.m. to nine p.m. daily.
- F. All unsold stock and accompanying litter shall be removed from the location by five p.m. on the fifth day of July.
- G. The fireworks stand shall be removed from the temporary location by eight p.m. on the sixth day of July, and all accompanying litter shall be cleared from said location by said time and date.
- H. Prior to the issuance of a permit, each applicant shall file with the city clerk a cash deposit, certificate of deposit or a surety bond made payable to the city in the amount of one hundred dollars to assure compliance with the provisions of this chapter. Such deposit, certificate or bond shall be refundable upon compliance with the provisions and requirements of this chapter, including but not limited to the removal of the stand and the cleaning of the site. In the event the permittee does not so comply or remove the stand or clean the site, in the manner required by the city building inspector, the city may do so, or cause the same to be done by other persons, and the reasonable cost thereof shall be a charge against the permittee and his deposit of surety bond.
- I. All fireworks stands shall have an 8-foot by 8-foot banner, provided by the fireworks manufacturer, stating that the City of Dinuba prohibits the use, sale, storage of illegal fireworks, possible fines and the phone number to report the use, storage or sales of illegal fireworks. The banner shall be displayed on the fireworks stand and in clear view.

**5.34.160 Violation-penalties.**

- A. Any person who allows, permits, aids, or abets any discharge or storage of dangerous fireworks (including a public display) without having first obtain a permit therefore from the Fire Chief or his/her designee, shall be in violation of this chapter, unless otherwise permitted by ordinance.
- B. Administrative citation. Upon identification of an unpermitted discharge or storage of dangerous fireworks, law enforcement officers, firefighters, code enforcement officers, or other authorized city officials, may issue an administrative citation or a notice of violation to all responsible person(s) present at the unpermitted discharge or storage of dangerous fireworks. The citing officer or official shall notify those responsible person(s) present at the unpermitted

discharge or storage of dangerous fireworks that further violation of the ordinance may result in additional fines an assessment of response costs.

C. Nothing in this chapter shall be intended to limit any of the penalties provided for under the California Health and Safety Code or Penal Code with regard to the sale, use, possession, delivery, storage, and/or transportation of dangerous fireworks.

Persons violating this chapter shall be deemed guilty of a misdemeanor and, upon conviction, shall be pucinshed accordingly, as set forth in Section 1.16.015 of this code.

**SECTION II:**

If any section, sub-section, sentence, clause, phrase, or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. City Council hereby declares that it would have adopted the ordinance and each section, sub-section, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, sub-sections, sentences, clauses, phrases, or portions to be declared invalid or unconstitutional.

**SECTION III:** Effective date and publishing of new Ordinance. Before the expiration of twenty (20) days after its adoption, a summary of this Ordinance prepared by the City Attorney shall be published once in the Dinuba Sentinel, a newspaper of general circulation published in the City of Dinuba. This ordinance shall take effect immediately upon its adoption.

The foregoing Ordinance is hereby passed, adopted, and approved by the City Council of the City of Dinuba on this 13th day of June, 2017, by the following vote:

AYES: Reynosa, Launer, Thusu, Morales

NOES: None

ABSENT: Harness



Kuldip Thusu

Vice MAYOR OF THE CITY OF DINUBA

ATTEST:

CITY CLERK