

ORDINANCE NO. 1093

**AN ORDINANCE OF THE CITY OF LOS BANOS
AMENDING TITLE 4, CHAPTER 3 OF THE LOS
BANOS FIRE PREVENTION CODE REGULATING
THE POSSESSION, SALE, AND USE OF
FIREWORKS AND PROVIDING FOR
ADMINISTRATIVE CITATIONS AS MANDATED
BY SB 839**

The City Council of the City of Los Banos does ordain as follows:

Section 1. Section 4-3.16 of the Los Banos Municipal Code is amended and retitled to read as follows:

Sec. 4-3.16 Fireworks - Purpose.

It is the intent of the City to reasonably regulate the sale, use, display, and discharge of dangerous and safe and sane fireworks within the City to protect the public health, safety, and general welfare.

Section 2. Sub Section 4-3.16.1A of the Los Banos Municipal Code is amended to read as follows:

A. "Dangerous fireworks" means any fireworks specified as such in the State Fireworks Law, Section 12505 and 12561 of the Health and Safety Code of the State Of California, and such other fireworks as may be determined to be dangerous by the state fire marshal.

Section 3. Section 4-3.16.2 of the Los Banos Municipal Code is amended to read as follows:

Sec. 4-3.16.2. Possession, Sale, Use, Display, Discharge of Dangerous Fireworks.

A. It shall be unlawful to possess, sell, use, display, or discharge within the City of Los Banos "dangerous fireworks" except as permitted by the provisions of this Chapter.

B. It shall be unlawful for any person having lawful possession or control of private property, including but not limited to an owner, renter, lessee, to permit any person to possess, sell, use, display, or discharge within the City of Los Banos "dangerous fireworks" except as permitted by the provisions of this Chapter.

Section 4. Section 4-3.16.3 of the Los Banos Municipal Code is amended to read as follows:

Sec. 4-3.16.3. Possession, Sale, Use, Display, Discharge of Safe and Sane Fireworks.

It shall be unlawful to possess, sell, use, display, or discharge within the City of Los Banos "safe and sane fireworks" except as permitted by the provisions of this Chapter.

Section 5. Section 4-3.16.4 of the Los Banos Municipal Code is amended to read as follows:

Sec. 4-3.16.4. Permit for Sale of Safe and Sane Fireworks.

It shall be unlawful for any person to possess, store, to offer for sale, or sell safe and sane fireworks within the city of Los Banos without a valid permit from the fire department. The fire chief shall have the authority to adopt reasonable rules and regulations for the granting of permits for the sale of safe and sane fireworks by eligible organizations. The fire chief shall also have the authority to adopt reasonable rules and regulations for the safe operation of firework stands.

Section 6. Sections 4-3.16.12 and 4-3.16.13 of the Los Banos Municipal Code are renumbered to Sections 4-3.16.13 and 4-3.16.14 respectively:

Section 7. Section 4-3.16.3(a) of the Los Banos Municipal Code is renumbered to Section 4-3.16.12 and amended to read as follows:

Sec. 4-3.16.12. Public Display of Fireworks

Public Display of fireworks, as defined in the State Fireworks Law, Section 12500 et seq of the Health and Safety Code, may be conducted subject to all the terms and provisions therein contained provided that a permit therefore has been granted by the fire chief. Such public displays, in addition, shall be subject to all rules and regulations contained in the Fire Code.

The fire chief shall have authority to adopt reasonable rules and regulations for the granting of permits for those activities contained in Section 12640 of the Health and Safety Code of the State of California, including supervised public displays of fireworks by a jurisdiction, fair association, amusement park, other organization, or for the use of fireworks by artisans in pursuit of their trade. Each such use or display shall be handled by a licensed pyrotechnic operator as defined by Section 12527 of the Health and Safety Code of the State of California, and shall be of such character and so located, discharged or fired as in the opinion of the fire chief or his designee, after proper investigation, will not be hazardous or endanger any person.

Section 8. Sections 4-3.17 and 4-3-18 of the Los Banos Municipal Code are repealed.

Section 9. New Sections 4-3-17 and 4-17.1 are added to be numbered and titled and to read as follows:

Sec. 4-3.17 Administrative Enforcement for Fireworks - Purpose and Scope

A. This Section 17 provides for the imposition, enforcement, collection, and administrative review of all administrative fines, related to: (1) the possession, use, storage, sale and/or display of those fireworks classified as “dangerous fireworks” in California Health and Safety Code Sections 12500, *et seq.*, with the exception of a pyrotechnic licensee when operating pursuant to that license; and (2) the sale, use, and/or display of “safe and sane fireworks” as defined in California Health and Safety Code Sections 12500 *et seq.* on or at dates, times and/or locations other than those permitted by the Section 16 of this Chapter 3.

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 person constitutes but one remedy to redress violations of this code by any person. By adopting this Section 17, the city does not intend to limit its authority to employ any other remedy, civil or criminal, to redress any violation of this code or state law by any person.

C. The imposition of fines related to “dangerous fireworks” under this Section 17 shall be limited to persons who possess, sell, use and/or display, or the seizure of, 25 pounds or less (gross weight) of such dangerous fireworks.

D. Fines collected pursuant to this Section 17 related to “dangerous fireworks” shall not be subject to Health and Safety Code Section 12706. However, the city shall provide cost reimbursement to the State Fire Marshal for the transportation and disposal of “dangerous fireworks” seized by the city where applicable. These costs will be included in any administrative fines imposed under this Section 17.

Sec. 4-3.17.1 Enforcement Procedures and Fines

A. Administrative enforcement including the amount of administrative fine for this Section 17 shall be pursuant to the procedures set forth in Chapter 11 of Title 4 of the Los Banos Municipal Code.

Section 10. New Section 4-3-18 is added to be numbered and titled and to read as follows:

Sec. 4-3.18 Manufacturing of Fireworks

The manufacturing of fireworks within the City is prohibited, except under special permit as required by local and state regulations.

Section 11. To the extent that the terms and provisions of this Ordinance may be inconsistent or in conflict with the terms or conditions of any prior City ordinance, motion, resolution, rule or regulation governing the same subject, the terms of this Ordinance shall prevail with respect to the subject matter thereof and such inconsistent or conflicting provisions of prior ordinances, motions, resolutions, rules or regulations are hereby repealed.

Section 12. If any section, subsection, subdivision, paragraph, sentence, clause or phrase added by this Ordinance, or any part thereof, is for any reason held to be unconstitutional or 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 hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses or phrases are declared unconstitutional, invalid or ineffective.

Section 13. This Ordinance shall go into effect and be in full force and operation thirty (30) days after its final passage and adoption. The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted and published once within fifteen days after passage and adoption as may be required by law; or, in the alternative the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the Office of the City Clerk five days prior to the date of adoption of this Ordinance; and, within fifteen days after adoption, the City Clerk shall cause to be published, the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.

Introduced by Council Member Sousa and seconded by Council Member Villalta on the 21st day of April, 2010.

Passed on the 5th day of May, 2010 by the following vote:

AYES: Council Members Faria, Sousa, Stone, Villalta, Mayor Jones
NOES: None
ABSENT: None

APPROVED:

/s/ Tommy Jones
Tommy Jones, Mayor

ATTEST:

/s/ Lucille L. Mallonee
Lucille L. Mallonee, City Clerk