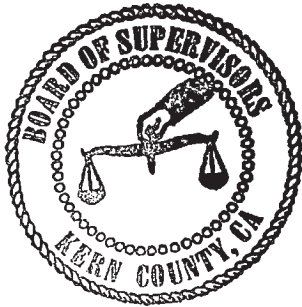


ORDINANCE NO. G-8537

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF KERN, STATE OF CALIFORNIA AMENDING SECTIONS 17.32.026, 17.32.093 AND 17.32.094 AND ADDING SECTION 17.32.027 TO CHAPTER 17.32, TITLE 17 OF THE ORDINANCE CODE OF THE COUNTY OF KERN CONCERNING ILLEGAL FIREWORKS AND ADMINISTRATIVE PENALTIES FOR MULTIPLE TIME OFFENDERS AND SOCIAL HOSTS

The following ordinance, consisting of two (3) sections, was regularly passed and adopted by the Board of Supervisors at a regular meeting held on the 24th day of February, 2015, by the following vote:

AYES: Gleason, Couch, Perez  
NOES: Scrivner, Maggard  
ABSENT: None



(SEAL)

ATTEST:

KATHLEEN KRAUSE  
Clerk of the Board of Supervisors

By , Deputy Clerk

  
Chairman of the Board of Supervisors of  
the County of Kern, State of California

THE BOARD OF SUPERVISORS OF THE COUNTY OF KERN ORDAINS AS FOLLOWS:

*Section 1.* This ordinance shall be published in accordance with Government code section 25124 and it shall take effect and be in full force on and after the 27th day of March, 2015.

*Section 2.* Sections 17.32.026, 17.32.093 and 17.32.094 of Chapter 17.32 of Title 17 of the Ordinance Code are amended as follows:

**17.32.026 Section 109.4 amended – Violation penalties.**

Section 109.4 of *DIVISION II ADMINISTRATION* of the Kern County Fire Code is amended to read as follows:

**109.4 Violation penalties.**

A. Except as provided herein, any person who shall violate a provision of this Code or who shall fail to comply with any of the requirements thereof or fail to comply with any order made thereunder by competent authority, or who shall erect, install, alter, repair or do work which deviates from any specifications or plans submitted to and approved by the fire marshal, or of a permit or certificate issued under provisions of this Code shall for each and every such violation or failure to comply be guilty of a misdemeanor and shall, upon conviction, be subject to a fine of not more than \$500, or by imprisonment in the county jail of the County of Kern for not more than six (6) months, or both such fine and imprisonment.

B. Any person who violates section 17.32.093 or 17.32.027 of this Code shall be assessed an administrative penalty. An administrative penalty under this paragraph shall be a fine not exceeding one thousand five hundred dollars (\$1,500.00) for the first violation; a fine not exceeding two thousand dollars (\$2,000.00) for a second violation within five years from the date of the first violation; and a fine not exceeding two thousand five hundred dollars (\$2,500.00) for each additional violation within five years from the date of the first violation. Pursuant to California Health and Safety Code section 12557, an administrative fine for possession, pursuant to this paragraph, shall only be assessed to a person who possesses or the seizure of twenty-five (25) pounds or less of dangerous fireworks.

C. The administrative penalty for any violation of any other section of this Code shall be as provided in Kern County Ordinance Code Section 8.54.120.

D. Any administrative penalty collected pursuant to this Code shall not be subject to California Health and Safety Code section 12706, but shall be used to reimburse the Office of the State Fire Marshal for the actual cost of the transportation and disposal of illegal fireworks seized under this Code.

E. All enforcement of administrative penalties shall be conducted pursuant to Chapter 8.54 of the Kern County Ordinance Code.

F. Notwithstanding any other provision in this Code, an alternative administrative penalty may be assessed for violation of sections 17.32.093 and 17.32.027 of this Code in the event the responsible party is a juvenile, i.e. under the age of eighteen (18), whereby the juvenile may elect to serve in a community service program, as approved by the County's program

administrator or as designated by the Board of Supervisors, and pay any required program fees.

1) Participation in an approved community service program, through election by the juvenile, will result in a reduction of the administrative penalty of one thousand five hundred dollars (\$1,500.00), commensurate with the hours served based on the current minimum wage applicable in California. The approved community service hours shall be determined, as appropriate, depending on the amount the administrative penalty is reduced by the hearing officer or the Board of Supervisors.

2) The community service program shall retain the discretion to admit, or deny admission to, the program as the standards and program policies applicable to that program allow. Failure to gain admission to a community service program shall restore the original administrative penalty of one thousand five hundred dollars (\$1,500.00), immediately and without further right to appeal.

3) Failure by a juvenile to complete the alternative community service penalty within one (1) calendar year of the issuance of the citation shall result in the penalty being converted to an administrative penalty of one thousand five hundred dollars (\$1,500.00).

4) The option of a juvenile to complete community service for a reduction of the administrative penalty shall not be available for subsequent violations of these sections of this Code.

5) If a citation issued to a juvenile under this section is appealed under any provision of this Code, the administrative penalty shall be deposited with the County as a condition of the appeal. If the appeal is not successful and the juvenile elects to complete an approved community service program in lieu of payment of the administrative penalty, the person that deposited the administrative penalty shall be entitled to a refund of the deposit less actual administrative fees paid by the County to the County's program administrator upon timely and successful completion of the community service program by the juvenile.

G. A conviction for any offense under the provisions of this Code shall not excuse the violation or authorize its continuance and the person or persons convicted of such offense shall be required to correct or remedy any condition or installation which fails to comply with the requirements of this Code with reasonable diligence. Each day that a condition prohibited by the provisions of this Code is caused or permitted to be maintained or continued shall constitute a separate and distinct offense.

### **17.32.093 Fireworks.**

The possession, manufacture, storage, sale, handling and use of fireworks are prohibited.

**EXCEPTIONS:**

1. Storage and handling of fireworks as allowed in California Code of Regulations, Title 19, Div. 1 Chap. 6 Fireworks.
2. Manufacture, assembly and testing of fireworks as allowed in California Code of Regulations, Title 19, Div. 1, Chap. 6 Fireworks.
3. The use of fireworks for display as allowed in Section 5608.
4. The possession, storage, sale, handling and use of safe and sane fireworks when in accordance with section 17.32.094 of this Code.

**17.32.094 Safe and Sane Fireworks.**

**A. General.** Fireworks defined and classified as "Safe and Sane" by California Health and Safety Code section 12529, may be displayed, sold, possessed and used pursuant to the following provisions of this Section, except within the Wildland-Urban Interface Fire Area.

**B. Permits.**

**1) Permit required.** It shall be unlawful for any person to offer for sale any fireworks without first obtaining a permit from the Kern County Fire Department Fire Prevention Office. A permit shall not be issued unless the person applying for the permit has first obtained a license from the California State Fire Marshal in accordance with the provisions of California Code of Regulations, Title 19, Subchapter 6. No one organization may receive more than one permit for fireworks sales during any one calendar year. See Section 105.6.

**2) Non-profit or charitable organization.** A permit for the sale of "Safe and Sane Fireworks" shall be issued only to a nonprofit organization or corporation organized and existing primarily for veterans, patriotic, religious, welfare, charitable or civic-betterment purposes, organized and established in the County for a period of at least one (1) year prior to the filing of an application for permit.

**3) Application for permit.** An application for a permit shall be filed with the Kern County Fire Department Fire Prevention Office between 8:00 A.M. on March 1 and 5:00 P.M. on May 15 of each year. Any permit issued shall be valid only for the premises or location for which it is issued, shall not be transferable, assignable or renewable, and shall be valid only for the times and dates specified in the permit. Each application shall include the following information and documents:

- a) Name and address of the applicant. The applicant must be an officer of the organization.
- b) The purpose of the nonprofit organization or corporation; its principal and permanent meeting place; the approximate

date of its establishment in the County; the total number of its local membership; and the names and addresses of its officers.

c) The location where the applicant will sell safe and sane fireworks, together with a plot plan showing the location of the temporary fireworks stand and all related structures, and written approval and consent to use such location for such use by the owner or lessee.

d) The zoning district applicable to the location where such fireworks are to be displayed and sold.

e) A plot plan showing the location of the temporary fireworks stand, property lines, utilities, location of permanent and temporary structures, driveways and sanitary facilities. Include the latitude and longitude of the fireworks stand, as determined by a Global Positioning System.

f) A one million dollar (\$1,000,000) public liability and a one million dollar (\$1,000,000) property damage insurance policy and products' liability insurance in the amount of one million dollars (\$1,000,000) with riders attached to the policies designating the County of Kern as an additional insured thereunder.

g) A roster of the current officers of the organization.

h) Written authorization from the owner, or person in lawful possession thereof, for the locating of the fireworks booth upon their property.

i) Proof of non-profit or charitable organization status.

### **C. Fireworks stands.**

**1) General.** All retail sales of safe and sane fireworks shall be permitted only from a fireworks stand and the sale from any other facility, building, structure or location is hereby prohibited. Fireworks stands shall be in accordance with Section 5609.3.

**2) Location.** Fireworks stands shall be located:

a) In a C-H zoning district,  
b) In a C-1 zoning district or a zoning district less restrictive than C-1,

c) On publicly owned property, including property owned by school districts, with the approval of the Director of the Planning Department, or

d) On property developed with church facilities, with the approval of the Director of the Planning Department.

e) In accordance with Table A.

**Table A  
Separation Distances for Fireworks Booths**

<b>Exposure</b>	<b>Distance (feet) X .3048 for m</b>
Other fireworks stands	500
Fuel storage, or fuel dispensing pump	100
Fuel storage tank fill connection	100
Repair garage or fixed open flame device	100
Other buildings	50
Street, alley, driveway or curblin	10
Property line	3

**3) Construction and removal.**

a) Fireworks stands shall be constructed in a manner which will reasonably ensure the safety of attendants and patrons.

b) Each fireworks stand must have at least two exits. Each fireworks stand in excess of forty (40) feet (12 192 mm) in length must have at least three (3) exits. Exits shall have a minimum width of thirty (30) inches (76 mm). An aisle with a minimum width of thirty (30) inches (76 mm) shall lead to each exit. Exit doors shall be operable from the inside without the use of a key or any special knowledge or effort.

c) The fireworks stand and all accompanying litter shall be removed from the temporary location by twelve (12) noon on the 15th day of July.

**4) Electrical wiring.**

a) All electrical wiring to or within a fireworks stand shall be installed in accordance with the Kern County Electrical Code and this Section.

b) All wiring in or on a fireworks stand shall be in rigid raceway or electrical metallic tubing (EMT).

c) Electrical wiring within the fireworks stand shall be limited to use for lighting and two (2) duplex receptacles for sales equipment only.

**5) Fire safety.**

a) Each fireworks stand shall be provided with two 2-A rated water base fire extinguishers. Each such extinguisher shall be properly serviced and tagged, and easily accessible for use in case of fire.

b) No person shall light, or cause or permit to be

lighted, any fireworks or any other article or material within any fireworks stand, or within fifty (50) feet (15 240 mm) thereof.

c) Smoking shall not be allowed in any fireworks stand nor within fifty (50) feet (15 240 mm) thereof. "No Smoking" signs shall be prominently displayed.

d) All weeds and combustible material shall be cleared from the location of the fireworks stand, including a distance of at least twenty (20) feet (6096 mm) surrounding the fireworks stand.

e) There shall be available to each fireworks stand, a trash container of sufficient size to accommodate trash generated by the fireworks stand. Each trash container shall be constructed of non-combustible material. Each trash container must be maintained at least twenty (20) feet (6096 mm) from the fireworks stand.

**6) Operations.** Operation of fireworks stands shall be in accordance with the following:

a) There shall be at least one adult in attendance during the open or sale hours of the fireworks stand.

b) No person under age eighteen (18) shall be permitted in a fireworks stand.

c) There shall be at least one (1) adult on the premises as night watchman for security during the hours of storage. Under no circumstances shall the watchman sleep within the fireworks stand. Accommodations for the watchman shall not be located within twenty-five (25) feet (7620 mm) of the fireworks stand.

**D. Sale of safe and sane fireworks.**

**1) Posting of permits.** All permits must be posted in a conspicuous place in or on the fireworks stand.

**2) Sales period.** Fireworks shall be sold only between the hours of 12 noon to 11:00 PM on July 1, and the hours of 6:00 AM to 11:00 PM on July 2 and July 3, and the hours of 6:00 AM on July 4 to 12:01 AM on July 5 of any year; provided, however, in any year in which the Fourth of July falls on a Wednesday, Thursday or Friday, said sales period may be extended by the Board of Supervisors or its appointed designee to allow sales commencing at 12 noon on June 29 based on a showing by an individual charitable organization of unequal sales periods in an adjacent city in the County or in a neighboring city or county. The sales period on the additional days of sale will be limited to 12 noon to 10:00 PM on June 29, and the hours of 9:00 AM to 10:00 PM on June 30 to July 3. Any charitable organization electing to make a request for an extension must meet all requirements to sell safe and sane fireworks and must file an application for the extension with the Chief on or before May 15 of the year the extension is sought. The application shall contain a statement of facts demonstrating the unequal sales periods in an adjacent city in the County or in a

neighboring city or county. Upon receipt of the recommendation of the Chief, the Clerk of the Board of Supervisors shall set the matter before the Board of Supervisors for consideration.

**3) Sale to persons under sixteen (16) prohibited.** No person shall sell or transfer any safe and sane fireworks to a person who is under sixteen (16) years of age from any fireworks stand.

**4) Use of safe and sane fireworks.** Except under Special Effects Permit or Public Display Permit, safe and sane fireworks shall only be used or discharged between the hours of 12 noon on July 1 to 12:01 AM of the next day, and the hours of 9:00 AM to 12:01 AM of the next day on July 2 and July 3, and the hours of 9:00 AM on July 4 to 12:30 AM on the next day, and the hours of 12:00 noon on December 31 to 12:30 AM of the next day of any year.

**5) Seizure of Fireworks.** The fire code official shall have the authority to seize, take and remove fireworks stored, sold, offered for sale, used or handled in violation of the provisions of Title 19 CCR, Chapter 6.

*Section 3.* Section 17.32.027 of Chapter 17.32 of Title 17 of the Ordinance Code is added as follows:

17.32.027 Social Host Liability – Fireworks

A. Findings, intent and purpose:

1) Findings. The Board of Supervisors, pursuant to the police powers delegated to it by the California Constitution, has the authority to enact laws which promote the public health, safety and general welfare of its residents. The illegal possession, manufacture, storage, sale, handling and use of fireworks, as described in section 17.32.093 of this Code, on private property is harmful to and creates a threat to public health, safety, quiet enjoyment of residential property and the general welfare. While the discharge of illegal fireworks can be tied to a particular residence or property, it is often difficult to tell who at the residence or property discharged the illegal firework(s). The owner or tenant of the premises is often in the best position to control, and knows or should know of the possession, manufacture, storage, sale, handling and use of illegal fireworks on his/her residence or commercial premises. The Board of Supervisors finds that in too many cases, persons having possession or control of private property where the illegal possession, manufacture, storage, sale, handling and use of fireworks occurs, have failed to ensure that illegal fireworks are not possessed, manufactured, stored, sold, handled or used on their property. Furthermore, problems associated with the illegal possession, manufacture, storage, sale, handling and use of fireworks are difficult to prevent



and deter unless the Fire Chief, Sheriff, or other designated official of the County of Kern has the legal authority to cite the owner or tenant of the premises where illegal fireworks are possessed, manufactured, stored, sold, handled or used.

2) Intent. The intent of this section is to protect the public health, safety, quiet enjoyment of residential property, and general welfare, rather than to punish. An ordinance that imposes liability on property owners or tenants for allowing the possession, manufacture, storage, sale, handling or use of illegal fireworks on their property is necessary to deter and prevent such possession, manufacture, storage, sale, handling or use and to deter persons who actively and passively aid, allow, or tolerate such activities on their property.

3) Purposes. The purposes of this section are to protect the public health, safety and general welfare, to deter the possession, manufacture, storage, sale, handling or use of illegal fireworks, and to reduce the costs of providing police, fire, and other emergency response services to areas where illegal fireworks are being possessed, manufactured, stored, sold, handled or used. These purposes are implemented by the imposition of a civil money penalty against social hosts (landowners or tenants) who actively or passively aid, allow or tolerate the possession, manufacture, storage, sale, handling or use of illegal fireworks on their property.

4) Declaration. For these reasons, the Board of Supervisors declares that the possession, manufacture, storage, sale, handling or use of illegal fireworks is a threat to the peace, health, safety and general welfare of the public. Such actions constitute a public nuisance as they affect at the same time the entire community of Kern County as well as the neighborhoods in which they occur. The nuisance created thereby presents an immediate threat to the public health and safety, warranting summary abatement by the Fire Chief, Sheriff or other designated County official under Government Code Section 25845, subdivision (a).

B. Definitions. For the purposes of this section, the following terms shall have the following meanings:

1) "Responsible person" means a person or persons with a right of possession of the residence or other private property at which illegal fireworks are possessed, manufactured, stored, sold, handled or used, including but not limited to:

a) Any owner of the residence or other private property, meaning the record owner of the title to property as of the time of the possession, manufacture, storage, sale, handling or use of illegal fireworks, wherever that person or entity resides at that time;

b) A tenant or lessee of the residence or other private property at the time when illegal fireworks are possessed, manufactured, stored, sold, handled or used;

c) The person(s) in charge of the residence or other private property at the time when illegal fireworks are possessed, manufactured, stored, sold, handled or used;

d) The person(s) who organizes, supervises, officiates, conducts or controls the gathering or any other person(s) accepting responsibility for such a gathering where illegal fireworks are possessed, manufactured, stored, sold, handled or used;

A responsible person need not be present at the time illegal fireworks are possessed, manufactured, stored, sold, handled or used in order for the County to impose civil money penalties upon such responsible person. Prior knowledge of the possession, use, manufacture, storage, sale, handling or use of illegal fireworks is not pre-requisite to a finding that any specific individual is a responsible person as defined by this section.

2) "Residence" or "other private property" means a home, yard, apartment, condominium, hotel or motel room, or other dwelling unit, or a hall, meeting room, office, land or building, whether occupied on a temporary or permanent basis, whether occupied as a dwelling, business, or location for parties or other social functions, and whether owned, leased, rented, or used with or without compensation.

C. Responsibility for proper property management. Every owner, occupant, lessee, tenant or holder of any possessory interest of a residence or other private property within the County of Kern is required to maintain, manage and supervise the property and all persons thereon in a manner so as not to violate the provisions of this section. The owner of the property may remain liable for such violations regardless of any contract or agreement with any third party regarding the property.

D. Penalties for violation.

1) It is a civil violation of this section, and a public nuisance constituting an immediate threat to public health and safety warranting summary abatement, for any responsible person to conduct or allow illegal possession, manufacture, storage, sale, handling and use of fireworks on his/her residential or other private property. Such a violation subjects any and all responsible persons to the civil money penalties specified in section 17.32.026, paragraph B of this Code.

2) In the event that a juvenile hosts a gathering at a residence or other private property at which illegal possession, manufacture, storage, sale, handling and use of fireworks occurs, then the parents or guardians of that juvenile will be jointly and severally liable for any penalties incurred pursuant to this section.

3) In the event that a juvenile is found to be a responsible person as defined by this section, the juvenile may elect to serve in a community service program as specified in section 17.32.026 of this Code.

4) The parents or guardians of a juvenile found to be a responsible person as defined by this section, may also elect to have that juvenile serve in a community service program as specified in section 17.32.026 of this Code.

COPIES FURNISHED:
Fire; Co. Council;
CRD; Sheriff
2-25-15 CP