

ORDINANCE 1521

AN ORDINANCE OF THE CITY OF BANNING, CALIFORNIA, AMENDING SECTION 8.20.070 OF THE BANNING MUNICIPAL CODE TO ESTABLISH ADDITIONAL PENALTIES FOR VIOLATING THE CITYWIDE PROHIBITION ON FIREWORKS

WHEREAS, the City of Banning ("City") previously adopted an ordinance, codified as Chapter 8.20 (Fireworks) of Title 8 (Health and Safety) of the Banning Municipal Code, prohibiting the possession and use of fireworks within city limits; and

WHEREAS, the ordinance contained Section 8.20.070 that established a misdemeanor penalty for violation of its provisions with increasing fines for subsequent convictions; and

WHEREAS, the misdemeanor penalty has failed to deter the use and possession of fireworks because it has proven burdensome for law enforcement to effectuate; and

WHEREAS, granting law enforcement officers the authority to issue administrative citations or infractions as an alternative to misdemeanor violations would strengthen their ability to enforce the prohibition of fireworks and improve deterrence in the future.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF BANNING,
CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:**

SECTION 1. CEQA. The adoption of this Ordinance is not a "project" under the California Environmental Quality Act because the Ordinance does not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment, as contemplated by Title 14, California Code of Regulations, Section 15378(b)(4). This Ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") and the City's CEQA Guidelines pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that granting law enforcement the authority to issue administrative citations and infractions in addition to misdemeanor charges for the illegal possession or use of fireworks within city limits will result in a permanent alteration of property or the construction of any new or expanded structures, or have any other direct or indirect physical changes in the environment, and therefore will not have any potential to significantly affect the environment.

SECTION 2. Section 8.20.070 (Violations - Penalty) of Chapter 8.20 (Fireworks) of Title 8 (Health and Safety) of the Banning Municipal Code, is hereby amended to read as follows, with the changes shown through the use of legislative format:

A. In the discretion of the enforcement officer, any person violating the provisions of this chapter may be issued an administrative citation pursuant to Banning Municipal Code Chapter 1.20, an infraction pursuant to Banning Municipal Code 1.28.030, or charged with a misdemeanor.

B. If a person is charged with a misdemeanor, upon conviction that person shall be punished by a fine not less than five hundred dollars and not more than one thousand dollars, or by imprisonment in the county jail for not exceeding one year, or by both such fine and imprisonment.

C. Upon any second or subsequent conviction of the offense, the person shall be punished by the penalties of a fine of one thousand dollars and by imprisonment in the county jail for one year.

D. A person is guilty of a separate offense for each and every day or portion thereof during which he commits, continues or permits a violation of this chapter.

E. 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 and/or transportation of dangerous fireworks.

SECTION 3. Except as otherwise expressly amended by this Ordinance, the provisions of Chapter 8.20 shall remain unchanged and continue in full force and effect.

SECTION 4. SEVERABILITY. If any section, subsection, clause or phase or portion of this code is for any reason declared to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of all other provisions of this ordinance. The Mayor and City Council hereby declare that it would have passed the ordinance codified in this chapter; and each section, subsection, sentence, clause and phrase or portion thereof, irrespective of the fact that any one or more of the sections, subsections, sentences, clauses, or phrases or portions thereof be declared invalid or unconstitutional.

SECTION 5. PUBLICATION, EFFECTIVE DATE. The City Clerk shall certify to the passage and adoption of this Ordinance, and shall make a minute of the passage and adoption thereof in the records and the proceedings of the City Council at which time the same is passed and adopted. This ordinance shall be in full force and effect thirty (30) days after its final passage and adoption, and within fifteen (15) calendar days after its final passage, the City Clerk shall cause a summary of this

Ordinance to be published in a newspaper of general circulation and shall post the same at City Hall, 99 E. Ramsey Street, Banning, California. The City Clerk shall cause the Ordinance to be printed, published, and circulated.

PASSED, APPROVED AND ADOPTED this 22nd day of May, 2018.

George Moyer, Mayor
City of Banning

ATTEST:

Sonja De La Fuente, Deputy City Clerk
City of Banning

APPROVED AS TO FORM:

Kevin G. Ennis, City Attorney
Richards, Watson & Gershon, APC

CERTIFICATION:

I, Sonja De La Fuente, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Ordinance 1521 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 8th day of May, 2018, and was duly adopted at a regular meeting of said City Council on the 22nd day of May, 2018, by the following vote, to wit:

AYES: Council Members Andrade, Franklin, Peterson, Welch, and Mayor Moyer

NOES: None

ABSENT: None

ABSTAIN: None

Sonja De La Fuente, Deputy City Clerk
City of Banning, California