AGENDA ITEM J-03

CITY OF LODI
COUNCIL COMMUNICATION

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AGENDA TITLE: Ordinance No. 1874 entitled, "An Ordinance of the City Council of the City of Lodi Amending Lodi Municipal Code Title 9 – Public Peace, Morals, and Welfare – by Repealing and Reenacting Lodi Municipal Code Chapter 9.12, 'Fires, Firearms and Fireworks,' in Its Entirety; and Further Repealing and Reenacting Chapter 9.13, 'Sale of Fireworks,' in Its Entirety"

MEETING DATE: April 3, 2013

PREPARED BY: City Clerk

RECOMMENDED ACTION: Motion waiving reading in full and (following reading by title) adopting the attached Ordinance No. 1874.

BACKGROUND INFORMATION: Ordinance No. 1874 entitled, "An Ordinance of the City Council of the City of Lodi Amending Lodi Municipal Code Title 9 – Public Peace, Morals, and Welfare – by Repealing and Reenacting Lodi Municipal Code Chapter 9.12, 'Fires, Firearms and Fireworks,' in Its Entirety; and Further Repealing and Reenacting Chapter 9.13, 'Sale of Fireworks,' in Its Entirety," was introduced at the regular City Council meeting of March 20, 2013.

ADOPTION: With the exception of urgency ordinances, no ordinance may be passed within five days of its introduction. Two readings are therefore required – one to introduce and a second to adopt the ordinance. Ordinances may only be passed at a regular meeting or at an adjourned regular meeting; except for urgency ordinances, ordinances may not be passed at a special meeting. Id. All ordinances must be read in full either at the time of introduction or at the time of passage, unless a regular motion waiving further reading is adopted by a majority of all council persons present. ***Cal. Gov't Code § 36934***.

Ordinances take effect 30 days after their final passage. ***Cal. Gov't Code § 36937***.

This ordinance has been approved as to form by the City Attorney.

FISCAL IMPACT: None.

FUNDING AVAILABLE: None required.

Randi Johl
City Clerk

RJ/JMR
Attachment

APPROVED: _____
Konradt Bartlam, City Manager

council/councom/Ordinance3.doc

ORDINANCE NO. 1874

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LODI AMENDING LODI MUNICIPAL CODE TITLE 9 – PUBLIC PEACE, MORALS, AND WELFARE – BY REPEALING AND REENACTING LODI MUNICIPAL CODE CHAPTER 9.12, "FIRES, FIREARMS AND FIREWORKS," IN ITS ENTIRETY; AND FURTHER REPEALING AND REENACTING CHAPTER 9.13, "SALE OF FIREWORKS," IN ITS ENTIRETY

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BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LODI AS FOLLOWS:

SECTION 1. Lodi Municipal Code Title 9 – Public Peace, Morals, and Welfare – is hereby amended by repealing and reenacting Chapter 9.12, "Fires, Firearms, and Fireworks," in its entirety to read as follows:

CHAPTER 9.12

SECTIONS:

9.12.010 Discharge of Weapons and Fireworks – Fires.
9.12.020 Firearms at Lodi Lake Park.

9.12.010 Discharge of Weapons and Fireworks – Fires.

A. Any person who does any of the following without first obtaining a special permit therefore, in writing, from the Chief of Police, which permit shall designate the time and place of such firing or discharging, is guilty of a misdemeanor:

1. Fires or discharges any pistol, gun, rifle, firearm, cannon anvil loaded with powder, bow, airgun or sling, or projects any other dangerous missile within the City

B. Except as provided in Chapter 9.13 of this code, any person who does any of the following without first obtaining a special permit therefore, in writing, from the Fire Chief, which permit shall designate the time and place of such firing or discharging, is guilty of a misdemeanor:

1. Possesses, discharges, or explodes any firecrackers, firerockets, roman candles, chasers, or other fireworks of any nature or kind; or

2. Makes any bonfire of any nature or kind, or who makes any bonfire or burns any hay, straw, rubbish, shavings, or other combustible materials within the City limits.

C. The provisions of this section do not prohibit any person from shooting destructive animals within or upon his own enclosure, nor prohibit the establishment and maintenance of shooting galleries, in accordance with the ordinances of the City.

9.12.020 Firearms at Lodi Lake Park.

Any person, excepting public officers, possessing, carrying or discharging firearms within the boundaries of the lands of the City commonly known and designated as "Lodi Lake Park" is guilty of a misdemeanor.

SECTION 2. Lodi Municipal Code Title 9 – Public Peace, Morals, and Welfare – is hereby amended by repealing and re-enacting Chapter 9.13, "Sale of Fireworks" in its entirety, and shall read as follows:

CHAPTER 9.13

SECTIONS:

9.13.010 Definitions.
9.13.020 Sale and Discharge—Time limit.
9.13.030 Permit Required—Issuance—Limitations.
9.13.040 Permit Application—Regulations—Limitations.
9.13.050 Prerequisites to Issuance of Permit.
9.13.060 Permit Applications—Notice of Acceptance or Rejection—Selection Procedure—Fee.
9.13.070 Suspension of Permit—Appeal Procedure.
9.13.080 Fireworks Sales Stand—Operation.
9.13.090 Fireworks Sales Stands—Requirements.
9.13.100 Fee Imposed upon Permittees.
9.13.110 Temporary Sales Tax Permit—Requirements.
9.13.120 Reserved.
9.13.130 Permissible Locations for Discharge.
9.13.140 Prohibitions on Discharge.
9.13.150 Reserved.
9.13.160 Administrative Penalties—Appeals.
9.13.170 Issuance of Administrative Citation—Contents.
9.13.180 Administrative Fines.
9.13.190 Right to an Administrative Hearing.
9.13.200 Administrative Hearing—Procedures.
9.13.210 Hearing Decision—Right of Appeal.
9.13.220 Financial Reporting.
9.13.230 Provisions Supplementary.

CHAPTER 9.13 FIREWORKS

9.13.010 Definitions.

The following words and phrases, as used in this chapter, are defined as follows:

A. "Citee" means any person served with an administrative citation charging him or her as a responsible person for violation of this chapter.

B. "Citation" means an administrative citation issued pursuant to this chapter to remedy a violation.

C. "City Manager" means the City Manager of the City of Lodi and/or designee or designees.

D. "Code" means the Lodi Municipal Code.

E. "Code Enforcement Officer" (CEO) means any Lodi Firefighter or Lodi Police Officer and those Parks and Recreation employee's designated to have citation powers by the Parks and Recreation Director.

F. "Dangerous fireworks" mean dangerous fireworks as set forth in California State Fireworks Law (Sections 12505 and 12561 of the California Health and Safety Code and the relevant sections of Title 19, Code of Regulations, Subchapter 6), as hereinafter may be amended from time to time, which are hereby incorporated by reference.

G. "Director" means the City Manager and/or designee or designees.

H. "Fire Chief" means the Fire Chief of the City of Lodi or other City Manager designee or designees.

I. "Fireworks Task Force Costs" means those employee salary, overtime and benefit costs, disposal costs, clean up costs, and operations costs incurred by the Lodi Police, Fire, and Parks and Recreation Departments to operate a Task Force to enforce the provisions of this chapter between June 28 and July 7 of each calendar year. Fireworks Task Force Costs shall not exceed $20,000 in the first year after the effective date of this Ordinance, adjusted by The Consumer Price Index, San Francisco, All Consumers, annually thereafter.

J. "Fireworks Wholesaler" means any person who sells fireworks to other wholesalers or retailers for resale; or any person, other than an importer, exporter, or manufacturer, who purchases fireworks from a manufacturer, importer or exporter for resale to a retailer or any other person for resale.

K. "Hearing Officer" means the person appointed by the City Manager to serve as the hearing officer for administrative hearings under this chapter.

L. "Issuance" or "Issued" means any of the following:

a. The preparation and service of an administrative fine citation to a citee in the same manner as a summons in a civil action in accordance with Article III (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedures; or

b. Mailing of administrative fine citation to the citee by certified mail with return receipt to the address shown on the county's latest equalized property taxes assessment rolls; or

c. By personally serving the responsible party by personal delivery of the administrative fine citation or by substituted service. Substituted service may be accomplished as follows:

1. By leaving a copy at the recipient's dwelling or usual place of abode, in the presence of a competent member of the household, and thereafter mailing by First Class Mail, postage pre-paid, a copy to the recipient at the address where the copy was left; or

2. In the event the responsible party cannot be served by First Class Mail, postage pre-paid, or cannot be personally served and has a property manager or rental agency overseeing the premises, substituted service may be made upon the property manager or rental agency or may be affected by posting the property with the administrative fine citation and mailing a copy by First Class Mail, postage pre-paid, to the responsible party in violation at the address of the property where the violation exists.

M. "Lodi City Clerk" or "City Clerk" means the Lodi City Clerk and/or designee or designees.

N. "Nonprofit organization" means: (1) any nonprofit association, charity, church, corporation, club, or society organized primarily for veteran, patriotic, welfare, civic, benevolent, betterment, youth activities, or charitable purposes and has obtained a nonprofit status with either the California Franchise Tax Board or the Internal Revenue Service; or (2) a group which is an integral part of a recognized nonprofit national organization having such tax exempt status; or (3) an organization affiliated with and officially recognized by an elementary, junior high school, high school, school district, and/or college that serves, in whole or in part, the residents of Lodi. To qualify as a "nonprofit" under in this definition, the entity must have a principal and permanent meeting place within the City limits of the City of Lodi.

O. "Person" means a natural person or a legal entity that is also an owner, tenant, lessee, and/or other person with any right to possession or control of the property where a violation of this chapter occurred.

P. "Principal and permanent meeting place" means and includes, but is not limited to, a permanent structure, playing field, geographic area, or service population which resides in or is located within the city limits of the City of Lodi.

Q. "Residents of the City" or "City residents" means and includes owners of businesses and/or property in the city limits as well as occupants of residential dwellings within the city limits of the City of Lodi.

R. "Responsible Person" means a person who causes a code violation to occur or allows a violation to exist or continue, by his or her action or failure to act, or whose agent, employee or independent contractor causes a violation to occur, or allows a violation to exist or continue. There is a rebuttable presumption that the record owner of real property, as shown on the county's latest equalized property taxes assessment rolls, and a lessee of real property has a notice of any violation existing on said property. For purposes of this chapter, there may be more than one responsible person for a violation. Any person, irrespective of age, found in violation of any provision of this chapter may be issued a citation in accordance

with the provisions of this chapter. Every parent, guardian, or other person having the legal care, custody, or control of any person under the age of 18 years, who knows or reasonably should know that a minor is in violation of this chapter, may be issued a citation in accordance with the provisions of this chapter, in addition to any citation that may be issued to the offending minor.

S. "Safe and sane fireworks" (a.k.a. "State-approved fireworks") mean safe and sane fireworks as defined in California State Fireworks Law (Sections 12529 and 12562 of the Health and Safety Code and the relevant sections of Title 19, Code of Regulations, Subchapter 6), as hereinafter may be amended from time to time, which are hereby incorporated by reference.

T. "Violation" or "Violates" refers to any violation of any provision of this chapter..

9.13.020 Sale and Discharge—Time limit.

A. Subject to the provisions of this chapter, the State Fireworks Law, Sections 12500 through 12726 of the California Health and Safety Code, and any regulations promulgated thereunder, safe and sane fireworks, as defined herein, may be sold within the city limits of the City of Lodi only during the period beginning at 12:00 noon on June 28 and shall not continue after 9:00 p.m. on July 4 of the same year. The sale of fireworks shall be permitted only from 12:00 noon to 9:00 p.m. on June 28; from 9:00 a.m. to 9:00 p.m. daily from June 29 through July 4. No fireworks classified as "dangerous fireworks" by Section 12505 of the California Health and Safety Code may be sold within the city limits of the City of Lodi.

B. Subject to the provisions of this chapter, the State Fireworks Law, Sections 12500 through 12726 of the California Health and Safety Code, and any regulations promulgated thereunder, safe and sane fireworks, as defined herein, may be discharged within the city limits of the City of Lodi only during the period beginning at 12:00 noon to 11:00 p.m. on June 28 and from 9:00 a.m. to 11:00 p.m., daily, from June 29 through July 4. No fireworks classified as "dangerous fireworks" by Section 12505 of the California Health and Safety Code may be discharged within the city limits of the City of Lodi.

C. The use or discharge of fireworks within 50 feet of any fireworks sales stand is prohibited.

9.13.030 Permit Required—Issuance—Limitations.

A. Except as provided in this chapter, it is unlawful to offer for sale or sell at retail "safe and sane fireworks" without having first applied for and been issued a permit therefor, in the manner set forth in this chapter.

B. Permits for the sale of safe and sane fireworks shall be issued only to nonprofit organizations, and such fireworks shall be sold only at the outdoor sales stands, as more specifically set forth hereinafter.

C. Permits shall be issued by lottery. The lottery shall take place at a time, place, and manner determined by the Fire Chief in accordance with administrative rules and procedures adopted by the Fire Chief. Each applicant shall receive one lot.

D. No more than six (6) such permits shall be issued and be outstanding at any time.

E. No nonprofit organization may receive more than one (1) permit for the sale of fireworks during any one (1) calendar year. Only one (1) application per school will be allowed. If an organization is affiliated with a recognized educational institution as defined in Section 9.13.010 of this chapter, but maintains a separate tax-exempt status with the Internal Revenue Service or the California Franchise Tax Board, said nonprofit organization shall be allowed a separate application.

F. No nonprofit organization may be awarded a permit for more than two (2) consecutive calendar years.

G. Any applicant that has had a fireworks sales permit suspended or revoked within the prior three (3) calendar years shall be eligible for a fireworks sales permit only upon demonstrating to the Fire Chief's reasonable satisfaction that suitable arrangements have been made to preclude future violations.

9.13.040 Permit Application—Regulations—Limitations.

A. All applications for a permit to sell fireworks may be filed with the Lodi Fire Department between the first business day in March and the last business day in March of each year. All applications shall be accompanied by an application fee in an amount as may be established from time to time by resolution of the City Council.

B. All permit applications must be properly completed and submitted to the Lodi Fire Department before the close of business on the last business day in March. Permit applications that are incomplete or filed late shall not be processed.

C. All permit applications shall be made in writing on a form supplied by the Lodi Fire Department. A completed permit application shall be accompanied by an assurance that, if the applicant is issued a permit, the applicant shall, before receipt of such permit, deliver to the City the following items and/or information:

1. Proper identification and signature of the permit applicant;

2. The proposed location of the fireworks sales stand;

3. A detailed description of the fireworks proposed to be sold;

4. The written consent of the owner of record and/or lessor in control of the property upon which the proposed sales stand will be located;

5. The fireworks distributor's business name, address, telephone number, and person that is the point of contact;

6. A site plan, with dimensions indicating the location of all existing buildings, structures, driveways, flammable materials, and rights of way where the proposed sales stand will be located;

7. Proof of a temporary sales tax permit from the State Board of Equalization or proof of application;

8. A certificate of insurance evidencing current and valid commercial general liability, property damage, and product liability insurance of not less than $2,000,000.00 combined single limit, from a company authorized to transact the business of insurance in the state of California. The insurance company must have an AM Best Rating of not less than A-;

9. The certificate of insurance must provide an appropriate additional insured endorsement to the insurance policy or policies, which names the City of Lodi and its officers, employees, agents, and volunteers as additional insured's under the policy or policies;

10. Proof of a State Fire Marshal retail fireworks license;

11. Such other information and documentation that the Fire Chief in his or her reasonable discretion may require;

12. Temporary Event Permit: Each applicant shall also file a Temporary Event Permit Application as required by Lodi Municipal Code Section 17.78.050 with the Community Development Department;

13. Reimbursement Agreement. An Agreement in a form to be obtained from the City Attorney's Office between the City of Lodi and the Permittee's fireworks distributor, requiring the distributor to indemnify the City for that distributor's pro rata share of all Fireworks Task Force Costs incurred during the period that fireworks may be sold under this chapter.

D. Each applicant shall file with the City, at the time of filing the permit application, a nonrefundable application fee as may be established from time to time by resolution of the City Council. If selected in the lottery as a permittee, a Letter of Credit, certificate of deposit, or a surety bond made payable to the City in the amount as set by resolution of the City Council to assure compliance with the provisions of this chapter shall be filed with the City. 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 sales stand, cleaning of the site, and full passage of the City's final site inspection.

E. The Fire Chief is authorized to promulgate administrative regulations and procedures necessary for the successful and effective implementation of this chapter including rules and procedures governing the submission of applications for permits to sell safe and sane fireworks, inspections of fireworks stands, operation of fireworks stands, and such regulations relating to the sale of safe and sane fireworks as may be

necessary for the protection of life and property. Said administrative regulations and procedures shall be set forth in writing and are subject to prior approval by the City Attorney.

9.13.050 Prerequisites to Issuance of Permit.

Permits to sell fireworks shall only be issued to applicants that meet all of the following qualifications:

A. The applicant must be a nonprofit organization that conducts its activities primarily for the benefit of the City and its residents.

B. The applicant must have been organized and established in the city limits of the City of Lodi for a minimum of one (1) year continuously preceding the filing of application for the permit, and must have a bona fide membership of at least 10 members who are residents of the City.

9.13.060 Permit Applications—Notice of Acceptance or Rejection—Selection Procedure—Fee.

A. The Fire Chief shall notify all applicants by the third Monday in April regarding the results of the lottery and the applicants that have been granted permits, , and said successful lottery/prospective permittees will have until the close of business on the third Monday in May to submit their final paperwork required in subsection C of Section 9.13.040. If any successful lottery/prospective permittee fails to submit its paperwork by the deadline, in any given year, the Fire Chief shall give notice on the third Wednesday in May to the requisite number of substitute lottery applicants that they have until the second Monday in June to submit paperwork as required by subsection C of Section 9.13.040.

B. All applicants that have been granted permits shall, prior to issuance of the permit, pay a permit fee in an amount established from time to time by resolution of the City Council. The permit fee is intended to cover the cost of the first inspection of the fireworks stand. Any necessary subsequent inspections shall be subject to a re-inspection fee in an amount as established from time to time by resolution of the City Council. The Letter of Credit, certificate of deposit, or a surety bond made payable to the City and provided by the applicant pursuant to subsection D of Section 9.13.040 shall be held by the City to be available to cover the cost of removal of the fireworks sales stand and site clean-up in accordance with subsection P of Section 9.13.090.

C. Each applicant that has been granted a permit shall have no less than two (2) members of its sales staff attend an operator safety seminar approved and supervised by the Lodi Fire Department and provided by a licensed firework's wholesaler or the City of Lodi Fire Department.

9.13.070 Suspension of Permit—Appeal Procedure.

A. The Fire Chief may suspend immediately and without notice or hearing the permit of any permittee that violates any California statute, rule, regulation, or this code while operating or preparing to operate a fireworks sales stand during or immediately

preceding any period of sale. If the Fire Chief reasonably believes that a violation has occurred during, immediately preceding, or immediately following the authorized period of sale, he or she shall have power to prohibit the permittee from acquiring a fireworks sales permit in the future.

B. Any decision of the Fire Chief made pursuant to this chapter shall be subject to review by the City Manager. When the decision being appealed affects the current sale period, such review shall be held at the earliest possible time that the permittee, City Manager and the Fire Chief can schedule a hearing for such review. For decisions that do not affect the current sales period, the hearing shall be held within ten (10) City business days after the request for hearing, which request must be made in writing within ten (10) calendar days after notice of the decision being appealed. The City Manager may set aside the decision, modify it, or revoke in his or her reasonable discretion. The decision of the City Manager shall be final.

9.13.080 Fireworks Sales Stand—Operation.

A. It is unlawful for the permittee to allow any person other than individuals who are members and/or volunteers of the permitted nonprofit organization, or the spouses or adult children of such members, to sell or otherwise participate in the sale of fireworks.

B. It is unlawful for the permittee to pay any consideration to any person for selling or otherwise participating in the sale of fireworks.

C. Each sales stand must have a minimum of one (1) adult (21 years of age or older) in attendance and in charge thereof while fireworks are stored therein.

D. No person may sleep in or remain in the stand after close of business.

E. All unsold fireworks must be removed from the stand during non-sale hours and stored in a centrally located locked metal container or other secure and fire safe structure during non-sale periods. Each fireworks distributor shall provide a single storage location and container for storage of its stand's fireworks. The container shall be approved by the Fire Chief and located in an M1 or M2 zoned location approved by the Community Development Director and the Fire Chief.

F. Each sales stand must have on duty at all times during the sales period, at least one (1) salesperson (21 years of age or older) who attended the City of Lodi Fire Department operator safety seminar, required pursuant to subsection C of Section 9.13.060.

G. The sale of fireworks shall conform to restrictions of Section 9.13.020.

H. All unsold fireworks and accompanying litter shall be removed from the sales location by 10:00 p.m. on July 4 and the sales stand shall be removed by 12:00 noon on July 9 of each year.

I. Permittees shall require all persons who appear to be under the age of 30 years to provide proof of age and shall make no sales of fireworks to persons younger than 18 years of age.

9.13.090 Fireworks Sales Stands—Requirements.

All retail sales of "safe and sane fireworks" shall be made only from within a temporary fireworks sales stand, and sales from any other building or structure is hereby prohibited. Fireworks sales stands are subject to the following requirements:

A. Fireworks sales stands shall be put in place by the permittee no earlier than 8:00 a.m. on June 24 of each year.

B. No fireworks sales stand shall be located within 25 feet of any other building or structure, within five feet of any curb line, or within 100 feet of any gasoline pump.

C. The stand must be located on a developed lot with paved parking areas and driveway approaches and the stand itself must be located on a paved surface.

D. The stand may not occupy parking spaces required for the primary use of the site, or interfere with required access, circulation, fire lanes or fire hydrants.

E. No fireworks stand shall be located within 100 feet of any building used as a school, day care, hospital, place of detention, public garage, or place of assembly that can accommodate 300 or more occupants, or within 100 feet of a residential zone. Fireworks stands shall only be permitted in a district zoned CS, C2, CM, M1, or M2 or the PD designation equivalents.

F. A minimum of 20 feet of separation shall be provided between the fireworks sales stand and any vehicle(s), with the exception of loading or unloading the permittee's supply vehicle.

G. No weeds or other combustible materials are permitted within 25 feet of the fireworks sales stand.

H. All fireworks sales stands shall be preapproved by the Fire Chief prior to opening for business.

I. All general use 15 amp and 20 amp receptacles shall have listed ground-fault circuit-interrupter protection and electrical installations shall be approved by the City Building Inspector and/or the Fire Department prior to the stand opening for business.

J. All fireworks sales stands shall be built and maintained in accordance with the safety requirements of the City prior to opening for business.

K. No generators shall be allowed within 25 feet of any fireworks sales stand.

L. Smoking and the consumption of alcoholic beverages shall not be allowed within 50 feet of any fireworks sales stand and "No Smoking" signs shall be displayed on and in the fireworks sales stand.

M. Permittees shall place no signs in the public right-of-way.

N. Each fireworks sales stand shall be provided with two (2), two-and-one-half (2.5) gallon pressurized water type fire extinguishers, or two (2) 2A10BC dry chemical/powder type fire extinguishers, in good working order, and easily accessible for use in case of fire.

O. The fireworks sales stand shall be removed from the temporary location by 12:00 p.m. on July 9 of each year, all unsold fireworks by 10:00 p.m. July 4, and any accompanying litter shall be cleared from the location by 5:00 p.m. on July 5. If the permittee does not remove the stand and/or clean the sales site as required by this chapter, the City may do so, or cause the same to be done, and the reasonable cost thereof shall be charged against the permittee, and his or her deposit, certificate, or surety. In addition, any permittee found to be in violation of this section shall be subject to an administrative penalty imposed in accordance with Section 9.13.160.

P. The permit to sell fireworks shall be displayed in a prominent place in the fireworks sales stand and shall at all times be visible to members of the public.

Q. Each permittee under this chapter shall display a poster measuring 18 inches by 32 inches that shall be posted at the point of sale of the fireworks and hand out a flyer with each sale to notify purchasers of all applicable restrictions established by this chapter. All information shall be provided in English and Spanish. The Permittee shall provide the posters and fliers, which shall be approved by the Fire Chief prior to the permittee opening for business.

R. Fireworks Stands shall be either 24 or 32 feet long by 8 feet wide. 24 foot stands shall have two exits and a maximum occupancy of 6 people. 32 foot stands shall have 2 exits and a maximum occupancy of 8 people.

9.13.100 Fee Imposed Upon Permittees.

A. The City of Lodi will require each applicant receiving a permit to pay a fee, as described in Section 1(e)(3) of Article XIII C of the California Constitution, and the City of Lodi will require each permittee to pay their pro rata portion of the costs that the City of Lodi has incurred related to the following:

1. Processing and issuing permits;
2. Inspection of fireworks stands;
3. Public education and awareness campaign regarding the safe and responsible use of Safe and Sane Fireworks and the dangers and risks posed by the use of illegal fireworks; and

4. With respect to the sale and use of Safe and Sane Fireworks, including extra personnel time, and cleanup of fireworks trash and debris. "Extra Personnel Time" shall be defined as employee or contracted employee time that the City of Lodi would not otherwise incur but for the sale and use of Safe and Sane Fireworks in the City of Lodi and is the amount to be paid by the Fireworks Wholesaler pursuant to paragraph 9.13.040(c)14.

B. No permittee may offer for sale or sell safe and sane fireworks, unless and until the permittee has paid to the City the fee imposed by this section.

C. The fees established pursuant to this section are not intended to generate excess revenue for the City, but rather to attempt to offset costs.

9.13.110 Temporary Sales Tax Permit—Requirements.

A. Each permittee must obtain a temporary sales tax permit from the State Board of Equalization.

B. The temporary sales tax permit shall be displayed in a prominent place in the fireworks sales stand and at all times be visible to members of the public.

9.13.120 Reserved.

9.13.130 Permissible Locations for Discharge.

The discharge of fireworks in the City shall be limited to private property except as otherwise provided in this chapter. No fireworks shall be discharged on public, or semipublic properties, or in a public street or right-of-way except in those areas approved in writing by the Fire Chief. For purposes of this chapter, "semipublic" is defined as private property generally open for use by the public but not owned or maintained by a governmental body. Such property includes without limitation church property, shopping center property, and other property generally used by patrons of a commercial or private business establishment, but not including private streets in residential areas.

9.13.140 Prohibitions on Discharge.

A. It is unlawful for any person to ignite, explode, project, or otherwise fire or use any fireworks, or permit the ignition, explosion, or projection thereof, upon, over, or onto the property of another without his or her consent, or to ignite, explode, project, or otherwise fire or make use of, any fireworks within 10 feet of any residential dwelling or other structure used as a place of habitation by human beings.

B. Except as provided in subsection C of this section, it is unlawful for individuals under 18 years of age to sell, purchase, possess, use, or discharge "safe and sane fireworks."

C. It is unlawful for any person having the care, custody, or control of a minor under the age of 18 years to permit such minor to discharge, explode, fire, or set off any dangerous, illegal fireworks, at any time, or to permit such minor to discharge or set off any "safe and sane fireworks" unless such minor does so under the direct supervision of a person over 18 years of age and during the hours and on the days permitted by this chapter.

9.13.150 Reserved.

9.13.160 Administrative Penalties—Appeals.

A. This chapter authorizes the imposition of administrative fines on any person who violates any provision of this chapter in order to encourage and obtain compliance with the provisions of this chapter for the benefit and protection of the citizens of the City of Lodi. This chapter governs the imposition, enforcement, collection, and administrative review of all administrative fines, related to: the possession, use, storage, sale and/or display of those fireworks classified as "dangerous fireworks" in California Health and Safety Code Section 12500, et seq., with the exception of a pyrotechnic licensee when operating pursuant to that license; and the use of "safe and sane fireworks" as defined in California Health and Safety Code Section 12500 et seq. on or at dates, times and/or locations other than those permitted by this chapter. Said administrative fines are imposed under authority of Government Code Section 53069.4, Health and Safety Code Section 12557, and the police power of the City of Lodi.

B. The issuance of citations imposing administrative fines may be performed at the discretion of the officials of the City of Lodi; and the issuance of a citation to any person constitutes but one remedy of the city to redress violations of this chapter by any person. By adopting this chapter, the city does not intend to limit its authority to employ any other remedy, civil or criminal, to redress any violation of this chapter by any person, which this city may otherwise pursue.

C. The imposition of fines related to "dangerous fireworks" under this chapter 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 chapter related to "dangerous fireworks" shall not be subject to Health and Safety Code Section 12706, which section provides that certain fines collected by a court of the state be deposited with, and disbursed by, the County Treasurer. However, the city shall provide cost reimbursement to the State Fire Marshal pursuant to regulations to be adopted by the State Fire Marshal addressing the State Fire Marshal's cost for the transportation and disposal of "dangerous fireworks" seized by the city, which costs will be part of any administrative fine imposed. Unless and until said regulations have been adopted by the State of California, the city shall hold in trust $250 or 25% of any fine collected, which ever is greater, to cover the cost reimbursement to the State Fire Marshal for said cost of transportation and disposal of the "dangerous fireworks."

E. Because of the serious threat of fire or injury posed by the use of "dangerous fireworks" that can result from persistent or repeated failures to comply with the provisions of this chapter and the effect of such conditions or activities on the safety and the use and enjoyment of surrounding properties and to the public health, safety, and welfare, this chapter imposes strict civil liability upon the owners of real property for all violations of this chapter existing on their real property. Each individual use, display, and/or possession shall constitute a separate violation and each shall be subject to a separate administrative fine.

9.13.170 Issuance of Administrative Citation—Contents.

A. Whenever a Code Enforcement Officer (CEO) determines that a violation of the code has occurred, the CEO may issue an administrative citation on a city-approved form listing the code violation(s) and the amount of the administrative fine required to be paid by the responsible person(s) in accordance with the provisions of this chapter.

B. Each administrative citation shall contain the following information:

a. The name, mailing address, date of birth, CDL number (if available), and home or business telephone number of the responsible person charged with any violation of this chapter;

b. The address or description of the location of the violation;

c. The date or dates on which the person violated this chapter;

d. The section or sections of this chapter that were violated;

e. A description of the violation(s);

f. The amount of the administrative fine for each violation, the procedure in place to pay the fines, and any late fee and interest charge(s), if not timely paid, and notice that if the city is required to take action to collect such fines, the responsible person may be charged costs and attorney's fees;

g. Notice of the procedure to request an administrative hearing to contest the citation (including the form to be used, how to obtain the form, and the period within which the request must be made in order for it to be considered timely);

h. The names, addresses, and telephone numbers of any witnesses to the violation(s);

i. The name and signature of the CEO who issued the citation and the name and signature of the citee, if he or she is physically present and will sign the citation at the time of its issuance. The failure or refusal of a citee to sign a citation or provide the information required on the citation, shall not affect its validity or any related subsequent proceedings, nor shall signing a citation constitute an admission that a person is responsible for a violation of this chapter;

j. Any other information deemed necessary by the director for enforcement or collection purposes.

9.13.180 Administrative Fines.

A. Each person who violates any provision of this chapter as it relates to the possession, use, storage, sale and/or display of "dangerous fireworks" shall be subject to the imposition and payment of an administrative fine or fines as provided below:

Number of offense in 1 year period	Amount of Administrative Penalty	Late Charge	Total Amount of Penalty plus Late Charge
First	$ 1,000	$ 250	$ 1,250
Second	$ 2,000	$ 500	$ 2,500
Third	$ 3,000	$ 1,000	$ 4,000

B. Each person who uses "safe and sane fireworks" on or at dates, times, and/or locations other than those permitted by this ordinance shall be subject to the imposition and payment of an administrative fine or fines as provided below:

Number of offense in 1 year period	Amount of Administrative Penalty	Late Charge	Total Amount of Penalty plus Late Charge
First	$ 250	$ 75	$ 325
Second	$ 500	$ 150	$ 650
Third	$ 750	$ 300	$ 1,050

C. In the case of a violation of any of the provisions listed above, the administrative fine(s) shall be due and payable within 30 calendar days from the issuance of the administrative fine citation, and the citee shall be required to abate the violation, and surrender all dangerous fireworks to the CEO, immediately. For penalties not paid in full within that time, a late charge in the amount set forth above is hereby imposed and must be paid to the city by the citee. Fines not paid within the time established by this section shall accrue interest at the prevailing established rate. On the second and each subsequent time that a person is issued a citation for the same violation in any 12-month period, the fine is increased as indicated above and the citee shall be liable for the amount of the new fine until it is paid, in addition to being responsible for payment of previous fines.

D. All administrative fines and any late charges and interest due shall be paid to the city at such a location or address as stated on the citation, or as may otherwise be designated by the City Manager. Payment of any fine or fines shall not excuse the citee from complying with the provision of this chapter so violated. The issuance of the citation and/or payment of any fine shall not bar the city from employing any other enforcement action or remedy to obtain compliance with the provisions of the code so violated including the issuance of additional citations and/or criminal prosecution.

E. Upon confirmation of the citation or when the citation is deemed confirmed, all unpaid administrative fines, late fees, and/or interest shall constitute a judgment which may be collected in any manner allowed by law for collection of judgments including but not limited to recordation to create a lien on any real property owned by the responsible person. The city shall be entitled to recover its attorney's fees and costs incurred in collecting any administrative fines, late charges, and/or interest.

F. Payment of the administrative fine shall not excuse or discharge a citee from the duty to immediately abate and correct a violation of this chapter, nor from any other responsibility or legal consequences for a continuation or a repeated occurrence(s) of a violation of this chapter.

9.13.190 Right to an Administrative Hearing.

A. Any citee may contest the violation(s), or that he or she is a responsible person, by filing a request for an administrative hearing on a city-approved form with the Lodi Fire Chief's office within 30 calendar days from the issuance date of a citation. If the Fire Chief does not receive the request in the required time period, the citee shall have waived a right to a hearing and the citation shall be deemed confirmed and final.

B. No fees shall be charged for the filing of a request for a hearing.

C. Citees must deposit the full amount of the penalty listed on the citation on or before the request for a hearing is filed. Failure to deposit the full amount of all penalties within the required time period, or the tender of a non-negotiable check, shall render a request for an administrative hearing incomplete and untimely. Penalties that are deposited with the city shall not accrue interest. Penalties deposited shall be returned to the person who deposited them if the citation is overturned.

D. A request for a hearing shall contain the following:

a. The citation number;

b. The name, address, telephone number, and any facsimile numbers and e-mail addresses of each person contesting the citation;

c. A statement of the reason(s) why a citation is being contested;

d. The date and signature of the citee(s).

E. The city will notify all persons who file a request for a hearing in writing by First Class Mail of the date, time, and place set for the hearing at least 10 calendar days prior to the date of the hearing. Service of this notice is deemed complete at time of mailing. The failure of a citee to receive a properly addressed notice shall not invalidate the citation or any hearing, city action, or proceeding conducted pursuant to this chapter.

F. The hearing will be conducted within 60 calendar days of the date a timely and complete request is received by the Fire Chief's office.

G. If the CEO submits an additional written report concerning the citation to the city for consideration at the hearing, the CEO shall also serve a copy of such report by First Class Mail on the person requesting an administrative hearing no less than seven (7) calendar days prior to the date of the hearing. Failure to receive said report shall not invalidate the citation or any hearing, city action, or proceeding pursuant to this chapter.

9.13.200 Administrative Hearing—Procedures.

A. The hearing officer designated or appointed by the City Manager shall hear all requests for administrative hearings of administrative fines in accordance with the procedures established herein.

B. Administrative hearings are informal, and formal rules of evidence and discovery do not apply. Photographs of seized fireworks shall be admissible evidence of the violation. The city bears the burden of proof to establish a violation and responsibility therefore by a preponderance of evidence. The citation is prima facie evidence of the violation, however, the CEO who issued the citation is required to attend or participate at the hearing. The citee(s) and CEO, if present, shall have an opportunity to present evidence and witnesses and to cross-examine witnesses.

C. A citee may appear at the hearing in person or by written declaration executed under penalty of perjury. Said declaration and any documents in support thereof shall be tendered to and received by the city at least seven (7) business days prior to the hearing. If the citee fails to attend or does not submit a written declaration in a timely manner, he or she shall be deemed to have waived the right to a hearing. In such an instance, the hearing officer shall cancel the hearing and not render a decision. In such instances, the citation shall be deemed confirmed.

D. Hearings may be continued once at the request of a citee or the officer who issued the citation. The hearing officer may also continue the hearing for cause.

9.13.210 Hearing Decision—Right of Appeal.

A. After considering all the testimony and evidence submitted at the hearing, the hearing officer shall issue a written decision to uphold or overturn the citation and shall state the reasons therefore.

B. The hearing officer shall serve citee(s) by First Class Mail with a copy of the written decision. The date the decision is deposited with U.S. Postal Service shall constitute the date of its service. The failure of a citee to receive a properly addressed decision shall not invalidate any hearing, city action, or proceeding conducted pursuant to this chapter.

C. The decisions of the hearing officer may be appealed by the citee to the City Council within 30 calendar days after the date of service of the decision. Each decision shall contain a statement advising the citee of this appeal right and the procedure for its exercise.

D. If a hearing officer's decision is not appealed in a timely manner, the decision shall be deemed confirmed.

E. If a responsible person prevails on appeal, the city shall reimburse his or her fine deposit within 30 calendar days of the City Council's decision on the appeal.

9.13.220 Financial Reporting.

On or before September 1 of any year authorized pursuant to a permit, the permittee shall submit to the City Clerk a financial statement by the treasurer or financial officer of the permittee setting forth the total gross receipts from the fireworks stand operated by the permittee; all expenses incurred and paid in connection with the purchase of fireworks and the sale thereof; and the most recent report filed by the permittee to the State Board of Equalization. The filing of such statement shall be a condition precedent to the granting of any subsequent permit under this chapter.

9.13.230 Provisions Supplementary.

The provisions of this chapter are supplementary to the provisions of the Fire Code of the City of Lodi. In case of a direct conflict between the provisions of the Fire Code of the City, and the provisions of this chapter, the provisions of this chapter shall prevail. Except with respect to such direct conflict, the provisions of the Fire Code of City of Lodi shall remain in full force and effect.

SECTION 3. No Mandatory Duty Of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 4. Non-Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall invalidate the entire ordinance. To this end, the provisions of this ordinance are not severable. The City Council hereby declares that it would not have adopted this ordinance if any portion thereof is determined to be invalid.

SECTION 5. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 6. This ordinance shall be published one time in the "Lodi News Sentinel," a daily newspaper of general circulation printed and published in the City of Lodi, and shall be in force and take effect 30 days from and after its passage and approval.

Approved this 3rd day of April, 2013.

ALAN NAKANISHI
Mayor

Attest:

RANDI JOHL, City Clerk

State of California
County of San Joaquin, ss.

I, Randi Johl, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1874 was introduced at a regular meeting of the City Council of the City of Lodi held March 20, 2013, and was thereafter passed, adopted, and ordered to print at a regular meeting of said Council held April 3, 2013, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Johnson, Katzakian, Mounce, and Mayor Nakanishi

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None

I further certify that Ordinance No. 1874 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

RANDI JOHL
City Clerk

Approved as to Form:

D. STEPHEN SCHWABAUER
City Attorney