

DATE SUBMITTED 4/1/2022  
 SUBMITTED BY acm  
 DATE ACTION REQUIRED 4/6/2022

COUNCIL ACTION (X)  
 PUBLIC HEARING REQUIRED ( )  
 RESOLUTION ( )  
 ORDINANCE 1<sup>ST</sup> READING (X)  
 ORDINANCE 2<sup>ND</sup> READING ( )  
 CITY CLERK'S INITIALS ( )

### IMPERIAL CITY COUNCIL AGENDA ITEM

SUBJECT:	DISCUSSION/ACTION: AN URGENCY ORDINANCE OF THE CITY OF IMPERIAL AMENDING THE CODIFIED ORDINANCES RELATED TO THE USE AND POSSESSION OF FIREWORKS		
	1. INTRODUCTION, FIRST READING BY TITLE ONLY, AND ADOPTION OF ORDINANCE 816 ON AN URGENCY BASIS AMENDING THE CODIFIED ORDINANCE RELATED TO THE USE AND POSSESSION OF FIREWORKS.  2. PROVIDE DIRECTION TO STAFF TO PREPARE A SUMMARY OF ORDINANCE NO. 816 FOR PUBLICATION PURPOSES.		
	DEPARTMENT INVOLVED: CITY ATTORNEY/CITY MANAGER'S OFFICE		
	BACKGROUND/SUMMARY:  At the direction of the City Council, the City Attorney and City Manager's Office have prepared the following Ordinance 816 to be adopted on an urgency basis. Ordinance 816 will amend the codified ordinances of the City's municipal code as it relates to the use and possession of illegal fireworks in the City of Imperial.		
	FISCAL IMPACT: To be determined	ADMIN SERV INITIALS	_____
	STAFF RECOMMENDATION: To approve Ordinance 816 as presented to be adopted on an urgency basis.	DEPT. INITIALS	<u>AK</u>
	MANAGER'S RECOMMENDATION: Approve as presented	CITY MANAGER'S INITIALS	_____
	MOTION:		
SECONDED:	APPROVED ( )	REJECTED ( )	
AYES:	DISAPPROVED ( )	DEFERRED ( )	
NAYES:	REFERRED TO:		
ABSENT:			

**ORDINANCE NO 816**

**AN URGENCY ORDINANCE OF THE CITY OF IMPERIAL  
AMENDING THE CODIFIED ORDINANCES RELATED TO  
THE USE AND POSSESSION OF FIREWORKS AND  
DECLARING THE URGENCY THEREOF**

**Section 1:** The City Council of the City of Imperial finds as follows:

- A. Dangerous and unregulated fireworks are a health and safety concern to all residents of the City of Imperial; and
- B. Thousands of injuries are caused by fireworks across this country every year; and
- C. Fireworks can cause significant anxiety in adults and children, especially veterans and others with post-traumatic stress, as well as pets; and
- D. Fireworks also pose a serious risk of fire under conditions that continue to demonstrate extraordinary risk of damaging fire; and
- E. There is a demonstrated need for enforcement tools with which emergency responders can hold those posing a significant risk to public health and safety through the possession and detonation of fireworks in this city; and
- F. Historically, the City of Imperial has seen increased instances of use of fireworks beginning in May and continuing into the summer months and specifically on and around the Fourth of July holiday; and
- G. With the serious risk of firework-related injuries stemming from increased use of fireworks, there is an urgent and immediate need to provide additional enforcement tools within the City in order to protect the threat to public health, safety and welfare; and
- H. The City Council has determined that this ordinance must take effect immediately to continue to protect the health, welfare and safety of the City and its residents.

**Section 2:** The City Council of the City of Imperial does ordain as follows:

Sections 8-53 through 8-57 of Article VI of Chapter 8 of the Imperial City Code are hereby enacted to read as follows:

## ARTICLE VI

### FIREWORKS – HOST LIABILITY

Section 8-53. Host Defined.

Section 8-54. Host Liability.

Section 8-55. Violation-Penalty.

Section 8-56 Conflict With Imperial City Code.

Section 8-57 Severability.

#### **Section 8-53. Host Defined.**

For purpose of Chapter 8 of this Code, “Host” means a person who either:

- a. Owns or controls private property, including, but not limited to, an owner, tenant, landlord, or property manager of the property; or
- b. Organizes, supervises, officiates, conducts, controls, or is otherwise in charge of the activity on the property.

#### **Section 8-54. Host Liability.**

- a. No host shall allow any person to violate a provision of Article V of Chapter 8 of the Imperial City Code relating to fireworks on the host’s private property, except as provided below in subsection (a)(2).
  1. Whenever a host is present at the private property while another person violates a provision of this chapter, there shall be a rebuttable presumption that the host knew or should have known of the violation.
  2. The provisions of this section shall not apply to:
    - A. The possession, manufacture, storage, display, sale, use, or discharge of fireworks as permitted under federal, state, or local law;
    - B. A host who initiates contact with law enforcement or fire officials to assist in removing any person from the property or terminating the activity in order to comply with this chapter, if the request for assistance is made before any other person contacts law enforcement or fire officials to complain about the violation of this chapter.
- b. No host shall aid or abet another person’s violation of a provision of this chapter in a public right of way adjacent to the host’s private property. A host aids and abets another person’s violation of a provision of this chapter if he or she knows of the

other person's unlawful purpose and the host specifically intends to, and does in fact, aid, facilitate, promote, encourage, or instigate the other person's commission of that violation.

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**Section 8-55. Violation-Penalty.**

- a. In addition to any other remedy allowed by law, any person who violates a provision of Articles V and VI of Chapter 8 of the Imperial City Code is subject to criminal sanctions, civil actions, and administrative penalties.
- b. Notwithstanding any provisions of the Imperial City Code to the contrary, the amount of an administrative penalty for a violation of any provision of Articles V and VI of Chapter 8 of the Imperial City Code is:
  1. \$1,000.00 for the first violation;
  2. \$2,500.00 for the second violation within one year of the first violation; and
  3. \$5,000.00 for each additional violation within one year of the first violation.
- c. Any host who violates Articles V and VI of Chapter 8 of the Imperial City Code is liable for the response costs relating to the violation. All hosts who violate Articles V and VI of Chapter 8 in the same incident are jointly and severally liable for the response costs relating to the violation. The amount of the response costs constitutes a legal debt owed to the City.
  1. Notice of the response costs shall be served by first-class mail on the hosts liable for such costs. The notice shall contain the following information:
    - A. The name of the host who is liable for the response costs;
    - B. The address if the private property where the incident occurred;
    - C. The date and time of the response;
    - D. The law enforcement, fire, or other emergency response personnel who responded; and
    - E. An itemized list of the response costs.
  2. Payment for response costs shall be remitted to the City of Imperial within thirty (30) calendar days of the date of the notice. The payment of any such costs shall be stayed upon the filing of a timely appeal.

3. A host charged with response costs may, within ten (10) calendar days of the date of the notice of response costs, appeal the response costs in accordance with section 15.82 of the Imperial City Code. The appeal hearing shall be scheduled and conducted in the manner prescribed therein. Failure to timely file an appeal constitutes a failure to exhaust available administrative remedies and bars any further review or administrative appeal of the response costs.
- d. Violation of Articles V and VI of Chapter 8 of the Imperial City Code are hereby declared to be a public nuisance.
- e. It is unlawful, and a misdemeanor, to violate any provision of this chapter, provided, however, that a violation of this chapter may, at the discretion of the Police Chief, Fire Chief, or prosecuting attorney, be charged and prosecuted as an infraction.
- f. All remedies prescribed under Articles V and VI of Chapter 8 of the Imperial City Code are cumulative and the election of one or more remedies does not bar the City of Imperial from the pursuit any other remedy available to the City.

**Section 8-56 Conflict With Imperial City Code.**

In the event that any provision of this article conflicts with any provision of the Imperial City Code, the provisions of this article shall prevail.

**Section 8-57 Severability.**

If any section, subsection, paragraph, sentence, clause, or phrase of this article for any reason shall be held to be invalid or unconstitutional, the decision shall not affect the remaining portions of the article. The Council of the City of Imperial hereby declares that it would have passed this article and each section, subsection, paragraph, sentence, clause, or phrase which is a part thereof, irrespective of the fact that any one or more sections, subsections, paragraphs, sentences, clauses, or phrases are declared to be invalid or unconstitutional.

**Section 3: Effective Date.** This ordinance shall take effect immediately upon adoption to preserve the public health, safety, and welfare.

PASSED, ADOPTED AND APPROVED as an Urgency Ordinance at a regular meeting of the City Council of the City of Imperial, this \_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Geoff Dale, Mayor

ATTEST:

\_\_\_\_\_  
Dennis Morita, City Clerk