

ORDINANCE NO. 535

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
NEWARK ADDING CHAPTER 7.24, FIREWORKS, TO THE
NEWARK MUNICIPAL CODE TO INCREASE PENALTIES
RELATED TO ILLEGAL FIREWORKS

WHEREAS, the City of Newark allows the sale and use of Safe and Sane Fireworks, as defined and classified in Sections 12529 and 12562 of the Health and Safety Code, around the Fourth of July holiday; and

WHEREAS, the sale and use of Safe and Sane Fireworks is regulated by the City; and

WHEREAS, the use of illegal fireworks poses a significant public health, safety, and welfare risks to those that discharge the illegal fireworks as well as members of the public in the surrounding areas; and

WHEREAS, the use of illegal fireworks creates a significant fire danger, which is exacerbated by ongoing drought conditions within the City; and

WHEREAS, the use of illegal fireworks has increased significantly over recent years, which has increased the significant public health, safety, and welfare risks such fireworks cause; and

WHEREAS, the City Council desires to increase the penalties for illegal fireworks by classifying such conduct as a misdemeanor and increasing the maximum fine for violations; and

WHEREAS, the California Constitution, Article XI, Section 7, provides cities and counties with the authority to enact ordinances to protect the health, safety, welfare, and morals of their citizens.

THE CITY COUNCIL OF THE CITY OF NEWARK DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals.

The above recitals are true and correct and made a part of this Ordinance.

SECTION 2. Addition of Chapter 7.24.

Chapter 7.24, Fireworks, is added to the Newark Municipal Code to read as follows:

“Chapter 7.24 Fireworks Social Host Ordinance.

Section 7.24.010 Definitions.

The following definitions shall apply to this Chapter

A. “Safe and Sane Fireworks” means those fireworks defined and classified in Sections 12529 and 12562 of the Health and Safety Code, as those sections may be amended from time to time.

B. “Social host” means any of the following:

1. Any owner of private property as listed on the most recent Alameda County assessment roll;
2. Any person who has the right to use, possess or occupy a public or private property under a lease, permit, license, rental agreement, or contract; or
3. Any person who hosts, organizes, supervises, officiates, conducts, or accepts responsibility for a gathering on public or private property.

C. “Strictly liable” means liability for a wrongful act irrespective of such person’s intent, knowledge, negligence or lack thereof in committing the wrongful act.

Section 7.24.020 Use.

Fireworks other than Safe and Sane Fireworks are prohibited. Except as permitted by the City, it is unlawful for any person, corporation, or entity to possess, store, offer for sale, expose for sale, sell at retail or wholesale, use, discharge, or explode, or allow the use on their property or property under their control, any fireworks except Safe and Sane Fireworks.

Section 7.24.030 Social Host Liability

Any Social Host shall be Strictly Liable for any unlawful ignition, use, discharge or display of any dangerous fireworks, or Safe and Sane Fireworks in violation of this Code, at their property or gathering; except that:

A. No owner of private property shall be liable under this Section for a violation of this Chapter if the property owner can demonstrate that at the time of such violation they:

1. had rented or leased the property to another,
2. were not present, and
3. had no prior knowledge of the violation.

B. No person who has the right to use, possess or occupy a unit in a multifamily residential property under a lease, rental agreement or contract shall be liable under this Section for violations of this Chapter occurring in the common areas of the property.

Section 7.24.040 Penalty.

A. Any person or entity who violates this Chapter shall be guilty of a misdemeanor, punishable by any remedy authorized by this Municipal Code or applicable law, at the election of the City.

B. Notwithstanding anything in this Code to the contrary, a violation of this Chapter may be punishable by a fine of up to one thousand (\$1,000) per violation. For the purposes of this Section, each use or discharge of a firework in violation of this Chapter shall be a separate violation.

C. A fine for violating this section may be issued to administratively in accordance with Chapter 7.18 (Administrative Citations) and any person receiving a fine pursuant to this section shall be entitled to the hearing procedures contained therein.

SECTION 3. Severability

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council of the City of Newark hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION 4. CEQA.

Approval of the ordinance is exempt from further environmental review under the general rule in California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) that CEQA only applies to projects that have the potential for causing a significant effect on the environment. As a series of text amendments and additions that do not authorize any new activity, it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment.

SECTION 5. Publication and effective date.

Within fifteen (15) days from and after adoption, this Ordinance shall be published once in the Tri-City Voice, a newspaper of general circulation printed and published in Alameda County and circulated in the City of Newark, in accordance with California Government Code Section 36933. This Ordinance shall take effect and be enforced thirty (30) days after its adoption.

The foregoing ordinance was introduced and read before the City Council of the City of Newark by Council Member Collazo at the regular meeting of the City Council of the City of Newark held on March 10, 2021.

This ordinance was read at the regular meeting of the City Council held March 24, 2022. Council Member Bucci moved that it be adopted and passed, which motion was duly seconded, and said ordinance was passed and adopted.

AYES: Council Members Bucci, Collazo, Vice Mayor Hannon, and Mayor Nagy

NOES: None

ABSENT: Council Member Freitas

SECONDED: Council Member Collazo

APPROVED:

ATTEST:

s/ALAN L. NAGY
Mayor

s/SHEILA HARRINGTON
City Clerk

APPROVED AS TO FORM:

s/KRISTOPHER J. KOKOTAYLO
Interim City Attorney