ORDINANCE NO. 2017 – 0.5

AN ORDINANCE OF THE AVENAL CITY COUNCIL AMENDING ORDINANCE NO. 98 – 02 ADDING SECTIONS 4-7.08 – 4-7.14 "DANGEROUS FIREWORKS" TO TITLE 4, SECTION 7, OF THE CITY'S CODE OF ORDINANCES.

THEREFORE, THE CITY COUNCIL OF THE CITY OF AVENAL DOES ORDAIN AS FOLLOWS:

THE CITY COUNCIL OF THE CITY OF AVENAL DOES HEREBY DECLARE THE ADOPTING OF THE THIS ORDINANCE TO BE AN EMERGENCY, THEREFORE, WAIVING THE FIRST AND SECOND READINGS DUE TO THE HAZARDOUS AND POTENTIAL PUBLIC HEALTH AND SAFETY RISKS/HAZARDS RELATING TO DANGEROUS FIREWORKS.

"DANGEROUS FIREWORKS"

(See Attachment A)

EFFECTIVE DATE: The forgoing Emergency Ordinance shall take effect immediately upon passage. Prior to the expiration of fifteen (15) days from the passage hereof, a certified copy of this Ordinance shall be posted in the office of the City Clerk pursuant to Government Code Section 36933 (c) (1) and a summary shall be published once in the Avenal Chimes, a newspaper printed and published in the City of Avenal, State of California, together with the names of the Council Members voting for and against the same.

THE FOREGOING ORDINANCE was passed and adopted at a regular meeting of the Avenal City Council held on the 8th day of June 2017 by the following roll call vote:

AYES:	**Ovalle, Woolley, Preciado.**
NOES:	**None.**
ABSTAIN:	**None.**
ABSENT:	**Moreno, Gravelle.**

APPROVED:

Alvaro Preciado, MAYOR

ATTEST:

Maria A. Ortiz, CITY CLERK

Attachment "A"

DANGEROUS FIREWORKS

4-7.08- Purpose.

(a) This section authorizes the imposition of administrative fines on any person who violates any provision of this article in order to encourage and obtain compliance with the provisions of this article for the benefit and protection of the entire community. This article 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" 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. Said administrative fines are imposed under authority of Government Code Section 53069.4, Health and Safety Code Section 12557, the police power of the City, and pursuant to California Attorney General Opinion (No. 07-503, December 20,2011).

(b) The issuance of citations imposing administrative fines may be performed at the discretion of the officials of the City authorized hereunder; and the issuance of a citation to any person constitutes but one remedy of the City to redress violations of this article by any person. By adopting this article, the City does intend to limit its authority to employ any other remedy, civil, or criminal, to redress any violation of this article by any person, which this City may otherwise pursue.

4-7.09- Definitions.

The following definitions apply to the use of these terms for the purposes of this article:

(a) *"Dangerous fireworks,"* as defined in California Health and Safety Code Sections 12505, includes the following: "

(1) Any fireworks which contain any <;>fthe following:

a. Arsenic sulfide, arsenates, or arsenites.

b. Boron.

c. Chlorates, except:

i. In colored smoke mixture in which an equal or greater amount of sodium bicarbonate is included.

ii. In caps and party poppers.

iii. In those small items (such as ground spinners) wherein the total powder content does not exceed four grams of which not greater than 15 percent (or 600 milligrams) is potassium, sodium, or barium chlorate.

d. Gallates or gallic acid.

e. Magnesium {magnesium-aluminum alloys, called magnalium, are permitted).

f. Mercury salts.

g. Phosphorous (red or white except that red phosphorus is permissible in caps and party poppers.)

h. Picrates or picric acid.

i. Thiocyanates.

j. Titanium, except in particle size greater than 100-mesh.

k. Zirconium.

(2) Firecrackers.

(3) Skyrockets and rockets, including all devices which employ any combustible or explosive material and which rise in the air during discharge.

(4) Roman candles, including all devices which discharge balls of fire into the air.

(5) Chasers, including all devices which dart or travel about the surface of the ground during discharge.

(6) Sparklers more than ten inches in length or one-fourth of one inch in diameter.

(7) All fireworks designed and intended by the manufacturer to create the element of surprise upon the user. These items include, but are not limited to, auto-toolers, cigarette loads, exploding golf balls, and trick matches.

(8) Fireworks known as devil-on-the-walk, or any other firework which explodes through means of friction, unless otherwise classified by the state fire marshal pursuant to this part.

(9) Torpedoes of all kinds which explode on impact.

(10) Fireworks **kits.**

(11) Such other fireworks examined and tested by the state fire marshal and determined by him, with the advice of the state board of fire services, to possess characteristics of design or construction which make such fireworks unsafe for use by any person not specially qualified or trained in the use of fireworks.

(b) *"Citee"* means any person served with an administrative citation charging him or her as a responsible person for violation.

(c) *"Citation"* means an administrative citation issued pursuant to this article to remedy a violation.

(d) *"Code"* means the Avenal City Code of Ordinance.

(e) *"Code enforcement officer" (CEO)* shall include, but not be limited to, the Kings City Fire Chief, Fire Marshal, Police Chief, or their agents, designees or assigns designated to enforce any provision of this article.

(f) *"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 article occurred.

(g) *"Responsible person"* means:

1. The person(s) who owns, rents, leases, or otherwise has possession of the residence or other private property;

2. The person(s) in immediate control of the residence or other private property; and

3. The person(s) who organizes, supervises, sponsors, conducts, allows, controls, or controls access to the illegal discharge or illegal storage of fireworks."

If the residence or other private property is rented or leased, the landlord or lessor is not covered by this section unless they fall within the category of persons described under paragraph 2 or 3 of this definition. A landlord or lessor can only be held responsible under paragraph 3 of this definition if he or she has knowledge that fireworks are being discharged or illegally stored on the property without obtaining a permit therefor from the Fire Chief.

4. Every parent, guardian or other person, having the legal care, custody or control of any person under the age of 18 years may be issued a citation in accordance with the provisions of this article, in addition to any citation that may be issued to the offending minor.

(h) *"Violation"* or *"violates"* refers to any violation of any provision of this article, and/or the failure to comply with any additional requirement imposed under California Health and Safety Code Sections 12500, et seq.

4-7.10- Ban on dangerous fireworks

(a) The City of Avenal hereby prohibits the possession, use, storage sale, display, giving, delivery, and/or transporting of 25 pounds or less of "dangerous fireworks" in all zones in the City; with the exception of:

(1) A pyrotechnic licensee operating pursuant to a valid City or state issued license;

(2) Or the use of "safe and sane fireworks" as defined in this article and Health and Safety Code Section 12500 etseq.

(b) 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 provision of this article 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 section imposes strict civil liability upon the owners of residential real property for all violation of this article existing on their residential real property. Each contiguous use, display and/or possession shall constitute a separate violation and shall be subject to a separate administrative fine.

4-7.11 - Issuance of administrative citation; service procedures.

Upon determining that a violation exists with respect to any property within the unincorporated area of the City, the code enforcement officer shall serve an administrative citation upon one or more of the responsible persons. Service shall be completed utilizing one of the below methods of service:

(a) *Service.* An administrative citation shall be served on the responsible person by an enforcement officer in one of the following ways:

(1) *Personal service.* In any case where an administrative citation has been issued, the enforcement officer may personally serve the responsible person and obtain the signature of the responsible person on the administrative citation. If personal service is affected, but the responsible person served refuses or fails to sign the administrative citation, the failure or refusal to sign shall not *affect* the validity of the service of the administrative citation or of any of the subsequent proceedings. The enforcement officer shall note on the administrative citation the failure or refusal of the responsible person to sign the citation. The date of service under this subsection shall be the date of actual service.

(2) *Service of citation by mail.* As an alternative to personal service, the enforcement officer may serve the administrative citation by mail as hereinafter set forth. The administrative citation shall be mailed to the responsible person by certified mail, postage prepaid with a return receipt requested. Simultaneously, the citation may be sent by first class mail. If the citation is sent by certified mail and returned unsigned, then service shall be deemed effective pursuant to first class mail, provided the citation sent by first class mail Is not returned by the United States Postal Service undelivered. In the case of service by certified mail for which a signed receipt is returned, the date of service shall be the date of signing of the receipt. In the case of service by regular first class mail, the date of service shall be the date upon which such mail was deposited in the United State Mail with postage prepaid, plus three days.

(3) *Service of citation by posting notice.* If the enforcement officer does not succeeding serving the responsible person by personal service or by mail as set forth above, the enforcement officer shall post the administrative citation on any real property within the City in which the City has knowledge that the responsible person has a legal interest and such posting shall be deemed effective service. The date of service of a posted notice or citation shall be the date of actual posting, plus five days.

(4) The form of the administrative citation shall be approved by the City Council.

(b) *Exception to noticing requirements of section 1A-4.* Administrative citations issued pursuant to this section shall be considered citations issued to correct immediate dangers to health and/or safety concerns of the City. Pursuant to this article, a citee shall not be provided a notice of violation, or given a chance to abate the violation, prior to issuance of an administrative citation.

4-7.12 - Issuance of administrative citation; content.

(a) *Content.* Each administrative citation may contain the following information:

(1) Date, approximate time, and address or definite description of the location where the violation was observed;

(2) The Code sections or provisions violated and a description of the violation;

(3) The date the notice of violation was served on the responsible person and the time specified thereon to correct the violation;

(4) A statement that the violation has not been corrected within a given correction period, if any;

(5) The amount of the fine;

(6) An explanation of how and where the fine may be paid and the time period within which *it* must be paid;

(7) Identification of rights of appeal, including the time within which the citation may be contested and the place to obtain a notice of appeal form to contest the administrative citation; and

(8) The name and signature of the enforcement officer and, if possible, the signature of the responsible person;

(9) 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;

(10) Any other information deemed necessary by the director for enforcement or collection purposes.

(11) In the event that the Avenal Police Department is the issuing agency for a violation of this ordinance, a crime report will be submitted along with the citation.

4-7.13 - Administrative fines for dangerous fireworks.

(a) Each person who violates any provision of this article as it relates to "dangerous fireworks" shall be subject to the imposition and payment of an administrative fine(s) as provided below:

Number of Offense in 1-Year Period	Amount of Administrative Penalty	Late Charge	Total Amolmt of Penalty plus Late Charge
First	$1,000.00	$100.00	$1,100.00
Second	1,500.00	200.00	1,700.00
Third	2,000.00	300.00	2,300.00

(b) 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.

(c) 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 in section 4-7.13(a) 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) Upon confirmation of the citation or when the citation is deemed confirmed, either by exhaustion of administrative remedies or by the citee's own admission, 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.

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

4-7.14 - Rights and procedures to administrative hearing and appeals.

Within 15 days from the date of mailing such notice, the property owner, or any person interested in the property affected by such notice, may appeal to the board of supervisors. Such appeal shall be in writing and shall be filed with the City Clerk. At the next regular meeting of the City Council after the appeal, the City Council shall proceed to hear and pass upon such appeal and the decision thereon shall be final and conclusive.