

CHAPTER 15

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Article I. Alcoholic Beverages

15-1 Alcoholic beverages – defined.. The term “alcoholic beverage” includes alcohol, spirits, liquor, wine, beer and every liquid or solid containing alcohol, spirits, wine or beer, and which contains one-half of one percent or more of alcohol by volume. (Ord. 332)

15-2 Prohibiting Alcohol Consumption in Public Places,

- (a) No person shall use or consume any alcoholic beverage in or on any public street, roadway, alley, or property owned by the City of Imperial, including City parks. (Ord. 676)

(As to streets and sidewalks generally, see Ch 19 of this Code)

Article I.5 Social Hosts Who Allow Minors to Obtain Possess, or Consume Alcoholic Beverages

15-2.1 Findings and Intent..

(a) Minors often obtain, possess, or consume alcoholic beverages at parties held at private residences or private premises that are under the control of an adult who knows of such conduct but fails to stop it.

(b) Underage consumption of alcoholic beverages poses an immediate threat to the public health, safety and welfare in that it increases alcohol abuse by minors, physical altercations, violent crimes including rape and other sexual offenses, accidental injury, neighborhood vandalism, and excessive noise disturbance, all of which may require intervention by local law enforcement.

I When law enforcement responds to a disturbance involving underage consumption of alcoholic beverages at private parties, extensive resources are often used to manage the incident. Further, a large social gathering that requires law enforcement attention takes away valuable resources from other service calls in the community, thereby placing the community at increased risk. Law enforcement is not currently reimbursed for their expenses when called to a private party.

(d) The prohibitions found in this article are reasonable and expected to deter the consumption of alcoholic beverages by minors by holding responsible adults who know of the illegal conduct yet fail to stop it. In addition, the revenue received by the City after cost reimbursement will be directed toward alcohol and controlled substance abuse and prevention education programs in the community.

15-2.2 Definitions. The terms used in this ordinance have the meaning provided by state law except as expressly provided herein.

(a) “Adult” means any person twenty-one (21) years or over.

(b) “Alcohol” means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

I “Alcoholic beverage” includes alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine, or beer, and which contains one-half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances.

(d) “Enforcement services” means the actual amount of time spent by law enforcement personnel in responding to, or in remaining at, a party, gathering, or event at which a minor obtains, possesses, or uses alcoholic beverages including, but not limited to, the salaries and benefits of such personnel; the actual cost of medical treatment incurred by such personnel; administrative costs attributable to the incident; the cost of repairing and/or replacing any damaged City property; and any other allowable costs related to the enforcement of this ordinance.

(e) “Family gathering” means a gathering where each minor present is supervised by his or her parent or legal guardian.

(f) “Legal guardian” means a person who is lawfully vested with the power and charged with the duty of taking care of a minor.

(g) “Juvenile” means any person less than eighteen (18) years of age.

(h) “Minor” means any person under the age of twenty-one (21) years.

(i) “Parent” includes any person who is a natural parent, an adoptive parent, a foster parent, or a stepparent.

(j) “Party” means a gathering or event at which a group assembles for a social occasion or activity at a private residence or private premises.

(k) “Person(s) responsible for the event” includes, but is not limited to: (1) The person(s) who owns, rents, leases, or otherwise has control of the premises where the party, gathering or event takes place; (2) the person(s) in charge of the premises; or (3) the person(s) who organized the event. (If the property or premises is rented, the landlord is not covered by this ordinance unless they are described in (2) or (3) in this paragraph.) If a person responsible for the event is a juvenile, then the parents or guardians of that juvenile will be joint and severally liable for the costs incurred for enforcement services pursuant to this article.

(l) “Private residence” means the place where one actually lives or has his or her home.

(m) “Private premises” means privately owned land, including any appurtenances or structures on the land.

(n) “Social host” is an adult who permits a party where one or more minors consume one or more alcoholic beverages on property owned or controlled by the adult.

15-2.3 Prohibition. No adult who owns or controls a private residence or private premises shall allow a party to take place or continue at said residence or premises if a minor at the party obtains, possesses, or consumes any alcoholic beverage and the adult knows that the minor has obtained, possesses, or is consuming alcoholic beverages at the party.

15-2.4 Protected Activities. This ordinance shall not apply to legally protected religious activities of family gatherings.

15-2.5 Separate Violation for each Incident. Each incident in violation of section 15-2.3 shall constitute a separate offense.

15-2.6 Enforcement Authority. The City Attorney and the Imperial Police Department are authorized to administer and enforce the provisions of this article. The City Attorney and the Imperial Police Department may exercise any enforcement powers provided by law.

15-2.7 Enforcement Remedies.

(a) Any person who knowingly sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to a minor is guilty of an infraction/misdemeanor punishable by a fine not to exceed \$500.00 and shall be required to perform not less than 24 hours of community service.

(b) Any person who knowingly violates subdivision (a) above and the minor thereafter consumes the alcoholic beverage and thereby proximately causes great bodily injury or death to himself, herself, or any other person, is guilty of a misdemeanor and shall be punished by imprisonment in a county jail for a term not to exceed one year, or by a fine not exceeding one thousand dollars (\$1,000.00), or by both imprisonment and fine.

I Any act of willful misconduct of a minor that results in injury or death to another person or in injury to the property of another shall be imputed to the parent or guardian having custody and control of the minor for all purposes of civil damages, and the parent or guardian having custody and control shall be jointly and severally liable with the minor for any damages resulting from the willful misconduct.

(d) A social host who knowingly serves alcoholic beverages to a minor guest may be held liable for injuries sustained by third parties, including City law enforcement personnel, as a result of the minor guest's negligence.

(e) A social host shall be liable for the cost of providing enforcement services in response to a party in which minor have obtained, possessed, or consumed alcoholic beverages. Such costs include reasonable attorneys' fees in the event of litigations.
Ord. 715)

15-3 Same – Consumption while occupying motor vehicle. No person, while occupying a motor vehicle at any place within the city, shall use or consume any alcoholic beverage.
(Ord. 332)

(As to motor vehicles generally, see Ch 13 of this Code)

Article II. Curfew

15-4 Curfew – Definitions. For the purposes of section 15-5 and 15-6, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Emergency A sudden unforeseeable combination of circumstances which calls for immediate action.

Loiter To idle, to loaf, to stand idly by or to walk, drive or to ride about aimlessly.

Minor Anyone under eighteen years of age.

Public place Any place or property except private property to put to a nonpublic use.
(Ord. 412)

15-5 Same – Imposed Every minor is guilty of a misdemeanor who loiters in a public place or trespasses on private property during the following hours:

- (a) During the period of June 15th to September 15th: 12:00 Midnight and sunrise of the following day, for each day Sunday through Saturday, inclusive.
- (b) During the period of September 15th through June 15th:
 1. 10:00 P.M. and sunrise of the following day, for each day Sunday through Thursday, inclusive.
 2. 12:00 Midnight, and sunrise of the following day, for each day Friday and Saturday.
(Ord. 142)

15-6 Same – Exemptions. Section 15-5 does not apply when:

- (a) A minor is accompanied by a parent, guardian or other person having legal care, custody or control.
- (b) A minor is accompanied by the minor's spouse who is not a minor.
- (c) A minor is on an errand by authority of the parent, guardian or other person having legal care, custody or control.
- (d) A minor is participating in or reacting to an emergency situation.
- (e) A minor is engaged in a legitimate business, trade, occupation or profession with the consent of parents, guardian or other person having legal care, custody or control.
- (f) A minor is attending or returning home forthwith by the most direct route from a meeting, entertainment or recreational activity directed, supervised or sponsored by a governmental agency, adult service club, church group or school authority.
- (g) A minor is returning home forthwith by the most direct route from a public motion picture establishment. (Ord. 412)

Article III. Firearms

15-7 Firearms, air rifles, etc. - Discharge. It shall be unlawful for any person to shoot, fire off or discharge any firearm, pellet gun, BB gun or bow and arrow within the city without having first secured a permit in writing from the chief of police to do so. (Ord. 389)

(For state law as to discharge of firearms, see Pen. C. S. 246. See also Pen. C. S. 374I)

Article IV. Various

15-8 Holes, excavations, etc. - Fencing. No person having charge or control of any public or private property, whether as owner or otherwise, shall allow or permit any hole, excavation or other place into which any person going upon such premises might fall, or otherwise might prove dangerous to personal safety, to exist in the city on such property, unless the same is securely and sufficiently protected by fence or other means so as to guard against the possibility of accident. (Ord. 107)

15-9 Pawnbrokers and secondhand dealers – Purchases and sales. Every pawnbroker and dealer in secondhand goods shall keep a record of all purchases and all sales, and all mortgages issued to him or by him and all pawn tickets, and shall make a daily report of all transaction to the chief of police. The report shall be kept in substantially the following manner:

Date; name of purchaser or seller, address, age, sex, height, weight, description of party, including color of hair and eyes and manner in which dressed; whether bought or sold; and a complete description of the article bought or sold, which shall include the number of same, where same is numbered.

It shall be unlawful for any pawnbroker or dealer in secondhand goods to purchase any article from any person under the age of twenty years, without first consulting the chief of police. (Ord. 247)

(For state law authorizing city to regulate and require reports from persons dealing in secondhand personal property, see B & P C, S. 21638. As to authority of city to require reports of pawnbrokers, see Fin. C. S. 21208. As to pawnbrokers generally, see Fin. C. S. 21000 et seq.)

15-10 Railroads – Jumping on or off cars. No person who is not a railroad employee shall climb or jump on or off of any railroad train or car, within the city; provided, that the provisions of this section shall not apply to passengers upon such trains or cars. (Ord. 78)

15-11 Trees and shrubs – Damaging. It shall be unlawful for any person to cut or injure in any manner any tree or shrubbery growing or being on any street, alley, sidewalk, square, park or other public highway or place in the city, or permit or allow the same to be done by any person or animal, or to hitch any animal so that it can or may so cut or injure such trees or shrubbery, or to allow any animal to be in any place or position, or upon any street, alley, sidewalk, square, park or other public highway or place in the city so it can or may injure the trees or shrubbery. (Ord. 42)

Article V. Graffiti

15-12.1 Definitions.

(a) Graffiti: Means any inscription, word, figure or design marked, etched, scratched, drawn or painted on any surface, without the written permission of the owner (or owner's representative) of such surface, regardless of the material of which the surface is composed, through the use of an aerosol or pressurized container of paint, indelible, chalk, ink dye, or other liquid substance capable of defacing property.

(b) Graffiti Implement: Means any implement capable of marking a surface to create graffiti including, but not limited to, aerosol paint containers, paint sticks, felt-tip markers or marking pens, marking instruments, drill bits, grinding stones, scribes, glass cutters, or etching tools, or other similar implements capable of scarring glass, metal, concrete, stucco, wood or similar surfaces.

I Aerosol Paint Containers: Means any container, regardless of the material from which it is made, which is adapted or made for the purpose of spraying paint or other similar substances capable of defacing property.

(d) Defacement Shall mean the intentional altering of the physical shape or physical appearance of property.

(e) Felt-tip marker or Marking pen: Means any indelible marker or similar implement with a tip, which, at its broadest width, is greater than one-eighth inch,, containing an ink or similar substance.

(f) Minor: Means a person less than eighteen years of age.

(g) Paint Stick/Graffiti Stick: Means a device containing a solid form of paint, wax, epoxy, or other similar substance capable of being applied to a surface by pressure, and upon application, leaving a mark.

(h) Spray Actuator: (also known as a “spray tip”, “nozzle” or “button”) means an object which is capable of being attached to aerosol paint containers for the purpose of spraying the substance contained therein.

(i) Owner’s Representative: Means any person or entity expressly authorized by the owner of any property to permit another person to place inscriptions, words, figures or designs upon such property, or person or entity in lawful possession of any property, whose right of possession include the authority to permit or allow inscriptions, words, figures, designs to be place upon such property.

(j) Responsible Person: Means any person who owns, controls, or possesses property or who has primary responsibility for the repair or maintenance of property.

15-12.2 Possession by Minors – Prohibited.

(a) It shall be unlawful for any minor to possess any graffiti implement:

1. While upon public property; or
2. While upon private property without the written consent of the owner of such private property. Such consent must be given in advance and must authorize the minor’s presence while in the possession of a graffiti implement.

This subsection shall not apply while the minor is attending, or traveling to or from a school at which the person is enrolled, if the person is participating in a class at said school which has, as a written requirement of said class, the need to use felt tip markers.

- (b) No minor shall possess any graffiti implement while in: any public park (within 25 feet of any structure); playground; swimming pool; recreational facility; the civic center area; (highway, street, or alley), whether such minor is or is not in any automobile, vehicle, or other conveyance, except as may be authorized by the city.
- (c) This section is not intended to conflict with California Penal Code section 594.1

15-12.3 Furnishing to Minors Prohibited. It shall be unlawful for any person, other than a parent or legal guardian, to sell, exchange, give, loan or otherwise furnish, or cause, or permit to be exchanged, given, loaned, or otherwise furnished, any graffiti implement to any minor without the presence of the parent, or other lawfully designated custodian of the person, which custodial consent shall be given in advance in writing.

14-12.4 Wrongful Display for Sale.

- (a) No person, firm or entity engaged in a commercial enterprise (“Seller”) shall display for sale, trade, or exchange, any graffiti implement except in an area under the control of Seller’s employee(s). The acceptable method for displaying a graffiti implement for sales in a completely enclosed cabinet or other storage device which shall be permanently affixed to a building or building structure, and which shall, at all times, except during access by authorized representatives, remain securely locked.
- (b) Any person who displays or stores a graffiti implement in violation of the provisions of this chapter shall be personally liable for any and all costs incurred by any party in connection with the removal of graffiti, or the repair of any property containing graffiti, caused by a minor who shall use such graffiti implement in violation of the provisions of California Penal Code Section 594, and for all attorney’s fees and court costs incurred in connection with the civil prosecution of any claim for damages.

15-12.5 Signs Required. Any person engaged in the retail sale of aerosol pressurized containers of paint shall post in a conspicuous place signs in accordance with Penal Code Section 594.1.

15-12.6 Application of Graffiti Prohibited.

- (a) It is unlawful for any person to apply graffiti markings upon any surface of real or personal property, whether publicly or privately owned.

- (b) It is unlawful for any person to assist, aid, abet, allow, permit, or encourage another to violate the provision of this ordinance by words, overt act, failure to act, or by lack of supervision and control.

15-12.7 Removal of Graffiti. No person owning or otherwise in control of any real property within the City shall permit or allow any graffiti to be placed upon or remain on such property when graffiti is visible from the street or other public or private property, for a period in excess of thirty days of occurrence or 15 days after the date of notice to abate by the Chief of Police.

15-12.8 Notice to Abate – Compliance by Owner. Whenever the Chief of Police or his designee determines that graffiti exists on any surface in the City of Imperial which is visible from the street or other public or private property, he shall cause a notice to be issued to abate such nuisance. The property owner shall have fifteen days after the date of the notice to remove the graffiti or the property will be subject to abatement by the City.

15-12.9 Service of Notice. The notice to abate graffiti shall be served upon the owner(s) of the affected premises, as such owner's name and address appears on the latest equalized property tax assessment rolls of the County of Imperial. In addition, if there is a commercial tenant using the premises, the notice shall also be serviced on said tenant. If there is no known address for the owner, the notice shall be sent in care of the property address. The notice required by this chapter may be serviced in any one of the following manners:

- (a) By personal service on the owner(s), occupant or person in charge or control of the property.
- (b) By registered or certified mail addressed to the owner at the last known address of said owner. If this address is unknown, the notice will be sent to the property address. In addition, where the property is occupied, a copy of the notice shall be delivered to the occupant.

15-12.10 Removal by City.

- (a) Upon failure of person to comply with the notice to abate by the designated date, or such continued date thereafter as the Chief of Police or his designated representative approves, then the Chief of Police is authorized and directed to cause the graffiti to be abated by the City forces, volunteers, or private contractor, and the City, its volunteers, or its private contractor is expressly authorized to enter upon the premises for such purposes. All reasonable efforts to minimize damage from such entry shall be taken by the City, and any paint used to obliterate graffiti shall be as close as practicable to background color(s).

- (b) When the graffiti has been abated by the City due to the refusal or failure of the owner to do so, the owner shall reimburse the City for the total costs of the removal of the graffiti. The costs to be reimbursed include labor, material, preparation or specifications and contract and inspection.

If the amount billed to the property owner has not been paid within 30 days of the City's assessment, the city shall cause to be filed in the office of the recorder of the County of Imperial a notice of lien. Liens shall be collected at the time of sale or remodel in excess of fifty percent (50%) of the market value of the building.

- (c) The City may provide a program for the removal of the graffiti, but shall not authorize nor undertake to provide for the painting or repair of any more extensive area than that where the graffiti is located. Prior to the removal of the graffiti, the City shall obtain written consent from the property owner, and the owner shall execute the appropriate release; and example is as follows:

CITY OF IMPERIAL

GRAFFITI ABATEMENT PROGRAM

GRAFFITI REMOVAL AUTHORIZATION FORM

I, (name) _____ the owner of property located at _____, Imperial, California, or agent representing the property owners, hereby authorize the City of Imperial and its officers, agents, contractors, volunteers, and employees to remove graffiti from property by repainting, sandblasting, or other appropriate graffiti removal technique.

I hereby release and hold harmless the City of Imperial, its officers, agents, contractors, volunteers and employees from any and all claims, demands, causes of action or obligations whatsoever arising out of or relating to entry on my property for the purpose of graffiti eradication, including, but not limited to those arising from incidental damage to shrubs, plants, or other vegetation as well as those related to the appearance of the property as the result of the graffiti eradication work.

I understand that the City will not repaint or repair any more extensive area than where the graffiti is located and further understand that I will have to pay for the total cost of the graffiti removal. I further understand that every effort will be made to match existing colors; however, an exact match may not be provided. I also understand that if I want to assure that I will be satisfied with the color of paint being used, I can furnish the paint with the color that I desire.

PLEASE CHECK THE APPROPRIATE RESPONSE:

___ I will be able to supply paint or other removal equipment. Contact me to finalize arrangements.

___ I will not be able to supply paint and understand that paint used by the City may not match the existing color.

REPEATED GRAFFITI REMOVAL AUTHORIZATION (OPTIONAL):

___ I further authorize the City of Imperial, and its officers, agents, contractors, volunteers, and employees to remove graffiti from the property referenced above as and when it may appear. I understand that this authorization can be rescinded by me at any time upon written notice of such recession being delivered to the city at the address referenced below>

Return to : City of Imperial
420 South Imperial Avenue
Imperial, CA 92251
Attn: Police Chief

15-12.11 Graffiti – Reward.

- (a) Pursuant to section 53069.5 of the Government Code, the City does hereby offer a reward of \$150.00 for information leading to the arrest and conviction of any person in violation of Penal Code Section 594 by the use of graffiti, not to exceed \$75.00 per violation. In the event of multiple contributors of information, the reward amount shall be divided by the City in the manner it shall deem appropriate. For the purposes of the section, diversion of the offending violation to a community service program, or a plea bargain to a lesser offense, shall constitute a conviction.
- (b) Claims for reward under this Section shall be filed with the City. Each claim shall:
 - (1) Specifically identify the date, location, and kind of property damaged or destroyed.
 - (2) Identify by name the person who was convicted or confessed to the damage or destruction of the property.
 - (3) Identify the court and the date upon which the conviction occurred or the place and the date of the confession.

- (c) No claim for a reward shall be allowed by the City Council unless the Chief of Police or his designee investigates and verifies accuracy of the claim and recommends that it be allowed.
- (d) The person committing the graffiti,, or if an unemancipated minor, then the custodial parent of said minor, shall be liable for the reward paid pursuant to this section.
- (e) No law enforcement officer, municipal officer, official or employee of the City shall be eligible for such reward.

15-12.12 Penalties for Violation This section applies to violations involving vandalism in violation of Section 594 of the Penal code by defacing property with paint or any other liquid.

Any and all violations of the ordinance shall be punishable either as an infraction or a misdemeanor, at the discretion of the City Attorney. The following penalties shall apply to person(s) convicted of violating this ordinance:

- (a) According to Vehicle Code Section 13202.6 a drivers license may be suspended or delayed in issuance for one year for each conviction of graffiti as follows:

Conviction of person aged 13 years or older for vandalism by defacing property with paint or any other liquid; suspension or delay of driving privilege; reduction of period for community service.

- (1) For each conviction of a person for any offense specified in this section, committed while the person was 13 years of age, or older, the court may suspend the person(s) driving privilege for one year. If the person convicted does not yet have the privilege to drive, the court may order the department to delay issuing the privilege to drive for one year subsequent to the time the person becomes legally eligible to drive. However, if there is no further conviction for any offense specified in this section in a 12-month period after the conviction, the court, upon petition of the person affected, may modify the order imposing the delay of the privilege. For each successive offense, the court shall suspend the person's driving privilege for those possessing a license or delay the eligibility for those not in possession of a license at the time of their conviction for an additional year.
- (2) Any person whose driving privilege is suspended or delayed for an act involving vandalism in violation of Section 594 of the Penal Code, may elect to reduce the period of suspension or delay imposed by the court by performing community service under the

supervision of the probation department. The period of suspension or delay ordered shall be reduced at the rate of one day for each hour of community service performed. For purposes of this paragraph, "community service" means cleaning up graffiti from any public property, including public transit vehicles.

- (3) As used in this section, the term "conviction" includes the finding in juvenile proceedings specified in Section 13015.
 - (4) Whenever the court suspends driving privileges pursuant to this section, the court in which the conviction is had shall require all drivers' licenses held by the person to be surrendered to the court. The court shall, within 10 days following the conviction, transmit a certified abstract of the conviction, together with any drivers' licenses surrendered, to the department.
 - (5) When the court is considering suspending or delaying driving privileges pursuant to this section, the court shall consider if a personal or family hardship exists that requires the person to have a driver's license for his or her own, or a member of his or her family's employment or medically related process.
 - (6) The suspension, restriction, or delay of driving privileges pursuant to this section shall be in addition to any penalty imposed upon conviction of any violation specified in this section.
- (b) Every person convicted of a violation of this ordinance, shall be punished by a mandatory fine in accordance with Penal Code Section 594.

The court shall, in addition to the fines imposed pursuant to this section, order the offender to pick up litter or clean up graffiti at a time and place within the jurisdiction of the court as follows:

- (1) For a first conviction punishment pursuant to this section, the court shall require the offender to pick up litter or clean up graffiti for not less than eight (8) hours.
- (2) For a second conviction punishment pursuant to this section, the court shall require the offender to pick up litter or clean up graffiti for not less than sixteen (16) hours.
- (3) For a third or subsequent conviction punishment pursuant to this section, the court shall require the offenders to pick up litter or clean up graffiti for not less than twenty-four (24) hours.

- (c) Every person convicted of a violation of this ordinance shall be liable for any and all cost incurred in connection with the removal of the graffiti, or the repair of any property containing graffiti, and for all attorney's fees and court costs incurred in connection with the Civil Prosecution of any claim for damages.
- (d) If a person is a minor, the parent(s) shall also serve concurrent Community Service time removing graffiti with the offender, and pay all fines should the minor be unable to pay said fines.

15-12.13 Severability. If any provision, clause, sentence, or paragraph of this chapter or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the other provision of this chapter which can be given effect without the invalid provision of application, and to this end the provisions of this chapter are declared to be severable.

15-12.14 Graffiti Removal and Prevention Program. A graffiti removal and prevention program shall be developed in an attempt to reduce the amount of graffiti occurrence in the City of Imperial. (Ord. 609)

Article VI. Newsracks

15-15 Intent and purpose. The City Council of the City of Imperial finds and declares that:

- (a) The uncontrolled placement of newsracks in public rights-of-way presents an inconvenience and danger to the safety and welfare of persons using such rights-of-way, including pedestrians, persons entering and leaving vehicles and buildings, and persons performing essential utility, traffic control and emergency services.
- (b) Newsracks so located as to cause an inconvenience or danger to persons using public rights-of-way, and unsightly newsracks located therein, constitute public nuisances.
- (c) It is a matter of necessity that the City of Imperial protects children and unconsenting adults in and on its public streets, sidewalks, transportation facilities and other rights-of-way from viewing such public displays of offensive sexual material. Such displays are thrust indiscriminately upon unwilling audiences of adults and children and constitute assaults upon individual privacy.
- (d) The provisions and prohibitions hereinafter contained and enacted are in pursuance of and for the purpose of securing and promoting

the public health, morals and general welfare of persons in the City of Imperial in their use of public rights-of-way.

15-16. Definitions.

- (a) Distributor shall mean the person responsible for placing and maintaining a newsrack in the public right-of-way.
- (b) Newsrack means self-service or coin-operated box, container, storage unit or other dispenser installed, used, or maintained for the display and sale of newspapers or other news periodicals.
- (c) Nudity means the showing with less than a fully opaque covering of the genitals, pubic hair, buttocks, natal cleft, perineum, anus or anal region of any person, other than a child under the age of puberty, or any portion of the breast at or below the areola thereof of any female person, other than a child under the age of puberty, or the depiction of covered male genitals in a discernibly turgid state.
- (d) Offensive means that the work in which the representations appear, taken as a whole, appeals to the prurient interest and patently depicts or portrays the prohibited sexually explicit material in a manner which, taken as a whole, lacks serious literary, artistic, political, or scientific value.
- (e) Parkway means that area between sidewalks and the curb of any street, and where there is no sidewalk in that area between the edge of the roadway and property line adjacent thereto. Parkway shall also include any area within a roadway which is not open to vehicular travel.
- (f) Pictorial material means any material suggesting or conveying a visual image, and includes, but is not limited to, a photograph, painting or drawing.
- (g) Roadway means that portion of a street improved, designed, or ordinarily used for vehicular travel.
- (h) Sexually explicit material means any pictorial material depicting human sexual intercourse, human or animal masturbation, bestiality, oral intercourse, anal intercourse, human-animal intercourse, excretory functions, homosexual acts, direct physical stimulation or touching of unclothed genitals or pubic areas of the human male or female, flagellation or torture by or upon a person in the context of a sexual relationship or sexual stimulation. The material shall be judged without regard to any covering which may be affixed or printed over the material in order to obscure genital areas in a depiction otherwise falling within the definition

of the Subsections. Works of art or of anthropological significance are not included within the definitions of this Subsection.

- (i) Sidewalk means any surface provided for the exclusive use of pedestrians.
- (j) Street means all that area dedicated to public use for public street purposes and shall include, but not be limited to, roadways, parkways, alleys and sidewalks. (Ord. 468)

15-17 Permit required. It shall be unlawful for any person, firm or corporation to erect, place, maintain or operate, on any public street, or in any other public way or place, in the City of Imperial any newsrack without first having obtained a permit from the City Clerk specifying the exact location of such rack(s). One permit may be issued to include any number of newsracks, and shall be signed by the applicant. (Ord 468)

15-18 Application for permit. Application for such permit shall be made in writing, to the City Clerk upon such form as shall be provided by her, and shall contain the name and address of the applicant, the proposed specific location of said newsrack, and shall be signed by the applicant. (Ord. 468)

15-19 Conditions for permit.

- (a) As an express condition of the acceptance of such permit, the permittee thereby agrees to indemnify and save harmless the City, its officers, directors, and employees against any loss or liability or damage, including expenses and costs for bodily or personal injury, and for property damage sustained by any person as the result of the installation, use, or maintenance of a newsrack within the City of Imperial.
- (b) Permits shall be issued for the installation of a newsrack or newsracks without prior inspection of the location but such newsrack or newsracks and the installation, use or maintenance thereof shall be conditioned upon observance of the provisions of the Ordinance and such reasonable rules and regulations as may be established by the City Clerk and Chief of Police. Permits shall be issued within twenty-four (24) hours after the application has been filed. An annual permit fee of Twenty-five (\$25.00) is required.
- (c) Such permits shall be valid for one (1) year and shall be renewable pursuant to the procedure for original applications referred to in Section 4 and upon payment of the Twenty-five Dollar (\$25.00) permit fee. (Ord. 468)

15-20 Standards for maintenance and installation. Any newsrack which in whole or in part rests upon, in or over any public sidewalk or parkway, shall comply with the following standards:

- (a) No newsrack shall exceed five (5) feet in height, thirty (30) inches in width, or two (2) feet in thickness.
- (b) No newsrack shall be used for advertising signs or publicity purposes other than that dealing with the display, sale, or purchase of the newspaper or news periodical sold therein.
- (c) Each newsrack shall be equipped with a coin-return mechanism to permit a person using the machine to secure an immediate refund in the event he is unable to receive the publication paid for. The coin-return mechanism shall be maintained in good working order.
- (d) Each newsrack shall have affixed to it in a readily visible place so as to be seen by anyone using the newsrack a notice setting forth the name and address of the distributor and the telephone number of working telephone service to call to report a malfunction, or to secure a refund in the event of a malfunction of the coin-return mechanism, or to give the notices provided for in this division.
- (e) Each newsrack shall be maintained in a neat and clean condition and in good repair at all times. Specifically, but without limiting the generality of the foregoing, each newsrack shall be serviced and maintained so that:
 - 1) It is reasonably free of dirt and grease.
 - 2) It is reasonably free of chipped, faded, peeling and cracked paint in the visible painted areas thereof.
 - 3) It is reasonably free of rust and corrosion in the visible unpainted metal areas thereon.
 - 4) The clear plastic or glass parts thereof, if any, through which the publications therein are viewed are unbroken and reasonably free of cracks, dents, blemishes and discoloration.
 - 5) The paper or cardboard parts or inserts thereof are reasonable free of tears, peeling or fading.
- (f) It shall be unlawful for any person to place or maintain any publication or material in newsracks which exposes to public view any pictorial material which depicts or appears to depict nudity or offensive sexually explicit material.
(Ord. 468)

15-21 Location and placement of newsrack. Any newsrack which rests in whole or in part upon, or on any portion of a public right-of-way or which projects onto, into,

or over any part of a public right-of-way shall be located in accordance with the provisions of this Section:

- (a) No newsrack shall be used or maintained which projects onto, into, or over any part of the roadway of any public street, or which rests, wholly or in part upon, along, or over any portion of the roadway of any public street.
- (b) No newsrack shall be permitted to rest upon, in or over any public sidewalk or parkway, when such installation, use or maintenance endangers the safety of persons or property, or when such site of location is used for public utility purposes, public transportation purposes or other governmental use, or when such newsrack unreasonably interferes with or impedes the flow of pedestrian or vehicular traffic including any legally marked or stopped vehicle, the ingress into or egress from any residence or place of business, or the use of poles, posts, traffic signs or signals, hydrants, mailboxes, or other objects permitted at or near said location.
- (c) No newsrack shall be chained, bolted, or otherwise attached to any fixture located in the public right-of-way, except to other newsracks.
- (d) Newsracks may be placed next to each other, provided that no group of newsracks shall extend for a distance of more than eight (8) feet along a curb, and a space of not less than three (3) feet shall separate each group of newsracks.
- (e) No newsrack shall be placed, installed or maintained:
 - 1) Within three (3) feet of any marked crosswalk.
 - 2) Within twelve (12) feet of the curb return of any unmarked crosswalk.
 - 3) Within five (5) feet of any fire hydrant, fire call box, police call box or other emergency facility.
 - 4) Within five (5) feet of any driveway.
 - 5) Within three (3) feet ahead or fifteen (15) feet to the rear of any sign marking a designated bus stop.
 - 6) Within three (3) feet of the outer end of any bus bench.
 - 7) At any location whereby the clear space for the passageway of pedestrians is reduced to less than six (6) feet.
 - 8) Within three (3) feet of or on any public area improved with lawn, flowers, shrubs, trees or other landscaping.
 - 9) Within one hundred (100) feet of any other newsrack on the same side of the street in the same block containing the same issue or edition of the same publication.

The provisions contained Subsection (e) of this Section shall not apply if compliance with the provisions would prohibit the placement of newsracks for a distance of one hundred fifty (150) feet on the same side of the street in the same block. (Ord 468)

15-22 Violations of Ordinance. Upon determination by the Chief of Police that a newsrack has been installed, used or maintained in violation of the provisions of this Ordinance, an order to correct the offending condition will be issued to the distributor and confirmed by mailing a copy of the order by certified mail return receipt requested. The order shall specifically describe the offending condition and suggest actions necessary to correct the condition. Failure to properly correct the offending condition within three (3) days (excluding Saturdays, Sundays, and legal holidays) after the mailing date of the order shall result in the offending newsrack being summarily removed and processed as unclaimed property under provisions of the Unclaimed Property Ordinance. If the offending newsrack is not properly identified as to owner under provisions of Section 6(d) hereof, it shall be removed immediately and processed as unclaimed property under provisions of the Unclaimed Property Ordinance. The Chief of Police shall cause inspection to be made of the corrected condition or of a newsrack reinstalled after removal under this Section. The distributor of said newsrack shall be charged a Ten Dollar (\$10.00) inspection fee for each newsrack so inspected which charge shall be in addition to all other fees and charges required under this Ordinance and the Unclaimed Property Ordinance. (Ord. 468)

15-23 Appeals. Any person or entity aggrieved by a finding, determination, notice or action taken under the provisions of this Ordinance may appeal and shall be apprised of his right to appeal to the City Council. An appeal must be perfected within three (3) days after receipt of notice of any protested decision or action by filing with the City Clerk a letter of appeal briefly stating therein the basis for such appeal. A hearing shall be held on a date no more than ten (10) days after receipt of the letter of appeal. Appellant shall be given at least five (5) days notice of the time and place of the hearing. The City Council shall give the appellant, and any other interested party, a reasonable opportunity to be heard, in order to show cause why the determination of the Chief of Police should not be upheld. In all such cases, the burden of proof shall be upon the appellant to show that there was no substantial evidence to support the action taken by the Chief of Police. At the conclusion of the hearing, the City Council shall make a final and conclusive determination. (Ord. 468)

15-24 Revocation. In addition to the enforcement procedures in Section 8 of this Ordinance, it shall be within the power and discretion of the City Clerk to suspend or revoke the permit for continued or repeated violation or infractions of any provision of this Ordinance or of any rule, direction or regulation established pursuant to this Ordinance. (Ord. 468)

15-25 Designated representative. "City Clerk" as used in this Ordinance shall include her designated representative. "Chief of Police" as used in this Ordinance shall include his designated representative. (Ord. 468)

15-26 Abandonment. In the event a newsrack remains empty for a period of thirty (30) continuous days, the same shall be deemed abandoned, and may be treated in the manner as provided in Section 8 for newsracks in violation of the provisions of this Ordinance. (Ord. 468)

15-27 Separability. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. (Ord. 468)

Article VII. Housing Discrimination.

15-28 Declaration of policy. It is hereby declared to be the policy of the City of Imperial in the exercise of its police power for the public safety, public health and general welfare to assure equal opportunity to all persons to live in decent housing facilities regardless of race, color, religion, sex or national origin, and, to that end, to prohibit discrimination in housing by any persons. (Ord. 514)

15-29 Definitions. When used herein:

1. "Real property" includes buildings, structure, lands, tenements, leaseholds, cooperatives and condominiums.
2. "Discrimination" or "discriminatory housing practice" means any difference in treatment based upon race, color, religion, sex, or national origin; or any act that is unlawful under this ordinance.
3. "Person" includes individuals, children, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations and all other groups or combinations.
4. "Owner" includes a lessee, sublessee, co-tenant, assignee, managing agent or other person having the right of ownership or possession, or the right to sell, rent, or lease any housing accommodation.
5. "Financial Institution" includes any person, as defined herein, engaged in the business of lending money or guaranteeing losses.
6. "Real Estate Broker" or "Real Estate Salesman" includes any individual, qualified by law, who, for a fee, commission, salary or for other valuable consideration, or who with the intention or expectation of receiving or collecting same, lists, sells, purchases, rents, or leases any housing accommodations, including options thereupon, or who negotiates or attempts to negotiate a loan,

secured by a mortgage or other encumbrance, upon transfer of any housing accommodation; or who is engaged in the business of charging an advance fee or contracting for collection of a fee in connection with a contract whereby he undertakes to promote the sale, purchase, rental or lease of any housing accommodation through its listing in a publication issued primarily for such purpose; or an individual employed by or acting on behalf of any of these.

7. "Housing accommodation" or "Dwelling" means any building, mobile home, or trailer, structure, or portion thereof which is occupied as, or designed, or intended for occupancy, as a residency by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, mobile home or trailer, structure, or portion thereof or any real property, as defined herein, used or intended to be used for any of the purposes set forth in this subsection.
8. "Mortgage Loan Broker" means an individual who is engaged in or who performs the business of "Mortgage Broker" or services of a mortgage loan broker as the same are defined by the laws of California.
9. "Open market" means the market which is informed of the availability for sale, purchase, rental or lease of any housing accommodation, whether informed through a real estate broker or by advertising by publication, signs, or by any other advertising methods directed to the public or any portion thereof, indicating that the property is available for sale, purchase, rental or lease.

(Ord. 514)

15-30 Unlawful practices. In connection with any of the transactions set forth in this section which affect any housing accommodation on the open market, or in connection with any public sale, purchase, rental or lease of any housing accommodation, it shall be unlawful within the City of Imperial for a person, owner, financial institution, real estate broker or real estate salesman, or any representative of the above, to:

1. Refuse to sell, purchase, rent or lease, or deny to or withhold any housing accommodation from a person because of his race, color, religion, ancestry, national origin, sex or place of birth; or
2. To discriminate against a person in the terms, conditions, or privileges of the sale, purchase, rental or lease of any housing accommodation, or in the furnishing of facilities of services in connection therewith; or

3. To refuse to receive or transmit a bona fide offer to sell, purchase, rent or lease any housing accommodation from or to a person because of his race, color, religion, ancestry, national origin, sex or place of birth; or
4. To refuse to negotiate for the sale, purchase, rental or lease of any housing accommodation to a person because of his race, color, religion, ancestry, national origin, sex or place of birth; or
5. To represent to a person that any housing accommodation is not available for inspection, sale, purchase, rental or lease when in fact it is so available, or to refuse to permit a person to inspect any housing accommodation, because of his race, color, religion, or national origin, sex or place of birth; or
6. To make, publish, print, circulate, post or mail, or cause to be made, published, printed, circulated, posted or mailed, any notice, statement or advertisement, or to announce a policy or to sign or to use a form of application for the sale, purchase, rental, lease or financing of any housing accommodation, or to make a record of inquiry in connection with the prospective sale, purchase, rental, lease or financing of any housing accommodation, or to make a record of inquire in connection with the prospective sale, purchase, rental, lease or financing any housing accommodation, which indicates any discrimination or any intent to make a discrimination.
7. To offer, solicit, accept or use a listing of any housing accommodation for sale, purchase, rental or lease with the understanding that a person may be subject discrimination in connection with such sale, purchase, rental or lease, or in the furnishing of facilities or services in connection therewith; or
8. To induce directly or indirectly, or attempt to induce directly or indirectly, the sale, purchase, rental or lease, or the listing for any of the above, of any housing accommodation by representing that the presence or anticipated presence of persons of any particular race, color, religion, sex or national origin or place of birth in the area to be affected by such sale, purchase, rental or lease will or may result in either:
 - a) The lowering of property values in the area;
 - b) An increase in criminal or antisocial behavior in the are; or
 - c) A decline in the quality of schools serving the area.
9. To make any misrepresentations concerning the listing for sale, purchase, rental or lease, or the anticipated listing for any of the above, or the sale,

purchase, rental or lease of any housing accommodation in any area in the City of Imperial for the purpose of including or attempting to induce any such listing or any of the above transactions; or

10. To engage in, or hire to be done, or to conspire with others to commit acts or activities of any nature, the purpose of which is to coerce, cause panic, incite unrest or create of play upon fear, with the purpose of either discouraging or inducing, or attempting to induce, the sale, purchase, rental or lease, or the listing for any of the above, of any housing accommodation; or
11. To retaliate or discriminate in any manner against a person because he has opposed a practice declared unlawful by this article, or because he has filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding, hearing or conference under this ordinance; or
12. To aid, abet, incite, compel, or coerce any person to engage in any of the practices prohibited by this ordinance; or to obstruct or prevent any person from complying with the provisions of this ordinance; or any other issue thereunder; or
13. By canvassing, to commit any unlawful practices prohibited by this ordinance; or
14. Otherwise to deny to, or withhold any housing accommodation from a person because of his race, color, religion, ancestry, national origin, sex or place of birth; or
15. For any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part, in the making of commercial real estate loans, to deny a loan or other financial assistance to a person applying therefore for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling, or to discriminate against him in the fixing of the amount, interest rate, duration, or other terms of conditions of such loans of other financial assistance, because of the race, color, religion, sex, or national origin of such person or of any person associated with him in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance or of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given; or
16. To deny any qualified person access to or membership or participation in any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in their terms or

conditions of such access, membership, or participation, on account of race, color, religion, sex, or national origin. (Ord. 514)

15-31 Exemptions. This ordinance shall not apply to:

- (1) A religious organization, association, or society or any non-profit institution or organization operating, supervised, or controlled by or in conjunction with a religious organization, association, or society, which limits the sale, rental, or commercial purpose to persons of the same religion, or which gives preference to such persons, unless membership in such a religion is restricted on account of race, color, sex, or national origin.
- (2) A private club not in fact open to the public, which as an incident to its primary purpose or purposes, provides lodgings which it owns or operates for other than a commercial purpose, and which limits the rental or occupancy of such lodgings to its members or gives preference to its members.
- (3) Any single-family house sold or rented by an owner: Provided that such private individual owner does not own more than three such single family houses at any one time: Provided further, that in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with the respect to one such sale within any twenty-four month period: Provided further that such bona fide private individual owner does not own any interest in, nor is there owned or served on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time: Provided further, the sale or rental of any such single-family house shall be excepted from the application of this ordinance only if such house is sold or rented:
 - a) Without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person, and
 - b) Without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of the provisions of 42 United States Code Section 3604 I or of Section 3 of this

ordinance; but nothing in this provision shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title; or

4. Rooms or units in dwellings containing living quarter occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence. (Ord. 514)

15-32 Procedure. Any person aggrieved by an unlawful practice prohibited by this ordinance may file a complaint with the City Council within thirty (30) days after the aggrieved person becomes aware of the alleged unlawful practice and in no event more than sixty (60) days after the alleged unlawful practice occurred. The City Council or their duly authorized representative shall investigate each complaint and attempt to resolve each complaint.

Failure to achieve a resolution acceptable to both parties and compliance with this ordinance shall cause the City Council to forward the complaint and their findings to appropriate state and federal officials. (Ord. 514)

15-33 Other remedies. Nothing herein contained shall prevent any person from exercising any right or seeking any remedy to which he might otherwise be entitled or from filing his complaint with any appropriate governmental agency. (Ord. 514)

15-34 Penalties. The violation of any provision of this ordinance shall constitute a misdemeanor and shall be punishable by imprisonment up to six (6) months and/or five hundred (\$500.00) dollar fine. (Ord. 514)

15-35 Severability of invalid provisions. In case any one or more of the sections, subsections, clauses, or provisions of this ordinance, or the application of such sections, subsections, clauses or provisions to any situations, circumstances, or person, shall for any reason be held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not effect any other sections or provisions of this ordinance of the application of such sections, subsections, clauses or provisions to any other situation, circumstance or person, and it is intended that his ordinance shall be constructed and applied as if such section or provision so held unconstitutional or invalid had not been included in this ordinance. (Ord. 514)

Article VIII. Regulation of the Sale of Tobacco Products

15-36 Purposes. The City Council does hereby find that substantial scientific evidence exists that the use of tobacco products causes cancer, heart disease, and various other medical diseases. The U.S. Surgeon General has found that tobacco-caused diseases are the leading cause of premature, preventable death and disability in

the U.S. The National Centers for Disease Control have found that at least four hundred eighteen thousand (418,000) Americans die each year from tobacco caused diseases. The U.S. Surgeon General and the U.S. Department of Health and Human Services have found that a majority of those Americans who die of tobacco caused diseases became addicted to nicotine in tobacco products as adolescents before the age of legal consent. Accordingly, the City Council finds and declares it is in the public interest to prohibit self-service sales and self-service displays, racks and shelves of tobacco products.

15-37. Definitions. For the purposes of this chapter, the following words are defined:

- a) *Business* means any sole proprietorship, joint venture, corporation or other business entity formed for profit making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.
- b) *City* shall mean the City
- c) *Employee* shall mean any person who is employed by any employer in consideration for direct or indirect wages or profit, any person who volunteers his or her services for a nonprofit entity.
- d) *Minor* means any individual who is less than eighteen years old.
- e) *Non-profit* entity means any corporation, unincorporated associated or other entity created for charitable, philanthropic education character-building, political, social or other similar purpose, the net proceeds from the operations of which are committed to the promotion of the objectives or purposes of the entity and not a private gain. A public agency is not a “nonprofit entity” within the meaning of the section.
- f) *Person* shall mean any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- g) *Self-service merchandising* means open display of tobacco products and point-of-sale tobacco-related

promotional products that the public has access to without the intervention of an employee.

- h) *Tobacco product* means any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, snuff or any other form of tobacco which may be utilized for smoking, chewing, inhaling or other manner ingestion.
- i) *Tobacco retailer* shall mean any person or governmental entity that operates a store, stand, booth, concession, or other place at which sales of tobacco products are made to purchasers for consumption or use.
- j) *Tobacco vending machines* means any electronic or mechanical device or appliance the operation of which depends upon insertion of money, whether in coin or paper currency, or other things representatives of value, which dispenses or releases a tobacco product.
- k) *Vendor-assisted* means only a store employee has access to the tobacco product and assists the customer by supplying the product. The customer does not take possession of the product until it is purchased.

15-38 Prohibitions.

a) No person, business, tobacco retailer, or owner, manager, or operator of any establishment subject to this ordinance shall sell, offer to sell or permit to be sold any tobacco product to an individual without requesting and examining photo identification of customers 26 and younger for the purpose of establishing the purchaser's age as eighteen years or greater, unless the seller has some reasonable basis for determining the buyer's age.

b) (1) Except as provided in subsection (2), it shall be unlawful for any person, business or tobacco retailer to sell, permit to be sold, offer for sale or display for sale any tobacco product by means of self-service merchandising or by means other than vendor-assisted sales.

(2) The provisions of subsection (1) shall not apply to the premises of a duly licensed and permitted business used exclusively for the retail sale of tobacco products or accessories so long as minor are not permitted within the premises and the premises are posted conspicuously at each point of entrance with a notice stating that no one under the age of eighteen years is permitted to be on the premises pursuant to this subsection (2) of Section 15-38(b) of the City Code. Nothing herein shall be interpreted as relieving such retailer from also posting the notices described in Section 22952 (b) of the California Business and Professions Code.

15-39 Non-retaliation.

a) No person or employee shall discharge, refuse to hire or in any manner retaliate against any employee or applicant for employment because such employee or applicant agrees to abide by the provisions of this ordinance.

b) No person shall intimidate or threaten any reprisal or effect any reprisal for the purpose of retaliating against another person because such other person seeks to attain compliance with provisions of this article.

15-40 Other applicable laws. This article shall not be interpreted or construed to relieve any person from posting the notices prescribed by California Business and Professions Code Section 22952 and any regulations adopted pursuant thereto.

15-41 Violation, enforcement and penalties.

a) Any person, business or tobacco retailer who violates any provision of the chapter shall, upon conviction thereof, be punished as specified in Section 1-7 of the Code.

b) The owner, operator, or manager of any public place or place of employment within the purview of this article shall comply herewith. Such owner, operator or manager shall post or cause to be posted all signage required by this article.

c) It shall be the responsibility of employers to disseminate information concerning the provisions of the article to employees.

15-42 Severable provisions. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or application of the act which can be given effect without the invalid provision or application, and to this end the provisions or this act are severable. (Ord. 638)

15-43 Park Regulations.

a) Scope. For purposes of this article, parks shall include all dedicated parks, parks established by adverse uses, planted areas open to the general public, parks on leased property and trails open to the general public. Parks shall include those areas of off street parking.

b) Park Closure. All parks shall be closed between the hours of 10 p.m. and 5 a.m. It is unlawful for any person to enter or stay in any park during said hours of closure. Vehicles parked in violation of this ordinance may be towed at owner's expense in accordance with applicable law.

c) Smoking in Parks. It is unlawful for any person to smoke, including emitting or exhaling the fumes of any pipe, cigar, cigarette or any other lighted smoking equipment used for burning any tobacco product, weed or plant, or carry or hold a lighted pipe, cigar, cigarette or other lighted smoking products used for burning any tobacco product, weed or plant in any park except in areas designated by the City Manager, and indicated by signage, as smoking areas. The provisions of this section do not apply in any circumstance where federal or state law regulates smoking, if the federal or state law is more restrictive.

d) Use of Amplification in Parks. It is unlawful for any person to broadcast sound by use of amplification without first obtaining a permit pursuant to applicable provisions of the Imperial City Code. (Ord. 772)

Article IX. Security Alarm Systems

15-50 Purpose. The purpose of this article is to encourage the proper and effective use of alarm systems thereby reducing unnecessary responses by city personnel and equipment to preventable false alarms by setting forth regulations governing the various types of intrusions, holdup, fire and other alarm systems within the city in order to promote the public health, welfare and safety.

15-51 Definitions. For the purposes of this article, the following definitions shall apply:

a) *Alarm agent* means any person in possession of a state approved alarm company agent identification card containing said agent's photograph and physical description and employed by maintaining, moving, repairing, replacing, servicing, responding to, or causing others to respond to an alarms system in or on any building, structure or facility.

b) *Alarm business* means any State approved alarm company business carried on by any individual, partnership, corporation, or other entity of leasing, maintaining, servicing, repairing, altering, replacing, moving or installing any alarm system or causing to be leased, maintained, serviced, repaired, altered, replaced, moved or installed any building, structure or facility.

c) *Alarm system* means any mechanical or electrical device which is designed or used for either the detection of fire or intrusion into a building, structure or facility or both, which detection causes a local audible alarm or transmission of a signal or message, or which is used to evoke police or fire department response. Alarm systems include, but are not limited to, direct-dial telephone devices. Devices which are not designed or used to evoke police or fire response and devices which are designed so as not to be audible, visible, or perceptible outside of the protected building, structure or facility are not included within this definition. Also not included in this definition are auxiliary devices installed by a

telephone company to protect its system from damage or disruption by use of an alarm system, alarm systems affixed to vehicles, smoke detectors, and medical alert systems.

d) *Alarm User* means any person using an alarm system at his place of business or residence.

e) *Chief* means the fire chief or the chief of police, whichever is appropriate.

f) *False alarms* means an alarm signal eliciting an emergency response from the police or fire department when a situation requiring such response does not in fact exist, but does not include an alarm signal caused by violent natural conditions or other extraordinary circumstances that would activate an alarm system in reasonably good working condition. Upon failure of the police or fire department to find any evidence of intrusion, fire or other need or cause for activating an alarms system, a conclusive presumption of false alarm will be made.

g) *Fire alarm system* means any device designed to detect and to signal the occurrence of a fire or other emergency to which the fire department is reasonably expected to respond.

h) *Fire department, fire service personnel or fire chief* means the fire chief of the city and designated personnel of the city fire department.

i) *Nonpriority* means that police response to the activation of an alarm will not be given precedence over other calls and will be predicated upon availability of police units and other service needs.

j) *The police or chief of police* means the chief of the city, his officers and designated employees.

k) *Public entity* means the federal, state, county, city governments, and any of their agencies.

15-52 Alarm Business Registration.

a) It shall be unlawful for any person, partnership, corporation, or firm to own, manage, conduct or carry on the business of selling, leasing, installing, servicing, maintaining, repairing, replacing, moving, removing, or monitoring an alarm system in or on any building, place or premises within the city without first having registered with the police department; provided, however, such registration shall not be required for any business which only sells or leases said alarms systems from a fixed location, unless such business services, installs, monitors or responds to alarm systems at the protected premises.

b) Registration shall be accomplished by furnishing such information as may be required by the police department, including but not limited to, the full name of the business, a copy of the license issued pursuant to Section 7593.8 of the Business and Professions Code for the alarm business, and the name and business address of the manager of operations for the area which includes the city.

15-53 Alarm Agent Registration.

a) It shall be unlawful for any person, including the owners of an alarm business, to engage directly in the selling, leasing, maintaining, servicing, repairing, altering, replacing, moving or installing of an alarm system in or on any building, place, or premises within the city without first having registered his name and filed with the police chief a copy of the alarm agent registration card issued to him pursuant to the provisions of Section 7593.7 of the California Business and Professions Code.

b) Nothing herein shall require a person to so register in order to install, service, repair, alter, replace or move an alarm system on the premises owned or occupied by that person.

c) Nothing herein shall require a person to so register who is merely a salesman for any business not required to register as an alarm business under the provisions of Chapter 12 of the Imperial City Code if such salesman does not engage in any other activities related to alarm systems apart from selling.

d) Every person engaged in installing, repairing, servicing, altering, replacing, moving or removing an alarm system as defined herein on any premises within the city, other than premises owned or occupied by said person, shall carry on his person at all times while so engaged a valid state alarm agents' registration card and shall display such card to any police officer upon request.

15-54 Notification of Change.

a) Any alarm business registered with the police department shall immediately report to the police chief any change of address or ownership of the business or the name or area which includes the city.

b) Any person registered as an alarm agent shall immediately report to the police chief any change of address.

15-55 Alarm User's Permit.

a) No person shall install, or cause to be installed, use, maintain or possess an alarm system on premises owned or in the possession or control of such person

within the city without first having obtained an alarm user's permit from the appropriate chief in accordance with this section.

b) Owners of existing alarms systems will be notified of these permit requirements as discovered. In such cases, permit applications shall be made within thirty (30) days of notification.

c) The application for an alarm user's permit shall be submitted on a form as prescribed by the appropriate chief and shall include the address of the premises wherein the system is to be located and the name, address and telephone number of the applicant and persons who will render service or repairs during any hours of the day and night. It shall be the duty of the alarm user to keep this information current.

d) The permit shall be denied by the appropriate chief if the alarm system does not comply with this article or standards adopted pursuant to Chapter 6 of the Imperial City Code.

e) The appeal process shall be as follows:

(1) Upon denial, the party whose application has been denied may request a hearing before the appropriate chief or his designate.

(2) At said hearing, the party who requested the hearing shall be entitled to present evidence on his own behalf.

(4) If the application is denied after said hearing, the chief or his designated hearing officer shall state in writing the reasons for denial.

(5) The decision of the chief or his designated hearing officer shall be final.

f) This section shall not apply to a public entity.

15-56 Monitoring Services. Every alarm business which monitors an alarm system located within the city shall maintain on file a current listing of all such alarm systems, including the name, address and telephone number of the individuals from who entry to the premises may be obtained. Said information shall be available to the chief upon request.

15-57 Disconnection of Audible Alarms. If service is unavailable, audible alarms which have emitted an alarm signal in excess of fifteen (15) minutes are hereby declared to be a nuisance, and the chief may cause such alarm to be disconnected by a registered alarm agent, with the cost therefore to be a charge payable by the alarm use. This charge will be separate and apart from all other charges.

15-58 Nuisance Alarms.

- a) The chief may designate an alarm system at a specific location as a nuisance if such alarm system actuates excessive false alarms.
- b) It is hereby found and determined that four (4) false burglary alarms within any three (3) consecutive calendar month period, two (2) false alarms requiring police response or two (2) false fire alarms within any three (3) consecutive calendar month period is excessive and thereby constitutes a public nuisance. The chief shall not consider any alarm in his computation of nuisance alarms if such alarm was generated by earthquakes, or unusual weather conditions, and not the result of the negligence of the alarm user, his agents or employees.
- c) The permit of an alarm user shall be automatically suspended if in violation of standards established by subsection (b) of this section. The chief or his designated shall serve the permittee with a written order of suspension, which shall state the reason for such suspension. The order shall be effective immediately if personally served or forty-eight (48) hours after the same has been deposited with postage prepaid in the United States mail.
- d) Immediately upon such order of suspension becoming effective, the alarm system shall receive nonpriority response from the police department.
- e) The suspension of the alarm user's permit shall become a revocation fifteen (15) days after the suspension becomes effective unless the permittee requests a hearing.
- f) The permittee may request a hearing from the chief. While hearing is pending, the revocation shall be stayed.
- g) At the hearing, the permittee may present evidence on his own behalf. The permittee may also present written verification that the alarm system has been completely evaluated and the problem located and corrected.
- h) If the revocation is ordered after the hearing, the chief or his designated hearing officer shall state in writing the reasons for the revocation.
- i) The decision of the chief or designated hearing officer shall be final

15-59 Burglar Alarms. Any building burglar alarm must have an automatic cutoff, capable of terminating its operation with fifteen (15) minutes of the time it is activated. Notwithstanding the requirements of this provision, any member of the police department of the city shall have the right to take such steps as may be reasonable and necessary to disconnect any such alarm during the period of its activation.

No owner of a motor vehicle shall have in operation an audible burglar alarm therein unless such burglar alarm shall be capable of terminating its operation within fifteen (15) minutes of the time it is activated. Notwithstanding the requirements of this provision, any member of the police department of the city shall have the right to take such steps as may be reasonable and necessary to disconnect any such alarm installed on a motor vehicle at any time during the period of its activation.

15-60 Service Fees.

a) Starting thirty (30) days following the effective date of this ordinance, the following service fees shall apply:

(1) For the first false alarm within three (3) consecutive calendar month period, there shall be no service fee;

(2) For the second and any subsequent false alarm within such period there shall be a service fee as established by the City Council.

b) Police officers will respond to all alarms reported, whether or not a cancellation telephone call has been received.

c) There shall be an additional service fee of thirty-five dollars (\$35.00) for each incident where a responsible person cannot be located to respond to the scene of an alarm within thirty (30) minutes.

d) The amount of any service fee shall be deemed a debt to the city. An action may be commenced in the name of the city in any court of competent jurisdiction for the amount of any delinquent service fee.

e) All service fees shall be deemed delinquent thirty (3) days after they are due and payable.

f) This section shall not apply to a public entity.

(Ord. 673)

Article X. Regulating the Conduct of Registered Sex Offenders

15-70 Preamble In order to promote public safety, and in light of the fact that sex offenders pose a clear threat to the children residing or visiting our community. Because convicted sex offenders are more likely than any other type of offender to re-offend for another sexual assault, the City Council of the City of Imperial desires to impose safety precautions in furtherance of the goal of protecting our children. The purpose of this regulation is to reduce the potential risk of harm to children of our community by impacting the ability for sex offenders to be in contact with unsuspecting children in

locations that are primarily designed for use by, or are in primarily used by children, namely, the grounds of a public or private school for children, a center or facility that provides day care or children's services, a video arcade, a playground, park or an amusement center. The City of Imperial desires to add location restrictions to such offenders where the state law is silent.

15-71 Definitions.

(a) "Sex Offender" means a person who has been required to register with a governmental entity as a sex offender.

(b) "Children" means those persons who are under the age of eighteen (18) years of age.

15-72 Regulations. A sex offender is prohibited from being on or within three hundred feet (300') of a public or private school for children, a center or facility that provides day care or children's services, a video arcade, a playground, park or an amusement center. This prohibition does not apply to a sex offender's place of residence when regulated by state law.

15-73 Violations. Any person violating this section is guilty of a misdemeanor. A misdemeanor is punishable by a fine up to one thousand dollars (\$1,000.00) or imprisonment for up to one year, or both. The City Attorney may reduce the violation to an infraction. An infraction is punishable by (1) a fine not exceeding one hundred dollars (\$100.00) for a first violation; (2) a fine not exceeding two hundred dollars (\$200.00) for a second violation; (3) a fine not exceeding five hundred dollars (\$500.00) for each additional violation of this provision. A person guilty of a separate offense for each and every day during which a violation occurs. (Ord. 740)

Article XI. Administrative Violation and Administrative Enforcement Procedures

Section 15-80 Administrative Violations.

(a) Designation of administrative violations.

(1) The following shall be designated as administrative violations and shall be subject to enforcement pursuant to the provisions of this chapter:

(i) All violation of the Imperial Municipal Code, unless otherwise excepted by ordinance;

(ii) All violations of the Uniform Codes adopted by the City of Imperial;

(iii) All violations of design standards adopted by the City Council and/or Planning Commission and on file with the City Clerk;

(iv) All violations of conditions imposed on any entitlement, permit, contract, or environmental document issued or approved by the City of Imperial;

(v) All violations of state laws enforced by the City of Imperial that have been designated for enforcement through this chapter by ordinance.

(2) An administrative violation may only be adjudicated pursuant to the administrative enforcement procedures established in section 15.81 of this article. Each responsible person shall have the right to request an administrative hearing and subsequent judicial review pursuant to the procedures established in Code of Civil Procedure Sections 1094.5 and 1094.6 before the city will take action to collect any administrative penalty.

(b) Administrative violations are not exclusive remedy.

Nothing in this chapter is intended to limit or prohibit the enforcement of the Imperial Municipal Code or other applicable laws through civil or criminal process where the city attorney has evaluated the criteria set forth in Sections 15.80 and 15.81, and has determined that enforcement through the administrative enforcement procedures will not result in effective redress, where there have been repeated administrative violations, or where the severity of the violation warrants redress through civil or criminal action.

(c) Levels of administrative violations.

(1) Administrative violations shall be designated by level based upon the potential monetary sanction as follows:

- (i) Level A violations shall be subject to a fine of \$20 - \$500.
- (ii) Level B violations shall be subject to a fine of \$100 - \$2,500
- (iii) Level C violations shall be subject to a fine of \$100 - \$5,000
- (iv) Level D violations shall be subject to a fine of \$100 - \$7,500
- (v) Level E violations shall be subject to a fine of \$100 - \$10,000

Unless otherwise provided for by ordinance, all administrative violations will be deemed a Level A violation.

(2) At the time of issuance of a notice of administrative violation pursuant to Section 15.81 (e), the enforcement authority shall evaluate in writing the criteria set forth in Section 15.80 (e) to determine the appropriate level of sanction and

shall provide written notice to the responsible person of the proposed level of sanction and the reasons therefore as required by Section 15.81 (e).

(3) Where multiple violations have occurred or are occurring, each violation of the Imperial Municipal Code or other applicable laws shall be subject to a separate sanction.

(4) The enforcement authority shall have no power or discretion to void any notice of administrative violation until after a meeting with the enforcement authority's supervisor as provided for in Section 15.82(d). If a notice of administrative violation is voided, the enforcement authority shall provide written justification for such action to the city manager.

(d) Sanctions for administrative violations.

Any one of the following sanctions shall be available to redress infringement of the Imperial Municipal Code or applicable laws.

(1) Revocation and/or suspension of licenses or permits, conditional use permits or other entitlements issued by the City of Imperial;

(2) The placement of requirements for corrective action on permits, licenses or entitlements issued by the City of Imperial as a condition to avoid revocation of the permit, license or entitlement;

(3) Monetary sanctions as set forth in Section 15.80(c) of this chapter;

(4) The issuance of a compliance order setting forth corrective action;

(5) As a alternative to other sanctions and in appropriate circumstances, requiring community service by the responsible person;

(6) Requiring a responsible person to post a performance bond, irrevocable letter of credit or other adequate security to ensure compliance with the Imperial Municipal Code or other applicable laws.

(e) Standards for imposition of administrative sanction.

The following factors shall be considered in determining the appropriate sanctions for any administrative violation:

(1) The knowledge of intent of the person/entity found to have violated the Imperial Municipal Code or other applicable laws;

(2) A final determination of prior violations of the Imperial Municipal Code or other applicable laws within 12 months of the date of the violation. Violations

of a similar nature shall be given additional weight in evaluating the appropriate sanctions as provided for in Section 15.80(c);

(3) Efforts by the person/entity found to have violated the Imperial Municipal Code or other applicable laws to take remedial action upon a notice of a violation;

(4) Any financial gain realized by a responsible person as a result of an administrative violation;

(5) The intent to which the violation undermines the purpose of the ordinance violated;

(6) The number of other violations existing at the time of the issuance of the notice of administrative violation;

(7) The costs incurred for remedial action taken by the enforcement authority;

(8) The degree and performance of harm to health, safety and/or environment caused by the violation, including, but not limited to, any loss of life to person or animal;

(9) The amount it would have cost the responsible person to comply with the law;

(10) Where the violation consists of failure to obtain a permit or license, the financial cost to obtain a permit or license prior to engaging in the conduct that is the subject of administrative violation. The amount of any sanction imposed for failure to obtain a license or permit shall be no less than one and one-half times the cost of obtaining such license or permit.

Section 15-81. Administrative Enforcement Procedures.

(a) Responsibility and authority.

The city manager shall have overall responsibility and authority to enforce the provisions of the Imperial Municipal Code or other applicable laws. The city manager may delegate to department heads or other appropriate subordinates the authority to enforce any of the provisions of the Imperial Municipal Code or other applicable laws which relate to the responsibilities of their department. The city manager may also delegate to the police department or code enforcement officer the authority to enforce any of the provisions of the Imperial Municipal Code or other applicable laws.

(b) Purpose of enforcement.

The purpose of administrative enforcement is to obtain fair and uniform compliance with the provisions of the Imperial Municipal Code and other applicable laws.

(c) Guidelines for exercising administrative enforcement authority.

Administrative enforcement of the provisions of the Imperial Municipal Code and other applicable laws shall be limited to cases where: (1) specific bona fide citizen complaints have been received; (2) where the violation occurs within the context of the city's oversight and approval of a project; or (3) where the enforcement action is a part of a plan for the uniform enforcement of a provisions of the Imperial Municipal Code or other applicable laws within the city. No notice to correct or notice of administrative violation shall be issued pursuant to a citizen complaint until the enforcement authority has conducted an independent investigation and determined that there is good cause to believe that a violation of the Imperial Municipal Code or other applicable laws has occurred. The enforcement authority shall keep a record of all citizen complaints.

(d) Notice to correct and stop order.

Whenever a violation is discovered which can be corrected and the responsible person has not been issued a notice to correct or notice of administrative violation for the same violation within the past 12 months, the enforcement authority shall issue a notice to correct in order to notify the responsible person of the violation and to order that the violation be corrected within a reasonable time. Unless a different period is specifically set forth in the Imperial Municipal Code, 10 calendar days shall be considered a reasonable time to correct any violation. The notice to correct shall be in writing and shall set forth the facts that constitute the violation, the specific provisions of the law which have been violated, the specific acts required to correct the violation, the time allowed to correct the violation, and the rights to appeal the notice to correct. If the violation is related to a permit, license, or other city approval of a project, the notice to correct may be accompanied by a stop order which orders the responsible person to immediately stop any and all work on the project that is subject to the permit, license or approval until the violation is corrected. The notice to correct shall be served in accordance with the provisions of Section 15.81(h).

(e) Notice of administrative violation.

A notice of administrative violation may be issued under any of the following circumstances:

- (1) When the violation cannot be corrected;
- (2) When the violation can be corrected, a notice to correct has been served, and the specified time has passed without adequate correction of the violation;

(3) When a stop order has been issued and has not been complied with by the responsible person;

(4) when the same violation has been committed by the same responsible person within the past 12 months and a notice to correct or notice of administrative violation has been served on the responsible person within that same 12 month period.

The notice of administrative violation shall be in writing and shall set forth the facts constituting the violation, the specific provisions of law which have been violated, the proposed sanctions for the violation as specified in Section 15.80(d) of this chapter, and the rights that the responsible person has to appeal the notice of administrative violation. The notice of administrative violation shall be served as provided in Section 15.81(h).

(f) Right of entry for inspection.

(1) Whenever necessary to make an inspection to enforce the Imperial Municipal Code or other applicable laws, or whenever there is reasonable cause to believe there exists a violation of the Imperial Municipal Code or other applicable laws in any building or upon any premises within the jurisdiction of the city, any authorized official of the city may, upon presentation of proper credentials, enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed by the Imperial Municipal Code or other applicable laws. "Reasonable time" shall mean Monday through Friday from 8:00 a.m. to 5:00 p.m., except in the case of an emergency involving a threat to the public health or safety.

(2) Except in emergency situations or when consent of the owner and/or occupant of the building or premises to be inspected has been obtained, the city official shall give the owner and/or occupant, if they can be located after reasonable effort, 24 hours written notice of the authorized official's intention to inspect through a notice of intention to inspect. The notice of intention to inspect shall state that the property owner has the right to refuse entry and, that in the event such entry is refused, inspection may be made only upon issuance of an administrative warrant or search warrant as allowed by law by a duly authorized judge.

(3) The written notice of intention to inspect shall be served by certified mail, return receipt requested. Where the authorized official intends to inspect within the next 24-hour period, the written notice shall be hand delivered. The notice of intention to inspect may be left with any person above the age of 18 who identifies himself/herself as an occupant, tenant or owner of the premises. If no one is at the premises at the time of delivery, the notice of intention to inspect shall be posted in 2 conspicuous places on the premises.

(4) Prior to entering the premises, the authorized official conducting the inspection shall ascertain from the owner and/or occupant whether the notice of intention to inspect has been received and shall obtain permission for entry. Unless an

emergency situation exists, if the owner and/or occupant refuses entry after such a request has been made, or if no actual contact is made with the owner and/or occupant prior to the attempt to enter, the official must seek assistance from any court of competent jurisdiction in obtaining such entry.

(g) Informal attempts to encourage compliance.

Nothing in this chapter shall be interpreted to preclude an enforcement authority from informally encouraging citizens to comply with the Imperial Municipal Code or other applicable laws. Informal oral or written requests to encourage compliance are encouraged as are attempts to informally negotiate or mediate issues relating to compliance.

(h) Service of notices.

Any notices required under this chapter except a notice of intention to inspect pursuant to Section 15.81(f) shall be served by personal delivery to the responsible person or by certified mail, return receipt requested, to the last known address of the responsible person. If the responsible person is not present for personal delivery, if certified mail is refused, or if the location of a responsible person cannot be determined after diligent efforts, notices may be posted in a conspicuous place on the affected property for a period of 10 calendar days and by mailing first class to the last known address. When there is no affected property, such alternative service shall be accomplished by publication of any notices in a newspaper of general circulation that is most likely to give actual notice to the responsible person 2 times in a 10-day period and by mailing first class to the last known address.

(i) Responsibility of parent(s) and/or legal guardian.

Whenever the responsible person is a person under the age of 18, the enforcement authority shall provide copies of all notices and orders specified in this title to the parent(s) and/or legal guardian. Any administrative sanctions levied under this chapter may be levied against the juvenile and the parent(s) and/or legal guardian of the juvenile. The parent(s) and/or legal guardian shall have the right to a hearing and judicial review as set forth in this chapter. In addition to any other defenses that may be raised to the administrative violation, the parent(s) and/or legal guardian may raise a defense that the parent(s) and/or legal guardian have exercised good faith efforts to control the behavior of the minor but have been unsuccessful in achieving such control

(j) Confidentiality in connection with citizen complaints.

The city shall take all reasonable steps to ensure that the identity of any person making a complaint to the city concerning a violation of the Imperial Municipal Code or other applicable laws shall remain confidential. However, no enforcement action shall be taken beyond issuance of a notice of correction unless: (1) the complaining witness agrees to be identified upon request of the responsible person; or (2) the enforcement authority has developed sufficient independent evidence to proceed with a notice of administrative violation.

Section 15.82 Hearings

(a) **Right to a hearing.**

Any person charged with an administrative violation who has been served with a notice to correct, stop order or notice of administrative violation and who wishes to contest the violation or the proposed sanction may request a hearing by filing a request for a hearing within 10 calendar days of date of the service of the notice to correct, stop order or notice of administrative violation.

(b) **Preservation of status quo pending hearing.**

Any stop order issued pursuant to section 15-81(d) shall remain in effect until the time of the hearing and any subsequent judicial review. Any additional compliance obligations that may be imposed at the result of a notice to correct, stop order or notice of administrative violation shall also be stayed if a timely request for hearing is filed and until final decision after the hearing is completed unless an emergency situation affecting the safety or preservation of life or property exists. The situation exception under this section to the responsible person within 24 hours of taking the action to correct the emergency situation.

(c) **Request for hearing and fee – Notice of denial of hearing based on untimely appeal.**

The request for hearing shall be filed with the city clerk on a form provided by the city clerk and shall include reference to the notice which is being appealed, shall state all of the grounds for the appeal, and shall be accompanied by payment of; (1) an amount not to exceed \$500.00 as security for payment as proposed administrative sanction; and (2) a hearing fee. The city clerk shall not accept any request for hearing unless it is accompanied by the hearing fee and the required security for administrative sanction. The amount of the hearing fee shall be established from time to time by resolution of the city council. The amount of the security for the administrative sanction shall be the amount of the maximum sanction specified in the notice of violation, or \$500.00 whichever is less. If the city clerk determines that the request for a hearing is untimely, the city clerk shall advise the responsible person of the determination in writing and shall mail a notice of denial of hearing based on untimely appeal to the responsible person shall then have the right to judicial review of the determination as provided for in this article. Upon a showing of good cause for the delay in filing a request for hearing, the city clerk may refer the issue of the right to an appeal to the administrative hearing pursuant to the procedures set forth in this chapter. The hearing officer shall determine whether there was a good cause for the delay in filing the request for hearing before proceeding to the merits of the appeal.

(d) Meeting with enforcement authority.

Persons charged with a violation of the Imperial Municipal Code or other applicable laws are encouraged to meet with the enforcement authority and/or the appropriate department head or his/her designee prior to requesting a hearing to seek resolution of the matter. Such a meeting may be requested before or after the request of hearing is filed, but a request for the meeting shall not extend the time for filing the request for hearing.

(e) Mediation.

With the filing of a request for a hearing or at any time before a hearing, the enforcement authority or a responsible person may request that an impartial mediator be appointed to help resolve the issues related to the charged violation and/or proposed sanctions. The purpose of the mediation shall be to provide an opportunity for the enforcement authority and a responsible person to reach mutual agreement upon steps to achieve compliance with the Imperial Municipal Code or other applicable laws. If the enforcement authority agrees to mediation, the city clerk shall appoint a volunteer mediator to assist in the resolution of the dispute. The hearing may be postponed until completion of the mediation if both parties agree to postponement. The city will solicit members of the community to act as volunteer mediators and shall provide them with training in mediation skills. Mediators will not receive compensation but shall be recognized publicly for their service to the community. If the enforcement authority and the responsible person reach agreement on a compliance plan, the agreement shall be placed in writing and shall be signed by the enforcement authority, the responsible person and the mediator. If the terms of agreement are shall service a notice of administrative violation as provided for Section 15.81(e).

(f) Timely Hearing.

The hearing shall be held within 30 calendar days of the filing of a request for hearing unless both parties agree to a postponement of the hearing or the hearing officer rules that there is good cause to postpone the hearing. After the hearing has started, it may be continued with the consent of all parties or upon a showing of good cause for such continuance.

(g) Notice of time and place of hearing.

The city clerk shall mail to all parties written notice of the time and place of the hearing at least 10 calendar days prior to the date set for the hearing. Such notice shall also include a description of the rights of the parties in the hearing. Hearings shall be conducted in the city.

(h) Hearing officer.

The city clerk shall appoint an Imperial officer for each hearing who may be an employee of the city or a person whose services are acquired by contact with the hearing officer or some public or private agency. The person appointed to conduct with the hearing officer or some public or private agency. The person appointed to conduct the hearing should not have within the last 12 months and responsibility for the investigation prosecution or enforcement of the provision of the Imperial Municipal Code or other applicable laws at issue in the hearing and shall not have had any personal involvement in the case to be heard.

(i) Ex parte communications.

The hearing officer shall have no communications with any party, any city employee or official, or any potential witness concerning the substance of the case. Having such communications outside the presence of the party may be grounds of disqualification of the hearing officer from conducting the hearing. All communications concerning the case between the hearing officer and any person shall be revealed to the parties in the matter.

(j) Rights of the parties.

The parties shall have the following rights:

- (1) Timely and adequate notice of the time and place of the hearing, their rights during the hearing and the issues that are to be the subject of the hearing;
- (2) The right to present evidence and witnesses;
- (3) The right to present argument;
- (4) The right to be represented. The representative need not be an attorney;
- (5) The right to open disclosure of all evidence presented to the hearing officer in the case;
- (6) The right to confront and cross-examine adverse witnesses;
- (7) The right to subpoena witnesses or documents;
- (8) The right to a verbatim record of the hearing;
- (9) The right to a decision based upon the evidence in the record of the hearing;
- (10) The right to an impartial hearing officer;
- (11) The right to a written decision setting forth the reasons for the decision and the evidence relied upon.

(k) Hearing procedure.

The hearing procedure shall be informal and the hearing officer will have an affirmative obligation to seek truth concerning the issues in the hearing. The hearing officer may ask questions of any witness and may establish the procedure for the presentation of evidence. The hearing officer may, on his or her own motion, call or

subpoena a witness. The hearing officer may order the exclusion of witness during the testimony or other witnesses.

(l) Hearing open to the public.

All hearings provided under this chapter shall be open to the public.

(m) Oath.

All testimony shall be given under oath. Hearing officers have the authority to administer such oaths.

(n) Quantum and burden of proof.

All facts must be established by a preponderance of the evidence. The enforcement authority will have the burden to prove that a violation occurred and that the proposed sanction is appropriate. The enforcement authority shall be required to present its case first.

(o) Rules of evidence.

The rules of evidence adopted by state of federal law shall not apply. All relevant evidence shall be admissible and hearsay evidence may be used for the purpose of supplementing and explaining other evidence.

(p) Subpoenas.

The hearing officer shall have the authority to issue subpoenas (order to appear and give testimony) and subpoenas duces tecum (order to produce document(s) or paper(s)). The hearing officer may only issue subpoenas and subpoenas duces tecum upon a showing of reasonable necessity by the requesting party.

(q) Record of the hearing.

The hearing shall be tape recorded and a copy of the recording will be provided to anyone requesting a copy upon the payment of a fee set from time to time by resolution of the city council to cover the cost of duplication.

(r) Written Transcript.

Any person, including a party, may request a typed written transcript of the hearing but the requesting person will be responsible for the cost of transcription, including an administrative fee. An estimate will be provided of the cost of the transcription and the person requesting the transcript will be required to deposit an amount equal to that estimate before transcription will be started. If the cost of the transcription is greater than the estimate, the person requesting the transcript will be

required to pay the additional cost before the transcript is provided. If the actual cost of transcription is less than the estimate, the city will refund the difference.

(s) Written Decision.

The hearing officer shall prepare and forward to the parties a written decision within 30 calendar days of the close of the hearing. The decision shall be mailed by first class mail. If the hearing officer grants appeal, the hearing officer shall have the discretion to refund the fee charged to the responsible person for the appeal.

Section 15.83. Judicial review.

(a) Final administrative decision.

The decision of the hearing officer shall constitute the final administrative decision and shall not be appealable to the city council or any committee or commission of the city.

(b) Judicial review.

Appeal shall be through judicial review of the final administrative decision by filing a petition for a writ of mandate with the superior court in accordance with the provisions of sections 1094.5 and 1094.6 of the California Code of Civil Procedure. Such writs must be filed within 90 calendar days from the date of final administrative decision.

(c) Review Standard.

The court may not charge the finding of fact of hearing officer unless there is not substantial evidence to support those findings.

Section 15.84 Enforcement of Monetary Sanctions.

(a) When Monetary sanctions are due.

Monetary sanctions levied against a responsible person are due at the following times:

(1) If a request for hearing is not filed in relation to the notice of administrative violation, the monetary sanction set out in the notice shall be due and payable 10 calendar days after service of the notice of administrative violation.

(2) If a request for hearing is filed within the time limits proscribed by section 15.82 and there is not appeal of the hearing decision to the court pursuant to section 15.83, the monetary sanction shall be due and payable 90 calendar days after the date of a hearing decision, an order by the hearing officer dismissing the request for

hearing, or the date the hearing request is withdrawn by the responsible party. The amount of the sanction payable shall be amount set by the hearing officer in a decision after hearing, or the amount set forth in the notice of administrative violation if there is no hearing.

(3) If there is no judicial review of the hearing decision pursuant to Section 15.83, the monetary sanction shall be due and payable 30 calendar days after the date of the final court order in relation to that review. The amount due shall be the amount ordered by the hearing officer unless a court modifies the amount of monetary sanction.

(b) Place for payment of monetary sanction.

All monetary sanctions shall be paid to the city and delivered to the finance department of the city. All payments shall be accompanied by a copy of the notice of administrative violation, or the decision of the hearing officer or the court decision establishing the amount of the monetary sanction. The finance department shall prepare a receipt documenting the payment of the monetary sanction and shall forward one copy of the receipt to the enforcement authority and one copy of the receipt to the city clerk. The city clerk shall thereafter verify that the sanction has been paid in full. If the sanction has been paid in full, the city clerk shall so note in the records pertaining to the administrative violation. If the sanction has not been paid in full, the city clerk shall notify the enforcement authority and responsible person in writing.

(c) Failure to pay a monetary sanction.

If the responsible party does not pay the monetary sanction within the times provided under Section 15.85, or if the responsible party fails to pay the required monetary sanction in full within the times provided under Section 15.84, any unpaid portion shall bear interest at the rate of 10 percent per annum from the date such payment was due until paid in full and the city may take any of the following actions to collect the monetary sanction:

(1) Liens. The amount of the unpaid sanction plus interest plus a reasonable administrative fee established by the city council from time to time to cover the cost of collection constitutes and may be declared a lien on any real property owned by the responsible party within the city.

(i) Notice shall be given to the responsible party prior to the recordation of the lien, and shall be served in the same manner as a summons in a civil action pursuant to Article 3, (commencing with section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure.

(ii) The lien shall attach when the city manager or his/her designee records a lien listing delinquent unpaid sanctions with the Imperial County Recorder's office. The lien shall specify the amount of the lien, the date of the code

violation(s), the date of the final administrative decision, the street address, legal description, and assessor's parcel number of the parcel on which the lien is imposed and the name and address of the recorded owner of the parcel.

(iii) In the event the lien is discharged, released or satisfied, either through payment or foreclosure, notice of the discharge containing the information specified in this section shall be recorded by the city clerk.

(2) Special Assessments. The amount of the unpaid sanction plus interest plus a reasonable administrative fee established by the city council from time to time to cover the cost of collection, may be declared a special assessment against any real property owned by the responsible person within the city, to the extent the responsible person owns more than one parcel within the city. The city council may impose the special assessment on more than one parcel. However, the amount of the assessment shall not exceed the penalty imposed for the administrative violation. The city manager or his/her designee may present a resolution to the city council to declare a special assessment, and upon passage and adoption thereof, shall cause a certified copy thereof to be recorded with the Imperial County Recorder's officer. The assessment may then be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subjected to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary municipal taxes.

(3) Withholding Entitlements. The city may withhold issuance of licenses, permits and other entitlements to a responsible person until payment is received.

(4) Other Enforcement Procedures. The city may take such other actions as are allowed for enforcement of a civil judgment as provided for pursuant to the Enforcement of Judgments Law, California Code of Civil Procedure Sections 680.010, et seq. (Ord. 731)

Article XII

Medical Marijuana Dispensaries

15-85 Purposes and findings.

The City Council finds that federal and state laws prohibiting the possession, sale and distribution of marijuana would preclude the opening of medical marijuana dispensaries sanctioned by the City of Imperial, and in order to serve public health, safety, and welfare of the residents and businesses within the City, the declared purpose of this chapter is to prohibit medical marijuana dispensaries as stated in this article.

15-86 Definitions.

The following terms and phrases, whenever used in this chapter, shall be construed as defined in this section:

a) “Identification card” is a document issued by the State Department of Health Services which identifies a person authorized to engage in the medical use of marijuana and the person’s designated primary caregiver, if any.

b) “Medical marijuana” is marijuana used for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person’s health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other serious medical condition for which marijuana is deemed to provide relief as defined in subsection (h) of California Health and Safety Code Section 11362.7.

c) “Medical marijuana dispensary” is any facility or location where medical marijuana is made available to and/or distributed by to three or more of the following: a qualified patient, a person with an identification card, or primary caregiver. Each of these terms is defined herein and shall be interpreted in strict accordance with California Health and Safety Code Sections 11362.5 and 11362.6 et seq. as such sections currently exist or as may be amended from time to time.

d) “Primary caregiver” is the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of the patient or person.

e) “Physician” is an individual who possesses a recognition in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California and who has taken responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient and who has conducted a medical examination of that patient before recording in the patient’s medical record the physician’s assessment of whether the patient has a serious medical condition and whether the medical use of marijuana is appropriate.

f) “Qualified patient” is a person who is entitled to the protections of California Health and Safety Code Section 11362.5, but who does not have an identification card issued by the State Department of Health Services.

15-87 Medical marijuana dispensary prohibited.

It shall be unlawful for any person or entity to own, manage, conduct, or operate any medical marijuana dispensary or to participate as an employee, contractor, agent or volunteer, or in any other manner or capacity, in any medical marijuana dispensary in the City of Imperial.

15-88 Use or activity prohibited by state or federal law.

Nothing contained in this article shall be deemed to permit or authorize any use or activity which is otherwise prohibited by any state or federal law. (Ord. 766)

Article XIII

Regulation of Marijuana Under Proposition 64

15-90 Purpose and Findings.

In light of approval of Proposition 64 (also known as the Control, Regulate, and Tax Adult Use of Marijuana Act (“AUMA”) on the November 8, 2016, statewide general election, the purpose of this Ordinance is to adopt an Ordinance in order to, among other things, regulate personal indoor cultivation, ban outdoor personal cultivation, ban use of marijuana in City facilities and ban all types of businesses licensed under the AUMA.

This ordinance is not related to the regulation or prohibition of medical marijuana cultivation or sale.

The adoption of this ordinance is exempt from CEQA as it does not have any significant impact on the environment as it simply continues existing provisions of the City Code as to restrictions on marijuana cultivation.

15-91. Indoor Marijuana Cultivation

(a). Purpose. The purpose and intent of this Ordinance is to regulate the cultivation of marijuana in a manner that protects the health, safety and welfare of the community consistent with AUMA. As such, this Ordinance is not intended to interfere with a patient's right to medical marijuana, as provided for in California Health & Safety Code Section 11362.5, nor does it criminalize medical marijuana possession or cultivation by specifically defined classifications of persons, pursuant to state law. This Ordinance is not intended to give any person unfettered legal authority to grow marijuana; it is intended simply to impose zoning restrictions on the personal indoor cultivation of marijuana permitted under AUMA when it is authorized by California state law for medical or other lawful purposes under the state law.

Non-conflicting enactment. No part of this Ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. §§ 800 et seq., nor to otherwise permit any activity that is prohibited under that Act or any

other local, state or federal law, statute, rule or regulation.

(b). Definitions.

As used herein the following definitions shall apply:

1. "Authorized Grower" means a person 21 years and older who is authorized by, and in compliance with, federal or state law to cultivate marijuana indoors for personal use. There may be only one authorized grower per private residence who can present written evidence that any other persons in that private residence have authorized him/her to obtain the permit referenced herein.

2. "City" means the City of Imperial.

3. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, trimming, or otherwise processing of marijuana plants or any part thereof.

4. "Fully enclosed and secure structure" means a fully-enclosed space within a building that complies with the California Building Code ("CBC"), as adopted in the City, or if exempt from the permit requirements of the CBC, that has a complete roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, is accessible only through one or more lockable doors, and is not visible from a public right-of-way. Walls and roofs must be constructed of solid materials that cannot be easily broken through such as two inch by four inch nominal or thicker studs overlaid with three-eighths inch or thicker plywood or the equivalent. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement. If indoor grow lights or air filtration systems are used, they must comply with the California building, electrical, and fire codes as adopted in the City of Imperial.

5. "Immature marijuana plant" means a marijuana plant, whether male or female, that has not yet flowered and which does not yet have buds that are readily observed by unaided visual examination.

6. "Indoors" means within a fully enclosed and secure structure as that structure is defined above.

7. "Mature marijuana plant" means a marijuana plant, whether male or female, that has flowered and which has buds that are readily observed by unaided visual examination.

8. "Outdoors" means any location within the City that is not within a fully enclosed and secure structure.

9. "Parcel" means property assigned a separate parcel number by the Imperial County assessor.

10. "Private residence" means a house, apartment unit, mobile home, or other similar dwelling unit. A second unit does not constitute a "private residence."

(c). Indoor Cultivation of Marijuana Only for Personal Use; Regulations for

Residential Zones.

1. When authorized by state law, an authorized grower shall be allowed to cultivate marijuana only in a private residence in a residential zone, only indoors, and only for personal use, subject to the following regulations:

2. The marijuana cultivation area shall be located indoors. The total area cultivated shall not exceed fifty square feet and not exceed ten feet in height, nor shall it come within twelve (12) inches of the ceiling or any cultivation lighting. Cultivation in a greenhouse on the property of the residence but not physically part of the home is permitted, as long as it is fully enclosed, secure, not visible from a public right-of-way and meeting all requirements in this Ordinance.

3. Marijuana cultivation lighting shall not exceed one thousand two hundred watts in total for the total cultivation area within the residence.

4. The use of gas products such as but not limited to CO₂, butane, methane, or any other flammable or non-flammable gas for marijuana cultivation or processing is prohibited.

5. There shall be no exterior visibility or evidence of marijuana cultivation outside the private residence from the public right-of-way, including but not limited to any marijuana plants, equipment used in the growing and cultivation operation, and any light emanating from cultivation lighting.

6. The authorized grower shall reside full-time in the residence where the marijuana cultivation occurs. It is the responsibility of the authorized grower to insure that marijuana cultivated hereunder is not accessed by persons under 21.

7. The authorized grower shall not participate in marijuana cultivation in any other location within the City. There may be only one authorized grower per private residence.

8. The residence shall include fully functional and usable kitchen, bathroom, and bedroom areas actually utilized for their intended use by the resident authorized grower, and the premises shall not be used primarily or exclusively for marijuana cultivation.

9. The marijuana cultivation area shall be in compliance with the current adopted edition of the California Building Code § 1203.4 Natural Ventilation or § 402.3 Mechanical Ventilation (or equivalent), as amended from time to time.

10. The building official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to installation of fire suppression sprinklers and may require annual or other inspections.

11. The marijuana cultivation area shall not result in a nuisance or adversely affect the health, welfare, or safety of the resident or nearby residents by creating dust, glare, heat, noise, noxious gasses, odors, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes.

12. No more than 6 living marijuana plants, mature or immature, are

permitted for indoor personal cultivation under this Chapter.

13. Marijuana in excess of 28.5 grams produced by plants kept for indoor personal cultivation under this Chapter must be kept in a locked space on the grounds of the private residence not visible from the public right-of-way.

(d). Indoor Cultivation of Marijuana Restricted to One Authorized Grower per Private Residence.

1. It is hereby declared to be unlawful, a public nuisance and a violation of this Chapter for any person owning, leasing, occupying, or having charge or possession of any parcel within the City to cause or allow such parcel to be used for the cultivation of marijuana, unless the person is authorized by state law to grow marijuana for a specifically authorized purpose within a private residence in a residential zone, and such authorized grower is complying with all requirements of this Ordinance.

2. No person shall grow marijuana upon any parcel until and unless he or she first secures a permit from the community development department and pay such fee as may be required and set forth by resolution of the City Council for issuance of the permit and or inspections.

3. Only one such permit shall be granted per private residence.

(e). Public Nuisance Prohibited.

It is hereby declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any parcel within the City to create a public nuisance in the course of cultivating marijuana plants or any part thereof. A public nuisance may be deemed to exist, if such activity produces:

1. Odors which are disturbing to people of reasonable sensitivity residing or present on adjacent or nearby property or areas open to the public.

2. Repeated responses to the parcel by law enforcement or fire personnel.

3. A repeated disruption to the free passage of persons or vehicles in the neighborhood, excessive noise which is disturbing to people of normal sensitivity on adjacent or nearby property or areas open to the public.

4. Any other impacts on the neighborhood which are disruptive of normal activity in the area including, but not limited to, grow lighting visible outside the dwelling, excessive vehicular traffic or parking occurring at or near the dwelling, and excessive noise emanating from the dwelling.

5. Outdoor growing and cultivation outdoor growing and cultivation of marijuana in violation of this ordinance.

15-92. Outdoor Cultivation Banned.

It is hereby declared to be unlawful, a public nuisance and a violation of this Ordinance for any person owning, leasing, occupying, or having charge or possession of any parcel within any zoning district in the City to cause or allow such premises to

be used for the outdoor cultivation of marijuana plants.

15-93. Penalties Not Exclusive; Violation Constitutes a Crime.

The remedies and penalties provided herein are cumulative, alternative and nonexclusive. The use of one does not prevent the use of any other criminal, civil, or administrative remedy or penalty authorized by, or set forth in, the Imperial Municipal Code. None of the penalties or remedies authorized by, or set forth in, the Imperial Municipal Code shall prevent the City from using any other penalty or remedy under state statute which may be available to enforce this section or to abate a public nuisance. Violation of this Chapter shall constitute a crime punishable as a misdemeanor or infraction in the discretion of the City Attorney.

15-94. Prohibition on Possession and Smoking of Marijuana in City Buildings

The possession, smoking or other use of marijuana is prohibited in buildings owned, leased or occupied by the City. As an employer, the City maintains a drug and alcohol free workplace by prohibiting the use, consumption, possession, transfer, transportation, sale, display and growth of marijuana in the workplace. As provided by state law, where a tobacco smoking ban or regulation is in place, such ban or regulation applies to the smoking of marijuana.

15-95. SCOPE

Except as set forth in this ordinance, all other provisions of the Imperial City Code shall remain in full force and effect.

15-96. SEVERABILITY

If any section, subsection, clause, phrase, or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases or portions be declared invalid or unconstitutional. (Ord. 793)