



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Robert Sapien, Jr.

SUBJECT: UPDATE ON FINE AMOUNTS
FOR ILLEGAL FIREWORKS

DATE: December 2, 2020

Approved

Date

12/4/20

RECOMMENDATION

- (a) Accept the Update on Fine Amounts for Illegal Fireworks.
- (b) Adopt a resolution amending the Administrative Citation Schedule of Fines for violations of San José Municipal Code Chapter 10.17, Part 2, Section 10.17.100, to increase fine amounts for first, second, third and subsequent violations pertaining to the unlawful sale, storage, use, or discharge of fireworks and repealing Resolution No. 79332.

OUTCOME

Council approval will result in the repeal of Resolution Number 79332¹, adopted on December 3, 2019. The replacement Resolution will increase fines as indicated in Table 1 below.

Table 1: Current and recommended fine schedules for violations of San José Municipal Code Part 2, Section 10.17.100.

	Current Administrative Citation Fine	Recommended Administrative Citation Fine
First Violation	\$500	\$1,000
Second Violation (within 18 month period from date of previous violation)	\$700	\$2,000
Third and Subsequent Violations (within 18 month period from date of previous violation)	\$1,000	\$3,000

¹ [Resolution No. 79332](#)

BACKGROUND

On October 27, 2020, the City Council accepted the Fireworks Ordinance Workplan Status Update² and directed staff to perform a comparative analysis of fines related to illegal fireworks across the Bay Area and prioritize returning to Council with increased fine amounts that will more effectively deter illegal fireworks before the 2021 New Year's celebrations.

ANALYSIS

Staff reviewed fines imposed for firework violations across 32 jurisdictions including seven Bay Area cities, fourteen cities in California, and eleven cities from across the nation. Twenty-one of the surveyed jurisdictions had a population of over 200,000. The review revealed a variety of enforcement approaches including varied fine amounts, liability for damages related to illegal fireworks, and incarceration.

Twenty-two of the cities surveyed imposed a first violation fine ranging from \$10-\$2,000 with most having a fixed amount of less than \$500. Five of the researched jurisdictions had escalating fine amounts, but most cities had a fixed fine amount or range which did not increase for subsequent violations. Anaheim, California and the California State Fire Marshal impose the highest fines of \$1,000 for the first violation, \$2,000 for a second violation, and \$3,000 for a third violation.

San José fines are comparable to neighboring Bay Area Cities, such as Fremont, Oakland and Santa Clara, in amount and progression. San Francisco and Sunnyvale, however, did not list fine amounts in their ordinance for comparison. In April 2016, the San José raised the initial fine from \$350 to \$500, with current fines escalating from \$500 to \$700 to \$1000 for subsequent violations within an 18-month period. Table 2 below provides findings from Bay Area Cities.

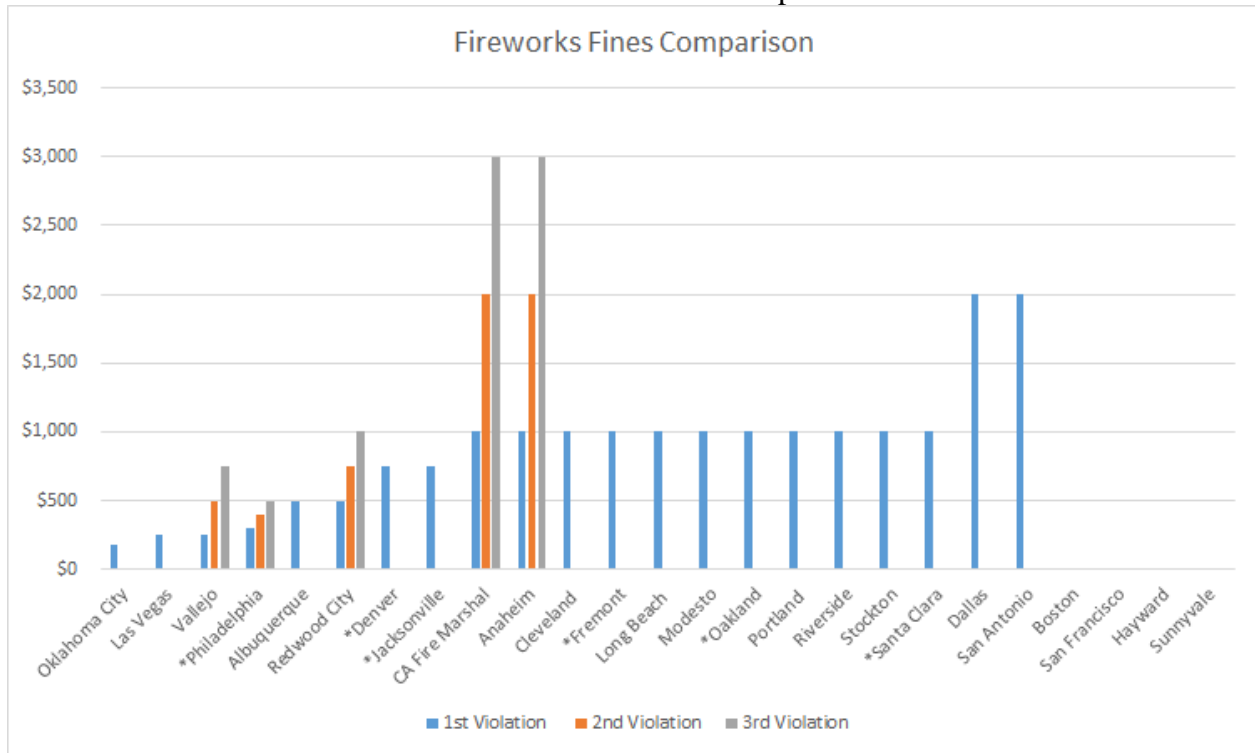
While San Jose's current fines are comparable to neighboring Bay Area Cities, an increase in fine amounts could provide a more effective deterrent for the use of illegal fireworks.

² [Fireworks Ordinance Workplan Status Update 10/27/20](#)

Table 2: Fireworks Fine Amounts Comparing Bay Area Cities

Bay Area City	1st Violation	2nd Violation	3rd Violation	Notes
San José	\$500	\$700	\$1,000	-
Fremont	\$500-\$1,000	\$500-\$1,000	\$500-\$1,000	Minimum \$500, Maximum \$1,000. Misdemeanor + Jail up to 1 year
Oakland	\$350-\$1,000	\$350-\$1,000	\$350-\$1,000	-
Redwood City	\$500	\$750	\$1,000	Can also include imprisonment
Santa Clara	\$250-\$1,000	\$250-\$1,000	\$250-\$1,000	\$250 and/or up to \$1,000 and/or Jail for 6 months
San Francisco	N/A	N/A	N/A	Fine/Jail or both not listed in Municipal Code 1290
Hayward	0-\$1,000	N/A	N/A	Up to \$50,000 in fines under California Health and Safety Code 12700
Sunnyvale	N/A	N/A	N/A	All fireworks prohibited

Chart 1: Fireworks Fines Comparison



*Denotes cities where fines amounts had a range (e.g. \$250 to \$1,000 in the City of Santa Clara)

CONCLUSION

The increased use of illegal fireworks has resulted in an impact on the quality of life for many San José residents. The 2020 *Fireworks Ordinance Workplan Status Report* cited the perception of low fine amounts as an insufficient deterrent for illegal fireworks use. A review of fireworks fines indicates that potential fine amounts are consistent with neighboring communities in the Bay Area however higher fine amounts do exist within California. The recommendation to increase fines at fixed amounts that escalate with repeated violations will provide a greater deterrent to illegal fireworks use and maintain the basic citation structure and fine schedule presently in use.

EVALUATION AND FOLLOW-UP

On October 27, 2020, the City Council directed staff to focus on additional recommendations to curb the use of illegal fireworks and enhance outreach and enforcement and report back to Council with findings. Staff will continue to research and address these recommendations and will provide an update to the Public Safety, Finance and Strategic Support Committee meeting on April 15, 2021.

The Fireworks Ordinance Workplan will be updated to include items listed in memorandum submitted by Mayor Liccardo and Councilmembers in addition to next steps found in the Fireworks Ordinance Workplan Status Report.

CLIMATE SMART SAN JOSE

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the December 15, 2020 Council Meeting.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office, City Manager's Budget Office, Planning, Building and Code Enforcement Department, and Police Department.

HONORABLE MAYOR AND CITY COUNCIL

December 2, 2020

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COMMISSION RECOMMENDATION/INPUT

Fire and Police Departments provided a Fireworks Report Update to the Neighborhoods Commission on October 14, 2020. Public comment and Commission discussion included concerns regarding the effectiveness of penalties for unlawful fireworks activities. Recommendation from the Neighborhoods Commission was not possible because a quorum was not met.

CEQA

Not a Project, File No. PP17-008, General Procedure and Policy Making resulting in no changes to the physical environment.

/s/

ROBERT SAPIEN, JR.

Fire Chief, Fire Department

For questions, please contact Hector R. Estrada, Deputy Fire Chief, Bureau of Fire Prevention, at (408) 535-7794.