



# Memorandum

**TO:** PUBLIC SAFETY, FINANCE, AND  
STRATEGIC SUPPORT COMMITTEE

**FROM:** Curtis P. Jacobson

**SUBJECT:** FIREWORKS CITATION  
PROCESS IMPROVEMENTS

**DATE:** August 15, 2017

Approved

Date

8-15-17

## SUPPLEMENTAL

The purpose of this supplemental memorandum is to provide additional information regarding improvements that staff are evaluating for issuance of citations using information from the City's online fireworks use reporting form. The need to improve the online citation process has become clear, as on August 9, 2017, following media reports and the City's own evaluation, the City took action to replace the 45 citations issued using the form information with warning letters, and publicized that action in a news release (<https://goo.gl/Ct2yo8>).

## BACKGROUND

The May-June-July 2017 period marked the first time that citations were issued using data submitted through the online form at [www.sanjoseca.gov/fireworks](http://www.sanjoseca.gov/fireworks), see Exhibit A. (Note: The form is currently not online as it was removed after July 12 when the evaluation of online reports ended.) The form is a feature of the pilot Illegal Fireworks Enforcement Program that commenced in 2016. The form was up during the July 2016 fireworks season, but no citations were issued through the form that year.

The online form was welcomed by the many residents who seek ways to work with the City to diminish the significant use of dangerous, commercial grade fireworks in their neighborhoods that widely occurs across the City's 180-square mile area during certain holidays and celebrations. Staff followed Council direction to first improve the online form over the 2016 version, and then widely publicized the form. Between late May and July 12, residents filed 1,075 online reports of fireworks use; City staff reviewed the reports and accordingly issued 45 citations. As mentioned above, after reviewing the process for citation issuance and listening to concerns from some of those cited, the City rescinded all 45 citations and replaced them with warning letters.

## **ANALYSIS**

This analysis provides a review of:

- Challenges with the online reporting form;
- Challenges with the citation criteria;
- Challenges with the citation process; and
- The early steps and improvements that staff will take to address the challenges.

### **(A) Online Reporting Form Challenges**

Challenges to the online reporting form include:

- (1) ***Expectations for enforcement response.*** While the form included a statement that it would not enable an immediate enforcement response, there appeared to be expectations by some residents that it would enable a rapid response, as residents expressed such expectations on the form or on social media platforms discussing the form.
- (2) ***Providing adequate address information*** – While the 2017 online form (see image, page 3) included instruction to provide complete address information, the large majority of submissions (812 of 1,075 reports) were incomplete and could not be used to generate either warning letters or citations. This incomplete data happens as some users of the online form simply report the sound of fireworks as they perceive it coming from a general direction, while many others provide the address of schools and parks (which are not subject to citations). These reports nevertheless have value in that they contribute to the mapping of hot spots of fireworks use in the City.
- (3) ***Providing photo/video evidence*** – Of the 1,075 reports submitted, 89 provided photo or video evidence, but only some of these were of a quality to enable clear identification of fireworks use. Staff have concerns about residents who may be too eager to document fireworks use, putting themselves at risk of an encounter with a fireworks user that could potentially escalate to violence. It is important that the City continue to message that those who use their cameras to capture evidence do so with discretion and the utmost attention to their personal safety.
- (4) ***Willingness to testify*** – Of the 1,075 submissions, 797 (nearly 75 percent) indicated that they would be willing to testify, which could be important if a fireworks user contested the citation. While this represents a tremendous willingness to testify, this could evaporate when the time comes to appear at a hearing of a contested citation. As this year's citations were rescinded, the hearing process and associated attendance of witnesses was not tested.

## **(B) Citation Criteria Challenges**

Following consultation with the City Attorney's Office, Fire and Code Enforcement staff reviewed the submitted reports, and were advised to use the following criteria in making a judgment to issue a citation:

- The submission of video or photographic evidence or a person using fireworks or fireworks being used at a specific property;
- Multiple reporting parties pointing to the same property or person using fireworks; and/or
- Follow-up phone conversations with the reporting party concerning the verity of their information.

Challenges with these criteria include:

- (1) ***Photo/video evidence*** – As noted earlier, staff have a concern about the potential for escalated situations when residents are obtaining photo/video evidence. Additionally, during evenings and with the sporadic nature of fireworks use, it can be very difficult to obtain an effective image. While 89 reporting parties submitted photos or videos, only a small portion of these could be used as evidence.
- (2) ***Multiple reporting parties*** – If two or more incoming reports pointed to the same property as a place of fireworks use, that information could be considered as a factor for citation issuance. In some cases, this may have been the primary information for issuing a citation, and staff are recommending revisiting this criterion and whether it should be supplemented with other criterion for citation issuance.
- (3) ***Follow-up phone conversations*** – Staff made phone calls to many of the reporting parties for cases in which citations were issued. A point of contention by some recipients of mailed citations was that a) no one called them, and b) does this procedure enable “vengeful neighbors” to take action against someone simply to make their life miserable. Staff will weigh the merits of whether all or some cases should involve a call to both the witness and accused parties prior to citation issuance.

## **(C) Citation Process Challenges**

As an administrative citation, fireworks use citations generated through the online form are subject to the rules found in [Chapter 1.15](#) of the Municipal Code that apply to all types of City administrative citations, including citations issued for abandoned vehicles, blight conditions, and other code enforcement issues. The administrative citation process includes:

- A mailed citation outlining the cited action;
- An appeal process available within 30 days of the date on the citation;

- Requirement of upfront payment of the associated fine (refundable pending outcome of the appeal) with the option to have pre-payment waived upon submitting information for a hardship waiver.

Primary challenges with this process include:

- (1) ***Citation information may feel incomplete to the recipient*** – The citation does not inform the recipient of any of the evidence used to justify the citation.
- (2) ***Requirement to prepay fines***. A key criticism of the existing process is the requirement for an appealing party to prepay the fine, with a refund possible pending the outcome of the hearing. Given the level of fines associated with fireworks use (\$500 to \$1,000), City staff are exploring the waiver of prepayment of appealed citations or a way to provide review of the citations without payment of fines, pending any need to adjust the Municipal Code accordingly.

#### **(D) Early Steps/Recommendations for Improvements**

The City of San José values the participation of its community members in the citywide challenge of addressing illegal fireworks use. At the same time, the City values fairness in the enforcement of the Municipal Code and wants to assure a fair process for those accused of illegal fireworks use. City staff made the determination that the fairest action was to replace the 45 citations issued using online information with a warning letter, rather than spend significant staff time correcting potential defects in the citations (including time expended by enforcement and finance staff and hearing officers).

While remaining fully committed to enforcing against the illegal use of fireworks, there appears opportunity for the City to improve the online form and citation process. Early steps, improvements, and continued evaluation include:

***Form Improvements*** - Staff will continue to assess the form's utility and engage residents who have used the form on how it might be improved. At this time, planned improvements include:

- (a) Further clarify instructions so that users understand that the tool does not initiate an immediate enforcement response, but can be helpful in mapping fireworks use hotspots.
- (b) Further clarify instructions to provide a specific residential address where fireworks were discharged and identification of persons discharging fireworks. Staff will further consider how to identify the address property owner for purposes of citation issuance.
- (c) Staff will evaluate the merits of providing instruction on how to capture useful photo or video images, with the paramount instruction to safely conduct any capture of images.
- (d) Evaluate the feasibility of the fireworks form moving to the My San Jose ([www.sanjoseca.gov/mysanjose](http://www.sanjoseca.gov/mysanjose)) platform, which readily enables camera use and

auto-generated location information from a GPS feature. Such a decision would entail the prioritization around the several work efforts being planned for My San Jose.

***Citation Criteria and Process Improvements*** - Staff will further consider the citation process and criteria with attention to these possible improvements:

- (a) Working closely with the City Attorney's Office, staff will consider a range of criteria that provides confidence in the citation process.
- (b) Staff will evaluate the citation notice for possible inclusion of a description of the evidence being used to support the citation, or whether additional outreach to the accused party is appropriate.
- (c) Staff will review the process and possible Municipal Code changes to enable deferring fine payment for those who appeal the citation.

City staff are committed to a fair, robust process for enforcement against fireworks use. Staff engaged in the pilot Illegal Fireworks Program will take lessons and information from the second year of the program and apply it to an improved program for New Year's Eve 2017, Lunar New Year celebration in 2018, as well as subsequent celebrations in 2018.

/s/

CURTIS P. JACOBSON  
Fire Chief

**EXHIBIT A**  
**Snapshot of the Online Fireworks Reporting Form**

*Top portion of form (see next page for bottom portion of form)*

### Report Illegal Fireworks

Except for professional fireworks displays with permits, all fireworks are illegal in San José and in most of Santa Clara County. To report the use of illegal fireworks in San José, please complete this form. Your report is important and helpful, but does not necessarily initiate the dispatch of enforcement personnel. This form enables administrative citations or warning letters as possible, and requires accurate and complete information.

\* = required field

**Address where fireworks occurred \***

Street Address

Front Address 2

City State Zip

Exact address, including property number, is needed

**Person 1, Name**

First Last

**Person 2, Name**

First Last

**Incident date and time \***

08/16/2017 12:30pm

**Briefly describe the incident \***

Except for professional fireworks displays with permits, all fireworks are illegal in San José and in most of Santa Clara County. To report the use of illegal fireworks in San José, please complete this form. Your report is important and helpful, but does not necessarily initiate the dispatch of enforcement personnel. This form enables administrative citations or warning letters as possible, and requires accurate and complete information.

\* = required field

## EXHIBIT A - Continued

Bottom portion of form (see prior page for top portion of form)

**Briefly describe the incident \***

**Upload photo or video, if taken**

**Reporting Party**

You must provide your name and contact information, which will be kept confidential UNLESS a cited offender requests a hearing. If the evidence you provide is sufficient, a citation will be issued via mail to the offender. If the offender requests a hearing to contest the citation, you will be asked to either appear as a witness or provide evidence for the purpose of the hearing, which will negate your ability to remain anonymous.

**Name \***

First Last

**Phone number \***

**Email address**

**Willing To Testify?**

Yes

No

**Terms Of Use**

You must provide your name and contact information, which will be kept confidential UNLESS a cited offender requests a hearing. If the evidence you provide is sufficient, a citation will be issued via mail to the offender. If the offender requests a hearing to contest the citation, you will be asked to either appear as a witness or provide evidence for the purpose of the hearing, which will negate your ability to remain anonymous.

**Terms Of Use**

This program serves to deter the use of illegal fireworks and promote public safety through collaboration between the City of San José (City) and the community we serve. Accordingly, all form submitters agree to the following terms and conditions: 1. Any photo or video footage containing or related to illegal fireworks use that is submitted may be used by the City as evidence during any stage of an investigation. 2. Under no circumstances shall residents who report the use of illegal fireworks construe that they are acting as an agent or employee of the City, San José Fire Department, and/or the San José Police Department. 3. The City will contact you to confirm the contents of this complaint using the phone number and/or email address provided herein. If an alleged illegal fireworks user contests his/her citation(s), you will be asked to provide evidence regarding this complaint. By submitting this information, I understand and agree to the above policy and terms of use.

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