



Memorandum

TO: CITY COUNCIL

FROM: Mayor Sam Liccardo
Councilmember Sylvia Arenas
Councilmember Johnny Khamis

SUBJECT: FIREWORKS
ENFORCEMENT
ORDINANCE POST-
FOURTH OF JULY REPORT

DATE: September 8th, 2017

APPROVED:

RECOMMENDATION

1. Accept the Fireworks Enforcement Ordinance Post Fourth of July Report.

2. Direct the City Manager to:

- a. **Fines and Appeals:** Return to Council with information regarding actual usage of hardship exemption for appealing fireworks citation without payment of the fine. Absent evidence of frequent awareness of and actual use of the exemption, eliminate the requirement for payment prior to appeal.
- b. **Evidence:** Draft written policy for Council approval setting forth the minimum threshold evidentiary requirements for issuance of citation to any individual violator.
- c. **Staff Ownership:** Identify a lead department and staff person responsible for managing this project, and to provide information responsive to Community and Council requests.
- d. **Prior Council Direction:** Follow Council's previous direction provided in both the September 13, 2016 and April 25, 2017 memoranda, with minor modification, as follows:
 - i. Work with the City Manager to redirect a portion of funds used for purchased media and lawn signs to support the receipt, triage, and response to incoming calls and reports.
 - ii. Report on the feasibility of better utilizing existing technology and new tools for identifying violators and the precise location of violations, such as "Shot Spotter."
 - iii. Explore implementation of creating a separate phone line and number, to field routine, non-emergency fireworks complaints during major holidays, to mitigate the logjam at the call center and dispatch. Consider whether cleared volunteers could be trained to handle non-emergency, routine complaints regarding fireworks during periods in which the call center is overwhelmed.

- iv. Determine a schedule that allows for online reporting, enforcement, and follow-up to commence in early June 2018 or sooner to better deter illegal activity during the Fourth of July holiday.
- v. Coordinate messaging between departments, the 311 call center, and dispatch, such that all staff utilize the same, consistent message, particularly in conveying the same directions to residents.
- vi. Overhaul the campaign messaging, working with the Mayor's Office of Strategic Partnerships to leverage collaborations with organizations such as Bloomberg Philanthropies. Explore data-driven behavioral insights about messaging more likely to deter violations than merely generic messages about fireworks' illegality or lack of safety. For example, focus on dialogue that demonstrates to potential violators of the heightened risk of detection and enforcement, such as by emphasizing how residents can help reduce fireworks usage by using the online reporting tool, and by noting the enhanced administrative enforcement that will not require the presence of a police officer.
- e. **MySanJose App:** Explore the integration of a reporting tool into "MySanJose"
- f. **KPI's:** Identify metrics that can be used to benchmark progress with the of fireworks violations—even using imperfect & biased data, such as 311 calls or on-line complaints, with appropriate qualification.
- g. **Cost Recovery for Response:** Where Fire Department must respond to fireworks-related fires, explore imposing costs of emergency response on violators
- h. **Setting Expectations:** Add an additional disclaimer—with a "check-box" feature to ensure user awareness--to the on-line reporting tool that enables the user to know that the City will utilize the information to investigate violations and enforce the law, but that it does not provide a means for immediate response.

DISCUSSION

We have heard substantial public frustration with the City's fireworks response this year, and we should make preparations now to upgrade our efforts to protect the safety of our community and deter future violators. We commend efforts to send follow-up letters to residents who received warnings last year, and appreciate that many more residents will receive letters next year due to ample data collected from the reporting tool. The use of this data will help deter violations—and put parents on notice of the activities of their kids—in the future.

Given the challenges of coordinating multiple departments on this matter, and in light of the lack of follow-through on prior Council direction, it appears critical that this initiative have a clear "owner" among Staff with responsibility for project implementation and cross-departmental communication. We urge the City Manager to designate that person immediately.

Regarding prior Council direction, some additional explanation appears warranted in light of the recent turnover of both Councilmembers and staff:

Messaging: Criminologists such as James Q. Wilson have long emphasized the superior deterrence value of communicating the *likelihood* of detection and penalty over other messages, such as the illegality of the conduct, the severity of penalty, or the moral harm of conduct. In response to the prior year's emphasis on the illegality and danger of fireworks, Council repeatedly expressed skepticism that the generic messages staff was utilizing (e.g., "Fireworks are illegal" or messages emphasizing safety) would have any effect. Indeed, at the September 13, 2016 Council Meeting, the Council directed the City Manager to "develop a more targeted communications campaign focused on on-line reporting, enhanced administrative enforcement, ...and how residents can help, rather than merely offering generic messages about fireworks safety." The following April, after staff presented its fireworks plan, Council repeated its September direction, noting in the approved memorandum that, "We don't see in the current plan a response to Council direction to... [r]e-focus the communications effort from a message of 'fireworks are illegal/dangerous,' to 'here's how we can work together to reduce dangerous fireworks in your neighborhood' that would include promotion of our improved online reporting tool, and information on when to call 311 or 911." Staff declined to alter the thrust of the messaging campaign, repeating paternalistic messages emphasizing that "fireworks are illegal" and dangerous through City on-line media (see, e.g. www.sanjoseca.gov/fireworks) and banners. Staff also deployed a "respect your neighbors, veterans, and pets" message, which would have predictably negligible impacts on a teenager inclined to ignite a device. Information regarding the on-line tool was subjected to (at most) very small fonts on the corner of banners, and hard-to-find locations on the City website.

Commencement of Enforcement Well Before July 4th: Last September, Council directed staff to "Determine a schedule for enforcement that allows for online reporting, enforcement and follow-up to occur in early May 2017 or sooner to help deter additional illegal activity during the 4th of July holiday." In April of this year, we urged staff again to follow the September direction, and the memorandum added that staff should "[b]egin efforts in mid-May, when fireworks usage begins in many neighborhoods, so that perpetrators can be identified and parents/property owners can be warned sufficiently to deter fireworks usage during the July 4th holiday." After June had passed, we learned that no staff enforcement began until July 1st—far too close in time to the 4th to provide any significant deterrence to violators. Once again, staff never provided to Council any *ex ante* explanation for its disregard of Council direction.

Use of Volunteers: Many residents frustrated by fireworks activity have expressed a willingness to help overstretched City staff grapple with this challenge. In September of 2016, Council sought to have staff explore the "feasibility of utilizing both technology and volunteers to relieve emergency dispatch personnel of call volume and to improve response." While this may prove to be infeasible for various reasons, it is worth asking the questions, and we await the answers to those questions. Council further hoped that "volunteer engagement might also provide feedback for staff to ensure clearer provision of public information, and groups like Code for San Jose can help make online reporting tools more user-friendly for both the public and staff."

We look forward to substantial improvements in the project management and implementation of this effort to meet the community's and Council's expectations in 2018. The time to begin that work is now, before the urgency of other priorities interfere with implementation next June.

BROWN ACT

The signers of this memorandum have not had, and will not have, any private conversation with any other member of the City Council, or that member's staff, concerning any action discussed in the memorandum, and that each signer's staff members have not had, and have been instructed not to have, any such conversation with any other member of the City Council or that member's staff.