



COUNCIL AGENDA: 11/28/17  
FILE: 17-386  
ITEM: 8.1

# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Curtis P. Jacobson

**SUBJECT:** 2017 FIREWORKS ORDINANCE  
WORK PLAN STATUS REPORT

**DATE:** November 20, 2017

Approved

Date

11/21/17

## RECOMMENDATION

Accept the 2017 Fireworks Ordinance Work Plan status report.

## OUTCOME

If the City Council accepts this report, staff will continue to move forward with the work described in the 2017 Fireworks Ordinance Work Plan.

## BACKGROUND

On September 12, 2017, the City Council heard a report<sup>1</sup> titled "Fireworks Enforcement Ordinance Post-Fourth of July 2017 Status Report." Council accepted both the staff report and a memorandum<sup>2</sup> dated September 8, 2017 co-authored by Mayor Sam Liccardo, Councilmember Sylvia Arenas, and Councilmember Johnny Khamis.

This status report provides an update on activities and a work plan associated with implementing the Council's direction from the September 12, 2017 City Council Meeting.

<sup>1</sup> Staff report: <https://sanjose.legistar.com/View.ashx?M=F&ID=5399431&GUID=6DCBFE31-72FF-430E-875D-3CEF03174FEE>

Supplemental memorandum: <https://sanjose.legistar.com/View.ashx?M=F&ID=5399432&GUID=6FEC4807-8466-43C0-9A87-638FF8DF59C9>

<sup>2</sup> Memorandum from Mayor and Councilmembers:

<https://sanjose.legistar.com/View.ashx?M=F&ID=5414517&GUID=7064C412-114A-4F85-A065-1099A384DC8F>

## **ANALYSIS**

Following the September 12, 2017 City Council meeting, the City Manager designated the Fire Department as the lead department for coordination and project implementation. The Fire Department assembled a cross-departmental group consisting of staff from the City Manager's Office; Police Department; Department of Transportation; Parks, Recreation & Neighborhood Services (PRNS) Department; Planning Building and Code Enforcement (PBCE) Department; Finance Department; Office of Employee Relations (OER); Information Technology (ITD) and the City Attorney's Office.

Attachment A provides a high-level Illegal Fireworks Work Plan, with an update on each item from the Council direction from September 12, 2017, as well as key staff initiatives. Attachment B provides a sample of the online reporting form, updated per Council's September 2017 direction. The following is a more in-depth look at three larger issues that emerged from the Council direction: Fines and Appeals; Use of Volunteers; and Outreach and Marketing Campaign.

### **Fines and Appeals**

Council directed staff to: "Return to Council with information regarding actual usage of hardship exemption for appealing fireworks citations 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."

***Current process for administrative citation fines, appeals, and hardship waivers.*** San José Municipal Code Section 1.15.090 requires the City to collect an advance deposit prior to scheduling an appeal hearing. Multiple City departments issue administrative citations, and the requirement for paying an advance deposit (equal to the amount of the fine) applies to all administrative citations issued for violations of the Municipal Code, not just to the use of illegal fireworks.

If a citation recipient feels the citation is not valid, instructions on the citation direct the recipient to contact the Finance Department to request an appeal hearing and, if needed, an advance deposit hardship waiver. The City provides hardship qualification criteria on its website at <http://www.sanjoseca.gov/index.aspx?nid=789>. Forms and information on administrative hearing requests can also be found at <http://www.sanjoseca.gov/index.aspx?NID=788>.

***Use of the advance deposit hardship waiver for fireworks use this year.*** As outlined in prior reports, 2017 Fourth of July fireworks citations that were issued based on online reports were changed to warnings at the direction of the City Manager. Prior to this action, the Finance Department had received five requests for appeal. Of those, three individuals also requested a hardship waiver. All three hardship waivers were granted. Because the citations based on online data were changed to warnings, in the end the appeal hearings were no longer needed. The City

refunded all fines associated with fireworks use citations based on online data; the 14 citations issued in person, in the field remained valid.

***Consideration of options for changing the process.*** On September 12, 2017, Council further directed the City Manager to explore the following options:

- Eliminate the requirement to pay the fine prior to an appeal hearing being granted, and
- Explore the potential of a pilot program modeled after the City of Los Angeles Administrative Citation Enforcement Program (“ACE Program”).

Elimination of the advance deposit requirement would require a change to the Municipal Code Section 1.15.090, which pertains to all types of citations, not just fireworks.

Staff explored several options for eliminating the advance deposit requirement:

- Create an exception in the Municipal Code for fireworks citations only. This is not recommended as it would create inequity between an individual cited for illegal fireworks and an individual cited for another type of violation of the Municipal Code. Such an exemption might be used as rationale for a legal challenge to the City’s requirement of advance deposit.
- Create an exception for all citations issued from reports made online. This is not recommended as there are additional warnings and citations the City issues, such as in animal control cases, where the complaint was made online and City staff did not witness the reported behavior.
- Eliminate the advance deposit requirement for all citations. Staff does not recommend this option as it would likely significantly increase the number of requests for appeal hearings. Currently, appeal hearing requests constitute only 3.5 percent of total administrative citations issued. To date this fiscal year, 107 appeal hearings have been requested out of the 3,016 administrative citations issued. While assessing the potential increase is difficult to quantify, it should be noted that the current program is run with a lean and efficient staffing model, and the current staffing levels would not be able to absorb an increase in workload.

Per Council direction, staff researched the ACE Program used by Los Angeles. In this program, an administrative review is made available to the recipient of a citation upon request; this review is performed prior to an appeal hearing and the advance deposit is not required at this point. If the citation is deemed valid in the administrative review process, the cited party can request an appeal hearing and, at that time, an advance deposit is collected.

The administrative review is conducted by Los Angeles’ City Attorney’s Office and not by the citing department. The ACE program has a substantial budget, mostly due to a high volume of citations, the involvement of the City Attorney’s Office, and the additional step of the administrative review. Implementing a similar program at the City of San José would require greater staffing levels along with the associated costs.

Due to the workload impacts, if Council wishes to proceed with either a change to the Municipal Code to eliminate the advance deposit requirement or to implement a pilot program modeled after the ACE Program, staff recommends Council either refer these proposals to the budget process or to the next Priority Setting process for further analysis.

### **Use of Volunteers**

Council directed staff to: "Explore implementation of creating a separate phone line and number to field routine, non-emergency fireworks complaints during major holidays, and 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."

***Dedicated Phone Line.*** Staff is establishing a dedicated phone line and plan to have it operational by New Year's Eve. During times of the year when illegal fireworks use is historically low, the hotline will have a recorded message and provide callers with options for making complaints.

At times of the year with a high rate of illegal fireworks activity, the hotline will provide a message directing callers to the online reporting tool. Callers without access to the internet may select the option to speak to a call-taker, either in the City Call Center, or at the City's after-hours contractor. Staff in the Police and Fire Communications centers will be able to transfer non-emergency illegal firework activity calls to this dedicated hotline.

The goal is to significantly reduce the amount of time Police Communications spend on non-emergency, illegal firework activity calls and alleviate potential log-jams in order to respond to emergencies that typically spike during the holidays when fireworks are used. In addition, the 311 hold message will be updated as soon as practical with information regarding illegal firework activity reporting and provide callers with the phone number for the hotline as well as direct callers to the online reporting tool.

Costs associated with the dedicated phone line include:

- The cost to establish this phone number is an estimated \$400 to \$500. This cost will be covered by the existing budget in ITD.
- The contract for the Call Center's after-hours service provides that the contractor will answer a specific number of calls related to specific City services. Expanding the contract scope to include answering more calls on illegal firework activity could potentially increase costs dependent on additional call volume. Staff will monitor these costs following New Year's Eve and Tet/Lunar New Year, and determine if adjustments will be needed to the contract, including additional funding.

***Volunteer Call-Taking.*** Staff from the Office of Employee Relations, City Attorney's Office, ITD, and the Police and Fire Departments have explored Council's direction about using volunteers to assist with high call volume.

Using volunteers to answer calls is not feasible in the Police and Fire Communications centers. Dispatchers and call-takers go through a rigorous training and backgrounding process. Training and backgrounding volunteers for the few days per year with the highest volume of illegal fireworks calls would not be practical or cost-effective.

It is also staff's assessment that using volunteers in the City Call Center is also not feasible. Call Center staff handle sensitive and confidential information with call intake; confidentiality requirements are also written into the contract with the after-hours service. Taking complaints about illegal fireworks use involves confidential information about the reporting party, the alleged user of illegal fireworks, home addresses, and other sensitive or personal information. For these reasons, staff is not recommending using volunteers to handle illegal fireworks calls.

***Other Volunteer Opportunities: Community Outreach and Education.*** Understanding the City Council's interest in using volunteers to help with this issue, staff is exploring the use of volunteers to expand community education and outreach. A near-term effort planned for New Year's Eve and Tet/Lunar New Year is discussed in the Outreach and Marketing Campaign section below. Longer term, staff is exploring ways volunteers could possibly visit community centers, schools and other public places and venues to provide educational information about illegal fireworks, however, staff resources to plan, develop, and manage such an effort have not yet been identified. Additionally, it is noted that outreach efforts involving children and other youth programs may require volunteers to submit to certain screening or backgrounding protocols.

### **Outreach and Marketing Campaign**

Council's direction from September 12, 2017 included a number of items related to improving outreach and marketing efforts. Staff has addressed each recommendation in Attachment A; the following is information about upcoming outreach efforts for New Year's Eve and Tet/Lunar New Year 2018.

Of the \$75,000 budget available for outreach for the July 4, 2017 fireworks use period, staff expended nearly \$57,000, reserving \$18,000 to use toward outreach to discourage fireworks use during the coming New Year's Eve celebration and targeted outreach around the 2018 Tet Festival/Lunar New Year (February 16) celebration.

***New Year's Eve.*** Staff plan to create multilingual flyers with a "celebrate safely" message that emphasizes no gunshots, no fireworks use, and don't drink and drive. Staff will disseminate these flyers through libraries and community centers, and as possible, through public schools (school closures begin December 20). Staff will also supply the flyers to City Council offices and to members of the Neighborhoods Commission along with identification of the hot spots of fireworks use based on prior celebrations. This enables Council offices and community volunteers to engage in flyer distribution in hot spot neighborhoods. Staff will amplify the flyer

messages through social media and will work to secure traditional media coverage. Design, translation and printing are estimated to cost under \$4,000.

***Tet/Lunar New Year.*** Staff plan to conduct outreach targeted to Vietnamese and Chinese residents. Although Vietnam banned firecracker production, trade and use in 1994 for safety reasons, and many cities in China in recent years have banned or greatly restricted fireworks use to control air pollution and promote safety (despite China manufacturing most of the world's fireworks), the tradition of setting off bundled firecrackers during Tet has been difficult to restrict in those countries and here in the U.S. The Fire Department and communications staff will mail letters to property owners, businesses and community organizations to encourage obtaining a Fireworks permit and the hiring of professional pyrotechnicians who can safely and legally set off firecrackers, particularly in front of retail locations where firecracker use has been a problem in past years. Staff will amplify the message with ad placements in ethnic media. Design, translation and ads are estimated to cost under \$5,000. Staff will also work to secure media coverage through Vietnamese and Chinese TV and radio stations.

***Fourth of July 2018.*** Staff is developing an updated outreach campaign. Updates on specific Council direction is provided in Attachment A.

Per Council's direction to "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," staff will transfer the remainder of outreach funds, approximately \$9,000, to Fire and Code Enforcement budgets to support the receipt, triage, and response to fireworks use reports filed using the online reporting tool for additional after hour staffing and/or overtime.

### **EVALUATION AND FOLLOW-UP**

This memorandum addresses Council direction from September 12, 2017. Staff will provide an update to the Council via Informational Memoranda following New Year's Eve and Lunar New Year 2018. Should there be need for significant adjustment to the work plan prior to Fourth of July 2018, staff will return to Council.

### **PUBLIC OUTREACH**

This memorandum will be posted on the City's Council Agenda website for the November 28, 2017 Council Meeting.

### **COORDINATION**

This memorandum has been coordinated with the City Manager's Office, City Attorney's Office, the Office of Employee Relations, Police Department, Information Technology Department,

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**Subject: 2017 Fireworks Ordinance Work Plan Status Report**

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Finance Department, Parks, Recreation & Neighborhood Services, and the Department of Planning, Building and Code Enforcement.

**COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action.

**CEQA**

Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action.

/s/  
CURTIS P. JACOBSON  
Fire Chief

For questions, please contact Ryan Dulin, Deputy Director, Fire Department, at (408) 794-6984.

Attachment A: Illegal Fireworks Work Plan

Attachment B: Illegal Fireworks Online Reporting Form

### Attachment A: Illegal Fireworks Work Plan

Items from Council Direction		
Action Item	Actions Taken/Next Steps	Due Dates
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.	<p>Information regarding hardship exemption usage is provided in the attached staff report.</p> <p>Regarding the elimination of requirement for pre-payment: Please see attached recommendation for policy and legal analysis.</p>	<b>COMPLETED/ IN PROGRESS</b> December 2017
B. Evidence: Draft written policy for Council approval setting forth the minimum threshold evidentiary requirements for issuance of citation to any individual violator.	Staff has updated the fireworks use online reporting tool, adding information about the minimum threshold evidentiary requirements and clearly outlining the criteria for issuing citations for fireworks violations on residential and non-residential properties. (See Attachment B.) The goal is to better inform the reporting party of the information needed to issue a citation. Staff will review reports filed over New Year's Eve and Lunar New Year to evaluate if additional improvements are needed prior to the 2018 Fourth of July holiday.	<b>COMPLETED</b>
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.	The Fire Department is the lead department. The Fire Chief designated Ryan Dulin, Deputy Director of the Bureau of Administrative Services, as the department staff person responsible for managing this project, and to provide information responsive to the community and Council requests.	<b>COMPLETED</b>



Items from Council Direction		
Action Item	Actions Taken/Next Steps	Due Dates
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:		
1) 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.	Of the \$75,000 budget available for outreach for the July 4, 2017 fireworks use period, staff expended nearly \$57,000 (\$14,000 was spent on lawn signs, which are not planned for purchase for New Year's Eve or Tet/Lunar New Year). There remains \$18,000 to use toward outreach to discourage fireworks use during the coming New Year's Eve celebration (\$4,000) and for targeted outreach around the Tet Festival/Lunar New Year celebration on February 16 (\$5,000). The remaining \$9,000 can be redirected toward operational enforcement efforts. Please see the "Marketing and Outreach" section of the attached staff report for more information.	Spring 2018

Items from Council Direction		
Action Item	Actions Taken/Next Steps	Due Dates
2) 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.”	<p>Several California cities have put in place audio-detection systems, such as ShotSpotter, to detect gunshots. For a large city, the installation typically is limited to neighborhoods with a history of gun violence. This is due to cost. Annual costs for ShotSpotter are, according to publicly available information, \$245,000 per year in San Diego and \$264,000 per year in Oakland.</p> <p>The City Manager’s Office of Civic Innovation has on its work plan to evaluate audio-based detection systems, such as ShotSpotter, as it develops the City’s Internet of Things strategy. The Civic Innovation Cabinet is planning to discuss and prioritize use cases, including illegal fireworks detection and reporting, at its January 2018 meeting.</p>	February 2018
3) Explore implementation of creating a separate phone line and number to field routine, non-emergency fireworks complaints during major holidays, and 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.	<p>Phone line: IN PROGRESS. To be completed prior to New Year’s Eve.</p> <p>Consideration of volunteers: COMPLETED. See attached staff report for discussion of volunteer usage.</p>	<b>COMPLETED</b> December 2017

Items from Council Direction		
Action Item	Actions Taken/Next Steps	Due Dates
4) 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.	<p>Staff has developed a schedule. The online reporting tool will be made available:</p> <ul style="list-style-type: none"> <li>• New Year's Eve: December 18, 2017 to January 1, 2018</li> <li>• Lunar New Year (February 16 in 2018): February 1-18, 2018</li> <li>• Fourth of July: June 1, 2018-July 8, 2018</li> </ul>	<b>COMPLETED</b>
5) 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.	Staff is in the process of developing messaging in advance of New Year's Eve to direct residents to the online reporting tool with guidance regarding the type of information that is needed to file a complete online report. Staff will create messaging around the new dedicated phone line for all involved departments.	<b>IN PROGRESS</b> December 2017

Items from Council Direction		
Action Item	Actions Taken/Next Steps	Due Dates
<p>6) 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.</p>	<p>Staff's work plan includes overhauling the campaign messaging for Fourth of July 2018 using data-driven behavioral insights as outlined in Council's direction.</p>	<p>January 2018-July 2018</p>
<p>E. MySanJose App: Explore the integration of a reporting tool into "MySanJose"</p>	<p>The Illegal Firework service request is currently on the MySanJose product backlog queue and staff is currently working on improving the applications customer experience. To implement use of MySanJose for Illegal Fireworks complaints, additional funding may be required to move forward with feature development. The team would then have to work through requirements, development, and implementation with responsible service departments.</p>	<p><b>IN PROGRESS</b> Fall 2018</p>

Items from Council Direction		
Action Item	Actions Taken/Next Steps	Due Dates
F. Key Performance Indicators (KPIs): Identify metrics that can be used to benchmark progress with the of fireworks violations—even using imperfect and biased data, such as 311 calls or complaints, with appropriate qualification.	<p>The illegal fireworks team has identified the following key performance indicators:</p> <ul style="list-style-type: none"> <li>• Police and Fire calls for service;</li> <li>• Police and Fire illegal fireworks incidents;</li> <li>• Injuries reported related to fireworks incidents;</li> <li>• Citations and arrests related to fireworks incidents;</li> <li>• Volume of illegal fireworks confiscated; and</li> <li>• Campaign publicity tactical outputs with survey measures (such as through Survey Monkey) of community members’ assessment of related messages.</li> </ul> <p>These metrics, along with the existing online reporting tool analytics, will be collected and used to make future improvements.</p>	<b>COMPLETED/ IN PROGRESS</b> for New Year’s Eve, Lunar New Year, and July 4 <sup>th</sup> 2018
G. Cost Recovery for Response: Where Fire Department must respond to fireworks related fires, explore imposing costs of emergency response on violators.	Existing ordinances 10.17.040 and 10.17.120 allow the Fire Department to recover specific costs (salaries and benefits, any medical treatment to or for any public safety personnel injured, and repairing or replacing any public safety equipment or property damage) for response to an unpermitted discharge or illegal storage of fireworks. Going forward, in addition to issuing citations for the unpermitted discharge or storage of fireworks, the Fire Department will evaluate the law enforcement, firefighting, or other costs related to such incident and assess those costs to the responsible parties.	<b>ONGOING</b>

Items from Council Direction		
Action Item	Actions Taken/Next Steps	Due Dates
H. Setting Expectations: Add an additional disclaimer—with a “checkbox” feature to ensure user awareness—to the online 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.	Staff has added the checkbox. Please see Attachment B for the updated form.	<b>COMPLETED</b>
Additional Items on Work Plan		
Action Item	Actions Taken/Next Steps	Due Dates
Volunteer Outreach – Hot Spot Neighborhoods	Staff will be developing hot spot maps and a multi-lingual flyer that Council offices, Neighborhoods Commission, neighborhood leaders, and others can share door-to-door in advance of holidays when illegal fireworks are heavily used.	<b>IN PROGRESS</b> December 2018 for New Year’s Eve
Volunteer Outreach – Schools, Community Organizations, etc.	Identify staff resources to develop outreach plan, create targeted messages and collateral, and recruit and train volunteers.	<b>TBD</b>

## Attachment B: Illegal Fireworks Online Reporting Form (Screen 1)

# Report Illegal Fireworks

Except for **approved and permitted** professional fireworks displays, all fireworks are illegal in San José and in most of Santa Clara County. This form enables administrative citations or warning letters, as appropriate and requires accurate and complete information. **Your report is important and helpful in addressing fireworks use.** To report the use of illegal fireworks in San José, please complete this form.

### Please provide the following information:

- Photo/video evidence showing use or possession of firework on the property
- Willingness to testify
- Address where illegal activity occurred

For non-private property (school, park, etc.), also provide:

- First and last name of person using illegal fireworks.

*Note: City staff will review the information provided and may issue a citation or warning based on the sufficiency of information/evidence provided. Incomplete reports may prevent the City from issuing citations or warning notices. However, incomplete reports are used for planning neighborhood enforcement and outreach efforts to prevent the use of illegal fireworks.*

Acknowledgement \*

☐

I understand and accept that my report will not initiate an emergency response.

field\_48

view\_59

Add Firework Rep

Continue

## (Screen 2)

field\_26

### Details of Report

Exact address where fireworks occurred \*

Street Address  Street Address 2

City State Zip

field\_2

You must include property number and unit number for apartments.

Address of person using fireworks

Street Address  Street Address 2

City State Zip

field\_49

If person using fireworks lives at different location than where fireworks activities occurred please enter that address location.

Name of person using fireworks 1

First Last

field\_25

Name of person using fireworks 2

First Last

field\_26



Incident date and time \*

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 may significantly negate your ability to remain anonymous.

Reporting party name \*

 

First

Last

Reporting party phone \*

Reporting Party Email

Are you willing to testify? ☒ Yes ☐ No

## 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.

5a0b32665a2528	view_60	Edit Firework Rep	5a0b32665a2528	<u>Submit</u> Fireworks Report
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