

DATE: August 12, 2019  
TO: Hon. Raul Perez, Chairman  
Public Safety, Finance and Strategic Support Committee  
City of San Jose  
FROM: Steven G. Spivak, resident of San Jose District 2  
RE: Unacceptable lack of fireworks ordinance enforcement

Dear Chairman Perez:

I write to express my deep disappointment with the City of San Jose. While created with good intent, after over 30 years of failing to deal meaningfully with enforcement, the City's response to fireworks ordinance violations in 2019 remains weak, with its focus on education and not on enforcement. Although there have been some good ideas implemented such as the public fireworks display at Almaden Lake, our neighborhoods continue to suffer explosive attacks. For example, resident reports, documented by video in D3's Roosevelt Park, TV news reports from Alviso and, of course, the thousands of online and telephone reports all document how blatant are the violations and how meager the response. The overall lack of results, in terms of either numbers of citations issued, fines or jail time imposed, or any meaningful or effective physical law enforcement response, constitutes a completely unacceptable situation in this city.

In addition to the City's failure to enforce the fireworks law, San Jose's public communications have, at times, also served not only to force San Jose residents who wish to report fireworks crimes into the position of crime scene investigators, blaming resident reporters for the City's lack of response on shortcomings in their reports, but also to encourage fireworks ordinance violators with at least one televised official public announcement to the effect that fireworks violations would only be enforced "when it is safe." The effect of such official miscommunications is to not only discourage resident reporting but also to encourage those intent upon breaking the law to do so with impunity, knowing that no law enforcement personnel would interfere. This miscommunication, too, is completely unacceptable.

We know, from observing neighborhoods from Mt. Hamilton's height on a typical July 4th, that fireworks violations occur from one end of town to the other, creating an out-of-control situation challenging even a full complement of law enforcement staff. With the existing understaffed police department, there appears to be no way to summon a police officer for neighborhood fireworks violations.

We also know, that after three years comprising nearly 6,500 online resident fireworks reports, and over 1,400 telephone reports (not including dropped calls due to busy lines), despite calls and letters from residents and repeated urgent requests from the Neighborhoods Commission calling for enforcement action, we have seen hardly any response. San Jose has issued a total of 27 citations for July 4<sup>th</sup> fireworks ordinance violations. For the July 4, 2019 holiday, a total of 7 citations have been issued, but only one is reported as law enforcement field citation. We do not know how many citations resulted in fines or jail time.

Fireworks explosions in our neighborhoods are not a low priority. The explosions are disruptive to neighborhood peace and quiet, dangerous and even life threatening to our loved ones with PTSD, pets and children, and potentially damaging to our homes, businesses and property.

The fireworks problem peaks at known times of the year. Law enforcement should prepare for these known times and plan to address the problem. **Instead, it is apparent to many of us that the residents of San Jose have largely been left to fend for ourselves.**

The City of San Jose's primary method to deal with illegal fireworks violations, the online reporting tool, after three years of use, can only be described as a waste of reporters' time. The form requires photographic evidence that may prove hard to obtain; it forces residents into potentially unsafe confrontations with neighbors. With so few results, use of the form is only contributing to residents' frustration and lack of faith in the City's willingness to protect them. Other and better online reporting engines exist for us to use.

We understand that this city's police force may not have sufficient numbers of officers for a city of our size. That explains the lack of fireworks ordinance enforcement **but it most emphatically does not excuse it.** *There is no reason why the City could not fund a robust enforcement program, starting on a small scale if necessary, in neighborhoods with the highest numbers of fireworks ordinance violation complaints.*

The Committee and Council must stand firm and exert full influence on the police department to initiate a robust fireworks ordinance enforcement program; and to fund these endeavors with the understanding that failure to do so is not an option. With this in mind, please consider the following steps:

1. Commit to field enforcement as a first priority; and
2. Select a manageable area to begin the enforcement program such as Roosevelt Park or portions of Alviso; and
3. Determine the cost to patrol, D3's Stop Illegal Fireworks in San Jose Committee has already researched and documented the cost of a July 4<sup>th</sup> patrol; and
4. Boost first-time offense fine to \$1,000.
5. Contact all residents in the selected area (s) with notification of police patrols on July 4<sup>th</sup>; and
6. Coordinate communications to reinforce the enforcement function with warnings; avoid encouraging delinquency; and
7. Vigorously publicize enforcement activity as well as violator arrests, convictions, jail time and fines; and
8. Add additional public fireworks display(s) in such places as Hellyer County Park and/or other affected Council districts;
9. For the future, consider the free "Nail 'Em" app that enables real time GPS location reporting and direct PD response.

The institution of an enforcement program may start relatively small. However, once it becomes known that law enforcement is out and about, that violators actually do face stiff fines and/or jail time, the word will spread.

We cannot and will not accept continuing and uncontrolled instances of annoying, dangerous and illegal fireworks in our neighborhoods. We are counting on you to take action.

Sincerely,

Steven G. Spivak

cc:

Hon. Sergio Jimenez

Hon. Magdalena Carrasco

Hon. Chappie Jones

Hon. Sylvia Arenas

Jennifer Maguire, COSJ

**From:** Steve Spivak  
**Sent:** Thursday, September 26, 2019 4:34 PM  
**To:** City Clerk  
**Subject:** Fwd: DISAPPOINTED -- Fireworks Ordinance Workplan Status Report Supplemental Memorandum

**[PLEASE INCLUDE IN COUNCIL MEETING AGENDA 10/1/19 UNDER ITEM 8 "LETTERS FROM THE PUBLIC".]**

**DATE:** September 26, 2019  
**TO:** Hon. Raul Perez, Chairman, PSFSS Committee;  
Members, San Jose City Council  
**SUBJECT:** Supplemental memorandum dtd. 9/24/19 Fireworks Ordinance Workplan Status Report

I write to express continued disappointment at the lack of commitment to enforce the fireworks ordinances in this city. With the greatest respect for the San Jose Police Department, I find that the "Deployment Plan and Enforcement" section, proposing a pilot program of field enforcement, is predicated upon the participation of SJPD "volunteers." This proposal is problematic from the get-go. As noted in the memorandum, it "has been challenging" for the department to assign officers to enforce the fireworks ordinances. A total of two departmental "volunteers" were available in 2019.

Reading the supplemental memorandum very closely, one can only assume that: any fireworks ordinance field enforcement program in this city on July 4<sup>th</sup> is entirely dependent upon the willingness of off-duty police officers to "volunteer," that volunteers are unlikely to step forward in sufficient numbers to make field enforcement practicable; that "possibly incentivizing the program" will attract more volunteers. The fact is that the entire proposed San Jose fireworks ordinance field enforcement pilot is contingent upon whether "sufficient officers have volunteered for the overtime assignment." With respect, this is not a real commitment. Since when does law enforcement depend on a volunteer force? San Jose does not have a "volunteer" police department.

If SJPD is going to organize a successful field enforcement pilot project, they must be able to assign sufficient officers, cancelling or substituting holiday time off as appropriate.

Until the City of San Jose makes a real commitment to direct field enforcement of the fireworks ordinances, we in the neighborhoods will continue to have to fend for ourselves in the face of dangerous, annoying and illegal fireworks explosions.

July 4th is no holiday for fireworks ordinance violators; it should not be a holiday for law enforcement.

I urge you to exercise your full influence on the police department to revise the current proposal with a real and unqualified commitment to make it work. We look forward to supporting you and SJPD in this effort.

Sincerely,

SGS

Steven Spivak  
District 2

cc:

Hon. Sam Liccardo, Mayor  
Hon. Charles "Chappie" Jones, Dist. 1  
Hon. Sergio Jimenez, Dist. 2

Hon. Lan Diep, Dist. 4

Hon. Magdalena Carrasco, Dist. 5

Hon. Devora Davis, Dist. 6

Hon. Maya Esparza, Dist. 7

Hon. Sylvia Arenas, Dist. 8

Hon. Pam Foley, Dist. 9

Hon. Johnny Khamis, Dist. 10