

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Robert Sapien, Jr.
Anthony Mata
Jim Shannon

SUBJECT: SEE BELOW

DATE: April 28, 2021

Approved



Date

04/29/21

**SUBJECT: AMENDMENT TO TITLE 10 (SOCIAL HOST ORDINANCE) AND TO
2020-2021 SCHEDULE OF FEES AND CHARGES FOR ILLEGAL
FIREWORKS**

RECOMMENDATION

- (a) Approve an ordinance amending Chapter 10.17 of Title 10 of the City of San José Municipal Code to:
 - (1) Add Sections 10.17.060 and 10.17.070 to define Social Host and Strictly Liable;
 - (2) Amend Section 10.17.030 to define private and public property;
 - (3) Amend Section 10.17.100 to impose strict liability on social hosts for fireworks violations at their property and/or gatherings;
 - (4) Add Section 10.17.130 to provide a billing mechanism for charging responsible parties for emergency response costs associated with fireworks violations; and
 - (5) Add Section 10.17.140 to include an administrative appeal procedure for recipients to dispute the imposition or amount of a response charge.
- (b) Adopt a resolution amending the 2020-2021 Schedule of Fees and Charges (Resolution No. 72737, as amended) to establish response charges for emergency responses related to fireworks violations.

OUTCOME

Amending the City of San José Municipal Code (SJMC) sections related to fireworks enforcement will continue the ban on the sale, use, discharge and storage of fireworks and will extend responsibility for violations to social hosts and property owners who host gatherings at which fireworks are illegally used or discharged. In addition, amending the response cost ordinance will provide an administrative procedure for the City to bill for all costs associated with responding to an incident related to or caused by the illegal use of fireworks. Updating the Schedule of Fees and Charges to reflect actual response costs associated with fireworks violations will keep the Schedule up-to-date and consistent and authorize reimbursement for emergency response services to be billed back to the person(s) responsible for response costs resulting from the use of illegal fireworks.

- Scope of Charges – the response charge will be the actual cost of services, including without limitation, fire and police personnel and equipment incurred for each incident.
- Response Charges Procedure – the bill of charges shall be served by the Fire Chief and/or Chief of Police upon the responsible party. The total amount of the response charge shall be deemed a civil debt to the City and the Director of Finance may take such action to recover the costs as the City is authorized to do by law for the recovery of a civil debt.
- Appeal Process – the bill of charges will include information on how the person being charged may request a hearing before the appeals hearing board within 10 days of service of the bill to dispute the imposition of a response charge or the amount of the charge. The decision of the appeals hearing board shall be final.

BACKGROUND

In 1984, the City Council voted to amend the SJMC, banning all fireworks, including “safe and sane” fireworks, with the exception of controlled public fireworks displays operated by a licensed pyrotechnician pursuant to a permit by the Fire Department.

In August 2014, the City Council directed the City Manager to make changes to fireworks enforcement after several years of increasing noise and safety complaints from residents. Both the Fire and Police Departments were directed to look for options that might slow and eventually contain the illegal sale, use, possession and storage of fireworks. In June 2015, the City Council directed staff to establish a framework to cite, fine, and adjudicate the use, possession, sale, advertisement for sale, transportation, and/or manufacturing of fireworks. The Council also directed staff to explore the use of Administrative Citations in addition to criminal charges, which may be brought by the Santa Clara County District Attorney’s Office. On April 12, 2016, the Council adopted an ordinance amending SJMC Section 10.17 to prohibit the sale, use, possession, and storage of fireworks and to provide for civil liability under certain circumstances for those persons responsible for minors who violate the ordinance. The Council also established administrative fines for fireworks-related violations. The City established the Fireworks Ordinance Work Plan to focus staff efforts on slowing and reducing the illegal sale, use, possession, and storage of fireworks and improve outreach, education, and enforcement efforts.

As part of the Fireworks Ordinance Work Plan, staff implemented numerous strategies between 2016 and 2020 to mitigate the use of fireworks and increase public awareness of the dangers and illegality of fireworks use including development of a robust marketing and outreach campaign; a community online fireworks reporting tool; enhanced mitigation and enforcement strategies; regular reporting to Public Safety, Finance, and Strategic Support Committee; and multiple Department coordination efforts including the Fire Department, Police Department, Planning, Building, and Code Enforcement, City Attorney’s Office, City Information Technology Department and the City Manager’s Office of Communications. Past efforts included the establishment of a dedicated phone line for reporting illegal fireworks activity; a new advance deposit hardship waiver qualification criteria for all Administrative Citations; establishment of

“Education and Outreach, Reporting, and Enforcement” as major work plan components; and goals to reduce the number of fireworks-related injuries and fires, increase the number of actionable reports, and decrease the number of illegal fireworks hotspots.

During 2019, staff enhanced and expanded community outreach and messaging and issued the first Fireworks Non-Renewable (Fire) Permit in an area known for celebrations using illegal fireworks. The intent of the permit was to provide an opportunity for a community event to be held that utilized services from a pyrotechnic professional and to offer an alternative to the individual use of illegal fireworks. In addition to banner displays, Social Media Kits for campaign messaging were provided to the City’s 33 fire stations. School electronic billboards were also used for the first time as part of the outreach campaign. Planning, Building and Code Enforcement Department – Code Enforcement Division conducted the first Fireworks Customer Survey, which surveyed users of the online reporting tool on their user experience, and provided follow-up with residents whose reports resulted in the issuance of a Warning Notice or Citation. Staff also began regular reporting at the Neighborhoods Commission.

In 2020, due to limitations related to the COVID-19 pandemic and Santa Clara County Public Health shelter-in-place orders, outreach opportunities were limited. Additionally, Fireworks Non-Renewable (Fire) Permits were not issued during the shelter-in-place period because public gatherings to watch fireworks were not allowed pursuant to the County’s Health Orders. Fireworks mitigation efforts were delivered primarily through social media including multi-lingual public safety advisory videos, targeted social media outreach and use of organizational platforms to reach the broadest possible audience. Illegal fireworks activity increased significantly over recent prior years during the 2020 Fourth of July period in San José, with similar experience reported by fire chiefs across the nation.

On October 27, 2020, the City Council accepted the Fireworks Ordinance Workplan Status Update and directed staff to take two actions involving the SJMC and Ordinance governing the use of illegal fireworks. First, staff was directed to perform a comparative analysis of fines related to illegal fireworks across the Bay Area and prioritize returning to Council with a recommendation for increased fine amounts that were to be in place for the 2021 New Year. On December 15, 2020, Council voted to approve a resolution to increase fine amounts to \$1,000 for the first violation, \$2,000 for a second violation, and \$3,000 for a third violation.

Council also voted to place a Social Host Ordinance item on the next City Council Priority Setting session, to direct the City Attorney to draft an ordinance imposing responsibility on social hosts for fireworks violations that occur at their gatherings. Because it was deemed that the development of a Social Host Ordinance could be completed with existing resources and brought to the City Council this Spring, it was not discussed as part of the recent City Roadmap Priority Setting Session (which replaced the City Council Priority Setting Session) and is instead brought forward for consideration as part of the recommendations contained in this memorandum.

ANALYSIS

The Social Host Ordinance imposes liability on social hosts as well as property owners and/or tenants for allowing the possession, manufacture, storage, sale, handling or use of illegal fireworks on their property is necessary to deter and prevent such possession, manufacture, storage, sale, handling or use and to deter persons who actively and passively aid, allow, or tolerate such activities on their property and at their gatherings.

Social Host liability makes it a violation of the SJMC for an individual to host a gathering at which fireworks are discharged or used, even if the host did not discharge the fireworks him/herself. Under the current ordinance, only the individual who discharged the fireworks can be cited. The purpose of imposing liability on social hosts is to encourage individuals who host gatherings to exercise greater care in ensuring no illegal activity takes place at their gatherings.

Other jurisdictions that have expanded Social Host liability for fireworks violations include: City of Pacifica, City of Redwood City, City of Rohnert Park, City of Tracy, Kern County and unincorporated Santa Clara County.

The proposed ordinance amendment would impose liability on the social host, in addition to the property owner and tenant, regardless of whether they knew or should have known of the fireworks violation. The owner or tenant of the premises is often in the best position to control, and knows or should know of the possession, manufacture, storage, sale, handling and use of illegal fireworks on his/her residence or commercial premises.

The proposed amendment will make social hosts and property owners responsible for any fireworks violations that occur at their gatherings or on their property even if the host or property owner did not discharge the fireworks. Moreover, it will make social hosts and property owners jointly and severally liable for the emergency response costs associated with or caused by the fireworks violations. This will deter people from hosting gatherings with fireworks and encourage people to prevent guests from using or discharging fireworks.

The Schedule of Fees and Charges will be updated to specify that the response charges associated with an emergency response related to fireworks violations are for actual costs only.

CONCLUSION

The 2020 Fourth of July illegal fireworks experience was a significant setback to incremental mitigation progress made in prior years. The Social Host Ordinance will provide an additional enforcement tool toward protecting residents from the inherent dangers of fireworks.

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 researched and addressed these recommendations and provided an update to the Public Safety, Finance and Strategic Support Committee meeting on April 15, 2021¹.

The Fireworks Ordinance Workplan includes direction to staff to draft an amendment to the SJMC to adopt a Social Host Ordinance submitted by Mayor Sam Liccardo and Councilmember Raul Perez memorandum², dated October 27, 2020. Approval of this recommendation will be the first reading of the ordinance. The ordinance will return to Council for its second reading and approval on May 25, 2021. If approved at that time, the ordinance will be in effect as of June 25, 2021.

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 May 11, 2021 City Council Meeting.

COMMISSION RECOMMENDATION/INPUT (update)

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.

¹ [Fireworks Ordinance Workplan Status Report, 4/15/2021](#)

² [Memorandum from Mayor and Perez, 10/23/2020](#)

HONORABLE MAYOR AND CITY COUNCIL

April 28, 2021

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COORDINATION

This memorandum was coordinated with the City Attorney's Office, City Manager's Office of Administration, Policy and Intergovernmental Relations, City Manager's Office of Communications and Information Technology Department.

COST SUMMARY/IMPLICATIONS

Amending the Municipal Code as recommended is intended to reduce community risk from firework activity. The billing for response costs are not anticipated to provide significant General Fund revenues, but will help offset the cost of enforcement response activities and are intended to deter inappropriate behavior.

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

/s/

ANTHONY MATA
Chief of Police, Police Department



JIM SHANNON
Budget Director

For questions, please contact Hector R. Estrada, Deputy Fire Chief/Fire Marshal, at (408) 535-7794.