

**DRAFT**

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING CHAPTER 10.17 OF TITLE 10 OF THE SAN JOSE MUNICIPAL CODE TO ADD SECTIONS 10.17.060 AND 10.17.070 TO DEFINE “SOCIAL HOST” AND “STRICTLY LIABLE”; AMEND SECTION 10.17.030 TO DEFINE PRIVATE AND PUBLIC PROPERTY; AMEND SECTION 10.17.100 TO IMPOSE STRICT LIABILITY ON SOCIAL HOSTS FOR FIREWORKS VIOLATIONS AT THEIR GATHERINGS; ADD SECTIONS 10.17.130 AND 10.17.140 TO INCLUDE AN ADMINISTRATIVE PROCEDURE FOR BILLING AND APPEALING EMERGENCY RESPONSE CHARGES ASSOCIATED WITH FIREWORKS VIOLATIONS**

**WHEREAS**, on October 27, 2020, the City Council of the City of San José requested that the City Attorney’s Office **bring-draft an ordinance for City Council’s consideration** imposing liability on social hosts for fireworks violations; and

**WHEREAS**, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the Director of Planning, Building and Code Enforcement has determined that the provisions of this Ordinance do not constitute a project, under File No. PP17-008 (Not a Project: General Procedure & Policy Making resulting in no changes to the physical environment); and

**WHEREAS**, the City Council of the City of San José is the decision-making body for this Ordinance; and

**WHEREAS**, this Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance;

**NOW, THEREFORE,** BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Chapter 10.17 of Title 10 of the San José Municipal Code is amended by adding sections to Part 1 to be numbered and entitled and to read as follows:

**10.17.060 Social Host**

"Social host" includes but is not limited to:

A. The person(s) who owns, rents, leases, or otherwise has possession or use of the property;

B. The person(s) in immediate control of the property; or

C. The person(s) who organizes, supervises, sponsors, conducts, allows, attends, controls, or controls access to the fireworks gathering on the property.

D. A government entity, including, but not limited to, a municipal corporation, school district, and/or political subdivision, is not a social host.

E. If the property is rented or leased, the landlord or lessor is not covered by this Chapter unless they fall within the category of persons described under Subsection B. or C. herein. A landlord or lessor can only be held responsible under Subsection C. if they have knowledge that the event is a fireworks gathering.

### 10.17.070 Strictly Liable

“Strictly liable” means liability for a wrongful act irrespective of such person’s intent, knowledge, negligence or lack thereof in committing the wrongful act.

SECTION 2. Section 10.17.030 of Chapter 10.17 of Title 10 of the San José Municipal Code is amended to read as follows:

### 10.17.030 Property

"Property" shall mean any private or public property; including but not limited to: ~~;-a~~

- A. A home, yard, balcony, porch, driveway, or field, private parking lot, private street, business, or strip mall, whether or not occupied on a temporary or permanent basis, whether occupied as a dwelling, party or other social function, and whether owned, leased, rented or used with or without compensation.
  
- B. Any property owned or controlled by a public entity, including but not limited to:
  - 1. Recreational areas such as public parks, playgrounds, sports fields, and gardens;
  
  - 2. Public buildings such as libraries, auditoriums, theaters and City Hall;
  
  - 3. Public right-of-way and structures on public right-of-way, including but not limited to benches, public bridges, sidewalks, park strips, and curbstones.

SECTION 3. Section 10.17.100 of Chapter 10.17 of Title 10 of the San José Municipal Code is amended to read as follows:

**10.17.100 Sale, Use, Possession and Storage of Fireworks**

- A. Except where otherwise expressly provided in this Code, it shall be unlawful for any person to sell, use or discharge any fireworks.
- B. Except where otherwise expressly provided in this Code or under a permit issued by the California State Fire Marshal, it shall be unlawful for any person to offer for sale or store any fireworks.
- C. Except where otherwise expressly provided in this Code, ~~it shall be unlawful and a public nuisance pursuant to Chapter 1.13 of this Code for any property owner or tenant to allow or permit the sale, use and discharge of fireworks on their property when the property owner or tenant knows or should know of the sale, use or discharge of fireworks at the property.~~ any social host shall be strictly liable for any unlawful use, discharge, or display of fireworks at their property or gathering.

SECTION 4. Chapter 10.17 of Title 10 of the San José Municipal Code is amended by adding sections to Part 2 to be numbered and entitled and to read as follows:

**10.17.105 Spectators Prohibited at Fireworks Exhibitions**

- A. “Fireworks Exhibition” means any unpermitted discharge or use of fireworks as defined in Section 10.17.010.

B. "Spectator" shall mean any person who is present at a Fireworks Exhibition for the purpose of viewing, observing, watching, or witnessing the event. A Spectator includes any person at the location of the event without regard to the means by which the person arrived.

C. A person is "present" at the Fireworks Exhibition if that person is within two hundred (200) feet of the location of the Fireworks Exhibition.

D. It shall be unlawful for any person to be knowingly present as a Spectator at a Fireworks Exhibition.

1. Nothing in this Section prohibits peace officers or their agents, or any other employee of the city designated by the city manager to enforce the provisions of this Code, who are acting in the course of their official duties from being Spectators at a Fireworks Exhibition.

E. Relevant Circumstances to Prove a Violation:

1. Notwithstanding any other provision of law, to prove a violation of this Section, admissible evidence may include, but is not limited to, any of the following:

a. That the person charged has previously participated in or been a Spectator at a Fireworks Exhibition;

b. That the person charged has previously aided and abetted the illegal sale, use, discharge, storage, or possession of illegal fireworks;

c. That the person charged has previously attended a Fireworks Exhibition; or

d. That the person charged was previously present at a location where a Fireworks Exhibition was in progress.

e. Evidence of these prior acts may be admissible, to the fullest extent permissible by law, to show the opportunity, intent, plan, knowledge, identity, or the absence of a mistake or accident, or propensity of the defendant to be present at or attend a Fireworks Exhibition if the prior act or acts occurred within three (3) years of the presently charged offense. These prior acts may always be admissible to show knowledge on the part of the defendant that a Fireworks Exhibition was taking place.

2. In addition to the circumstances set out in subsection A. above, and notwithstanding any other provision of law, to prove a violation of this Section, admissible evidence may also include, but is not limited to, any of the following:

a. The time of day;

b. The nature and description of the Scene;

c. The number of people at the Scene;

d. The location of the person charged in relation to any person or group of persons present at the Scene;

e. That the person charged drove or was transported to the Scene.

3. For purposes subsection 2., above, "Scene" refers to the location of Fireworks Exhibition.

### 10.17.130 Charging for Responses

A. The bill or charges shall be served by the Chief of Police and/or the Fire Chief upon the responsible party.

B. The total amount of the response charge shall be deemed to be 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. The bill of charges shall state the response charge.

C. The bill of charges and any other notices required by this Part shall be served upon the responsible party in accordance with Section 1.04.140 of this Code. If the responsible party has no last known business or residence address, then the scene of the disturbance shall be deemed to be the proper address for service of notice.

D. The bill of charges shall include a notice of the right of the person being charged to request a hearing before the Appeals Hearing Board within ten (10) days of service of the bill to dispute the imposition of a response charge or the amount of the charge.

**10.17.140 Hearing Before Appeals Hearing Board**

A. Any request for a hearing to dispute the imposition of a response charge or the amount of the charge must be in writing and received by the Secretary of the Appeals Hearing Board within ten (10) days of the date of service of the bill of charges.

B. The hearing shall be conducted in conformance with Part 29 of Chapter 2.08 of Title 2 and the rules and regulations of the Appeals Hearing Board.

C. The decision of the Appeals Hearing Board shall be final.

PASSED FOR PUBLICATION of title this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
SAM LICCARDO  
Mayor

ATTEST:

\_\_\_\_\_  
TONI J. TABER, CMC  
City Clerk



