



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Curtis P. Jacobson

SUBJECT: FIREWORKS ORDINANCE

DATE: April 1, 2016

Approved

D. D. S. L.

Date

4/1/16

RECOMMENDATION

- a) Adopt an ordinance amending the City of San José 1.08.040 of Chapter 1.08 of Title 1 related to enforcement of the San José Municipal Code or other City Ordinance, adding a new Chapter 10.17 to Title 10, and repealing Section 17.12.940 of Chapter 17.12 of title 17 of the San José Municipal Code to prohibit the sale, use, possession and storage of fireworks and to provide for civil liability under certain circumstances for persons responsible for minors who violate the prohibition in Chapter 10.17 related to fireworks.
- b) Adopt a resolution amending the Administrative Citation Schedule of Fines to establish administrative fines for violations related Fireworks, and repealing Resolution No. 77702.

OUTCOME

Adoption of the proposed ordinance and resolution will provide the City with an additional tool to enforce provisions within the San José Municipal Code prohibiting the use of fireworks. If the City Council approves this action, then City staff will develop and implement a 4th of July pilot program focused on life safety, education, and the promotion of public firework displays, to be augmented by administrative enforcement.

BACKGROUND

At the August 20, 2014 Rules and Open Government Committee (Committee) meeting, the Committee, by means of the priority setting session process, directed the City Manager to draft and bring to Council an ordinance which would authorize, in addition to the existing criminal sanctions for the possession of fireworks, the issuance of administrative citations and fines for the use, possession, sale, advertisement for sale, transportation, and/or manufacturing of fireworks. The Committee further requested that language be included in the ordinance giving the City Manager the option of delegating the authority to issue administrative citations to whomever the City Manager deemed appropriate, thus allowing for the issuance of citations by

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not only the Police Department but by others as well, including but not limited to: the Fire Department, the Code Enforcement Division of the Department of Planning, Building and Code Enforcement and Park Rangers. Finally, the Committee further requested that the ordinance include language that defined and identified the “responsible party” and that fines be created that escalated for devices with larger explosive capacity.

The discharge of illegal fireworks is not unique to the City of San José. The illegal storage, sale and use of fireworks are occurring more frequently throughout the year in many communities. There is no easy answer on how to deter the use of illegal fireworks. In an effort to prevent injuries, fires and damage to property, the San José Fire Department and the San José Police Department have historically supported a ban on fireworks. In 1977, when San José had a population of less than 600,000, state approved fireworks were allowed in the City. In 1984, in an effort to protect the health, safety and welfare of its residents, the City Council voted to amend the Municipal Code banning all fireworks, including “safe and sane” fireworks. The one exception allowed for by City Council was controlled public fireworks displays that were open to the public and operated by a licensed pyro technician pursuant to a permit issued by the Fire Prevention Bureau.

One of the primary goals of both the Fire Department and the Police Department is to promote life safety; not only for civilians, but for emergency first responders as well. Over recent years there has been an escalation in the discharge of all fireworks in the City resulting in growing frustration in the community. In 2014, both departments were directed to look for options that might slow and eventually contain the illegal sale, use, possession and storage of fireworks. Staff was even directed to look at the option of allowing state approved fireworks as a vehicle to stop the use of illegal fireworks. During the study and benchmarking, staff concluded that there was no quantifiable data to support the return of state approved fireworks as a mechanism to decrease the use of illegal fireworks. As such, both the Fire Department and the Police Department continue to support a ban on fireworks, with the exception of controlled and permitted public fireworks displays.

In addition to maintaining the current ban, staff recommended public displays and City-sponsored events as a way to draw crowds to safe events and in the hope it would decrease the number of fireworks illegally discharged in neighborhoods. The coordinated 4th of July Special Events have been very successful during the last two years. In addition, both departments have worked collaboratively toward enforcement and assigned additional officers and inspectors to conduct both fire-watch as well as patrol the evening events that were hosted throughout the City. During each of the last two years, there were multiple festivals and three sanctioned fireworks shows that combined, drew approximately 100,000 residents and visitors. The impact of these events to deter the use of illegal fireworks is difficult to measure, however, the number of community members participating and enjoying these events should be categorized as a success.

In addition, the Fire Department’s Bureau of Fire Prevention along with the Santa Clara County Fire Chiefs Association led an aggressive Fireworks Safety Campaign in the weeks leading up to the July 4th weekend for the past two years. The objective was to educate the public on the

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dangers of the illegal use of fireworks and encourage individuals to attend safe, professional and permitted legal fireworks events in conjunction with other identified special events occurring in the City. The campaign included a segment on NBC Bay Area regarding the dangers of illegal fireworks; radio spots encouraging residents to attend the scheduled public fireworks displays; outdoor billboards and posters warning of the dangers of fireworks and reminding residents that all fireworks are illegal; and public service announcements discouraging firework use which were aired in local movie theatres, City and County websites, City Television, and social media. These efforts will continue this year with expanded emphasis on social media to get the message out.

As part of the final stages of the Campaigns in 2014 and 2015, and in cooperation with both the Police and Fire Department's respective Bureaus of Field Operations, the Bureau of Fire Prevention deployed staff into the community to enhance awareness of the dangers associated with the illegal use of fireworks. Specifically, on July 4th of both years the Bureau of Fire Prevention placed teams into the community. These teams were assigned to San José Police personnel assisting in specific areas of the City identified for targeted enforcement.

The Fire Department's Bureau of Field Operations also reinforced suppression capabilities during critical hours for the 4th of July weekend by augmenting staff and deploying three additional engine companies and three additional squads into service from July 4th to 6th in 2014 and 2015. In turn, on July 4th and July 5th between the hours of 3:00 p.m. and 11:00 p.m., the Police Department assigned overtime officers for targeted enforcement.

Together, the Fire Department and the Police Department maintained high visibility throughout the days and nights of July 4th and 5th. Both Police and Fire engaged hundreds of community members, attempting to educate the public and discourage the use of fireworks. These actions proved to be extremely successful and both departments have received positive feedback from the community.

ANALYSIS

There remains significant illegal firework activity within the City of San José. However, the Fire Department and Police Department believe that the City sponsored activities, fireworks education and fireworks awareness campaign in collaboration with the Santa Clara County Fire Chiefs Association, as well as the targeted enforcement efforts, remain critical and successful steps in dealing with and abating illegal fireworks. Promoting life safety, to both our residents as well as to all emergency responders will always be a primary goal of both departments.

If adopted, the proposed ordinance will continue the ban on the sale, use, discharge and storage of fireworks, will make property owners liable for the sale, use, or discharge of the fireworks on their property when they know or should have known of the violation, and will make guardians liable for response costs for minors who violate the prohibition. Additionally, the proposed ordinance would authorize the City Manager to designate City employees who can issue administrative citations. If an administrative citation is issued for a violation, the proposed civil

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fine amounts are \$350 for the first violation, \$700 for the second violation, and \$1,000 for subsequent violations within a 12 month period; amounts consistent with civil fines for fireworks violations in the County of Santa Clara.

In an effort to implement Council direction and enhance enforcement efforts city-wide, the Fire Department, Police Department, the Department of Planning, Building and Code Enforcement (PBCE), the Department of Transportation (DOT) and the Department of Parks, Recreation and Neighborhood Services (PRNS) will come together to leverage existing resources within the respective departments.

The Police Department will focus resources on targeted enforcement to address the blatant use of large-scale illegal fireworks shows at schools and parks in prior years. Data analysis through the Police Department's Crime Analysis Unit will be used to capture and identify reported fireworks related activity city-wide. It should be noted that the analysis for activity occurring on July 4th for 2014 and 2015 indicate a decrease in reported incidents from 2014 to 2015. This could be an indicator that when these steps were taken over the last two years, they had a positive effect in reducing the discharging of illegal fireworks in the community.

To that end, the Police Department will adapt their approach, and dependent upon available staffing, will look to assign designated firework patrols throughout the community in uniform and plainclothes to advance enforcement.

The Fire Department will continue to focus on education, awareness, prevention, and suppression activities. The Fire Department will again work collaboratively with the Santa Clara County Fire Chiefs Association spearheading a county-wide Fireworks Safety campaign as well as reinforce suppression capabilities.

In addition to the efforts of the Police and Fire Departments, DOT will be available to assist in efforts to deter the use of illegal fireworks by reporting any illegal firework activity that they observe during the course of their parking compliance and traffic control duties. DOT regularly provides 24/7 parking compliance and traffic control services throughout the City. On July 4th, DOT's Parking and Traffic Control Officers (PTCOs) will be fully deployed to support sanctioned fireworks events and heightened activity during the evening hours. On July 4th, available PTCOs will be assigned critical parking compliance and traffic control duties to support the special events that occur in downtown and other areas. Other PTCOs will be deployed to patrol neighborhoods and locations in the City where large groups of people typically gather to watch fireworks, such as Communications Hill and the east foothills. The primary focus of the PTCOs in those neighborhoods will be to help ensure that illegal or unsafe parking practices do not negatively impact traffic and pedestrian safety in a neighborhood.

In turn, PRNS will provide support in the City's efforts to deter the use of illegal fireworks as it relates to park lands or private property immediately adjacent to park lands. PRNS Park Rangers regularly patrol the major regional parks and trails throughout the City from approximately 8 a.m. to one hour after sunset. On the July 4th, all available Park Rangers will be called back to support the sanctioned events that may be scheduled on or adjacent to park lands. Over the last

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three years this has included sanctioned fireworks shows at Guadalupe River Park, Almaden Lake Park and staffing for Kelley Park for the annual San Jose Giants fireworks display at the Municipal Stadium. Rangers will also be assigned to fire-watch and initial attack/suppression patrol at Alum Rock Park until 11 pm on July 4th. The primary focus of the Rangers in those parks is to ensure public safety, monitor for illegal or unsafe activities, including the use of illegal fireworks, and responding to reports of wildland fire. Rangers expect an average of more than 50,000 park visitors to the combined fireworks shows each July 4th stretching PRNS' limited resources. To further support the City's effort to reduce the illegal use of fireworks, as PRNS Park Rangers move between park facilities they will be able to report any firework activity observed on private property directly to Police Dispatchers as well as to enforce rules regarding fireworks within the parks to the extent possible.

Fireworks Reporting Pilot Program

In a continued effort to improve enforcement, and recognizing the immense amount of calls for service received through the 911 system of residents reporting illegal fireworks, a pilot program will be initiated which will allow residents to report illegal firework use via an online submission form. During the pilot program period of July 1, 2016 to July 5, 2016, the Illegal Fireworks Reporting Form will be available on the City's homepage where residents can provide required information such as the address of the location where illegal fireworks are in use, the date and time of the incident, and names of the individuals involved if known. The Fire Department and PBCE will process the information received from the online submissions. Citations will be issued via mail where evidence is sufficient to support accusation of the use of illegal fireworks. For the complaints that do not have sufficient evidence for a citation, a warning letter to the Property Owner will be issued. The impact to Code Enforcement's and Fire service is unknown at this time. Should the number of complaints warrant it, up to six (6) general funded Code Enforcement Inspectors will be redeployed from their current complaint investigations and field inspections in the General Code Program; and four (4) to six (6) Fire Prevention Inspectors would be redeployed from their current investigations and inspections to address the complaints during the pilot period. The redeployed staff will review resident submittals to ensure that they meet the evidentiary threshold and have given accurate contact information for issuance of citation. There will be no expectation of anonymity for the resident requesting service since Code Enforcement will be unable to independently verify the violation.

EVALUATION AND FOLLOW-UP

The Fire Department will provide the Public Safety, Finance and Strategic Support Committee with information regarding the outcome of the coordinated efforts of the department as well as the implementation of the ordinance and issuance of administrative citations in the fall of 2016.

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PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the April 12, 2016, Council Meeting.

COORDINATION

This memorandum was coordinated with the Police Department, the Department of Planning, Building and Code Enforcement, the Department of Transportation, the Department of Parks, Recreations and Neighborhood Services, the City Attorney's Office, and the City Manager's Office.

CEQA

Not a Project, File No. PP10-068(c), Municipal Code or Policy Change that involves no changes to the physical environment.

/s/
CURTIS P. JACOBSON
FIRE CHIEF

For questions, please contact Johnny Dellinger, Assistant Fire Chief, at (408) 794-6952.

