



DATE: March 22, 2022

TO: Mayor and City Council

FROM: Assistant City Manager

SUBJECT: Fireworks Ban Education and Enforcement: Introduction of Two Ordinances Amending Chapter 4 Article 15 of the Hayward Municipal Code Relating to Social Nuisance by Specifically Including Fireworks and Chapter 3 Article 3 of the Hayward Municipal Code Relating to Fireworks by Specifically Identifying Property Owners Accountable for Fireworks

RECOMMENDATION

That the Council provides feedback on staff's proposed workplan to enhance community education and enforcement related to the fireworks ban and introduces two ordinances:

- 1) Amending Chapter 4, Article 15 of the Hayward Municipal Code to specifically include fireworks (Attachment II); and
- 2) Amending Chapter 3, Article 3 of the Hayward Municipal Code to specifically hold property owners accountable for fireworks on private property (Attachment III).

SUMMARY

On July 20, 2021, Council held a work session on firework mitigation options in response to a surge in community calls and complaints about illegal firework activity. Staff is now returning with a proposal for an enhanced outreach and enforcement approach that focuses on holding private property owners accountable where violations occur and issuing citations to private properties. As part of this approach, staff is recommending amendments to two Articles in the Municipal Code. Additionally, staff is also requesting authorization from Council to use \$30,000 toward overtime costs for enhanced and targeted enforcement operations. Some of these costs will be recuperated through additional fees associated with enforcement. These costs will be absorbed by departmental budgets or through the use of fund balance. Finally, staff is presenting an enhanced communication plan to inform community members about the additional enforcement and fees.

BACKGROUND

On July 20, 2021, Council held a work session on firework mitigation options in response to a surge in community calls and complaints about illegal firework activity. That report¹ provided background on local enforcement challenges, calls for services, and the state and federal context that shows a sharp increase in the supply and availability of fireworks. The primary existing enforcement challenges are:

- It is difficult for the Hayward Police Department (HPD) staff to issue individual citations when fireworks are being lit in large crowds, due to unsafe conditions for staff.
- Officers must witness a person actually lighting a firework to issue an individual citation, which can be difficult to catch.
- Regionally, the supply and access to illegal fireworks is high, which is impacting cities throughout the Bay Area.

The July 2021 report also summarized the City's existing community outreach and enforcement activities, which include:

- Increased staffing for HPD and the Fire Department (HFD) during and around the July 4th holiday.
- Targeted operations to catch people who are selling fireworks in Hayward, which can result in seizures. However, these operations are time intensive and limited considering the scale of the supply.
- Community outreach and social media:
 - The City's Community and Media Relations Division coordinates annually with HPD and HFD to conduct online community outreach. Last year, the City generated 37 posts relating to fireworks, earning 26,180 total impressions and 66 comments. The City also created public service announcements on the City's electronic billboards along major freeways.
 - HPD works with Maintenance Services Department (MSD) staff to strategically place electronic street signs throughout the City.
 - HPD conducts concentrated outreach efforts in neighborhoods impacted by fireworks based on data from calls for service in previous years. These efforts include in-person meetings and events. Last year, HPD District Command Officers distributed over 1,000 flyers.

The July 2021 report included four areas of opportunities to enhance the City's existing strategy for addressing and mitigating illegal fireworks. At that work session, Council provided the following feedback:

- Council wanted more clarity on how staff can enforce the fireworks ban and what happens with community complaints and calls.
- Council did not want to use criminal citations as the primary enforcement tool. Instead, Council would rather see noncriminal citations like nuisance citations.
- Council suggested additional ways to conduct community outreach.

¹ Link to Staff Report: <https://hayward.legistar.com/LegislationDetail.aspx?ID=5034294&GUID=A5D1F2EC-6211-407F-8C0A-54465EE2F559&Options=ID|Text|&Search=fireworks>

- A majority of Council members did not support hosting a sanctioned area for safe and sane fireworks or hosting a City-sponsored fireworks display.

DISCUSSION

Staff has created an interdepartmental taskforce for the implementation of this approach, which includes staff from the Police and Fire Departments and Code Enforcement, Streets, and Communications Divisions. Staff will continue to implement the outreach and enforcement activities listed above. In addition, staff is recommending enhancing these activities with the following approach to educate and hold private property owners accountable for firework activity on their property.

Proposed Enhanced Enforcement Approach

Staff recommends enhancing the City's fireworks enforcement by focusing on private properties where violations occur. As noted above, individual citations are difficult to issue, and Council has concerns about using criminal citations as the primary enforcement tool. There are fewer barriers for staff to issue citations for property violations, and the process is safer because staff does not need to engage with groups of people who are setting off fireworks.

This approach would have the following steps:

1. An appointed officer of the City witnesses a fireworks violation on a private property (such as someone's driveway or backyard) or in the street within 100 feet of a residence that can be tied back to a property (such as a house party that has spilled into the street). The appointed officers will most likely be staff from HPD, HFD, or Code Enforcement, but could be any assigned City staff.
2. The appointed officer fills out a case report and sends it to the Code Enforcement Division. The staff person may include photographic or video evidence, though that is not needed.
3. Code Enforcement issues a citation notice to the property owner. If it is a rental property, the citation will be mailed to the owner's address, not the property address, because this is a property violation.
4. The fee is \$1,200 for the first citation, \$3,000 for the second citation, and \$5,000 for the third.
5. The property owner can contest the citation through a hearing.
6. If the fee remains unpaid, it is added to the property tax bills, as is the case with all code enforcement citations.

Reports from community members - Community members will also be able to file a report online with Code Enforcement to report fireworks activity on a private property. However, they will not be able to file anonymous reports and they may need to testify if the property owner contests the citation.

Anonymous complaints - Community members will still be able to file anonymous complaints through Access Hayward. These complaints are sent to HPD's Crime Prevention Specialists. The Crime Prevention Specialists will follow up with warning letters to the properties stating

that there has been an anonymous complaint and reminding them of the fees if they were to receive a citation.

Limitations - This approach cannot be used for people lighting fireworks in parks or other public spaces, which staff knows are areas of concern. Instead, this is one tool in the enforcement toolbox. The hope is that any enhanced enforcement will send a stronger message that fireworks are not tolerated in Hayward.

Proposed Workplan for Spring and Summer of 2022

If Council agrees with this enhanced enforcement approach, staff will mobilize to conduct the following activities over the next four months:

April 2022:

- Return to Council on April 5 with the second reading and adoption of the ordinances.
- Once the ordinances are adopted, issue a press release explaining the new language, the citation process, and the amounts. Follow up with social media posts that will occur throughout the spring and summer.
- Send courtesy notices to all property owners informing them of the risk of citation and the fee amounts. In addition, staff will include a similar message in water bills.

May 2022:

- Send follow up letters to target addresses that have been identified in the past as hosting firework activity to inform them again of the fee amounts.
- Post electronic signs with warning messages.
- Begin targeted enforcement operations in areas with historically high amounts of fireworks. These operations will mostly occur after dark and may have staff from Code Enforcement, HPD, and/or HFD.

June and July 2022:

- Continue targeted enforcement operations in highly impacted neighborhoods, based on analysis of the calls for service and Access Hayward complaints.

Proposed Ordinance Updates

Staff is recommending the following changes to the Municipal Code to support the enforcement approach described above. These are shown with tracked changes in Attachments II and III.

- 1) Amending Chapter 4, Article 15 of the Hayward Municipal Code to specifically include fireworks.
 - Chapter 4 is on Public Welfare, Morals, and Conduct.
 - Article 15 is the Social Nuisance Ordinance.
 - These text changes specifically include fireworks as a noise nuisance and as a criminal activity that threatens the life, health, safety, or welfare of the residents of the property, neighbors, or the public.

- 2) Amending Chapter 3, Article 3 of the Hayward Municipal Code to specifically hold property owners accountable for fireworks on private property.
- Chapter 3 is on Public Safety.
 - Article 3 is on Explosives, Firearms, and Fireworks.
 - This text change explicitly holds property owners and social hosts accountable for fireworks that are ignited on their property. It also holds them accountable for fireworks in the public right of way within 100 feet of a residence that is tied back to their property, such as a through a party or event that they are hosting.

FISCAL IMPACT

There may be some additional overtime costs to be able to staff the enhanced enforcement activities in this plan, which are estimated at \$30,000. This overtime will be split between the Code Enforcement Division, Police Department, and Fire Department. These costs will be absorbed by departmental budgets or through the use of fund balance. Increased enforcement and citations will generate revenue from fees that may offset some or all of these overtime costs.

NEXT STEPS

If the Council introduces the attached ordinances this evening, they will be brought back for adoption during a regular meeting scheduled for April 5, 2021. The ordinances will then be effective 30 days after adoption.

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