



**DATE:** July 20, 2021  
**TO:** Mayor and City Council  
**FROM:** Assistant City Manager  
**SUBJECT:** Fireworks Mitigation Options

## **RECOMMENDATION**

That the Council reviews and comments on this report.

## **SUMMARY**

Independence Day has traditionally been associated with celebratory fireworks use in the City of Hayward. Unfortunately, like most cities and municipalities across California, the City of Hayward has experienced the proliferation of illegal fireworks sales, purchases, and use in recent years. Recognizing that illegal fireworks pose significant risks due to fire, injury, and public nuisance, in May of 2021, the City Manager directed staff to investigate and present alternative enforcement options to Council in July for review.

This report provides a summary of staff's research into possible alternatives for illegal fireworks enforcement and seeks feedback from the Council on the next steps related to options for fireworks mitigation.

## **BACKGROUND**

The Municipal Code contains several ordinances associated with fireworks enforcement (Attachment II). Chapter 3, Article 3 directly addresses the detonation of fireworks. Other articles in the code are tangentially related due to the nature of fireworks as a noise nuisance or safety hazard. While the Municipal Code lists several examples of activities that constitute a public nuisance, fireworks are not explicitly included.

The State of California Health and Safety Code prohibits the possession, sale, transfer, or gift of dangerous<sup>1</sup> fireworks without a valid permit and outlaws the discharge of fireworks in situations where it may harm others or cause fear or panic. In Alameda County, with the exceptions of the cities of Dublin, Newark, and Union City, which allow the sale and use of "safe and sane" fireworks,<sup>2</sup> all fireworks are illegal.

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<sup>1</sup> This legal definition includes sparklers bigger than 10 inches in length or one-quarter of an inch in diameter as well as rockets.

<sup>2</sup> "Safe and sane" fireworks include smaller items like fountains, spinners, sparklers shorter than 10 inches in length and smaller than one-quarter of an inch in diameter, and snap caps.

While fireworks displays are traditional in observance of the Fourth of July and other holidays, they can cause injury, alarm pets and some individuals with Post-Traumatic Stress Disorder, and spark fires in both urban and wildland contexts. The fire risk posed by illegal fireworks is of particular concern because of the potential for damage and loss of property, injury, and loss of life. Periods of drought and dry summer conditions heighten these concerns due to increased fire risk.

Nationally, the Consumer Product Safety Commission (CPSC) releases an annual Fireworks report. Below are several highlights of the report.<sup>3</sup>

- 2020 saw an all-time high of fireworks-related incidents over the last 15 years.
- 18 people died in 2020 as a result of fireworks-related incidents.
- In 2020, 15,600 were treated in hospitals for fireworks-related injuries.

The California legislature has recognized that illegal fireworks have become a statewide problem. As a result, there have been two bills introduced to address illegal fireworks use:

- SB 277, Dangerous Fireworks<sup>4</sup>
  - o This bill will expand the definition of what is a "dangerous firework." Thus, allowing authorities to seize dangerous fireworks as they are mandated in the bill.
- AB 1497, Firework Violations<sup>5</sup>
  - o Increase state-related fines for firework-related incidents, including a fine of up to \$10,000.

### **Enforcement Challenges**

Due to the language of the Municipal Code and the inherent danger of responding to calls relating to fireworks use, the Hayward Police Department (HPD) is the lead agency on illegal fireworks enforcement in Hayward. Chapter 3, Article 3 of the Municipal Code specifically outlaws the firing or discharge of fireworks rather than possession, thereby requiring a sworn peace officer to be present and witness the act of lighting a firework in order to issue a citation.

In light of this constraint and the expected increase in calls for service over the July 4<sup>th</sup> holiday, HPD must increase scheduled staffing in response to the anticipated demand. On typical evenings, HPD Patrol staffing consists of 1 Lieutenant, 4 Sergeants, and 18 Patrol Officers (2 Patrol Teams covering swing and midnight shifts). In 2021, this staffing was supplemented by 1 Sergeant, 5 Officers, and 1 Dispatcher dedicated solely to fireworks-related calls for service. The cost of this increased staffing over the July 4 holiday was \$6,135.

When officers are responding to calls, there need to be two officers present. One officer acts as the primary and a second assists and provides cover. However, fireworks use is typically used for celebratory purposes and often includes large gatherings. As such, situations involving

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<sup>3</sup> <https://www.cpsc.gov/s3fs-public/2020-Fireworks-Annual-Report.pdf>

<sup>4</sup> [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220SB277](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB277)

<sup>5</sup> [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220AB1497](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1497)

fireworks often find that officers cannot approach due to heightened dangers of a large crowd with intoxicated residents and firing dangerous explosives. Meaning officers cannot issue citations without increased risk of escalating the situation and creating a potentially unsafe environment for officers and involved individuals.

Enforcement efforts are further complicated by the increased accessibility of illegal fireworks in California and the Bay Area. Digital markets for the purchase of illegal fireworks and unscrupulous suppliers have driven the proliferation of illegal fireworks in recent years.

### Illegal Fireworks in Hayward

Fireworks-related calls to HPD Communications Center begin as early as May and steadily increase leading up to July 4. Since 2019, the percentage of calls relating to illegal fireworks use on the evening of July 4<sup>th</sup> has increased steadily, as shown in Table 1.

**Table 1. HPD Communications Center Calls for Service on July 4 from 8:00 PM to 12:00 AM**

Year	Calls for Service	Illegal Fireworks related	Percentage of Calls that are Illegal Fireworks Related
2019	637	194	30%
2020	720	276	38%
2021	610	263	43%

Table 2 shows that 20% of all calls for service on the entire day of July 4 of 2021 were related to illegal fireworks use.

**Table 2. Calls for Service on July 4, 2021**

Total Calls for Service	Illegal Fireworks Related	Emergency	Non-Emergency
1752	354	593	1159
	20%	34%	66%

Hayward Fire Department (HFD) does not currently track incidents specifically related to fireworks. However, the average number of fires per month is 60, or 15 per week. Table 3 shows that during the dates around July 4, the rate of fires nearly doubles. Over the course of a few days, the number of fire incidents exceeds what typically occurs over the span of a week. HFD also receives approximately 220 Medical Calls for Service during that same timeframe.

**Table 3. Number of Fires During Peak Fireworks Use**

	July 3-7, 2019	July 3-6, 2020	July 2-5, 2021
Outside Veg/Rubbish Fires	18	26	16
Structure Fires	0	2	1

### City's Response to the Increase in Illegal Fireworks

In response to the surge in illegal fireworks-related calls and complaints, the City began a joint public messaging campaign coordinated between the City Manager's Office, HPD, and HFD

advising residents of the risks of using illegal fireworks. The City has published 37 posts relating to fireworks, earning 26,180 total impressions and 66 comments. A majority of the resident responses on social media posts relating to fireworks are hostile toward illegal fireworks and demand more enforcement efforts from the City. As a result, HPD strategically places electronic street signs to remind community members that fireworks are prohibited in the City of Hayward and that violators are subject to a fine. HPD also concentrates outreach efforts in neighborhoods and specific homes disproportionately impacted by fireworks based on data from calls for service in previous years. These efforts include in-person meetings and events, distributing over 1,000 flyers by District Command Officers, and direct contact to these homes.

On July 4 of 2021, HPD seized a total of 645 lbs. of illegal fireworks. With the amount of staffing and the current language of the ordinance, this is the extent to which HPD can reduce the supply of fireworks.

Illegal fireworks use is a problem that has expanded in scope both beyond the City limits of Hayward and on a single holiday of Independence Day. The accessibility of fireworks as the primary driver of illegal fireworks use is exacerbated by the tension associated with the pandemic.

**DISCUSSION**

Staff identified four areas of opportunities to enhance the City's existing strategies for addressing and mitigating illegal fireworks:

1. *Ordinance Amendment* – the City could amend the Hayward Municipal Code to improve and streamline reporting and issuing fines relating to illegal fireworks.
2. *Enforcement Alternatives* – the City could adjust its current approach to enforcement.
3. *Sanctioned Areas/Events* – the City could offer legal, safer alternatives to illegal fireworks displays.
4. *Education and Marketing* –the City could improve efforts to communicate with the community about the risks and dangers of illegal fireworks.

A list of policies and programs for consideration in each opportunity area is provided in Table 4 below.

**Table 4. Opportunity Areas**

Group	Component
<b>Ordinance Amendments</b>	Expand Municipal Code Article 3, Section 3 to include possession of fireworks as an infraction, eliminating the need for peace officers to witness fireworks being used.
	Include fireworks as part of a Responsible Persons' duty under the Social Host Ordinance, allowing property owners and hosts of events that are operating fireworks without permission to be fined.
	Add fireworks use to the list of public nuisances.

	Amend Article 3, Section 3 to allow Code Enforcement personnel to assist in issuing fireworks possession and use citations.
<b>Enforcement Alternatives</b>	Update the fee schedule to increase fines for second and third violations.
	Establish a program for the City Manager's Office to issue warning letters for reported crimes relating to fireworks.
	Conduct targeted "sting" operations to deter use in historically high-use locations/regions.
<b>Sanctioned Areas/Events</b>	Promote a community event with a sanctioned celebration.
	Identify locations for safe use of fireworks to be used away from hazardous areas and within reasonable times. (ie. Palma Ceia Park)
<b>Education and Marketing Campaign</b>	Partner with Hayward Unified School District and other educational institutions in Hayward to inform the public about the dangers and risks associated with fireworks use.
	Increase social media and targeted communications to the public.

These opportunities each have their own trade-offs. The **Ordinance Amendment** has several components and is intended both to make it easier for administrative citations to be issued and to allow Code Enforcement to assist in their administration. In addition, allowing Code Enforcement to assist in the issuance of citations will address some of the staffing issues associated with illegal fireworks enforcement.

The Ordinance Amendment does not address the safety concerns of officers responding to large groups and gatherings, which is how and where most fireworks are used. Furthermore, although it will make it possible to hold property owners responsible for fireworks on their property, it is understood that most illegal fireworks use occurs in public spaces such as parking lots, streets, and parks.

**Enforcement Alternatives** can be implemented within the current legal framework or alongside ordinance amendments to address illegal fireworks. However, some alternatives – such as increasing fines for subsequent offenses – may not be effective due to the existing enforcement constraints discussed in this report.

**Sanctioned Areas/Events** will provide residents a way to participate in celebrations safely. However, the effectiveness of this strategy in reducing illegal fireworks has had mixed results in other cities that have adopted it. It may potentially be an expensive option with little effect.

In tracking our current efforts in community engagement, they have not been shown to be effective. Moreover, in many ways, they have antagonized residents to send the City angry

correspondence regarding fireworks. Therefore, the **Education and Marketing Campaign** will require new approaches to increase its effectiveness.

There are severe limitations to any response the City has to fireworks. However, improving fireworks enforcement now allows incremental improvements and may decrease illegal fireworks use in the long run. Moreover, while the City makes its local improvements, Chief Contreras of HFD and Chief Chaplin of HPD have committed to leading a regional effort in addressing illegal fireworks enforcement.

### **FISCAL IMPACT**

Under the City's Master Fee Schedule, an administrative citation under the City's Municipal Code carries a \$100 fine for the first violation, a \$200 fine for the second violation, and a \$500 fine for the third and subsequent violations. Therefore, these citations may generate some funds, but it would not be a significant amount unless the number of citations issued dramatically increases.

Establishing a Sanctioned Area or Event would require a funding source. These costs may partially be covered by funding generated from the citations. Should Council choose to pursue a more robust education and marketing campaign for the program it would be implemented by existing staff. Additional costs are currently estimated to be approximately \$30,000 to \$50,000 annually, for which funds would need to be identified.

### **NEXT STEPS**

Based on Council feedback, staff will conduct additional analysis of enforcement options and related costs and will bring the item back to Council before spring of 2022.

*Prepared by:* Daniel Mao, Policy Fellow

*Recommended by:* Jennifer Ott, Assistant City Manager

Approved by:



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Kelly McAdoo, City Manager