

ORDINANCE NO. _____

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

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**ORDINANCE AMENDING CHAPTER 5.28 OF THE SAN MATEO COUNTY
ORDINANCE CODE REGARDING FIREWORKS**

SECTION 1. FINDINGS. The Board of Supervisors of the County of San Mateo hereby finds and declares as follows:

WHEREAS, the San Mateo County Fireworks Ordinance, codified at Chapter 5.28 of the County’s Ordinance Code (“Fireworks Ordinance”), currently bans the possession, storage, sale, use, and/or explosion of all fireworks in the unincorporated areas of San Mateo County, except where authorized by permit; and

WHEREAS, unpermitted fireworks are a health and safety concern throughout the unincorporated area of the County, as they may cause serious injuries and property damage; and

WHEREAS, according to statistics published by the United States Consumer Product Safety Commission, in 2021, the most recent year for which statistics are available, there were an estimated 11,500 injuries caused by fireworks throughout the United States, with 74% of such injuries occurring during the one-month period between June 18, 2021 and July 18, 2021; and

WHEREAS, children under the age of 15 accounted for 29% of all fireworks-related injuries in 2021; and where the United States Consumer Product Safety Commission has found a 25% increase in fireworks injuries over the last fifteen years, between 2006 and 2021; and

WHEREAS, the loud noise of unpermitted fireworks can cause particular distress

to household pets, young children, and persons suffering from post-traumatic stress disorder, with July 4th fireworks reported to be one of the biggest causes of runaway pets each year; and

WHEREAS, unpermitted fireworks pose a significant fire risk at a time when the State and County are recovering from one of the most devastating fire seasons on record; and

WHEREAS, in 2020, the CZU Lightning Complex fires burned nearly 90,000 acres of land in San Mateo County and Santa Cruz County, damaging or destroying nearly 1,500 structures; and

WHEREAS, according to Cal Fire, in 2022, there were over 7,490 wildfire incidents which burned over 360,000 acres throughout the state;

WHEREAS, the County anticipates continuing to experience historically high-risk fire seasons in the future; and

WHEREAS, according to Cal Fire, the fire season in California is starting earlier and ending later each year, with warmer spring and summer temperatures, reduced snowpack, and earlier spring snowmelt creating longer and more intense dry seasons that increase moisture stress on vegetation and make forests more susceptible to severe wildfire; and

WHEREAS, the State reports that California is facing a historic level of dryness that has gone on for three years, with 2022 having the driest January, February, and March in over 100 years; and

WHEREAS, Californians experienced record-breaking heat waves in 2022; and

WHEREAS, even when enforcement officers are able to identify the location

where a violation of the Fireworks Ordinance occurs, it is very difficult to identify the individual(s) committing the violation, many of whom flee the location or blend in with gathered crowds; and

WHEREAS, it is difficult for enforcement officers to obtain the cooperation of observers and bystanders willing to identify violators; and

WHEREAS, the County is often required to respond to incidents involving violations of the Fireworks Ordinance in order to protect the public safety, and such responses are a burden on scarce County resources and may result in responses to regular and emergency calls being delayed and protection to other portions of the County being reduced; and

WHEREAS, it is in the public interest for violators of the Fireworks Ordinance to be held responsible for the County's costs of response to such violations; and

WHEREAS, the Board desires to amend the Fireworks Ordinance to clarify that existing strict liability provisions for those who have the care, custody, or control of a minor who violates the Fireworks Ordinance apply even where the adults with the care, custody, or control of a violating minor are not present at the time of the violation; and

WHEREAS, it is in the public interest for violators of the Fireworks Ordinance who discharge unpermitted fireworks within close proximity to schools, long term care facilities, or humane society and pet rescue shelters to be subject to increased penalties; and

WHEREAS, it is in the public interest for violators of the Fireworks Ordinance who consume alcohol during the violation, or allow underage drinking on premises where violations occur, to be subject to increased penalties.

NOW, THEREFORE, the Board of Supervisors of the County of San Mateo ordains as follows:

SECTION 2. ENFORCEMENT. Section 5.28.070 (Enforcement) of Chapter 5.28 of the San Mateo County Ordinance Code is hereby amended in its entirety to read as follows (*amendments are underlined*):

(a) Definitions.

1. **Enforcement Officer.** For purposes of this Section, the term “Enforcement Officer” means any County employee, agent of the County, or law enforcement officer with the authority to enforce any provision of this Code.

2. **Public Safety Personnel.** For the purposes of this Section, the term “Public Safety Personnel” means enforcement officers, firefighters, first responders, and all other emergency services or emergency management personnel.

3. **Response Costs.** For the purposes of this Section, the term “response costs” means those reasonable and necessary costs directly incurred by public safety personnel for a response to a violation of this Chapter, and include the cost of providing law enforcement, firefighting, and/or other emergency services at the scene of the violation, including, without limitation, the following:

(i) Salaries and benefits of public safety personnel for the amount of time spent responding to, remaining at, or otherwise dealing with the violation, and the administrative costs attributable to the response(s); and

(ii) The cost of any medical treatment to or for any public safety personnel injured responding to, remaining at, or leaving the scene of the violation; and

(iii) The cost of repairing any public safety equipment or property damage, and the cost of the use of any such equipment, in responding to, remaining at, or leaving the scene of the violation.

4. **Social Host.** For the purposes of this Section, the term “Social Host” means:

(i) Any owner of private property as listed on the most recent

assessment roll; and/or

(ii) Any person who has the right to use, possess or occupy a public or private property under a lease, permit, license, rental agreement, or contract; and/or

(iii) Any person who hosts, organizes, supervises, officiates, conducts, or accepts responsibility for a gathering on public or private property.

5. **Strictly Liable.** For the purposes of this Section, the term “Strictly Liable” means liability for a wrongful act regardless of such person’s intent, knowledge, negligence, or lack thereof in committing the wrongful act.

6. **Spectator.** For the purposes of this Section, the term “spectator” means any person present during an unpermitted fireworks discharge for the purpose of viewing, observing, watching, or witnessing the event. A person is “present” during an unpermitted fireworks discharge if that person is within two hundred (200) feet of the location of the fireworks discharge. Peace officers or their agents, or County employees designated to enforce the provisions of this Code, who are acting in the course of their official duties, are not considered “spectators.”

(b) Seizure of Fireworks. The Fire Chief, Fire Marshall, or Fire Warden, within the geographic area of their responsibility and authority, or the Sheriff, or their respective designee(s), shall seize, take, remove or cause to be removed at the expense of the owner all stocks of fireworks offered or exposed for sale, stored or held in violation of this Chapter.

(c) Violations by Minors. Any person having the care, custody, or control of any minor who violates this Chapter shall be strictly liable for the minor’s violation of this Chapter. The person having the care, custody, or control of any minor who violates this Chapter need not be present when the minor violates the Chapter to be held strictly liable for the violation.

(d) Social Host Liability.

1. Any social host shall be strictly liable for any violation of this Chapter occurring at the social host’s property or gathering, subject to the following exceptions:

(i) No owner of private property shall be liable under this Subsection (d) for a violation of this Chapter occurring on the

owner's property if the owner can demonstrate that, at the time of such violation:

(A) The owner had either (1) rented or leased the property to another or (2) the violation was committed by an individual who was unlawfully present or had trespassed on the owner's property;

(B) The owner was not present; and

(C) The owner had no prior knowledge the violation was going to occur.

(ii) No person who has the right to use, possess, or occupy a unit in a multifamily residential property under a lease, rental agreement, or contract shall be liable under this Subsection (d) for violations of this Chapter occurring in the common areas of the property.

(iii) Nothing in this Subsection (d) shall limit the liability of any social host for a violation of this Chapter by the social host.

(e) Spectator Liability. It shall be unlawful for any person to be knowingly present as a Spectator during an unpermitted fireworks discharge in violation of this Chapter.

(f) Administrative Citation. Upon identification of a violation of this Chapter, any enforcement officer may issue an administrative citation or a notice of violation. The administrative fine shall be as follows:

(1) one thousand dollars (\$1,000.00) for each citation issued to any person who violates this Chapter, except as provided below;

(2) if the violator is a Spectator, the fine shall be five hundred dollars (\$500.00) for the first offense, and Spectators receiving subsequent citations within any twelve month period shall be charged one thousand dollars (\$1,000.00) per subsequent violation.

(3) If the violator has been cited for a violation which

(a) Takes place within five hundred (500) feet of a day care center, school or school yard, whether public or private; long term care facility; or humane society or pet rescue shelter; or

(b) Is made by any person observed by the Enforcement Officer to be consuming alcohol when cited for a violation of this Chapter; or

(c) Takes place where underage drinking is observed by the

Enforcement Officer on the premises where the violation occurs;

the fine shall be two thousand dollars (\$2,000.00).

(g) Misdemeanor. In addition to the penalties described above, any person who violates this Chapter shall also be guilty of a misdemeanor punishable by a fine of not more than \$1,000.00, imprisonment in the County jail for a period not exceeding six months, or both, if the violation:

(1) Is a substantial factor in causing harm to persons or property; and

(a) Causes serious bodily injury to persons, defined as the serious impairment of physical condition, and may include, without limitation, loss of consciousness, concussion, bone fracture, protracted loss or impairment of function of any bodily member or organ, a wound requiring extensive suturing, and/or serious disfigurement; and/or

(b) Causes damage to real or physical property in excess of \$1,000.00.

(h) Non-exclusivity of Penalties. The penalties set forth herein are not intended to be exclusive of other penalties and remedies and are intended to be in addition to any other remedies provided in this Code or any other law, statute, ordinance or regulation, including, without limitation, the California Health and Safety Code or California Penal Code with regard to the sale, use, possession, delivery, storage, and/or transportation of fireworks.

(i) Response costs. Any person who is issued an administrative citation and/or written notice of violation under this Chapter may, in addition to the penalties provided for in this Chapter 5.28, also be held liable for response costs incurred in responding to a violation of this Chapter 5.28. All violators shall be jointly and severally liable for the response costs incurred.

(j) Payment of Fines and Costs.

(1) All administrative fines and/or response costs shall be paid to the County within 30 days from the date of service of the citation, unless the person charged in the citation requests a hearing as set forth below in Section 5.28.070(k).

(2) Payment of a fine and/or response costs under this Chapter shall not excuse or discharge any continuation or repeated occurrence of the Code violation that is the subject of the

administrative citation.

(k) Appeal/Hearing Request.

(1) Any recipient of an administrative citation may contest that there was a violation of this Chapter 5.28 or that he or she is liable for the violation by requesting an appeal hearing within 30 days from the date of service of the citation. The contesting party shall identify the date and location of the alleged violation and indicate in the appeal that he or she is requesting a hearing. The appealing party shall attach a copy of the citation to the appeal.

(2) The person requesting the appeal hearing shall be notified of the time and place set for the hearing at least 10 days before the date of the hearing.

(3) If the enforcement officer submits an additional written report concerning the administrative citation to the hearing officer for consideration at the hearing, a copy of such report also shall be served on the person requesting the hearing at least five days before the date of the hearing.

(4) The County Executive, or designee(s), shall designate the hearing officer for the administrative citation appeal hearing.

(l) Appeal/Hearing Procedure.

(1) A hearing before the hearing officer shall be set for a date that is not less than fifteen (15) days and not more than sixty (60) days from the date that the request for appeal hearing is filed in accordance with the provisions of this Chapter.

(2) At the hearing, the party contesting the administrative citation shall be given the opportunity to testify and to present evidence concerning the administrative citation.

(3) The failure of any recipient of an administrative citation to appear at the appeal hearing shall constitute a failure to exhaust administrative remedies.

(4) The administrative citation and any additional report submitted by the enforcement officer shall constitute *prima facie* evidence of the respective facts contained in those documents.

(5) The hearing officer may continue the appeal hearing and request additional information from the enforcement officer or the recipient of the administrative citation before issuing a written

decision.

(6) After considering all of the testimony and evidence submitted at the appeal hearing, the hearing officer shall issue a written decision to uphold or cancel the administrative citation and shall set forth in the decision the reasons for that decision. The decision of the hearing officer shall be final, except if the violator pursues judicial review as set forth in subsection (o) below. If the hearing officer determines that the administrative citation should be upheld, then the responsible person shall pay the fine amount within thirty (30) days. The recipient of the administrative citation shall be served with a copy of the hearing officer's written decision.

(7) The employment, performance evaluation, compensation, and benefits of the hearing officer shall not be directly or indirectly conditioned upon the amount of administrative citation fines upheld by the hearing officer.

(m) Late Payment Charges.

(1) Unless otherwise provided in this Code, any person who fails to timely pay, in full, any fine imposed pursuant to the provisions of this Chapter 5.28, on or before the date that fine is due, shall also be liable for the payment of a late payment charge of ten (10) percent of the amount of the delinquent fine.

(2) Any person who fails to timely pay, in full, any fine imposed pursuant to the provisions of this Chapter 5.28, on or before thirty (30) days after its due date shall also pay a second ten (10) percent of the delinquent amount.

(n) Recovery of Administrative Fines and Costs.

(1) The County may collect any past due administrative citation fine or late payment charge by use of all available legal means, including filing a civil lawsuit.

(2) Any person who fails to pay any obligation shall be liable in any action brought by the County for all costs incurred in securing payment of the delinquent amount, including, but not limited to, administrative costs, and attorneys' fees.

(3) Collection costs shall be in addition to any penalties, interest, and/or late charges imposed upon the delinquent obligation.

(4) Collection costs imposed under this provision shall be added to and become a part of the underlying obligation.

(o) Right to Judicial Review. Any person aggrieved by an administrative decision of a hearing officer on an administrative citation may obtain review of the administrative decision by filing an appeal to be heard de novo by the Superior Court in accordance with the timelines and provisions set forth in California Government Code Section 53069.4. If no notice of appeal of the hearing officer's administrative decision is filed within the period set forth in Section 53069.4, the hearing officer's decision shall be deemed confirmed.

(p) Notices.

(1) The administrative citation required to be given by this Chapter shall be served on the violator in the same manner as summons in a civil action in accordance with Article 3 (commencing with § 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. All subsequent notices shall be served by personal delivery or by deposit in the United States mail, in a sealed envelope postage prepaid, addressed to such person to be notified at his or her last-known business or residence address as the same appears in the public records or other records pertaining to the matter to which such notice is directed. Service by mail shall be deemed to have been completed at the time of deposit in the post office.

(2) Failure to receive any notice specified in this Chapter does not affect the validity of proceedings conducted hereunder.

SECTION 3. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, it shall not affect the remaining portions of this Ordinance.

SECTION 4. EFFECTIVE DATE. This Ordinance shall be effective 30 days from the date of its passage.

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