



County of San Mateo

Inter-Departmental Correspondence

Department: BOARD OF SUPERVISORS
DISTRICT 4
File #: 21-374

Board Meeting Date: 5/18/2021

Special Notice / Hearing: None
Vote Required: Majority

To: Honorable Board of Supervisors
From: Supervisor Warren Slocum, District 4
Supervisor Don Horsley, District 3
Subject: Adoption of Ordinance Amending Chapter 5.28 of the Ordinance Code

RECOMMENDATION:

Adopt an ordinance amending Chapter 5.28 of the County's Ordinance Code, known as the San Mateo County Fireworks Ordinance ("Fireworks Ordinance"), previously introduced on May 4, 2021, and waive the reading of the Ordinance in its entirety.

BACKGROUND:

The Fireworks Ordinance bans the possession, storage, sale, use, and/or explosion of all fireworks in the unincorporated areas of the County, except where authorized by permit. The enforcement provisions, which have remained unchanged for the past 35 years, require an update in advance of the upcoming Fourth of July holiday.

A. Injuries and Property Damage

According to statistics published by the United States Consumer Product Safety Commission, in 2019, the most recent year for which statistics are available, there were an estimated 10,000 injuries caused by fireworks throughout the United States, and 73% of those injuries occurred during the one-month period between June 21, 2019 and July 21, 2019. Children under the age of 15 accounted for 36% of all fireworks-related injuries, with children under the age of 4 suffering the highest per capita rate of emergency department-related injuries.

Unpermitted fireworks also pose a fire risk at a time when the State and County are recovering from one of the most devastating fire seasons on record. In 2020, according to Cal Fire, nearly 10,000 fires burned over 4.2 million acres, which is more than 4% of the State's roughly 100 million acres of land, making 2020 the largest wildfire season recorded in California's modern history. The CZU Lightning Complex fires burned nearly 90,000 acres of land in San Mateo County and Santa Cruz County, damaging or destroying over 1,600 structures.

The County is likely to face similar high risk fire seasons in the future, as, each year, the fire season is starting earlier and ending later, 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.

B. Enforcement Difficulties

The County is often required to respond to incidents involving violations of the Fireworks Ordinance in order to protect the public safety. 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. While responding enforcement officers are generally able to identify the location where a violation 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.

DISCUSSION:

Thus, we propose amending the Fireworks Ordinance to expand and update its enforcement provisions. Specifically, the proposed amendments would:

- Impose strict liability upon those who have the care, custody, or control of a minor who violates the Fireworks Ordinance and upon social hosts where a violation occurs on their property;
- Increase the administrative fines for each violation and to make certain violations involving harm to persons and/or property a misdemeanor;
- Hold those with multiple violations in any 12-month period responsible for the County's costs of responding to such violations; and
- Update provisions relating to appeal rights and procedures and the County's ability to collect outstanding fines and costs for violations.

A. Strict Liability

The proposed strict liability provisions apply to (1) those having the care, custody, or control of any minor who violates the Fireworks Ordinance and (2) social hosts, who are defined as: (a) the owner of the property where the violation occurs; (b) anyone who has the right to use, possess, or occupy the property under a lease, permit, license, rental agreement, or contract; and/or (c) anyone who hosts, organizes, supervises, officiates, conducts, or accepts responsibility for a gathering the property.

A property owner will not be held liable if, at the time of the violation:

- The owner had either (a) 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; and
- The owner was not present; and
- The owner had no prior knowledge the violation was going to occur.

Moreover, a person who has the right to use, possess, or occupy a unit in a multifamily residential property under a lease, rental agreement, or contract will not be held liable for violations occurring in

the common areas of the property.

B. Increased Fines and Consequences

Currently, any violation of the Fireworks Ordinance is an infraction punishable by fines of \$100 for the first violation, \$200 for the second violation within any one-year period, and \$500 for the third and subsequent violations within any one-year period.

The proposed amendments would increase the fine for *all* violations to \$1,000. The amendments also create a misdemeanor classification, separately punishable by a \$1,000 fine and/or up to six months in jail, where the violation causes serious bodily injury or property damage in excess of \$1,000.

In addition, where someone violates the Fireworks Ordinance two or more times within any 12-month period, the violator would also be held liable for all costs incurred by public safety personnel (law enforcement, firefighters, and/or other emergency services personnel) responding to the scene of the violation, including, without limitation:

- The salaries and benefits of the public safety personnel for the amount of time spent responding to, remaining at, or otherwise dealing with the violation;
- 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
- 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.

The proposed amendments also make clear that the above fines/penalties are in addition to any other remedies provided in the County's Ordinance Code and any other law, statute, ordinance or regulation, including, specifically, the California Health and Safety Code and California Penal Code with regard to the sale, use, possession, delivery, storage, and/or transportation of fireworks. For example, under California Health and Safety Code Section 12700(b), the possession of unaltered dangerous fireworks is punishable as a misdemeanor or a public offense with fines of up to \$50,000.

C. Appeal and Collection Rights

Given the expanded enforcement provisions, the proposed amendments also create an appeal process and clarify the County's right to collect all fines imposed.

FISCAL IMPACT:

The fiscal impacts associated with the proposed amendments to the Fireworks Ordinance are currently unknown. While the County may incur increased enforcement and administrative costs, those costs will likely be offset by the strict liability, increased fines, and cost-recovery components of the amendments.