



County of San Mateo

Inter-Departmental Correspondence

Department: BOARD OF SUPERVISORS
DISTRICT 4
File #: 23-268

Board Meeting Date: 4/25/2023

Special Notice / Hearing: None
Vote Required: Majority

To: Honorable Board of Supervisors
From: Supervisor Warren Slocum, District 4
Sheriff Christina Corpus
Subject: 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 April 11, 2023, 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 were comprehensively revised in May 2021 (Ordinance No. 4846) to (i) impose strict liability upon those with the care, custody, or control of a minor who violates the Fireworks Ordinance and upon social hosts where a violation occurs on their property; (ii) increase administrative fines for each violation and to make violations involving specified harm to persons and/or property a misdemeanor; (iii) hold those with multiple violations in any 12-month period responsible for the County's costs of responding to such violations; and (iv) update provisions setting forth appeal rights and procedures, and the County's ability to collect outstanding fines and costs for violations. Nevertheless, residents of unincorporated areas continue to report ongoing problems with unpermitted fireworks, including fireworks discharged from moving vehicles. These unpermitted fireworks discharges are most problematic around the Fourth of July holiday, but pose concerns year-round as well.

A. Injuries and Property Damage

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, and 74% of those injuries occurred during the one-month period between June 18, 2021, and July 18, 2021. Children under the age of 15 accounted for

29% of all fireworks-related injuries in 2021. The Commission found a 25% increase in fireworks injuries over the last fifteen years, between 2006 and 2021.

The loud noise of unpermitted fireworks discharges 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.

Unpermitted fireworks also pose a significant fire risk at a time when California continues to experience longer wildfire seasons, drought conditions, and record-breaking heat waves due to climate change. The CZU Lightning Complex fires in 2020 burned nearly 90,000 acres of land in San Mateo County and Santa Cruz County, damaging or destroying nearly 1,500 structures. In 2022, according to Cal Fire, there were over 7,490 wildfire incidents which burned over 360,000 acres throughout the state. 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. Californians experienced record-breaking heat waves in 2022.

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. It is very difficult for responding enforcement officers, even where they are able to identify the location where a violation occurs, to identify the individual(s) committing the violation, many of whom flee the location or blend in with gathered crowds. It is difficult to obtain the cooperation of observers and bystanders to identify culprits.

DISCUSSION:

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

- Impose spectator liability to make it unlawful to be knowingly present for an unpermitted discharge or use of fireworks, and make any spectator within 200 feet of the unpermitted discharge subject to an administrative citation.
- Clarify that the parent or guardian held strictly liable for a minor's violation of the Fireworks Ordinance need not be present at the time of the unlawful discharge.
- Make those who violate the Fireworks Ordinance responsible for County response costs at the time of the first violation, rather than at the time of the second violation.
- Provide for increased penalties where unpermitted violations take place within close proximity to certain types of businesses or facilities, such as schools, long term care facilities, or humane society and pet rescue shelters.
- Provide for increased penalties where violators are observed consuming alcohol when cited for fireworks discharges, and where there is underage drinking on the premises where

violations occur.

- Clarify the procedure for violators to seek judicial review, pursuant to Government Code Section 53069.4.

A. Spectator Liability

The spectator liability provisions apply to any persons present during an unpermitted fireworks discharge for the purpose of observing the fireworks discharge. A person is “present” if the person is within 200 feet of the location of the fireworks discharge. (Peace officers or their agents, or county employees designated to enforce the Fireworks Ordinance, who are acting in the course of their official duties, are not considered spectators.) A spectator of an unpermitted discharge is subject to an administrative citation in the amount of \$500.00, and if the spectator violates the Fireworks Ordinance two or more times within any 12-month period, any subsequent fines would be in the amount of \$1,000.00 per occurrence. While those enforcing the Fireworks Ordinance may elect ultimately not to cite spectators, spectators may be more forthcoming in identifying the actual fireworks operator if they themselves are subject to an administrative citation.

B. Parent or Guardian of Minor Who Violates Ordinance

The Fireworks Ordinance presently states that any person having the care, custody, or control of any minor who violates the Fireworks Ordinance shall be strictly liable for the minor’s violation. The amendment clarifies that the adult with the care, custody, or control of the minor need not be present at the time of the violation for strict liability to apply.

C. County Response Costs at Time of First Violation

Currently, where someone violates the Fireworks Ordinance two or more times within any 12-month period, the violator is 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 but not limited to the salaries of public safety personnel for the time spent responding to the violation, the cost of any medical treatment for any public safety personnel injured responding to the violation, and the cost of repairing any public safety equipment or property damage incurred in responding to the violation. The amendment would make violators responsible for County response costs at the time of the first violation, rather than at the time of the second violation.

D. Providing for Heightened Penalties in Certain Situations

Currently, the Fireworks Ordinance provides that a violator of the Fireworks Ordinance incurs an administrative fine of \$1,000.00.

The amendments would provide that violators (i) whose unpermitted fireworks discharges take place within 500 feet of schools, long term care facilities, or humane society and pet rescue shelters, (ii) who are observed consuming alcohol when cited for fireworks discharges, or (iii) are cited where there is underage drinking on the premises; shall instead be fined in the amount of \$2,000.00

E. Clarifying Procedure to Appeal Per Government Code

The final amendment to the Fireworks Ordinance clarifies the procedure for violators to seek judicial

review, pursuant to Government Code Section 53069.4.

FISCAL IMPACT:

The fiscal impacts associated with the 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 amendments which provide for spectator liability and for County response costs to be imposed at the time of the first violation.