



# Memorandum

**TO:** HONORABLE MAYOR AND CITY COUNCIL

**FROM:** Nora Frimann  
City Attorney

**SUBJECT:** SEE BELOW

**DATE:** November 20, 2024

**SUBJECT:** An Ordinance Amending Sections 6.90.320 and 6.90.330 of Chapter 6.90 of Title 6 and Repealing Section 10.32.020 of Chapter 10.32 of Title 10 of the San José Municipal Code to Better Align with the Regulation of Firearms under the California Penal Code

## **RECOMMENDATION**

Approval of an ordinance amending Sections 6.90.320 and 6.90.330 of Chapter 6.90 of Title 6 of the San José Municipal Code and repealing Section 10.32.020 of Chapter 10.32 of Title 10 of the San José Municipal Code.

## **SUMMARY AND OUTCOME**

Approval of this recommendation will amend Sections 6.90.320 and 6.90.330 of San José Municipal Code (SJMC) Chapter 6.90 – Retail Firearms and Ammunition Dealers Regulations, and repeal Section 10.32.020 of SJMC Chapter 10.32 – Restrictions on Weapons for Persons Under the Age of Eighteen Years in order to better align with the regulation of firearms under the California Penal Code. The proposed ordinance complies with the recommendations of the City Auditor in his 2022 Firearms Regulation Audit Report<sup>1</sup> which was approved by the City Council.

Section 6.90.320 is being amended to make the 10-day waiting period for retail transactions apply to all firearms and not just to pistols and revolvers. This amendment will make this section consistent with the requirements of the California Penal Code. Section 6.90.330 is being amended to delete the reference to suicide prevention which duplicates the suicide prevention notice that the State already requires retail firearm businesses to post pursuant to the California Penal Code. Section 10.32.020 is being

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<sup>1</sup> See page 34 of the Audit Report (Firearm Regulations: The City Should Update Procedures Around Gun Violence Restraining Orders and Firearm Business Inspections, Report No. 22-09, dated December 2022) for the recommendations regarding the three Municipal Code sections addressed in the draft ordinance.

repealed because it conflicts with the requirements of the Penal Code regulating the circumstances under which persons may sell, dispose of or give firearms to minors.

## **BACKGROUND**

On December 15, 2022, the City Auditor presented to the Public Safety, Finance and Strategic Support Committee (PSFSS Agenda Item (d)2) a Firearms Regulation Audit Report titled "Firearms Regulations: The City Should Update Procedures Around Gun Violence Restraining Orders and Firearm Business Inspections." PSFSS forwarded the Firearms Regulation Audit Report to the City Council with a recommendation to accept the Report. The Report was heard at the January 24, 2023, City Council meeting and the Report was accepted by the City Council.

Recommendation #1 of the Report recommended that to ensure that the Municipal Code better aligns with the California Penal Code, the City Administration should update SJMC Sections 6.90.320, 6.90.330, and 10.32.020. The City Attorney's Office agreed with the recommendation and proposed to make appropriate updates to the Municipal Code to better align these sections of the Municipal Code with the California Penal Code. The proposed ordinance provides the required updates to the three Code provisions to make the Code consistent with State law.

## **ANALYSIS**

### **1. Amendments to SJMC Sections 6.90.320 and 6.90.330**

The Firearms Regulation Audit Report recommended that Subsection B. of SJMC Section 6.90.320 - Business Premises Conditions, be amended. As written, the second sentence of Subsection B. states that a Firearms Business Licensee shall not deliver any *pistol or revolver* to a purchaser earlier than 10 days after the application for the purchase, lease or transfer, unless otherwise provided by State or federal law. This is inconsistent with Chapter 10.32 which applies to retail dealers of all firearms and with Penal Code Section 26815 which requires a 10-day waiting period for all firearms. The proposed amendment will correct this inconsistency with the Penal Code and with SJMC Chapter 10.32, which regulates retail firearms and ammunition dealers, not just retail dealers of pistols and revolvers.

The Audit Report also recommended that Subsection B. of SJMC Section 6.90.330 be amended to delete the reference to suicide prevention since it duplicates the suicide prevention notice that the State already requires retail firearm businesses to post, as set out in subdivision (b)(1) of Penal Code 26835. The amendment to Subsection B. of Section 6.90.330 deletes the reference to suicide prevention and adds a requirement to display Santa Clara County approved printed materials on mental health and addiction

resources, subjects that are not state mandated notice requirements under Penal Code Section 26835.<sup>2</sup>

2. Repeal of SJMC Section 10.32.020 – Restrictions on Weapons for Persons Under the Age of Eighteen Years

SJMC Section 10.32.020 prohibits persons from selling, disposing of or giving to any minor under the age of eighteen years a firearm without the written request of the child's parent or guardian, and no minor can possess a pistol without the written consent of the child's parent or guardian. As the Audit Report notes, Section 10.32.020 would allow persons under 21 years of age to be sold a firearm and allow this in the case of minors with written consent of their parent or guardian. The California Penal Code generally prohibits what SJMC Section 10.32.020 allows.<sup>3</sup> There are specific, narrow exceptions in the Penal Code to the general age prohibitions, but none of the exceptions authorized under the Penal Code are as broad as the exception for consent of a parent or guardian in SJMC Section 10.32.020.<sup>4</sup> Section 10.32.020 contradicts the Penal Code provisions governing age restrictions on selling, loaning, transferring, supplying, delivering or giving possession or control of a firearm as well as the Penal Code provisions restricting possession of firearms by minors. In light of the extensive and detailed level of State regulation of firearms by minors and persons who are less than 21 years old and the fact that SJMC Section 10.32.020 conflicts with the above cited Penal Code provisions, Section 10.32.020 is preempted by State law and must be repealed in order to conform with state law.

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<sup>2</sup> Subsection B as currently written already required display of Santa Clara County approved resources for domestic violence and local gun laws. The proposed amendment requires the Licensee to display for patrons Santa Clara County approved printed materials on mental health, addiction, and domestic violence resources and printed materials on local gun laws.

<sup>3</sup> Penal Code Sections 27505 and 27510. Subdivision (a) of Penal Code Section 27505 generally prohibits any person, corporation or firm from selling, loaning, or transferring a firearm to a minor, and selling a handgun to a person under 21 years of age. There is a detailed list of limited exceptions to the prohibition in subdivision (a) set out in subdivision (b).

Subdivision (a) of Penal Code Section 27510 prohibits licensed retail firearms dealers from selling, supplying, delivering or giving possession or control of a firearm to any person who is under 21 years of age. Subdivision (b) sets out detailed exceptions to the general prohibition in subdivision (a).

<sup>4</sup> The Penal Code also restricts possession of firearms generally and specific types of firearms by minors with specified exemptions (Penal Code Sections 29610 and 29615) as well as possession of live ammunition by minors (Penal Code Sections 29650 and 29655). Penalties for violations by minors and their custodial parent or legal guardian of these prohibitions are set out in Penal Code Sections 29700 and 29705.

## **CONCLUSION**

As directed by the City Council, this ordinance will amend Sections 6.90.320 and 6.90.330 of Chapter 6.90 of Title 6 of the San Jose Municipal Code and repeal Section 10.32.020 of Chapter 10.32 of Title 10 of the San Jose Municipal Code.

## **EVALUATION AND FOLLOW-UP**

No evaluation or follow-up is needed for this item. It simply makes Municipal Code consistent with State law regulation of firearms.

## **CLIMATE SMART SAN JOSÉ**

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

## **PUBLIC OUTREACH**

This memorandum will be posted on the City's Council Agenda website for the December 3, 2024, Council Meeting.

## **COMMISSION RECOMMENDATION AND INPUT**

No commission recommendation or input is associated with this action.

## **COORDINATION**

This memorandum has been coordinated with the San Jose Police Department and the Office of the City Auditor.

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**CEQA**

Not a Project, File No. PP17-008, General Procedure & Policy Making resulting in no changes to the physical environment.

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By /s/  
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If you have any questions, please contact Carl Mitchell, Senior Deputy City Attorney at (408) 535-1919.

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