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October 16, 2017

Sam Liccardo, Mayor  
City of San Jose  
200 E. Santa Clara St.  
San José, CA 95113

*Sent via email*

**Re: Support for Proposed Safe Storage Ordinance as Modified per Councilmembers Peralez and Jones’ memorandum**

Dear Mayor Liccardo and the members of the City Council,

On behalf of the Law Center to Prevent Gun Violence (“the Law Center”), I write in support of Councilmembers Peralez and Jones’ modifications to the proposed safe storage ordinance 17-065 (“Modified Proposed Ordinance.”). Founded by lawyers after a mass shooting at a San Francisco law firm in 1993, the Law Center has been providing legal expertise in support of local, state, and federal gun violence prevention laws to legislators nationwide for nearly 25 years.

Safe storage ordinances are a preventative measure for harm to children and depart from existing California state law by providing clear and unambiguous direction and legal repercussions. These ordinances are in effect in eight California communities—San Francisco,<sup>i</sup> Sunnyvale,<sup>ii</sup> Oakland,<sup>iii</sup> Los Angeles,<sup>iv</sup> Santa Cruz,<sup>v</sup> Tiburon,<sup>vi</sup> Belvedere,<sup>vii</sup> and Palm Springs.<sup>viii</sup> The Town of Moraga is currently in the process of drafting a safe storage ordinance.

**The Modified Proposed Ordinance addresses the very real risks posed by unsecured guns in the home.** A recent study by researchers at the Center for Disease Control and Prevention stated that youth suicide with guns has risen dramatically between 2007 and 2014.<sup>ix</sup> In fact, **gun suicides by minors 10 years old and older increased 60 percent** in that period. The authors noted that safe storage of firearms would likely reduce this alarming number. While California enacted a “Child Access Prevention” (CAP) law in 2011, **the firearm suicide rate of minors under the age of 18 has remained steady between 2005 and 2015.**<sup>x</sup>

Studies have demonstrated that the risk of suicide—particularly amongst children and teens—is significantly higher in homes where a firearm is kept loaded and/or unlocked.<sup>xi</sup> Additionally, a study of mass shootings demonstrated that in over half of shootings perpetrated by minors in elementary or secondary schools, the shooter used guns obtained from home that were likely unsecured.<sup>xii</sup>

Children and teens are also at risk of death or injury from unintentional shootings. Children as young as three-years-old are strong enough to fire some types of handguns.<sup>xiii</sup> San Jose residents know these facts intimately. **In 2012, a year after the state’s CAP law went into effect, the three-year-old child of a San Jose police officer found his father’s unlocked gun and fatally shot himself.**<sup>xiv</sup> An analysis published by Everytown for Gun Safety in 2014 found that 70% of shooting deaths involving children could have been prevented if the firearm had been stored locked and unloaded.



**Existing state law does not go far enough to protect children.** In California, individuals may be criminally liable if they negligently store or leave, on premises within their custody or control, a loaded firearm in a location where the person knows, or reasonably should know, that the child is likely to gain access to the firearm without the permission of the child's parent or legal guardian.<sup>xv</sup> No liability is imposed in this situation if reasonable action is taken to secure the firearm against access by a child. The law also does not apply if the firearm was kept in a locked container or in a location that a reasonable person would believe to be secure, or the firearm was locked with a locking device that rendered the firearm inoperable.<sup>xvi</sup>

***A close reading of California state law demonstrates that it does little to prevent access to firearms by minors because it does not affirmatively require any particular behavior.*** So long as a person does not “negligently” store or leave a loaded firearm on his or her premises, or takes “reasonable” action to “secure” the firearm, he or she may not be liable even if a minor gets ahold of the firearm. Furthermore, if the person stores the firearm in a locked container or with a locking device, he or she escapes liability in the event a child does gain access to the firearm. These subjective standards only provide an out for individuals when a child actually gains access to a firearm. The law does not dictate what responsible storage is, and require that gun owners abide by it. ***A safe storage law, on the other hand, would require that gun owners keep their guns in locked containers or with trigger locks; this is an unambiguous, preventative measure with an objective standard.***

**The unmodified proposed ordinance would not prevent gun thefts by people who have consent to be in the home, such as caregivers of elderly residents and other visitors.** A study by Harvard and Northeastern researchers shows that hundreds of thousands of guns are stolen each year; gun theft is an important way that guns enter the illegal market.<sup>xvii</sup> The ATF estimates that about 10-15% of stolen guns are used in subsequent crimes.<sup>xviii</sup> According to the researchers, gun owners who safely store their firearms experience gun thefts at a lower rate than those who do not. The study also concludes that promoting safer storage of guns may help to reduce gun thefts and reduce the number of guns entering the illegal market.<sup>xix</sup>

***Safe storage laws are consistent with the Second Amendment and have consistently been upheld by the courts.*** In the landmark case, *District of Columbia v. Heller*,<sup>xx</sup> the United States Supreme Court held that the Second Amendment protects a law-abiding, responsible citizen's right to possess an operable handgun in the home for self-defense. The Court struck down a District of Columbia ordinance that “totally ban[ned] handgun possession in the home” and required “that any lawful firearm in the home be disassembled or bound by a trigger lock at all times.”<sup>xxi</sup> The Court found the ordinance unconstitutional precisely because it made it “impossible for citizens to use [firearms] for the core lawful purpose of self-defense.”<sup>xxii</sup> But the Court was careful to restrict its ruling to the unduly broad prohibition at issue, specifically stating that its holding was not intended to “suggest the invalidity of laws regulating the storage of firearms to prevent accidents.”<sup>xxiii</sup>

In 2014, the NRA and other plaintiffs sued the City and County of San Francisco claiming its safe storage law—which required handguns kept in a residence to be stored in a locked container or disabled with a trigger lock when not carried on the person<sup>xxiv</sup>—violated the Second Amendment.<sup>xxv</sup> The Ninth Circuit Court of Appeal, in affirming the District Court's ruling, found that the law did not significantly burden the right to possess a handgun in the home for self-defense, because guns stored safely can be accessed in a matter of seconds.<sup>xxvi</sup> The court held that San Francisco demonstrated that the ordinance served a significant government interest by “reducing the number of gun-related injuries and deaths from having an unlocked handgun in the home,” and that the law was substantially related to that



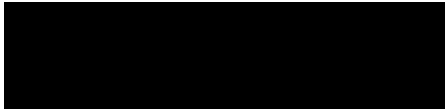
interest.<sup>xxvii</sup> The court noted that San Francisco's law was unlike the law at issue in *Heller* because it left open other channels for self-defense in the home by allowing residents to carry firearms.<sup>xxviii</sup>

Similarly, both the Massachusetts State Supreme Court<sup>xxix</sup> and a New York State trial court<sup>xxx</sup> have reviewed Massachusetts' and New York City's safe storage laws, respectively, and found that neither violated the Second Amendment because the laws did not require a firearm to be rendered inoperable in the home at all times.

***Since 2007 when the gun lobby challenged San Francisco's ordinance, seven other cities have enacted safe storage laws. The gun lobby has threatened to sue all, or nearly all, of them but has actually sued none of them.***

For the foregoing reasons, I urge you to enact the modified safe storage ordinance proposed by Councilmembers Peralez and Jones.

Sincerely,



Allison Anderman  
Managing Attorney

Cc: Vice Mayor, Magdalena Carrasco, District 5  
Councilmember Chappie Jones, District 1  
Councilmember Sergio Jimenez, District 2  
Councilmember Raul Peralez, District 3  
Councilmember Lan Diep, District 4  
Councilmember Dev Davis, District 6  
Councilmember Tam Nguyen, District 7  
Councilmember Sylvia Arenas, District 8  
Councilmember Donald Rocha, District 9  
Councilmember Johnny Khamis, District 10

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<sup>i</sup> San Francisco Police Code § 4512.

<sup>ii</sup> Sunnyvale Municipal Code § 9.44.040.

<sup>iii</sup> Oakland Municipal Code § 9.39.040.

<sup>iv</sup> Los Angeles Municipal Code § 55.21.

<sup>v</sup> Santa Cruz Municipal Code § 9.29.020.

<sup>vi</sup> Tiburon Municipal Code § 32-30.

<sup>vii</sup> Belvedere Municipal Code § 9.71.020.

<sup>viii</sup> Palm Springs Municipal Code § 11.16.045.

<sup>ix</sup> Elizabeth Van Brocklin, *19 Children Are Shot in America Every Day*, THE TRACE, June 19, 2017.

<sup>x</sup> Center for Disease Control and Prevention Web-based Injury Statistics Query and Reporting System (WISQARS), 2005 - 2015, California Suicide Firearm Deaths and Rates per 100,000, viewed on 10/16/17. In 2009, the rate of gun suicides by minors under age 18 was .29. In 2006, the rate was .25. California passed a "Child Access Prevention" law, and



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several amendments strengthening that law, between 2011 – 2013. The rate of gun suicides by minors was still .29 in 2013. The rate was .24 in 2015, showing that the rate has essentially remained steady for the ten year period between 2005 and 2015 (the last year for which data is available).

<sup>xi</sup> Matthew Miller & David Hemenway, *The Relationship Between Firearms and Suicide: A Review of the Literature*, 4 *Aggression & Violent Behavior* 59, 62–65 (1999) (summarizing the findings of multiple studies).

<sup>xii</sup> See Analysis of School Shootings, December 31, 2015, available at <http://everytownresearch.org/reports/analysis-of-school-shootings/>.

<sup>xiii</sup> Sarah Kaplan, *3-year-old picks up great-grandpa's pistol from nightstand, fatally shoots sister*, WASHINGTON POST, February 8, 2016, available at <https://www.washingtonpost.com/news/morning-mix/wp/2016/02/08/3-year-old-picks-up-great-grandpas-pistol-from-nightstand-fatally-shoots-sister/>.

<sup>xiv</sup> Patrick May, *Gilroy neighbors mourn little boy's accidental shooting death*, July 7, 2012, MERCURY NEWS, available at <http://www.mercurynews.com/2012/07/07/gilroy-neighbors-mourn-little-boys-accidental-shooting-death/>.

<sup>xv</sup> Cal. Penal Code § 25100(c).

<sup>xvi</sup> Cal. Penal Code § 25105(b), (d).

<sup>xvii</sup> David Hemenway, Deborah Azrael, and Matthew Miller, *Whose guns are stolen? The epidemiology of Gun theft*, INJURY EPIDEMIOLOGY, January 13, 2017, at [victimshttps://injepijournal.springeropen.com/articles/10.1186/s40621-017-0109-8](https://injepijournal.springeropen.com/articles/10.1186/s40621-017-0109-8)

<sup>xviii</sup> Dan Noyes, *How Criminals Get Guns*, FRONTLINE, available at <http://www.pbs.org/wgbh/pages/frontline/shows/guns/procon/guns.html>.

<sup>xix</sup> David Hemenway, Deborah Azrael, and Matthew Miller, *Whose guns are stolen? The epidemiology of Gun theft*, INJURY EPIDEMIOLOGY, January 13, 2017, at [victimshttps://injepijournal.springeropen.com/articles/10.1186/s40621-017-0109-8](https://injepijournal.springeropen.com/articles/10.1186/s40621-017-0109-8).

<sup>xx</sup> 554 U.S. 570 (2008).

<sup>xxi</sup> *Id.* at 628 (emphasis added).

<sup>xxii</sup> *Id.* at 630 (emphasis added).

<sup>xxiii</sup> *Id.* at 632.

<sup>xxiv</sup> In 2016, San Francisco strengthened its safe storage ordinance to apply to all firearms, not only handguns.

<sup>xxv</sup> *Jackson*, 746 F.3d at 953.

<sup>xxvi</sup> *Id.* at 966.

<sup>xxvii</sup> *Id.*

<sup>xxviii</sup> *Id.* at 965.

<sup>xxix</sup> *Commonwealth v. McGowan*, 464 Mass. 232 (2013).

<sup>xxx</sup> *Tessler v. City of New York*, 952 N.Y.S.2d 703, 716 (2012).

**From:** Larry Shields <[REDACTED]>  
**Sent:** Sunday, October 15, 2017 9:41 AM  
**To:** City Clerk  
**Subject:** Mandatory Firearm Storage Proposed Ordinance

Obviously, the city council is once again more concerned with collecting votes from frightened citizens than doing anything constructive to improve safety or raise the standard of living of people in Their society. They will spend the taxpayers money and the councils time, also paid by the taxpayers, to promote a law which any reasonable person can plainly see is already more than covered by existing California State law. It is no wonder taxpayers generally have little faith in these so-called public servants. I am personally distressed by this obvious play at public expense to promote the careers of so-called public servants.

Larry Shields

**From:** Cliff Cada <[REDACTED]>  
**Sent:** Saturday, October 14, 2017 8:00 PM  
**To:** City Clerk  
**Subject:** Firearm Storage Ordinance

I vehemently oppose this ordinance.

Cliff Cada  
95138

**From:** Ceasar <[REDACTED]>  
**Sent:** Saturday, October 14, 2017 4:31 PM  
**To:** City Clerk  
**Subject:** Stop anymore gun control

Please stop the ordinance for locking guns when occupants are gone. There are laws already in place for gun safety at home.  
Sent from my iPhone

**From:** Mach1pilot <[REDACTED]>  
**Sent:** Saturday, October 14, 2017 12:49 PM  
**To:** City Clerk  
**Subject:** Gun storage law

More inane gun laws, just what the law abiding folks in your city need (not). This proposed law is beyond stupid and will not enhance gun safety for the general public. NO votes from all council members required...

Robert S Massey  
Retired Federal Officer

**From:** Kruger Michael <[REDACTED]>  
**Sent:** Friday, October 13, 2017 5:18 PM  
**To:** City Clerk  
**Subject:** lock up weapons while away to vage

strike down the ordinance locked away safes for guns.

**From:** Alan <[REDACTED]>  
**Sent:** Friday, October 13, 2017 5:24 PM  
**To:** City Clerk  
**Subject:** Firearms storage

With all of the shootings and mass murders I don't understand how you can feel good about what you are doing. How do you expect someone to defend his family, with a broom stick? I will not dismantle my firearms, I will have it at the ready like I have for over 20 years. No one can access my safes except me.

I know you probably feel that this is the next step in banning firearms. I hope NRA and CRPA take you to court and you lose.

What a crock.

Alan

**From:** david farrell <>  
**Sent:** Friday, October 13, 2017 4:09 PM  
**To:** City Clerk  
**Subject:** Your liberal laws.

Dear California Government,

Every time I turn around in California there's a new law/regulation that infringes on my 2nd amendment rights.

I propose that instead of having your 'safe storage' bill passed, we should have a 'safe storage of politicians' bill passed. We'd be better off putting politicians in 'safe storage' than our guns.

I will keep my firearms responsibly in my possession. It's not the governments business how/where/when I exercise my constitutional rights.

The US Constitution was created to limit government, not the freedoms of American Citizens.

MAKE CALIFORNIA AMERICA AGAIN

Thanks, Dave



SENIOR PARTNER  
C. D. MICHEL\*

MANAGING PARTNER  
JOSHUA ROBERT DALE

SPECIAL COUNSEL  
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October 16, 2017

Mayor Sam Liccardo  
Vice Mayor Magdalena Carrasco  
Councilmember Charles "Chappie" Jones  
Councilmember Sergio Jimenez  
Councilmember Raul Peralez  
Councilmember Lan Diep  
Councilmember Devora "Dev" Davis  
Councilmember Tam Nguyen  
Councilmember Sylvia Arenas  
Councilmember Donald Rocha  
Councilmember Johnny Khamis

SAN JOSÉ CITY COUNCIL  
200 E. Santa Clara St.  
San José, CA 95113  
[cityclerk@sanjoseca.gov](mailto:cityclerk@sanjoseca.gov)  
**VIA EMAIL & FAX: (408) 292-6207**

**Re: Proposed Ordinance Amending Chapter 10.32 of Title 10 of the San Jose  
Municipal Code—OPPOSITION**

Honorable Members of the City Council,

We write to you on behalf of our clients, the National Rifle Association of America, and the California Rifle & Pistol Association, Inc., as well as the hundreds of thousands of their members in California, including those members residing in the City of San José.

Our clients oppose the adoption of the recently proposed ordinance mandating firearms be stored in a locked container or disabled with a trigger lock in a person's place of residence (the "Proposed Ordinance"). As drafted, the Proposed Ordinance will preclude the safest and most secure methods of storing a firearm as a means of satisfying its requirements, suffers from serious vagueness issues, and is otherwise preempted by state law.

For the following reasons, we ask the City Council to reject the Proposed Ordinance, and instead consider the alternative programs offered by our clients that will better achieve the City's goals of combatting criminal misuse of firearms and preventing accidental injuries.

**I. THE PROPOSED ORDINANCE PRECLUDES THE USE OF THE SAFEST AND MOST SECURE MEANS OF STORING FIREARMS AVAILABLE ON THE MARKET**

As a threshold matter, the Proposed Ordinance requires any person who keeps a firearm in their residence to “store the Firearm in a Locked Container or disable the Firearm with a Trigger Lock upon leaving the Residence.” In order for a device to be considered a “Locked Container,” the Proposed Ordinance requires that the device satisfy the definition of California Penal Code Section 16850 and also be listed on the California Department of Justice, Bureau of Firearms (“DOJ”) “roster of approved firearm safety devices.”

California law defines the term “locked container” as “a secure container that is fully enclosed and locked by a padlock, keylock, combination lock, or similar locking device.”<sup>1</sup> But California law also defines the term “firearm safety device” as “a device *other than a gun safe* that locks and is designed to prevent children and unauthorized users from firing a firearm.”<sup>2</sup> Such devices “may be installed on a firearm, be incorporated into the design of the firearm, or prevent access to the firearm.”<sup>3</sup>

Because the Proposed Ordinance requires a “Locked Container” to meet both the definition of a “locked container” *and* be listed on DOJ’s “roster of approved firearm safety devices,” it will preclude the use of many gun safes as a means for securing a firearm in one’s residence—gun safes which are undoubtedly the safest and most secure means of storing a firearm available on the market. We highly doubt the drafters of the Proposed Ordinance intended such an absurd result. Rather, we believe the confusion stems from DOJ’s own misinterpretation of the law.

In addition to the definitions for “locked container” and “firearm safety device,” California law also defines the term “gun safe” as “a locking container that fully contains and secures one or more firearms, and that meets the standards for gun safes adopted pursuant to [Penal Code] Section 23650.”<sup>4</sup> Under Penal Code section 23650, DOJ was required to “develop regulations to implement a minimum safety standard for firearm safety devices *and* gun safes to significantly reduce the risk of firearm-related injuries to children 17 years of age and younger.”<sup>5</sup> Today, standards for “firearm safety devices” can be found in 11 C.C.R. section 4094, and standards for “gun safes” can be found in 11 C.C.R. section 4100.

For years, California has required all firearm transactions to be accompanied by a “firearm safety device that is listed on [DOJ’s] roster of approved firearm safety devices.”<sup>6</sup> However, if the purchaser or transferee already owns a gun safe that satisfies both California and DOJ’s standards, and

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<sup>1</sup> Cal. Pen. Code § 16850. For reasons unrelated to the proposed ordinance, this definition does not apply to a utility or glove compartment of a motor vehicle.

<sup>2</sup> Cal. Pen. Code § 16540 (emphasis added).

<sup>3</sup> *Id.*

<sup>4</sup> Cal. Pen. Code § 16610.

<sup>5</sup> Cal. Pen. Code § 23650(a) (emphasis added).

<sup>6</sup> Cal. Pen. Code § 23635(a).

provides proof of ownership or otherwise as authorized by the Attorney General, this requirement is waived.<sup>7</sup> What's more, while a "firearm safety device" is required to be tested by DOJ in order to appear on the "roster of approved firearm safety devices," *[g]un safes shall not be required to be tested, and therefore may meet the standards without appearing on the Department of Justice roster.*<sup>8</sup>

Despite the fact that a gun safe is not requirement to be tested, DOJ has nonetheless tested and listed several gun safes on the "roster of approved firearm safety devices." But the vast majority of gun safes still do not appear on the roster for the reasons discussed above. Thus, by requiring a device to meet the definition of a locked container under California law *and* be listed on DOJ's roster of approved firearm safety devices, the Proposed Ordinance will preclude the use of many gun safes as a means of satisfying its requirement to safely secure a firearm upon leaving one's residence.

## II. THE PROPOSED ORDINANCE IS UNCONSTITUTIONALLY VAGUE

The due process provisions of the Fourteenth Amendment and Article 1, section 7 of the California Constitution require "a reasonable degree of certainty in legislation, especially in the criminal law."<sup>9</sup> And where statutes impact constitutionally protected conduct, the United States Supreme Court has raised the bar on the required certainty, demanding the greatest clarity "where the certainty induced by the statute threatens to inhibit the exercise of constitutionally protected rights."<sup>10</sup>

"The underlying concern [of the void for vagueness doctrine] is the core due process requirement of adequate notice."<sup>11</sup> To provide such notice, the terms of a penal statute "must be sufficiently explicit to inform those who are subject to it what conduct" is to be regulated.<sup>12</sup> Any statute that requires persons of "common intelligence" to "guess at its meaning" or "differ as to its application" necessarily violates due process.<sup>13</sup>

In other words, a law is unconstitutionally vague if: (1) the law fails to provide notice to persons of ordinary intelligence as to what items must be secured in a locked container as required; or (2) that the law's definitions are so vague that, without more, it fails to provide sufficient standards to prevent arbitrary and discriminatory enforcement.

Here, the definition of the term "firearm," as used in the Proposed Ordinance, refers only to California Penal Code section 16520. As generally defined by this section, a "firearm" is "a device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of

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<sup>7</sup> Cal. Pen. Code § 23635(b).

<sup>8</sup> Cal. Pen. Code § 23635(b)(1); See also Cal. Pen. Code § 23655.

<sup>9</sup> *People v. Heitzman*, 9 Cal.4th 189, 199 (1994) (quoting *In re Newbern*, 53 Cal.2d 786, 792 (1960)) (emphasis added).

<sup>10</sup> *Coluati v. Franklin*, 439 U.S. 379, 391 (1979); *Baggett v. Bullitt*, 377 U.S. 360, 372 (1964); See also *People v. Barksdale*, 8 Cal.3d 320, 327 (1972) (stating that "stricter standards of permissible statutory vagueness may be applied to a statute having a *potentially inhibiting effect on fundamental rights*" (emphasis added)).

<sup>11</sup> *People ex rel. Gallo v. Acuna*, 14 Cal.4th 1090, 1115 (1997).

<sup>12</sup> *Katzev v. Los Angeles County*, 52 Cal.2d 360 (1959).

<sup>13</sup> *Connally v. General Const. Co.*, 269 U.S. 385, 391 (1926).

an explosion or other form of combustion.”<sup>14</sup> But in addition to this definition, there are a number of ways the term is defined. For one, the term also includes “the frame or receiver of the weapon,” but only as applied to:

- Firearm transaction records;
- The definition of “infrequent” loans involving firearms;
- Operation of law transfers;
- The definition of “responsible adult” regarding California firearm laws;
- The definition of “used firearm”;
- The license requirements for the sale, lease, or transfer of firearms, and the exceptions to these requirements relating to law enforcement;
- The exceptions for law enforcement to the requirements for gun shows;
- Recordkeeping, background checks, and fees relating to the sale, lease, or transfer of firearms;
- The “manufacture” of firearms;
- The restrictions on minors possessing firearms;
- The restrictions on firearm possession by prohibited persons;
- The exceptions relating to law enforcement for firearm eligibility checks;
- The Firearm Safety Certificate program;
- The Department of Justice’s “Ballistic Identification System”; or,
- The use of the term in the Welfare and Institutions Code.<sup>15</sup>

Penal Code section 16520 also states that the term “firearm” can include a “rocket, rocket propelled projectile launcher, or similar device containing an explosive or incendiary material, whether or not the device is designed for emergency or distress signaling purposes,” but only as applied to:

- The definition of “lawful possession of [a] firearm”;
- California’s “loaded” firearm restrictions regarding criminal storage, carrying a concealed firearm, and carrying a loaded firearm in public; or,
- California’s restriction against carrying a concealed firearm.<sup>16</sup>

Penal Code section 16520 also states that the term “firearm” does “not include an unloaded antique firearm,” but only as applied to:

- The definition of “infrequent” firearm transactions;
- The definition of “firearm transaction records”;

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<sup>14</sup> Cal. Penal Code § 16520(a).

<sup>15</sup> Cal. Penal Code § 16520(b)(1-19).

<sup>16</sup> Cal. Penal Code § 16520(c).

- Operation of law transfers;
- The definition of “used firearm”;
- California’s restriction against the open carry of unloaded handguns;
- California’s restriction against carrying an unloaded firearm that is not a handgun in an incorporated city or city and county;
- The license requirements for the sale, lease, or transfer of firearms;
- California’s restriction against the sale or transfer of a handgun to any person under the age of 21, or any other firearm to a person under the age of 18;
- California’s restriction against the sale or transfer of a handgun that does not bear either a manufacturer’s serial number or other identification mark assigned to it by the California Department of Justice;
- California’s restrictions on the delivery of a firearm by a licensed firearms dealer;
- California’s restriction that all firearm transfers in California be processed by a California licensed firearms dealer;
- California’s license requirement for the manufacture of firearms; or,
- California’s requirements for the storage of firearms in a residence where another resident is prohibited from possessing firearms;<sup>17</sup>

Further, as used when referring to firearms that are unclaimed, abandoned, or subject to destruction, Penal Code section 16520 states the term “firearm” does not include a destructive device.<sup>18</sup> And as used when referring to “undetectable” firearms, the term “firearm” has the same meaning under Federal law, which is defined as “(A) any weapon (including a starter gun) which will or is designed to or may be readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device,” with the exception that the term “does not include an antique firearm.”<sup>19</sup>

Finally, as used when referring to the manufacture of firearms, the term “firearm” includes “the unfinished frame or receiver of a weapon that can be readily converted to the functional condition of a finished frame or receiver.”<sup>20</sup>

By defining the term “firearm” as “a firearm as defined in California Penal Code, Section 16520, as may be amended from time to time,” absent any further clarification, the Proposed Ordinance is unconstitutionally vague. Penal Code section 16520 provides multiple definitions for the term “firearm” as it applies to specific provisions of the California Penal Code relating to firearms. While some items may be considered firearms for the purposes of one definition provided under Penal Code section 16520, those same items may not be considered firearms under other provisions of Penal Code section 16520.

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<sup>17</sup> Cal. Penal Code § 16520(d).

<sup>18</sup> Cal. Penal Code § 16520(e).

<sup>19</sup> Cal. Penal Code § 16520(f).

<sup>20</sup> Cal. Penal Code § 16520(g).

Because the proposed definition for the term “firearm” fails to provide adequate notice to persons of ordinary intelligence as to what specific firearms must be secured in a locked container, and otherwise fails to provide sufficient standards to prevent arbitrary and discriminatory enforcement, the Proposed Ordinance is unconstitutionally vague and unenforceable.

### III. THE PROPOSED ORDINANCE IS PREEMPTED BY STATE LAW

Under the preemption doctrine, a local law will be struck down if it duplicates state law, conflicts with state law, or enters into a field wholly occupied by the state to the exclusion of local regulation, either expressly or by implication.<sup>21</sup> A local law “*duplicates* state law when it is “coextensive” with state law.”<sup>22</sup> A local law “*contradicts* state law when it is inimical to or cannot be reconciled with state law.”<sup>23</sup>

Here, the Proposed Ordinance dictates the manner in which residents keep their firearms within their own homes, and requires anyone who resides in San José to keep their firearms in a locked container or disabled with a trigger lock upon leaving their residence.

#### a. The Proposed Ordinance Contradicts State Law

California maintains a comprehensive set of statutes, creating criminal and/or civil liability for the improper storage of a firearm whenever a minor or prohibited person accesses a firearm and uses that firearm to cause death or bodily injury or carries it to a public place.<sup>24</sup> Liability for such is subject to an equally comprehensive set of exceptions.<sup>25</sup>

Specifically, state law exempts one from liability whenever: (1) the firearm is kept in a locked container; (2) the firearm is kept in a location a reasonable person would believe to be secure; (3) the firearm is carried on one’s person or the firearm is kept in close enough proximity to the person to be retrieved and used as if it were carried on one’s person; or (4) the firearm is locked by a locking device.<sup>26</sup>

By its express terms, the Proposed Ordinance strips from ordinary San José residents the right to engage in behavior specifically deemed lawful by the state. For it flatly denies individuals two options explicitly authorized by state law—i.e., to keep their firearms in a secure location (locked or not) or to keep the firearm under their immediate control—thereby contradicting state law.

#### b. The Proposed Ordinance Enters an Area Fully Occupied by State Law

In addition to the above, a local law is impliedly preempted by state law when it encroaches on an area of law occupied by state law. This occurs when either:

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<sup>21</sup> Cal. Const., art. XI, § 7; *O’Connell v. City of Stockton*, 41 Cal.4th 1061, 1067 (2007); *Fiscal v. City & Cty. of San Francisco*, 158 Cal.App.4th 895, 903-04 (2008).

<sup>22</sup> *O’Connell*, 41 Cal.4th at 1068.

<sup>23</sup> *Id.*

<sup>24</sup> Cal. Penal Code §§ 25100-25135, 25200-25225.

<sup>25</sup> Cal. Penal Code §§ 25105(a-g), 25135(a)(1-6), 25205.

<sup>26</sup> Cal. Penal Code §§ 25105(a-g), 25135(a)(1-6), 25205.

- (1) The subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern;
- (2) The subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or,
- (3) The subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the locality.<sup>27</sup>

As discussed above, the storage of firearms is fully and completely regulated by state law. In addition to California's negligent storage provision, any firearm sold by a California licensed firearms dealer must include a firearm safety device.<sup>28</sup> Dealers must also obtain an affidavit from customers who purchase long guns stating ownership of a gun safe or lock box.<sup>29</sup> To be an approved firearm safety device, DOJ conducts rigorous safety tests to ensure they "significantly reduce the risk of firearm-related injuries to children 17 years of age and younger."<sup>30</sup> There are also several storage requirements that apply to anyone living with another individual who is prohibited by state or federal law from owning firearms.<sup>31</sup>

Because California's firearm storage scheme is so comprehensive, any local interference with that scheme (except that which was expressly authorized) is preempted.

#### IV. CONCLUSION

Our clients understand the need to combat the criminal misuse of firearms and to prevent accidental injuries. To that end, they have a number of programs available to the City upon request.<sup>32</sup> These include firearm safety training,<sup>33</sup> the Eddie Eagle GunSafe® Program,<sup>34</sup> the National School

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<sup>27</sup> *Fiscal*, 158 Cal.App.4th at 904.

<sup>28</sup> Cal. Penal Code § 23635(a).

<sup>29</sup> See *BOF 978 (Rev. 01/2013): Affidavit Stating Ownership of a Gun Safe or Lock Box*, California Department of Justice, Bureau of Firearms, [https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/forms/bof\\_978.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/forms/bof_978.pdf) (Jan. 2013).

<sup>30</sup> Cal. Penal Code § 23650(a).

<sup>31</sup> Cal. Penal Code § 25135.

<sup>32</sup> <https://explore.nra.org/interests/safety-and-education/>.

<sup>33</sup> <https://explore.nra.org/interests/firearms-training/>. With roughly 1 million people attending NRA training courses annually, the NRA is recognized nationally as the Gold Standard for firearm safety training.

<sup>34</sup> <https://eddieeagle.nra.org/>. The Eddie Eagle GunSafe® program is a gun accident prevention program that seeks to help parents, law enforcement, community groups and educators navigate a topic paramount to our children's safety, teaching children when they see a gun to "Stop! Don't touch! Leave the Area, and tell an adult."

Shield Program,<sup>35</sup> and youth-specific programs designed to teach firearm safety and responsibility.<sup>36</sup> Each of these programs have proven to reduce accidental gun deaths and promote public safety—more so than any gun-control law can hope to achieve. Instead of adopting the Proposed Ordinance, we ask the City of San José to consider such alternatives.

For these reasons, we strongly encourage the City Council to reject the Proposed Ordinance. If you have any questions or concerns regarding the content of this correspondence, please feel free to contact us at your convenience.

Sincerely,  
**Michel & Associates, P.C.**



Matthew D. Cubeiro

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<sup>35</sup> <https://www.nationalschoolshield.org/>. The National School Shield program is committed to addressing the many facets of school security, including best practices in security infrastructure, technology, personnel, training, and policy.

<sup>36</sup> <http://youth.nra.org/>.



ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE  
AMENDING CHAPTER 10.32 OF TITLE 10 OF THE  
SAN JOSE MUNICIPAL CODE TO ADD A NEW PART  
5 TO REQUIRE SAFE STORAGE OF FIREARMS IN A  
RESIDENCE, AS DEFINED**

**WHEREAS**, firearm injuries have a significant adverse public health and safety impact nationally, in the State of California, and locally; and

**WHEREAS**, the Santa Clara County Public Health Department issued a report on firearm injuries in October 2015. In 2013, 12% of injury deaths were due to firearms injuries. During the period 2004-2013, there were an average of 44 deaths per year due to self-inflicted/suicide from firearms injuries, and an average of 28 deaths per year due to assault/homicide from firearms injuries. Self-inflicted/suicide accounted for the highest percentage of deaths (59%) from firearms injuries, with assault/homicide accounting for 37% of deaths from firearm injuries.

**WHEREAS**, unlocked guns in the home are susceptible to theft during burglaries. According to a November 2012 report of data from the Bureau of Justice Statistics—a program of the United States Department of Justice—an average of approximately 172,000 firearms were stolen each year during burglaries over the six-year period from 2005 through 2010. At least 80% or an annual average of at least 135,000 of these stolen firearms were never recovered by police; and

**WHEREAS**, according to a report by the Bureau of Alcohol, Tobacco and Firearms, private individuals in California reported over 10,000 lost or stolen firearms in 2012. The actual number of stolen guns is likely higher because California law does not currently require gun owners to report the theft of a firearm, although gun owners in

California are required to report the loss or theft of a firearm beginning July 1, 2017;  
and

**WHEREAS**, according to the San Jose Police Department, during the period from May 1, 2014 through April 30, 2017, 286 firearms were reported stolen out of 9270 residential burglaries reported in the City of San Jose.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF  
SAN JOSE:**

A new Part is added to Chapter 10.32 of Title 10 of the San José Municipal Code, to be numbered, entitled, and to read as follows:

**Part 5  
SAFE STORAGE OF FIREARMS IN A RESIDENCE**

**10.32.160 Definitions**

As used in this Part, the following terms have the following meaning:

- A. "Firearm" means a firearm as defined in California Penal Code, Section 16520, as may be amended from time to time.
  
- B. "Locked Container" means a locked container as defined in California Penal Code Section 16850, as amended from time to time, and is listed on the California Department of Justice Bureau of Firearms roster of approved firearm safety devices.

- C. "Residence" means any structure intended or used for human habitation, including but not limited to houses, condominiums, rooms within a Residence, in-law units, motels, hotels, single room occupancy units, time shares, and recreational and other vehicles where human habitation occurs.
  
- D. "Trigger Lock" means a trigger lock that is listed on the California Department of Justice's roster of approved firearms safety devices, and that is identified as appropriate for that firearm by reference to either the manufacturer and model of the firearm or to the physical characteristics of the firearm that match those listed on the roster for use with the device under California Penal Code Section 23635, as may be amended from time to time.

**10.32.170 Firearms in Residence -- Prohibition**

A person who owns or possesses a Firearm and keeps it in his or her Residence shall store the Firearm in a Locked Container or disable the Firearm with a Trigger Lock upon leaving the Residence.

RD:CBM:KML  
7/28/2017

PASSED FOR PUBLICATION of title this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk

Dear Mayor Sam Lccardo, Johnny Khamis (D10), City Manager Norberto Duenas and the City Clerk,

I object to the safe storage ordinance for the following reasons. This is being emailed at 4PM on Monday October 16<sup>th</sup>, 2017.

The “Safe Storage” ordinance (17 October, 2017 Council agenda item 17-065) sounds sensible, but it is just the opposite. It harms public safety – not improves it.

**A. Prevents self-protection.** Studies show that firearms can’t be unlocked in time to respond to a typical break-in. Neither key locks, biometric locks, or safes can be reliably opened in less time than the 60 seconds<sup>1</sup> or less needed for a typical home invasion. Gun owners are required to lock all guns when leaving their dwelling – rendering other family members defenseless. Meanwhile SJPD’s response time is far below their target.

**B. Impacts vulnerable.** Seniors and physically challenged are often targeted, yet unable to quickly respond. The ordinance disproportionately jeopardizes the safety of vulnerable residents.

**C. Ineffective.** These laws don’t work. Proponents lack any credible evidence that it does<sup>2</sup>. Negligent adults and criminals don’t obey laws. So-called “safe storage” laws haven’t reduced theft or shootings. A cable-locked gun can’t be fired, but can be stolen.

Responsible gun owners already secure their firearms. Proponents have failed to show the ordinance will change any behavior.

**D. Dangerous.** Guns can be fired with trigger locks installed. They can be attached to a loaded gun – a cable lock can’t. A trigger lock is “a disaster waiting to happen”<sup>3</sup>

**E. Redundant.** Child endangerment laws already allow felony prosecution where guns are accessible to children or unsecured guns are used by minors.

**F. Unenforceable.** Guns must be locked any time a gun owner leaves their dwelling – not their property. Sweep the porch, take out trash, or use the kitchen when renting a room? You violate the ordinance unless all firearms are locked anytime you leave your locked room or dwelling.

SJPD Chief Garcia demurred when asked about enforceability at the at the September, 2016 Rules Committee meeting. *The ordinance only creates scofflaws – not improved public safety.*

**G. Hypocritical.** Since 2010, Bay Area law enforcement have lost over 944 guns.<sup>4</sup> SJPD have lost about 1/3<sup>rd</sup> – 327. The City of San Jose is listed as dispensing free gun cable

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<sup>1</sup> Source: FBI and Bureau of Justice Statistics <https://ucr.fbi.gov/> & <https://www.bjs.gov/>

<sup>2</sup> Actually there is a negative correlation. Locales with such regulations have worse crime rate trends. Source: <http://www.gunfacts.info/>

<sup>3</sup> [https://www.youtube.com/watch?v=S\\_4QvNmfti4](https://www.youtube.com/watch?v=S_4QvNmfti4)

<sup>4</sup> <http://extras.mercurynews.com/policeguns/>

locks upon request under the Federally financed Project ChildSafe<sup>5</sup> program. But the program is not mentioned on any City website, nor is it otherwise publicized. SJPD reported approximately 300 undistributed free gun cable locks.<sup>6</sup>

SJPD fails to address the estimated hundreds of Armed Prohibited Persons in San Jose. SJPD asserts it is a State law enforcement problem<sup>7</sup>, yet fails to monitor results or hold State law enforcement accountable.

Sincerely,

Richard J Tobias  
Resident of D10 - 95120

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<sup>5</sup> <http://www.projectchildsafesafe.org/>

<sup>6</sup> Oct 1, 2015 Response to Public Records Request

<sup>7</sup> Dec 1, 2016 Response to Public Records Request

**From:** Buck Cannon <>  
**Sent:** Monday, October 16, 2017 4:31 PM  
**Subject:** No new Gun Control. No on SJ Gun Storage Ordinance

I am a San Jose resident and voter. I oppose the San Jose Gun Storage Ordinance.

This proposed ordinance does nothing to promote public safety, and instead create a dangerous patchwork of laws that can easily trap unwitting, law-abiding gun owners in criminal prosecution.

Even the Chief of Police noted that a “violation of such an ordinance would likely not come to light unless officers were called to a home or business on a report of a burglary or other criminal activity,” making it clear that such ordinances are only enforced after the fact and usually against crime victims.

California law already has a comprehensive set of laws regarding the negligent storage of firearms in one’s home, which already address every point of concern raised by the Chief.

**From:** jburnette >  
**Sent:** Monday, October 16, 2017 4:29 PM  
**To:** City Clerk  
**Subject:** Locked Storage Ordinance

City Council,

Please do not approve the ill-conceived Locked Storage Ordinance for [guns.lt](http://guns.lt) does nothing to enhance public safety.

Gerald Burnette,  
Concerned citizen.

**From:** Walt/3 <

**Sent:** Monday, October 16, 2017 4:28 PM

**To:** City Clerk

**Subject:** Agenda item 17-065 is insufficiently researched, inadequate for its intended purpose and innane

The Council must do their due diligence and not pass rules and regulations that are asinine like this. Do your job! This is an embarrassment to the citizens of this city!

Walt Roseberry

The “Safe Storage” ordinance (17 October, 2017 Council agenda item 17-065) sounds sensible, but it is just the opposite. It harms public safety – not improves it.

**A. Prevents self-protection.** Studies show that firearms can’t be unlocked in time to respond to a typical break-in. Neither key locks, biometric locks, or safes can be reliably opened in less time than the 60 seconds<sup>1</sup> or less needed for a typical home invasion. Gun owners are required to lock all guns when leaving their dwelling – rendering other family members defenseless. Meanwhile SJPD’s response time is far below their target.

**B. Impacts vulnerable.** Seniors and physically challenged are often targeted, yet unable to quickly respond. The ordinance disproportionally jeopardizes the safety of vulnerable residents.

**C. Ineffective.** These laws don’t work. Proponents lack any credible evidence that it does<sup>2</sup>. Negligent adults and criminals don’t obey laws. So-called “safe storage” laws haven’t reduced theft or shootings. A cable-locked gun can’t be fired, but can be stolen.

Responsible gun owners already secure their firearms. Proponents have failed to show the ordinance will change any behavior.

**D. Dangerous.** Guns can be fired with trigger locks installed. They can be attached to a loaded gun – a cable lock can’t. A trigger lock is “a disaster waiting to happen”<sup>3</sup>

**E. Redundant.** Child endangerment laws already allow felony prosecution where guns are accessible to children or unsecured guns are used by minors.

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<sup>1</sup> Source: FBI and Bureau of Justice Statistics <https://ucr.fbi.gov/> & <https://www.bjs.gov/>

<sup>2</sup> Actually there is a negative correlation. Locales with such regulations have worse crime rate trends. Source: <http://www.gunfacts.info/>

<sup>3</sup> [https://www.youtube.com/watch?v=S\\_4QvNmfti4](https://www.youtube.com/watch?v=S_4QvNmfti4)



F. **Unenforceable.** Guns must be locked any time a gun owner leaves their dwelling – not their property. Sweep the porch, take out trash, or use the kitchen when renting a room? You violate the ordinance unless all firearms are locked anytime you leave your locked room or dwelling.

SJPD Chief Garcia demurred when asked about enforceability at the at the September, 2016 Rules Committee meeting. *The ordinance only creates scofflaws – not improved public safety.*

G. **Hypocritical.** Since 2010, Bay Area law enforcement have lost over 944 guns.<sup>4</sup> SJPD have lost about 1/3<sup>rd</sup> – 327. The City of San Jose is listed as dispensing free gun cable locks upon request under the Federally financed Project ChildSafe<sup>5</sup> program. But the program is not mentioned on any City website, nor is it otherwise publicized. SJPD reported approximately 300 undistributed free gun cable locks.<sup>6</sup>

SJPD fails to address the estimated hundreds of Armed Prohibited Persons in San Jose. SJPD asserts it is a State law enforcement problem<sup>7</sup>, yet fails to monitor results or hold State law enforcement accountable.

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<sup>4</sup> <http://extras.mercurynews.com/policeguns/>

<sup>5</sup> <http://www.projectchildsafesafe.org/>

<sup>6</sup> Oct 1, 2015 Response to Public Records Request

<sup>7</sup> Dec 1, 2016 Response to Public Records Request

**From:** Rod Steel < >

**Sent:** Monday, October 16, 2017 4:23 PM

**Subject:** I Oppose SJ Gun Storage Ordinance

I am a voter in San Jose and I oppose the SJ Gun Storage Ordinance.

Gun control is an issue for state law, not local government.

Further, mandatory locked storage ordinances do nothing to promote public safety, and instead create a dangerous patchwork of laws that can easily trap unwitting, law-abiding gun owners in criminal prosecution. Even the Chief of Police noted that a “violation of such an ordinance would likely not come to light unless officers were called to a home or business on a report of a burglary or other criminal activity,” making it clear that such ordinances are only enforced after the fact and usually against crime victims. What’s more, California law already has a comprehensive set of laws regarding the negligent storage of firearms in one’s home, which already address every point of concern raised by the Chief.

**From:** Gratitude Gratitude < >  
**Sent:** Monday, October 16, 2017 4:08 PM  
**Subject:** OPPOSE: SJ Gun Storage Ordinance

I am an active San Jose voter and I OPPOSE the Gun Storage Ordinance on the October 17, 2017 City Council meeting.

Local anti-gun ordinances do nothing to promote public safety, and instead create a dangerous patchwork of laws that can easily trap unwitting, law-abiding gun owners in criminal prosecution. Even the Chief of Police noted that a “violation of such an ordinance would likely not come to light unless officers were called to a home or business on a report of a burglary or other criminal activity,” making it clear that such ordinances are only enforced after the fact and usually against crime victims. What’s more, California law already has a comprehensive set of laws regarding the negligent storage of firearms in one’s home, which already address every point of concern raised by the Chief.

**From:** Larry Barras  
**Sent:** Monday, October 16, 2017 3:35 PM  
**To:** City Clerk  
**Subject:** Opposition to Locked Firearm Storage Ordinance

Dear City Clerk and Council,

I am writing to oppose this legislation. It is completely unnecessary and only serves to further complicate the lives of lawful firearms owners. I have searched the records of Santa Clara county and can find not a single instance where this legislation would have prevented a single injury or death.

Please, vote down this completely unnecessary and pointless legislation.

Larry Barras  
Delynn Way  
San Jose, CA 95125

**From:** John Mosher < >

**Sent:** Monday, October 16, 2017 3:30 PM

**To:** City Clerk

**Subject:** San Jose City Council to Consider Mandatory Locked Storage Ordinance

Good Day,

I am writing in regards to this new legislation that is going to be reviewed tomorrow. I get the concern in regards to gun safety but don't we already have laws inducted by the state which has requirements in regards to this.

I ask that you please do not pass this proposal

Thank you

John H Mosher

**From:** Matt Purkeypile < >

**Sent:** Monday, October 16, 2017 2:59 PM

**To:** City Clerk

**Subject:** Not in favor of locked fire arm proposal

I am writing to express my opposition to the proposal being discussed tomorrow require locking of fire arms.

Matt Purkeypile

Jacob Ave

San Jose, CA

**From:** behalf of Dave Truslow < >  
**Sent:** Tuesday, October 17, 2017 8:23 AM  
**To:** Jimenez, Sergio  
**Cc:** City Clerk  
**Subject:** Instead of Item 17-065 Gun Control, Do These

Sergio,

I very much appreciate your support for our gang prevention programs and hope you will oppose 17-065.

Our laws did not dissuade criminals from breaking into the mayor's home, or others. They did not prevent violent home invasions that resulted in the brutal beating death of "Miss Flo" or recent other deaths and injuries. However a San Jose homeowner last weekend was able to respond to an armed attack when he fought back with his gun. The proposed ordinance prevents self-defense.

Ordinances such as 17-065 don't improve public safety. I wish it were otherwise, but facts don't support it\*.

Further, no gun owner or law enforcement officer that I've spoken with has indicated they will change their behavior. Like the rescinded fireworks fines, 17-065 just creates contempt rather than a safer San Jose.

I'm also baffled why the ordinance targets residents, but not businesses. The DOJ reports about 26% of burglarized guns originate from businesses.

Since these "safe storage" laws can't be effectively enforced (per Chief Garcia's comments in September, 2016), what should we be doing?

1. Investigate the 456 Armed Prohibited Persons DA Jeff Rosen's letter says reside in San Jose. SJPD advised me they don't pursue or track such cases - they claim it's a State responsibility.

2. Activate San Jose's Project ChildSafe program - or hand off responsibility from SJPD to another City agency or one of the local non-profit gun groups e.g., Santa Clara Valley Rifle Club is a (c)(7); Bayprofs, a (c)(3); Santa Clara County NRA chapter a (c)(3). All provide public education programs.

SJPD reports about 300 gun locks that were acquired for free distribution as part of ProjectChildSafe. They have been languishing for years because SJPD has neglected to maintain the program.

3. Activate Eddy Eagle and Refuse To Be A Victim programs - PRNS would be the logical lead. Eddy Eagle educates children on what to do if a gun is encountered. RTBAV is a half-day class that teaches adults how to minimize their victim risk. The firearms component is optional but only a few minutes when included. Grants are available for both. There could be no direct cost.

4. Budget funds for public awareness for proper firearms storage and mental health awareness. Chief Garcia has repeatedly cited mental illness as a significant factor in many officer involved shootings.

Please vote No on 17-065 and support effective measures that actually improve public safety.

\* see attached

Best,  
-dave truslow

The “Safe Storage” ordinance (17 October, 2017 Council agenda item 17-065) sounds sensible, but it is just the opposite. It harms public safety – not improves it.

- A. **Prevents self-protection.** Studies show that firearms can’t be unlocked in time to respond to a typical break-in. Neither key locks, biometric locks, or safes can be reliably opened in less time than the 60 seconds<sup>1</sup> or less needed for a typical home invasion. Gun owners are required to lock all guns when leaving their dwelling – rendering other family members defenseless. Meanwhile SJPD’s response time is far below their target.
- B. **Impacts vulnerable.** Seniors and physically challenged are often targeted, yet unable to quickly respond. The ordinance disproportionately jeopardizes the safety of vulnerable residents.
- C. **Ineffective.** These laws don’t work. Proponents lack any credible evidence that it does<sup>2</sup>. Negligent adults and criminals don’t obey laws. So-called “safe storage” laws haven’t reduced theft or shootings. A cable-locked gun can’t be fired, but can be stolen.

Responsible gun owners already secure their firearms. Proponents have failed to show the ordinance will change any behavior.

- D. **Dangerous.** Guns can be fired with trigger locks installed. They can be attached to a loaded gun – a cable lock can’t. A trigger lock is “a disaster waiting to happen”<sup>3</sup>
- E. **Redundant.** Child endangerment laws already allow felony prosecution where guns are accessible to children or unsecured guns are used by minors.
- F. **Unenforceable.** Guns must be locked any time a gun owner leaves their dwelling – not their property. Sweep the porch, take out trash, or use the kitchen when renting a room? You violate the ordinance unless all firearms are locked anytime you leave your locked room or dwelling.

SJPD Chief Garcia demurred when asked about enforceability at the at the September, 2016 Rules Committee meeting. *The ordinance only creates scofflaws – not improved public safety.*

- G. **Hypocritical.** Since 2010, Bay Area law enforcement have lost over 944 guns.<sup>4</sup> SJPD have lost about 1/3<sup>rd</sup> – 327. The City of San Jose is listed as dispensing free gun cable locks upon request under the Federally financed Project ChildSafe<sup>5</sup> program. But the program is not mentioned on any City website, nor is it otherwise publicized. SJPD reported approximately 300 undistributed free gun cable locks.<sup>6</sup>

SJPD fails to address the estimated hundreds of Armed Prohibited Persons in San Jose. SJPD asserts it is a State law enforcement problem<sup>7</sup>, yet fails to monitor results or hold State law enforcement accountable.

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<sup>1</sup> Source: FBI and Bureau of Justice Statistics <https://ucr.fbi.gov/> & <https://www.bjs.gov/>

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<sup>3</sup> [https://www.youtube.com/watch?v=S\\_4QvNmfti4](https://www.youtube.com/watch?v=S_4QvNmfti4)

<sup>4</sup> <http://extras.mercurynews.com/policeguns/>

<sup>5</sup> <http://www.projectchildsafe.org/>

<sup>6</sup> Oct 1, 2015 Response to Public Records Request

<sup>7</sup> Dec 1, 2016 Response to Public Records Request

**From:** Larry <

**Date:** October 14, 2017 at 11:08:20 AM PDT

**To:** Johnny Khamis <[District10@sanjoseca.gov](mailto:District10@sanjoseca.gov)>

**Subject: Regarding: AMENDING CHAPTER 10.32 OF TITLE 10**

Dear Councilman Johnny Khamis, District 10

Regarding: AMENDING CHAPTER 10.32 OF TITLE 10 OF THE SAN JOSE MUNICIPAL CODE TO ADD A NEW PART 5 TO REQUIRE SAFE STORAGE OF FIREARMS IN A RESIDENCE

Please Listen to reason rather than falling victim to emotional fear.

Consider educating the public over legislating unenforceable laws that burden over worked police staff. This kind of legislation makes criminals of unsuspecting, otherwise law abiding, citizens without correcting any of the issues surrounding the fear of firearms.

In fact it can be proven that every attempt to stem the flow of ever more powerful and faster firearms merely stimulates criminal subterfuge and human ingenuity.

Pandering to the fearful will not solve their concerns.

I have been around firearms for hunting tools and as a hobby my entire 75 years without any unfortunate incident or inadvertent loss. I owe this to a broad education and concerns for safety and security.

I would be happy to meet with you and discuss what I teach firearms advocates and those new to the tradition. As your district constituent who voted for you I hope you would entertain my offer to sit and visit regarding this issue.

At your service.

Mr. Lawrence A. Townsend  
Foothill Drive  
San Jose, CA 95123-4549

**From:** Ronald Halfhill Dba Verdant Ventures <t>

**Sent:** Monday, October 16, 2017 5:14 PM

**To:**

**Cc:** City Clerk

**Subject:** Re: 17-065

Councilmembers

:

Please consider carefully the attached statements regarding upcoming legislation, specifically: The “Safe Storage” ordinance (17 October, 2017 Council agenda item 17-065) sounds sensible, but it is just the opposite. It harms public safety – not improve it. If you wish to give criminals the advantage, the proposed ordinance is for you; if not, defeat this ordinance. This ordinance will not prevent any more mass shootings like what happened recently in Las Vegas; those firearms were reportedly bought legally. What WILL prevent more of them is the vigorous regulation and revision of the profession of psychiatry and the practitioners of that profession who prescribe mood altering psych drugs known to cause depression and aggressive tendencies, and which have been the one common element among the past mass shootings since Columbine. All the shooters were on or had been on psych drugs known for such behaviour displayed by the shooters. Access to firearms will not be significantly impeded by this proposed ordinance because criminals or the criminally inclined will be able to get them almost anywhere without having to break into some responsible firearm owner's residence. News flash: Criminals do NOT obey laws !!!!! Was access to alcohol significantly impeded by Prohibition? No. It merely made criminals out of otherwise responsible citizens, and diverted law enforcement from enforcing more heinous crimes

The “Safe Storage” ordinance (17 October, 2017 Council agenda item 17-065) sounds sensible, but it is just the opposite. It harms public safety – not improves it.

A. Prevents self-protection. Studies show that firearms can't be unlocked in time to respond to a typical breakin.

Neither key locks, biometric locks, or safes can be reliably opened in less time than the 60 seconds<sup>1</sup> or less

needed for a typical home invasion. Gun owners are required to lock all guns when leaving their dwelling –

rendering other family members defenseless. Meanwhile SJPD's response time is far below their target.

B. Impacts vulnerable. Seniors and physically challenged are often targeted, yet unable to quickly respond. The ordinance disproportionately jeopardizes the safety of vulnerable residents.

C. Ineffective. These laws don't work. Proponents lack any credible evidence that it does<sup>2</sup>.

Negligent adults and

criminals don't obey laws. So-called “safe storage” laws haven't reduced theft or shootings. A cable-locked

gun can't be fired, but can be stolen.

Responsible gun owners already secure their firearms. Proponents have failed to show the



ordinance will  
change any behavior.

D. Dangerous. Guns can be fired with trigger locks installed. They can be attached to a loaded gun – a cable lock can't. A trigger lock is “a disaster waiting to happen”<sup>3</sup>

E. Redundant. Child endangerment laws already allow felony prosecution where guns are accessible to children or unsecured guns are used by minors.

F. Unenforceable. Guns must be locked any time a gun owner leaves their dwelling – not their property. Sweep the porch, take out trash, or use the kitchen when renting a room? You violate the ordinance unless all firearms are locked anytime you leave your locked room or dwelling. SJPD Chief Garcia demurred when asked about enforceability at the at the September, 2016 Rules Committee meeting. The ordinance only creates scofflaws – not improved public safety.

G. Hypocritical. Since 2010, Bay Area law enforcement have lost over 944 guns.<sup>4</sup> SJPD have lost about 1/3rd – 327. The City of San Jose is listed as dispensing free gun cable locks upon request under the Federally financed Project ChildSafe<sup>5</sup> program. But the program is not mentioned on any City website, nor is it otherwise publicized. SJPD reported approximately 300 undistributed free gun cable locks.<sup>6</sup> SJPD fails to address the estimated hundreds of Armed Prohibited Persons in San Jose. SJPD asserts it is a State law enforcement problem<sup>7</sup>, yet fails to monitor results or hold State law enforcement accountable.

1 Source: FBI and Bureau of Justice Statistics <https://ucr.fbi.gov/> & <https://www.bjs.gov/>

2 Actually there is a negative correlation. Locales with such regulations have worse crime rate trends. Source:

<http://www.gunfacts.info/>

3 [https://www.youtube.com/watch?v=S\\_4QvNmfti4](https://www.youtube.com/watch?v=S_4QvNmfti4)

4 <http://extras.mercurynews.com/policeguns/>

5 <http://www.projectchilddsafe.org/>

6 Oct 1, 2015 Response to Public Records Request

7 Dec 1, 2016 Response to Public Records Request

**Ron Halfhill, Assoc. AIA**  
**Canoas Garden Ave.**  
**San Jose, CA 95125**

**From:** Paul Ellis <>

**Sent:** Monday, October 16, 2017 5:32 PM

**To:** Liccardo, Sam; Jones, Chappie; Jimenez, Sergio; Peralez, Raul; Diep, Lan; Carrasco, Magdalena; Davis, Dev; Nguyen, Tam; slyvia.arenas@sanjoseca.gov; don.rocha@sanjoseca.gov; Khamis, Johnny; Duenas, Norberto; Sykes, Dave

**Cc:** City Clerk

**Subject:** Please Vote "No" on agenda item 17-065

I urge you to vote no on subject item agenda and offer the following input for your consideration:

The "Safe Storage" ordinance (17 October, 2017 Council agenda item 17-065) sounds sensible, but it is just the opposite. It harms public safety – not improves it.

- A. **Prevents self-protection.** Studies show that firearms can't be unlocked in time to respond to a typical break-in. Neither key locks, biometric locks, or safes can be reliably opened in less time than the 60 seconds<sup>[1]</sup> or less needed for a typical home invasion. Gun owners are required to lock all guns when leaving their dwelling – rendering other family members defenseless. Meanwhile SJPD's response time is far below their target.
- B. **Impacts vulnerable.** Seniors and physically challenged are often targeted, yet unable to quickly respond. The ordinance disproportionately jeopardizes the safety of vulnerable residents.
- C. **Ineffective.** These laws don't work. Proponents lack any credible evidence that it does<sup>[2]</sup>. Negligent adults and criminals don't obey laws. So-called "safe storage" laws haven't reduced theft or shootings. A cable-locked gun can't be fired, but can be stolen.  
  
Responsible gun owners already secure their firearms. Proponents have failed to show the ordinance will change any behavior.
- D. **Dangerous.** Guns can be fired with trigger locks installed. They can be attached to a loaded gun – a cable lock can't. A trigger lock is "a disaster waiting to happen"<sup>[3]</sup>
- E. **Redundant.** Child endangerment laws already allow felony prosecution where guns are accessible to children or unsecured guns are used by minors.
- F. **Unenforceable.** Guns must be locked any time a gun owner leaves their dwelling – not their property. Sweep the porch, take out trash, or use the kitchen when renting a room? You violate the ordinance unless all firearms are locked anytime you leave your locked room or dwelling.

SJPD Chief Garcia demurred when asked about enforceability at the at the September, 2016

Rules Committee meeting. *The ordinance only creates scofflaws – not improved public safety.*

G. **Hypocritical.** Since 2010, Bay Area law enforcement have lost over 944 guns.<sup>[4]</sup> SJPDP have lost about 1/3<sup>rd</sup>– 327. The City of San Jose is listed as dispensing free gun cable locks upon request under the Federally financed Project ChildSafe<sup>[5]</sup> program. But the program is not mentioned on any City website, nor is it otherwise publicized. SJPDP reported approximately 300 undistributed free gun cable locks.<sup>[6]</sup>

SJPDP fails to address the estimated hundreds of Armed Prohibited Persons in San Jose. SJPDP asserts it is a State law enforcement problem<sup>[7]</sup>, yet fails to monitor results or hold State law enforcement accountable.

[1] Source: FBI and Bureau of Justice Statistics <https://ucr.fbi.gov/> & <https://www.bjs.gov/>

[1] Actually there is a negative correlation. Locales with such regulations have worse crime rate trends. Source: <http://www.gunfacts.info/>

[1] [https://www.youtube.com/watch?v=S\\_4QvNmfti4](https://www.youtube.com/watch?v=S_4QvNmfti4)

[1] <http://extras.mercurynews.com/policeguns/>

[1] <http://www.projectchildsafe.org/>

[1] Oct 1, 2015 Response to Public Records Request

[1] Dec 1, 2016 Response to Public Records Request

Regards,  
Paul Ellis

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**REMEMBER: *If you forward this, please remove email addresses before you send it on, and use the BCC area when sending to several people at once.* Be Kind to Your Email Friends**

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[1] Source: FBI and Bureau of Justice Statistics <https://ucr.fbi.gov/> & <https://www.bjs.gov/>

[2] Actually there is a negative correlation. Locales with such regulations have worse crime rate trends. Source: <http://www.gunfacts.info/>

[3] [https://www.youtube.com/watch?v=S\\_4QvNmfti4](https://www.youtube.com/watch?v=S_4QvNmfti4)

[4] <http://extras.mercurynews.com/policeguns/>

[5] <http://www.projectchildsafe.org/>

[6] Oct 1, 2015 Response to Public Records Request

[7] Dec 1, 2016 Response to Public Records Request

-----Original Message-----

From: Jerry Jeska < >

To: mayoremail <mayoremail@sanjoseca.gov>; district1 <district1@sanjoseca.gov>; district2 <district2@sanjoseca.gov>; district3 <district3@sanjoseca.gov>; district4 <district4@sanjoseca.gov>; district5 <district5@sanjoseca.gov>; district6 <district6@sanjoseca.gov>; district7 <district7@sanjoseca.gov>; district8 <district8@sanjoseca.gov>; district9 <district9@sanjoseca.gov>; district10 <district10@sanjoseca.gov>

Sent: Wed, Oct 11, 2017 10:17 pm

Subject: gun control measure on 10/17/17

Dear San Jose Mayor and City Council members:

As a friend of mine sent to the District 4 Council member, "I was just notified by a third party that the City Council is set to vote on a gun control measure on 10/17/17.

A matter of this importance that affects as many people as it does should be scheduled for an evening meeting and publicized well in advance so people who have day jobs can attend."

Best regards,

Jerry Jeska  
long-time San Jose resident

**From:** Jess B. Guy <j >  
**Sent:** Monday, October 16, 2017 9:28 PM  
**To:** City Clerk  
**Subject:** Proposed Firearms Storage Ordinance

I stand in opposition to the proposed ordinance requiring safe storage of firearms in a residence.

The ordinance dictates to honest citizens what they must do in the privacy of their own homes/bedrooms. This fact alone should be reason enough to quash such an attempt to control our lives.

Safe firearms storage and handling is taught by numerous pro-gun organizations. The City of San Jose has seen fit to avoid any such education efforts and rely on the politician's greatest gift to a community - another bad law.

We've been down this road before. Ill-informed bureaucrats passing a law and saying, "look what we've done"; imposed another burden on law abiding citizens.

The Chief of Police has stated this law will generally be difficult, if not impossible to enforce. Unless the City Council passes another law allowing the police to enter private residences without a warrant.

Firearms safety is an educational process, not a legislative one.

Jess B. Guy

-----Original Message-----

From: Jerry Jeska <>

To: mayoremail <mayoremail@sanjoseca.gov>

Sent: Wed, Oct 11, 2017 10:46 pm

Subject: Oct. 17meeting re. firearm storage issue

Dear Mayor Licardo and City Council members:

CA Dept. of Justice reports submitted by Attorney General Kamala Harris re. "Firearms Used in Commission of Crimes" in 2014 and 2015 may be of interest regarding the measure being considered by the City Council re. storage of firearms. They seem to indicate stolen firearms, while the dread of legitimate gun owners, are not often used in commission of crimes.

<https://www.oag.ca.gov/sites/all/files/agweb/pdfs/publications/firearms-report-15.pdf>

Notes that, acc. to this report prepared by the California Department of Justice, Bureau of Forensic Services (BFS), for the Legislature as directed by California Penal Code section 34200, in 2015 only "One of the firearms examined was confirmed to have been reported stolen. Ownership status was not determined for many of the firearms examined."

<https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/firearms-report-14.pdf> offering 2014's statistics says, "None of the firearms examined were confirmed to have been reported stolen. Ownership status was not determined for many of the firearms examined."

That this issue was coming before the Council should have been announced earlier. Folks working day-shift jobs need some lead time to arrange absence from work. A good many firearms owners in San Jose have jobs and are too responsible to call in sick at the last minute.

Regards,

Jerry Jeska  
San Jose resident

-----Original Message-----

From: Jerry Jeska <>

To: mayoremail <mayoremail@sanjoseca.gov>

Sent: Fri, Oct 13, 2017 11:32 pm

Subject: "safe" gun storage issue for 10/17 meeting

Dear Mayor Licardo,

One of the reasons I supported your election bid was that, when I asked if you would be pursuing any local firearm regulation, you told me you felt the state regulations were adequate/more appropriate. I trusted you. Please urge the City Council to abandon the firearms storage regulation to be considered in the 10/17 meeting.

The state regulations, some of the most stringent in the nation, have already been carried to the point of their logical absurdity. There is no need for the measure to be considered in the 10/17 council meeting.

I am sure you are aware that Chicago's regulation of firearms is extremely constrictive, yet it has the most firearms inflicted deaths in the nation.

Regards,  
Jerry P. Jeska

**From:** Jerry Jeska <  
**Sent:** Monday, October 16, 2017 10:07 PM  
**To:** City Clerk; dave.sikes@sanjoseca.gov  
**Subject:** Fwd: for Oct. 17 City Council meeting-Item 8.1 (aka Item17-065)

San Jose City Clerk and City Manager:

FYI.

Jerry Jeska

-----Original Message-----

**From:** Jerry Jeska <>  
**To:** district1 <district1@sanjoseca.gov>; district2 <district2@sanjoseca.gov>; district3 <district3@sanjoseca.gov>; district4 <district4@sanjoseca.gov>; district5 <district5@sanjoseca.gov>; district6 <district6@sanjoseca.gov>; district7 <district7@sanjoseca.gov>; district8 <district8@sanjoseca.gov>; district9 <district9@sanjoseca.gov>; district10 <district10@sanjoseca.gov>  
**Sent:** Sun, Oct 15, 2017 10:00 pm  
**Subject:** for Oct. 17 City Council meeting-Item 8.1

Dear Mayor Licardo and SJ City Council:

Re. the "safe firearms storage" measure to be discussed at the SJ City Council meeting:

Please consider that trigger locks are dangerous, especially when an occupant is awakened nervous about the situation and groggy from sleep. (At a community watch meeting a representative of the SJPD pointed out that burglars tend to hit a home around 3 or 4am when residents are usually in a deep state of sleep.) A precept of firearm safety is to never place your finger inside a trigger guard until ready to press the trigger. Removing a lock could cause accidental discharge.

Many residents, such as I, do not have children and even never have unsupervised children in our residences. No children would be imperiled by my not having a firearm locked up.

Partial dismantling of a firearm, with a crucial part hidden or locked up, renders it unusable to a criminal. Example = Some owners of bolt action rifles remove the bolts and hide or store them in a safe as a deterrent to theft.

Re. types of firearms stolen with which to commit crimes: Councilman Peralez could attest that many types of firearms are totally unsuited to the commission of crimes. Examples are bolt-action or single-shot firearms--be they rifles, pistols and shotguns--are examples, as are muzzle-loading or other black-powder guns (antique or reproduction) and many vintage/antique firearms. Why should these be required to be locked up on the unreasonable premise that they might be used in commission of a crime?

Trigger locks can easily be removed with an electric drill and requiring the purchase of a safe is discriminatory against the city's poor.

Please reject the "safe storage of firearms" being considered Oct. 17. The city would do better to mandate that alcoholic beverages be locked up.

Regards,



Jerry Jeska

40+ year San Jose resident and habitual voter

-----Original Message-----

From: Jerry Jeska <>

To: district1 <district1@sanjoseca.gov>; district2 <district2@sanjoseca.gov>; district3 <district3@sanjoseca.gov>; district4 <district4@sanjoseca.gov>; district5 <district5@sanjoseca.gov>; district6 <district6@sanjoseca.gov>; district7 <district7@sanjoseca.gov>; district8 <district8@sanjoseca.gov>; district9 <district9@sanjoseca.gov>; district10 <district10@sanjoseca.gov>

Sent: Mon, Oct 16, 2017 1:24 pm

Subject: Oct. 17 City Council Item 8.1 re. safe firearms storage

Dear San Jose Mayor and City Council:

Please recognize some of the problems with the Safe Storage of Firearms, Item 8.1 on the October 17 City Council meeting agenda.

1: Requiring trigger locks on many firearms is superfluous.

Regarding child safety: It is nearly impossible for a small child to injure himself with a long gun, particularly if it is stored unloaded.

Regarding firearm burglaries with intent to commit future crimes: According to a SJPD representative at a neighborhood watch meeting I recently attended, burglars try to be in and out of a residence in the space of 60 seconds. They do not have time to lug out long guns, and a great percentage of those are bolt operated. The bolts are easily removed and concealed or locked in a safe by the owner—thus rendering them useless. Moreover, bolt action firearms are almost never used in the commission of a crime. Single shot, antique/vintage/replica or black powder (antique, replica or other) firearms are equally useless to a burglar intent on stealing a gun for other criminal activity. **Why mandate that any of these be locked up?** See Attorney General Kamala Harris' "2015 Report on Firearms Used in Commission of Crime".

<https://www.oag.ca.gov/sites/all/files/agweb/pdfs/publications/firearms-report-15.pdf> and the same for 2014 <https://www.oag.ca.gov/sites/all/files/agweb/pdfs/publications/firearms-report-14.pdf>

Legitimate gun owners have the greatest dread of our property being stolen. We will secure it to the best of our ability and would prefer to decide in what manner. Less responsible types will not obey the laws you pass anyway. Let us decide which guns should go in the safe and which can be otherwise secured. Long guns take up room. Storing only rifle **bolts** and handguns in a safe or lock box allows more room in a safe for other items such as slide or semi-automatic operated guns.

(Meaning no disrespect--if you are not familiar with the nomenclature, do not even know, for instance, what a bolt action firearm or what black powder as opposed to modern gunpowder is and their significance of these terms, you should not be making decisions on such matters. When I brought my previous council member to my home to go over some of this, I learned she did not know some of these terms, even the difference between an automatic and a semi-automatic weapon. Councilman Peralez, I am certain, is familiar with the nomenclature and technology.)

Trigger locks: Trigger locks can easily be removed with an electric drill. At that, the gun can still be discharged in the process, possibly injuring the culprit who might then try to sue the rightful owner. Safe firearm practice denotes that no finger or anything else should be

inserted into the trigger guard until one is ready to press the trigger. Awakened in the middle of the night, a groggy, frightened resident (sometimes a female who is possibly not the principal owner/operator should her husband be away) would have to find the key, unlock the trigger lock (without discharging the gun accidentally if already loaded—perhaps having loaded it before remembering to remove the lock), and then load and cock the weapon. Should the gun be a semi-automatic weapon, a round must then be jacked into the chamber. By this time, considerably more time has elapsed than a burglar wants to spend in a house, and considerably more time has elapsed that perpetrators of a home invasion need to subdue a vulnerable family. Police response time? Too late, and not their fault.

Please abandon this misguided attempt. At the very least, the penalty for non-compliance should be reduced to an "infraction" like a parking ticket. The default penalty for SJMC violations is a misdemeanor. \$1,000 fine and/or up to 6 months jail. Maximum penalty would be \$100 fine. Easier too since otherwise city attorney has to file charges. The city's time/money could be better spent securing police firearms, which seems to be the real problem.

Respectfully

Jerry P. Jeska  
40+ year San Jose resident and voter

-----Original Message-----

From: Jerry Jeska <>

To: mayoremail <mayoremail@sanjoseca.gov>

Sent: Wed, Oct 11, 2017 10:46 pm

Subject: Oct. 17meeting re. firearm storage issue

Dear Mayor Licardo and City Council members:

CA Dept. of Justice reports submitted by Attorney General Kamala Harris re. "Firearms Used in Commission of Crimes" in 2014 and 2015 may be of interest regarding the measure being considered by the City Council re. storage of firearms. They seem to indicate stolen firearms, while the dread of legitimate gun owners, are not often used in commission of crimes.

<https://www.oag.ca.gov/sites/all/files/agweb/pdfs/publications/firearms-report-15.pdf>

Notes that, acc. to this report prepared by the California Department of Justice, Bureau of Forensic Services (BFS), for the Legislature as directed by California Penal Code section 34200, in 2015 only "One of the firearms examined was confirmed to have been reported stolen. Ownership status was not determined for many of the firearms examined."

<https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/firearms-report-14.pdf> offering 2014's statistics says, "None of the firearms examined were confirmed to have been reported stolen. Ownership status was not determined for many of the firearms examined."

That this issue was coming before the Council should have been announced earlier. Folks working day-shift jobs need some lead time to arrange absence from work. A good many firearms owners in San Jose have jobs and are too responsible to call in sick at the last minute.

Regards,

Jerry Jeska  
San Jose resident

**From:** Greg Lytle >

**Sent:** Monday, October 16, 2017 10:34 PM

**To:** City Clerk; The Office of Mayor Sam Liccardo; District1; District2; District3; District4; District5; District 6; District7; District8; District9; District 10

**Subject:** Firearm Safe Storage Ordinance

10/16/2017

Re: City Council Meeting 10/17/2017

Agenda item: 8.1 Firearm Safe Storage Ordinance

Mayor and City Councilmembers of the City of San Jose,

I am opposed to the proposed ordinance for the following reasons:

- As drafted, the ordinance defines the term “locked container” by referring to the definition used in the California Penal Code, *but also* requiring the container to be “listed on the California Department of Justice Bureau of Firearms roster of approved firearm safety devices.” But many modern and expensive gun safes are not listed on this roster because they are not required to be. As a result, some of the safest and most secure options for storing firearms will not satisfy the requirements of the proposed ordinance and thus would only serve to penalize the responsible gun owner. The “locked container” requirement and definition in California Penal Code Section 16850 (see below) is specific enough and should suffice.

The requirement to be listed on the roster should be dropped.

16850. As used in this part, “locked container” means a secure container that is fully enclosed and locked by a padlock, keylock, combination lock, or similar locking device. The term “locked container” does not include the utility or glove compartment of a motor vehicle.

- Modification as proposed by Councilmembers Raul Peralez and Chappie Jones in their memorandum dated 10/13/17 "Permitted firearm owners are required to lock their firearms in the home in a lock box or disabled with a trigger lock **at all times** unless carried on their person or under their immediate control." This proposal is a major departure from the original "...upon leaving the Residence" and is exactly the same as alternative policy #1 in the City Attorney Richard Doyle and Assistant City Manager David Sykes memorandum dated 9/25/17 which they recommended **against** for the following reason: "This policy may increase the number of residents wearing weapons on their person when inside their residences, which poses a concern for the safety of San Jose police officers, firefighters, and others who might respond to the

home during a public safety or medical emergency as well as other situations." This modification proposal creates major public safety implications and should be dropped.

- The overall reach of the above proposed modification is excessively intrusive and violates the sanctity of the home. A lawful gun owner has every expectation that the degree of accessibility of firearms within the walls of his/her residence is his/her sole discretion and right. The case of constantly wearing a firearm on one's person at all times is obviously impractical. The definition of "under their immediate control" is too vague and subjective to be of any protection against violation of the ordinance. And lastly, the alternative of being constantly locked denies the lawful gun owner the very purpose of possessing the firearm, i.e. that of self protection. It would be virtually impossible for the gun owner to retrieve the firearm from a locked safe or a trigger lock, quite possibly in another room, in a timely and discrete manner to confront and defend against an intruder/attacker. Self defense is an inalienable right. This ordinance has all the earmarks of denying that right.
- There are an estimated 22,000+ laws and regulations nationwide including federal, state, county, municipality, school, university, hunting and game commission, parks, etc. This is an unwieldy and overly-complex maze which incrementally infringes upon the second amendment of the Bill of Rights. This ordinance just adds to that complexity and infringement.

Gregory A. Lytle  
Falerno Way  
San Jose, CA. 95135

**From:** Jerry Jeska <>

**Sent:** Monday, October 16, 2017 10:35 PM

**To:** District1; District2; District3; District4; District5; District 6; District7; District8; District9; District 10; Sykes, Dave

**Cc:** City Clerk

**Subject:** for Oct. 17 City Council meeting-Agenda Item 8.1, aka Item 17-065

Dear San Jose Mayor Licardo, City Manager and City Council:

Re. the "safe firearms storage" measure, Item 17-065, to be discussed at the 10/17/17 SJ City Council meeting:

Please consider that trigger locks are dangerous, especially when an occupant is awakened nervous about the situation and groggy from sleep. (At a community watch meeting a representative of the SJPd pointed out that burglars tend to hit a home around 3 or 4am when residents are usually in a deep state of sleep.) A precept of firearm safety is to never place your finger inside a trigger guard until ready to press the trigger. Removing a lock could cause accidental discharge.

Many residents, such as I, do not have children and even never have unsupervised children in our residences. No children would be imperiled by my not having a firearm locked up.

Partial dismantling of a firearm, with a crucial part hidden or locked up, renders it unusable to a criminal. Example = Some owners of bolt action rifles remove the bolts and hide or store them in a safe as a deterrent to theft.

Re. types of firearms stolen with which to commit crimes: Councilman Peralez could attest that many types of firearms are totally unsuited to the commission of crimes. Examples are bolt-action or single-shot firearms--be they rifles, pistols and shotguns--are examples, as are muzzle-loading or other black-powder guns (antique or reproduction) and many vintage/antique firearms. Why should these be required to be locked up on the unreasonable premise that they might be used in commission of a crime?

Trigger locks can easily be removed with an electric drill and requiring the purchase of a safe is discriminatory against the city's poor.

Please reject the "safe storage of firearms" being considered Oct. 17. The city would do better to mandate that alcoholic beverages be locked up. (Alcohol, especially when combined with motor vehicles, surely poses more health and societal problems, even to the point of fatalities, than firearms.) As minors have legal difficulties procuring hard liquor, beer and wine, burglaries provide an avenue to secure it.

Regards,

Jerry Jeska  
40+ year San Jose resident and habitual voter

---



**From:** Russ Allred < >  
**Sent:** Tuesday, October 17, 2017 10:34 AM  
**To:** City Clerk  
**Subject:** Opposition to the Firearm Safe Storage Ordinance

Mayor Sam Liccardo and Councilmembers of the City of San José,

Please oppose the Firearm Safe Storage Ordinance proposal up for discussion today. This ordinance should be opposed for the following reasons:

It institutes a large financial burden. Instead of needing one firearm and one safe to protect an entire family, each family member would need to have their own firearm so they can lock it up when they aren't home and their own safe to insure another family member's mistake didn't make them a criminal.

It impedes self-defense. By using the California gun safe standards or requiring a trigger lock, you are greatly increasing the time needed to make a gun ready to fire. Since the City of San José is not a shall issue city for concealed carry weapons and open carry is illegal, home invaders will know the safest time to cause harm is when a person is arriving home.

It leads to more handling of loaded firearms within the home.

It vastly complicates firearm storage for travelers or anyone staying in an RV or Inn.

It is unnecessary. Firearm owners are the ones with the largest incentive to keep their firearms from being stolen. Please leave it to us to handle it.

As someone with San José pride and a nearly lifetime resident I want to thank you for your service and I want to urge you to oppose this burdensome and dangerous ordinance and let us continue to live in the land of the free and the home of the brave.

Russ Allred  
Bend Avenue  
San Jose, CA 95136

**From:** Olga Sharanhovich < >  
**Sent:** Tuesday, October 17, 2017 10:51 AM  
**To:** City Clerk  
**Subject:** Oppose to 8.1 17-065 Firearm Safe Storage Ordinance.

I would like to strongly oppose the proposed city ordinance 8.1 17-065 Firearm Safe Storage Ordinance.

As drafted, the ordinance defines the term "locked container" by referring to the definition used in the CA Penal Code, but also requiring the container to be "listed on the CA Dept. of Justice Bureau of Firearms roster of approved firearm safety devices." We own right now top of the line gun safe, which infinitely better and more secure than any of the listed safes on CA "roster" but it's not CA approved by this definition. While providing superior safety and protection to the owner firearms under this new ordinance we will automatically make us "criminals". How this can be reasonable or just? The ordinance is half-baked and does nothing to prevent crime crime and only criminalize law-abiding residents of this city!

Furthermore majority modern and expensive gun safes are not listed on this roster because they are not required to be. As a result, some of the safest and most secure options for storing firearms will not satisfy the requirements of the proposed ordinance.

--

Regards,  
Olga Sharanhovich

**From:** Paulette Koonce < >  
**Sent:** Tuesday, October 17, 2017 10:51 AM  
**To:** City Clerk  
**Subject:** No on SJ Gun Storage Ordinance

I am a San Jose resident, active voter and a Woman who is opposed to the San Jose Gun Storage Ordinance.

-Pauline Koonce  
95112

**From:** William Robbins < >  
**Sent:** Tuesday, October 17, 2017 10:52 AM  
**To:** City Clerk  
**Subject:** Against Locked-Storage Ordinance

October 17 2017

Office of the City Clerk  
200 E. Santa Clara St.  
San Jose, CA 95113

Dear Sir or Madam:

I pay close attention to legislative and administrative activities pertaining to regulation of firearms throughout California. I am against the San Jose City Council's proposed ordinance regarding residential storage of firearms. I view the proposed ordinance as a threat to the inalienable and constitutional rights of all lawful citizens of California. As for unlawful citizens, they are already breaking laws that government authorities are unable to enforce adequately.

Sincerely,  
William L. Robbins  
Member, CRPA, NRA  
NRA Certified Instructor - Pistol

\*\*\*\*\*

William L. (Bill) Robbins

**From:** Bryant Adleson [REDACTED] >  
**Sent:** Tuesday, October 17, 2017 1:49 PM  
**To:** City Clerk  
**Subject:** Opposition to 17-065

I was born and raised in San Jose and I am a current resident. I want to state my opposition to 17-065 the required gun lock proposal.

This is another example of "feel good" legislation and will do little to nothing to address preventing criminals from acquiring illegal guns and/or committing violence with the use of a stolen gun while being unenforcable, dangerous and over-burdening.

The purpose of having a gun out of a gun safe is to have it readily accessible for personal defense within the dwelling (home defense). In order to have a home defense strategy be truly effective, multiple firearms will likely be left readily available (unsecured) for instant access. This ordinance would require every time a gun owner left the dwelling to have to collect those guns, unload them and make them safe then secure them in a gun safe (or otherwise "lock them up") then upon return to the dwelling, remove them from the safe (or unlock them), redistribute them throughout the dwelling then reload them. Not only is this an unreasonable burden but it is also a dangerous law. How easy would it be to "forget" (coming home late) to make the guns ready for a home defense strategy so now when a gun is needed, it is not there (as they say; when seconds count, the police are only minutes away).

Even if a senior or physically handicapped person were to use something like a trigger lock, cable lock or locked container to prevent their guns from being a stolen, studies have shown that the amount of time to access the gun and make it ready is not long enough to be able to defend themselves.

This law is unenforcable unless another crime has been committed or something like a fire has allowed police to enter the dwelling.

Criminals who misuse guns will always find a way to get their hands on a gun so this law would be ineffective. Stealing an un-secured gun in a locked dwelling is already a crime and even if the gun could not be stolen after the crime of burglary has been committed; there are many other just as easy ways to get illegal possession of a gun (criminals don't obey laws and will always find an alternative).

There are already safe-storage laws in place regarding accessibility by children.

Like most gun control laws they infringe upon the rights of law abiding citizens and addresses a symptom of the disease not the root cause, which is crime and mental health.

I urge you to vote no on 17-065.

Thank you for your time and consideration!

Sent from my iPhone

**From:** John F. Kim <[REDACTED]>

**Sent:** Tuesday, October 17, 2017 1:30 PM

**To:** City Clerk

**Subject:** Comment on proposed legislation: OPPOSE safe storage of firearms in residence rule

Dear Councilmembers,

I write to oppose the proposed legislation requiring that firearms be stored in a locked container as defined in California Penal Code 16850. There are many very secure gun safes that are not certified by the State under this definition, so compliance with the proposed law would in fact require gun owners who have a very secure gun safe to take the guns out of the safe and move them to a less secure lockbox or locking gun cabinet.

At a minimum, the proposed legislation must be amended to allow high quality gun safes to be used as one of the secure storage options.

In addition, the definition of "firearm" under CPC Section 16520 can be somewhat vague and this proposed ordinance may in fact be pre-empted by California state law.

I recommend the City of San Jose focus on enforcing existing firearms laws and prosecuting firearms thefts to the fullest extent of the law allowed, as a way to discourage firearms crimes and firearms thefts.

--John F. Kim  
Los Gatos, CA

**From:** Jerry Jeska <[REDACTED]>

**Sent:** Tuesday, October 17, 2017 11:38 AM

**To:** Rocha, Donald; Arenas, Sylvia; Khamis, Johnny; Nguyen, Tam; Davis, Dev; Diep, Lan; Jimenez, Sergio; Carrasco, Magdalena; Jones, Chappie; Rocha, Donald

**Cc:** City Clerk

**Subject:** email re. Item 8.8 on agenda of 10/17/17 City Council meeting, Item 17-065

Dear San Jose Mayor Ricardo, Members of City Council and City Manager:

If possible, before today's Council meeting, please personally review all the emails I sent to your office email (district1@sanjoseca.gov, district 2@--etc. etc.) beginning 10/11. I was told those would probably be read only by your staff.

I appreciate your time.

Regards,

Jerry P. Jeska  
40+ year SJ resident

**From:** Vlad Sharanhovich [REDACTED] >  
**Sent:** Tuesday, October 17, 2017 11:27 AM  
**To:** City Clerk  
**Subject:** OPPOSE to 8.1 17-065 Firearm Safe Storage Ordinance

I strongly oppose 8.1 17-065 Firearm Safe Storage Ordinance. This ordinance is does nothing to promote public safety. We already have "Child Access Prevention" law impose criminal liability when a minor gains access to a negligently stored firearm. Imposing this propose ordinance is not only redundant but will also:

- criminalize law-abiding residents of San Jose as no one is really using CA approved gun safety devices
- create a new non-enforcable regulation with implicit hidden costs
- LOWER fun safety by forcing to use less secure but CA-approved gun safety devices

Stop wasting our time and taxpayers money and look at the real criminal problems in San Jose city. Do you really think enacting this ordinance will lower all-time hight crime rates in the city? Why do you think San Jose residents need to keep firearms in their homes? Because city and police can not protect us nowadays.

With best regards,  
Vlad Sharanhovich  
San Jose rsident

**From:** Mark Reynolds [REDACTED] >

**Sent:** Tuesday, October 17, 2017 11:31 AM

**To:** Sykes, Dave; City Clerk; Jones, Chappie; Liccardo, Sam; Duenas, Norberto; Peralez, Raul; Diep, Lan; Carrasco, Magdalena; Davis, Dev; Nguyen, Tam; Arenas, Sylvia; Rocha, Donald; Khamis, Johnny

**Subject:** 17 October, 2017 Council agenda item 17-065

**Please do not approve Agenda Item 17-065**

This is another example of "feel good" legislation and will do little to nothing to address preventing criminals from acquiring illegal guns and/or committing violence with the use of a stolen gun while being unenforceable, dangerous and over-burdening.

- o This law is unenforceable unless another crime has been committed or something like a fire has allowed police to enter the dwelling. Even if police did legally enter a dwelling, in most cases, a gun not in plain sight (in a closet or drawer for example), would not be visible to invoke the "crime" committed in this law (making the law ineffective).
- o Criminals who misuse guns will always find a way to get their hands on a gun so this law would be ineffective. Stealing an un-secured gun in a locked dwelling is already a crime and even if the gun could not be stolen after the crime of burglary has been committed; there are many other just as easy ways to get illegal possession of a gun (criminals don't obey laws and will always find an alternative).
- o A quality gun safe is the surest method to prevent a gun from being stolen and people unable to afford a quality gun safe (normally over \$1000 for a quality gun safe) will be forced to use a lesser-expensive means to "secure" a gun like a trigger lock, cable lock or some type of locked container (which can be a locked backpack that can be stolen). Even a lesser expensive gun safety cabinet can be picked up and easily hauled away with the guns inside (if it is bolted to a wall or floor, it can easily be removed with a pry bay and/or simple tools. A gun can still be fired when a trigger lock is used and it does not prevent a gun from being stolen. While a cable lock is a more sure method of preventing a gun from being fired, it will not prevent it from being stolen. Again, this makes the law ineffective and in the case of a trigger lock, dangerous.
- o There are already safe-storage laws in place regarding accessibility by children.
- o The purpose of having a gun out of a gun safe is to have it readily accessible for personal defense within the dwelling (home defense). In order to have a home defense strategy be truly effective, multiple firearms will likely be left readily



available (unsecured) for instant access. This ordinance would require every time a gun owner left the dwelling to have to collect those guns, unload them and make them safe then secure them in a gun safe (or otherwise "lock them up") then upon return to the dwelling, remove them from the safe (or unlock them), redistribute them throughout the dwelling then reload them. Not only is this an unreasonable burden but it is also a dangerous law. How easy would it be to "forget" (coming home late) to make the guns ready for a home defense strategy so now when a gun is needed, it is not there (as they say; when seconds count, the police are only minutes away).

- o Even if a senior or physically handicapped person were to use something like a trigger lock, cable lock or locked container to prevent them from being a criminal, studies have shown that the amount of time to access the gun and make it ready is not long enough to be able to defend themselves.

**From:** Derek Van Zonner [REDACTED] >  
**Sent:** Tuesday, October 17, 2017 11:05 AM  
**To:** City Clerk  
**Subject:** 17-065 Firearm Safe Storage Ordinance \*OPPOSE\*

To whom this may concern

Opposition letter to the proposed city ordinance "17-065 Firearm Safe Storage Ordinance".

The city, state and federal regulation have already plenty of rules that regulate how to store firearms at home. This ordinance tells that rules that are good for the rest of US are not good enough for the city of San Jose, am I correct? What exactly are you trying achieve with these regulations? Gun owners are some of the most reliable and responsible residents of the city. We don't live guns laying around the house loaded, we follow the law to the letter. Now you want to make us criminals because instead of using the most crappy safety devices listed on your outdated and never updated "roster" list we are spending lots of money for moder safes and locks??? When is the last time you have checked this list? I looked through it yesterday and it has the WORST safety device on the market listed there. Fix your CA-approved list first and invest into keeping it up to date instead of shifting burden on manufacturers and consumers!

This ordinance is an offence to gun owners. Strongly OPPOSE.

The best,  
Derek Van Zonner

**From:** Michael A. [REDACTED] >  
**Sent:** Tuesday, October 17, 2017 11:17 AM  
**To:** City Clerk; Cranford, Sandra  
**Subject:** 17 October, 2017 Council agenda item 17-065

RESEND TO: Executive Assistant to the City Manager Sandra Cranford

This is another example of "feel good" legislation and will do little to nothing to address preventing criminals from acquiring illegal guns and/or committing violence with the use of a stolen gun while being unenforcable, dangerous and over-burdening.

- o This law is unenforcable unless another crime has been committed or something like a fire has allowed police to enter the dwelling. Even if police did legally enter a dwelling, in most cases, a gun not in plain sight (in a closet or drawer for example), would not be visible to invoke the "crime" committed in this law (making the law ineffective).
- o Criminals who misuse guns will always find a way to get their hands on a gun so this law would be ineffective. Stealing an un-secured gun in a locked dwelling is already a crime and even if the gun could not be stolen after the crime of burglary has been committed; there are many other just as easy ways to get illegal possession of a gun (criminals don't obey laws and will always find an alternative).
- o A quality gun safe is the surest method to prevent a gun from being stolen and people unable to afford a quality gun safe (normally over \$1000 for a quality gun safe) will be forced to use a lesser-expensive means to "secure" a gun like a trigger lock, cable lock or some type of locked container (which can be a locked backpack that can be stolen). Even a lesser expensive gun safety cabinet can be picked up and easily hauled away with the guns inside (if it is bolted to a wall or floor, it can easily be removed with a pry bay and/or simple tools. A gun can still be fired when a trigger lock is used and it does not prevent a gun from being stolen. While a cable lock is a more sure method of preventing a gun from being fired, it will not prevent it from being stolen. Again, this makes the law ineffective and in the case of a trigger loc,, dangerous.
- o There are already safe-storage laws in place regarding accessibility by children.
- o The purpose of having a gun out of a gun safe is to have it readily accessible for personal defense within the dwelling (home defense). In order to have a home

defense strategy be truly effective, multiple firearms will likely be left readily available (unsecured) for instant access. This ordinance would require every time a gun owner left the dwelling to have to collect those guns, unload them and make them safe then secure them in a gun safe (or otherwise "lock them up") then upon return to the dwelling, remove them from the safe (or unlock them), redistribute them throughout the dwelling then reload them. Not only is this an unreasonable burden but it is also a dangerous law. How easy would it be to "forget" (coming home late) to make the guns ready for a home defense strategy so now when a gun is needed, it is not there (as they say; when seconds count, the police are only minutes away).

- o Even if a senior or physically handicapped person were to use something like a trigger lock, cable lock or locked container to prevent them from being a criminal, studies have shown that the amount of time to access the gun and make it ready is not long enough to be able to defend themselves.

**From:** believe333 [REDACTED] >  
**Sent:** Wednesday, October 18, 2017 6:20 AM  
**To:** City Clerk  
**Subject:** eference Item 17-065 "Safe Storage Ordinance

Dear Mayor and Council. I oppose the proposed Safe Storage ordinance (Item 17-065). Please do not jeopardize my safety and my loved ones."

P, Edgerton  
D2

**From:** Leslie Thornton [REDACTED] >  
**Sent:** Tuesday, October 17, 2017 10:29 PM  
**To:** City Clerk  
**Subject:** Gun shops

People who buy guns the shops should have a resource site to look up buyers on how many guns they have bought where and dates and report as guns are bought to authorities  
Sent from my iPhone

**From:** Andres Carmona [REDACTED] >  
**Sent:** Tuesday, October 17, 2017 7:19 PM  
**To:** City Clerk  
**Subject:** Firearm storage ordinance

To whom this may concern,  
I would like to share a story with you and why this ordinance should NOT be adopted. My house has been broken into twice in the last five years both during the day when nobody was home. Over the years I had built custom furniture with hidden compartments which only responsible members of my family know about. Both times the criminals took jewelry and electronic but never found my hand gun. Both times I was called at work by police officers that were at my house responding to the break in. They asked if I had a gun since there were shooting targets present at my house. I said yes and walked them thru the process of opening the hidden compartment in the furniture. Even with clear step by step instructions they struggle to open it. When I arrived they had finally opened it and saw my hand gun was NOT stolen. My house was turned upside down by the criminals and we felt devastated and violated. The only bright side to the ordeal was the compliments by officers on how well my hand gun was stored. If this ordinance were to pass this same scenario would make me a criminal.

PLEASE DO NOT PASS THIS ORDINANCE.  
THANK YOU  
Andres

William M. Wiese Jr  
Board Member, The Calguns Foundation  
[REDACTED]  
San Jose, CA 95118  
[REDACTED]

The Honorable Sam Liccardo, Mayor  
City of San Jose  
200 E. Santa Clara St.  
San Jose, CA 95113

16 October 2017

RE: **17-056, proposed ordinance on "Firearm Safe Storage"**

Dear Mayor Liccardo:

I write to you both as a longtime San Jose resident affected by this law, as well as a board member of The Calguns Foundation (a Second Amendment litigation, advocacy and education group).

The proposed lawmaking here is admirably "feel-good" – obviously driven in part by recent news to which it is really irrelevant. This "values signaling" will do little if any good and can cause significant harm as currently written. It will result in no change to safety at best, and likely reduces safety.

1.) The ordinance,

*"A person who owns or possesses a Firearm and keeps it in his or her Residence shall store the Firearm in a Locked Container or disable the Firearm with a Trigger Lock upon leaving the Residence."*

has significant ambiguity in its phrasing and can be read in multiple ways. In one read, it certainly appears to ban a person having an "accessible operational gun" in his residence, even next to him/her, or even carried on him/her, for ready access. It either has to be in locked container, or trigger-locked when leaving the home. And no matter whether or not the owner is the only person in the residence, or there are no children present, etc. This goes far beyond any simple request to lock gun(s) away when out of the residence.

While there may be some local feeling of legal support of disabling guns stored at home while resident is present - given the US 9<sup>th</sup> Circuit has not properly understood (or is trying to refute, as in the SF case) the clear ramifications of the 2008 *Heller v DC* decision - indeed *Heller* clearly affirmed the right of Mr. Heller to possess a useable, accessible, loaded, operational handgun at home.

Given other Circuits' recent findings - including that Washington, DC cannot require 'good cause' to issue carry permits (*Wrenn v DC*, the results of which DC decided not to challenge at the Supreme Court) there's fair expectation that 'circuit splits' on many other firearms matters will get "cert" and be heard by the Supreme Court. 9<sup>th</sup> Circuit holdings challenged at the Supreme Court are overturned approximately

80% of the time; a huge wave of retirements & appointments throughout the Federal judiciary are taking place right now, with expectations of at least one or two Supreme Court seats changing in the next 2-3 years. Thus, these gun law matters are not in any way issues to be regarded finalized by/at the 9<sup>th</sup>, regardless of what gun control advocates assert.

**2.) Effective criminalization of high-quality safes (!)** Many gun owners store firearms in large, heavy locking safes/vaults, costing at least a thousand to many thousands of dollars.

However, these generally are not certified by Calif. DOJ as being on their "Roster" of approved firearm storage devices. This Roster is in fact primarily comprised of small lockboxes. So the ordinance thus forces the many folks with such safes to instead either....

- remove firearm(s) from a perfectly good \$3000+ heavy-duty burglary/fire safe and store them in a DOJ-labelled glorified "tin box".
- ...or leave them loose, with an easily-removable/subvertible trigger lock.

What a pathway to failure!

[I recall there was a CBS news (likely "60 Minutes") episode a few years ago showing a DOJ-approved common lockbox being opened by a 3 year old child. ]

With this "feature" alone, this law should be called "San Jose Mandatory Unsafe Storage Law."

**3.)** Other than issues above, **state law is largely duplicative.** Go into any California licensed firearms dealer ("FFL") in town and look at all the mandatory signs which contain statements concerning firearms safe storage, legal transfers, etc. Plus there are Federal bans (felonies) regarding allowing access to guns (and ammo) to felons and the adjudicated mentally ill.

**4.) Prosecutions for problems related to storage are rare or deferred.** In the few instances where a child got access to a relative's firearm and harmed himself/herself or others, prosecutors are generally loath to charge a grieving family member. If people don't know what state law is, they're sure as heck not gonna know what a local ordinance is. ("Ignorance of the law is no excuse", yes - but it certainly makes for irrelevancy.) Our local police have already said it would be difficult in getting prosecutions.

**5.) What about Law Enforcement Officers living in San Jose?** These folks frequently have firearms on or with or them and "about the house". They know, or should know, safe storage laws, etc. The proposed law appears not to exempt them - as perhaps it well shouldn't - but were any incident to happen with someone accessing an LEOs firearm in the house, a nonprosecution of the LEO [regardless of separate agency employment sanctions] will certainly add a "some animals are

more equal than others" taint to the recent *sturm und drang* in the news concerning community law enforcement practices (and further reduce public confidence).

I'm unclear why this law was proposed. At best it does nothing; it likely increases risk. The people who wrote it need both some legal writing guidance/review and some technical competency in the field.

Sincerely,  
William M. Wiese Jr.

cc:

Vice Mayor, Magdalena Carrasco, District 5  
Councilmember Chappie Jones, District 1  
Councilmember Sergio Jimenez, District 2  
Councilmember Raul Peralez, District 3  
Councilmember Lan Diep, District 4  
Councilmember Dev Davis, District 6  
Councilmember Tam Nguyen, District 7  
Councilmember Sylvia Arenas, District 8  
Councilmember Donald Rocha, District 9  
Councilmember Johnny Khamis, District 10



Anthony Napolitano, Esq.  
 Resident, San Jose District 6  
 c/o Napolitano Law Office

Cupertino, CA 95014

October 17, 2017

Sam Liccardo, Mayor  
 and Members of the City Council  
 City of San Jose  
 200 E. Santa Clara St.  
 San Jose, CA 95113

Sent via email

**Re: Opposition to the Proposed "Safe Storage" Ordinance 17-065 in All Forms**

Dear Mayor Liccardo and Distinguished Councilmembers,

I am a San Jose resident writing to voice my opposition to the proposed "safe storage" Ordinance 17-065 (the "Ordinance") before the Council. This law will be ineffective in achieving its goals, may lead to arbitrary and capricious enforcement, punishes the victims of property crime, and may increase the crime rate in San Jose, further burdening an already strained police force.

**Crime Rates Increase in "Safe-Storage" Jurisdictions**

The memoranda and letters submitted from members of the public on this issue make very clear that public safety and decreasing crime rates are a top priority for individuals on all sides of the debate. While the arguments in favor of the Ordinance express many hopeful wishes for its success, they lack any actual statistical analysis of how similar laws have impacted other cities. Rather than blindly pass a law and hope for the best outcome, I urge the Council to examine the numbers.

Dr. John R. Lott, Jr., conducted one of the most comprehensive studies of the impact of gun control laws on crime rates, and his research shows that, nationwide, the rate of rapes and of robberies each increase 8.9% after the adoption of similar "safe storage" rules. Smaller increases are also seen in the murder, property crime, burglary, and larceny rates in "safe storage" jurisdictions. See Dr. Lott's table below:

Table 9.6 Evaluating other gun-control laws using state-level data

	Percent change in various crime rates for changes in explanatory variables									
	Violent crime	Murder	Rape	Robbery	Aggravated assault	Property crime	Burglary	Larceny	Auto theft	State death rate
Change in the crime rate from the difference in the annual change in crime rates in the years before and after the adoption of the right-to-carry law (annual rate of change after the law - annual rate of change before the law)	2.0%	3.2%*	-1.4%	3.3%	2.3%*	1.3%	2.9%*	0.7%***	0.6%	0.6%
Change in the average crime rate after the adoption of Brady law	-2.4%	3.6%	3.6%*	0.02%	-4.2%	0.6%	0.7%	0.4%	0.4%	2.5%
Change in the average crime rate after the adoption of safe-storage rules	0.04%	1.3%	8.9%*	8.9%*	-4.4%	2.5%	3.6%*	2.0%	1.0%	0.1%

\*The result is significant at the 1 percent level for a two-tailed t-test  
 \*\*The result is significant at the 5 percent level for a two-tailed t-test  
 \*\*\*The t-test is significant at the 1 percent level  
 \*\*\*\*The t-test is significant at the 10 percent level

Source: Lott, John R., *More Guns, Less Crime: understanding crime and gun-control laws*, 3rd ed., University of Chicago Press (2010) p. 200.

Closer to home, an examination of San Francisco's "safe storage" ordinance shows that rape rates rose by 3.8% and robberies by 2.9% in the six years after its adoption compared to the six years

before.<sup>1</sup> It should be of note that although these increases are lower, the rates still rose during an intense period of gentrification and a huge demographic shift in the city due to the technology industry.

Criminals are also more likely to enter occupied homes when they believe there is little risk a firearm will be accessible to the residents, which in turn increases the chance for confrontations in which law-abiding citizens are injured as property crime turns violent.<sup>2</sup> This is of particular concern for women's rights and safety, given the above-noted increase in incidents of rape associated with "safe storage" rules.

San Jose, with police resources limited as they are, does not need an increase in crime due to bad policy.

### **Citizens will be Less Able to Protect Themselves**

A likely explanation for the observed increase in crime rates is that criminals know more guns will be locked up. Even with the exception that a citizen may be allowed to unlock a gun while at home, it is likely that many will simply keep their guns locked at all times. At the very least, residents will be especially vulnerable while entering or exiting their homes when criminals know access to firearms will be most restricted. As Mafia member Sammy "the Bull" Gravano put it, "I want you to have nothing. If I'm a bad guy, I'm always gonna have a gun. Safety locks? You will pull the trigger with a lock on, and I'll pull the trigger. We'll see who wins."<sup>3</sup>

In other words, one must consider that technology has failed all of us at times when seconds count. Anyone who has ever had trouble unlocking his or her phone in time to snap a photo and capture just the right moment knows that a routine action does not always work as swiftly as needed, especially under time pressure. Unlocking a firearm creates the same difficulty with more severe consequences.

When a similar measure was considered by the Council last year just prior to the 2016 election, I appeared at the committee hearing on the proposal and asked that they consider the then-recent case of William Brady III.<sup>4</sup> Brady was a stalker who entered his victim's home and began shooting. Despite his female victim's call to 911 upon seeing Brady, police were unable to arrive in time, but another individual in the house quickly armed himself and wounded Brady, ending the confrontation. As the cliché goes, "when seconds count, the police are minutes away."

When those seconds may mean the difference between life and death, I ask the Council to give the law-abiding citizen the advantage.

### **Supporting Memoranda Expressly Admit the Ineffectiveness of Such Rules**

The City Attorney's Memorandum (the "City's Memorandum") and the Memorandum from Councilmembers Peralez and Jones (the "P-J Memorandum") both discuss child access and convicted

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<sup>1</sup> Data taken from <http://www.city-data.com/crime/crime-San-Francisco-California.html>. The year 2008 was the first full adoption and enforcement year for the ordinance, so the years examined were the two six-year periods of 2002-2007 and 2009-2014. The differences in rates were taken by simply comparing the averages for the two periods and lack the more sophisticated statistical analysis of Dr. Lott's work, which can better control for the multiple variables that clearly impact crime rates within a city.

<sup>2</sup> Gun Rights Are Women's Rights, <https://www.prageru.com/courses/political-science/gun-rights-are-womens-rights>.

<sup>3</sup> Quoted in Lott, John R., *More Guns, Less Crime: understanding crime and gun-control laws*, 3rd ed., University of Chicago Press (2010) p. 197.

<sup>4</sup> <http://www.mercurynews.com/2016/10/17/los-altos-hills-shooting-wounded-stalking-suspect-identified/>

felon (and other prohibited person) access to firearms at length. These arguments are not relevant to the Ordinance before the Council. As the City's Memorandum clearly states, "State law currently addresses the safety of children who are reasonably expected to be present in the home. . . [and] addresses persons convicted of a felony, [etc]."<sup>5</sup>

The one thing that is telling about this discussion, however, comes from the letter in support submitted by the Law Center to Prevent Gun Violence, which states "While California enacted a 'Child Access Prevention' (CAP) law in 2011, ***the firearm suicide rate of minors under the age of 18 has remained steady between 2005 and 2015.***" Despite all the arguments suggesting that, in an alternate reality, some imagined storage solution could have prevented these deaths, the actual statistical evidence demonstrates the utter ineffectiveness of such storage laws in having their intended effect. If the state's "safe storage" law had zero effect on its goal of preventing children from accessing firearms to hurt themselves, there is little reason to believe this Ordinance will achieve its goal any better.

The City's Memorandum goes on to admit the near impossibility of enforcing the Ordinance:

*A violation of such an ordinance would likely not come to light unless law enforcement was called to a home on a report of a burglary or other criminal activity . . . Officers at the scene would have the discretion, based on the totality of the circumstances, to take enforcement action.<sup>6</sup>*

Essentially, enforcement of the Ordinance would be completely arbitrary, which undermines basic premises underlying the concept of Rule of Law. Either the City will find itself repeatedly punishing the victims of burglary and other crimes, or the law will not be enforced or respected, resulting in a capricious prosecution to set an example every so often. Neither option is a good one for the City.

#### **Increased Financial Burden on Citizens**

The City's Memorandum claims that the Ordinance will have a minimal fiscal impact on the city, but the Ordinance would have a potentially enormous impact on its citizens. The mandate within the Ordinance requires gun owners to obtain, specifically, those gun locks or storage containers on the California Department of Justice approved list. That list is limited in scope, and individuals who either purchased firearms before safety devices were required or who did so before the Department of Justice published its list may have to go purchase hundreds of dollars of additional equipment to comply with the Ordinance.

Compliance would also require that gun owners go through the laborious process of matching their particular firearms to the exact "safety device" listed for it by the Department of Justice. This is incredibly limiting, financially burdensome, and will impact the poor and the elderly (the latter being more likely to have pre-2002 firearms) the most. Citizens should be given the liberty to choose the best way to secure their firearms in their own home based on their specific circumstance.

#### **Unconstitutionality**

An Ordinance such as this is of questionable constitutionality and is yet to be discussed by the United States Supreme Court. The recent decisions in *Heller* and *McDonald*, however, specifically

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<sup>5</sup> City's Memorandum, page 3.

<sup>6</sup> City's Memorandum, page 4.

address the additional recommendation presented in the P-J Memorandum as clearly unconstitutional. Enactment of either option will likely expose the City to costly civil rights litigation, yet another financial burden not mentioned in the City's Memorandum but that the City must certainly bear.

It is also worth noting that the assertion in the P-J Memorandum that the Founding Fathers crafted the Second Amendment in an era solely "of single shot muskets and pistols" is wrong. Repeating and multi-shot arms such as the Puckle Gun,<sup>7</sup> the world's first "machine gun," were available as early as 1718. Public policy should not be based on mistruths and unsupported generalizations.

### **Conclusion**

Given the above evidence of a negligible benefit contrasted with likely harm, as well as the other concerns expressed, I urge the Council to use its wisdom in voting against this Ordinance.

Respectfully submitted,

A black rectangular redaction box covering the signature of Anthony Napolitano.

Anthony Napolitano  
Resident, District 6

Cc: Vice Mayor Magdalena Carrasco, District 5  
Councilmember Chappie Jones, District 1  
Councilmember Sergio Jimenez, District 2  
Councilmember Raul Peralez, District 3  
Councilmember Lan Diep, District 4  
Councilmember Dev Davis, District 6  
Councilmember Tam Nguyen, District 7  
Councilmember Sylvia Arenas, District 8  
Councilmember Donald Rocha, District 9  
Councilmember Johnny Khamis, District 10

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<sup>7</sup> [https://en.wikipedia.org/wiki/Puckle\\_gun](https://en.wikipedia.org/wiki/Puckle_gun)