

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: FIREARM SAFE STORAGE
ORDINANCE (Second Reading)
(CORRECTED)

DATE: October 27, 2017

Approved

Date

SUPPLEMENTAL MEMORANDUM

RECOMMENDATION

Adopt an ordinance requiring firearm owners to safely store firearms in a locked container or disabled with a trigger lock upon leaving the residence with an exception from prosecution for reporting a theft or loss of a firearm to the Police Department within 24 hours, and a one year sunset on the reporting exception.

ANALYSIS

On October 17, 2017, the City Council approved for publication the proposed Safe Storage Ordinance. The motion approving the Safe Storage Ordinance included an additional provision creating an exception from prosecution for violation of the safe storage requirement if the person who owns or possesses the firearm reports the theft or loss of a firearm from the residence within 24 hours of the time he or she knew or reasonably should have known of the theft or loss and a one year sunset on this exception. This exception has been added to Section 10.32.170 as subsection B and the sunset provision has been added as subsection C.

Pursuant to Council direction and in response to public comment that the definition of a firearm might be considered too vague since it incorporated all of the administrative subdivisions of California Penal Code Section 16520, the definition of firearm has been simplified by adopting the definition of a firearm set out in subdivision (a) of Section 16520: "a device, designed to be used as a weapon, from which is expelled through the barrel, a projectile by the force of an explosion or other form of combustion." This definition describes the fundamental physical attributes of firearms so that a person of ordinary intelligence will have notice of what type of device needs to be secured in a locked container. This is the same definition that the City of Oakland used in the safe storage ordinance that it adopted in 2016.

Similarly, Councilmember Davis raised a concern that the definition of Locked Container would not allow persons to comply with the Ordinance if the firearms owner used a lawfully purchased

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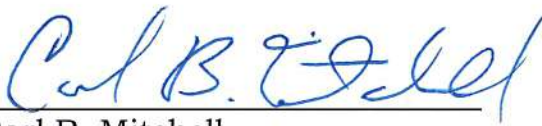
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gun safe that is not listed on the California Department of Justice Bureau of Firearms roster. In response to Council direction, the definition of Locked Container as defined in Penal Code Section 16850 has been retained, but without the additional requirement that the Locked Container be listed on the roster of approved firearm safety devices. This change in the definition allows a firearm owner to comply with the Ordinance by using gun safes that may not be listed on the roster but which are lawfully available in California.

The Safe Storage Ordinance with the revisions noted above will be posted on the agenda webpage for the City Council's meeting of October 31, 2017, at which the second reading of the Safe Storage Ordinance will be considered for adoption.

RICHARD DOYLE
City Attorney

By: 
Carl B. Mitchell
Senior Deputy City Attorney

For questions, please contact Carl B. Mitchell, Senior Deputy City Attorney, at (408) 535-1919.