



COUNCIL AGENDA: 1/24/2023

ITEM: 3.4

FILE NO: 23-074

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Toni J. Taber, CMC
City Clerk

SUBJECT: SEE BELOW

DATE: January 24, 2023

SUBJECT: Firearm Regulation Audit Report

Recommendation

As recommended by the Public Safety, Finance and Strategic Support Committee on December 15, 2022, accept the report on the Firearm Regulation Audit.

CEQA: Not a Project, File No. PP17-009, Staff Report, Assessments, annual Reports, and Informational Memos that involve no approvals of any City action. (City Auditor)

[Public Safety, Finance and Strategic Support Committee referral 12/15/2022 - Item (d)2]



Office of the City Auditor

**Report to the City Council
City of San José**

**FIREARM REGULATIONS:
THE CITY SHOULD
UPDATE PROCEDURES
AROUND GUN VIOLENCE
RESTRAINING ORDERS
AND FIREARM BUSINESS
INSPECTIONS**

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December 8, 2022

Honorable Mayor and Members
Of the City Council
200 East Santa Clara Street
San José, CA 95113

Firearm Regulations: The City Should Update Procedures Around Gun Violence Restraining Orders and Firearm Business Inspections

In 2020, over 45,000 Americans were killed by gun violence in the United States. Per the Centers for Disease Control and Prevention, the country saw 13.6 firearm-related deaths per 100,000 residents. In California, the rate was less, with 8.5 deaths per 100,000 residents; San José saw 5.1 firearm deaths per 100,000 residents.

Federal, state, and local laws regulate the possession, ownership, use, and sale of firearms. The San José Police Department (SJPd) enforces these laws in San José, including investigating and making arrests for firearm-related offenses. SJPd also initiates or processes gun violence restraining orders (GVROs) that temporarily remove firearms from individuals who pose a risk of harm to themselves or others. Additionally, SJPd regulates firearm dealers and issues concealed carry weapons permits. The City is currently working to establish procedures around new regulations requiring gun owners to obtain and maintain liability insurance and pay an annual gun harm reduction fee.

The objective of this audit was to assess the City's firearm regulatory processes and policies, including a review of trends in firearm violence in the city. A Councilmember requested this audit.

Finding I: Firearm-Related Incidents Have Increased in the City. Overall firearm-related crimes and incidents have been increasing in San José. Specifically, firearm-related crimes have risen by 25 percent over the past five years, from 990 incidents to 1,240. We found:

- The prevalence of firearm-related crimes varies across Police districts. Some districts have seen far more than others, with 4 of the 17 Police districts accounting for over 40 percent of incidents between 2017-2021.
- Over that same period, aggravated assaults and robberies made up over 70 percent of crimes that involved a firearm.
- The largest increase since 2017 was in the broad category of weapon-related incidents, such as illegal possession or carrying a concealed weapon.
- Finally, the city has seen a significant increase in the number of privately made firearms (sometimes referred to as "ghost guns"). In 2021, SJPd submitted nearly 170 to the Santa Clara County District Attorney's Crime Laboratory for processing; in 2015, they submitted just one.

Finding 2: State Law is the Primary Authority Regulating Firearms in the City. While there are three levels of firearm regulation—federal, state, and local—the California Penal Code is the primary authority for regulatory purposes for the city. We found:

- The City’s Municipal Code provides additional regulations regarding licensing firearm dealers, storing a firearm in a residence, and other requirements on owning, purchasing, or using a firearm in the city.
- The City’s Municipal Code can better align with the State Penal Code in a couple of areas, and duplicates a state suicide prevention noticing requirement in another instance. While state law prevails in such instances, the Municipal Code should be updated to better align with state regulations.

RECOMMENDATION:

To better align with state law, the Administration should:

- Update Municipal Code sections related to age requirements and waiting periods for firearm purchases, and suicide prevention noticing.

Finding 3: The Police Department Should Update Internal Procedures and Conduct Outreach on Gun Violence Restraining Orders. The City uses Gun Violence Emergency Protective Orders (GVEPOs) and Gun Violence Restraining Orders (GVROs) to remove and prevent purchases of firearms from individuals who are found to be a danger to themselves or others. We found:

- Since 2018, the City has filed over 280 orders.
- The current processes for these orders involve coordination among multiple parties, including the SJPD and the City Attorney’s Office, as well as Santa Clara County.
- SJPD’s Duty Manual defines procedures for GVROs, but do not accurately reflect current practice or differentiate between the different types of orders.
- Unlike some jurisdictions, the City does not have publicly available information about GVROs on its website. Also, the City does not conduct community outreach on such orders.

RECOMMENDATIONS:

To improve GVRO procedures and community outreach, SJPD should:

- Update language in the Duty Manual to reflect the different types of GVROs, and develop procedures on the current process of each.
- Incorporate information about GVROs into its community outreach efforts, including posting information on the City’s website.

Finding 4: The Police Department Can Provide Increased Staff Guidance and Supervisory Oversight for Regulating Firearm Businesses. SJPD’s Permits Unit regulates firearm businesses for compliance with the Municipal Code. However, the Unit can improve guidance on inspections by defining documentation requirements, the expected frequency of inspections, and compliance guidelines. We found:

- There were inconsistencies in how staff reviewed firearm businesses for compliance, and staff did not document compliance with all Municipal Code requirements.
- The permit fee for firearm businesses may not be fully cost recovery. An assessment of actual time spent on inspections has not been reviewed since 2013.

RECOMMENDATIONS:

To improve the inspection process, SJPD should:

- Develop procedures to document inspection expectations, and revise its inspection checklist.
- Reassess actual time spent on inspections.

This report has seven recommendations. We plan to present this report at the December 15, 2022 meeting of the Public Safety, Finance and Strategic Support Committee. We would like to thank the San José Police Department, the City Attorney's Office, and the City Manager's Office of Administration, Policy, and Intergovernmental Relations for their time, information, insight, and cooperation during the audit process. The Administration has reviewed the information in this report, and their response is shown on the yellow pages.

Respectfully submitted,



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This report is also available online at www.sanjoseca.gov/audits

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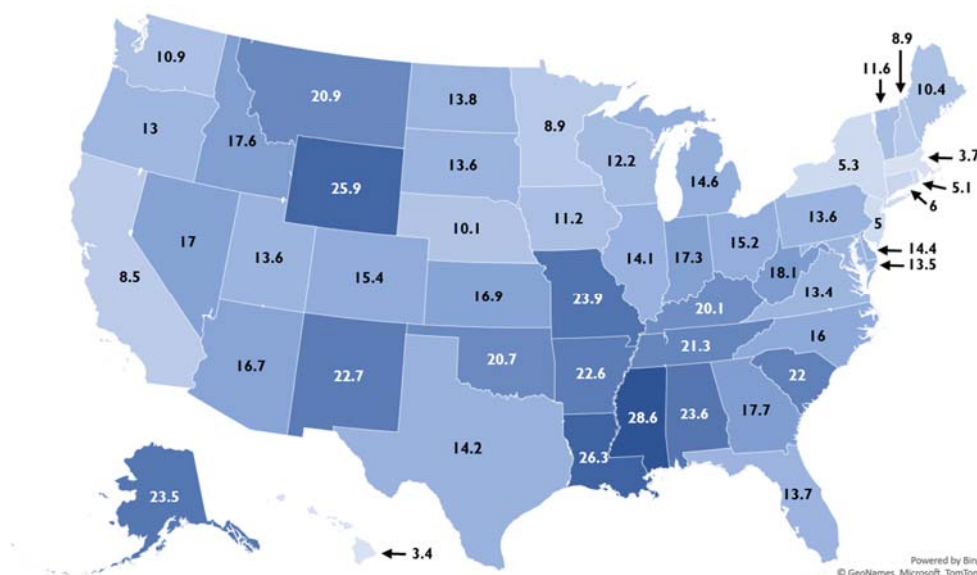
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Background

In 2020, over 45,000 Americans were killed by gun violence in the United States. Per the Centers for Disease Control and Prevention (CDC), there were 13.6 firearm-related deaths per 100,000 residents across the country. In California, the number of firearm-related deaths was 8.5 per 100,000 residents, lower than the overall national rate and lower than most other states.

Exhibit 1: Firearm Death Rate Across the United States in 2020

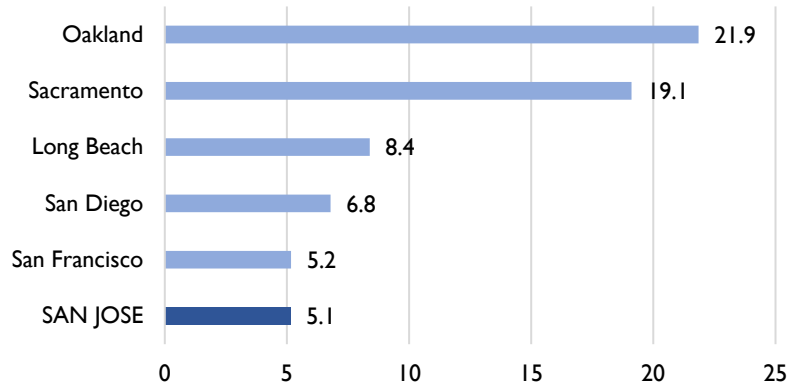


Source: CDC WONDER (an integrated information and communication system for public health), Firearm mortality by state, 2020.

Note: Numbers are based on residency location and includes all firearm deaths.

All causes of firearm deaths included (suicide, homicide, legal intervention, unintentional, and undetermined), the number of San José's firearm-related deaths was less than the state's overall death rate, and less than other large California cities (see Exhibit 2).

Exhibit 2: The City Had a Lower Firearm Death Rate in 2020 Compared to Other Jurisdictions



Source: California Department of Public Health (CDPH), California Comprehensive Master Death File (CCMDF), 2020.

Note: Numbers are based on incident location. Data is not age-adjusted.

Overview of State and Federal Firearm Regulations

Firearms are regulated by federal, state, and local laws. These regulations encompass possession, ownership, use, and sale of firearms. The following are some of the primary federal and state statutes regulating firearms.

- *Title 18 of the United States Code Chapter 44 - Firearms* requires licensing for importing, dealing, or manufacturing firearms, and regulates interstate and foreign commerce in firearms. It also prohibits certain people from being sold a firearm. Additionally, it requires a criminal background check in the National Instant Criminal Background Check System (NICS) for firearm purchases from federally licensed firearm dealers. It has other requirements, allowances, and prohibitions, such as requiring firearm dealers to provide handgun purchasers with a secure gun storage or safety device, allowing qualified law enforcement officers to carry a concealed weapon, and banning the possession of firearms on federal facilities.¹
- The *California Penal Code Part 6. Control of Deadly Weapons* requires licensing for dealing or manufacturing firearms; and prohibits certain people from owning a firearm. It also covers requirements on selling a firearm, firearm safety devices, a requirement for a firearm safety certificate to purchase or receive a firearm, procedures for law enforcement who come across a firearm when responding to a domestic

¹ 18 U.S.C. Chapter 44 – Firearms, <https://uscode.house.gov/view.xhtml?path=/prelim@title18/part1/chapter44&edition=prelim>.

violence incident, lost or stolen firearms, licensure for carrying a concealed firearm, and other requirements.²

The California Department of Justice's Bureau of Firearms is responsible for education, regulation, and enforcement actions regarding the manufacture, sales, ownership, safety training, and transfer of firearms. Select federal and state firearm regulations are discussed more in Finding 2.

The Municipal Code Addresses Aspects of Firearm Regulations in San José

Chapters 6.90 and 10.32 of the Municipal Code further address firearm regulations in the City of San José.

- Chapter 6.90 covers licensing requirements for firearm and ammunition dealers. It requires a firearm business license for selling, leasing, or transferring any firearm or firearm ammunition at retail. It also authorizes the City to inspect businesses for compliance with the Municipal Code. The chapter also includes requirements to deter straw purchases.³ Additional discussion of these requirements is in Finding 4.
- Chapter 10.32 includes prohibitions on the shooting of firearms in the city, places age restrictions on weapons, requires the safe storage of a firearm that is stored in a residence upon leaving a residence, and covers prohibitions on certain types of weapons.
- In 2022, the City Council amended Chapter 10.32 to require gun owners to obtain and maintain homeowner's, renter's, or a gun liability insurance policy that covers losses or damages resulting from any accidental use of their firearm. The amendment also required a *Gun Harm Reduction Fee*, which gun owners must pay annually to a nonprofit organization designated by the City. The Administration anticipates that the insurance requirement will come into effect on January 1, 2023 and continues to work on identifying a non-profit to receive the gun harm reduction fee.

The San José Police Department Is Responsible for Enforcing Firearm-Related Laws, Regulations, and Ordinances

The mission of the San José Police Department (SJPd) is to *Create safe places to live, work and learn through community partnerships*. SJPd's core services include Crime Prevention and Community Education, Investigative Services, Regulatory

² California Penal Code Part 6. Control of Deadly Weapons, https://leginfo.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=PEN&division=&title=&part=6.&chapter=&article=&nodetreepath=9.

³ A straw purchase is the illegal purchase of a firearm on the behalf another. This may occur when a person may not legally be able to purchase a firearm, or the person may not want to be associated with the transaction.

Services, and Respond to Calls for Services and Patrol Support. The SJPd is charged with enforcing firearm regulations in the city.

Enforcement of Firearm-Related Regulations

Generally, SJPd enforces firearm regulations through its patrol and investigative operations. For example, officers may investigate and make arrests for firearm-related offenses, including the illegal use of firearms, illegal possession, and other actions violating federal, state, or local laws.

Regulation of Firearm Dealers

The Permits Unit in SJPd oversees firearm business permits and enforces regulatory requirements laid out by the Municipal Code for firearm dealers. One inspector in the Permits Unit is charged with inspection and regulation of these businesses. At the time of the audit the Unit regulated 10 firearm businesses in the city. Permits Unit staff report that one of the businesses has since closed which leaves nine firearm businesses in the city.

Gun Violence Restraining Orders

Gun violence restraining orders (GVROs) are orders that allow family members, household members, colleagues, teachers, and law enforcement to work with the courts to temporarily remove firearms and prevent purchase of new guns by individuals who pose a significant risk of harm to themselves and others. In San José, these are generally initiated by officers in the field. The City Attorney's Office then works with SJPd to investigate and finalize GVROs. GVROs are discussed further in Finding 3.

Concealed Weapons Permits

The Permits Unit is also responsible for issuing concealed carry weapons permits (CCWs).⁴ Applicants for a CCW must go through backgrounding, fingerprinting, 16 hours of training, and a psychological evaluation to be eligible for a CCW. In June 2022, the Supreme Court of the United States ruled that a New York law requiring a license to carry a firearm in public was unconstitutional.⁵ This ruling impacted states that have laws like New York's, such as California. According to SJPd, the Department is working on updating its processes to comply with these changes.

⁴ CCWs are regulated by the CA Penal Code, sections 26150 and 26155.

⁵ *New York State Rifle and Pistol Association v. Bruen*. The decision struck down a law requiring people to demonstrate a particular need for carrying a gun in order to get a license to carry a firearm in public.

Other SJPD Firearm-Related Initiatives

The City has also used other gun mitigation measures. These include:

- **Gunshot detection pilot programs:** SJPD has piloted programs to use automated license plate reader systems that integrate with Gunshot Detection Systems to provide patrol officers early detection of gun violence.
- **Free gun locks:** SJPD's Crime Prevention Unit provides gun locks to residents free of charge. At the time of the audit, staff reported there were 200 gun locks remaining from about 14,500 gun locks received as a donation from Project ChildSafe in 2018.⁶
- **Gun buyback programs:** These are programs where residents can turn in their firearms to the Police Department in exchange for cash. Staff shared that the last gun buyback program hosted by SJPD was in 2018.

Other Recent Developments

The U.S. Attorney General signed the Bureau of Alcohol, Tobacco, Firearms (ATF) final rule *Definition of "Frame" or "Receiver" and Identification of Firearms* in April 2022. The rule updated some definitions around firearms. For example, weapon part kits now are considered firearms. Additionally, it clarified that retailers must conduct background checks before selling kits and parts. Manufacturers must also include serial numbers on the firearm frame or receiver in a firearm parts kit. The rule was effective August 24, 2022.

In May 2022, a U.S. appeals court ruled California's ban on the sale of semiautomatic firearms to those under 21 years as unconstitutional. The case is still making its way through the judicial system, but depending on the ruling, it may have implications for California's age requirement for the purchase of firearms.

Council Memorandum on Community Violence Prevention and Response

In response to a May 2021 mass shooting at Valley Transportation Authority (VTA), a Councilmember issued a memorandum proposing a "three pronged approach in addressing the wellness and safety of our community in hopes of reducing violence." The Councilmember recommended various actions around (1) Proactive Workplace Safety & Cultural Evaluation, (2) Trauma Response & Resiliency, and (3) Firearm Violence Prevention.

⁶ Project ChildSafe is a program of the National Shooting Sports Foundation that promotes firearm safety and education. Each gun lock is estimated to cost \$6.88. Staff report that the current funding source is still the grant from Project ChildSafe, and that the Crime Prevention Unit has not applied for any other grants related to firearm safety or gun violence.

Audit of Firearm Regulations

The Councilmember also asked that the City Auditor conduct an audit of the City's firearm regulatory processes and policies, including a review of trends in firearm violence in the city.

Finding I Firearm-Related Incidents Have Increased in the City

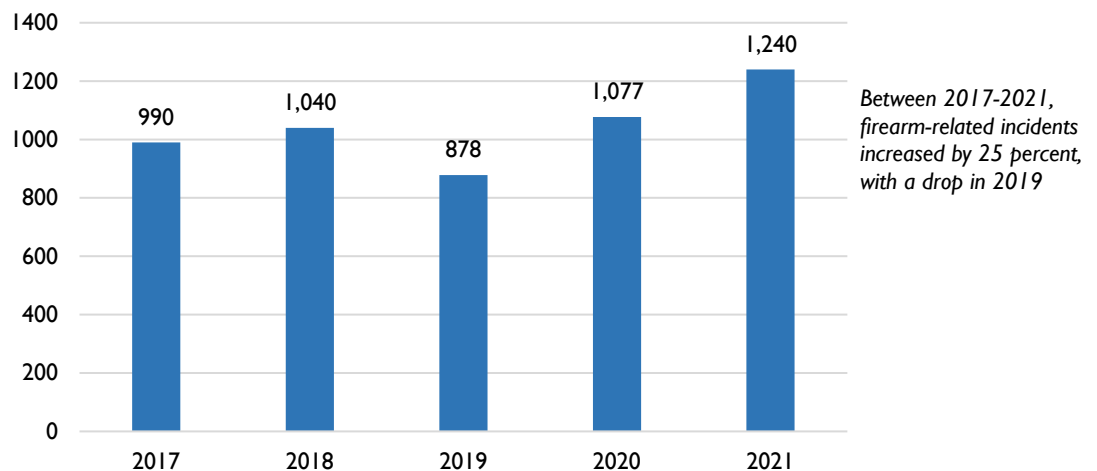
Summary

Overall firearm-related crimes and incidents have been increasing in San José. Specifically, firearm-related crimes have risen by 25 percent over the past five years, from 990 incidents to 1,240. The prevalence of firearm-related crimes varies across police districts, with some districts having seen far more than others. Between 2017 and 2021, aggravated assault and robbery made up over 70 percent of crimes that involved a firearm. The largest increases in firearm-related incidents since 2017 have been in aggravated assaults and illegal possession, or similar weapon-related incidents. Finally, the city has seen a significant increase in the number of privately made firearms (sometimes referred to as “ghost guns”) seized in the community.

Firearm-Related Incidents Grew by 25 Percent Between 2017 and 2021

Over the past five years, incidents in San José involving a firearm have increased by 25 percent, from 990 incidents to 1,240. Between 2017-2021, 71 percent of firearm-related incidents with a specified firearm type identified reportedly involved a handgun.

Exhibit 3: Firearm-Related Incidents in the City Have Grown Over the Past Five Years

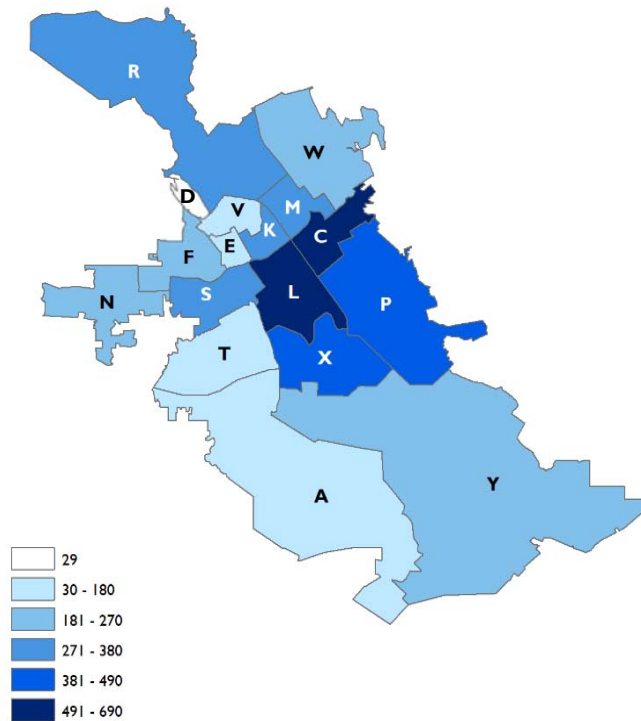


Source: Auditor analysis of SJPd records management system data 2017-2021 Part I & II crimes coded as involving a firearm. The analysis consists of incidents and not the number of victims, which may be more than the number of incidents.

The Number of Firearm-Related Incidents Vary by Police District

Certain police districts have seen higher concentrations of firearm-related incidents than others. For example, over 40 percent of firearm-related incidents between 2017 and 2021 were in districts C, L, P, and X, in central and east San José.⁷ Excluding police district D, which is the Airport, districts A, E, T, and V saw the fewest incidents over the same period. See Appendix B for a table of the number of firearm-related incidents by police district.

Exhibit 4: The Number of Firearm-Related Incidents Vary by Police District (2017-2021) - Map

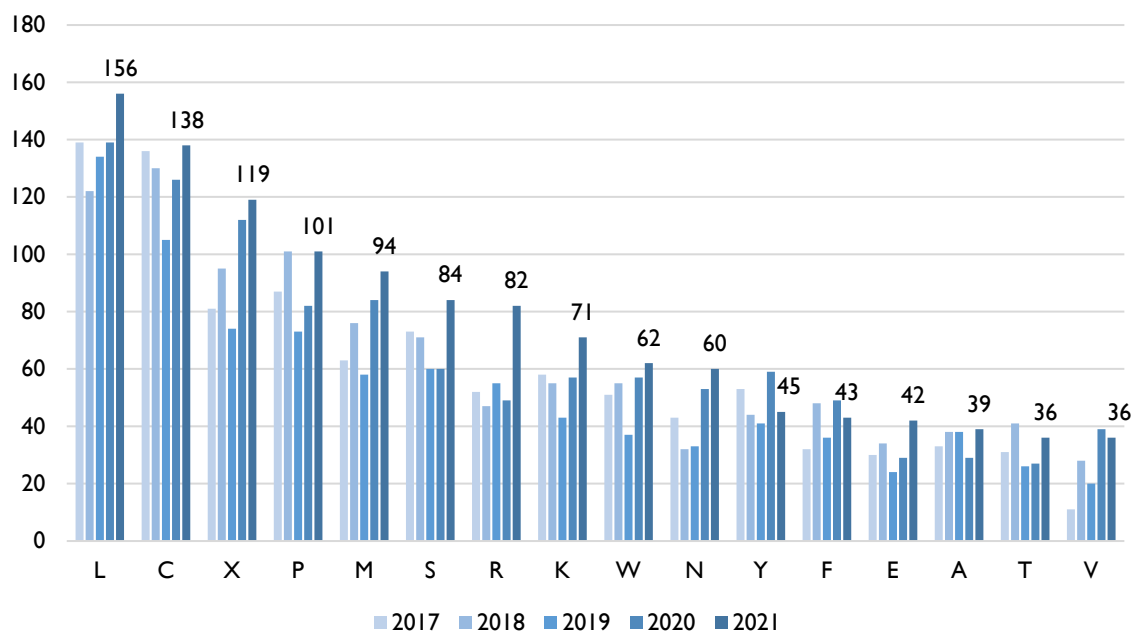


Source: Auditor analysis of SJPd records management system data 2017-2021 Part I & II crimes coded as involving a firearm that had a police district associated with it, and SJPd police districts GIS layer. The analysis consists of incidents and not the number of victims, which may be more than the number of incidents.

Note: Incidents that did not have an identified police district were excluded. This accounted for less than 2 percent of the overall total.

⁷ Incidents that did not have an identified police district were excluded in the analysis. This accounted for less than 2 percent of the overall total.

Exhibit 5: The Number of Firearm-Related Incidents Vary by Police District (2017-2021)



Source: Auditor analysis of SJPd records management system data 2017-2021 Part I & II crimes coded as involving a firearm and had a police district associated with it. The analysis consists of incidents and not the number of victims, which may be more than the number of incidents.

Note: District D (the Airport) is excluded from the chart. Data labels refer to number of incidents in 2021. Incidents that did not have an identified police district were excluded. This accounted for less than 2 percent of the overall total.

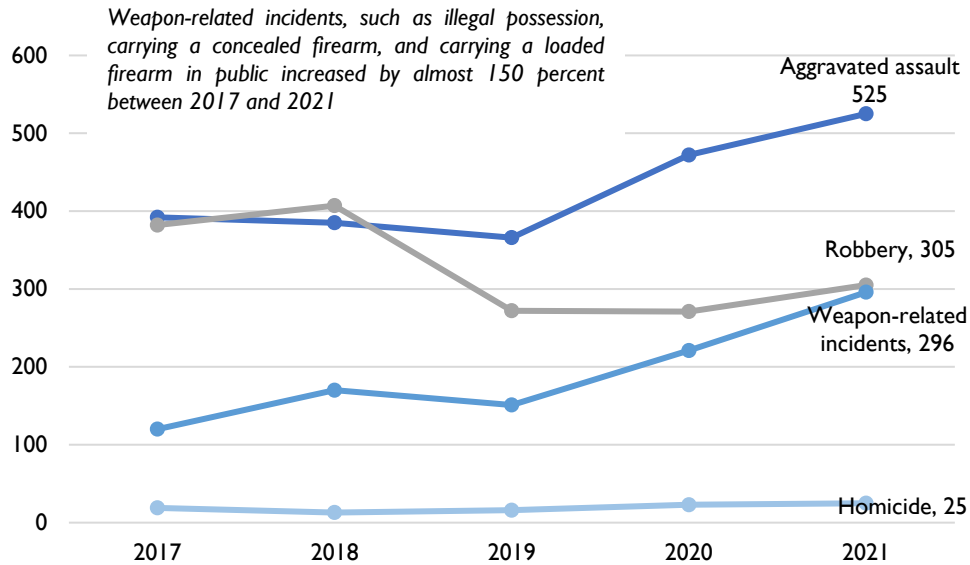
Aggravated Assault Has Been the Most Common Crime Involving a Firearm

The most common crime that involved a firearm was aggravated assault (41 percent of all firearm-related incidents), followed by robbery (31 percent). Next, at 18 percent, were a category of “weapon-related incidents” that includes crimes such as illegal possession, illegally carrying a concealed firearm, and carrying a loaded firearm in public.⁸

Certain firearm-related crimes saw greater increases over the past five years than others. For example, weapon-related incidents (such as illegal possession) more than doubled and aggravated assaults increased by 34 percent. Conversely, robberies involving a firearm have decreased by 20 percent from 2017, though 2021 saw an increase from 2020. In 2021, there were 25 firearm-related homicides.

⁸ If excluding the category of weapon-related incidents, the increase in firearm-related incidents 2017 to 2021 is 9 percent, rather than 25 percent.

Exhibit 6: Top Four Crimes with the Most Firearm-Related Incidents, 2017-2021

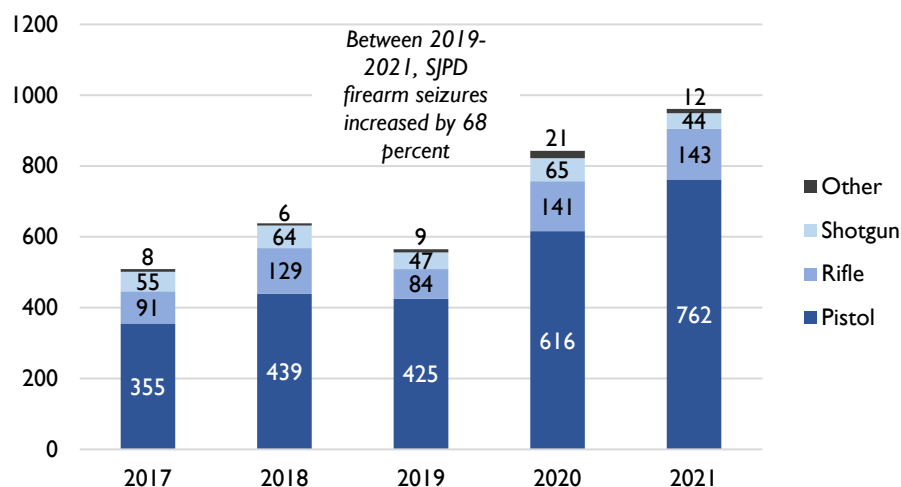


Source: Auditor analysis of SJPd records management system data 2017-2021 Part I & II crimes coded as involving a firearm. The analysis consists of incidents and not the number of victims, which may be more than the number of incidents.

Firearms Seized by the Police Department Have Also Increased

The number of firearms seized by SJPd has been increasing, even though there was a slight decrease in 2019. Based on SJPd's records management system categories, pistols were the most seized weapon. This was followed by rifles, 69 percent of which were semi-automatic or automatic weapons.

Exhibit 7: The Number of Firearms Seized by SJPd Has Been Increasing



Source: Auditor analysis of SJPd records management system data 2017-2021 seized firearms.

Note: 69 percent of rifles seized were semi-automatic or automatic rifles.

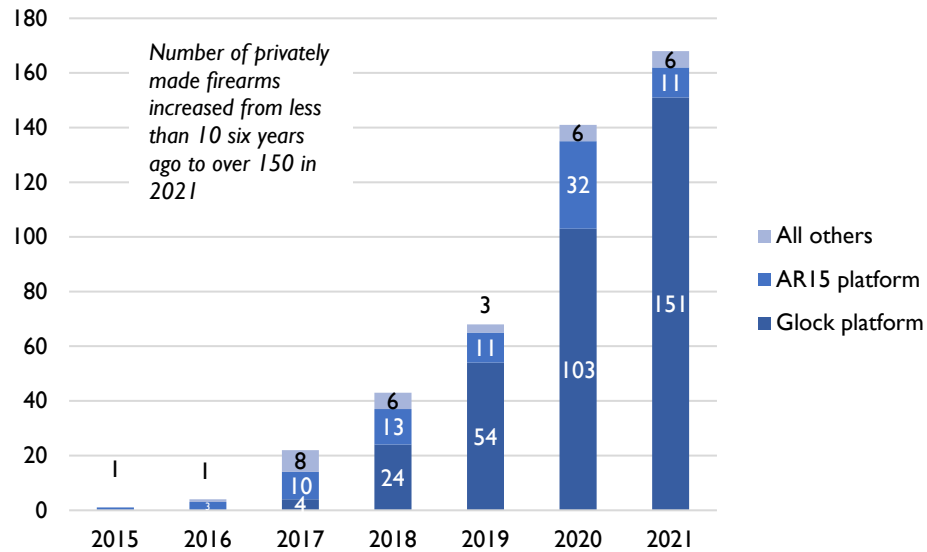
Privately Made Firearms Have Also Been a Growing Concern Across the Different Levels of Government

Based on Santa Clara County District Attorney's Crime Laboratory reports, the number of privately made firearms (sometimes referred to as "ghost guns") submitted between 2015 and 2021 by SJPd to the Crime Laboratory and processed has increased significantly. Whereas SJPd submitted just 1 privately made firearm in 2015, it submitted 168 in 2021.⁹

The Glock platform was identified as the most common privately made firearm submitted by SJPd to the Crime Laboratory and processed, making up 75 percent of the total. The AR15 platform was next at 18 percent.

⁹ According to the Santa Clara County DA's Crime Laboratory and SJPd, there may be a lag time with when SJPd has submitted a firearm to the lab to when it gets processed by the County, so all cases are not captured in the timeframe.

Exhibit 8: The Number of Privately Made Firearms Has Been Increasing



Source: Auditor analysis of Santa Clara County DA's Crime Laboratory privately made firearms data as of 2021.

Note: More than one privately made firearm may be confiscated from an incident.

Of those that could be linked to a firearm-related incident, the category of weapon-related incidents (such as illegal possession) made up 73 percent, followed by aggravated assault at 13 percent, and robbery at 8 percent.

To address the growing concern of privately made firearms, the federal government updated some definitions around firearms. For instance, the definition now includes weapon parts kits. Further, the federal government requires privately made firearms to be marked with serial numbers when added to a federally licensed firearm dealer's inventory.

The City also established an ordinance that prohibits the possession, purchase, or sale of privately made firearms in the city. The state similarly has put in place these prohibitions.

Finding 2 State Law Is the Primary Authority Regulating Firearms in the City

Summary

There are three levels of firearm regulations—federal, state, and local. The California Penal Code is the primary authority for regulatory purposes in the city. However, the City's Municipal Code does provide additional regulations regarding licensing firearm dealers, storing a firearm in a residence, and other requirements on owning or possessing a firearm in the city. This includes insurance and gun harm reduction fee requirements from the recently enacted Gun Harm Reduction Ordinance. However, currently the City's Municipal Code does not fully align in a couple instances with the State Penal Code regarding firearm regulations. There is also a section that duplicates a state requirement on suicide prevention noticing. While enforcing state law would prevail in these instances, we recommend the Administration revise the Municipal Code to better align with state law.

State Law Is the Guiding Regulatory Authority for the City's Firearm Regulations

As mentioned in the Background, there are three levels of firearm regulations—federal, state, and local. At all levels, regulations guide possessing, purchasing, and selling a firearm. For example, federal law:

- Requires a person be at least 21 years of age to purchase a handgun from a federally licensed firearm dealer.
- Requires federally licensed firearm dealers to initiate a background check prior to releasing a firearm to the purchaser.¹⁰
- Prohibits certain persons from possessing a firearm.¹¹

Firearm regulations in the California Penal Code are stricter than federal regulations. For example, federal law allows individuals to purchase a shotgun or rifle if they are 18 years of age, whereas California generally requires individuals to be 21 for such purchases. California also has a 10-day waiting period before a

¹⁰ Under federal law, if the FBI cannot complete the background check within three business days, the firearm dealer can release the firearm to the purchaser (unless state law prohibits it). The background check entails verifying through the National Instant Criminal Background Check System that the buyer does not have a criminal record or is not otherwise ineligible to have a firearm.

¹¹ For instance, this would include persons convicted of a crime punishable by imprisonment for a term exceeding a year, convicted of a misdemeanor crime of domestic violence, who are unlawful users of a controlled substance, or who have been committed to a mental institution.

firearm can be released to a purchaser. There is no such waiting requirement in federal law.

Local law enforcement agencies generally enforce state and federal firearm laws and thus play a major role in regulating the possession or sale of firearms.

The Municipal Code Has Additional Firearm Regulations

City firearm regulations generally follow state requirements, though the City has adopted additional regulations. As described in the Background, chapters 6.90 and 10.32 address firearm regulations. Some examples that go beyond what is in the state regulations include:

- Sections 6.90.090 and 6.90.360 respectively require firearm dealers to have a firearm business license with the City and have video surveillance and audio recording systems in place to monitor activity and transactions (the video and audio recordings must be stored for at least 30 days).¹²
- Section 10.32.170 requires gun owners to safely store their firearm in a locked container or with a trigger lock upon leaving their residence.
- Sections 10.32.210 and 10.32.215 respectively require gun owners to have liability insurance covering losses or damages that result from any accidental use of the firearm and pay an annual gun harm reduction fee that is to be paid to a City designated nonprofit. Note, these requirements have not yet been fully implemented.

Exhibit 9 summarizes select federal, state and local laws, identifying the source of the regulatory authority and providing examples of where the state or local laws go further than the federal government.¹³

¹² SB 1384, which was approved in September 2022, establishes in the California Penal Code a video and audio surveillance requirement for firearm businesses. It is effective January 1, 2024.

¹³ It should be noted that within the different laws, there are generally exceptions.

Exhibit 9: Matrix of Select Firearm Requirements/Regulations in San José

Requirement/Regulation	Federal	State	City
Persons who fall within certain prohibiting categories (e.g., convicted of particular crimes) cannot receive or possess a firearm*	✓		
Federally licensed firearm dealers must initiate a background check prior to releasing a firearm to the purchaser	✓		
At least 21 years old to purchase a handgun	✓		
Generally, all firearm sales or transfers must occur through a licensed firearm dealer		✓	
At least 21 years old to purchase a shotgun or rifle		✓	
10-day waiting period requirement for firearm purchases		✓	
Firearm purchaser must have a firearm safety certificate		✓	
Firearm purchases (not limited to only handguns) must be accompanied with a firearms safety device or proof of ownership of a gun safe		✓	
Demonstration by purchaser of safe handling of a firearm		✓	
Information on the risks and laws on firearms must accompany firearm packaging, and firearm warning labels must address suicide prevention		✓	
Specified firearm warnings must be posted in the licensed firearm dealer's premises		✓	**
Involved with the issuance of a license to carry a concealed weapon on one's person		✓	
Gun violence restraining orders allowing certain people to petition courts to prohibit a person from owning firearms		✓	
In addition to prohibiting the manufacture, transfer, and sale of privately made firearms without a serial number (sometimes referred to as "ghost guns"), prohibits the possession of them as well		✓***	
Persons who possess a firearm in their residence must store their firearm in a locked container or disable it with a trigger lock upon leaving their residence			✓
Firearm business locations must be monitored by a video surveillance system and audio recording system			✓
Gun owners must have liability insurance and pay an annual gun harm reduction fee to a City designated nonprofit****			✓

Source: Auditor summary of City's Municipal Code Chapters 10.32 and 6.90, City Council meeting document on the Privately Made Firearms Ordinance, State Penal Code Part 6. Control of Deadly Weapons, CA DOJ firearm law summary documents, Title 18 of the United States Code Chapter 44 - Firearms, AB 1621, and ATF Q&A webpages.

Note: Within the laws there are generally exceptions. For instance, under CA Pen. Code, § 27510, a person 18 years of age or older who possesses a valid, unexpired hunting license issued by the Department of Fish and Wildlife can be sold a firearm that is not a handgun or a semiautomatic centerfire rifle. Scaling of the checkmarks indicates how a law established at a higher government level would then also apply to the lower government levels. The City's Municipal Code may not explicitly mention some of the requirements in the table, but because the City falls under state law, the requirement would similarly apply.

* The state has additional firearm prohibiting categories than what is set forth by the federal government.

** In addition to the noticing required by state law, the Municipal Code stipulates that firearm dealer licensees should display additional resources on suicide prevention, domestic violence, and local gun laws.

*** AB 1621 recently was passed in CA to prohibit possession of privately made firearms without a serial number. This goes into effect Jan 1, 2024.

**** Implementation of these requirements is currently underway.

The Municipal Code Should be Updated to Better Align with the State Penal Code

Currently, two sections of the San José Municipal Code conflict with the California Penal Code governing firearm sales. While the California Penal Code would prevail in these instances, the Municipal Code should be revised or repealed to conform with state law. Additionally, there is another section that duplicates a state requirement.

- Section 10.32.020 would allow persons under 21 years of age to be sold a firearm, and would allow this in the case of minors with written consent from their parent or guardian. Under state law, that is generally not allowed.¹⁴
- Section 6.90.320 specifies that the 10-day waiting period requirement for firearm purchases is for pistols or revolvers, whereas the California Penal Code applies this waiting requirement to all firearm types.¹⁵
- Section 6.90.330 requires firearm businesses to post a notice on suicide prevention in addition to what is required by the state, seemingly duplicating a state requirement. Businesses already must comply with the state requirement, and mandating additional noticing is redundant.

Recommendation:

- I: To ensure that the San José Municipal Code better aligns with the California Penal Code, the City Administration should update sections 10.32.020, 6.90.320, and 6.90.330 of the Municipal Code.**

¹⁴ Section 10.32.020 reads “No person shall sell, dispose of or give to any minor under the age of eighteen years, any pistol, airgun or other weapon capable of receiving and discharging any charge, cartridge or explosive, without the written request of his parent or guardian; and no minor under the age of eighteen years shall have in his possession any such pistol or weapon unless by the written consent of his parent or guardian.” There are exceptions to the age requirement (CA Penal Code, §§ 27505, 27510), but the language in section 10.32.020 of the Municipal Code does not pertain to those exceptions.

¹⁵ Subsection B of Section 6.90.320 of the Municipal Code states “The Licensee shall comply with the applicable provisions of State Firearm Law. The Licensee shall not deliver any pistol or revolver to a purchaser earlier than ten (10) days after the application for the purchase, lease or transfer, unless otherwise provided by State or federal law.”

Finding 3 The Police Department Should Update Internal Procedures and Conduct Outreach on Gun Violence Restraining Orders

Summary

The City uses Gun Violence Emergency Protective Orders (GVEPOs) and Gun Violence Restraining Orders (GVROs) to remove and prevent purchases of firearms from individuals who are deemed to be a danger to themselves or others. Since 2018, the City has filed over 280 orders. The current processes for these orders involve coordination among multiple parties, and the procedures are defined in SJPD's Duty Manual. However, the Duty Manual does not accurately reflect the current process, and should be updated. Because residents other than law enforcement officers can seek a GVRO, SJPD should also update its website to include GVRO information, and include such information in community outreach efforts by the Crime Prevention Unit.

Gun Violence Restraining Orders Provide Tools for Law Enforcement

Gun Violence Restraining Orders (GVROs) provide tools for law enforcement and certain community members to remove firearms from a person who is at risk of causing harm to themselves or others using guidelines as defined by the Penal Code.¹⁶ There are three types of GVROs:

- Temporary Emergency (also referred to as Gun Violence Emergency Protective Orders (GVEPOs)) can be requested and served by a law enforcement officer (after approval by a judge) if an individual is deemed an immediate and present threat to themselves or others. The order lasts 21 days and the respondent must give up their firearms to the law enforcement officer.¹⁷ A GVEPO also temporarily prohibits a person from owning or purchasing a firearm or ammunition.
- Temporary Ex-Parte (ex-parte GVROs) can be requested by petitioners such as family members, educators, coworkers, or housemates in addition to law enforcement. Applicants must apply in writing in family court. The order lasts 21 days (pending a hearing to extend to one year or more).

¹⁶ Depending on the type of GVRO being approved, there must be reasonable cause, a substantial likelihood, or clear and convincing evidence that the person presents significant or immediate danger to themselves or others, and that the order is necessary to protect injury because other means have been tried or are inappropriate under the circumstances.

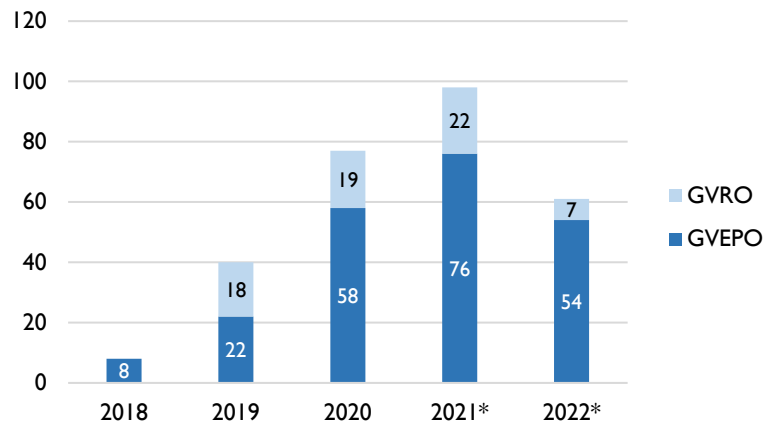
¹⁷ Subject is legally required to surrender firearms and ammunition. (CA Pen. Code, § 18120.) Possession of a GVEPO does not, by itself, bestow authority to search. Firearms and ammunition may only be seized when in plain sight or through a consensual search or other lawful search (e.g., search warrant).

- Order after a Hearing GVROs (referred to in this document as GVROs) may be issued by the court after a GVEPO or Temporary Ex-Parte GVRO. These can last from one to five years.

Appendix C provides additional information about the different types of GVROs.

Since 2018, the City has filed over 280 orders, which includes GVEPOs and GVROs.

Exhibit 10: Number of GVEPOs and GVROs in San José, 2018 Through July 2022

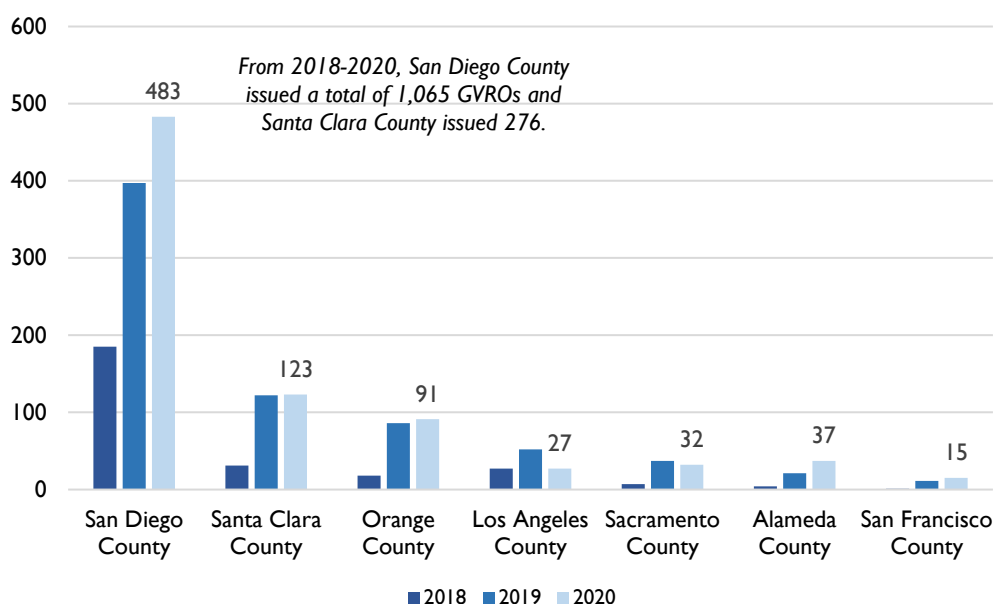


Source: Auditor analysis from information provided by SJPd Warrants Unit and the City Attorney's Office.

*There are GVRO cases pending from 2021 and 2022. GVRO numbers for 2021 and 2022 are current as of July 2022. According to the City Attorney's Office, pending cases generally do not result in firearms being returned because of case continuances or other related cases.

Santa Clara County has issued the second most GVROs in recent years among large California counties.

Exhibit 11: Santa Clara County Issued the Second Most GVROs Among Large California Counties Between 2018-2020



Source: Santa Clara County District Attorney's Office (obtained from California Department of Justice), 2018-2020.

Note: Requests initiated by family members were omitted.

According to staff from the City of San Diego, issuing GVROs has been a point of emphasis for the City Attorney's Office. Through these efforts, San Diego County has filed the most GVROs in the state. In addition, San Diego, as described later, has robust procedures for issuing GVROs and provides information about them on its website. The San Diego City Attorney's Office also has dedicated staffing to GVRO processing, including three attorneys that focus on GVROs. In contrast, San José has one dedicated attorney to this.

SJPD Procedures on GVRO Process Should be Updated to Reflect Current Process

In San José, SJPD is responsible for identifying and investigating persons for potential GVROs, and working with the City's Attorney's Office to file GVROs. The process is outlined in the SJPD Duty Manual. The California Penal Code requires law enforcement agencies to develop, adopt, and implement written policies and standards relating to gun violence restraining orders.¹⁸ However, the Duty Manual does not reflect the actual current process, and should be updated to differentiate the processes for the different orders.

¹⁸ CA Pen. Code, § 18108 et seq.

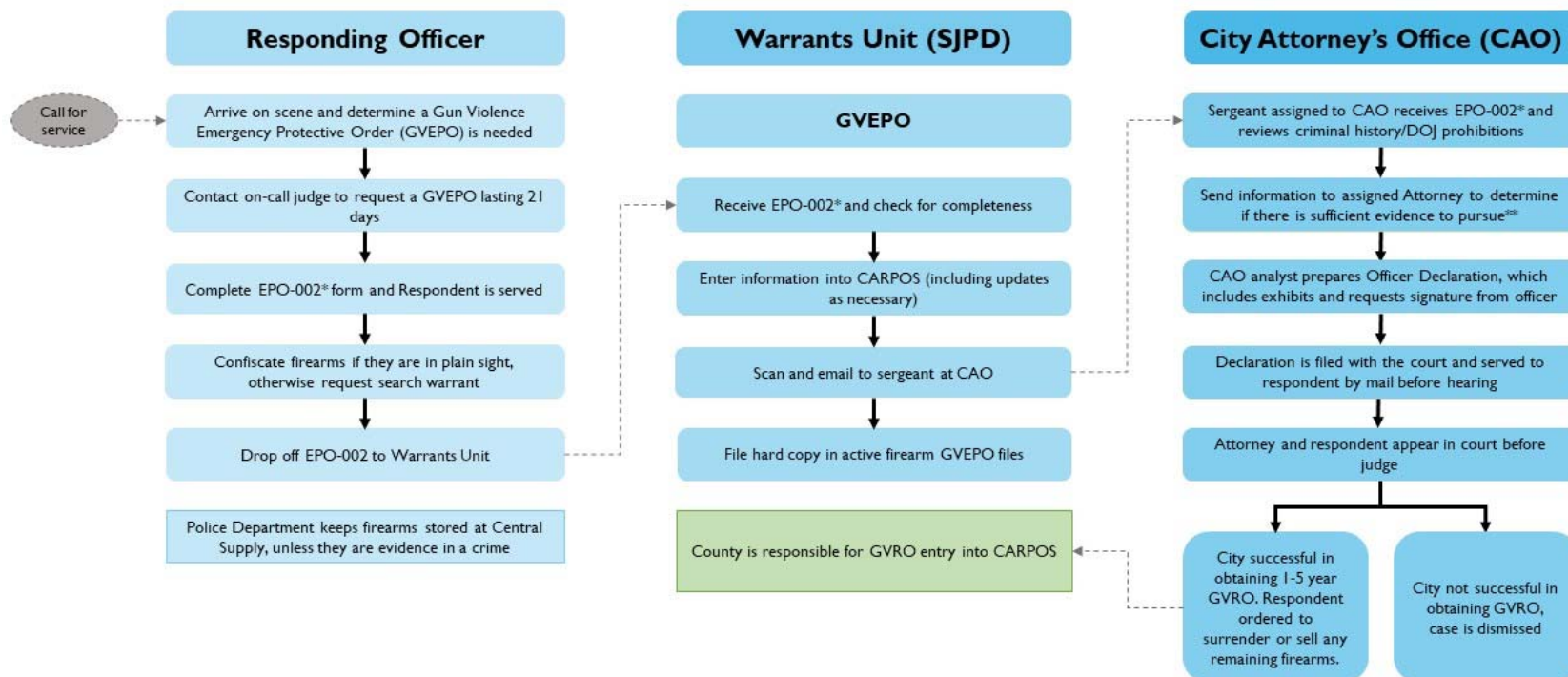
Obtaining a GVEPO or a GVRO Involves Multiple Steps and Parties

The GVEPO and GVRO processes have multiple steps and involve multiple partners. The first step to a GVRO is filing a GVEPO, which is coordinated between SJPd, the City Attorney's Office and the Superior Court of Santa Clara County. Upon issuance of a GVEPO, SJPd officers can confiscate firearms that are in, plain sight (or seek a search warrant).

After a GVEPO is issued, a police sergeant assigned to the City Attorney's Office will work with an assigned attorney to determine if there is sufficient evidence to pursue a GVRO. The City Attorney's Office may then prepare an Officer Declaration to be filed with the Superior Court. Upon a hearing, the Court may then issue a GVRO. If the individual is at the hearing, their presence in court constitutes proof of service. If the respondent is not at the hearing the County Sheriff's Office is tasked with serving the order.

Both the GVRO and GVEPO processes includes data entry into a statewide database—California Restraining and Protective Order System (CARPOS). For GVEPOs, the SJPd Warrant's Unit enters the information. For GVROs, County staff is responsible for entering the information. These orders will show up in a California Department of Justice background check if a person attempts to purchase a firearm, which is the underlying intent of GVRO laws.

Exhibit 12: City GVRO Process Workflow



Note: CARPOS – California Restraining and Protective Order System; DOJ – Department of Justice; GVRO – Gun Violence Restraining Order.

Note: Respondent may request the court to terminate the GVRO once every year that the order is in effect by filling out GV-600.

* Form EPO-002, Firearms Emergency Protective Order.

** Respondent may stipulate to the terms of the GVRO prior to the hearing, so hearing is not necessary.

Source: Auditor summary of interviews with SJPD staff including Warrants Unit and City Attorney's Office, and review of internal draft procedures and Judicial Council of California forms.

Current SJPD Procedures on GVRO Process Do Not Fully Reflect Actual Process

SJPD's Duty Manual provides guidance for issuing a GVRO, including:

- When to consider a GVRO in a domestic disturbance response;
- When to consider a GVRO against a person experiencing mental health issues;
- Process for obtaining a GVRO;
- Booking and seizing a firearm pursuant to a GVRO;
- Officer GVRO hearing presence; and
- Bureau of Investigations (BOI) responsibilities.

In some instances, the Duty Manual does not accurately reflect the actual process. For example, the Duty Manual:

- Does not distinguish between GVROs and GVEPOs, even though the process is different.
- Does not specify whose responsibility it is to enter GVROs into CARPOS. This is done by Santa Clara County.
- Inaccurately assigns some responsibilities to a Bureau of Investigations detective, including serving a GVRO. This is the responsibility of the County.

The Duty Manual also does not include the list of eligible petitioners and the timeframe for GVROs.¹⁹

In contrast, the San Diego Police Department has more robust GVRO procedures than SJPD on GVRO use. For example, they have internal policies that provide details about the different types of orders and guidelines for requesting and/or enforcing them. These policies detail information such as how to obtain a GVEPO (which San Diego calls a Temporary Emergency Firearms Protective Order), the administrative form to use for a GVEPO (EPO-002), and what factors the court considers when issuing a GVRO.

SJPD Provides Additional Guidance and Updates to Staff Through the Use of Training Bulletins

SJPD uses training bulletins to inform staff of law updates and form revisions regarding GVROs and other information. In the past, training bulletins have not been timely to reflect changes in state laws around GVROs. For example, in

¹⁹ California Penal Code does not explicitly require listing eligible petitioners and the length of each order but does require standards and procedures on gun violence restraining orders.

response to changes at the state level, *Form EPO-002, Firearms Emergency Protective Order* was revised in 2019 and again in 2020. The first change included adding the hearing date and an address line for the respondent, and the second extended the requested GVRO for up to five years (from one year). In one case, the training bulletin was issued more than a year after the update.

According to the City Attorney's Office and Police Department staff, some officers have used a previous version of the form, which stated that the GVRO would only last a year. These would need to be re-served. If not re-served, then the GVRO could legally only last a year (rather than up to five). Staff reported that the City had to re-serve orders in instances where staff used the wrong form.

Recommendations:

- 2: To provide consistency and clarify responsibilities, the Police Department should update the Duty Manual to reflect the different types of gun violence restraining orders, and develop procedures on the current process for each, including staff responsibilities on disseminating communications on applicable administrative or law updates in a timely manner.**

The City Can Better Inform the Public About Gun Violence Restraining Orders

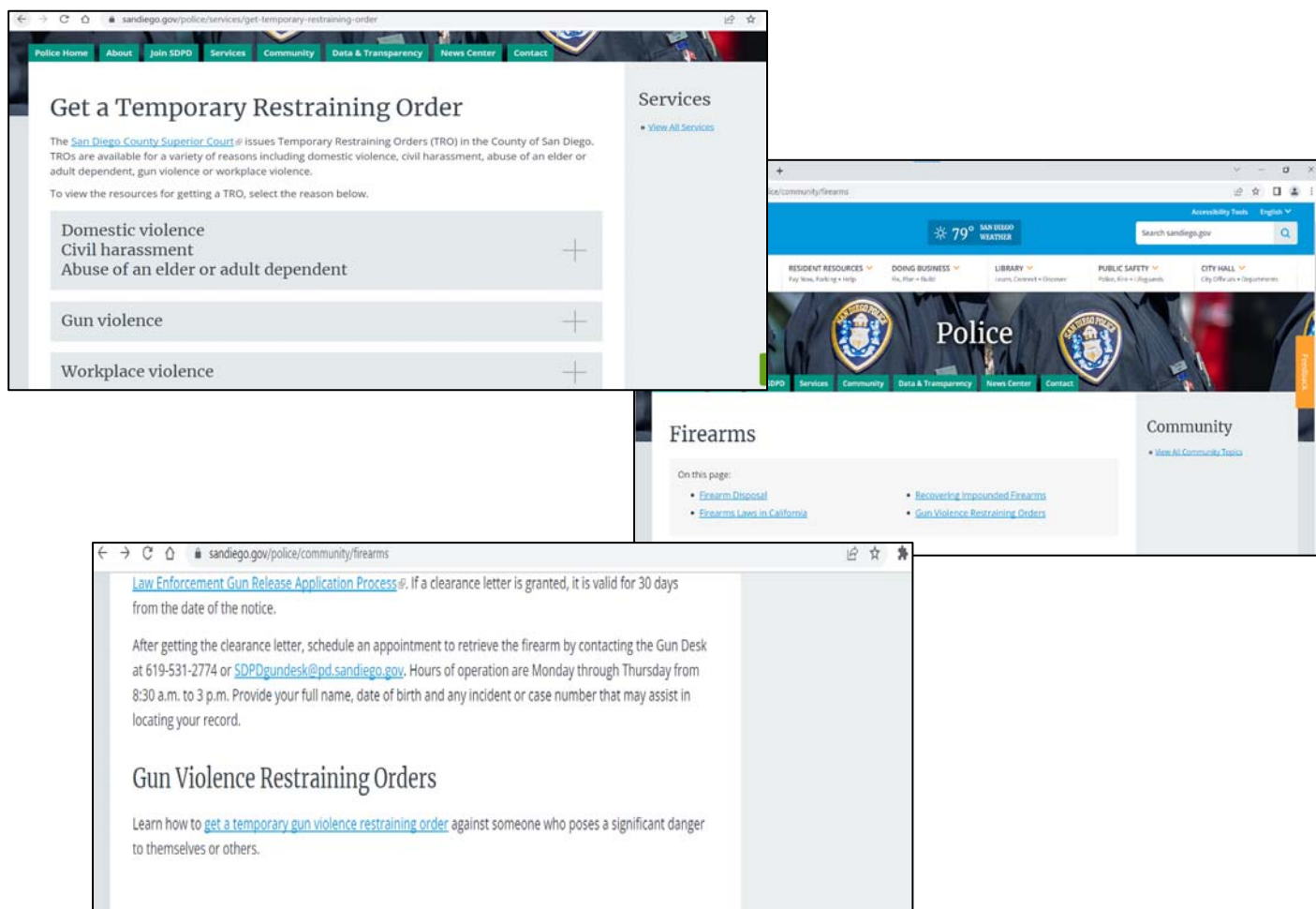
Besides law enforcement, GVROs can be initiated “ex parte” by petitioners such as a family member, employer, or educator.²⁰ From 2018-2020, Orange County had 71 ex parte GVROs. Based on data provided by Santa Clara County to the CA Department of Justice, the County did not have any during that same time period.

The City has done limited community outreach to inform the public about GVROs. Unlike some other jurisdictions, the City does not provide information and resources on GVROs on its website. In contrast, the San Diego's Police Department website provides information to the public about GVROs and how to obtain one. Seattle's Police Department similarly has a webpage on extreme risk protection orders, and includes materials in other languages (e.g., Amharic, Chinese, Korean).²¹

²⁰ AB 2870 was signed into law in September 2022. It expands the list of eligible petitioners for an ex parte GVRO to include additional types of family members, a roommate, classmate, dating partner, or an individual who has a child in common with the subject of the petition. GVEPOs are available only to law enforcement officers.

²¹ Extreme risk protection orders prevent individuals at high risk of harming themselves or others from accessing firearms. They allow family, household members, and police to obtain a court order when there is demonstrated evidence that the person presents a significant danger.

Exhibit 13: GVRO Resource Pages on San Diego Police Department's Website



Source: San Diego Police Department website.

The Police Department Has Multiple Avenues to Educate the Public About GVROs

SJPD staff highlighted the Speak for Safety website as a model that could be built upon for designing a GVRO specific website for the City,²² and noted the need to have such information available in multiple languages, such as Spanish and Vietnamese.

Also, the Crime Prevention Unit does presentations in the community on various crime prevention topics. Staff reported that in applicable presentations they have discussed safe storage of firearms and warned children about not touching a gun if they see one. They also hand out gun locks to residents free of charge. However, GVROs have not been a part of their community outreach efforts.

²² Speak for Safety is a campaign to raise awareness of California's GVROs. See <https://speakforsafety.org/>.

Recommendations:

- 3: To educate the community about the availability of gun violence restraining orders, the Police Department should:**
- a. Include awareness of gun violence restraining orders in its public education efforts, such as incorporating relevant information into the Crime Prevention Unit's community outreach presentations, and/or developing public service announcements.**
 - b. Include information on the different types of gun violence restraining orders and how to obtain one on the City's website, as well as make the information available in multiple languages.**

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Finding 4 The Police Department Can Provide Increased Staff Guidance and Supervisory Oversight for Regulating Firearm Businesses

Summary

SJPD's Permits Unit regulates firearm businesses for compliance with the Municipal Code. However, the Unit can improve guidance around inspections, such as documentation requirements, the frequency of inspections, and compliance guidelines. We found inconsistencies in how businesses were inspected and compliance with all Municipal Code requirements for firearm businesses was not fully documented. Finally, the permit fee for firearm businesses may not be fully cost recovery and should be reviewed. We recommend that the SJPD develop formal policies and procedures to guide its firearm business inspection program and review the cost recovery analysis of firearm business permit fees.

The Police Department's Permits Unit Regulates Firearm Business

SJPD's Permits Unit is responsible for providing oversight over businesses who sell firearms in the city. Chapter 6.90 of the Municipal Code lays out permit requirements for such businesses. Permits Unit staff are expected to conduct one annual inspection and two additional inspections to ensure compliance with the Municipal Code. The Department has designated one police officer to conduct these inspections, however a recent change in policy requires an additional police officer to be present on these inspections.

Inspections Have Not Fully Documented Compliance with the Municipal Code

At the time of the audit, there were 10 permitted firearm dealers in the city.²³ The Permits Unit provides oversight over these businesses, but did not always adequately document compliance with the Municipal Code.²⁴ From our sample review, we observed:

²³ One of the businesses has since closed. Currently there are nine firearm businesses in the city.

²⁴ Of the ten active firearm business licenses, we reviewed a judgmental sample of three businesses. We reviewed these for understanding how the department documents compliance with the Municipal Code and determining the adequacy of the review.

- Inspection records for one business had multiple Certificates of Eligibility (COE)²⁵ that were outdated, and an incomplete resale certificate.
- Records for another business did not include an updated liability insurance certificate or an updated alarm certificate.
- For a new business application, there was no documentation from the Planning Department stating whether the business complied with zoning regulations.
- Documents in the file did not necessarily correspond to when an initial inspection was done or was unclear about the date of when licenses or supporting documents were provided. There was also no consistent documentation to show follow-up when an issue was identified in an inspection.
- There was evidence of only one annual inspection even though Permits Unit staff told us that the department routinely does two additional unscheduled inspections.
- There was no evidence of an additional officer's presence at these inspections as required by SJPD policy.
- Even though the checklist included the requirement on the audio/video surveillance requirement, there was no documentation on how the inspector confirmed that they had verified compliance with the 30-day storage requirement.

The Municipal Code Outlines Various Requirements for Firearm Dealers

To receive a dealer permit, the Municipal Code requires businesses to comply with various zoning regulations, have an alarm system, comply with signage requirements, and other operating regulations and conditions. Exhibit I4 outlines requirements from the Municipal Code for firearm dealers.

²⁵ A "Certificate of Eligibility" certifies the Department of Justice (DOJ) has checked its records and determined the recipient is not prohibited from acquiring or possessing firearms at the time the firearms eligibility criminal background check was performed. A COE is a pre-requisite licensing/permit requirement for all prospective licensed firearms dealers, licensed ammunition vendors, manufacturers, certified instructors, gun show promoters, explosive permit holders, and other firearm-related employment activities, including, any agent or employee of a vendor who handles, sells, or delivers firearms and ammunition.

Exhibit 14: Requirements for Firearm Dealers

Category	Requirement
Application	<ul style="list-style-type: none"> • Completing a personal history questionnaire • Fingerprinting, be photographed at SJPD, be interviewed by an officer assigned to the permits unit and be at least 21 years of age • Having proof of a valid and current federal firearms license, state firearm dealer license • Having a Certificate of Eligibility issued by the State of California
Operation	<ul style="list-style-type: none"> • Displaying licenses • Having proof of compliance with a 10-day waiting period • Complying with requirements for delivery method of firearm to purchaser • Verifying of the licensee's age and identity
Noticing	<ul style="list-style-type: none"> • Posting warnings and noticing required by state law (such as on limits to purchasing more than one firearm in a 30-day period, and repercussions if a minor obtains and uses a firearm that was not securely stored in the owner's premises) • Having pamphlets or other printed materials related to suicide prevention, domestic violence and local gun laws for patrons
Physical Inventory	<ul style="list-style-type: none"> • Requiring the licensee to do a physical inventory that includes a listing of firearms and listing of each firearm the licensee has sold • Making the inventory report available if asked along with an affidavit signed by the licensee that this was confirmed
Audio Video Surveillance	<ul style="list-style-type: none"> • Requiring business locations to be monitored by an audio and video surveillance recording system • Storing images on the business premises for at least 30 days
Training	<ul style="list-style-type: none"> • Training all employees to question and determine whether each potential customer is buying the gun for themselves or for others in accordance with a checklist or protocol published by SJPD

Source: Auditor summary of Municipal Code Chapter 6.90.

The Current Inspection Checklist Does Not Include All Municipal Code Requirements



The Permits Unit currently uses an inspection checklist that, while including most Municipal Code requirements, did not include many others. As shown in Exhibit 15, the checklist did not include:

- The specific requirements under the Municipal Code for brochures for domestic violence prevention and local gun laws such as pamphlets and printed materials.²⁶
- Verification that the vendor trained their employees to question customers to determine whether they intend to buy or lease firearms for themselves.

²⁶ During our review for compliance with this requirement we found that while businesses had been provided brochures on suicide prevention, there was no notice on domestic violence as required by the Code. The Department has since begun providing the domestic violence pamphlets for display at firearm businesses. We should also note that the domestic violence brochures are available in multiple languages.

- Verification of how vendors are complying with identity check requirements
- Verification of the inventory check (attestation) required under the Municipal Code
- Any unscheduled inspections and the presence of the second police officer

Exhibit 15: Firearm Business Inspection Compliance Checklist

	SAN JOSE POLICE DEPARTMENT PERMITS UNIT	
FIREARMS DEALER FACILITY INSPECTION CHECKLIST		

Business Name: _____
Address: _____

Date: _____

SIGNAGE, LICENSES, PERMITS:

- Valid FFL _____ yes see attached _____ P / F
- Valid Sellers Permit (B.O.E.) _____ yes, see attached _____ P / F
- Valid Certificate of Eligibility (CA DOJ) _____ yes, attached _____ P / F
- Store Front Not In Violation of 26820 PC or Municipal Code _____ P / F
- Warnings Posted per 26835 PC (1 Inch Letters) _____ P / F
- Government Fees and Licensee Fees Posted _____ P / F
- Display Of All Licenses Requiring Display _____ P / F
- Suicide Prevention /Santa Clara County brochures on display _____ P / F
- Confirmation of Video/Audio (6.90.360) requirements (Video surveillance of all areas
Video and Audio of Sale/Transfer area, Review recording of transaction, 30 day
transaction recordings history, Video/Audio warning sign requirement
- Confirm use of Chapter 6 approved questions: _____ P / F

STRUCTURE AND SECURITY:

- Business Location In Compliance With Zoning Regulations _____ P / F
- Business In Permanent Building Per Municipal Code _____ P / F
- Doors Alarmed _____ P / F
- Windows Alarmed _____ P / F
- Alarm Company _____
- Method Of Securing Firearms During Non-Business Hours _____ P / F Describe: _____

PHOTOS TAKEN: _____ Yes / No

NOTES:

Approved Yes / No _____ Inspected By: _____ Badge: _____

Source: San José Police Department.

The Permits Unit Relies on Business to Provide Certificates of Eligibility

As noted above, the Municipal Code requires that firearm businesses provide a proof of Certificate of Eligibility for all relevant employees. A review of the Certificates of Eligibility provides assurance that an employee is not prohibited from acquiring or possessing firearms. The Permit Unit's current process relies on businesses to provide these documents to SJPD; however, the business may not provide an accompanying roster of employees. This limits the Permit Unit's ability

to cross check information to ensure all employees who should have a Certificate of Eligibility has one.

Draft Policies and Procedures Provide Little Guidance on Expectations

The Permits Unit has been working on draft policies and procedures for the Permits Unit staff. However, at the time of the audit the draft did not provide much guidance on the oversight of firearm businesses. For example, it did not include:

- Guidance for firearm business license issuance and renewals including verification of documents,
- Inspection expectations including the manner and number of inspections,
- Retention requirements for documents provided by firearm businesses,
- The requirement that two sworn staff conduct these inspections, and
- Expectations for oversight or supervision of inspections.

Having these guidelines would provide assurance of a consistent process including an ability to provide supervision of these inspections.

Firearm Business Permit Fees May Not Be Fully Cost Recovery

In FY 2022-23, the annual firearm dealer renewal fee was set at \$353 and the initial dealer application fee was set at \$786. The firearm business permit fees are expected to be Category I fees which, per the City's Adopted Fees and Charges Report, are supposed to be fully cost recovery.²⁷

However, the current years' fees are not fully cost recovery because of a small error on the cost-recovery calculation. This occurred because of a typo in the calculation.

Because the time spent on these inspections have not been reassessed since 2013, the current fees may not reflect actual cost of the inspections. Currently, they estimate that one inspector spends 1.58 hours of their time on each business. The cost calculation also does not include time for the additional inspector that is now supposed to accompany the inspector.

Recommendations:

- 4: To ensure a consistent process for firearm business regulation, the Police Department's Permits Unit should develop policies and procedures to document inspection expectations, roles and responsibilities, and documentation requirements. This includes:**

²⁷ At the time of the audit, we noted a small error in the cost recovery calculation. We notified staff and the Department, with the City Manager's Budget Office, brought a resolution to the City Council on November 29, 2022 to amend the 2022-2023 Schedule of Fees and Charges to correct the error.

- a. **Expectations for inspections including the number of scheduled and unscheduled inspections and the number of staff required, and**
 - b. **Documentation retention requirements for initial and renewal inspections and supervisory oversight.**
- 5: To ensure completeness of inspections, the Police Department's Permits Unit should revise the inspection checklist to include:**
 - a. **Sign off by second officer at inspections,**
 - b. **Review of audio/video surveillance for compliance with the 30-day storage requirement including potentially documentation of dates,**
 - c. **Review of requirement of attestation of firearm inventory check, and**
 - d. **Document review of the display of suicide prevention, domestic violence prevention, and local gun law resources.**
- 6: To cross check for accuracy and completeness, the Police Department's Permits Unit should request an annual roster of employees requiring a Certificate of Eligibility from firearm businesses.**
- 7: To ensure that firearm business permit fees are fully cost recovery, the Police Department should reassess actual time spent on inspections to determine whether the amount of time accurately reflects the time included in the cost recovery calculations.**

Conclusion

Firearm-related incidents have increased in the city between 2017-2021. Federal, state, and local laws regulate the possession, ownership, use and sale of firearms. The SJPD is tasked with enforcing these laws. City regulations generally follow state requirements, although the City's Municipal Code has additional guidelines in some instances. To better align with state law regarding firearm regulations, the Administration should update the Municipal Code accordingly. Gun violence restraining orders, which temporarily prohibit a person from owning or purchasing a firearm who poses significant danger to themselves or others, are a tool the City has to prevent firearm violence. To ensure procedures reflect current practice and to increase public awareness, the SJPD should revise language in its Duty Manual and update its internal procedures. SJPD should also include information about these orders in their public education efforts. The SJPD Permits Unit regulates firearm businesses by conducting inspections to ensure they follow Municipal Code requirements. The Permits Unit should update its procedures to ensure they are checking for compliance with all Municipal Code requirements and that there is supervisory oversight.

RECOMMENDATIONS

Finding 1: Firearm-Related Incidents Have Increased in the City

No recommendations.

Finding 2: State Law Is the Primary Authority Regulating Firearms in the City

Recommendation #1: To ensure that the San José Municipal Code better aligns with the California Penal Code, the City Administration should update sections 10.32.020, 6.90.320, and 6.90.330 of the Municipal Code.

Finding 3: The Police Department Should Update Internal Procedures and Conduct Outreach on Gun Violence Restraining Orders

Recommendation #2: To provide consistency and clarify responsibilities, the Police Department should update the Duty Manual to reflect the different types of gun violence restraining orders, and develop procedures on the current process for each, including staff responsibilities on disseminating communications on applicable administrative or law updates in a timely manner.

Recommendation #3: To educate the community about the availability of gun violence restraining orders, the Police Department should:

- a. Include awareness of gun violence restraining orders in its public education efforts, such as incorporating relevant information into the Crime Prevention Unit's community outreach presentations, and/or developing public service announcements.

- b. Include information on the different types of gun violence restraining orders and how to obtain one on the City's website, as well as make the information available in multiple languages.

Finding 4: The Police Department Can Provide Increased Staff Guidance and Supervisory Oversight for Regulating Firearm Businesses

Recommendation #4: To ensure a consistent process for firearm business regulation, the Police Department's Permits Unit should develop policies and procedures to document inspection expectations, roles and responsibilities, and documentation requirements. This includes:

- a. Expectations for inspections including the number of scheduled and unscheduled inspections and the number of staff required, and
- b. Documentation retention requirements for initial and renewal inspections and supervisory oversight.

Recommendation #5: To ensure completeness of inspections, the Police Department's Permits Unit should revise the inspection checklist to include:

- a. Sign off by second officer at inspections,
- b. Review of audio/video surveillance for compliance with the 30-day storage requirement including potentially documentation of dates,
- c. Review of requirement of attestation of firearm inventory check, and
- d. Document review of the display of suicide prevention, domestic violence prevention, and local gun law resources.

Recommendation #6: To cross check for accuracy and completeness, the Police Department's Permits Unit should request an annual roster of employees requiring a Certificate of Eligibility from firearm businesses.

Recommendation #7: To ensure that firearm business permit fees are fully cost recovery, the Police Department should reassess actual time spent on inspections to determine whether the amount of time accurately reflects the time included in the cost recovery calculations.

APPENDIX A

Audit Objective, Scope, and Methodology

The mission of the City Auditor's Office is to independently assess and report on City operations and services. The audit function is an essential element of San José's public accountability and our audits provide the City Council, City management, and the general public with independent and objective information regarding the economy, efficiency, effectiveness, and equity of City operations and services.

In accordance with the City Auditor's Fiscal Year (FY) 2022-23 Work Plan, we have completed an audit of firearm regulatory processes and policies. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The objective of our audit was to review the City's firearm regulatory processes and policies, including a review of trends in firearm violence in the city. This audit was requested by a Councilmember. To achieve our audit objective and understand relevant management controls we did the following:

- To understand current firearm regulations in the City, reviewed applicable federal, state and local laws and regulations including:
 - Title 18 of the United States Code Chapter 44 - Firearms
 - California Penal Code Part 6 Control of Deadly Weapons
 - San José Municipal Code Chapter 6 (Retail Firearms and Ammunition Dealers Regulations), and Chapter 10 (Weapons)
- Reviewed internal Police Department policies and procedures, including:
 - The San José Police Department Duty Manual
 - Draft Permits Unit and Warrants Unit policies
 - Training bulletins and memoranda issued related to gun violence restraining orders
- Interviewed staff to understand the current regulatory environment and processes in San José, including:
 - Staff in the San José Police Department Permits Unit, Warrants Unit, Fiscal Unit, Crime Analysis Unit, and Crime Prevention Unit, as well as sworn staff assigned to the City Attorney's Office
 - City Attorney's Office staff
 - Staff from the City Manager's Office, and
 - Santa Clara County DA's Crime Laboratory staff to understand privately made firearm data provided to SJPd
- To understand trends in firearm-related incidents we analyzed data from:
 - The Police Department's records management system (RMS)
 - National and state data from the Centers for Disease Control and city data received from the California Department of Public Health

- Santa Clara County DA's Crime Laboratory 2015-2021 data on privately made firearms
- To understand the processes and outreach around GVROs we reviewed the following:
 - Assembly Bill No. 61—Gun Violence Restraining Orders
 - The tracking sheet the City Attorney's Office utilizes for GVROs filed by the City
 - Outreach related to the City's GVRO laws done by the San José Police Department
 - San Diego and Seattle Police Department's websites and policies regarding GVROs
 - SJPD training bulletins issued in 2019 and 2021 related to updates in GVRO laws
 - Form EPO-002s issued in 2019, 2020, and 2021
- Using the City Attorney's Office's internal GVRO tracking sheet we reviewed a random sample of 30 GVROs for CY 2019 to 2022. We reviewed these against data in the California Restraining and Protective Order System (CARPOS) to understand the timeliness and completeness of the data entry
- Interviewed staff from the Santa Clara County District Attorney's Office and the City of San Diego Attorney's Office
- Selected a judgmental sample of three out of ten firearm businesses to understand the Police Department's process to document compliance with the San José Municipal Code
- Reviewed accuracy of permit fees by analyzing the Police Department's cost analysis of the 2022-23 firearm business permit fees

We would like to thank the San José Police Department, the City Attorney's Office, and the City Manager's Office for their time and insight during the audit process.

APPENDIX B

Table of the Number of Firearm-Related Incidents by Police District, 2017-2021

Police District	2017	2018	2019	2020	2021	Total
A	33	38	38	29	39	177
C	136	130	105	126	138	635
D	5	7	6	4	7	29
E	30	34	24	29	42	159
F	32	48	36	49	43	208
K	58	55	43	57	71	284
L	139	122	134	139	156	690
M	63	76	58	84	94	375
N	43	32	33	53	60	221
P	87	101	73	82	101	444
R	52	47	55	49	82	285
S	73	71	60	60	84	348
T	31	41	26	27	36	161
V	11	28	20	39	36	134
W	51	55	37	57	62	262
X	81	95	74	112	119	481
Y	53	44	41	59	45	242

Source: Auditor analysis of SJPd records management system data 2017-2021 Part I & II crimes coded as involving a firearm and had a police district associated with it. The analysis consists of incidents and not the number of victims, which may be more than the number of incidents.

Note: Incidents that did not have an identified police district were excluded. This accounted for less than 2 percent of the overall total.

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APPENDIX C

Santa Clara County District Attorney's Office Crime Strategies Unit, GVRO Summary Page

GUN VIOLENCE RESTRAINING ORDERS - 2021

WHAT IS IT? An order that allows law enforcement to take guns and ammo from persons who are danger to self/others. Requires party to relinquish weapons/ammo immediately.

3 TYPES: There are three types of GVRO's: (1) Temporary Emergency Order is for an immediate threat, and is only for Law Enforcement, (2) Temporary Ex-Parte is a formal application made in court by LEA or Family/Housemates, (3) Order after Notice/Hearing is a One Year order after a full hearing.

TIPS: If you have an imminent threat, you can request a GVRO over the phone, and memorialize it on the emergency order. If there's no emergency, request the ex-parte order. This triggers a formal hearing, and sets a court date when the judge first reviews the paperwork.

TAKING GUNS: The order requires the party to relinquish guns/ammo **immediately** to law enforcement. If they refuse, you have a basis for a search warrant pursuant to PC 1524(a)(14).

FOR HELP: On-Call Search Warrant DDAs can assist with an emergency order or warrant. Forms and Instructions Available Online at: <https://speakforsafety.org/>

	TEMPORARY EMERGENCY	TEMP EX-PARTE	ORDER AFTER HEARING
STANDARD FOR ISSUANCE	Must show there is <i>reasonable cause</i> : (1) the party is and immediate and present danger of causing personal injury to self or another by having guns/ammo AND (2) order is necessary to protect injury because other means have been tried OR are inappropriate under the circumstances	Must show there is a <i>substantial likelihood</i> : (1) the party poses a significant danger, in the near future, of injury to self/others, AND (2) order is necessary to protect injury because other means have been tried OR are inappropriate under the circumstances	Must show by <i>clear and convincing evidence</i> : (1) party poses significant danger of injury to self or others, AND less restrictive alternatives were ineffective or inappropriate under the circumstances.
WHO CAN APPLY?	LAW ENFORCEMENT ONLY	LAW ENF./FAMILY/COWORKER EDUCATOR/HOUSEMATE	LAW ENFORCEMENT
PROCESS	- Apply Orally or in Writing - Contact Duty Judge - Form EPO-002 - Once issued, serve & take guns immediately	- Apply in Writing in Family Court - Forms: GV-100, CLETS-001, GV-109	- The hearing is set EITHER by filing Ex Parte OR by operation of law after a temporary emergency order is issued
DURATION	21 days (triggers 1 Year hearing, but otherwise expires)	21 days (pending hearing on 1 Year+ order)	ONE TO FIVE YEARS
LEGAL AUTHORITY	PC 18125, et seq.	pc 18150, et seq	PC 18170, et seq



Questions about California Gun Laws, contact us:
Santa Clara County District Attorney's Office Crime Strategies Unit
SuDDA Marisa McKeown [408-792-2608] or DDA Mike Vidmar [408-792-2489]

Source: Santa Clara County District Attorney's Office Crime Strategies Unit.

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Memorandum

TO: JOE ROIS
CITY AUDITOR

FROM: Anthony Mata
Chief of Police

SUBJECT: SEE BELOW

DATE: November 30, 2022

APPROVED



DATE 12/2/2022

SUBJECT: RESPONSE TO AUDIT REPORT – FIREARM REGULATIONS: THE CITY SHOULD UPDATE PROCEDURES AROUND GUN VIOLENCE RESTRAINING ORDERS AND FIREARM BUSINESS INSPECTIONS

BACKGROUND

On September 22, 2021, Councilmember Peralez submitted a memorandum to the Joint Meeting for the Rules and Open Government Committee and Committee of the Whole entitled *Community Violence Prevention and Response*.¹ This memorandum, approved by the Committee, directed the City Auditor to “conduct an audit of the City’s firearm regulatory processes and policies, including a review of trends in firearm violence in the city, and make recommendations to the City Council for consideration.” In response, the City Auditor completed the audit entitled *Firearm Regulations: The City Should Update Procedures Around Gun Violence Restraining Orders and Firearm Business Inspections*. The Police Department (Department) and Office of the City Attorney administration reviewed the audit and are providing the following responses to the recommendations contained therein.

In addition to the direction provided in the *Community Violence Prevention and Response* memorandum outlined above, the memorandum gave direction to:

“Agendize at a future Public Safety, Finance & Strategic Support Committee (PSFSS) a report from the Police Department on causes of firearm related deaths and injuries including suicides in San José within the last five years and cross reference to the City Council, preferably with the audit mentioned in recommendation #3.”

The information requested on firearm deaths and incidents in the last five years is contained within Finding I of the City Auditor’s report and within the report by the Pacific Institute for Research and Evaluation entitled *Incidence and Cost of Firearm Injuries in San Jose, CA*. Mayor Liccardo submitted this report to the City Council as part of item 4.1 at the January 25, 2022 City Council meeting.²

¹ Details from this meeting may be found here:

<https://sanjose.legistar.com/MeetingDetail.aspx?ID=890597&GUID=EB459ED4-CBDE-45CC-8D32-2077182155AC>

² <https://sanjose.legistar.com/View.ashx?M=F&ID=10413284&GUID=89193E7F-B8CF-4BA5-B995-8D155A223F64>

The green, yellow, and red light priority framework will be utilized to illustrate the Department's operational readiness to undertake the workload demands of each response. A projected target completion date will be provided for each recommendation.

RECOMMENDATIONS AND RESPONSES

Recommendation #1: To ensure that the San José Municipal Code better aligns with the California Penal Code, the City Administration should update sections 10.32.020, 6.90.320, and 6.90.330 of the Municipal Code.

Response – The City Attorney's Office agrees with the recommendation and will propose appropriate updates to the Municipal Code to better align the Municipal code with the California Penal Code.

GREEN – the City Attorney's Office will begin working on this recommendation. The projected target completion of this recommendation is October 2023.

Recommendation #2: To provide consistency and clarify responsibilities, the Police Department should update the Duty Manual to reflect the different types of gun violence restraining orders, and develop procedures on the current process for each, including staff responsibilities on disseminating communications on applicable administrative or law updates in a timely manner.

Response – The Department agrees with this recommendation. The Department will update the Duty Manual as follows:

- A description of the types of gun violence restraining orders and when they apply
- The procedures for acquisition of each type of gun violence restraining order
- Staff responsibilities for communicating administrative or legal updates in a timely manner, including periodic review of administrative and legal requirements

GREEN – the Department will begin working on this recommendation. The projected target completion of this recommendation is June 2023.

Recommendation #3: To educate the community about the availability of gun violence restraining orders, the Police Department should:

- a. Include awareness of gun violence restraining orders in its public education efforts, such as incorporating relevant information into the Crime Prevention Unit's community outreach presentations, and/or developing public service announcements.
- b. Include information on the different types of gun violence restraining orders and how to obtain one on the City's website, as well as make the information available in multiple languages.

Response – The Department agrees with this recommendation. The Crime Prevention Unit and Divisional Captains will provide relevant gun violence restraining order information during community outreach presentations. In addition, the Creative Services Detail, in coordination with the Office of the City Attorney, will develop a public service announcement regarding gun violence restraining orders.

Information regarding how to obtain gun violence restraining orders will be added to the Department's website at www.sjpd.org. This information will be available in multiple languages.

GREEN – the Department will begin working on this recommendation. The projected target completion of this recommendation is June 2023.

Recommendation #4: To ensure a consistent process for firearm business regulation, the Police Department's Permits Unit should develop policies and procedures to document inspection expectations, roles and responsibilities, and documentation requirements. This includes:

- a. Expectations for inspections including the number of scheduled and unscheduled inspections and the number of staff required, and**
- b. Documentation retention requirements for initial and renewal inspections and supervisory oversight.**

Response – The Department agrees with this recommendation. The Permits Unit will develop comprehensive policies and procedures regarding documenting firearm business inspections as outlined in the report.

GREEN – the Department will begin working on this recommendation. The projected target completion of this recommendation is June 2023.

Recommendation #5: To ensure completeness of inspections, the Police Department's Permits Unit should revise the inspection checklist to include:

- a. Sign off by second officer at inspections,**
- b. Review of audio/video surveillance for compliance with the 30-day storage requirement including potentially documentation of dates,**
- c. Review of requirement of attestation of firearm inventory check, and**
- d. Document review of the display of suicide prevention, domestic violence prevention, and local gun law resources.**

Response – The Department agrees with this recommendation. The Permits Unit will revise the inspection checklist as outlined in the report. The updated checklist will be included as a requirement in the Unit’s policies and procedures.

GREEN – the Department will begin working on this recommendation. The projected target completion of this recommendation is June 2023.

Recommendation #6: To cross check for accuracy and completeness, the Police Department’s Permits Unit should request an annual roster of employees requiring a Certificate of Eligibility from firearm businesses.

Response – The Department agrees with this recommendation. The Permits Unit will develop a process by which a roster of employees requiring a Certificate of Eligibility is collected annually from all firearms businesses in the City. This process will be included as a requirement in the Unit’s policies and procedures.

GREEN – the Department will begin working on this recommendation. The projected target completion of this recommendation is June 2023.

Recommendation #7: To ensure that firearm business permit fees are fully cost recovery, the Police Department should reassess actual time spent on inspections to determine whether the amount of time accurately reflects the time included in the cost recovery calculations.

Response – The Department agrees with this recommendation. The Permits Unit will conduct an analysis of the time necessary to process firearm business permits. Using that information, the Department will work with the Fiscal Unit and the City Manager’s Budget Office to ensure the actual time spent on inspections accurately reflects the time included in the cost recovery calculations. Any necessary adjustments will be brought before City Council for review.

GREEN – the Department will begin working on this recommendation. The projected target completion of this recommendation is October 2023.

CONCLUSION

The Police Department Administration thanks the City Auditor’s Office for its review of firearm regulations. The recommendations provided will increase oversight and provide the community with key information on gun violence restraining orders. We look forward to advancing these best practices.

/s/

Anthony Mata
Chief of Police