



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Richard Doyle  
David Sykes

**SUBJECT:** FIREARM SAFE STORAGE  
ORDINANCE

**DATE:** September 25, 2017

## RECOMMENDATION

Adopt an ordinance requiring gun owners to safely store firearms in a locked container or disabled with a trigger lock upon leaving the residence.

## OUTCOME

Adoption of this ordinance and subsequent compliance may result in a reduction in the number of firearms thefts within San José.

## BACKGROUND

At the September 7, 2016 meeting of the Rules and Open Government Committee, the Committee reviewed a memorandum<sup>1</sup> from Councilmember Raul Peralez and then-Councilmember Ash Kalra regarding a proposed ordinance for the safe storage of firearms. The Committee referred the issue of a Gun Safety Ordinance to staff for review and evaluation.

Staff returned to the Rules and Open Government Committee on October 19, 2016, with a report<sup>2</sup> analyzing the proposed firearm safety ordinance. The proposed ordinance contained four recommendations, three of which were likely to be addressed by the passage of Proposition 63 and the enactment of new state laws. The Committee recommended staff return after the election with an update and referred one item to the full City Council for discussion and action; the item required “gun owners to safely store firearms that are kept in the home in a locked container or disabled with a trigger lock.”

The Committee further recommended staff to identify funding sources or grant opportunities for purchase of off-duty lock boxes for police officers to comply with a new state law regarding safe storage of firearms in unattended vehicles. As of January 1, 2017, California Penal Code Section

<sup>1</sup> Councilmembers' memorandum: [http://sanjose.granicus.com/MetaViewer.php?meta\\_id=590828](http://sanjose.granicus.com/MetaViewer.php?meta_id=590828)

<sup>2</sup> Police Department staff report: [http://sanjose.granicus.com/MetaViewer.php?meta\\_id=597168](http://sanjose.granicus.com/MetaViewer.php?meta_id=597168)

25140(a) requires firearms stored in unattended vehicles to be locked in the trunk or stored in a locked container out of plain view. The Police Department has funded the installation of such boxes for officers serving in Special Operations. The Police Department believes this action item fulfills the requirements of the new law and Council direction.

On January 4, 2017, staff returned to the Rules Committee with a status report<sup>3</sup> on firearm safe storage and stated the City Attorney had capacity to draft an ordinance for the Council's consideration regarding the safe storage of firearms in residences. It should be noted that staff's "green light" on this item (under the Council Priority Setting Process) was based on a projection of limited staff work to conduct the legal and policy analysis outlined below. Had the Rules Committee requested more extensive policy analysis or community outreach, staff's recommendation would have been to forward the proposed ordinance to the next Council Priority Setting session.

## **ANALYSIS**

The City Attorney's Office reviewed ordinances from other cities in California to determine which ordinances have withstood legal challenges and would ultimately serve as a model ordinance. Staff also reviewed the following concerns raised by the Safe Cities Coalition and other members of the public:

- Children or teenagers accessing firearms, resulting in accidental deaths or injuries, as well as intentional harm and suicides.
- Individuals who suffer from mental health issues accessing firearms, resulting in deaths or injuries, confrontations with police, or suicides.
- The escalation of domestic violence incidents when firearms are readily accessible.
- Access to firearms by felons.
- Unlocked firearms are more likely to be stolen from the home.

Following is an analysis of how these concerns are addressed under current California law:

### ***Firearm Storage and Children and Youth***

Unless otherwise unlawful, any person over the age of 18, who is not prohibited from possessing firearms, may have a loaded or unloaded firearm at his/ her place of residence. California Penal Code Section 25100 makes it a crime to store a loaded firearm that is accessible to a child, if the child obtains the firearm and causes injury or death and/or carries the firearm into a public place. Penal Code Section 25105 provides a number of exceptions to the criminal storage law: the child obtains the firearm as a result of an illegal entry to any premises by any person; the firearm is kept in a locked container or in a location that a reasonable person would believe to be secure; the firearm is locked with a locking device, as defined in Penal Code Section 16860, which renders the firearm inoperable; the firearm is carried on the person or within close enough proximity

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<sup>3</sup> Status Report: [http://sanjose.granicus.com/MetaViewer.php?meta\\_id=609529](http://sanjose.granicus.com/MetaViewer.php?meta_id=609529).

thereto that the individual can readily retrieve and use the firearm as if carried on the person; the person is a peace officer or member of the Armed Forces or National Guard and the child obtains the firearm during, or incidental to, the performance of the person's duties; or the person who keep a loaded firearm on premises that are under the person's custody or control has no reasonable expectation, based on objective facts and circumstances, that a child is likely to be present on the premises. .

### ***Access to Firearms – Prohibiting Categories***

Any person who has been convicted of a felony, certain misdemeanors, certain firearms offenses, who is addicted to narcotics, who is the subject of a domestic violence restraining order, or has been committed to a mental institution pursuant to Welfare and Institutions Code section 8100, may not possess or have under his/her control any firearm<sup>4</sup>. It is important to note that the definition of "committed to a mental institution" does not include certain types of temporary hold, such as temporary 72-hour hold, when a person, as a result of a mental health disorder, is a danger to himself /herself or gravely disabled, pursuant to Welfare and Institutions Code Section 5150.

Certain federal statutes impose lifetime and other more restrictive prohibitions on firearm possession. Additionally, statutory conditions exist that allow for the possession of firearms, but preclude the acquisition or purchase of additional firearms, by certain persons, including those who are the subject of certain restraining orders and those under state or federal indictment.

### ***Theft of Firearm from a Residence***

State law does not include any provisions requiring firearms be stored in the home in a manner that might deter or prevent theft.

### **Conclusions**

State law currently addresses the safety of children who are reasonably expected to be present in the home and prohibiting access to firearms by several categories of individuals. State law also addresses persons convicted of a felony, certain misdemeanors, certain firearms offenses, who are addicted to narcotics, who are the subject of a domestic violence restraining order, or have been committed to a mental institution. However, State law does not address the prevention of theft of unsecured firearms.

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. A report by the Bureau of Alcohol, Tobacco and Firearms indicated private individuals in California reported over 10,000 lost or stolen firearms in 2012; the actual number of stolen guns may be 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.

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<sup>4</sup> Prohibiting Categories: <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/forms/prohibcatmisd.pdf>

From August 1, 2014 through July 31, 2017, 265 firearms were reported stolen during the 8883 residential burglaries in the City of San Jose. Stolen firearms are commonly used in subsequently committed crimes. As a result, there is a significant public interest in preventing them from falling into the hands of persons involved in criminal activity.

There is a compelling argument for the requirement that firearms are secured in a locked container<sup>5</sup> in accordance with California Penal Code Section 16850, or disabled with a trigger lock<sup>6</sup> when the owner(s) have departed the home and there is no reasonable expectation that the residence will be occupied prior to the owner's return; securing a firearm in a locked container or disabling the firearm with a trigger lock while the owner is away from the residence may help mitigate the possibility that the firearm will be feloniously taken in the commission of a burglary.

### **Potential Impacts**

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, or unless officers recover a firearm after it has been used in a crime, the firearm is owned by someone other than the suspect, and it becomes clear that the firearm had been stolen or lost. Officers at the scene would have the discretion, based on the totality of the circumstances, to take enforcement action. This would result in minimal added workload to officers and virtually no fiscal impact to the City, other than potential revenue from fines collected due to a violation. Compliance with such an ordinance may result in a reduction in the number of firearms thefts within San José.

In implementing a safe storage ordinance, staff does not want to create a deterrent to reporting stolen firearms that had not been kept in a locked container or disabled with a locking device, especially immediately following the ordinance being enacted. One option would be for the Council to direct the City Manager to put in place policies under which the Police Department would not cite any person for a violation if the firearm is reported stolen within 24 hours after the person knew or reasonably should have known that the firearm was stolen.

### **EVALUATION AND FOLLOW-UP**

After a year, the City Manager will report to the Council via informational memorandum on the number of citations written under this ordinance.

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<sup>5</sup> Under California Penal Code Section 16850, the term "locked container" means a secure container that is fully enclosed and locked by a padlock, key-lock, combination lock, or similar locking device. The term "locked container" does not include the utility or glove compartment of a motor vehicle.

<sup>6</sup> "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.

## **POLICY ALTERNATIVES**

Additional policy alternatives (from other California cities) that Council could consider:

***Alternative # 1: Requiring the firearm to be locked in a container or disabled with a trigger lock when it is not on the gun owner's person, as is required in San Francisco.***

**Pros:** The safe storage of firearms would be implemented when the firearm was not on the owner's person, likely resulting in a reduction in the number of firearms thefts within San José.

**Cons:** 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 José police officers, firefighters, and others who might respond to the home during a public safety or medical emergency as well as other situations.

**Reason for not recommending:** Encouraging firearms owners to carry presumably loaded weapons on their persons at all times is likely to increase risks to San José city staff as well as neighboring residents and family members.

***Alternative # 2: Requiring the firearm to be locked up or disabled with a trigger lock when it is not on the gun owner's person or in his or her immediate control and possession (Sunnyvale) or within close enough proximity and control that the person can readily retrieve and use the firearm as if carried on the person (Los Angeles).***

**Pros:** The safe storage of firearms would be implemented, likely resulting in a reduction in the number of firearms thefts within San José.

**Cons:** The question of whether a firearm was in the owner's "immediate possession and control" or "*within close enough proximity and control that the person can readily retrieve and use the firearm as if carried on the person*" is subject to the interpretation of the courts.

**Reason for not recommending:** Due to the difficulty in determining whether an owner was in "proximity and control" of their firearm, staff recommends an alternative with more clear language.

***Alternative # 3: Exempting active duty members of law enforcement from this ordinance.***

**Pros:** There are no pros to this recommendation, as unsecured firearms would be easily accessible to burglars.

**Cons:** Law enforcement personnel are victims of burglaries, just like other members of the public; this exemption could potentially result in unsecured firearms being in the hands of criminals.

**Reason for not recommending:** As previously stated, law enforcement personnel are victims of burglaries and this exemption could potentially result in unsecured firearms being in the hands of criminals.

**PUBLIC OUTREACH**

This ordinance has been previously discussed at the Rules and Open Government Committee meetings. This memorandum will be posted on the City's Council Agenda website for the October 17, 2017 Council Meeting.

**COORDINATION**

This memorandum has been coordinated with the City Attorney's Office and the San José Police Department.


**COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action.

**CEQA**

Not a project, File No. PP17-009. Staff Report, assessments, annual reports, and informational memos that involve no approvals of any City action.

  
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