



Memorandum

TO: THE HONORABLE MAYOR &
CITY COUNCIL

FROM: Councilmember Lan Diep

SUBJECT: FIREARM SAFE STORAGE
ORDINANCE

DATE: 10/17/2017

Approved

San Diep

Date

10/17/17

RECOMMENDATION

Direct the City Attorney to draft an ordinance similar to the state's Child Access Prevention Law that expands its provisions to impose civil liability on gun owners whose reckless disregard of substantial and unjustifiable risks in storing their guns is the proximate cause of a gun-related crime.

ARGUMENT

In drafting the Second Amendment, our nation's founders intended to "codify a pre-existing right, rather than to fashion a new one."¹ As interpreted by the Supreme Court, the Second Amendment guarantees the individual right to "carry weapons in case of confrontation."² This right has been incorporated to apply to states, counties, and cities,³ limiting the ability of municipalities to infringe upon it. The right to carry a firearm is not absolute and states may regulate it in a reasonable manner. However, the right to carry a weapon for self-defense is strongest when "law-abiding, responsible citizens use arms in defense of hearth and home."⁴

Although this Council is empowered to regulate the storage of guns within city limits, it should avoid micromanaging the actions of law-abiding citizens within their own homes. Both recommendations by staff and Councilmembers Peralez and Jones walk up to that threshold, and may even cross it.

The stated objectives in proposing a firearm safe storage ordinance are praiseworthy. Gun owners should be responsible and store their firearms securely to prevent unintended bodily harm to others. But what is *responsible* depends on individual circumstances and the government should not establish a standard for everyone. The ordinances proposed seek to apply a one-size-fits-all solution to a problem of varying degree.

¹ *District of Columbia v. Heller*, 554 U.S. 570 (2008).

² *Id.*

³ *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

⁴ *District of Columbia v. Heller*, 554 U.S. 570 (2008).

Context is important. A person who lives in a single-family home is probably more susceptible to burglary than one who lives in a high-rise with onsite security. Leaving a handgun in a bedside drawer may be acceptable in a house with an immobile newborn, but unacceptable in a house with teenagers. Yet if those teenagers are taught to respect and handle guns from a young age so that they view guns as a tool rather than a shiny toy, then perhaps less precaution is required in that specific household.

The recommendation by Councilmembers Jones and Peralez builds in flexibility by intentionally not defining “immediate control” and leaving it for a judge, jury, or prosecutor to use their best judgement. But that is precisely what should not be done. Laws that are plain in their objective, limited in their scope, and clear as to the limits of what is legal are the laws that will be most effective. Clarity will help prosecutors know what to charge and will instruct judges on what to enforce. The legislative branch is most directly accountable to the public; the Council should not abdicate our own responsibility as legislators and leave it to judges to bind the public to their personal preferences.

The public is accustomed to being held accountable for their own actions. It is commonly understood that there is a general duty of care towards those whom our actions impact. If passed, the proposed ordinances mandating that firearms be locked up would create an affirmative duty on gun owners to prevent and perhaps even be liable for the criminal actions of strangers. The Council would impose liability for *inaction* rather than *action*.

CONCLUSION

Instead of extending government regulation into the private homes of gun owners, it is preferable to impose punishments for undesired outcomes that are the direct result of one’s own reckless negligence. In other words, impose a punishment when a gun owner fails to perceive a substantial and unjustifiable risk that will likely occur under the circumstances, that a reasonable person would be aware of. Doing so would serve as a deterrent to irresponsible action by gun owners while allowing them to be responsible according to their own individual circumstances.

COUNCILMEMBER
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