



# Memorandum

**TO:** RULES AND OPEN  
GOVERNMENT COMMITTEE

**FROM:** Mayor Sam Liccardo  
Vice Mayor Chappie Jones

**SUBJECT:** GUN VIOLENCE PREVENTION

**DATE:** February 19, 2019

Approved

Date 2-19-2019

## RECOMMENDATION

Direct the City Manager and City Attorney to revise and update sections of Chapter 10.32 of the San José Municipal Code ("Firearms Sales") to:

1. Require of all licensees of vendor permits:
  - a) **Video and Audio Recording Transactions:** Video- and audio-record every firearm and ammunition transfer to any unsworn member of the public, provide adequate storage of that data for a minimum period, and enable reproduction or access to the videos to SJPD or other agency designated by the City Manager upon request;
  - b) **Training:** Train all staff within a year of ordinance implementation and all new hires within 3 months of implementation, to question potential purchasers, within earshot of the audio recording device, to determine whether the customer seeks to purchase the gun or ammunition for themselves, or for another person ("straw purchaser"). The questions shall comply with a checklist or protocol published by the San Jose Police Department, in consultation with the City Attorney;
  - c) **Inventory Checks:** Perform at least one annual inventory check, and immediately report any missing or stolen firearms and/or ammunition to SJPD;
  - d) **Suicide Prevention:** Display information at point of-sale about local gun laws, suicide warning signs, and Santa Clara County-approved resources for suicide prevention and domestic violence.
2. Prohibit the sale of any firearms and ammunition within or from a residence.
3. Modernize section 10.32.030—requiring a license for sale, transfer, or advertisement of concealable firearms—to include the regulation of sale of all firearms, ammunition, and downloadable firearms within the city.

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- a) If proposed state legislation in this session fails to address the 3D-printed gun loophole, direct the City Attorney to specifically include language that extends the requirements of SJMC Section 10.32 to anyone who provides or downloads data required for the production of a 3D-printed firearm or its components.

## **DISCUSSION**

### **The Correlation Between Gun Access and Gun Violence**

Although the San José Police Department in recent years has effectively reduced the incidence of crimes such as homicide and burglary, we have seen a troubling increase in assaults with firearms, and in robberies with firearms. National trends regarding gun violence should also give us pause, as we see rapid growth in the frequency of mass shootings, with more than 1,900 such incidents since the horrific 2012 shooting of school children at Sandy Hook.<sup>1</sup> We have also seen a troublingly stubborn rise in firearm-enabled suicide among juveniles and young adults in the past two decades. All told, these trends leave a grim toll across our nation: some 39,000 gun-related deaths each year, including 23,000 suicides. And it's getting worse: even accounting for population growth, U.S. gun deaths in two decades have increased 16%.<sup>2</sup>

We cannot ignore the evidence linking rates of gun violence with the proliferation of guns. An extensive peer-reviewed study published in the *American Journal of Public Health* concluded that a 1 percent increase in a state's gun ownership will predict a nearly commensurate increase in gun-related homicides.<sup>3</sup> Independent, peer-reviewed studies from major universities—those not funded by ideologically affiliated groups—repeatedly demonstrate that gun control laws mitigate gun violence.<sup>4</sup> Still, the United States has the weakest gun control laws among the world's most developed nations, and it shows: gun-related deaths in the United States are 3 times more frequent per person than any one of those 33 nations.<sup>5</sup>

As we consider the rising gun-related crime countywide, we cannot ignore that legal gun sales increased by 156% from 2001 to 2015—totaling 363,725 legally sold guns in that span.

### **Why Regulate Gun Stores?**

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<sup>1</sup> <https://www.vox.com/a/mass-shootings-america-sandy-hook-gun-violence>. Data is collected from the “Mass Shooting Archive,” which defines a “mass shooting” as any incident in which four or more people are injured by a single shooter or conspiracy of shooters on a single day.

<sup>2</sup> <https://www.gunpolicy.org/firearms/region/united-states>

<sup>3</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3828709/>

<sup>4</sup> See, e.g., Dr. Elsinore J. Kaufman & Dr. Christopher N. Morrison, and Dr. Charles D. Branas, “State Firearm Laws and Interstate Firearm Deaths From Homicide and Suicide in the United States” *Journal of the American Medical Association*, March 2018 (finding robust correlation between strong gun laws in states and reduced incidence of firearm-related homicides).

<sup>5</sup> [www.gunpolicy.org](https://www.gunpolicy.org), as demonstrated graphically in <https://www.vox.com/a/mass-shootings-america-sandy-hook-gun-violence>

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The near-ubiquity of guns makes this, and declare that there's nothing for us to do. The federal and state governments have pre-emptive authority to regulate most aspects of gun policy in the United States, leaving little room for cities like San José to enact policies that can better protect our residents.

Yet cities do regulate the operations of gun retailers within their jurisdictions. That is the focus of this memorandum. The means by which crime guns—legal or illegal—are injected into a community inevitably starts with the purchase at a licensed retailer, according to former Director of the Bureau of Alcohol, Tobacco, and Firearms (ATF) Bradley Buckles.

Studies tracing the origins of “crime guns”—guns recovered at the scene of crimes—show how regulations over legal sales affect the flow of guns in the illicit market. For example, Illinois in the early 1990's had effective background check requirements, but Chicago suffered from a high rate of out-of-state guns being used in crime in that city. The 1994 passage Brady Handgun Violence Prevention Act in 1994 imposed uniformly strict background checks nationally, and reduced the rate of recovery of out-of-state crime-connected guns in Chicago by more than half.<sup>6</sup> In contrast, when Missouri repealed its permit-to-purchase (PTP) law for handgun purchases in 2007, the rate of in-state crime guns recovered in Missouri increased dramatically.<sup>7</sup>

Naturally, opponents of gun regulation argue that guns are often stolen, or obtained through illicit channels, or purchased through the internet, so better regulation of law-abiding stores won't do much. They point to data from a January 2019 Bureau of Justice Statistics study suggesting that only 10.1% of federal and state inmates self-reported that they obtained the gun used in their offense from a retail source.<sup>8</sup>

Such a superficial reading of that study is very misleading, however. That 10.1% statistic “only includes those who directly purchased or traded for the firearms themselves,” according to the study's author.<sup>9</sup> In the same study, another 25% of inmates said that they received their gun from a “family member or a friend, or as a gift”<sup>10</sup> That “gift” often came from a gun retailer, as some 10.8% of the inmates admitted that they had the gun “purchased for them.” That illicit provision of guns from retail sources in this way—through “straw purchasers”—constitutes a focus of this proposal. Another 43% of guns came “off the street,” or from an “underground market.” There's ample reason to believe that a large share of that 43% “off the street” market originated from a straw purchaser source; in a separate study, the U.S. Bureau of Alcohol, Tobacco, and Firearms (ATF) examined gun-trafficking investigations of illegally-owned guns from July 1996 to December 1998 and found that by far the

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<sup>6</sup> I Philip J Cook, Richard J. Harris, Jens Ludwig, and Harold A. Pollack, *Some Sources Of Crime Guns in Chicago: Dirty Dealers, Straw Purchases, and Traffickers*, 104 J.Crim. L.& Criminology (2015)

<sup>7</sup> Webster, D. (2013). *Reducing gun violence in America*. Baltimore, Md.: Johns Hopkins Univ. Press.

<sup>8</sup> U.S. Department of Justice. Source and Use of Firearms Involved in Crimes: Survey of Prison Inmates, 2016

<sup>9</sup> Question regarding US Dept of Justice Special Report: Source and Use of Firearms involved in Crimes [E-mail to M. Alper]. (2019, January 30).

<sup>10</sup> In all of this, of course, it bears noting the obvious: the entire study relied upon self-reports of convicted felons, who likely have a strong incentive to conceal who provided them guns, or how they got them—particularly if they're gang members. “Friends and family” could be as likely to be fellow gang members who purchased the guns for them as not.

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largest share— 46 percent— of trafficking investigations during this period involved straw purchasers at licensed gun stores.<sup>11</sup>

### The Perils of Straw Purchasing

There's ample other evidence that straw purchasing constitutes a major source of guns used in crime and youth suicides. Given their lack of lawful ability to purchase a firearm, youth must obtain their guns almost entirely from social connections, as the data shows: an ATF study found that "straw purchases" at licensed stores comprised more than half of firearms confiscated from youth.<sup>12</sup> Given the epidemic of suicide among teens and young adults,<sup>13</sup> straw purchasing of guns should capture our concern for that reason alone.

Other studies support this focus, because it's self-evident that gang members and friends with clean records comprise ideal buyers of guns for crooks. A 2015 case study of the sources of crime guns in Chicago showed that non-gang members with no prior felony arrest were 5.5 times more likely to purchase a new gun directly from a dealer than a gang member with no prior felony arrest.<sup>14</sup> In that same report, researchers concluded that "gang members seem to be more reliant on trafficking and straw purchases."<sup>15</sup> The growing feminization of crime increasingly brings women into the gun supply chain. At the risk of relying on traditional gender stereotypes, a 2017 study of sources of crime guns in Chicago point out that 15% of newer guns confiscated from male gang members were originally purchased by a female, suggesting that these guns were acquired through a straw purchase.<sup>16</sup> Finally, as noted earlier, perhaps half of all illegally-owned guns are sourced to straw purchasing. At every turn, we see the importance of reducing the practice.

Most gun and ammunition dealers take their responsibilities seriously, and diligently try to ensure that they only sell guns to law-abiding citizens. Yet identifying "problem vendors" can be particularly fruitful: according to the ATF, 57% of the guns involved in crime could be traced to only 1% of licensed gun shops.<sup>17</sup>

### Why Not Leave it to Congress?

The federal government has largely abdicated its role in firearm regulation. So long as Congress and the White House cower in the presence of National Rifle Association (NRA) lobbyists, federal gun regulation will remain weak. Federal laws appear too tepid even to aid in efforts to protect

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<sup>11</sup> Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms and Explosives. *Following the Gun: Enforcing Federal Law Against Firearms Traffickers*. Washington, D.C.: Department of the Treasury, 2000; This was the only comprehensive study of its kind, and found that "straw purchasing" of guns accounted for more than twice as many trafficked guns as the next most common cause.

<sup>12</sup> *Commerce in Firearms in the United States*, <https://permanent.access.gpo.gov/lps4006/020400report.pdf>

<sup>13</sup> U.S. Center for Disease Control, [www.cdc.gov/injury/images/lc-charts/leading\\_causes\\_of\\_death\\_age\\_group\\_2015\\_1050w740h.gif](http://www.cdc.gov/injury/images/lc-charts/leading_causes_of_death_age_group_2015_1050w740h.gif)

<sup>14</sup> Philip J Cook, Richard J. Harris, Jens Ludwig, and Harold A. Pollack, *Some Sources Of Crime Guns in Chicago: Dirty Dealers, Straw Purchases, and Traffickers*, 104 J.Crim. L.& Criminology (2015)

<sup>15</sup> Philip J Cook, Richard J. Harris, Jens Ludwig, and Harold A. Pollack, *Some Sources Of Crime Guns in Chicago: Dirty Dealers, Straw Purchases, and Traffickers*, 104 J.Crim. L.& Criminology (2015)

<sup>16</sup> Philip J. Cook and Harold A. Pollack (2017). Reducing Access to Guns by Violent Offenders. *RSF: The Russell Sage Foundation Journal of the Social Sciences*, 3(5), p.2.

<sup>17</sup> Department of Treasury, Bureau of Alcohol, Tobacco, Firearms and Explosives. *Commerce in Firearms in the United States*. Washington, D.C.: Department of the Treasury, 2000.

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us from terrorism; in 2004, people on the FBI's terrorist watch list were able to buy guns in 47 out of the 58 times they tried, according to a GAO study.<sup>18</sup> Federal enforcement doesn't inspire confidence, either; according to a 2013 report of the US Department of Justice's Office of Inspector General, although 38% of federally licensed gun vendors fail to comply with federal standards, the ATF rarely revokes firearm licenses.

The regulations proposed above attempt to address some of these issues. Training employees who sell guns with police-approved protocols of questioning will help identify, deter, and reduce sales to straw buyers.<sup>19</sup> Videotaping purchases will improve enforcement against permissive gun dealers, while deterring straw buyers who know that even with the use of false identification, they can be readily identified as a source of a gun used in a crime. Mandating inventory checks, when combined with state reporting requirements, reduces risks of embezzlement or illegal distribution from gun store employees. Prohibiting sales of guns in residences eliminates the prospect of law enforcement facing privacy-related bars to regulation, search, and seizure.

We also have not updated City ordinances regulating the sale of guns since 1980. Technology now enables every owner of a 3D printer to become a "producer" or "distributor" of firearms—just one of several challenges for which we are ill-prepared. Revising our ordinances is long overdue.

I am grateful for the research, thought leadership, and partnership of several organizations, including the Gifford Law Center, Brady Campaign to End Gun Violence, and Everytown. I'm also thankful to the San José Police Department and the Santa Clara County District Attorney's Office for their expert insights and input.

Updating gun ordinances aligns with the Major Cities Chiefs of Police Policy Statement, the Mayor's Gang Prevention Task Force Strategic Work Plan 2019-2020 Goal #1, and the East San José Peace Project Gun Safety & Violence Prevention Workgroup.

### *Brown Act Disclaimer*

*The signers of this memorandum have not had, and will not have, any private conversation with any other member of the City Council, or that member's staff, concerning any action discussed in the memorandum, and that each signer's staff members have not had, and have been instructed not to have, any such conversation with any other member of the City Council or that member's staff.*

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<sup>18</sup> Government Accountability Office. Gun Control and Terrorism: FBI Could Better Manage Firearm-Related Background Checks Involving Terrorist Watch List Records. Washington, D.C.: GAO, 2005.

<sup>19</sup> [https://everytownresearch.org/reports/inside-straw-purchasing-criminals-get-guns-illegally/#foot\\_note\\_10](https://everytownresearch.org/reports/inside-straw-purchasing-criminals-get-guns-illegally/#foot_note_10)