



## Memorandum

**TO:** CITY COUNCIL

**FROM:** Mayor Sam Liccardo  
Vice-Mayor Chappie Jones  
Councilmember Raul Perez

**SUBJECT:** SEE BELOW

**DATE:** August 21, 2019

Approved

Date

8-15-2019

**SUBJECT:**

**A HARM REDUCTION APPROACH: ELIMINATING THE "GUN VIOLENCE SUBSIDY"**

### RECOMMENDATION

1. **Purpose:** This policy shall have three basic purposes regarding gun violence: harm reduction, alignment of risk, behavior and financial responsibility, and reduction of public burden.
2. **Insurance for all gun owners**  
Upon complying with standard City processes for Council-requested policy proposals, evaluate and present to Council options requiring all residents of the City of San José—other than sworn employees of law enforcement agencies—to have insurance for their ownership or possession of a gun.
  - a. **No Registry / Licensing / Data Collection:** To ensure compliance with state law, such an insurance requirement must not contain any provision for a registry or licensing scheme, nor shall the City collect any data beyond that necessary to implement this policy.
  - b. **Provision of Insurance:** The insurance requirement may be provided by an existing homeowner's policy, renter's policy, or a stand-alone policy. In the instance where the gun owner's insurer does not provide appropriate coverage, or the individual cannot obtain insurance coverage, the gun owner must participate in a public pool, as described in 3., below.

**Coverage:** Insurance shall include coverage for accidental discharge of the gun, and for the intentional acts of third parties who steal, borrow, or otherwise acquire the gun. To comply with state law and with longstanding insurance principles designed to avoid moral hazard, the insurance shall not cover liability of the policyholder for his or her own intentional conduct.

**3. Fee to Fund Public Pool to Address “Gun Violence Subsidy”**

Where insurance is not available, or as an alternative to an insurance mandate, Staff shall consider how the City might require gun owners to pay a per-household fee to participate in a public compensation pool sufficient to eliminate the public cost of the “gun violence subsidy” to existing gun owners.

- a. Gun Violence Subsidy:** The “Gun Violence Subsidy” incorporates all financial burdens borne by the public for private usage and ownership of firearms that result in harm, including but not limited to:
  - Emergency medical response provided by the San José Fire Department, and public-funded transport by AMR;
  - Hospitalization and treatment provided by VMC and other public hospitals funded by MediCal, the County, or other public sources;
  - Rehabilitation and physical therapy funded by public sources;
  - Incident response by San Jose Police Department;
  - Expenditures by state-funded Victim-Witness Assistance Center programs for funeral services, counseling, and other expenses;
  - Prosecution expenses by the County District Attorney’s Office; and
  - Any other expenses foreseeably borne by taxpayers for gun violence.
- b. Nexus Study:** Staff shall engage an expert consultant to conduct a nexus study to aggregate the Gun Violence Subsidy in the City of San José, and assess a per-household fee on gun-owning households that would accurately relieve that aggregate burden from the public.
- c. Partnership with County and State:** Staff shall reach out to the County of Santa Clara, State of California, and other relevant agencies to assess (a) costs incurred by those agencies, and (b) their interest in partnering with the City to recoup those costs through fee revenue.
- d. Allocation of Risk:** Staff shall consider varying the fee based upon circumstances actuarially related to the risks associated with the gun’s possession, e.g., to reduce or eliminate the fee where the gun owner has completed a sanctioned gun safety course within a designated period, or to increase the fee where young adults under 25 possess or have access to the gun, for example.
- e. Legality:** Staff shall consider how the Council can establish “by a preponderance of the evidence ...that the amount [of the fee] is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor’s burdens on... the governmental activity,” as required under Proposition 26.

**4. Enforcement**

- a. Construct a set of enforcement misdemeanor sanctions analogous to those outlined in California Vehicle Code 16209, which provides fines and other penalties for the misdemeanor of operating a vehicle without insurance.
- b. Enforcement would remain the responsibility of any police officer or other designated city official lawfully present to identify the presence of a firearm, whether via plain view, a consent search, and/or pursuant to a search warrant or any other lawful basis for search.

**5. Tax**

Separately, Staff shall consider for citywide polling in October a measure that would impose an additional tax on all ammunition and firearm purchases in the City. Engage with the County and surrounding cities regarding implementing a uniform tax regionally, to fund gun safety classes, violence prevention programs, and additional victim assistance services for survivors of gun violence not otherwise provided through the state-funded Santa Clara County Victim-Witness Assistance Center.

**6. Legislative Advocacy**

Identify within the existing legislative priority advocacy for a statewide insurance- and/or fee-based approach to gun violence harm reduction, and place this item on the Agenda for the Fall 2019 Legislative Priorities updates. Further urge legislation that removes potential obstacles to local solutions such as these, including barring any legal claims asserting state preemption over a locally-enacted insurance- or fee-based approach.

**7. Taking Guns and Other Weapons Out of Dangerous Hands**

**a. Consent-to-Search Program for Juveniles**

Evaluate, in partnership with the Santa Clara County District Attorney's Office, the cost and benefits of a program, similar to St. Louis', enabling parents to allow SJPD to search their homes for any weapons owned by their dependents, and to seize those weapons, in exchange for an agreement not to prosecute the dependent for unlawful possession of the firearm or weapon. <sup>1</sup>

**b. Gun Bounty Program**

Evaluate, in partnership with other relevant agencies, the cost and benefits of a program similar to that in Pittsburg, which offered cash rewards to anonymous tipsters who identified unlawful (e.g., those with prior felony convictions or domestic violence restraining orders) possessors of firearms. <sup>2</sup>

---

<sup>1</sup> See Scott H. Decker and Richard Rosenfeld, "The St. Louis Consent-to-Search Program," National Institute of Justice Research Reports, NCJ 191332, November 2004. Such an agreement, however, should not prohibit the use of evidence of the weapon in a prosecution for an unrelated incident under California Evidence Code Section 352, nor for prosecution for the use of threat weapon in a subsequently-discovered crime.

<sup>2</sup> See Juan Pena-Acosta et al., "Gun Bounty Program: Program Design and Evaluation for the City of Pittsburg," Heinz School, Carnegie Mellon University, May 1998.



HONORABLE MAYOR AND CITY COUNCIL

August 21, 2019

Subject: Rules Committee Agenda:

A HARM REDUCTION APPROACH: ELIMINATING THE “GUN VIOLENCE SUBSIDY”

Page 4

**DISCUSSION**

Under the Supreme Court’s decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Second Amendment to the U.S. Constitution endows adult citizens with the right to own guns. However, the Second Amendment does not require the public to subsidize gun ownership. With advocates on both sides deeply entrenched in ideological battles, we propose an approach that focuses on harm reduction.

By requiring insurance—e.g., from owners of automobiles or of uniquely dangerous pets—we routinely use private insurance markets to encourage safer behavior, discern and reduce risk, and to more fairly allocate costs of harm. If we mandate insurance for car ownership because the dangers inherent in driving, we should do the same for gun ownership.

Insurance for gun owners has not, to my knowledge, been previously imposed in the United States, but it is hardly a new idea. Academics and policy experts have discussed this approach for many years, as a less regulatory mechanism for reducing the harm and improving the allocation of financial burdens of gun violence. In the year after the massacre at Sandy Hook Elementary, nearly a half-dozen states had legislation proposing a gun liability insurance requirement in one form or another, including a proposal co-authored by Senator Phil Ting in California. Due to the strong opposition of the gun manufacturers’ lobby and other challenges, none of those proposals found their way into law.

As we have seen too often and recently, every act of gun violence or accidental shooting results in extraordinary public expense—for first responders, emergency room care, lost work hours, funeral expenses, and grief counseling, among other expenses. Some of these expenses are absorbed directly by public taxpayers through a statewide victims’ assistance fund, but the public also bears many of these costs indirectly—for example, through welfare payments to families who have lost the income of their disabled or deceased breadwinner.

A bedrock principle of insurance prohibits covering intentional acts of the insured, and this proposal does not interfere with that principle. While the overwhelming majority of gun violence is the result of intentional conduct by the gun owner, much harm results from intentional conduct of others who acquire the owner’s gun, or from accidental shootings. For example, about 500 deaths and more than 17,000 thousand of injuries result every year from accidental shootings in the United States, and more than 4.6 million children live in a home with a loaded and unlocked firearm. More than 200,000 guns are stolen each year, according to the National Crime Information Center, and they find their way into the hands of perpetrators of thousands of crimes, such as, the mass shootings of 2016 in Burlington, Washington, the 2017 attack at the UPS facility in San Francisco, and the 2018 homicides in Santa Fe.

Where private insurance does not exist sufficiently address these liabilities, the City can offer a suitable alternative, and one that covers a greater breadth of intentional harms that the private insurance markets would shun. For that reason, we urge consideration of the creation of a public fund supported by fees paid by gun owners. While we will likely face constitutional challenges, there appears ample precedent for allowing reasonable fees on constitutionally-protected activity—whether

**HONORABLE MAYOR AND CITY COUNCIL**

**August 21, 2019**

**Subject: Rules Committee Agenda:**

**A HARM REDUCTION APPROACH: ELIMINATING THE "GUN VIOLENCE SUBSIDY"**

**Page 5**

that includes taxes on gun sales under the Second Amendment, or on sales of newspapers or state incorporation fees for a 501(c)(4) organization under the First Amendment.

Cities in the eastern United States have started gun bounty programs, offering rewards to anonymous tipsters who report situations where someone illegally obtains and/ or possesses a firearm. Pittsburgh offers rewards up to \$1,500 per tip. Baltimore pays tipsters up to \$2,000 total per tip that leads to the recovery of illegal, functioning firearms and gun arrest. Both gun bounty programs are coordinated through their local CrimeStoppers organizations.

To be clear, this proposal does not represent the definitive effort to address this national crisis. The considerable legal and constitutional constraints imposed on local government allows only for modest steps. We hope, however, that it might provide a basis for greater statewide adoption, as other communities find benefit in such an approach.

By this measure alone, we will not suddenly stop this dystopian contagion of gun violence. But we can stop making the public pay for it.