



Memorandum

**TO: HONORABLE MAYOR
AND CITY COUNCIL**

FROM: Anthony Mata

SUBJECT: SEE BELOW

DATE: June 3, 2021

Approved:

Date: 06/07/21

**SUBJECT: ORDINANCE REGULATING THE SALE, LEASE, AND TRANSFER OF
FIREARMS AND FIREARM AMMUNITION IN SAN JOSÉ AT RETAIL**

RECOMMENDATION

Approve an ordinance repealing Part 3 of Chapter 10.32 of Title 10 of the San José Municipal Code and amending Title 6 of the San José Municipal Code to add Chapter 6.90 to regulate the sale, lease, and transfer of firearms and firearm ammunition in San José at retail.

OUTCOME

Adoption of this ordinance will regulate the sale, lease, and transfer of firearms and firearm ammunition in San José at retail locations. It requires that retailers obtain a Firearm Business License from the City as a condition of selling, leasing or otherwise transferring firearms and ammunition. It requires that licensees video and audio record all firearm and ammunition sale transactions, train all sales staff to determine whether the customer seeks to purchase the firearm for themselves or another person (“straw purchasers”), ensure inventory checks are conducted, and display suicide prevention information. This ordinance will also prohibit the sale of any firearm within or from a residence.

BACKGROUND

On December 5, 1978 the San José City Council passed an ordinance that required any person engaging in the business of selling or transferring concealable firearms to obtain a license from the City. Concealable firearms are described as a pistol, revolver or any other firearm capable of being concealed upon a person. This license requirement is still in effect and is found in [Part 3 of Chapter 10.32 of Title 10 of the San José Municipal Code](#). The Municipal Code establishes regulatory standards for licenses, including business site standards, fitness standards for applicants, and recordkeeping requirements.

On February 27, 2019, Mayor Liccardo and Vice Mayor Jones presented a [joint memorandum regarding Gun Violence Prevention](#) to the Rules and Open Government Committee dated February 19, 2019, recommending revision of the licensing provisions described above. The Committee directed the City Manager and City Attorney to revise and update sections of Chapter 10.32 of the Municipal Code 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 firearm or ammunition for themselves, or for another person (“straw purchaser”). The questions shall comply with a checklist or protocol published by the San José 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 firearm 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 and ammunition.

It’s important to note that Recommendation #1.a. – d. expanded the scope of the license requirement. As described above, the Municipal Code currently requires that sellers of concealable firearms (such as pistols) obtain licenses. Recommendation #3 directs that the license requirement be expanded to sellers of all types of firearms and ammunition. The memorandum from Mayor Liccardo and Vice Mayor Jones originally included direction related to 3D printed firearms under Recommendation #3, but that language was removed by the Rules and Open Government Committee when it acted on the item due to concerns about conflicts with pending State legislation.

ANALYSIS

Ordinance Summary

Section 1 of the proposed ordinance repeals Part 3 of Chapter 10.32 of Title 10 of the San José Municipal Code. The reason for the repeal is to place the licensing and regulation of retail firearms and ammunition dealers under the regulatory framework of Title 6 with other City Business Licenses and Regulations.

Section 2 of the proposed ordinance amends Title 6 of the San José Municipal Code to add a new chapter numbered 6.90 entitled “Retail Firearms and Ammunition Dealers Regulations.” The chapter includes the following:

Part 1: General Provisions – Includes the purpose, definitions, reference to state firearm laws, the requirement for a Firearm Business License to sell any firearm or ammunition at a retail location, exemptions, and the requirement for existing dealers to comply with the ordinance within a prescribed timeframe.

Part 2: Firearm Business License Procedures – Incorporates by reference the general permit and license procedures set out in Chapter 6.02 so that they will govern the application for, investigation, approval, denial, suspension, revocation, and renewal of any Firearm Business License, and sets out additional requirements for Firearm Business Licenses, inspection authorization, fees, license term limits, and denial, suspension and revocation and renewal of a Firearm Business License.

Part 3: Operating Regulations and Conditions – Includes the terms and conditions under which a Firearm Business License shall be used, display of the license, premises conditions, notice requirements, maintenance and submission of records, inventory requirements, video and audio surveillance requirements, and training requirements.

Response to Rules and Open Government Committee Direction

The direction from the Rules and Open Government Committee will be completed as follows:

1. Require of all licensees of vendor permits:
 - a. **Video and Audio Recording Transactions:** This would be completed under section 6.90.360 Video and Audio Surveillance Requirements. This section would establish a requirement that the sale or transfer of a firearm or firearm ammunition to persons who are not peace officers shall be recorded in such a way that the facial features of the purchaser are clearly visible and audio recorded such that the voices of both purchaser and seller are clearly audible. These recordings would be required to be maintained on the business premises for not less than thirty days. The intent of this provision is to deter individuals from purchasing firearms for someone else as a means of circumventing firearm laws. This

practice is known as “straw purchasing.”

- b. **Training:** This would be completed under section 6.90.370 Training Requirements. This section would establish a requirement that employees be trained to question and determine whether each potential customer who is not a sworn peace officer is attempting to buy a firearm for another person. Customers would be required to be questioned in such a manner in a location where video and audio recording devices clearly record the transaction. Like 1.a. above, the intent of this provision is to deter straw purchases.
 - c. **Inventory Checks:** This would be completed under section 6.90.350 Inventory Requirements. This section establishes a requirement that licensees conduct an inventory of firearms and ammunition on a yearly basis and keep records of such inventory on the business premises for not less than five years. It would also require that any firearm or ammunition that is discovered to be lost or stolen during the inventory that has not previously been reported to the Chief of Police shall immediately be reported.
 - d. **Suicide Prevention:** This would be completed under section 6.90.330 Notice Requirements. This section would establish a requirement that licensees shall post a notice regarding suicide prevention as approved by the Chief of Police along with Santa Clara County approved resources for suicide prevention, domestic violence, and local firearm laws.
2. **Prohibit the sale of any firearms and ammunition within or from a residence.** This would be completed under section 6.90.210 Additional Requirements for Licenses.
 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 and ammunition.** This would be completed under section 6.90.090 Firearm Business License Required. This section would provide that no person shall engage in the business of selling, leasing or otherwise transferring any firearm or firearm ammunition at retail without first having obtained a Firearm Business License. This provision would expand the scope of the City Firearm Business License requirement. Currently, only sellers of concealable firearms are required to obtain a license; retailers who sell ammunition and long guns, but who do not sell concealable firearms, are not currently licensed. The proposed ordinance would expand the license requirement to include sellers of all firearms and ammunition.

Ordinance Implementation

Over the next 45 days police permits unit will notify current permitted firearm dealers and those potentially impacted by the ordinance via mail and follow up with in person contacts at the business location. Firearm Dealers who previously did not need a permit will be identified by their state firearm dealer license. Businesses that need a permit will be directed to the

department's website to obtain the required forms. The ordinance requires compliance within 90 days of adoption and the permits unit will follow up with the dealers to ensure they meet the requirements.

The ordinance requires that firearm retail employees be trained to question customers to ensure that the customer is not conducting a "straw" purchase. As guidance for this training, the permits unit will provide dealers with a set of template questions for use in detecting straw purchases. The ordinance also requires that dealers post information regarding suicide prevention, domestic violence, and local firearm laws. The permits unit will provide documents in PDF format on the department's website for dealers to download and post.

The permits unit will conduct annual inspections of firearm dealers to ensure compliance with the regulations of the ordinance. Officers will ensure that the dealers conduct an annual inventory, have the appropriate documents posted and ensure that the video/audio system complies with the ordinance.

CONCLUSION

As directed by the Rules and Open Government Committee, this proposed ordinance will modernize San José's regulation of the sale, lease, and transfer of firearms. It establishes new regulatory requirements for licensees intended to deter straw purchases, require yearly inventory of firearms and ammunition to detect and report thefts, promote suicide prevention, and prohibit sales of firearms and ammunition from a residence. It also expands the licensing requirement from the current requirement for sellers of concealable firearms to sellers of all firearms and ammunition. Taken together, these actions are intended to promote public safety and reduce the risk of gun violence in our community.

EVALUATION AND FOLLOW-UP

Staff will report back to City Council with an information memorandum in the fall on implementation.

CLIMATE SMART SAN JOSÉ

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the June 15, 2021 Council Meeting.

HONORABLE MAYOR AND CITY COUNCIL

June 3, 2021

Subject: Ordinance Regulating the Sale, Lease, and Transfer of Firearms and Firearm Ammunition in San José at Retail

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COORDINATION

This memorandum has been coordinated with the City Attorney's Office and the City Manager's Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

CEQA

Not a Project, File No. PP17-008, General Procedure & Policy Making resulting in no changes to the physical environment.



Anthony Mata
Chief of Police

For questions, please contact Lieutenant Jason Kidwell, San José Police Department, at (408) 537-1677.

Attachment:

Part 3 of Chapter 10.32 of Title 10 of the San José Municipal Code

Part 3 - CONCEALABLE FIREARMS DEALERS

10.32.030 - License required.

No person shall engage in the business of selling or transferring, or shall advertise for sale, or offer or expose for sale, any pistol, revolver or other firearm capable of being concealed upon a person without first obtaining and keeping in current effect the requisite license as provided under this part. A license shall be required for each location where selling or transferring of such firearms takes place.

(Ord. 19500.)

10.32.040 - Application for license.

Each person applying for a license under this part shall submit an application and a questionnaire response in support of such application to the chief of police. Such application shall be accompanied by a fee (in the form of a check or cash) as set forth in the schedule of fees established by resolution of council, said fee to defray the cost of processing such application. This fee shall be in addition to fees for processing noncriminal fingerprint cards. Each application shall specify only one location where the sale or transfer of concealable firearms should take place. If a licensee changes his or her place or business, an application for the new location shall be submitted, accompanied by a fee (in the form of a check or cash) as set forth in the schedule of fees established by resolution of council, said fee to defray the cost of processing such application. Such application shall be considered an initial application and not an application for renewal.

(Ords. 19500, 20418, 21289.)

10.32.050 - Approval by chief of police.

The chief of police shall have the authority to approve or not approve applications under this part. For the purposes of considering applications for licenses under this part, the chief of police shall apply the minimum written standards hereinbelow set forth in Section 10.32.060. If an applicant meets all such standards, the chief of police shall issue a license.

(Ord. 19500.)

10.32.060 - Procedural requirements.

Applicant must comply with the following requirements:

- A. Possess valid and current federal firearms permit;
- B. Pay permit fee to police department;
- C. Pay fingerprinting fee to police department;

- D. Complete personal history questionnaire on form provided by the San José police department;
- E. Be fingerprinted at police department;
- F. Be photographed at police department;
- G. Be interviewed at police department by officer assigned to concealable firearms unit;
- H. Sign authorization for release of pertinent records.

(Ords. 19500, 20418.)

10.32.065 - Business site standards.

- A. Business location must be in compliance with City of San José zoning codes and regulations.
- B. Business site must be a permanent building having four solid walls and a roof; constructed of wood, metal, cement or like materials and resting on a foundation of cement, stone, brick or metal or similar materials commonly used in the construction of foundations for permanent buildings.
- C. Building doors and windows must be alarmed with a system of any manufacture which will cause an audible alarm to sound on the exterior of the building or a silent alarm to a centralized monitored facility signaling unauthorized entry during nonbusiness hours.
- D. Business inventory of an explosive or flammable nature must be stored in compliance with federal, state of California and City of San José fire codes.
- E. Inventory of firearms must conform to the type of federal firearms permit issued to the permittee.
- F. Business must conform to Penal Code Section 12071, state of California, i.e.:
 - 1. The business shall be carried on only in the building designated in the license.
 - 2. The license or a copy thereof (when issued), certified by the issuing authority, shall be displayed on the premises where it can easily be seen.
 - 3. No pistol or revolver shall be delivered:
 - a. Within fifteen days of the application for the purchase, and when delivered shall be unloaded and securely wrapped; nor
 - b. Unless the purchaser either is personally known to the seller or shall present clear evidence of his identity.
 - 4. No pistol or revolver, or imitation thereof, or placard advertising the sale or other transfer thereof, shall be displayed in any part of the premises where it can readily be seen from the outside.

(Ord. 19500.)

10.32.066 - Approval of application - Fitness standards.

Any application submitted under Section 10.32.060 shall be approved if the applicant:

- A. Fulfills all requirements of Section 10.32.060 of this part; and
- B. Is not under indictment for, nor has ever been convicted of a crime involving fraud, dishonesty, deceit or violence; and
- C. Has not done any unlawful act involving firearms with the intent to injure seriously another person; and
- D. Has not done any act involving dishonesty, fraud or deceit with the intent substantially to benefit him or herself or another, or substantially to injure another; and
- E. Is not a fugitive from justice; and
- F. Is not an unlawful user of or addicted to marijuana or any depressant or stimulant drug, narcotic drug, or excessive use of alcohol, to the extent that such use would impair his or her fitness to deal in concealable firearms; and
- G. Has not been adjudicated as a mental defective, has not been committed to a mental institution, or does not suffer from any severe psychological disturbance which would seriously impair his or her fitness to deal in concealable firearms; and
- H. Has not wilfully violated any provisions of this chapter; and
 - I. Has not wilfully made false statements as to any material fact in application for this license; and
 - J. Has not done any act which if done by a licensee would be grounds for suspension or revocation of license; and
- K. Meets all business site standards under Section 10.32.065.

(Ord. 20418.)

10.32.067 - Maintenance and submission of records.

Each licensed dealer shall maintain records of importation, shipment, receipt, sale or other disposition of firearms and ammunition, and shall make such records available at all reasonable times, and shall submit to the licensing authority such reports and information upon reasonable request. The licensing authority may enter during business hours the premises (including places of storage) of any firearms or ammunitions dealer for the purpose of inspecting or examining (1) any records or documents required to be kept; (2) any firearms or ammunition kept or stored at such premises.

(Ord. 20418.)

10.32.070 - Denial of application.

If the applicant does not meet all of the written standards hereinabove set forth, the chief of police shall not issue a license to such applicant. It shall be the duty of the chief of police to notify an applicant that his or her application has been denied by serving such person, either personally or by first class United States mail, with a letter setting forth the reason or reasons which provided cause for such denial. The notice, if served by mail, shall be deemed to have been served on the date of its deposit in the United States mail, postage prepaid, to the applicant's address of record. The notice shall also inform the applicant of his or her right to a hearing before the administrative appeals commission at which time the applicant may appear with counsel if so desired and be heard on the matter. The applicant shall also be given notice that any request for a hearing before the administrative appeals commission must be made in writing to such commission within ten days after the date on which such notice is served on the applicant.

(Ord. 19500.)

10.32.080 - Appeal from denial.

An applicant whose application has been denied by the chief of police shall have the right to appeal such decision to the code enforcement appeals commission in the manner set forth at Section 6.02.190 of this Code. Said commission shall hold a hearing thereon in the manner set forth at Section 6.02.190 of this Code.

(Ords. 19500, 20879.)

10.32.090 - License renewal.

Every license issued under this chapter shall expire one year from the date of its issuance. Licensees shall submit an application for renewal in person at least ninety days before the expiration of the license. If renewal is not timely, the application will be deemed an application for license pursuant to Section 10.32.040. Licensees who apply for renewal shall be required to meet the standards specified in this chapter. The application for renewal of a license issued hereunder shall be accompanied by a fee (in the form of a check or cash) as set forth in the schedule of fees established by resolution of council, said fee to defray the cost of processing such application.

(Ords. 19500, 20418, 21289.)

10.32.100 - Licenses nonassignable.

Except as otherwise hereinafter provided, no license issued under this part may be sold, transferred or assigned by the licensee or by operation of law, to any other person or persons; and any such sale, transfer or assignment, or attempted sale, transfer or assignment, be deemed to constitute a voluntary surrender of such license and such license shall thereafter be deemed terminated and void.

(Ord. 19500.)

10.32.110 - Display of license.

Every license issued under this part shall be displayed on the premises where the concealable firearms are sold in such a fashion that it can be easily read by patrons.

(Ord. 19500.)

10.32.120 - Suspension and revocation.

Every license issued under this part shall be subject to summary suspension and revocation by the chief of police if that official determines that:

- A. The licensee has failed to meet any of the requirements specified under this chapter;
- B. The licensee has violated any of the conditions or provisions which appear on the license;
- C. The licensee has violated any federal or state firearms sales laws;
- D. The licensee's federal firearms sales license has been revoked;
- E. The licensee has committed any act which could have resulted in denial of issuance of the license.

Notification. It shall be the duty of the chief of police to notify any licensee charged with any violation or misconduct, as described above, by serving such person, either personally or by first class United States mail, with a letter setting forth the particular written standard or condition which has been violated, and informing such licensee of the right to a hearing before the administrative appeals commission, at which time the licensee may appear with counsel if so desired and be heard in defense of the charges. The suspension or revocation shall be effective on the date the notice is served on the licensee. Such notice, if served by United States mail, shall be deemed to have been served on the date of its deposit in the United States mail, postage prepaid, to the licensee's address of record. Failure on the part of the licensee to request in writing a hearing before the administrative appeals commission within ten days after the notice is served, personally or by United States mail, shall result in a permanent revocation of the license.

(Ords. 19500, 20418.)

10.32.130 - Hearing.

Upon timely receipt of a written request for a hearing, the administrative appeals commission shall hold a hearing at the time and in the manner set forth in Section 6.02.190 of this Code.

(Ord. 19500.)