

Legislation Text

File #: ROGC 19-272, **Version:** 1

A Harm Reduction Approach: Eliminating the "Gun Violence Subsidy". (Mayor, Jones, Peralez)

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 Jose-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 Jose 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 Jose, 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.

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.