

Legislation Text

File #: 21-1579, Version: 1

Reducing Gun Harm, and the Public Burdens of Gun Violence. - TO BE HEARD AT 6:30 P.M.

As referred by the Rules and Open Government Committee on June 16, 2021:

(a) **Reducing Gun Harm, and the Public Burdens of Gun Violence:** Direct the City Attorney to return to Council in September with an ordinance for Council approval that would require every gun owner residing in the City of San José-with exceptions delimited below-to obtain and maintain a City-issued document evincing (i) payment of an annual fee, and (ii) attestation of insurance coverage for unintentional firearm-related death, injury, or property damage.

(1) Compliance:

(i) The gun owner shall sign and complete the insurance attestation, describing her specific policy number and issuer, and sign it under penalty of perjury. Acceptable coverage may include any homeowner's or renter's policy providing a minimum coverage amount.

(ii) The document (or signed waiver) shall be kept wherever guns are stored or transported with the owner (in-home gun safe, in car, etc.).

(2) Exemptions and waivers:

(i) A written, discretionary waiver of the fee requirement and the insurance coverage will be permitted for all low-income individuals who qualify under Cal. Govt. Code §68632. However, the owner must store and maintain the waiver document with the gun.

(ii) An exemption from these requirements will exist for sworn law enforcement.

(iii) An exemption from these requirements will exist for holders of a concealed carry weapon (CCW) permits, if the City Attorney deems it necessary to do so to avoid conflicts with state preemption over CCW regulation.

(3) Penalties: Failure to comply shall constitute a civil violation subjecting the owner to the temporary or permanent seizure of the gun, and under specified circumstances, a fine. Subsequent failure to yield firearms upon the lawful demand of a law enforcement official under this ordinance would constitute a misdemeanor.

(4) Legal issues:

(i) To minimize financial risk against the City, the City Manager is directed to retain fee revenue in a segregated account until the conclusion of active litigation seeking to overturn the ordinance.

(ii) The City Attorney shall evaluate the legal feasibility of applying these requirements upon all persons possessing a firearm in the City of San Jose, whether they reside here or not.

(iii) The City Attorney shall evaluate the constitutionality of permanent seizure of the firearm as a consequence of noncompliance.

(5) Fee Calculation and Revenue:

(i) Pursuant to state law, fee revenue may only be utilized to fund city services provided specifically to respond to gun harm, including police officer response, fire/emergency medical response, and any City assistance to victims and their families.

(ii) Return in September with the final report from the Pacific Institute for Research and Evaluation (PIRE) detailing the financial burden carried by City taxpayers for the use of firearms in the City, pursuant to Proposition 26. Calculate a fee substantially below each gun owner's pro-rata share of that cost, to ensure clear legal satisfaction of Proposition 26's dictates. As Proposition 26 allows, the fee should provide full cost recovery for the City's cost of processing the fee application.

(iii) Should the County of Santa Clara indicate a willingness to participate in and enforce a fee mandate, fee revenue would be shared with the County to fund such services as emergency room treatment, victim

assistance, jail, criminal prosecution, and mental health services within the constraints of Prop 26.

(6) **Ghost Guns:** ensure that the definition of "firearm" under the ordinance includes unfinished frames and receivers commonly sold as do-it-yourself guns and/or assembled after downloading and 3D printing.

(b) **Gun Violence Restraining Orders (GVRO):** Direct the City Manager to return to Council in the Fall to identify ways to increase access and use of GVRO's, including:

(1) Better inform residents in multiple languages about accessing GVROs, such as by:

(i) Requiring protocols in our gang prevention outreach by employees of PRNS and affiliated non-profits to clients and family members;

(ii) Reviewing and revising SJPd protocols and training about proactively informing reporting parties of domestic violence about the availability of GVRO's (rather than doing so only upon their affirmative disclosure of the existence of a firearm in the home);

(iii) Publicly displaying information in our police lobbies, on our city website, and other prominent locations;

(iv) Communicating to key HR/risk officers among employers and school districts; and

(v) Participating in a convening of stakeholders by the District Attorney's Office to explore other options for enhancing public awareness.

(2) Update training protocols for officers regarding recent changes in state law that enable police officers to complete DVRO's on behalf of residents afraid or otherwise constrained from doing so.

(3) Return to Council during the time for identifying City-sponsored legislation, and add for Council consideration a bill that would strengthen the effectiveness of GVRO's, including

(i) Broadening authority to search the subject's residence to ensure compliance;

(ii) Enhancing sanction for violating a GVRO from a misdemeanor to a wobbler/felony;

(iii) Enabling District Attorney's offices to submit GVRO's on behalf of concerned witnesses and victims.

(c) **Assault Weapons Ban:** Direct the City Attorney to file an amicus curia or to join other cities and counties throughout the state in jointly filing to appeal the June 4, 2021, District Court decision in *Miller v. Bonta* that overturned California's three-decade ban on assault weapons.

(d) **Ghost Guns:** Direct the City Attorney to craft a prohibition on the possession, assembly, and manufacturing of any untraceable gun lacking a serial number, in collaboration with partner organizations such as Brady United and Gifford Law Center, to cover gaps in California state prohibitions, most of which do not take effect until July 2022.

(e) **Straw Purchasing and Suicide Prevention:** Direct the City Attorney to bring to Council this June the final ordinance of the measures upon which Council had already voted in 2019, to regulate gun sale transactions to counter "straw purchasing"-such as by videotaping transactions and training gun store staff-and to post suicide prevention information prominently at the point of sale. Gun store staff training should include vigilance for circumstances of the purchase of guns by domestic violence victims for their disqualified abusers.

(f) **Ammunition Checks:** If pending federal litigation overturns the 2016 California mandate for background checks on all ammunition purchasers, return to Council to consider several options, including (a) assessing the legality of an SJPd-issued permit for ammunition purchases, and (b) evaluate whether to mandate fingerprinting on all ammunition purchases within the City of San José, modeled on the successful efforts of sixteen other cities.

(g) **"Looking out for One Another":** Convene with County leaders to discuss how we can create a public campaign to encourage appropriate notification to mental health or law enforcement authorities of implied or explicit threats of violence, planning or preparatory steps to commit violence, or apparent fascination with prior acts of violence.

(h) **Gun Buy-Back programs:** Direct the City Manager to return to Council to discuss how the City could more frequently host gun buy-backs and strengthen partnerships for buy-back programs with Santa Clara County and other public, private, and non-profit organizations.

(i) **Leveraging Federal Information for Early Intervention:** Direct the City Manager to work with the Santa

Clara County District Attorney to enhance communication between the San José Police Department and other local law enforcement with key Federal agencies- specifically the Special Agents in Charge (SAC) for local Federal Bureau of Investigations, Bureau of Alcohol, Tobacco, and Firearms, DEA, DHS, and U.S. Customs and Border Control-to improve protocols that will enable local law enforcement access to critical information about high-risk individuals in San José. Report back to Council the findings from such efforts.

CEQA: Not a Project, File No. PP17-008, General Procedure and Policy Making resulting in no changes to the physical environment. (Liccardo, Jones, Peralez, Cohen, Carrasco)
[Rules Committee referral 6/16/2021 - Item G.2]

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