



DATE: April 13, 2021

CATEGORY: Public Hearing

DEPT.: City Attorney's Office
and Police Department

TITLE: **Introduce an Ordinance Prohibiting Possession of Firearms on City Property**

RECOMMENDATION

Introduce an Ordinance of the City of Mountain View Adding Article V to Chapter 38 of the Mountain View City Code Relating to Firearms on City Property, to be read in title only, further reading waived, and set second reading for April 27, 2021 (Attachment 1 to the Council report).

BACKGROUND

On September 3, 2019, the City Council was requested to consider measures related to firearm safety as a Council priority in light of the Gilroy Garlic Festival shooting that occurred that year. At the September 17, 2019 meeting, staff returned with a brief report requesting Council direction, at which time Council directed staff to return with a report detailing gun safety legislation in other California cities and recommendations on which type of legislation Council could consider adopting that would be most effective, reasonable to implement, and staff could accomplish alongside the established priorities of the City Council's Major Goals Work Plan.

At a Study Session on January 28, 2020, the City Attorney's Office presented options for Council's consideration. Council directed staff to return with an ordinance prohibiting possession of firearms on all City properties and an ordinance relating to safe storage of firearms in homes and vehicles. Council declined to pursue other regulations which involve prohibiting firearms sales as a home occupation and imposing locational restrictions on firearms dealers.

On February 4, 2020, Council modified its Fiscal Year 2019-20 and Fiscal Year 2020-21 Major Goals Work Plan to move forward without an ordinance regulating safe storage of firearms.

Since Council's last direction, the COVID-19 pandemic presented City staff and Council with new and unprecedented challenges and priorities resulting in a delay in bringing this back to Council. Based on prior Council direction, the ordinance before Council this evening proposes limited regulation prohibiting the possession of firearms on City property.

ANALYSIS

The proposed ordinance includes a limited scope of local regulation. State and Federal laws provide more comprehensive gun safety regulations. This ordinance imposes a limited prohibition on the possession of firearms on City properties.

Intersection with State and Federal Legislation

Below is an update on recent State legislation and proposed Federal legislation relating to gun safety.

Several gun safety bills signed into legislation by the California State Legislature and went into effect on January 1, 2021:

- **AB 2061, Gun Show Inspections:** This measure, beginning July 1, 2022, allows the Department of Justice (DOJ) to inspect firearms dealers, ammunition vendors, or manufacturers participating in a gun show or event in order to ensure that all transfers or sales are conducted in compliance with applicable State and local laws. This measure also allows the DOJ to adopt regulations to administer the application and enforcement of laws relating to gun shows and ammunition vendors.
- **AB 2362, Penalties for Firearms Dealers:** This measure authorizes, starting July 1, 2021, the DOJ to impose civil fines on firearms dealers for violating regulations or prohibitions related to their firearms dealers' license. This measure authorizes the DOJ to impose a civil fine not exceeding \$1,000 for a violation and a civil fine not exceeding \$3,000 for a violation when the licensee has received written notification regarding the violation and failed to take corrective action. The DOJ can also impose a civil fine if they determine the licensee committed the violation knowingly or with gross negligence.
- **AB 2617, Out-of-State Gun Restrictions:** This measure ensures individuals who own or possess firearms or ammunition, with the knowledge they are prohibited from doing so because of a valid protective order issued by an out-of-State jurisdiction, are guilty of a misdemeanor. This measure is consistent with existing State law, which already recognizes Domestic Violence Restraining Orders and

other forms of protective orders from other states. By extending this authority to Gun Violence Restraining Orders, State and local law enforcement can enforce such orders when residents of other states who pose a dangerous risk of gun violence cross into California.

- **AB 2699, Unsafe Handguns Exemptions:** This measure specifies which entities are exempt from the existing prohibition on the manufacturing, sale, or transfer of an “unsafe handgun.” These entities include specific law enforcement and government agencies, who may purchase unsafe handguns for employees who have successfully completed the basic course prescribed by the Commission on Peace Officer Standards and Training (POST), and who qualify with the handgun, at least every six months.
- **AB 2847, Handgun Microstamp Imprinting:** This measure, effective July 1, 2022, revises requirements for unsafe handguns by requiring a micro-stamp to be imprinted in one place on the interior of the handgun. Additionally, this measure requires the DOJ, for every new firearm added to the roster, to remove three firearms from the roster that are not compliant with current requirements.
- **SB 723, Criminal Liability for Prohibited Persons:** This measure clarifies that a person with an active arrest warrant for a felony or specified misdemeanor must have knowledge of the warrant to be criminally liable as a person prohibited from possessing a firearm.

The United States Congress is taking action on gun safety this spring. On March 11, 2021, the U.S. House of Representatives approved a pair of gun control bills. The first bill would expand background checks to those purchasing weapons over the Internet, at gun shows, and through certain private transactions. The second bill would give authorities 10 business days for Federal background checks to be completed before a gun sale can be licensed. Currently, such sales can proceed if a background check is not completed within three days. The U.S. Senate also plans to consider a companion bill to expand background checks, bringing it to a full vote of the Senate as early as this month.

Proposed Ordinance

The proposed ordinance (Attachment 1) prohibits the possession of firearms on all City properties that are owned, leased, or subleased by the City, and that are utilized for public purposes. The City of Mountain View currently prohibits the possession of firearms in City parks and recreational facilities only in Mountain View City Code (MVCC) Section 38.9. The City also prohibits the discharge of firearms in the City, subject to certain exceptions (such as for peace officers in the discharge of their duties, for necessary self-

defense, and at shooting ranges) (MVCC Section 21.13). On January 28, 2020, Council directed staff to expand the current prohibition on possession of firearms to City property Citywide.

This ordinance goes beyond existing State laws relating to possession of firearms on public property. California Penal Code Section 171b prohibits the possession of firearms at local public buildings and at any local public meetings. This does not include certain City properties, such as the Center for the Performing Arts or parking lots. The Penal Code also prohibits the possession of a loaded firearm and an exposed, unloaded handgun in any “public place” or “public street.” (Penal Code Sections 26350, 25850) However, “public place” is not defined and may exclude certain City properties. Furthermore, the prohibition only covers exposed, unloaded handguns, not long guns.

The proposed ordinance would apply to all firearms, not just handguns, regardless of whether they are loaded or unloaded. The proposed ordinance provides specificity and clarity to ensure that the prohibition applies to all City properties used for public purposes, including, but not limited to: City Hall, the Center for the Performing Arts, Library, Municipal Operations Center, Police station, Fire stations, parking lots, and parking structures.

The City Attorney’s Office conducted a legal analysis to ensure that the ordinance passes constitutional muster. Under California Constitution Article XI, Section 7, a county or city may make and enforce within its limits local ordinances and regulations not in conflict with State law. If otherwise valid local legislation conflicts with State law, it is preempted and void. Here, no such conflict exists because the ordinance goes beyond State law to further clarify and define the prohibition on possession of firearms on City properties.

Enforcement

Violations of the proposed ordinance may be prosecuted as a misdemeanor punishable by fine and/or imprisonment. Although the ordinance goes beyond State law, it is important to note that enforcement of the ordinance will not be proactive in nature. In other words, the Police Department would not proactively contact people at City properties for the purpose of checking for firearms. Rather, if Officers happen to contact a person on a City property, and subsequently learn that person is carrying a gun, Officers could cite or arrest for the violation. In these situations, Officers may also have the option and discretion to cite or arrest for other State violations. When there are overlapping State and local violations, the Police Department tends to pursue the State violations because State crimes may result in greater penalties. City Code violations are limited to misdemeanors, whereas State violations may be subject to felony charges.

FISCAL IMPACT

Any fiscal impact is limited to staff time required for enforcement and prosecution.

ALTERNATIVES

1. Decline to introduce the ordinance.
2. Provide other direction.

PUBLIC NOTICING – Agenda posting.

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Attachment: 1. Ordinance