

**DATE:** October 11, 2022  
**TO:** Honorable Mayor and City Council  
**FROM:** Diana Fazely, Assistant City Attorney  
Jennifer Logue, City Attorney  
**VIA:** Kimbra McCarthy, City Manager  
**TITLE:** **Firearm Safety Legislation**



# STUDY SESSION MEMO

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## I. PURPOSE

Receive direction from Council on options for additional firearm safety legislation.

## II. BACKGROUND

At a Study Session on January 28, 2020, the City Attorney's Office presented firearm safety legislation options for Council's consideration. Since then, the City Council has adopted two ordinances relating to firearm safety: (1) an ordinance prohibiting possession of guns on City property (adopted on April 27, 2021); and (2) an ordinance requiring safe storage of guns in homes and in vehicles (adopted on March 8, 2022).

On June 14, 2022, the City Council directed staff to return to the City Council with additional firearm safety legislation options in response to the mass shooting in Uvalde, Texas, on May 24, 2022.

## III. DISCUSSION

This Study Session memorandum includes two options for additional firearm safety legislation for Council's consideration. To provide context and to assist Council in assessing the options for additional firearm legislation, this memorandum also includes a summary of the City's current firearm safety laws and related enforcement activities and a summary of recently adopted State legislation related to firearm safety. In developing these firearm safety legislation options, the City Attorney's Office reviewed a summary of laws adopted by other California local governments prepared by the Giffords Law Center to Prevent Gun Violence, which is attached hereto as **Attachment 1**.

For purposes of this Study Session memorandum, the terms "gun" and "firearm" are used interchangeably.

#### **IV. FIREARM SAFETY LEGISLATION OPTIONS**

The City Attorney's Office has prepared the following firearm safety legislation options for Council's consideration.<sup>1</sup> Workload impacts vary with each option. As such, a further discussion about timing to bring forward the legislation necessary to effectuate each option may be necessary in conjunction with Council's upcoming consideration of its work plan in February 2023.

##### **1. Option No. 1: Modify Existing Ordinance or Adopt New Ordinance to Expand the Locations Within City Where Firearms are Prohibited**

On June 23, 2022, the U.S. Supreme Court decided the case of *New York State Rifle & Pistol Association v. Bruen* ("*Bruen*"), in which the Court held unconstitutional the State of New York's law requiring applicants to show "proper cause" to obtain a concealed carry weapon (CCW) license to carry a gun in public for self-defense. The Court articulated a new framework for analyzing firearms regulations based on constitutional text and history. The *Bruen* case rendered the state law "good cause" requirement for CCW license applicants void.

The California State legislature attempted to create a new issuing process for CCW licenses in response to *Bruen* with Senate Bill (SB) 918. SB 918 not only included a new procedure for processing CCW licenses, but also included additional restrictions on CCW license holders, such as prohibiting CCW licensees from carrying their firearms in "sensitive" places, such as schools, courts, government buildings, hospitals, public transportation, businesses where liquor is sold for on-site consumption, libraries, churches, etc. However, SB 918 did not receive the requisite number of votes in the State legislature and, thus, failed.

In response to the *Bruen* case, cities in the region are considering ordinances, in which all firearms, including those carried by CCW licensees, would be restricted in those sensitive places. The majority and concurring opinions of the *Bruen* case indicate that these types of regulations are permissible, although they did not include an exhaustive list of which locations are considered "sensitive" other than schools, government buildings, legislative assemblies, and courthouses.

As noted above, the City Council has already adopted an ordinance that prohibits the possession of firearms on specifically identified City property, which applies to CCW licensees. This option would expand the prohibition on possession of firearms to additional

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<sup>1</sup> The City Attorney's Office also considered whether the City can adopt an ordinance that imposes liability insurance requirements on gun owners. Because the City of San Jose has been sued over this very issue, we do not recommend adopting an ordinance imposing liability insurance requirements on gun owners at this time. If the City were to adopt such an ordinance at this time, it would almost certainly be sued. Staff recommends monitoring the City of San Jose case to see how it resolves.

“sensitive” places within the City, such as schools and specifically defined public gatherings, and would apply to CCW licensees.

Because the law is still evolving post *Bruen*, this option will require additional legal research and analysis to determine the extent to which local governments may prevent individuals possessing a valid license to carry a gun from carrying their gun in certain locations. This option would also require amendment of the City’s existing ordinance prohibiting possession of firearms on City property or adoption of a new ordinance and ongoing enforcement by the Mountain View Police Department. No other neighboring cities have enacted this type of ordinance yet, although Sunnyvale’s City Council did direct their staff to explore this type of ordinance at its August 30 Study Session.

2. **Option No. 2: Enact a New Ordinance to Create a Licensing Framework for Firearm Dealers**

Requiring firearm dealers to obtain a local license from the City, in addition to State and Federal licenses, would allow for the Mountain View Police Department to be aware of local firearms dealers and to facilitate the monitoring of their operations. Firearm dealers who want to operate in the City would be required to submit an application to the Mountain View Police Department. Typically, the application process requires the Police Department to process applications, conduct investigations of the applicants, process permit renewals (on an annual basis), and inspect and enforce the additional regulations the City imposes on the dealers. In addition, licenses are subject to suspension and/or revocation and include an appeals process. Neighboring jurisdictions with this type of regulation include Palo Alto, Sunnyvale, and San Jose.

The following criteria/restrictions would be imposed on firearm dealers seeking to obtain a license from the City:

- a. **Liability Insurance:** Require firearm dealers to have liability insurance so individuals who have been harmed by a dealer’s negligent practices (such as failing to follow background check laws or aiding and abetting the sale of guns to felons) can be compensated; and
- b. **Zoning Regulations:**
  - i. *Prohibition on Home Occupations*

This prevents firearm dealers from being located in residential areas or prohibits firearm sales as a “home occupation” or home business. State law requires all firearm purchases, including private-party transfers, to be made through State- and Federal-licensed firearm dealers, and these dealers typically provide their

services as a dealer (which includes conducting the necessary background checks and holding the firearm for the required waiting periods) for firearm sales occurring via the internet or between private parties.

Neither Federal nor State law prohibits firearm dealers from operating out of their homes.

In the City of Mountain View, home occupations are permitted in residential zoning districts, and there is no explicit language preventing firearm sales as a home occupation. Currently, there are three firearm dealers with current business licenses conducting business out of homes in the City. The Zoning Code would need to be amended to include firearm sales as a prohibited home occupation, and this would also be included in the firearm dealer license ordinance. Amendments to the Zoning Code would need to go to the Environmental Planning Commission (EPC) before it comes before Council.

If Council directs staff to include the prohibition of firearm sales as a home occupation in the new licensing framework, staff recommends providing existing home occupations a certain period of time to continue operations before they must cease operations in that location (“amortization”). Typically, the length of time to be provided for amortization should be commensurate with providing the property owner a reasonable opportunity to recoup their investment. If Council directs the City Attorney’s Office to amortize the existing home occupations, we will need to further analyze how much time should be provided. Council may also direct staff to permit these existing home occupations to be “grandfathered,” which would allow them to continue operations even after adoption of this restriction.

ii. *Locational Restrictions on Firearm Dealers*

This type of restriction prohibits firearm dealers from operating within certain distances from areas that tend to have high concentrations of children, such as schools, day-care centers, or parks. If Council wanted to impose these locational restrictions on firearm dealers, this would need to be done by ordinance, which may require amending the City’s Zoning Code as well.

Currently, Palo Alto and Los Gatos prohibit firearm dealers from operating within 250’ of day cares, schools, and parks. If Council adopted an identical restriction, the City’s two existing brick-and-mortar firearm businesses would fall outside of this locational restriction. If Council desires to increase the locational restriction (e.g., prohibiting operation within 500’ of day cares, schools, and parks), the existing businesses may be impacted, and the City

Attorney’s Office would need direction from Council on how it wishes to address the impact on these businesses. The City can either “grandfather” the existing businesses to allow them to continue operations, even after adoption of this restriction, or provide an amortization period after which operations must cease. If Council directs our office to amortize the existing firearm businesses, we will need to further analyze how much time should be provided to ensure the property owner is provided a reasonable opportunity to recoup their investment.

iii. *Neighboring Cities*

The following chart shows which neighboring cities have the aforementioned firearm safety legislation:

	<b>Sunnyvale</b>	<b>Palo Alto</b>	<b>Los Gatos</b>	<b>San Jose</b>	<b>Campbell</b>	<b>Morgan Hill</b>
<b>Licensing Dealers</b>	X	X	X	X	X	X
<b>Home Occupations</b>		X		X	X	X
<b>Liability Insurance</b>		X			X	X
<b>Locational Restrictions on Firearm Dealers</b>		X	X			

**V. CURRENT CITY REGULATIONS AND ENFORCEMENT**

a. *Existing City Code Provisions Relating to Firearms*

The Mountain View Police Department enforces existing State laws relating to firearms and enforces the following existing provisions of the Mountain View City Code (MVCC) relating to firearms:

- MVCC Sections 38.300 through 38.303—Prohibition on possession of firearms on City property.

- MVCC Sections 21.80 through 21.82—Safe storage of firearms in residences and vehicles.
- MVCC Section 8.230—This provision is within the City’s Building Code and allows for the City to require additional security measures to be implemented if any part of a building is used for weapon, ammunition, and/or explosive storage.
- MVCC Section 21.13—Prohibition on discharge of firearms within the City with specific exceptions for law enforcement purposes by peace officers, self-defense, or at shooting ranges.
- MVCC Section 38.9—Prohibition on possession, discharge, or shooting of any firearm or any other dangerous weapon at City parks or recreational facilities.
- The City also regulates shooting clubs/facilities as a conditional use in the Flood Plain Zoning District (MVCC Section 36.26.2).

b. *Existing Gun Stores in the City*

- There are currently two brick and mortar gun stores and three licensed firearm dealers that conduct business from their homes in residential areas in the City. The brick-and-mortar gun stores are treated as permitted retail uses by the City. State law requires all firearm purchases, including private-party transfers, to be made through State- and Federal-licensed firearm dealers, and these dealers typically provide their services (which includes conducting the necessary background checks and holding the firearm for the required waiting periods) for firearm sales occurring via the internet or between private parties.

c. *Current Firearms Enforcement*

In addition to the enforcement of criminal laws relating to the possession or use of firearms, the Mountain View Police Department currently enforces other existing firearms laws:

- The Police Department is authorized under Gun Violence Restraining Order (GVRO) laws to seek a court order prohibiting a person who is shown to present a danger of gun violence from owning or possessing any firearm. The City Attorney’s Office works with the Police Department to obtain GVRO orders from the court.
- When a person is held by the Police Department and is taken to a mental-health facility for evaluation, the Police Department is authorized to seize the person’s firearms and other dangerous weapons. The City Attorney’s Office generally seeks a

court order, as authorized by the California Health and Safety Code, to retain and destroy the firearms.

- When a person is arrested by the Police Department for an act of domestic violence, the Police Department is authorized to seize the person's firearms and other dangerous weapons. The City Attorney's Office, in appropriate cases, seeks a court order as authorized by the California Penal Code to retain and destroy the firearms.

## VI. RECENT STATE LAWS

Governor Gavin Newsom has signed the following bills this year relating to firearm control/safety that became effective upon his signature:

- **AB 1621**—Restricts ghost guns (unserialized and untraceable firearms) and the parts and kits used to build them.
- **AB 1594**—Allows governments and victims of gun violence to sue manufacturers and sellers of firearms.
- **AB 2571**—Restricts advertising of firearms to minors and authorizes the Department of Justice or any city or county attorney and injured plaintiffs to bring a civil action to enforce the prohibition.
- **SB 1327**—Creates private right of action to limit spread of illegal assault weapons and ghost guns.
- **AB 228**—Requires the Department of Justice, beginning January 1, 2024, to conduct inspections of dealers at least every three years, except for a dealer whose place of business is located in a jurisdiction that has adopted an inspection program.
- **AB 311**—Prohibits the sale of firearm precursor parts on the property of the 22nd District Agricultural Association, the Del Mar Fairgrounds.
- **AB 1769**—Prohibits the sale of any firearm, firearm precursor part, or ammunition on the property of the 31st District Agricultural Association, the Ventura County Fair and Event Center.
- **AB 1842**—Prohibits licensed firearms dealers from charging more than 5% of the purchase price of the firearm as a restocking or other return-related fee when the purchase of the firearm is canceled by the buyer within 10 days of the application, with an exception for special-order firearms.

- **AB 2156**—Expands the prohibitions on the manufacture of firearms without a State license, including reducing the number of guns a person may manufacture without a license and prohibiting the use of a three-dimensional printer to manufacture any firearm without a license.
- **AB 2239**—Creates a 10-year prohibition on the possession of firearms for individuals convicted of child abuse or elder abuse.
- **SB 906**—Requires local educational agencies to annually provide information to parents about California’s child access prevention laws and laws relating to the safe storage of firearms; requires school officials to report to law enforcement any threat or perceived threat of a homicidal act; and requires law enforcement or the school police to conduct an investigation and threat assessment, including a review of the Department of Justice’s firearm registry and a search of the school and/or student’s property by law enforcement or school police, if certain conditions are met.
- **SB 915**—Prohibits the sale of firearms, firearm precursor parts, and ammunition on State property, as specified.
- **AB 2551**—Imposes additional noticing requirements on the Department of Justice to local authorities when a person prohibited from possessing a firearm attempts to acquire one.

The following firearm safety/control laws were signed by the Governor and take effect on January 1, 2023:

- **AB 2552**—This bill would require additional notices relating to the storage, handling, purchase, and theft of firearms to be posted at each public entrance of gun shows/events.
- **SB 1384**—This bill would require a licensed firearm dealer to have a digital video surveillance system, burglary alarm system, and keyless entry system on their business premises, as specified, and would require that dealer to carry a policy of general liability insurance, as specified.
- **AB 2870**—This bill would expand who can file a petition for a gun violence restraining order (GVRO) to include any person related by consanguinity or affinity within the fourth degree, an individual who has a child in common with the subject, or a roommate, classmate, or dating partner of the subject of the order.
- **AB 452**—This bill requires local educational agencies to provide notification to parents of each student about California’s child access prevention laws and laws relating to the safe storage of firearms and requires the California Department of Education to develop model language for this notification in consultation with the Department of Justice.



**VII. RECOMMENDATION**

Provide staff with direction on the options set forth in this Study Session memorandum and inform staff if Council would like more information or public outreach prior to returning to Council with proposed legislation.

**VIII. NEXT STEPS**

Depending on Council direction, additional analysis may be necessary prior to returning to Council with an ordinance for consideration. Workload impacts vary with each option. As such, a further discussion about timing to bring forward the legislation necessary to effectuate each option may be necessary, in conjunction with Council's upcoming consideration of its work plan in February 2023.

**IX. PUBLIC NOTICING**

Agenda posting and notice of the Study Session was sent to existing firearms dealers in the City.

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Attachment: 1. Local Gun Safety Legislation in California