

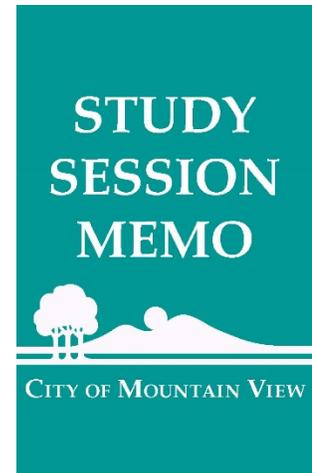
DATE: January 28, 2020

TO: Honorable Mayor and City Council

FROM: Diana Fazely, Senior Deputy City Attorney
Krishan Chopra, City Attorney

VIA: Max Bosel, Interim City Manager

TITLE: **Gun Safety-Related Issues: Regulatory Options**



PURPOSE

Receive direction from Council on regulatory options related to gun safety.

BACKGROUND

At the September 17, 2019 meeting, Council directed staff to return to Council with a report detailing gun safety legislation in other California cities and recommendations on which type of legislation Council can 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.

DISCUSSION

This Study Session memo sets forth: (1) the City's current regulations and policies concerning gun control/safety, including the City's current enforcement of firearm laws; (2) a summary of State laws signed into law and effective as of January 1, 2020; (3) the laws of neighboring cities; and (4) an analysis of potentially viable regulatory options for the Council to consider. Attachment 1 is a summary of laws adopted by local governments in California prepared by the Giffords Law Center to Prevent Gun Violence, which was also provided to the Council at the September 17, 2019 meeting.

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

1. **The City's Current Regulations and Policies Concerning Gun Control/Safety**

a. *Existing City Code Provisions Relating to Guns*

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

- 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 36.26.2).

b. *Existing Gun Stores in the City*

- There are currently five gun stores with current business licenses in the City. Two of them are brick and mortar gun stores, and three are licensed firearm dealers that conduct business 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 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.

c. *Current Firearms Enforcement*

In addition to enforcement of criminal laws relating to the possession or use of firearms, the 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.

d. *Gun Buy-Back Events*

The City's Police Department participates in gun buy-back programs. Last year, the Department participated in an event hosted by the City of Sunnyvale's Department of Public Safety. The event encouraged people to turn in unwanted guns in exchange for cash. Once guns are turned in, they are checked through Federal and State databases to ensure they were not stolen. If stolen, efforts to return the gun to its rightful owner are made. If they were not stolen, the guns are destroyed. The City contributed \$5,000 to the program and will be participating and contributing the same amount again this year. Five surrounding jurisdictions also participated in the program, and about 560 firearms were purchased. The next event will take place on February 29, 2020 in Sunnyvale.

e. *City Policies*

The City has internal policies relating to gun control/safety. Administrative Instruction 3-22, "Workplace Violence Prevention Policy," defines "threatening behavior" by employees to include bringing guns, knives, or weapons of any other kind on City property unless expressly authorized by the nature of their work. Administrative Instructions are typically enforceable against City employees only, but Administrative Instruction 3-22 also provides protocols for responding to prohibited behavior of employees or nonemployees.

2. **Recent State Laws and Cases Relating to Gun Control/Safety**

Governor Gavin Newsom signed 15 new gun control/safety bills in 2019, one of which is SB 61, which prohibits the sale of semiautomatic center rifles to persons under the age of 21 (with exceptions for law enforcement officers and active members of the armed forces), effective January 1, 2020. Sunnyvale passed an ordinance in 2018 similarly prohibiting the sale of semiautomatic center rifles with the same exceptions which now has become moot with the new Statewide prohibition.

Other laws that are effective as of January 1, 2020 include amendments to existing GVRO legislation:

- AB 12 extends the duration of a GVRO to a maximum of five years.
- AB 61 allows an employer, coworker, or an employee or teacher to file a petition requesting a GVRO.
- AB 164 makes it a crime for a person to own or possess a firearm in California when they are prohibited from doing so in any other state by way of a court order issued in that state.
- AB 339 requires law enforcement agencies to develop and adopt written policies and standards on or before January 1, 2021 regarding the use of GVROs.
- AB 1493 authorizes a person who is the subject of a GVRO petition to submit a form to the court voluntarily relinquishing their firearm rights.

Laws related to the regulation of firearm sales:

- SB 61 prohibits the sale of semiautomatic center-fire rifles to any person under 21 years of age and applications to purchase more than one semiautomatic center-fire rifle in any 30-day period.
- SB 376 prevents individuals from selling large numbers of firearms without a license by capping the number of annual sales at five transactions or 50 firearms.
- AB 645 requires packaging for firearms to contain a warning statement on suicide prevention.
- AB 879 requires, starting in 2024, that the sale of firearms precursor parts be conducted through a licensed firearms precursor part vendor.
- AB 1669 updates existing law by applying the same gun show regulations that already apply to firearms dealers to ammunition vendors.
- AB 1297 requires any local authority issuing concealed firearm licenses to charge an applicant a fee sufficient to cover the reasonable costs of processing, issuing, and enforcement of the license and eliminates the existing \$100 limit on processing fees for concealed firearm licenses.

And laws related to gun storage:

- SB 172 expanded the State's current law relating to negligent storing of firearms in a manner that allows a child or prohibited person from gaining access. It also imposes a 10-year firearm prohibition for misdemeanor violations of these laws.

The U.S. Supreme Court heard arguments in the case of *New York State Rifle & Pistol Association v. City of New York* on December 2, 2019, in which the issue is whether New York City's ban on transporting a licensed, locked, and unloaded handgun to a home or shooting range outside city limits is consistent with the Second Amendment, the commerce clause, and the constitutional right to travel. This is the first time since 2010 that the Supreme Court will be significantly weighing in on gun regulations, and its decision may affect local government regulations. All Supreme Court decisions must be made by the end of the Court's term, typically the end of June or early July. Staff is monitoring developments in this case.

3. Laws of Neighboring Cities

The following chart shows which neighboring cities have the recommended options set forth in Section 4 of this report.

	Sunnyvale*	Palo Alto	Los Altos	Menlo Park	Cupertino	San Jose	Santa Clara
Regulating or Prohibiting Possession of Firearms on Public Property	X (prohibition on discharge of firearms)	X	X (under 18 years old only)	X	X (in parks only)	X	X (prohibition of discharge of firearms)
Home Businesses		X	X			X	
Keeping Dealers Away from "Sensitive" Areas		X					
Safe Storage	X (homes)					X (homes)	

* Sunnyvale requires all firearm dealers to obtain a permit from its Department of Public Safety and, within that permitting framework, Sunnyvale has additional regulations.

Sunnyvale also has additional regulations on firearms in general that were the subject of controversy in the past. In 2013, Sunnyvale adopted an ordinance prohibiting the possession of large-capacity magazines, among other gun safety measures, which was challenged in *Fyock v. City of Sunnyvale*. The case went to the Ninth Circuit, and the prohibition on large-capacity magazines was held constitutional on March 4, 2015. A year later, California law was enacted also prohibiting the possession of large-capacity magazines, rendering Sunnyvale’s ordinance moot. In 2018, the City of Sunnyvale adopted an ordinance prohibiting the sale of semiautomatic center-fire rifles to those under the age of 21, with specific exemptions. There were no legal challenges to this ordinance. With SB 61, effective January 1, 2020 (see “Recent State Laws and Cases Relating to Gun Control/Safety” above), the ordinance is now rendered moot.

4. Potentially Viable Gun Control/Safety Legislative Options for the Council to Consider

Staff is presenting the following options for Council’s consideration because they fit within Council’s direction for options that are effective, relatively easy to implement, and legally defensible under Federal and State law. However, workload

impacts vary with each option. Council is scheduled to review its Major Goals Work Plan on February 4, and Council can further discuss potential tradeoffs at that time.

a. *Regulating or Prohibiting Possession of Firearms and/or Ammunition on Public Property*

This type of legislation prohibits the possession of firearms and/or ammunition on public property, including schools, parks, recreational facilities, and municipal buildings. Many cities with this type of legislation prohibit the possession and/or firing of firearms within the city subject to specific exceptions (e.g., Palo Alto, Union City, Burlingame, and Santa Cruz) while others only prohibit such in parks and other open spaces (e.g., Campbell and Cupertino). The City of Mountain View currently prohibits the possession of firearms in City parks and recreational facilities only (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). An option that Council may consider is expanding the existing ordinance relating to possession to prohibit it on all City property Citywide. Any such prohibition would only apply on City property.

If Council directed staff to return with an ordinance to expand the City's current prohibition of possession of firearms Citywide, it would be fairly easy to implement because it would simply expand the City's current ordinance. Staff also recommends including in the ordinance exceptions to the prohibition, such as for peace officers and travel to and from legal shooting/target ranges or hunting grounds. This option would not have a significant impact on the Police Department in terms of enforcement.

Does Council want staff to return with an ordinance prohibiting the possession of firearms on City property Citywide?

b. *Home Businesses*

This type of legislation 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 gun dealers from operating out of residential homes, and the restriction may prevent criminals and illegal activity from entering into residential neighborhoods. Prohibiting firearm dealers from being located in residential areas may be done by zoning (Palo Alto, Berkeley, and Hayward), or by explicitly prohibiting firearm sales as a home occupation (Pleasanton, San Jose, and Pasadena).

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 two firearm dealers with current business licenses conducting business out of homes in the City. MVCC Section 36.28.90 could be amended to prohibit firearm sales as a home occupation. Any such ordinance would need to go to the Environmental Planning Commission (EPC) before it comes before Council because home occupation regulations are in the Zoning Ordinance.

If Council directs staff to return with an ordinance preventing firearm sales as a home occupation, Council should also direct staff as to whether the existing home occupations should be grandfathered in or if they should be given a certain period of time to move their business to a permitted zone (also known as “amortization”). If Council directs staff to amortize the existing home occupations, staff will need to further analyze how much time should be provided. This option may impact staff resources in the Community Development Department because it will likely require working with members of the public who may be for or against gun rights, and amortization of home businesses may also require additional resources to ensure compliance.

Does Council want staff to return with an ordinance prohibiting firearm sales as a home occupation, and, if so, does Council want to grandfather in or amortize the existing home businesses?

c. *Keeping Dealers Away from “Sensitive” Areas*

This type of legislation prohibits firearm dealers from operating within certain distances from sensitive areas, such as schools, day-care centers, or parks. These are sensitive areas because they tend to have high populations of children. This is typically effectuated by zoning regulations (Los Gatos, Pleasant Hill, and San Carlos).

Recent Example—San Carlos: In response to an application for a new retail gun store in the city, the City Council adopted an urgency ordinance imposing a moratorium on new gun/ammunition retail establishments. After numerous public outreach meetings and study sessions with its planning commission and city council, the city adopted an ordinance in March 2019 that included requiring all gun stores and shooting ranges to obtain a use permit and make stores subject to locational restrictions (1,000' from sensitive uses (such as residential zones, schools, day cares, youth centers, and parks) and other gun retail stores or shooting ranges). The existing gun stores and shooting ranges were grandfathered in. The ordinance was not legally challenged and is currently in effect.

If Council wanted to impose locational restrictions on firearm dealers, this would need to be done by amending the Zoning Ordinance. Council may also provide direction on what types of uses it deems “sensitive” and how to address existing firearm dealer businesses (grandfather in or amortize). This option may impact staff resources in the Community Development Department because it will likely require working with members of the public who may be for or against gun rights, identifying and locating sensitive uses, and the controversial nature of regulating gun stores by zoning may be staff-intensive.

Does Council want staff to return with an ordinance amending the Zoning Ordinance to impose locational restrictions on firearm dealers, and, if so, does Council have any other types of uses other than residential zones, schools, day cares, youth centers, and parks that it deems as “sensitive”?

d. *Safe Storage in the Home and/or in Vehicles*

These types of legislation require individuals in legal possession of firearms to store the firearms in a manner that prevents theft or accidental shootings in homes (e.g., County of Santa Clara, Sunnyvale, and San Carlos) or in vehicles (e.g., Oakland). These laws may help prevent accidental shootings, suicides, and firearm thefts during home burglaries and/or vehicle break-ins. Existing State laws require safe storage of firearms in specific circumstances, such as to prevent minors gaining access to firearms or securing a handgun when left in a vehicle.

Implementation of these types of legislation would require an ordinance and would be relatively easy to implement. However, the effectiveness is unclear

because the Police Department would be unable to actively enforce any such ordinance due to constitutional protections against unreasonable searches of homes and/or vehicles. Most violations of this type of ordinance would likely be discovered as incidental to another crime investigation or law enforcement action. However, the City could include a public information and education campaign along with adoption of these regulations to raise awareness, which would require staff time and may have implications for workload and potential project tradeoffs.

Does Council want staff to return with an ordinance requiring safe storage in homes, in vehicles, or in both, and, if so, does Council want staff to conduct a related public information and education campaign?

RECOMMENDATION

Provide staff with direction on which gun control/safety regulatory options set forth in this Study Session memo it wants to pursue, and inform staff if Council would like more information or public outreach prior to returning to Council with proposed regulations.

The questions for Council's consideration are restated below:

- **Does Council want staff to return with an ordinance prohibiting the possession of firearms on City property Citywide?**
- **Does Council want staff to return with an ordinance prohibiting firearm sales as a home occupation, and, if so, does Council want to grandfather in or amortize the existing home businesses?**
- **Does Council want staff to return with an ordinance amending the Zoning Ordinance to impose locational restrictions on firearm dealers, and, if so, does Council have any other types of uses other than residential zones, schools, day cares, youth centers, and parks that it deems as "sensitive"?**
- **Does Council want staff to return with an ordinance requiring safe storage in homes, in vehicles, or in both, and, if so, does Council want staff to conduct a related public information and education campaign?**

NEXT STEPS

Depending on Council direction, staff may require further analysis and/or public outreach prior to returning to Council with an ordinance for consideration.

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

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(Revised 01/24/20)

Attachment: 1. California Local Gun Safety Legislation