



OFFICE OF THE CITY MANAGER

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PUBLIC SAFETY COMMISSION STAFF REPORT

Meeting: February 9, 2017

Subject

Consider amendments to Chapter 10.76, Firearms, of the Municipal Code to add gun safety measures.

Recommended Action

Provide direction to staff on the proposed ordinance amending Chapter 10.76, Firearms, of the Cupertino Municipal Code to require gun safety measures within the City of Cupertino in compliance with state law (see Attachment A). Staff recommends that the Public Safety Commission recommend that the City Council approve the proposed ordinance with revisions as recommended by the Commission.

Description

On January 12, 2017, staff presented amendments to Chapter 10.76, Firearms, of the Municipal Code to add gun safety measures to the Public Safety Commission for review and comment. Staff brought forward these amendments as directed by Council at their annual priority setting session on January 12, 2016 (Attachment B). Approximately 40 residents and local gun advocates expressed their concerns about the proposed ordinance. One of the largest concerns related to the requirement to obtain a permit was addressed by staff, noting that the Sunnyvale Rod and Gun Club shooting range falls outside of the City's limit in unincorporated Cupertino and, therefore, is not subject to the City's laws.

The Commission decided to continue the agenda item and asked staff to bring back information on:

- Change in Sunnyvale crime rates after implementation of Gun Safety Ordinance
- Data on effectiveness of gun control measures

- Information on lawsuit against Sunnyvale
- Legal challenges to Proposition 63

The information requested by the Commission is summarized below.

Change in Sunnyvale crime rates after implementation of Gun Safety Ordinance

Staff worked with the Santa Clara County Sheriff's Office to gather data on crime statistics. The charts in Attachment C show crime trends in the US, California, and nearby jurisdictions like Sunnyvale. Overall crime in the United States has experienced a steady decline over the last 5 years while California's crime rates declined from 2012 to 2014 only to rise again in 2015. Both nationwide and within California, robberies with firearms have declined since 2013 while aggravated assaults with firearms have increased. In 2015, the United States had an 18% increase in the number of murders with firearms when compared to 2014.

In Sunnyvale, overall crime rates, including property crime rates, continue to fall after their gun ordinance was enacted in December 2013. After 2013, Sunnyvale experienced a slight increase in robberies with a firearm and a decrease in aggravated assaults with a firearm. In San Francisco, overall crime rates, including property crime rates, continue to rise after their gun ordinance was enacted in December 2013. However, despite this trend, the number of homicides with a firearm have declined as well as the total number of shooting victims per year.

In Cupertino, overall crime rates have been slowly increasing since 2011. Instances of murder, robbery, and aggravated assault with a firearm in Cupertino have remained relatively steady from 2011 to 2015.

Data on effectiveness of gun control measures

While there are many reports and articles available showing positive and negative correlations between gun laws and crime rates, staff has found few credible peer-reviewed studies on reducing gun-related crimes or injuries. Unfortunately, the Centers for Disease Control and Prevention (CDC) halted firearm research in 1996 after the National Rifle Association (NRA) accused the agency of promoting gun control and Congress threatened to strip the agency's funding. Congress then inserted language in the CDC's appropriation bill that no funds "may be used to advocate or promote gun control," which was perceived as a ban on gun violence research.

In 2013, President Obama directed the CDC to study the best ways to reduce gun violence by executive order and requested \$10 million for gun violence research but Congress denied the funding request. Despite the lack of dedicated funding, the CDC convened a

committee “tasked with developing a potential research agenda that focuses on the causes of, possible interventions to, and strategies to minimize the burden of firearm-related violence.” The report, [Priorities for Research to Reduce the Threat of Firearm-Related Violence](#) (2013), surveys previous research and concludes that previous research on firearm violence prevention and other interventions—including right-to-carry laws—is inadequate, has inconsistent results, and remains controversial.¹ The report points to the lack of high-quality data available for researchers and identifies key research topics to help us better understand the issues.

Duty to Report

Some studies show stolen guns are used to commit subsequent crimes. A [U.S. Department of the Treasury study](#) revealed that nearly a quarter of ATF gun trafficking investigations involved stolen firearms and were associated with over 11,000 trafficked firearms. Ten percent of the investigations involved guns stolen from residences.²

The duty to report requirement is addressed in federal and state law. Under federal law, gun businesses with federal licenses are required to report missing firearms within 48 hours. With the passage of Proposition 63, every person will be required to report the loss or theft of a firearm to law enforcement within 5 days effective July 1, 2017. The proposed Cupertino ordinance would require reporting within 48 hours.

Safe Storage

Staff found some research showing a positive correlation between safe storage of firearms and reduced unintentional deaths from firearms. Prior to the research ban, a study titled [State Gun Safe Storage Laws and Child Mortality Due to Firearms](#) analyzed safe storage laws that were in effect in 12 states for at least one year between 1990 and 1994.³ The study found “among children younger than 15 years, unintentional shooting deaths were reduced by 23%.” Gun-related homicide and suicide showed modest declines, however, these were not statistically significant. A more recent study, the [Effectiveness of Interventions to Promote Safe Firearm Storage](#), found that safe storage programs are more effective when a free device to secure firearms is provided.⁴ These studies are not conclusive evidence that safe storage laws are effective.

In 2010, SB1080 (Leno) made it a crime to negligently store or leave a loaded firearm in a location where a child is likely to gain access to it without permission, unless reasonable action is taken by the person to secure the firearm against access by the child ([Cal Penal Code §25100](#)). The proposed ordinance would go further and require that firearms be stored in a locked container or be disabled with a trigger lock unless under immediate control and possession.

Prohibition Against High-Capacity Magazines

Banning high-capacity magazines is an attempt to reduce death and injury from mass shootings, as they are a common in such incidents.⁵ However, there is no solid research showing that a ban on high-capacity magazines would prevent death or injury or reduce crime.

Gun advocates correctly pointed out that this provision would be duplicative of state law. As of July 1, 2017, California law will prohibit the ownership of large-capacity magazines ([SB 1446](#), Leno).

Regulation of Ammunition Sales

Staff did not find research showing the effectiveness of restricting ammunition sales. Anecdotally, the cities of Sacramento and Los Angeles have reported success in identifying and prosecuting criminals by comparing records of ammunition sales against records from California's database identifying convicted felons and people not authorized to purchase ammunition.

Under Proposition 63, ammunition sales will be regulated state-wide. However, these regulations will not implemented for some time. By January 1, 2018, ammunition sales in California will need to be conducted by a licensed vendor. On July 1, 2019, licensed ammunition vendors will be required to record, maintain, and report to DOJ records of ammunition sales as well as conduct background checks.

The proposed Cupertino ordinance would require compliance 60 days after Council approval, however, the language could be amended to ensure that state regulations satisfy the local provisions to simplify reporting requirements. Currently, the proposed Cupertino ordinance requires a thumb print for ammunition sales, which Proposition 63 does not.

Information on lawsuit against Sunnyvale

In December 2013, the National Rifle Association (NRA), representing five residents of Sunnyvale, California, filed a lawsuit to stop enforcement of the city's ban on possession of magazines able to hold more than 10 rounds (*Fyock v. Sunnyvale*). In March 2014, Supreme Court Justice Anthony Kennedy rejected a request to block enforcement of the law pending appeals. In March 2015, the federal 9th Circuit Court of Appeals upheld the magazine capacity restriction, ruling that it does not violate the Second Amendment.

Legal challenges to Proposition 63

The California Rifle and Pistol Association (CRPA) recently formed the Coalition for Civil Liberties to mount a challenge against Proposition 63 and other gun control measures. Although the group has vowed to file suit, no lawsuit has been filed to date. They are hopeful that judicial appointments by President Trump will make courts more sympathetic to arguments by gun advocates.

Under the proposed ordinance, Cupertino residents maintain their 2nd Amendment right to own firearms. The ordinance targets safety and provides law enforcement with some additional tools.

Sustainability Impact

The proposed Ordinance is not a project within the meaning of section 15378 of the California Environmental Quality Act (“CEQA”) Guidelines because it has no potential for resulting in physical change in the environment, either directly or ultimately. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment.

Fiscal Impact

None.

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Reviewed and Approved by: David Brandt, City Manager

Attachments:

A – Redlined Draft Ordinance No. 16-

B – Minutes from 2016 Council Priority Setting Session

C – State, Regional, and Local Crime Statistics

¹ [Priorities for Research to Reduce the Threat of Firearm-Related Violence](https://www.nap.edu/catalog/18319/priorities-for-research-to-reduce-the-threat-of-firearm-related-violence)

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² Following the Gun: Enforcing Federal Laws Against Firearms Traffickers, supra note 6, at 11, 41.

(http://everytown.org/wp-content/uploads/2014/08/Following-the-Gun_Enforcing-Federal-Laws-Against-Firearms-Traffickers.pdf)

³ [State Gun Safe Storage Laws and Child Mortality Due to Firearms](http://jamanetwork.com/journals/jama/article-abstract/418289) (Cummings et al., 1997)

<http://jamanetwork.com/journals/jama/article-abstract/418289>

⁴ [Effectiveness of Interventions to Promote Safe Firearm Storage](https://oup.silverchair-) (Rowhani-Rahbar et. al., 2015)

<https://oup.silverchair->

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5 See Violence Policy Center, Mass Shootings in the United States Involving High-Capacity Ammunition Magazines, at http://www.vpc.org/fact_sht/VPCshootinglist.pdf