



The City of San Diego

Staff Report

DATE ISSUED: May 16, 2019  
TO: City Council  
FROM: The Office of the City Attorney  
SUBJECT: Approve an ordinance to amend Chapter 5, Article 3 of the San Diego Municipal Code to add section 53.17 titled Safe Storage of Firearms.

Primary Contact: Paige E. Folkman Phone: (619) 533-5800  
Secondary Contact: Michelle Garland Phone: (619) 533-5800

Council District(s): All

OVERVIEW:

Presentation by the City Attorney's Office to introduce an ordinance that would regulate the safe storage of firearms in residences within the City of San Diego.

PROPOSED ACTIONS:

Approve an ordinance to amend Chapter 5, Article 3 of the San Diego Municipal Code to add a new section 53.17 titled Residential Safe Storage of Firearms.

DISCUSSION OF ITEM:

Gun violence is a major public health issue. Having a firearm in a home that is easily accessible to children, those struggling with mental health issues, and criminals, increases firearm related injuries, deaths, and crimes. Research indicates these risks are minimized when unattended firearms are locked up or disabled with a trigger lock.

The purpose of this new municipal code regulation is to protect the health and safety of the public by requiring firearms to be safely stored unless they are under the control of the owner, thereby preventing firearm access by those who are not the owner or authorized user of a firearm and reducing the number of firearm-related injuries, deaths, and crimes.

## The Ordinance

The Firearm Safe Storage Ordinance (Safe Storage Ordinance) requires people who keep firearms in their residences, including accessory structures (e.g., garages and sheds), to store them in locked containers or disable them with a trigger lock unless the firearm is on their person or is in the immediate control of the person so that it can be readily retrieved.

This Safe Storage Ordinance does not substantially burden the right or ability of owners to use firearms for self-defense in the home. The locking requirements in this Ordinance apply only to firearms that are not being carried on the person or in the person's immediate control. Under this Ordinance firearm owners may carry loaded and unlocked firearms in the home at any time and the safe storage requirements allow owners to store firearms loaded if they wish. The Ordinance will be enforced criminally as provided in Municipal Code section 12.0201.

The Safe Storage Ordinance also encourages owners of firearms to report lost or stolen firearms to law enforcement. A person who reports a firearm lost or stolen with a law enforcement agency will not be subject to prosecution for violation of the Ordinance for the firearm that is reported lost or stolen.

The Ordinance addresses the very real risks posed by unsecured firearms in the home. It will help prevent accidental shootings, teen suicides, and firearm thefts from homes during burglaries. This Ordinance will preserve the peace and protect the public health, safety and general welfare of the residents of the City of San Diego by reducing firearms-related injuries and crime.

## Unsecured Firearms Increase the Risk of Suicides and Accidental Shootings

Firearm-related deaths in the United States are the second leading cause of injury-related deaths in children between the ages of 1 and 17, surpassed only by motor vehicle injury deaths.<sup>1</sup>

The number of people who do not safely secure their firearm is startling. It is estimated that 4.6 million children in the United States live in a home with unsecured firearms.<sup>2</sup> Studies show that unsecured firearms are frequently accessible to and accessed by young children, even when their parents believe their firearms are not accessible.<sup>3</sup> For example, 73% of children ages 9 and under reported knowing the location of their parent's firearms, and 36% of those children admitted that

---

<sup>1</sup> Katherine A. Fowler, Linda L. Dahlberg, Tadesse Haileyesus, Carmen Gutierrez and Sarah Bacon, *Childhood Firearm Injuries in the United States*, Pediatrics, June 19, 2017, <https://pediatrics.aappublications.org/content/pediatrics/140/1/e20163486.full.pdf>.

<sup>2</sup> Deborah Azrael, Joanna Cohen, Carmel Salhi, and Matthew Miller, *Firearm Storage in Gun-Ownning Households with Children: Results of a 2015 National Survey*, Journal of Urban Health (June 2018) [https://www.thetrace.org/wp-content/uploads/2018/05/Firearm-Storage-in-Households-with-Children\\_JUH.pdf](https://www.thetrace.org/wp-content/uploads/2018/05/Firearm-Storage-in-Households-with-Children_JUH.pdf).

<sup>3</sup> Frances Baxley, Matthew Miller, *Parental Misperceptions About Children and Firearms*, Archives of Pediatric & Adolescent Med. (2006) <http://childrensfirearmsafetyalliance.com/wp-content/uploads/2017/09/Parental-Misconceptions-About-Children-and-Firearms-AMA.pdf>.

they had handled the firearms, including children whose parents had reported their children did not know the location of their firearms.<sup>4</sup>

Evidence shows that the presence of a firearm in a home with children substantially increases the risk of suicide and accidental shootings, but that these risks are lower in homes where firearms are secured.<sup>5</sup>

Firearms were the leading cause of suicides in San Diego County from 1988 through 2016, outnumbering intentional overdose/poisoning, hanging/asphyxia, jumping, and other causes.<sup>6</sup> Between 2007 and 2016, San Diego County's suicide rate among those aged 18 years or younger was higher than the California state rate.<sup>7</sup> The San Diego County Suicide Prevention Council found that San Diego County's suicide rate between 2016 and 2017 increased 5% from 13.1 to 13.8 per population of 100,000.<sup>8</sup>

Suicide attempts often are impulsive acts, with one study finding that 24% of nearly lethal suicide attempts by individuals 13 to 34 years of age occurred within five minutes of their decision to attempt suicide.<sup>9</sup> Secured firearms impede the opportunity for impulsive suicide attempts, giving suicidal individuals time to contact family, friends, and health-care professionals, and giving others time to react.

#### Secured Firearms Prevent and Help Reduce Deaths and Injuries

It is proven that laws requiring firearms to be secured help reduce suicides and injuries.

Data between 2004 and 2014 from the Centers for Disease Control shows that among minors between the ages of 10 and 17, firearms were used in just 9% of youth suicides in Massachusetts, a state that has child firearm access prevention laws, compared to 39% of youth suicides nationally,

---

<sup>4</sup> Frances Baxley & Matthew Miller Parental *Misperceptions About Children and Firearms*, 160 Archives of Pediatric & Adolescent Med. (2006) <http://childrensfirearmsafetyalliance.com/wp-content/uploads/2017/09/Parental-Misconceptions-About-Children-and-Firearms-AMA.pdf>.

<sup>5</sup> Deborah Azrael, Joanna Cohen, Carmel Salhi, and Matthew Miller, *Firearm Storage in Gun-Ownng Households with Children: Results of a 2015 National Survey*, Journal of Urban Health (June 2018) [https://www.thetrace.org/wp-content/uploads/2018/05/Firearm-Storage-in-Households-with-Children\\_JUH.pdf](https://www.thetrace.org/wp-content/uploads/2018/05/Firearm-Storage-in-Households-with-Children_JUH.pdf).

<sup>6</sup> 2016 Annual Report, County of San Diego Department of the Medical Examiner, <https://www.sandiegocounty.gov/content/dam/sdc/me/docs/SDME%20Annual%20Report%202016.pdf>.

<sup>7</sup> *Youth Suicide Prevention: New School Policies and Beyond*, San Diego County Suicide Prevention Council, 2018, <https://tribkswb.files.wordpress.com/2018/09/spc-report.pdf>.

<sup>8</sup> *Youth Suicide Prevention: New School Policies and Beyond*, San Diego County Suicide Prevention Council, 2018, <https://tribkswb.files.wordpress.com/2018/09/spc-report.pdf>.

<sup>9</sup> Thomas R. Simon, PhD, Alan C. Swann, MD, Kenneth E. Powell, MD, MPH, Lloyd B. Potter, PhD, MPH, Marcie-jo Kresnow, MS, and Patrick W. O'Carroll, MD, MPH, *Characteristics of Impulsive Suicide Attempts and Attempters* (January 19, 2011).

<https://onlinelibrary.wiley.com/doi/pdf/10.1521/suli.32.1.5.49.24212>.

and that the overall suicide death rate among youth in Massachusetts is 35% below the national average.<sup>10</sup>

An April 2019 study of pediatric gunshot wounds identified children ages 0-15 years who were admitted to a Houston trauma center from 2001 to 2016 and concluded that many of the gun shot injuries could have been prevented with safe firearm storage, increased community education efforts, and other safety measures.<sup>11</sup>

The RAND Corporation analyzed scientific literature on firearm laws and concluded that child firearm access prevention laws reduce firearm self-injuries (including suicides) and unintentional firearm injuries and deaths among children.<sup>12</sup>

### Unsecured Firearms Pose a Threat to Public Safety

The United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), reported that lost and stolen firearms pose a substantial threat to public safety and to law enforcement.<sup>13</sup>

Lost and stolen firearms are used to commit violent crimes, are often bought and sold in an unregulated secondary market where law enforcement is unable to trace transactions, and are transferred to others who commit crimes or are prohibited by law from possessing a firearm.<sup>14</sup> In 2017, ATF reported 876 firearms suspected to be have been used in a crime were recovered in San Diego.<sup>15</sup>

Requiring the safe storage of firearms will reduce the number of firearms stolen during household burglaries or other property crimes, as about 93% of firearm thefts between 2005 and 2010

---

<sup>10</sup> *Safe Storage*, Giffords Law Center to Prevent Gun Violence <https://lawcenter.giffords.org/gun-laws/policy-areas/child-consumer-safety/safe-storage/>.

<sup>11</sup> Joe W. Brewer Jr, Charles S. Cox, Stephen A Fletcher, Manish N Shah, Michelle Sandberg, David I. Sandberg, *Surgery, Analysis of pediatric gunshot wounds in Houston, Texas: A social perspective*, Journal of Pediatric (April 2019) [https://www.jpedsurg.org/article/S0022-3468\(18\)30720-6/pdf](https://www.jpedsurg.org/article/S0022-3468(18)30720-6/pdf).

<sup>12</sup> The RAND Corporation, *What Science Tells Us About the Effects of Gun Policies*, <https://www.rand.org/research/gun-policy/essays/what-science-tells-us-about-the-effects-of-gun-policies.html>.

<sup>13</sup> *2012 Summary: Firearms Reported Lost and Stolen*, U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, <https://www.atf.gov/resource-center/docs/2012-summary-firearms-reported-lost-and-stolen-2pdf/download>.

<sup>14</sup> *2012 Summary: Firearms Reported Lost and Stolen*, U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, <https://www.atf.gov/resource-center/docs/2012-summary-firearms-reported-lost-and-stolen-2pdf/download>.

<sup>15</sup> *California Data Source: Firearms Tracing System, January 1, 2017 – December 31, 2017*, U.S. Department of Justice, Bureau of Justice Statistics, <https://www.atf.gov/docs/undefined/cawebsite17183919pdf/download>.

occurred during property crimes.<sup>16</sup> In 83% of burglaries and 85% of other property crimes that involved a stolen firearm, none of the stolen firearms had been recovered.<sup>17</sup>

Recent data shows that in San Diego County one in five robberies involved a firearm,<sup>18</sup> and a firearm was used in 55% of homicides.<sup>19</sup> According to San Diego Police Department data, in 2018, firearms were used in 21 homicides, 222 robberies, 414 assaults, and in 43 suicides\attempted suicides, and 1,189 firearms were stolen in the City of San Diego between 2015 and 2018.

States that require firearms to be secured have a firearm theft rate below the national average.<sup>20</sup>

### Safes and Trigger Locks

Firearms sold or manufactured in California must come with a safety device. In California, with some exceptions, any firearm sold or transferred by a licensed firearms dealer, including a private transfer through a dealer, and any firearm manufactured in the state, must include or be accompanied by a firearm safety device that is listed on the Department of Justice's roster of approved firearm safety devices. California Penal Code section 23635.

Additionally, the use of a gun safe or trigger lock does not impede quick access to a firearm. A quick access safe with a pushbutton code keeps a firearm secure but also readily accessible. Trigger locks can be removed within seconds by someone who knows the combination. A simple online search using "firearm safe storage" or "firearm locking devices" as keywords will locate information on lock boxes, cable locks, safes, and triggers locks. Lock boxes come in a variety of forms either with push buttons, combinations, or digital keypad lock. Lock boxes are quick to access and difficult to steal if permanently mounted. Locks boxes cost \$40 to \$200 or more, cable locks and trigger locks are more

---

<sup>16</sup> Lynn Langton, *Firearms Stolen during Household Burglaries and Other Property Crimes, 2005-2010*, U.S. Department of Justice, Bureau of Justice Statistics, November 2012, <https://www.bjs.gov/content/pub/pdf/fshbopc0510.pdf>.

<sup>17</sup> Lynn Langton, *Firearms Stolen during Household Burglaries and Other Property Crimes, 2005-2010*, U.S. Department of Justice, Bureau of Justice Statistics, November 2012, <https://www.bjs.gov/content/pub/pdf/fshbopc0510.pdf>.

<sup>18</sup> *Thirty-Eight Years of Crime in the San Diego Region: 1980 Through 2017*, SANDAG (April 2018), [https://www.sandag.org/uploads/publicationid/publicationid\\_4489\\_23656.pdf](https://www.sandag.org/uploads/publicationid/publicationid_4489_23656.pdf).

<sup>19</sup> Cynthia Burke Ph.D., *San Diego Violent Crime Victims and Suspects in 2015*, SANDAG (Dec. 2016), [https://www.sandag.org/uploads/publicationid/publicationid\\_2082\\_21410.pdf](https://www.sandag.org/uploads/publicationid/publicationid_2082_21410.pdf).

<sup>20</sup> Brian Freskos, *Missing Pieces, Gun theft from legal owners is on the rise, quietly fueling violent crime across America*, The Trace, November 20, 2017, <https://www.thetrace.org/features/stolen-guns-violent-crime-america/>.

inexpensive and cost \$5 to \$40 or more. All can be found at firearm and sporting goods stores and online retailers.

#### The NRA, Attorney General, and Chiefs of Police All Advocate for Safe Storage

The National Rifle Association (NRA) safety rules instruct gun owners to store guns so they are not accessible to unauthorized persons.<sup>21</sup>

The California Attorney General notes that securing firearms is a basic gun safety rule for gun owners to understand and practice at all times.<sup>22</sup> Specifically, the Attorney General instructs owners to secure storage of firearms using safety devices, such as a trigger lock or cable lock, or locked containers, such as a lock box or a gun safe. And for maximum safety recommends using both a locking device and a storage container.

The International Association of Chiefs of Police (IACP) also supports responsible firearm ownership by recommending that owners secure their firearms from theft and from misuse by using safes, trigger locks, and monitored alarm systems.<sup>23</sup>

#### Other California Jurisdictions

The following jurisdictions have similar firearm safe storage regulations:

Belvedere  
Berkeley  
Los Angeles  
Oakland  
Palm Springs  
San Jose  
Santa Cruz  
Saratoga  
Sunnyvale  
Tiburon  
San Francisco City and County

#### City Strategic Plan Goal(s)/Objective(s):

Work in partnership with all of our communities to achieve safe and livable neighborhoods and to reduce and prevent crime.

Fiscal Considerations: N/A

---

<sup>21</sup> NRA Gun Safety Rules <https://gunsafetyrules.nra.org/>.

<sup>22</sup> State Department of Justice, Attorney General website, *Firearm Safety*, <https://oag.ca.gov/firearms/tips>.

<sup>23</sup> Resolution from Security of Firearms, International Association of Chiefs of Police, <https://www.theiacp.org/resources/resolution/security-of-firearms>.

Charter Section 225 Disclosure of Business Interests: N/A

Environmental Impact:

The activity is not a "project" and is therefore not subject to CEQA pursuant to State CEQA Guidelines Section § 15060(c)(3).

Equal Opportunity Contracting Information (if applicable): N/A

Previous Council and/or Committee Actions:

None.

Key Stakeholders and Community Outreach Efforts:

The Safe Storage Ordinance is supported by San Diegans for Gun Violence Prevention, the Giffords Law Center to Prevent Gun Violence, the San Diego Police Officers Association, Alzheimer's San Diego, Social Advocates for Youth San Diego, and other community groups and community leaders.

Paige E. Folkman

Mara W. Elliott

Chief Deputy City Attorney

City Attorney

**Public Safety and Livable Neighborhoods Committee  
DRAFT ORDINANCE**

AN ORDINANCE AMENDING CHAPTER FIVE, ARTICLE THREE OF THE SAN DIEGO MUNICIPAL CODE BY ADDING NEW SECTION 53.17, RELATING TO SAFE STORAGE OF FIREARMS.

WHEREAS, having a firearm in the home that is easily accessible to children, those struggling with mental health issues, and criminals, increases firearm related injuries, deaths, and crimes, creating significant local and national public health impacts; and

WHEREAS, research indicates that these impacts are reduced when firearms are locked up or disabled with a trigger lock (secured); and

WHEREAS, firearm-related deaths in the United States are the second leading cause of injury-related deaths in children between the ages of 1 and 17, surpassed only by motor vehicle injury deaths; and

WHEREAS, it is estimated that 4.6 million children in the United States live in a home with unsecured firearms; and

WHEREAS, studies show that unsecured firearms are frequently accessible to and accessed by young children, even when their parents believe their firearms are not accessible; and

WHEREAS, 73% of children ages 9 and under reported knowing the location of their parent's firearms, and 36% of those children admitted that they had handled the firearms, including children whose parents had reported their children did not know the location of their firearms; and



**Public Safety and Livable Neighborhoods Committee**  
**DRAFT ORDINANCE**

WHEREAS, evidence shows that the presence of a firearm in a home with children substantially increases the risk of suicide and accidental shootings, but that these risks are lower in homes where firearms are secured; and

WHEREAS, firearms were the leading cause of suicides in San Diego County from 1988 through 2016, overtaking intentional overdose/poisoning, hanging/asphyxia, jumping, and other causes; and

WHEREAS, between 2007 and 2016, San Diego County's suicide rate among those aged 18 years or younger was higher than the California state rate; and

WHEREAS, the San Diego County Suicide Prevention Council found that San Diego County's suicide rate between 2016 and 2017 increased 5% from 13.1 to 13.8 per population of 100,000; and

WHEREAS, suicide attempts often are impulsive acts, with one study finding that 24% of nearly lethal suicide attempts by individuals 13 to 34 years of age occurred within five minutes of their decision to attempt suicide; and

WHEREAS, secured firearms impede the opportunity for impulsive suicide attempts, giving suicidal individuals time to contact family, friends, and health-care professionals, and giving others time to react; and

WHEREAS, data between 2004 and 2014 from the Centers for Disease Control shows that among minors between the ages of 10 and 17, firearms were used in just 9% of youth suicides in Massachusetts, a state that has child firearm access prevention laws, compared to 39% of youth suicides nationally, and that the overall suicide death rate among youth in Massachusetts is 35% below the national average; and

**Public Safety and Livable Neighborhoods Committee**  
**DRAFT ORDINANCE**

WHEREAS, an April 2019 study of pediatric gunshot wounds identified children ages 0-15 years who were admitted to a Houston trauma center from 2001 to 2016 and concluded that many of the gun shot injuries could have been prevented with safe firearm storage, increased community education efforts, and other safety measures; and

WHEREAS, the RAND Corporation analyzed scientific literature on firearm laws and concluded that child firearm access prevention laws reduce firearm self-injuries (including suicides) and unintentional firearm injuries and deaths among children; and

WHEREAS, in 2012, the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), reported that lost and stolen firearms pose a substantial threat to public safety and to law enforcement; and

WHEREAS, in 2017, ATF reported 876 firearms suspected to be have been used in a crime were recovered in San Diego; and

WHEREAS, requiring the safe storage of firearms will reduce the number of firearms stolen during household burglaries or other property crimes, as about 93% of firearm thefts between 2005 and 2010 occurred during property crimes; and

WHEREAS, in 83% of burglaries and 85% of other property crimes that involved a stolen firearm, none of the stolen firearms had been recovered; and

WHEREAS, lost and stolen firearms are used to commit violent crimes, are often bought and sold in an unregulated secondary market where law enforcement is unable to trace transactions, and are transferred to others who commit crimes or are prohibited by law from possessing a firearm; and

WHEREAS, recent data shows that in San Diego County one in five robberies involved a firearm, and a firearm was used in 55% of homicides; and

**Public Safety and Livable Neighborhoods Committee**  
**DRAFT ORDINANCE**

WHEREAS, according to San Diego Police Department data, in 2018, firearms were used in 16 homicides, 222 robberies, 414 assaults, and in 43 suicides\attempted suicides, and 1189 firearms were stolen in the City of San Diego between 2015 and 2018; and

WHEREAS, states that require firearms to be secured have a firearm theft rate below the national average; and

WHEREAS, the National Rifle Association (NRA) safety rules instruct gun owners to store guns so they are not accessible to unauthorized persons; and

WHEREAS, the California Attorney General advocates for secure storage of firearms using safety devices, such as a trigger lock or cable lock, or locked containers, such as a lock box or a gun safe; and

WHEREAS, the International Association of Chiefs of Police advocates for responsible firearms owners to secure their firearms from theft and from misuse by using safes, trigger locks, and monitored alarm systems; and

WHEREAS, this Ordinance requires firearms to be secured with trigger locks, in a locked container, on the person, or in the person's immediate control, and does not substantially burden a person's right or ability to use firearms for self-defense in the home; and

WHEREAS, this Ordinance applies only to firearms that are not being carried on the person or in the person's immediate control; and

WHEREAS, under this Ordinance, a person may carry loaded and unlocked firearms in the home at any time, and loaded firearms may be securely stored; and

WHEREAS, the Legislature of the State of California has not, expressly or by implication, preempted the regulation of safe residential firearm storage; and

**Public Safety and Livable Neighborhoods Committee**  
**DRAFT ORDINANCE**

WHEREAS, the Council of the City of San Diego finds that this Ordinance addresses the risks posed by unsecured firearms in the home and will help prevent accidental shootings, teen suicides, and residential firearm thefts; and

WHEREAS, the Council of the City of San Diego finds and declares that this Ordinance will preserve the peace and protect the public health, safety, and general welfare of the residents of the City of San Diego by reducing firearms-related injuries and crime; and

WHEREAS, the Council of the City of San Diego further finds it is within its police power to implement and enforce the provisions of this Ordinance;

NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 5, Article 3 of the San Diego Municipal Code is amended by adding new section 53.17, to read as follows:

**§53.17 Residential Safe Storage of Firearms**

- (a) Purpose and Intent. It is the purpose and intent of this section that the storage of firearms in *residences* within the City of San Diego be regulated for the protection and health of the public and to prevent firearm access by a *person* who is not the *authorized user* of a firearm.
- (b) Definitions. For the purposes of this section, defined terms appear in italics. The following definitions apply in this section:
  - (1) *Accessory structure* has the same meaning as in San Diego Municipal Code section 113.0103.
  - (2) *Authorized user* means a *person* who is not prohibited from owning or possessing a *firearm*.

**Public Safety and Livable Neighborhoods Committee**  
**DRAFT ORDINANCE**

- (3) *Firearm* has the same meaning as in San Diego Municipal Code section 53.10.
  - (4) *Locked container* has the same meaning as in California Penal Code section 16850.
  - (5) *Mobilehome* has the same meaning as in San Diego Municipal Code section 113.0103.
  - (6) *Person* has the same meaning as in San Diego Municipal Code section 11.0210.
  - (7) *Residence* means any *structure* intended or used for human habitation including, without limitation, houses, condominiums, apartments, and *mobilehomes*.
  - (8) *Structure* has the same meaning as in San Diego Municipal Code section 1113.0103.
  - (9) *Trigger lock* means a firearm safety device approved by the California Department of Justice Bureau of Firearms in accordance with California Penal Code section 23635.
- (c) Prohibition. It is unlawful for any *person* to keep a *firearm* within any *residence*, including its *accessory structures*, unless the *firearm* is stored in a *locked container* or disabled with a *trigger lock*.
- (d) Exceptions. Subsection (c) shall not apply in the following circumstances:
- (1) the *firearm* is carried on the body of a *person* who is an *authorized user* of the *firearm*, or

**Public Safety and Livable Neighborhoods Committee**  
**DRAFT ORDINANCE**

- (2) the *firearm* is in the immediate control of the *authorized user* so that the *person* can readily retrieve and use the *firearm* as if carried on the *person's* body.
- (e) Reporting Lost or Stolen *Firearms*. In order to encourage reports to law enforcement agencies of lost or stolen *firearms*, a *person* who files a report with a law enforcement agency notifying the agency that a *firearm* has been lost or stolen shall not be subject to prosecution for violation of this section for the *firearm* that is reported lost or stolen.

SANNA R. SINGER  
ASSISTANT CITY ATTORNEY  
MARY T. NUESCA  
ASSISTANT CITY ATTORNEY  
PAIGE E. FOLKMAN  
CHIEF DEPUTY CITY ATTORNEY

OFFICE OF  
**THE CITY ATTORNEY**  
CITY OF SAN DIEGO  
**MARA W. ELLIOTT**  
CITY ATTORNEY

1200 THIRD AVENUE, SUITE 1620  
SAN DIEGO, CALIFORNIA 92101-4178  
TELEPHONE (619) 236-6220  
FAX (619) 236-7215

May 20, 2019

REPORT TO PUBLIC SAFETY AND LIVABLE NEIGHBORHOODS COMMITTEE  
LEGAL ANALYSIS OF PROPOSED FIREARM SAFE STORAGE ORDINANCE

**INTRODUCTION**

On June 5, 2019, the Public Safety and Livable Neighborhoods Committee is expected to consider a proposed Firearm Safe Storage Ordinance (Safe Storage Ordinance) that would make it unlawful for a person to keep a firearm within any residence<sup>1</sup> within the City of San Diego (City) unless the firearm is stored in a locked container or disabled with a trigger lock. The proposed Safe Storage Ordinance would allow for certain exceptions. A firearm may be kept within a residence if the firearm is carried on the body of the person who is an authorized user<sup>2</sup> of a firearm, or the firearm is in the immediate control of that person so that they can readily retrieve and use the firearm as if carried on their body. This report addresses whether the proposed Safe Storage Ordinance would be constitutional under the Second Amendment to the United States Constitution and whether the City is preempted by federal or state law from regulating firearms.

**QUESTIONS PRESENTED**

1. Does an ordinance regulating the storage of firearms in a residence violate the Second Amendment?
2. Is a City ordinance regulating the storage of firearms in a residence preempted by either federal law or state law?

**SHORT ANSWERS**

1. No. Under current legal precedent, although the proposed ordinance regulates conduct within the scope of the Second Amendment, it does not impose a substantial burden on firearm owners and is substantially related to an important government interest in firearm safety.
2. No. A local ordinance regulating the storage of a firearm in a residence, which is not regulated under federal or state law, is not preempted.

---

<sup>1</sup> For purposes of the proposed Safe Storage Ordinance, residence means any structure intended or used for human habitation, including without limitation houses, condominiums, apartments, and mobile homes.

<sup>2</sup> For purposes of the proposed Safe Storage Ordinance, an authorized user is a person who is not prohibited from owning or possessing a firearm.

## ANALYSIS

### I. UNDER CURRENT LEGAL PRECEDENT, THE PROPOSED SAFE STORAGE ORDINANCE IS CONSTITUTIONAL UNDER THE SECOND AMENDMENT.

The Second Amendment to the United States Constitution, applicable to states and cities through the Fourteenth Amendment, protects “an individual right to keep and bear arms” and “the inherent right of self-defense.” *Jackson v. City and County of San Francisco*, 746 F.3d 953, 959 (9th Cir. 2014) cert. denied 135 S.Ct. 2799 (2015), (citing *District of Columbia v. Heller*, 554 U.S. 570, 595, 628 (2008)). Firearm regulations that substantially burden this right are unconstitutional. *Id.*

Recently, the Ninth Circuit upheld a San Francisco ordinance (San Francisco Police Code section 4512) requiring handguns inside the home to be stored in locked containers or disabled with a trigger lock when not being carried on the person. *Jackson v. City and County of San Francisco*, 746 F.3d 953 (9th Cir. 2014).<sup>3</sup> Although the Court found that the ordinance made it more difficult for a person to use a firearm for the lawful purpose of self-defense, the Court found that this burden was not substantial as it only affected the way responsible firearm owners store their firearms in the home when not carried on their person. *Jackson*, 746 F.3d at 964 (citing *United States v. Chovan*, 735 F.3d 1127, 1138 (9th Cir. 2013)). The Court found that the ordinance only indirectly burdens the ability to use a handgun and does not constitute a complete ban, either on its face or in practice. *Jackson*, 746 F.3d at 964.

The Court distinguished the San Francisco ordinance from an ordinance that was found unconstitutional by the U.S. Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570 (2008). In *Heller*, the ordinance at issue barred the possession of handguns both inside and outside the home, and required other firearms to be kept unloaded and disassembled or with a trigger lock. *Jackson* 746 F.3d at 959 (citing *Heller*, 554 U.S. at 575). The *Heller* court determined this ordinance unduly burdened an individual’s Second Amendment rights. In contrast, the Court held that the San Francisco ordinance regulates only gun storage, not the carrying of a handgun, and thus allows an individual to retain his or her right to immediate self-defense within the home. *Jackson*, 746 F.3d at 964.

Because the San Francisco ordinance only regulates the manner in which a person can exercise their Second Amendment rights, the Court analyzed the regulation under an intermediate scrutiny standard of review. *Jackson*, 746 F.3d at 964-65 (such an ordinance does not impose the sort of severe burden that requires the higher level of scrutiny applied by other courts in this context). “[T]he first prong of intermediate scrutiny review [is] whether the government’s stated objective is significant, substantial, or important.” *Id.* at 965. Second, the enactment must be substantially related to the important objective. *Id.* at 966.

---

<sup>3</sup> The matter before the court was an appeal for the denial of a motion for preliminary injunction.



The Court found that “[i]t is self-evident’ that public safety is an important government interest,” and reducing “gun-related injury and death” promotes public safety. *Jackson*, 746 F.3d at 965 (quoting *Chovan*, 735 F.3d at 1139). It also found that requiring “persons [to] store handguns in a locked storage container or with a trigger lock when not carried on the person is substantially related to the important government interest of reducing firearm-related deaths and injuries.” *Jackson*, 746 F.3d at 966.

Here, the proposed Safe Storage Ordinance explains the City’s important interests in reducing the number of firearm-related suicides, preventing children and persons prohibited from owning or possessing firearms access to firearms, and preventing firearms from being stolen and used in criminal activity. Additionally, a person can have a fully operable firearm on their person or within their immediate control while in the home, which addresses the self-defense concern in *Heller*. *Heller*, 554 U.S. at 576. Therefore, under current legal precedent, the proposed Safe Storage Ordinance is permissible under the Second Amendment.

## **II. FEDERAL LAW DOES NOT PREEMPT A LOCAL REGULATION OF THE STORAGE OF FIREARMS IN A RESIDENCE.**

Article VI of the United States Constitution declares that laws of the United States “shall be the supreme Law of the Land . . . anything in the Constitution or Laws of any State to the Contrary notwithstanding.” U.S. Const. art. VI. “In the absence of an express congressional command, state law is pre-empted if that law actually conflicts with federal law, [ ] or if federal law so thoroughly occupies a legislative field “as to make reasonable the inference that Congress left no room for the States to supplement it.” *Cipollone v. Liggett*, 505 U.S. 504, 516 (1992) (citations omitted).

However, Congress may expressly allow local government to simultaneously regulate in specific areas. Such is the case here, where Congress has elected to allow states to regulate firearms simultaneously with the federal government. Specifically, the United States Code regulating firearms has a provision expressing Congress’ intent not to occupy the entire field of firearms regulation, but rather, to allow local regulation:

No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.

18 U.S.C.A. § 927.

This simultaneous regulation is illustrated in the transportation of firearms, where both the federal government and the California state legislature require a firearm to be kept in the truck or a locked container. 18 U.S.C.A. § 926A, Cal. Penal Code § 25610. Conversely, federal law contains no regulations specifically pertaining to the storage of firearms in a residence.<sup>4</sup> The absence of federal residential firearm storage regulations in this area leaves the field open to state or local regulation, as proposed in the proposed Safe Storage Ordinance.

Based on the express granting of Congressional authority for local firearms regulation, and the absence of any conflicting or comprehensive federal residential firearms storage legislation, the proposed Safe Storage Ordinance is not preempted by law.

### **III. STATE LAW DOES NOT PREEMPT THE LOCAL REGULATION OF THE STORAGE OF FIREARMS IN A RESIDENCE.**

Generally, a city may “make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” Cal. Const. art. XI, § 7. This constitutional power is commonly referred to as a municipality’s “police powers.” *California Rifle & Pistol Assn. v. City of West Hollywood*, 66 Cal. App. 4th 1302, 1310 (1998). However, “[i]f an otherwise valid local legislation conflicts with state law, it is preempted by such law and is void.” *Great Western Shows, Inc. v. County of Los Angeles*, 27 Cal. 4th 853, 860 (2002) (citing *Sherwin-Williams Co. v. City of Los Angeles*, 4 Cal. 4th 893 (1993)). “A conflict exists if the local legislation duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication” *Great Western Shows*, 27 Cal. 4th at 860.

Like federal laws, state laws regulate certain areas of gun regulation but not the entire field of gun control. Here, the State Legislature has regulated in several areas of firearm storage. Therefore, the question is whether federal or state law conflicts with or was intended to occupy the legislative field, such that the proposed Safe Storage Ordinance is preempted.<sup>5</sup>

#### **A. Express Preemption**

The legislature may expressly indicate an intent to fully occupy an area. *Big Creek Lumber Co. v. County of Santa Cruz*, 38 Cal. 4th 1139, 1150 (2006). Conversely, the legislature may clearly indicate an intent to allow local regulation. Generally, as to local control of firearms, the legislature has not expressly indicated a desire to occupy the entire field; rather, it has targeted certain specific areas for preemption and has not broadly preempted local regulation. *Great Western*, 27 Cal. 4th at 864, *Nordyke*, 27 Cal. 4th 875, 882 (2002) (“[T]here are significant

---

<sup>4</sup> The only federal laws regulating storage of firearms are applicable only to licensed firearm dealers, and have no application in this context. 18 U.S.C.A. § 922(z)(1), 18 U.S.C.A. § 923(d)(1)(G).

<sup>5</sup> Currently the California Legislature is considering a bill that would require a firearm owner to securely store any firearm against theft or unauthorized access with Department of Justice-approved safety devices anytime they are outside their residence. Assem. Bill 276 (2019-2020 Reg. Sess.) introduced by Assem. Friedman on Jan. 28, 2019. Firearms: storage. The current version of AB 276 states that it will not preclude or preempt a local ordinance that imposes additional penalties or requirements in regard to safe storage of firearms.

local interests in gun regulation that the Legislature has not sought to override except in specific areas... .”)

A local ordinance may also be expressly preempted if it conflicts with or contradicts state law by prohibiting an act that the state law expressly authorizes, or authorizing an act that the state law expressly prohibits. *Sherwin-Williams Co.*, 4 Cal. 4th at 902. Local regulations that do not criminalize precisely the same acts that are prohibited by state statute are not duplicative of state law, and thus are not preempted. *Nordyke v. King*, 27 Cal. 4th 875 (2002) (county ordinance prohibiting possession of a firearm on county property found not to be preempted by state firearms statutes because state law did not expressly preempt regulation of gun shows nor did it duplicate or contradict such statutes).

The proposed Safe Storage Ordinance does not conflict with or duplicate state law. For example, state law allows a person to carry an open or concealed firearm within their residence. Cal. Pen. Code § 25605, exempting application of Cal. Pen. Code § 25400, concealed firearm regulations. The proposed Safe Storage Ordinance allows a firearm to be carried on the body of the person who is the lawfully authorized user of the firearm in accordance with all applicable laws, either openly or concealed. State law also allows a person to have a loaded firearm within the person’s place of business. Cal. Penal Code § 26035. The proposed Safe Storage Ordinance allows for a firearm to be loaded at a person’s residence, regardless if the residence is also used as their place of business.

Additionally, the state regulates the storage of firearms when a person living at a residence is prohibited from possessing a firearm. Cal. Pen. Code § 25135.<sup>6</sup> In contrast, but not inconsistently, the proposed Safe Storage Ordinance applies to all persons in a residence regardless of whether a person prohibited from possessing a firearm also resides in the residence.

Finally, the state regulates keeping a loaded firearm within any premises where it might be accessible to children or a person prohibited from possessing a firearm. Cal. Pen. Code § 25100. The statute makes it a crime if a person prohibited from possessing a firearm or a child obtains access to the firearm and causes injury, and the owner of the firearm knows or reasonably should know that a prohibited person or a child, without the permission of the child’s parent or legal guardian, is likely to gain access to the firearm. Cal. Pen. Code § 25100 (a)-(b). It also makes it a crime for a person to negligently store or leave a loaded firearm in a location where the person knows or reasonably should know that a child or a person prohibited from possessing a firearm is likely to gain access to it. Cal. Pen. Code § 25100(c). However, no

---

<sup>6</sup> State law makes it unlawful for certain persons to own and/or possess firearms, for example, any person who is: convicted of a felony or a violent offense enumerated in California Penal Code sections 29900 or 29905; ordered to not possess firearms as a condition of probation; convicted of a misdemeanor listed in California Penal Code section 29805; subject to a temporary restraining order or an injunction issued pursuant to California Code of Civil Procedure sections 527.6 or 527.8, a protective order as defined in California Family Code section 6218, a protective order issued pursuant to California Penal Code sections 136.2 or 646.91, or a protective order issued pursuant to California Welfare and Institutions Code section 15657.03; or found by a court to be a danger to himself, herself, or others because of a mental illness pursuant to California Welfare and Institutions Code section 8103.

penalty applies if the firearm is kept in a locked container, is carried on the person, or within close enough proximity so the individual can readily retrieve and use the firearm as if carried on the person, or is locked with a locking device. Cal. Pen. Code § 25105(a), (c), (d).

Unlike the state statutes, the proposed Safe Storage Ordinance regulates the storage of a loaded and unloaded firearms in a residence, and the ordinance is violated regardless of whether a child or prohibited person actually gains access and obtains the firearm or has the ability to access it. Thus, the proposed Safe Storage Ordinance does not conflict with or contradict state law; it does not prohibit an act that the state law expressly authorizes; and it does not authorize an act that the state law expressly prohibits. It also does not duplicate state law as it does not criminalize the same acts prohibited by the state law.

### **B. Implied Preemption**

Local regulation in an area of law may also be preempted when the Legislature impliedly manifests its intent to fully occupy the area. *Great Western Shows*, 27 Cal. 4th at 860-61. Implied preemption will apply when: “(1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the locality.” *Great Western Shows*, 27 Cal. 4th at 861 (quoting *Sherwin-Williams Co.*, 4 Cal. 4th at 897-98).

Regarding the first factor, whether state law completely covers the subject matter, the California Supreme Court has previously held that, “review of the gun law preemption cases indicates that the Legislature has preempted discrete areas of gun regulation rather than the entire field of gun control.” *Great Western Shows*, 27 Cal. 4th at 861. State firearm regulations “do not show that the entire area of gun or weapons control has been so fully and completely covered by general law ... ‘as to clearly indicate that [the subject] has become exclusively a matter of state concern.’” [Citation.] *Great Western Shows*, 27 Cal. 4th at 861-62 (quoting *Galvan v. Superior Court*, 70 Cal. 2d 851, 860 (1969)) (alterations in the original). The Court went on to point out a Penal Code section where the Legislature expressly prohibited requiring a license to keep a concealable weapon at a residence or place of business and noted that “[s]uch a statutory provision would be unnecessary if the Legislature believed that all gun regulation was improper.” *Great Western Shows*, 27 Cal. 4th at 861-62 (quoting *Galvan*, 70 Cal. 2d at 860) (alterations in the original). Here, the Legislature has decided to regulate storage of firearms in particular circumstances, leaving the field open to other local regulation.

The second factor, whether state law is couched in terms to clearly indicate that local action is not permitted, has not been addressed by the courts regarding firearm storage. However, the existing firearm storage regulations noted above prohibit very specific behavior and nothing

in the language indicates an intent to foreclose additional local regulations. Additionally, the Legislature's consideration of broader firearm storage regulation in 2013, Senate Bill 108 (2013-2014 Reg. Sess.), evidences an understanding that local regulations were accommodated within the existing regulatory scheme. Senate Bill 108, as originally proposed, would have required that firearms stored at a residence must be stored in one of certain specified secured manners when the owner was away.<sup>7</sup> The bill was subsequently amended to only direct the California Department of Justice "to study, among other things, the effectiveness of the San Francisco ordinance<sup>8</sup> in preventing instances of unintentional firearm injury and death, self-inflicted gunshot wounds, firearm theft, and the unauthorized use of firearms which resulted in a crime."<sup>9</sup> The bill was eventually made inactive after it was retained in committee without further action.

Finally, the third factor, whether the nature of firearm storage regulations is such that the local benefit would be outweighed by its adverse effect on transient citizens, weighs against implied preemption. Firearm storage regulations, by their nature, have limited effects on transient citizens. Regulations that control how firearms are stored within the City's jurisdiction would impose minimal, if any, burden on transient citizens since it would mostly control the conduct of residents. "Laws designed to control the sale, use or possession of firearms in a particular community have very little impact on transient citizens, indeed, far less than other laws that have withstood preemption challenges." *Great Western Shows*, 27 Cal. 4th at 867 (quoting *Suter v. City of Lafayette*, 57 Cal. App. 4th 1109, 1119 (1997)).

Here, the proposed regulation of firearm storage in residences is not exclusively a matter of state concern, there is no indication the state intended to foreclose local regulations, and the proposed regulation greatly benefits the safety in the local community.

### CONCLUSION

The proposed Safe Storage Ordinance is constitutional under the Second Amendment because it is substantially related to a government interest in firearm safety and does not impose a substantial burden on firearm owners. We further conclude that the proposed ordinance is not preempted by federal or state law because those laws regulate only certain areas of firearm regulation and do not occupy the entire field of gun control, allowing for local regulation.

---

<sup>7</sup> See Senate Committee on Public Safety Bill Analysis, dated April 15, 2013 (available at [http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201320140SB108](http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201320140SB108).)

<sup>8</sup> San Francisco Police Code section 4512 which was also the subject of *Jackson v. City and County of San Francisco*, 746 F.3d 953 (9th Cir. 2014).

<sup>9</sup> Assembly Committee on Public Safety Bill Analysis, dated August 15, 2013, p. 4 (available at [http://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill\\_id=201320140SB108](http://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=201320140SB108).)

Additionally, the proposed Safe Storage Ordinance does not contradict or duplicate state law, and the California Legislature has not shown an intent to exclusively regulate storage of firearms in residences.

MARA W. ELLIOTT, CITY ATTORNEY

By /s/ Paige E. Folkman  
Paige E. Folkman  
Chief Deputy City Attorney

PEF:hm:sc  
RC-2019-4  
Doc. No. 1970717\_4



The City of San Diego  
**Item Approvals**

**Item Subject:** Approve an ordinance to amend Chapter 5, Article 3 of the San Diego Municipal Code to add section 53.17 titled Safe Storage of Firearms.

<b>Contributing Department</b>	<b>Approval Date</b>
DOCKET OFFICE	05/17/2019
ENVIRONMENTAL ANALYSIS	05/20/2019

<b>Approving Authority</b>	<b>Approver</b>	<b>Approval Date</b>
OFFICE OF THE CITY ATTORNEY FINAL DEPARTMENT APPROVER	SINGER, SANNA	05/17/2019
ASSISTANT CITY ATTORNEY	SINGER, SANNA	05/21/2019