DATE: December 16, 2019

SUBJECT

Proposed City ordinance regarding safe storage of firearms in residences

RECOMMENDATION

Waive first reading and introduce an ordinance adding a new Chapter 37A to the Redwood City Municipal Code entitled “Safe Storage of Firearms in a Residence.”

STRATEGIC INITIATIVE

Government Operations

BACKGROUND

On April 8, 2019, the City Council directed staff to return at a future meeting with a proposed ordinance, modeled after San Mateo County’s ordinance requiring safe storage of firearms, for City Council consideration.

The county ordinance, which was approved in March of 2019, was codified at Chapter 3.54 of the San Mateo County Ordinance Code. Violation was classified as a misdemeanor and it carries a penalty of up to 6-months in county jail and a $1,000 fine. This ordinance was expressly limited to unincorporated areas of the county and does not apply with in the city limits of Redwood City. The proposed Redwood City ordinance (Attachment A) largely mirrors the county ordinance with a violation classified as misdemeanor and $1,000 fine.

On January 1, 2020, modifications to existing state law will go into effect and will expand the requirements for the safe storage of firearms in residences in order to limit access by minors or individuals prohibited from possessing firearms. This measure will be codified at Penal Code Section 25100 et seq. Violations of these sections carry a range of punishments and penalties. If a child or unauthorized person actually accesses an unsecured firearm and causes some sort of harm, penalties can range from a misdemeanor
to a felony conviction with state prison time. In the event a firearm is improperly stored but has not been accessed, violations are classified as a misdemeanor. Individuals convicted of improper storage of a firearm are also prohibited from owning a firearm for 10 years from the date of conviction. This penal code section is enforceable throughout the state.

Having a loaded or unlocked gun in the home can increase the risk of gun-related injury and death. According to a 2008 report published in the New England Journal of Medicine, living in a home where guns are kept increased an individual’s risk of death by homicide by between 40 percent and 170 percent. Similarly, a 2004 national study determined that the presence of guns in the home increased an individual’s risk of death by homicide by 90 percent.

Firearm injuries have a significant public health impact. According to a 2015 study, researchers conservatively estimate that gun violence costs the American economy at least $229 billion every year, including $8.6 billion in direct expenses such as those for emergency and medical care. In California, the direct costs of hospital use for firearm assault injuries alone was estimated at $87.4 million in 2010. Sixty-five percent of these costs were borne by taxpayers.

Children are particularly at risk of injury and death from firearms when firearms are not safely secured in their own homes or in homes they visit. According to national data, children and young adults (24 years of age and under) constitute 38 percent of all firearm deaths and non-fatal injuries. More than 75 percent of guns used in suicide attempts and unintentional injuries of children and young adults (0-19 years of age) were stored in the residence of the victim, a relative, or a friend. Eighty-nine percent of accidental shooting deaths among children occur in the home, and most of these deaths occur when children are playing with an unsecured loaded gun in their parents’ absence.

In San Mateo County, there have been 301 gun-related deaths over the past 10 years. According to data collected in 2018 by the Citizens for a San Mateo County Gun Buy Back from participants at two separate gun buy back events, a majority of respondents reported “hiding [the gun] in a discrete location” and/or “keeping it unloaded” as a safety measure, even though these methods are not generally considered safe storage. A significant number of respondents (27 percent in May 2018 and 60 percent in December 2018) reported that they surrendered the firearms for “safety reasons,” and nearly half of respondents indicated that they did not know how to properly store an inherited firearm.

**ANALYSIS**

Requiring firearms to be stored in the home in a safe manner, through either trigger locks or locking storage boxes, can reduce the risk of firearm injury and death and prevent access and use by others without the owner’s knowledge or permission. These measures can decrease the risk that the gun will be used to commit suicide, homicide, or inflict injury, whether intentionally or unintentionally. Safe storage measures have a demonstrated protective effect in homes with children and teenagers where guns are stored.

As of January 1, 2020, the City will have an expanded means of deterring and punishing unsafe firearm storage practices under state law. If the proposed ordinance is enacted, it would cover similar ground as state law, but would be more easily prosecuted than the state statute due to its broader scope and fewer exceptions. The City ordinance has one narrow exception and no defenses, while the state law has several
exceptions and defenses. However, the state law also carries more significant penalties, up to and including a felony conviction, based on how an unlawfully stored firearm is used after access is gained. The City ordinance makes no such differentiation. The state law also prohibits possession of a firearm for ten years after a conviction, while the City ordinance does not.

The provisions under the County ordinance, the proposed City ordinance, and State law are summarized in the chart below.

<table>
<thead>
<tr>
<th>Ordinance/Statute</th>
<th>Elements to Prove a Violation</th>
<th>Notable Exceptions</th>
<th>Penalties</th>
</tr>
</thead>
</table>
| San Mateo County Ordinance                             | • A firearm was present in a residence  
• It was not stored in a locked container or with a trigger lock | If the firearm is physically carried on the person                                | • Misdemeanor, up to 6 months in county jail  
• Up to $1000 fine                                                   |
| Chapter 3.54                                          |                                                                                             |                                                                                     |                                                                          |
| Proposed Redwood City Municipal Code 37A.3            | • A firearm was present in a residence  
• It was not stored in a locked container or with a trigger lock | If the firearm is physically carried on the person                                | • Misdemeanor, up to 6 months in county jail  
• Up to $1000 fine                                                   |
| State Penal Code Section 25100 et seq.                | • A firearm was kept on premises under a person’s control  
• The person knew or reasonably could have known it was likely a child or prohibited person could access it, unless reasonable steps are taken to prevent access | • Access is obtained by illegal means  
• Firearm was locked in a container or otherwise secure  
• Firearm was carried on the person or in close proximity  
• Firearm was used in lawful self-defense  
• Person had a reasonable expectation that no child | First Degree – Felony, up to 3 years in state prison and $10,000 fine.  
Second Degree – Misdemeanor, up to a year in county jail, $1,000 fine.  
Third Degree – Misdemeanor, no specified jail time, no specified fine.  
In all cases a conviction of state law carries a ten-year firearm possession prohibition. |
<table>
<thead>
<tr>
<th>Ordinance/Statute</th>
<th>Elements to Prove a Violation</th>
<th>Notable Exceptions</th>
<th>Penalties</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Additional Elements for First Degree</td>
<td>would be on the premises</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Access resulted in death or Great Bodily Injury (GBI)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Additional Elements for Second Degree</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Access resulted in injury other than GBI or</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• The firearm is carried to a public place</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Typically, when state law and local ordinances overlap, law enforcement will first seek prosecution under the state law and this would likely be the case here. As a practical matter, it is unlikely local law enforcement would become aware of a violation of either the state law or local ordinance unless there was some subsequent improper use of an improperly stored firearm and the state law carries greater penalties when this occurs. In short, the state law is more narrowly focused on preventing the harm that can result from improper storage, *i.e.*, a child or prohibited person accesses a firearm and then does something with it, and state law carries more serious punishment when this occurs, whereas the proposed City ordinance (like the County ordinance) focuses solely on the manner in which a firearm is stored, irrespective of any other factors. The City ordinance would likely be used only if the elements of the state law could not be proven or the District Attorney declined to prosecute for some other reason. In the event the District Attorney declined to prosecute a case under state law, the City could fall back on its ordinance for prosecution through the City Attorney’s office.

Under the proposed ordinance, the safe storage of firearms in a residence would require that:
(a) Except when carried on the person, no person shall keep a firearm in any residence unless the firearm is stored in a locked container or is disabled with a trigger lock.
(b) To encourage reporting of lost or stolen firearms, a person who reports the loss or theft of a firearm they own or possess to a local law enforcement agency within five days from the time they knew or reasonably should have known the firearm had been lost or stolen shall not be prosecuted for violation of subsection (a).

A violation of the ordinance would be subject to enforcement through criminal prosecution by the City Attorney’s Office and/or civil penalties.
FISCAL IMPACT

There is no direct fiscal impact to adopting the proposed ordinance.

ENVIRONMENTAL REVIEW

This activity is not a project under California Environmental Quality Act (CEQA) as defined in CEQA Guidelines, section 15378, because it has no potential for resulting in either a direct or reasonably foreseeable indirect physical change in the environment.

PUBLIC NOTICE

Public Notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

ALTERNATIVES

The City Council could choose not to introduce the proposed ordinance or could direct staff to modify the proposed ordinance.

ATTACHMENTS

Attachment A - Ordinance Adding Chapter 37A (Safe Storage of Firearms In a Residence) to the Redwood City Code

REPORT PREPARED BY:

Ashley Osborne, Captain
aosborne@redwoodcity.org
(650) 780-7654

APPROVED BY:

Dan Mulholland, Police Chief
Melissa Stevenson Diaz, City Manager