

**CITY OF ALBANY
CITY COUNCIL AGENDA
STAFF REPORT**

Agenda Date: February 7, 2022
Reviewed by: NA

SUBJECT: Ordinance No. 2022-01 Amending Albany Municipal Code, Chapter 8 (“Law Enforcement”) to Add Section 8-22 Entitled “Safe Storage of Firearms” – First Reading

REPORT BY: Mala Subramanian, City Attorney

SUMMARY

This ordinance requires firearms within a residence to be stored in a locked container or disabled with a trigger lock.

STAFF RECOMMENDATION

That the Council waive reading and approve first reading of Ordinance No. 2022-01, amending Albany Municipal Code, Chapter 8 (“Law Enforcement”) by adding Section 8-22 entitled “Safe Storage of Firearms”

BACKGROUND

On December 6, 2021, Council Member McQuaid presented a memorandum and recommendation that the City Council direct staff to draft an ordinance requiring firearms located within a residence or vehicle be stored in a locked container or disabled with a trigger lock. After discussion, the Council voted to approve the recommendation. Accordingly, the City Attorney’s office has prepared the subject ordinance.

DISCUSSION

California state law imposes criminal liability for the negligent storage of firearms and for allowing a child to gain access to a firearm. However, state law does not mandate that all firearms be stored with a locking device in place. (California Penal Code §§ 25000 -25225; Civil Code §1714.3.) Similar to Pleasanton, Dublin and other cities, the attached ordinance prohibits the keeping of a firearm in a residence unless stored in a locked container or disabled with a trigger lock. After reviewing the matter further, it appears the City is likely preempted as to the vehicle storage component for rifles and shotguns since California Penal Code Section 25850 prohibits having any loaded firearm in a vehicle.

The exception for personal carrying was expanded to include maintenance and self-defense uses, in line with other cities’ ordinances. The ordinance also includes flexibility to allow enforcement via a misdemeanor or infraction in the discretion of the prosecuting attorney.

Attachment

1. Ordinance No. 2022-01

1 Unintentional shootings occurred most frequently when children were likely to be home:
2 over the weekend, in the summer, and during school holidays;⁵ and

3 **WHEREAS**, the Alameda County District Attorney’s Office report, “Guns In
4 Alameda County 2012-2018” states that Alameda County is consistently above the state
5 average in lost or stolen guns as compared to the number of guns purchased. The report
6 indicates that from 2012 through 2018, 2,766 firearms had been lost or stolen within
7 Alameda County, with an average of 395 per year.⁶ According to the District Attorney’s
8 Report, “Proper storage can reduce the number of lost and stolen firearms within our
9 communities”⁷; and

10 **WHEREAS**, child access prevention laws are an important tool for reducing child
11 gun deaths. These laws encourage the safe storage of firearms by imposing liability on
12 adults who allow children to have unsupervised access to guns; and

13 **WHEREAS**, California state law imposes criminal liability for the negligent
14 storage of firearms and for allowing a child to gain access to a firearm, however
15 California law does not mandate that all firearms be stored with a locking device in place
16 (California Penal Code §§ 25000 -25225; Civil Code §1714.3); and

17 **WHEREAS**, many cities in California including those in the Bay Area, have
18 strengthened safe storage laws by requiring a firearm be stored in a locked container or
19 disabled with a trigger lock; and

20 **WHEREAS**, requiring firearms to be stored with trigger locks or in a locked
21 container does not substantially burden the right or ability to use firearms for self-defense
22 in the home. For example, affordable lockboxes and security cases, which open
23 immediately when several keys or pushbuttons are touched in a preset sequence, are
24 widely available. Users report that they can retrieve a loaded weapon in just two to three
25

26 _____
27 ⁵ Everytown for Gun Safety, Report: “Preventable Tragedies: Findings from the #NotAnAccident Index,”
28 published 8/30/21, last updated 12/29/21, available online at:
<https://everytownresearch.org/report/notanaccident/> (accessed 1/6/22).

⁶ Alameda County District Attorney’s Office Report, “Guns In Alameda County 2012-2018,” p.25,
available online at: https://www.alcoda.org/resources/files/guns_complete_cv4.pdf (accessed 1/6/22).

⁷ Alameda County District Attorney’s Office Report, “Guns In Alameda County 2012-2018,” p.34,
available online at: https://www.alcoda.org/resources/files/guns_complete_cv4.pdf (accessed 1/6/22).

1 seconds, and that the locks are also easy to open in the dark. Some lockboxes also feature
2 biometric locks, which provide immediate access when they scan the owner's fingerprint.
3 A publication of the National Rifle Association describes this category of storage option
4 as providing “Some of the best storage options for those who want quick-access to
5 defensive firearms.”⁸; and

6 **WHEREAS**, the City intends to reduce gun violence and gun-related injuries
7 through this Ordinance.

8 **NOW THEREFORE, THE ALBANY CITY COUNCIL DOES ORDAIN AS**
9 **FOLLOWS:**

10 **SECTION 1: ALBANY MUNICIPAL CODE AMENDED.** Albany Municipal
11 Code, Chapter 8 (“Law Enforcement”), is hereby amended by adding a new Section 8-22,
12 entitled “Safe Storage of Firearms” to read as follows:

13 **“8-22 Safe Storage of Firearms.**

14 **8-22.1 Prohibitions.**

15 A. No person shall keep a firearm within any residence unless the firearm is
16 stored in a locked container or disabled with a trigger lock.
17

18 **8-22.2 Definitions.**

19 As used in this Section 8-22 the following terms have the following meaning:

20 A. "Firearm" means a Firearm as defined in California Penal Code,
21 Section 16520, as amended from time to time.

22 B. "Locked container" means a secure container that is fully enclosed and
23 locked by a padlock, key lock, combination lock, or similar locking
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⁸ Horman, B. Gil, NRA Family, “6 Ways To Safely Store Your Firearms,” published 10/13/21, available
online at: <https://www.nrafamily.org/articles/2021/10/13/6-ways-to-safely-store-your-firearms> (accessed
1/6/22.)

1 device as defined by California Penal Code Section 16850, as amended
2 from time to time, and is listed on the California Department of Justice
3 Bureau of Firearms roster of approved firearm safety devices.

4 C. "Residence" means any structure intended or used for human habitation,
5 including but not limited to houses, condominiums, apartments,
6 accessory dwelling units, rooms, in-law units, motels, hotels, Single
7 Room Occupancy (SROs), time shares, and recreational and other
8 vehicles where human habitation occurs.

9
10 D. "Trigger lock" means a trigger lock that is listed on the California
11 Department of Justice's roster of approved firearms safety devices and
12 that is identified as appropriate for that firearm by reference to either the
13 manufacturer and model of the firearm or to the physical characteristics
14 of the firearm that match those listed on the roster for use with the device
15 under California Penal Code, Section 23635.
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18 **8-22.3 Exceptions.**

19 This Section 8-22 shall not apply in the following circumstances:

20
21 A. The firearm is carried on the person of an individual, during use for cleaning
22 and maintenance, or during use for lawful self-defense, and in accordance with all
23 applicable laws.

24
25 B. The firearm is under the control of a person who is a peace officer under
26 California Penal Code Section 830.

27
28 **8-22.4 Lost or stolen firearms.**

In order to encourage reports to law enforcement agencies of lost or stolen
firearms in accordance with California Penal Code Section 25250, a person who

1 files a report with a law enforcement agency notifying the agency that a firearm
2 has been lost or stolen within five days from the time they knew or reasonably
3 should have known the firearm had been lost or stolen shall not be subject to
4 prosecution for violation of Section 8-22.

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6 **8-22.5 Penalty.**

7 Every violation of this Section 8-22 shall constitute a misdemeanor and upon
8 conviction shall be punished by a fine not to exceed \$1,000 or by imprisonment in
9 the county jail not to exceed six months, or by both. Notwithstanding the
10 preceding sentence, any violation of Section 8-22 may, in the discretion of the city
11 attorney or other prosecutor, be charged and prosecuted as an infraction.”
12

13 **SECTION 2: ENVIRONMENTAL REVIEW.**

14 The City Council finds that adoption and implementation of this ordinance is not a
15 “project” for purposes of the California Environmental Quality Act (CEQA), as that term
16 is defined by CEQA guidelines (Guidelines) section 15378(b)(5). The effect of the
17 proposed Ordinance will be to impose requirements on the safe storage of firearms. No
18 new development will result from the proposed action. No impact to the physical
19 environment will result. The City Council also alternatively finds that the adoption and
20 implementation of this ordinance is exempt from the provisions of CEQA under the
21 common sense exemption that it will not result in any direct or indirect physical change in
22 the environment, per section 15061(b)(3) of the CEQA Guidelines.
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27 **SECTION 3: SEVERABILITY.**

28 The City of Albany declares that each section, sub-section, paragraph, sub-paragraph,
sentence, clause and phrase of this ordinance is severable and independent of every other

1 section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this
2 ordinance. If any section, sub-section, paragraph, sub-paragraph, sentence, clause or
3 phrase of this ordinance is held invalid, the City Council declares that it would have
4 adopted the remaining provisions of this ordinance irrespective of the portion held
5 invalid, and further declares its express intent that the remaining portions of this
6 ordinance should remain in effect after the invalid portion has been eliminated.

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8 **SECTION 4: PUBLICATION AND EFFECTIVE DATE.**

9 This Ordinance shall be posted at three public places within the City of Albany
10 and shall become effective thirty days after the date of its posting.

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12 **PASSED AND ADOPTED** by the City Council of the City of Albany at its meeting on
13 the ___ day of _____, 2022, by the following vote:

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16 AYES:

17 NOES:

18 ABSENT:

19 ABSTAIN:
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25 PRESTON JORDAN, MAYOR
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