



CITY COUNCIL STAFF REPORT

From: City Manager

Report Type: ACTION ITEMS

Lead Department: City Manager; City Attorney

Meeting Date: March 6, 2023

Report #: 2301-0766

TITLE

Adopt Emergency (4/5ths vote required) and Standard Ordinances Prohibiting Possession of Firearms in Sensitive Places Recognized by the Supreme Court; Potential Direction to Staff to Develop an Ordinance Further Expanding the List of Sensitive Places; CEQA Status – Exempt Under CEQA Guidelines Section 15061(b)(3).

RECOMMENDATION

Staff recommends that Council:

- Adopt a determination that this project is exempt under CEQA Guidelines section 15061(b)(3).
- Adopt emergency (4/5ths vote required) and standard ordinances prohibiting the carrying of firearms in sensitive places recognized by the Supreme Court.
- If Council is interested in further limiting the locations where firearms can be carried, direct staff to develop an ordinance expanding the list of sensitive places. Staff recommends that Council designate an ad hoc Council committee to work confidentially with staff to evaluate legal risks and options and make a recommendation to Council on an expanded list of sensitive places.

EXECUTIVE SUMMARY

In response to the U.S. Supreme Court's recent decision in *New York State Rifle & Pistol Association v. Bruen*, staff recommends that Council adopt emergency and standard ordinances that would ban the carrying of firearms in an initial round of "sensitive places" where the Supreme Court has deemed such bans presumptively lawful.

Developing an expanded list of sensitive places will require monitoring developing caselaw and weighing legal risk and policy goals. Staff recommends that Council designate an ad hoc Council committee to work with staff to develop a recommendation to Council on an expanded list of sensitive places.

BACKGROUND

On June 23, 2022, the U.S. Supreme Court decided the case of *New York State Rifle & Pistol Association v. Bruen* (“*Bruen*”), in which the Court held unconstitutional the State of New York’s law requiring applicants to show “proper cause” to obtain a license to carry a concealed weapon. The Court held that requiring applicants to demonstrate a special need for self-protection distinguishable from that of the general community violated the applicants’ Second and Fourteenth Amendment rights.

Bruen also established a new test for evaluating legal challenges under the Second Amendment: if a law regulates conduct covered by the “plain text” of the Second Amendment, the law will be upheld only if the government demonstrates that it is “consistent with the Nation’s historical tradition of firearm regulation.” However, the *Bruen* Court also reaffirmed that certain locations are “‘sensitive places’ where arms carrying could be prohibited consistent with the Second Amendment.”

In California, *Bruen* rendered unconstitutional and unenforceable California’s “good cause” requirement for obtaining a permit to carry firearms outside the home, which are set forth in California Penal Code sections 26150(a)(2) and 26155(a)(2). As a result, permitting agencies (police chiefs and county sheriffs) may no longer require a showing of “good cause” to obtain a concealed carry permit.¹ Historically, the “good cause” requirement likely constrained the number of permit applications that were granted in California. While procedural requirements (such as a background check and safety training) remain, the elimination of the “good cause” requirement makes it easier to obtain a permit to carry a firearm outside the home and will likely increase the number of permits that are granted. It is foreseeable that firearms may be present in greater numbers in public and private spaces in California.

Prior to *Bruen*, California state law limited carrying of firearms in a variety of places, but in most locations made an exception that allowed firearms with a valid carry permit. In response to *Bruen*, legislation was introduced in California that would, among other things, prohibit the knowing possession of firearms in an expansive list of sensitive locations, even with a valid permit. The 2022 bill, SB 918, included an urgency clause, which triggered a supermajority requirement. It failed by one vote on the last day of the 2022 legislative session. The bill, renamed SB 2, has been reintroduced for consideration in the 2023 legislative session. If it passes this session, it could do so either as an urgency statute (which would still take several months), or as a regular bill (which would go into effect January 1, 2024).

A uniform statewide rule would make it easier for the public to know what to expect in public and private spaces, and for responsible law-abiding residents who carry firearms to understand

¹ In response to the Supreme Court’s holding that “good cause” may no longer be required, the police chiefs and city attorneys of Santa Clara County worked together to develop a model policy that expanded and clarified the remaining elements of California’s firearms permit process. Chief Binder has adopted the revised permit policy for use in Palo Alto.

and comply with the law. But at this time, in the absence of state or local legislation prohibiting firearms in specified sensitive locations, the carrying of firearms with a valid permit is lawful in most public and private places in California. Accordingly, several cities in Santa Clara County are considering whether to adopt local ordinances to prohibit the carrying of firearms in sensitive places. In December 2022, Sunnyvale adopted an ordinance prohibiting the carrying of firearms in sensitive places including government property, public transit, and places of worship. Mountain View has had an ordinance prohibiting possession of firearms on city property since April of 2021, and the City Council expressed support for a sensitive places ordinance at a study session in October. Mountain View staff is expected to propose an ordinance in early 2023.

In response to the *Bruen* decision, the State of New York adopted a new firearms law that included an expansive list of sensitive places in which firearms were banned, including public transit, parks, shelters, and places of worship. In *Antonyuk v. Hochul*, (No. 22-cv-986), the district court for the Northern District of New York enjoined the State from enforcing its firearms ban in many of the sensitive places enumerated in the statute, reasoning that under *Bruen* the state had stretched the sensitive places doctrine too far. That case is currently on appeal before the Second Circuit, which has stayed the district court's injunction during the appeal. Elsewhere in the country, litigation that will clarify the bounds of the "sensitive places" doctrine is ongoing, and the relevant caselaw is developing rapidly. In California, litigation is pending against the City of Glendale challenging its local ordinance prohibiting firearms on City property, and opponents of SB 2 have stated an intention to challenge that law, if enacted.

Attachment C includes a table listing the sensitive places included in New York's statute, how each fared before the district court, and the corresponding provisions in SB 2 and the Sunnyvale ordinance.

ANALYSIS

The proposed ordinances would prohibit the carrying of firearms in certain "sensitive places" that have been explicitly authorized by the Supreme Court. The Supreme Court expressed in *District of Columbia v. Heller*, and reaffirmed in *McDonald v. City of Chicago*, that "laws forbidding the carrying of firearms in sensitive places such as schools and government buildings" are "presumptively lawful." In *Bruen*, the Court named "legislative assemblies, polling places, and courthouses" as examples of "sensitive places" where weapons could be prohibited consistent with the Second Amendment. The proposed ordinances would cover those places as a first step.

Approval of the emergency ordinance requires four-fifths of the Council members present for passage. If Council supports staff's recommendation to ban the carrying of firearms in certain sensitive places, it may adopt the emergency and standard ordinances. If adopted, the emergency ordinance would be effective immediately and remain in place for 60 days, and the standard ordinance would take effect on the 31st day after adoption on second reading.

If Council wishes to expand the list of sensitive places where firearms are prohibited, staff recommends that Council designate a short-term ad hoc committee to work with staff to evaluate and balance legal risk and policy goals in a confidential forum. Staff and the ad hoc committee would return to Council with a recommendation on an ordinance that potentially expands the locations where firearms are prohibited. We anticipate that this ad hoc committee's work would require several meetings and be completed within ninety days.

RESOURCE IMPACT

There are no significant resource impacts associated with this action beyond budgeted staffing levels.

STAKEHOLDER ENGAGEMENT

Staff has reached out to the Superintendent of Palo Alto Unified School District regarding the prohibition on firearms in schools and the Palo Alto Police Department regarding revising the bail schedule to reflect the new ordinances. In developing a follow-up ordinance, staff will conduct appropriate and feasible stakeholder engagement.

ENVIRONMENTAL REVIEW

Adoption of the attached ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15061(b)(3), because it can be seen with certainty that there is no possibility of a significant adverse impact on the environment.

ATTACHMENTS

Attachment A: Emergency Ordinance of the Council of the City of Palo Alto Prohibiting the Carrying of Firearms in Sensitive Places

Attachment B: Ordinance of the Council of the City of Palo Alto Prohibiting the Carry of Firearms in Sensitive Places

Attachment C: Firearms in Sensitive Places Table

APPROVED BY:

Ed Shikada, City Manager