



REPORT TO LAW & LEGISLATION COMMITTEE City of Sacramento

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915 I Street, Sacramento, CA 95814-2671

STAFF REPORT
November 21, 2006

Honorable Members of the
Law and Legislation Committee

**Title: Update on Ordinance: Drafting Ordinance Requiring Mandatory Reporting
of Theft or Loss of Firearms**

Location/Council District: Citywide

Recommendation: Staff recommends that the Law and Legislation Committee direct the City Attorney to draft an ordinance requiring mandatory reporting of the theft or loss of firearms to police.

Contact: James Maccoun, Lieutenant, 808-0866

Presenters: James Maccoun, Lieutenant, 808-0866

Department: Police

Division: Fiscal/Economic Development

Organization No: 2112

Description/Analysis

Issue: Councilmember Kevin McCarty requested that staff research establishing an ordinance requiring gun owners to report the loss or theft of a firearm to the Police Department within forty-eight (48) hours of knowledge of loss or theft. Consistent with the protocols established by the Committee and City Council, staff previously submitted a report with the requested information on the establishment of such an ordinance to receive direction from the Committee. Staff is currently submitting an updated report addressing concerns and answering questions expressed in the previous session.

The adoption of such an ordinance could have an impact on reducing the diversion of firearms from the legal market to the illegal market and on tracking firearms in the hands of criminals, domestic violence offenders, unauthorized juveniles, and other persons prohibited by law from possessing firearms. This ordinance would require gun owners to take responsibility for the whereabouts of their weapons and prevent use of a common alibi for illegal firearm transfer. In addition, a reporting requirement could give prosecutors another weapon against illegal trafficking in firearms. Reductions in gun violence have been achieved

where communities have adopted focused, comprehensive, and innovative strategies to attack their gun violence problems.

The ordinance would require that:

- Person owning or in possession of a lost or stolen firearm reside within the City of Sacramento limits, or the loss or theft of a firearm occur within the City of Sacramento limits.
- Persons owning or in possession of a firearm notify the Sacramento Police Department within forty-eight (48) hours of becoming aware of the loss or theft of such firearm.
- Persons reporting a lost firearm provide the following information to the Sacramento Police Department: (1) type of firearm, (2) model of firearm, (3) caliber of firearm, (4) manufacturer of firearm, (5) date and place of theft or loss, (6) complete statement of facts and circumstances surrounding such theft or loss, and (7) serial number if available.
- Failure to report a stolen or missing gun would be a misdemeanor.

Similar ordinances have been enacted in San Francisco, Berkeley, Oakland and Los Angeles. A copy of the ordinance recently enacted in Los Angeles is attached.

Policy Considerations:

This ordinance would be consistent with City's mission to protect, preserve, and enhance the quality of life for present and future generations. It would also be consistent with current California law requiring registration of newly purchased handguns as a restriction on the unlawful possession of firearms.

Previously Expressed Concerns:

- *Enforcement* – No jurisdiction with similar ordinances contacted by SPD staff has enforced a similar ordinance. Enforcement would be incidental to other criminal investigations.
- *Penalty* – The penalty would be a misdemeanor, pursuant to the maximum authority for City ordinance violation.
- *Cost for Enforcement / Cost Recovery* – Unknown. No California city has enforced similar ordinances, and no mechanism is known or authorized for cost recovery. Any tax or fee on gun sales would require voter approval.
- *Bureaucracy* – No special staff would be required beyond that necessary to handle a possible increase to the workloads of prosecuting City Attorney and District Attorney staff.

Environmental Considerations:

This report concerns administrative issues that will not have any significant effect on the environment, and that do not constitute a "project" as defined by the California Environmental Quality Act (CEQA) [CEQA Guidelines Sections 15061(b)(3); 15378(b)(2)].

Rationale for Recommendation: Staff recommends that the Committee direct the City Attorney to draft the ordinance described above to reduce the diversion of firearms from the legal market to the illegal market and therefore affect gun violence problems in the City of Sacramento.

Financial Considerations: The proposed ordinance has no current fiscal effects.

Emerging Small Business Development (ESBD): Not applicable.

Respectfully Submitted by: 

James Maccoun
Lieutenant

Approved by: 

Albert Nájera
Chief of Police

Recommendation Approved:

GUSTAVO F. VINA
Assistant City Manager

Ref: COP 11-6

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Background:

It has been estimated that only one in six guns used to commit crimes is obtained legally, and that many of the rest are stolen, trafficked, or purchased through "straw" buyers. Police officers often waste precious time and resources trying to contact the original purchaser of a firearm who later claims it was lost or stolen. "Straw" buyers often purchase weapons which they pass on to criminals, gang members, and others unable to purchase firearms legally, complicating the tasks of tracing weapon ownership and solving gun-related crimes. This ordinance would require persons owning a firearm or in possession of a firearm to report any theft or loss of their personal firearms to the Sacramento Police Department within forty-eight (48) hours of becoming aware of the loss or theft. The purpose of this ordinance is (1) to deter the criminal use of stolen or lost weapons, (2) to facilitate the recovery of stolen or lost property, (3) to facilitate the apprehension of criminals who commit crimes with stolen or lost weapons, (4) to prevent unwarranted criminal accusations against owners who suffer the loss or theft of a firearm, (5) to deter persons from falsely claiming that a firearm was stolen or lost to avoid punishment for an illegal firearm transfer, and (6) to deter "straw" firearm purchases, in which persons purchase firearms legally and then sell these firearms to persons who are prohibited from gun ownership due to a felony conviction, age restriction, or another prohibition.

The Sacramento Police Department has conducted two surveys of police departments and offices of the district attorney in three cities that have similar ordinances in their municipal codes.

In July 2006, the SPD Criminal Intelligence Unit contacted police departments of the three California cities with similar ordinances: San Francisco (since 2004), Oakland (since 2003), and Berkeley (since 2001).

Specific questions focused on:

1. the impact of the ordinance on the reduction of crime and the method of measurement,
2. details of arrests and convictions for violations of the ordinance, and
3. revisions in police procedures due to adoption of the ordinance.

The agency personnel contacted:

1. were unaware of the ordinance,
2. reported that no investigations, arrests or convictions related to the ordinance existed, and
3. were unaware of any studies of costs of enforcement or impact on crime related to the ordinance.

In October 2006, the SPD Economic Development Unit re-contacted the above-mentioned police departments and consulted with the District Attorney's Offices in Alameda County and San Francisco County.

Results of this survey echoed those of the earlier survey:

1. An experienced Inspector in the Weapons Unit of the SFPD, who reads 3,000 reports every month, had not handled nor had he heard of any cases in which the ordinance was invoked.
2. A Criminal Intelligence Unit Sergeant in the Oakland PD, while aware of the municipal code, had never heard that it had been charged.
3. An Assistant District Attorney for the County of San Francisco in charge of prosecuting misdemeanors was unaware of the existence of the ordinance and therefore, had never heard of any prosecution involving violation of the ordinance.
4. An Assistant District Attorney for the County of San Francisco stated that he did not believe it would expand his ability to prosecute crime and that it would take special circumstances for the ordinance to be useful in prosecution, in that the person charged would have to be proven cognizant of a burglary or theft of the firearm.
5. An Alameda County Deputy District Attorney who prosecutes weapons charges had not used the ordinance to prosecute and had not heard of anyone else using it.
6. A Berkeley PD Lieutenant also had not used the ordinance nor heard of its use.

In short, no jurisdiction or agency contacted by SPD has been able to provide examples of:

1. investigations or arrests,
2. successful prosecutions,
3. studies of effectiveness,
4. studies of the costs of enforcement, or
5. studies of fees to cover those costs

Additional Notes:

- ❖ On September 29, 2006, Gov. Schwarzenegger vetoed Senate Bill 59 (mandating reporting of stolen or lost firearms or parts of firearms to law enforcement within 5 working days of the time the person should reasonably have known of the theft or loss). In doing so, the Governor:
 1. noted that the measure “could result in cases where law-abiding citizens face criminal penalties simply because they were the victim of a crime “
 2. cited “unproven results of jurisdictions in California that have passed similar measures.”
- ❖ Persons who illegally possess a firearm cannot be required to incriminate themselves by reporting its loss. *Haynes v. United States* 390 U.S. 62 (1968).

ORDINANCE NO. _____

An ordinance adding a new Section 55.12 to the Los Angeles Municipal Code to require the reporting of a theft or loss of a firearm to the Police Department.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. A new Section 55.12 is added to Chapter V, Article V of the Los Angeles Municipal Code to read:

Section 55.12. Duty to Report Theft or Loss of Firearms; Exemptions.

A. Any person who owns or possesses a firearm (as defined in Penal Code Section 12001 (b) or as amended) shall report the theft or loss of the firearm to the Los Angeles Police Department within 48 hours of becoming aware of the theft or loss, whenever: (1) the person resides in the City of Los Angeles; or (2) the theft or loss of the firearm occurs in the City of Los Angeles.

B. Any person who has experienced the theft or loss of a firearm within the five years prior to the effective date of this ordinance without the firearm having been recovered during that period, and who otherwise meets the reporting requirements in Section A above, is required to report the loss or theft of the firearm to the Los Angeles Police Department within 60 days of the effective date of this ordinance.

C. Any person who fails to report the theft or loss of a firearm as required in Subsections A or B, when the person knew or should have known of the theft or loss, shall be guilty of a misdemeanor.

D. Persons licensed to sell or manufacture firearms pursuant to Penal Code Sections 12071 or 12086 are exempt from this section, if the firearm lost or stolen was business merchandise, was lost or stolen from their firearm-related business, or was in their possession pursuant to Penal Code Section 12082.

E. If any provision of this ordinance is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining provisions, which can be implemented without the invalid provisions, and to this end, the provisions of this ordinance are declared to be severable.

Section 2. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.