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AGENDA REPORT

TO: City Council

FROM: Councilmembers Dan Kalb
& Annie Campbell Washington

SUBJECT: Large Capacity Magazine Ban
& Safe Firearm Storage

DATE: December 10, 2015

RECOMMENDATION

ADOPT ORDINANCES WHICH: (1) PROHIBIT THE POSSESSION OF LARGE-CAPACITY FIREARM MAGAZINES AND (2) REQUIRE THE SAFE STORAGE OF FIREARMS IN A RESIDENCE.

OUTCOME

The Ordinance Prohibiting Possession of Large-Capacity Magazines would add a new chapter to the Oakland Municipal Code to prohibit the possession of large-capacity firearm magazine clips (magazine clips with more than 10 bullets) in the City, subject to identified exemptions required by federal or state law. Following the effective date of this ordinance, persons formerly in legal possession of a large-capacity magazine in Oakland would have 90 days to either (a) remove the magazine clip from the City, (b) surrender the magazine to the Oakland Police Department for destruction, or (c) sell or transfer the magazine lawfully to another person outside the state in accordance with state law. The ordinance provides criminal and civil remedies for violations of its provisions, including misdemeanor conviction, punishable by six months in jail and/or a fine of up to \$1,000, and a civil penalty of \$1,000 per violation.

The Ordinance Requiring the Safe Storage of a Firearm in a Residence would add a new chapter to the Oakland Municipal Code to require that firearms kept in any residence in Oakland either be stored in a locked container or disabled with a trigger lock. The ordinance provides criminal and civil remedies for violation of its provisions, including misdemeanor conviction, punishable by six months in jail and/or a fine of up to \$1,000, and a civil penalty of \$1,000 per violation.

BACKGROUND/LEGISLATIVE HISTORY

As described in detail in the Whereas clauses and Findings of the two ordinances that this report accompanies, gun violence is a serious problem in the United States, including in the City of Oakland. Two exacerbating factors in gun violence are the availability and use of large-capacity gun magazines and unsecured guns in homes. Large-capacity magazines create an enhanced risk

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of gun violence because they hold numerous rounds of ammunition and are frequently used in mass shootings. Unsecured guns in homes create an enhanced risk of gun violence because children and other persons who are not the lawful owner of a firearm, such as burglars, can obtain them and subsequently use them to cause a dangerous accident or to perpetrate a crime.

In 1994, the United States Congress enacted a nationwide ban on possession of large-capacity magazines as part of the federal assault weapons ban. A researcher hired by the U.S. Department of Justice to research the effect of the ban found that large-capacity magazines result in more shots fired, more persons hit, and more wounds inflicted per victim than do attacks with other firearms¹. A Washington Post study analyzed data kept by the Virginia State Police and found a clear decline in the percentage of crime guns that were equipped with large capacity ammunition magazines after the federal ban was enacted². Nevertheless, the law was allowed to sunset in September of 2004.

Since January 1, 2000, California Penal Code Section 32310 has, with limited exceptions, prohibited the manufacture, importation into the state, keeping for sale, offering or exposing for sale, giving or lending of large capacity magazines. However, California law does not prohibit the actual possession of these magazine clips. Multiple states and municipalities ban or restrict large-capacity magazines. In California, San Francisco, Sunnyvale, and Los Angeles have already banned possession of these gun magazines.

A number of municipalities and one state (Massachusetts) have laws requiring that firearms be secured when kept in homes. In California, San Francisco, Sunnyvale, Los Angeles, and, most recently, Santa Cruz have adopted this type of requirement.

ANALYSIS

Because of the enhanced ammunition provided by large-capacity magazines (also known as high-capacity magazines), they are associated with greater public risk when illegally used. Large-capacity magazines have been used in a number of high profile mass shootings, including ones occurring in California. A study of mass shootings occurring in the United States over the last three decades found that more than half of the perpetrators used assault weapons, large-

¹ Christopher S. Koper, *An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003*, Report to the National Institute of Justice, U.S. Department of Justice 6, 18 (June 2004), at <https://www.ncjrs.gov/pdffiles1/nij/grants/204431.pdf>

² *About the Project: The Hidden Life of Guns*, Wash. Post, Jan. 22, 2011, at <http://www.washingtonpost.com/wp-dyn/content/article/2011/01/22/AR2011012204243.html>; David S. Fallis & James V. Grimaldi, *Virginia Data Show Drop in Criminal Firepower During Assault Gun Ban*, Wash. Post, Jan. 23, 2011, at <http://www.washingtonpost.com/wp-dyn/content/article/2011/01/22/AR2011012203452.html>.

capacity magazines, or both³. On average, shooters with assault weapons and/or large-capacity weapons hit and kill more people than shooters without them. Shooters without large-capacity weapons are forced to reload more frequently when their weapon runs out of ammunition, providing precious time for victims to flee or the shooter to be subdued.

Though large-capacity magazines cannot be sold in California, they can be legally owned here. They are also difficult to trace because ammunition magazines are not stamped with serial numbers. Large-capacity magazines can be obtained by persons in Oakland either by purchasing them out-of-state or by illegally purchasing them in the state, including from a legal owner. In 2015 alone, the Oakland Police Department reported that 101 criminal cases were charged where a large-capacity magazine was recovered. Restricting legal ownership in Oakland would help to dissuade possession in Oakland and reduce the likelihood that crimes committed with firearms would involve a high-capacity magazine.

Guns kept in the home are more likely to be involved in an unintentional shooting, criminal assault, or used in suicides and against family and friends rather than in self-defense. According to information from the Oakland Police Department, from 2005 through 2015, there were approximately 707 residential burglaries reported where a firearm was stolen. Keeping a firearm locked when it is not being carried ensures that it cannot be accessed and used by others without the owners' knowledge or permission. This simple measure significantly decreases the risk that the gun will be used to commit suicide, homicide or inflict injury, whether intentionally or unintentionally. There is a wide consensus among medical professionals, police chiefs, gun control advocates and gun rights groups that applying trigger locks or using lockboxes to store unsupervised guns in the home promotes health and safety.

PUBLIC OUTREACH/INTEREST

The Law Center to Prevent Gun Violence was consulted during the development of these ordinances. The Law Center to Prevent Gun Violence and the Alameda County Chapter of the Brady Campaign have expressed their support for the passage of each of these ordinances.

³ Mark Follman et al., *More Than Half of Mass Shooters Used Assault Weapons and High-Capacity Magazines*, Mother Jones (Feb. 27, 2013), at <http://www.motherjones.com/politics/2013/02/assault-weapons-high-capacity-magazines-mass-shootings-feinstein>.

COORDINATION

The ordinances were drafted in close consultation with the Oakland City Attorney's office. The Oakland Police Department provided relevant data for both ordinances, which was incorporated into their respective Findings.

FISCAL IMPACT

The Ordinance Prohibiting Possession of Large-Capacity Magazines could have a temporary, albeit minor, impact on Oakland Police Department resources, since it is not known how many high capacity magazines currently possessed in Oakland would be surrendered to the Police Department during the 90 day grace period following the effective date of the ordinance.

The Ordinance Requiring the Safe Storage of a Firearm in a Residence should not result in additional costs to the City.

SUSTAINABLE OPPORTUNITIES

Economic: No significant impact.

Environmental: No significant impact.

Social Equity: These ordinances should have the effect of reducing, though not eliminating, some instances of gun violence that might otherwise occur due to the possession and use of a large-capacity magazine or presence of an unsecured firearm in a residence.

For questions regarding this report, please contact Oliver Luby, Office of Councilmember Dan Kalb, at 510-238-7013.

Respectfully submitted,



Dan Kalb
Councilmember, District 1



Annie Campbell Washington
Councilmember, District 4

Prepared by:
Oliver Luby, Policy Manager
Office of Councilmember Dan Kalb