



## City Council Staff Report

DATE: July 6, 2016

SUBJECT: DISCUSSION REGARDING FIREARMS SAFETY REGULATIONS

FROM: David Ready, City Manager

BY: Douglas Holland, City Attorney

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### SUMMARY

At the City Council meeting on June 15, 2016, Councilmember Kors suggested the Council consider a firearms regulatory program for Palm Springs. The purpose of this agenda item is to provide for discussion on this topic and provide staff with appropriate direction. A draft ordinance is attached for informational purposes.

### RECOMMENDATION:

Discuss the topic of local firearms regulations and provide direction to staff.

### BACKGROUND

In light of the recent incident in Orlando, Florida involving the use of an automatic firearm in the killing and injury of several nightclub patrons, Councilman Kors requested the Council consider firearm regulations for the City of Palm Springs.

As a general rule and pursuant to the State Constitution, cities have the power to suppress, prohibit, or regulate all things that are injurious to the public welfare. Firearms are arguably a proper area for such regulations. Nevertheless, the state legislature has adopted legislation that preempts discrete areas of firearm regulation, limiting the areas in which cities have authority to regulate. A copy of the current edition of "California Firearms Laws Summary" from the California Attorney General is attached for your information.

Cities still have the ability to prohibit and prevent the unnecessary firing and discharge of firearms and can impose land use regulations that would restrict where gun dealerships can locate in the city.

Pursuant to the authority cities may currently have in California, Sunnyvale and other cities have adopted unique regulations that do not appear to have been preempted by state law. These regulations include:

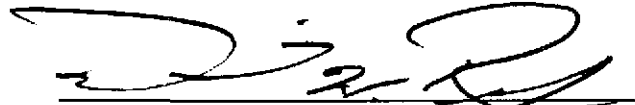
- a) Imposition of a duty to report theft or loss of firearms,
- b) Requiring safe storage of firearms in the home,
- c) Prohibition, with certain exceptions, of possession of large-capacity ammunition magazines,
- d) Imposition of record-keeping requirements for ammunition sales, and
- e) Prohibiting unsecured firearms and ammunition in unattended vehicles.

A draft ordinance that incorporates the above concepts has been prepared and is attached to this report for your reference.



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Douglas Holland, City Attorney

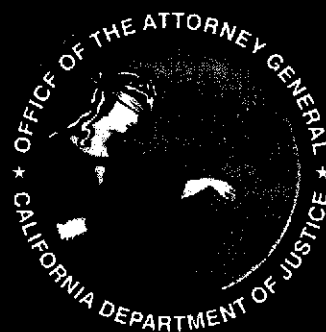


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David Ready, City Manager

C: California Firearms Laws Summary  
Draft Ordinance

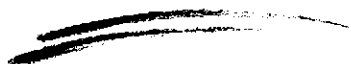
# California Firearms Laws Summary



**2016**

California Department of Justice  
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<http://oag.ca.gov>

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# California Firearms Laws Summary 2016



## INTRODUCTION

As the owner of a firearm, it is your responsibility to understand and comply with all federal, state and local laws regarding firearms ownership. Many of the laws described below pertain to the possession, use and storage of firearms in the home and merit careful review. The California Firearms Laws Summary 2016 provides a general summary of California laws that govern common possession and use of firearms by persons other than law enforcement officers or members of the armed forces. It is not designed to provide individual guidance for specific situations, nor does it address federal or local laws. The legality of any specific act of possession or use will ultimately be determined by applicable federal and state statutory and case law. Persons having specific questions are encouraged to seek legal advice from an attorney, or consult their local law enforcement agency, local prosecutor or law library. The California Department of Justice (DOJ) and all other public entities are immune from any liability arising from the drafting, publication, dissemination, or reliance upon this information.

## PERSONS INELIGIBLE TO POSSESS FIREARMS

The following persons are prohibited from possessing firearms (Pen. Code, §§ 29800-29825, 29900; Welf. & Inst. Code, §§ 8100, 8103):

### Lifetime Prohibitions

- Any person convicted of any felony or any offense enumerated in Penal Code section 29905.
- Any person convicted of an offense enumerated in Penal Code section 23515.
- Any person with two or more convictions for violating Penal Code section 417, subdivision (a)(2).
- Any person adjudicated to be a mentally disordered sex offender. (Welf. & Inst. Code, § 8103, subd. (a)(1).)
- Any person found by a court to be mentally incompetent to stand trial or not guilty by reason of insanity of any crime, unless the court has made a finding of restoration of competence or sanity. (Welf. & Inst. Code, § 8103, subs. (b)(1), (c)(1), and (d)(1).)

## **10-Year Prohibitions**

- Any person convicted of a misdemeanor violation of the following: Penal Code sections 71, 76, 136.5, 140, 148, subdivision (d), 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 830.95, subdivision (a), 17500, 17510, subdivision (a), 25300, 25800, 27510, 27590, subdivision (c), 30315, or 32625, and Welfare and Institutions Code sections 871.5, 1001.5, 8100, 8101, or 8103.

## **5-Year Prohibitions**

- Any person taken into custody as a danger to self or others, assessed, and admitted to a mental health facility under Welfare and Institutions Code sections 5150, 5151, 5152; or certified under Welfare and Institutions Code sections 5250, 5260, 5270.15. Persons certified under Welfare and Institutions Code sections 5250, 5260, or 5270.15 may be subject to a lifetime prohibition pursuant to federal law.

## **Juvenile Prohibitions**

- Juveniles adjudged wards of the juvenile court are prohibited until they reach age 30 if they committed an offense listed in Welfare and Institutions Code section 707, subdivision (b). (Pen. Code, § 29820.)

## **Miscellaneous Prohibitions**

- Any person denied firearm possession as a condition of probation pursuant to Penal Code section 29900, subdivision (c).
- Any person charged with a felony offense, pending resolution of the matter. (18 U.S.C. § 922(g).)
- Any person while he or she is either a voluntary patient in a mental health facility or under a gravely disabled conservatorship (due to a mental disorder or impairment by chronic alcoholism) and if he or she is found to be a danger to self or others. (Welf. & Inst. Code, § 8103, subd. (e).)
- Any person addicted to the use of narcotics. (Pen. Code, § 29800, subd. (a).)
- Any person who communicates a threat (against any reasonably identifiable victim) to a licensed psychotherapist which is subsequently reported to law enforcement, is prohibited for six months. (Welf. & Inst. Code, § 8100, subd. (b).)
- Any person who is subject to a protective order as defined in Family Code section 6218 or Penal Code section 136.2, or a temporary restraining order issued pursuant to Code of Civil Procedure sections 527.6 or 527.8.

## **Personal Firearms Eligibility Check**

Any person may obtain from the DOJ a determination as to whether he or she is eligible to possess firearms (review of California records only). The personal firearms eligibility check application form and instructions are on the DOJ website at <http://oag.ca.gov/firearms/forms>. The cost for such an eligibility check is \$20. (Pen. Code, § 30105.)

## SALES AND TRANSFERS OF FIREARMS

In California, only licensed California firearms dealers who possess a valid Certificate of Eligibility (COE) are authorized to engage in retail sales of firearms. These retail sales require the purchaser to provide personal identifier information for the Dealer Record of Sale (DROS) document that the firearms dealer must submit to the DOJ. There is a mandatory 10-day waiting period before the firearms dealer can deliver the firearm to the purchaser. During this 10-day waiting period, the DOJ conducts a firearms eligibility background check to ensure the purchaser is not prohibited from lawfully possessing firearms. Although there are exceptions, generally all firearms purchasers must be at least 18 years of age to purchase a long gun (rifle or shotgun) and 21 years of age to purchase a handgun (pistol or revolver). Additionally, purchasers must be California residents with a valid driver's license or identification card issued by the California Department of Motor Vehicles.

Generally, it is illegal for any person who is not a California licensed firearms dealer (private party) to sell or transfer a firearm to another non-licensed person (private party) unless the sale or transfer is completed through a licensed California firearms dealer. A "Private Party Transfer" (PPT) can be conducted at any licensed California firearms dealership. The buyer and seller must complete the required DROS document in person at the licensed firearms dealership and deliver the firearm to the dealer who will retain possession of the firearm during the mandatory 10-day waiting period. In addition to the applicable state fees, the firearms dealer may charge a fee not to exceed \$10 per firearm for conducting the PPT.

The infrequent transfer of firearms between immediate family members is exempt from the law requiring PPTs to be conducted through a licensed firearms dealer. For purposes of this exemption, "immediate family member" means parent and child, and grandparent and grandchild but does not include brothers or sisters. (Pen. Code, § 16720.) The transferee must also comply with the Firearm Safety Certificate requirement described below, prior to taking possession of the firearm. Within 30 days of the transfer, the transferee must also submit a report of the transaction to the DOJ. Download the form (Report of Operation of Law or Intra-Familial Firearm Transaction BOF 4544A) from the DOJ website at <http://oag.ca.gov/firearms/forms> or complete and submit the form electronically via the internet at <https://CFARS.doj.ca.gov>.

The reclaiming of a pawned firearm is subject to the DROS and 10-day waiting period requirements.

Specific statutory requirements relating to sales and transfers of firearms follow:

### **Proof-of-Residency Requirement**

To purchase a handgun in California, you must present documentation indicating that you are a California resident. Acceptable documentation includes a utility bill from within the last three months, a residential lease, a property deed or military permanent duty station orders indicating assignment within California.

The address provided on the proof-of-residency document must match either the address on the DROS or the address on the purchaser's California driver's license or identification card. (Pen. Code, § 26845.)

### **Firearm Safety Certificate Requirement**

To purchase or acquire a firearm, you must have a valid Firearm Safety Certificate (FSC). To obtain an FSC, you must score at least 75% on an objective written test pertaining to firearms laws and safety requirements. The test is administered by DOJ Certified Instructors, who are often located at firearms dealerships. An FSC is valid for five years. You may be charged up to \$25 for an FSC. Firearms being returned to their owners, such as pawn returns, are exempt from this requirement. In the event of a lost, stolen or destroyed FSC, the issuing DOJ Certified Instructor will issue a replacement FSC for a fee of \$5. You must present proof of identity to receive a replacement FSC. (Pen. Code, §§ 31610-31670.)

### **Safe Handling Demonstration Requirement**

Prior to taking delivery of a firearm, you must successfully perform a safe handling demonstration with the firearm being purchased or acquired. Safe handling demonstrations must be performed in the presence of a DOJ Certified Instructor sometime between the date the DROS is submitted to the DOJ and the delivery of the firearm, and are generally performed at the firearms dealership. The purchaser, firearms dealer and DOJ Certified Instructor must sign an affidavit stating the safe handling demonstration was completed. The steps required to complete the safe handling demonstration are described in the Appendix. Pawn returns and intra-familial transfers are not subject to the safe handling demonstration requirement. (Pen. Code, § 26850.)

### **Firearms Safety Device Requirement**

All firearms (long guns and handguns) purchased in California must be accompanied with a firearms safety device (FSD) that has passed required safety and functionality tests and is listed on the DOJ's official roster of DOJ-approved firearm safety devices. The current roster of certified FSDs is available on the DOJ website at <http://oag.ca.gov/firearms/fsdcertlist>. The FSD requirement also can be satisfied if the purchaser signs an affidavit declaring ownership of either a DOJ-approved lock box or a gun safe capable of accommodating the firearm being purchased. Pawn returns and intra-familial transfers are not subject to the FSD requirement. (Pen. Code, §§ 23635-23690.)

### **Roster of Handguns Certified for Sale in California**

No handgun may be sold by a firearms dealer to the public unless it is of a make and model that has passed required safety and functionality tests and is listed on the DOJ's official roster of handguns certified for sale in California. The current roster of handguns certified for sale in California is on the DOJ website at <http://certguns.doj.ca.gov/>. PPTs, intrafamilial transfers, and pawn/consignment returns are exempt from this requirement. (Pen. Code, § 32000.)



## One-Handgun-per-30-Days Limit

No person shall make an application to purchase more than one handgun within any 30-days period. Exemptions to the one-handgun-per-30-days limit include pawn returns, intra-familial transfers and private party transfers. (Pen. Code, § 27540.)

## Handgun Sales and Transfer Requirements

|   | Retail Sales | Private Party Transfers | Intra-familial Transfers | Pawn Returns |
|---|--------------|-------------------------|--------------------------|--------------|
| Proof-of-Residency Requirement                      | Yes          | Yes                     | No                       | Yes          |
| Firearm Safety Certificate Requirement              | Yes          | Yes                     | Yes                      | No           |
| Safe Handling Demonstration Requirement             | Yes          | Yes                     | No                       | No           |
| Firearm Safety Device Requirement                   | Yes          | Yes                     | No                       | No           |
| Roster of Handguns Certified for Sale in California | Yes          | No                      | No                       | No           |
| One-Handgun-Per-30-Days Limit                       | Yes          | No                      | No                       | No           |

## Long Gun Sales and Transfer Requirements

|   | Retail Sales | Private Party Transfers | Intra-familial Transfers | Pawn Returns |
|---|--------------|-------------------------|--------------------------|--------------|
| Proof-of-Residency Requirement          | No           | No                      | No                       | No           |
| Firearm Safety Certificate Requirement  | Yes          | Yes                     | Yes                      | No           |
| Safe Handling Demonstration Requirement | Yes          | Yes                     | No                       | No           |
| Firearm Safety Device Requirement       | Yes          | Yes                     | No                       | No           |

## PROHIBITED FIREARMS TRANSFERS AND STRAW PURCHASES

### What is a straw purchase?

A straw purchase is buying a firearm for someone who is prohibited by law from possessing one, or buying a firearm for someone who does not want his or her name associated with the transaction.

It is a violation of California law for a person who is not licensed as a California firearms dealer to transfer a firearm to another unlicensed person, without conducting such a transfer through a licensed firearms dealer. (Pen. Code, § 27545.) Such a transfer may be punished as a felony. (Pen. Code, § 27590.)

Furthermore, it is a violation of federal law to either (1) make a false or fictitious statement on an application to purchase a firearm about a material fact, such as the identify of the person who ultimately will acquire the firearm (commonly known as "lying and buying") (18 U.S.C. 922(a)(6)), or (2) knowingly transfer a firearm to a person who is prohibited by federal law from possessing and purchasing it. (18 U.S.C. 922(d).) Such transfers are punishable under federal law by a \$250,000 fine and 10 years in federal prison. (18 U.S.C. 924(a)(2).)

### **Things to Remember About Prohibited Firearms Transfers and Straw Purchases**

An illegal firearm purchase (straw purchase) is a federal crime.

An illegal firearm purchase can bring a felony conviction sentence of 10 years in jail and a fine of up to \$250,000.

Buying a gun and giving it to someone who is prohibited from owning one is a state and federal crime.

**Never buy a gun for someone who is prohibited by law or unable to do so.**

## **REPORTING REQUIREMENTS FOR NEW CALIFORNIA RESIDENTS**

New California residents must report their ownership of firearms to the DOJ or sell/transfer them in accordance with California law, within 60 days of bringing the firearm into the state. Persons who want to keep their firearms must submit a New Resident Firearm Ownership Report (BOF 4010A), along with a \$19 fee, to the DOJ. Forms are available at licensed firearms dealers, the Department of Motor Vehicles or on-line at the DOJ website at <http://oag.ca.gov/firearms/forms>. Forms may also be completed and submitted electronically via the internet at <https://CFARS.doj.ca.gov> (Pen. Code, § 27560.)

## **SHIPMENT OF FIREARMS**

Long guns may be mailed through the U.S. Postal Service, as well as most private parcel delivery services or common carriers. Handguns may not be sent through the U.S. Postal Service. A common or contract carrier must be used for shipment of handguns. However, pursuant to federal law, non-licensees may ship handguns only to persons who hold a valid Federal Firearms License (FFL).

Both in-state and out-of-state FFL holders are required to obtain approval (e.g., a unique verification number) from the California DOJ prior to shipping firearms to any California FFL. (Pen. Code, § 27555.)

## CARRYING FIREARMS ABOARD COMMON CARRIERS

Federal and state laws generally prohibit a person from carrying any firearm or ammunition aboard any commercial passenger airplane. Similar restrictions may apply to other common carriers such as trains, ships and buses. Persons who need to carry firearms or ammunition on a common carrier should always consult the carrier in advance to determine conditions under which firearms may be transported.

## FIREARMS IN THE HOME, BUSINESS OR AT THE CAMPSITE

Unless otherwise unlawful, any person over the age of 18 who is not prohibited from possessing firearms may have a loaded or unloaded firearm at his or her place of residence, temporary residence, campsite or on private property owned or lawfully possessed by the person. Any person engaged in lawful business (including nonprofit organizations) or any officer, employee or agent authorized for lawful purposes connected with the business may have a loaded firearm within the place of business if that person is over 18 years of age and not otherwise prohibited from possessing firearms. (Pen. Code, §§ 25605, 26035.)

**NOTE:** If a person's place of business, residence, temporary residence, campsite or private property is located within an area where possession of a firearm is prohibited by local or federal laws, such laws would prevail.

## TRANSPORTATION OF FIREARMS

### Handguns

California Penal Code section 25400 does not prohibit a citizen of the United States over 18 years of age who is in lawful possession of a handgun, and who resides or is temporarily in California, from transporting the handgun by motor vehicle provided it is unloaded and stored in a locked container. (Pen. Code, § 25610.)

The term "locked container" means a secure container which is fully enclosed and locked by a padlock, key lock, combination lock, or similar locking device. This includes the trunk of a motor vehicle, but does not include the utility or glove compartment. (Pen. Code, § 16850.)

### Rifles and Shotguns

Nonconcealable firearms (rifles and shotguns) are not generally covered within the provisions of California Penal Code section 25400 and therefore are not required to be transported in a locked container. However, as with any firearm, nonconcealable firearms must be unloaded while they are being transported. A rifle or shotgun that is defined as an assault weapon pursuant to Penal Code section 30510 or 30515 must be transported in accordance with Penal Code section 25610.

## **Registered Assault Weapons and .50 BMG Rifles**

Registered assault weapons and registered .50 BMG rifles may be transported only between specified locations and must be unloaded and in a locked container when transported. (Pen. Code, § 30945, subd. (g).)

The term "locked container" means a secure container which is fully enclosed and locked by a padlock, key lock, combination lock, or similar locking device. This includes the trunk of a motor vehicle, but does not include the utility or glove compartment. (Pen. Code, § 16850.)

## **USE OF LETHAL FORCE IN SELF-DEFENSE**

The question of whether use of lethal force is justified in self-defense cannot be reduced to a simple list of factors. This section is based on the instructions generally given to the jury in a criminal case where self-defense is claimed and illustrates the general rules regarding the use of lethal force in self-defense.

### **Permissible Use of Lethal Force in Defense of Life and Body**

The killing of one person by another may be justifiable when necessary to resist the attempt to commit a forcible and life-threatening crime, provided that a reasonable person in the same or similar situation would believe that (a) the person killed intended to commit a forcible and life-threatening crime; (b) there was imminent danger of such crime being accomplished; and (c) the person acted under the belief that such force was necessary to save himself or herself or another from death or a forcible and life-threatening crime. Murder, mayhem, rape and robbery are examples of forcible and life-threatening crimes. (Pen. Code, § 197.)

### **Self-Defense Against Assault**

It is lawful for a person being assaulted to defend themselves from attack if he or she has reasonable grounds for believing, and does in fact believe, that he or she will suffer bodily injury. In doing so, he or she may use such force, up to deadly force, as a reasonable person in the same or similar circumstances would believe necessary to prevent great bodily injury or death. An assault with fists does not justify use of a deadly weapon in self-defense unless the person being assaulted believes, and a reasonable person in the same or similar circumstances would also believe, that the assault is likely to inflict great bodily injury.

It is lawful for a person who has grounds for believing, and does in fact believe, that great bodily injury is about to be inflicted upon another to protect the victim from attack. In so doing, the person may use such force as reasonably necessary to prevent the injury. Deadly force is only considered reasonable to prevent great bodily injury or death.

**NOTE:** The use of excessive force to counter an assault may result in civil or criminal penalties.

## **Limitations on the Use of Force in Self-Defense**

The right of self-defense ceases when there is no further danger from an assailant. Thus, where a person attacked under circumstances initially justifying self-defense renders the attacker incapable of inflicting further injuries, the law of self-defense ceases and no further force may be used. Furthermore, a person may only use the amount of force, up to deadly force, as a reasonable person in the same or similar circumstances would believe necessary to prevent imminent injury. It is important to note the use of excessive force to counter an assault may result in civil or criminal penalties.

The right of self-defense is not initially available to a person who assaults another. However, if such a person attempts to stop further combat and clearly informs the adversary of his or her desire for peace but the opponent nevertheless continues the fight, the right of self-defense returns and is the same as the right of any other person being assaulted.

## **Protecting One's Home**

A person may defend his or her home against anyone who attempts to enter in a violent manner intending violence to any person in the home. The amount of force that may be used in resisting such entry is limited to that which would appear necessary to a reasonable person in the same or similar circumstances to resist the violent entry. One is not bound to retreat, even though a retreat might safely be made. One may resist force with force, increasing it in proportion to the intruder's persistence and violence, if the circumstances apparent to the occupant would cause a reasonable person in the same or similar situation to fear for his or her safety.

The occupant may use a firearm when resisting the intruder's attempt to commit a forcible and life-threatening crime against anyone in the home provided that a reasonable person in the same or similar situation would believe that (a) the intruder intends to commit a forcible and life-threatening crime; (b) there is imminent danger of such crime being accomplished; and (c) the occupant acts under the belief that use of a firearm is necessary to save himself or herself or another from death or great bodily injury. Murder, mayhem, rape, and robbery are examples of forcible and life-threatening crimes.

Any person using force intended or likely to cause death or great bodily injury within his or her residence shall be presumed to have held a reasonable fear of imminent peril of death or great bodily injury to self, family, or a member of the household when that force is used against another person, not a member of the family or household, who unlawfully and forcibly enters or has unlawfully and forcibly entered the residence and the person using the force knew or had reason to believe that an unlawful and forcible entry had occurred. Great bodily injury means a significant or substantial physical injury. (Pen. Code, § 198.5.)

**NOTE:** If the presumption is rebutted by contrary evidence, the occupant may be criminally liable for an unlawful assault or homicide.

## **Defense of Property**

The lawful occupant of real property has the right to request a trespasser to leave the premises. If the trespasser does not do so within a reasonable time, the occupant may use force to eject the trespasser. The amount of force that may be used to eject a trespasser is limited to that which a reasonable person would believe to be necessary under the same or similar circumstances.

### **CARRYING A CONCEALED WEAPON WITHOUT A LICENSE**

It is illegal for any person to carry a handgun concealed upon his or her person or concealed in a vehicle without a license issued pursuant to Penal Code section 26150. (Pen. Code, § 25400.) A firearm locked in a motor vehicle's trunk or in a locked container carried in the vehicle other than in the utility or glove compartment is not considered concealed within the meaning of the Penal Code section 25400; neither is a firearm carried within a locked container directly to or from a motor vehicle for any lawful purpose. (Pen. Code, § 25610.)

The prohibition from carrying a concealed handgun does not apply to licensed hunters or fishermen while engaged in hunting or fishing, or while going to or returning from the hunting expedition. (Pen. Code, § 25640.) Notwithstanding this exception for hunters or fishermen, these individuals may not carry or transport loaded firearms when going to or from the expedition. The unloaded firearms should be transported in the trunk of the vehicle or in a locked container other than the utility or glove compartment. (Pen. Code, § 25610.)

There are also occupational exceptions to the prohibition from carrying a concealed weapon, including authorized employees while engaged in specified activities. (Pen. Code, §§ 25630, 25640.)

### **LOADED FIREARMS IN PUBLIC**

It is illegal to carry a loaded firearm on one's person or in a vehicle while in any public place, on any public street, or in any place where it is unlawful to discharge a firearm. (Pen. Code, § 25850, subd. (a).)

It is illegal for the driver of any motor vehicle, or the owner of any motor vehicle irrespective of whether the owner is occupying the vehicle to knowingly permit any person to carry a loaded firearm into the vehicle in violation of Penal Code section 25850, or Fish and Game Code section 2006. (Pen. Code, § 26100.)

A firearm is deemed loaded when there is a live cartridge or shell in, or attached in any manner to, the firearm, including, but not limited to, the firing chamber, magazine, or clip thereof attached to the firearm. A muzzle-loading firearm is deemed loaded when it is capped or primed and has a powder charge and ball or shot in the barrel or cylinder. (Pen. Code, § 16840.)

In order to determine whether a firearm is loaded, peace officers are authorized to examine any firearm carried by anyone on his or her person or in a vehicle while in any public place, on any public street or in any prohibited area of an

unincorporated territory. Refusal to allow a peace officer to inspect a firearm pursuant to these provisions is, in itself, grounds for arrest. (Pen. Code, § 25850, subd. (b).)

The prohibition from carrying a loaded firearm in public does not apply to any person while hunting in an area where possession and hunting is otherwise lawful or while practice shooting at target ranges. (Pen. Code, §§ 26005, 26040.) There are also occupational exceptions to the prohibition from carrying a loaded firearm in public, including authorized employees while engaged in specified activities. (Pen. Code, §§ 26015, 26030.)

**NOTE:** Peace officers and honorably retired peace officers having properly endorsed identification certificates may carry a concealed weapon at any time. Otherwise, these exemptions apply only when the firearm is carried within the scope of the exempted conduct, such as hunting or target shooting, or within the course and scope of assigned duties, such as an armored vehicle guard transporting money for his employer. A person who carries a loaded firearm outside the limits of the applicable exemption is in violation of the law, notwithstanding his or her possession of an occupational license or firearms training certificate. (Pen. Code, § 12031(b).)

## **OPENLY CARRYING AN UNLOADED HANDGUN**

It is generally illegal for any person to carry upon his or her person or in a vehicle, an exposed and unloaded handgun while in or on:

- A public place or public street in an incorporated city or city and county; or
- A public street in a prohibited area of an unincorporated city or city and county. (Pen. Code, § 26350.)

It is also illegal for the driver or owner of a motor vehicle to allow a person to bring an open and exposed unloaded handgun into a motor vehicle in specified public areas. (Pen. Code, § 17512.)

## **PUNISHMENT FOR CARRYING UNREGISTERED HANDGUN**

Any person who commits the crime of carrying a concealed handgun while having both the handgun and ammunition for that handgun on his/her person or in his/her vehicle may be subject to a felony enhancement if the handgun is not on file (registered) in the DOJ's Automated Firearms System. (Pen. Code, § 25400, subd. (c).)

Any person who commits the crime of carrying a loaded handgun on his/her person in a prohibited place may be guilty of a felony if the handgun is not on file (registered) in the DOJ's Automated Firearms System. (Pen. Code, § 25850, subd. (c).)

## **MISCELLANEOUS PROHIBITED ACTS**

### **Obliteration or Alteration of Firearm Identification**

It is illegal for any person to obliterate or alter the identification marks placed on any firearm including the make, model, serial number or any distinguishing mark lawfully assigned by the owner or by the DOJ. (Pen. Code, § 23900.)

It is illegal for any person to buy, sell or possess a firearm knowing its identification has been obliterated or altered. (Pen. Code, § 23920.)

### **Unauthorized Possession of a Firearm on School Grounds**

It is illegal for any unauthorized person to possess or bring a firearm upon the grounds of, or into, any public school, including the campuses of the University of California, California State University campuses, California community colleges, any private school (kindergarten through 12th grade) or private university or college. (Pen. Code, § 626.9.)

### **Unauthorized Possession of a Firearm in a Courtroom, the State Capitol, etc.**

It is illegal for any unauthorized person to bring or possess any firearm within a courtroom, courthouse, court building or at any meeting required to be open to the public. (Pen. Code, § 171b.)

It is illegal for any unauthorized person to bring or possess a loaded firearm within (including upon the grounds of) the State Capitol, any legislative office, any office of the Governor or other constitutional officer, any Senate or Assembly hearing room, the Governor's Mansion or any other residence of the Governor or the residence of any constitutional officer or any Member of the Legislature. For these purposes, a firearm shall be deemed loaded whenever both the firearm and its unexpended ammunition are in the immediate possession of the same person. (Pen. Code, §§ 171c, 171d, 171e.)

### **Drawing or Exhibiting a Firearm**

If another person is present, it is illegal for any person, except in self-defense, to draw or exhibit a loaded or unloaded firearm in a rude, angry or threatening manner or in any manner use a firearm in a fight or quarrel. (Pen. Code, § 417.)

### **Threatening Acts with a Firearm on a Public Street or Highway**

It is illegal for any person to draw or exhibit a loaded or unloaded firearm in a threatening manner against an occupant of a motor vehicle which is on a public street or highway in such a way that would cause a reasonable person apprehension or fear of bodily harm. (Pen. Code, § 417.3.)

### **Discharge of a Firearm in a Grossly Negligent Manner**

It is illegal for any person to willfully discharge a firearm in a grossly negligent manner which could result in injury or death to a person. (Pen. Code, § 246.3.)



### **Discharge of a Firearm at an Inhabited/Occupied Dwelling, Building, Vehicle, Aircraft**

It is illegal for any person to maliciously and willfully discharge a firearm at an inhabited dwelling, house, occupied building, occupied motor vehicle, occupied aircraft, inhabited housecar or inhabited camper. (Pen. Code, § 246.)

### **Discharge of a Firearm at an Unoccupied Aircraft, Motor Vehicle, or Uninhabited Building or Dwelling**

It is illegal for any person to willfully and maliciously discharge a firearm at an unoccupied aircraft. It is illegal for any person to discharge a firearm at an unoccupied motor vehicle, building or dwelling. This does not apply to an abandoned vehicle, an unoccupied motor vehicle or uninhabited building or dwelling with permission of the owner and if otherwise lawful. (Pen. Code, § 247.)

### **Discharge of a Firearm from a Motor Vehicle**

It is illegal for any person to willfully and maliciously discharge a firearm from a motor vehicle. A driver or owner of a vehicle who allows any person to discharge a firearm from the vehicle may be punished by up to three years imprisonment in state prison. (Pen. Code, § 26100.)

### **Criminal Storage**

“Criminal storage of firearm of the first degree” – Keeping any loaded firearm within any premises that are under your custody or control and you know or reasonably should know that a child (any person under 18) is likely to gain access to the firearm without the permission of the child’s parent or legal guardian and the child obtains access to the firearm and thereby causes death or great bodily injury to himself, herself, or any other person. (Pen. Code, § 25100, subd. (a).)

“Criminal storage of firearm of the second degree” – Keeping any loaded firearm within any premises that are under your custody or control and you know or reasonably should know that a child (any person under 18) is likely to gain access to the firearm without the permission of the child’s parent or legal guardian and the child obtains access to the firearm and thereby causes injury, other than great bodily injury, to himself, herself, or any other person, or carries the firearm either to a public place or in violation of Penal Code section 417. (Pen. Code, § 25100, subd. (b).)

Neither of the criminal storage offenses (first degree, second degree) shall apply whenever the firearm is kept in a locked container or locked with a locking device that has rendered the firearm inoperable. (Pen. Code, § 25105.)

### **Sales, Transfers and Loans of Firearms to Minors**

Generally, it is illegal to sell, loan or transfer any firearm to a person under 18 years of age, or to sell a handgun to a person under 21 years of age. (Pen. Code, § 27505.)

## **Possession of a Handgun or Live Ammunition by Minors**

It is unlawful for a minor to possess a handgun unless one of the following circumstances exist:

- The minor is accompanied by his or her parent or legal guardian and the minor is actively engaged in a lawful recreational sporting, ranching or hunting activity, or a motion picture, television or other entertainment event;
- The minor is accompanied by a responsible adult and has prior written consent of his or her parent or legal guardian and is involved in one of the activities cited above; or
- The minor is at least 16 years of age, has prior written consent of his or her parent or legal guardian, and the minor is involved in one of the activities cited above. (Pen. Code, §§ 29610, 29615.)

It is unlawful for a minor to possess live ammunition unless one of the following circumstances exist:

- The minor has the written consent of a parent or legal guardian to possess live ammunition;
- The minor is accompanied by a parent or legal guardian; or
- The minor is actively engaged in, or is going to or from, a lawful, recreational sport, including, competitive shooting, or agricultural, ranching, or hunting activity. (Pen. Code, §§ 29650, 29655.)

## **NEW FIREARMS/WEAPONS LAWS**

### **AB 892 (Stats. 2015, ch. 203) – Purchase of State-Issued Handgun by Spouse/Domestic Partner of Peace Officer Killed in the Line of Duty**

- Provides an exception to the Unsafe Handgun Act allowing the spouse/domestic partner of a peace officer killed in the line of duty to purchase their spouse/domestic partner's service weapon. (Pen. Code, § 32000.)

### **AB 950 (Stats. 2015, ch. 205) – Gun Violence Restraining Orders**

- Allows a person who is subject to a gun violence restraining order to transfer his or her firearms or ammunition to a licensed firearms dealer for the duration of the prohibition. If the firearms or ammunition have been surrendered to a law enforcement agency, the bill would entitle the owner to have them transferred to a licensed firearms dealer. (Pen. Code, §§ 29830.)
- Extends to ammunition, current authority for a city or county to impose a charge relating to the seizure, impounding, storage, or release of a firearm. (Pen. Code, § 33880.)

### **AB 1014 (Stats. 2014, ch. 872 ) – Gun Violence Restraining Orders**

- Beginning June 1, 2016, authorizes courts to issue gun violence restraining orders, ex parte gun violence restraining orders, and temporary emergency gun violence restraining orders if the subject of the petition poses a significant danger of personal injury to himself, herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm and that the order is necessary to prevent personal injury to himself, herself, or another, as specified. (Pen. Code, §§ 18100 - 18205.)
- Beginning June 1, 2016, makes it a misdemeanor to own or possess a firearm or ammunition with the knowledge that he or she is prohibited from doing so by a gun violence restraining order. (Pen. Code, § 18205.)
- Beginning June 1, 2016, makes it a misdemeanor to file a petition for a gun violence restraining order with the intent to harass or knowing the information in the petition to be false. (Pen. Code, § 18200.)

### **AB 1134 (Stats. 2015, ch. 785 ) – Licenses to Carry Concealed Handguns**

- Authorizes the sheriff of a county to enter into an agreement with the chief or other head of a municipal police department of a city for the chief or other head of a municipal police department to process all applications for licenses to carry a concealed handgun, renewals of those licenses, and amendments of those licenses, for that city's residents. (Pen. Code, § 26150.)

### **AB 2220 (Stats. 2014, ch. 423) – Private Patrol Operators**

- Beginning July 1, 2016, establishes procedures allowing a Private Patrol Operator (PPO) business entity to be the registered owner of a firearm.
- Beginning July 1, 2016, allows a security guard to be assigned a firearm by the PPO and for a firearm custodian to be designated by the PPO. (Pen. Code, §§ 16970, 31000, 32650.)

### **SB 199 (Stats. 2014, ch. 915) – BB Devices and Imitation Firearms**

- Beginning January 1, 2016, amends the definitions of a “BB device” and an “imitation firearm.” (Pen. Code, §§ 16250, 16700.)

### **SB 707 (Stats. 2015, ch. 766) – Gun-free School Zones**

- Recasts Gun-Free School Zone Act provisions relating to a person holding a valid license to carry a concealed firearm to allow that person to carry a firearm in an area that is within 1,000 feet of, but not on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive. (Pen. Code, § 626.9.)
- Creates an exemption from the Gun-Free School Zone Act for certain appointed peace officers authorized to carry a firearm by their appointing agency, and for certain retired reserve peace officers authorized to carry a concealed or loaded firearm. (Pen. Code, § 626.9.)

- Deletes the exemption that allows a person holding a valid license to carry a concealed firearm to bring or possess a firearm on the campus of a university or college. (Pen. Code, § 30310.)
- Deletes the exemption that allows a person to carry ammunition or reloaded ammunition onto school grounds if the person is licensed to carry a concealed firearm. (Pen. Code, § 30310.)
- Creates a new exemption authorizing a person to carry ammunition or reloaded ammunition onto school grounds if it is in a motor vehicle at all times and is within a locked container or within the locked trunk of the vehicle. (Pen. Code, § 30310.)



If you have any comments or suggestions regarding this publication, please send them to:

Department of Justice  
Bureau of Firearms / HSC Unit  
P.O. Box 160367  
Sacramento, CA 95816-0367

or via our website at  
<http://oag.ca.gov/firearms>

UNION LABEL



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**ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE OF THE CITY OF PALM SPRINGS,  
CALIFORNIA, AMENDING CHAPTER 11.16 OF THE  
PALM SPRINGS MUNICIPAL CODE, RELATING TO  
FIREARMS.**

***City Attorney's Summary***

*This Ordinance amends the City's existing provisions of the Palm Springs Municipal Code relating to weapons by imposing certain requirements related to firearms including 1) reporting to police, within 48 hours, known loss or theft of a firearm; 2) storing firearms in residences in a locked container or disabling them with a trigger lock when not in the owner's immediate possession; 3) prohibiting the possession of ammunition magazines capable of holding more than 10 rounds, with certain exceptions; 4) logging and tracking of ammunition sales within the City of Palm Springs; and 5) requiring concealed weapon licensees to safely store firearms when left in automobiles.*

**Section 1:** Chapter 11.16 of the Palm Springs Municipal Code, previously entitled "Weapons," is amended in its entirety to read:

**Chapter 11.16      Firearms**

**11.16.005      Definitions**

"Concealed carry licensee" means a person licensed or otherwise authorized to carry a concealable firearm pursuant to California Penal Code Section 26150 *et seq.*

"Firearm" means any device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of any explosion or other form of combustion.

"Large-capacity magazine" means any detachable ammunition feeding device with the capacity to accept more than 10 rounds, but shall not be construed to include any of the following:

- a.      A feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds;
- b.      A .22 caliber tube ammunition feeding device;
- c.      A tubular magazine that is contained in a lever-action firearm

"Locked Container" means a secure container that is fully enclosed and locked by a padlock, key lock, combination lock, or similar locking device as defined by California Penal Code Section 16850. For purposes of this Chapter, it also include a lock box that

is listed on the California Department of Justice Bureau of Firearms roster of approved firearm safety devices. For purposes of this Chapter, it does not include a bag or other container made of fabric or other penetrable material, such as a regular purse, backpack, or gym bag.

"Residence" means any structure intended or used for human habitation, including but not limited to, houses, condominiums, rooms, motels, and time-shares. For purposes of this ordinance, it also includes a garage which is enclosed within or located adjacent to such a structure and which is not open to the public.

**11.16.010 Shooting Without Permit.**

It is unlawful for any person except a "peace officer" as defined in Sections 830 *et seq.*, of the Penal Code of California, as may be amended from time to time, in the performance of duties or a person acting in self-defense or in defense of others, within the city of Palm Springs, to discharge any cannon, firearm, air-gun, or any instrument of any kind, character, or description which throws or projects bullets or missiles of any kind, to any distance, by means of explosion, combustion, release of compressed air or gas, or otherwise, without first having obtained a permit to do so granted by the Chief of Police; or to make or use, any slingshot in any manner causing danger to or annoyance of any person or injury to property.

**11.16.020 Shooting permit—Application—Granting—Denial.**

Application for such permission shall be made in writing to the Chief of Police who shall grant such permission only if the Chief of Police determines that a substantial public interest or a compelling private need will be served thereby, and also that the shooting, if permitted cannot foreseeably result in any injury, disturbance, annoyance or hazard to any person or result in any damage to property other than that of the permittee, and further that it will in no way unnecessarily jeopardize or seriously menace the public peace, health or safety. In any case where the Chief of Police grants a permit, the Chief of Police may attach whatever conditions and terms as in his or her opinion are necessary or appropriate in order to carry out the objectives stated in this Section. No permittee exercising the privilege granted by any such permit, shall fail, refuse, or neglect to strictly comply with all conditions and terms the Chief of Police may have attached thereto.

**11.16.030 Shooting Permit—Exemptions.**

Sections 11.16.010 and 11.16.020 shall not apply to any peace officer, either federal, state, county, or municipal, acting in line of duty, or engaged in target practice at any range regularly established for such officers, nor to the operators or patrons of any shooting gallery, skeet club or target range holding a permit from the city building inspector and city business license for the conduct thereof.

**11.16.040 Duty to Report Theft or Loss of Firearms.**

Any person who owns or possesses a firearm (as defined in Penal Code Section 16520 or as amended) shall report the theft or loss of the firearm to the Police Department of the City of Palm Springs within forty-eight (48) hours of the time he or she knew or reasonably should have known that the firearm had been stolen or lost, whenever: (1) the person resides in the city of Palm Springs; or (2) the theft or loss of the firearm occurs in the City of Palm Springs.

**11.16.070 Safe Storage of Firearms.**

Except when carried on his or her person, or in his or her immediate control and possession, no person shall keep a firearm (as defined in Penal Code Section 16520 or as amended) in any residence owned or controlled by that person unless the firearm is stored in a locked container, or the firearm is disabled with a trigger lock that is listed on the California Department of Justice's list of approved firearms safety devices.

**11.16.070 Possession of Large-Capacity Ammunition Magazines Prohibited.**

(a) It is unlawful for any person to possess any large-capacity magazine in the city of Palm Springs whether assembled or disassembled, except as otherwise authorized by law.

(b) Any person who, prior to the effective date of this section, was legally in possession of a large-capacity magazine shall have ninety (90) days from such effective date to do either of the following without being subject to prosecution:

- (1) Remove the large-capacity magazine from the City of Palm Springs; or
- (2) Surrender the large-capacity magazine to the Palm Springs Police Department for destruction; or
- (3) Lawfully sell or transfer the large-capacity magazine in accordance with Penal Code Section 12020.

(c) This section shall not apply to the following:

- (1) Any federal, state, county, or city agency that is charged with the enforcement of any law, for use by agency employees in the discharge of their official duties;
- (2) Any government officer, agent, or employee, member of the armed forces of the United States, or peace officer, to the extent that such person is otherwise authorized to possess a large-capacity magazine and does so while acting within the course and scope of his or her duties;
- (3) A forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her duties;



(4) Any entity that operates an armored vehicle business pursuant to the laws of the state, and an authorized employee of such entity, while in the course and scope of his or her employment for purposes that pertain to the entity's armored vehicle business;

(5) Any person who has been issued a license or permit by the California Department of Justice pursuant to Penal Code Sections 18900, 26500-26915, 31000, 32315, 32650, 32700-32720, or 33300, as may be amended from time to time, when the possession of a large-capacity magazine is in accordance with that license or permit;

(6) A licensed gunsmith for purposes of maintenance, repair or modification of the large-capacity magazine;

(7) Any person who finds a large-capacity magazine, if the person is not prohibited from possessing firearms or ammunition pursuant to federal or state law, and the person possesses the large-capacity magazine no longer than is reasonably necessary to deliver or transport the same to a law enforcement agency;

(8) Any person lawfully in possession of a firearm that the person obtained prior to January 1, 2000, if no magazine that holds fewer than 10 rounds of ammunition is compatible with the firearm and the person possesses the large-capacity magazine solely for use with that firearm.

(9) Any retired peace officer holding a valid, current Carry Concealed Weapons (CCW) permit issued pursuant to California Penal Code.

#### **11.16.080. Ammunition Sales.**

(a) It is unlawful for any person to engage in the business of selling, leasing, or otherwise transferring firearm ammunition within the City of Palm Springs except in compliance with this Section.

(b) Definitions:

(1) "Ammunition" means any cartridge or encasement containing a bullet or projectile, propellant, or explosive charge, and a primer which is used in the operation of a firearm.

(2) "Ammunition vendor" means any person engaged in the business of selling, leasing, or otherwise transferring firearm ammunition.

(3) "Person" means a natural person, association, partnership, firm, corporation, or other entity.

(c) Every ammunition vendor shall maintain an ammunition sales log which records all ammunition sales made by the vendor. The transferee shall provide, and the ammunition vendor shall record on the ammunition sales log, at the time of sale, all of the following information for each sale of firearms ammunition:

(1) The name, address, and date of birth of the transferee;

(2) The date of the sale;

- (3) The transferee's driver's license number, state identification card number, passport number, or other valid government-issued photographic identification;
- (4) The brand, type, and quantity of firearms ammunition transferred;
- (5) The identity of the person transferring the firearms ammunition on behalf of the ammunition vendor;
- (6) The transferee's signature and right thumbprint.

(d) The ammunition sales log shall be recorded on a form approved by the Chief of Police. All ammunition sales logs shall be kept at the location of the firearms ammunition sale for a period of not less than two years from the date of the sale. Ammunition sales logs shall be open to reasonable inspection by peace officers at all times the ammunition vendor is regularly open for business.

(e) No person shall knowingly provide false, inaccurate, or incomplete information to an ammunition vendor for the purpose of purchasing firearms ammunition. No ammunition vendor shall knowingly make a false, inaccurate, or incomplete entry in any ammunition sales log, nor shall any ammunition vendor refuse any reasonable inspection of an ammunition sales log subject to inspection.

#### **11.16.090 Safe Storage of Firearms in an Automobile Required for Concealed Carry Licensees**

It is unlawful for persons licensed or otherwise authorized to carry a concealable firearm pursuant to California Penal Code Section 26150 *et seq.*, to leave a concealable firearm in an automobile within the City of Palm Springs in a public right of way unless the firearm is stored in a locked container.

#### **11.16.100 Penalties and Remedies**

(a) A violation of any provision of this Chapter shall be subject to enforcement through criminal prosecution and/or civil remedies as provided herein.

(1) A person who violates this Chapter shall be guilty of a misdemeanor punishable pursuant to the provisions of Section 1.01.160 of this Code and each day or portion thereof that a person maintains and/or continues such violation to continue shall constitute a separate and subsequent offense as provided in Section 1.01.150 of this Code.

(2) The City may assess civil penalties in the amount of one thousand dollars (\$1,000.00) per violation and each day or portion thereof that a person maintains and/or continues such violation to continue shall constitute a separate and subsequent offense as provided in Section 1.01.150 of this Code.

(b) Remedies under this Chapter are cumulative and not exclusive. They are in addition to and do not supersede or limit other administrative, civil, and/or criminal

remedies provided under state or federal law, or other provisions of the Oakland Municipal Code. The City may seek an order for the award of attorney's fees.

**Section 2.** In the event that any California statute adopted or referred to in this Chapter is amended or succeeded by another enactment of the California Legislature, such amendments shall be deemed automatically adopted as part of this Chapter as if fully set forth herein unless the City Council amends this Chapter to provide otherwise.

**Section 3.** If any provision of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction within the State of California, such decision shall not affect the validity of the remaining provisions. The City Council declares that it would have adopted the remaining provisions irrespective of the provisions, sections, sentences, clauses, or words declared invalid or unconstitutional.

**Section 4.** The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published and posted pursuant to the provisions of law and this Ordinance shall take effect thirty (30) days after passage.

PASSED, APPROVED, AND ADOPTED BY THE PALM SPRINGS CITY COUNCIL THIS \_\_ DAY OF \_\_\_\_\_, 2016.

\_\_\_\_\_  
ROBERT MOON, MAYOR

ATTEST:

\_\_\_\_\_  
JAMES THOMPSON, CITY CLERK

CERTIFICATION

STATE OF CALIFORNIA )  
COUNTY OF RIVERSIDE ) ss.  
CITY OF PALM SPRINGS )

I, JAMES THOMPSON, City Clerk of the City of Palm Springs, hereby certify that Urgency Ordinance No. \_\_\_\_\_ is a full, true and correct copy, and was introduced and adopted at a regular meeting of the Palm Springs City Council on the 6<sup>th</sup> day of July, 2016, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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JAMES THOMPSON, CITY CLERK  
City of Palm Springs, California