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DATE: January 9, 2023

TO: Honorable Mayor and Members of the City Council through City Manager

FROM: Brian Miller, Deputy Police Chief  
Dylan Brady, Assistant City Attorney

SUBJECT: Adoption (Second Reading) of Ordinance No. 2831 N.C.S. Amending Chapter 10.56 of the Petaluma Municipal Code, Entitled “Possession or Discharge” to Add Regulations Regarding Safe Storage of Firearms in Residences and Requiring Lost or Stolen Firearms be Reported within Forty-Eight Hours, Retitling the Chapter “Possession, Storage and Discharge of Firearms” and Finding This Action is Exempt From CEQA Pursuant to CEQA Guidelines Sections 15301 (Existing Facilities), 15061(b)(3) (common sense), and 15308 (Protecting Environment)

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### **RECOMMENDATION**

It is recommended that the City Council adopt the attached ordinance amending Chapter 10.56 of the Petaluma Municipal Code to add regulations regarding residents’ safe storage of firearms in residences and requiring lost or stolen firearms be reported within forty-eight hours, retitling the chapter and finding this action is exempt from CEQA pursuant to CEQA Guidelines Sections 15301 (Existing Facilities), 15061(b)(3) (common sense), and 15308 (Protecting Environment).

### **BACKGROUND**

On December 19, 2022, City Council introduced Ordinance No. 2831 N.C.S. which amended Chapter 8.17 of the Petaluma Municipal Code. The proposed amendment requires individuals to report their lost or stolen firearms to the Petaluma Police Department (PPD) within 48 hours and requires that firearms be safely stored or locked in residences and vehicles. Ordinance No. 2831 N.C.S. was introduced with a vote of 7-0. During the introduction, Councilmember Barnacle requested that the City perform additional outreach including social media updates that include information about PPD’s Child Safe Gun Lock Program to help firearm owners comply with the proposed ordinance. Staff will be conducting the requested outreach and have included information in their latest community update at this link: <https://cityofpetaluma.org/community-update-for-december-21-2022/> Additionally, here is a link to Petaluma’s Child Safe Gun Lock Program:

## **Safe Storage**

Having a loaded or unlocked gun in the home is associated with an increased risk of gun-related injury and death. Children are particularly at risk of injury and death from firearms when firearms are not safely secured in their own homes or in homes they visit. Applying trigger locks or using lock boxes when storing firearms in the home reduces the risk of firearm injury and death. Project ChildSafe, a program of the National Shooting Sports Foundation, identifies the safe storage of firearms as the number one way to help prevent firearms accidents. Project ChildSafe's recommendations for safely storing firearms can be found on their website.<sup>1</sup>

Cities throughout California have adopted ordinances requiring the safe storage of firearms in residences. San Francisco's safe storage law was upheld as constitutional by the Ninth Circuit Court of Appeals in *Jackson v. City and County of San Francisco*, 746 F.3d 953 (9th Cir. 2014) where the court found that San Francisco's locked-storage law served a significant government interest by reducing the number of gun-related injuries and deaths from having an unlocked handgun in the home.

Existing state law prohibits keeping firearms within a premises where the person with custody or control of the premises knows or reasonably should know that a child or a person prohibited from possessing a firearm is likely to gain access to the firearm, where a child or prohibited person obtains access to a firearm and injures someone, or carries the firearm off-premises.<sup>2</sup> The prohibitions do not apply to firearms kept in a locked container or safe, or disabled by a safety device, or maintained in a locked trunk, or secured with a locking device that renders the firearm inoperable, or to firearms that are carried on the person, or that are readily retrievable as if carried on the person.<sup>3</sup> Existing law also requires that persons leaving handguns in unattended vehicles lock them in a container placed out of plain view, or lock the handguns in a locked container permanently affixed to the vehicle's interior and not in plain view, or lock the handgun in a locked toolbox or utility box.<sup>4</sup>

However, currently, there is no state law that requires safety devices, such as lock boxes or trigger locks, to be used on all firearms stored in a residence. Keeping a firearm locked when it is not being carried ensures that it cannot be accessed and used by others without the owner's knowledge or permission. Applying trigger locks or using lock boxes when storing firearms in the home reduces the risk of unauthorized users, including children, from accessing and using firearms, which can reduce unintentional discharges, firearm theft, gun-related homicides and suicides. Safe storage measures have a demonstrated protective effect in homes with children and teenagers where guns are stored.<sup>5</sup> Additionally, safe storage laws are intended both to discourage the theft of firearms and to prevent accidents and suicides. According to a 2018 report in the Journal of

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<sup>1</sup><https://projectchildsafe.org/parentsandgunowners/#:~:text=Unloaded%20firearms%20should%20be%20stored,in%20addition%20to%20locked%20storage>

<sup>2</sup> Penal Code Sections 25100 and 25200

<sup>3</sup> Penal Code Sections 25105 and 25205

<sup>4</sup> Penal Code Section 25140

<sup>5</sup> Penal Code Sections 25100 and 25200

Urban Health, more than half a million firearms are lost or stolen from private residences each year.<sup>6</sup> Accordingly, safe storage laws can help prevent theft of firearms left unattended in people's homes.

#### Reporting missing firearms:

Under California law, “every person shall report the loss or theft of a firearm he or she owns or possesses to a local law enforcement agency in the jurisdiction in which the theft or loss occurred within five days of the time he or she knew or reasonably should have known that the firearm had been stolen or lost.”<sup>7</sup> Laws requiring gun owners to report the loss or theft of a firearm serve several purposes. Reasons for requiring theft reporting include:

- Earlier notification of lost or stolen firearms allows police to identify stolen weapons more easily during the course of an investigation.
- When a crime gun is traced by law enforcement to the last purchaser of record, the owner may falsely claim that the gun was lost or stolen to hide his or her involvement in the crime or in gun trafficking. Reporting laws provide a tool for law enforcement to detect this behavior and charge criminals who engage in it.
- When a person who legally owned a gun becomes prohibited from gun ownership, it is important that law enforcement remove the firearm from his or her possession. Reporting laws help disarm prohibited persons by deterring them from falsely claiming that their firearms were lost or stolen.
- Reporting laws protect gun owners from unwarranted criminal accusations when their guns are recovered at a crime scene and make it easier for law enforcement to locate a lost or stolen firearm and return it to its lawful owner.
- The danger that lost or stolen firearms pose to public safety requires a heightened level of accountability on the part of individuals who choose to own firearms. Reporting laws make gun owners more accountable for their weapons.

Recently, the city of Morgan Hill's reporting law, which requires that the theft or loss of a gun be reported to the police within 48-hours, was upheld and found not to be preempted by California law in *Kirk v. City of Morgan Hill*.<sup>8</sup> The court in *Kirk* noted cities' ability to impose more stringent firearm regulations than prescribed by state law, given the significant local safety interests at stake.

Chapter 10.56 of the Petaluma Municipal Code regulates the possession and discharge of firearms in the City of Petaluma. Chapter 10.56 makes it a misdemeanor offense for a person to discharge a firearm except in self-defense, at firing ranges or hunting grounds, or with a permit from the chief of police. The proposed ordinance would add regulations requiring all firearms and precursors to firearms to either be stored safely in a locked container or locked with a triggering device. Additionally, the proposed ordinance would require people whose firearm is stolen or lost to report the missing firearm to the Petaluma Police within 48 hours of discovering that the firearm is missing.

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<sup>6</sup> Penal Code Sections 25105 and 25205

<sup>7</sup> Penal Code Section 25250

<sup>8</sup> *Kirk v. City of Morgan Hill* (2022) 83 Cal.App. 5<sup>th</sup> 976

## **DISCUSSION**

### **Safe Storage**

The proposed amendments to Chapter 10.56 of the Petaluma Municipal Code would require all firearms and firearm precursors as defined by the California Penal Code to either be stored in a locked container or disabled with a locking device. Both “locked containers” and “locking devices” are defined in Sections 16850 and 16860, respectively of the California Penal Code.

“Locked container” is defined as “a secure container that is fully enclosed and locked by a padlock, keylock, combination lock, or similar locking device.” The term “locked container” does not include the utility or glove compartment of a motor vehicle.”<sup>9</sup> “Locking device” is defined as “a device that is designed to prevent a firearm from functioning and, when applied to the firearm, renders the firearm inoperable.”<sup>10</sup> Both locking devices and locked containers are readily available. The proposed amendments would prohibit the key or mechanism or code to unlock the locking container or device from being kept accessible or disclosed to unauthorized users.

The proposed amendments would also require “precursor parts of firearms” which are defined in Penal Code Section 16531 as parts of a firearm “that has reached a stage in manufacture where it may readily be completed, assembled or covered to be used... or that is marketed or sold to the public to become used... as a functional firearm once completed, assembled or converted,” to be safely stored and locked as well.

The proposed ordinance includes exceptions to the safe storage requirements that would apply when the firearm is in the immediate control and possession of a peace officer or an individual who is complying with applicable state and federal firearm laws. Several California jurisdictions have adopted similar “safe firearm storage” ordinances to bolster firearm safety in the home. Safe storage ordinances are in effect in at least 20 California municipalities, including Antioch, Alameda, Belvedere, Berkeley, Dublin, Los Angeles, Moraga, Morgan Hill, Oakland, Orinda, Palm Springs, San Diego, San Francisco, San Jose, Santa Cruz, Saratoga, South San Francisco, Sunnyvale, Tiburon, and Walnut Creek.

### **48 Hour Duty to Report Stolen or Missing Firearm**

The proposed amendments would also require any person who owns or possesses a firearm to report a missing firearm to the Petaluma Police Department within 48-hours of the time they suspected or knew their firearm is missing if the person is a resident of Petaluma or the firearm went missing in Petaluma. This provision mirrors Morgan Hill regulations that were recently upheld by a California appellate court.

The proposed ordinance both clarifies and expands on the Penal Code lost firearm reporting requirements. Under the Penal Code, a person must report the theft or loss of a firearm to “a local law enforcement agency.” There are multiple local law enforcement agencies that operate in

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<sup>9</sup> Penal Code Section 16850

<sup>10</sup> Penal Code Section 16860

Petaluma. Therefore, staff believe it is important to clarify that the appropriate local law enforcement agency in Petaluma for reporting lost or stolen firearms is the Petaluma Police Department. The proposed ordinance would require reporting within 48 hours of discovery of the loss or theft of a firearm, rather than the five days provided in California law. Earlier notification of lost or stolen firearms allows police to more easily identify stolen weapons during the course of an investigation, which can help deter the unauthorized use of the missing firearm.

To encourage reporting of lost or stolen firearms, the proposed ordinance provides that a person who complies with the 48-hour notification requirement would not be in violation of the safe storage ordinance.

A violation of the proposed amendments would be subject to enforcement through criminal prosecution as an infraction or misdemeanor, and civil or administrative enforcement pursuant to the Petaluma Municipal Code. Each violation would be deemed a distinct and separate offense.

The ordinance would not create a substantial burden to persons lawfully carrying and storing firearms in the home as the devices are readily available. Requiring safe firearm storage is intended to decrease the risk of harm to children and the entire community from unauthorized access to firearms. The proposed ordinance fills an important gap in existing law and aims to reduce accidental gun shootings, gun-related homicides and suicides, and the theft of unsecured firearms.

## **PUBLIC OUTREACH**

Staff included introduction of the Ordinance in its latest Community Update at this link: <https://cityofpetaluma.org/community-update-for-december-21-2022/>

If the ordinance is adopted staff will reach out to gun stores in Petaluma informing them of the new amendment and recommending that they inform their patrons. Additionally, the City will promote the new requirements, which will include information about PPD's child safe program, on our various communications channels including on the City's website, social media, and weekly update. PPD will also develop a video promoting safe gun storage. The City has previously received communications from community members with Moms Demand Action requesting that staff evaluate alternatives to increase firearm safety and access prevention in our community. Staff have also received email communication from Assistant Superintendent Maite Itturi of Petaluma City Schools and a joint resolution of the Petaluma City and Petaluma Joint Union High School Districts regarding updating the Student Handbook with information about parents' firearm storage obligations. A copy of the resolution is attached to this staff report as Attachment 2. Additionally, this agenda item appeared on the City's tentative agenda document on November 21, 2022 which was a publicly-noticed meeting.

## **COUNCIL GOAL ALIGNMENT**

This amendment satisfies the following City Council goals, objectives and work plan items: Goal 4 A Safe Community that Thrives Objective 1: Maintain and enhance public safety and prepare for emergencies and disasters, through crime and fire prevention and traffic safety. Workplan Item #72. Assess current staffing levels and adjust public safety staffing to ensure rapid response times

and the safety of our first responders. Workplan Item #78. Improve public safety through proactive crime and fire prevention activities.

### **ENVIRONMENTAL REVIEW**

The proposed ordinance, amending Chapter 10.56 (Weapons) of Title 10 (Peace, Safety, and Morals) of the Petaluma Municipal Code, is not subject to the California Environmental Quality Act (CEQA) under the general rule in CEQA Guidelines Section 15061(b)(3) that CEQA applies only to projects which have the potential for causing a significant effect on the environment, and the requirement for separate safe storage of guns and ammunition and the reporting of stolen guns will not have a significant effect on the environment. Additionally, the proposed ordinance is categorically exempt pursuant to CEQA Guidelines Section 15301 (Existing Facilities) as the requirement for storage of a firearm either in a locked container or for the firearm to be disabled with a safety device would at most be a minor alteration of facilities involving negligible or no expansion of existing use. Moreover, the ordinance is exempt from CEQA pursuant to Sections 15307 and 15308 of the CEQA Guidelines as an action taken to assure the maintenance, restoration, enhancement, and protection of natural resources and the environment as authorized by state law where the regulatory process involves procedures for protection of the environment. The proposed ordinance strengthens existing standards for storage and reporting of stolen guns which should prevent gun accidents and protect human health, which is an aspect of the environment regulated under Public Resources Code Section 21083(b)(3).

### **FINANCIAL IMPACTS**

There are no anticipated direct financial impacts as a result of adopting this ordinance. Indirect costs may include less police resources devoted to investigating lost or missing firearms.

### **ALTERNATIVES**

The Council could choose to not adopt the proposed ordinance or to adopt the ordinance with changes.

### **ATTACHMENTS**

1. Proposed Ordinance No. 2831 N.C.S.
2. Joint Resolution of Petaluma City and Petaluma Joint Union High School Districts