

Law and Legislation Committee Report

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Sacramento, CA 95814

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Discussion Item 06

Title: Ordinance Adding Section 9.32.190 to the Sacramento City Code Relating to the Possession of Specified Items at Public Demonstrations and Declaring the Ordinance an Emergency Measure to Take Effect Immediately Upon Adoption

Location: Citywide

Recommendation: 1) Review an Ordinance adding section 9.32.190 to the Sacramento City Code, relating to the possession of specified items at public demonstrations; 2) declare the ordinance an emergency measure to take effect immediately upon adoption; and 3) pass a Motion forwarding the Ordinance to City Council for approval.

Contact: Dave Peletta, Deputy Chief of Police, Office of Operations, (916) 808-0800, Police Department

Presenter: Dave Peletta, Deputy Chief of Police, Office of Operations, (916) 808-0800, Police Department

Attachments:

- 1-Description/Analysis
- 2-Exhibit A
- 3-Ordinance

Description/Analysis

Issue Detail: The Sacramento City Code contains several chapters and sections designed to ensure a safe, peaceful environment for residents, businesses, customers and visitors. Sacramento City Code, Chapter 9.32 contains provisions governing public peace, morals and welfare.

It is imperative that individuals within the City of Sacramento be allowed to engage in expressive public conduct without suffering injury. Likewise, it is imperative that peace officers dedicated to protecting the rights of individuals to participate in expressive public conduct be able to engage in official duties without suffering injury.

Government entities may place reasonable time, place and manner restrictions on public conduct in order to address risks to public safety, while still enabling individuals to engage in expressive conduct.

In recent years, there have been numerous protests, demonstrations and rallies in cities throughout the country, including Sacramento, which have resulted in violence, destruction of property, and injuries to civilians and law enforcement. Specific to the City of Sacramento, individuals have used items such as bottles, rocks, bats, pepper spray, knives, and sticks, to cause injury and damage. Unfortunately, events in which protestors and counter-protestors utilize improvised weapons to harm one another are becoming commonplace, and they have been shown to occur at random and without forewarning. Therefore, as a matter of public safety, it is crucial that law enforcement be permitted to protect citizens attempting to engage in lawful, free speech.

The ability to place restrictions to regulate the possession of certain items at protests, demonstrations, rallies, and other similar public events permits law enforcement personnel to protect the safety of persons engaged in lawful, expressive conduct.

Policy Considerations: The City Council has a long-standing commitment of supporting the principles of free speech as well as policies that protect the health, safety, or welfare of the community.

Economic Impacts: None.

Environmental Considerations: Not applicable.

Sustainability: There are no sustainability considerations associated with this report.

Commission/Committee Action: The Ordinance was deemed an urgent matter by the City Manager and therefore, was not reviewed by the Law and Legislation Committee. Instead, it was to be presented to City Council at their January 22, 2019 meeting. On that date, the item was pulled, and staff was advised to take the Ordinance before the Law and Legislation Committee for review.

Rationale for Recommendation: There is a significant municipal interest in protecting citizens against violence and fostering the ability for individuals to engage in lawful, free speech. Therefore, municipalities are empowered to regulate certain conduct taking place in public fora, provided applicable regulations are narrowly tailored, and alternative methods for individuals to express beliefs and ideas remain available. Pursuant to the City's commitment to protecting its residents, visitors, and businesses, the proposed addition to the Sacramento City Code to restrict certain items at public demonstrations, rallies, protests, picket lines, or similar events, will help foster open expression and free speech by protecting against injuries to members of the public and law enforcement who are present at such events.

The proposed ordinance neither seeks to regulate spoken words nor patently expressive or communicative conduct. Rather, the proposed ordinance is designed exclusively to prohibit the possession of weapons and potential weapons. The prohibition of the specifically listed items under particularized circumstances, will not impact the ability of individuals to engage in expressive conduct, but rather create spaces for individuals to engage in lawful, expressive conduct without fear of, or incurring injuries.

Exhibit A to this report includes a list of violent protests that recently occurred across the nation, including in the City of Sacramento. The events listed in Exhibit A, as well as the weapons identified, exemplify the need for the proposed ordinance.

At present, the City does not have restrictions against certain items that can be brought to public demonstrations, rallies, protests, picket lines, or similar events and used as weapons.

However, recent events, both local and national, planned and unplanned, demonstrate the need to put provisions into place to maintain public health and safety while allowing the public to safely exercise their right to expression. Numerous cities, including but not limited to Los Angeles, Beverly Hills, and Laguna Beach have adopted similar laws.

Financial Considerations: There is no financial impact associated with implementing the proposed amendment. However, the City of Sacramento has incurred substantial costs when responding to recent protests – most notably the June 2016 Traditionalist Worker Party protest (estimated at \$68,000), and the first few weeks of protests related to the officer-involved

shooting involving Stephon Clark (estimated to exceed \$800,000)—all of which involved individuals using improvised weapons and damaging property.

Local Business Enterprise (LBE): Not applicable.

EXHIBIT A

DATE:	June 26, 2016
INCIDENT:	Traditionalist Worker Party Rally
LOCATION:	Sacramento, CA
ARRESTS:	Four individuals arrested
INJURIES:	10 civilians injured, including two with stab wounds
DAMAGE:	South side Capitol annex glass, smashed trash cans, broken glass
WEAPONS:	Sticks, knives, rocks, pepper spray, chains, flagpoles, and one loaded handgun
SUMMARY:	Traditionalist Worker Party, neo-Nazis, and skinheads clashed with counter-protesters at the California State Capitol. (Source: Sacramento Police Department and Open-Source.)
VIDEO URL:	https://www.kcra.com/article/video-protesters-clash-at-state-capitol/6269830
DATE:	January 20, 2017
INCIDENT:	Inauguration Day Protest
LOCATION:	Washington D.C.
WEAPONS:	Rocks, Bricks and Baseball Bats
SUMMARY:	Individuals smashed storefronts and bus-stops, struck vehicle windows, and projected rocks at police. Protesters also assaulted a driver and set fire to his vehicle. (Source: Open-source.)
VIDEO URL:	https://www.youtube.com/watch?v=kUyM8HSYYuM
DATE:	February 1, 2017
INCIDENT:	Yiannopoulos Protest
LOCATION:	Berkeley, CA (U.C. Berkeley)
WEAPONS:	Smoke bombs, Molotov cocktails, Commercial-grade fireworks, Bottles with biohazard, Pepper-spray, Rock, and Bicycle locks
SUMMARY:	Individuals threw rocks and set fires on the U.C. Berkeley campus leading to the cancellation of Yiannopoulos' presentation. (Source: Open-source.)
DATE:	March 4, 2017
INCIDENT:	Free Speech Protest
LOCATION:	Berkeley, CA (U.C. Berkeley)
DAMAGE:	Vandalism to store-fronts and vehicles; burning of signs
WEAPONS:	Baseball bats, Bricks, 2x4 boards, Daggers, Smoke-bombs, Signs, and Pepper-spray
SUMMARY:	Trump supporters marched and were met by a group of counter-protesters – fights and vandalism ensued. (Source: Open-source.)
DATE:	March 25, 2017
INCIDENT:	Make America Great Again March
LOCATION:	Sacramento, CA (McKinley Park)
DAMAGE:	Vandalism to vehicle tires by counter-protesters (two arrests for 594 PC)
WEAPONS:	Flags mounted on heavy sticks, Body armor, Shields, Helmets, Metal rods
SUMMARY:	A rally was held at a park, and counter-protesters punctured tires. (Source: Sacramento Police Department.)
DATE:	May 1, 2017
INCIDENT:	May Day Rally
LOCATION:	Portland, OR

EXHIBIT A

WEAPONS:	Molotov cocktails, Rocks, Ball-bearings, Fireworks, Smoke-bombs, Road flares, and Soda cans
SUMMARY:	A May Day march devolved into a riot with random acts of violence against police and emergency personnel, arson, and vandalism. (Source: Portland Police Department and open-source)
VIDEO URL:	https://www.youtube.com/watch?v=nszYFHBnk2Y
DATE:	August 12, 2017
INCIDENT:	Unite the Right Rally
LOCATION:	Charlottesville, VA
WEAPONS:	Firearms, Fireworks, Smoke-bombs, Flag poles, Body armor, Helmets, Aerosol cans, Bicycle locks, and Arson to flags
SUMMARY:	A rally with both alt-right and counter-protesters erupted into a riot resulting in multiple acts of violence and vandalism. (Source: Open-source)
DATE:	April 24, 2018
INCIDENT:	Stephon Clark Protest
LOCATION:	Sacramento, CA (District Attorney's Office)
ARRESTS:	1 Arrest
DAMAGE:	Vandalism to vehicle window with driver inside
WEAPON:	Stick
SUMMARY:	Sacramento Black Lives Matter protestors gathered in front of the Sacramento District Attorney's Office demanding that the DA bring charges against officers involved in the Stephon Clark shooting incident, where an individual attacked a vehicle with the driver still inside. (Source: Sacramento Police Department.)
DATE:	August 4, 2018
INCIDENT:	Patriot Prayer Rally
LOCATION:	Portland, OR
ARRESTS:	6 Arrests
DAMAGE:	Vandalism to vehicle window with driver inside
WEAPON:	Sticks, knives, fireworks, shields, helmets (other protected gear)
SUMMARY:	Alt-right group held a rally at Waterfront Park in Portland. Counter-protesters arrived in large numbers and clashed with police when they failed to disperse. (Source: Sacramento Police Department)

ORDINANCE NO. 2019-XXX

Adopted by the Sacramento City Council

XXXXX, 2019

AN ORDINANCE ADDING SECTION 9.32.190 TO THE SACRAMENTO CITY CODE, RELATING TO THE POSSESSION OF SPECIFIED ITEMS AT PUBLIC DEMONSTRATIONS AND DECLARING THE ORDINANCE AN EMERGENCY MEASURE TO TAKE EFFECT IMMEDIATELY UPON ADOPTION

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

The City Council of the City of Sacramento finds and declares as follows:

- A. It is imperative that individuals engaging in peaceful expressive public activity, and law enforcement personnel dedicated to protecting such activity, be allowed to do so without suffering injury.
- B. Numerous public protests, demonstrations, and rallies conducted throughout cities such as Charlottesville, Portland, St. Louis, as well as cities throughout California, such as Berkeley, Laguna Beach, and Sacramento have erupted in violence between demonstrators and counter-demonstrators, and violence against law enforcement personnel.
- C. Individuals, acting alone or in concert with others, have used improvised weapons to inflict injury on members of the public attending these events and law enforcement personnel responding to these events, thereby posing a real and serious threat to life and safety.
- D. Various items have been used as weapons to injure, harm, or incapacitate attendees and law enforcement officers, including wood and metal pipes, poles, bats, chains, projectiles (such as rocks, concrete, pellets and ball bearings), glass bottles and containers filled with flammable or noxious substances, and aerosol sprays deployed to cause flames or attack olfactory systems.
- E. Demonstrations, rallies, protests, and similar events may occur in the city without notice and without a permit. To be prepared for such events, the city must prohibit items that are often used as improvised weapons to protect the health, safety, and welfare of event participants, law enforcement personnel responsible for safeguarding participants' rights, and the public generally.

SECTION 2.

Section 9.32.190 is added to the Sacramento City Code to read as follows:

9.32.190 Prohibition on carrying or possessing specified items while attending or participating in any public demonstration.

A. No person shall carry or possess any of the following items or articles while attending or participating in any public demonstration, rally, protest, picket line, or similar event:

1. Any length of lumber, wood, or wood lath unless that object is 1/4-inch or less in thickness and 2 inches or less in width, or if not generally rectangular in shape, such object shall not exceed 3/4-inch in its thickest dimension. Both ends of the lumber, wood, or wood lath must be blunt.
2. Any length of metal or plastic pipe, whether hollow or solid, except that hollow plastic piping not exceeding 3/4-inch in its thickest dimension and not exceeding 1/8-inch in wall thickness, and not filled with any material (liquid, gas, or solid) may be used solely to support a sign, banner, placard, puppet, or other similar expressive display. Both ends of any plastic pipe permissible under this subsection must be blunt.
3. Baseball or softball bats, regardless of composition or size, except when made of cloth, cardboard, soft plastic, foam, or paper.
4. Any aerosol spray, tear gas, mace, pepper spray, or bear repellent.
5. Any projectile launcher or other device, such as a catapult or wrist rocket, that is commonly used for the purpose of launching, hurling, or throwing any object, liquid, material, or other substance, whether through force of air pressure, spring action, or any other mechanism.
6. Weapons such as firearms, knives, swords, sabers, or other bladed devices, axes, hatchets, ice picks, razor blades, or martial arts weapons of any kind, box cutters, pellet or BB guns, conducted electrical weapons, including, but not limited to, Tasers or stun guns, or any chain greater than 20 inches in length or greater than 1/4-inch in diameter. This subsection also includes toy or replica firearms unless such toy or replica is florescent colored or transparent.
7. Balloons, bottles, or any other container such as water guns or water cannons, filled with any flammable, biohazard, or other noxious matter that is injurious, nauseous, sickening, or irritating to any of the senses.
8. Glass bottles, whether empty or filled.
9. Open flame torches, lanterns, or other devices that utilize combustible materials such as gasoline, kerosene, propane, or other fuel sources.
10. Shields made of any rigid material such as metal, wood, hard plastic, or any combination thereof.
11. Bricks, rocks, pieces of asphalt, concrete, pellets, or ball bearings.

B. When feasible, a warning shall be issued before enforcement of the provisions of this section. A warning is sufficient if provided orally, by posted signs, or by amplified announcement.

C. Authorized peace officers, and employees, agents, or representatives of any local, state, or federal government agency are exempt from the provisions of this section when engaged in official government business.

D. Nothing in this section prohibits an individual from carrying a cane or using a walker or other device necessary for providing mobility so that the person may participate in a public demonstration, rally, protest, picket line, or similar event. Further, nothing in this section shall prohibit the city from imposing specific conditions on a permit issued pursuant to section 12.48.110.

SECTION 3.

If any provision of this Ordinance or its application to any person or circumstance is held invalid or ineffective by any court of competent jurisdiction, or by reason of any preemptive legislation, that invalidity shall not affect the validity of the remaining provisions of this Ordinance. The City Council declares that it would have passed this Ordinance and each section, subsection, subdivision, sentence, clause, and phrase, irrespective of the fact that any one or more sections, subdivisions, sentences, clauses, phrases, or words be declared invalid.

SECTION 4.

This Ordinance is declared to be an emergency ordinance to take effect immediately upon adoption by the City Council pursuant to charter section 32(g)(2). The facts constituting the emergency are as set forth in section 1 of this Ordinance, all of which are incorporated into this section as facts supporting the emergency nature of this Ordinance.