

Agenda Report

November 21, 2022

TO: Honorable Mayor and City Council

FROM: Police Department

SUBJECT: AMENDMENTS TO THE FISCAL YEAR 2023 GENERAL FEE SCHEDULE TO ALLOW FOR COST RECOVERY FOR ADMINISTERING THE CARRYING CONCEALED WEAPONS (CCW) PERMIT PROCESS

RECOMMENDATION:

It is recommended that the City Council:

1. Find the proposed action is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15061(b)(3), the General Rule that CEQA only applies to projects which have the potential for causing a significant effect on the environment; and
2. Adopt a resolution amending the Fiscal Year (FY) 2023 General Fee Schedule to allow cost recovery for administering the carrying concealed weapons (CCW) permit process.

BACKGROUND:

The Fiscal Year (FY) 2023 General Fee Schedule was adopted by the City Council on June 13, 2022. While the General Fee Schedule is typically reviewed and updated annually, revisions are made periodically throughout the year as needed. The Police Department is proposing four new fees and revising two existing fees to support its implementation of new Carrying Concealed Weapon (CCW) procedures.

In June 2022, the U.S. Supreme Court issued its decision in *New York State Rifle & Pistol Assn. v. Bruen*, 142 S.Ct. 2111 (2022). In that case, the court held that New York's "proper cause" requirement for a CCW permit violates the Second and Fourteenth Amendments of the U.S. Constitution. California has a similar standard to New York's "proper cause" requirement, as part of its CCW process. One day after the *Bruen* decision, the California Attorney General issued a memo to law enforcement officials (Attachment B to this Agenda Report) stating, among other things, that

California's "good cause" requirement for a CCW permit is unconstitutional and unenforceable, and that agencies should no longer require proof of good cause to issue a CCW permit. However, the Attorney General's memo also noted that the *Bruen* decision "does not affect other statutory requirements governing public-carry licenses," and, as such, "issuing authorities must still require proof that (1) 'the applicant is of good moral character,' (2) the applicant is a resident of the relevant county or city (or has their principal place of business or employment in that county or city), and (3) the applicant has completed a course of training. Issuing authorities may also still require psychological testing." (citations)

Upon this guidance from the Attorney General, PPD staff has received an influx of CCW applications, and seeks to amend the General Fee Schedule to recover allowable costs, as set forth below.

New Fees

- **Live Scan Processing Fee – Initial Application** (Proposed Fee #601)

The Live Scan Processing Fee for the Initial Application for a Concealed Weapons Permit (CCW) is being added to charge the appropriate Department of Justice fees for fingerprinting services on an initial concealed weapons permit. This fee is immediately forwarded to the Department of Justice. Fees are set by Penal Code Section 26190(a)(1).

Proposed Fee: \$93

- **Live Scan Processing Fee – Renewal Application** (Proposed Fee #602)

The Live Scan Processing Fee for the Renewal Application for a Concealed Weapons Permit (CCW) is being added to charge the appropriate Department of Justice Fees for fingerprinting services. This fee is immediately forwarded to the Department of Justice. Fees are set by Penal Code Section 26190(a)(1).

Proposed Fee: \$52

- **Psychological Exam Fee – Initial Application** (Proposed Fee #603)

The Psychological Exam Fee is a pass thru fee (with a maximum \$150 fee) to the psychologist that performs the exam. The City must use the same licensed Psychologist that is contracted for the psychological testing of its own departmental employees. The amount of the fee that can be passed through to applicants is capped by Penal Code Section 26190(f)(1) & (f)(2).

Proposed Fee: \$150

- **Amendments to Application Fee – Initial and Renewal Application**
(Proposed Fee #604)

The Amendments to Application Fee are set by Penal Code Section 26215. Amendments allow a CCW holder to add or delete a particular firearm on their CCW application or allows the City to change any restrictions or conditions placed on the CCW license.

Proposed Fee \$10

Revised Fees

The Pasadena Police Department is requesting name changes as well as an update to the fee to match cost recovery.

- **Background Check – Initial Application** (Proposed Fee #599)
The background check for applicants is expected to take a minimum 3 hours of an officer's time. The background check is required to determine that the CCW applicant is of good moral character, a resident of Pasadena, and has completed the required training to possess a CCW. These requirements are set forth by Penal Code Section 26155. Penal Code Section 26190, subdivisions (a)(2), (b)(1) and (b)(2) allow for a police department to be reimbursed for processing costs.

Revised Fee: \$337.14

- **Background Check – Renewal Application** (Proposed Fee #600)
The background check for renewal applicants is expected to take a minimum 3 hours of an officer's time. The background check is required to determine that the CCW applicant is still of good moral character, continues to be a resident of Pasadena, and has completed the required training to possess a CCW. These requirements are set forth by Penal Code Section 26155. Penal Code Section 26190, subdivisions (a)(2), (b)(1) and (b)(2) allow for a police department be reimbursed for processing costs.

Revised Fee: \$337.14

Legal Discussion

This legal discussion responds to several inquiries from members of the Public Safety Committee at its October 19, 2022 meeting, requesting a response from the City Attorney's Office. Even if the Council may have additional questions on PPD's

approach to processing CCW applications, staff requests the Council adopt the new and amended fees as requested, to allow staff to recover its costs of service – as the current fees need to be updated to reflect costs.

As a matter of background, Penal Code Section 26155 provides that a police chief may issue a CCW license if the applicant satisfies four criteria: (a) the applicant is of good moral character; (b) the applicant shows good cause for issuing the license; (c) the applicant is a resident of the city, or has a principal place of employment or business in the city and spends substantial time in that place of employment or business; and (d) the applicant has completed training described in Penal Code Section 26165. The California Attorney General has determined the second criteria (“good cause”) is no longer enforceable, as a result of the *Bruen* decision on an analogous New York law.

One of the inquiries from Public Safety Committee members was what constitutes “good moral character” to receive a CCW. The Penal Code does not expressly define “good moral character” sufficient to receive a CCW. However, the Attorney General’s memo noted that *Bruen* “does not eliminate the duty or authority of local officials to protect the communities that they know best by ensuring that licenses are only issued to individuals who – by virtue of their character and temperament – can be trusted to abide in by the law and otherwise ensure the safety of themselves and others.” The memo also notes that “an applicant’s reasons for seeking a [CCW] may alert authorities to a need for psychological testing,” which the Attorney General noted remains permissible under the Penal Code.

Another inquiry was who makes the finding of “good moral character.” The Chief of Police would make that finding, pursuant to Penal Code section 26155. PPD does not presently intend to refer all applicants to a psychological exam, but only where specific and articulable facts support a referral. Additionally, after applicants receive a CCW, when they apply for renewal, Penal Code Section 26190(f)(2) prevents agencies from requiring psychological testing unless “there is compelling evidence to indicate that a test is necessary.” Psychologists do not provide PPD with details about a CCW applicant’s psychological exam due to medical privacy laws, but PPD would receive an indication from a psychologist as to whether the applicant is suitable or not suitable for a CCW. In the end, however, if an applicant were denied a CCW for lacking in “good moral character,” that decision would be made by the Chief, and on information provided to the Chief through the application process.

Another question related to fees that are assessed through the CCW process, and whether PPD can impose a fee to be passed through to, for example, a local non-profit organization. That approach does not appear to be permissible. Penal Code Section 26190(b)(1) limits CCW fees to “actual costs for processing the application.” As such, it appears the City cannot impose such an additional fee. For background, the City of San Jose imposed such a pass-through fee, which would be imposed on any residents

owning a firearm – not related to those seeking CCW permit. In January 2022, the San Jose City Council adopted a Gun Harm Reduction Ordinance, requiring residents who own firearms to (a) pay an annual \$25 per household fee; and (b) purchase firearm insurance to cover losses or damages stemming from negligence. The \$25 fee would be passed through to a non-profit aimed at preventing gun violence. San Jose was sued as a result of this ordinance, and the city has postponed implementing the ordinance due to such litigation.

Finally, the City Attorney's Office continues to monitor legal developments that may inform PPD's implementation of its processing of CCW applications.

- **SB 918 (Portantino) – Failed to Pass Assembly.** Two months following the Supreme Court's decision in *Bruen*, SB 918, which sought to clarify California's rules for CCW permits, failed to pass in the Assembly – so the State's current CCW rules remain applicable.
- **November 2022 New York Federal Court Decision on “Good Moral Character.”** In July 2022, one week after the *Bruen* decision, New York State passed a revised process for issuing CCW permits, and six individuals brought suit in federal court. On November 7, 2022, in 184-page ruling, a federal district judge in New York issued a preliminary injunction prohibiting enforcement of certain aspects of New York's CCW law, including, but not limited to, requirements that applicants demonstrate good moral character, finding the term, as used in New York law, to be impermissibly “subjective and vague.” *Antonyuk v. Hochul*, ___ F.Supp.3d ___, 2022 WL 16744700 (N.D. N.Y. 2022). This case and others, as relevant, will be monitored to the extent they inform Pasadena's approach to its CCW policy. At present, though, the decision does not affect how the California Penal Code is interpreted, so Pasadena must continue to enforce the CCW process, as set forth in the Penal Code, with the exception of the “good cause” requirement. *Lockyer v. City & County of San Francisco*, 33 Cal.4th 1055, 1082 (2004) (“a local public official, charged with the ministerial duty of enforcing a statute, generally does not have the authority, in the absence of a judicial determination of unconstitutionality, to refuse to enforce the statute on the basis of the official's view that it is unconstitutional”).

COUNCIL POLICY CONSIDERATION:

The proposed action is consistent with the City Council's Strategic Plan Goal of maintaining fiscal responsibility and stability through the periodic review and update of the General Fee Schedule and by ensuring that, where appropriate, the City is reimbursed for the cost of providing selected services.


ENVIRONMENTAL ANALYSIS:

The proposed purchase order contract has been determined to be exempt from the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines Section 15061(b)(3), the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The proposed action is the modification of a tax or fee and will not result in any new development or physical changes.

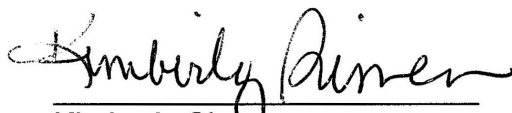
FISCAL IMPACT:

Upon adoption of the resolution, the amendments to the General Fee Schedule are expected to increase the revenues in the General Fund for FY 2023 by approximately \$110,000. The Department anticipates reviewing and potentially issuing 200 CCW permits in the current fiscal year. These revenue projections have not been factored into the General Fund Five-Year Plan or the Fiscal Year 2023 Operating Budget.

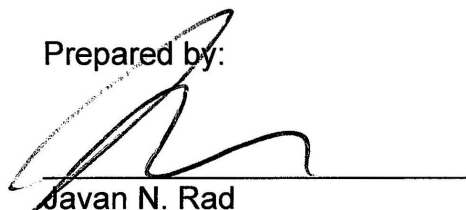
Respectfully submitted,


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Attachments: (2)

- 1) Attachment A – Resolution Amending the Fiscal Year 2023 General Fee Schedule
- 2) Attachment B – Legal Alert from California Department of Justice, Office of the Attorney General, U.S. Supreme Court's Decision in *New York State Rifle & Pistol Association v. Bruen*, No. 20-843, June 24, 2022