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Title: CONSIDERATION OF RESOLUTION NO. 19-163 FOR IMPOSITION OF NEW AND ADDITIONAL REGULATIONS AND RESTRICTIONS ON THE SALE AND POSSESSION OF FIREARMS IN THE CITY OF CARSON (CITY COUNCIL)

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Attachments: 1. Resolution No. 19-163

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Report to Mayor and City Council

Tuesday, September 17, 2019

New Business Discussion

SUBJECT:

CONSIDERATION OF RESOLUTION NO. 19-163 FOR IMPOSITION OF NEW AND ADDITIONAL REGULATIONS AND RESTRICTIONS ON THE SALE AND POSSESSION OF FIREARMS IN THE CITY OF CARSON (CITY COUNCIL)

I. SUMMARY

This item is on the agenda at the request of Mayor Robles. In light of the mass shooting and gun violence epidemic currently afflicting the nation, it is incumbent upon the Council to consider ways in which the City can strengthen its gun regulations in order to protect the public safety of the City’s residents and guests.

One potential manner of doing so is to provide that new gun dealers may only situate in appropriate locations that are not within a reasonable distance from specified sensitive uses such as schools, churches, day-care centers, recreation facilities, residential uses/zones, bars, liquor stores and other gun dealers. However, other conditions or regulatory requirements may also be imposed to help make the City’s gun control regulations more stringent and comprehensive.

The purpose of this item is for the City Council to provide direction to staff to

consider ways in which the City can strengthen its gun regulations so as to protect its residents to the maximum extent possible while remaining in compliance with applicable federal and state laws.

The proposed resolution would direct staff to move expeditiously to implement regulations: (1) confining gun dealers to commercial zones, and making such uses subject to issuance of a conditional use permit; (2) imposing the aforementioned distance restrictions from sensitive uses, and providing for reasonable amortization of nonconforming uses created thereby; (3) prohibiting gun sales and possession on City property; and (4) restricting sales of specified equipment that is auxiliary to use of firearms, if staff research reveals there is a police power justification therefor.

Staff would be directed to adhere to all public notice and hearing requirements in connection with imposing such regulations, including providing for Planning Commission consideration of same if required.

II. RECOMMENDATION

WAIVE further reading and ADOPT Resolution No. 19-163 “A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, PROVIDING DIRECTION TO CITY STAFF AND THE CITY ATTORNEY’S OFFICE TO EXPEDITIOUSLY MOVE TO IMPLEMENT NEW OR ADDITIONAL REGULATIONS TO SEVERELY RESTRICT THE POSSESSION AND SALE OF FIREARMS IN THE CITY OF CARSON TO PROTECT PUBLIC SAFETY”

III. ALTERNATIVES

TAKE another action the City Council deems appropriate.

IV. BACKGROUND

Gun Violence Epidemic in the United States

Tens of thousands of people die each year from gun violence in the United States. Specifically, the CDC reports that there are an average of 36,383 gun deaths and 100,120 gun injuries annually in the United States. The per capita rates of gun death and violence in the United States are among the highest in the world, particularly when compared with other high-income nations.

There are 120.5 guns per 100 residents in the United States, an average of more than one gun per person. This is by far the highest rate of gun ownership in the world.

The gun violence epidemic in the United States has been ongoing for many years. Over 25,000 people have died from gun-related deaths each year since at least 1999. However, the number of gun deaths has steadily increased during that time

frame. The year 2017 (the most recent full calendar year for which comprehensive data has been reported) saw the highest number of gun deaths since at least 1979, which was the year firearms deaths started to be coded in mortality data.

Most alarmingly, however, the number of mass shootings has been on the rise. There have been at least 19 deadly mass shootings (defined as incidents where at least 4 people, not including the suspect, were killed in a shooting in one day) in the U.S. in just the first eight months of 2019.

The degree of fear and apprehension caused by these events cannot be underestimated, nor can it be disregarded as irrational. Mass shootings have occurred in a myriad of public places, from schools to churches to theatres. The threat is now sufficiently real that schools, such as those within the LAUSD, are now conducting mandatory drills for possible active-shooter situations.

Some recent examples of the tragic results of this epidemic are as follows:

- On November 7, 2018, a gunman opened fire in a bar full of college students in Thousand Oaks, California, resulting in the deaths of 13 people;
- On May 31, 2019, a gunman killed 12 people and injured 4 others at a city public works building in Virginia Beach, Virginia;
- On July 28, 2019, sixteen people were shot, including a gunman and two children, at the Gilroy Garlic Festival in Gilroy, California;
- On August 3, 2019, in a hispanophobic massacre, 22 people were killed and 24 were injured at a Walmart in El Paso, Texas; and
- On August 4, 2019, a gunman killed 10 people and injured 27 outside of a bar in Dayton, Ohio.

Less than two years ago, on October 1, 2017, the nation endured the worst mass shooting in U.S. history when a lone gunman massacred 59 people at the Route 91 Harvest music festival in Las Vegas, Nevada.

Existing Municipal Code Provisions and Permittees

The City already has a few measures in place which: (1) prohibit the sale or possession of any assault weapon, subject to certain very limited exceptions (CMC §4310); and (2) require a police permit, thumb-printing, and compliance with strict reporting requirements and other regulations prior to the sale or purchase of ammunition (CMC §§4311-4312).

The City's Municipal Code also prohibits carrying loaded weapons, discharging firearms (with limited exceptions), carrying concealed weapons without a Sheriff's permit, and selling or giving weapons or ammunition to minors. (CMC §§4300-4309).

"Gun dealers," defined as persons who sell or transfer any firearm capable of being

concealed on the person, are required to obtain a separate regulatory permit from the City in addition to a standard City business license, and the permit is subject to the following conditions, among others (CMC §§6303, 63129.5):

- The business shall occur only in the building designated in the license;
- The license shall be displayed conspicuously on the premises;
- No pistol or revolver shall be delivered within 15 days of the application for purchase, and when delivered shall be unloaded and securely wrapped;
- No pistol or revolver shall be delivered unless the purchaser either is personally known to the seller or presents clear proof of identity to the seller; and
- No pistol or revolver, imitation pistol or revolver, or placard advertising the sale or transfer thereof, may be displayed in any part of the premises where it can be seen from the outside.

Cities and counties have been charged with executing the state's regulatory program for licensing of gun dealers. (See Cal. Pen. Code §26705 *et seq.*). Accordingly, the City must administer the state's program consistent with its provisions with respect to licensure of gun dealers.

In addition to the required City business license and regulatory permit, all gun dealers in the City must have: (1) a federal firearms license from the ATF; (2) a certificate of eligibility from the State DOJ, demonstrating that the DOJ has checked its records and determined the applicant is not prohibited from acquiring or possessing firearms; and (3) a state BOE seller's permit.

There are eight existing gun dealers in the City that have been duly licensed and permitted pursuant to the foregoing regulatory program. By adopting the proposed resolution containing the one-mile separation requirement for gun sales from schools, churches, day-care centers, recreation facilities, bars, liquor stores, and residential uses, the Council would also be directing staff to provide for reasonable amortization of these eight dealers as nonconforming uses to the extent they are not in compliance with these restrictions.

City's Authority to Regulate Guns Under State Law

The City has the police power to suppress, prohibit, or regulate all things that are injurious to the public welfare. (Cal. Const. Art. XI, §7). Firearms and other deadly weapons are a proper item for these regulations.

However, state law currently preempts cities from imposing certain types of gun regulations, meaning that such regulations, if adopted by the City, would be subject to legal challenge by gun proponents as invalid and unenforceable, whereas other regulations are permissible. State law indicates the City is likely preempted from doing the following, without limitation:

- Regulating the registration or licensing of commercially-manufactured firearms

encompassed by the Penal Code (Gov't Code §53071);

- This includes imposing regulations that would conflict or interfere with the state's licensing program, although it does not generally include imposing additional or supplementary licensing requirements that do not conflict with such program (*see Suter, infra*);
- Prohibiting the sale of handguns, including "Saturday Night Specials;"
 - The permissible and impermissible types of handguns are covered by the State's Unsafe Handgun Act, enacted in 1999 (now codified at Penal Code §§32000-32030);
- Prohibiting the sale of ammunition (*See 77 Ops.Cal.Atty.Gen.147 (1994)*); and
- Prohibiting the possession of handguns by citizens or legal residents over 18 years of age in private homes, in private places of business, or on private property owned or lawfully possessed by such person, or requiring a permit or license for such possession. (Penal Code §25605).

Although the foregoing is not an exhaustive list of the types of local regulations that may be preempted by state law, it is clear that state law does not completely preempt local regulation the field of gun control. For example, the City can likely prohibit sales and possession of guns and sales of ammunition on City property and in City parks and recreation areas. (*See Great Western Shows, Inc. v. County of Los Angeles* (2002) 44 P.3d 120; *Nordyke v. King* (2002) 44 P.3d 133; *Calguns Foundation, Inc. v. County of San Mateo* (2013) 218 Cal.App.4th 661). The City can also likely prohibit or restrict sales of certain types of equipment that are related or auxiliary to use of firearms, provided the City has a rational basis for doing so pursuant to its police power.

The city also retains its normal land use authority with respect to gun dealers, meaning the City can restrict gun dealers to commercial areas and require land use permits for such uses (including imposing normal land use permitting requirements such as locational and architectural compatibility). (*Suter v. City of Lafayette* (1997) 57 Cal.App.4th 1109, 1122, 1132.)

Accordingly, the City Council should consider land use restrictions that would preclude new gun dealers from situating near sensitive uses as one of the potential ways of strengthening the City's regulations regarding the sale of guns in the City without running afoul of state law preemption.

If the City Council determines that it would like to have authority to adopt regulations that would currently be preempted by state law, it should consider: (1) adopting a separate resolution demanding the state legislature to adopt gun reform legislation on the topic and having it transmitted to state legislators; and/or (2) tasking City agents with advocating for such reform in Sacramento.

V. FISCAL IMPACT

None.

VI. EXHIBITS

(1) Resolution No. 19-163. (Pgs. 7-11)

Prepared by: City Attorney's Office