



DATE: September 20, 2022

TO: Mayor and City Council

FROM: Assistant City Manager/Development Services Director
Chief of Police

SUBJECT: Firearms Regulations: Review and Discuss Regulations Related to Firearms

RECOMMENDATION

That the Council reviews the report and provides feedback to staff regarding the proposed approach to the regulation of firearms in the City of Hayward.

SUMMARY

Mayor Halliday and Councilmembers Lamnin and Andrews prepared a formal Council referral based on a growing concern both here in Hayward and throughout the nation regarding the impact of gun violence and accidental misuse of guns on the safety of the community. In response, staff provided a background memo regarding firearms regulations and the current land use process for firearm sales to the Council and the Council voted 7-0 to hold a future work session to provide staff feedback on this topic and guide future regulations around firearms in the community. Based on a review of the City's current regulations, ongoing efforts at the state and national level, and legal limitations on what the City can do, staff has included recommendations for the Council's consideration and discussion.

BACKGROUND

In July 2021, staff received a formal Council referral from Mayor Halliday and Councilmembers Lamnin and Andrews based on a growing concern both here in Hayward and throughout the nation regarding the impact of gun violence and accidental misuse of guns on the safety of the community. In September 2021, staff provided a background memo to the Council regarding the history of firearm regulations, the status of existing regulations, existing firearm sales outlets, and recommended next steps. The Council voted 7-0 requesting to hold a future work session to provide staff feedback on this topic and guide future regulations around firearms in the community. The primary topics of interest to the Council were regarding recommendations that came from the Giffords Law Center to Prevent Gun Violence (Law Center), an organization that provides legal and technical assistance in support of gun violence prevention, and additional information about a gun buy-back program.

DISCUSSION

The Law Center provides legal and technical assistance in support of gun violence prevention to federal, state, and local legislators nationwide. In an email sent to Council, the Law Center included four recommendations to strengthen Hayward's regulations regarding firearms including: (1) requiring gun sales to be videotaped; (2) prohibiting gun dealers from operating near sensitive locations such as schools, churches, and playgrounds; (3) prohibiting possession of firearms on public property; and (4) requiring safe storage of guns in the home. In addition, as part of the Council's request to hold a work session on this topic, there was also interest in discussing a gun buy-back program.

1. Requiring Gun Sales Be Videotaped

The Law Center's recommendation for requiring gun sales to be videotaped stems from a lack of regulation at the federal or state level to do so. The Law Center believes that video recordings have the potential to provide valuable evidence to law enforcement officers who are enforcing gun laws and prosecuting gun crimes. According to the Law Center, there are at least seven communities in California that currently require this, including Cities of Campbell, El Cerrito, Emeryville, Pleasant Hill, and San Carlos, as well as Santa Cruz County and the City and County of San Francisco.

Firearm sales in Hayward are regulated under Chapter 6, Article 11 of the Hayward Municipal Code, which requires any person, partnership, cooperative, corporation, firm, or association that engages in the business of operating or managing any business which sells, transfer, leases, or offers or advertises for sale, transfer, or lease, any firearm and/or ammunition to obtain a firearms dealer permit from the Chief of Police of the Hayward Police Department and be subject to a variety of requirements and conditions. Separately, Chapter 10, Article 1 of the Hayward Municipal Code, Zoning Ordinance, regulates land use to ensure an appropriate mix of land uses in an orderly manner. Specifically, Section 10-1.145 identifies the Zoning Ordinance as Exclusionary, which means when a use is not specifically listed in the sections devoted to "Uses Permitted," it shall be assumed that such uses are prohibited unless it is determined by the Planning Director, or on appeal to the Planning Commission, that the use is similar to and not more objectionable or intensive than the uses listed. Firearm sales are not listed under "Uses Permitted" within any Zoning District. Staff has historically required businesses whose primary use is the sale of firearms to obtain a Conditional Use Permit, in addition to the firearms dealers permit. Additionally, for those businesses for which firearm sales is ancillary (i.e., the area dedicated to such use is less than 10% of the floor area), such as sporting goods stores, staff requires they obtain a firearms dealers permit.

Staff Recommendation: If Council agrees to requiring gun sales to be videotaped, staff recommends amending Chapter 6, Article 11 related to obtaining a firearms dealer permit to explicitly include such a provision under subsection 6-11.05, Conditions of Approval. Given that a firearms dealers permit is required for every operation that wishes to sell guns, whether ancillary or primary, this provision will more universally be applicable. The Supreme Court has recognized a tradition of longstanding laws imposing conditions or qualifications on the commercial sale of firearms as presumptively valid under the Second Amendment.

2. Prohibiting Gun Dealers from Operating near Sensitive Locations

The Law Center also recommends including a provision that prohibits gun sales near sensitive locations, including schools, churches and playgrounds. According to the Law Center, guns are the second leading cause of death for children under 18 and three million children are directly exposed to gun violence each year, some resulting in death injury and lasting trauma. By prohibiting gun dealers from operating near these uses where children tend to be present, children's exposure to guns is minimized and left at the discretion of parents.

As mentioned previously, there are only two operations in the City that have a valid firearms dealers permit, both of which include gun sales that are ancillary to their primary use. These include Security Six at the corner of C Street and Mission Boulevard whose primary operation is to conduct security training classes and Big 5 Sporting Goods Store on Foothill Boulevard just north of A Street whose primary function is to sell sporting goods of all types. Big 5 Sporting Goods store is primarily a retail operation specializing in sporting goods for the entire family, including equipment and clothing for soccer, baseball, fishing, camping, etc. There are no schools or playgrounds within 1000 feet of that location. While the Security Six operation is within 300 feet of Giuliani Plaza where there is a playground, the operation is primarily a facility for security training and there is no indication that gun sales occur there.

Staff Recommendation: If the Council would like to add a provision prohibiting gun sales near sensitive locations, staff recommends amending Chapter 6, Article 11 (firearms sales permit) to explicitly establish location criteria for firearms dealers under subsection 6-11.03 Application Form; Fee by prohibiting these uses within ½ mile of any school or playground. This provision will not affect existing operators, since gun sales are not those businesses' primary use and their permits were approved prior to any such change. The new provision would be applicable to any operator moving forward. As above, the Supreme Court has recognized a tradition of longstanding laws imposing conditions or qualifications on the commercial sale of firearms as presumptively valid under the Second Amendment.

3. Prohibiting Possession of Firearms on Public Property

The Law Center also recommends prohibiting the possession of firearms on public property as that helps to keep guns out of spaces where freedom of expression and assembly is particularly important, like legislative buildings; where children frequent, like parks; and where disagreements are common, like courthouses. According to the Law Center, there are 143 jurisdictions in California that currently regulate or prohibit the possession of firearms and/or ammunition on certain types of public property, such as in parks, recreation areas, and municipal buildings.

While the City of Hayward currently has regulations related to discharging of weapons within the City limits, there is no specific language in the Municipal Code that prohibits possession of these weapons on City property. In checking with the Hayward Area Recreation and Park District, their District Handbook does include provisions and specifically states "No person other than a law enforcement officer in the scope of duty shall use, carry, possess, or discharge a firearm on District property. No person shall use, carry, or possess explosives or dangerous

weapons on District Property, including but not limited to hatchets, axes, machetes, bows, crossbows, spears, air or gas weapons, or any other weapon potentially dangerous to human or wildlife safety and well-being. No person shall cause a bullet or other dangerous projectile to pass through or enter into District Property.”

Staff Recommendation: If prohibiting the possession of firearms on public property is of interest to the Council, staff recommends amending Chapter 3 of the Municipal Code, Public Safety, either under Article 3 or 4 to specifically regulate the possession of firearms on City property. Given recent Supreme Court decisions, it is critical that whatever regulations the City establishes related to guns, “the government must demonstrate that the regulation is consistent with the nation’s historic tradition of firearms regulations.” The relevant legal analysis is based on the government identifying a well-established and representative historical *analogue* for the proposed regulation. The Supreme Court’s recent decisions recognize that there is a longstanding tradition of laws prohibiting carrying of firearms in sensitive places such as schools and various government buildings such as polling places, courthouses, and legislative assemblies.

4. Requiring Safe Storage of Guns in the Home

The Law Center recommends additional regulations related to the safe storage of guns in homes to help prevent accidental shootings, suicides, and firearms theft. According to the center, these additional preventions, coined child access prevention (CAP) laws, are an effective tool for preventing such tragedies.

A CAP law already exists under state law. California Penal Code Section 25100¹ punishes “criminal storage of a firearm.” A person has committed criminal storage of a firearm when: (1) they keep a firearm within their home or other premises under their control, (2) they know or reasonably should know that a child or person legally prohibited from possessing a firearm is likely to gain access without permission from the owner of the firearm, and (3) the child or person legally prohibited from possessing a firearm obtains possession of the firearm and causes death or great bodily injury with it. Depending on the degree, violations of California Penal Code Section 25100 can be a felony or misdemeanor.

Staff Recommendation: Staff recommends that the City not adopt any local provisions that address this topic as it is already addressed by state law and would be unnecessarily duplicative. Any locally adopted regulations that are substantively different or stricter than state law would raise the issue of validity under the Second Amendment. For example, the Supreme Court found unconstitutional a law that required a gun owner to render a firearm inoperable while being stored in the home because the law made it impossible for residents to use guns for the “core lawful purpose of self-defense.”² However, staff has included an

¹ https://california.public.law/codes/ca_penal_code_section_25100

² <https://www.supremecourt.gov/opinions/07pdf/07-290.pdf>

attachment to this report that includes a number of links to existing red flag laws already on the books as well as efforts underway at both the state and federal level that may better address the concerns.

5. Gun Buy-Back Programs

When gun buy-back programs were originally discussed as part of the referral, there was interest on the part of Council to discuss such a program. The City has implemented gun buy-back events in the past as they used to hold an annual event at the Business Costco on A Street. The Police Department's experience was that people brought guns that were not consistent with those encountered in the field, many of them did not function properly, and the guns collected were all legally owned, creating a significant expense without actually creating the desired impact. Despite this, proponents of the program argue that it provides community members with a safe disposal option for unwanted guns. The reality is that the Police Department will happily accept guns for destruction at the Hayward Police Department without a program in place, as they do now.

Staff Recommendation: Staff does not recommend creating a formal gun buy-back program³ or holding events similar to what was done historically given concerns with program effectiveness and insufficient staff capacity to facilitate them as they can be labor intensive and costly.

ECONOMIC AND FISCAL IMPACT

There is no economic or fiscal impact stemming from this work session discussion. However, depending on the direction from Council, there may be an impact stemming from any new regulations proposed/adopted, but that will be analyzed at that time of adoption or formal approval.

STRATEGIC ROADMAP

This agenda item supports the Strategic Priority of Support Quality of Life. This item is not specifically related to a project identified in the adopted Strategic Roadmap; however, staff is bringing forth this new item at the request of Council via a Council referral to have a discussion around firearms. Any direction from Council to prioritize any recommendations for follow-up on this item will need to be evaluated against current priorities and workload. It would be staff's recommendation that any follow-up on this be added to a future Strategic Roadmap and weighed against other current priorities and staff resources.

PUBLIC CONTACT

There was no public notification required in advance of this work session discussion. However, staff did reach out to representatives from the Law Center inviting them to participate in this discussion.

³ <https://www.cnn.com/2022/04/16/us/chicago-gun-buybacks/index.html>

NEXT STEPS

Depending on the discussion and/or direction provided by Council to staff, if there is direction to amend various sections of the Hayward Municipal Code to add additional provisions regarding firearm sales and possession of firearms, staff recommends that this project be added to the next Strategic Roadmap under the priority Support Quality of Life and be tackled as a year one project beginning in FY24. Alternatively, if this is something the Council wants to prioritize now, there are other existing priority projects from the adopted Strategic Roadmap that will need to be postponed including the Sidewalk Vendor Ordinance and/or updates to the Alcohol Regulations in order to allocate resources to this effort.

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