



DATE: September 21, 2021

TO: Mayor and City Council

FROM: City Manager

SUBJECT: Staff Analysis Memo - Firearm Sales Regulations Referral

A formal Council referral was received from Mayor Halliday and Councilmembers Lamnin and Andrews in August 2021 based on a growing concern in the City of Hayward (City) and throughout the nation regarding the impact of gun violence and accidental misuse of guns on the safety of the community. The referral requests that the Council evaluate the adequacy of current gun regulations in Hayward and provide direction to staff on next steps for improving those regulations.

Background

Ordinance 96-18, adopted by the Hayward City Council on 10/1/1996, established uniform regulations applicable to all firearms dealers in the City. The regulations were created with the intent of eliminating the sales of firearms in residential neighborhoods, improving overall gun safety, and reducing the potential for theft of guns by requiring strict measures. The regulations also improved law enforcement's ability to monitor the sale of guns by licensed dealers to ensure they are not being sold to minors or to people not otherwise eligible by law to purchase firearms. At that time, there were nine federally licensed firearm dealers in the City of Hayward.

Current Regulations

Firearm sales are regulated under [Chapter 6, Article 11](#) of the Hayward Municipal Code. This section requires any person, partnership, cooperative, corporation, firm, or association that operates or manages any business which sells, transfers, leases, offers or advertises for sale, transfer, or lease of any firearm and/or ammunition to obtain a firearms dealer permit from the Chief of Police of the Hayward Police Department (HPD) and to be subject to a variety of requirements and conditions.

[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. Because firearm sales were already regulated under Chapter 6, Article 11, staff did not believe firearm sales could be outright prohibited as a land use due to constitutional issues and determined that firearm sales are similar to alcohol or cannabis sales, which the City permits subject to issuance of a Conditional Use Permit (CUP). Staff has historically required businesses whose primary use is

the sale of firearms, to obtain a CUP and the firearms dealers permit, whereas those businesses for which firearm sales is ancillary, such as sporting goods stores, would not be required to obtain a CUP, just the firearms dealers permit.

Existing Conditions and Process

Currently, the City has two licensed firearms dealers—Big 5 Sporting Goods on Foothill Boulevard and Security Six on Mission Boulevard. Neither business requires a CUP, since firearm sales at these businesses are considered ancillary uses under the provisions of the Zoning Ordinance. Both businesses are, however, required to have firearms dealers permit through HPD.

The firearms dealers permit application review process mirrors those in place for both alcohol and cannabis and ensures compliance with all provisions in the HMC, including, but not limited to, age restrictions, security measures for both the facility and the firearms, liability insurance requirements, and proof of compliance with all federal and state licensing laws. The review occurs within the Investigations Division of HPD, which is also tasked with regulations compliance and inspections for alcohol establishments, cannabis operations, tobacco establishments, as well as investigations into problem establishments within the City.

Since legally, firearm sales cannot be prohibited due to the constitutional issues described above, there are limited options for updating the ordinance. These options include: (1) changing the ordinance to reflect the current practice where primary sales of firearms are subject to a CUP, not ancillary uses; or (2) making all firearm sales, including ancillary firearm sales uses, subject to a CUP.

Workload Impacts/Strategic Roadmap Priorities

An evaluation and potential update of the existing regulations governing the sales of firearms is not currently an identified project in the adopted FY2021-2023 Strategic Roadmap, revised on [June 1, 2021](#). The Development Services Department, with the support of HPD, would handle this project. The department already has a number of projects and tasks identified within the Strategic Roadmap for Year 2, including but not limited to: (1) updates to the Housing Element; (2) implementation of the recently updated Cannabis ordinance; (3) implementation of the soft story ordinance; (4) revision of the alcohol use regulations; (5) revamping the community preservation ordinance; (6) updating the tree preservation ordinance; and (7) creation of a sidewalk vendor ordinance which was slated to begin at the end of Year 2 and extend into year 3.

Staff Recommendation and Next Steps

Given the significant workload for DSD identified in the Strategic Roadmap, coupled with the regulation compliance and inspection priorities of HPD, staff recommends that, if updates are desired, this project be identified for consideration in the next 3-year Strategic Roadmap effort. This will allow staff to focus on the priorities already set and established by the Council. If the Council directs staff to prioritize an update to the firearms sales regulations, staff recommends that the Sidewalk Vendor Ordinance creation or revision of the alcohol use regulations be put on hold so that the other Strategic Roadmap priority projects, including those mandated by State Law, can still be accomplished. If Council directs staff to prioritize the firearm sales regulation update in lieu of the Sidewalk Vendor Ordinance or the alcohol use regulations, staff recommends that a work session be held in spring 2022 to identify priorities for this update.