

STAFF REPORT



CITY ATTORNEY'S OFFICE

DATE: March 28, 2023

TO: Justin Hess, City Manager

FROM: Joseph H. McDougall, City Attorney
BY: Jill Vander Borght, Senior Assistant City Attorney

SUBJECT: Update to City Council's July 26, 2022 Firearm Regulation Direction

RECOMMENDATION

Note and file.

BACKGROUND

On July 26, 2022, the City Council approved an Urgency Ordinance (Ordinance No. 22-3,977) imposing a temporary moratorium on the establishment of new or replacement retail businesses selling firearms or ammunition. This action allowed City staff time to research and present a comprehensive zoning proposal so that Council may consider various regulatory frameworks within its zoning laws for firearms retailers. On August 23, 2022, the Council extended the moratorium, which is currently set to expire on July 24, 2023.

Along with the imposition of the moratorium, Council directed staff to research and report back on other short-term, medium-term, and long-term options to address community concerns regarding firearms. Specifically, Council directed the following: (1) a gun buy-back event; (2) community engagement and firearms safety education initiatives; (3) further staff investigation into a local ghost gun ordinance; and (4) potential amendments to the Burbank Municipal Code's business license and zoning regulations that provide for firearm retailer licensing requirements and new objective development standards.

DISCUSSION

The following summary provides an update on each of the above requests and explains the short, medium, and ongoing long-term work undertaken to effectuate Council's July 26, 2022 direction.

Urgency Ordinance Moratorium

At the July 26, 2022 meeting, Council undertook immediate action through the Urgency Ordinance to impose a temporary moratorium on the establishment of new or replacement retail businesses selling firearms or ammunition, allowing City staff time to research and present a comprehensive zoning proposal so that Council may consider various regulatory frameworks for firearms retailers. On August 23, 2022, the Council extended the moratorium until July 24, 2023.

Gun Buy Back Event

On December 10, 2022, the Burbank Police Department facilitated a gun buy-back event, which resulted in the recovery of 58 weapons. The drive-through event provided Burbank residents with an opportunity to anonymously and safely relinquish their unwanted guns in exchange for gift cards, thereby reducing the availability of unwanted firearms in the community.

Participants received a \$100 pre-paid gift card to Walmart for each handgun, rifle, or shotgun, and a \$200 gift card for each assault weapon. The event yielded the following:

Handguns – 29

Rifles – 17

Shotguns – 11

Assault Weapons – 1

None of the weapons collected were found to be reported lost or stolen, and all firearms were destroyed in compliance with California state law.

Gun Violence Restraining Orders

In 2016, AB 1014 established gun violence restraining orders (GVROs), civil restraining orders that temporarily restrict a person's right to own or possess firearms and ammunition for one to five years. The Burbank Police Department has successfully utilized this tool in instances where a person whose possession of a firearm posed a safety risk to the community, and in November 2022 provided virtual training on GVROs for all department personnel.

In October of 2022, the City Attorney's Office attended a meeting with the California Attorney General regarding GVRO programs. To increase awareness of this public safety tool and its utilization, the City Attorney's Office has provided training to local non-profit groups and arranged for the San Diego City Attorney's Office to train local law enforcement, attorneys, and judges in our community at a half day training on March 21, 2023. The training provided sample search warrant templates for officers seizing guns pursuant to a GVRO and sample GVRO petitions for attorneys. The San Diego City

Attorney offered training free of charge as part of a grant program to educate other communities about GVROs.

Additional Communication and Advocacy

The Burbank Police Department has undertaken pointed outreach regarding gun safety. A gun safety page¹ was posted to its website, providing information on state law regarding responsible storage, handling, and safety precautions for gun owners, as well as advertising the availability of free gun locks for the public. In addition, the Burbank Police Department has partnered with Project ChildSafe to provide ongoing education to the community by disseminating informational material through the Department's website, social media platforms, and community newsletter.

Working Group

Staff has convened a working group with stakeholders from the City Manager's Office, City Attorney's Office, Community Development Department, Building and Safety, and Police Department to analyze additional requests made by Council on July 26, 2022. The working group is focused in the following areas:

- (1) Land Use Regulations For Firearms Retailers – The working group is collaborating with a consultant to develop a regulatory framework aimed at addressing Council's concerns about firearm retail uses in the community. Specifically, the working group is considering whether a congregation of firearm retailers along critical commercial corridors raises concerns for sustainable and economically diverse retail areas in the City, and firearm retail proximity to residential neighborhoods and sensitive-use locations like schools, places of worship, and public parks. The working group anticipates bringing a Zone Text Amendment including buffer zones to address these community concerns with the location of new firearm retailers along commercial corridors and in close proximity to sensitive-use locations.
- (2) Licensing For Firearms Retailers – The working group is working with a consultant to consider amending the business license process governed by BMC Section 3-4-111 to establish additional requirements for firearms retailers such as successfully passing an audit by a state or federal agency as a condition of license renewal, potential additional local inventory reports or insurance requirements.
- (3) Giffords Law Center Model Ordinance – The working group continues to use the Giffords Model Ordinance in the context of recommended best practices aimed at local concerns to incorporate into development standards and other regulatory requirements.

¹ <https://www.burbankpd.org/community-outreach/gun-safety/>

The working group is actively engaged in the above long-term efforts, and the outcome of these efforts will be forthcoming at future Council meetings.

Ghost Gun Ordinance

Council requested staff consider a ghost gun ordinance similar to San Diego, which in January 2022 prohibited the purchase or sale of parts of firearms that lack serial numbers and enabled misdemeanor prosecution for violators. However, since its adoption, San Diego's ghost gun ordinance has been entirely preempted by comprehensive State legislation² which strongly reforms and regulates the ghost gun industry in California.

Many of California's new ghost gun reforms took effect immediately when the Governor signed Assembly Bill (AB) 1621 into law on June 30, 2022, while some other critical provisions became effective on January 1, 2023. These laws ensure that the sale and manufacture of both completed and unfinished frames and receivers (called "firearm precursor parts" in California law) are subject to the same gun safety laws as fully assembled guns, and that many more unlicensed gun manufacturers must obtain standard manufacturer licenses and comply with stronger safety requirements to lawfully produce firearms in the State. For the purposes of this and other relevant gun safety laws, the term "firearm" is now defined to include both a completed or unfinished frame or receiver (Cal. Penal Code §§ 29010(b); 16520(b)(16)). "Firearm precursor part" is defined in Cal. Penal Code § 16531. The new State laws criminalize the activity San Diego's ghost gun ordinance was designed to similarly criminalize. They allow the City to prosecute for any violations of their detailed provisions.

These laws regulate the sale of ghost gun kits and key components, and California law now generally treats the sale, transfer, and manufacture of both completed and unfinished frames or receivers (defined as "firearm precursor parts") the same way state law treats the sale, transfer, and manufacture of fully assembled guns (see 2022 Cal. AB 1621; Cal. Penal Code §§ 16520, 16531). Among other things, this means that the sale and transfer of ownership of unfinished frames or receivers in California must now generally be conducted by or through a licensed firearms dealer, pursuant to requirements such as an in-person ID check, background check, sale record, firearm safety certificate check, bulk purchase limitations, and waiting periods. This also means that all people who are legally disqualified from purchasing or obtaining fully assembled firearms are similarly legally disqualified from purchasing or obtaining both completed and unfinished frames or receivers. AB 1621 enacted mirroring prohibitions in the Business and Professions Code, that took effect January 1, 2023 and made it generally unlawful for any person within California to "manufacture or cause to be manufactured, distribute, transport, or import into the state, or cause to be distributed, transported, or imported into the state, keep for sale, offer or expose for sale, or give or lend" any firearm that does not have a serial

² This is intended as a summary of new State law in the area of ghost guns and is not intended to be exhaustive.

number required by law, or which has had its serial number altered or obliterated (2022 Cal. SB 1327 (enacting Cal. Bus. Prof. Code §§ 22949.62(a); 22949.61(f) (defining “unserialized firearm”).

These laws further require a license to manufacture firearms by printer. Effective January 1, 2023, any person, firm, or corporation must obtain a firearm manufacturer’s license from the California Department of Justice, and comply with specified laws governing licensed firearm manufacturers, to legally manufacture more than three firearms in the state in a calendar year, or to use a 3D-printer to manufacture any number of firearms (Cal. Pen Code § 29010 (as amended by 2022 Cal. AB 2156)).

Finally, the laws impose a series of stringent registration requirements with both State and federal regulators. Subject to narrow exceptions, it will generally be unlawful to knowingly possess an unserialized firearm, including a completed or unfinished frame or receiver, starting on January 1, 2024 (California law already generally prohibits selling or transferring ownership of firearms, including completed and unfinished frames and receivers, that do not have federal serial numbers).

ENVIRONMENTAL REVIEW

This activity involves organizational and administrative activities of the government related to firearm safety and retail land uses, and such internal procedural changes have no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. As such, this action is not a “project” subject to the requirements of the California Environmental Quality Act (CEQA) 14 Cal. Code Regs § 15378.

FISCAL IMPACT

None.

CONCLUSION

Staff recommends this report be noted and filed, while staff continues to work on effectuating Council’s long-term direction.

ATTACHMENT

Attachment 1 – July 26, 2022 Staff Report and Attachments