



City of Culver City

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Staff Report Details (With Text)

File #: 20-887 **Version:** 1 **Name:**
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Title: CC - Adoption of a Resolution Confirming Third Supplement to Public Order Issued on April 1, 2020 by the Director of Emergency Services, Allowing Firearms Retailers to Conduct Business, Including New Sales and Transfers, During the COVID-19 Local Emergency, Consistent With U.S. Department of Homeland Security Cybersecurity & Infrastructure Security Agency (CISA) Advisory Guidance and the Los Angeles County Positions Regarding Firearms Retailers.

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Attachments: 1. 2020-04-02_ATT 1_March 20 Order.pdf, 2. 2020-04-02_ATT 2_CISA_Guidance.pdf, 3. 2020-04-02_ATT 3_Resolution_April 1 Order_Firearms Retailers.pdf, 4. 2020-04-02_ATT 4_Ordinance No. 2010-004.pdf

Date	Ver.	Action By	Action	Result
4/2/2020	1	City Council Meeting Agenda		

CC - Adoption of a Resolution Confirming Third Supplement to Public Order Issued on April 1, 2020 by the Director of Emergency Services, Allowing Firearms Retailers to Conduct Business, Including New Sales and Transfers, During the COVID-19 Local Emergency, Consistent With U.S. Department of Homeland Security Cybersecurity & Infrastructure Security Agency (CISA) Advisory Guidance and the Los Angeles County Positions Regarding Firearms Retailers.

Meeting Date: April 2, 2020

Contact Person/Dept: Jesse Mays/City Manager's Office
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Fiscal Impact: Yes ☐ No ☒ **General Fund:** Yes ☐ No ☐

Public Hearing: ☐ **Action Item:** ☒ **Attachments:** ☒

Commission Action Required: Yes ☐ No ☒ **Date:**

Public Notification: (E-Mail) Meetings and Agendas - City Council (04/01/2020);

Department Approval: John M. Nachbar, City Manager (04/01/2020)
Carol Schwab, City Attorney (04/01/2020)

RECOMMENDATION

Staff recommends the City Council (1) adopt a Resolution confirming the Third Supplement to Public Order issued on April 1, 2020 by the Director of Emergency Services allowing Firearms Retailers to conduct business, including new sales and transfers, during the COVID-19 Local Emergency, consistent with the U.S. Department of Homeland Security Cybersecurity & Infrastructure Security Agency (CISA) Advisory Guidance and the Los Angeles County positions regarding firearms retailers.

BACKGROUND/DISCUSSION

Proclamation of Local Emergency

Since February 2020, the City of Culver City has been part of a coordinated response involving the federal Centers for Disease Control and Prevention, the California Department of Public Health, and the Los Angeles County Department of Public Health as a result of the rapidly evolving multinational outbreak of the coronavirus respiratory disease (COVID-19). On March 14, 2020, the City Manager, as the Director of Emergency Services (“Director”), issued a Proclamation of Local Emergency due to the outbreak and spread of COVID-19. Such action followed the Los Angeles County Department of Public Health’s and the Chair of the Board of Supervisor’s declarations of a local health emergency and the State of California’s declaration of a State of Emergency on March 4, 2020, and the President’s declaration of a National Emergency on March 13, 2020.

March 16, 2020 Public Order

On March 16, 2020, the Director issued a Public Order enacting new City measures to protect members of the public and City workers from undue risk of COVID-19 (“March 16 Order”). The March 16 Order addresses closing bars, lounges and nightclubs that do not serve food, prohibits dine-in food service for local restaurants (but permits delivery and take-out), and closes movie theaters, live performance venues, gyms, fitness studios and the like, and other indoor recreational facilities. The March 16 Order also imposed a moratorium on residential tenant evictions based on an inability to pay rent due to COVID-19 related circumstances. At a Special Meeting on March 18, 2020, the City Council adopted Resolution No. 2020-R015 ratifying the Proclamation of Local Emergency by the Director and confirming the existence of such local emergency. At the same meeting, City Council adopted an urgency ordinance (Ordinance No. 2020-006) confirming the March 16 Order, pursuant to CCMC Section 3.09.020.B.1.h(2).

March 19, 2020 Governor’s and Los Angeles City/County Stay at Home Orders

On March 19, 2020, additional orders were issued by the Governor of the State of California, the Los Angeles County Department of Public Health, and a number of neighboring communities, including the City of Los Angeles. These “Safer at Home” orders directed residents to stay in their homes, except for certain exceptions, and businesses were directed to cease operations that required in-person attendance, with exceptions that include, among others, essential businesses and essential activities.

The March 19, 2020 [Executive Order N-33-20 <https://covid19.ca.gov/img/Executive-Order-N-33-](https://covid19.ca.gov/img/Executive-Order-N-33-)

[20.pdf](#)> from the Governor, among other things, ordered all persons in the state of California to stay home at their place of residence “except as needed to maintain continuity of operations of the federal critical infrastructure sectors”, as outlined in the [CISA Critical Infrastructure Sectors webpage <https://www.cisa.gov/critical-infrastructure-sectors>](https://www.cisa.gov/critical-infrastructure-sectors). In accordance with Executive Order N-33-20, the State Public Health Officer designated a list of “Essential Critical Infrastructure Workers” to help state, local, tribal, and industry partners as they work to protect communities, while ensuring continuity of functions critical to public health and safety, as well as economic and national security.

Additionally, on March 19th, the County of Los Angeles and the City of Los Angeles each issued “Safer at Home” orders which are equally or more restrictive than the Executive Order.

The three orders issued on March 19--Executive Order N-33-20, the [County Safer at Home Order <http://publichealth.lacounty.gov/media/Coronavirus/COVID-19_March%2021-HOOrder-7_00_FINAL2.pdf>](http://publichealth.lacounty.gov/media/Coronavirus/COVID-19_March%2021-HOOrder-7_00_FINAL2.pdf), and the [City of Los Angeles Safer at Home Order <https://www.lamayor.org/sites/g/files/wph446/f/article/files/SAFER_AT_HOME_ORDER2020.03.19.pdf>](https://www.lamayor.org/sites/g/files/wph446/f/article/files/SAFER_AT_HOME_ORDER2020.03.19.pdf)-as well as the Public Health Officer’s “Essential Critical Infrastructure Workers” designation, were silent as to firearms retailers.

March 20, 2020 First Supplemental Order

On March 20, 2020 the Director issued a First Supplement to Public Order intended to impose additional measures to maintain hand hygiene, respiratory etiquette, and social distancing, in order to slow the spread of COVID-19, and to preserve the stability of commercial tenants during a time of potential severe economic impact (“March 20 Order”) (Attachment 1). The March 20 Order, among other things, incorporates by reference the City of Los Angeles March 19, 2020 Public Order, outlines supplemental restrictions placed on certain establishments and activities throughout Culver City, allows exemptions for essential activities to continue, orders a moratorium on commercial tenant evictions to supplement the residential tenant eviction moratorium already in place, and waives or defers the payment of certain City taxes and fees. As with the Executive Order and the Los Angeles Order(s), the Director’s March 20 Order is silent as to firearms retailers.

At the March 26, 2020 Special City Council meeting, the City Council adopted an Urgency Ordinance which, among other things, confirmed the City Manager’s March 20 Order.

Changing Los Angeles County Positions

After the issuance of the March 19, 2020 Executive Order and the County of Los Angeles Stay at Home Order, on March 24, 2020, in an interview that was widely publicized, Los Angeles County Sheriff Alex Villanueva stated that gun shops were nonessential businesses, and if they did not close their doors, they would be cited and face the loss of their business licenses. However, that same evening, it was reported that Los Angeles County Counsel contradicted the Sheriff, stating that firearm retailers were essential businesses. The Sheriff then reversed his position the next morning, stating the enforcement of his order was suspended, but also stating that the Governor’s office should make a decision as to whether gun stores were essential. In a televised press conference on Wednesday, March 25, 2020, Governor Newsom was asked if he considered firearms retailers to be essential businesses. The Governor stated that it was up to the individual county sheriffs to make such a determination and did not give an opinion or any further clarification.

The following day, Thursday March 26, 2020, Sheriff Villanueva issued a new statement, stating that

firearms retailers were non-essential, and he would enforce the closure of firearms retailers in areas over which he had jurisdiction: in the unincorporated areas of Los Angeles County and in the 42 cities that contract with the Sheriff's Office for law enforcement. The Sheriff made exceptions for security companies, law enforcement, and those persons who had already purchased a firearm and were waiting to take possession (after appropriate paperwork and the background check completed). The Sheriff also stated that in the 46 cities in Los Angeles County with their own police department, he would defer to the discretion of the police chief in each of those jurisdictions.

March 27, 2020 Lawsuit filed in response to Sheriff

On Friday March 27, 2020 a lawsuit was filed in the United States District Court for the Central District by various individuals, a Burbank gun store, the Second Amendment Foundation, the California Gun Rights Foundation, the National Rifle Association of America (NRA) and the Firearms Policy Coalition (collectively Plaintiffs), against Sheriff Alex Villanueva, Governor Gavin Newsom, the California Public Health Officer, the Director of The County of Los Angeles Public Health, and the County of Los Angeles (collectively Defendants). The lawsuit alleges, among other things, that the named Defendants are violating the Constitutional rights of the Plaintiffs by prohibiting the lawful acquisition, sale, and transfer of legal firearms. The lawsuit requests declaratory relief due to the varying orders around the state, and the confusion caused by the changing Los Angeles County Sheriff's position. (The Plaintiffs filed a First Amended Complaint on March 29, 2020 adding the City of Los Angeles and the City of Burbank as defendants.)

March 28, 2020 Federal Guidance

On March 28, 2020, the United States Department of Homeland Security, Cyberspace and Infrastructure Security Agency (CISA) issued an Advisory Memorandum on "Identification of Essential Critical Infrastructure Workers During COVID-19 Response" (Memorandum). The Memorandum was issued along with the March 28, 2020 "Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 response" (Guidance). (The Memorandum and Guidance are collectively included in Attachment 2). In the Guidance, under "Law Enforcement, Public Safety and other First Responders", "*workers supporting the operation of firearm or ammunition product manufacturers, retailers, importers, distributors, and shooting ranges*" were included.

Further Change of Position by Sheriff

On March 30, 2020, Sheriff Villanueva issued a statement entitled "Federal Clarity Regarding Essential Businesses (Firearms Retailers)". In the statement, the Sheriff opined that while the CISA Guidance was advisory in nature, "nonetheless the federal memorandum is persuasive given the national scope..." Sheriff Villanueva continued, "based on this further input from the federal government, the Los Angeles County Sheriff's Department will not order or recommend closure of businesses that sell or repair firearms or sell ammunition" and will report improper health practices such as poor sanitation or failure to maintain social distancing to the District Attorney.

Current Status in Culver City

The City has one stand-alone firearms retailer, Martin B. Retting (Retting). During February and March, similar to other firearms dealers around the country, the state and Los Angeles County, Retting experienced an influx of business, due to the uncertainty in the nation as COVID-19 continued to spread. During the week of March 16th, after experiencing long lines outside of the

store, Retting instituted an appointment-only system for customers, and instituted various social distancing, infection control and health and safety measures recommended by the County.

Upon the issuance of the Director's March 20 Order, Retting ceased all new sales, and similar to other firearms retailers in the County, agreed to operate for the limited purpose of consummating the sales orders already placed by customers. (Note--in California there is a 10-day waiting period before a purchased firearm may be transferred to the purchaser. Additionally, transactions not completed within 30 days, under federal law, are void and must be restarted.) Since March 20th, Retting has only been permitting customer to pick up previously purchased firearms, by appointment only, and using social distancing, infection control and other health and safety measures implemented after consultation with City staff.

Similar social distancing measures and limited appointments are in place at many of the firearms retailers around Los Angeles County. However, there are firearms retailers who have remained open for new sales, maintaining that firearms retailers are essential businesses. Further, some counties, for example, San Diego County and San Luis Obispo County, continued to allow sales of firearms to new purchasers even after the Stay at Home orders were in place, maintaining they are essential businesses.

On March 20, 2020, the City was contacted by one of the Plaintiffs in the federal lawsuit, the Firearms Policy Coalition (FPC). The FPC stated that the City would be added to the existing federal lawsuit if the City did not cease its restrictions on law-abiding adults from purchasing and transferring firearms from licenses businesses in the City.

Retting also requested that the City interpret its March 20 Order consistent with the federal and County positions, and that it may remain open during the COVID-19 emergency, with strict social distancing, infection control, and other health safety measures in place.

In light of the CISA guidance and the Sheriff's change of position, the City Manager issued a Third Supplement to Public Order on April 1, 2020, clarifying his March 20th Order, to allow firearms retailers in Culver City to conduct business, including new sales and transfers, during the COVID-19 Local Emergency, only so long as they comply with the strict social distancing, infection control and health and safety measures dictated by the County of Los Angeles Department of Public Health and the March 20 Order.

Staff recommends the City Council adopt the proposed Resolution confirming the April 1, 2020 Order (Attachment 3).

Note: Although previous public orders have been confirmed by urgency ordinance, it has been determined that a resolution is sufficient. An urgency ordinance was utilized to give the public orders the force of law, because the published version of the City's Emergency Ordinance, specifically Section 3.09.050 (Punishment of Violations), did not provide enforcement authority. Recently, however, it was discovered that due to an error by the City's codifier, incorrect text for Section 3.09.050 was published, while the original ordinance adopted by the City Council in 2010 (Ordinance No. 2010-004) does provide for enforcement and penalties for violations of any orders issued pursuant to Chapter 3.09. A copy of Ordinance No. 2010-004 is included as Attachment 4 to this report.

FISCAL ANALYSIS

There may be staff costs associated with the enforcement of the April 1 Order; however, they are difficult to estimate at this time.

ATTACHMENTS

1. 2020-04-02_ATT 1_March 20 Order
2. 2020-04-02_ATT 2_Homeland Security CISA Advisory Guidance
3. 2020-04-02_ATT 3_Ordinance No. 2010-004
4. 2020-04-02_ATT 4_Proposed Resolution Confirming April 1, 2020 Third Supplement to Public Order

MOTION

That the City Council:

Adopt a Resolution confirming the Third Supplement to Public Order issued April 1, 2020 by the Director of Emergency Services allowing Firearms Retailers to conduct business, including new sales and transfers, during the COVID-19 Local Emergency, consistent with the U.S. Department of Homeland Security Cybersecurity & Infrastructure Security Agency (CISA) Advisory Guidance and the Los Angeles County positions regarding firearms retailers.