



City of Culver City

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Staff Report

File #: 22-1216, **Version:** 1

Item #: A-1.

CC - ACTION ITEM: (1) Report on and Discussion of Existing Local, State and Federal Firearm Regulation, Policies and Policy Options; (2) (if Desired) Creation of a City Council Ad Hoc Firearms Policy Subcommittee and Appointment of Two City Council Members thereto; and (3) Direction to the City Manager as Deemed Appropriate.

Meeting Date: August 22, 2022

Contact Person/Dept.: Jesse Mays, Assistant City Manager
Erika Ramirez, Current Planning Manager
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Fiscal Impact: Yes ☐ No ☒

General Fund: Yes ☐ No ☒

Attachments: Yes ☒ No ☐

Commission Action Required: Yes ☐ No ☒

Public Notification: (E-Mail) Meetings and Agendas - City Council (08/17/2022);

Department Approval: John Nachbar, City Manager (08/17/2022)

RECOMMENDATION

Staff recommends the City Council (1) consider and discuss the report on existing local, state and federal firearms regulations, policies, and policy options; (2) if desired, create a City Council Ad Hoc Firearms Policy Subcommittee and appoint two City Council Members thereto; and (3) provide direction to the City Manager as deemed appropriate.

BACKGROUND

At the June 13, 2022 meeting, City Council directed staff to return to Council with a report on (1) existing ordinances in the City regarding firearms and firearms sales operations in the City, including an assessment of the level of compliance and enforcement, and (2) firearms policies pursued by

other municipalities.

Additionally, on July 11, 2022, Council directed staff to include a discussion of a moratorium on new gun stores, gun smiths, ranges, or the expansion of existing gun stores, to the August 22nd staff report.

Current Structure of Regulation of Firearms Sales

This report provides only a brief summary of federal and state firearms regulations and focuses primarily on what a City may do to regulate firearms locally. *(Note-this report at times uses both of the terms “firearm” and “gun”, although from a technical standpoint they are not precisely interchangeable.)*

Federal Firearms Sales Regulations

The federal Gun Control Act requires that persons who are engaged in the business of dealing in firearms be licensed by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). Under federal law, “engaged in the business” means conducting business with the principal objective of livelihood and profit through repetitive purchase and resale of firearms. Although federal law requires background checks for all firearms sales by licensed firearms dealers, the law is not comprehensive and does not require background checks for guns sold by unlicensed sellers, such as non-dealers who sell guns online or at gun shows, or persons who claim to be a hobbyist instead of a retailer. Additionally, while a large percentage of background checks are completed within a few minutes through the National Instant Criminal Background Check System (NICS), if the background check is not completed within three days, the purchaser may receive the firearm, unless the state has a longer waiting period. State files are not always included in the federal database. Thirteen states, including California, require that the state law enforcement agency (i.e., California Department of Justice (DOJ)) serve as the point of contact for the background check required by federal law.

Certain categories of people are prohibited from having a firearm, including felons, domestic abusers, and people with certain mental health histories. Additionally, subject to certain exceptions, citizens and U.S. residents must be 18 years or older to purchase shotguns, rifles, or ammunition. All other firearms, such as handguns, can only be sold to individuals 21 or older.

State of California Firearms Sales Regulation

California is ranked #1, with an “A” rating, on the Annual Gun Law Scorecard published by the Giffords Law Center to Prevent Gun Violence (Giffords). California requires universal background checks, a 10-day waiting period for firearms purchases, state firearms sales record retention, minimum age laws, prohibitions against certain persons to possess firearms, employee background checks, assault weapon and large magazine restrictions, domestic violence gun laws, safe storage laws, lost and stolen firearm reporting laws, an eligibility check for the sale or transfer of ammunition, and more. Individuals may only purchase one handgun or semiautomatic ‘centerfire’ rifle within a 30-day period, with limited exceptions.

Only federally licensed firearms dealers who possess a valid California Certificate of Eligibility are authorized to engage in retail sales of firearms. California’s firearms regulations are primarily codified in the California Penal Code and available on the DOJ website at <https://oag.ca.gov/system/files/media/cfl2021.pdf>.

Recently, Governor Newsom approved several bills passed by the state legislature pertaining to firearms sales:

- AB 1594 which authorizes the State and city attorneys and county attorneys to sue a firearms manufacturer, distributor, importer, marketer, or retailer if they fall below a defined firearm industry standard of conduct that takes effect July 1, 2023.
- AB 2571 which immediately prohibits marketing firearms in a manner attractive to minors. (Note -several lawsuits have been filed challenging this new law on First and Second Amendment grounds).
- AB 1621 which imposed new restrictions on “ghost guns”.

Local Regulation

Local governments may require one or more of the following for businesses selling firearms:

- Business license
- Discretionary operational/regulatory permit
- Discretionary land use permit (usually a Conditional Use Permit (CUP))

Current Firearm Dealers in Culver City

According to the Federal Firearms Listing published by the ATF (<https://www.atf.gov/firearms/listing-federal-firearms-licensees>), there are four Federal Firearms Licensees in Culver City, as of January 2022:

- Modern Warrior Gunsmithing LLC (11276 Washington Place)
- TJ’s Custom Gunworks (3347 Caroline Avenue)
- Big 5 Sporting Goods #18 (4343 Sepulveda Boulevard)
- Martin B. Retting, Inc. (11029 West Washington Boulevard)

Modern Warrior Gunsmithing and TJ’s Custom Gunworks are gunsmiths. They do not sell firearms retail to the public. Stand-alone gunsmiths service, repair or modify/customize firearms owned by customers. They are permitted to sell firearms to another dealer, but not to the public. From a Culver City land use perspective, gunsmiths fall under “business and consumer support services” and not “firearms sales,” because they do not engage in retail sale of firearms. For this reason, the two gunsmiths in Culver City do not require a CUP, as discussed further below under Land Use Regulations. According to the state DOJ Bureau of Firearms, the City’s two firearms retailers (Big 5 and Martin B. Retting) each possess the required State certifications and documentation to sell firearms to the public. Each of them has been selling firearms since before the City’s CUP requirement went into effect.

Current Regulations and Enforcement in Culver City

The Culver City Municipal Code (CCMC) contains the following provisions related to firearms:

Safe Storage Ordinance

In 2019, Culver City approved a safe storage ordinance, codified in CCMC Section 13.03.200,

requiring all firearms in a residence be kept in a locked container or disabled with a trigger lock. The ordinance also encourages the reporting of lost or stolen firearms. According to CCPD, enforcement of the safe storage ordinance would typically occur during investigations related to other crimes or reports of threats. If unsafe storage of a firearm is observed during another investigation, CCPD officers will cite using the California Penal Code section on gun storage. The State of California has very extensive requirements for storage, including storage around children and in vehicles. It is technically possible that someone could make a complaint about a violation of Culver City's unsafe storage ordinance, at which point Culver City Police would respond, and if necessary, obtain a warrant, but in practice this has not happened.

Discharge of Firearms

CCMC section 13.03.220, "Shooting Requirements," prohibits discharge of a firearm except in certain circumstances, such as in lawful defense of persons, in making or attempting to make lawful arrests, by a law enforcement officer in the performance of his or her duties, while filming, or while engaging in target practice at an appropriate facility. The California Penal Code also contains a similar prohibition against unlawful discharge of a weapon. CCPD officers cite violators using the Penal Code version of the law, when necessary. Typically, CCPD enforces a violation of this Penal Code section that has occurred during the commission of another crime. CCPD officers do get reports of unsafe discharge of weapons, most frequently around New Year's Eve and the Fourth of July. In those cases, CCPD officers respond and investigate. However, it is typically difficult to identify and arrest someone for this violation, because by the time police arrive, the perpetrator is usually gone.

Suicide Prevention

In 2019, along with the safe storage ordinance, City Council adopted a provision codified in CCMC section 13.03.225, requiring all firearms retailers to post information about resources for suicide prevention. A City-designed poster was distributed to the City's two firearms retailers after the Ordinance was adopted. Staff visited Martin B. Retting on August 4, 2022 and confirmed that the City-designed poster was posted in several prominent locations. Staff visited Big 5 on August 4, 2022 and observed that the City poster was not posted at that time, although other suicide prevention signage was displayed. Staff is in the process of updating the suicide prevention poster with the new 988 Suicide & Crisis Lifeline information and will distribute the new sign to Retting and Big 5 when it is finished.

Land Use Regulations

The City's Zoning Code currently limits the establishment of new firearm retailers to four of the commercial zones: the CG (Commercial General), CC (Commercial Community), CRR (Commercial Regional Retail) or CRB (Commercial Regional Business Park). As of the adoption of the 2005 Zoning Code, firearms retailers must obtain an approved Conditional Use Permit (CUP) by the Planning Commission during a public hearing (CCMC 17.220.015). In addition, a minimum linear distance of 1,000 feet shall be required to separate all establishments that offer firearms for sale from all other establishments that offer firearms for sale, and from parks, playgrounds, and primary and/or secondary schools (CCMC 17.400.050). The Zoning Code does not include language pertaining to ammunition, nor does it define a firearm, firearms sales, or firearm dealer. "Firearm" is defined, however, in CCMC section 13.03.200. (In the pre-2005 Zoning Code, firearms sales were only mentioned in the context of second-hand dealers and pawnshops that desired to add firearms sales.

Pawnshops and second hand dealers each contained a 1000-foot distancing requirement similar to the current distancing requirement for firearms sales. These provisions were instituted sometime between 1983-1998. The two firearms retailers both pre-date these earlier Zoning Code versions as well)

A firearm dealer that was established prior to the requirement of an approved CUP, or prior to the distance requirements from certain sensitive uses described in the Zoning Code, is considered a legal nonconforming use. A legal nonconforming use is a use that was lawfully established before the adoption or amendment of a Code provision, but which would be prohibited, regulated, or restricted differently under the current terms of the Zoning Code or future amendments.

Nonconforming uses are allowed to continue provided there is no increase or enlargement of the area, space or volume occupied or devoted to the nonconforming use (CCMC Section 17.610.010). In addition, if a sensitive use is established within 1,000 feet from an existing firearm dealer, the existing firearm dealer is not required to relocate. However, if a legal nonconforming firearm dealer has been abandoned or discontinued for a period of one year, then it cannot be reestablished, and any subsequent reuse or any new use established shall conform to the current provisions of the CCMC.

The Big 5 store on Sepulveda Boulevard does not appear to be within 1000 feet of any school, park, or playground. The Martin B. Retting store on Washington Boulevard is within 1000 feet of the La Ballona School at 10915 Washington Boulevard, and Tellefson Park. However, the Retting store website states they have been at the current location since 1958, and City business licensing records going back to 1980 reflect that the Retting store was licensed prior to 1980, falling under the legal non-conforming provisions discussed above.

Regulations in Other California Communities

Other California local jurisdictions have used a variety of policies to regulate firearms sales. The following are examples of regulations found in other cities:

- Require gun dealers to obtain a local permit to operate.
- Additional site security and safe storage for gun dealers.
- Require firearm dealers to carry liability insurance.
- Prohibit gun dealers as a home occupation.
- Restrict dealers from operating near "sensitive areas".
- Require dealers to report their inventory.
- Require dealers to videotape sales.
- Require dealers to post additional notices.
- Prohibit unaccompanied minors from entering gun dealer premises.
- Require regular inspections of gun dealer premises.

- Regulate or prohibit possession of firearms and/or ammunition on public property, which would include prohibiting gun shows on City property.
- Regulate gun shows or events in the City.
- Prohibit guns at protests or demonstrations.
- Require safe storage in the home.
- Require safe storage in vehicles.
- Require reporting loss or theft of a firearm.

Attachment 1 summarizes these gun safety policies in California, the number of communities that have adopted each policy, based on staff's research, which Westside Cities Council of Governments cities have adopted the policies, and whether Culver City has already adopted the policies.

DISCUSSION

Culver City Policy Options

If desired, the City Council could decide to pursue one or more of the policy options listed below. The timeframe and one-time and ongoing resources necessary to enact the various policies below vary and range from short-term and inexpensive to long-term and expensive. Specific financial and staffing impacts, as well as specific details of any given policy, would be described in any future report brought back by staff to City Council. The City Council could create an Ad Hoc City Council Firearms Policy Subcommittee to further discuss this issue with staff and make recommendations to the City Council.

Sale of Firearms and Ammunition Ordinance

Various California cities have incorporated several of the policies listed above into comprehensive ordinances regulating the sale of firearms and ammunition. Culver City could, if desired, institute any of the following policies, which are further described in Attachment 1, as defined in one or more ordinances and/or by modifying the current land use regulations:

- Require gun dealers to obtain a local permit to operate (#1 in Attachment 1).
- Additional site security and safe storage for gun dealers (#2 in Attachment 1).
- Require firearm dealers to carry liability insurance (#3 in Attachment 1).
- Require dealers to report their inventory (#6 in Attachment 1).
- Require dealers to videotape sales (#7 in Attachment 1).
- Require dealers to post additional notices, including notices specifically warning about the risks and dangers associated with firearms (#8 in Attachment 1).

- o Prohibit unaccompanied minors and/or other people prohibited from owning a gun from entering gun dealer premises (#9 in Attachment 1).
- o Require regular inspections of gun dealer premises (#10 in Attachment 1).
- o Maintain the required land entitlement (CUP) approval in the designated zones for gun dealers to operate.
- o Expand current list of “sensitive uses” from parks, playgrounds, and primary and secondary schools.
- o Establish operating standards that may include other categories such as but not limited to hours of operation, sales by appointment only of certain types of firearms..
- o Establish record keeping and access standards such as requiring maintenance of inventory records and purchase records, submittal of annual revenue and purchase reports to the City, and the ability of the City to inspect such records.
- o Set requirements for manner in which firearms must be secured when the business is open and when it is closed.
- o Establish a specific application fee for a firearm sales permit.

Moratorium

California law authorizes municipalities to adopt “interim” ordinances that place an immediate moratorium, i.e., a temporary prohibition, on the establishment of specified new activities and uses in the City. The Government Code provides for the procedures and requirements for the adoption of an “interim” ordinance.

In short, without following normal zoning code ordinance adoption procedures, a city council may, in order to protect the public health, safety, and welfare of the community, adopt an “interim ordinance” prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the City Council, Planning Commission or Planning Department is considering or studying for adoption within a reasonable time. There are specific requirements that must be met before adopting an interim ordinance, including that the ordinance must contain legislative findings that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional entitlements for a specific use or uses would result in a threat to the public health, safety, or welfare.

A moratorium ordinance is adopted on a temporary basis and may be adopted as an urgency measure (adopted without notice and becomes effective immediately), or, as an interim nonurgency ordinance following notice and a public hearing, but also becomes effective immediately. An initial 45-day moratorium, may be extended for a total duration of up to two years. Ten days before the expiration of the interim ordinance or any extension, the City Council must issue a written report describing the measures taken to alleviate the condition which led to the adoption of the ordinance.

City records reflect there has not been an applicant for a new firearms retailer since the adoption of the 2005 Zoning Code.

Prohibit Firearms at Public Events and/or Other Sensitive Places

California generally prohibits open carrying of weapons in public. Concealed carrying is allowed, however, only with a permit issued by the Sheriff of a county, or by the Chief of Police or other head of a municipal police department. In the wake of the recent U.S. Supreme Court's decision striking down the "good cause" requirement in New York state law for a concealed carrying permit, the potential result could be an increase in the number of concealed carry permits issued.

There are other requirements in California law, however, that remain valid, including a requirement that the applicant is of good moral character and has completed a course of training. It is expected that the State of California will add additional regulations in this area within the next few months. California prohibits carrying of weapons, including by concealed weapons licensees, at polling places (Cal. Elections Code § 18544(a)), and in any state or local public building, or at any public meeting, although concealed weapons licensees are generally exempt from these restrictions (Cal. Penal Code § 171b(a)(1), (b)(3)).

Culver City currently prohibits firearms in public parks. Culver City could also choose to enact policies now to prohibit firearms at additional sensitive places. For instance, six California cities, including the City of Los Angeles and Beverly Hills, prohibit guns at protests and demonstrations. The City of San Carlos prohibits guns at all public gatherings, which includes not only demonstrations but events requiring a special event permit or encroachment permit or other temporary use permit involving 20 or more persons. Culver City could:

- o Prohibit firearms at protests and demonstrations.
- o Prohibit firearms at all public gatherings
- o Prohibit firearms at additional specific places..

Secure Gun Storage

Unsafe gun storage is a major source of gun violence in the United States. Safe storage policies can have a big impact to reduce gun violence. (Source:

https://citygrip.org/practice_area/secure-gun-storage/)

Recently, guns have been stolen from vehicles in record numbers and guns thefts from cars are now the largest source of stolen guns. (Source:

[<https://everytownresearch.org/gun-thefts-from-cars-the-largest-source-of-stolen-guns/\)>](https://everytownresearch.org/gun-thefts-from-cars-the-largest-source-of-stolen-guns/)

As of 2016, California law (Penal Code § 25250) requires the reporting of lost or stolen guns to local law enforcement within five days, but some jurisdictions require that a report be made faster than five days - e.g., 48 or 72 hours.

Although State Law already requires secure gun storage in homes and vehicles, and Culver City Police currently cites using State Penal Code, not the CCMC, for gun storage violations, the City could add the following additional measures to the City's Safe Storage Ordinance, via modifications to the CCMC:

- o Require safe storage in vehicles (see #15 in Attachment 1).
- o Require 48 hours timeline for reporting a lost or stolen weapon, to encourage quick reporting

(see #16 in Attachment 1).

- o A civil liability provision that makes the firearm's owner liable in a civil action for death or injury if an unauthorized user obtains access to firearm because of a violation of the ordinance.
- o Include firearm precursor parts in materials that are required to be secured.
- o Prohibit keys or codes to gun storage from being accessible to minors.

Additional strategies that the City could pursue related to Secure Gun Storage include:

- o Requiring firearms retailers to post information about safe gun storage.
- o Educating gun owners about secure gun storage and encouraging community members to have conversations about gun safety through educational campaigns.
- o Advertise the availability of free gun locks at CCPD.
- o Advertise the ability to turn in guns, no questions asked, at CCPD.
- o Funding a gun buy-back program.
- o Publicizing the Be SMART program, a framework designed to help parents and adults act responsibly and normalize conversations about gun safety. The initiative encourages parents and caretakers to take five simple steps to help prevent shootings by children: **Secure** all guns in your homes and vehicles; **Model** responsible behavior around guns; **Ask** about unsecured guns in other homes; **Recognize** the role of guns in suicide; **Tell** your peers to Be SMART.

Advocate for Gun Laws

Guns are regulated at the federal and state level. Although California already has some of the strictest firearms regulations in the country, and Culver City's elected officials at the state and federal level are typically already supportive of additional gun legislation, Culver City and its residents can advocate to state and federal representatives to introduce and support gun laws such as requiring background checks on all gun sales, red flag laws, domestic violence relinquishment laws, and funding bills that provide financial support for community-based violence prevention programs. Culver City and its residents can express opposition to representatives on bills such as preemption, stand your ground, guns in schools, concealed carry reciprocity, and permitless carry. Although Culver City's current legislative platform, adopted in 2016, generally refers to supporting efforts to enhance public safety, the platform does not include any specific reference to firearms policies. Culver City could:

- o Add support of and opposition to specific types of firearms laws to the City's legislative platform.

FISCAL ANALYSIS

There is no fiscal impact associated with this discussion item.

ATTACHMENTS

1. 2022-08-22 ATT Firearm Policies in Other California Jurisdictions

MOTIONS

That the City Council:

1. Review and discuss existing local, state, and federal firearm regulations, policies, and policy options; and
2. If desired, create a City Council Ad Hoc Firearms Policy Sub-committee and appoint two City Council Members thereto; and
3. Direct the City Manager as deemed appropriate.