



13 APR 18 PM 4:36

ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney
Barbara J. Parker
City Attorney

(510) 238-3601
FAX: (510) 238-6500
TTY/TDD: (510) 238-3254

April 23, 2013

Public Safety Committee
Oakland, California

Re: Councilmember **Brooks'** Resolution Urging The Chief Of Police To Send Letters To Prospective Handgun Purchasers Who Reside In The Jurisdiction Informing Them Of Their Responsibilities As Firearm Owners, item 4 on the April 23, 2013 Public Safety Committee

Dear Chairperson Gallo and Members of the Public Safety Committee:

I. Purpose of the Report

The purpose of this report is to advise you of amendments to the referenced resolution that are necessary for the resolution to comply with the City Charter. The revisions do not change the substance of the resolution. The proposed resolution is attached with red line amendments that are necessary to comply with the City Charter.

II. Background

On January 3, 2013, the Rules and Legislation Committee considered Councilmember **Brooks'** request to schedule a resolution urging the Chief of Police to send letters to prospective handgun purchasers who reside in Oakland informing them of their responsibilities as a firearms owners.¹ Prior to the Rules Committee meeting, the City Attorney's Office advised Councilmember **Brooks** verbally and in writing that the resolution conflicted with the City Charter's Non-interference clause, section 218, and proposed revisions to the resolution that would accomplish the resolution's goals in a manner consistent with the Charter. During the January 3, 2013 Rules Committee meeting the City Attorney's Office orally provided the same advice to the Rules Committee. The Rules Committee scheduled the item without any revisions for the February 26, 2013 Public Safety Committee meeting. Subsequently, the item was deferred to the April 9, 2013 meeting of the Public Safety Committee.

¹ In February, Assemblymember Rob Bonta introduced Assembly Bill 1020 (AB 1020) that would require the California Attorney General to notify persons applying to purchase firearms during the ten day waiting period that firearms transfers must be conducted through licensed dealers, that "straw man" purchases are prohibited and that firearms must be safely stored so as to prevent access by children.

This Office saw Councilmember Brooks' proposed resolution when it was published since she did not request that the City Attorney's Office review the proposed resolution before she submitted it to the City Clerk's Office. The City Attorney's Office has prepared a revised resolution that comports with Charter Section 218 requirements, corrects a Penal Code citation in the resolution,² and deletes a statement in the resolution that erroneously indicates the City Attorney has authority to prosecute violations of state criminal laws regulating gun sales. Oakland must obtain authorization from the District Attorney to prosecute violations of state criminal laws on a case-by-case basis, or Oakland can request authority to prosecute a category of crimes.

III. Analysis

A. Oakland Charter Section 218 – Non-interference in Administrative Affairs

The Oakland City Charter ("City Charter") is the supreme law of the City of Oakland ("City"). It grants the City the power to make and enforce all laws and regulations in respect to *municipal affairs*, subject only to the restrictions and limitations provided in the Charter. The Charter authorizes the City to exercise Home Rule powers as to municipal affairs that the California Constitution grants to charter cities (Section 6 of Article XI of the Constitution of the State of California). (City Charter § 106.)

As the City Attorney opined in the February 6, 2003 public legal opinion regarding City Manager's powers³, municipal corporations, such as the City of Oakland, are not bound by the separation of powers principles in the federal or state constitution. *McQuillin Mun. Corp* § 10.06, p. 313 (3rd Edition). Strict separation of powers is not constitutionally required for local governments. 13 Cal Jur 3d (Rev) Part §101, p. 224. Therefore, the City Charter determines the roles of the City Council, Mayor and City Manager.

Oakland's City Charter clearly separates the legislative (Council) and administrative (City Administrator) powers. Section 207, among other things, provides that the Council has no administrative powers.⁴ Section 218 further prohibits the Council and its members from interfering with the administrative affairs/service of the City for which the City Administrator, Mayor, and other appointed or elected officers are responsible.⁵

² Effective January 1, 2012, former Penal Code Section 12071(b)(3)(A) was renumbered as Penal Code Section 26815. No substantive changes were made to the statute.

³ This opinion is available on the City Attorney's website under the opinion archive list for 2003.

⁴ Section 207. Powers of the Council. The Council shall be the governing body of the City. It shall exercise the corporate powers of the City and, subject to the expressed limitations of this Charter, it shall be vested with all powers of legislation in municipal affairs adequate to provide a complete system of local government consistent with the Constitution of the State of California. It shall have no administrative powers. The Council shall fix the compensation of all City employees, officers and officials except as otherwise provided by this Charter.

⁵ Section 218. Non-interference in Administrative Affairs. Except for the purpose of inquiry, the Council and its members shall deal with the administrative service for which the City Administrator, Mayor and other appointed or elected officers are responsible, solely through the City Administrator, Mayor or

With regard to Councilmember Brooks' proposed resolution, Section 218 provides that the Council and its members shall deal with the administrative service through the City Administrator or Mayor "[except] for the purpose of inquiry. . ." and prohibits the Council and Council members from "giv[ing] orders to any subordinate of the City under the jurisdiction of the City Administrator. . . , either publicly or privately" or "[attempting] to coerce or influence the City Administrator or such other officers, in respect to any contract, purchase of any supplies or any other administrative action."

The proposed resolution does not make an inquiry; it urges the Chief to send letters. Accordingly, to comport with the Charter, we advised that the request should be made to the City Administrator instead of the Police Chief. The City Administrator then can choose to direct the Chief who reports to her to send the letters. In addition, "urging" the Chief to take the specified actions may constitute an attempt to "coerce or influence" the Chief in the administrative operations of the police department, which is prohibited by Section 218. Council coercion or influence is prohibited even with respect to the administrative actions of the City Administrator.

Although the particular terms of this resolution may appear to be harmless or insignificant, compliance with the Charter's non interference clause is not optional; the voters in enacting the Charter mandated the separation of powers of the Council (legislative branch) and the City Administration. This separation of powers is underscored by section 207 of the City Charter which provides that the Council "shall have no administrative powers". Second, during a recent meeting some Councilmembers said they needed advice or clarity regarding the boundaries of their powers and one Councilmember announced that everybody gives direction to staff; otherwise nothing would get done. This Office is providing that clarity and advice to assure that the council understands its role and powers.

such other officers. Neither the Council nor any Council member shall give orders to any subordinate of the City under the jurisdiction of the City Administrator or such other officers, either publicly or privately; nor shall they attempt to coerce or influence the City Administrator or such other officers, in respect to any contract, purchase of any supplies or any other administrative action; nor in any manner direct or request the appointment of any person to or his removal from office by the City Administrator or any of his subordinates or such other officers, nor in any manner take part in the appointment or removal of officers or employees in the administrative service of the City. Violation of the provisions of this section by a member of the Council shall be a misdemeanor, conviction of which shall immediately forfeit the office of the convicted member. (Emphasis added.)

**B. Options to Obtain Authorization for City Attorney to Prosecute
State Laws Regulating Firearms**


If the Council wishes to undertake a program similar to the Los Angeles program, the options are: 1) ask the District Attorney to carry out enforcement, 2) seek authorization from the District Attorney to carry out the necessary prosecutions, or 3) seek state legislation that authorizes the Oakland City Attorney to carry out such prosecutions.

Options 2 and 3 above also would require funding. The Council eliminated funding for the City Attorney's misdemeanor prosecutor program in the City's FY 2011 – 2013 budget. Accordingly, the Council would need to restore some funding to allow this Office to hire attorneys and support staff to prosecute violations of state criminal gun regulations.

IV. Conclusion

If the Council supports the goals of Councilmember Brooks' resolution, the Council should approve the revised resolution attached to this report which comports with section 218 of the City Charter.

Very truly yours,


BARBARA J. PARKER
City Attorney

Attorney Assigned:
Doryanna Moreno

Enclosure: Revised Resolution

cc: City Councilmembers
Deanna Santana, City Administrator

DRAFT

City Attorney

OFFICE OF THE CITY CLERK
OAKLAND

13 APR 16 PM 4:36

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER DESLEY BROOKS

RESOLUTION REQUESTING THE CITY ADMINISTRATOR ASK THE CHIEF OF POLICE TO SEND LETTERS TO PROSPECTIVE HANDGUN PURCHASERS WHO RESIDE IN THE JURISDICTION INFORMING THEM OF THEIR RESPONSIBILITIES AS FIREARM OWNERS

WHEREAS, between July 1, 2001 and June 30, 2011, 3,829 victims of gunshot wounds were brought to Highland Hospital for treatment. Of those, 3,289 survived, 540 died; and

WHEREAS, in 2012, there were many senseless killings in Oakland -- a grandmother walking home from the store, slain by a stray bullet from a nearby gun battle; six students and a staff member gunned down at Oikos University; two best friends from childhood, girls ages 15 and 16, shot and left to die on the street; a 15-year-old girl at a housing complex where another teen died in July, bringing the number of people killed in the City in 2012 to 131; and

WHEREAS, in 2012, the amount of homicides in the City was at the highest number since 2006, when 148 people were slain. In 2011, 110 people were killed; and

WHEREAS, in 2006, 3,253 people died from firearm-related injuries in California and 4,305 other people were treated for non-fatal gunshot wounds; and

WHEREAS, California Penal Code § 11106 requires the California Department of Justice (DOJ) to compile information about prospective handgun purchasers based on information received from firearms dealers at the time of application, and to furnish this information to peace officers of the state upon any proper request; and

WHEREAS, Penal Code § 26815 prohibits delivery of a firearm until ten days have passed since the purchaser has submitted an application to purchase the firearm; and

WHEREAS, California law imposes certain responsibilities on firearm owners, including the responsibility to process all secondary transfers of firearms through a licensed firearms dealer, thereby allowing DOJ to run a background check on every recipient of a firearm; and

WHEREAS, from July 2005 through July 2009, the Los Angeles Police Department received the names and addresses of prospective handgun purchasers residing in targeted areas of the City from DOJ, and distributed letters during the ten-day waiting period to those purchasers informing them of their responsibilities as firearm owners; and

WHEREAS, other California jurisdictions have found that the letters are an effective way to inform gun purchasers of their legal obligations, and have had a constructive impact on the behavior of gun purchasers; and

WHEREAS, the RAND Corporation has recently completed a study describing the results of the Los Angeles program. The study found that prospective gun purchasers who received the letter were twice as likely to report to law enforcement that those guns were stolen as purchasers who did not receive the letter. The study noted that it was unclear whether the guns that were reported stolen were actually stolen or were being falsely reported as stolen to break the paper trail between the initial purchaser and the eventual criminal owner of the gun. Either way, the knowledge that a handgun is no longer in the hands of the initial buyer is important to law enforcement in its own right; and

WHEREAS, Attorney General Jerry Brown agreed that DOJ may extend the Los Angeles program to other cities and counties in California that wish to send letters to prospective handgun purchasers; and

WHEREAS, in November 2009, the County of San Mateo enacted a resolution encouraging the Sheriff to send similar letters to prospective handgun purchasers in the County, and the County has begun sending these letters; now, therefore be it

RESOLVED: That the Oakland City Council by adoption of this resolution hereby requests that the City Administrator ask the Chief of Police to seek assistance from the Department of Justice so that the City may send letters to prospective handgun purchasers who reside in the City during the ten-day waiting period advising them of their obligations as firearm owners.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES – BROOKS, GALLO, KALB, KAPLAN, MCELHANEY, REID, SCHAAF, and PRESIDENT KERNIGHAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California