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Residents urge city council to enact gun control legislation

By Sora O'Doherty

Although there was an outpouring of support from Orinda residents for two proposed gun control ordinances - one to require that firearms be secured with trigger locks or kept in locked containers; the other regulating the business of gun dealers - and only a few speakers against them, the Orinda City Council remained concerned about potential financial liability and instructed staff to conduct further research into the issues at its Aug. 21 meeting.

City Manager Steve Salomon explained that gun control is "a complicated issue, controversial at national and state levels as well as at the local level." He said that the council had four options as to how to proceed:

Option 1. Staff would monitor state and federal legislation and court decisions, and increase publicity on the services the police department provides relating to gun safety. Staff would report back to the council if there is a further action or position that would be prudent to take. Staff does not recommend that city pursue a land use permit.

Option 2. In addition to Option 1, direct the city attorney to prepare an ordinance similar to the one adopted by Moraga. This action would be primarily symbolic, since the police will not go to each house to examine gun storage. However, if police are called to a location for other reasons, this could add some breadth to an appropriate investigation. More significantly, the council would be joining with other communities who have passed similar ordinances signaling a desire for more reasonably restrictive interpretations of the second amendment.

Option 3. There are currently no gun dealers in Orinda. Approximately 20 years ago the city of Lafayette amended its municipal code to require gun dealers to apply to the city through the police department and, after review, if they meet requirements, they receive a permit with conditions. A permit can be denied under certain circumstances. Orinda Municipal Code would have to be amended similar to Option 2.

Option 4. In addition to the three options above, the council could direct the staff to explore and bring back other changes to the municipal code which create a more significant regulatory environment in Orinda. This will take a significant amount of staff and attorney time and would increase the risk of litigation if any additional changes are made.

Council Member Dean Orr asked for Orinda Police Chief Mark Nagel's assessment of what the state currently requires. Nagel responded that at the state level everything revolves around children. If children are present, guns must be locked. A child has to get a gun and use the gun for the owner to be criminally punished. Orinda attorney Osa Wolff added that the state focuses on the penal side, which is not equivalent to local regulation, and stated that this is an area for local consideration.

In the public comment period, the council heard from approximately 30 individuals in support of the ordinances, and three against.

Orinda resident Jackie Moreau was a victim of gun violence and also had some close personal friends who lost a child to suicide, and said she thought had they had their guns secured, that would not have happened. She urged the council to do everything that you can and be aggressive in pursuing gun safety. Dan de Busschere said that nobody disagrees with the goals, but that the council has much to consider. He stated that gun ownership is a protected class and that regulation raises issues of litigation liability. Many speakers offered statistics about gun violence; quite a few offered examples from their own lives. Christine Barry said that the Brady Campaign found that 4.6 million children live in homes with unsafely stored guns. Eight children a day are injured or killed by accidental use of guns. She spoke about a friend of her in-laws, a pastor who accidentally killed his own daughter while he was putting a gun away. The firearm accidentally discharged and the bullet ricocheted off the fireplace and hit his daughter in the heart; she died instantly.

Jenifer Balducci suggested that, as there are no gun dealers in Orinda yet, it is the perfect time to enact an ordinance to not allow gun sales in the future. (Pleasant Hill was sued by a preexisting gun dealer.)

Moraga resident Alison Anderman is the managing attorney at the Gifford Law Center. San Francisco was the first jurisdiction to adopt a safe storage law, she said. The gun lobby sued, and they lost in the trial court, lost in the 9th circuit, and the Supreme Court declined to review the case. After San Francisco nine other jurisdictions have enacted safe storage laws and none have been sued. "Moraga was also worried about being sued," Anderman said, "so (The Gifford Law Center) secured the services of Farella Braun and Martel a prestigious litigation firm to defend the town pro bono, and we pledge the same support to Orinda." She added that she is very happy to work with the city attorney and happy to provide free drafting assistance. She suggested that Orinda could face a bigger cost if the city fails to take modest reasonable steps.

The council asked staff to conduct additional research about other ordinances passed in other cities, ways to limit litigation risk, specifics gun sales and permits, and what kind of legal framework exists for this type of gun storage ordinance.

Wolff said she would research this, noting that there would need to be an analysis to assure that the city doesn't effectively ban guns.

Council Member Darleen Gee asked if Nagel was concerned about enforcing this ordinance.

"I am concerned that it would be interpreted as violation of Second Amendment rights," Nagel said. "How far do you want us to go? Investigating? Asking questions?"

Orr noted that there had been a tremendous amount of correspondence on this issue and that the message to the council is clear. "I just want to make sure that whatever we do we have a policy in place so we don't place the city with an undue amount of risk, either legal or financial," he said, adding that it is critical that the ordinance can be supported by the Sheriff's Office. "We have to be able to have our law enforcement stand behind it." He asked for further clarification between state ordinance and proposed local law and a better understanding of how they work together.

Mayor Amy Worth asked staff to return to council with more information and to identify any other issues they come across so the council can make a decision in the future.

To view the video of the Aug. 21 city council meeting, visit

<http://orindaca.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=1415&Format=Agenda>.

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