

STATEMENT OF CITY SOLICITOR ALISSA GIULIANI, ESQ.
ZONING & PLANNING COMMITTEE MEETING

May 13, 2021

7:00 P.M.

Good evening Councilors:

Tonight I am joined by Attorneys Maura O’Keefe and Andrew Lee and we are pleased to be with you again as you consider the important zoning amendment before you. I hope information that the Planning and Law Departments have shared with you helps in your decision making. The Law Dept. specifically has fielded questions from many of you individually or from residents and we have updated the Frequently Asked Questions to share some of those answers with the public. One of the questions that we have answered here and in the FAQs is why can’t the City go more restrictive and just ban gun sales all together.

I understand that a number of Councilors have docketed a separate item proposing such a ban on gun shops in the City. Under open meeting law, your deliberations tonight are limited to the docket item before you and the separate item will be the subject of another committee discussion such as this. But I would like to address in general the question of “Why not ban all gun retail in the City and see how the Courts decide the issue?”

As I stated during this Committee’s initial meeting on this item, any act by local government to completely prohibit the sale and purchase of firearms within the City will be challenged and will likely be found unconstitutional. Our office has reviewed the statutes, federal and state case law, and consulted with experts in firearm regulation at both the state and federal level. Based on our research, our legal analysis and guidance from experts, we stand by our conclusion that a complete ban on the sale of guns in Newton would not withstand a legal challenge.

Some have said “But the law is unsettled and we should give it a try.” Our advice against pursuing this in the courts is not just based on the law but on the adverse impacts that a lost battle could very likely bring to bear not just on Newton, but on communities across the country.

If the City decides to fight for a ban, and the City loses - it will create bad law and an unfortunate precedent with wide-ranging impact.

Given the current state of 2nd Amendment jurisprudence in this country, litigation of a local ban on gun sales could set the stage for a legal decision that limits the broad authority that localities now have to regulate business of this nature or, even more broadly, finds that selling guns is indeed a constitutionally protected right. A decision along those lines would put Newton and other cities in the position of having to ensure protections and opportunities for those who sell guns within their borders. The overturning of a ban would also likely result in a greater number of firearm stores within the City as there would be no strict regulation and zoning buffers to fall back on. And with such a decision, it is unlikely the City would enjoy the same authority it has now to enact reasonable restrictions on the sale of guns to protect its citizens from a proliferation of commercial firearms businesses within the community.

Put bluntly, when considering the risks of litigation in the name of fighting the good fight, the real risk here is that the City's ability to regulate gun stores could be diminished, if not removed entirely, and that decision would impact every community in the country.

So what we continue to advise, is that the Council work within the constraints of the law and create reasonable yet stringent restrictions that protect the community. As you have seen, our office has heard the concerns of the City Council and, along with the Planning Department, we have offered a zoning amendment that pushes boundaries of regulation and limited opportunity to the greatest extent defensible without placing the City of Newton in a position that could see these boundaries eradicated by a difficult decision of a higher court.

We look forward to hearing your deliberations on this tonight and we will be listening for questions that we can respond to here or at a later date.

Thank you.