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DEPARTMENT OF
POLICE

CITY OF SACRAMENTO
CALIFORNIA

September 6, 1988

HALL OF JUSTICE
813 SIXTH STREET
SACRAMENTO, CA
95814-2495

916-449-5121

JOHN P. KEARNS
CHIEF OF POLICE

Law and Legislation Committee
Council Chambers
Sacramento, California 95814

Honorable Members in Session:

SUBJECT: An Ordinance Amending Sacramento City Code 48 Series
(Weapons)

SUMMARY

The City of Sacramento does not presently have an ordinance that prevents individuals from carrying, transporting, use or possession of dangerous weapons or dangerous articles in or upon City buildings or grounds.

BACKGROUND

The County of Sacramento passed an ordinance which proscribes as a misdemeanor "(t)he carrying, transportation, use or possession of dangerous weapons or dangerous articles. . . in or upon any county building or grounds. The ordinance defines "dangerous weapon" in the same terms found in Penal Code 12020. The ordinance defines "dangerous articles" as "any explosive or flammable substance which can be exploded or burned in a manner which is capable of producing bodily injury or damage to property, or any bomb, grenade, or similar device." The ordinance exempts all law enforcement personnel and County employees who are required to possess such items to perform county business, work or service on county premises.

Sacramento Police Officers recently encountered a situation at a County Welfare Office which demonstrated the usefulness of such an ordinance. Officers responded to a County Welfare Office within the City limits. Employees called police because a male had entered the place of business carrying a gun case. As it turned out, the suspect was carrying an unloaded shotgun in a gun case. He did have a box of shotgun shells in a backpack. The suspect told the responding officers that he meant no harm, that he had just purchased the shotgun. He had a bill of sale showing that indeed he had earlier purchased the shotgun. He did not want to leave it in the car because his car did not lock up to provide a secure storage. This subject was checked. He had no criminal record.

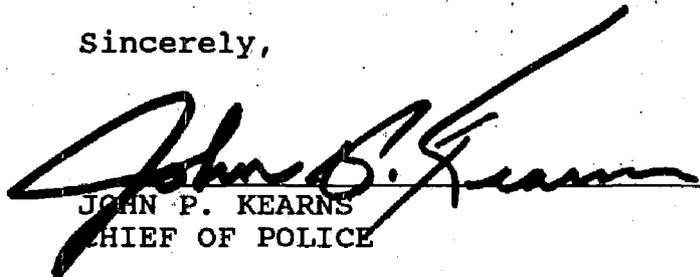
Law and Legislation Committee
September 6, 1988
Page 2

The building in this case is presently posted at the entrance/reception area with a sign prohibiting dangerous weapons and articles inside.

RECOMMENDATION

The Law and Legislation Committee endorse the attached proposed City Ordinance and forward it to the full City Council for approval.

Sincerely,



JOHN P. KEARNS
CHIEF OF POLICE

JPK:lf

Ref: 9-14

Attachment

ORDINANCE NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL ON DATE OF *

AN ORDINANCE AMENDING SECTION 48 OF THE SACRAMENTO CITY CODE RELATING TO WEAPONS.

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

Chapter 48 of the Sacramento City Code is hereby amended to read as follows:

48.1 through 48.10 - Same

Add:

48.11 PROHIBITION. The carrying, transportation, use or possession of dangerous weapons or dangerous articles is prohibited in or upon any county building or grounds.

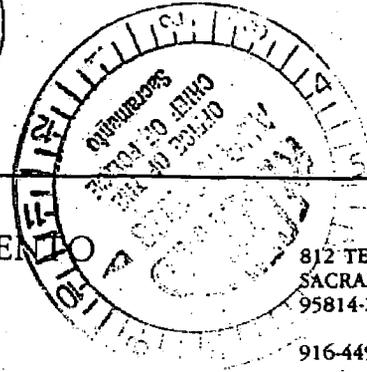
a. DANGEROUS WEAPON DEFINED. As used in 48.11 "dangerous weapon" includes any instrument or weapon of the kind commonly known as a blackjack, slingshot, billy, metal knuckles, dagger, knife, pistol, revolver, or any other firearm, razor with an unguarded blade, and any metal pipe or bar used or intended to be used as a club.

b. DANGEROUS ARTICLE DEFINED. As used in 48.11 "dangerous article" includes any explosive or flammable substance which can be exploded or burned in a manner which is capable of producing bodily injury or damage to property, or any bomb, grenade or similar device.

c. EXEMPTIONS. The prohibitions of 48.11 shall not apply to any judge, sheriff, deputy sheriff, policeman, marshal, deputy marshal, member of the California Highway Patrol, member of the California State Police, agent of the Department of Justice, agent of the Bureau of Narcotics Enforcement, guard or parole officer of the State Department of Corrections or California Youth Authority, or probation officer or deputy probation officer who is acting in the course of employment and who is lawfully authorized to possess such weapons.

d. The prohibitions of this chapter do not apply to any city employee or agent of the county who is required to possess dangerous articles in order to perform city business, work or service on city premises.

e. VIOLATION A MISDEMEANOR. Any person who violates the prohibitions of this chapter shall be guilty of a misdemeanor.



OFFICE OF THE
CITY ATTORNEY

JAMES P. JACKSON
CITY ATTORNEY

THEODORE H. KOBAY, JR.
ASSISTANT CITY ATTORNEY

CITY OF SACRAMENTO
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August 18, 1988

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MEMORANDUM

TO: John P. Kearns, Chief of Police
Lt. Matt Powers, Planning & Fiscal

FROM: James P. Jackson, City Attorney
Samuel L. Jackson, Deputy City Attorney

RE: Dangerous Weapons and Articles Ordinance

QUESTION

May the City pass an ordinance making it a misdemeanor to carry, transport, use or possess a dangerous weapon or dangerous article in or upon any City building or grounds?

ANSWER

YES. Local jurisdictions are not preempted by the state Penal Code from regulating the possession and use of dangerous weapons or explosives.

BACKGROUND

The County of Sacramento passed an ordinance which proscribes as a misdemeanor "[t]he carrying, transportation, use or possession of dangerous weapons or dangerous articles . . . in or upon any county building or grounds."¹ The ordinance defines "dangerous weapon" in the

¹Sacramento County Code, Chapter 9.42 [Appendix "A"].

John P. Kearns, Chief of Police
Matt Powers, Lieutenant
August 18, 1988
Page -2-

same terms found in Penal Code §12020. The ordinance defines "dangerous article" as "any explosive or flammable substance which can be exploded or burned in a manner which is capable of producing bodily injury or damage to property, or any bomb, grenade, or similar device." The ordinance exempts all law enforcement personnel and County employees who are required to possess such items to perform county business, work or service on county premises.

Sacramento Police Officers recently encountered a situation at a County Welfare Office which demonstrated the usefulness of such an ordinance. The Police Department has requested an opinion regarding the possibility of enacting a similar ordinance to apply to City property.

ANALYSIS

I. LOCAL JURISDICTIONS MAY ADOPT REGULATIONS TO SUPPLEMENT STATE LAW PROVISIONS GOVERNING POSSESSION AND USE OF DANGEROUS WEAPONS AND EXPLOSIVES

Penal Code §12020 prohibits the manufacture, importation, sale, or possession of a variety of dangerous weapons including those described in Sacramento County Code Chapter 9.42. The County ordinance supplements the state law provision by expressly extending the prohibition to apply to the carrying, transporting, and possession of dangerous weapons on County property. A similar City ordinance would supplement the state code by extending the prohibition to City property.

A local legislative body may establish regulations regarding matters of statewide concern only if the state has not revealed an intention to occupy the field to the exclusion of all local regulation.² The regulation of firearms is clearly a matter of statewide concern.³ However, the Legislature has not expressly preempted local regulation in this field. Furthermore, despite the pervasive regulation of firearms by state law, the courts have consistently held

²Doe v. City and County of San Francisco (1982) 136 Cal.App.3d 509, 512

³Doe, supra, at p. 513

John P. Kearns, Chief of Police
Matt Powers, Lieutenant
August 18, 1988
Page -3-

that problems with firearms are likely to require different treatment in different localities throughout the state.⁴ Therefore, local jurisdictions are not preempted by state law from enacting supplemental regulations of possession of firearms which do not conflict with state law.

Health and Safety Code provisions expressly provide that local jurisdictions may regulate possession and transportation of explosives.⁵

II. THE LEGISLATURE HAS EXPRESSLY PREEMPTED LOCAL REGULATION OF REGISTRATION AND LICENSING OF FIREARMS AND ANY ORDINANCE WHICH AFFECTS THIS FIELD WILL BE INVALIDATED

State law expressly preempts local jurisdictions from regulating registration and licensing of firearms.⁶ The Court of Appeal invalidated a city ordinance which prohibited possession of handguns in San Francisco, but exempted persons who had already obtained licenses to carry or sell handguns pursuant to Penal Code §12050 or 2070. The court held:⁷

[The effect of the exemption] is to create a new class of persons who will be required to obtain licenses in order to possess handguns. Persons presently possessing handguns in their homes who are not licensed to carry their weapons must obtain licenses or relinquish their handguns. Persons who could have purchased handguns for home possession under prior law are required under the San Francisco ordinance to enter the permit system.

The court invalidated the ordinance as an improper regulation of a preempted field because of this indirect effect on the permit system.

⁴For example, see Galvan v. Superior Court (1969) 70 Cal.2d 851, 864

⁵Health and Safety Code §§12002 and 12085

⁶Government Code §53071

⁷Id., supra, at p. 517

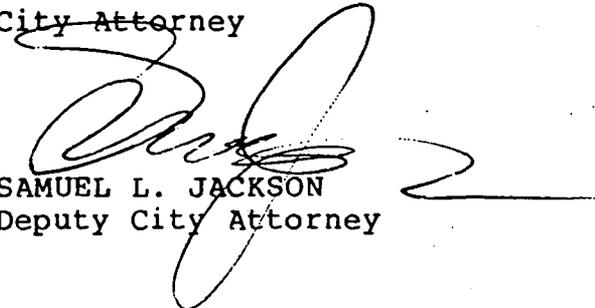
John P. Kearns, Chief of Police
Matt Powers, Lieutenant
August 18, 1988
Page -4-

CONCLUSION

The City is not preempted by state law from regulating possession of dangerous weapons or explosives. However, any ordinance which affects the state law registration and licensing scheme for firearms will be invalidated.

Very truly yours,

JAMES P. JACKSON
City Attorney



SAMUEL L. JACKSON
Deputy City Attorney

SLJ:rmm

SACRAMENTO CITY CODE

WEAPONS

CHAPTER 48

<u>Section</u>		<u>Page</u>
§ 48.1	"Dangerous or deadly weapon" defined.	1
§ 48.2	Person carrying concealed dangerous or deadly weapon-- Not to hide, loiter, etc., in public place or on premises of another or wander from place to place.	1
§ 48.3	Same--Not to engage in fight, disorderly conduct, etc., in public place or on premises of another .	1
§ 48.4	Same--Not to loiter about place where intoxicating beverages sold or other place of public resort. .	1
§ 48.5	Dangerous or deadly weapons prohibited in cars. . .	2
§ 48.6	Sale of push-button or spring-blade knives.	2
§ 48.7	Repealed by Ordinance No. 3234.	2
§ 48.8	Discharging air guns in city.	2
§ 48.9	Carrying and use of slings in the city.	2
§ 48.10	Prohibiting sale of air guns to minors.	2

SACRAMENTO CITY CODE

WEAPONS

CHAPTER 48

§ 48.1 "Dangerous or deadly weapon" defined.

The term "dangerous or deadly weapon" includes, but is not limited to, any dirk or dagger; any knife with a blade three inches or more in length; any snap-blade, spring-blade or pushbutton knife, regardless of the length of the blade; any ice pick or similar sharp stabbing tool; any straight-edge razor or any razor blade fitted to a handle; any dangerous or deadly weapon within the meaning of any law of this state restricting the use thereof; any cutting, stabbing or bludgeoning weapon or device capable of inflicting grievous bodily harm and any firearm other than one carried pursuant to a valid permit, issued by a duly authorized governmental authority, or any ordinary rifle or shotgun lawfully carried for purposes of hunting or other lawful sport. (Ord. No. 1817, §1; Ord. No. 1951, §1)

§ 48.2 Person carrying concealed dangerous or deadly weapon--Not to hide, loiter, etc., in public place or on premises of another or wander from place to place.

It shall be unlawful for any person, while carrying concealed upon his person any dangerous or deadly weapon, to loaf or loiter upon any public street, sidewalk or alley or to wander about from place to place with no lawful business thereby to perform, or to hide, lurk or loiter upon or about the premises of another. (Ord. No. 1817, §2)

§ 48.3 Same--Not to engage in fight, disorderly conduct, etc., in public place or on premises of another.

It shall be unlawful for any person who has concealed upon his person or who has in his immediate physical possession any dangerous or deadly weapon to engage in any fight or to participate in any other rough or disorderly conduct upon any public place or way or upon the premises of another. (Ord. No. 1817, §3)

§ 48.4 Same--Not to loiter about place where intoxicating beverages sold or other place of public resort.

It shall be unlawful for any person who has concealed upon his person any dangerous or deadly weapon to loiter about any place where intoxicating liquors are sold or any other place of public resort. (Ord. No. 1817, §4)

WEAPONS

§ 48.5 Dangerous or deadly weapons prohibited in cars.

It shall be unlawful for any person to have in his possession, in any automobile, any dangerous or deadly weapon, but this restriction shall not be deemed to prohibit the carrying of ordinary tools or equipment carried in good faith for uses of honest work, trade or business or for the purpose of legitimate sport or recreation. (Ord. No. 1817, §5)

§ 48.6 Sale of push-button or spring-blade knives.

It shall be unlawful for any person to sell or give to anyone in the city any push-button or spring-blade knife. (Ord. No. 1951, §2)

§ 48.7 Repealed by Ordinance No. 3234.

§ 48.8 Discharging air guns in city.

It shall be unlawful for any person to carry or use any air gun for the purpose of discharging or from which are or may be discharged bullets, shot or missiles of any kind within the city limits, except in licensed shooting galleries. (Ord. No. 490, 1st Series, §1)

§ 48.9 Carrying and use of slings in the city.

It shall be unlawful for any person to carry or use a sling for the purpose of throwing a missile of any kind within the city limits. (Ord. No. 160, 1st Series, §1)

§ 48.10 Prohibiting sale of air guns to minors.

- (a) It shall be unlawful for any person to sell, give or loan to any person under eighteen years of age, any BB gun, air gun, pellet gun, or spring gun, within the city.
- (b) No person, under the age of eighteen years, shall have in his possession or control any BB gun, air gun, pellet gun, or spring gun, within this city, except while in immediate custody of his parents as hereinafter provided.
- (c) The chief of police is hereby authorized to establish training programs for minors, and also to license the

WEAPONS

establishment of shooting ranges and galleries in proper locations.

- (d) Any person under the age of eighteen years may, while in custody of and under immediate control of his or her parent or guardian, use a BB gun, air gun, pellet gun, or spring gun, to shoot at an inanimate target on range or in a shooting gallery which has been authorized by the chief of police.
- (e) Any person desiring to operate and maintain a shooting range for BB guns, air guns, pellet guns, or spring guns, within the city, shall first apply to the chief of police for a permit, on an application form to be furnished by the chief of police. If, upon investigation, it appears the range can be maintained at the location specified in the application, without danger to the public, then and in that event the chief of police may issue a permit. (Ord. No. 2272, §1)