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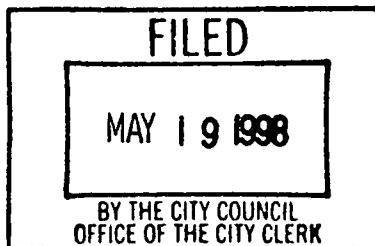
**CITY OF SACRAMENTO
CALIFORNIA**

May 4, 1998

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MEMORANDUM

TO: Mayor and City Councilmembers

FROM: Samuel L. Jackson, City Attorney
William P. Carnazzo, Assistant City Attorney
Richard E. Archibald, Senior Deputy City Attorney

RE: Concealed Weapons

ISSUE PRESENTED

1. Whether the City Code provisions pertaining to concealed weapons (Title 48, Chapter 48.01) are preempted by the State Penal Code provisions concerning concealed weapons?

BRIEF ANSWER

1. Generally not. A municipal ordinance with language nearly identical to that found in the current City Code was upheld in Yuen v. Municipal Court, 52 Cal.App.3d 351 (1975) against a preemption challenge. The Yuen court held that the Legislature had not preempted the field of regulation through enactment of Penal Code provisions regarding concealed weapons, and that the San Francisco ordinance served a different purpose than the state legislation (namely, to prohibit persons from carrying a broad range of concealed weapons while "loitering or loafing about" in public or engaging in other specified (mis)conduct. The current provisions of the Penal Code are nearly identical to those which were the basis of the preemption challenge in Yuen. The Yuen decision should be considered valid and binding.

It should be noted that the City Code provisions pertaining to concealed weapons do not restrict the type or length of knives in all circumstances; rather, they limit the type and length of knives that may be concealed upon a person while that person is engaged in certain types of (mis)conduct, such as "loafing or loitering" about a public street, sidewalk or alley, having a

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concealed weapon while engaged in a fight or having a concealed weapon while loitering about a place selling alcohol.

BACKGROUND

Councilmember Yee inquired as to the validity of the provisions of the City Code pertaining to the carrying of a concealed weapon, and more specifically, the provisions that deal with the carrying of knives. The primary concern is whether the City Code provisions are preempted by the Penal Code provisions concerning concealed weapons. Councilmember Yee requested a report back to the full Council.

ANALYSIS

State Law

California Penal Code sections 12020 and 653k deal with knives as concealed weapons. Section 12020 provides, in pertinent part:

(a) Any person in this state who ... carries concealed upon his or her person any dirk or dagger ... is punishable by imprisonment in a county jail not exceeding one year or in the state prison....
(Emphasis added.)

....

(c)(24) As used in this section, a 'dirk' or 'dagger' means a knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death....

(d) Knives carried in sheaths which are worn openly suspended from the waist of the wearer are not concealed within the meaning of this section.

Section 653k deals with switchblade knives, and provides, in pertinent part:

Every person who possesses in the passenger's or driver's area of any motor vehicle in any public place or place open to the public, [or] carries upon his or her person ... a switchblade knife having a blade two or more inches in length is guilty of a misdemeanor. (Emphasis added.)

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For the purposes of this section, 'switchblade knife' means a knife having the appearance of a pocketknife and includes a spring-blade knife, snap-blade knife, gravity knife or any other similar type knife, the blade or blades of which are two or more inches long and which can be released automatically.... (Emphasis added.)

City Code

Chapter 48.01 of Title 48 of the City Code sets forth the City's regulations regarding concealed weapons. Section 48.01.001 sets forth the City's definition of concealed weapons. Section 48.01.001 provides:

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 push-button 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. (Emphasis added.)

Sections 48.01.002 through 48.01.005 generally prohibit persons from carrying concealed weapons while engaged in various defined types of conduct (misconduct) for which the presence of concealed weapons may pose a significant threat to health and safety. Section 48.01.002 provides:

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.

Sections 48.01.003 through 48.01.005 prohibit the carrying of concealed weapons in other specified situations (while loitering near a place where liquor is sold).

The issue of whether cities are preempted by state law from regulating in the area of concealed weapons is not new. In Yuen v. Municipal Court, (1975) 52 Cal.App.3d 351, the court addressed the validity of a San Francisco ordinance very similar to the current provisions of Title

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48 of the City Code. The S.F. ordinance prohibited loitering on public streets, alleys and sidewalks, along with certain other specified activities, while carrying concealed weapons. The state legislation on concealed weapons was very similar to the current state legislation set forth above. The court concluded that state law did not preempt the field of knives and knife-like objects as dangerous or deadly weapons, and that the S.F. ordinance lawfully supplemented the state legislation to address local concerns and issues. Id. at 356-358.

The Yuen decision has been followed, has not been reversed, and should be considered good law. Like the San Francisco ordinance at issue in Yuen, the provisions of Chapter 48.01 of Title 48 of the City Code should generally be seen as supplemental to state legislation to address local concerns and issues, and therefore valid. It should be noted that the City Code provisions pertaining to concealed weapons do not restrict the type or length of knives in all circumstances; rather, they limit the type and length of knives that may be concealed upon a person while that person is engaged in certain types of (mis)conduct, such as "loafing or loitering" about a public street, sidewalk or alley, etc., having a concealed weapon while engaged in a fight, having a concealed weapon while loitering about a place selling alcohol, etc.

While the City is generally not preempted from regulating in the area of concealed weapons, there may be a preemption problem with the City's regulations regarding switchblades. In People v. Gerardo, (1985) 174 Cal.App.3d Supp. 1, the court cited Yuen favorably in rejecting a preemption challenge to a local ordinance prohibiting the carrying of knives or dirks in plain view. The court did comment that it felt the Legislature had preempted the field of switchblade regulation, but did not have to address the issue because the defendant's transgression did not involve a switchblade.

State law prohibits a person from having in the driver or passenger area of a motor vehicle, or carrying upon his or her person, a switchblade having a blade two or more inches in length. Penal Code Sec. 653k. Section 48.01.005 provides that it shall be unlawful for any person to have in his possession in any automobile any dangerous or deadly weapon. Under the City Code, any and all switchblades, regardless of the length of the blade, constitute dangerous or deadly weapons. According to the Gerardo court, the Legislature has occupied the field of switchblade regulation (at least as it relates to possession, whether concealed or not), and further regulation by local jurisdictions is therefore preempted. Although the discussion in Gerardo concerning switchblade regulation is not binding, it is well reasoned and the Council may wish to consider its implementation through amendment of the potentially conflicting provisions of Title 48.

CONCLUSIONS

The courts have held that the Legislature did not preempt the field of regulation of concealed weapons generally, and knives specifically. The provisions of Title 48 of the City Code are similar to those in a San Francisco ordinance which were upheld in the Yuen decision

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as valid and effective when challenged on preemption grounds. Accordingly, the provisions of Title 48 should generally be considered valid and effective. There is a potential preemption problem with provisions of Title 48 dealing with switchblade knives, and the Council may wish to amend such provisions to eliminate any preemption concerns in this limited area.

REA:je

c: Sam Jackson, City Attorney
Bill Edgar, City Manager