



October 4, 2023

MEMORANDUM

TO: Jeffrey Yates
Assistant City Manager

THROUGH: Lachelle H. Pulliam
Interim City Attorney

FROM: Michael R. Whyte
Police Attorney

SUBJECT: "Every Town for Gun Safety" Recommendation

At the August 16, 2023, special meeting on public safety, Council directed staff to research the "Every Town for Gun Safety" recommendation, along with recommendations for a "Tool Kit", in addition to the creation of a Task Force comprised of the City, County, Schools, Health Care, Judicial and others.

One of the Every Town recommendations was for cities to enact an ordinance requiring warning signs to be posted outside of businesses that sell firearms. The City Attorney's Office has researched the proposed ordinance.

The proposed ordinance would require any "dealer" to post a warning sign at or near the entrance. A dealer is defined as any person engaged in the business of selling firearms at wholesale or retail who has, or is required to have, a federal firearms license under 18 U.S.C. § 923(a). The warning sign would read as follows:

WARNING: Access to a firearm in the home significantly increases the risk of suicide; death during domestic violence disputes; and the unintentional death of children, household members, or others. If you or a loved one is experiencing distress and/or depression, call the [hotline] or visit [website].

G.S. § 14-409.40 is a state preemption statute for local laws governing the regulation of firearms. The preemption statute prohibits municipalities for regulating in any manner the possession or sale of firearms.

G.S. § 14-409.40(a1) states: "the lawful design, marketing,...sale,...of firearms...to the public is not an unreasonably dangerous activity and does not constitute a nuisance per se and furthermore, that it is the unlawful use of firearms and ammunition, rather than their lawful...sale,...that is the proximate cause of injuries...".

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The proposed ordinance arguably does not regulate the sale of firearms, just requires the posting of signage. Requiring a posting of signage would be considered a regulation on commercial speech. Court decisions state that any regulation effecting commercial speech that is not misleading and concerns otherwise lawful activity must pass three “tests”. First, that the government asserts a substantial interest in the speech regulation. Second, that the regulation directly advances that interest. Third, that the regulation is not more extensive than necessary.

Court cases suggest that without direct information supporting the statements in the warning required to be posted, that the regulation/ordinance will not survive a First Amendment challenge. There is no case directly on point. It does not appear that any other jurisdiction in North Carolina has instituted a similar ordinance.

The City is not prohibited from enacting such an ordinance. However, if challenged, the ordinance would need to pass constitutional scrutiny.