

# CITY of ALBUQUERQUE

## TWENTY FIFTH COUNCIL

COUNCIL BILL NO. R-23-171 ENACTMENT NO. \_\_\_\_\_

SPONSORED BY: Dan Lewis, Brook Bassan, Louie Sanchez, and Renée Grout

1 RESOLUTION

2 AFFIRMING SUPPORT FOR THE FUNDAMENTAL RIGHT TO KEEP AND BEAR  
3 ARMS, TO URGE THE GOVERNOR TO TAKE NO ACTIONS THAT VIOLATE  
4 CONSTITUTIONAL RIGHTS, AND TO UPHOLD THE DUTY OF GOVERNMENT  
5 OFFICIALS TO SUPPORT THE CONSTITUTION AND LAWS OF THE STATE OF  
6 NEW MEXICO AND THE UNITED STATES OF AMERICA.

7 WHEREAS, the New Mexico State Constitution, Article II, Section 2, Popular  
8 Sovereignty states that, “All political power is vested in and derived from the  
9 people: all government of right originates with the people, is founded upon  
10 their will and is instituted solely for their good; and

11 WHEREAS, Article II, Section 3, Right of Self-government provides that the  
12 “people of the state have sole and exclusive right to govern themselves as a  
13 free, sovereign and independent state”; and

14 WHEREAS, Article II, Section 4, Inherent Rights reads, in part, that “[a]ll  
15 persons ... have certain natural, inherent and inalienable rights, among which  
16 are the rights of enjoying and defending life and liberty, ... protecting property,  
17 and of seeking and obtaining safety and happiness”; and

18 WHEREAS, Article II, Section 6, Right to Bear Arms guarantees that “[n]o  
19 law shall abridge the right of the citizen to keep and bear arms for security and  
20 defense, for lawful hunting and recreational use and for other lawful purposes,  
21 but nothing herein shall be held to permit the carrying of concealed weapons,”  
22 and prohibits a municipality or county from regulating, “in any way, an  
23 incident of the right to keep and bear arms”; and

24 WHEREAS, Article V, Section 4, Powers of the Governor, which vests  
25 “supreme executive power of the state” in the governor, compels the governor  
26 to “take care that the laws be faithfully executed”; and

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1 WHEREAS, Article 20, Section 1, Oath of Officer mandates that every  
2 elected official, when entering upon their duties, must take and subscribe to  
3 an oath or affirmation to “support the constitution of the United States and the  
4 constitution and laws of this state, and that he will faithfully and impartially  
5 discharge the duties of his office to the best of his ability”; and

6 WHEREAS, the Second Amendment to the United States Constitution  
7 guarantees “the right of the people to keep and bear Arms,” U.S. Const.  
8 amend. II; and

9 WHEREAS, in *New York State Rifle & Pistol Ass’n, Inc. v Bruen*, 142 S.Ct.  
10 2111 (2022), the United States Supreme Court ruled that carrying a firearm for  
11 self-defense was conduct protected by the Second Amendment, which  
12 “presumptively guarantees” a right to bear arms in public for self-defense, and  
13 rejected a means-end scrutiny analysis in favor of a test based on the  
14 historical tradition of firearm regulation in determining whether a government  
15 restriction on firearms is constitutional. In that respect, the Court observed  
16 that, “American governments simply have not broadly prohibited the public  
17 carry of commonly used firearms for personal defense”; and

18 WHEREAS, on September 7, 2023, by Executive Order 2023-130, Governor  
19 Michelle Lujan Grisham of the State of New Mexico declared a “State of Public  
20 Health Emergency” under the authority of the Public Health Emergency  
21 Response Act, based on “gun violence” constituting “a statewide public  
22 health emergency of uncertain duration” as well as “a manmade disaster  
23 threatening widespread physical or economic harm that is beyond local  
24 control” pursuant to the All Hazard Emergency Management Act; and

25 WHEREAS, on September 8, 2023, in reliance of the Governor’s declaration  
26 and in furtherance of Executive Order 2023-130, the Secretary of the New  
27 Mexico Department of Health, Patrick Allen, issued a “Public Health  
28 Emergency Order Imposing Temporary Firearm Restrictions, Drug Monitoring,  
29 and Other Public Safety Measures”; and

30 WHEREAS, the Secretary’s September 8 Order makes it illegal for law-  
31 abiding persons, other than law enforcement and security officers, to  
32 “possess a firearm, ... either openly or concealed,” in any city or country that  
33 meets specified thresholds, with five exceptions; bans the possession of

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1 firearms on all “state property, public schools and public parks” by persons  
2 other than law enforcement and licensed security officers; directs all state  
3 departments and agencies “to take all appropriate steps to ensure compliance  
4 with this Order,” and specifies that any person who violates the Order is liable  
5 for civil administrative penalties; and

6 WHEREAS, Executive Order 2023-130 states that local governments are  
7 “encouraged to request” emergency proclamations and additional measures  
8 “pursuant to the Riot Control Act,” which would authorize the governor, by  
9 proclamation, to prohibit in those localities “the possession of firearms or any  
10 other deadly weapon by a person in any place other than his place of  
11 residence or business, except for peace officers,” prohibit “other activities the  
12 governor reasonably believes should be prohibited,” and with violations being  
13 punishable as crimes; and

14 WHEREAS, Executive Order 2023-130 and the Secretary’s Order (“the  
15 September 7 and 8 Orders”) remain in force until October 6, 2023, and if  
16 extended or renewed, to a date beyond; and

17 WHEREAS, nothing in the Public Health Emergency Response Act or the  
18 All Hazard Emergency Management Act, the statutes relied on by the Governor  
19 as the authority for Executive Order 2023-130, specifically authorize a general  
20 suspension of the right to keep and bear arms; and

21 WHEREAS, state law in New Mexico generally does not prohibit the open  
22 carrying of firearms in public; the concealed carrying of a firearm without a  
23 valid concealed carry license is generally allowed for persons on their own  
24 property or in their private vehicle, or when carrying an unloaded firearm; N.M.  
25 Stat. Ann. § 30-7-2; and

26 WHEREAS, New Mexico statute law provides that a concealed handgun  
27 license is valid for four years unless suspended or revoked, where license  
28 suspension or revocation may only occur based on the conduct of the  
29 licensee; N.M. Stat. Ann. §§ 29-19-3, 6(I); and

30 WHEREAS, the prohibitions imposed through the September 7 and 8  
31 Orders on the fundamental rights to keep and bear arms are contrary to the  
32 State Constitution of New Mexico, the Second Amendment to the United  
33 States Constitution, and clear Supreme Court precedent; and

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1 WHEREAS, the prohibitions imposed through the September 7 and 8  
2 Orders will not only fail to curb “gun violence” by criminals who already  
3 ignore existing laws – a fact that Governor Lujan Grisham herself has  
4 allegedly acknowledged – but make it more likely that law-abiding citizens  
5 targeted by criminals will be left unable to defend themselves, their families  
6 and others; and

7 WHEREAS, several legal challenges have already been initiated  
8 challenging the imposition, validity, and enforcement of the gun prohibitions  
9 in the September 7 and 8 Orders; and

10 WHEREAS, the Oath/Affirmation of Office sworn by the members of the  
11 City Council included an oath/affirmation to support the constitution of the  
12 United States and the constitution and laws of the State of New Mexico.

13 BE IT RESOLVED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF  
14 ALBUQUERQUE:

15 Section 1. The City of Albuquerque hereby declares its intent to support  
16 and defend the constitutional rights of its citizens, including the right to keep  
17 and bear arms for security and defense, for lawful hunting and recreational  
18 use, and for other lawful purposes; and to adamantly oppose unconstitutional  
19 restrictions on such rights.

20 Section 2. The City of Albuquerque opposes the gun prohibitions in the  
21 September 7 and 8 Orders and urges the Governor and state officials to take  
22 no actions, that would violate the freedoms guaranteed in both Constitutions  
23 or burden law-abiding citizens who currently lawfully possess firearms.

24 Section 3. That to the extent allowed by law, the City of Albuquerque may  
25 use all lawful means to prohibit, by resolution or ordinance, any City  
26 Department, Officer, or Employee acting in their official capacity, from  
27 applying for grants, spending City public funds, using City public resources or  
28 City public employees, that support any present or future infringement on the  
29 right of its citizens to keep and bear arms.

30 Section 4. The City Council directs the City Clerk to forward a copy of this  
31 resolution to the Office of the Governor of New Mexico.

32 Section 5. SEVERABILITY CLAUSE. If any section, paragraph, sentence,  
33 clause, word, or phrase of this resolution is for any reason held to be invalid

1 or unenforceable by any court or competent jurisdiction, such decision shall  
2 not affect the validity of the remaining provisions of this resolution. The  
3 Council hereby declares that it would have passed this resolution and each  
4 section, paragraph, sentence, clause, word, or phrase thereof irrespective of  
5 any provisions being declared unconstitutional or otherwise invalid.

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