



Legislation Text

File #: R-23-171, Version: 2

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

RESOLUTION

Affirming Support For The Fundamental Right To Keep And Bear Arms, To Urge The Governor To Take No Actions That Violate Constitutional Rights, And To Uphold The Duty Of Government Officials To Support The Constitution And Laws Of The State Of New Mexico And The United States Of America (Lewis, Bassan, Sanchez, Grout)

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

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

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

WHEREAS, Article II, Section 4, Inherent Rights reads, in part, that "all persons ... have certain natural, inherent and inalienable rights, among which are the rights of enjoying and defending life and liberty, ... protecting property, and of seeking and obtaining safety and happiness"; and

WHEREAS, Article II, Section 6, Right to Bear Arms guarantees that “no law shall abridge the right of the citizen to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes, but nothing herein shall be held to permit the carrying of concealed weapons,” and prohibits a municipality or county from regulating, “in any way, an incident of the right to keep and bear arms”; and

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

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

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

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

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

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

WHEREAS, the Secretary’s September 8 Order makes it illegal for law-abiding persons, other

than law enforcement and security officers, to “possess a firearm, ... either openly or concealed,” in any city or country that meets specified thresholds, with five exceptions; bans the possession of firearms on all “state property, public schools and public parks” by persons other than law enforcement and licensed security officers; directs all state departments and agencies “to take all appropriate steps to ensure compliance with this Order,” and specifies that any person who violates the Order is liable for civil administrative penalties; and

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

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

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

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

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

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

WHEREAS, the prohibitions imposed through the September 7 and 8 Orders will not only fail to curb “gun violence” by criminals who already ignore existing laws - a fact that Governor Lujan Grisham herself has allegedly acknowledged - but make it more likely that law-abiding citizens

targeted by criminals will be left unable to defend themselves, their families and others; and

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

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

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

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

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

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

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

Section 5. SEVERABILITY CLAUSE. If any section, paragraph, sentence, clause, word, or phrase of this resolution is for any reason held to be invalid or unenforceable by any court or competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this resolution. The Council hereby declares that it would have passed this resolution and each section, paragraph, sentence, clause, word, or phrase thereof irrespective of any provisions being declared unconstitutional or otherwise invalid.

X:\CL\SHARE\CL-Staff_Legislative Staff\Legislation\25 Council\R-171final.docx