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Richard J. ...  
Clk., U.S. District Court  
Northern District of California  
San Jose

1 C. D. Michel - S.B.N. 144258  
Clinton B. Monfort - S.B.N. 255609  
2 Sean A. Brady - S.B.N. 262007  
Anna M. Barvir - S.B.N. 268728  
3 MICHEL & ASSOCIATES, P.C.  
180 E. Ocean Boulevard, Suite 200  
4 Long Beach, CA 90802  
Telephone: 562-216-4444  
5 Facsimile: 562-216-4445  
Email: cmichel@michellawyers.com  
6

7 Attorneys for Plaintiffs

8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
10 **SAN JOSE DIVISION**

11 LEONARD FYOCK, SCOTT  
HOCHSTETLER, WILLIAM  
12 DOUGLAS, DAVID PEARSON,  
13 BRAD SEIFERS, and ROD  
SWANSON,

14 Plaintiffs

15 vs.  
16

17 THE CITY OF SUNNYVALE, THE  
MAYOR OF SUNNYVALE,  
18 ANTHONY SPITALERI in his  
19 official capacity, THE CHIEF OF  
THE SUNNYVALE DEPARTMENT  
20 OF PUBLIC SAFETY, FRANK  
GRGURINA, in his official capacity,  
21 and DOES 1-10,  
22

23 Defendants.  
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26  
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) CASE NO.

) **CV 13-05807 PSG**

) COMPLAINT FOR DECLARATORY  
) AND INJUNCTIVE RELIEF

) SMC § 9.44.050: Violation of U.S. Const.,  
) Amends. II & XIV

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1 Plaintiffs, by and through their undersigned attorneys, bring this Complaint  
2 for Declaratory and Injunctive Relief against the above-named Defendants, their  
3 employees, agents, and successors in office, and in support thereof allege the  
4 following upon information and belief:

## 5 6 INTRODUCTION

7 1. Plaintiffs bring this suit to challenge the constitutionality of Sunnyvale  
8 Municipal Code section 9.44.050 (“the Ordinance”), enacted and enforced by  
9 Defendant City of Sunnyvale, its Mayor, Anthony Spitaleri, and its Chief of Police,  
10 Frank Grgurina (collectively, “the City”). The Ordinance violates Plaintiffs’ rights  
11 to keep and bear arms under the Second Amendment to the United States  
12 Constitution.

13 2. The Ordinance bans the possession and use of common, standard-  
14 capacity “ammunition feeding devices” or “magazines” capable of holding more  
15 than ten rounds. Magazines prohibited by the Ordinance are in widespread,  
16 common use throughout the United States. These magazines are typically  
17 possessed by law-abiding citizens for lawful purposes, including in-home self  
18 defense.

19 3. The City’s ban on the very possession of these magazines directly  
20 violates Plaintiffs’ rights to keep and bear arms enshrined by the Second  
21 Amendment.

22 4. Accordingly, Plaintiffs seek declaratory and injunctive relief to invalidate  
23 and enjoin the City’s enforcement of the Ordinance.

## 24 25 JURISDICTION AND VENUE

26 5. The Court has original jurisdiction of this civil action pursuant to 28  
27 U.S.C. § 1331 because the action arises under the Constitution and laws of the  
28 United States, thus raising federal questions. The Court also has jurisdiction under

1 28 U.S.C. § 1343(a)(3) and 42 U.S.C. § 1983 in that this action seeks to redress the  
2 deprivation, under color of the laws, statutes, ordinances, regulations, customs and  
3 usages of the State of California and political subdivisions thereof, of rights,  
4 privileges or immunities secured by the United States Constitution and by Acts of  
5 Congress.

6 6. Plaintiffs' claims for declaratory and injunctive relief are authorized by  
7 28 U.S.C. §§ 2201 and 2202, respectively.

8  
9 **INTRADISTRICT ASSIGNMENT**

10 7. This action arises in the County of Santa Clara because a substantial part  
11 of the events or omissions giving rise to the claims occurred in that County.  
12 Pursuant to the Northern District's Local Rule 3-2(e), this action shall be assigned  
13 to the San Jose division.

14  
15 **PARTIES**

16 8. Plaintiff Leonard Fyock is a resident of Sunnyvale. Plaintiff Fyock is a  
17 law-abiding citizen who is not prohibited from owning or possessing firearms  
18 under state or federal law. He currently owns magazines prohibited by the  
19 Ordinance capable of accepting more than ten rounds that were lawfully acquired  
20 in accordance with state and federal law. Due to the City's enactment of the  
21 Ordinance, Plaintiff Fyock is prohibited from possessing these magazines in the  
22 City of Sunnyvale. If the Ordinance is not enjoined, Plaintiff Fyock will comply  
23 with this section to avoid prosecution and will not possess his magazines within  
24 City limits. But for the City's enactment and ongoing enforcement of the  
25 Ordinance, Plaintiff Fyock would immediately and continuously possess these  
26 magazines within the City for lawful purposes, including in-home self-defense.

27 9. Plaintiff William Douglas is a resident of Sunnyvale. Plaintiff Douglas  
28 is a law-abiding citizen who is not prohibited from owning or possessing firearms

1 under state or federal law. He currently owns magazines prohibited by the  
2 Ordinance capable of accepting more than ten rounds that were lawfully acquired  
3 in accordance with state and federal law. Due to the City's enactment of the  
4 Ordinance, Plaintiff Douglas is prohibited from possessing these magazines in the  
5 City of Sunnyvale. If the Ordinance is not enjoined, Plaintiff Douglas will comply  
6 with this section to avoid prosecution and will not possess his magazines within  
7 City limits. But for the City's enactment and ongoing enforcement of the  
8 Ordinance, Plaintiff Douglas would immediately and continuously possess these  
9 magazines within the City for lawful purposes, including in-home self-defense.

10 10. Plaintiff Scott Hochstetler is a resident of Sunnyvale. Plaintiff  
11 Hochstetler is a law-abiding citizen who is not prohibited from owning or  
12 possessing firearms under state or federal law. He currently owns magazines  
13 prohibited by the Ordinance capable of accepting more than ten rounds that were  
14 lawfully acquired in accordance with state and federal law. Due to the City's  
15 enactment of the Ordinance, Plaintiff Hochstetler is prohibited from possessing  
16 these magazines in the City of Sunnyvale. If the Ordinance is not enjoined,  
17 Plaintiff Hochstetler will comply with this section to avoid prosecution and will not  
18 possess his magazines within City limits. But for the City's enactment and ongoing  
19 enforcement of the Ordinance, Plaintiff Hochstetler would immediately and  
20 continuously possess these magazines within the City for lawful purposes,  
21 including in-home self-defense.

22 11. Plaintiff Brad Seifers is a resident of Sunnyvale. Plaintiff Seifers is a  
23 law-abiding citizen who is not prohibited from owning or possessing firearms  
24 under state or federal law. He currently owns magazines prohibited by the  
25 Ordinance capable of accepting more than ten rounds that were lawfully acquired  
26 in accordance with state and federal law. Due to the City's enactment of the  
27 Ordinance, Plaintiff Seifers is prohibited from possessing these magazines in the  
28 City of Sunnyvale. If the Ordinance is not enjoined, Plaintiff Seifers will comply

1 with this section to avoid prosecution and will not possess his magazines within  
2 City limits. But for the City's enactment and ongoing enforcement of the  
3 Ordinance, Plaintiff Seifers would immediately and continuously possess these  
4 magazines within the City for lawful purposes, including in-home self-defense.

5 12. Plaintiff Rod Swanson is a resident of Sunnyvale. Plaintiff Swanson is a  
6 law-abiding citizen who is not prohibited from owning or possessing firearms  
7 under state or federal law. He currently owns magazines prohibited by the  
8 Ordinance capable of accepting more than ten rounds that were lawfully acquired  
9 in accordance with state and federal law. Due to the City's enactment of the  
10 Ordinance, Plaintiff Swanson is prohibited from possessing these magazines in the  
11 City of Sunnyvale. If the Ordinance is not enjoined, Plaintiff Swanson will comply  
12 with this section to avoid prosecution and will not possess his magazines within  
13 City limits. But for the City's enactment and ongoing enforcement of the  
14 Ordinance, Plaintiff Swanson would immediately and continuously possess these  
15 magazines within the City for lawful purposes, including in-home self-defense.

16 13. Plaintiff David Pearson is a resident of Sunnyvale. Plaintiff Pearson is a  
17 law-abiding citizen who is not prohibited from owning or possessing firearms  
18 under state or federal law. He currently owns magazines prohibited by the  
19 Ordinance capable of accepting more than ten rounds that were lawfully acquired  
20 in accordance with state and federal law. Due to the City's enactment of the  
21 Ordinance, Plaintiff Pearson is prohibited from possessing these magazines in the  
22 City of Sunnyvale. If the Ordinance is not enjoined, Plaintiff Pearson will comply  
23 with this section to avoid prosecution and will not possess his magazines within  
24 City limits. But for the City's enactment and ongoing enforcement of the  
25 Ordinance, Plaintiff Pearson would immediately and continuously possess these  
26 magazines within the City for lawful purposes, including in-home self-defense.

27 14. Each of the individual Plaintiffs identified above are residents and  
28 taxpayers of the City of Sunnyvale who presently intend to possess their lawfully-

1 acquired, common magazines capable of holding more than ten rounds within the  
2 City as is their right under the Second Amendment to the United States  
3 Constitution – a right the City now denies them through the enactment and  
4 enforcement of the Ordinance. Plaintiffs fear prosecution if they possess magazines  
5 prohibited by the ordinance within the City of Sunnyvale.

6 15. Each of the individual Plaintiffs presently intend to and forthwith would  
7 possess their magazines prohibited by the Ordinance within the City of Sunnyvale  
8 if this Court declared the Ordinance void and unenforceable or otherwise enjoined  
9 its enforcement.

10 16. Defendant City of Sunnyvale is a municipal corporation acting as such  
11 by and under state law. Defendant City of Sunnyvale is a “person” acting under  
12 color of state law within the meaning of 42 U.S.C. § 1983, and is principally  
13 responsible for implementing and enforcing the Ordinance.

14 17. Defendant Anthony Spitaleri is the current Mayor and Chief Executive  
15 Officer of Defendant City of Sunnyvale. Defendant Spitaleri is an agent, servant,  
16 and/or employee of Defendant City of Sunnyvale, acting under color of state law as  
17 that phrase is used in 42 U.S.C. § 1983, and is responsible for enforcing the  
18 Ordinance. Defendant Spitaleri is sued in his official capacity.

19 18. Defendant Frank Grgurina is the Chief of the Department of Public  
20 Safety of Defendant City of Sunnyvale. As Chief of the Department of Public  
21 Safety, Defendant Grgurina is the chief law enforcement officer for Defendant City  
22 of Sunnyvale. Defendant Grgurina is an agent, servant, and/or employee of  
23 Defendant City of Sunnyvale, acting under color of state law as that phrase is used  
24 in 42 U.S.C. § 1983, and is responsible for enforcing the Ordinance. Defendant  
25 Grgurina is sued in his official capacity.

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1 **GENERAL ALLEGATIONS**

2 **Sunnyvale Municipal Code Section 9.44.050:**

3 19. On July 16, 2013, the Sunnyvale City Council adopted a resolution  
4 calling for a Special Municipal Election to be held on November 5, 2013, for the  
5 purpose of voting on various proposed amendments to the Sunnyvale Municipal  
6 Code, including a slate of local gun-control laws that would be presented to the  
7 voters as Measure C. The ballot measure asked voters to adopt, among other items,  
8 Sunnyvale Municipal Code section 9.44.050. (A copy of Sunnyvale Municipal  
9 Code section 9.44.050 is attached hereto as Exhibit “A” and incorporated herein.)

10 20. On November 5, 2013, a majority of the ballots cast voted to approve  
11 the adoption of Measure C and, effectively, to amend the Sunnyvale Municipal  
12 Code to include section 9.44.050.

13 21. On or about November 26, 2013, the City of Sunnyvale, through its  
14 legislative body the City Council of the City of Sunnyvale, “declared” the  
15 November 5 vote on Measure C pursuant to California Elections Code section  
16 9217.

17 22. The Ordinance took effect on December 6, 2013, ten (10) days after the  
18 Sunnyvale City Council declared the vote.

19 23. The Ordinance prohibits any person, corporation, or other entity in the  
20 City of Sunnyvale from possessing ammunition magazines it refers to as “large-  
21 capacity magazines” or from possessing or using firearms equipped with these  
22 magazines.

23 24. The Ordinance defines a “large-capacity magazine” as an ammunition  
24 feeding device with the capacity to accept more than ten rounds.

25 25. The Ordinance provides that any person who possesses any magazines  
26 prohibited by the Ordinance prior to its effective date shall have ninety (90) days to  
27 cease possessing those magazines within the City of Sunnyvale.

28 26. Pursuant to the Ordinance, any person who is in lawful possession of

1 any “large-capacity magazines” prior to December 6, 2013, must surrender such  
2 magazines to law enforcement for destruction, remove them from the City of  
3 Sunnyvale, or transfer them to a licensed firearms dealer on or before March 6,  
4 2014.

5 27. The Ordinance identifies a number of exceptions, including but not  
6 limited to, possession by military and possession by law enforcement while acting  
7 within “the course and scope of their duties.”

8 28. The Ordinance does not include an exception for possession by law-  
9 abiding citizens for self-defense.

10 29. The Ordinance does not include an exception for law enforcement  
11 officers who possess any prohibited magazines within their homes for self-defense  
12 or at any other times when officers are not acting within “the course and scope of  
13 their duties.”

14 30. Active police officers are forced to dispose of their personally owned,  
15 lawfully acquired magazines with capacities of more than ten rounds that are  
16 prohibited by the Ordinance, as set forth in that section and described in paragraph  
17 26 of this Complaint.

18 31. The City has never informed Plaintiffs or the public that it does not  
19 intend to enforce the Ordinance.

20 32. The City has no documents indicating that it does not intend to enforce  
21 the Ordinance.

22 **Standard-Capacity Magazines Prohibited by the Ordinance**  
23 **Are Protected Under the Second Amendment:**

24 33. On June 26, 2008, the United States Supreme Court confirmed in  
25 *District of Columbia v. Heller*, 554 U.S. 570, 624-25 (2008), that arms “typically  
26 possessed by law-abiding citizens for lawful purposes” or those “in common use”  
27 are protected under the Second Amendment.

28 34. On June 28, 2010, the Supreme Court confirmed that Second



1 Amendment protections are fully applicable to state and local governments by  
2 virtue of the Fourteenth Amendment. *McDonald v. City of Chicago*, 130 S. Ct.  
3 3020 (2010).

4 35. In the wake of *Heller* and *McDonald*, courts have evaluated Second  
5 Amendment protections for ammunition, magazines, and firearm components  
6 pursuant to the Supreme Court’s “common use” standard described in *Heller*.

7 36. Magazines and firearms equipped with magazines that are in common  
8 use for lawful purposes are protected by the Second Amendment.

9 37. A standard-capacity magazine is one containing the number of  
10 cartridges the firearm was designed to operate with. Increased or “large-capacity”  
11 magazines and feeding devices are those holding more cartridges than the firearm  
12 was originally designed to use. Reduced or low-capacity magazines are those  
13 whose capacity is artificially reduced from that which the firearm was originally  
14 designed or intended to use.

15 38. Firearms with magazines capable of holding more than ten rounds can  
16 be traced back to the era of ratification of the Fourteenth Amendment.

17 39. Millions of firearms that have been sold in the United States come stock  
18 from the factory with magazines capable of holding more than ten rounds. These  
19 include, but are not limited to: the Glock 17 (designed to hold 17 rounds), the  
20 Beretta 92F (designed to hold 15 rounds), the M1 Carbine (designed to hold 15 or  
21 30 rounds), and the Ruger Mini-14 (designed to hold 5 or 20 rounds).

22 40. Notwithstanding the City’s description of the prohibited magazines as  
23 being “large-capacity,” magazines with capacities of more than ten rounds are  
24 standard for many common handguns and long guns. For example, standard  
25 capacity for firearms chambered in 9 mm is 15-17 rounds; standard capacity for  
26 firearms chambered in .40 S&W is 15 rounds; standard capacity for firearms  
27 chambered in .45 ACP is 7-13 rounds; standard capacity for firearms chambered in  
28 5.56 mm is 20-30 rounds; and standard capacity for firearms chambered in .308 is

1 20 rounds.

2 41. Millions of firearms with standard-capacity magazines capable of  
3 holding more than ten rounds that are prohibited by the Ordinance are currently  
4 possessed by law-abiding citizens for a variety of lawful purposes in the United  
5 States, including target practice, shooting competitions, and hunting.

6 42. Millions of firearms with standard-capacity magazines capable of  
7 holding more than ten rounds that are prohibited under the Ordinance are currently  
8 possessed by law-abiding citizens for the core lawful purpose of self-defense,  
9 including in-home self-defense.

10 43. Self-defense is the “central component” of the Second Amendment right  
11 to keep and bear arms, which is at its zenith within the home.

12 44. Millions of individual, law-abiding American citizens are currently in  
13 possession of firearms with standard-capacity magazines that are capable of  
14 holding more than ten rounds, that are now banned by the Ordinance.

15 45. Standard-capacity magazines that are prohibited by the Ordinance are  
16 typically possessed by law-abiding citizens for lawful purposes, including in-home  
17 self-defense.

18 46. Standard-capacity magazines capable of holding more than ten rounds  
19 that are prohibited by the Ordinance are not “dangerous and unusual.”

20 47. The majority of pistol magazines currently manufactured in the United  
21 States have capacities of greater than ten rounds.

22 48. There are currently tens of millions of rifle magazines that are lawfully-  
23 possessed in the United States with capacities of more than ten rounds.

24 49. The use of standard-capacity firearms and magazines with capacities of  
25 more than ten rounds increase the likelihood that a law-abiding citizen will survive  
26 a criminal attack.

27 50. Firearms with standard-capacity magazines capable of holding more than  
28 ten rounds are well-suited and preferred for self-defense.

1 51. Firearms with standard-capacity magazines capable of holding more than  
2 ten rounds are well-suited and preferred for sporting purposes.

3 52. Banning the possession of standard-capacity magazines by law-abiding  
4 citizens does not increase public safety.

5 53. Limiting magazine capacity for law-abiding citizens to ten rounds  
6 decreases public safety by giving violent criminals an advantage and thus  
7 decreasing the likelihood that a victim will survive a criminal attack.

8 54. The overwhelming majority of law enforcement officers in the United  
9 States acknowledge that banning standard-capacity magazines capable of holding  
10 more than ten rounds will not increase public safety.

11 **DECLARATORY JUDGMENT ALLEGATIONS**

12 55. Plaintiffs are responsible, law-abiding adults qualified to own firearms  
13 under the laws of the United States and the laws of the State of California.  
14 Plaintiffs seek to lawfully possess constitutionally protected magazines prohibited  
15 by the Ordinance for self-defense and other lawful purposes.

16 56. Plaintiffs presently intend to exercise their rights to defend themselves,  
17 their homes, and their families by keeping magazines prohibited by the Ordinance  
18 and using them with their firearms for self-defense and other lawful purposes. The  
19 City's policies under the Ordinance prevent them from doing so and criminalize the  
20 exercise of Plaintiffs' Second Amendment rights.

21 57. Because the City has enacted and enforces the Ordinance, Plaintiffs face  
22 potential criminal prosecution for exercising their Constitutional right to keep  
23 common magazines capable of holding more than ten rounds for self-defense and  
24 other lawful purposes.

25 58. There is an actual and present controversy between the parties hereto in  
26 that Plaintiffs contend that the City's ordinance that forbids residents from  
27 possessing and using common magazines violates the Second Amendment. The  
28 City denies these contentions. Plaintiffs desire a judicial declaration of their rights

1 and the City’s duties, namely, that the City’s policy under the Ordinance violates  
2 Plaintiffs’ Second Amendment rights. Plaintiffs should not have to face criminal  
3 prosecution by the City for exercising their constitutional rights to keep and bear  
4 constitutionally protected arms or, alternatively, give up those rights to comply  
5 with the Ordinance.

6 **INJUNCTIVE RELIEF ALLEGATIONS**

7 59. If an injunction does not issue enjoining the City from enforcing the  
8 Ordinance, Plaintiffs will be irreparably harmed. Plaintiffs are continuously and  
9 irreparably injured by the Ordinance insofar as it precludes them from exercising  
10 rights guaranteed by the Second Amendment. The Ordinance denies Plaintiffs the  
11 right to possess and use commonly possessed magazines within the City of  
12 Sunnyvale for lawful purposes, including in-home self-defense, without risking  
13 criminal prosecution.

14 60. Because the City has enacted and enforces the Ordinance, Plaintiffs are  
15 subject to irreparable harm. If not enjoined by this Court, the City will continue to  
16 enforce the Ordinance in derogation of Plaintiffs’ Second Amendment rights.

17 61. Plaintiffs have no plain, speedy, and adequate remedy at law. Damages  
18 are indeterminate or unascertainable and would not fully redress any harm suffered  
19 by Plaintiffs as a result of being unable to engage in activity protected by the  
20 Second Amendment, namely the continued possession of their magazines that are  
21 prohibited by the Ordinance.

22 62. The injunctive relief sought would eliminate that irreparable harm and  
23 allow Plaintiffs to continue or resume exercising their Second Amendment rights to  
24 possess magazines protected by the Second Amendment within the City of  
25 Sunnyvale. Accordingly, injunctive relief is appropriate.

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1                                   **CLAIM FOR RELIEF: VALIDITY OF SMC § 9.44.050**

2                                   **Violation of the Second Amendment Right to Keep and Bear Arms**

3                                   **(U.S. Const., Amend.'s II and XIV)**

4                   63. Paragraphs 1-62 are realleged and incorporated herein by reference.

5                   64. Sunnyvale Municipal Code section 9.44.050 violates the Second  
6 Amendment on its face and as applied to Plaintiffs.

7                   65. The Second Amendment protects the right to possess and use common  
8 magazines capable of holding more than ten rounds and firearms equipped with  
9 these magazines.

10                  66. The City's prohibition on the possession of common magazines capable  
11 of holding more than ten rounds by law-abiding citizens, including Plaintiffs,  
12 directly conflicts with the right to keep and bear arms, rendering Section 9.44.050  
13 unconstitutional.

14  
15                                   **PRAYER FOR RELIEF**

16 WHEREFORE Plaintiffs pray for relief as follows:

17                  1) For a declaration that Sunnyvale Municipal Code section 9.44.050 violates  
18 the Second Amendment.

19                  2) For a declaration that common ammunition feeding devices and magazines  
20 capable of holding more than ten rounds prohibited by the Ordinance are protected  
21 by the Second Amendment.

22                  3) For a preliminary prohibitory injunction forbidding the City and its agents,  
23 employees, officers, and representatives, from enforcing or attempting to enforce  
24 the Ordinance.

25                  4) For a permanent prohibitory injunction forbidding the City and its agents,  
26 employees, officers, and representatives, from enforcing or attempting to enforce  
27 the Ordinance.

28                  5) For remedies available pursuant to 42 U.S.C. § 1983 and for an award of

1 reasonable attorneys fees, costs, and expenses pursuant to 42 U.S.C. § 1988 and/or  
2 other applicable federal law;

3 6) For such other and further relief as the Court may deem just and proper.

4 Date: December 16, 2013

**MICHEL & ASSOCIATES, PC**

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C. D. Michel  
Attorney for Plaintiffs

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## **EXHIBIT A**

**PROPOSED ORDINANCE TO AMEND  
THE CITY OF SUNNYVALE MUNICIPAL CODE  
ESTABLISHING GUN SAFETY REGULATIONS**

The City Council of the City of Sunnyvale, on its own motion, submits to the electors the following proposed ordinance to amend the Municipal Code of the City of Sunnyvale. The City Council has called a Special Municipal Election to be held on Tuesday, November 5, 2013, for the purpose of voting on the proposed amendments.

The proposed ordinance to amend the Municipal Code of the City of Sunnyvale follows the statement of the measure; it is set out in full.

**CITY OF SUNNYVALE MEASURE C**

Shall the City of Sunnyvale adopt a gun safety ordinance to require: 1) reporting to police, within 48 hours, known loss or theft of a firearm; 2) storing firearms in residences in a locked container or disabling them with a trigger lock when not in the owner's immediate possession; 3) prohibiting the possession of ammunition magazines capable of holding more than 10 rounds, with certain exceptions; and 4) logging and tracking of ammunition sales within the City of Sunnyvale?

Yes     \_\_\_\_\_  
No      \_\_\_\_\_

If Measure C carries, an ordinance amending the Municipal Code of the City of Sunnyvale shall be adopted, adding new Sections 9.44.030, 9.44.040, 9.44.050, 9.44.060 to Chapter 9.44, entitled "Firearms," which reads as follows:

**AN ORDINANCE AMENDING CHAPTER 9.44 (FIREARMS) OF THE SUNNYVALE  
MUNICIPAL CODE TO ADD GUN SAFETY MEASURES**

WHEREAS, the People of the City of Sunnyvale find that the violence and harm caused by and resulting from both the intentional and accidental misuse of guns constitutes a clear and present danger to the populace, and find that sensible gun safety measures provide some relief from that danger and are of benefit to the entire community; and

WHEREAS, the People of the City of Sunnyvale find that laws that provide for safe storage of guns in homes, that require a gun owner to report a stolen or lost gun, that prohibit the possession of ammunition magazines capable of holding more than ten rounds unless circumstances warrant such possession, and that require record-keeping relating to the sale of ammunition constitute sensible gun safety regulations because they are not unduly burdensome for gun owners, they aid law enforcement officers in their duties, and they offer some protection to all members of the community.

NOW THEREFORE, THE PEOPLE OF THE CITY OF SUNNYVALE DO ORDAIN AS FOLLOWS:



SECTION 1. SMC §§9.44.030, 9.44.040, 9.44.050, 9.44.060. ADDED.

Sunnyvale Municipal Code Title IX (Public Peace, Safety or Welfare), Chapter 9.44 (Firearms), is amended to add four new Sections to read as follows:

**9.44.030. Duty to report theft or loss of firearms.**

Any person who owns or possesses a firearm (as defined in Penal Code Section 16520 or as amended) shall report the theft or loss of the firearm to the Sunnyvale Department of Public Safety within forty-eight (48) hours of the time he or she knew or reasonably should have known that the firearm had been stolen or lost, whenever: (1) the person resides in the City of Sunnyvale; or (2) the theft or loss of the firearm occurs in the City of Sunnyvale.

**9.44.040. Safe storage of firearms.**

Except when carried on his or her person, or in his or her immediate control and possession, no person shall keep a firearm (as defined in Penal Code Section 16520 or as amended) in any residence owned or controlled by that person unless the firearm is stored in a locked container, or the firearm is disabled with a trigger lock that is listed on the California Department of Justice's list of approved firearms safety devices.

**9.44.050. Possession of large-capacity ammunition magazines prohibited.**

(a) No person may possess a large-capacity magazine in the City of Sunnyvale whether assembled or disassembled. For purposes of this section, "large-capacity magazine" means any detachable ammunition feeding device with the capacity to accept more than ten (10) rounds, but shall not be construed to include any of the following:

- (1) A feeding device that has been permanently altered so that it cannot accommodate more than ten (10) rounds; or
- (2) A .22 caliber tubular ammunition feeding device; or
- (3) A tubular magazine that is contained in a lever-action firearm.

(b) Any person who, prior to the effective date of this section, was legally in possession of a large-capacity magazine shall have ninety (90) days from such effective date to do either of the following without being subject to prosecution:

- (1) Remove the large-capacity magazine from the City of Sunnyvale; or
- (2) Surrender the large-capacity magazine to the Sunnyvale Department of Public Safety for destruction; or
- (3) Lawfully sell or transfer the large-capacity magazine in accordance with Penal Code Section 12020.

(c) This section shall not apply to the following:

(1) Any federal, state, county, or city agency that is charged with the enforcement of any law, for use by agency employees in the discharge of their official duties;

(2) Any government officer, agent, or employee, member of the armed forces of the United States, or peace officer, to the extent that such person is otherwise authorized to possess a large-capacity magazine and does so while acting within the course and scope of his or her duties;

(3) A forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her duties;

(4) Any entity that operates an armored vehicle business pursuant to the laws of the state, and an authorized employee of such entity, while in the course and scope of his or her employment for purposes that pertain to the entity's armored vehicle business;

(5) Any person who has been issued a license or permit by the California Department of Justice pursuant to Penal Code Sections 18900, 26500-26915, 31000, 32315, 32650, 32700-32720, or 33300, when the possession of a large capacity magazine is in accordance with that license or permit;

(6) A licensed gunsmith for purposes of maintenance, repair or modification of the large capacity magazine;

(7) Any person who finds a large capacity magazine, if the person is not prohibited from possessing firearms or ammunition pursuant to federal or state law, and the person possesses the large capacity magazine no longer than is reasonably necessary to deliver or transport the same to a law enforcement agency;

(8) Any person lawfully in possession of a firearm that the person obtained prior to January 1, 2000, if no magazine that holds fewer than 10 rounds of ammunition is compatible with the firearm and the person possesses the large capacity magazine solely for use with that firearm.

(9) Any retired peace officer holding a valid, current Carry Concealed Weapons (CCW) permit issued pursuant to the California Penal Code.

#### **9.44.060. Ammunition Sales.**

(a) It is unlawful for any person to engage in the business of selling, leasing, or otherwise transferring firearm ammunition within the City of Sunnyvale except in compliance with this code.

(b) Definitions:

(1) "Ammunition" means any cartridge or encasement containing a bullet or projectile, propellant, or explosive charge, and a primer which is used in the operation of a firearm.

(2) "Ammunition vendor" means any person engaged in the business of selling, leasing, or otherwise transferring firearm ammunition.

(3) "Person" means a natural person, association, partnership, firm, corporation, or other entity.

(c) Every ammunition vendor shall maintain an ammunition sales log which records all ammunition sales made by the vendor. The transferee shall provide, and the ammunition vendor shall record on the ammunition sales log, at the time of sale, all of the following information for each sale of firearms ammunition:

(1) The name, address, and date of birth of the transferee;

(2) The date of the sale;

- (3) The transferee's driver's license number, state identification card number, passport number, or other valid government-issued photographic identification;
- (4) The brand, type, and quantity of firearms ammunition transferred;
- (5) The identity of the person transferring the firearms ammunition on behalf of the ammunition vendor;
- (6) The transferee's signature and right thumbprint.

(d) The ammunition sales log shall be recorded on a form approved by the Director of Public Safety. All ammunition sales logs shall be kept at the location of the firearms ammunition sale for a period of not less than two years from the date of the sale. Ammunition sales logs shall be open to reasonable inspection by peace officers at all times the ammunition vendor is regularly open for business.

(e) No person shall knowingly provide false, inaccurate, or incomplete information to an ammunition vendor for the purpose of purchasing firearms ammunition. No ammunition vendor shall knowingly make a false, inaccurate, or incomplete entry in any ammunition sales log, nor shall any ammunition vendor refuse any reasonable inspection of an ammunition sales log subject to inspection.

## SECTION 2. SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. The People of the City of Sunnyvale hereby declare that they would have passed this Ordinance and each section or subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.