

FFL GUARD[®]

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October 24, 2013

Via Electronic Mail and U. S. Mail

Chair Mitchell Englander
Vice Chair Joe Buscaino
Councilmember Nury Martinez
Councilmember Mitch O'Farrell
CITY OF LOS ANGELES
PUBLIC SAFETY COMMITTEE
200 N. Spring Street
Los Angeles, CA 90012

Re: **Council File: 13-0241 Ammunition Sale / Electronic Reporting -
OPPOSITION**

Dear Honorable Councilmembers:

I write on behalf of *FFLGuard*, a cooperative firearms compliance and legal program that represents hundreds of federal firearms licensee ("FFL") clients nationwide, to oppose new regulations on the sale of firearms and ammunition to be considered by the Public Safety Committee on October 25, 2013.

I. THE CITY IS ILL-PREPARED TO IMPLEMENT THE PROPOSED ORDINANCE

Current Los Angeles Municipal Code section 55.11 requires all ammunition vendors in the City to record specified categories of information regarding ammunition transactions, including the name, address and right thumbprint of the purchaser, and the amount and type of ammunition sold. This information must be maintained at the vendor's business and made available for physical inspection by the Los Angeles Police Department ("LAPD"). The Proposed Ordinance amends current law to also require that vendors electronically transmit the recorded information to LAPD within five (5) days of the sale. The manner of electronic transmittal is to be determined by the Chief of Police.

At first blush, this measure seems to do nothing more than streamline the current process for recording ammunition sales transactions, providing access to law enforcement without the need for the physical inspection of the vendors' ammunition logs. In reality, the Proposed Ordinance

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is a seriously flawed measure that is far from ready for implementation. And it threatens the livelihood of legitimate local businesses.

Indeed, the City Attorney reports that LAPD has reported that they are unable to “ensure the effective implementation of an electronic transmittal system.”¹ According to LAPD Information Technology personnel, they cannot yet “effectively capture thumbprints electronically.”² The ability to accurately capture the purchaser’s thumbprint is essential. Absent successful resolution of this problem, the Proposed Ordinance will do little to reduce the need to manually inspect FFLs’ ammunition sales records onsite.

The LAPD’s admission that they have not found a fully functioning electronic reporting system is deeply troubling. The law imposes *criminal* penalties for failure to comply. L.A., Cal., Muni. Code § 55.11(g). But nothing protects FFLs if the electronic reporting system malfunctions, preventing FFLs from timely or accurately reporting their sales. Nothing shields FFLs from criminal liability if some anomaly causes the LAPD’s electronic records to differ from the FFL’s physical records. Far too much hinges on the mere hope that the technology doesn’t fail us.

And what of those ammunition retailers that do not currently have the technology necessary to comply with the electronic reporting requirement? The cost of purchasing and maintaining the system is likely to be prohibitive, especially for smaller businesses already overly burdened by the mandate that they keep a detailed record of every single ammunition sale. The Proposed Ordinance is just one more costly burden on these local businesses, pushing them closer to shutting their doors altogether, taking untold revenues and jobs from the City.

II. THE PROPOSED ORDINANCE IS PREEMPTED BY CALIFORNIA STATE LAW

California state law expressly preempts localities from passing any regulation “relating to registration or licensing of commercially manufactured firearms” Cal. Gov’t Code § 53071 (emphasis added).

The Proposed Ordinance, by requiring transmission of ammunition sales records to LAPD, seeks to require the registration of ammunition purchases – purchases that are necessarily *related* to firearms. The City cannot circumvent state law explicitly prohibiting registration of firearms by requiring their *de facto* registration through the reporting of ammunition sales to local authorities.

Los Angeles is free to adopt reasonable laws regulating the commercial sale of firearms, but as the California Court of Appeal admonished in *Fiscal v. City and County of San Francisco*, 158 Cal. App. 4th 895, 919 (2008), “the goal of any local authority wishing to legislate in the area of gun control should be to accommodate the local interest with the least possible interference with

¹ Mike Feuer, City of Los Angeles City Attorney’s Office, Report re: Draft Ordinance Amending Section 55.11 of the Los Angeles Municipal Code to Require Electronic Transmission of Records Regarding Ammunition Sales, Rep. R13-0208, 2 fn. 1 (2013).

² *Id.*

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state law . . . Therefore, when it comes to regulating firearms, *local governments are well advised to tread lightly.*" (Emphasis added.)

Enacting an ordinance that is far from ready for implementation, threatens the livelihood of local businesses, and improperly steps into an area expressly governed by state law is hardly the sort of treading lightly the Court of Appeal contemplated.

The City would certainly be well-advised to take notice of the City Attorney's own analysis of the likely preemptive effect of current state law on the Proposed Ordinance. Feuer, *supra*, at 2-3.

III. CONCLUSION

The firearms industry and law-abiding gun owners in California are the most heavily regulated population in the country. The burden increases with each new measure, making it nearly impossible for FFLs to earn a livelihood or to create jobs and revenue for the city and state. We oppose the Proposed Ordinance because it will only increase the regulatory burden on law-abiding retailers and their customers and divert law enforcement resources.

If you have any questions or concerns concerning the content of this correspondence, please feel free to contact me at your convenience.

Sincerely,



By: Christopher M. Chiafullo
for The Chiafullo Group, LLP
FFLGuard
National Coordinating Counsel