

LAW OFFICE OF DONALD KILMER, APC
1645 Willow St., Suite 150, San Jose, CA 95125
Vc: (408) 264-8489 Fx: (408) 264-8487
Don@DKLawOffice.com

Donald E.J. Kilmer, Jr. (SBN: 179986)
LAW OFFICES OF DONALD KILMER, A.P.C.
1645 Willow Street, Suite 150
San Jose, California 95125-5120
Voice: (408) 264-8489
Fax: (408) 264-8487
Email: Don@DKLawOffice.com

Attorney for Plaintiffs

FILED
SAN MATEO COUNTY

APR 05 2012

Clerk of the Superior Court
By 
DEPUTY CLERK

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO
400 County Center, Redwood City, CA 94063

THE CALGUNS FOUNDATION,
INC., and GENE HOFFMAN,

Plaintiffs,

vs.

COUNTY OF SAN MATEO, and
DOES 1 TO 20,

Defendants.

Case No.: CIV 509185

PLAINTIFFS' REQUEST FOR
JUDICIAL NOTICE

Alameda County Ordinances
Chapter 9.12 - Firearms & Dangerous
Weapons

Date: April 24, 2012
Time: 9:00 a.m.
Dept.: Law/Motion

Plaintiffs THE CALGUNS FOUNDATION, INC., (CGF, Inc.) and GENE
HOFFMAN, hereby request that the Court take Judicial Notice of Chapter
9.12.120(F)(3) of the Alameda County Code of Ordinances.

Authority for Judicial Notice of this State's Statutes is found at California
Evidence Code §§ 452.

RESPECTFULLY SUBMITTED,

Date: April 5, 2012



Donald Kilmer for Plaintiffs

**Alameda County, California, Code of Ordinances >> Title 9 - PUBLIC PEACE, MORALS AND WELFARE >>
Chapter 9.12 - FIREARMS AND DANGEROUS WEAPONS >>**

Chapter 9.12 - FIREARMS AND DANGEROUS WEAPONS

Sections:

- 9.12.010 - Shooting of firearm upon public way—Misdemeanor.
- 9.12.020 - Shooting of firearm into public way—Misdemeanor.
- 9.12.030 - Shooting of firearm on or into public place—Misdemeanor.
- 9.12.040 - Peace officers—Not subject to chapter.
- 9.12.050 - Definition of dangerous weapon.
- 9.12.060 - Use, possession, discharge, sale of dangerous weapons.
- 9.12.070 - Exceptions.
- 9.12.080 - Disorderly conduct.
- 9.12.090 - Public offense by state law.
- 9.12.110 - "Saturday night specials" handguns.
- 9.12.120 - Possession of firearms on county property prohibited.

9.12.010 - Shooting of firearm upon public way—Misdemeanor.

Every person who in the unincorporated territory of the county shoots any loaded firearm of any description whatever on or upon any public road or highway not subject to the provisions of Section 374c of the Penal Code is guilty of a misdemeanor.

(Amended during 1996 codification; prior gen. code § 3-117.0)

9.12.020 - Shooting of firearm into public way—Misdemeanor.

Every person who in the unincorporated territory of the county shoots any loaded firearm of any description whatever into any public road or highway is guilty of a misdemeanor.

(Prior gen. code § 3-117.1)

9.12.030 - Shooting of firearm on or into public place—Misdemeanor.

Every person who in the unincorporated territory of the county shoots any loaded firearm of any description whatever on or into any public place not covered by Section 9.12.010 or 9.12.020 of this chapter within the unincorporated territory of the county is guilty of a misdemeanor.

(Prior gen. code § 3-117.2)

9.12.040 - Peace officers—Not subject to chapter.

This chapter does not apply to peace officers in the performance of their official duties.

(Prior gen. code § 3-117.3)

9.12.050 - Definition of dangerous weapon.

Dangerous weapon shall mean and include:

- A. Any knife having a blade three inches or more in length, or any snap-blade or spring-blade knife regardless of the length of the blade;
- B. Any ice pick or similar stabbing tool;

- C. Any cutting, stabbing or bludgeoning weapon or device capable of inflicting grievous bodily harm;
- D. Any dirk or dagger or bludgeon or blackjack;
- E. Any straight edge razor or any razor blade fitted to a handle;
- F. Any rifle, gun, pistol, revolver, air rifle, B-B gun, air gun, sling, sling shot, or other similar instrument or device designed or intended to discharge or capable of discharging a bullet, shot, or other missile of any kind.

(Prior gen. code § 4-11.0)

9.12.060 - Use, possession, discharge, sale of dangerous weapons.

Except as otherwise provided in Section 9.12.070 of this chapter, it shall be unlawful for any person in the unincorporated territory of the county to sell, give, loan, or in any way furnish, or to cause or permit to be sold, given, loaned, or in any way furnished to a minor, or to allow any minor to use or possess or discharge, or for any minor to use or possess or discharge a dangerous weapon.

(Prior gen. code § 4-11.1)

9.12.070 - Exceptions.

Nothing in this chapter shall be deemed or construed to prohibit the selling, giving, loaning, or furnishing to any minor, upon written consent of the parent or guardian of such minor, any dangerous weapon as defined in subsection F of Section 9.12.050; nor to prohibit such minor from using or having in his possession, care, custody or control any such dangerous weapon as so defined in the event that such possession, care, custody, control or use is had with the consent of the parent or guardian of such minor and is under the direct supervision and control of some adult person; nor to prohibit any minor from using or having in his possession or control any dangerous weapon which is in good faith in his possession or control or use for his lawful occupation or employment or for the purpose of lawful recreation.

(Prior gen. code § 4-11.2)

9.12.080 - Disorderly conduct.

Notwithstanding Section 9.12.070, it shall be unlawful for any minor carrying upon his person or having in his possession or under his control any dangerous weapon to engage in any fight or participate in any rough or disorderly conduct upon any public place or way or upon the premises of another.

(Prior gen. code § 4-11.3)

9.12.090 - Public offense by state law.

The provisions of this chapter shall not apply to the commission of any act which is made a public offense by any law of this state.

(Prior gen. code § 4-11.4)

9.12.110 - "Saturday night specials" handguns.

This section shall be known as the "county Saturday night special/junk gun sales prohibition" and may be so cited.

- A. Purpose and Findings. The purpose of this section is to ensure the health, safety, and general welfare of county citizens by "eliminating the sale of inadequately designed and poorly manufactured handguns in the county. In adopting this section the board of supervisors finds as follows:
 - 1. Saturday night specials, also known as "junk guns," are poorly manufactured and are not suitable for, or readily adaptable to, sporting purposes; and,

2. Saturday night specials are small and light making them easy to conceal, and present a threat to the public welfare and law enforcement officers; and,
 3. According to the Bureau of Alcohol Tobacco and Firearms, eight of the ten firearms most frequently traced nationally to crime scenes in 1995 were Saturday night specials, and that according to a University of California Davis Violence Prevention Research Program, Saturday night specials are thirty-four (34) times more likely to be involved in crimes as are other firearms; and,
 4. Gunshot fatalities and care of gunshot victims in California cost seven hundred three million dollars (\$703,000,000.00) in direct medical costs in 1993 alone; and,
 5. There are more than twice as many gun dealers as public schools in California; and,
 6. More Californians now die from guns than from car accidents; and,
 7. One hundred fifty-three (153) people were murdered in Oakland in 1995, and ninety-five (95) of them were killed with handguns; and,
 8. The federal government has already prohibited the importation of foreign manufactured Saturday night specials; and,
 9. Numerous public leaders and law enforcement officials have supported a ban on Saturday night specials; and,
 10. Firearms manufacturers have made token modifications "Saturday night specials" which have resulted in no advancement, or only marginal advancement, in the durability of the handguns; and,
 11. Firearms manufacturers have grafted inadequate safety devices onto the core design including fragile half-cock hammer notches in derringers and single-action revolvers, manual pistol slide locks, rudimentary hammer or trigger locks that act by simple interference, and crude grip safety levers; and,
 12. Cosmetic remodeling by firearms manufacturers does not ameliorate the core design deficiencies of Saturday night special handguns, and that Saturday night special handguns continue to be dangerous products due to their low quality of manufacture and metallurgy, so as to be unacceptable in commerce in the unincorporated area of the county; and,
 13. A firearm's frame, barrel, breechblock, cylinder and slide must be completely fabricated of heat-treated carbon steel, forged alloy or other material of equal or higher tensile strength in order to reliably contain the weapon's ballistic power, and that any firearm in which all of these components do not meet this standard is an inherently unsafe product; and,
 14. The Legislature has not, expressly or impliedly, preempted the area of firearm sales. The board of supervisors therefore finds that the subject is within the scope of the powers of the county and the section is designed to protect the health, safety and general welfare of the community; and,
- B. Definitions. Except as provided elsewhere herein the term "Saturday night special," as used in this section means any of the following:
1. A pistol, revolver, or firearm capable of being concealed upon the person, as those terms are defined in the California Penal Code Section 12001(a), which contains a frame, barrel, breechblock, cylinder or slide that is not completely fabricated of heat-treated carbon steel, forged alloy or other material of equal or higher tensile strength.
 2. A semi-automatic pistol which: (a) is not originally equipped by the manufacturer with a locked-breech action; and (b) is chambered for cartridges developing maximum permissible breech pressures above 24,100 Copper Units of Pressure as standardized by the Sporting Arms and Ammunition Manufacturers Institute. For purpose of this subsection, "semiautomatic pistol" means a firearm, as defined in California Penal Code Section 12001(b), which is designed to be held and fired with one hand, and which does the following upon discharge: (i) fires the cartridge in the chamber; (ii) ejects the fired cartridge case; and (iii) loads a cartridge from the magazine into the chamber. "Semiautomatic pistol" shall not include any assault weapons designated in California Penal Code Section 12276.
 3. A pistol, revolver, or firearm capable of being concealed upon the person, as those terms are

defined in California Penal Code Section 12001(a), which: (a) uses an action mechanism which is substantially identical in design to any action mechanism manufactured in or before 1898 that was originally chambered for rimfire ammunition developing maximum safe permissible breech pressures below 19,000 Copper Units of Pressure as standardized by the Sporting Arms and Ammunition Manufacturers Institute; and (b) is chambered to fire either centerfire ammunition or rimfire ammunition developing maximum permissible breech pressures above 19,000 Copper Units of Pressure as standardized by the Sporting Arms and Ammunition Manufacturers Institute; and (c) is not originally equipped by the manufacturer with a nondetachable trigger guard; or (d) if rimfire, is equipped with a barrel of less than twenty (20) bore diameters in overall length protruding from the frame. For purposes of this subsection, "action mechanism" means the mechanism of a firearm by which it is loaded, locked, fired and unloaded commonly known as the cycle of operation.

- C. Exclusions. The term "Saturday night special" does not include any of the following:
 - 1. Any pistol which is an antique or relic firearm or other weapon falling within the specifications of paragraphs (5), (7) and (8) of subsection (b) of California Penal Code Section 12020; or
 - 2. Any pistol for which the propelling force is classified as pneumatic, that is, of, or related to, compressed air or any other gases not directly produced by combustion; or
 - 3. Children's pop guns or toys; or
 - 4. An "unconventional pistol" as defined in California Penal Code Section 12020(c)(12); or
 - 5. Any pistol which has been modified to either: render it permanently inoperable, or permanently to make it a device no longer classified as a Saturday night special.
- D. Roster of Saturday Night Specials. The county sheriff or his/her designee shall compile, publish, and thereafter maintain a roster of Saturday night specials. The roster shall list those firearms, by manufacturer and model number, which the county sheriff or his/her designee determines fit the definition of Saturday night special set forth in subsection B of this section, Definitions.
- E. Notification. Upon completion of a list of firearms to be placed on the roster for the first time, the sheriff or his/her designee shall endeavor to send written notification to: (1) the manufacturer of every firearm on said list; and (2) every dealer within the unincorporated area of the county who is licensed to sell and transfer firearms pursuant to Section 12071 of the Penal Code of the state of California and this code. Such notification shall do the following:
 - a. Identify the model number of the firearm which has been classified as a Saturday night special, and
 - b. Advise the recipient that the recipient may apply for reconsideration of the classification of the firearm as a Saturday night special, and
 - c. Advise the recipient that the burden of proving a firearm does not constitute a Saturday night special shall be on the recipient.
- F. Reconsideration by the County Sheriff.
 - 1. The county sheriff, or his/her designee, shall, prior to the effective date of the ordinance codified in this section establish standards and procedures for the form and content of an application, conducting an administrative hearing and evaluating evidentiary testimony relating to the decision of the county sheriff or his/her designee to classify the firearm in question as a Saturday night special.
 - 2. Upon timely filing of one or more complete applications for reconsideration, the county sheriff or his/her designee shall evaluate the evidence submitted by the applicant(s). The applicant(s) shall have the burden of demonstrating that the firearm does not constitute a Saturday night special.
- G. Appeal of Classification.
 - 1. If the county sheriff or his/her designee determines that the firearm under reconsideration has been properly classified as a Saturday night special, then the applicant(s) shall have the right to appeal such decisions to the president of the board of supervisors, and the applicant(s) shall have the right to a hearing before the president or his/her designee prior to inclusion of the firearm in question on the roster.

2. The president, or his/her designee, is authorized to establish standards and procedures for the form and content of an appeal, conducting an administrative hearing and evaluating evidentiary testimony relating to the decision of the sheriff or his/her designee to classify the firearm in question as a Saturday night special.
 3. The burden of proof shall be on the appellant(s) to demonstrate that the firearm does not constitute a Saturday night special.
 4. All parties involved shall have the right to offer testimonial, documentary and tangible evidence bearing on the issues and to be represented by counsel.
 5. The president or his/her designee shall hear and consider all relevant evidence. Upon the conclusion of the hearing, the president or his/her designee shall, based on the evidence presented, determine whether the firearm constitutes a Saturday night special.
 6. In all instances, the decision of the president or his/her designee whether to classify the firearm in question as a Saturday night special and to place said firearm on the roster is final.
- H. **Publication of the Roster.** The county sheriff or his/her designee shall place on the roster those firearms which have been determined to constitute a Saturday night special. The sheriff or his/her designee shall cause the roster to be published in the following manner:
1. Notification of the roster's completion shall be published at least once in the official newspaper as designated by the county and circulated in the county within fifteen (15) days after its completion; and
 2. A copy of the roster, certified as a true and correct copy thereof, shall be filed in the office of the clerk of the board of supervisors,
 3. A copy of the roster, certified as a true and correct copy thereof, shall be distributed to every dealer within the unincorporated areas of the county who is licensed to sell and transfer firearms pursuant to Section 12071 of the Penal Code of the state of California and this code.
- I. **Effective Date of Roster.** The roster shall become effective on the fifteenth day after its publication.
- J. **Additions to the Roster.** Additions to the roster shall be made in accordance with the following:
1. **Semiannual Determination.** On a semiannual basis, the county sheriff or his/her designee shall determine the need to place firearms on the roster. Upon identifying one or more firearms as a Saturday night special, the president or his/her designee shall prepare a draft list of the additions to the roster.
 2. **Notification of Additions to Roster.** In the event that a draft list of firearms to be added to the roster is prepared, the county sheriff or his/her designee shall endeavor to send written notification in accordance with the aforementioned provisions of subsection E of this section.
 3. **Reconsideration by the County Sheriff.** Any person who the county sheriff or his/her designee notifies pursuant to subsection (J)(2) of this section may apply for reconsideration of the classification of that firearm as a Saturday night special in accordance with the provisions of subsection F of this section.
 4. **Appeal of Classification.** Whenever a firearm has been determined to be properly classified as a Saturday night special after reconsideration, the applicant may file an appeal to the president and the president or his/her designee shall hold a hearing in accordance with the provisions of subsection G of this section.
 5. **Additions of Firearms to Roster.** After all appeals have been exhausted, the county sheriff or his/her designee shall place on the roster those additional firearms which have been determined to constitute a Saturday night special within the meaning of this section. The county sheriff or his/her designee shall cause the roster, as amended to include these additional firearms, to be published in accordance with subsection H of this section.
 6. **Effective Date of Additions to the Roster.** The addition of new firearms to the roster shall not operate to preclude the enforcement of the roster with respect to firearms previously listed thereon. The publication of the roster, as amended to include new firearms, shall be effective as to those newly added firearms on the fifteenth day after its publication.
- K. **Sale Prohibited.** No wholesale or retail firearms dealer shall sell, offer or display for sale, give, lend or transfer ownership of, any firearm listed on the roster of Saturday night specials. This section shall

not preclude a wholesale or retail gun dealer from processing firearm transactions between unlicensed parties pursuant to Section 12072 (d) of the Penal Code of the state of California.

- L. Exemptions. Nothing in this section relative to the sale of Saturday night specials shall prohibit the disposition of any firearm by sheriffs, constables, marshals, police officers, or other duly appointed peace officers in the performance of their official duties, nor to persons who are authorized by the United States Federal Government for use in the performance of their official duties; nor shall anything in this section prohibit the use of any firearm by the above mentioned persons in the performance of their official duties.
- M. Penalty. Any person violating any of the provisions of this section shall be guilty of a misdemeanor. Any person convicted of a misdemeanor under the provisions of this section shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment for a period not exceeding six months, or by both such fine and imprisonment. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this section is committed, continued or permitted by such person and shall be punishable accordingly. In addition, any person found to be in violation of this section shall be considered in noncompliance with the requirements of this code and subject to the suspension and or revocation of a firearms dealer permit.
- N. Severability and Validity. This section shall be enforced to the full extent of the authority of the county. If any section, subsection, paragraph, sentence or word of this section is deemed to be invalid or beyond the authority of the county, either on its face or as applied, the invalidity of such provision shall not affect the other sections, subsections, paragraphs, sentences or words of this section, and the applications thereof, and to that end the section, subsections, paragraphs, sentences and words of this section shall be deemed severable.

(Ord. 97-63 § 1)

9.12.120 - Possession of firearms on county property prohibited.

- A. Findings. The board of supervisors finds that gunshot fatalities and injuries are of epidemic proportions in Alameda County. During the first five years of the 1990's, eight hundred seventy-nine (879) homicides were committed using firearms, and an additional one thousand six hundred forty-seven (1,647) victims were hospitalized with gunshot injuries. Firearms are the leading cause of death among young people between the ages of fifteen (15) and twenty-four (24) in Alameda County. Between July 1, 1996 and June 30, 1997, one hundred thirty-six (136) juveniles were arrested in Oakland for gun-related offenses. On July 4, 1998 a shooting incident on the Alameda County Fairgrounds resulted in several gunshot wounds, other injuries and panic among fair goers. Prohibiting the possession of firearms on county property will promote the public health and safety by contributing to the reduction of gunshot fatalities and injuries in the county.
- B. Misdemeanor. Every person who brings onto or possesses on county property a firearm, loaded or unloaded, or ammunition for a firearm is guilty of a misdemeanor.
- C. County Property. As used in this section, the term county property means real property, including any buildings thereon, owned or leased by the county of Alameda (hereinafter "county"), and in the county's possession, or in the possession of a public or private entity under contract with the county to perform a public purpose, including but not limited to real property owned or leased by the county in the unincorporated and incorporated portions of the county, such as the county park in Sunol and the Alameda County Fairgrounds in the city of Pleasanton, but does not include any "local public building" as defined in Penal Code Section 171b(c), where the state regulates possession of firearms pursuant to Penal Code Section 171b.
- D. Firearm. "Firearm" is any gun, pistol, revolver, rifle or any device, designed or modified to be used as a weapon, from which is expelled through a barrel a projectile by the force of an explosion or other form of combustion. "Firearm" does not include imitation firearms or BB guns and air rifles as defined in Government Code Section 53071.5.
- E. Ammunition. "Ammunition" is any ammunition as defined in Penal Code Section 12316(b)(2).
- F. Exceptions. Subsection 9.12.120B does not apply to the following:

1. A peace officer as defined in Title 3, Part 2, Chapter 4.5 of the California Penal Code (Sections 830 et seq.);
 2. A guard or messenger of a financial institution, a guard of a contract carrier operating an armored vehicle, a licensed private investigator, patrol operator, or alarm company operator, or uniformed security guard as these occupations are defined in Penal Code Section 12031(d) and who holds a valid certificate issued by the Department of Consumer Affairs under Penal Code Section 12033, while actually employed and engaged in protecting and preserving property or life within the scope of his or her employment;
 3. A person holding a valid license to carry a firearm issued pursuant to Penal Code Section 12050;
 4. The possession of a firearm by an authorized participant in a motion picture, television, video, dance or theatrical production or event, when the participant lawfully uses the firearm as part of that production or event, provided that when such firearm is not in the actual possession of the authorized participant, it is secured to prevent unauthorized use.
 5. A person lawfully transporting firearms or ammunition in a motor vehicle on county roads;
 6. A person lawfully using the target range operated by the Alameda County sheriff;
 7. A federal criminal investigator or law enforcement officer; or
 8. A member of the military forces of the state of California or of the United States while engaged in the performance of his or her duty.
- G. Severability. If any provision of this section or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provision or application of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(Ord. 2000-22, 1999: Ord. 2000-11 § 1)