

1 WRIGHT & L'ESTRANGE
2 Robert C. Wright (SBN 51864)
3 Andrew E. Schouten (SBN 263684)
4 401 West A Street, Suite 2250
5 San Diego, California 92101
6 (619) 231-4844
7 (619) 231-6710 (fax)

8 NATIONAL SHOOTING SPORTS FOUNDATION, INC.
9 Lawrence G. Keane, General Counsel
10 (*pro hac vice pending*)
11 11 Mile Hill Road
12 Newtown, Connecticut 06470
13 (203) 426-1320
14 (203) 426-7182 (fax)

15 Attorneys for Petitioners U.S. Firearms Company LLC, Eric W. Fisher, and
16 The National Shooting Sports Foundation, Inc.

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **IN AND FOR THE COUNTY OF SANTA CLARA**

19 U.S. FIREARMS COMPANY LLC, a) 20 limited liability company; ERIC W.) 21 FISHER; and THE NATIONAL) 22 SHOOTING SPORTS) 23 FOUNDATION, INC., a non-profit) 24 trade association,) 25) 26 Petitioners,) 27) 28 v.) 29) 30 CITY OF SUNNYVALE; THE) 31 SUNNYVALE CITY COUNCIL; and) 32 DOES 1 through 30, inclusive,) 33) 34 Respondents.)	CASE NO. DECLARATION OF ANDREW E. SCHOUTEN IN SUPPORT OF PETITIONERS' EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION Date: December 9, 2013 Time: 8:30 a.m. Dept: Judge:
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35 I, Andrew E. Schouten, declare:

36 1. I am an attorney at law licensed to practice before all of the courts in the
37 State of California and am an associate at the law firm of Wright & L'Estrange, counsel of
38 record for Petitioners U.S. Firearms Company LLC, Eric W. Fisher, and The National
39 Shooting Sports Foundation, Inc. The facts stated herein are true and correct of my own
40 knowledge, except as to those matters stated on information and belief, and as to those

1 matters, I believe them to be true.

2 2. Attached as Exhibit "A" is a true and correct copy of a printout of the
3 Sunnyvale Department of Public Safety's "Public Safety Statistics" webpage,
4 <http://sunnyvale.ca.gov/Departments/PublicSafety/PublicSafetyStatistics.aspx>.

5 3. Attached as Exhibit "B" is a true and correct copy of a summary report
6 called 1992-2012 Sunnyvale Violent Crimes, prepared by the Sunnyvale Department of
7 Public Safety's Crime Analysis Unit, which is available for download at
8 [http://sunnyvale.ca.gov/Portals/0/Sunnyvale/DPS/Crime%20Analysis/Violent%20Crime%
9 20Counts%201992-2012.pdf](http://sunnyvale.ca.gov/Portals/0/Sunnyvale/DPS/Crime%20Analysis/Violent%20Crime%20Counts%201992-2012.pdf).

10 4. The City of Sunnyvale's Community Development/Planning Division
11 submitted a report entitled "2011-7071 Location and Operation of Firearm Sales
12 Businesses (Study Issue)," which it submitted to the Sunnyvale City Council for its
13 consideration on September 27, 2011. Attached as exhibit "C" is a true and correct copy
14 of the 2011 study report (including attachments A, C, and G only), which is available at
15 [http://sunnyvale.ca.gov/Portals/0/Sunnyvale/NonCouncilReports/pc/2011/pc-2011-
17 7071.pdf](http://sunnyvale.ca.gov/Portals/0/Sunnyvale/NonCouncilReports/pc/2011/pc-2011-
16 7071.pdf).

18 I declare under penalty of perjury, under the laws of California, that the foregoing
19 is true and correct.

20 Executed on December 5, 2013, at San Diego, California.

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EXHIBIT A



SUNNYVALE DEPARTMENT OF PUBLIC SAFETY

BUREAU OF SPECIAL OPERATIONS



SUNNYVALE DEPARTMENT OF PUBLIC SAFETY

BUREAU OF SPECIAL OPERATIONS



You are here: [Departments](#) > [Public Safety](#) > [Public Safety Statistics](#)

PUBLIC SAFETY STATISTICS

SUNNYVALE CRIME STATISTICS

Sunnyvale is proud to have one of the lowest crime rates in the Nation. We believe that this is due to the strong partnership between the Citizens of Sunnyvale and the law enforcement Officers that serve them.

We thank you for your interest in Sunnyvale crime statistics and encourage you to contact our Crime Prevention Unit for tips and information on how to prevent crime in your neighborhood, home, business, or school.

CRIME AND INCIDENT MAPS FOR YOUR NEIGHBORHOOD

The Sunnyvale Department of Public Safety has joined forces with [CrimeReports.com](#) to provide crime and incident data to the residents of Sunnyvale. [CrimeReports.com](#) takes Records Management System (RMS)/Computer Aided Dispatch (CAD) crime data provided by Public Safety every 24 hours and turns the data into easy to view information.

[CrimeReports.com](#) makes it simple and easy to share timely and important local crime data with the citizens and community organizations in Sunnyvale. The service is free to members of the public, and allows people to receive alerts automatically via email if a crime occurs near their home. It also allows citizens to view reported crime activity on an easy to use map for any location in Sunnyvale.

We hope that the information provided will enhance our already strong connection with the community. We truly believe that it is important that our community members become involved in our efforts to keep our community safe. If you wish to provide any additional information on a crime or incident you see listed on [CrimeReports.com](#), please contact (408)730-7110 or e-mail us at [Sunnyvale Public Safety](#).

CRIMEREPORTS.COM TERMS AND CONDITIONS

The information displayed on [CrimeReports.com](#) is susceptible to some degree of error due to the collection, entry, and geo-processing of the data. No warranty or guarantee is made nor implied regarding the content, geographic accuracy, timeliness, completeness, sequence, or accuracy of any of the information provided herein. The reader should not rely on the data provided herein for any reason. The information is provided strictly as a courtesy to the public.

- [I Understand These Terms & Conditions. Click Here For CrimeReports.com](#)
- [I Understand These Terms & Conditions, But I Have More Questions. Click Here For CrimeReports FAQs](#)

Understanding Crime Statistics

The crime statistics provided here correspond with the FBI guidelines for crime data. Since 1930, the FBI has administered the Uniform Crime Reporting Program (UCR). There are eight primary crimes counted by the FBI. These crimes are separated into the categories of violent crimes and property crimes. The crimes included are the violent crimes of: murder, forcible rape, robbery, and aggravated assault. The property crimes of: burglary, larceny-theft, motor vehicle theft, and arson. For definitions of these crimes, please click below.

Download the iPhone app for Crime Reports to get geo-location reports on your smartphone



CrimeReports®

SUNNYVALE CRIME STATISTICS BY YEAR

If you need assistance please contact the Crime Prevention Unit at (408)730-7140.

Public Safety Statistics

[Traffic Safety Statistics](#)

Contact

Department of Public Safety
Crime Prevention Unit
700 All America Wy
Sunnyvale, CA 94086
Phone (408) 730-7140
Fax (408)749-0166

Electronic Contact:

[Click Here to Use the Online Generic City Comment Form](#)

COMPLIMENTS OR COMPLAINTS
ABOUT OUR STAFF

If you are interested in general information on crime statistics, including crime data from other Cities, and information on how crime statistics are collected, calculated and reported, please see the websites of the FBI or the California Department of Justice.

Summary Rept-2012 Year End amended.pdf

This graph compares Sunnyvale crime totals for 2011 to 2012

Violent Crime Counts 1992-2012.pdf

This graph provides a summary of the number of occurrences per year of the violent crimes of: homicide, rape, robbery, and aggravated assault in Sunnyvale.

Property Crime Counts 1992-2012 (1).pdf

This graph provides a summary of the number of occurrences per year of the property crimes of: burglary, theft, and stolen vehicles in Sunnyvale.

SUNNYVALE CRIME STATISTICS BY MONTH

Crimes in Sunnyvale October 2013.pdf

This graph provides a summary of the FBI part 1 crimes by month. Please check back monthly for updates.

More Information on Crime Statistics

- FBI
- CA Dept. of Justice
- Violent Crime Definitions
- Property Crime Definitions

Comments/Questions

We welcome your comments or questions on Sunnyvale crime statistics. Please email to: pubsfty@ci.sunnyvale.ca.us



City of Sunnyvale
 Normal City Hours of Operation are
 8 a.m. until 5 p.m.
(408) 730-7500
 Sunnyvale City Hall
 466 W. Olive Ave.
 Sunnyvale, CA 94086
 TDD: (408) 730-7501
 Map and Directions



Can't Find It?

Or check out the [SITE MAP!](#)

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Frequently-Used Links

- Jobs with the City
- Garbage and Recycling
- Downtown Development
- Economic Development
- Register for Classes and Activities

About the City

- Welcome to Sunnyvale
- City Charter and Policies
- City Council
- New Resident Guide

About the Web Site

The City of Sunnyvale Web Site is maintained by the Sunnyvale Communications Office and the Department of Information Technology.

Questions? Contact Us.

The Fine Print

- Privacy Policy
- Terms of Use

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EXHIBIT B



1992 - 2012 Sunnyvale Violent Crimes Number of Incidents per Year

FBI part 1 violent crime counts.

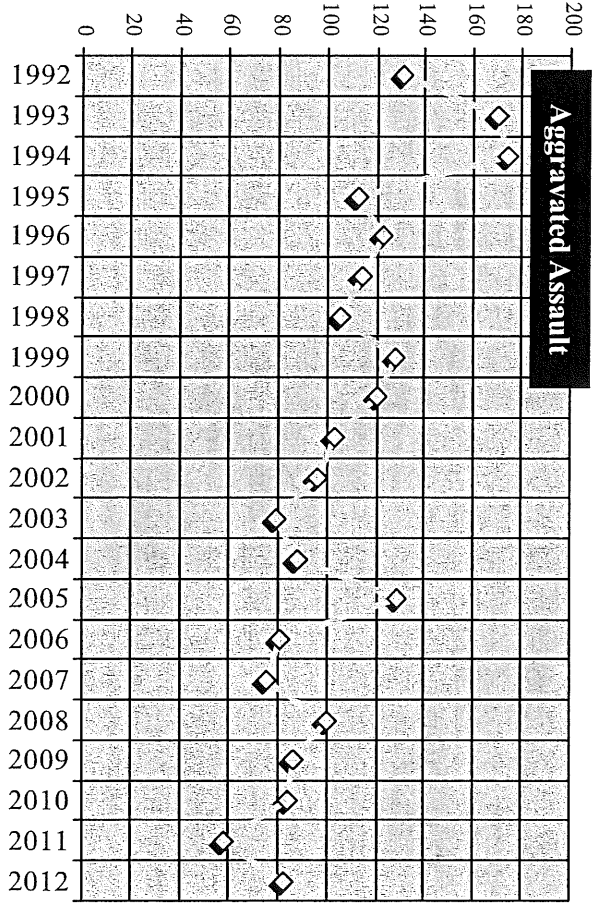
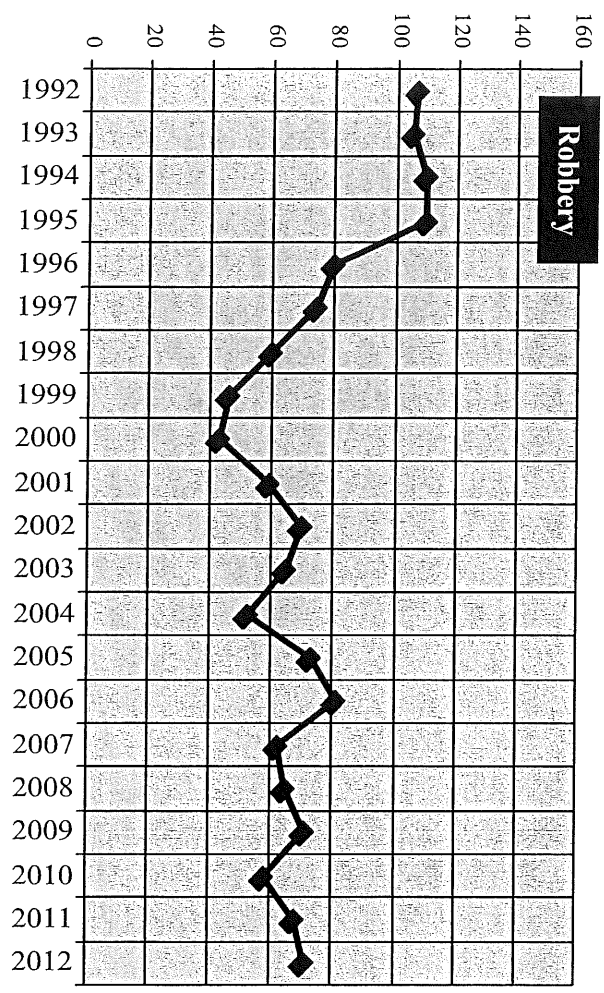
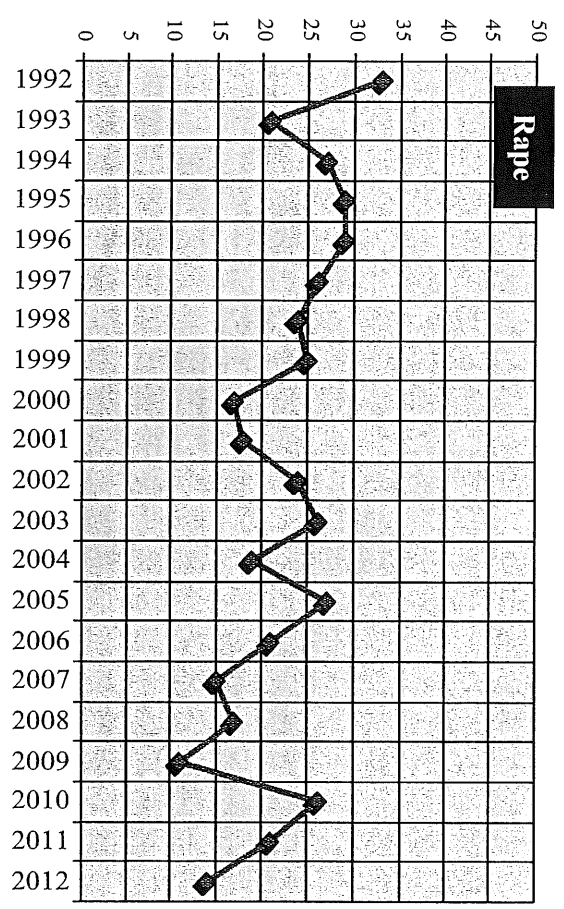
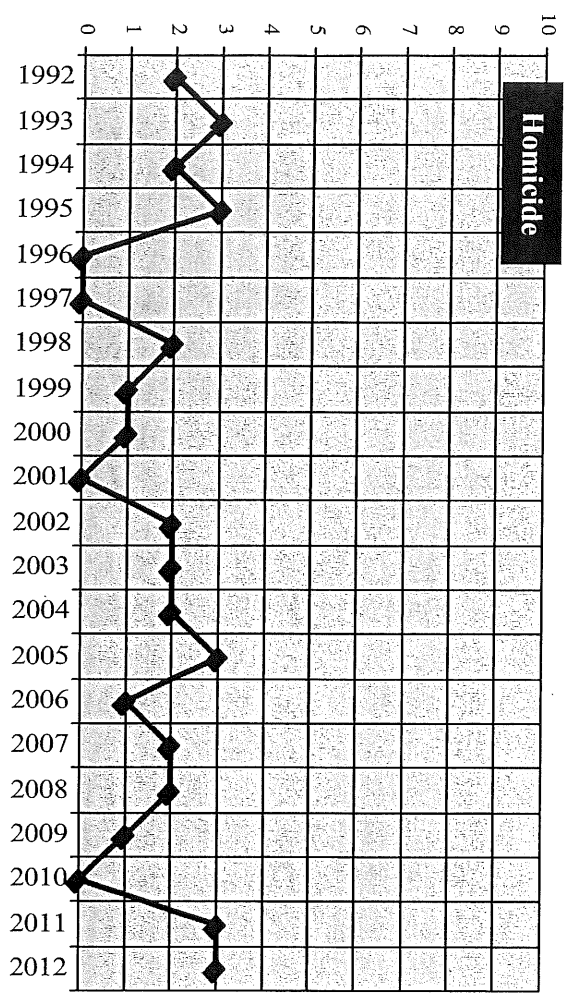


EXHIBIT C



**Draft for Planning Commission review
on August 22, 2011**

Council Date: September 27, 2011

**SUBJECT: 2011-7071 Location and Operation of Firearm Sales
Businesses (Study Issue)**

REPORT IN BRIEF

The passion surrounding firearms is intense, with arguments on all sides of the issue about the effectiveness or need for additional controls and regulations. Most of these discussions, however, go well beyond Sunnyvale's purview, and are regulated by numerous existing state and federal laws.

This study originated when a gun shop opened (legally) and neighbors were concerned because of the visible location and they were not given advanced notice. These concerns led to the question of whether firearm sales businesses should be restricted as to location or should require a Sunnyvale permit (see study issue paper, Attachment A). Currently, firearm sales businesses are treated the same as most other retail uses, which means they are allowed by right in a commercial zoning district. The Department of Public Safety (DPS) also issues a permit for every firearm sales business to ensure they meet the state and federal requirements, and have received a local business license.

Sunnyvale firearms dealers have been in business for decades, with little or no incident. Although there has been no evidence of increased crime, property devaluation or land use incompatibilities as the result of the businesses, residents have expressed concerns about the potential crime and public safety risk associated with a firearm sales business located near their homes and schools. The greatest concerns appear to be who is buying and selling firearms and the potential secondary land use effects of this activity.

There are various ways to address this concern. One would be to require a planning permit for the use at a specific location, and the other would be to require a more rigorous permit from DPS for the dealer selling the products. Planning permits address typical land use concerns to ensure a use is compatible with its surroundings (e.g. buffers, hours of operation, noise controls, parking management, etc.), while a DPS permit would ensure the person selling firearms meets state and federal requirements, while also meeting local concerns, such as security.

Staff recommends the Council adopt the draft ordinance (Attachment B) to amend the Municipal Code to:

- Add a definition for “firearms sales business;”
- Prohibit these businesses in commercial and industrially-zoned districts within 200 feet of public schools in order to provide a buffer to the schools;
- Require a new DPS Firearms Dealer Permit. Each permit should include additional conditions such as requiring a security plan to be installed and then inspected by the City, and that the Federal Firearm License (FFL) holder and all employees meet the state and federal requirements regarding past criminal convictions, etc. (current requirements are limited to the dealer and not the employees).

BACKGROUND

The majority of state and federal laws regulate the person *buying* a firearm (including background checks and a 10-day waiting period) and the person or business *selling* firearms. There are several types of licenses and methods to sell or transfer firearms. In Sunnyvale, two retail operations have FFLs and five home-based businesses hold FFLs, plus there are: an auction business and a machine shop.

The locations of those holding FFLs in Sunnyvale are shown on the map in Attachment C. The two retail businesses, Big 5 and U.S. Firearms, are located on El Camino Real. Big 5 sells only long guns (or rifles), while U.S. Firearms sells all types of firearms. Four of the home-based businesses are generally located south of Caltrain tracks and have had licenses for at least 20 years and the most recently issued home-based business issued this year is located near Highway 237.

When U.S. Firearms opened for business in Sunnyvale in the fall of 2010, the owner and operator gained all the necessary permits and state and federal licenses to open. Surrounding neighbors of the business noticed the sign for the business and raised concerns to the Council, Planning Commission and staff about: the lack of notification; compatibility concerns; and the safety of children that walk by the business on the way to school. Subsequently, the Planning Commission sponsored the Study Issue, and Council ranked it number 4 of 4 for 2011

EXISTING POLICY

Land Use and Transportation

GOAL C1: Preserve and enhance an attractive community, with a positive image and a sense of place that consists of distinctive neighborhoods, pockets of interest, and human-scale development.

Action Statement C1.1.1: Prepare and update land use and transportation policies, design guidelines, regulations and

engineering specifications to reflect community and neighborhood values.

GOAL C4: Sustain a strong local economy that contributes fiscal support for desired city services and provides a mix of jobs and commercial opportunities.

Action Statement C4.1.3 Promote commercial uses that respond to the current and future retail service needs of the community.

Policy C4.3: Consider the needs of business as well as residents when making land use and transportation decisions.

Title 19 (Zoning Code)

The zoning code allows many retail uses (such as firearm sales businesses) by right. Other uses, such as hotels, schools, day care centers, churches, car washes, restaurants, service stations, car sales businesses, animal hospitals, medical clinics, and the sale of alcohol at service stations requires a Planning permit such as a Miscellaneous Plan Permit (MPP) or Use Permit (UP). The sale of alcohol at a service station requires a Use Permit. The reason some uses require planning permit is because of unique aspects of the business, such as late hours, parking concerns, and possible compatibility issues. Planning permits run with the land, and not the applicant.

A Miscellaneous Plan Permit (MPP) is required for retail businesses in industrial-zoned locations to ensure the use meets site requirements, such as parking and that the industrial nature of the area is not adversely affected.

Home-based businesses do not require a separate planning permit, but home occupation requirements must be met before a business license is issued (Attachment D lists home occupation requirements). These requests are referred to the Department of Public Safety for a DPS License to Sell Firearms Permit with a requirement to be renewed annually (see discussion below).

Federal Law and State Law

Under the federal Gun Control Act of 1968 (Title 18 U.S.C. §101 et. seq.), it is unlawful for any person to engage in the business of importing, manufacturing, or dealing in firearms without obtaining a Federal Firearms License (FFL) from the Department of the U.S. Attorney General. Dealers must also obtain a state-issued firearms dealer's license from the California Attorney General under Penal Code §12071.

Licensed firearms dealers must comply with state and federal laws related to purchase and sale of firearms, such as background checks, waiting periods, handgun safety certificates, and gun registration. They are subject to inspection by the Bureau of Alcohol, Tobacco and Firearms (ATF) and the California Department of Justice. Their state and federal licenses must be

renewed periodically, and the DPS License to Sell Firearms Permit is issued annually.

Neither the federal or state gun control laws preempt the ability of cities to regulate where licensed firearms businesses may locate. The laws provide that firearms dealers must obtain a local business license and comply with all local ordinances and regulations. (18 U.S.C. §923(d)(1)(E)(i); Penal Code §12071(a)(1)(B).) In addition, cities may require that firearms dealers obtain a local permit to operate. (Penal Code §12071(a)(2).)

Examples of some requirements of buyers and sellers of firearms can be seen in Attachment E.

DISCUSSION

Overview

The Second Amendment to the U.S. Constitution states: "A well-regulated militia being necessary to the security of a free State, the right of the People to keep and bear arms shall not be infringed." How this amendment is interpreted and regulated is a passionate discussion for all sides of the issue. This study **does not**, however, include any discussion or consideration of the larger issue of the right to keep or bear firearms. It is limited to city permitting criteria related to firearm sales businesses. This study does not consider banning future firearm sales in Sunnyvale or eliminating existing businesses that sell firearms.

Concerns

The main concern about a firearm sales business is the sale of potentially dangerous products that have a long history of public debate. Although some retail establishments sell products that are also potentially harmful, none are as heavily regulated as firearms. The obvious reason for the regulations is the danger that can result from firearms being in the wrong hands. That may be why existing regulations are more focused on the individuals buying and selling the firearms, rather than the location of the business engaged in that activity.

Factors to Consider

Sunnyvale Requirements to Sell Firearms

In all cases, there are two basic requirements for a Sunnyvale firearms sales business: A Business License and a License to Sell Firearms Permit from DPS. The business license application is reviewed by Planning for conformance with the zoning code. Once the business license is issued, a seller must then receive the DPS permit. That permit is issued once all other permit requirements are met (local, State and Federal). Basically, the DPS permit is intended to confirm

that the seller has received all federal, state and local permits necessary to operate in Sunnyvale.

Other Cities

In Santa Clara County, different approaches are used in the permit process for firearms (Attachment F). Many cities in the County have specific regulations in their municipal codes relating to the sale of firearms. Palo Alto requires a Firearms Dealer Permit issued by the Chief of Police with limitations including: prohibition of firearms sales in zoning districts in which residential use is the principal permitted or maintained use; within 250 feet of a day care center, school or residential use; and within 250 feet of another firearms dealer, a cardroom, massage establishment, or adult entertainment business. San Jose specifically prohibits the sales of firearms as a home occupation.

Bay Area cities regulate firearm sales differently: some require a Use Permit process, while others require a permit from the Chief of Police. There are a few cities that require both permit types, and all cities require a business license.

Crime Statistics

Attachment G shows a map of each business with a FFL, and the locations of crimes involving guns from January 2006 to June 2011. As can be seen in the map, there is no correlation between gun-related crimes and the location of firearms sales businesses.

Considerations

The sale of firearms near schools and homes creates uncertainty and apprehension to some members of the community. Most concerns seem to relate to firearms themselves, and not the store, per se.

It is difficult to determine the impact a *store* has on a community. During review of other cities' ordinances and regulations, most of the criteria used in determining whether or not to regulate businesses are based on the perceived danger firearm sales can introduce to an area. There is no confirmed evidence that a firearm sales store increases gun-related or other crimes in an area.

Listed below are some of the concerns raised about firearm sales businesses:

- They can cause a decrease in nearby property values;
- They create insecurity for nearby residents about their safety;
- There may be a negative influence on children that may walk by the business;
- A violent or criminal element could be brought into a neighborhood;
- Businesses could be a source of trafficked firearms;

- State and federal inspections and requirements may not be sufficient in assuring the businesses meet all laws or cover all necessary aspects in the sale of firearms; and
- The sale of ammunition does not require a license, so ammunition can get into the wrong hands.

Staff could find no report that substantiated the concern that a firearm sales business devalues nearby properties. Determining the impact of a firearm sales business on nearby property values is difficult to assess because of the multitude of factors that influence property values. There is also no tangible evidence that a firearm sales business within a commercial district adversely affects surrounding businesses.

As the DPS map shows, in the past five years, there is no obvious relationship between firearm sales businesses and gun-related crime. These results include home-based businesses. It does not appear that the presence of a firearms sales business increases crime or introduces criminal elements into surrounding neighborhoods.

Attachment H is an article from the American Planning Association that shows a security plan is the most effective tool that can be applied through land use controls.

A goal of this study is to determine whether firearm sales businesses should require a specific permit, and, if so, what types of performance standards and conditions of approval would be included. As opposed to the medical marijuana study, where the complete lack of state and federal laws and guidelines created a situation where the City would become the regulating body in all ways, firearm sales have extensive regulations and requirements imposed by state and federal governments.

There is a similarity between the sale of firearms and the sale of alcohol from liquor stores. In both cases, a significant concern is the effect the use has on children and young adults. In 2009, in response to the concern about the location of liquor stores near schools, the Council adopted requirements that prohibit them from being located within 200 feet of public school sites. This may be a feasible option to use for commercial firearms sales businesses since the public concern over alcohol sales has a similar basis.

City Requirements and Regulations

Two options the city can use to regulate the sales of firearms in Sunnyvale would be to require a discretionary permit from Planning for the use of the property, or to expand the License to Sell Firearms Permit from DPS for the

dealer. In either case, staff has tried to avoid duplicating state and federal regulations.

Planning Permits- Permits issued through the Planning Division could include either a Miscellaneous Plan Permit (MPP) or Use Permit (UP). An MPP is a staff-level review, typically with limited or no public noticing. An MPP is commonly used to consider site issues (such as parking, landscaping and architecture) or performance measures (hours of operation, noise concerns, etc.). A UP is typically required for unique or disputed land uses, or for those that have aspects about the use that requires a higher level of discretion. A UP requires a public meeting by either the Zoning Administrator or Planning Commission and requires notification of the application to surrounding property owners and tenants. Findings for approval and conditions of approval are part of both planning permits. Planning permits “run with the land”, meaning that if the business owner/operator changes, the new owner can continue the use.

DPS Permits- In contrast, a Firearms Dealer License could be required for a firearms dealer. Currently, DPS requires approval of a License to Sell Firearms Permit, although it is not required by code. This permit has been used for decades by DPS to ensure firearm sales businesses meet all state, federal and local licensing requirements before opening.

By codifying the requirement for a Firearms Dealer License, it would create a formal process to ensure that firearms sales businesses operate securely, and provides DPS with legal authority to take enforcement action should the operation not meet any requirement for the permit. City review for this permit would focus on local issues, such as on-site security measures, plans and inspections. Other cities also require background checks for employees, inventory reports, and ammunition sales records as part of this license.

A DPS permit may be a more appropriate requirement than a planning permit because public concerns center more on the sale of firearms and compliance with state and federal requirements.

Home-based Businesses - Currently, the home occupation requirements in the code prohibit the sales of items from the home where a showroom is included, or where a significant amount of area is devoted to the sale of products. Mail order and internet sales are allowed from the home, as are those types of businesses (such as firearms) where the majority of the business is not conducted in person at the home; although, with firearm sales the final transaction may be concluded where the license for the business is issued (as required by state and federal law). The existing home-based firearm sales businesses meet all of the home occupation requirements.

Distance Limitations- Some cities have distance limitations of firearms sellers from uses such as residential, schools, day care centers, and other firearm sellers. The distance limitations range from 150 feet to 1,000 feet and can include the above-mentioned uses, as well as adult businesses, card rooms, etc.

In Sunnyvale, the use of distance regulations from residentially-zoned properties would effectively prohibit all home-based businesses and almost all of the commercial properties on El Camino Real since the majority of them back up to residential properties. The result would be that firearms sales businesses could mainly locate in the industrially-zoned properties in the north of the city.

Another option is to limit firearm sales businesses near schools. This approach was used by Council in 2009 when new liquor stores were prohibited within 200 feet of a public school. Although this requirement would not affect many commercial properties, it would ensure a buffer between firearm stores and schools. The reason there would not be many properties affected is because most Sunnyvale schools are not located near commercially-zoned areas. Attachment I shows the 200 foot distance from public schools to commercial areas. Residential home-based businesses were not included in this alternative since they have little traffic and no obvious signs of being a business. No existing business would be affected by this requirement.

Prospective Application- Any proposed change is anticipated to apply only to future proposals, and would not affect existing businesses. An amortization program to bring existing businesses into current requirements would be costly and time consuming to the City.

Path to Schools- Zoning distance limitations are usually calculated using the straight line method. This technique provides the most consistent and objective method for calculating setbacks and distances between uses. The study issue paper included consideration of not allowing firearm sales by using a "path to school" method. This is a very difficult method of regulating land uses since there is not a designated path between residential areas and schools; in fact, there are likely many paths possible. After evaluating this option and realizing the difficulty of codifying this approach, staff believes that a distance buffer would meet the intent of this option and would substantially eliminate the potential of a firearms store located along a heavily used school path.

Signage Controls- The study issue paper also suggested a review of limiting the type of signs at firearm sales businesses. In general, the First Amendment of the Constitution limits the City's ability to regulate sign content, including firearm advertising. It would be difficult for the City to justify an exception to this Constitutional limit. The City must show that an enacted regulation

substantially advances the City's stated interest, with evidence in support of the effectiveness of the regulation, and that other existing alternatives are not superior in terms of effectiveness and burden on speech. As Sunnyvale does not currently have empirical evidence of a problem or how a ban on firearm advertising would reduce a perceived problem, this option was not considered feasible.

FISCAL IMPACT

Any change in permitting requirements, or the requirement for a new permit type, should include a fee to ensure cost recovery so that there is no fiscal impact to the City. Additional fee and inspection costs would create a greater financial burden on the businesses engaged in the sales of firearms.

PUBLIC CONTACT

Public Contact was made through posting of the Planning Commission agenda on the City's official-notice bulletin board, on the City's Web site, and the availability of the agenda and report in the Office of the City Clerk.

A public outreach meeting was held on June 29, 2011, at which approximately 120 people attended. Over 110 notices of the meeting were sent to neighborhood associations, the Chamber of Commerce, existing firearm sales businesses, the Legal Community Against Violence (LCAV), and all people who spoke at the September 28, 2010 City Council meeting during the Public Comment period of the meeting. Comments from the outreach meeting have been summarized and are part of this report (Attachment J). The majority of comments were against additional regulation for firearms sales businesses, and stating the importance of allowing and maintaining these businesses for Sunnyvale.

A City web page (www.FirearmSales.inSunnyvale.com) and e-mail address FirearmSales@ci.sunnyvale.ca.us have been established for the study, and all e-mails and correspondence received have been included with this report (Attachment K).

The LCAV also submitted a model ordinance for consideration in regulating firearms dealers (Attachment L).

ALTERNATIVES

1. Introduce an ordinance to amend the Municipal Code to:
 - a. Create a definition in Titles 9 (Public Peace, Safety and Welfare) and 19 (Zoning) for "firearms sales" to include all firearms licensed by the state and federal governments,
 - b. Amend the Zoning District Tables (Title 19) to prohibit firearm sales in any commercial and industrial zoning districts located within 200 feet of a public school,

- c. Amend Title 9 to require a new Firearm Dealer Permit issued by the Director of Public Safety. Such a plan may include conditions, such as:
 - i. Require a security plan subject to approval by DPS,
 - ii. Require the Federal Firearms Licensee and all employees to meet all State and Federal requirements for holding a license.
2. Same as number 1, but also require a Miscellaneous Plan Permit for any new firearm sales business.
3. Adopt an alternative with modifications or further restrictions desired by Council, such as:
 - a. Require a greater buffer around public schools,
 - b. Require a buffer for other uses, such as residential, parks, day care centers or other uses,
 - c. Require a Use Permit with noticed public hearing.
4. Make no changes to the existing code requirements.

RECOMMENDATION

Alternative 1; amend the code to define "firearm sales business", prohibit those businesses within 200 feet of a public school, and codify the requirement for a permit from Public Safety.

The greatest concern regarding firearm sales is the business operator that is engaged in buying and selling the firearms. The location is also a concern, but staff has not identified any adverse land use impacts associated with a firearms store. The focus of state and federal regulations is on the buyers and sellers of firearms. Codifying the requirements for a permit from DPS would provide additional public assurances of the safety of the operation of a firearms store. The goal of this permit would be to provide assurance that the business meets state and federal requirements, as well as local security requirements. Staff does not see a need to duplicate the strict regulations required by state and federal authorities.

Staff recommends making no changes to the land use permitting requirements for these uses, since the store itself has not shown to be an incompatible use. In order to meet community concerns about the possible impact to children, however, staff recommends prohibiting the retail sales of firearms within 200 feet of public schools. Staff also does not see the need for a MPP or UP as the DPS Firearm Dealers Permit would allow for sufficient local controls.

Until late 2010, there were seven firearm sales businesses located in Sunnyvale. The majority of these businesses, including four home-based businesses, have been operating for more than 20 years without incident. A

new firearm sales business opened in September 2010, at which time concern was raised about the safety of such a use. This business has also operated without incident. Crime statistics have not shown negative impacts tied directly to these operations. All businesses have complied with state, federal and local regulations and requirements. The proposed changes to the code would address future businesses, and not those currently existing in Sunnyvale.

Reviewed by:

Hanson Hom, Director, Community Development

Reviewed by: Trudi Ryan, Planning Officer

Prepared by: Andrew Miner, Principal Planner

Reviewed by:

Dayton Pang, Interim Director, Public Safety

Approved by:

Gary M. Luebbers

City Manager

Attachments

- A. Study Issue Paper
- B. Draft ordinance
- C. Map of existing firearm sales businesses
- D. Title 19 Home Occupation requirements
- E. Existing requirements to buy or sell firearms
- F. Other cities regulations
- G. Map of gun-related crime in Sunnyvale
- H. Information from the American Planning Association
- I. Map of non-residential Zoning near schools
- J. Outreach meeting summary of comments
- K. Correspondence received
- L. Legal Community Against Violence model ordinance and discussion

2011 Council Study Issue

CDD 11-04 Location and Operation of Stand-alone Firearm Sales Businesses

Lead Department Community Development

History 1 year ago None 2 years ago None

1. What are the key elements of the issue? What precipitated it?

The City of Sunnyvale zoning code allows retail uses in the city in specific zoning areas, some of which require no planning permits, others are subject to different types of planning permits or locational requirements. The type of permit depends on the type of use proposed. There are some retail uses, such as adult businesses, that have specific zoning requirements and locational restrictions. Other uses, such as the sales of liquor at service stations and drive-through restaurants require public hearings. Liquor stores in neighborhood commercial zones are prohibited when within 200 feet of public school sites. Other than those specific uses, the zoning code does not distinguish between types of retail sales.

Recently, a gun shop opened along Mary Avenue near El Camino Real, adjacent to a residential neighborhood. Residents of that neighborhood objected to the gun shop location, with concern for its proximity to residents and schools. Neighbors also were concerned because the store is on a route children use to get to and from school.

The zoning code does not have specific requirements for gun shops; therefore, no special planning or zoning permits are needed for firearm sales ("guns"). The sale of firearms is regulated by State and Federal laws. In Sunnyvale, a retailer of firearms must have several licenses and approvals, including: a Federal Firearms License (FFL); a valid Seller's Permit issued by the State Board of Equalization; and, a City of Sunnyvale business license. The Department of Public Safety reviews requests for firearms licensing by sending information on the proposed owner to the State and Federal licensing agencies. Public Safety also reviews the security of a building for the use. The subject gun store received the required City approvals for their use and is required to operate in accordance with the State and Federal regulations.

This study issue would consider how Federal and State laws regulate the sale of firearms, what zoning and other regulations are possible in the location and operation of firearm sales. Options to be considered include distance limitations from sensitive uses (such as schools, parks, and routes used to reach those locations), operating standards, and public safety review options.

There are large sporting goods stores in the city that sell a wide variety of products, including firearms. This study would not include those businesses, but would focus on stand-alone firearm stores, where the products sold are dedicated to firearms.

2. How does this relate to the General Plan or existing City Policy?**LAND USE AND TRANSPORTATION**

GOAL C1 Preserve and enhance an attractive community, with a positive image and a sense of place, that consists of distinctive neighborhoods, pockets of interest, and human-scale development.

Action Statement C1.1.1 Prepare and update land use and transportation policies, design guidelines, regulations and engineering specifications to reflect community and neighborhood values.

GOAL C4 Sustain a strong local economy that contributes fiscal support for desired city services and provides a mix of jobs and commercial opportunities.

Action Statement C1.1.1 Prepare and update land use and transportation policies, design guidelines, regulations and engineering specifications to reflect community and neighborhood values.

Action Statement C4.1.3 Promote commercial uses that respond to the current and future retail service needs of the community.

Policy C4.3 Consider the needs of business as well as residents when making land use and transportation decisions.

3. Origin of Issue

Board or Commission Planning Commission

4. Staff effort required to conduct study Major

5. Multiple Year Project? No Planned Completion Year 2011

6. Expected participation involved in the study issue process?

Does Council need to approve a work plan? No
Does this issue require review by a Board/Commission? Yes
If so, which? Planning Commission
Is a Council Study Session anticipated? No

7. Briefly explain cost of study, including consultant hours, impacted budget program, required budget modifications, etc. and amounts if known.

Study would be covered with the Planning (234) and Public Safety operating budgets. Major cost is over 300 staff hours.

8. Briefly explain potential fiscal impact of implementing study results (consider capital and operating costs, as well as potential revenue).

Additional permitting or operational requirements could impact DPS and CDD depending on the result.

9. Staff Recommendation

Staff Recommendation For Study

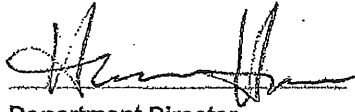
If 'For Study' or 'Against Study', explain

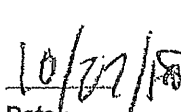
Staff feels this study could assist in providing zoning guidelines and restrictions in the placement of fire arms stores in the City, but acknowledges that it is not a high priority given the unlikely frequency of this land use.

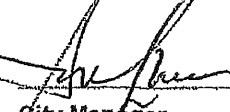
ATTACHMENT A
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Reviewed by

Approved by





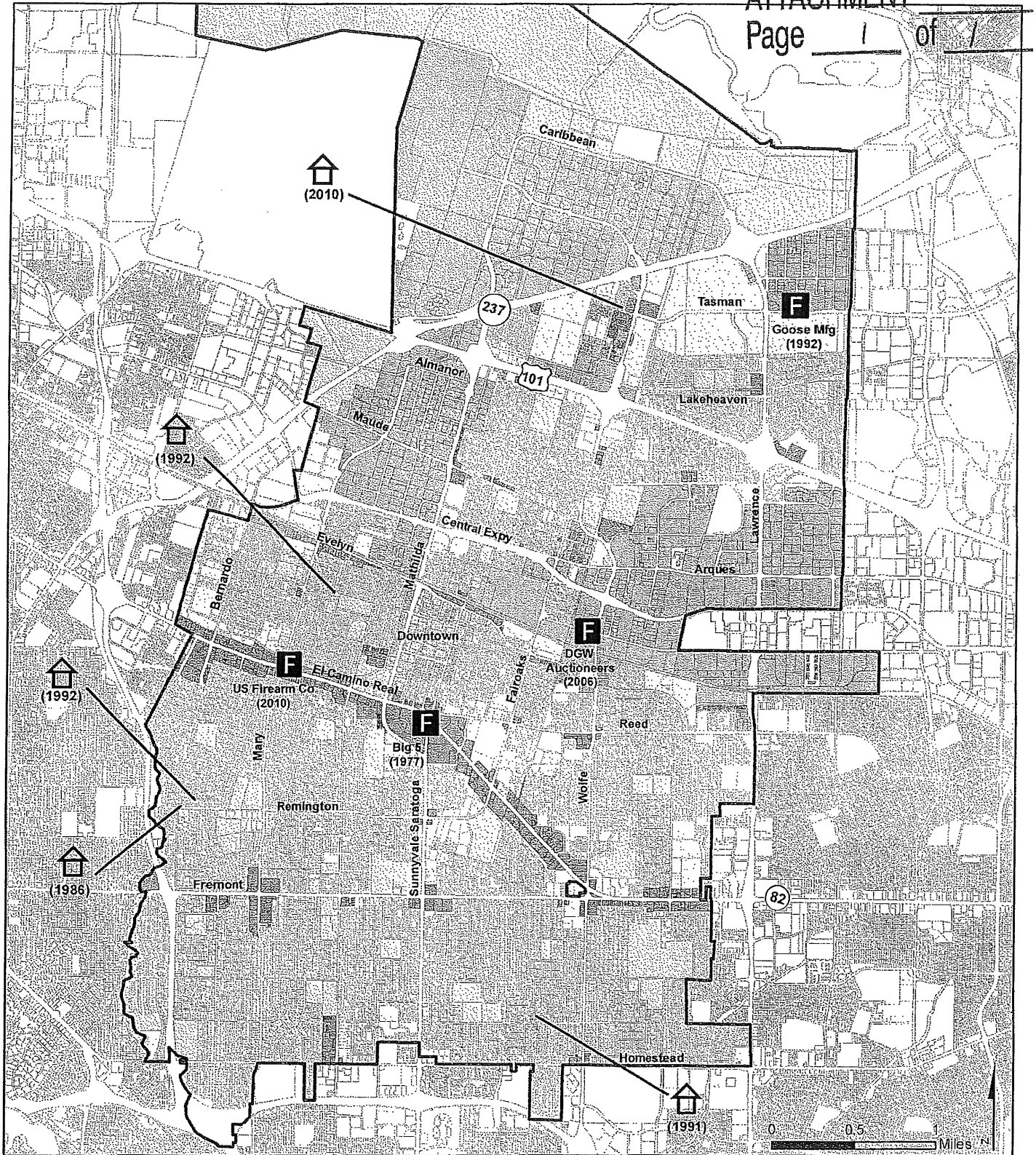


Department Director

Date

City Manager

Date



Firearm Businesses Study



City of Sunnyvale

This map is created by the City of Sunnyvale Planning Division.
Data Sources: City of Sunnyvale Planning Division
26/7/2011, 13:00



Home Based Firearm Business
(Year Home Occupation First Issued)



Other Licensed Firearm Dealers



Residential



Downtown Specific Plan



Industrial and Service



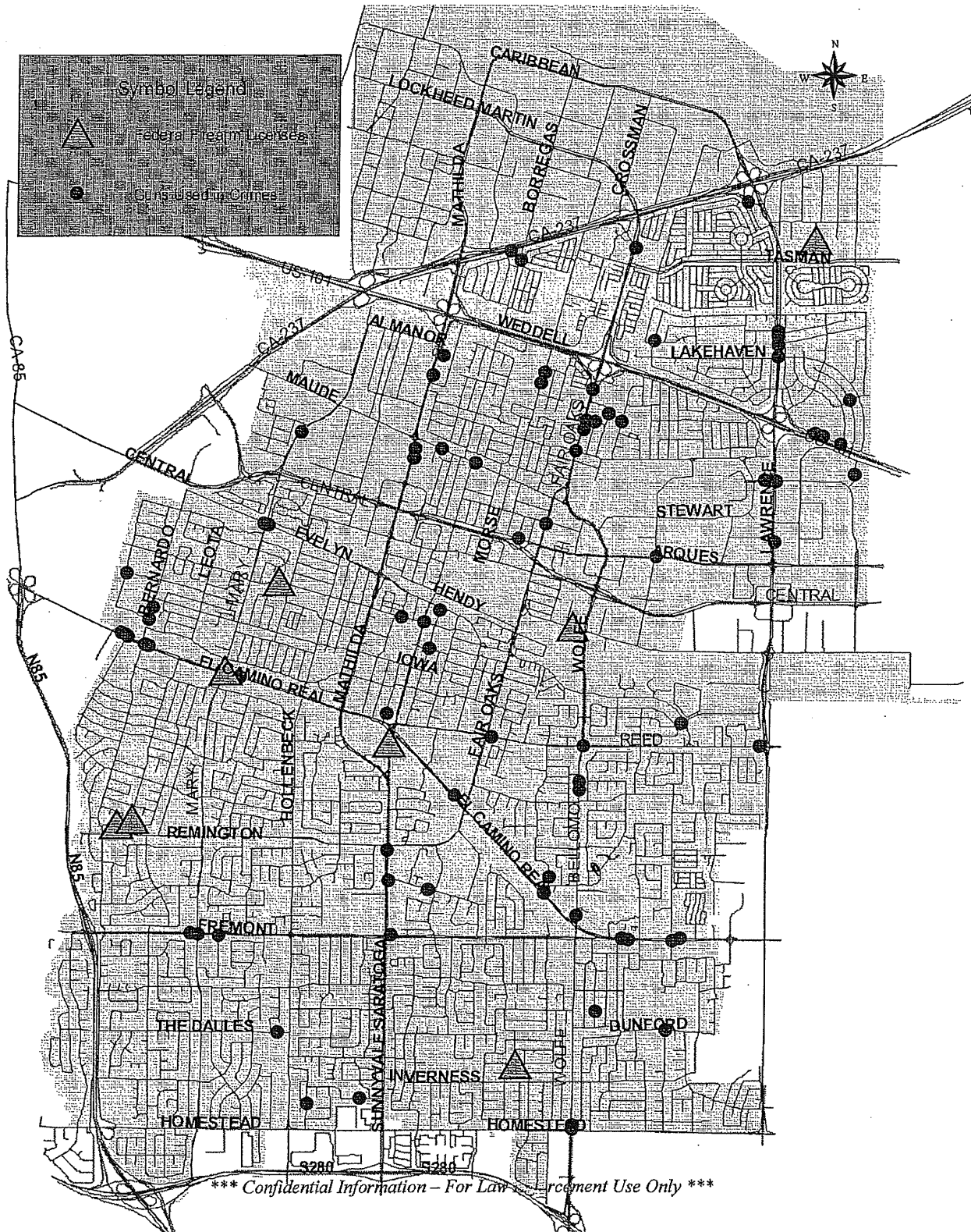
Commercial



Public Facilities

**Sunnyvale Federal Firearm Licenses &
Locations of Crimes Involving Guns (1/1/06 – 6/30/11)**

'Crimes involving guns' is defined as incidents in which a gun was used or threatened to be used in the commission of a crime. An actual gun may not have been seen. Does not imply that a gun was discharged or a shooting occurred.



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