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Attorneys for Defendants  
 THE CITY OF SUNNYVALE, THE MAYOR OF  
 SUNNYVALE, ANTHONY SPITALERI in his  
 official capacity, THE CHIEF OF THE  
 SUNNYVALE DEPARTMENT OF PUBLIC  
 SAFETY, FRANK GRGURINA, in his official  
 capacity

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE DIVISION

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

Plaintiffs,

v.

THE CITY OF SUNNYVALE, THE  
 MAYOR OF SUNNYVALE,  
 ANTHONY SPITALERI in his official  
 capacity, THE CHIEF OF THE  
 SUNNYVALE DEPARTMENT OF  
 PUBLIC SAFETY, FRANK GRGURINA,  
 in his official capacity, and DOES 1-10

Defendants.

Case No. 13-cv-05807 RMW

**DECLARATION OF ANTHONY SPITALERI  
 IN SUPPORT OF SUNNYVALE'S  
 OPPOSITION TO PLAINTIFFS' MOTION  
 FOR PRELIMINARY INJUNCTION**

Date: February 21, 2014  
 Time: 9:00 a.m.  
 Location: San Jose Courthouse  
 Courtroom 6 – 4<sup>th</sup> Floor  
 280 South 1<sup>st</sup> Street  
 San Jose, CA 95113

I, Anthony Spitaleri, declare as follows:

1. I served as Mayor of the City of Sunnyvale from January 10, 2012 through January 7, 2014. I had previously served as Mayor of Sunnyvale from January 2008 through January

1 2010. I served on the Sunnyvale City Council from January 2006 through January 2014.

2 2. For 36 years I was a firefighter with the Palo Alto Fire Department, before retiring  
3 as Captain.

4 3. I have sat for years on the National League of Cities' Public Safety and Crime  
5 Prevention Policy and Advocacy Committee. I was also a member of the League of California  
6 Cities' Public Safety Committee and Home Land Security Sub-Committee.

7 4. As a mayor with a long background in public safety, I became concerned with the  
8 potential for gun violence in the City of Sunnyvale, particularly after the mass shootings in  
9 Newtown and other cities around the country. Although Sunnyvale is not known for having high  
10 incidences of crime, the mass shootings in Newtown and other small municipalities demonstrated  
11 that these tragedies can hit any city, without regard to its size, location, or history of crime.  
12 Prompted by the incident in Newtown, I became increasingly interested in steps that could be  
13 taken to prevent a similar tragedy from occurring in Sunnyvale.

14 5. After Newtown, I became aware of the growing efforts of cities throughout  
15 California and the U.S. to take local action that could supplement federal and state regulations  
16 with the goal of stopping preventable deaths caused by gun violence. Some of these cities  
17 included San Francisco, Los Angeles and Sacramento.

18 6. As I understand it, one commonality of many of the mass shootings of recent years  
19 is the use of high powered, rapid fire assault weapons that utilize large capacity ammunition  
20 magazines ("LCMs"), which are capable of wreaking substantial amounts of lethal damage in  
21 brief bursts of violence.

22 7. I and the Sunnyvale City Council considered several measures to address this  
23 issue, some of which were borrowed from ordinances that had been successfully implemented in  
24 other California cities. Ultimately, four provisions were put to Sunnyvale voters as "Measure C."  
25 They are:

- 26 a. A requirement that lost or stolen guns be reported within forty-eight hours.
- 27 b. A requirements that residents safely store their weapons.
- 28 c. A ban on the possession of LCMs; and

1 d. A requirement that merchants keep ammunition sales logs.

2 8. A true and correct copy of the proposed ordinance that led to the passage of  
3 Measure C — containing the complete text of Measure C — is attached hereto as Exhibit 1.

4 9. On November 5, 2013, Measure C, passed with 66.55% of the Sunnyvale voters  
5 voting “yes.”

6 10. As noted in the proposed ordinance that led to the passage of Measure C, the City  
7 of Sunnyvale determined that violence caused by the intentional and accidental misuse of guns  
8 constitutes a “clear and present danger to the populace” and found that “sensible gun safety  
9 measures provide some relief from that danger and are of benefit to the entire community.”

10 11. I believe that Measure C constitutes one such sensible gun safety measure and that  
11 it will benefit the community of the City of Sunnyvale and promote public safety. In putting  
12 Measure C on the ballot, the Sunnyvale City Council was similarly guided by its concern for the  
13 threat to public safety posed by LCMs.

14 12. As I understand it, only the ban on LCMs is at issue in this case. This provision  
15 limits the ammunition magazines that residents may possess to those that can hold no more than  
16 10 rounds, subject to certain exceptions. The provision allows individuals possessing LCMs a  
17 90-day grace period before the ban goes into effect.

18 13. We selected the ban on possession of LCM’s in order to reduce the threat of a  
19 mass shooting and the risk to law enforcement personnel posed by weapons that use these LCMs.  
20 We believed that given the narrow loophole in California law allowing possession (but not  
21 manufacture, sale or transfer) of LCMs, the most effective way to achieve this goal of reducing  
22 the threat of injury and death posed by LCMs was to ban their possession in our city (subject to  
23 certain exceptions, including for law enforcement).

24 14. I declare under penalty of perjury under the laws of the State of California that  
25 the foregoing is true and correct. Executed this 29th day of January, 2014, in Sunnyvale,  
26 California.

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By: Anthony (Tony) Spitaleri  
Anthony Spitaleri

**EXHIBIT 1**  
**To**  
**DECLARATION OF ANTHONY**  
**SPITALERI IN SUPPORT OF**  
**SUNNYVALE'S OPPOSITION TO**  
**PLAINTIFFS' MOTION FOR**  
**PRELIMINARY INJUNCTION**

**EXHIBIT "A" TO RESOLUTION NO. 606-13**

**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 \_\_\_\_**

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 \_\_\_\_ 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.