

1 Roderick M. Thompson (State Bar No. 96192)
rthompson@fbm.com
2 Anthony P. Schoenberg (State Bar No. 203714)
aschoenberg@fbm.com
3 Rochelle L. Woods (State Bar No. 282415)
rwoods@fbm.com
4 Evan M. Engstrom (State Bar No. 267300)
eengstrom@fbm.com
5 Farella Braun + Martel LLP
235 Montgomery Street, 17th Floor
6 San Francisco, CA 94104
Telephone: (415) 954-4400
7 Facsimile: (415) 954-4480

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

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN JOSE DIVISION
15

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

19 Plaintiffs,

20 v.

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

25 Defendants.
26
27
28

Case No. 13-cv-05807 RMW

**DECLARATION OF FRANK GRGURINA IN
SUPPORT OF SUNNYVALE'S OPPOSITION
TO PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

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

1 I, Frank Grgurina, declare as follows:

2 1. I am the Chief of the Sunnyvale Department of Public Safety and have served in
3 this role since November 2011. Prior to my current position, I was a sworn officer for the
4 Fremont Police Department ("FPD") for over 22 years. I held a wide variety of assignments
5 throughout my career at FPD including positions as a Field Training Officer, Street Crimes
6 Detective, Narcotics Agent, SWAT Team Member, and as a certified instructor in weaponless
7 defense. My final position at FPD was that of a Police Captain with oversight of all field
8 operations. As a supervisor, manager, and as a second in command, I had the opportunity to
9 oversee almost every work group at the Fremont Police Department.

10 2. The information stated in this declaration is based on my knowledge, training,
11 education and experience.

12 3. I understand that the plaintiffs in this case contend that they need to use large
13 capacity magazines to defend themselves or their homes effectively. I am not personally aware of
14 any specific instance in the Cities of Fremont and Sunnyvale where a citizen was unable to
15 defend him or herself as a result of not having a large capacity magazine.

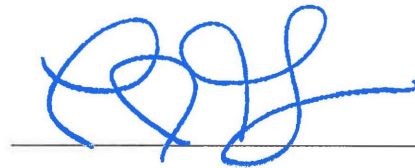
16 4. In my opinion, possession and use of large capacity magazines by those who
17 commit crimes poses a significant threat to public safety personnel and members of the
18 community. I am aware of several incidents in which criminal suspects have used a large
19 capacity magazine to harm and kill others and themselves. As an example, Criminal Suspect
20 Shareef Allman killed three co-workers and seriously injured several others individuals in a
21 shooting rampage which began in the City of Cupertino and ended in the City of Sunnyvale. The
22 incident came to a deadly conclusion in the City of Sunnyvale, when Allman was confronted by
23 Santa Clara County Sheriff's Deputies resulting in an exchange of gun fire. Allman had been in
24 possession of several weapons, which included high capacity magazines. The incident lasted for
25 approximately 22 hours, placing members of the community in danger for an extended period of
26 time and requiring a massive public safety response.

27 5. I am familiar with the Sunnyvale Department of Public Safety's ("DPS")
28 expectations for off duty public safety officers. DPS officers are afforded the opportunity to take

1 enforcement action when confronted with criminal situations and may act as law enforcement
2 officers at any time. This may involve assisting on-duty officers under appropriate circumstances
3 or taking individual action while off-duty. Officers must also have the ability to defend
4 themselves against subjects who may wish to harm them due to their role as a law enforcement
5 officer.

6 6. I have been informed by the Sunnyvale City Attorney, Joan A. Borger, that
7 Section 9.44.050 does not apply to law enforcement personnel. Law enforcement officers are
8 exempt from Section 9.44.050, whether they are in possession of LCMs while on or off-duty.
9 This exemption applies equally to Sunnyvale law enforcement personnel authorized to carry
10 LCMs and to off-duty officers from other jurisdictions. Attached hereto as Exhibit A is a true and
11 correct copy of a memorandum by Joan A. Borger and Rebecca L. Moon regarding exemptions to
12 Section 9.44.050.

13 I declare under penalty of perjury under the laws of the California that the foregoing is
14 true and correct and that this Declaration was executed on January 29, 2014, at Sunnyvale,
15 California.



Frank Grgurina

EXHIBIT A
To
DECLARATION OF FRANK
GRGURINA IN SUPPORT OF
SUNNYVALE'S OPPOSITION TO
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION



CITY OF SUNNYVALE

OFFICE OF THE CITY ATTORNEY


P.O. BOX 3707 SUNNYVALE, CALIFORNIA 94088-3707

TEL: (408) 730-7464

FAX: (408) 730-7468

INTEROFFICE MEMORANDUM

TO: Frank Grgurina, Chief of Public Safety

FROM: Joan A. Borger, City Attorney 
Rebecca L. Moon, Assistant City Attorney

DATE: December 13, 2013

RE: Law Enforcement Exemption for Large-Capacity Magazines

As you requested, this memo confirms the informal advice previously given by our office in regard to the interpretation of the law enforcement exemption in Sunnyvale Municipal Code Section 9.44.050(c)(2) (Sunnyvale Measure C).

Section 9.44.050(c)(2) provides that the prohibition on possession of large-capacity magazines does not apply to [1] “[a]ny government officer, agent, or employee, member of the armed forces of the United States, or peace officer, [2] 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”. The section does not apply to any person who satisfies both conditions.

Questions have been raised concerning the application of this section to:

- (1) Officers who possess large-capacity magazines while off-duty.
- (2) Possession of personal (non-duty) weapons by officers.
- (3) Officers from other jurisdictions who are visiting or traveling through Sunnyvale.

It is our opinion that individuals listed in Section 9.44.050(c)(2), who are authorized as part of their duties to possess and use large-capacity magazines, are exempt under 9.44.050(c)(2) at all times, both while on and off duty. Further, the exemption is not limited to official duty weapons. Finally, the exemption applies to same extent to officers from other jurisdictions while in Sunnyvale.

Please do not hesitate to contact us if you have any additional questions or concerns.

Office of the City Attorney

