

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,

Defendant(s).

Case No. C-13-5807-RMW

**ORDER GRANTING WITH
MODIFICATIONS DEFENDANTS'
ADMINISTRATIVE MOTION TO
ENLARGE TIME FOR HEARING
AND BRIEFING PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION AND DENYING
DEFENDANTS' MOTION FOR
EXPEDITED DISCOVERY**

[Re: Docket No. 25]

On January 3, 2014, 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; and Does 1-10 (collectively "Sunnyvale") filed an administrative motion to enlarge time for hearing and briefing plaintiffs' motion for preliminary injunction and for expedited discovery. *See* Dkt. No. 25. Plaintiffs Leonard Fyock, Scott Hochstetler, William Douglas, David Pearson, Brad Seifers, and Rod Swanson (collectively "plaintiffs") filed an

1 opposition on January 7, 2014. *See* Dkt. No. 28. The court GRANTS with modifications
 2 Sunnyvale's motion to enlarge time and DENIES Sunnyvale's request for expedited discovery.

3 **I. BACKGROUND**

4 This case concerns a City of Sunnyvale ordinance, entitled Measure C, that was passed by
 5 Sunnyvale voters on November 5, 2013. Measure C includes several gun control provisions,
 6 including a ban on the possession of large capacity magazines ("LCMs"), defined as magazines
 7 capable of accepting more than 10 rounds. Plaintiffs challenge this provision as in violation of the
 8 Second Amendment right to bear arms. The Sunnyvale City Council certified the November 5, 2013
 9 election results on November 26, 2013, and Measure C took effect on December 6, 2013. Absent a
 10 preliminary injunction, the possession of LCMs will be prohibited in Sunnyvale as of March 6,
 11 2014.

12 On December 23, 2013, Plaintiffs filed a motion for preliminary injunction. *See* Dkt. No. 10.
 13 The motion is currently set for hearing on February 7, 2014, with Sunnyvale's opposition due
 14 January 12, 2014 and Plaintiffs' reply due January 24, 2014.¹ Sunnyvale now moves for expedited
 15 discovery and to extend the deadlines such that the hearing on the preliminary injunction would be
 16 February 28, 2014, the opposition would be due January 31, 2014, and the reply would be due
 17 February 14, 2014.

18 **II. MOTION FOR EXPEDITED DISCOVERY**

19 Sunnyvale's request for expedited discovery is DENIED. In its motion, Sunnyvale argues
 20 that it needs discovery to determine "whether (a) the firearm discussed in the declaration is capable
 21 of using magazines that hold 10 or less rounds, and (b) whether the declarant owns other firearms
 22 capable of using magazines that hold 10 or less rounds," in order to refute plaintiffs' assertions that
 23 "their ability to defend their home from a home intruder would be hindered if they have to remove
 24 their LCMs from Sunnyvale during the pendency of this lawsuit." Dkt. No. 25 at 4. The plaintiffs in
 25 their opposition acknowledge that they do not assert that the ordinance "deprives them of the ability
 26 to keep a firearm for self-defense [sic]. Rather, they have alleged that the Ordinance prevents them
 27

28 ¹ These briefing deadlines are pursuant to a stipulation by the parties filed on December 23, 2013.
 Dkt. No. 8. The stipulation is GRANTED, although the briefing deadlines are subject to the
 revisions made in this order.

1 from possessing and using commonly owned firearms with magazines capable of holding more than
2 ten rounds – and requires them to remove these protected magazines from their homes.” Dkt. No. 28
3 at 5. Sunnyvale’s requested discovery is therefore irrelevant to the motion for preliminary
4 injunction. Moreover, Sunnyvale can still argue in its irreparable harm analysis that arms besides
5 those with magazines capable of holding more than 10 rounds are available to plaintiffs. Expedited
6 discovery, including depositions of one or more of the plaintiffs, at this stage is unnecessary for
7 Sunnyvale to oppose the motion for preliminary injunction.

8 **III. MOTION TO ENLARGE TIME**

9 Sunnyvale contends that an extension in the schedule would permit them “the time needed to
10 conduct some discovery, prepare an opposition and gather its own evidence, while still allowing
11 time for the motion to be heard prior to the March 6, 2014 deadline under Measure C for disposing
12 of LCMs.” Dkt. No. 25 at 4. The court has already found that Sunnyvale is not entitled to discovery.
13 However, given the complex issues involved in the motion for preliminary injunction and the wealth
14 of evidence plaintiffs submitted in support of its motion for preliminary injunction, the court agrees
15 that some modification in the schedule is necessary. At the same time, the court is sympathetic to
16 the need to resolve the motion for preliminary injunction prior to the March 6, 2014 deadline for
17 individuals to dispose of any LCMs they possess. Therefore, the court orders that the hearing on the
18 motion for preliminary injunction is reset for February 21, 2014 at 9:00 a.m. Sunnyvale’s opposition
19 to the motion is due on January 29, 2014, with plaintiffs’ reply due February 10, 2014.

20 **IV. ORDER**

21 For the above stated reasons, Sunnyvale’s Motion for Expedited Discovery is DENIED.
22 Sunnyvale’s Motion to Enlarge Time for Hearing and Briefing Plaintiff’s Motion for Preliminary
23 Injunction is GRANTED with modifications. The hearing for plaintiffs’ motion for preliminary
24 injunction is hereby set for February 21, 2014 at 9:00 a.m. Sunnyvale’s opposition to the motion
25 shall be filed no later than January 29, 2014. Plaintiffs’ reply, if any, shall be filed no later than
26 February 10, 2014.

27
28 **IT IS SO ORDERED.**

Dated: January 9, 2014


RONALD M. WHYTE
United States District Judge