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The National Shooting Sports Foundation, Inc.

EMILED
2013 DEC -9 3:35
J. CAO-NGUYEN

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

U.S. FIREARMS COMPANY, LLC, a
limited liability company; ERIC W.
FISHER; and THE NATIONAL
SHOOTING SPORTS
FOUNDATION, INC., a non-profit
trade association,

Petitioners,

v.

CITY OF SUNNYVALE; THE
SUNNYVALE CITY COUNCIL; and
DOES 1 through 30, inclusive,

Respondents.

CASE NO. **118CV257353**
VERIFIED PETITION FOR TEMPORARY
RESTRAINING ORDER, PRELIMINARY
AND PERMANENT INJUNCTION,
DECLARATORY RELIEF, AND WRIT OF
MANDATE

(C.C.P. §§ 526, 1060, 1085)

BY FAX

Petitioners U.S. Firearms Company LLC ("U.S. Firearms"), Eric W. Fisher, and the
National Shooting Sports Foundation, Inc. ("NSSF"), allege as follows:

NATURE OF RELIEF SOUGHT

1. This Petition arises out of a November 5, 2013, Special Municipal Election in
the City of Sunnyvale (the "City"), for the purpose of voting on ballot Measure C, which

1 proposed an Ordinance amending the City's Municipal Code. The Ordinance is set forth
2 in Exhibit A to this petition and incorporated by reference at this point.

3 2. Petitioners seek an order invalidating Sections 9.44.030 and 9.44.060 of the
4 Ordinance requiring federally-licensed firearms sellers, and responsible persons and
5 agents, to: (i) obtain information protected by the right of privacy from customers
6 purchasing ammunition and (ii) report to police the loss or theft of firearms.

7 3. The purpose of this Petition is to protect Petitioners from hardships suffered
8 from complying with a patchwork of local firearms and ammunition laws governing their
9 lawful business activities that are in conflict with general State and Federal laws, and to
10 prevent the City from invading the constitutionally-protected and inalienable privacy rights
11 of citizens.

12 4. Sections 9.44.030 and 9.44.060 of the Ordinance are invalid because they
13 conflict with, and are thus preempted by State and Federal law, and violate State law by
14 permitting the City and its police officers to investigate law-abiding citizens without
15 suspicion and collect their statutorily protected personal information solely on the basis of
16 their exercise of constitutionally-recognized and protected rights under the Second
17 Amendment to the U.S. Constitution.

18 **THE PARTIES**

19 5. Petitioner U.S. Firearms is a California limited liability company maintaining
20 its sole place of business at 590 S. Mary Avenue, Sunnyvale, California 94086.

21 6. U.S. Firearms is duly licensed by federal, state, and local authorities to
22 engage in the business of selling firearms. U.S. Firearms operates a full service retail gun
23 store offering firearms training and gunsmithing services, as well as the sale of firearms,
24 ammunition, and firearms accessories.

25 7. Petitioner Eric W. Fisher is the managing member of U.S. Firearms. Mr.
26 Fisher is also a responsible person under the Federal Firearms License for U.S. Firearms.
27 In the course of conducting business, U.S. Firearms, Mr. Fisher, and U.S. Firearms' other
28

1 employees, own or possess firearms. Mr. Fisher regularly purchases ammunition from
2 U.S. Firearms for personal use.

3 8. Petitioner NSSF is an Internal Revenue Code section 501(c)(6) Connecticut-
4 based nonprofit trade association for America's firearms, ammunition, hunting, and
5 recreational shooting sports industry. Its mission is to promote, protect, and preserve
6 hunting and the shooting sports. Founded in 1961, the NSSF has a membership of more
7 than 9,000 federally-licensed firearms and ammunition manufacturers, distributors,
8 retailers; companies manufacturing, distributing and selling shooting and hunting-related
9 goods and services; public and private shooting ranges; and sportsmen's organizations,
10 including members in the State of California and the Sunnyvale area. NSSF's members
11 supply the firearms and ammunition used by the U.S. military and Federal, State and
12 Local law enforcement to protect America's national security and keep our communities
13 safe, and also supply sportsmen and gun owners throughout the State with the firearms
14 and ammunition they use for lawful purposes. U.S. Firearms is a member of the NSSF.

15 9. NSSF's interest in this case derives principally from the fact that its
16 members provide the lawful commerce in firearms and ammunition that make the
17 exercise of Second Amendment rights possible. Moreover, NSSF members are required
18 to comply with the requirements of State and Federal laws applicable to the conduct of
19 their businesses. These businesses are entitled to lawfully own, purchase, sell and
20 transfer firearms and ammunition under the same rules, not a patchwork of different and
21 conflicting local laws across California.

22 10. Petitioners are informed and believe, and thereon allege, that Respondent
23 City is a chartered city within the State of California subject to the Court's power to
24 compel compliance with a legal duty under Code of Civil Procedure section 1085.

25 11. Petitioners are informed and believe, and thereon allege, that Respondent
26 City Council of Sunnyvale (the "City Council") is the City's governing body and is vested
27 with all of the City's powers. The City Council is subject to the Court's power to compel
28 compliance with a legal duty under Code of Civil Procedure section 1085.

1 their lawful, constitutionally-protected conduct.

2 20. The Fourth Amendment to the U.S. Constitution provides:

3 The right of the people to be secure in their persons, houses,
4 papers, and effects, against unreasonable searches and
5 seizures, shall not be violated, and no Warrants shall issue,
6 but upon probable cause, supported by Oath or affirmation,
7 and particularly describing the place to be searched, and the
8 persons or things to be seized.

9 21. “[E]xcept in certain carefully defined classes of cases, a search of private
10 property without proper consent is ‘unreasonable’ unless it has been authorized by a valid
11 search warrant.” *Camara v. Municipal Court* (1967) 387 U.S. 523, 528-29.

12 22. The Fourth Amendment is made applicable to the States and their political
13 subdivisions by virtue of the Fourteenth Amendment to the U.S. Constitution.

14 23. Respondents have a clear, present ministerial duty under Article XI, section
15 7 of the California Constitution not to enact local regulations that conflict with the general
16 laws in this State, and in particular, the firearms and ammunition laws found in the
17 California Penal Code.

18 24. Respondents also have a duty to not infringe on citizens’ legally-protected
19 privacy and Fourth Amendment rights.

20 **STUDY OF FIREARMS SELLERS**

21 25. When U.S. Firearms opened in 2010, City residents expressed concerns to
22 Respondents about the new business. Respondents thereafter charged the City Planning
23 Division to conduct a study on firearms seller’s operations in the City. The Planning
24 Division’s 2011 “Location and Operation of Firearm Sales Businesses” study (without
25 exhibits) is attached hereto as Exhibit B.

26 26. Among other things, the Planning Division’s 2011 study found:

27 a. “Sunnyvale firearms dealers have been in business for decades, with
28 little or no incident.”

b. “[T]here has been no evidence of increased crime, property
devaluation or land use incompatibilities as the result of [firearms sales]

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businesses.”

c. “[T]here is no correlation between gun-related crimes and the location of firearms sales businesses.”

d. Although ammunition sales are often invoked as a justification for municipal regulation, “[t]here is no confirmed evidence that a firearm sales store increases gun-related or other crimes in an area.”

e. “Staff could find no report that substantiated the concern that a firearm sales business devalues nearby properties.”

f. “There is also no tangible evidence that a firearm sales business within a commercial district adversely affects surrounding businesses.”

g. “[I]n the past five years, there is no obvious relationship between firearm sales businesses and gun-related crime.”

h. “It does not appear that the presence of a firearms sales business increases crime or introduces criminal elements into surrounding neighborhoods.”

i. “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. [U.S. Firearms] 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.”

j. “All [Sunnyvale firearm sales] businesses have complied with state, federal and local regulations and requirements.”

k. “The focus of state and federal regulations is on the buyers and sellers of firearms. . . . [City Planning] Staff does not see a need to duplicate the strict regulations required by state and federal authorities.”

(Ex. B at 1, 5-6, 10-11).

1 **BALLOT MEASURE C**

2 27. Despite the Planning Division's Study and Findings, a special interest group,
3 Sunnyvale Citizens for Sensible Gun Measures ("SV4SGM"), requested that the
4 Ordinance be presented to voters for approval as ballot Measure C.

5 28. On July 16, 2013, the City Council adopted a Resolution to put Measure C
6 before voters during the General Municipal Election held on November 5, 2013.

7 29. On November 5, 2013, a majority of the electorate approved Measure C.

8 30. The City Council endorsed the results of the election on November 26,
9 2013, making the Ordinance effective on December 6, 2013.

10 **IRREPARABLE INJURY**

11 31. During its three years of operation, U.S. Firearms has developed numerous
12 customers who regularly purchase ammunition and has derived net income from these
13 sales.

14 32. U.S. Firearms ammunition customers are aware of section 9.44.060 of the
15 Ordinance requiring that persons engaged in the business of selling firearm ammunition in
16 the City obtain information from purchasers protected by the right of privacy, including:
17 the purchaser's name, driver's license number, brand type and amount of ammunition
18 purchased, signature, thumbprint, residential address, and date of birth.

19 33. Numerous ammunition purchasers from U.S. Firearms have stated to Mr.
20 Fisher that if the Ordinance becomes effective, they will purchase ammunition from sellers
21 in cities adjacent to Sunnyvale which do not require the disclosure of private information.
22 Alternatively, these customers have the ability purchase ammunition on the Internet,
23 again without the requirement of disclosing private personal information.

24 34. Within five miles of U.S. Firearms in Sunnyvale, there are at least four
25 ammunition sellers located in the cities of Mountain View, Cupertino, and Santa Clara,
26 California, from whom customers of U.S. Firearms can purchase ammunition without the
27 requirement of disclosing personal information protected by the right of privacy.

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1 35. Unless the enforcement of section 9.44.060 of the Ordinance is enjoined or
2 restrained by order of this Court, that provision will cause great and irreparable injury to
3 U.S. Firearms in that current ammunition customers, and the revenue and goodwill they
4 represent, will leave to purchase from nearby dealers in other cities and/or Internet sellers
5 of ammunition.

6 36. U.S. Firearms has no adequate remedy at law for the injuries which will be
7 suffered as a result of losing its ammunition customers, and it will be difficult for U.S.
8 Firearms to determine the precise amount of damage to be incurred if the enforcement of
9 section 9.44.060 of the Ordinance is not restrained.

10 37. Ammunition customers also have no adequate remedy at law for the
11 invasion of their constitutional and statutory rights of privacy and the chilling effect on the
12 exercise of their rights under the Second Amendment to the U.S. Constitution.

13 **FIRST CAUSE OF ACTION**

14 **(Writ of Mandate – Penal Code Preemption – Ammunition Sales)**

15 38. Petitioners refer to and incorporate by reference, as though fully set forth
16 herein, paragraphs 1-37, inclusive.

17 39. State law preempts the City's efforts to regulate firearms and ammunition
18 sales. Section 53071 of the Government Code provides:

19 It is the intention of the Legislature to occupy the whole field of
20 regulation of the registration or licensing of commercially
21 manufactured firearms as encompassed by the provisions of
22 the Penal Code, and such provisions shall be exclusive of all
local regulations, relating to registration or licensing of
commercially manufactured firearms, by any political
subdivision as defined in Section 1721 of the Labor Code.

23 40. Courts have construed Government Code section 53071 to preempt local
24 ordinances that relate to the possession, sale registration or licensing of firearms and
25 ammunition. *See Fiscal v. City and County of San Francisco* (2008) 158 Cal.App.4th 895,
26 902, 907, 911-15.

27 41. Firearms and ammunition are mutually dependent subjects of regulation
28 under the Penal Code. Penal Code section 16520 defines a firearm as a "device,

1 designed to be used as a weapon, from which is expelled through a barrel, a projectile by
2 the force of an explosion or other form of combustion,” while Penal Code section 16150(b)
3 generally defines ammunition as any “projectile capable of being fired from a firearm with
4 a deadly consequence.”

5 42. The State occupies the field of ammunition sales in California (Penal Code
6 §§ 30210-30365), defining the kind of ammunition which can be possessed and sold (§§
7 30210-30290), persons to whom ammunition may be sold (§§ 30300-30305), places
8 where possession of ammunition is prohibited (§ 30310), face-to-face transfer of handgun
9 ammunition required (§ 30312), bans on armor piercing ammunition (§ 30320), except to
10 members of the armed forces, police, or forensic laboratories (§ 30330), and qualifications
11 for employees who may sell handgun ammunition (§§ 30347-30352).

12 43. As part of this comprehensive scheme of regulation, the California
13 Legislature enacted the Anti-Gang Neighborhood Protection Act of 2009 (“Anti-Gang
14 Act”), which regulates the recordkeeping of handgun ammunition sales by vendors.
15 Section 30352 of the Penal Code provides that,

16 (a) Commencing February 1, 2011, a vendor shall not sell or
17 otherwise transfer ownership of any handgun ammunition without, at
the time of delivery, legibly recording the following information:

18 (1) The date of the sale or other transaction.

19 (2) The purchaser's or transferee's driver's license or other
20 identification number and the state in which it was issued.

21 (3) The brand, type, and amount of ammunition sold or
otherwise transferred.

22 (4) The purchaser's or transferee's signature.

23 (5) The name of the salesperson who processed the sale or
24 other transaction.

25 (6) The right thumbprint of the purchaser or transferee on
the above form.

26 (7) The purchaser's or transferee's full residential address
27 and telephone number.

28 (8) The purchaser's or transferee's date of birth.

1 engage in the business of selling, leasing, or otherwise transferring firearm ammunition
2 within the City of Sunnyvale except in compliance with this code." Section 9.44.060(c) of
3 the Ordinance requires that vendors maintain records of ammunition sales, including all of
4 the information which must be recorded by the vendor under Penal Code section 30352.
5 Unlike Penal Code section 30352, the Ordinance does not exempt any transactions from
6 its recordkeeping and reporting requirements.

7 51. Section 9.44.060(d) of the Ordinance permits inspection of the ammunition
8 sales records by peace officers during vendors' normal business hours. Unlike Penal
9 Code section 30357, such inspections need not be supported by any demonstrable
10 cause, pending investigation, individualized suspicion, or regulatory objective.

11 52. As in Penal Code section 30360, section 9.44.060(e) of the Ordinance
12 provides that no ammunition vendor shall knowingly make a false entry in any ammunition
13 sales records, and makes it illegal for any person to knowingly provide false information to
14 a vendor for purposes of purchasing firearms ammunition.

15 53. Like Penal Code section 30365, any violations of the Ordinance are
16 punishable as misdemeanors under Sunnyvale Municipal Code section 1.04.010(a).

17 54. Respondents failed to perform their clear, present ministerial duty under
18 Article XI, section 7 of the California Constitution not to cause to be enacted local
19 regulations conflicting with the general laws of the State, and in particular, the firearms
20 statutes found in the Penal Code. Section 9.44.060 of the Ordinance conflicts with State
21 law because it enters into an area fully occupied by the Penal Code and imposes
22 standards which are both duplicative, in part, and more onerous, in part, on firearms
23 sellers.

24 55. Article XI, section 7 of the California Constitution and the Penal Code
25 establish important public rights. Petitioners have standing to ensure that Respondents
26 do not impair or defeat these rights or the purposes of the laws establishing them.

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1 63. The CCRA defines “personal information” to mean, at minimum, a
2 customer’s “first name or first initial and his or her last name in combination with” a
3 “Driver’s license number or California identification card number.” Cal. Civ. Code §
4 1798.81.5(d); *see also id.* at § 1798.80(e) (defining personal information as “any
5 information that identifies, relates to, describes, or is capable of being associated with, a
6 particular individual, including, but not limited to, his or her name, signature, ... physical
7 characteristics or description, address, telephone number, ... driver’s license or state
8 identification card number...”).

9 64. Among other things, the CCRA provides that businesses owning “personal
10 information about a California resident” must “implement and maintain reasonable
11 security procedures and practices appropriate to the nature of the information, to protect
12 the personal information from unauthorized access, destruction, use, modification, or
13 disclosure.” Cal. Civ. Code § 1798.81.5(b). Businesses must also employ reasonable
14 steps to dispose of customer records containing personal information in such a manner as
15 to make the records “unreadable or undecipherable through any means.” *Id.* at §
16 1798.81.

17 65. Businesses must make certain disclosures to affected California customers
18 following any unauthorized acquisition or disclosure of personal information, other than
19 the good-faith acquisition by the businesses’ employees or agents, provided that the
20 information is not used or subject to further unauthorized disclosure. Cal. Civ. Code §
21 1798.82.

22 66. The CCRA does not expressly permit disclosure of customers’ personal
23 information to law enforcement, and other privacy statutes require a search warrant
24 before such disclosure. *See, e.g.,* Cal. Civ. Code § 56.10(b)(6) (medical information may
25 be disclosed pursuant to search warrant). Moreover, Section 9.44.060 of the Ordinance
26 cannot be construed to provide for vendors’ or purchasers’ implied consent to disclosure,
27 as any purported waiver of CCRA protections is void and unenforceable as contrary to
28 public policy. Cal. Civ. Code § 1798.84(a).

1 **THIRD CAUSE OF ACTION**

2 **(Writ of Mandate – Right of Privacy – Ammunition Sales)**

3 72. Petitioners refer to and incorporate by reference, as though fully set forth
4 herein, paragraphs 1-53, inclusive.

5 73. In November 1972, the People of California approved a ballot proposition
6 that specifically amended Article I, Section 1 of the California Constitution to enumerate a
7 right of privacy as an inalienable right applicable against private and public entities.

8 74. As noted by the California Supreme Court, the ballot proposition amending
9 Article I, Section 1 was directed at remedying four “principal mischiefs”:

10 (1) "government snooping" and the secret gathering of
11 personal information; (2) the overbroad collection and
12 retention of unnecessary personal information by government
13 and business interests; (3) the improper use of information
14 properly obtained for a specific purpose, for example, the use
of it for another purpose or the disclosure of it to some third
party; and (4) the lack of a reasonable check on the accuracy
of existing records.

15 *White v. Davis* (1975) 13 Cal. 3d 757, 775.

16 75. Government surveillance of citizens’ constitutionally-protected conduct has
17 the effect of chilling the exercise of such conduct and constitutes an invasion of those
18 citizens’ privacy rights under Article I, Section 1. Any such invasion must be justified by
19 compelling State interests to be valid.

20 76. Respondents have no legitimate or compelling interest in conducting
21 surveillance of law-abiding citizens, harvesting and retaining firearm owners’ personal
22 information, or monitoring their lawful ammunition purchases.

23 77. According to the City Planning Division’s 2011 report, there is no empirical
24 evidence that firearms sellers’ operations in Sunnyvale have resulted in increased gun-
25 related or others crimes, and that existing sellers have complied with all existing State and
26 Federal laws and regulations.

27 78. SV4SGM’s ballot arguments in favor of Measure C directed voters to the
28 group’s website. Petitioners are informed and believe, and thereon allege, that

1 SV4SGM's website urged voters to approve Measure C in part because the City would
2 use advanced information technology to "compile, maintain, access, and cross-reference"
3 data gathered from vendors' ammunition sales logs to generate investigative leads for
4 persons who are prohibited from owning firearms.

5 79. As a result, lawful firearms owners are necessarily compelled to disclose
6 sensitive personal information for collection by police and subjected to suspicionless
7 searches and ongoing government monitoring *merely because they have engaged in*
8 *conduct in furtherance of their rights guaranteed by the U.S. Constitution.*

9 80. Nor does section 9.44.060 of the Ordinance provide for any limitation on the
10 use, dissemination, or maintenance of ammunition purchasers' personal information or
11 sales data. Respondents are under no obligation to maintain such information confidential
12 and have unfettered discretion as to its use.

13 81. Indeed, section 9.44.060 of the Ordinance exposes Petitioners to civil
14 liability for Respondents' surveillance of ammunition purchasers. Customers affected by
15 CCRA violations may bring civil actions for statutory damages, injunctive relief, and
16 attorneys' fees and costs. Cal. Civ. Code § 1798.84(b)-(g). Section 9.44.060 of the
17 Ordinance does not purport to immunize or indemnify Petitioners for Respondents' CCRA
18 violations.

19 82. Respondents are precluded by the CCRA and the Fourth Amendment from
20 authorizing or employing the surveillance techniques contemplated by the Ordinance.

21 83. Section 9.44.060 of the Ordinance does not represent the least intrusive
22 means to accomplish its objectives.

23 84. Respondents failed to perform their clear, present ministerial duty under
24 Article I, section 1 of the California Constitution, the common law, the CCRA, and the
25 Fourth Amendment not to violate ammunition purchasers' privacy rights by compelling
26 them to disclose personal information and conducting warrantless, unfettered surveillance
27 of their lawful and constitutionally-protected conduct.

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Each licensee shall report the theft or loss of a firearm from the licensee's inventory or collection, within 48 hours after the theft or loss is discovered, to the Attorney General and to the appropriate local authorities.

92. Section 9.44.030 of the Ordinance reads as follows:

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. (Emphasis added.)

93. Section 9.44.030 duplicates the requirements of Penal Code section 26885 and 18 U.S.C. § 923(g)(6) to the extent it requires that the theft or loss of a firearm be reported within 48 hours of discovery.

94. Section 9.44.030 imposes a more onerous requirement on licensed firearms sellers in that they must now report the theft or loss of a firearm within 48 hours of the time "he or she . . . *reasonably should have known that the firearm had been stolen or lost.*" (Emphasis added.) Thus, a firearms seller could be convicted of violating the Ordinance for *negligent failure to know* that a firearm was lost or stolen.

95. Since it purports to regulate and proscribe conduct by City residents in other jurisdictions, Section 9.44.030 operates extraterritorially in excess of the City's authority.

96. Respondents failed to perform their clear, present ministerial duty under Article XI, section 7 of the California Constitution not to enact local regulations conflicting with the general laws of the State, and in particular, the firearms statutes found in the Penal Code. To the contrary, section 9.44.030 of the Ordinance conflicts with State and Federal law because it enters into an area fully occupied by Penal Code section 29115 and 18 U.S.C. § 923(g), duplicates certain provisions of those statutes, and imposes more stringent standards on firearms sellers than provided for by State and Federal law.

97. Petitioners reallege paragraphs 56-60 of the First Cause of Action with the same force and effect as if set forth fully at this point.

1 **FIFTH CAUSE OF ACTION**

2 **(Declaratory Relief)**

3 98. Petitioners refer to and incorporate by reference, as though fully set forth
4 herein, paragraphs 1-97, inclusive.

5 99. An actual and justiciable controversy exists between the parties concerning
6 the validity of sections 9.44.030 and 9.44.060 of the Ordinance. Petitioners contend that
7 these sections are unlawful, as specified above. Petitioners are informed and believe,
8 and thereon allege, that Respondents dispute the Petitioners' contentions.

9 100. Petitioners have no plain, speedy, or adequate remedy at law. Pecuniary
10 compensation to Petitioners or their customers would not afford adequate relief.

11 101. A judicial determination of rights and responsibilities arising from this actual
12 controversy is necessary and appropriate at this time.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Petitioners pray as follows:

15 A. That this Court declare sections 9.44.030 and 944.060 of the Ordinance are
16 invalid and unenforceable.

17 B. That this Court issue a temporary restraining order, a preliminary and
18 permanent injunction, and peremptory Writ of Mandate commanding Respondents to: (1)
19 cease and desist from implementing or enforcing sections 9.44.030 and 944.060 of the
20 Ordinance; and (2) inform all City offices, commissions, and agencies, including but not
21 limited to the Sunnyvale Department of Public Safety, those sections of the Ordinance's
22 invalidity.

23 C. That this Court award Petitioners their costs of this action, including
24 reasonable attorneys' fees and costs; and
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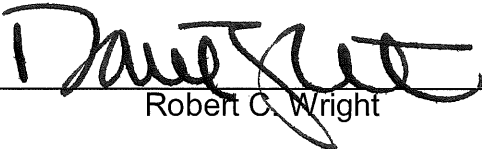
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D. That this Court grant such other relief as the Court deems just and proper.

WRIGHT & L'ESTRANGE

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

Dated: December 9, 2013

By  _____
Robert C. Wright

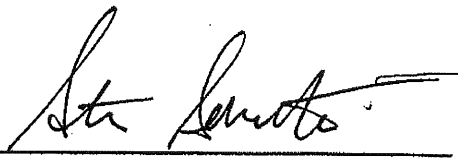
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VERIFICATION

I, Stephen Sanetti, am the President and Chief Executive Officer of the National Shooting Sports Foundation, Inc., a Petitioner in this proceeding. I have read the foregoing VERIFIED PETITION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY AND PERMANENT INJUNCTION, DECLARATORY RELIEF, AND WRIT OF MANDATE. I am informed and believe the matters therein to be true and on that ground allege that the matters stated therein are true.

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

Executed on December 9, 2013, at Newtown, Connecticut.



Stephen Sanetti

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VERIFICATION

I, Eric W. Fisher, am the managing member for U.S. Firearms Company LLC, a California limited company, and a Petitioner in this proceeding. I am also a Petitioner, Individually, in this proceeding. I have read the foregoing VERIFIED PETITION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY AND PERMANENT INJUNCTION, DECLARATORY RELIEF, AND WRIT OF MANDATE. The facts stated in the Petition are true of my own knowledge, except as to matters stated on information and belief, and as to those matters I believe them to be true.

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

Executed on December 9, 2013, at Sunnyvale, California.

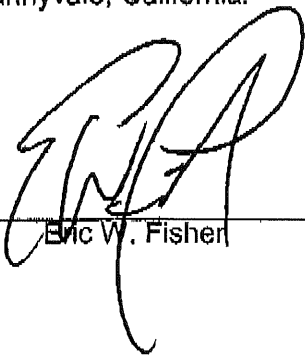

Eric W. Fisher

EXHIBIT A

DRAFT JAB 11.20.13

ORDINANCE NO. XXXX-13

**AN ORDINANCE OF THE CITY OF SUNNYVALE
AMENDING CHAPTER 9.44 (FIREARMS) OF THE
SUNNYVALE MUNICIPAL CODE TO ADD GUN SAFETY
MEASURES**

WHEREAS, by Resolution No. 606-13, adopted July 16, 2013, the City Council of the City of Sunnyvale submitted a measure to the electors of the City of Sunnyvale proposing an amendment to Chapter 9.44 of the Sunnyvale Municipal Code adding gun safety measures as set forth in Section 1 of this ordinance; and

WHEREAS, the proposed amendment was adopted by a majority of the voters at the election held on November 5, 2013, and the City Council has by Resolution No. _____ declared that the ballot measure was approved.

NOW THEREFORE, THE PEOPLE OF THE CITY OF SUNNYVALE DO ORDAIN AS FOLLOWS:

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.

SECTION 1. SECTIONS 9.44.030, 9.44.040, 9.44.050 and 9.44.060 ADDED. Sections 9.44.030, 9.44.040, 9.44.050 and 9.44.060 is added to Chapter 9.44 (Firearms) of Title 9 (Public Peace, Safety or Welfare) of Sunnyvale Municipal Code 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 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 Chief 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.

SECTION 3. EFFECTIVE DATE. Pursuant to California Election Code Section 9217, this ordinance is adopted as of November 26, 2013, when the City Council of the City of Sunnyvale certified the election results. This ordinance shall go into effect December 6, 2013.

SECTION 4. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in *The Sun*, the official newspaper for publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

This ordinance was introduced by Resolution No. 606-13 by the City Council of the City of Sunnyvale at the regular meeting of the City Council, held on the 16th day of July, 2013, for submission to the voters at an election to be held on November 5, 2013 by the following vote:

AYES: SPITALERI, GRIFFITH, MOYLAN, MEYERING, MARTIN-MILLIUS, DAVIS
NOES: WHITTUM
ABSENT: None
ABSTAIN: None

This ordinance was submitted to the voters and approved by a vote of 12,404 (yes) to 6,235 (no) as declared by Resolution No. _____ of the City Council, dated November 26, 2013.

ATTEST:

APPROVED:

City Clerk
(SEAL)

Mayor

APPROVED AS TO FORM:

City Attorney

EXHIBIT B



**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