



Council Meeting: July 16, 2013

SUBJECT: Adoption of a Resolution Calling a Special Election for November 5, 2013, to be Consolidated with the General Municipal Election, for the Purpose of Submitting to the Voters a Measure to Adopt an Ordinance Establishing Gun Safety Regulations

BACKGROUND

At its June 25, 2013 meeting, the City Council directed staff to draft an ordinance and related resolutions to place a measure on the ballot for November 5, 2013, to consider adoption of an ordinance establishing certain gun safety regulations.

DISCUSSION

A group of Sunnyvale residents in support of sensible gun control measures ("SV4gsm") has proposed that the City of Sunnyvale adopt an ordinance establishing safety regulations related to guns and ammunition. The proposal was placed on the June 25, 2013 Council agenda by the Mayor, and the Council voted to direct staff to prepare an ordinance and ballot measure for consideration by the voters at the November election.

The proposed ordinance would amend Chapter 9.44 (Firearms) of the Sunnyvale Municipal Code ("SMC") by adding new sections covering four basic areas: duty to report theft or loss of firearms, safe storage of firearms in the home, prohibition, with certain exceptions, on possession of large-capacity ammunition magazines, and record-keeping requirements for ammunition sales. The exact text of the proposed ordinance is included in Attachment A to this report. The new provisions are generally described as follows.

SMC Section 9.44.030, Duty to report theft or loss of firearm, provides that any person who owns or possesses a firearm will be required to report the loss or theft of the firearm within forty-eight hours of the time he or she knew or reasonably should have known of the loss or theft.

SMC Section 9.44.040, Safe storage of firearms, provides that, except when carried on his or her person, or in his or her immediate control and possession, no person shall keep a firearm 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.

SMC Section 9.44.050, Possession of large-capacity ammunition magazines prohibited, provides that 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: A feeding device that has been permanently altered so that it cannot accommodate more than ten (10) rounds; a .22 caliber tube ammunition feeding device; or a tubular magazine that is contained in a lever-action firearm. It provides that any person who, prior to the effective date of this section, was legally in possession of a large-capacity magazine shall have 90 days from such effective date to do either of the following without being subject to prosecution: remove the large-capacity magazine from the City of Sunnyvale; surrender the large-capacity magazine to the Sunnyvale Department of Public Safety for destruction; or lawfully sell or transfer the large-capacity magazine in accordance with Penal Code Section 12020. There are a number of exemptions to this provision, including but not limited to law enforcement officers, designated government agents and officials, and armored vehicle businesses.

SMC Section 9.44.060, Ammunition sales, requires ammunition vendors to maintain an ammunition sales log that records all ammunition sales made by the vendor. The vendor must record: The name, address, and date of birth of the transferee; the date of the sale; the transferee’s driver’s license number, state identification card number, passport number, or other valid government-issued photographic identification; the brand, type, and quantity of firearms ammunition transferred; the identity of the person transferring the firearms ammunition on behalf of the ammunition vendor; and the transferee’s signature and right thumbprint. The log must be maintained for at least two years, and be available for inspection by peace officers during normal business hours.

ELECTION REQUIREMENTS AND BALLOT LANGUAGE

The City’s General Municipal Election will be held on November 5, 2013. There are several steps to be completed in order to place a ballot measure on this election date, including Council approval of a resolution calling for the ballot measure election. The attached resolution calls for an election to be held in conjunction with the General Municipal Election to vote on a ballot measure that would amend the Sunnyvale Municipal Code by adding the sections discussed above. In addition to calling the election, a series of actions are included in the resolution as follows:

1. Approval of the ballot question that will be presented to Sunnyvale voters;
2. Amendments to the Municipal Code to incorporate the proposed gun safety measures;
3. The process for submission of the ballot argument for the measure;
4. Authorizing the City Attorney to prepare the impartial analysis; and

5. Requesting the services of the Register of Voters of Santa Clara County to conduct the election.

The State Elections Code requires the ballot measure to be printed in the ballot pamphlet in the form of a “yes” or “no” question. The ballot question may not exceed 75 words, and should be presented in clear and concise fashion so that it is clearly understandable to the electorate. The proposed ballot question is as follows:

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?

The proposed ballot measure would result in adoption of the ordinance if approved by a majority of the voters. It would be effective 10 days after the vote is declared by the City Council. Pursuant to Elections Code Section 9217, an ordinance that is adopted by the voters at an election cannot be repealed or amended except by another vote of the people, unless provision is otherwise made in the original ordinance. The current proposed ordinance does not contain any qualifying language, and so if it were passed, could only be changed by a future vote. Notwithstanding, if the State passes legislation in the future that preempts all or parts of the ordinance, those preempted sections would not be enforceable.

The State Elections Code provides for the filing of ballot measure arguments. If submitted, one argument “For” and one argument “Against” the measure, of no more than 300 words each, will be printed with the sample ballot. The resolution also provides for rebuttal arguments. Ballot measures may be filed with the City Clerk by the City Council, by any member or members authorized by the City Council, or any combination of voters or associations. The arguments can be authored by a maximum of five eligible voters.

If more than one argument for or against any measure is submitted, the City Clerk is required to select one of the arguments for printing. Preference is given to arguments submitted in the following order:

1. Argument submitted by the City Council or members of the City Council authorized by the Council;
2. The individual voter or bona fide association of citizens who are the bona fide sponsors or proponents of the measure;

3. Bona fide associations of citizens;
4. Individual voters.

The City Clerk will set a date for the submittal of ballot arguments based on the time reasonably necessary to prepare and print the arguments and sample ballots and to permit the required public examination period.

The State Elections Code provides that the City Attorney may be directed to prepare an impartial analysis of the measure, which is not to exceed 500 words. Direction to prepare such an analysis is included in the resolution.

CEQA

The proposed ordinance is not a project within the meaning of the California Environmental Quality Act and therefore no environmental assessment is necessary.

FISCAL IMPACT

The Registrar of Voters has estimated it will cost the City approximately \$43,195 for this measure to be submitted to the voters at the November 5, 2013 election.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

ALTERNATIVES

(1) Adopt a Resolution Calling a Special Election for the Purpose of Submitting to the Voters a Measure to Adopt an Ordinance Establishing Gun Safety Regulations within the City of Sunnyvale to be Placed on the Ballot at the Consolidated Election to be Held in the City of Sunnyvale on November 5, 2013.

(2) Take no action.

RECOMMENDATION

Staff makes no recommendation.

Prepared and Submitted by:



Joan A. Borger
City Attorney

Attachments

- A. Resolution of the City Council of the City of Sunnyvale Calling a Special Election for the Purpose of Submitting to the Voters a Measure to Adopt an Ordinance Establishing Gun Safety Regulations within the City of Sunnyvale to be Placed on the Ballot at the Consolidated Election to be Held in the City of Sunnyvale on November 5, 2013.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE CALLING A SPECIAL ELECTION FOR THE PURPOSE OF SUBMITTING TO THE VOTERS A MEASURE TO ADOPT AN ORDINANCE ESTABLISHING GUN SAFETY REGULATIONS WITHIN THE CITY OF SUNNYVALE TO BE TO BE PLACED ON THE BALLOT AT THE CONSOLIDATED GENERAL MUNICIPAL ELECTION TO BE HELD IN THE CITY OF SUNNYVALE ON NOVEMBER 5, 2013

WHEREAS, on June 11, 2013, the City Council adopted Resolution 586-13, calling a General Municipal Election to be held in the City of Sunnyvale on November 5, 2013, and requesting election consolidation and the services of the Santa Clara County Registrar of Voters; and

WHEREAS, the City Council is interested in submitting to the voters a measure concerning a proposed ordinance establishing gun safety regulations within the City; and

WHEREAS, the City Clerk will set the dates for submittal of arguments for and against the measure; and

WHEREAS, a City may allow for submittal of rebuttal arguments for City ballot measures if the City Council adopts the provisions of Elections Code Section 9285 concerning rebuttal arguments; and

WHEREAS, whenever two or more elections of a city are called to be held on the same day, in the same territory, or in territory that is in part the same, such elections may be either completely or partially consolidated pursuant to Part 3 (commencing with Section 10400) of Division 10 of the Elections Code, and Section 5342 of the Education Code; and

WHEREAS, Elections Code Section 10002 empowers the City Council to request the assistance of the County Registrar of Voters to provide election services to the City, and the City Council intends to call a General and Special Election on November 5, 2013, and for the consolidation of the elections.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYVALE THAT:

1. SPECIAL ELECTION. A Special Municipal Election hereby is called in and for the City of Sunnyvale, on Tuesday November 5, 2013, for the purpose of submitting the below-designated measure to the voters of the City. The City Council orders that the Special Municipal Election be consolidated and combined with the General Municipal Election called for the same date.

ATTACHMENT A

2. MEASURE. The City Council hereby submits to the voters of the City of Sunnyvale, and orders to be placed on the ballot, at the Special Municipal Election called for November 5, 2013, the following 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

3. ADOPTION OF MEASURE. In the event a majority of the electors voting on the measure set forth above vote in favor thereof, the Sunnyvale Municipal Code shall be amended to read as set forth in Exhibit "A," attached hereto and incorporated herein, effective ten days after the vote is declared by the City Council.

4. NOTICE OF ELECTION. Notice of the time and place of holding the election is given, and the City Clerk hereby is authorized, instructed and directed to coordinate with the County of Santa Clara Registrar of Voters to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election.

5. CONSOLIDATION REQUEST. Pursuant to the requirements of Part 3 (Consolidation of Elections; §§10400 et seq.) of Division 10 of the Elections Code, the City Council hereby requests the governing body of any other political subdivision, or any officer otherwise authorized by law, to partially or completely consolidate such elections, and to further provide that, upon consolidation, the consolidated election shall be held and conducted, election officers appointed, voting precincts designated, ballots printed, polls opened and closed, ballots opened and returned, returns canvassed, and all other proceedings in connection with the election shall be regulated and done by any body or official authorized to perform such functions and canvass the returns of the elections; and that this City Council consents to such consolidation.

6. REQUEST FOR COUNTY SERVICES. Pursuant to Section 10002 of the California Elections Code, the City Council hereby requests the Board of Supervisors of the County of Santa Clara to permit the Registrar of Voters to render services to the City of Sunnyvale relating to the conduct of Sunnyvale's Special Municipal Election to be held on Tuesday, November 5, 2013. Services shall be of the type normally performed by the Registrar of Voters in assisting the clerks of municipalities in the conduct of elections including, but not limited to, those certain services set forth in Section 4 hereof.

Subject to the approval of the Board of Supervisors of the foregoing requests, the City Clerk is hereby authorized to engage the services of the Registrar of Voters of the County of Santa Clara to aid in the conduct of the election. Further, the City Director of Finance is authorized and directed to pay the costs of services, provided that no payment shall be made for services which the Registrar of Voters is otherwise required by law to perform.

7. BALLOT ARGUMENTS. Arguments for and against may be filed consistent with Elections Code Section 9282, *et seq.*

8. REBUTTAL ARGUMENTS. The City Council adopts the provisions of the Elections Code section 9285 to allow rebuttal arguments for all City of Sunnyvale ballot measures upon the adoption date of this resolution.

9. IMPARTIAL ANALYSIS. Pursuant to Election Code Section 9280, the City Council hereby directs the City Attorney to prepare an impartial analysis of the measure.

10. TRANSMITTAL OF RESOLUTION. The City Clerk is hereby directed to file a certified copy of this resolution with the Board of Supervisors, the County Registrar of Voters and the County Clerk of the County of Santa Clara.

11. EXEMPTION FROM CEQA. The City Council finds that this is not a project under the California Environmental Quality Act and, therefore, no environmental assessment is necessary.

Adopted by the City Council at a regular meeting held on _____, 2013, by the following vote:

- AYES:
- NOES:
- ABSTAIN:
- ABSENT:

ATTEST:

APPROVED:

City Clerk
(SEAL)

Mayor

APPROVED AS TO FORM:

City Attorney

EXHIBIT "A" TO RESOLUTION NO. _____

**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 or 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.

9.44.060. 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.