



**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](http://www.FirearmSales.inSunnyvale.com)) and e-mail address [FirearmSales@ci.sunnyvale.ca.us](mailto: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. Luebbbers

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

## 2011 Council Study Issue

**CDD 11-04 Location and Operation of Stand-alone Firearm Sales Businesses**

Lead Department Community Development

History 1 year ago None 2 years ago None

**1. What are the key elements of the issue? What precipitated it?**

The City of Sunnyvale zoning code allows retail uses in the city in specific zoning areas, some of which require no planning permits, others are subject to different types of planning permits or locational requirements. The type of permit depends on the type of use proposed. There are some retail uses, such as adult businesses, that have specific zoning requirements and locational restrictions. Other uses, such as the sales of liquor at service stations and drive-through restaurants require public hearings. Liquor stores in neighborhood commercial zones are prohibited when within 200 feet of public school sites. Other than those specific uses, the zoning code does not distinguish between types of retail sales.

Recently, a gun shop opened along Mary Avenue near El Camino Real, adjacent to a residential neighborhood. Residents of that neighborhood objected to the gun shop location, with concern for its proximity to residents and schools. Neighbors also were concerned because the store is on a route children use to get to and from school.

The zoning code does not have specific requirements for gun shops; therefore, no special planning or zoning permits are needed for firearm sales ("guns"). The sale of firearms is regulated by State and Federal laws. In Sunnyvale, a retailer of firearms must have several licenses and approvals, including: a Federal Firearms License (FFL); a valid Seller's Permit issued by the State Board of Equalization; and, a City of Sunnyvale business license. The Department of Public Safety reviews requests for firearms licensing by sending information on the proposed owner to the State and Federal licensing agencies. Public Safety also reviews the security of a building for the use. The subject gun store received the required City approvals for their use and is required to operate in accordance with the State and Federal regulations.

This study issue would consider how Federal and State laws regulate the sale of firearms, what zoning and other regulations are possible in the location and operation of firearm sales. Options to be considered include distance limitations from sensitive uses (such as schools, parks, and routes used to reach those locations), operating standards, and public safety review options.

There are large sporting goods stores in the city that sell a wide variety of products, including firearms. This study would not include those businesses, but would focus on stand-alone firearm stores, where the products sold are dedicated to firearms.

**2. How does this relate to the General Plan or existing City 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 C1.1.1** Prepare and update land use and transportation policies, design guidelines, regulations and engineering specifications to reflect community and neighborhood values.

**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.

3. Origin of issue

**Board or Commission** Planning Commission

4. Staff effort required to conduct study Major

5. Multiple Year Project? No Planned Completion Year 2011

6. Expected participation involved in the study issue process?

Does Council need to approve a work plan? No  
Does this issue require review by a Board/Commission? Yes  
If so, which? Planning Commission  
Is a Council Study Session anticipated? No

7. Briefly explain cost of study, including consultant hours, impacted budget program, required budget modifications, etc. and amounts if known.

Study would be covered with the Planning (234) and Public Safety operating budgets. Major cost is over 300 staff hours.

8. Briefly explain potential fiscal impact of implementing study results (consider capital and operating costs, as well as potential revenue).

Additional permitting or operational requirements could impact DPS and CDD depending on the result.

9. Staff Recommendation

**Staff Recommendation** For Study

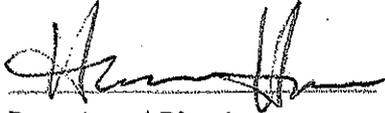
**If 'For Study' or 'Against Study', explain**

Staff feels this study could assist in providing zoning guidelines and restrictions in the placement of fire arms stores in the City, but acknowledges that it is not a high priority given the unlikely frequency of this land use.

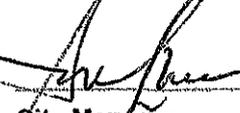
ATTACHMENT A  
Page 3 of 3

Reviewed by

Approved by

  
Department Director

10/27/10  
Date

  
City Manager

10-29-10  
Date

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE ADDING CHAPTER 9.43 OF TITLE 9 (PUBLIC PEACE, SAFETY OR WELFARE) AND AMENDING SECTION 19.12.070 OF TITLE 19 (ZONING) OF THE SUNNYVALE MUNICIPAL CODE RELATING TO FIREARMS DEALERS; AND AMENDING TABLE 19.20.030, TABLE 19.22.030, TABLE 19.28.070, TABLE 19.28.080, AND TABLE 19.29.050 OF TITLE 19 (ZONING) OF THE SUNNYVALE MUNICIPAL CODE RELATED TO PERMITTED, CONDITIONALLY PERMITTED AND PROHIBITED USES IN COMMERCIAL AND INDUSTRIAL ZONING DISTRICTS

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. CHAPTER 9.43 ADDED. Chapter 9.43 (Firearms Dealers) is hereby added to Title 9 (Public Peace, Safety or Welfare) of the Sunnyvale Municipal as follows:

Chapter 9.43

FIREARMS DEALERS

- 9.43.010 Definitions
- 9.43.020 Permit Required
- 9.43.030 Application – Form – Fees
- 9.43.040 Application – Investigation
- 9.43.050 Application - Denial.
- 9.43.060 Permit - Duration - Renewal.
- 9.43.070 Permit - Assignment.
- 9.43.080 Permit - Conditions.
- 9.43.090 Permit - Grounds for Modification, Suspension or Revocation.
- 9.43.100 Permit - Hearing.
- 9.43.110 Permit - Liability insurance.
- 9.43.120 Permit - Authority to inspect.
- 9.43.130 Compliance.
- 9.43.140 Severability.

9.43.010 Definitions

The following words and phrases, whenever used in this section, shall be construed as follows:

- (a) "Engaged in the business" means the conduct of a business by the selling, transferring, or leasing of any firearm; or the preparation for such conduct of business as evidenced by the securing of applicable federal or state licenses; or the holding of one's self out as engaged in the business of selling, transferring, or leasing of any firearm; or the selling, transferring, or leasing of any firearms in quantity, in series or in individual transactions, or in any other manner indicative of trade.

(b) "Firearm" means any revolver, rifle, shotgun or any other device designed to be used as a weapon, from which a projectile is expelled through a barrel by the force of an explosion or any other form of combustion. A "firearm" includes any device defined as a firearm by the California Penal Code as said definition now reads or may hereafter be amended to read.

(c) "Firearms dealer" means a person engaged in the business of selling, transferring, or leasing, or advertising for, sale, transfer, or lease, or offering or exposing for sale, transfer, or lease, any firearm.

(d) "Person" means natural person, association, partnership, firm, or corporation.

**9.43.020 Permit Required**

No person shall engage in the business of selling, transferring or leasing, or advertising for sale, transfer or lease, or offering or exposing for sale, transfer or lease within this city any firearm unless that person has been issued a permit pursuant to the provisions of this chapter.

**9.43.030 Application – Form – Fees**

(a) An applicant for a permit under this chapter shall file with the Chief of Public Safety a sworn application in writing, on a form to be furnished by the city. The applicant shall provide all information requested, including proof of compliance with all applicable federal, state, and local laws when required by the Chief of Public Safety, or the application will not be deemed complete. The application shall be accompanied by a nonrefundable fee as set forth in the municipal fee schedule.

(b) Any person proposing to engage in business as a firearms dealer within this city shall secure the applicable federal license and shall have thirty calendar days after approval of such federal license to apply for a city permit in compliance with the provision of this chapter and shall not engage in the business as a firearms dealer within the city until the city permit is issued.

**9.43.040 Application – Investigation**

The Chief of Public Safety shall conduct an appropriate investigation of the applicant to determine for the protection of the public safety whether the permit may be issued. The Chief of Public Safety may require additional information of an applicant which he or she deems necessary to complete the investigation.

**9.43.050 Application - Denial.**

(a) The Chief of Public Safety shall issue a firearms dealer permit to an applicant unless he or she finds any of the following:

(1) The applicant, or an officer, employee, or agent thereof is under the age of twenty-one years;

(2) The applicant is not licensed as required by all applicable federal, state, and local laws;

(3) The applicant, or an officer, employee, or agent thereof has had a similar type of permit previously revoked or denied for good cause within the immediately preceding year;

(4) The applicant, or an officer, employee, or agent thereof has knowingly made any false or misleading statement of a material fact or omission of a material fact in the application for a permit;

(5) The applicant, or an officer, employee, or agent thereof has been convicted of:

(A) Any offense so as to disqualify the applicant, or an officer, employee, or agent thereof from owning or possessing a firearm under applicable federal, state, and local laws,

(B) Any offense relating to the manufacture, sale, possession, use, or registration of any firearm or dangerous or deadly weapon,

(C) Any offense involving the use of force or violence upon the person of another,

(D) Any offense involving theft, fraud, dishonesty, or deceit,

(E) Any offense involving the manufacture, sale, possession, or use of any controlled substance as defined by the California Health and Safety Code as said definition now reads or may hereafter be amended to read;

(6) The applicant, or an officer, employee, or agent thereof is an unlawful user of any controlled substance as defined by the California Health and Safety Code as said definition now reads or may hereafter be amended to read, or is an excessive user of alcohol, to the extent that such use would impair his or her fitness to be a firearms dealer;

(7) The applicant, or an officer, employee, or agent thereof has been adjudicated as a mental defective, or has been committed to a mental institution, or suffers from any psychological disturbance which would impair his or her fitness to be a firearms dealer;

(8) The operation of the business as proposed will not comply with all applicable federal, state, and local laws;

(9) The applicant, or an officer, employee, or agent thereof does not have and/or cannot provide evidence of, a possessory interest in the property at which the proposed business will be conducted;

(10) The operation of the firearm dealer business as proposed in the application for the permit will violate any applicable building, fire, health or zoning requirements set forth in this code.

**9.43.060 Permit - Duration - Renewal.**

All permits issued pursuant to this chapter shall expire one year after the date of issuance; provided, however, that such permits may be renewed by the Chief of Public Safety for additional periods of one year upon approval of an application for renewal by the Chief of Public Safety payment of the renewal fee. Such renewal application must be received by the Chief of Public Safety, in completed form, no later than forty-five days prior to the expiration of the current permit.

**9.43.070 Permit - Assignment.**

The assignment or attempt to assign any permit issued pursuant to this chapter is unlawful and any such assignment or attempt to assign a permit shall render the permit null and void.

**9.43.080 Permit - Conditions.**

Any permits issued pursuant to this chapter shall be subject to all of the following conditions, the breach of any of which shall be sufficient cause for revocation of the permit by the Chief of Public Safety:

(a) The business shall be engaged-in only in the building located at the street address designated in the permit, and only by such persons as specified in the permit; the business may also be engaged-in at such other locations or events (i.e. gun shows) as are authorized by federal and state law provided that such location or event conforms to the requirements of this code; any changes to the approved location or to the persons authorized to act as officers, employees, or agents of the permittee in engaging in the business during the term of the permit must be approved by the Chief of Public Safety;

(b) The permit or a copy thereof, certified by the Chief of Public Safety, shall be displayed on the premises where it can easily be seen;

(c) The permittee shall comply with all federal and state firearms laws;

(d) The permittee shall comply with all provisions of California Penal Code Section 12071 regarding business regulations and building specifications for firearm security, as well as any other security plan or requirements imposed by the Chief of Public Safety;

(e) The permittee shall not operate in a manner that is detrimental to the public health or safety or otherwise constitutes a nuisance;

(e) The permittee shall comply with all federal, state and local laws and ordinances;

(f) All sellers of firearms shall protect such firearms from theft during business hours in the following manner:

(1) All firearms shall be displayed in locked cabinets, a secured rack, or a storage area so that access to firearms is controlled by the dealer or an employee, to the exclusion of all others.

(2) The firearm dealer or the dealer's agent or employee shall be present when a prospective buyer or seller is handling any firearm prior to sale and delivery of the firearm.

Any permit issued pursuant to this chapter shall be subject to such additional conditions as the Chief of Public Safety finds are reasonably related to the purposes of this chapter.

**9.43.090 Permit - Grounds for Modification, Suspension or Revocation.**

A permit may be modified, suspended or revoked by the Chief of Public Safety for any of the following grounds:

(a) The permittee has violated a condition of the permit or any provision of this Code.

(b) The permittee has knowingly made any false, misleading or fraudulent statement of material facts in the application for a permit, or in any report or record required to be filed with the city.

(c) The permittee has continued to operate after the permit has been suspended.

(d) The existence of the condition of the premises that constitutes a nuisance or is hazardous or unsafe for human occupancy.

**9.43.100 Permit - Hearing.**

(a) Any person whose application for a permit has been denied, or whose permit has been revoked pursuant to the provision of this chapter, shall have the right to a hearing before the Chief of Public Safety prior to final denial or prior to revocation.

(b) The Chief of Public Safety shall give the applicant or permittee written notice of his or her intent to deny the application or to modify, suspend or revoke the permit. The notice shall set forth the ground or grounds for the chief of police's intent to deny the application or to modify, suspend or revoke the permit, and shall inform the applicant or permittee that he or she has ten days from the date of receipt of the notice to file a written request for a hearing. The application may be denied or the permit modified, suspended or revoked if a written hearing request is not received within the ten-day period.

(c) If the applicant or permittee files a timely hearing request, the Chief of Public Safety shall set a time and place for the hearing. All parties involved shall have the right to offer testimony, documentary and tangible evidence bearing on the issues, to be represented by counsel, and to confront and cross-examine any witnesses against them. The decision of the Chief of Public Safety whether to deny the application or to modify, suspend or revoke the permit is final.

**9.43.110 Permit - Liability insurance.**

No permit shall be issued or continued pursuant to this chapter unless there is in full force and effect a policy of insurance in such form as the city deems proper, executed by an insurance company approved by the city.

**9.43.120 Permit - Authority to inspect.**

Any and all investigating officials of the city shall have the right to enter the building designated in the permit from time to time during regular business hours to make reasonable inspections to observe and enforce compliance with building, mechanical, fire, electrical, plumbing, or health regulations, or provisions of this chapter. A public safety investigator may conduct compliance inspections to ensure conformance with all federal, state, and local laws, and the provisions of this chapter. A warrant shall be obtained whenever required by law.

**9.43.130 Compliance.**

Any person engaging in the business of selling, transferring, or leasing, or advertising for sale, transfer or lease, or offering or exposing for sale, transfer or lease, any firearm on the effective date of the ordinance codified in this chapter shall have a period of sixty days after such effective date to comply with the provisions of this chapter.

**9.43.140 Severability.**

This chapter shall be enforced to the full extent of the authority of the city of Sunnyvale. If any section, subsection, paragraph, sentence or word of this chapter is deemed to be invalid or beyond the authority of the city of Sunnyvale, either on its face or as applied, the invalidity of such provision shall not affect the other sections, subsections, paragraphs, sentences, or words of this chapter, and the applications thereof; and to that end, the section, subsections, paragraphs, sentences and words of this chapter shall be deemed severable.

**SECTION 2. SECTION 19.12.070 AMENDED.** Section 19.12.070 of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby amended as follows:

**19.12.070. "F"**

(1) – (6) [Text unchanged]

(7) "Firearms Dealer" means a premises where any person engages in the business of dealing in firearms as defined by Chapter 9.43 of the Municipal Code.

(7) – (11) [Renumber (8) – (12), consecutively; text unchanged.]

**SECTION 3. TABLE 19.18.030 AMENDED.** Table 19.18.030 of Chapter 19.18 (Residential Zoning Districts) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby amended to read, as follows:

**TABLE 19.20.030  
Permitted, Conditionally Permitted and  
Prohibited Uses in Commercial Zoning Districts**

In the table, the letters and symbols are defined as follows:

- P = Permitted use
- UP = Use Permit required
- MPP = Miscellaneous plan permit required
- N = Not permitted, prohibited

COMMERCIAL ZONING DISTRICTS	C-1	C-2	C-3	C-4
1. - 9.	[text unchanged]			
10. Other A. – K.	[text unchanged]			
<u>L. Firearms Dealer within 200 feet of public school sites</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>
<u>M. Firearms Dealer more than 200 feet from public school sites<sup>9</sup></u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>

**Footnotes:**

- 1. – 8. [Text unchanged]
- 9. Subject to provisions of Chapter 9.43.

**SECTION 4. TABLE 19.22.030 AMENDED.** Table 19.22.030 of Chapter 19.22 (Industrial Zoning Districts) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby amended to read, as follows:

**TABLE 19.22.030  
Permitted, Conditionally Permitted and  
Prohibited Uses in Industrial Zoning Districts**

In the table, the letters and symbols are defined as follows:

- P = Permitted use
- MPP = Miscellaneous plan permit required
- UP = Use Permit required
- N = Not permitted, prohibited

FAR = Floor area ratio restrictions  
> = Greater than  
N/A = FAR does not apply

Use Regulations by Zoning District USE	M-S Zoning Districts FAR	M-S Zoning Districts	M-S/POA Zoning Districts	M-3 Zoning Districts FAR	M-3 Zoning Districts
1. - 5.	[text unchanged]				
6. Other A. - Q.	[text unchanged]				
<u>L. Firearms Dealer within 200 feet of public school sites</u>	<u>N/A</u>	<u>N</u>	<u>N</u>	<u>N/A</u>	<u>N</u>
<u>M. Firearms Dealer more than 200 feet from public school sites<sup>5</sup></u>	<u>To 35% &gt;35%</u>	<u>MPP 35% UP &gt;35%</u>	<u>P</u>	<u>N/A</u>	<u>MPP 35% UP &gt;35%</u>

1.-4. [Text unchanged]  
5. Subject to provisions of Chapter 9.43.

SECTION 5. TABLE 19.28.070 AMENDED. Table 19.28.070 of Chapter 19.28 (Downtown Specific Plan District) of the Sunnyvale Municipal Code is hereby amended to read, as follows:

**TABLE 19.28.070**  
**Permitted, Conditionally Permitted and Prohibited**  
**Uses in Mixed Use, Commercial and Office DSP Blocks**

In the table, the letters and symbols are defined as follows:

P = Permitted use  
SDP = Special Development permit required  
MPP = Miscellaneous plan permit required  
N = Not permitted, prohibited

DSP MIXED USE, COMMERCIAL AND OFFICE BLOCKS	1	1a	2	3	7	13	18	20
1. - 5.	[text unchanged]							
6. Other A. - O.	[text unchanged]							
<u>P. Firearms Dealer within 200 feet of public school sites</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>
<u>Q. Firearms Dealer more than 200 feet from public school sites<sup>4</sup></u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>

1.-3. [Text unchanged]  
4. Subject to provisions of Chapter 9.43.

SECTION 6. TABLE 19.29.050 AMENDED. Table 19.29.050 of Chapter 19.29 (Moffett Park Specific Plan District) of Title 19 (Zoning) the Sunnyvale Municipal Code is hereby amended to read, as follows:

**TABLE 19.29.050  
Permitted, Conditionally Permitted and Prohibited Uses  
in MPSP Subdistricts**

In the table, the letters and symbols are defined as follows:

**P** = Permitted use. A Moffett Park Design Review Permit is required pursuant to Section 19.29.050(c). Development exceeding the standard FAR limit must be reviewed through a major permit.

**SDP** = Special Development permit. A Moffett Park Special Development Permit is required.

**MPP** = Miscellaneous Plan Permit. A Miscellaneous Plan Permit is required

**N** = Not permitted, prohibited

Use	Specific Plan Subdistrict		
	MP-TOD	MP-I	MP-C
1. - 7.	[text unchanged]		
8. Other A. - U.	[text unchanged]		
<u>P. Firearms Dealer within 200 feet of public school sites</u>	<u>N</u>	<u>N</u>	<u>N</u>
<u>Q. Firearms Dealer more than 200 feet from public school sites<sup>1</sup></u>	<u>MPP</u>	<u>MPP</u>	<u>MPP</u>

<sup>1</sup> Subject to provisions of Chapter 9.43.

**SECTION 7. CONSTITUTIONALITY; SEVERABILITY.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, 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 8. CEQA EXEMPTION.** The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment. The Council therefore directs that the Planning Division may file a Notice of Exemption with the Santa Clara County Clerk in accordance with the Sunnyvale Guidelines for the implementation of CEQA adopted by Resolution No. 118-04.

**SECTION 8. EFFECTIVE DATE.** This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

**SECTION 9. 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.

Introduced at a regular meeting of the City Council held on \_\_\_\_\_, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on \_\_\_\_\_, by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

ATTEST:

APPROVED:

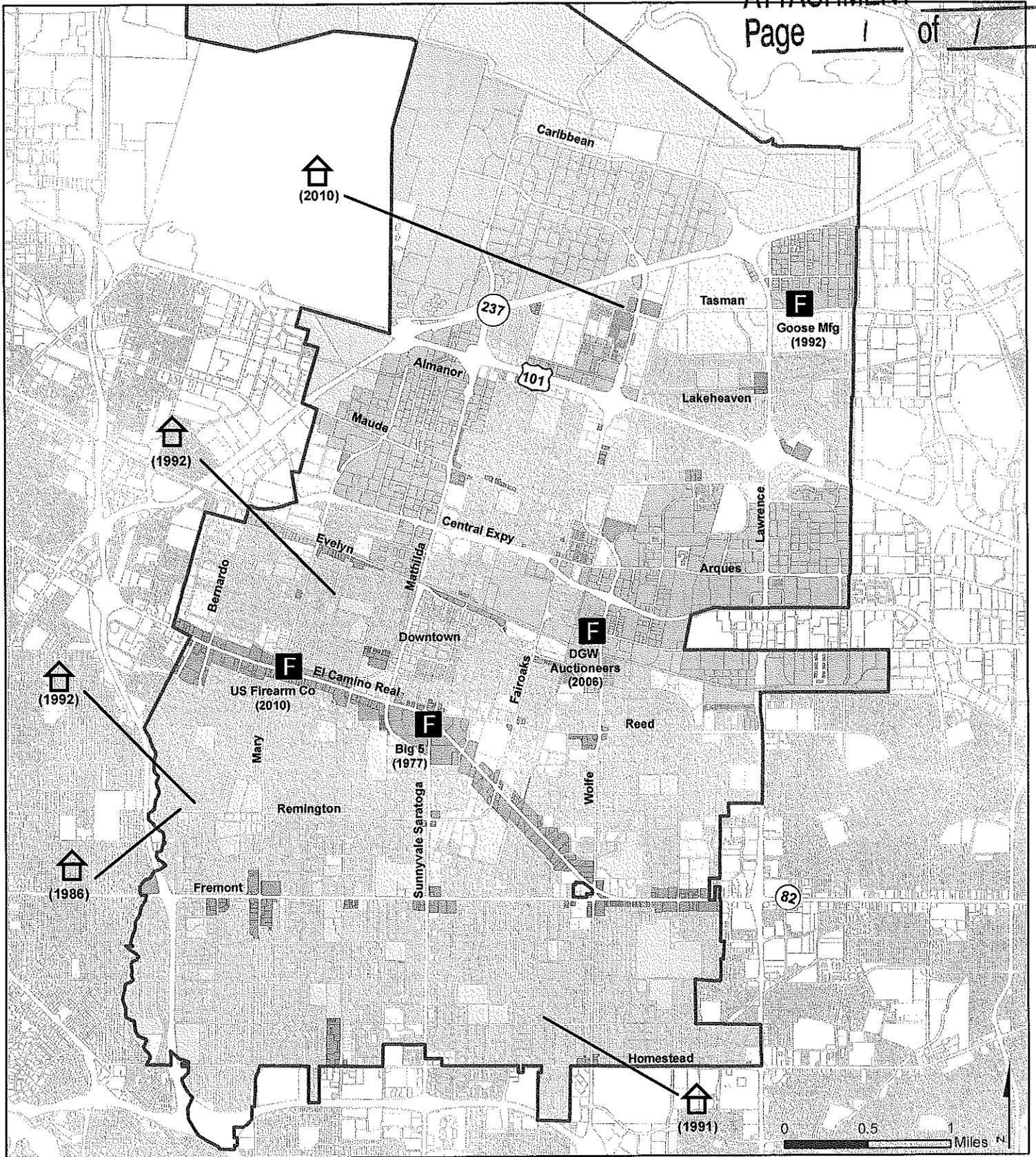
\_\_\_\_\_  
City Clerk  
Date of Attestation: \_\_\_\_\_

\_\_\_\_\_  
Mayor

(SEAL)

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
David E. Kahn, City Attorney



# Firearm Businesses Study

 City of Sunnyvale

This map is created by the City of Sunnyvale Planning Division.  
Data Sources: City of Sunnyvale Planning Division  
26/7/2011, 13:00

 Home Based Firearm Business  
(Year Home Occupation First Issued)

 Other Licensed Firearm Dealers

 Residential  
 Downtown Specific Plan  
 Industrial and Service  
 Commercial  
 Public Facilities

**TITLE 19 ZONING CODE- HOME OCCUPATION REQUIREMENTS**

**19.42.010. Operation of home occupations.**

Home occupations may be conducted in any zoning district with a business license, provided the director of community development has determined that the proposed use shall comply with the following restrictions:

- (a) The home occupation will not change the residential character or appearance of the dwelling unit or mobile home;
- (b) The home occupation shall be restricted to the dwelling area and shall not be conducted in the yard, garage or any accessory structure except detached habitable spaces;
- (c) No internal or external alterations to the structure are made which are nonresidential in nature;
- (d) No more than twenty percent of the floor area within the dwelling unit or four hundred square feet, whichever is less, shall be devoted to the business (including storage described in paragraph (h));
- (e) No persons other than residents of the dwelling shall work or report to work on the premises;
- (f) No display window or signage shall be permitted on site;
- (g) All advertising shall clearly state "by appointment only" if the residential address is used;
- (h) No more than fifty cubic feet of storage of inventory or products shall be devoted to business purposes in any part of the dwelling;
- (i) No merchandise, product, or tangible thing shall be sold on the premises;
- (j) The business shall not generate vehicular traffic which will interfere with residential traffic circulation or shall not cause more than three vehicles including vehicles used by customers, vendors or delivery services to visit the premises per day;
- (k) The business shall not generate external noise, odor, glare, vibration or electrical interference detectable to the normal sensory perception by adjacent neighbors;

(l) No explosive, toxic, combustible or flammable materials in excess of what would be allowed incidental to normal residential use shall be stored or used on the premises;

(m) The use or storage of any supplies, electrical or mechanical equipment, shall be limited to that which is compatible with the residential use of the dwelling unit or mobile home;

(n) The total number of home occupations at any one address is not limited, except the cumulative impact of all such businesses shall not exceed the limits set forth in this section for a single home occupation. (Ord. 2907-09 § 8; Ord. 2623-99 § 1 (part); prior zoning code § 19.24.005).

**STATE AND FEDERAL LAWS AND REQUIREMENTS**

The following list some of the requirements to buy and/or sell a firearm in California. The information was provided from review of the State and Federal laws and requirements, discussion with representatives from the State Department of Justice and Federal ATF, and from discussions with Sunnyvale-based firearm sales businesses.

To buy a firearm (with certain exceptions):

- The applicant must be at least 21 years of age for a handgun and 18 years of age for a long gun (or rifle);
- A 10-day waiting period after a sales is initiated;
- A seller must collect personal information about a customer, including a thumbprint. The personal information is then transmitted to the State for the background check to be completed;
- A maximum of one handgun per month is allowed to be purchased by an individual;
- An applicant must provide proof of residency, and a Handgun Safety Certificate (not for long guns). Also, a handgun must be purchased with an approved safe, lock box, or trigger or gun lock (or purchaser must have proof of safety device within 30 days prior to purchase);
- Upon receipt of a firearm, the owner must leave the premises with it unloaded. If located within 1,000 feet of a school, it must also be transported in a locked case.
- Firearm must be listed on the State Department of Justice Roster of Handguns Certified to Sell.

To sell a firearm:

- A licensed firearms dealer must have a permanent premises where the business is conducted;
- For home-based businesses, a "business premises" does not include a private dwelling, no part of which is open to the public (27 Code of Fed. Regs. §478.11). This means that at least part of a dealer's home must be open to the public in order to constitute the "premises" where the licensed activities take place;
- A licensed firearms dealer must devote time, attention, and labor to making repetitive purchases and sales for pecuniary gain. Enhancing or liquidating a personal collection is expressly excluded from the definition of "business" and "livelihood";
- A sale must be completed at the place the license is issued. For a residence, the firearm must be picked up by the customer at the premises to which the license is issued;
- A dealer often acts as the middleman between someone that wants to sell a gun and a person that wants to buy a gun. With

exceptions for antique and collectors firearms, a dealer must be involved with the transfer or sale of any firearm.

- The licenses and requirements a firearms seller needs includes:
  - A Federal Firearms License (FFL) from the ATF (renewed every three years);
  - Being on the Centralized Dealer List;
  - Certificate of Eligibility (yearly background check required of seller);
  - For handgun sales, certification needed to do the “safe handling demonstration”;
  - The costs of the licenses and requirements for a home-based business are approximately \$350.00 per year.

Firearm Sales Study Issue  
Commercial/Retail- Other Cities

City	Location of Text in Code	General Ord reqs	Process	Restrictions
<b>NON-RESIDENTIAL</b>				
Campbell	No mention			
Cupertino	No mention			
Gilroy	Title 9A- Firearm Sales	<p>9A-1 Private persons selling their own firearms shall be exempted from the purview of this chapter. For the purposes of this chapter, a person selling three or more firearms in any calendar year shall be presumptively deemed to be engaged in the commercial sale of firearms and shall be required to comply with the terms of this chapter.</p> <p>The seller shall obtain a permit from the chief of police authorizing the storage of firearms within the City of Gilroy. (9A-3.3)</p>	Firearm Sales permit from Chief of Police	<p>No person shall engage in the business of selling, offering for sale, or displaying for sale, or storing preparatory for sale, any firearms within the city limits of Gilroy unless the person has fully complied with all of the following conditions (9A-3)</p> <p>(1) The seller shall hold a federal firearms permit and shall meet all the provisions of the Gun Control Act of 1968.</p> <p>(2) The seller shall comply with all applicable sections of the California Penal Code relating to registration of sales of firearms.</p> <p>(3) The seller shall have obtained a permit from the chief of police authorizing the storage of firearms within the City of Gilroy. The permit shall be renewable annually and shall be issued only upon a showing that the seller has a federal firearms permit and has taken steps to ensure the safety of his firearms from burglary, theft and fire. The chief of police shall have the right, in conjunction with the building inspector, to require a condition for the issuance of a permit, structural changes to the building in which the firearms are sold or stored, with the structural changes, specifically including, but not limited to, the installation of burglar alarms and other warning devices, to be such as are reasonably related to the purpose of ensuring the safety of such firearms from burglary or theft.</p>
Los Altos	No mention			
Los Altos Hills	No mention			
Los Gatos	No mention			
Milpitas	No mention			
Monte Sereno	No mention	No mention, except regarding assault weapons		No person, including but not limited to wholesale and retail gun dealers, shall sell, offer or display for sale, give, lend or transfer ownership of, or possess any assault weapon. Any person who sells or possesses any assault weapon in the City of Monte Sereno in violation of this Section is guilty of a misdemeanor (already prohibited under State law).
Morgan Hill	No mention			
Mountain View	No mention			
Palo Alto	Title 4- Business licenses	<p>4.57 No person shall engage in the business of selling, transferring or leasing, or advertising for sale, transfer or lease, or offering or exposing for sale, transfer or lease within this city any firearm unless that person has been issued a permit pursuant to the provisions of this chapter (4.57.020). Any person proposing to engage in business as a firearms dealer within this city shall secure the applicable federal license and shall have thirty calendar days after approval of such federal license to apply for a city permit in compliance with the provision of this chapter and shall not engage in the business as a firearms dealer within the city until the city permit is issued (4.57.030). The chief of police shall issue a firearms dealer permit to an applicant unless he or she finds any of the following (4.57.050).</p>	<p>1. Firearms Dealer Permit from Chief of Police</p> <p>2. Permit as required for retail service in any zoning district.</p>	<p>Not Allowed:</p> <p>4.57.050(a) The chief of police shall issue a firearms dealer permit to an applicant unless he or she finds any of the following:</p> <p>(9) The business as proposed will be operated in the following locations:</p> <p>(A) Within a zoning district in which retail service is not a permitted or conditional use,</p> <p>(B) Within a zoning district in which residential use is the principal permitted or maintained use, or within two hundred fifty feet of the exterior limits of any such district,</p> <p>(C) On or within two hundred fifty feet of the exterior limits of any other premises occupied by a public or private day care center or day care home, elementary school, junior high school, or high school.</p>

Firearm Sales Study Issue  
Commercial/Retail- Other Cities

City	Location of Text in Code	General Ord reqts	Process	Restrictions
San Jose	Title 10- Public Peace, Morals and Welfare	10.32.030 Requirements limited to firearms that a capable of being concealed (handguns). The requisite license is required.	Concealable Firearms Dealer Permit required	The chief of police shall have the authority to approve or not approve applications under this part. For the purposes of considering applications for licenses under this part, the chief of police shall apply the minimum written standards herein below set forth in Section 10.32.060. If an applicant meets all such standards, the chief of police shall issue a license.
Santa Clara	No mention			
Saratoga	No mention			
Sunnyvale	No mention			
Oakland	Business Taxes, Permits and Regulations	5.26.040 It is unlawful for any person, partnership, cooperative, corporation, firm, or association to engage in the business of operating or managing any business which sells, transfers, leases, or offers or advertises for sale, transfer, or lease, any firearm or ammunition without first obtaining a permit from the Chief of Police of the Oakland Police Department.	Firearm Dealers Permit from Chief of Police	The Chief of Police shall deny the issuance of a permit, and has the authority to revoke an existing permit, when any of the following conditions exist (5.26.070.1): 1.The applicant, or an officer, employee, or agent thereof, proposes to operate in the following locations: 1.Within a zoning district in which general retail sales commercial activities are not a permitted or conditional use; 2.Within a zoning district in which residential use is the principal permitted or maintained use, or within 1,000 feet of the exterior limits of any such district; 3.Within 1,000 feet of a public or private day care center or day care home, or within 1,000 feet of any elementary, junior high, or high school whether public or private; 4.On or within 1,500 feet of the exterior limits of any other premises occupied by a dealer in firearms or ammunition, an adult entertainment establishment or a hot tub/sauna establishment.
San Leandro	Zoning	2-606.B- CC District – Conditionally Permitted Uses. The following uses are allowed only in the CC District, subject to the approval of a conditional use permit. (Certain uses are subject to special requirements and/or limitations, as prescribed following the individual use classification.): #28. Gun or Weapon Shop.	Use Permit	Definitions: Gun or Weapon Shop: A business establishment principally engaged in the business of selling firearms, ammunition or other "deadly weapon" as defined in Part 4, Title 2 of California Penal Code (commencing with section 12000).
Hayward	Business, Professions and Trades	6-11.01(d) FIREARMS SALES. A person or entity engaged in the business of selling, transferring, or leasing; or advertising for sale, transfer, or lease, or offering or exposing for sale, transfer, or lease, any firearm and/or ammunition, either directly or indirectly; and/or engaged in the retail sale of ammunition, as defined in Hayward Municipal Code.	Firearm Dealers Permit	SEC. 6-11.05 CONDITIONS OF APPROVAL. In addition to other requirements and conditions of this article, a permit is subject to the following conditions, the breach of any of which is sufficient cause for revocation of the permit by the Chief of Police: a. The business shall be carried on only in the building located at the street address shown on the permit. This requirement, however, does not prohibit the permittee from participating in a <b>gun show</b> or event which is authorized by federal and state law upon compliance with federal and state law; SEC.6-11.06 REQUIREMENT OF SECURED PREMISE. The requirement for a security plan approved by the Chief of Police. SEC. 6-11.07 RECORDS OF AMMUNITION SALES. Ammunition sales shall be recorded as required by Chief of Police.
Richmond	Businesses 7.100 and Zoning 15.04.910	7.100.030 - Conditional use permit.: No permit shall be issued to any person pursuant to this chapter to engage in the business of a dealer in firearms or ammunition for any firearm, unless the person has first obtained a conditional use permit under Section 15.04.910 of this Code for use of the proposed business site as a dealer in firearms.	Use Permit	CUP requirement includes firearm ammunition

Firearm Sales Study Issue  
Commercial/Retail- Other Cities

City	Location of Text in Code	General Ord reqts	Process	Restrictions
Pleasanton	Zoning and Specific Business Regulations	CUP in specific zoning districts for the sale of: Firearm sales in which no more than 10 firearms are stored on-site at any one time and the majority of firearms are sold through catalogs, mail order, or at trade shows  6.64 Firearm Sales Permit- issued by Chief of Police	Use Permit and Firearm Sales Permit	6.64.030 The requirement for a firearm sales permit is in addition to the requirement for a conditional use permit for firearm sales
Fremont	Title V- Businesses, Professions and Trades	Sec. 5-8103. Permit required. (a) Firearms dealers: No person, partnership, cooperative, corporation, firm, or association will engage in the business of operating or managing any business in the city, which sells, transfers, leases, or offers or advertises for sale, transfer, or lease, any firearm without first obtaining a firearms dealers permit from the chief of police. Application for any such permit shall be made in writing to the chief of police in such form as shall be prescribed by him/her. The applicant shall provide all information requested, including proof of compliance with all applicable federal, state, and local laws, or the application will not be deemed complete. Persons who are collectors of antique firearms as described in section 5-8102(g) of this chapter shall not be required to obtain and maintain a firearms dealers permit.	Firearms Dealers Permit and Use Permit	Extensive list of requirements
Antioch	Title 9- Zoning Code	Section 9-5.3833 Firearm Sales Businesses (A) Prior to the commencement of the operation, the operator(s) shall be required to obtain a use permit, subject to approval of the Planning Commission.	Use Permit	(B) In addition to the use permit requirements stipulated in this chapter, the applicant must also furnish an outline of the security and safety measures that will be used in the operation of the business. Required measures shall include a security alarm system and a locked storage area for firearm and ammunition inventory. These measures shall be subject to review by the Chief of Police or his or her designee and the appropriate fire protection agency and the approval of the Planning Commission. (C) Prior to occupancy of the business, the applicant(s) shall furnish any applicable documentation evidencing compliance with federal and state requirements for a firearms dealer. Should any of the applicant's necessary federal and/or state permits be revoked, terminated, expired, or otherwise declared invalid, the use permit or Home Occupation Use Permit shall be considered void. (D) Commercial establishments offering firearms for sale and which were in operation when this chapter became effective shall comply with the requirements of this section for security and safety within one year after the adoption of this chapter.
Oakley	Chapter 11- firearm Sales	5.11.004 Conditional Use Permit required for any person engaged in selling, transferring, leasing any firearm subject to approval by the City Council. (Subject to Chief of Police review)	Use Permit	5.11.008 Security and Safety Measures required 5.11.022 Site Restrictions include no dealer within 150' of residential districts, school ,day care, and 500' from adult businesses and other firearm dealers.

Firearm Sales Study Issue  
Home Occupations- Other Cities

City	Location of Text in Code	General Ord reqts	Process
<b>HOME-BASED BUSINESSES</b>			
Campbell	Zoning- Title 21	21.44- Gun sales from the home not specifically mentioned. General home occupation requirements include: 21.44.030.(B).3- The home office of a salesperson is allowed when all sales are made by mail or internet order, or similar means, with no commodities or displays on the premises.  21.44.060.(M)- No clients on premises. No clients or patrons of the business or business operator shall come to the residence containing the home occupation for the purpose of the conduction of business, except one pupil at any one time for music instruction is allowed.	Home occupation permit
Cupertino	Zoning- Title 19	19.92- Gun sales from the home not specifically mentioned. General home occupation requirements include: 19.92.030- Direct sale of products off display shelves or racks to the general public is prohibited; however, an order may be filled on the premises if placed earlier by a customer using telephone or mail order communications, or through attendance of sales party	Business License
Gilroy	Zoning- Section 40	Section 40- Gun sales from the home not specifically mentioned. General home occupation requirements include: It is the intent of these regulations to reduce the impact of a home occupation to the degree that its effects on the neighborhood are undetectable from normal and usual residential activity. 40.20(e) There shall be no conduct of a business or office open to the public. 40.20(h) No products shall be sold on the premises except artist's originals or products individually made to order on the premises.  Any use of occupation which does not meet the criteria set forth in Section 40.20 of this Ordinance may be permitted in a residential zone only in accordance with a conditional use permit which may be issued by the Planning Commission.	Business license and possibly a Conditional Use Permit
Los Altos	Zoning- Title 14	Gun sales from the home not specifically mentioned. General home occupation requirements include: 14.02.070 Home occupations- An occupation carried on in a home, provided no assistants are employed and provided such use is conducted within a dwelling and carried on by the occupants of the property, and is clearly incidental to the residential use of the dwelling, and does not change the residential character or appearance of the dwelling or adversely affect the uses permitted in the residential district of which it is a part, and wherein no product, other than those produced on the premises, is sold and no mechanical equipment is used, other than that necessary for domestic purposes, and where there is no indoor or outdoor storage of materials, equipment, and/or supplies, other than those necessary for domestic purposes.  Home occupations, as defined above, may be conducted in any residential commercial or agricultural district, provided such occupations are in compliance with the regulations and all other standards and regulations pertaining to permitted uses within the zoning district in which the home occupation is located.	Home occupation permit

ATTACHMENT F  
Page 4 of 6

Firearm Sales Study Issue  
Home Occupations- Other Cities

City	Location of Text in Code	General Ord reqts	Process
Los Altos Hills	Zoning- Title 10	Gun sales from the home not specifically mentioned. General home occupation requirements include: 10-1.202 Home occupation means an occupation carried on by the resident of a dwelling as a secondary use of the premises.	Business license
Los Gatos	Zoning- Chapter 29	Gun sales from the home not specifically mentioned. General home occupation requirements include: Sec.29.10.09025 The home occupation shall not involve the presence of more than one (1) customer on the premises at any time.	Home occupation permit
Milpitas	Zoning- Chapter 10	Gun sales from the home not specifically mentioned. General home occupation requirements include: XI-10-13.05(e) Retail sales (excluding retail sales in which all products are sold over the phone or internet and shipped to the customer).	Home occupation permit
Monte Sereno	Zoning- Title 10	Gun sales from the home not specifically mentioned. General home occupation requirements include: 10.01.020 "Home occupation" means a use for pleasure or profit customarily conducted entirely within a dwelling...which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes.	Business License
Morgan Hill	Zoning- Title 18	Gun sales from the home not specifically mentioned. General home occupation requirements include: 18.48.055 A zoning permit shall be required for all home occupations.	Zoning Permit
Mountain View	Zoning- Chapt 36	Gun sales from the home not specifically mentioned. General home occupation requirements include: Sec.A36.42.100 Business licenses are required for home occupations, which are permitted as accessory uses in all residential zoning districts. A statement of compliance with the following operating standards shall be signed prior to issuance of the business license.	Business License
Palo Alto	Title 4- Business Licenses	Firearm Sales not allowed: 4.57.050(a) The chief of police shall issue a firearms dealer permit to an applicant unless he or she finds any of the following: (9) The business as proposed will be operated in the following locations: (A) Within a zoning district in which retail service is not a permitted or conditional use, (B) Within a zoning district in which residential use is the principal permitted or maintained use, or within two hundred fifty feet of the exterior limits of any such district, (C) On or within two hundred fifty feet of the exterior limits of any other premises occupied by a public or private day care center or day care home, elementary school, junior high school, or high school.	Business License
San Jose	Title 20- Zoning	20.80.720.C Firearm sales specifically not allowed as home occupation	Not allowed
Santa Clara	Title 18- Zoning	Gun sales from the home not specifically mentioned. General home occupation requirements include: No article is displayed, sold, or offered for sale on the premises.	Home occupation permit
Saratoga	Title 15- Zoning	15-06.350 - Home occupation."Home occupation" means any activity which is the conduct of an art or profession, the offering of a service, the conduct of a business or the handcraft manufacture of products in a dwelling unit solely by the occupants thereof, in a manner incidental and secondary to the use of the dwelling for dwelling purposes, and in accord with the provisions of this Code. 15-04.010.a There shall be no stock-in-trade other than products manufactured on the premises.	Business license

ATTACHMENT F  
Page 5 of 6

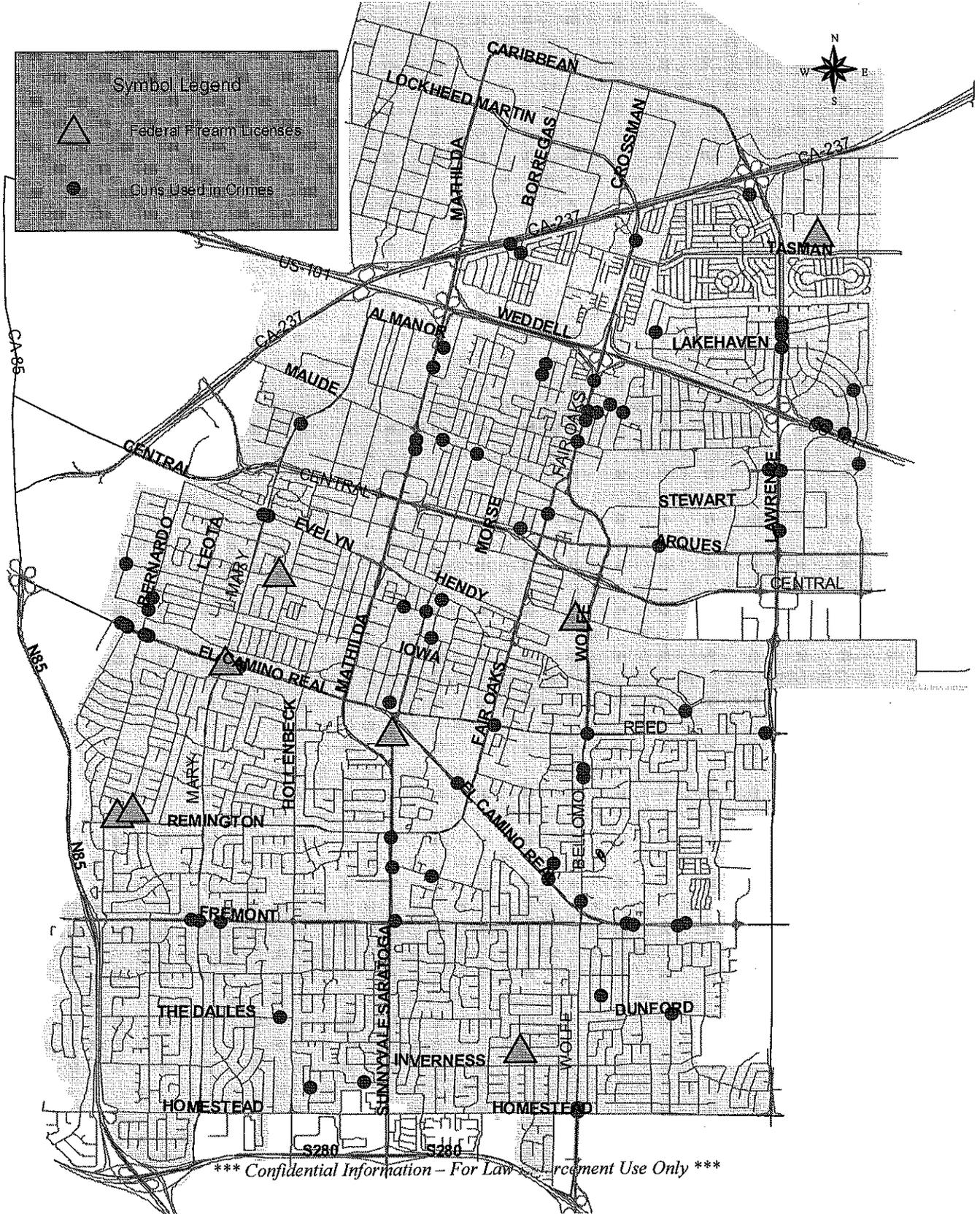
Firearm Sales Study Issue  
Home Occupations- Other Cities

City	Location of Text in Code	General Ord regts	Process
Oakland	Title 17- Zoning	17.112.010 The provisions of this Chapter shall be known as the home occupation regulations. The purpose of these regulations is to prescribe the conditions under which limited nonresidential activities may be conducted when incidental to Residential Activities. These regulations shall apply to all activities of a nonresidential nature which are incidental to Residential Activities when such nonresidential activities would not be allowed if they were not incidental to Residential Activities. 17.112.040 Articles Sold. Articles offered for sale shall be limited to those produced on the premises, except where the home occupation serves as an agent or intermediary between off-site suppliers and off-site customers, in which case all articles, except for samples, shall be received, stored, and sold directly to customers at off-premises locations.	Home occupation permit
San Leandro	Article 5- Residential Districts, Section 2-514	Home Occupation Permit issued by Zoning Enforcement Officer. No specific mention of firearms.	Home occupation permit
Hayward	Chapter 10- Zoning	10.1-3500 Considered a "secondary use" allowed with conditions: Does not display or sell any commodities except those produced on the premises. HOME OCCUPATION - EXPANDED. An expansion of the provisions of or variance to a home occupation as defined above regarding numbers of customers, hours of operation, sale of commodities produced on the premises (excluding sale of guns), and minor repair only.	Administrative planning approval
Richmond	Title 15- Zoning	An occupation conducted in a dwelling unit, garage or accessory building in a residential district that is incidental to the principal residential use as specified in Section 15.04.810.012A on an appointment basis with a certificate from Planning.	Home occupation certificate
Pleasanton	Title 18- Zoning	18.104.040 Prohibited home occupations. B. Firearm sales, provided, however, that federally licensed firearm dealers with home occupation permits approved prior to the effective date hereof shall be given one year from the effective date hereof to comply with the ordinance codified in this chapter.	Not allowed
Fremont	Title 8- Zoning	8-22144(b)(5)- Firearms dealers are expressly prohibited as home occupations	Not allowed
Antioch	Title 9- Zoning Code	Home-based firearm sales businesses prohibited, unless: (E) A home-based holder of a valid Federal Firearm License, a valid Seller's Permit issued by the State Board of Equalization, and a valid Certificate of Eligibility issued by the California Department of Justice, all of which were issued prior to July 1, 1994, may continue his/her operation, provided a Home Occupation Use Permit (HOUP) is obtained from the city. Home-based sales of firearms are prohibited if the above certificates were obtained after July 1, 1994.	Not allowed
Oakley	Title 5- Zoning Code	Home-based firearm sales businesses prohibited, unless: A home-based holder of a valid Federal Firearm License, a valid Seller's Permit issued by the State Board of Equalization, and a valid Certificate of Eligibility issued by the California Department of Justice, all of which were issued prior to June 1, 2011, may continue his/her operation, provided a Home Occupation Use Permit (HOUP) is obtained from the city. Home-based sales of firearms are prohibited if the above certificates were obtained after June 1, 2011.	Not allowed

ATTACHMENT F  
Page 6 of 6

**Sunnyvale Federal Firearm Licenses &  
Locations of Crimes Involving Guns (1/1/06 – 6/30/11)**

'Crimes involving guns' is defined as incidents in which a gun was used or **threatened** to be used in the commission of a crime. An actual gun may not have been seen. Does not imply that a gun was discharged or a shooting occurred.



PAS EIP-02

May 2010

PAS Essential

INFO PACKET

# Regulating Contentious Commercial Uses

*The Planning Advisory Service (PAS) researchers are pleased to provide you with information from our world-class planning library. This packet represents a typical collection of documents PAS provides in response to research inquiries from our subscribers. For more information about PAS visit [www.planning.org/pas](http://www.planning.org/pas).*



**American Planning Association**

*Making Great Communities Happen*

EIP-02

## Regulating Contentious Commercial Uses

## Foreword

Certain commercial uses have long been the source of headaches for local planners. This packet focuses on some of the most common ones: tattoo and body piercing businesses, gun shops, alternative financial services, pawnshops, alcohol sales, massage parlors, and sexually oriented businesses. These uses tend to generate controversy within communities due to negative perceptions and potential secondary effects. However, completely banning these uses is most likely not legally justifiable and deprives those residents who do use them. This packet offers a variety of sample zoning and licensing ordinances from communities who place restrictions on these controversial uses but still allow an opportunity for them to locate within their jurisdiction.

It is important to note that some communities have little issue with these uses. Many local governments make no distinction between these uses and other businesses operating in a commercial zoning district. They are either line listed as a permitted use or more commonly as a conditional use subject to universal conditional use standards. This is particularly true for tattoo parlors, massage parlors, liquor stores, and pawnshops. Sexually oriented businesses, however, tend to receive special regulatory attention in most communities.

The most common regulation for contentious commercial uses is a distancing requirement between the use and residences, churches, parks, schools, daycares, and other sensitive uses. Additionally, distancing requirements between individual facilities are often used to prevent clustering of these uses. Distancing requirements may appear in either zoning or licensing regulations.

Some of these uses have specific requirements that address particular issues with the use:

- **Tattoo and Body Piercing:** Due to the puncturing of skin, tattoo parlors and body piercing studios tend to have heavy licensing regulations that focus on health and sanitation. These regulations may cover facilities, personnel, and operational practices to protect public health.
- **Gun Shops:** Communities may require gun shops to install security enhancements and maintain certain recordkeeping standards to ensure that guns do not get into the hands of criminals.
- **Pawnshops:** To limit the trafficking of stolen items, pawnshops are usually required to keep records of transactions and to share this information with police. Additionally, regulations may limit finance charges as a protection for patrons that have pledged items.
- **Massage Parlors:** Communities typically require massage therapists to be licensed by the state or local government or to have graduated from an accredited massage school. Additionally, certain operational practices and recordkeeping must be followed. These regulations are used to prevent illegal sexual activity.
- **Sexually Oriented Businesses:** Several specific regulations exist as there are a wide range of business types in this category, from adult bookstores to adult cabarets.

Again, some communities have not found it necessary to place strong restrictions on the uses represented in this packet. But for those planners who are seeking information on how to more carefully regulate these uses while allowing them an opportunity to establish in their communities, we hope you find these resources useful.

**PAS EIP-02****Regulating Contentious Commercial Uses****Tattoo and Body Piercing Shops (Body Altering / Body Art Businesses)**

Burke, Chris. 1998. "Zoning Gets Under Your Skin." *Zoning News*, April.

Antioch (Illinois), Village of. 2009. *Village Code*. Title 10, Zoning. Chapter 6, Business Districts. Article A, Section 10-6A-1. B-1 Limited Retail Business District – Permitted Uses. Coeur d'Alene, ID: Sterling Codifiers.

Currituck (North Carolina), County of. 2009. *Unified Development Ordinance*. Chapter 3, Special Requirements. Section 3.5.8, Tattoo and Body Piercing Studios.

(Includes 12 additional publications and zoning and licensing ordinances.)

**Gun Shops**

Davidson, Michael. 2000. "On the Firing Line: Zoning for Gun-Related Uses." *Zoning News*, February.

New Haven (Connecticut), City of. 2009. *Zoning Ordinance*. Article V, Business and Industrial Districts. Section 42.4. Regulation of Gun Shops and Associated Goods Sales. Tallahassee, FL: Municipal Code Corporation.

Bellingham (Washington), City of. 2009. *Municipal Code*. Title 6, Business Taxes, Licenses, and Regulations. Chapter 34, Firearms Retail Establishments.

(Includes 7 additional publications and zoning and licensing ordinances.)

**Alternative Financial Services**

Blank, Rebecca M. 2008. *Public Policies to Alter the Use of Alternative Financial Services among Low-Income households*. Brookings Institution.

Pima (Arizona), County of. 2009. *Pima County Code*. Title 18, Zoning. Chapter 18.03, General Definitions. Section 18.03.020(N)(1). Definitions – Non-chartered Financial Institutions. Chapter 18.45, CB-2 General Business Zone. Section 18.45.040(E). Conditional Uses - Non-chartered Financial Institutions. Tallahassee, FL: Municipal Code Corporation.

Wauwatosa (Wisconsin), City of. 2009. *Wauwatosa Municipal Code*. Title 24, Zoning and Land Use Control. Chapter 24.46, General Regulations. Section 24.46.100. Convenient Cash Businesses and Similar Establishments. Tallahassee, FL: Municipal Code Corporation.

(Includes 7 additional publications and zoning and licensing ordinances.)

**Pawnshops**

Fort Worth (Texas), City of. 2009. *Zoning Ordinance*. Chapter 5, Supplemental Use Standards. Article 1, Standards for Selected Uses. Section 5.125, Pawnshop.

Northfield (Minnesota), City of. 2009. *Northfield Code*. Chapter 34, Land Development Regulations. Article VIII, Zoning. Division 5, Design Standards, Performance Standards, and Specific Use Standards. Section 34-1046. Pawnshop. Tallahassee, FL: Municipal Code Corporation.

(Includes 7 additional publications and zoning and licensing ordinances.)

**Alcohol Sales**

Pasadena (California), City of. 2008. *Zoning Code*. Article 2, Zoning Districts, Allowable Land Uses, and Zone-Specific Standards. Chapter 17.28, Overlay Zoning Districts. Section 17.28.030. AD Alcohol Overlay District.

Polk (Florida), County of. 2009. *Land Development Code*. Chapter 2, Land Use Districts and Regulations. Section 224. Alcohol Sales.

**PAS EIP-02**

**Regulating Contentious Commercial Uses**

(Includes 9 additional publications and zoning and licensing ordinances.)

**Massage Parlors**

Brierton, Janet. 2004. "Regulation of Massage Parlors." *OLR Research Report 2004-R-0443*. Connecticut General Assembly, Office of Legislative Research.

Inkster (Michigan), City of. 2006. *Zoning Code*. Article 10, Regulated Uses. Section 155.205. Massage Establishments.

Sumter (Florida), County of. 2009. *County Code*. Chapter 13, Land Development Code. Article V, Specific Use Standards. Division 3, Sales and Services. Section 13-729. Massage Therapy. Tallahassee, FL: Municipal Code Corporation.

(Includes 7 additional publications and zoning and licensing ordinances.)

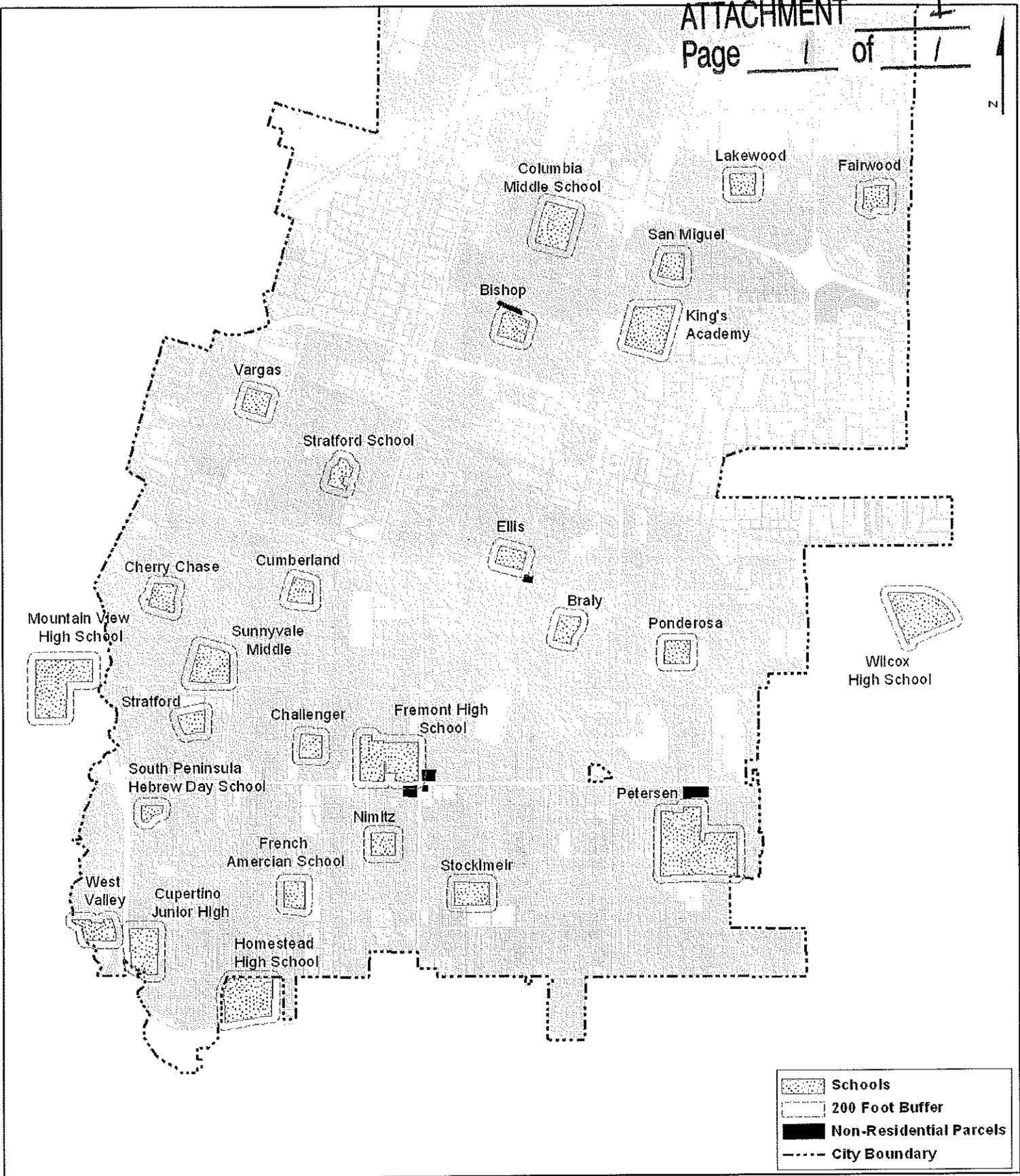
**Sexually Oriented Businesses**

Kelly, Eric Damian and Connie Cooper. 2000. *Everything You Always Wanted to Know... About Regulating Sex Businesses*. Planning Advisory Service Report no. 495/496. Chicago: American Planning Association.

Douglas (Massachusetts), Town of. 2004. *Zoning By-Law*. Section 8.0, Overlay Districts. Section 8.2. Adult Entertainment Overlay Districts (AEOD).

Mandan (North Dakota), City of. 2009. *Code of Ordinances*. Title 21, Planning and Zoning. Chapter 21-11. Adult Establishment Regulations.

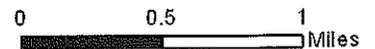
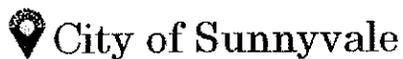
(Includes 11 additional publications and zoning and licensing ordinances.)



# Non Residential Zoning Districts near Schools

## Firearm Businesses Study

This map is created by the City of Sunnyvale Planning Division.  
 Data Sources: City of Sunnyvale Planning Division  
 8/11/2011, 13:00





**SUMMARY MEETING NOTES**  
**City of Sunnyvale**  
**Firearms Sales Study Issue**

ATTACHMENT J  
Page 1 of 2

**Public Outreach Meeting**

**June 29, 2011**  
**6:30 p.m. - 7:30 p.m.**  
**Sunnyvale City Hall**  
**Council Chambers**

**Estimated attendance: 120**

**1. Welcome and Introductions**

Andrew Miner, Principal Planner, welcomed and thanked community members for attending the meeting.

Miner introduced City staff:

- o Hanson Hom, Director of Community Development
- o Rebecca Moon, Assistant City Attorney
- o Andy Laveroni, Department of Public Safety
- o Patricia Lord, Senior Management Analyst

Miner described the purpose of the meeting, explained the history of this study and to the steps forward to City Council.

**2. Public Input**

There were many long-time Sunnyvale residents as well as residents and workers from nearby and adjacent cities interested in the study. The following is a summary of comments made during the public input and discussion period facilitated by the Principal Planner:

- o Concern with unoccupied commercial space and limiting commerce;
- o U.S. firearms are a symbol of freedom;
- o Any permits create additional overhead costs;
- o Why focus on gun sales to regulate?
- o Glad to see U.S. firearms in the City of Sunnyvale;
- o Propose a two-tier permit: Planning and Public Safety;
- o More concern with the Brass Rail. Misplaced concern;
- o What could be impact on new businesses?
- o Want statistics from Public Safety on claims about crime;
- o What are land use regulations for home occupation businesses?
- o Gun stores are a resource for regulation information; provides community resource;

- Guns not a threat to schools; minimum time spent on gun issues;
- Slippery slope to regulate;
- Is there a Public Safety issue?
- Schools do not educate on firearms; gun stores offer firearms safety education;
- Need to demonstrate a clear benefit for regulations;
- Do not want to disallow home occupation gun sales;
- This is a 2nd Amendment and Civil Rights issue;
- Don't need to change current regulations. "Do nothing" recommendation;
- Higher police presence at gun stores;
- Don't "ghetto-ize" gun stores;
- Cost for study could be used for other purposes;
- What were the reasons/impetus for study issue? Dangerous precedence;
- What problem is being solved? If none, then don't study;
- Provide crime statistics;
- Study result of emotional response. Significant regulations already in place;
- How will study affect existing stores and potential locations? (Example, in Pleasant Hill only three locations);
- Make it easier for firearms sales businesses to open in Sunnyvale.

### 3. Meeting Wrap-up and next steps

Andrew Miner reminded community members of the opportunity to provide additional comments in writing with comment cards available or to e-mail:

[FirearmSales@ci.sunnyvale.ca.us](mailto:FirearmSales@ci.sunnyvale.ca.us).

Information was provided on the upcoming Planning Commission and City Council dates.

Meeting adjourned approximated 7:40 p.m.

Summary notes prepared by:

Patricia Lord  
Senior Management Analyst

Robert Hodges  
333 Schroeder St  
Sunnyvale, CA 94085  
June 28, 2011

Andrew Miner  
Principal Planner  
City of Sunnyvale  
456 W. Olive  
Sunnyvale, Ca 94086

Dear Andrew:

I am a long-time resident of our city, and I am writing to provide input to the Firearms Sales Study that you are conducting at the direction of the city council. In the 32 years that my wife and I have lived here in Sunnyvale, we have come to understand and appreciate the city and its safety and prosperity. We have raised two children who attended Sunnyvale schools, graduating from Fremont High School in the early 1990's. We are happy to call Sunnyvale our home.

My understanding is that this study was mandated by the City Council as a 2011 study issue based solely on a small number of resident complaints concerning a retail firearms store that began operation in the past year. I believe that it is important to note that with a city population of over 133,000 residents with 57,000 registered voters, the number of residents that expressed an explicit concern represents a tiny percentage of the city's residents. My concern is that this vocal minority has created a perception that some further land use policy is necessary for the City of Sunnyvale. I firmly believe that no such policy is necessary.

An overarching question related to this issue is whether or not the city's residents are well served by having such businesses operate within the city. Paragraph 19.26.010 of the Sunnyvale Municipal Code states that the purpose of commercial zoning within the city is to provide for the "retail and service needs of the residents and businesses of the city through establishment of a well defined pattern of commercial activity which is conveniently located, efficient and attractive." Do conveniently located retail stores that sell firearms and ammunition address those needs? This question is certainly answered in the affirmative by understanding that there as few as 11,100, or as many as 23,300, homes<sup>1</sup> in Sunnyvale that have at least one firearm in the household. Businesses that provide firearms, ammunition, repair and other services without doubt serve the needs of the city's residents and should certainly fall within the scope of the City's commercial zoning purpose.

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<sup>1</sup>Estimating the number of firearms owned by Sunnyvale residents is problematic. The California DOJ provides only Dealer Record of Sales (DRS) statistics since 1972. In that time, the DOJ reports that over 8 million firearms have been purchased. Assuming an even distribution of sales throughout the state, Sunnyvale residents purchased roughly 35,000 firearms in that 39 year period. Due to the relative scarcity of credible studies on firearm ownership, this estimate of Sunnyvale households owning at least one firearm is based on self-reported survey data from a 2009 national Behavioral Risk Factor Surveillance System (BRFSS) survey conducted by the North Carolina State Center for Health Statistics as well as a 2005 Gallup poll. Both surveys asked respondents if there was at least one firearm kept in the home. The BRFSS study was broken out by state (2.1%); while the Gallup Poll was aggregated at a national level (4.4%). These percentages, applied to the number of household in Sunnyvale, form the basis of my estimate.

The obvious second question is whether or not the City needs to levy any additional land use requirements on firearms businesses that wish to operate in Sunnyvale. In other words, are there any special characteristics of those businesses that might impact their ability to exist on commercially zoned property in Sunnyvale that the City needs to regulate, and that is not adequately addressed by existing regulations? To be sure, selling firearms and ammunition involves compliance efforts that go well beyond what most retail businesses face. There are many state and Federal laws and regulations with which the firearms business owner must comply. However, existing State DOJ licensing policies and procedures adequately address these additional requirements and are both necessary and sufficient for ensuring that a business owner is in compliance. For your convenience, I have attached a copy of the California DOJ requirements and application for any prospective firearms dealer who wishes to establish such a business in California. I think a simple review of these requirements will convince any reasonable person that any additional City regulation is redundant and will result only in extra cost to the City.

One other thing to keep in mind is that these compliance requirements clearly do not relate to zoning. Nothing about the nature of selling firearms, ammunition, or related products differs from other retail sales commonly in operation in the City. A retail store specializing in the sale and service of firearms is not different in nature from a store that sells and services sewing machines. None of the Conditionally Permitted and Unpermitted uses currently identified in the existing Municipal Code (Table 19.20.030) relate to the essential nature of a business that simply sells durable goods and related supplies.

Local government precedent also bears on this inquiry. I urge the Study Issue team to make a thorough discovery of what other California cities have implemented on this very topic. Although I have much fewer resources available to me, I made what analysis I could of what cities in California have implemented zoning or permitting policies specifically for firearms sales. My discovery was brief and unsystematic. I found only one California City, Solano Beach, that has a conditional use and permitting process for firearms sales. Nonetheless, I was unable to discover any demonstrable benefit that Solano Beach enjoys from this extra regulation. Other than the inherent additional cost to the city, it was unclear what impact these regulations had. I assume that the Study Issue team will have a much more comprehensive effort in evaluating any requirements other cities have implemented. In doing so, I urge the Study Team to not only identify any such zoning or permitting regulations, but to create a defensible statement of benefit as well as cost for any of similar regulation changes that the Sunnyvale City Council would consider. I am certain that the Council will be influenced by what other elected local representatives have implemented, but it is clearly in the best interests of the city to understand not merely what regulations have been established, but what measurable benefits have obtained from them.

One approach to addressing this overall issue is to evaluate if there have been any problems associated with those firearms businesses that currently exist in the city. Although it is beyond my personal ability to investigate the operation of all those businesses, I can offer at least one anecdotal fact. Big Five Sporting Goods has operated at the intersection of El Camino and Sunnyvale Avenue for over 30 years. Over that entire duration, Big Five has sold a variety of firearms, ammunition, and firearm related accessories without incident or any expression of community concern. It is surrounded by an evolving and vital mix of commercial and residential properties that is typical of much of the city. To put it plainly, there have been no resident complaints about Big Five Sporting Goods. To understand why this issue came to the attention of

Andrew Miner  
June 28, 2011  
Page 3

ATTACHMENT K  
Page 3 of 40

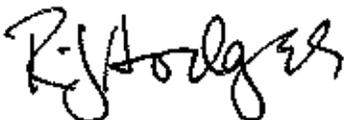
the City Council recently, it is necessary to better understand why there have been recent resident complaints about firearms sales when there has been at least one prominent retail firearms business operating in the city for such a long time without such attention.

In my opinion, what brings this issue forward today has little to do with zoning, land use, or any other aspect of city planning and enforcement. The true issue, the proverbial "elephant in the room," is the highly polarized and fractious attitudes that exist concerning firearms. In particular, those sentiments have been directed at a store with a branding and presentation that is more obviously that of a firearms business than that of a general sporting goods store. The introduction of US Firearms, located at El Camino and Mary, is a dedicated firearms business with an identity that triggered an emotional and political reaction in some residents. In operation, it is no different than Big Five Sporting Goods. They both sell firearms and ammunition as well as other sporting goods and items. They both were required to comply with the City's permitting and licensing process, and both successfully did that. Nonetheless, what has triggered the angst of a very small minority of residents has nothing to do with whether or not a business should be permitted to operate in a given location of the city. These complaints (and the unnecessary attention the city is giving to this issue) are driven by a political and philosophical orientation that can create a genuine risk to the City's decision making if the City does not stay focused solely on the zoning and land use scope that is this study's stated purpose.

I urge the Study Issue team, as well as the City Council, to make every effort to keep this issue from escalating into some broader scope. To speak more plainly, we (citizens of Sunnyvale) would all be at risk in the event that this inquiry, and the City Council's decision on the matter, escalates into a Second Amendment/Gun Control issue. To date, I am convinced that the City's goals for the Study Issue are as they seem. But the recent outcome of the Medical Marijuana Study reminds me that there is a potential for an extreme decision on the part of the City Council that would result in such an escalation. Even a cursory review of local governments that chose to get caught up in the debate on gun rights and gun control suffered punishing litigation costs. I ask that the City remain mindful of the scope of this inquiry and scrupulously avoid getting caught up in a broader political agenda.

I hope my comments are of use to you as you complete your study. If you wish, I would be happy to provide any additional assistance to your effort. Feel free to contact me by either phone or email.

Sincerely,



Robert Hodges  
(408) 480-6488  
bkhodges@pachell.net

**KAMALA D. HARRIS**  
*Attorney General*

*State of California*  
**DEPARTMENT OF JUSTICE**



DIVISION OF LAW ENFORCEMENT  
BUREAU OF FIREARMS  
P.O. BOX 160367  
SACRAMENTO, CA 95816-0367  
Public: (916) 263-0240  
Facsimile: (916) 263-0790

**To:** Prospective California Licensed Firearms Dealers

**Re:** California Licensed Firearms Dealer Requirements

Thank you for your interest in becoming a California licensed firearms dealer. The purpose of this notice is to provide you with important information about the statutory requirements for becoming a California licensed firearms dealer, and certain requirements for doing business in California as a licensed firearms dealer.

All California licensed firearms dealers are required to have all of the following:

- A valid federal firearms license.
- Any regulatory or business license, or licenses, required by local government.
- A valid seller's permit issued by the State Board of Equalization.
- A certificate of eligibility issued by the Department of Justice.
- A license granted by the duly constituted licensing authority of any city, county or city and county.
- A valid listing on the Department of Justice Centralized List of Firearms Dealers.

In addition to the licensing requirements listed above, the following requirements regarding the sale and transfer of firearms also apply to all California licensed firearms dealers:

#### **Personal Computer and Internet Access Requirements**

The Dealer Record of Sale (DROS) information that is submitted by licensed firearms dealers to DOJ to approve or deny the sale or transfer of firearms, must be submitted electronically via the internet using a secure dial-in connection from the dealer's personal computer (PC) directly to DOJ. Therefore, all licensed firearms dealers must have a PC with internet access. PC systems must be IBM compatible with, at a minimum, an internal 56K/v.90 modem and a Windows 98 operating system. A printer is also required to complete the DROS transaction process.

#### **DOJ Certified Instructor Requirements**

Department of Justice (DOJ) Certified Instructors have an important role in the sales and delivery of handguns in California. Their primary roles and responsibilities are described below under the Handgun Safety Certificate and Safe Handling Demonstration requirements. In order to become a DOJ Certified Instructor, applicants must submit a completed Certified Instructor Application (form FD037), a \$14 non-refundable fee for a firearms eligibility background check (valid COE holders are exempt from the fee) and certification to provide firearms safety training from one of the following organizations:

August 18, 2010  
Page 2

1. Department of Consumer Affairs, State of California- Firearm Training Instructor.
2. Director of Civilian Marksmanship, Instructor or Rangemaster.
3. Federal Government, Certified Rangemaster or Firearm Instructor.
4. Federal Law Enforcement Training Center, Firearm Instructor Training Program or Rangemaster.
5. United States Military, Military Occupational Specialty (MOS) as marksmanship or firearms instructor. Assignments as Range Officer or Safety Officer are not sufficient.
6. National Rifle Association- Certified Instructor, Law Enforcement Instructor, Rangemaster or Training Counselor.
7. Commission on Peace Officer Standards and Training (POST), State of California- Firearm Instructor or Rangemaster.
8. Authorization from a State of California accredited school to teach a firearms training course.
9. Any entity determined by the Department of Justice to provide comparable instruction firearms safety to those organizations listed above. Please see [www.ag.ca.gov/firearms/](http://www.ag.ca.gov/firearms/) for a current listing of comparable entities.

#### **Handgun Safety Certificate Requirements**

Unless exempted, in order to purchase a handgun in California, the recipient must present to the firearms dealer a valid Handgun Safety Certificate (HSC). To obtain an HSC, an individual must pass a written test on handgun safety, which is given by DOJ Certified Instructors, generally located at firearms dealerships. If, as the licensee of a licensed firearms dealership, you also become a DOJ Certified Instructor, you may delegate the responsibility of proctoring the written test to any of your employees. If you elect not to become a DOJ Certified Instructor, only a DOJ Certified Instructor (either an employee or independent contractor) may proctor the written test.

#### **Safe Handling Demonstration Requirements**

With limited exceptions, prior to taking delivery of a handgun, the recipient must perform a safe handling demonstration on the handgun, or the same make and model of handgun, as the handgun being transferred. This required demonstration must be performed in the presence of a DOJ Certified Instructor, and the firearms dealer must prepare and sign an affidavit certifying the demonstration was completed. There is no delegation of authority for overseeing the safe handling demonstration. Only a DOJ Certified Instructor is authorized to oversee the safe handling demonstration. Therefore, in order to conduct handgun transactions, firearms dealers must either: 1) become a DOJ Certified Instructor; 2) employ a DOJ Certified Instructor in your dealership; or 3) contract with an independent contractor DOJ Certified Instructor whom you can use as needed to complete the handgun transfer requirements.

Please be advised California Licensed firearms dealers are governed by the California Penal Code (PC), Dangerous Weapons Control Laws, commencing with PC section 12000, and the California Code of Regulations, Title 11, Division 1, commencing with Chapter 12.

August 18, 2010  
Page 3

This information is provided to inform prospective firearms dealers of some of the important requirements and responsibilities of California licensed firearms dealers. For additional information regarding the sale and transfer of firearms in California, please visit our web site at [www.ag.ca.gov/firearms](http://www.ag.ca.gov/firearms).

If you have any additional questions regarding this notice, please contact the Bureau of Firearms at (916) 263-8100.



**CALIFORNIA DEPARTMENT OF JUSTICE  
 BUREAU OF FIREARMS**



**APPLICATION FOR  
 CENTRALIZED LIST OF FIREARMS DEALERS**

*Part A - Firearms Dealership Information*

Firearms Dealership Name	Dealership Telephone Number (    )		Dealership Fax Number (    )			
Mailing Address	City	County	State	Zip Code		
Dealership Physical Location (if different)	City	County	Zip Code			
<b>Days and Hours of Operation</b>						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Local Firearms Dealer Licensing Authority (issuer of local firearms license)						
Local Law Enforcement Agency (Police or Sheriff Department)						

*Part B - Firearms Dealer Licensee Information*

Licensee Name (exactly as name appears on California Driver License or Identification Card)	
Certificate of Eligibility (COE) Number	COE Expiration Date
Federal Firearms License (FFL) Number	FFL Expiration Date
Local Firearms License Num	Local License Expiration Date
CA Board of Equalization Seller's Permit Number	

**Certification**

*"I declare under penalty of perjury (Sections 126 and 127 PC) that all statements made by me on this application are true and complete."*

\_\_\_\_\_  
 Signature of Applicant listed in Part B

\_\_\_\_\_  
 Date

**Part C - Additional Firearms Dealer Licensee(s)**

*Please complete this section if there is more than one licensee with a COE, FFL, and Local Firearms License for this same firearms dealership at this location. If there is no other licensee, go to Part D.*

Licensee Name (exactly as name appears on California Driver License or Identification Card)	
Certificate of Eligibility (COE) Number	COE Expiration Date
Licensee Name (exactly as name appears on California Driver License or Identification Card)	
Certificate of Eligibility (COE) Number	COE Expiration Date

**Additional Licensee Certification**

*"I declare under penalty of perjury (Sections 126 and 127 PC) that all statements made by me on this application are true and complete."*

Signature of Additional Applicant listed in Part C	Date
Signature of Additional Applicant listed in Part C	Date

**Part D - Fees**

1. Enter the total number of licensees from Parts B and C.	
2. Multiply the number of licensees from Line 1 by \$20. This is your firearms dealership's Centralized List of Firearms Dealers Annual Fee.	\$
3. Dealer Inspection Program Annual Fee.	\$ <b>95.00</b>
4. Add the amounts of Line 2 and Line 3. This is your total Centralized List of Firearms Dealer/Dealer Inspection Program Annual Fee.	\$

*Please make a check or money order payable to Department of Justice.*

Mail to:  
 Department of Justice  
 Bureau of Firearms- Centralized List  
 P.O. Box 160367  
 Sacramento, CA 95816-0367

## INSTRUCTIONS FOR APPLICATION FOR CENTRALIZED LIST OF FIREARMS DEALERS

The Application for Centralized List of Firearms Dealers must be typewritten or printed in ink. Incomplete forms will not be processed and will be returned with attached monies. Applications must be accompanied by copies of the Federal Firearms License (FFL), Local Firearms License (or alternative letter described in Penal Code (PC) section 12071), and the Board of Equalization Seller's Permit for each individual requesting listing on the Centralized List in conjunction with the dealership. If you have any questions, please call the Firearms Licensing and Permits Unit at (916) 263-8100.

### Part A - Firearms Dealership Information

- Provide the firearms dealership's name, mailing address and the physical location if different from the mailing address. The physical location information is frequently different when a post office box or a rural route number is used as the mailing address.
- Provide the firearms dealership's hours of operation for each day of the week, using standard am/pm abbreviations. Indicate "closed" on days the firearms dealership is not open.
- The local Firearms Dealer Licensing Authority is the local department or bureau that issues the 12071 PC Local Firearms License or alternative letter described in 12071 PC. Provide this department/bureau's name. Also provide the name of the Police or Sheriff's Department that is responsible for law enforcement protection for your community.

### Part B - Firearms Dealer Licensee Information

- Provide your name as it appears on your California Driver License or Identification Card. Provide your COE, FFL and Local Firearms License number and expiration dates and your Board of Equalization Seller's Permit number in the spaces indicated.
- Sign and date the certification statement affirming the information you provided is true and complete.

**Part C - Additional Firearms Dealer Licensee(s)**

- Each licensee who is also listed on the FFL, Local Firearms License and Seller's Permit noted in Part B - Firearms Dealer Licensee Information, and who desires listing on the Centralized List for this dealership must provide his/her name as it appears on their California Driver's License or Identification Card and COE number and expiration date in the spaces indicated. The additional licensee must also sign and date the certification statement affirming the information provided is true and complete. Part C may be copied to accommodate as many additional licensees as necessary for the dealership.

**Part D - Fees**

- The Centralized List of Firearms Dealers fee is \$20 for each of the dealership's licensees. The Firearms Dealer Inspection Program fee is \$95 per dealership. Part D provides the format to calculate the total fees for your dealership. Enter the number of licensees to be listed, multiply that number times \$20, for the total Centralized List fees. Add the \$95 Dealer Inspection fee for the total annual fees due.
- Make check or money order payable to the Department of Justice for the appropriate remittance. Attach the check or money order to the lower right margin of the form where indicated.
- Mail the completed application, remittance and documentation to:

Department of Justice  
Bureau of Firearms - Centralized List  
P.O. Box 160367  
Sacramento, CA 95816-0367

**CENTRALIZED LIST APPLICATION PROCESSING TIME**

The maximum time for processing a completed application is 30 days for an initial application and 20 days for a renewal application. If the Department fails to meet the time period for processing an application, the applicant, within 30 days of the final decision granting or denying the application, may apply in writing for a full reimbursement of all application fees. The Department shall respond within 10 days of receipt of a request for reimbursement; and, if the reimbursement is denied by the Department, the applicant may appeal the denial in writing directly to the Attorney General. Further information regarding this process is provided in the California Code of Regulations, Title 11, Chapter 13, and may be obtained by calling (916) 263-8100.

**FirearmSales AP - Firearm land use**

ATTACHMENT K  
Page 11 of 40

**From:** "Courpet" <[REDACTED]>  
**To:** <FirearmSales@ci.sunnyvale.ca.us>  
**Date:** 6/29/2011 8:36 PM  
**Subject:** Firearm land use

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Hi Andy,

I hope you were enlightened by some of the comments given in tonight's "town hall" meeting. Kudos for running the meeting so smoothly.

I'm not sure if the lady from some anti-violence coalition was misinformed or was trying to mislead but her comments about ATF inspection policy was false as well as her comment that Sunnyvale had no policy on firearms. She said that ATF only inspects every 10 years, wrong! They inspect me about every 3 years and can inspect me every day if they wish. They can even come on my property "without" a search warrant. Also I am sure you are aware that Public safety does have a few policies relating to firearms such as no advertising that can be seen from the outside, licensee's shall follow all applicable Federal, State and local laws, etc

I hope the City Council doesn't have some hidden agenda, time will tell.

Best Regards,

Loran Courpet  
1083 Grape Ave

ATTACHMENT K  
Page 12 of 40

**From:** "Lyn J. Mangiameli" <[REDACTED]>  
**To:** <FirearmSales@ci.sunnyvale.ca.us>  
**Date:** 6/29/2011 11:01 PM  
**Subject:** Feedback relating to 6/29 meeting

Just wanted to reiterate and reinforce my comments made earlier this evening.

First, Andrew, you did an outstanding job conducting the meeting--a meeting that could have devolved into accusations and contentiousness. You maintained control and moved the meeting forward in a respectful, very fair, informative, patient, sometimes humorous and non-defensive manner. I was not only appreciative, but impressed. Quite seriously, Thank You.

Second, I wish to return to my verbal comments about preventing ghettoization of firearm-related businesses. As several other speakers tonight pointed out, a local gun shop has the potential to be an valuable resource for the community--even for those who choose not to personally own or use a firearm. For example, it can sponsor safety training to both adults and youth, provide guidance on CA laws relating to firearms, offer expert counseling in selection of appropriate firearm-related items (such as why one firearm or holster or ammunition is safer for home defense, another better suited for recreational use), and make available convenient repair services that allow firearms to be maintained in safe condition. Because of this, I very much believe that it benefits the community to have such stores remain able to be located in areas where a responsible citizen would be comfortable to bring one's colleague, spouse, child, or grandchild. I would assert that the present policies that Sunnyvale has in effect has made it possible for a business such as U.S. Firearms to open with a clean, pleasant atmosphere that is welcoming to a broad cross-section of our residents. It has made it possible for me and my wife, both doctoral level medical professionals, to literally walk just a few blocks to consult with and/or make purchases from knowledgeable professionals who have become, in many respects, our friends and neighbors. I truly believe that if Sunnyvale continues to allow firearms-related businesses to locate in nice places, it will continue to have businesses that are consistent with such surroundings, offering higher quality (and priced) products, and attracting customers of the same caliber. I would suggest that is a big plus for all of Sunnyvale.

I remain most appreciative of the opportunity to comment on this, both at the meeting and now in writing.

Lyn J. Mangiameli, Ph.D.

ATTACHMENT K  
Page 13 of 40

**From:** [REDACTED]  
**To:** <FirearmSales@ci.sunnyvale.ca.us>  
**Date:** 7/1/2011 10:34 AM  
**Subject:** Study comments

I was at your meeting on Wednesday the 29<sup>th</sup> of June.

I spoke in support of our local firearm retailers because they are a value to the community, not a problem that needs to be hidden away.

After hearing only one LCAV lawyer who wants to add zoning restrictions to firearm retailers, I hope you understand there is almost zero public support for additional zoning requirements.

I remember you saying that email comments will be recorded in your study and I would like to ask you to look at the numbers of email comments and compare the ratio of pro and con to the public comments submitted at the actual meeting.

I fear that the LCAV and other groups that want to violate my rights could engage in an email campaign to drown out the actual voice of the public.

Please consider weighing email comments appropriately if they deviate radically from the comments gathered at the meeting.

Thanks again for running the public comment meeting smoothly. It was very informative.

Daniel Lucero

ATTACHMENT K  
Page 14 of 40

**From:** Steve Sarette [REDACTED]  
**To:** <FirearmSales@ci.sunnyvale.ca.us>  
**Date:** 7/11/2011 11:49 AM  
**Subject:** Firearms Sales Study Issue

Hello,

I am writing to you about the current study regarding firearms sales in Sunnyvale. I was unable to attend the meeting on Wednesday night (June 29), so I thought I'd chime in via email.

As a long time resident of Sunnyvale, I've always appreciated the sort of fiscal restraint with which the city conducts itself. This is why I'm disappointed to see you spending scarce dollars on a non-issue. Gun stores are some of the most lawful establishments that any community could hope to attract. Everyone who purchases a firearm in them is put through a federal background check, and the stores are frequently audited (at least once a year, if not more often than that) by various state and federal agencies to make sure they comply with that requirement.

Further, the type of people who visit gun shops are the kind of people that any city would want. They are sober, well-behaved law-abiding citizens -- a healthy percentage of which are police officers -- who have no problem with being subjected to a federal backup investigation when purchasing a firearm. Criminals DON'T put themselves through that. But law-abiding citizens do.

In the City Council meeting last September when neighbors complained about US Firearms, the fear was expressed that a gun store would attract violent robberies. They then pointed out that in a nation of 300,000,000 people, it is possible to find news stories describing just exactly that. But what they didn't point out is that banks, jewelry stores and convenience stores are also sometimes violently robbed, and probably at a much greater frequency than are gun stores. To follow the logic, this must mean that we should also not place those kind of businesses near schools, parks, and other places where kids congregate. Are you therefore contemplating a zoning ordinance that would be equally applied to all such businesses that are open to the public?

One final point: In recent years the Supreme Court has twice noticed that the Second Amendment protects a citizen's right to own a firearm for the lawful purpose of self-defense. If we have a right to own firearms, then certainly we have a right to purchase them. By contemplating zoning standards for gun stores that are probably going to be more strict than what you have for banks, jewelry stores, etc, you are treading into dangerous waters, one that could end up costing the city a regrettable amount of money -- especially if your ordinance makes it impossible to even have a gun shop in Sunnyvale. And for what? Because law-abiding citizens are exercising a right that is protected by the highest law of the land, and this makes some few people nervous? This is not the action of the fiscally responsible city which I have grown to admire.

My suggestion is that you simply let the matter drop. But if you can't do that, you should at the very least make sure that the zoning ordinances for gun stores are no more strict than what you use for other businesses that are open to the public and which deal with expensive, desirable products.

Thank you for your attention.

- Steve Sarette  
1206 Rousseau Drive  
Sunnyvale, CA  
[REDACTED]

**FirearmSales AP - Why is the planning commission dealing with firearms?**

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**From:** Allen Barker <[REDACTED]>  
**To:** <FirearmSales@ci.sunnyvale.ca.us>  
**Date:** 7/2/2011 8:11 AM  
**Subject:** Why is the planning commission dealing with firearms?

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ATTACHMENT K  
Page 15 of 40

What is the problem to be solved here? Specifically who is proposing it?

**Allen Barker**  
[REDACTED]

**FirearmSales AP - Public Hearing on re US FireArms Store**

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**From:** Stephanie Haag [REDACTED]  
**To:** <firearmsales@ci.sunnyvale.ca.us>  
**Date:** 7/5/2011 12:26 PM  
**Subject:** Public Hearing on re US FireArms Store

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ATTACHMENT K  
Page 16 of 40

I attended this meeting and found that the purpose was not zoning, or landmanagement, but rather a second amendment issue. It seems activists are working on Sunnyvale to remove the freedom and rights of the people granted by the constitution. I mentioned in my statment tat the meeting hat the concern regarding a firearms store opening up in a commercially zoned area is far less a threat to residents than the Brass Rail which is right next to a residential area. The Brass Rail attracts low life characters who get intoxicated with alcohol, take drugs and bring loaded weapons to this seedy nightclub. This is what Sunnyvale should be concerned about, not a firearms shop. No criminal buys a gun from a gun shop.

Sunnyvale should leave this gunshop alone if they abide by the laws.

**Andrew Miner - Re: Correct e-mail?**

**From:** [REDACTED]  
**To:** <AMiner@ci.sunnyvale.ca.us>  
**Date:** 7/6/2011 7:05 PM  
**Subject:** Re: Correct e-mail?

ATTACHMENT K  
 Page 17 of 40

I prefer Tony... Thank you, Andy. I biggest biggest enemy of liberty is fear. In my home country, the govt pursued an adversarial relationship with seperatists that resided in far away islands and provinces until these seperationalists had to fight back. Then the govt used their acts to comp[romise the freedoms and liberties of the regular citizens.

So many groups in America want to spread fear and uncertainty where it need not be. They are fearful to be sure, but their solutions are not thought out in the best terms because of their irrational fears.

That is probably better said than written, but thank you, Andy.

Tony Rocha

-----Original Message-----

**From:** Andrew Miner <AMiner@ci.sunnyvale.ca.us>  
**To:** [REDACTED]  
**Sent:** Wed, Jul 6, 2011 1:55 pm  
**Subject:** Re: Correct e-mail?

Thank you, Antonio, for your comments. And congratulations on becoming a U.S. citizen.

I understand how difficult it is to speak in front of many people, but I will make sure the comments from your e-mail are included so the Planning Commission and City Council see your thoughts.

I will include your name and e-mail on the mailing list for future correspondence regarding meetings or documents relating to this issue.

Thanks for responding so I know I have everyone's proper e-mail address.

Take care-

Andy

On 7/6/2011 at 1:37 PM, [REDACTED] wrote:

Yes it's me. I wanted to speak, but was a bit overwhelmed by everyone already talking about the gun stores in your city.

I came to the US from the Philippines where we had sweeping gun confiscation where no people could legally own guns. Within a few weeks, the bad people all re-armed and now had a disarmed people to prey on. How each new regulation or tax is a step in the wrong direction.

I wanted to speak on how proud I am to finally become a citizen here and how a true free people should never be disarmed...

However after the meeting ended, I got a very good feeling that you already know that there are a lot of regulations under which a gun store must comply to satisfy Fed and State requirements.

Thank you so much for your time and diligence.

Antonio Rocha

San Francisco Firefighter

Sent from my iPad

ATTACHMENT K  
Page 18 of 40

On Jul 6, 2011, at 10:35, "Andrew Miner" <[AMiner@ci.sunnyvale.ca.us](mailto:AMiner@ci.sunnyvale.ca.us)> wrote:

Is this the correct e-mail address for Antonio Rocha? I am trying to update my e-mail list from the recent City of Sunnyvale study outreach meeting, and I had trouble reading your writing on the sign-in sheet. Thanks.

Andrew Miner, AICP  
Principal Planner  
City of Sunnyvale  
408 730-7707



Save the environment. Please don't print this email unless you really need to. 

**FirearmSales AP - Do NOT require a permit for businesses to sell firearms**

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**From:** Jared Kirk <[REDACTED]>  
**To:** <FirearmSales@ci.sunnyvale.ca.us>  
**Date:** 7/13/2011 8:47 AM  
**Subject:** Do NOT require a permit for businesses to sell firearms

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ATTACHMENT K  
Page 19 of 40

Dear City Council and Planning Commission:

I am a resident of Sunnyvale. I request that you do NOT require a permit for businesses to sell firearms in Sunnyvale. This is unnecessary and makes it harder for businesses to come to Sunnyvale. It is unfortunate that there is a stereotype that gun owners are unstable or unsafe. There are many law abiding citizens who enjoy the sport of shooting safely and lawfully. Please do not make it harder for law abiding citizens to enjoy this sport than it already is in California.

All gun purchases already require a 2 week waiting period; therefore, allowing a firearm dealer to locate near a school does not pose a risk to the school that someone will act rashly and inappropriately.

Thank you for your consideration of my petition.

Best regards,  
Jared Kirk  
578 S Eden Ave  
Sunnyvale, CA 94085

**FirearmSales AP - [BULK] Please don't pass any laws discriminating against gun retailers**

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**From:** "Marvin B. Rudin" [REDACTED]  
**To:** <firearmsales@ci.sunnyvale.ca.us>  
**Date:** 7/16/2011 9:59 PM  
**Subject:** [BULK] Please don't pass any laws discriminating against gun retailers

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ATTACHMENT K  
Page 20 of 40

Firearms is the only product class, the use of which is protected by the Constitution - law of the land everywhere in the USA including Sunnyvale.

So why is the location where this legal product class is sold an issue to be examined by the Sunnyvale government?

If, by passing a law intended to make it difficult to find gun sellers, Sunnyvale's government infringes on the right to buy firearms, it also would be infringing on the right to own and bear firearms!!

So I wonder if this is an imaginary "issue" created to ostensibly justify the passing of a law that infringes on the right to bear arms, that anti-gun advocates hope will go unnoticed by those citizens who expect our freedoms to be protected under the U.S. Constitution's 2nd Amendment, not infringed by Sunnyvale's government.

In conclusion, please don't pass any laws discriminating against gun retailers. Please respect the Constitution, the document that protects all of us Americans' freedoms - yours too.

Respectfully yours,

Marvin B. Rudin  
30+ year resident of Sunnyvale

**FirearmSales AP - Firearms Sales Study Issue**

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**From:** Jennifer Chao [REDACTED]  
**To:** <firearmsales@ci.sunnyvale.ca.us>  
**Date:** 7/17/2011 9:34 PM  
**Subject:** Firearms Sales Study Issue

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ATTACHMENT K  
Page 21 of 40

Hi, I am a longtime resident of Sunnyvale and when a firearms business opened where Jiffy Lube used to be last year, I was really surprised that Sunnyvale would let them open there. I live in the neighborhood in the back (Olive Avenue) and it is extremely close to where children are playing after school, in the front lawns of their homes. I am uncomfortable that this business was even allowed to open there and thinks it brings down the attractiveness of our neighborhood, especially because the shop's windows are tinted black, so it looks like we are in a hoodlum area or a shady area of town. I really think the Sunnyvale Council needs to think about these things when they approve a business to open near residential areas and schools. Children walk home from school and pass this shop everyday. What was the council thinking?!

ATTACHMENT K  
Page 22 of 40

**From:** Skye Hilton Key [REDACTED]  
**To:** <FirearmSales@ci.sunnyvale.ca.us>  
**Date:** 7/19/2011 9:15 AM  
**Subject:** Firearm store anxiety unnecessary.

Good Morning,

Having been a resident of Sunnyvale for over 10 months, I would like to begin with this is the best place I have lived since moving to the bay area some time ago. It is safe, clean, friendly with beautiful parks, good schools and plenty to do.

What is the actual fear of having a firearms retail business (at the corner of El Camino Real and Mary which is almost nothing but commercial property) in a specific proximity of schools, day care, etc? Will kids see it and become blood thirsty criminals or turn into Ted Nugent? Will stressed out people see the day care and the gun store, decide now is a good time to buy a firearm and go on a shooting spree... after the waiting period and all the paperwork. Day care will be over by then! Second Amendment thugs hanging out in front of the store will try to push Guns & Ammo magazines on neighborhood kids to get them hooked undoubtedly. Of course not, it's ridiculous, as is the anxiety expressed over it. The firearms store will turn children into thugs just like the McDonald's down the street will make them morbidly obese. It will encourage people to go on a killing spree just like Sporty's Bikini Bar will encourage men to rape. I could go on, but I think I made point.

I have never been to US Firearms Co, but it does have 5/5 stars on Yelp and business is good I understand. Maybe a good questions to ask is, where would the people concerned prefer the store to be located? How many would answer, no where? I have also failed to notice a mosque in Sunnyvale. Maybe it's because people are afraid of terrorist. Again, ridiculous reasoning based on fear and ignorance.

Thank you for your time and including an email address so Sunnyvale has a voice on this issue. :)

Skye Key  
Sunnyvale, Ca

ATTACHMENT K

Page 23 of 40

**From:** Vikas Kapur [REDACTED]  
**To:** <FirearmSales@ci.sunnyvale.ca.us>, <aminer@ci.sunnyvale.ca.us>  
**Date:** 8/15/2011 3:11 PM  
**Subject:** Please do not locate fire-arms stores in Sunnyvale

I understand there is a debate going on about fire-arm sales in Sunnyvale. Please do not locate any fire-arm stores in Sunnyvale. We have Big 5 with their shotguns and rifles and that should be sufficient. We are a large metropolis, it is extremely easy for gun purchasers to drive over to San Jose if they desire to buy guns.

I grew up on a military base so can see both sides of the issue. with regards,

Vikas Kapur, Sunnyvale, CA

**FirearmSales AP - Public comment on firearms sales**ATTACHMENT K  
Page 24 of 40

**From:** "Paul George @ PPJC" <paul@peaceandjustice.org>  
**To:** <FirearmSales@ci.sunnyvale.ca.us>  
**Date:** 8/15/2011 3:25 PM  
**Subject:** Public comment on firearms sales

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Peninsula Peace and Justice Center  
 625 Hamilton Avenue  
 Palo Alto, CA 94301

Dear Sunnyvale City Council,

I appreciate this opportunity to comment for your study of firearms regulations for the City of Sunnyvale.

I am sure you are aware of the alarming statistics regarding gun violence in this country, which cause fatalities and injuries second only to car accidents. Perhaps the most alarming statistic relates to the number of *accidental* deaths and injuries due to the presence of firearms. I would encourage Sunnyvale to consider the regulation of guns as you would any other public health issue.

I congratulate Sunnyvale and its citizens for raising this critical issue and for seriously looking into it. Local communities may actually be our best – and only – hope to rationally address the epidemic of gun violence in our country. It is clear, given the make-up of our Federal legislature, that no significant efforts at gun control will come out of Washington in the near or even long-term future.

I know that many of your citizens have expressed their desires and arguments for strict gun control regulations for Sunnyvale. The purpose of this letter is simply to endorse those sentiments of your citizens and to say that PPJC's 2000 members (of whom nearly 200 are Sunnyvale residents) stand with those citizens who are urging you to take a strong stand against gun violence and the all-too-readily available nature of this threat to our communities.

Sincerely yours,

Paul George  
 Director

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Peninsula Peace and Justice Center  
 625 Hamilton Avenue, Palo Alto, CA 94301  
 (650) 326-8837 <http://www.peaceandjustice.org>

"Peninsula Peace and Justice Center has been one of the most effective of the activist organizations." - Noam Chomsky

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ATTACHMENT     K      
Page   25   of   40  

**From:** B Chua [REDACTED]  
**To:** <FirearmSales@ci.sunnyvale.ca.us>  
**CC:** <aminer@ci.sunnyvale.ca.us>  
**Date:** 8/15/2011 5:14 PM  
**Subject:** RE: Location and sale of firearms businesses study issue

In addition, home does not have the fire safety requirements that can protect neighbors from fire/explosion accidents with home-based firearms shops.

--- On Mon, 8/15/11, B Chua [REDACTED] > wrote:

> From: B Chua [REDACTED]  
> Subject: RE: Location and sale of firearms businesses study issue  
> To: FirearmSales@ci.sunnyvale.ca.us  
> Cc: aminer@ci.sunnyvale.ca.us  
> Date: Monday, August 15, 2011, 5:10 PM  
> Dear Planning Commission and City  
> Council,  
>  
> Please do not allow firearms businesses in the home, and do  
> not allow firearms businesses in the city. The safety and  
> peacefulness of the community will still be compromise even  
> with special zoning.  
>  
> Thank you,  
> B & M Chua  
>  
>  
>

**FirearmSales AP - Need zoning for firearms shops**

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**From:** Prashant Agarwal [REDACTED]  
**To:** <firearmsales@ci.sunnyvale.ca.us>  
**Date:** 8/15/2011 6:08 PM  
**Subject:** Need zoning for firearms shops

---

ATTACHMENT K  
Page 26 of 40

I recently noticed a firearm shop opened at the intersection of Mary and El Camino. I was really surprised to see such a shop in a residential area.

We already have zoning for adult stores, why not for gun stores? In my opinion, they too should be zoned away from homes and schools to limit children's exposure to guns.

Plenty of other California cities do not permit private gun sales and have zoning for gun stores, then why not in Sunnyvale?

Regards,  
Prashant Agarwal  
1056 Polk Ave,  
Sunnyvale, CA 94086

**FirearmSales AP - firearms stores in Sunnyvale**

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**From:** nidhi goel [REDACTED]  
**To:** "FirearmSales@ci.sunnyvale.ca.us" <FirearmSales@ci.sunnyvale.ca.us>  
**Date:** 8/15/2011 9:09 PM  
**Subject:** firearms stores in Sunnyvale

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ATTACHMENT K  
Page 27 of 40

Hello Sir,

We absolutely need zoning for firearms stores in Sunnyvale, and that we need to ban private sale of guns from homes. This will really affect home values.

We live near Iowa & Mary.

Thanks,  
Nidhi

## **No to Firearms Sales in Sunnyvale**

We are Sunnyvale residents who count on its consistent status among the safest 10 cities of its size in the United States for the safety of our lives and the stability of our home values. The mayor herself noted in this year's state of the city address that Sunnyvale ranks 5<sup>th</sup> for quality of life among cities of the Americas. We believe strongly that is because of this city's family-friendly and enlightened policies.

### Why then is the city waiting for the other shoe to drop when it comes to gun sales?

It is simply unacceptable that dealers with Federal Firearms Licenses (FFLs) are currently selling guns/ammunition out of their homes in Sunnyvale. And it is simply unacceptable that we already have a gun store that shares a wall with a residential property and is dangerously close to a children's school/day care center. Why is a city that is usually so forward thinking now scrambling in such a reactive manner after permitting so many compromises to our safety? We are sitting on a ticking public safety bomb.

We feel thoroughly shortchanged by the city to learn that even if we enact ordinances to control firearms sales, the existing gun store will be grandfathered in. And it's simply outrageous that we could be living next door to a private gun dealer and not know who or where they are located. This after the city explicitly bans any commercial activity from homes that involves the exchange of material goods.

### **Action Needed**

Sunnyvale needs to act immediately to institute:

- An outright ban on FFL sales of firearms from private homes or any other non-traditional location (such as a funeral home)
- A ban on any storefront explicitly for the sale of guns, or at least
  - Land use requirements for gun storefronts
  - Restrictions against having storefronts next to residential areas, schools, day care centers, and religious and community centers
  - Requirement for all firearms/ammunition dealers to register with and obtain a license or permit from the city

- o Requirements to install burglar alarms and camera surveillance at any firearms storefront
- o Requirements to immediately report lost or stolen firearms *and ammunition* to local law enforcement
- o Background checks for gun store employees and agents
- o Requirements to report all gun *and ammunition* sales to local law enforcement
- o Requirements to submit periodic inventories to local law enforcement

### **Ample Justification**

- 1 Our safety should be the city's primary concern. The more regulation there is, the less likely the desire or opportunity to misuse guns.
  - a. There is an epidemic of gun violence in this country that claims especially our young and that Sunnyvale might well succumb to if we don't regulate gun sales. According to the American Association of pediatricians, guns account for 1 in 5 deaths from injury of those aged 1 – 19, and 1 in 3 deaths from injury of teenagers.
  - b. The common refrain that people, not guns, are the problem makes a specious distinction between a shooter and a gun. Guns obviously don't walk themselves into people's hands and pull their own triggers. And no amount of safety training takes away from the *desire* to point the trigger at someone else (like state senator Lori Klein of Arizona did with a reporter).
  - c. Guns are not just any tool; they are designed to inflict maximum damage. If they weren't, well then we should equip our armed forces with knitting needles, and we could all simply shoot first and have this discussion later.
  - d. In the two public meetings the city has had so far on this issue, we have seen extremely disturbing and intimidating behavior by those who oppose gun regulation. At the first City Council comment session in 2010, a gun rights lawyer went around pointedly taking pictures of anyone who spoke in favor of regulation. At the study issue meeting last month, a gun lobbyist, instead of contributing to the debate,

August 2011

simply asked to know who all the "anti-gun folks" were in an attempt to intimidate them. If such behavior isn't a public safety issue, what is?

- e. With so many gun dealers already operating in Sunnyvale, the question is not whether an accident will happen but only when. Is the city ready to face liability and its citizens' ire when something goes horribly wrong?
- 2 FFL gun sales should be deemed illegal in Sunnyvale on the basis of its existing law banning the sale of material goods from homes.
- 3 Other cities in California have successfully passed ordinances to control the sale of firearms, why not Sunnyvale? California law already authorizes local governments to do so. Several cities do not permit FFL gun sales, period.
- 4 Sunnyvale already has zoning in place for adult stores, why not for gun stores? Is the city seriously trying to suggest that it is easier to buy guns than pornography? That the strip clubs have been the site of the few incidents of gun violence this city has seen should underscore the need to regulate both types of establishments tightly.
- 5 We are sure that the City Council and Planning Commission are aware of Sunnyvale's premier status among Silicon Valley cities. Educated, financially stable, middle-class technology workers choose to live in Sunnyvale as an affordable alternative to Palo Alto, Los Altos, and Mountain View. In return, they avail of safety, a great location, superb city services, and one of the area's best school districts. With a loose policy towards gun sales, the city will only lose this appeal and the prosperity that comes from it. What kind of image does the city want to have, and does it really want a gun policy that is completely at odds with its safety record and proactive approach in other areas of city management?
- 6 How many gun stores does a city really need? We already had Big 5 Sporting Goods as well as private dealers selling guns before U. S. Firearms opened on Mary Avenue.
- 7 In these hard economic times, does the city really have the resources to ensure that Sunnyvale isn't a gun disaster waiting to happen? Can the Dept. of Public Safety ensure that all the FFL dealers sell their ware honestly and follow safety precautions? In better times, couldn't our resources be put to better use?

August 2011

- 8 We live in an earthquake zone; the nightmare scenario that could take place in the event a catastrophic earthquake makes it easy to steal guns from dealers should be sufficient to lock down the sales of guns.
- 9 Unregulated access to guns directly threatens the authority and effectiveness of law enforcement. Again, the possibility of such encounters in the event of an earthquake is too terrifying to imagine.
- 10 Gun stores and dealers are targets of theft in the way that electronics or sports stores are simply not. Illegally trafficked firearms fuel the drug war just to our south, which is why the federal government has recently required additional reporting of semiautomatic weapon sales in border states.
- 11 The right to bear arms does not override safety concerns in the same way that freedom of speech does not give the right to libel and abuse.

Sincerely,

Sunnyvale residents,

Nandini Balakrishna [REDACTED]

Peter Christensen [REDACTED]

Puja Sampat [REDACTED]

Nikhil Khosla [REDACTED]

OUTREACH MEETING  
COMMENT CARDS  
6/29/11



Your feedback is important. What additional thoughts, concerns or questions do you have regarding location and sales of firearms businesses in Sunnyvale? If you would like staff to respond, please leave your name and e-mail. Thank you!

Comments:

MY FAMILY & I LIVE QUITE CLOSE TO THE NEW FIREARMS SHOP ON S. MARY AVE. WHEN IT FIRST OPENED I WENT IN TO SEE WHAT TYPE OF PLACE THIS WAS. JUST RECENTLY I RETURNED (I HAVE MADE NO PURCHASES) TO SEE IF IT HAD CHANGED. BOTH TIMES I WAS VERY FAVORABLY IMPRESSED WITH THE SHOP. IT WAS SO CLEAN, ORDERLY, THE STAFF WAS FRIENDLY & WELL INFORMED & IT WAS OBVIOUS THAT SECURITY WAS THEIR CONCERN. I NOTICED THERE WERE NO ITEMS THAT

COULD BE DANGEROUS THAT WERE ACCESSIBLE (I.E. EVERYTHING LOCKED).

IF OTHER FIREARMS RETAIL SHOPS, ACTUALLY, IF ANY ESTABLISHMENTS, WERE AS SAFELY & WELL OPERATED AS THE FIREARMS SHOP ON MARY AVE., ALL OF SUNNYVALE WOULD BENEFIT.

SOMETHING I CONTINUE TO WONDER: WHAT DOES ANYONE FEAR, ACTUALLY? IF YOU COULD PLEASE SUPPLY THAT ANSWER AT SOME POINT, I WOULD APPRECIATE IT SINCERELY. I HAVE PONDERED THIS, & I CANNOT DISCERN ANY REASONABLE THREAT.

THANK YOU FOR LISTENING - DR. ASHLEY COMBS  
SUNNYVALE



Your feedback is important. What additional thoughts, concerns or questions do you have regarding location and sales of firearms businesses in Sunnyvale? If you would like staff to respond, please leave your name and e-mail. Thank you!

**Comments:**

Hiding gun stores in commercial districts might actually encourage ~~the~~ the potential, or perceived, crime that might occur.



Your feedback is important. What additional thoughts, concerns or questions do you have regarding location and sales of firearms businesses in Sunnyvale? If you would like staff to respond, please leave your name and e-mail. Thank you!

**Comments:**

Keep it fair  
remember the budget  
Keep my money in Sunnyvale



Your feedback is important. What additional thoughts, concerns or questions do you have regarding location and sales of firearms businesses in Sunnyvale? If you would like staff to respond, please leave your name and e-mail. Thank you!

**Comments:**

→ Concerned about what funds will be spent and how it will be spent for the investigation.

→ Concerned about how this will affect commerce in the city.

→ What caused the decision of this study?



Your feedback is important. What additional thoughts, concerns or questions do you have regarding location and sales of firearms businesses in Sunnyvale? If you would like staff to respond, please leave your name and e-mail. Thank you!

**Comments:**

All comments seemed pro-gun.  
The council should know that this resident opposes sales, even if I didn't express it in a forum that was supposedly only about land-use.



Your feedback is important. What additional thoughts, concerns or questions do you have regarding location and sales of firearms businesses in Sunnyvale? If you would like staff to respond, please leave your name and e-mail. Thank you!

**Comments:**

Keep it fair  
remember the budget  
Keep my money in Sunnyvale



Your feedback is important. What additional thoughts, concerns or questions do you have regarding location and sales of firearms businesses in Sunnyvale? If you would like staff to respond, please leave your name and e-mail. Thank you!

**Comments:**

Hiding gun stores in commercial districts might actually encourage ~~the~~ the potential, or perceived, crime that might occur.



Your feedback is important. What additional thoughts, concerns or questions do you have regarding location and sales of firearms businesses in Sunnyvale? If you would like staff to respond, please leave your name and e-mail. Thank you!

**Comments:**

A gun store shd. NOT be associated  
with violence.

Ana Segovia



Your feedback is important. What additional thoughts, concerns or questions do you have regarding location and sales of firearms businesses in Sunnyvale? If you would like staff to respond, please leave your name and e-mail. Thank you!

**Comments:**

There are no better Americans than gun owners.  
You want more gun stores-not to restrict  
their growth.



Your feedback is important. What additional thoughts, concerns or questions do you have regarding location and sales of firearms businesses in Sunnyvale? If you would like staff to respond, please leave your name and e-mail. Thank you!

Comments:

as a law abiding gun owner  
I like to express my opinion that  
guns should ~~not~~ remain available  
for people like me.  
Thank R. K. K.



Your feedback is important. What additional thoughts, concerns or questions do you have regarding location and sales of firearms businesses in Sunnyvale? If you would like staff to respond, please leave your name and e-mail. Thank you!

Comments:

"IF IT WORKS, DON'T FIX IT"  
John Delaney



Your feedback is important. What additional thoughts, concerns or questions do you have regarding location and sales of firearms businesses in Sunnyvale? If you would like staff to respond, please leave your name and e-mail. Thank you!

### Comments:

I am a 25+ years Sunnyvale resident. I have raised my children here and will likely remain after they leave for college this year. I do not believe firearms businesses pose any risk to me or the public at large and do not support additional regulations/restrictions beyond those provided by existing State and Federal laws. I do not support imposing location constraints beyond those already imposed on other businesses by current zoning regulations.  
Daniel Parish [REDACTED]



Your feedback is important. What additional thoughts, concerns or questions do you have regarding location and sales of firearms businesses in Sunnyvale? If you would like staff to respond, please leave your name and e-mail. Thank you!

Comments: Yu Fei Leung [REDACTED]

If it isn't broken, don't fix it.  
The Firearms dealers are not a menace, if anything they provide a positive and valuable service to the community.

FRANK LACY



ATTACHMENT K  
Page 39 of 40

Your feedback is important. What additional thoughts, concerns or questions do you have regarding location and sales of firearms businesses in Sunnyvale? If you would like staff to respond, please leave your name and e-mail. Thank you!

Comments:

Too many cities across this nation, due to the misplaced ideology of officials, take action to restrict and contradict the 2nd Amendment, making it difficult for their citizens to enjoy that specific freedom set forth in the 2nd Amendment. I hope and pray that this wonderful city of Sunnyvale will not become one of those.



Your feedback is important. What additional thoughts, concerns or questions do you have regarding location and sales of firearms businesses in Sunnyvale? If you would like staff to respond, please leave your name and e-mail. Thank you!

Comments:

Thank you for the opportunity to speak and provide input regarding land use permits. I would encourage the city to maintain current use policy to attract more business to SU.

-Adam McInerney



Your feedback is important. What additional thoughts, concerns or questions do you have regarding location and sales of firearms businesses in Sunnyvale? If you would like staff to respond, please leave your name and e-mail. Thank you!

Comments: Paul Brunemeier, Sunnyvale resident  
& gun owner. [REDACTED]

Gun stores are inherently safe. They are already thoroughly regulated at the city, state, and federal levels.

They are an enhancement to our community in terms of safety and education. I want gun stores closer to my home and to my children's school.



Legal Community Against Violence

expertise, information & advocacy to end gun violence

ATTACHMENT L  
Page 1 of 59

VIA EMAIL

August 8, 2011

Andrew Miner  
Principal Planner  
City of Sunnyvale

**Re: Support for Land Use and Law Enforcement Regulation of Firearms Dealers**

Dear Mr. Miner,

On behalf of Legal Community Against Violence (LCAV), I would like to express support for a gun violence prevention ordinance that would regulate the location and operation of firearms dealers and require both a land use permit and a law enforcement permit. LCAV is a national law center formed in the wake of the 1993 assault weapons massacre at 101 California Street in San Francisco. LCAV is the nation's only organization devoted exclusively to providing legal assistance in support of gun violence prevention.

The City Council Study Issue Paper for "Location and Operation of Stand-alone Firearm Sales Businesses" states that the study is to consider, among other things, options such as "distance limitations from sensitive uses, operating standards, and public safety review options." LCAV recommends an ordinance that would address each of these crucial areas of regulation.

Firearms sellers should be required to obtain a land use permit and should be allowed to locate only within specified distances from other sensitive uses such as residential neighborhoods, daycare centers, schools, and parks. In addition, they should be required to obtain a license from the Chief of Police, perform background checks on employees, use specified security measures, provide regular reports of their inventory of firearms to law enforcement, require minors to be accompanied by a parent or guardian, obtain liability insurance and maintain records of long gun ammunition sales. These requirements would fill gaps in federal and state regulation of firearms dealers in order to help law enforcement enforce federal and state firearms and ammunition laws. They would also help ensure that these businesses are operating responsibly, and help prevent any detrimental effect of these businesses on the public health and safety.

Federal regulation of firearms dealer is inadequate to protect the public safety. Although federal law requires firearms dealers to obtain a license from the Bureau of Alcohol, Tobacco, Firearms & Explosives ("ATF"), ATF does not have the resources or authority to properly oversee the more than 100,000 firearms dealers, manufacturers, collectors, and others that it licenses ("FFLs").<sup>1</sup> In fact, on average, ATF inspects each FFL only once every 17 years, and the Office of the Inspector General has concluded that inspections by ATF are not fully effective for

<sup>1</sup> The U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives provided the total number of federal firearms licensees as of November 8, 2007.

ensuring that FFLs comply with federal firearms laws.<sup>2</sup> In addition, federal law is silent regarding many important aspects of the dealer's business, such as its location (leaving dealers free to operate out of their homes and near schools and other places children frequent) and on-site security requirements.

ATF has found that FFLs are the largest source of trafficked firearms.<sup>3</sup> In addition, during fiscal year 2007, ATF found that over 30,000 firearms were missing from FFLs' inventories with no record of sale.<sup>4</sup> In 1998, ATF found that 56% of randomly inspected dealers and 30% of pawnbrokers selling 50 or more guns had violated federal firearms law.<sup>5</sup>

The Second Amendment is not a bar to the regulation of firearms dealers by local California governments. In 2008, the Supreme Court issued a historic decision in *District of Columbia v. Heller*, holding that the Second Amendment confers an individual right to possess handguns in the home for self-defense, unrelated to service in a well-regulated state militia.<sup>6</sup> On June 28, 2010, the Supreme Court in *McDonald v. City of Chicago* held that the Second Amendment, as interpreted in *Heller*, applies to state and local governments in addition to the federal government.<sup>7</sup>

Although the *Heller* decision established a new individual right to "keep and bear arms," the opinion made it clear that the right is not unlimited, and should not be understood as "a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose."<sup>8</sup> The Court provided a list of the types of gun laws that it deems "presumptively lawful" under the Second Amendment, including those which impose conditions and qualifications on the commercial sale of firearms.<sup>9</sup> The Court in *McDonald* reiterated this list.<sup>10</sup> The *Heller* and *McDonald* decisions leave no doubt that regulation of firearms dealers remains legally permissible.

The International Association of Chiefs of Police recommends that local governments impose their own licensing requirements on firearms dealers because local requirements can respond to specific community concerns, and local review of licenses provides additional resources to identify and

<sup>2</sup> Mayors Against Illegal Guns, *The Movement of Illegal Guns in America: The Link between Gun Laws and Interstate Gun Trafficking* 18, December 2008, available at: [www.mayorsagainstilllegalguns.org/downloads/pdf/trace\\_report\\_final.pdf](http://www.mayorsagainstilllegalguns.org/downloads/pdf/trace_report_final.pdf); Office of the Inspector General, Evaluation and Inspections Division, U.S. Department of Justice, *Inspection of Firearms Dealers by the Bureau of Alcohol, Tobacco, Firearms and Explosives* i (July 2004), available at: <http://www.usdoj.gov/oig/reports/ATF/c0405/excc.htm>.

<sup>3</sup> Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers* ix (June 2000), available at: [www.atf.gov/pub/fire-explo\\_pub/pdf/followingthegun\\_internet.pdf](http://www.atf.gov/pub/fire-explo_pub/pdf/followingthegun_internet.pdf).

<sup>4</sup> Brady Center to Prevent Gun Violence, *U.S. Gun Shops "Lost" More than 30,000 Firearms Last Year*, June 17, 2008, available at: <http://www.bradycampaign.org/media/release.php?release=988>.

<sup>5</sup> Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, *Commerce in Firearms in the United States* 16 (Feb. 2000), available at:

[www.mayorsagainstilllegalguns.org/downloads/pdf/Commerce\\_in\\_Firearms\\_2000.pdf](http://www.mayorsagainstilllegalguns.org/downloads/pdf/Commerce_in_Firearms_2000.pdf)

<sup>6</sup> *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008).

<sup>7</sup> *McDonald v. City of Chicago*, No. 08-1521, 2010 U.S. LEXIS 5523 (June 28, 2010).

<sup>8</sup> *Heller* at 2816.

<sup>9</sup> *Id.*

<sup>10</sup> *McDonald*, 2010 U.S. LEXIS 5523 at \*79.

stop corrupt dealers.<sup>11</sup> Indeed, a 2009 study found that cities in states that comprehensively regulate retail firearms dealers and cities where these businesses undergo regular compliance inspections have significantly lower levels of gun trafficking than other cities.<sup>12</sup>

In addition, there is widespread public support for regulation of firearms dealers. A national poll conducted in March and April 2008 found that:

- 91% of Americans and 88% of gun owners favor requiring gun stores to perform background checks on employees;
- 86% of Americans and 83% of gun owners favor requiring gun retailers to inspect their inventories every year to report stolen or missing guns; and
- 88% of Americans favor requiring gun stores to keep all guns locked securely to prevent theft.<sup>13</sup>

As of September 2010, there were 2,037 federally licensed firearms dealers and pawnbrokers in California. California is among a minority of states that impose additional licensing requirements on firearms dealers, but even there the standards are minimal. As confirmed by a California Court of Appeals in *Suter v. City of Lafayette*, 67 Cal. Rptr. 2d 420 (Cal. Ct. App. 1997), California law authorizes local regulation in this area. Dozens of local governments in California have exercised this authority and now require firearms dealers to obtain a license or permit and impose additional requirements on dealers. At least four counties – Santa Clara, Contra Costa, Los Angeles, and Marin – require firearms dealers to obtain a local land use and/or police permit. In addition, the following 35 cities require firearms dealers to obtain a local land use and/or police permit:

- |                   |                 |                    |
|-------------------|-----------------|--------------------|
| 1. Alameda        | 13. Hercules    | 25. San Diego      |
| 2. Albany         | 14. Lafayette   | 26. San Jose       |
| 3. Antioch        | 15. Los Angeles | 27. San Francisco  |
| 4. Berkeley       | 16. Oakland     | 28. San Pablo      |
| 5. Beverly Hills  | 17. Palo Alto   | 29. San Rafael     |
| 6. Cathedral City | 18. Piedmont    | 30. Santa Ana      |
| 7. Chino          | 19. Pinole      | 31. Santa Cruz     |
| 8. El Cerrito     | 20. Pleasanton  | 32. Santa Monica   |
| 9. Emeryville     | 21. Richmond    | 33. Saratoga       |
| 10. Fremont       | 22. Sacramento  | 34. Tiburon        |
| 11. Gilroy        | 23. Salinas     | 35. West Hollywood |
| 12. Hayward       | 24. San Anselmo |                    |

<sup>11</sup> International Association of Chiefs of Police (IACP), *Taking a Stand: Reducing Gun Violence in Our Communities* 14 (Sept. 2007), available at: <http://www.theiacp.org/LinkClick.aspx?fileticket=%2Fs0LjOkJK5Q%3D&tabid=302>.

<sup>12</sup> Daniel W. Webster et al., *Effects of State-Level Firearm Seller Accountability Policies on Firearms Trafficking*, J. Urb. Health (July 2009).

<sup>13</sup> Greenberg Quinlan Rosner Research and the Tarrance Group, *Americans Support Common Sense Measures to Cut Down on Illegal Guns* 3, April 10, 2008, available at: [http://www.mayorsagainstilllegalguns.org/downloads/pdf/polling\\_memo.pdf](http://www.mayorsagainstilllegalguns.org/downloads/pdf/polling_memo.pdf).

LCAV has drafted a model ordinance that brings together the common sense measures described at the beginning of this letter.<sup>14</sup> The provisions are similar to ordinances enacted in other California jurisdictions. LCAV urges you to take proactive steps to protect the residents of Sunnyvale by regulating firearms dealers.

Very truly yours,



Laura Cutilletta  
Senior Staff Attorney

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<sup>14</sup> The LCAV Model Law Regulating Firearms Dealers and Ammunition Sellers for Local Governments in California can be downloaded at: [http://www.lcav.org/publications-briefs/model\\_laws/LCAV\\_Model\\_Dealer\\_Ordinance\\_CA.pdf](http://www.lcav.org/publications-briefs/model_laws/LCAV_Model_Dealer_Ordinance_CA.pdf).



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ATTACHMENT L  
Page 5 of 59

*LCAV Model Law*  
**REGULATING FIREARMS DEALERS AND AMMUNITION SELLERS  
(LOCAL GOVERNMENTS IN CALIFORNIA)**

November 2010

**About LCAV and Our Model Laws**

Legal Community Against Violence (LCAV) is a national public interest law center dedicated to preventing gun violence. As the first and only lawyers' organization in the gun violence prevention movement, LCAV focuses on policy reform at the state and local levels, marshaling the expertise and resources of the legal community in support of gun violence prevention.

LCAV serves governmental entities and nonprofit organizations nationwide. Our services include legal and technical assistance in the form of legal research and analysis, development of regulatory strategies, legislative drafting, and in certain circumstances, calling upon our network of attorney members to help secure *pro bono* litigation assistance. We also engage in educational outreach and advocacy, producing reports, analyses and model laws. Our website, [www.lcav.org](http://www.lcav.org), is the most comprehensive resource on U.S. firearm laws in either print or electronic form.

Model laws provide a starting point: a framework from which state or local legislation can be drafted, reviewed, debated, and ultimately adopted. California jurisdictions using this model must integrate it with existing ordinances as appropriate.

*This report and model law do not offer, and are not intended to constitute, legal advice.*

**Executive Summary**

LCAV has developed a model law for California jurisdictions to regulate firearms dealers and ammunition sellers. As detailed in the findings below, federal and state regulation of these entities is currently inadequate to protect the public safety.

Although federal law requires firearms dealers to obtain a license from the Bureau of Alcohol, Tobacco, Firearms & Explosives ("ATF"), ATF does not have the resources or authority to properly oversee the more than 100,000 firearms dealers, manufacturers, collectors, and others that it licenses ("FFLs").<sup>1</sup> In fact, on average, ATF inspects each FFL only once every 17 years, and the Office of the Inspector General has concluded that inspections by ATF are not fully effective for ensuring that FFLs comply with federal firearms laws. In addition, federal law is silent regarding many important aspects of the dealer's business, such as its location (leaving

<sup>1</sup> References for the facts identified in the Executive Summary can be found in the "Findings" portion of the model law below.

dealers free to operate out of their homes and near schools and other places children frequent) and on-site security requirements.

ATF has found that FFLs are the largest source of trafficked firearms. In addition, during fiscal year 2007, ATF found that over 30,000 firearms were missing from FFLs' inventories with no record of sale. In 1998, ATF found that 56% of randomly inspected dealers and 30% of pawnbrokers selling 50 or more guns had violated federal firearms law.

As of September 23, 2009, there were 2,032 federally licensed firearms dealers and pawnbrokers in California. California is among a minority of states that impose additional licensing requirements on firearms dealers, but even there the standards are minimal. As confirmed by a California Court of Appeals in *Suter v. City of Lafayette*, 67 Cal. Rptr. 2d 420 (Cal. Ct. App. 1997), California law authorizes local regulation in this area. Dozens of local governments in California have exercised this authority and now require firearms dealers to obtain a license or permit and impose additional requirements on dealers.

While firearms dealers are licensed at both the federal and state level, neither federal nor California law requires sellers of ammunition to obtain a license. A number of California cities, however, including Berkeley, Los Angeles, Richmond, Sacramento, and San Francisco, now require sellers of ammunition to obtain a license. Moreover, more than a dozen local jurisdictions in California have adopted ordinances requiring ammunition sellers to maintain records of ammunition sales. As detailed in the findings below, jurisdictions that have adopted such ordinances have had great success utilizing such records to identify people who illegally possess firearms, as well as ammunition. In 2009, the state adopted a law, AB 962 (De Leon), modeled after these ordinances, mandating that such records be made statewide for the sale or transfer of handgun ammunition. This model law, like many of the existing local ordinances, extends this requirement to long gun ammunition as well.

This model law is intended to fill the gaps in the federal and state regulatory oversight of firearms dealers and ammunition sellers. More specifically, the goals of this model law are to help: 1) ensure that dealers' operations will not be detrimental to the public health and safety; 2) prevent and detect illegal trafficking of firearms and ammunition by dealers and their employees; 3) prevent the loss and theft of firearms and ammunition from dealers; and 4) prevent and detect the sale of firearms and ammunition by dealers to persons who are prohibited by law from possessing these items.

The principal elements of this model law include:

- Findings. Findings describe the legal background and policy basis for the law.
- Law Enforcement Permit. Anyone selling firearms or ammunition is required to obtain a local law enforcement permit.
- Employee Background Checks. Every employee with access to or control over firearms or ammunition is required to undergo a background check.
- On-site Security. Security standards for the business premises include the maintenance of an alarm system and surveillance cameras, and requirements for the safe storage of firearms and long gun ammunition when the store is both open and closed for business.

- Inventory Reports. Firearms dealers must submit a report to law enforcement detailing their inventory every six months.
- Liability Insurance. Firearms dealers must carry liability insurance with limits of at least \$1 million per incident.
- Prohibition on Operating in Sensitive Areas. Firearms dealers and ammunition sellers are prohibited from operating in residential neighborhoods or near other sensitive areas, such as schools, daycare centers, or parks.
- Land Use Permit. Firearms dealers and ammunition sellers must obtain a land use permit to ensure that the location of the business complies with the jurisdiction's general plan and the business operations will not be detrimental to the public health and safety of those nearby.
- Ammunition Sales Records. Sellers of long gun ammunition are required to make and maintain records of sales that are available to law enforcement.

This report is based on LCAV's review of existing laws, judicial decisions, policy research, studies, and other gun violence prevention data, and it should answer many questions about the options available to communities regarding firearms dealers and ammunition sellers.

This report contains our nonpartisan analysis, study, and research on gun violence prevention case law and policies, and is intended for broad distribution to the public. Our presentation of this report is based upon our independent and objective analysis of the relevant law and pertinent facts and should enable public readers to form their own opinions and conclusions about the merits of this sample legislation.

Part I of these materials provides the text of the model law. Part II provides examples of legal challenges typically brought against firearms laws and explains that in the majority of cases, courts reject these arguments. Part III describes and responds to anticipated opposition arguments.

LCAV is ready to provide additional legal research, analysis, and drafting assistance to those seeking to enact a law regulating firearms dealers and ammunition sellers, or other laws to reduce gun violence. Please see [www.lcav.org](http://www.lcav.org) for more information about our services.

**TABLE OF CONTENTS**

**About LCAV and Our Model Laws** .....page 1

**Executive Summary**.....page 1

**I. Text of Model Law**.....page 5

**II. Common Legal Challenges to Gun Violence Prevention Laws**.....page 26

A. The Second Amendment and State Right to Bear Arms.....page 26

    1. The Second Amendment.....page 26

    2. State Right to Bear Arms.....page 28

B. Equal Protection.....page 28

C. Due Process.....page 29

D. Privilege Against Self-Incrimination.....page 31

E. Preemption and Local Authority to Regulate Firearms.....page 31

    1. Federal Preemption.....page 31

    2. State Preemption.....page 32

**III. Responses to Common Opposition Arguments**.....page 35

**Conclusion** .....page 37

I. Text of Model Law

CHAPTER 1 REGULATION OF FIREARMS DEALERS AND AMMUNITION  
SELLERS

ARTICLE 1 SALE OF FIREARMS AND AMMUNITION

- Sec. 1 Definitions
- Sec. 2 Law enforcement permit
- Sec. 3 Application for permit
- Sec. 4 Investigation by Chief of Police/Sheriff<sup>\*</sup> and employee background checks
- Sec. 5 Grounds for permit denial or revocation
- Sec. 6 On-site security
- Sec. 7 Liability insurance
- Sec. 8 Location of business premises
- Sec. 9 Ammunition sales records
- Sec. 10 Restricted admittance of minors and other prohibited purchasers
- Sec. 11 Inventory reports
- Sec. 12 Display of law enforcement permit
- Sec. 13 Issuance of law enforcement permit – Duration
- Sec. 14 Nonassignability
- Sec. 15 Compliance by existing businesses
- Sec. 16 Law enforcement inspections
- Sec. 17 Warning regarding secondary sales
- Sec. 18 Penalties
- Sec. 19 Report of permit revocation to federal and state authorities
- Sec. 20 Hearing for permit denial or revocation
- Sec. 21 Severability clause

ARTICLE 2 LAND USE PERMITS

- Sec. 1 Firearm and ammunition sales
- Sec. 2 Nonconforming uses
- Sec. 3 Severability clause

**Findings**

[Findings regarding the need for and benefits of these regulations should be included. Findings in support of a law are most effective when they are specific and localized. When possible, local data from law enforcement, the public health community, and the media should be added. General findings are provided below.]

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\* Where the words "Chief of Police/Sheriff," "City/County" or similar variations appear, simply select the appropriate designation for your jurisdiction.

### Findings Regarding Gun Violence in General

*Whereas*, in 2006, 3,253 people died from firearm-related injuries in California<sup>2</sup> and 4,305 other people were treated for non-fatal gunshot wounds,<sup>3</sup>

*Whereas*, in 2006, 3,567 people were assaulted with a firearm in California, and 1,411 of those victims were under the age of 21,<sup>4</sup>

*Whereas*, in 2006, 1,874 homicides were committed with a firearm in California, and 538 of those victims were under the age of 21,<sup>5</sup>

### Findings Regarding Current Federal Regulation of Firearms Dealers

*Whereas*, federal regulation of firearms dealers and ammunition sellers is currently inadequate to protect the public safety,

*Whereas*, although federal law requires firearms dealers to obtain a license from the Bureau of Alcohol, Tobacco, Firearms & Explosives ("ATF"),<sup>6</sup> ATF does not have the resources or authority to properly oversee the more than 100,000 firearms dealers, manufacturers, collectors and others that it licenses ("FFLs"),<sup>7</sup>

*Whereas*, ATF reported in 2007 that it inspects each FFL, on average, only once every 17 years,<sup>8</sup>

*Whereas*, between 1975 and 2005, ATF revoked, on average, fewer than 20 federal firearms licenses per year,<sup>9</sup>

*Whereas*, ATF faces numerous obstacles that limit its ability to enforce the law; for example, ATF may conduct only one unannounced inspection of each FFL per year, the burden of proof

<sup>2</sup> California Dep't of Health Servs., Epidemiology & Prevention for Injury Control Branch (EPIC), EPICenter California Injury Data Online, *Fatal Injury Data Custom Data Tables* (2010), at [http://www.applications.dhs.ca.gov/epicdata/content/TB\\_fatal.htm](http://www.applications.dhs.ca.gov/epicdata/content/TB_fatal.htm).

<sup>3</sup> California Dep't of Health Servs., Epidemiology & Prevention for Injury Control Branch (EPIC), EPICenter California Injury Data Online, *Nonfatal Injury Data Custom Data Tables* (2010), at [http://www.applications.dhs.ca.gov/epicdata/content/tb\\_nonfatal.htm](http://www.applications.dhs.ca.gov/epicdata/content/tb_nonfatal.htm).

<sup>4</sup> California Dep't of Health Servs., Epidemiology & Prevention for Injury Control Branch (EPIC), EPICenter California Injury Data Online, *Nonfatal Injury Data Custom Data Tables* (2010), at [http://www.applications.dhs.ca.gov/epicdata/content/tb\\_nonfatal.htm](http://www.applications.dhs.ca.gov/epicdata/content/tb_nonfatal.htm).

<sup>5</sup> California Dep't of Health Servs., Epidemiology & Prevention for Injury Control Branch (EPIC), EPICenter California Injury Data Online, *Fatal Injury Data Custom Data Tables* (2010), at [http://www.applications.dhs.ca.gov/epicdata/content/TB\\_fatal.htm](http://www.applications.dhs.ca.gov/epicdata/content/TB_fatal.htm).

<sup>6</sup> 18 U.S.C. § 922(a)(1)(A).

<sup>7</sup> The U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives provided the total number of federal firearms licensees as of November 8, 2007.

<sup>8</sup> Mayors Against Illegal Guns, *The Movement of Illegal Guns in America: The Link between Gun Laws and Interstate Gun Trafficking* 18, December 2008, available at: [www.mayorsagainstilllegalguns.org/downloads/pdf/trace\\_report\\_final.pdf](http://www.mayorsagainstilllegalguns.org/downloads/pdf/trace_report_final.pdf)

<sup>9</sup> Brady Center to Prevent Gun Violence, *Shady Dealings, Illegal Gun Trafficking From Licensed Gun Dealers* 23 (Jan. 2007), available at: <http://www.bradycenter.org/xshare/pdf/reports/shady-dealings.pdf>. In 2006, ATF increased its total revocations to 131. *Id.*

for ATF's prosecution and revocation of licenses is extremely high, serious violations of firearms law have been classified as misdemeanors rather than felonies, and ATF has historically been grossly understaffed,<sup>10</sup>

*Whereas*, the Office of the Inspector General has concluded that inspections by ATF are not fully effective for ensuring that FFLs comply with federal firearms laws,<sup>11</sup>

*Whereas*, ATF has found that FFLs are a major source of trafficked firearms. In June of 2000, ATF issued a comprehensive report of firearms trafficking in this country. That report analyzed 1,530 trafficking investigations during the period July 1996 through December 1998, involving more than 84,000 diverted firearms.<sup>12</sup> ATF found that FFLs were associated with the largest number of trafficked guns – over 40,000 – and concluded that “FFLs’ access to large numbers of firearms makes them a particular threat to public safety when they fail to comply with the law,”<sup>13</sup>

*Whereas*, during fiscal year 2007, ATF found over 30,000 firearms missing from licensees’ inventories with no record of sale,<sup>14</sup>

*Whereas*, in 1998, ATF found that 56% of randomly inspected dealers and 30% of pawnbrokers selling 50 or more guns had violated federal firearms law,<sup>15</sup>

*Whereas*, federal laws are silent regarding many important aspects of the dealer’s business, such as its location (leaving dealers free to operate out of their homes and near schools and other places children frequent) and security requirements during business hours,

*Whereas*, according to a 1998 ATF random sample of FFLs nationwide, 56% of all dealers operated out of their homes, and 33% were located in businesses that are not usually associated with gun sales, such as funeral homes or auto parts stores,<sup>16</sup>

#### Findings Regarding Current State and Local Regulation of Firearms Dealers

*Whereas*, as of September 23, 2009, there were 2,032 federally licensed firearms dealers and pawnbrokers in California.<sup>17</sup>

<sup>10</sup> *Id.* at 24-26.

<sup>11</sup> Office of the Inspector General, Evaluation and Inspections Division, U.S. Department of Justice, *Inspection of Firearms Dealers by the Bureau of Alcohol, Tobacco, Firearms and Explosives* i (July 2004), available at: <http://www.usdoj.gov/oig/reports/ATF/e0405/cxec.htm>.

<sup>12</sup> Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers* ix (June 2000), available at: [www.atf.gov/pub/fire-explo/pub/pdf/followingthegun\\_internet.pdf](http://www.atf.gov/pub/fire-explo/pub/pdf/followingthegun_internet.pdf).

<sup>13</sup> *Id.* at x.

<sup>14</sup> Brady Center to Prevent Gun Violence, *U.S. Gun Shops “Lost” More than 30,000 Firearms Last Year*, June 17, 2008, available at: <http://www.bradycampaign.org/media/release.php?release=988>.

<sup>15</sup> Brady Center to Prevent Gun Violence, *“Trivial Violations”? The Myth of Overzealous Federal Enforcement Actions Against Licensed Gun Dealers* i (Sept. 2006), available at: [www.bradycenter.org/xshare/pdf/reports/trivial-violations.pdf](http://www.bradycenter.org/xshare/pdf/reports/trivial-violations.pdf).

<sup>16</sup> Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, *Commerce in Firearms in the United States* 16 (Feb. 2000), available at:

[www.mayorsagainstillegalguns.org/downloads/pdf/Commrec\\_in\\_Firearms\\_2000.pdf](http://www.mayorsagainstillegalguns.org/downloads/pdf/Commrec_in_Firearms_2000.pdf)

*Whereas*, California is among a minority of states that impose licensing requirements on firearms dealers, but the standards are minimal,<sup>18</sup>

*Whereas*, the Court of Appeals in *Suter v. City of Lafayette*, 67 Cal. Rptr. 2d 420, 428 (Cal. Ct. App. 1997) held that state law authorizes local governments in California to impose additional licensing requirements on firearms dealers,<sup>19</sup>

*Whereas*, FFLs are required by federal law to comply with all state and local dealer laws as a condition for retaining their federal licenses,<sup>20</sup>

*Whereas*, in August 1994, the American Bar Association enacted a resolution expressing support for legislation to limit federal firearms licenses to bona fide firearms dealers, limit gun sales to the location of the licensed premises, limit ammunition sales to federal licensees, increase the number of permitted yearly inspections, and require licensed firearms dealers to:

- Comply with state and local laws,
- Maintain adequate business liability insurance,
- Pay annual fees to cover the costs of investigating license applications,
- Have all employees undergo background checks, and
- Report gun thefts to ATF and local police,<sup>21</sup>

*Whereas*, the International Association of Chiefs of Police recommends that local governments impose their own licensing requirements on firearms dealers because local requirements can respond to specific community concerns, and local review of licensees provides additional resources to identify and stop corrupt dealers,<sup>22</sup>

*Whereas*, a 2009 study found that cities in states that comprehensively regulate retail firearms dealers and cities where these businesses undergo regular compliance inspections have significantly lower levels of gun trafficking than other cities,<sup>23</sup>

*Whereas*, no federal or California law imposes security requirements on firearms dealers during business hours or requires firearms dealers or ammunition sellers to install burglar alarms or surveillance cameras. California law explicitly allows local jurisdictions to impose security

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<sup>17</sup> Federal firearms license totals for California as of September 23, 2009 were provided by the U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives.

<sup>18</sup> See Penal Code §§ 12070-12071.

<sup>19</sup> The court in *Suter* struck down a provision of Lafayette's ordinance imposing additional security requirements on firearms dealers. That part of the opinion has been superseded by the adoption of Cal. Penal Code § 12071(b)(15).

<sup>20</sup> 18 U.S.C. § 923(d)(1)(F).

<sup>21</sup> American Bar Association, *Item 10E*, Annual Meeting 1994, at <http://www.abanet.org/crimjust/policy/ejpol.html>.

<sup>22</sup> International Association of Chiefs of Police (IACP), *Taking a Stand: Reducing Gun Violence in Our Communities* 14 (Sept. 2007), available at:

<http://www.theiacp.org/LinkClick.aspx?fileticket=%2Fs0LiOkJK5Q%3D&tabid=302>.

<sup>23</sup> Daniel W. Webster et al., *Effects of State-Level Firearm Seller Accountability Policies on Firearm Trafficking*, J. Urb. Health (July 2009).

requirements on firearms dealers that are stricter or at a higher standard than those imposed by state law,<sup>24</sup>

*Whereas*, no federal or California law requires agents and employees of firearms dealers or ammunition sellers to undergo background checks. California law explicitly permits local jurisdictions to require firearms dealers to perform such background checks,<sup>25</sup>

*Whereas*, no federal or California law requires firearms dealers to obtain liability insurance, prohibits firearms dealers or ammunition sellers from operating in residential neighborhoods or near schools, daycare centers, or parks, or requires firearms dealers or ammunition sellers to obtain a land use permit,

*Whereas*, California law requires firearms dealers to report the loss or theft of any firearm within 48 hours of discovery to the local law enforcement agency where the dealer's business premises are located, but does not otherwise require dealers to provide inventory reports to local law enforcement agencies,<sup>26</sup>

*Whereas*, according to a survey of local jurisdictions in California conducted in 2000 by Legal Community Against Violence (LCAV):

- 29 cities and three counties in California require firearms dealers to obtain a license or permit,
- 21 cities and two counties in California require firearms dealers to obtain liability insurance,
- 34 cities and four counties in California prohibit firearms dealers in residential areas,
- 14 cities and two counties in California prohibit firearms dealers near sensitive areas, such as daycare facilities, schools, parks, places of worship and community/recreation centers, and
- 31 cities and two counties in California require firearms dealers to conduct background checks on employees,<sup>27</sup>

#### Findings Regarding Public Support for the Regulation of Firearms Dealers

*Whereas*, a national poll conducted in March and April 2008 found that:

- 91% of Americans and 88% of gun owners favor requiring gun stores to perform background checks on employees;
- 86% of Americans and 83% of gun owners favor requiring gun retailers to inspect their inventories every year to report stolen or missing guns;

<sup>24</sup> Cal. Penal Code § 12071(b)(15).

<sup>25</sup> Cal. Penal Code § 12071(b)(20).

<sup>26</sup> Cal. Penal Code § 12071(b)(13).

<sup>27</sup> For lists of the jurisdictions with the each of these requirements and prohibitions mentioned, see LCAV's publication, "*Communities on the Move 2000: How California Communities Are Addressing the Epidemic of Handgun Violence*," available at: [http://www.lcav.org/library/surveys\\_local\\_ordrs/com2000\\_pdf.pdf](http://www.lcav.org/library/surveys_local_ordrs/com2000_pdf.pdf). Please note that jurisdictions may have amended their ordinances since LCAV conducted that survey. For example, the City of Inglewood now prohibits firearms dealers in residential areas, but is not listed as such in that survey. The City of Emeryville now requires firearms dealers to obtain a local license, obtain liability insurance, and conduct background checks on employees, and prohibits firearms dealers in residential areas and near sensitive areas.

- 88% of Americans favor requiring gun stores to keep all guns locked securely to prevent theft; and
- 74% of Americans favor requiring gun retailers to videotape all gun sales,<sup>28</sup>

*Whereas*, in a nationwide poll conducted in January of 2007, 86% of gun owners reported that a gun store's decision to videotape all gun sales would not impact their decision to buy a gun at that store,<sup>29</sup>

#### Findings Regarding the Regulation of Ammunition Sellers

*Whereas*, federal law prohibits possession of ammunition by the same categories of persons it prohibits from possessing firearms,<sup>30</sup>

*Whereas*, California law requires persons who sell, loan or transfer firearms within California to obtain a license, but does not require persons who sell, loan or transfer ammunition to do so,<sup>31</sup>

*Whereas*, the Cities of Berkeley, Emeryville, Los Angeles, Richmond, Sacramento, and San Francisco are among the jurisdictions that now require sellers of ammunition to obtain a license or permit,<sup>32</sup>

*Whereas*, 14 cities (Beverly Hills, Carson, Hayward, Inglewood, Los Angeles, Oakland, Pomona, Sacramento, San Anselmo, San Francisco, Santa Ana, Santa Monica, Tiburon, and West Hollywood), and two counties (Contra Costa and Marin) require ammunition sellers to keep records of their ammunition sales,

*Whereas*, law enforcement agencies in jurisdictions that require ammunition sellers to keep records of their ammunition sales have been able to detect illegal possessors of firearms and ammunition by cross-referencing the information in these records with California Department of Justice-maintained information regarding persons prohibited from such possession,

*Whereas*, a two-month study of Los Angeles' ordinance requiring ammunition purchasers to present identification prior to purchase and requiring ammunition sellers to maintain a sales log found that prohibited purchasers accounted for nearly 3% of all ammunition purchasers over this period, acquiring roughly 10,000 rounds of ammunition,<sup>33</sup>

*Whereas*, the Los Angeles ordinance led to 30 investigations, 15 search warrants, nine arrests, and the confiscation of 24 handguns, 12 shotguns, and nine rifles that were illegally possessed

<sup>28</sup> Greenberg Quinlan Rosner Research and the Tarrance Group, *Americans Support Common Sense Measures to Cut Down on Illegal Guns 3*, April 10, 2008, available at:

[http://www.mayorsagainstillegalguns.org/downloads/pdf/polling\\_memo.pdf](http://www.mayorsagainstillegalguns.org/downloads/pdf/polling_memo.pdf)

<sup>29</sup> Greenberg Quinlan Rosner Research & The Tarrance Group for the Mayors Against Illegal Guns, *Strong Public Support for Tough Enforcement of Common Sense Gun Laws (Graphs)*, January 23, 2007, available at:

[http://www.greenbergresearch.com/articles/1849/2630\\_MAIgslides.pdf](http://www.greenbergresearch.com/articles/1849/2630_MAIgslides.pdf)

<sup>30</sup> 18 U.S.C. § 922(g).

<sup>31</sup> Cal. Penal Code § 12070(a).

<sup>32</sup> LCAV has not completed an exhaustive search for ordinances requiring sellers of ammunition to obtain a license or permit.

<sup>33</sup> George E. Tita et al., *The Criminal Purchase of Ammunition*, 12 *Inj. Prevention* 308, 308 (2006).

between 2004 and the first half of 2006, as well as 39 investigations in 2007, and at least 24 investigations in 2008,<sup>34</sup>

*Whereas*, a report issued one year after Sacramento enacted an ordinance requiring ammunition sellers to record the thumbprint of each purchaser and to electronically transmit the records of ammunition sales to the Sacramento Police Department ("SPD") found that:

- The SPD and allied agencies use the information gathered as a result of the ordinance in criminal investigations regularly,
- These requirements have allowed the SPD to electronically check the legal firearms rights status of transferees, and
- The electronic system for transfer of purchaser information has proven to be secure, effective and reliable.<sup>35</sup>

*Whereas*, between January 16 and December 31, 2008, the Sacramento ordinance led to the identification of 156 prohibited persons who had purchased ammunition, 124 of whom had prior felony convictions, 48 search warrants and 26 additional probation or parole searches. In addition, the ordinance led to 109 felony charges, 10 federal court indictments, 37 felony convictions and 17 misdemeanor convictions. The ordinance allowed law enforcement to seize a total of 84 firearms, including seven assault weapons, and thousands of rounds of ammunition,<sup>36</sup>

*Whereas*, on October 11, 2009, Governor Schwarzenegger signed a new law, AB 962 (De Leon), to require handgun ammunition sellers to create and maintain records of handgun ammunition sales and transfers, effective February 1, 2011. No federal or state law, however, requires ammunition sellers to create or maintain records of sales or transfers prior to that date, or requires vendors to create or maintain records of sales or transfers of ammunition that is not principally for use in handguns, and

*Whereas*, AB 962 (De Leon) also requires handgun ammunition sellers to store handgun ammunition so that it is inaccessible to customers without assistance from the seller or an employee, effective January 1, 2010. No federal or state law, however, governs the way sellers store ammunition that is not principally for use in handguns,

*Therefore*, the jurisdiction/governing body hereby adopts the following:

<sup>34</sup> LCAV obtained these numbers from Lieutenant Steve Nielsen of the Los Angeles Police Department's Gun Unit in May 2007 and May 2008.

<sup>35</sup> Sacramento, Cal., City Code, Chapters 5.64, 5.66; Sacramento Chief of Police Rick Brazier et al., *Report to Council, Ammunition Sales Records Study* (Aug. 12, 2008), at: [http://sacramento.granicus.com/Viewer.php?view\\_id=8&clip\\_id=1590&meta\\_id=155275](http://sacramento.granicus.com/Viewer.php?view_id=8&clip_id=1590&meta_id=155275).

<sup>36</sup> These statistics were obtained from Captain Jim Maccoun, Office of Technical Services, Sacramento Police Department on January 27, 2009. For the statistics for the period between January 16 and June 29, 2008, see *id.*

## ARTICLE 1 SALE OF FIREARMS AND AMMUNITION

### Sec. 1 Definitions

"Ammunition" means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm, and any component thereof, but shall not include blank cartridges or ammunition that can be used solely in an "antique firearm" as that term is defined in section 921(a)(16) of Title 18 of the United States Code.

"Applicant" means any person who applies for a law enforcement permit, or the renewal of such a permit, to sell, lease or transfer firearms or ammunition.

"Chief of Police/Sheriff" means the Chief of Police/Sheriff or the Chief's/Sheriff's designated representative.

To "engage in the business of selling, leasing, or otherwise transferring any firearm or ammunition" means to conduct a business by the selling, leasing or transferring of any firearm or ammunition, or to hold one's self out as engaged in the business of selling, leasing or otherwise transferring any firearm or ammunition, or to sell, lease or transfer firearms or ammunition in quantity, in series, or in individual transactions, or in any other manner indicative of trade.

"Firearm" means any device, designed to be used as a weapon or modified to be used as a weapon, from which is expelled through a barrel a projectile by the force of explosion or other means of combustion, provided that the term "firearm" shall not include an "antique firearm" as defined in section 921(a)(16) of Title 18 of the United States Code.

"Permittee" means any person, corporation, partnership or other entity engaged in the business of selling, leasing, or otherwise transferring any firearm or ammunition, which person or entity has obtained a law enforcement permit to sell, lease or transfer firearms or ammunition.

### Sec. 2 Law enforcement permit

*[This model requires both firearms dealers and ammunition sellers to obtain a land use permit as well as a law enforcement permit. Alternatively, jurisdictions may choose to make the land use permit requirement in Article 2 of this model applicable only to firearms dealers, and not to persons and entities that sell only ammunition.]*

It is unlawful for any person, corporation, partnership or other entity to engage in the business of selling, leasing, or otherwise transferring any firearm or ammunition within City/County without a law enforcement permit, as required by this Article, and a land use permit, as required by Article 2.

### Sec. 3 Application for permit

(a) An applicant for a permit or renewal of a permit under this Article shall file with the Chief of Police/Sheriff an application in writing, signed under penalty of perjury, on a form

prescribed by the City/County. The applicant shall provide all relevant information requested to demonstrate compliance with this Article, including:

- (1) The applicant's name, including any aliases or prior names, age and address;
- (2) The applicant's federal firearms license and California firearms dealer numbers, if any;
- (3) The address of the proposed location for which the permit is sought, together with the business name, and the name of any corporation, partnership or other entity that has any ownership in, or control over, the business;
- (4) The names, ages and addresses of all persons who will have access to or control of workplace firearms or ammunition, including but not limited to, the applicant's employees, agents and/or supervisors, if any;
- (5) A certificate of eligibility from the state Department of Justice under Penal Code Section 12071 for each individual identified in Sec. 3(a)(4) demonstrating that the person is not prohibited by state or federal law from possessing firearms or ammunition;
- (6) Proof of a possessory interest in the property at which the proposed business will be conducted, as owner, lessor or other legal occupant, and, if the applicant is not the owner of record of the real property upon which, the applicant's business is to be located and conducted, the written consent of the owner of record of such real property to the applicant's proposed business;
- (7) A floor plan of the proposed business which illustrates the applicant's compliance with security provisions, as outlined in Sec. 6 of this Article;
- (8) Proof of the issuance of a land use permit at the proposed location;
- (9) Proof of compliance with all applicable federal, state and local licensing and other business laws;
- (10) Information relating to every license or permit to sell, lease, transfer, purchase, or possess firearms or ammunition which was sought by the applicant from any jurisdiction in the United States, including, but not limited to, the date of each application and whether it resulted in the issuance of a license, and the date and circumstances of any revocation or suspension;
- (11) The applicant's agreement to indemnify, defend and hold harmless the City/County, its officers, agents and employees from and against all claims, losses, costs, damages and liabilities of any kind pursuant to the operation of the business, including attorneys fees, arising in any manner out of the negligence or intentional or willful misconduct of:

- (A) The applicant;

- (B) The applicant's officers, employees, agents and/or supervisors; or
- (C) If the business is a corporation, partnership or other entity, the officers, directors or partners.

(12) Certification of satisfaction of insurance requirements, for applicants applying for a permit to sell firearms;

(13) The date, location and nature of all criminal convictions of the applicant, if any, in any jurisdiction in the United States.

(b) The application shall be accompanied by a nonrefundable fee for administering this Article as established by City Council/County Board of Supervisors resolution.

**Sec. 4 Investigation by Chief of Police/Sheriff and employee background checks**

(a) The Chief of Police/Sheriff shall conduct an investigation to determine, for the protection of the public health and safety, whether the law enforcement permit may be issued or renewed. The Chief of Police/Sheriff shall require the following individuals to provide fingerprints, a recent photograph, a signed authorization for the release of pertinent records, and any additional information which the Chief of Police/Sheriff considers necessary to complete the investigation:

- (1) The applicant;
- (2) All persons who will have access to or control of workplace firearms or ammunition, including but not limited to the applicant's employees, agents and/or supervisors, if any.

(b) Prior to issuance or renewal of the permit, the Chief of Police/Sheriff shall inspect the premises to ensure compliance with this Article.

(c) The Chief of Police/Sheriff may grant or renew a law enforcement permit if the applicant or permittee is in compliance with this Article and all other applicable federal, state and local laws.

**Sec. 5 Grounds for permit denial or revocation**

(a) The Chief of Police/Sheriff shall deny the issuance or renewal of a law enforcement permit, or shall revoke an existing permit, if the operation of the business would not or does not comply with federal, state or local law, or if the applicant or permittee:

- (1) Is under 21 years of age;
- (2) Is not licensed as required by all applicable federal, state and local laws; *[A jurisdiction may choose to replace this language with: "(2) Is not licensed as a dealer in firearms under all applicable federal, state and local laws." This option would*

*prohibit the sale of ammunition by persons not engaged in the business of selling firearms, such as hardware and convenience stores.]*

- (3) Has made a false or misleading statement of a material fact or omission of a material fact in the application for a law enforcement permit, or in any other documents submitted to the Chief of Police/Sheriff pursuant to this Article. If a permit is denied on this ground, the applicant is prohibited from reapplying for a permit for a period of five years;
- (4) Has had a license or permit to sell, lease, transfer, purchase or possess firearms or ammunition from any jurisdiction in the United States revoked, suspended or denied for good cause within the immediately preceding five years;
- (5) Has been convicted of:
  - (A) An offense which disqualifies that person from owning or possessing a firearm under federal, state or local law, including, but not limited to, the offenses listed in Penal Code Sections 12021 and 12021.1;
  - (B) An offense relating to the manufacture, sale, possession or use of a firearm or dangerous or deadly weapon or ammunition therefor;
  - (C) An offense involving the use of force or violence upon the person of another;
  - (D) An offense involving theft, fraud, dishonesty or deceit;
  - (E) An offense involving the manufacture, sale, possession or use of a controlled substance as defined by the state Health and Safety Code;
- (6) Is within a class of persons defined in Welfare and Institutions Code Sections 8100 or 8103; or
- (7) Is currently, or has been within the past five years, an unlawful user of or addicted to a controlled substance as defined by the Health and Safety Code.

(b) Employees, agents or supervisors of the applicant or permittee may not have access to or control over workplace firearms or ammunition until the Chief of Police/Sheriff has conducted an investigation pursuant to Sec. 4(a)(2), and verified that none of the conditions listed in Sec. 5(a)(1), (4), (5), (6) or (7) exist, as applied to those employees, agents or supervisors. A new law enforcement investigation and background verification of such persons must be conducted each time the permittee renews his or her permit, or applies for a new permit. Except as provided in subsection (c), the Chief of Police/Sheriff shall deny the issuance or renewal of a law enforcement permit, or shall revoke an existing permit, if the applicant or permittee allows any employee, agent or supervisor to have access to or control over workplace firearms or ammunition prior to the completion of the law enforcement investigation and background

verification of those persons, or if those persons have not undergone the law enforcement investigation and background verification process within the last 365 days.

(c) Where an applicant is applying for a law enforcement permit to sell, lease or transfer firearms or ammunition within the first 90 days of the effective date of this Article, and where the applicant has a pre-existing firearms dealer business which complies with all applicable federal, state and local laws, or is not a firearms dealer but is already engaged in the sale of ammunition:

(1) The applicant's current employees, agents or supervisors may continue to have access to or control over workplace firearms and ammunition pending the completion of the Chief of Police's/Sheriff's investigation and background verification.

(2) Where one or more of the applicant's employees, agents or supervisors are found to be in violation of the conditions enumerated in subsection (b), the applicant shall have 21 days from the mailing of written notification from the Chief of Police/Sheriff to verify that such persons have been removed or reassigned so that they no longer have access to or control of workplace firearms or ammunition. Failure of the applicant to comply with this subsection shall cause the Chief of Police/Sheriff to deny the application for a law enforcement permit.

(d) The law enforcement permit of any person or entity found to be in violation of any of the provisions of this Article may be revoked.

#### Sec. 6 On-site security

(a) If the proposed or current business location is to be used at least in part for the sale of firearms, the permitted place of business shall be a secure facility within the meaning of Penal Code Section 12071(c)(2).<sup>37</sup>

(b) If the proposed or current business location is to be used at least in part for the sale of firearms, all heating, ventilating, air-conditioning, and service openings shall be secured with steel bars or metal grating.

(c) Any time a permittee is not open for business, every firearm shall be stored in one of the following ways:

(1) In a locked fireproof safe or vault in the licensee's business premises that meets the standards for a gun safe implemented by the Attorney General pursuant to Penal Code Section 12088.2; or

<sup>37</sup> A "secure facility" is defined by Penal Code § 12071(c)(2) as a building that meets certain specifications, including: certain types of locks on all doorways; steel bars on all windows; and steel bars, metal grating, or an alarm system on all heating, ventilating, air-conditioning, and service openings. State law allows a firearms dealer to avoid these requirements by utilizing other security features. See Penal Code § 12071(b)(14). Penal Code § 12071(b)(15) explicitly allows local jurisdictions to impose security requirements on firearms dealers that are stricter or at a higher standard than those imposed by state law.

(2) Secured with a hardened steel rod or cable of at least one-fourth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a boltcutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises. No more than five firearms may be affixed to any one rod or cable at any time.

(d) Any time a permittee is open for business, every firearm shall be unloaded, inaccessible to the public and secured using one of the following three methods, except in the immediate presence of and under the direct supervision of an employee of the permittee:

(1) Secured within a locked case so that a customer seeking access to the firearm must ask an employee of the permittee for assistance;

(2) Secured behind a counter where only the permittee and the permittee's employees are allowed. During the absence of the permittee or a permittee's employee from the counter, the counter shall be secured with a locked, impenetrable barrier that extends from the floor or counter to the ceiling; or

(3) Secured with a hardened steel rod or cable of at least one-fourth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a boltcutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises. No more than five firearms may be affixed to any one rod or cable at any time.

(e) Any time a permittee is open for business, any ammunition that is not principally for use in pistols, revolvers, or other firearms capable of being concealed upon the person, as that term is defined in Penal Code § 12001(a), shall be inaccessible to the public and secured using one of the methods mentioned in subsection (d)(1) or (2), except in the immediate presence of and under the direct supervision of an employee of the permittee.<sup>38</sup>

(f) The permitted business location shall be secured by an alarm system that is installed and maintained by an alarm company operator licensed pursuant to the Alarm Company Act, Business & Professions Code Sections 7590 *et seq.* The alarm system must be monitored by a central station listed by Underwriters Laboratories, Inc., and covered by an active Underwriters Laboratories, Inc. alarm system certificate with a #3 extent of protection.<sup>39</sup>

<sup>38</sup> Penal Code § 12061(a)(2) addresses the storage of handgun ammunition by sellers. That provision is effective January 1, 2010. See AB 962 (De Leon). "Handgun ammunition" is defined as ammunition principally for use in pistols, revolvers, or other firearms capable of being concealed upon the person, as that term is defined in Penal Code § 12001(a). Penal Code § 12060(b).

<sup>39</sup> Underwriters Laboratories, Inc. uses the term "extent of protection" to refer to the amount of alarm protection installed to protect a particular area, room or container. Systems with a #3 extent of protection include complete protection for all accessible openings, and partial motion and sound detection at certain other areas of the premises. For more information, see Central Station Alarm Association, *A Practical Guide to Central Station Burglar Alarm Systems* (3rd ed. 2005).

(g) The permitted business location shall be monitored by a video surveillance system that meets the following requirements:

(1) The system shall include cameras, monitors, digital video recorders, and cabling, if necessary.

(2) The number and location of the cameras are subject to the approval of the Chief of Police/Sheriff. At a minimum, the cameras shall be sufficient in number and location to monitor the critical areas of the business premises, including, but not limited to, all places where firearms or ammunition are stored, handled, sold, transferred, or carried, including, but not limited to, all counters, safes, vaults, cabinets, cases, entryways, and parking lots. The video surveillance system shall operate continuously, without interruption, whenever the permittee is open for business. Whenever the permittee is not open for business, the system shall be triggered by a motion detector and begin recording immediately upon detection of any motion within the monitored area.

(2) In addition, the sale or transfer of a firearm or ammunition shall be recorded by the video surveillance system in such a way that the facial features of the purchaser or transferee are clearly visible.

(3) When recording, the video surveillance system shall record continuously and store color images of the monitored area at a frequency of not less than 15 frames per second.<sup>40</sup> The system must produce retrievable and identifiable images and video recordings on media approved by the Chief of Police/Sheriff that can be enlarged through projection or other means, and can be made a permanent record for use in a criminal investigation. The system must be capable of delineating on playback the activity and physical features of persons or areas within the premises.

(4) The stored images shall be maintained on the business premises of the permittee for a period not less than one year from the date of recordation and shall be made available for inspection by federal, state or local law enforcement upon request.

(5) The video surveillance system must be maintained in proper working order at all times. If the system becomes inoperable, it must be repaired or replaced within fifteen calendar days. The permittee must inspect the system at least weekly to ensure that it is operational and images are being recorded and retained as required.

(6) The permittee shall post a sign in a conspicuous place at each entrance to the premises that states in block letters not less than one inch in height: **THESE PREMISES ARE UNDER VIDEO SURVEILLANCE. YOUR IMAGE MAY BE RECORDED.**

(h) The Chief of Police/Sheriff may impose security requirements in addition to those listed in this section prior to issuance of the law enforcement permit. Failure to fully comply with the

<sup>40</sup> Television in the U.S. has 30 frames per second. However, 15 frames per second is generally described as viewable, and is used in similar regulations. See, e.g., 02-392-013 Me. Code R. 6(6).

requirements of this section shall be sufficient cause for denial or revocation of the law enforcement permit by the Chief of Police/Sheriff.

**Sec. 7 Liability insurance**

(a) If the proposed or current business location is to be used for the sale of firearms, no law enforcement permit shall be issued or reissued unless there is in effect a policy of insurance in a form approved by the City/County and executed by an insurance company approved by the City/County, insuring the applicant against liability for damage to property and for injury to or death of any person as a result of the theft, sale, lease or transfer or offering for sale, lease or transfer of a firearm or ammunition, or any other operations of the business. The policy shall also name the City/County and its officers, employees and agents as additional insureds. The limits of liability shall not be less than \$1,000,000 for each incident of damage to property or incident of injury or death to a person; provided, however, that increased limits of liability may be required by the City Attorney/County Counsel if deemed necessary.

(b) The policy of insurance shall contain an endorsement providing that the policy shall not be canceled until written notice has been given to the City Manager/County Administrator at least 30 days prior to the time the cancellation becomes effective.

(c) Upon expiration of the policy of insurance, and if no additional insurance is obtained, the law enforcement permit is considered revoked without further notice.

**Sec. 8 Location of business premises**

(a) The business shall be carried on only in the building located at the street address shown on the permit. This requirement does not prohibit the permittee from participating in a gun show or event which is authorized by federal, state and local law upon compliance with those laws.

(b) The business premises shall not be located in any district or area that is zoned for residential use, or within 1,500 feet of any school, pre-school, day-care facility, park, community center, place of worship, liquor store, bar, youth center, video arcade, amusement park (not including a temporary carnival or similar event), other permittee as defined in Sec. 1 or residentially zoned district or area.

**Sec. 9 Ammunition sales records**

(a) No permittee or any agents, employees, or other persons acting under the permittee's authority shall sell or otherwise transfer ownership of any ammunition without verifying the identity of the transferee and recording the following information on a form to be provided by the Chief of Police/Sheriff:

- (1) The date of the transaction;
- (2) The name, address and date of birth of the transferee;

(3) The number of the transferee's current driver's license or other government-issued identification card containing a photograph of the transferee, and the name of the governmental authority that issued it;

(4) The brand, type, caliber or gauge, and amount of ammunition transferred;

(5) The transferee's signature; and

(6) The name of the permittee's agent or employee who processed the transaction.

(b) The permittee and any agents, employees, or other persons acting under the permittee's authority shall also, at the time of purchase or transfer, obtain the right thumbprint of the transferee on the above form.

(c) Within five calendar days of a firearm ammunition transfer, the permittee and any agents, employees, or other persons acting under the permittee's authority shall electronically transmit to the Police/Sheriff's Department all of the information set forth in paragraph (a). The electronic transmittal shall be by a method, and in a format, approved by the Chief of Police/Sheriff.

(d) The records created in accordance with this section must be maintained on the business premises of the permittee for a period not less than five years from the date of the recorded transfer and shall be made available for inspection by federal, state or local law enforcement upon request.

(e) Within one year of the effective date of this section, the Chief of Police/Sheriff shall submit a report to the City Council/County Board of Supervisors regarding the ammunition sales records maintained since the effective date of this section. The report shall state information including, but not limited to: the number of prohibited persons who had purchased ammunition and who were identified through use of these records, as well as the number of searches, arrests, and investigations performed, charges filed, convictions obtained and firearms and ammunition seized, as a result of these records.

(f) This section shall not apply if the transferee is:

(1) A "peace officer" as that term is defined in Penal Code § 830 *et seq.*, or a federal law enforcement officer; or

(2) A person licensed as a dealer or collector in firearms pursuant to Chapter 44 (commencing with Sec. 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(g) Effective February 1, 2011, this section shall not apply to the sale or transfer of ammunition that is principally for use in pistols, revolvers, or other firearms capable of being concealed upon the person, as that term is defined in Penal Code § 12001(a).<sup>41</sup>

<sup>41</sup> Penal Code § 12061(a)(3)-(7), (b) addresses records of the sale or transfer of handgun ammunition. Those provisions are effective February 1, 2011. See AB 962 (De Leon). "Handgun ammunition" is defined as ammunition

**Sec. 10 Restricted admittance of minors and other prohibited purchasers**

(a) Where firearm sales activity is the primary business performed at the business premises, no permittee or any of his or her agents, employees, or other persons acting under the permittee's authority shall allow the following persons to enter into or remain on the premises unless accompanied by his or her parent or legal guardian:

(1) Any person under 21 years of age, if the permittee sells, keeps or displays firearms capable of being concealed on the person, provided that this provision shall not prevent a supervisory agent or employee who has the authority to control activities on the business premises from keeping a single firearm capable of being concealed on the person on the business premises for purposes of lawful self-defense; or

(2) Any person under 18 years of age, if the permittee sells, keeps or displays only firearms other than firearms capable of being concealed on the person.

(b) Where firearm sales activity is the primary business performed at the business premises, the permittee and any of his or her agents, employees, or other persons acting under the permittee's authority shall be responsible for requiring clear evidence of age and identity of persons to prevent the entry of persons not permitted to enter the premises pursuant to subsection (a) by reason of age. Clear evidence of age and identity includes, but is not limited to, a motor vehicle operator's license, a state identification card, an armed forces identification card, or an employment identification card which contains the bearer's signature, photograph and age, or any similar documentation which provides reasonable assurance of the identity and age of the individual.

(c) The permittee shall post the following conspicuously at each entrance to the establishment in block letters not less than one inch in height:

(1) If the permittee sells, keeps or displays firearms capable of being concealed on the person, the sign shall state, "FIREARMS ARE KEPT, DISPLAYED OR OFFERED ON THE PREMISES, AND PERSONS UNDER THE AGE OF 21 ARE EXCLUDED UNLESS ACCOMPANIED BY A PARENT OR LEGAL GUARDIAN."

(2) If the permittee sells, keeps or displays only firearms other than firearms capable of being concealed on the person, the sign shall state, "FIREARMS ARE KEPT, DISPLAYED OR OFFERED ON THE PREMISES, AND PERSONS UNDER THE AGE OF 18 ARE EXCLUDED UNLESS ACCOMPANIED BY A PARENT OR LEGAL GUARDIAN."

(d) Where firearm sales activity is the primary business performed at the business premises, no permittee or any of his or her agents, employees, or other persons acting under the permittee's authority shall allow any person to enter into or remain on the premises who the permittee or any

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principally for use in pistols, revolvers, or other firearms capable of being concealed upon the person, as that term is defined in Penal Code § 12001(a). Penal Code § 12060(b).

of his or her agents, employees, or other persons acting under the permittee's authority knows or has reason to know is prohibited from possessing or purchasing firearms pursuant to federal, state, or local law.

**Sec. 11 Inventory reports**

Within the first five business days of April and October of each year, the permittee shall cause a physical inventory to be taken that includes a listing of each firearm held by the permittee by make, model, and serial number, together with a listing of each firearm the permittee has sold since the last inventory period. In addition, the inventory shall include a listing of each firearm lost or stolen that is required to be reported pursuant to Penal Code § 12071(b)(13). Immediately upon completion of the inventory, the permittee shall forward a copy of the inventory to the address specified by the Chief of Police/Sheriff, by such means as specified by the Chief of Police/Sheriff. With each copy of the inventory, the permittee shall include an affidavit signed by an authorized agent or employee on behalf of the permittee under penalty of perjury stating that within the first five business days of that April or October, as the case may be, the signer personally confirmed the presence of the firearms reported on the inventory. The permittee shall maintain a copy of the inventory on the premises for which the law enforcement permit was issued for a period of not less than five years from the date of the inventory and shall make the copy available for inspection by federal, state or local law enforcement upon request.

**Sec. 12 Display of law enforcement permit**

The law enforcement permit, or a certified copy of it, shall be displayed in a prominent place on the business premises where it can be easily seen by those entering the premises.

**Sec. 13 Issuance of law enforcement permit -- Duration**

(a) A law enforcement permit expires one year after the date of issuance. A permit may be renewed for additional one-year periods if the permittee submits a timely application for renewal, accompanied by a nonrefundable renewal fee established by City Council/County Board of Supervisors resolution. Renewal of the permit is contingent upon the permittee's compliance with the terms and conditions of the original application and permit, as detailed in this Article. Police/Sheriff's department personnel shall inspect the permitted business premises for compliance with this Article prior to renewal of the permit. The renewal application and the renewal fee must be received by the Police/Sheriff's department no later than 45 days before the expiration of the current permit.

(b) A decision regarding issuance or renewal of the law enforcement permit may be appealed in the manner provided in Sec. 20 of this Article.

**Sec. 14 Nonassignability**

A law enforcement permit issued under this Article is not assignable. Any attempt to assign a law enforcement permit shall result in revocation of the permit.

**Sec. 15 Compliance by existing businesses**

A person engaged in the business of selling, leasing, or otherwise transferring any firearm or ammunition on the effective date of this Article shall, within 90 days of the effective date, comply with this Article. However, any person whose business is located in any location described in Sec. 8 of this Article may continue to sell, lease, or transfer firearms and ammunition for up to one year after the effective date of this Article. After the one-year period has expired, all such persons are prohibited from selling, leasing or transferring firearms or ammunition in the named locations.

**Sec. 16 Law enforcement inspections**

Permittees shall have their places of business open for inspection by federal, state and local law enforcement during all hours of operation. The Police/Sheriff's department shall conduct periodic inspections of the permittee's place of business without notice. Permittees shall maintain all records, documents, firearms and ammunition in a manner and place accessible for inspection by federal, state and local law enforcement.

**Sec. 17 Warning regarding secondary sales**

A permittee shall post conspicuously within the licensed premises the following warning in block letters not less than one inch in height: WITH FEW EXCEPTIONS, IT IS A CRIME TO SELL OR GIVE A FIREARM TO SOMEONE WITHOUT COMPLETING A DEALER RECORD OF SALE (DROS) FORM AT A LICENSED FIREARMS DEALERSHIP.

**Sec. 18 Penalties**

*[Penalties for the violation of provisions of this ordinance may vary based on the law enforcement and policy needs of each community. Jurisdictions are encouraged to consult with local law enforcement to develop appropriate penalties. While the language below makes each violation of any provision of this Article a misdemeanor, jurisdictions may choose to make violations of particular provisions an infraction instead.]*

(a) Any person violating any of the provisions of this Article shall be guilty of a misdemeanor. Any person convicted of a misdemeanor under the provisions of this Article shall be punished by a fine of not more than \$1,000 or by imprisonment for a period not exceeding six months, or by both. Each such person shall be guilty of a separate offense for each and every day during any portion of which a violation of any provision of this Article is committed or continued by such person and shall be punishable accordingly.

(b) In addition to any other penalty or remedy, the City Attorney/County Counsel may commence a civil action to seek enforcement of these provisions.

**Sec. 19 Report of permit revocation to federal and state authorities**

In addition to any other penalty or remedy, the City Attorney/County Counsel shall report any person or entity whose law enforcement permit is revoked pursuant to this Article to the

Bureau of Firearms of the California Department of Justice and the Bureau of Alcohol, Tobacco, Firearms & Explosives within the U.S. Department of Justice.

**Sec. 20          Hearing for permit denial or revocation**

(a)      Within ten days of the Chief of Police/Sheriff mailing a written denial of the application or revocation of the permit, the applicant may appeal by requesting a hearing before the Chief of Police/Sheriff. The request must be made in writing, setting forth the specific grounds for appeal. If the applicant submits a timely request for an appeal, the Chief of Police/Sheriff shall set a time and place for the hearing within 30 days.

(b)      The Chief of Police/Sheriff shall provide a written decision regarding the appeal within 14 calendar days of the hearing. An applicant may appeal the decision of the Chief of Police/Sheriff to the {appropriate government body. The appeal process should also be detailed or referenced here}.

**Sec. 21          Severability clause**

If any section, subsection, sentence or clause of this Article is for any reason declared unconstitutional or invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the constitutionality, validity or enforceability of the remaining portions of this Article or any part thereof. The City Council/County Board of Supervisors hereby declares that it would have adopted this Article notwithstanding the unconstitutionality, invalidity or unenforceability of any one or more of its sections, subsections, sentences or clauses.

## ARTICLE 2 LAND USE PERMITS

*[This model requires both firearms dealers and ammunition sellers to obtain a land use permit as well as a law enforcement permit. Alternatively, jurisdictions may choose to make the land use permit requirement in Article 2 of this model applicable only to firearms dealers, and not to persons and entities that sell only ammunition.]*

### Sec. 1           Firearm and ammunition sales

(a)   Purpose. The purpose of this section is to provide for the appropriate location of any person, corporation, partnership or other entity engaging in the business of selling, leasing, or otherwise transferring any firearm or ammunition (hereinafter "firearms dealer or ammunition seller") through the permitting process.

(b)   Permit Requirement. It is unlawful for any firearms dealer or ammunition seller to sell, lease or transfer firearms or ammunition unless the dealer or seller has obtained a land use permit pursuant to this chapter and a law enforcement permit as provided under Article 1 of this chapter. Subject to the restrictions listed below, firearms dealers and ammunition sellers are permitted in [enumerate permitted districts, e.g., commercial, industrial, etc.]. Firearms dealers and ammunition sellers are prohibited in all other land use districts.

(c)   Procedure. An applicant for a land use permit shall apply to the planning commission by application prescribed by the City/County in the manner provided.

(d)   Location. A land use permit for the sale of firearms or ammunition will not be issued if the proposed business premises are located in any district or area that is zoned for residential use, or within 1,500 feet of any school, pre-school, day-care facility, park, community center, place of worship, liquor store, bar, youth center, video arcade, amusement park (not including a temporary carnival or similar event), other firearms dealer or ammunition seller or residentially zoned district or area.

(e)   Other Criteria. The planning commission shall approve or conditionally approve a land use permit application only if, on the basis of the application, plans, materials, and testimony submitted at the hearing, the planning commission finds:

(1)   The location of the proposed land use is in accordance with the general plan of City/County; and

(2)   The location, size, design, and operating characteristics of the proposed use will be compatible with and will not be detrimental to the public health, safety or welfare of persons residing or working in or adjacent to the proposed land use and the surrounding neighborhood.

(f)   Public Hearing and Notice Required. A public hearing shall be held with reference to an application for a land use permit. Notice for the public hearing shall be set forth as follows:

(1)   The contents of a public notice must include the following:

- (A) Date, time, and place of the public hearing;
- (B) Identity of the hearing body or hearing officer;
- (C) General explanation of the matter to be considered and where more specific information may be obtained;
- (D) General description in text or by diagram of the location of the real property/parcel or building which is the subject of the hearing; and
- (E) A statement that any interested party or agent may appear and be heard.

(2) [Insert any additional desired notice provisions.]

(g) Conditions. An approved land use permit is not effective until the applicant satisfies the following terms and conditions:

- (1) Possession of a valid law enforcement permit as required under Article 1;
- (2) Possession of all licenses and permits required by federal, state and local law; and
- (3) Compliance with the requirements of the City's/County's building code, fire code and other technical codes and regulations which govern the use, occupancy, maintenance, construction or design of the building or structure. The use permit shall require that the applicant obtain a final inspection from the City/County building official demonstrating code compliance before the applicant may begin business at the premises at issue.

## Sec. 2 Nonconforming uses

A firearms dealer or ammunition seller located in any location described in Sec. 1(d) may continue to sell, lease or transfer firearms and ammunition for up to one year after the effective date of this Article, provided the dealer or seller obtains a law enforcement permit from the City/County, pursuant to Article I, within 90 days of the effective date of that Article. After the one-year period has expired, all firearms dealers and ammunition sellers are prohibited from selling, leasing or transferring firearms and ammunition in the named locations.

## Sec. 3 Severability clause

If any section, subsection, sentence or clause of this Article is for any reason declared unconstitutional or invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the constitutionality, validity or enforceability of the remaining portions of this Article or any part thereof. The City Council/County Board of Supervisors hereby declares that it would have adopted this Article notwithstanding the unconstitutionality, invalidity or unenforceability of any one or more of its sections, subsections, sentences or clauses.

## II. Common Legal Challenges to Gun Violence Prevention Laws

Litigation challenging firearm laws has become a routine strategy of the gun industry, the National Rifle Association and other "gun rights" groups. These challenges sometimes raise the following issues: (1) the Second Amendment to the U.S. Constitution and state right to bear arms provisions; (2) equal protection; (3) due process; (4) the privilege against self-incrimination; and (5) in the context of local gun regulations, preemption and local authority to regulate firearms. This section provides an overview of these issues.

### A. The Second Amendment and State Right to Bear Arms

The Second Amendment and state right to bear arms provisions are often raised as a bar to gun violence prevention laws and regulations. In fact, these provisions permit a broad range of gun violence prevention measures.

#### 1. The Second Amendment

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." Until recently, the courts, including the United States Supreme Court, interpreted and applied the Amendment to protect a right to keep and bear arms only in relation to service in a well-regulated militia.<sup>42</sup> However, in 2008, the Supreme Court issued a historic decision in *District of Columbia v. Heller*, holding that the Second Amendment confers an individual right to possess handguns in the home for self-defense, unrelated to service in a well-regulated state militia.<sup>43</sup> On June 28, 2010, the Supreme Court in *McDonald v. City of Chicago*, held that the Second Amendment as interpreted in *Heller* applies to state and local governments in addition to the federal government.<sup>44</sup>

In *Heller*, the Court struck down the District's ban on handgun possession, finding that "the inherent right of self-defense has been central to the Second Amendment" and that handguns are "overwhelmingly chosen by American society" for self-defense in the home, "where the need for defense of self, family, and property is most acute."<sup>45</sup> The Court also struck down the District's requirement that firearms in the home be stored unloaded and disassembled or bound by a trigger lock or similar device, because the law contained no exception for self-defense.

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<sup>42</sup> Prior to June 2008, the U.S. Supreme Court last addressed the scope of the Second Amendment in *United States v. Miller*, 307 U.S. 174 (1939). In that case, the Court rejected a Second Amendment challenge brought by two individuals charged with violating a federal law prohibiting the interstate transportation of sawed-off shotguns. The Court held that the "obvious purpose" of the Amendment is to "assure the continuation and render possible the effectiveness" of the state militia, and the Amendment "must be interpreted and applied with that end in view." *Id.* at 178. After *Miller*, the scope of the Second Amendment was addressed in more than 200 federal and state appellate cases. These decisions overwhelmingly rejected Second Amendment challenges to firearm laws. See LCAV's web site, [www.lcav.org](http://www.lcav.org), for summaries of over 200 federal and state appellate cases prior to *District of Columbia v. Heller* rejecting Second Amendment challenges to firearms laws.

<sup>43</sup> *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008).

<sup>44</sup> *McDonald v. City of Chicago*, No. 08-1521, 2010 U.S. LEXIS 5523 (June 28, 2010).

<sup>45</sup> *Id.* at 2817.

Although the *Heller* decision established a new individual right to “keep and bear arms,” the opinion made it clear that the right is not unlimited, and should not be understood as “a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.”<sup>46</sup> The Court provided examples of gun laws that it deems “presumptively lawful” under the Second Amendment, including those which:

- Prohibit the possession of firearms by felons and the mentally ill;
- Forbid firearm possession in sensitive places such as schools and government buildings; and
- Impose conditions and qualifications on the commercial sale of firearms.

The Court made clear that this list is not exhaustive.<sup>47</sup> The Court in *McDonald* reiterated this list.<sup>48</sup> The Court in *Heller* also concluded that the Second Amendment is consistent with laws banning “dangerous and unusual weapons” not “in common use at the time,” such as M-16 rifles and other firearms that are most useful in military service.<sup>49</sup> Finally, the Court declared that its analysis should not be read to suggest “the invalidity of laws regulating the storage of firearms to prevent accidents.”<sup>50</sup>

The *Heller* and *McDonald* decisions failed to articulate a legal standard of scrutiny, or test, to be applied in evaluating other laws under the Second Amendment. However, these decisions leave no doubt that regulation of firearms remains legally permissible. Even after *Heller* and *McDonald*, most common sense gun violence prevention measures, such as those contained in this model law, are likely to be upheld. As mentioned above, the Court made clear that the right to bear arms is not unlimited and that its list of presumptively lawful regulations was not exhaustive. Moreover, the Court specifically declared that its analysis should not cast doubt on laws imposing conditions and qualifications on the commercial sale of firearms.<sup>51</sup>

For more information about the Second Amendment, including summaries of federal appellate cases decided after *Heller*, see: [http://www.lcav.org/content/secondamend\\_index.asp](http://www.lcav.org/content/secondamend_index.asp).

## 2. State Right to Bear Arms

The constitutions of most states recognize a “right to bear arms.” However, the California Constitution contains no “right to bear arms” provision. In *Kasler v. Lockyer*, 2 P.3d 581, 586 (Cal. 2000), the California Supreme Court rejected a challenge to the state ban on assault weapons, confirming that “no mention is made in [the California Constitution] of a right to bear arms,” and “regulation of firearms is a proper police function.”

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<sup>46</sup> *Id.* at 2816.

<sup>47</sup> *Id.* at 2817 n.26.

<sup>48</sup> *McDonald*, 2010 U.S. LEXIS 5523 at \*79.

<sup>49</sup> 128 S. Ct. at 2817.

<sup>50</sup> *Id.* at 2820. In addition, the *Heller* Court did not invalidate D.C.’s requirement that firearm owners be licensed. Mr. Heller’s attorney conceded that the licensing scheme was not, in itself, unlawful. Therefore, the Court did not address this requirement. *Id.* at 2819.

<sup>51</sup> *Heller*, 128 S. Ct. at 2816-2817; *McDonald*, 2010 U.S. LEXIS 5523 at \*79.

## B. Equal Protection

The Fourteenth Amendment provides that no state shall “deny to any person within its jurisdiction the equal protection of the laws.” However, when a law makes a classification neither “involving fundamental rights nor proceeding along suspect lines,” the law will withstand constitutional scrutiny so long as it bears a rational relationship to a legitimate governmental interest.<sup>52</sup>

In *Suter v. City of Lafayette*, 67 Cal. Rptr. 2d 420 (Cal. Ct. App. 1997), a firearms dealer brought an equal protection challenge against a law prohibiting minors from entering premises where the sale of firearms is the primary business performed at the site. The court held that “[b]ecause minors have a legitimate reason for entering sports or department stores that sell merchandise other than weapons or weapons-related goods, a rational basis exists for distinguishing between such businesses and those that primarily sell weapons.”<sup>53</sup> The dealer also claimed that the requirement that firearms dealers carry liability insurance was a denial of equal protection because it discriminates between firearms dealers and other businesses selling products that can and do cause injury, and because it fails to discriminate between firearms dealers on the basis of size and probable volume of sales. The court also rejected these claims.<sup>54</sup>

In *Koscielski v. Minneapolis*, 435 F.3d 898 (8th Cir. 2006), a firearms dealer brought an equal protection challenge against the City of Minneapolis’s zoning ordinance requiring firearms dealers to obtain conditional use permits and locate within particular zones and only in locations sufficiently distant from day care centers and churches. The court first held that the dealer’s claim involved neither a suspect classification nor a fundamental right. Therefore, the law would be found constitutional if it bore a rational relationship to a legitimate governmental interest. Upholding the law, the court concluded, “the implications for public safety warrant regulating and zoning firearms dealerships differently than other retail establishments.”<sup>55</sup>

The majority of cases also have rejected equal protection challenges to firearms laws under the U.S. Constitution and analogous state constitutional provisions.<sup>56</sup>

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<sup>52</sup> *Heller v. Doe*, 509 U.S. 312, 320 (1993), see also *Schweiker v. Wilson*, 450 U.S. 221, 230 (1981). Classifications along “suspect lines” can include a suspect class (e.g., race) or quasi-suspect class (e.g., gender). See, e.g., *Lavia v. Pennsylvania*, 224 F.3d 190, 200 (3d Cir. 2000).

<sup>53</sup> *Suter*, 67 Cal. Rptr. 2d at 434.

<sup>54</sup> *Id.* at 435-436.

<sup>55</sup> *Koscielski*, 435 F.3d at 902.

<sup>56</sup> See, e.g., *United States v. Lewitzke*, 176 F.3d 1022 (7th Cir. 1999) (rejecting equal protection challenge to federal law banning possession of firearm by person convicted of domestic violence misdemeanor); *United States v. McKenzie*, 99 F.3d 813 (7th Cir. 1996) (rejecting equal protection challenge to federal law banning possession of firearm by felon); *California Rifle and Pistol Ass’n v. City of West Hollywood*, 78 Cal. Rptr. 2d 591, 605-606 (Cal. Ct. App. 1998) (rejecting equal protection challenge to ban on the sale of “junk guns”); *Olympic Arms v. Buckles*, 301 F.3d 384 (6th Cir. 2002) (rejecting equal protection challenge to the definition of “assault weapon” in the 1994 federal assault weapon ban, which expired in 2004). But see *Fraternal Order of Police v. United States*, 152 F.3d 998 (D.C. Cir. 1998) (upholding equal protection challenge against federal law banning possession of firearms by government employees convicted of domestic violence misdemeanors but allowing possession by government employees convicted of domestic violence felonies).

Note that the decisions in *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008) and *McDonald v. City of Chicago*, No. 08-1521, 2010 U.S. LEXIS 5523 (June 28, 2010) did not address equal protection claims, but the Court's *dicta* suggests that the rational basis test is not appropriate for reviewing firearms regulation under the Second Amendment.<sup>57</sup> The Court did not set a standard for reviewing firearms laws. Although the Court in *McDonald* called the right "fundamental" for other purposes, the Court did not consider whether the Second Amendment right is a fundamental right for purposes of equal protection review. It is likely that future cases will resolve these issues.

### C. Due Process

The due process clause of the Fourteenth Amendment to the U.S. Constitution provides that no person shall be deprived of "life, liberty, or property, without due process of law...." Courts have held that the due process clause includes both substantive and procedural guarantees.

Substantively, a law failing to give a person of ordinary intelligence a reasonable opportunity to know what is prohibited, or failing to provide explicit standards for those who apply the law, violates due process under the federal constitution. As the U.S. Supreme Court has explained, "[i]t is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined."<sup>58</sup> Note, however, that clearly written laws also can violate due process when they are overbroad, impinging on constitutionally-protected conduct.<sup>59</sup>

Procedural due process imposes constraints on governmental decisions which deprive individuals of "liberty" or "property" interests within the meaning of the due process clause of the Fifth or Fourteenth Amendment.<sup>60</sup> Courts have held that the due process clause generally requires the government to provide the affected person with the opportunity to be heard at a meaningful time and in a meaningful manner, before the deprivation of the liberty or property interest.<sup>61</sup>

In *Suter v. City of Lafayette*, 67 Cal. Rptr. 2d 420, 433 (Cal. Ct. App. 1997), a firearms dealer challenged the City of Lafayette's requirements that firearms dealers obtain land use and police permits, and the city's zoning ordinance, which limited firearms dealers to areas zoned for retail or general commercial uses. The court held that these restrictions do not violate the substantive due process clause, noting that:

As the operation of a firearms dealership is a commercial enterprise, there is a rational basis for confining that operation to commercially zoned areas. In addition, because dealerships can be the targets of persons who are or should be excluded from possessing weapons, it is reasonable to insist that dealerships be located away from residential areas, schools, liquor stores and bars.<sup>62</sup>

<sup>57</sup> *Heller*, 128 S.Ct. at 2818 n.27.

<sup>58</sup> *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

<sup>59</sup> *Id.* at 114-15.

<sup>60</sup> *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

<sup>61</sup> *Id.*

<sup>62</sup> *Suter*, 67 Cal. Rptr. 2d at 433.

The court also noted that substantive due process allows for imprecise zoning or licensing ordinances, because of the need for government "in large urban areas to delegate broad discretionary power to administrative bodies."<sup>63</sup>

In *Baer v. Wauwatosa*, 716 F.2d 1117 (7th Cir. 1983), a licensed gun dealer brought an action against a city, mayor, and council members, alleging that by taking away his license to sell guns, the defendants had deprived him of property without due process of law. The city had revoked the license when the dealer was convicted of a felony. The court held that the dealer was deprived of "property" within the meaning of the due process clause when the city revoked his license, but that the procedures used for the revocation were adequate.<sup>64</sup> The court also held that the revocation of the license did not violate the substantive due process clause, stating:

The sale of guns is fraught with both short-term and long-term danger to the public -- or so at least the Wauwatosa authorities could rationally conclude, and no more is required to uphold the substantive validity of their action under the due process clause. The short-term danger is that the guns will be sold to criminals, children, and others who are, for excellent reasons, forbidden by law to have them; the long-term danger is that the circumstances of sale will encourage people to think of guns as weapons of aggression.<sup>65</sup>

Most courts have rejected due process challenges to firearms laws under the U.S. Constitution and analogous state constitutional provisions.<sup>66</sup>

Note that the decisions in *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008) and *McDonald v. City of Chicago*, No. 08-1521, 2010 U.S. LEXIS 5523 (June 28, 2010), did not address due process claims, but the Court's *dicta* suggests that the rational basis test is not appropriate for reviewing firearms regulation under the Second Amendment.<sup>67</sup> The Court did not set a standard for reviewing firearms laws. It is likely that future cases will resolve these issues.

#### D. Privilege Against Self-Incrimination

The Fifth Amendment to the U.S. Constitution provides in part that no person "shall be compelled in any criminal case to be a witness against himself." Record-keeping requirements

<sup>63</sup> *Id.* at 431.

<sup>64</sup> *Baer*, 716 F.2d at 1122-1123.

<sup>65</sup> *Id.* at 1123.

<sup>66</sup> See, e.g., *United States v. Hutzell*, 217 F.3d 966 (8th Cir. 2000) (rejecting due process challenge to federal law prohibiting possession of firearms by persons convicted of misdemeanor crimes of domestic violence); *United States v. Lim*, 444 F.3d 910 (7th Cir. 2006) (rejecting due process challenge to federal law requiring registration of sawed-off shotguns); *United States v. Edwards*, 182 F.3d 333 (5th Cir. 1999) (rejecting due process challenge to federal law banning possession of firearm by an unlawful user of a controlled substance); *City of Cincinnati v. Langan*, 640 N.E.2d 200 (Ohio Ct. App. 1994) (rejecting due process challenge to local assault weapon ban). But see *Robertson v. City & County of Denver*, 874 P.2d 325 (Colo. 1994) (upholding a due process challenge to portions of the definition of "assault weapon" in local assault weapon ban); *United States v. Vest*, 448 F. Supp. 2d 1002 (S.D. Ill. 2006) (upholding as applied due process challenge to law enforcement exception to federal laws restricting transfer and possession of machine guns).

<sup>67</sup> *Heller*, 128 S.Ct. at 2818 n.27.

violate the "privilege against self-incrimination" when they are directed principally at persons "inherently suspect of criminal activities."<sup>68</sup>

As discussed below, opponents of this model law may argue that the requirement that ammunition sellers maintain a record of each ammunition sale violates the privilege against self-incrimination because it requires purchasers, even those who are prohibited by law from possessing ammunition, to admit they purchased ammunition. However, the type of information recorded pursuant to this model law is neutral on its face, and this part of the model law is directed at ammunition purchasers generally, not a group inherently suspect of criminal activity. This requirement therefore does not violate the privilege against self-incrimination.

### **E. Preemption and Local Authority to Regulate Firearms**

Preemption occurs when a higher level of government removes regulatory power from a lower level of government. For example, Congress may remove legislative authority from the states in certain areas. Likewise, state governments may, in some cases, remove local legislative authority.

#### **1. Federal Preemption**

Under the Supremacy Clause of Article VI of the U.S. Constitution, a federal law is binding on all state and local governments so long as Congress duly enacted the law pursuant to one of its limited powers. When federal law removes state authority (and thus local authority) to regulate a specific subject matter, the process is called "federal preemption." Federal preemption of state law is uncommon in the area of firearms regulation.

Congress may make its intention to preempt an area of state law clear by expressly stating its intent in the language of a statute. Absent such a statement, when considering a challenge to a state or local law based on the claim that regulation of the subject has been preempted by Congress, courts presume that the federal government does not intend to preempt state and local authority.<sup>69</sup> When the challenged law is within an area of traditional state authority, the reviewing court will find preemption only when the court is "absolutely certain" that Congress intended to take away that authority.<sup>70</sup> Courts look for the existence of a pervasive scheme of federal legislation of the particular subject, or an irreconcilable conflict between the federal regulation and the challenged law, to determine congressional intent.<sup>71</sup>

Congress has not expressly preempted the broad field of firearms regulation.<sup>72</sup> Furthermore, courts have held that congressional regulation of firearms does not create a scheme so pervasive

<sup>68</sup> *Haynes v. U.S.*, 390 U.S. 85 (1968), *Garner v. U.S.*, 424 U.S. 648 (1976); *California v. Byers*, 402 U.S. 424 (1971).

<sup>69</sup> *Richmond Baro Gun Club, Inc. v. City of New York*, 896 F. Supp. 276, 285 (E.D.N.Y. 1995), *aff'd*, 97 F.3d 681 (2d Cir. 1996) (upholding New York City's assault weapon ban against a federal preemption challenge).

<sup>70</sup> *Gregory v. Ashcraft*, 501 U.S. 452, 464 (1991) (rejecting a federal preemption challenge to a Missouri constitutional provision setting mandatory retirement age for state judges).

<sup>71</sup> *Richmond*, 896 F. Supp. at 285.

<sup>72</sup> Rather, courts have cited 18 U.S.C. § 927 for the proposition that Congress has expressed an intent *not* to preempt the field of firearms. *See, e.g., Oefinger v. Zimmerman*, 601 F.Supp. 405 (W.D. Pa. 1984) (rejecting a federal preemption challenge to a state law banning machine guns and sawed-off shotguns); *C.D.M. Products, Inc., v. City*

that it leaves no room for state and local law.<sup>73</sup> Thus, absent a specific, irreconcilable conflict between a challenged state or local firearm law and a federal enactment, there is no federal preemption of that state or local law.

## 2. State Preemption

Most state constitutions allocate authority to local governments to regulate in the interests of the public health, safety and welfare (which generally includes regulation of firearms). "State preemption" occurs when a state government removes a portion of a local government's legislative authority. States differ considerably in how and to what extent they preempt the regulation of firearms.

Article XI, § 7 of the California Constitution provides that "[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." A local government's police power under this provision includes the power to regulate firearms.<sup>74</sup> Ordinances enacted pursuant to the police power are valid unless they conflict with state law.<sup>75</sup> A conflict exists if the ordinance contradicts, duplicates, or enters an area occupied by general law, either expressly or by legislative implication.<sup>76</sup>

The California Legislature has expressly preempted the following areas of firearms law: 1) licensing or registration of commercially manufactured firearms; 2) licensing or permitting with respect to the purchase, ownership, possession or carrying of a concealable firearm in the home or place of business; and 3) regulation of the manufacture, sale or possession of "imitation firearms."

California Government Code § 53071 provides:

It is the intention of the Legislature to occupy the whole field of regulation of the registration or licensing of commercially manufactured firearms as encompassed by the

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*of New York*, 350 N.Y.S.2d 500 (N.Y. Sup. Ct. 1973) (rejecting a federal preemption challenge to a local ordinance requiring licensing of wholesale firearm manufacturers and assemblers). 18 U.S.C. § 927 provides that "No provision of this chapter [18 U.S.C. § 921 *et seq.* which contains provisions regulating the licensing of firearms manufacturers and dealers, firearms possession, the carrying of weapons, and armor piercing ammunition] shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together." Note, however, that 18 U.S.C. § 926A provides that, notwithstanding state or local law, a person may transport firearms "from any place where he may lawfully possess and carry such firearm to any other place where he may lawfully possess and carry such firearm" so long as he or she complies with the specified safety standards. Courts have found this provision to supersede local laws regulating transportation of firearms. See, e.g., *Bieder v. United States*, 662 A.2d 185 (D.C. 1995) (reversing conviction for multiple violations of District firearms laws on grounds that trial court failed to allow defense based on 18 U.S.C. § 926A); *Arnold v. City of Cleveland*, 1991 Ohio App. LEXIS 5246 (Ohio Ct. App. 1991) (upholding federal preemption challenge to local law banning transportation of assault weapons). But see *Fresno Rifle & Pistol Club, Inc. v. Van de Kamp*, 746 F. Supp. 1415 (E.D. Cal. 1990) (rejecting federal preemption challenge to state law banning transportation of assault weapons).

<sup>73</sup> *Richmond*, 896 F. Supp. at 285.

<sup>74</sup> *Galvan v. Superior Court of San Francisco*, 452 P.2d 930 (Cal. 1969).

<sup>75</sup> *Sherwin-Williams Co. v. City of Los Angeles*, 844 P.2d 534, 536 (Cal. 1993).

<sup>76</sup> *Id.* at 536-7.

provisions of 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.

California Penal Code § 12026(b) provides:

No permit or license to purchase, own, possess, keep, or carry...shall be required of any citizen of the United States or legal resident over the age of 18 years who resides or is temporarily within this state, and who is not within the excepted classes prescribed by Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, to purchase, own, possess, keep, or carry, either openly or concealed, a pistol, revolver, or other firearm capable of being concealed upon the person within the citizen's or legal resident's place of residence, place of business, or on private property owned or lawfully possessed by the citizen or legal resident.

California Government Code § 53071.5 provides:

By the enforcement of this section, the Legislature occupies the whole field of regulation of the manufacture, sale, or possession of imitation firearms, as defined in section 12550 of the Penal Code, and that section shall preempt and be exclusive of all regulations relating to the manufacture, sale, or possession of imitation firearms, including regulations governing the manufacture, sale, or possession of BB devices and air rifles described in subdivision (g) of Section 12001 of the Penal Code.<sup>77</sup>

Courts will not infer preemption unless the circumstances clearly indicate the Legislature intended to preempt the field.<sup>78</sup>

*Suter v. City of Lafayette*, 67 Cal. Rptr. 2d 420 (Cal. Ct. App. 1997) involved a preemption challenge to an ordinance regulating the location and operation of firearms dealers, and requiring firearms dealers to obtain local land use and police permits. The court of appeal dismissed the action, holding that local governments are not generally excluded by state law from imposing additional requirements on firearms dealers.<sup>79</sup> In fact, the court noted that California Penal Code § 12071 explicitly contemplates local regulation of firearms dealers, including local licensing requirements.

The court in *Suter* found that the ordinance did not conflict with, duplicate, or enter into a field fully occupied by state law and was not, therefore, preempted, with one exception. The court struck down the portion of the ordinance regulating firearm storage, stating that it was preempted by the storage requirements in Penal Code § 12071(b)(14). However, subsequent to that case, the Legislature added Penal Code § 12071(b)(15), which states, "The licensing authority in an

<sup>77</sup> In addition, California generally permits local regulation of sport shooting ranges, but provides that local jurisdictions may not enforce new or amended noise control laws on shooting ranges that are in operation and not in violation of existing law at the time of the enactment of the new or amended noise control ordinance, if there has been no substantial change in the nature or use of the range. Cal. Civ. Code § 3482.1(d).

<sup>78</sup> *California Rifle and Pistol Ass'n, Inc. v. City of West Hollywood*, 78 Cal. Rptr. 2d 591, 600 (Cal. Ct. App. 1998) (holding that state law did not preempt a local ordinance banning the sale of Saturday Night Specials).

<sup>79</sup> *Suter*, 67 Cal. Rptr. 2d at 427.

unincorporated area of a county or within a city may impose security requirements that are more strict or are at a higher standard than those specified in paragraph (14).” Hence, California law does not preempt local governments from imposing requirements on firearms dealers, including licensing and security requirements, to supplement state law.<sup>80</sup>

The California Legislature has not expressly preempted any field related to ammunition sellers or sales. California adopted a law in 2009, AB 962 (De Leon), that governs certain aspects of ammunition sales and transfers, specifically requiring ammunition sellers to create and maintain records of handgun ammunition sales and transfers, and to store handgun ammunition so that it is inaccessible to customers without the assistance of the seller or an employee. However, there is no evidence that the Legislature intended through this law to remove local authority to regulate long gun ammunition sales. While this is an open question for the courts, we believe strong legal arguments exist in support of a variety of local ammunition-related ordinances.

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<sup>80</sup> Note that, in *Fiscal v. City and County of San Francisco*, 70 Cal. Rptr. 3d 324 (Cal. Ct. App. 2008), a court of appeal held that Proposition H, a municipal ordinance prohibiting all handgun possession and the sale, distribution, transfer and manufacture of all firearms and ammunition in San Francisco, was preempted by state law.

### III. Responses to Common Opposition Arguments

Opponents of this model law might argue that it creates undue burdens for firearms dealers and ammunition sellers, especially small businesses, by increasing the costs of doing business. However, the provisions of this model law impose modest costs to businesses. Furthermore, the benefits to public safety detailed in the findings of this model law clearly outweigh the costs imposed on the gun industry. In addition, the security measures required by the law prevent the theft of merchandise and protect the dealer's inventory. Responsible firearms dealers and ammunition sellers already use these measures and should welcome the elimination of competition from irresponsible dealers who present a danger to the public.

Several arguments are sometimes raised specifically in opposition to the record-keeping requirement for ammunition purchases. Some of the most common arguments are that:

- The record-keeping requirement for ammunition purchases will significantly delay transactions and drive customers outside the jurisdiction.
- Congress repealed a similar requirement in 1986, presumably because it was ineffective or costly to enforce.
- The requirement violates the purchaser's right to privacy and will lead to identity theft.
- The requirement is unconstitutional because it violates the privilege against self-incrimination.

These arguments lack merit, as shown by California's recent adoption of a law (AB 962- De Leon) imposing this requirement on all handgun ammunition purchases. The record-keeping requirement will not significantly delay transactions or drive customers outside the jurisdiction. The Sacramento Police Department has estimated that this requirement only adds two minutes to a transaction, significantly less time than if the customers got in their cars and traveled elsewhere to purchase ammunition. The inconvenience to law-abiding citizens is minor and is warranted by the lethal nature of the product being purchased.

It is true that the Firearm Owners' Protection Act of 1986 (FOPA) repealed several ammunition-related provisions of the Gun Control Act of 1968. However, the elimination of almost all federal regulation of ammunition sales and transfers constituted only a fraction of FOPA's sweeping changes to federal firearms regulations.<sup>81</sup> FOPA was sponsored by the gun lobby, and the NRA website currently states that its lobbying arm worked for more than a decade to secure FOPA's passage.<sup>82</sup> The NRA's argument that the ammunition record-keeping provisions of federal law were ineffective is also undermined by California's recent adoption of AB 962. This law is based on the experiences in Los Angeles and Sacramento (discussed above), which showed that a record-keeping requirement for ammunition sales can be quite effective. In addition, technological advances since the date of FOPA now allow records to be transmitted electronically, making enforcement less burdensome. Moreover, the federal record-keeping law

<sup>81</sup> FOPA also limited the number of inspections of dealers' premises ATF could conduct without a search warrant; prevented a central federal database of firearms, firearms owners, or firearms transactions; legalized sales by dealers at gun shows within the same state; and loosened the requirement of a federal license for persons engaged in the business of firearms sales. Pub. L. No. 99-308.

<sup>82</sup> National Rifle Association, *About NRA-ILA, Who We Are, And What We Do*, at <http://www.nra.org/About/>.

was difficult to enforce because state and local law enforcement agencies were required to petition the Secretary of the Treasury for access to the sales logs. AB 962 and this model law, in contrast, allow state and local law enforcement to independently access the records.

The record-keeping requirement does not violate the purchaser's right to privacy or lead to identity theft. Only the seller and law enforcement are granted access to the information that the ammunition purchaser must provide. This information is identical to the information that a person purchasing a firearm must provide. There is no evidence that identity theft has ever occurred in connection with a firearm sale. Accordingly, there is no reason to believe that ammunition sellers or law enforcement officers will steal an ammunition purchaser's identity.

Moreover, the requirement that ammunition sellers maintain a record of each ammunition sale does not violate the privilege against self-incrimination. As noted above, record-keeping requirements violate the "privilege against self-incrimination" when they are directed principally at persons "inherently suspect of criminal activities."<sup>83</sup> However, the type of information recorded pursuant to this model law is neutral on its face, and this provision is directed at ammunition purchasers generally, not a group inherently suspect of criminal activity. This requirement therefore does not violate the privilege against self-incrimination.

Finally, opponents of the requirement that firearms dealers provide an inventory of their merchandise to local law enforcement every six months sometimes argue that this requirement constitutes "registration" of commercially manufactured firearms and is therefore preempted by California Government Code § 53071. However, "registration" refers to a system that records the *identity* of the purchasers or owners of firearms along with information about the firearms purchased or owned by those individuals. The inventory requirement described in this model law does not involve recording information about the purchasers or owners of firearms. As a result, it is not a registration requirement and is not preempted.

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<sup>83</sup> *Haynes v. U.S.*, 390 U.S. 85 (1968); *Garner v. U.S.*, 424 U.S. 648 (1976); *California v. Byers*, 402 U.S. 424 (1971).

**Conclusion**

LCAV hopes that this report will be useful to local jurisdictions in California considering the adoption of ordinances to regulate firearms dealers and/or ammunition sellers. LCAV is available to provide additional legal research, analysis, and drafting assistance to those seeking to enact this or other laws to reduce gun violence. Please see [www.lcav.org](http://www.lcav.org) for more information about our services, and contact us at 415-433-2062 if we can be of assistance.

For significant developments regarding dealer regulations in 2009, see LCAV's Recent Developments in Federal and State Law (by firearms policy) page.

The following material is from LCAV's February 2008 edition of Regulating Guns in America: An Evaluation and Comparative Analysis of Federal, State and Selected Local Gun Laws

## Dealer Regulations

### Background

A firearms dealer is a person licensed by the federal government to engage in the business of purchasing and reselling firearms. Once licensed, a dealer may purchase unlimited quantities of firearms through the mail, at wholesale prices, without being subject to background checks or state waiting periods, if any.

As discussed below, federally licensed firearms dealers (FFLs) must comply with several federal statutes, including those requiring dealers to initiate background checks on unlicensed purchasers, document gun sales and report the loss or theft of a firearm. Federal law does not require all firearm sellers to obtain a license, however. A person who "makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms" is exempt from federal licensing laws.<sup>1</sup>

### Summary of Federal Law

*Licensing Requirements:* Federal law makes it unlawful for any person except a licensed dealer to engage in the business of dealing in firearms.<sup>2</sup> As applied to a firearms dealer, the term "engaged in the business" is defined as:

[A] person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms, but such term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms.<sup>3</sup>

The Gun Control Act of 1968<sup>4</sup> established the federal licensing system for firearms dealers. According to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), however, that system was "overly simple" from 1968 until 1993.<sup>5</sup> During that time, any person who was over 21, paid a \$10 annual fee, had premises from which to operate, and was not prohibited from possessing firearms was issued a license.<sup>6</sup> As a result, the number of FFLs soared, reaching a peak of more than 284,000 in 1992.<sup>7</sup> In 1993, ATF

<sup>1</sup> 18 U.S.C. § 921(a)(21)(C). Additional information about unlicensed sellers is contained in the section on Private Sales.

<sup>2</sup> 18 U.S.C. § 922(a)(1)(A).

<sup>3</sup> 18 U.S.C. § 921(a)(21)(C).

<sup>4</sup> 18 U.S.C. § 922.

<sup>5</sup> Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, *Commerce in Firearms in the United States* 11 (Feb. 2000).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

estimated that 46% of all FFLs conducted no business at all, but used their licenses to buy and sell firearms in violation of state and local zoning or tax laws.<sup>8</sup>

In 1993 and 1994, Congress adopted laws to strengthen the licensing system. The 1993 Brady Handgun Violence Prevention Act increased the license fee to \$200 for the first three years and \$90 for each additional three-year period.<sup>9</sup> That law also required applicants to certify that they had informed local law enforcement of their intent to apply for a license.<sup>10</sup> The Violent Crime Control and Law Enforcement Act of 1994 required applicants to submit photographs and fingerprints, and to certify that their business was not prohibited by state or local laws, and would, within 30 days, comply with such laws.<sup>11</sup>

The FFL population decreased substantially as a result of these reforms. By 1997, after the first three-year cycle of relicensing under the new laws had been complete, the number of FFLs had dropped by 49% nationwide, to 107,554.<sup>12</sup> As of December 1, 1999, that number had fallen to 103,845, the lowest number since 1969.<sup>13</sup> The total number of FFLs has remained significantly below pre-reform levels. As of 2007, there were 108,842 FFLs nationwide.<sup>14</sup> The number of "Type I" FFLs<sup>15</sup> saw an even more dramatic decline since the reforms of the early 1990's. The number of Type I FFLs dropped 79 percent between 1994 and 2007 (from 245,628 to 50,630).<sup>16</sup>

According to ATF, the reduction in the number of FFLs has been beneficial because it has enabled ATF to inspect a higher proportion of licensees.<sup>17</sup> ATF's inspection of FFLs remains inadequate, however. The U.S. Department of Justice Office of the Inspector General issued a report in July 2004 assessing the effectiveness of ATF's program for inspecting FFLs. That report stated:

We found that the ATF's inspection program is not fully effective for ensuring that FFLs comply with federal firearms laws because inspections are infrequent and of inconsistent quality, and follow-up inspections and adverse actions have been sporadic. Specifically, the ATF does not conduct in-person inspections on all applicants before licensing them to sell guns, and ATF compliance inspections of active dealers, including large-scale retailers, are infrequent and vary in quality. Even when numerous or serious violations were found, the ATF did not uniformly

<sup>8</sup> *Id.* at 13.

<sup>9</sup> 18 U.S.C. § 923(a)(3)(B).

<sup>10</sup> 18 U.S.C. § 923(d)(1)(F)(iii).

<sup>11</sup> 27 C.F.R. § 478.44(a)(1)(ii); 18 U.S.C. § 923(d)(1)(F)(i), (ii).

<sup>12</sup> Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, *Commerce in Firearms in the United States* 14 (Feb. 2000).

<sup>13</sup> *Id.* at 15.

<sup>14</sup> Federal firearms licensee totals as of November 8, 2007 were provided by the U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives.

<sup>15</sup> A "Type I" license is the basic license required for selling firearms (as opposed to manufacturing firearms or selling ammunition or curios).

<sup>16</sup> Violence Policy Center, *An Analysis of the Decline in Gun Dealers: 1994 to 2007* 3 (Aug. 2007). The Violence Policy Center report is based on data compiled as of February 13, 2007.

<sup>17</sup> *Commerce in Firearms in the United States*, *supra* note 12, at 17.

take adverse actions, refer FFLs for investigation, or conduct timely follow-up inspections.<sup>18</sup>

Another study found that between 1975 and 2005, ATF revoked, on average, fewer than 20 federal firearms licenses per year.<sup>19</sup> Furthermore, ATF prosecuted only 88 corrupt gun dealers between 2000 and 2002.<sup>20</sup> ATF faces numerous obstacles that limit its ability to enforce the law. For example, ATF may conduct only one unannounced inspection of each FFL per year, the burden of proof for prosecution and revocation are extremely high, serious violations of firearms law have been classified as misdemeanors rather than felonies, and ATF has historically been grossly understaffed.<sup>21</sup>

The ability to conduct effective inspections and enforcement against corrupt FFLs is crucial. According to ATF, one percent of FFLs are responsible for selling almost sixty percent of the guns that are found at crime scenes and traced to dealers.<sup>22</sup> Therefore, identifying and stopping even one corrupt dealer could lead to a significant reduction in the number of crime guns.

*FFL Duties and Prohibitions:* Once licensed, federal law requires dealers to:

- Initiate background checks on unlicensed firearm purchasers;<sup>23</sup>
- Maintain records of the acquisition and sale of firearms;<sup>24</sup>
- Report multiple sales of handguns (i.e., the sale of two or more pistols or revolvers to an unlicensed person within any five consecutive business days);<sup>25</sup> and

<sup>18</sup> Office of the Inspector General, Evaluation and Inspections Division, U.S. Department of Justice, *Inspection of Firearms Dealers by the Bureau of Alcohol, Tobacco, Firearms and Explosives* (July 2004).

<sup>19</sup> Brady Center to Prevent Gun Violence, *Shady Dealings, Illegal Gun Trafficking From Licensed Gun Dealers* 23 (January 2007). The report notes that in 2006, ATF increased its total revocations to 131. *Id.* at 23.

<sup>20</sup> Americans for Gun Safety Foundation, *The Enforcement Gap: Federal Gun Laws Ignored* 4 (May 2003).

<sup>21</sup> *Shady Dealings, Illegal Gun Trafficking From Licensed Gun Dealers*, *supra* note 19, at 24-25.

<sup>22</sup> *Commerce in Firearms in the United States*, *supra* note 12, at 9.

<sup>23</sup> The FFL must: (a) receive from the transferee a completed and signed Firearms Transaction Record (ATF Form 4473), providing detailed information about the transferee; (b) verify the identity of the transferee through a government-issued photo identification; and (c) contact the National Instant Criminal Background Check System (NICS), through either the FBI or a state point of contact, for a determination of whether the transfer may proceed. 27 C.F.R. §§ 478.111, 478.102, 478.124; 18 U.S.C. § 922(t)(1). The dealer may transfer the firearm if NICS provides the dealer with a unique identification number for the transfer or if three business days have elapsed since the dealer contacted NICS and the system has not notified the dealer that the transfer would be unlawful. 18 U.S.C. § 922(t)(1). Detailed information on these requirements is contained in the section on Background Checks.

<sup>24</sup> 18 U.S.C. § 923(g)(1)(A). The dealer must record, "in bound form," the purchase or other acquisition of a firearm not later than the close of the next business day following the purchase or acquisition. 27 C.F.R. § 478.125(e). The dealer must similarly record the sale or other disposition of a firearm not later than seven days following the date of such transaction and retain the Firearms Transaction Record (ATF Form 4473) obtained in the course of transferring custody of each firearm. *Id.*; § 478.124(b). When a firearms business is discontinued, these records must be delivered to the successor or, if none exists, to the Attorney General. 18 U.S.C. § 923(g)(4).

<sup>25</sup> 18 U.S.C. § 923(g)(3)(A).

- Report the theft or loss of a firearm within 48 hours after the theft or loss is discovered.<sup>26</sup>

FFLs must also submit to a maximum of one ATF inspection per year to ensure compliance with federal recordkeeping requirements.<sup>27</sup> More frequent inspections are permitted if a federal magistrate has issued a search warrant or if the search is incidental to a criminal investigation.<sup>28</sup> In addition, FFLs must respond to requests for information from ATF regarding the disposition of a firearm if such request is made during the course of a bona fide criminal investigation.<sup>29</sup>

A FFL may not sell or deliver: (1) a handgun to a resident of another state; (2) a shotgun or rifle or ammunition for that firearm to a person the dealer knows or has reasonable cause to believe is under the age of 18; or (3) a handgun or handgun ammunition to a person the dealer knows or has reasonable cause to believe is under the age of 21.<sup>30</sup>

FFLs may temporarily conduct business at a location other than that specified on the FFL's license if the temporary location is a gun show in the state specified on the license.<sup>31</sup>

ATF has found that FFLs who violate federal laws are a major source of trafficked firearms. In June of 2000, ATF issued a comprehensive report of firearms trafficking in this country. That report analyzed 1,530 trafficking investigations during the period July 1996 through December 1998, involving more than 84,000 diverted firearms.<sup>32</sup> ATF found that FFLs were associated with the largest number of trafficked guns – over 40,000 – and concluded that “FFLs’ access to large numbers of firearms makes them a particular threat to public safety when they fail to comply with the law.”<sup>33</sup> Random inspections by ATF have uncovered that a large percentage of FFLs do violate federal law and that this percentage is growing.<sup>34</sup>

Finally, according to a 1998 ATF random sample of FFLs nationwide, 56% of all dealers operated out of their homes.<sup>35</sup> Of the remaining 44%, 25% operated out of commercial premises that were gun shops or sporting goods or hardware stores.<sup>36</sup> The remainder were located in businesses that are not usually associated with gun sales, such as funeral homes or auto parts stores.<sup>37</sup>

<sup>26</sup> The report must be made to the Attorney General and to the “appropriate local authorities.” 18 U.S.C. § 923(g)(6).

<sup>27</sup> 18 U.S.C. § 923(g)(1)(B).

<sup>28</sup> 18 U.S.C. § 923(g)(1)(A), (B).

<sup>29</sup> 18 U.S.C. § 923(g)(7).

<sup>30</sup> 18 U.S.C. § 922(b)(1), (3).

<sup>31</sup> 18 U.S.C. § 923(j).

<sup>32</sup> Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers* ix (June 2000).

<sup>33</sup> *Id.* at x.

<sup>34</sup> Brady Center to Prevent Gun Violence, “Trivial Violations? The Myth of Overzealous Federal Enforcement Actions Against Licensed Gun Dealers” 1 (September 2006).

<sup>35</sup> *Commerce in Firearms in the United States*, *supra* note 12, at 16.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

**SUMMARY OF STATE LAWS REGULATING FIREARMS DEALERS**

Twenty-nine states and the District of Columbia have adopted laws regulating firearms dealers. In states that do not license firearms dealers, regulations cited below apply to FFLs. The most significant areas of regulation are described below.

**States that Require Dealer Licensing**

<u>Alabama</u>	Ala. Code §§ 13A-11-78, 13A-11-79
<u>California</u>	Cal. Penal Code §§ 12070(a), 12071(a)
<u>Connecticut</u>	Conn. Gen. Stat. § 29-28
<u>Delaware</u>	Del. Code Ann. tit. 24, § 901
<u>District of Columbia</u>	D.C. Code Ann. § 7-2504.01(b)
<u>Georgia</u>	Ga. Code Ann. § 43-16-2
<u>Hawaii</u>	Haw. Rev. Stat. Ann. § 134-31
<u>Indiana</u>	Ind. Code Ann. §§ 35-47-2-14 – 35-47-2-16
<u>Maryland</u>	Md. Code Ann., Pub. Safety §§ 5-101, 5-106
<u>Massachusetts</u>	Mass. Gen. Laws ch. 140, § 128
<u>New Hampshire</u>	N.H. Rev. Stat. Ann. §§ 159:8, 159:10
<u>New Jersey</u>	N.J. Stat. Ann. § 2C:58-2(a)
<u>New York</u>	N.Y. Penal Law §§ 265.00(9), 400.00(2)
<u>Pennsylvania</u>	18 Pa. Cons. Stat. § 6112
<u>Rhode Island</u>	R.I. Gen. Laws § 11-47-38
<u>South Carolina</u>	S.C. Code Ann. § 23-31-130
<u>Washington</u>	Wash. Rev. Code Ann. § 9.41.110
<u>Wisconsin</u>	Wis. Admin. Code Jus § 10.04

**States that Ban Residential Dealers**

<u>Massachusetts</u>	Mass. Gen. Laws ch. 140, § 123
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**States that Require Employee Background Checks**

<u>Connecticut</u>	Conn. Gen. Stat. § 29-37f
<u>Delaware</u>	Del. Code Ann. tit. 24, § 904(b)
<u>New Jersey</u>	N.J. Stat. Ann. § 2C:58-2(a)
<u>Virginia</u>	Va. Code Ann. § 18.2-308.2:3
<u>Washington</u>	Wash. Rev. Code Ann. § 9.41.110(5)(b)

**States that Require Security Measures**

<u>Alabama</u>	Ala. Code § 13A-11-79
<u>California</u>	Cal. Penal Code § 12071(b)(4), (14)
<u>Connecticut</u>	Conn. Gen. Stat. § 29-37d
<u>District of Columbia</u>	D.C. Code Ann. § 7-2504.07
<u>Massachusetts</u>	Mass. Gen. Laws ch. 140, § 123
<u>Minnesota</u>	Minn. Stat. § 62A.7161
<u>New Jersey</u>	N.J. Stat. Ann. § 2C:58-2(a), N.J. Admin. Code §§ 13:54-3.11, 13:54-6.2-13:54-6.5

*(continued on next page)*

**States that Require Security Measures** *(continued from previous page)*

<u>Pennsylvania</u>	18 Pa. Cons. Stat. Ann. § 6113
<u>Rhode Island</u>	R.I. Gen. Laws § 11-47-40(b)
<u>West Virginia</u>	W. Va. Code § 61-7-10(a)(1)

**States that Require Reporting of Sales to State and/or Local Law Enforcement**

<u>Alabama</u>	Ala. Code § 13A-11-79
<u>California</u>	Cal. Penal Code § 12076(b)(3)
<u>Connecticut</u>	Conn. Gen. Stat. §§ 29-33(e), 29-37a(b)
<u>Maryland</u>	Md. Code Ann., Pub. Safety §§ 5-101(p), 5-123(d)
<u>Massachusetts</u>	Mass. Gen. Laws ch. 140, §§ 123, 128B
<u>Michigan</u>	Mich. Comp. Laws § 28.422a(2)
<u>New Jersey</u>	N.J. Stat. Ann. § 2C:58-2(e)
<u>New York</u>	N.Y. Penal Law § 400.00(12)
<u>Oregon</u>	Or. Rev. Stat. § 166.427(2)
<u>Pennsylvania</u>	18 Pa. Cons. Stat. § 6111(b)(1)
<u>Washington</u>	Wash. Rev. Code Ann. § 9.41.110(9)

**States that Require Warnings to Purchasers**

<u>California</u>	Cal. Penal Code §§ 12071(b)(7)(A)-(F), 12088.1(b), 12088.3
<u>Connecticut</u>	Conn. Gen. Stat. § 29-37b
<u>Florida</u>	Fla. Stat. Ann. § 790.175
<u>Maine</u>	Me. Rev. Stat. Ann. tit. 15, § 455-A(1)
<u>Massachusetts</u>	Mass. Gen. Laws ch. 140, § 123
<u>Michigan</u>	Mich. Comp. Laws § 28.435(6)
<u>Minnesota</u>	Minn. Stat. § 624.7162
<u>Nebraska</u>	Neb. Rev. Stat. Ann. § 69-2426
<u>New Hampshire</u>	N.H. Rev. Stat. Ann. § 650-C:1(VII)
<u>New Jersey</u>	N.J. Stat. Ann. §§ 2C:58-16(b), 2C:58-17
<u>New York</u>	N.Y. Gen. Bus. Law § 396ee
<u>North Carolina</u>	N.C. Gen. Stat. § 14-315.2
<u>Ohio</u>	Ohio Rev. Code Ann. §§ 2923.25, 5502.63
<u>Texas</u>	Tex. Penal Code Ann. § 46.13(g)
<u>Wisconsin</u>	Wis. Stat. § 175.37

**States that Require Theft or Loss Reporting**

<u>California</u>	Cal. Penal Code § 12071(b)(13)
<u>Massachusetts</u>	Mass. Gen. Laws ch. 140 §§ 123, 129c
<u>New Jersey</u>	N.J. Admin. Code § 13:54-6.6

**States that Impose Strict Liability**

<u>Connecticut</u>	Conn. Gen. Stat. §§ 52-571f, 53a-8(b)
<u>District of Columbia</u>	D.C. Code Ann. §§ 7-2531.02(a), 7-2531.03, 7-2551.02, 7-2551.03
<u>Pennsylvania</u>	18 Pa. Cons. Stat. §§ 6111(g)(5), 6111(g)(6)

### Description of State Laws Regulating Gun Dealers

1. *Dealer Licensing:* Seventeen states and the District of Columbia require firearms dealers to obtain a license. The following states require licensing for the sale of all firearms: California, Hawaii, Massachusetts, New Jersey (dealer employees must also be licensed), Pennsylvania, Rhode Island,<sup>38</sup> and Washington. The District of Columbia also requires licensing for the sale of all firearms.

California appears to have the most comprehensive dealer licensing requirements in the nation. Under California law, a firearms "dealer" or "licensee" must have all of the following:

- A valid federal firearms license;
- Any regulatory or business license, or licenses, required by local government, or a letter from the duly constituted local licensing authority stating that the jurisdiction does not require any form of regulatory or business license and does not otherwise restrict or regulate the sale of firearms;
- A valid seller's permit issued by the State Board of Equalization; and
- A certificate of eligibility issued by the Department of Justice (showing that the person is not prohibited from possessing firearms).

The dealer also must be included in the centralized list of licensees maintained by the California Department of Justice.

The following states require licensing for the sale of handguns or other specified firearms only: Alabama, Connecticut (any person who sells ten or more handguns per year or is an FFL), Delaware (dealer sales of pistols, revolvers or "other deadly weapons made especially for the defense of one's person"), Georgia, Indiana, Maryland (dealer sales of "regulated firearms," defined as handguns and assault weapons), New Hampshire, New York (dealer sales of handguns, assault weapons and large capacity ammunition feeding devices) and South Carolina.

In Wisconsin, before a dealer may offer a handgun for sale, the dealer must register each handgun store he or she owns or operates with the Wisconsin Department of Justice. The Department of Justice will provide the dealer with a unique identification number for each store.

2. *Banning Residential Dealers:* Massachusetts is the only state that prohibits dealers from operating in a residence or dwelling.

3. *Employee Background Checks:* Five states – Connecticut, Delaware, New Jersey, Virginia and Washington – require background checks on firearms dealer employees. In Connecticut, however, employee background checks are only required where "the principal part of such trade or business is the retail sale of goods other than firearms."

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<sup>38</sup> Note that R.I. Gen. Laws § 11-47-38 requires all firearms dealers to be licensed. However, state law provides a mechanism for the licensing of dealers in handguns only.

In Delaware, employee background checks must be conducted annually.

In California, firearms dealers may require employees who handle, sell or deliver firearms at the dealers' place of business to undergo background checks, but such background checks are not mandatory.<sup>39</sup> California law explicitly permits local governments to require background checks of firearms dealer employees.<sup>40</sup>

4. *Security Measures:* Nine states -- Alabama, California, Connecticut, Massachusetts, Minnesota, New Jersey, Pennsylvania, Rhode Island, and West Virginia require firearms dealers to utilize security measures to reduce the risk of theft from their premises. Dealers in the following states may not display firearms, ammunition and/or advertising so that they can readily be seen from the outside by the public -- Alabama, California and Rhode Island (handguns, imitation handguns and handgun advertising), Massachusetts (firearms), New Jersey (firearms and imitation firearms), Pennsylvania (handguns or short-barreled rifles or shotguns), West Virginia (firearms and ammunition). In California and Minnesota, dealers must store firearms in a specified manner after business hours. In Connecticut, businesses that sell firearms at retail must have burglar alarms that are connected directly to the local police department. New Jersey dealers also must install a state-approved theft detection and prevention system and implement security and safe storage measures.<sup>41</sup>

In Washington, D.C., firearms dealers must keep all firearms and ammunition "in a securely locked place affixed to the premises except when being shown to a customer, being repaired, or otherwise being worked on."

5. *Sales Reporting:* Twelve states require dealers to report firearm sales to state and/or local law enforcement. Three of those states -- California, Connecticut and Massachusetts -- require reporting of all firearm sales. Connecticut requires reporting to state and local law enforcement, while California and Massachusetts require reporting only to state law enforcement.

Nine states require the reporting of sales of handguns or other specified firearms only: Alabama, Maryland (handguns and assault weapons), Michigan (sales to concealed weapons licensees only), New Jersey, New York (handguns, short-barreled rifles and shotguns, and assault weapons), Pennsylvania (handguns, rifles and shotguns with specified dimensions) and Washington. In Oregon, dealers buying or accepting in trade used firearms are required to record the name of the person selling or trading the firearm, and the make, model and manufacturer's identification number of the firearm, and submit a copy of the record to local law enforcement.<sup>42</sup>

<sup>39</sup> Cal. Penal Code § 12071(b)(20)(A), (B).

<sup>40</sup> Cal. Penal Code § 12071(b)(20)(C), (D).

<sup>41</sup> Note that South Carolina requires applicants for a dealers license to post a bond, a cash deposit, or deposit of other sureties, worth ten thousand dollars. S.C. Code Ann. § 23-31-150.

<sup>42</sup> In Virginia, the governing body of any county may require sellers of handguns to furnish to the clerk of the circuit court of the county, within ten days of the sale, information regarding the handgun and purchaser. Va. Code Ann. § 15.2-1207.

6. *Warnings to Purchasers:* Fifteen states require dealers to post and/or deliver written warnings to purchasers regarding the risks of storing firearms in a manner accessible to children. Those states are: California, Connecticut, Florida, Maine, Massachusetts, Michigan, Minnesota, Nebraska, New Hampshire, New Jersey, New York (applies to all retail firearms sellers), North Carolina, Ohio, Texas, and Wisconsin.

In California, dealers must post additional warnings, including those regarding the risk of lead exposure from firearms and the state's one-handgun-a-month law.<sup>43</sup>

7. *Theft or Loss Reporting:* Three states require dealers to report to state and/or local authorities the theft or loss of any firearm. California requires dealers to report theft or loss of any firearm to the local law enforcement agency where the dealer is located within 48 hours. Massachusetts requires dealers to report any theft or loss to the local licensing authority and to the state Criminal History Systems Board. New Jersey requires dealers to report the loss or theft of firearms or ammunition to the state police within 48 hours.

8. *Strict Liability:*<sup>44</sup> Two states – Connecticut and Pennsylvania – as well as the

<sup>43</sup> In addition, Colorado requires FFLs to post a sign describing the state's prohibition on straw purchasers. Colo. Rev. Stat. § 18-12-111.

<sup>44</sup> In 2005, Congress passed and the President signed into law the Protection of Lawful Commerce in Arms Act (PLCAA). The PLCAA grants firearms dealers and others immunity from some civil lawsuits. 15 U.S.C. §§ 7901 - 7903. The Act includes, *inter alia*, the following exceptions:

- (ii) an action brought against a seller for negligent entrustment or negligence per se;
- (iii) an action in which a manufacturer or seller of a [firearm] knowingly violated a State or Federal statute applicable to the sale or marketing of the [firearm], and the violation was a proximate cause of the harm for which relief is sought, including --

- (I) any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record required to be kept under Federal or State law with respect to the firearm or aided, abetted, or conspired with any person in making any false or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale or other disposition of a [firearm]; or

- (II) any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a [firearm], knowing, or having reasonable cause to believe, that the actual buyer of the [firearm] was prohibited from possessing or receiving a firearm or ammunition under subsection (g) or (n) of section 922 of title 18, United States Code[.]

15 U.S.C. § 7903(5)(A)(ii), (iii).

The scope of the PLCAA and its exceptions is being tested in the courts in several pending cases. In 2005, a federal district court denied a motion to dismiss a suit brought by the City of New York against gun manufacturers and distributors alleging a public nuisance, finding that the case was not precluded by the PLCAA. *City of New York v. Beretta U.S.A. Corp.*, 401 F. Supp.2d 244, 298 (E.D.N.Y. 2005), *appeal docketed*, No. 05-6942 (2d Cir. argued Sept. 21, 2007). In 2007, the Court of Appeals of Indiana upheld the denial of a motion to dismiss a similar suit brought by the City of Gary Indiana. The court found that the PLCAA did not apply to the City's case. *Smith & Wesson Corp. v. City of Gary*, 875 N.E.2d 422 (Ind. Ct. App. 2007). *But see District of Columbia v. Beretta U.S.A. Corp.*, 2008 D.C. App. LEXIS 4 (D.C. Cir. 2008); and *Heto v. Glock, Inc.*, 421 F. Supp.2d 1274 (C.D. Cal. 2006), *appeal docketed* Nos. 06-56872, 07-15403, 07-15404 (9th Cir. Jan. 4, 2007) (both granting defendants' motion for judgment on the pleadings under PLCAA).

District of Columbia, impose strict liability on firearms dealers under certain circumstances. In Connecticut, any person who sells, delivers or otherwise transfers a firearm to a person knowing that person is prohibited from possessing such firearm "shall be strictly liable for damages for the injury or death of another person resulting from the use of such firearm by any person." Connecticut also provides that any person who sells, delivers or provides any firearm to another person to "engage in conduct which constitutes an offense knowing or under circumstances in which he should know that such other person intends to use such firearm in such conduct shall be criminally liable for such conduct and shall be prosecuted and punished as if he were the principal offender."

Pennsylvania's law is similar to Connecticut's.

The District of Columbia provides that any firearms dealer who can be shown by a preponderance of the evidence to have knowingly and willfully engaged in the illegal sale of a firearm will be strictly liable in tort for all damages caused by the discharge of the firearm in the District, regardless of whether the person operating the firearm is the original, illegal purchaser. A strict liability action may not be brought, however:

- When the basis of the strict liability is a firearm originally distributed to a law enforcement agency or a law enforcement officer;
- By a person who can be shown by a preponderance of the evidence to have committed a self-inflicted injury or who was injured by a firearm while committing a crime, attempting to commit a crime, engaged in criminal activity, or engaged in a delinquent act;
- By a person who can be shown by a preponderance of the evidence to be engaged in the sale or distribution of illegal narcotics; or
- By a person who either assumed the risk of the injury that occurred or negligently contributed to the injury that occurred.

Dealers of assault weapons or machine guns in the District will also, with certain exceptions, be held strictly liable in tort for all direct and consequential damages arising from bodily injury or death if the bodily injury or death proximately results from the discharge of the assault weapon or machine gun in the District.<sup>45</sup>

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<sup>45</sup> In *District of Columbia v. Beretta U.S.A. Corp.*, 2008 D.C. App. LEXIS 4 (D.C. Cir. 2008), the court affirmed judgment on the pleadings in favor of defendants (various manufacturers, importers and distributors of firearms), concluding that the District's claims under the Assault Weapon Manufacturing Strict Liability Act were barred by the PLCAA. See also *supra* note 44.

SUMMARY OF SELECTED<sup>46</sup> LOCAL LAWS REGULATING FIREARMS DEALERSLocal Laws Regulating Firearms Dealers

Chicago	Chicago, Ill., Code §§ 4-144-010, 4-144-040, 4-144-061, 4-144-080, 4-380-070, 17-9-0202-C
Cleveland	Cleveland, Ohio, Code §§ 674.07, 674.09, 627.16, 627A.03
Columbus	Columbus, Ohio, Code §§ 545.02, 545.04(c), 2323.20
Hartford	Hartford, Conn., Code §§ 21-51, 21-58, 21-60
Los Angeles	Los Angeles, Cal., Code ch. X, art. 3, div. 9, § 103.314, Los Angeles, Cal. Code ch. V, art. 5, §§ 55.11, 55.15, 55.16
New York City	New York, N.Y., Admin. Code §§ 10-302, as amended by Local Law 30 (July 27, 2006), 10-303.2(b), 10-306(c), 10-131(i), New York, N.Y., Rules tit. 38, §§ 1-04 – 1-06, 4-04
Omaha	Omaha, Neb., Code §§ 19-51, 19-363, 19-371, 19-373, 19-376, 20-199, 20-202
San Francisco	San Francisco, Cal., Police Code art. 9, §§ 613, 613.2, 613.3, 613.9, 613.10-2, 613.10-3, 613.13, 615, San Francisco, Cal., Police Code art. 35, § 3502

*Chicago:* Chicago requires a local dealer license for all firearm sales, and daily sales reporting by dealers to the Superintendent of Police. Chicago prohibits any person from exhibiting handguns (including specified ammunition) in show cases, in show windows, on counters, or in any other public manner, or displaying signs, posters, cartoons or display cards suggesting the sale of such weapons. A firearms dealer may not operate out of his or her residence.

*Cleveland:* Handgun dealers are required to obtain a local license. Dealers engaged in such business at more than one location must obtain a separate license for each location. Dealer businesses are restricted to locations within general retail districts or semi-industrial districts, and dealer licenses will not be issued for business locations within 1,000 feet of a school, church, day care center, liquor establishment or another handgun dealer. Dealers must provide records of handgun sales to local law enforcement within twenty-four hours of sale.

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<sup>46</sup> This section is based on research and analysis of existing firearms laws in: Boston, Massachusetts; Chicago, Illinois; Hartford, Connecticut; Los Angeles, California; Newark, New Jersey; New York, New York; Omaha, Nebraska; and San Francisco, California. LCAV selected these cities because they are located in states that grant local jurisdictions broad authority to regulate firearms. It also includes existing laws in Cleveland and Columbus, Ohio. Note, however, that in 2006, the Ohio Legislature passed House Bill 347 (overriding the Governor's veto), which created Ohio Rev. Code Ann. § 9.68(A), a provision that purports to preempt all local authority to regulate firearms with few, limited exceptions. Legal challenges to the law are pending. Additional information about state laws governing local authority to regulate firearms is contained in the section of this report titled "The Legal Background."

Cleveland prohibits dealers from exhibiting for sale in show cases or show windows any revolvers, and from displaying any signs, posters, cartoons or display cards suggesting the sale of revolvers.

When selling any firearm, a licensed dealer must offer to sell or give the purchaser a trigger lock or similar device which prevents the firearm from discharging. Licensed dealers also must conspicuously post a warning at every purchase counter, as follows: "IT IS UNLAWFUL TO STORE OR LEAVE A FIREARM WHERE CHILDREN CAN OBTAIN ACCESS." This warning also must be distributed to each firearm purchaser at the time of sale.

*Columbus:* Columbus requires a license to engage in the business of dealing in weapons (including firearms). Dealers are required to report transactions to law enforcement within 24 hours. Dealers are prohibited from knowingly exhibiting firearms in show windows, and must report to law enforcement "forthwith" the loss or theft of any firearm in the dealer's possession or control.

*Hartford:* Hartford requires that any person who (1) advertises, sells, delivers, offers or exposes for sale or delivery; (2) has in his or her possession with intent to sell or deliver; (3) loans; (4) exchanges; (5) gives away or (6) otherwise transfers the ownership or possession of any pistol or revolver at retail must obtain a permit. Sellers of handguns must keep a record of all handguns transferred and provide such records to law enforcement each month.

*Los Angeles:* Firearms dealers in Los Angeles are required to: (1) obtain a permit; (2) locate in an area that is not in a residential neighborhood; (3) obtain the right thumbprint of each firearms purchaser;<sup>47</sup> (4) obtain a policy of insurance with limits of liability of at least \$1 million; (5) conduct employee background checks; (6) sell trigger locks with all firearms;<sup>48</sup> (7) post warnings regarding the dangers of guns in the home; and (8) comply with security requirements to deter theft.

Firearms dealers (and other ammunition vendors) must maintain records of ammunition purchases and obtain the right thumbprint of each ammunition purchaser.

No firearms dealer or other person may sell, lend, give, transfer ownership of, or otherwise transfer any "ultracompact firearm."<sup>49</sup>

*New York City:* No person or business may engage in the business of transferring firearms in New York City without a license. The city issues separate licenses for two

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<sup>47</sup> In 2003, California passed Penal Code § 12077(b)(2),(c)(2), which requires dealers to obtain the right thumbprint of all firearm purchasers.

<sup>48</sup> In 1999, California enacted a law requiring that firearm safety devices be sold with all firearms. Cal. Penal Code §§ 12087.6, 12088 – 12088.9, 12126.

<sup>49</sup> Los Angeles also prohibits dealers from selling junk guns. In 1999, California passed Penal Code § 12125, which prohibits the sale of junk guns in the state. Additional information on laws banning junk guns is contained in the section on Design Safety Standards for Handguns: Regulating Junk Guns/Saturday Night Specials.

principal types of firearms dealers: (1) dealers in rifles and shotguns; and (2) dealers in handguns and short-barreled rifles and shotguns. To obtain either license, the city police commissioner must determine that the applicant is of good moral character; has not been convicted of a felony, serious offense, or violation of the city assault weapon ban; has no mental defects that would impair his or her ability to safely possess a firearm; and that there is no good cause for denial of the license. In addition, applicants must be U.S. citizens, more than 21 years of age, and maintain a business in the city.

*Transfer Restrictions:* No dealer in rifles and shotguns may transfer a rifle or shotgun unless the purchaser exhibits a valid rifle and shotgun permit or proof that he or she is exempt from the permitting requirement. Rifle or shotgun ammunition and rifle and shotgun ammunition feeding devices capable of holding five rounds or less may be transferred only to persons with a rifle and shotgun permit and registration certificate, both of which must be displayed at the time of transfer.

Similarly, handgun ammunition or ammunition feeding devices designed for use in a handgun may not be transferred to any person who does not exhibit a handgun license or proof that he or she is exempt from the licensing requirement. Furthermore, no firearms dealer may transfer handgun ammunition of any caliber to a person not authorized to possess a handgun of the same caliber within the city.

*Employee Restrictions:* New York City requires all employees of a licensed rifle and shotgun dealer to personally possess a valid rifle and shotgun permit or handgun license. Licensees must submit a list of employees to law enforcement and must report any change in personnel or change in an employee's address within 48 hours of the change. No person who has been convicted of a felony, misdemeanor, serious offense or who is the subject of certain court orders may be employed by a firearms dealer. In addition, the fitness of an employee is subject to review by the Police Commissioner who may direct the licensee to terminate an employee based on various factors, including his or her "character or reputation."

*Safety and Security Requirements:* New York City requires dealers in rifles and shotguns to take safety precautions such as installing alarms and using high-security cylinder locks to make the premises secure. In addition, licensees must allow law enforcement to conduct a survey of the premises after which recommendations for increased security measures will be made.

Dealers in handguns and short-barreled rifles and shotguns may not display weapons in the store windows or doors but may display them enclosed in a glass case within the premises so long as they are removed and safeguarded when the business is closed. When not displayed, weapons must be locked in an enclosed security room or safe. Ammunition may not be displayed in any area. Dealers in handguns and short-barreled rifles and shotguns are required to conduct a physical inventory of their premises twice a year, and report the results as directed by the Police Commissioner.<sup>50</sup>

<sup>50</sup> On July 27, 2006, New York City Mayor Michael Bloomberg signed into law Local Law 30, which requires dealers in handguns and short-barreled rifles and shotguns to perform a physical inventory twice a

Any dealer who sells a handgun or short-barreled rifle or shotgun must provide a warning printed on a label attached to the firearm and on a separate sheet of paper which reads, "THE USE OF A LOCKING DEVICE OR SAFETY LOCK IS ONLY ONE ASPECT OF RESPONSIBLE WEAPON STORAGE. ALL WEAPONS SHOULD BE STORED UNLOADED AND LOCKED IN A LOCATION THAT IS BOTH SEPARATE FROM THEIR AMMUNITION AND INACCESSIBLE TO CHILDREN AND ANY OTHER UNAUTHORIZED PERSONS."

*Theft or Loss Reporting:* Rifle and shotgun dealers must report to the local police precinct and to the Rifle/Shotgun Section of the License Division of the New York City Police Department the loss or theft of any rifle or shotgun, ammunition, dealer's license, or record by telephone on the next business day after discovery of the loss or theft and in writing within 10 calendar days of the discovery. Dealers in handguns and short-barreled rifles and shotguns must also take an inventory twice a year of all firearms and forward a copy to local law enforcement.

*Civil Liability:* New York City imposes civil liability, including punitive damages, for any injury or death caused by a firearm that a manufacturer or dealer has transferred if the injury or death results from the use of a firearm by a person not authorized to possess the firearm in the city. Liability may be imposed only if the manufacturer or dealer "or any other individual or entity acting subsequent to such manufacturer or dealer" unlawfully transferred the firearm at any time prior to the injury or death. Any manufacturer or dealer that has complied with a list of standards during the year immediately preceding the transfer of the firearm is exempt. The standards address transfers at gun shows, recordkeeping and access to records, limiting handgun transfers to one a month, and compliance with all applicable laws governing firearms transfers. In addition, a manufacturer or dealer is exempt if during the year preceding the transfer of the firearm at issue, he or she has not transferred a firearm to any other manufacturer or dealer "in circumstances in which the manufacturer or dealer transferring such firearm knew or should have known that such manufacturer or dealer had not complied" with the standards listed above. However, if the manufacturer or dealer can prove that the injury or death was not directly or indirectly related to any act or omission by him or her, liability will not attach.<sup>51</sup>

*Omaha:* Omaha prohibits any person from engaging in the business of firearms dealer without obtaining a permit. The permit requirement applies to anyone engaged in the business of buying, selling, renting, pawning, pledging or trading firearms. A dealer must obtain a separate permit for each location at which he or she does business.

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year and report to the Police Department. Local Law 30 was one of four bills signed into law by Mayor Bloomberg on July 27, 2006. The other laws are: (1) Local Law 29, establishing a Gun Offender Registry requiring certain individuals convicted of criminal possession of a weapon to register with the Police Department; (2) Local Law 31, limiting handgun sales and purchases to one every 90 days; and (3) Local Law 32, banning deceptively colored firearms and the use and sale of gun coloration kits used to paint guns to look like toy guns.

<sup>51</sup> Note that the New York City civil liability ordinance was enacted prior to the passage of the Protection of Lawful Commerce in Arms Act (PLCAA). See *supra* note 44.

Any person engaged in the sale, pawning, exchange, loan, rental or delivery of firearms must complete and furnish to law enforcement a daily report of all such transactions.

Firearm dealers are required, as part of their application for a permit, to execute a bond to the city in the sum of \$2,000.

*San Francisco:* San Francisco has adopted comprehensive dealer regulations. Those regulations require dealers to: (1) obtain a license from the Police Department; (2) undergo a background check and identify all employees who will have access to or control of workplace firearms so that those individuals can undergo a background check; (3) comply with security measures as required by the Chief of Police to discourage firearm theft; and (4) obtain liability insurance with minimum limits of liability of \$1 million.

San Francisco also prohibits dealers from: (1) operating in residential neighborhoods and near other "sensitive" areas (e.g., schools, churches and other firearms dealers); (2) selling certain types of ammunition (e.g., Black Talon and other bullets that are designed to increase damage to the human body or other target) (3) selling "ultracompact" firearms; (4) allowing minors or other prohibited purchasers to enter the dealer's premises unless firearms and related accessories are kept or displayed within a separate room; and (5) displaying firearms, imitation firearms, ammunition or firearm or ammunition advertising where it can be readily seen from outside the premises..

Dealers must twice annually provide law enforcement with a detailed inventory of all firearms, including those that have been lost or stolen. San Francisco also requires dealers (and other ammunition vendors) to maintain records of ammunition sales.

San Francisco imposes strict tort liability on dealers, manufacturers and importers of firearms for direct and consequential damages arising from bodily injury or death that result from the discharge of a firearm within the City and County of San Francisco, for firearms manufactured, imported, distributed, sold, leased or otherwise transferred by the manufacturer, importer and/or dealer. This provision does not apply to shotguns or rifles without a magazine, or with a fixed magazine of four or fewer rounds. Other exemptions include: (1) actions based on discharge of a firearm during the commission of a crime; (2) actions based on discharge of a firearm by a law enforcement official; (3) actions based on discharge of a firearm that was equipped with an internal personalized safety feature at the time of its first retail sale; and (4) actions seeking to recover damages for self-inflicted injuries.<sup>52</sup>

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<sup>52</sup> Note that this ordinance was enacted prior to the passage of the Protection of Lawful Commerce in Arms Act (PLCAA), which grants firearms dealers and others immunity from some civil lawsuits. 15 U.S.C. §§ 7901 - 7903. See *supra* note 44.

## FEATURES OF COMPREHENSIVE DEALER LICENSING AND REGULATION LAW

The features listed below are intended to provide a framework from which policy options may be considered and debated. LCAV has not attempted to include every provision or every creative approach identified in the analysis above, nor have we addressed appropriate exceptions so that the regulation does not produce unintended consequences. A jurisdiction considering modifying existing, or developing new legislation in this area should consult with counsel to ensure its legal sufficiency and compatibility with existing codes and statutes, as appropriate.

- All firearms dealers selling any class of firearm are required to obtain a state and/or local license and undergo a background check (*California, Hawaii, Massachusetts, New Jersey, Pennsylvania, Rhode Island, Washington, District of Columbia, Chicago, Columbus, Los Angeles, New York City, Omaha, San Francisco*)<sup>53</sup>
- Dealers in residential and other sensitive neighborhoods are prohibited (*Massachusetts, Chicago, Cleveland, Los Angeles, San Francisco*)
- Dealer employees are required to undergo background checks (*Connecticut, Delaware, New Jersey, Virginia, Washington, Los Angeles, New York City, San Francisco*)
- Dealers are required to take security precautions to reduce the risk of theft (security measures may include safe storage requirements, alarm systems, and limitations on the display of firearms) (*Alabama, California, Connecticut, Massachusetts, Minnesota, New Jersey, Pennsylvania, Rhode Island, West Virginia, District of Columbia, Chicago, Cleveland, Columbus, Los Angeles, New York City, San Francisco,*)
- Dealers are required to report all firearm sales to state and local law enforcement (*Connecticut*)
- Dealers are required to maintain records of ammunition sales (*Los Angeles, San Francisco*)
- Dealers are required to provide law enforcement with a physical inventory of all firearms at least annually (*New York City, San Francisco*)
- Dealers are required to obtain liability insurance to ensure that persons harmed by the dealers' actions will be adequately compensated (*Los Angeles, San Francisco*)
- Dealers are required to post warnings to consumers (*California, Connecticut, Florida, Maine, Massachusetts, Michigan, Minnesota, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Texas, Wisconsin, Cleveland, Los Angeles, New York City*)
- Dealers are required to report the theft or loss of any firearm to state and local authorities (*Massachusetts*)

<sup>53</sup> A 2007 report by the International Association of Chiefs of Police (IACP) recommended that state and/or local governments license all gun dealers. International Association of Chiefs of Police, *Taking a Stand: Reducing Gun Violence in Our Communities* 14 (2007). IACP noted that state and local requirements can respond to specific community concerns and bring additional resources to identify and stop corrupt gun dealers.

- Dealers are prohibited from selling any firearm unless the firearm includes a locking device (*California, Massachusetts, Michigan, New York, Pennsylvania*)<sup>54</sup>
- Dealers are subject to civil liability for negligent entrustment, negligence per se, and knowing violations of federal or state statutes applicable to the sale or marketing of the firearms<sup>55</sup>

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<sup>54</sup> Additional information on laws governing locking devices is contained in the section on Locking Devices.

<sup>55</sup> New York City and San Francisco impose civil liability on dealers and others for some gun injuries and deaths. Civil liability laws require careful drafting in light of the new Protection of Lawful Commerce in Arms Act (PLCAA). *See supra* note 44.