

PLANNING COMMISSION MINUTES OF AUGUST 22, 2011

3. **FILE #:** 2011-7071
Report: Location and Operation of Firearm Sales Businesses Study
Staff Contact: Andrew Miner, 408-730-7707
aminer@ci.sunnyvale.ca.us
Notes: *This item is scheduled to be considered by City Council on September 27, 2011.*

Andrew Miner, Principal Planner, presented the staff report and introduced **Andrew Laveroni**, Public Safety Officer, was also present to answer questions.

Vice Chair Larsson asked staff about the Department of Public Safety's (DPS) permitting process, and public noticing. Mr. Miner said the DPS permitting process is a ministerial action that shows all state and federal requirements have been met. Mr. Miner said there is no public meeting, and the permit is not an appealable action. Vice Chair Larsson discussed with staff home occupancy businesses and requirements with Mr. Miner saying the goal of the requirements is that the business does not change the character of the neighborhood. Vice Chair Larsson discussed with staff the frequency of inspections.

Comm. Sulser discussed location requirements with staff. Mr. Miner discussed the recommended criteria for distance requirements with the goal of having a separation from locations where children are most likely to congregate. Comm. Sulser discussed with staff the location distance requirements for other uses including, large family daycares and adult businesses. **Trudi Ryan**, Planning Officer, said the location distance requirements for adult businesses is 1000 feet. Ms. Ryan further discussed different zoning districts and how firearm sales businesses are allowed in industrial zoning districts. Ms. Ryan said, currently, firearm sales businesses are treated like any other retail establishment.

Chair Hendricks referred to page 10 of the report regarding staff not identifying any adverse land use impacts associated with a firearm store, and confirmed with staff that the reason for the recommendation prohibiting the retail sales of firearms within 200 feet of public schools is a response to meet community concerns. Mr. Miner said the land use concern for a firearms store is no greater than other retail stores. Chair Hendricks asked staff about land use characteristics for different types of stores. Mr. Miner commented that people are very passionate about this issue on both sides and commented about characteristics of different types of stores.

Chair Hendricks opened the public hearing.

Daniel Lucero, a member of the public, said that the Commission should recommend to City Council Alternative 4, which is to make no changes to the existing code requirements. He said staff has been listening to the LCAV (Legal Community Against Violence) for legal advice. Mr. Miner commented that staff listens to the City Attorney for legal advice.

Todd Eyring, a member of the public, said he does not think any changes should be made to the existing code requirements. He said the City should be concerned with other issues, that

there are enough restrictions on firearm sales businesses, and that children cannot buy firearms at these stores.

Lindsay Nichols, attorney with LCAV, spoke in support of requiring additional permitting. She discussed gun violence, gun records, home-based sales, and said the recommendation of the location of firearm sales businesses to public schools does not go far enough and should be 1000 feet.

Cari Napoles, with LCAV, spoke in support of enhanced land use regulations on firearm sales businesses. She said she thinks the distance of firearm sales businesses from public schools should be increased to 1000 feet and that other places where children congregate should be included in the distance requirements. She said Sunnyvale should be proactive on this issue.

Mi Truong, a member of the public, spoke in support of making no changes to the existing code requirements. She said selling guns in particular locations is not the problem, that she would like to encourage businesses to come to Sunnyvale, and that we do not need more regulations from government.

Steve Sarette, a member of the public, asked that the Commission recommend that nothing be done to the existing code requirements. He said he read the report and saw no evidence of problems. He said these businesses are already extremely regulated and the public has the right to own guns and buy guns. He said it would be a slippery slope if the City passes requirements of distances for firearm sales businesses from public schools.

Bill Weiss, with Cal Guns Foundation, said he is concerned about the lack of usefulness of the recommended regulations. He discussed his experience with two independent agencies that monitor gun dealers and said that he has no problem keeping guns out of the bad guy's hands. He discussed the legal landscape changes with guns in the past few years, and said gun stores are part of our 2nd Amendment rights.

Jeff Sato, a Sunnyvale licensed home firearms dealer and retired police officer, discussed the staff recommendation. He said he does not object to employees being subject to background checks, but it is difficult to know where to draw the line. He discussed related issues including record keeping, current laws, the 200 foot requirement being unsubstantiated and said that alcohol and gun sales should not be put in the same category.

Chair Hendricks asked about the background checks, confirming with staff that this is recommended to be required of any employee that sells a firearm.

Paul Tomaszewski, a member of the public, spoke in support of Alternative 4, that the Commission recommend no changes be made to the existing code requirements. He discussed the report and said that the people who brought up the issue have brought up an unfounded issue. He said he thinks this is a prejudice of law abiding gun sellers, who are already burdened by federal and state laws. He said this issue is affecting a small minority of people.

Written comments from Emmanuel Texiera were provided to staff.

Nandini Balakrishna, a member of the public, spoke in support of the additional City zoning. She said when the U.S. Firearms store opened in 2010, names of about 150 people on two petitions were collected in support of zoning regulations for firearms sales businesses. She said this is not a small minority. She discussed other gun related statistics and recommended that the City require a Use Permit that necessitates giving public notice. She said she thinks the buffer should be extended to 500 feet from schools and other uses and that home-based firearm businesses need to be regulated.

Frank Lacy, a member of the public, said that the only rational conclusion to this issue is to do nothing and make no changes. He said he thinks this issue was brought about by hysteria and that staff's recommendation is responding to the hysteria. He said there is no relationship between stores that sell firearms, with alcohol sales and adult businesses.

Dave Hedges, a member of the public, said he would be happy to have a gun store nearby. He said gun stores are already heavily regulated. He said asked the Commission to not add unneeded restrictions and extra tasks to businesses in this poor business climate.

Puja Sampat, a member of the public, said she supports adding zoning regulations for firearm sales in heavily populated areas. She said there is a dollar value associated with perceived value. She said she supports between 500 to 1000 feet distance from schools and parks. She said she would also like to see more regulations for home-based firearms businesses, more monitoring, and said the City should be proactive to protect our City.

Vikas Kapur, a member of the public, spoke in favor of zoning for firearms businesses. He said he grew up around guns and thinks they are fine in rural settings, but said he feels that in an urban environment with denser population there needs to be more regulation.

Peter Christenson, a member of the public, said he respects the 2nd Amendment, however he thinks the City should introduce a ban on assault and semi-automatic weapons being sold of residences or gun shops in Sunnyvale. He said he has no problem with the present zoning for firearm sales businesses.

Christopher Chan, a member of the public, spoke against any changes in zoning regulations and said there is no definitive link between violence and gun stores. He said if this were really about protecting children then additional uses would be included with the public schools. He said gun stores are a reliable, trustful source that can provide education on gun ownership.

Yu Fei Leung, a member of the public, spoke against any additional zoning for firearms sales businesses. He said he does not think comparing gun stores to adult businesses and alcohol sales locations is a valid comparison.

Kris Adler, a member of the public, asked how about other cities in Santa Clara County that have ordinances restricting the distance between gun stores and schools. He said if the issue is children, he thinks it is better to teach children about guns in a reliable location rather than to have them learn about guns elsewhere. He said he does not think assault weapons should be

handled differently than standard firearms and does not think the City should take up this issue. Staff confirmed that Palo Alto is the only city in the County that has regulations about gun stores near schools.

Ron Bucher, a member of the public, said he grew up around guns. He said he likes the character of Sunnyvale, and that it is the responsibility of the Commission and the City Council to help maintain the character of the City. He said he is concerned that the firearm sales store on El Camino Real and Mary Avenue was allowed without a permit. He said he does not know why the City is reluctant to move firearm sales businesses to an industrial area. He asked what Public Safety's opinion is about regulating gun stores. Mr. Miner said that the Planning Division worked closely with the Department of Public Safety and the City Attorney's Office in this report.

Daniel Parish, a member of the public, asked that the Commission do nothing as this issue seems to be a solution in search of problem. He said this is taking action for the sake of appearances without addressing any actual problems. He said the guns from these stores are not the source of the problem.

Thomas Hagen, a member of the public, said there are many license and permitting requirements for gun stores, and said they are probably one of the most regulated business in the U.S. He discussed the gun situation in Mexico. He said he is against implementing any extra restrictions.

Anna Sun, a member of the public, said she is amazed by how regulated gun stores already are. She said she has learned to shoot guns and sleeps better at night knowing there is a gun in the house and that she can protect herself. She said she thinks a lot of people that support the proposed regulations just do not want gun stores to be close by.

Chair Hendricks closed the public hearing.

Ms. Ryan commented about issues brought up by the speakers including assault and semi-automatic weapons with **Andrew Laveroni**, Public Safety Officer, saying that these types of weapons are strictly regulated. Ms. Ryan clarified that staff's reasons for mentioning alcohol sales, and adult entertainment uses, was not to say they are similar to firearm sales businesses, and were only mentioned as they are uses with separation regulations.

Comm. Kolchak discussed with staff background checks with staff commenting that they think the renewal background checks cost about \$22, but that they were not sure about the initial cost.

Comm. Sulser moved for Alternative 1. Vice Chair Larsson seconded the motion. Comm. Sulser said that he was the Commissioner that initially proposed this study issue. He said he can support the location requirements and does not consider zoning to be a punishment to a legitimate use, but is really about the right use in the right place. He said the City regulates many uses including churches, and adult businesses. He said the recommended zoning is

minor and affects very few parcels. **Vice Chair Larsson** said he concurs with Comm. Sulser the recommend restrictions are minor and similar to other land use restrictions. He said this is a controversial issue, and there are a number of people concerned about whether a gun shop is near a school. He said he thinks the recommended zoning of a buffer near schools is way to address the concern about locations where children would congregate.

Chair Hendricks offered a Friendly Amendment to Alternative 1.C.ii. requiring background checks, clarifying that it only applies to people selling firearms in a store. This Friendly Amendment was acceptable to the maker and the seconder. Chair Hendricks offered a second Friendly Amendment to remove item 1.b., regarding the requirement for the 200 foot buffer around public schools. The second Friendly Amendment was not accepted.

Comm. Travis said he would not be supporting the motion. He said he does not find evidence to justify the zoning requirement. He said he does not see a correlation between firearms or alcohol stores as these are significantly different patrons. He said he does not see a need to sanction the firearm sales businesses into certain zoning areas of the City.

Comm. Kolchak said he would be opposing the motion. He said he concurs with Comm. Travis' comments. He said there were no significant issues proven in the report.

Comm. Chang said he would be supporting motion as we do have concerns by our residents. He said we are not closing any businesses, and are just addressing concerns with a buffer.

Chair Hendricks said he would not be supporting motion. He said he does not see anything in the report that shows that this type of retail establishment has any characteristics that would require changing the zoning regulations. He said he thinks the codification of the DPS requirements seems to make sense and hopes this might be put in place.

The motion failed 3-3, with Chair Hendricks, Comm. Kolchak, and Comm. Travis dissenting, and Comm. Dohadwala absent.

Comm. Travis moved for Alternative 1, removing 1.b. Comm. Kolchak seconded the motion. Comm. Travis said that his thoughts were covered in the previous motion and said that he thinks the additional background check for firearms sales personnel is not an extreme or restrictive requirement. He said he sees no valid argument for the 200 foot buffer from public schools. **Comm. Kolchak** said he agrees with the background checks and does not think the small fee would be a burden.

Vice Chair Larsson said he supports codifying the DPS licensing, however he cannot support the motion without some kind of guidelines on locations. He said he would have liked some public input or notification added to the process, and said he sees the distance requirement as a good compromise.

Comm. Sulser said he respects, but cannot support the motion as he thinks the City should go further.

Comm. Chang said he would not be supporting the motion as he would like to have the distance buffer.

Chair Hendricks said he would be supporting this motion and discussed his concerns about the distance requirement from the school as a land use decision. He said by imposing the 200 foot buffer, the framework is set that could include expanding the distance or to other uses in the future.

The motion failed 3-3, with Vice Chair Larsson, Comm. Chang, and Comm. Sulser dissenting, and Comm. Dohadwala absent.

Ms. Ryan said the Commission could continue to propose new motions to bridge the differences, or the recommendation could be sent forward to City Council as comments.

Comm. Chang moved for Alternative 3. The motion died for lack of a second.

Chair Hendricks moved for Alternative 1 to recommend to City Council to: 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. Chair Hendricks said his motion includes amending Alternative 1.c.ii to read, “all employees engaged in the sale of firearms meet all State and Federal requirements”. Comm. Sulser seconded the motion.

Chair Hendricks said he is not a fan of a distance restriction on this type of business; however he believes it is important to give a specific recommendation to the City Council. He said the public will get a chance to weigh in on this again at the City Council meeting. He said he is pretty sure the City Council will be able to hear arguments, and they could even move for Alternative 4. He said he thinks it is important to provide a definitive recommendation to City Council. He said he would like City Council to not expand the restriction or distance requirements into other uses or any additional distance than the recommended 200 foot buffer for public school properties. He said he thinks it is important to get the DPS requirements. He said his vote or feelings have not changed, but he wanted to give a specific recommendation to City Council.

Comm. Sulser said his rationale has not changed for voting for the motion.

Comm. Travis said he respectfully disagrees with the motion and said he would not vote for it because City Council takes what the Planning Commission recommends seriously and he cannot vote for something just to send a definitive recommendation.

Vice Chair Larsson said he would be supporting the motion and asked Chair Hendricks if his comments are part of the motion. Chair Hendricks said no, that they are just comments and not part of motion. Vice Chair Larsson said he agrees with Chair Hendricks comments and would be supporting the motion.

ACTION: Chair Hendricks made a motion on 2011-7071 to recommend to City Council to: 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; and to modify the language in ii) to read “Require the Federal Firearms Licensee and all employees engaged in the sale of firearms to meet all State and Federal requirements for holding a license.” Comm. Sulser seconded. Motion carried 4-2, with Comm. Kolchak and Comm. Travis dissenting and Comm. Dohadwala absent.

APPEAL OPTIONS: This item is scheduled to be considered by City Council at the September 27, 2011 City Council meeting.