



Legal Community Against Violence

expertise, information & advocacy to end gun violence

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

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<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 licensees provides additional resources to identify and

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<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.mayorsagainstillegalguns.org/downloads/pdf/trace\\_report\\_final.pdf](http://www.mayorsagainstillegalguns.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/e0405/exec.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.mayorsagainstillegalguns.org/downloads/pdf/Commerce\\_in\\_Firearms\\_2000.pdf](http://www.mayorsagainstillegalguns.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:

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|-------------------|-----------------|--------------------|
| 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 |                    |

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<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=%2Fs0LiOkJK5Q%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.mayorsagainstillegalguns.org/downloads/pdf/polling\\_memo.pdf](http://www.mayorsagainstillegalguns.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).