ADDRESSING GUN VIOLENCE THROUGH LOCAL ORDINANCES

A LEGAL RESOURCE MANUAL FOR CALIFORNIA CITIES AND COUNTIES

1998 SUPPLEMENT

LEGAL COMMUNITY AGAINST VIOLENCE

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LEGAL COMMUNITY AGAINST VIOLENCE WAS FORMED AS A FUND OF THE SAN FRANCISCO FOUNDATION IN THE WAKE OF THE JULY 1, 1993, 101 CALIFORNIA STREET MASSACRE, WHICH LEFT EIGHT PEOPLE DEAD AND SIX OTHERS WOUNDED.

LEGAL COMMUNITY AGAINST VIOLENCE IS DEDICATED TO REDUCING GUN VIOLENCE THROUGH EDUCATION, LEGISLATION AND LITIGATION.

This Supplement is designed for use with our 1996 publication, *Addressing Gun Violence Through Local Ordinances, A Legal Resource Manual for California Cities and Counties*, and the 1997 Supplement. The views expressed herein are those of Legal Community Against Violence. This publication is not intended as legal advice to any person or entity, and should not be regarded as such.

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CHAPTER I

LOCAL ORDINANCE UPDATE

A. LCAV'S LOCAL ORDINANCE PROJECT

This publication is being distributed to local officials throughout the state as part of LCAV's Local Ordinance Project, which provides free legal and technical assistance to California cities and counties seeking to reduce gun-related violence in their communities. LCAV began the Project in 1995 in response to numerous requests for assistance from local officials who wanted to stem the tide of gun violence, but were concerned that: 1) state and federal law might preempt such action; and 2) local governments could face costly litigation over local firearms-related measures.

In 1996, LCAV published *Addressing Gun Violence Through Local Ordinances, A Legal Resource Manual for California Cities and Counties* ("the Local Ordinance Manual"). The Local Ordinance Manual provides an analysis of the unique legal issues that arise in the context of ordinances regulating firearms and ammunition, such as preemption, the Second Amendment, due process and equal protection. LCAV has distributed thousands of copies of the Local Ordinance Manual and 1997 Supplement, free of charge, to city attorneys, county counsel, police chiefs, sheriffs, county health departments, and members of city councils and boards of supervisors statewide.

As part of the Local Ordinance Project, LCAV also provides free legal and technical assistance to local officials considering the adoption of violence-prevention ordinances, and coordinates the provision of *pro bono* litigation services when a city or county is sued following enactment of such an ordinance.

In addition, LCAV holds workshops throughout California to educate local officials, attorneys and community leaders about the types of ordinances being adopted at the local level and the possible legal challenges to such ordinances. Finally, we maintain a library of firearms-related ordinances, together with a "brief bank" of

pleadings in ordinance-related litigation. LCAV provides copies of these materials to local officials upon request.

B. 1997 - ANOTHER EXTRAORDINARY YEAR

During 1997, California cities and counties continued their historic adoption of innovative local ordinances to reduce gun violence. This grassroots movement has swept across the state, mobilizing a diverse coalition of elected officials, law enforcement officers, health care professionals, religious leaders, educators and community activists, united by the belief that communities can and must act to stem our nation's epidemic of gun violence.

The City of West Hollywood became a pioneer in this movement in 1996, when it adopted the first ordinance to ban the sale of poorly made, easily concealable handguns known as "Saturday Night Specials" or "junk guns." By April of 1998, nearly 40 other localities had followed in West Hollywood's footsteps.[1]

California cities and counties have also adopted a variety of other violence-prevention ordinances, including those regulating firearms dealers, requiring records of ammunition sales and prohibiting the sale of firearms at gun shows. Since 1996, LCAV and the Campaign to Prevent Handgun Violence Against Kids have conducted an annual survey of California cities and counties to determine the type and number of firearms and ammunition regulations enacted statewide. Each year the numbers have grown steadily, as local leaders have become increasingly determined to reduce gun violence in their communities.

One of the most widely adopted ordinances requires firearms dealers (holders of federal firearms licenses) to obtain a local license. Typically, these ordinances provide that such a license will only be issued upon proof that the dealer has liability insurance, stores firearms safely and does not operate in a residential neighborhood or in close proximity to other sensitive areas, such as schools, playgrounds, liquor stores or other

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[1] As of April 1, 1998, the following cities and counties had banned the sale of junk guns: Alameda, Alameda County, Albany, Belmont, Berkeley, Compton, Contra Costa County, Daly City, El Cerrito, Emeryville, Fremont, Half Moon Bay, Hayward, Huntington Park, Inglewood, Livermore, Los Angeles, Monterey Park, Oakland, Piedmont, Pinole, Pomona, Richmond, Sacramento, San Carlos, San Francisco, San Jose, San Leandro, San Mateo, San Mateo County, San Pablo, Santa Cruz, Santa Cruz County, Santa Monica, Union City, Walnut Creek, West Covina, and West Hollywood.

firearms dealers. Some ordinances also require employee background checks (to determine whether the prospective employee has a criminal record or history of mental illness) and the sale of a trigger lock or other disabling device with each firearm.

In 1995, Contra Costa County became one of the first localities to adopt an ordinance prohibiting residential firearms dealers. The County approached the issue of gun violence from the public health perspective, with the Health Services Department taking the lead. In March of 1995, that Department published *Taking Aim at Gun Dealers: Contra Costa's Public Health Approach to Reducing Firearms in the Community*. That publication noted that in June 1994 the County had 700 firearms dealers, the overwhelming majority of which operated in residential areas. As of February 1998, however, after the County and several of its cities had passed dealer ordinances, records from the Bureau of Alcohol, Tobacco and Firearms ("ATF") indicated that the number of dealers had fallen to 135 countywide.[2]

The County's study showed further that the City of Richmond had 37 firearms dealers in December of 1994, 36 of which operated in residential neighborhoods. Richmond adopted a dealer ordinance in 1995. As of February 1998, ATF records indicated that the number of dealers in the City had fallen to 0.[3]

The courageous efforts of local leaders and coalition members across the state have brought enormous strides in gun violence prevention that would have been impossible even a few years ago. Significantly, this local movement has also served as a catalyst for state legislation. During 1997, for example, the California Legislature passed historic bills to ban the manufacture and sale of junk guns in this state and require the sale of trigger locks with all firearms. Unfortunately, Governor Wilson vetoed both of these bills. Several other important firearm-related bills were, however, signed into law (see discussion *infra* at p. 12). The momentum set in action by local leaders has not been lost at the state or local level.

This publication is intended for use with LCAV's Local Ordinance Manual and 1997 Supplement. Chapter II provides a discussion of recent developments in federal

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[2] February 17, 1998, interview with ATF Public Information Officer Dennis Anderson.

[3] *Id*. This significant reduction in the number of firearms dealers can also be attributed to passage of the Brady Law, which increased dealer fees from $30 to $200 for a three-year period, and the Crime Bill of 1994, which required applicants to certify that the prospective business is not prohibited by state or local law. See 18 U.S.C. § 923 *et seq*.

and state law. Chapter III provides an update of the five lawsuits challenging local violence-prevention measures, including the landmark Court of Appeal decision upholding a dealer ordinance adopted by the City of Lafayette.

Chapter IV discusses several new types of ordinances currently being considered by California cities and counties, together with non-legislative approaches to reducing gun violence. Finally, in light of the numerous requests LCAV and the City of West Hollywood have received for copies of the City's ordinance banning the sale of Saturday Night Specials, Chapter V of the Supplement provides a copy of that ordinance.

CHAPTER II

DEVELOPMENTS IN FEDERAL AND STATE LAW

A. FEDERAL FIREARMS POLICIES

1. U.S. Supreme Court Review of the Brady Act

On June 27, 1997, the United States Supreme Court decided *Printz v. United States*, __ U.S. __, 117 S.Ct. 2365, 138 L.Ed.2d 914 (1997), a constitutional challenge to the interim provisions of the Brady Handgun Violence Prevention Act. 18 U.S.C.A. §922(s)(1) *et seq*. The Brady Act requires the Attorney General to establish a national instant background check system for prospective handgun purchasers by November 30, 1998. In the interim, the Act requires local chief law enforcement officers ("CLEOs") to conduct such background checks in states without comparable background check systems. The Act also imposes a five-day waiting period before firearms sales may be completed, but allows states to impose longer waiting periods if they choose.

In *Printz*, CLEOs from Montana and Arizona argued that the interim provisions of the Brady Act violated Tenth Amendment principles of state sovereignty. The Ninth Circuit rejected this argument, holding that the temporary duties imposed upon CLEOs by the Act did not significantly interfere with state functions. 66 F.3d 1025 (9th Cir. 1995). (See 1997 Supp., pp. 4-5.)

The U.S. Supreme Court reversed the Ninth Circuit, holding, in a 5-to-4 decision, that the Act's mandatory background check provisions imposed unconstitutional obligations on state officers to administer a federal regulatory program. The majority opinion stated:

> We held in *New York* [*v. United States*, 505 U.S. 144, 112 S.Ct. 2408, 120 L.Ed. 2d 120 (1992)] that Congress cannot compel the States to enact or enforce a federal regulatory program. Today we hold that Congress cannot circumvent that prohibition by conscripting the State's officers directly. The Federal Government may neither issue directives requiring the States to address particular problems,

> nor command the State's officers, or those of their political subdivisions, to administer or enforce a federal regulatory program.
>
> *Printz*, 117 S.Ct. at 2384.

The Court declined to consider the constitutionality of the 5-day waiting period, finding that the CLEOs had no standing to raise the issue.

In a concurring opinion, Justice O'Connor observed that notwithstanding the Court's decision, state and local law enforcement officers remain free to voluntarily perform background checks until the interim program expires on November 30, 1998. That opinion also notes that Congress could amend the program to provide for its continuation on a contractual basis with the states, as it does with several other federal programs (e.g., that conditioning states' receipt of federal funds for highway safety programs on compliance with federal requirements). Justices Stevens, Souter, Ginsberg and Breyer dissented.

Printz does not affect California or the 27 other states that currently have laws requiring background checks.[4] In California, handgun purchasers must still wait 10 days and undergo a background check by the Department of Justice. Penal Code § 12072. In the 22 remaining states, purchasers remain subject to a waiting period of up to 5 days. In the overwhelming majority of these states, CLEOs are voluntarily continuing to perform background checks of prospective handgun purchasers.

According to the U.S. Department of Justice, each month since the Brady Act went into effect, background checks have blocked handgun purchases by an estimated 6,600 convicted felons and other prohibited purchasers.[5] Between February 28, 1994 and February 28, 1998, therefore, background checks have prevented approximately 300,000 illegal handgun purchases.

2. Importation of Assault Weapons

In November of 1997, President Clinton issued an Executive Order blocking the importation of thousands of military-style semiautomatic assault weapons, including the

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[4] U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics Bulletin (February 1997).

[5] *Id.*

Uzi American and Galil Sporter. This action was taken at the urging of Senator Dianne Feinstein and 29 other senators who learned that ATF had improperly granted import permits for the weapons.

The 1968 Gun Control Act only allows importation of firearms that are "suitable for, or readily adapted to, sporting purposes." 18 U.S.C. § 925 (d)(3). In 1989, President Bush banned the importation of more than 40 military-style assault weapons that failed to meet the "sporting purposes" test. Moreover, in 1994, Congress banned the importation, as well as the future manufacture and sale, of 19 types of assault weapons with military characteristics. Several foreign and domestic manufacturers, however, have made minor modifications to their assault weapons in order to circumvent these laws.

At the time of President Clinton's importation freeze, ATF had already granted import permits for nearly 600,000 assault weapons and permits were pending for one million more. The President's order halted importation of the disputed weapons for 120 days so that the Treasury Department, which oversees ATF, would have an opportunity to review the legality of the permits.

On April 6, 1998, President Clinton announced that the Treasury Department had determined that the 58 types of assault weapons subject to the freeze could not be classified as "sporting" weapons and could not, therefore, be legally imported under the 1968 Gun Control Act. Weapons importers have vowed to go to Congress and/or to the courts to have the decision overturned.

3. Gun Manufacturers' Voluntary Trigger Lock Agreement

In October of 1997, President Clinton announced that eight major firearms manufacturers had voluntarily agreed to equip their handguns with child-proof trigger locks or similar safety devices by the end of 1998. Trigger locks are designed to fit over the trigger guard or hammer of a firearm to prevent unintended discharge.

The manufacturers participating in this historic agreement produce 80 percent of all American-made handguns. Although Senator Barbara Boxer has asked California's "junk gun" manufacturers to sign onto the agreement, to date they have declined to do so. As discussed below, in 1997 Governor Wilson vetoed legislation that would have required firearms dealers in this state to sell trigger locks with all firearms.

B. STATE FIREARMS POLICIES

1. Legislative Update

a. Governor Wilson Vetoes Statewide Junk Gun Ban

During 1997, the California Legislature passed Senate Bill (S.B.) 500, a historic bill to ban the manufacture and sale of Saturday Night Specials. S.B. 500's author, Senator Richard Polanco, has credited the dozens of local ordinances banning the sale of junk guns with providing the critical impetus to passage of the state legislation.

The Legislature passed S.B. 500 after considering evidence regarding the significant dangers of these poorly made weapons, which are unreliable for purposes of self-defense and favored by criminals because of their concealability and low price.[6] The bill would have applied the same safety and size standards to handguns manufactured in this state as those applied by the federal government to imported handguns since 1968. Because a handful of Southern California manufacturers produce an estimated 80 percent of all Saturday Night Specials sold in this country, S.B. 500 could have had nationwide impact.[7]

On September 26, 1997, Governor Wilson vetoed S.B. 500, despite the support of numerous law enforcement groups, including the California Police Chiefs Association, and the existence of overwhelming public support for the legislation. In his veto message, Governor Wilson summarily dismissed consumer protection concerns, stating that "rather than protecting either gun owners as consumers or the public as potential victims, S.B. 500 is far more likely to deprive those who must defend themselves against crime of an important means of doing so."

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[6] See G.J. Wintemute, *Ring of Fire: The Handgun Makers of Southern California,* U.C.Davis Violence Prevention Research Program (1994), and publications referenced in footnotes 19 and 23.

[7] *Ring of Fire, supra*.

On February 5, 1998, Senator Polanco reintroduced legislation to ban the manufacture and sale of Saturday Night Specials in California. That legislation, S.B. 1500, would prohibit the manufacture and sale of handguns that fail a safety and quality test taken from the National Institute of Justice Office of Science and Technology. S.B. 1500 would set minimal size requirements based on the 1968 federal import standards.

The Senate Public Safety Committee passed S.B. 1500 on April 14, 1998. A final vote on the bill is not expected until mid or late summer. In the interim, cities and counties across the state are continuing to send a clear message to Sacramento by adopting local junk gun sales bans, as well as resolutions supporting legislation at the state level.

b. Governor Wilson Vetoes Trigger Lock Legislation

Governor Wilson also vetoed Assembly Bill (A.B.) 1124 in 1997. That bill, sponsored by Assemblymember Dion Aroner, would have required firearms dealers to sell child-proof trigger locks with all firearms.

According to the U.S. Department of Justice, in 1994 Americans owned nearly 200 million firearms, 65 million of which were handguns.[8] Significantly, 30 percent of those handguns were stored loaded and unlocked.[9] Such unsafe storage practices pose a particular threat to children, most of who are strong enough to pull the trigger of many handguns by age 5.[10] As demonstrated by the recent homicides committed by young boys in Jonesboro, Arkansas and Edinboro, Pennsylvania, trigger locks or other disabling devices are essential to prevent intentional, as well as unintentional, shootings by children.

Governor Wilson's stated reason for vetoing A.B. 1124 was that there are "more effective and less intrusive ways to encourage gun safety."

As of April 1, 1998, nearly twenty local governments in California had adopted laws requiring firearms dealers to sell trigger locks with all firearms.

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[8] U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, Research in Brief (May 1997).

[9] *Id.*

[10] Naureckas, et al., *Children's and Women's Ability to Fire Handguns*, 149 Arch. Pediatric Adolescent Med. 1318 (1995).

c. Firearms-related Bills Signed into Law

During 1997, the California Legislature also passed, and Governor Wilson signed, several important firearms-related bills. A.B. 491, sponsored by Assemblymember Fred Keeley, expanded Penal Code Section 12035 by holding negligent gun owners liable when a child under 16 gains access to a firearm and injures or threatens someone with the weapon or carries it in a public place. Under prior law, liability was imposed only when a child under 14 gained access to a firearm and injured or threatened someone with the weapon, not when they were found with the weapon in a public place.

S.B. 146, sponsored by Senator Patrick Johnston, amended Penal Code Section 12050 to provide that a city police chief may only issue a permit to carry a concealed weapon ("CCW") to a resident of that city. Under prior law, a police chief could issue a CCW permit to anyone residing in the county. Although most chiefs, as a matter of practice, only issued CCWs to local residents, others became known for liberally issuing permits to persons who had already been denied CCWs by their local police chief or sheriff.

A.B. 1221, sponsored by Assemblymember Dion Aroner, amended Penal Code Section 12316 to prohibit the sale of handgun ammunition to persons under the age of 21. That bill closed a loophole in prior law, which prohibited minors under the age of 21 from purchasing handguns, but allowed anyone over the age of 18 to purchase ammunition for those weapons.

Finally, A.B. 991, sponsored by Assemblymember Kevin Shelley, amended Penal Code Section 12072 to require new California residents who bring handguns into the state to submit a Dealer Record of Sale ("DROS") form to the Department of Justice. DROS forms allow the Department of Justice to undertake background checks of handgun owners.

2. California's Assault Weapons Bans

The Roberti-Roos Assault Weapons Control Act of 1989 (Penal Code § 12275 *et seq*.) was adopted by the California Legislature after a man wielding an AK-47 assault rifle killed five children and wounded 30 others in a Stockton schoolyard. The Act includes a list of 75 banned assault weapons and permits the Attorney General to add

other weapons to the list after obtaining a superior court declaration authorizing the addition. As originally adopted, the Act permitted the possession of assault weapons purchased prior to June 1, 1989, if those weapons were registered with the Department of Justice prior to January 1, 1991. In 1991, however, the Legislature extended the registration deadline until March 30, 1992, at Attorney General Dan Lungren's request.

As discussed below, the Roberti-Roos Act has been controversial ever since its adoption. Most of the controversy has focused on the Attorney General's failure to add weapons to the list of banned assault weapons, despite the proliferation of thousands of "copycat" weapons, i.e., assault weapons which manufacturers have simply renamed or slightly modified in an effort to circumvent the ban. Lungren's failure to add weapons to the list has enabled assault weapons manufacturers to successfully evade the law without consequence (for example, the TEC-9 is included on the roster of banned weapons, but the TEC-DC9 – the gun used in the 101 California Street massacre - is still being sold legally, even though it is virtually identical to the banned weapon). Lungren has also been criticized, and recently sued, for continuing to register assault weapons after the statutory deadline (see *Handgun Control, Inc. v. Lungren, infra*).

a. A.B. 23 – Legislation to Strengthen the Assault Weapons Ban

Assemblymember Don Perata has introduced legislation to significantly strengthen the Roberti-Roos Act. The most important feature of that legislation, A.B. 23, is that it would replace the current list of specifically identified weapons with a general definition of assault weapons based on design, firepower and rapid-fire characteristics. Because it would use a character-based definition, A.B. 23 would effectively ban the manufacture and sale of all copycat weapons and eliminate the need for the "add-on" provision of the Act. As discussed below, this proposed change is also significant in light of a recent Court of Appeal decision holding that the add-on provision is unconstitutional (see *Kasler v. Lungren, infra).*

A.B. 23 has passed both the Assembly and Senate and is currently back in the Assembly awaiting final concurrence on Senate amendments. On April 13, 1998, the Assembly vote was 40 to 30 in favor of the bill, one vote short of the simple majority needed to pass the legislation. The Assembly is expected to reconsider A.B. 23 soon. The Governor has not yet indicated what action he will take with respect to the legislation.

b. *Handgun Control, Inc. v. Lungren*

On December 16, 1997, Handgun Control, Inc. and the Center to Prevent Handgun Violence filed suit against Attorney General Dan Lungren, alleging that Lungren has illegally continued to accept registration of thousands of assault weapons after the March 30, 1992, statutory deadline. (San Francisco Superior Court Case No. 991752.) The complaint alleges that this practice has provided an incentive for persons to purchase assault weapons in other states and register them in California by falsely claiming they were lawfully possessed prior to June 1, 1989, since no mechanism exists to verify such claims. The suit seeks a peremptory writ of mandamus commanding the Attorney General to *cease* registration of assault weapons and notify all persons who purportedly registered their weapons after March 30, 1992, that such registration is null and void.

The parties in *Handgun Control, Inc*. have agreed to file cross-motions for summary judgment because the essential facts in the case are not in dispute. As of April 1, 1998, no hearing date for those motions had been set.

The litigation should not be affected by the passage of A.B. 23, since that legislation, as presently drafted, does not permit registration of weapons that were already banned by the Roberti-Roos Act. The litigation may, however, be affected by the outcome of *Kasler* (discussed below), if the Act is ultimately found to be unconstitutional.

c. *Kasler v. Lungren*

The Attorney General's one and only attempt to add to the list of banned assault weapons, in March of 1991, resulted in *Kasler v. Lungren*, a lawsuit by Colt Industries challenging the constitutionality of the law. Lungren stipulated to an injunction barring further additions to the list pending the outcome of the litigation and, in November of 1993, the trial court issued an order rejecting the manufacturer's claims. The order was appealed and the case languished in the Court of Appeal for several years.

On March 4, 1998, the Third District Court of Appeal issued its long-awaited decision in *Kasler* (61 Cal. App. 4th 1237). In a decision which surprised many law enforcement groups, the court reversed the lower court judgment, holding that the add-on procedure of the Roberti-Roos Act violates the separation of powers doctrine because it requires a judge to legislate (i.e., it requires a judge to issue a declaration

authorizing the Attorney General to add assault weapons to the list). The court also found that the Act violates principles of due process because: 1) a temporal gap exists between the time a weapon is added to the list and the public receives notice of the addition; and 2) the Act is vague insofar as it defines weapons that can be added to the list as those with "slight" modifications and those that have been "redesigned" from guns on the list.

Although the court held that the add-on provision was severable from the list of banned weapons contained in the Act, the court found the list itself potentially vulnerable to plaintiffs' equal protection claims. Specifically, the court found that the complaint adequately alleged facts that, if true, would establish that the list is underinclusive because it does not include legal weapons that have the same or greater capacity for firepower or weapons identical to those on the list. Thus, plaintiffs might be able to show that the legislative classification was irrational in light of the harm sought to be alleviated. The court remanded the case to the lower court for further proceedings.

The Attorney General's office has stated that it will appeal the *Kasler* decision to the California Supreme Court and continue to enforce the list of banned weapons pending the outcome of that appeal. The case may become moot, however, if A.B. 23 is passed by the Senate and signed into law, since that legislation would, as presently drafted, delete both the list of banned weapons and the add-on provision of the Roberti-Roos Act.[11]

C. SELECTED DEVELOPMENTS IN OTHER STATES

Massachusetts. During 1997, Massachusetts Attorney General Scott Harshbarger, exercising his unusually broad authority, issued landmark consumer-protection regulations to promote handgun safety. Those regulations prohibit the sale of poorly made Saturday Night Specials by requiring that all handguns pass a material test

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[11] As reported in the 1997 Supplement, the California Supreme Court has already granted review of two other Court of Appeal decisions with conflicting interpretations of the Roberti-Roos Act, *Harrott v. County of Kings* (1996) 51 Cal. App. 4th 111, and *People v. Dingman* (1996) 47 Cal. App. 4th 1068 (1997 Supp., p.8). In February of 1997, Lungren shocked prosecutors by filing an *amicus curiae* brief in support of the criminal defendant in the *Dingman* case. In September of 1997, however, one month after the *Los Angeles Times* published a series of articles criticizing the Attorney General's actions regarding the assault weapons ban, Lungren abruptly withdrew the brief, stating simply that it "inaccurately reflected" his views.

and accidental discharge test. Any handgun that fails the material test must pass a performance test.

The Massachusetts regulations also require all handguns to be sold with: 1) warning labels and a demonstration by sellers regarding the safe handling and storage of firearms; 2) child-proof safety locks and a load indicator or magazine safety disconnect; and 3) tamper-resistant serial numbers.

The regulations were phased in beginning October 1, I997, and were to take full effect on June 1, 1998. In January of 1998, however, the American Shooting Sports Council and three firearms manufacturers filed suit to enjoin enforcement of the laws, arguing that the regulations were beyond the scope of the Attorney General's authority and violated the manufacturers' constitutional rights. As of April 1, 1998, there had been no significant developments in that suit.

Maryland. In 1996, Maryland adopted the Gun Violence Act of 1996, a package of comprehensive gun control laws which limit handgun purchases to one-per-month, require background checks and a seven-day waiting period for handgun purchases, prohibit domestic abusers from purchasing handguns, and increase penalties for illegal firearm sales.

In November of 1997, Governor Parris Glendening released data demonstrating that the law was accomplishing its intended purpose – to eliminate Maryland as a gun source for surrounding states, reduce the availability of handguns for Maryland criminals and contribute to a reduction in gun violence. The one-gun-a-month law, designed to reduce gun trafficking and "straw purchases" (gun purchases by individuals with clean criminal records for resale to convicted felons or other prohibited purchasers), showed the most dramatic results, with a significant decline in the number of guns recovered out of state that could be traced to a sale by a Maryland dealer.

Texas. In 1995, the Texas Legislature adopted a "shall issue" concealed weapons law, i.e., one that creates a non-discretionary system under which law enforcement authorities must issue a concealed weapons permit to anyone meeting certain minimal criteria. California, in contrast, has a "may issue" law - concealed weapons permits are discretionary and will only be issued upon a showing of "good cause." Penal Code § 12050. Licenses under the new Texas law, which became effective in 1996, allow license-holders to carry concealed weapons in most public

places, including malls, grocery stores, parks, museums, libraries, day-care centers and concerts.

In January of 1998, the Violence Policy Center ("VPC"), a national non-profit organization that conducts research on violence in America, published "License to Kill, Arrests Involving Texas Concealed Handgun License Holders." VPC found that between September 1, 1995, and September 4, 1997, a total of 151,433 individuals – one percent of the state's adult population – had obtained concealed handgun licenses. In addition, the study found that between January 1, 1996, and October 9, 1997, license holders were arrested for 946 crimes, including 263 felony offenses.

VPC found that the crime rate of concealed handgun license holders was significantly higher than that of the general population. During 1996, for example, Texas license holders were arrested for weapon-related offenses at a rate 22 percent higher than that of the general state population. Moreover, in the first six months of 1997, the weapon-related offense rate among license holders skyrocketed to *more than twice that of the general population.*

VPC notes that the National Rifle Association has been conducting a state-by-state campaign to promote "shall-issue" laws since 1987, dismissing concerns that such laws pose hazards to public safety. In light of its findings, however, VPC urges states like Texas to repeal their "shall issue" laws and strongly recommends against the adoption of such laws in other states. Alternatively, VPC recommends that existing "shall issue" laws be modified to minimize the likelihood of criminal activity by license holders. The California Legislature has repeatedly rejected "shall issue" laws, most recently in early 1998.

CHAPTER III

LOCAL ORDINANCE LITIGATION UPDATE

The 1997 Supplement to the Local Ordinance Manual provides an in-depth discussion of four lawsuits involving challenges to local violence-prevention measures. Those lawsuits presented legal challenges to: 1) West Hollywood's Saturday Night Special sales ban; 2) Santa Clara County's gun show sales ban; 3) Lafayette's firearms dealer ordinance; and 4) San Francisco's gross receipts tax. (See 1997 Supp., pp. 10-20.)

This Chapter provides an update of those cases, together with a discussion of the most recent ordinance-related lawsuit – that filed in November of 1997 against the City of Los Angeles following its adoption of an ordinance banning the sale of high-capacity ammunition magazines. As discussed below, 1997 brought significant legal victories to California cities and counties seeking to reduce gun violence in their communities.

A. WEST HOLLYWOOD'S SATURDAY NIGHT SPECIAL SALES BAN

The most closely watched ordinance-related lawsuit involves the City of West Hollywood's historic ban on the sale of Saturday Night Specials.[12] That suit, filed on February 16, 1996, by the California Rifle and Pistol Association, National Rifle Association and four individual plaintiffs, alleged that the ordinance was expressly and impliedly preempted by state law, duplicative of state law and "unreasonable and arbitrary" in violation of plaintiffs' due process and equal protection rights.[13]

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[12] *California Rifle and Pistol Association et al. v. City of West Hollywood*, Los Angeles Superior Court Case No. BC 144600.

[13] For a discussion of the legal arguments asserted in the lower court proceedings, see pages 10-13 of the 1997 Supplement.

The trial court proceedings were resolved in West Hollywood's favor on November 15, 1996, when Judge David A. Horowitz issued an order granting the City's motion for summary judgment and denying plaintiffs' cross-motion for summary adjudication. The court ruled that the West Hollywood ordinance is not expressly preempted by state law, does not conflict with or duplicate state law, and is not impliedly preempted by state law.

Plaintiffs appealed Judge Horowitz' ruling and the parties completed their appellate briefing in February of 1998. As of April 1, 1998, no date had been set for oral argument in the case. *Amicus curiae* briefs were filed in support of West Hollywood by the City and County of San Francisco and 17 other cities, by the Center to Prevent Handgun Violence, California Police Chiefs' Association, Hispanic-American Police Command Officers Association, LCAV and the Trauma Foundation, and by nine organizations representing people of color and/or women and children throughout California.[14]

B. SANTA CLARA COUNTY'S BAN ON THE SALE OF FIREARMS AT THE FAIRGROUNDS

Gun shows are notorious locations for illegal firearms sales. (See "Gun Shows In America, Tupperware Parties for Criminals," Violence Policy Center, 1996.) Illegal sales are often difficult to prove, however, because no federal, state or local law enforcement agency is currently responsible for monitoring gun show activities. In recent years, local governments have begun to regulate gun shows in an effort to address this problem.

In January of 1996, Santa Clara County approved an addendum to its lease with the Santa Clara County Fairgrounds Management Corporation banning the sale of firearms at the Fairgrounds. Gun show promoters Russell Allen Nordyke and Sallie Ann Nordyke, dba Trade Shows, sued the County in federal court, alleging that the lease

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[14] Those organizations are the Southern Christian Leadership Conference of Greater Los Angeles, Bay Area Urban League, Inc., Community Wellness Partnership, Drive By Agony, Santa Cruz Barrios Unidos, Los Angeles Commission on Assaults Against Women, California Congress of Parents, Teachers, and Students, Inc., League of Women Voters of California, and Women Against Gun Violence.

provision violated their constitutional rights of free speech, equal protection and due process, and was preempted by state law.

On July 8, 1996, the district court issued an order granting plaintiffs' motion for a preliminary injunction, holding that the incidental speech accompanying a gun sale is commercial speech entitled to First Amendment protection. The County appealed the order to the Ninth Circuit. (See 1997 Supp., pp.13-16.)

On April 4, 1997, the Ninth Circuit Court of Appeals issued its decision in the case. *Nordyke v. Santa Clara County*, 110 F.3d 707 (9th Cir. 1997). Significantly, the court held that the act of exchanging money for a gun is conduct, which does *not* qualify as "speech" for purposes of the First Amendment. The court held further, however, that because the lease also prohibited the "offering for sale" of guns at the Fairgrounds, the lease provision curtailed protected commercial speech.

The court observed that the First Amendment does not protect all proposals to engage in commercial transactions, but only those that concern lawful activity. Because the County had not adopted an ordinance making it *illegal* to sell firearms at the Fairgrounds (but had merely prohibited such sales through a provision of the lease), the sale of firearms at that location remained "lawful activity." Accordingly, proposals to engage in such a transaction would be protected as commercial speech under the First Amendment.

The court opined that although the County could have adopted an *ordinance* banning the sale of firearms at the Fairgrounds without implicating the First Amendment, its addendum to the lease for the Fairgrounds did not achieve that end. The court did not reach the issue of whether such an ordinance might be preempted by state or federal law.

The Santa Clara County case is instructive to localities seeking to prohibit the sale of firearms at gun shows. Other local regulations currently under consideration, such as those requiring promoters to hire trained law enforcement personnel to monitor gun show activities, are discussed in the 1997 Supplement (at p. 22-27).

C. LAFAYETTE'S DEALER ORDINANCE

California cities and counties achieved a huge legal victory in 1997 when the First District Court of Appeal upheld an ordinance adopted by the City of Lafayette to regulate firearms dealers. That ordinance, adopted in 1994, required firearm sales businesses to operate in commercial areas with a land use permit. The ordinance also required prospective business operators to obtain a police permit, only issued upon proof that: 1) the premises will be secure; 2) a trigger lock or similar device will be sold with each firearm; 3) the applicant will maintain a $1 million liability policy; and 4) minors will not be permitted on the premises (if firearm sales is the primary business performed on the premises) unless accompanied by a legally responsible adult.

On December 21, l994, 13 individuals, including local residential and commercial firearms dealers and persons allegedly wishing to patronize such dealers, sued the City of Lafayette, arguing that the ordinance was preempted by state law and violated plaintiffs' rights of due process, equal protection and privacy. (*Suter v. City of Lafayette*). The complaint also alleged a "taking" without just compensation in violation of the Fifth Amendment of the United States Constitution.

The trial court sustained the City's demurrer to the complaint without leave to amend, entered a judgment dismissing the action in its entirety and denied plaintiffs' post-judgment request for attorneys' fees. (See 1997 Supp., pp. 16-18.) Plaintiffs appealed.

On September 16, 1997, the Court of Appeal issued its landmark decision in the Lafayette case. 57 Cal. App. 4th 1109. In a victory for local governments across California, the court held that state law does not preempt the broad field of firearms sales or regulation of firearm dealers. In so holding, the court explicitly rejected as "unpersuasive dicta" contrary conclusions contained in a non-binding opinion of Attorney General Dan Lungren (77 Op. Att'y Gen. 147 (1994)). (See Manual, pp. 20-21.) The court observed that state law leaves substantial areas of firearms control unregulated, indicating an intent to permit local governments to tailor firearms legislation to the particular needs of their communities. The court also noted that Penal Code Section 12071 explicitly authorizes local regulation of firearms dealers.

Turning to the specific requirements of the Lafayette ordinance, the court upheld all but one of the challenged provisions. The court rejected plaintiffs' preemption

challenge to the trigger lock provision, holding that it did not expressly conflict with or duplicate state law, or enter into an area occupied by state law.

In response to plaintiffs' constitutional challenge to the ordinance, the court observed that local ordinances will generally be upheld against such a challenge if they are reasonably related to promoting the health, safety, comfort and welfare of the public, and if the means adopted to accomplish that end are reasonably appropriate. The court rejected plaintiffs' claim that the Lafayette ordinance should be scrutinized under a higher standard because it impinged upon free speech. In reliance on the holding in *Nordyke, supra*, the court held that the ordinance did not implicate the First Amendment because it did not restrict advertising or offering for sale, but merely regulated sales activity.

The court also upheld the zoning component of the ordinance, finding a rational basis for confining firearms dealers to commercial areas and insisting that they be located away from residential neighborhoods, schools, liquor stores and bars. The court found a rational basis also existed for the provision of the ordinance barring unaccompanied minors from firearms dealerships where firearms sales activity is the primary business performed at the site. Finally, the court rejected plaintiffs' challenge to the insurance requirement of the ordinance, holding that the City had a legitimate public interest in ensuring that persons who are injured by the negligence of firearms dealers receive adequate compensation for their injuries.

The only provision of the Lafayette ordinance invalidated by the court was that imposing security measures for the storage of firearms. The court found that provision preempted by Penal Code Section 12071 (b)(14), which requires dealers to employ one of three specified methods for storing firearms. Because the Lafayette ordinance required dealers to employ *two* of the three alternatives set forth in Section 12071(b)(14), the court found the ordinance impliedly preempted.[15]

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[15] Section 12071(b)(14) provides that in counties with a population of more than 200,000 or cities of more than 50,000, firearms dealers must store their firearms using one of the following methods when they are not open for business: (A) Store the firearm in a secure facility that is a part of the dealer's business premises ("secure facility" is defined in Section 12071(c)(3)); (B) Secure the firearm with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the firearm (other specific requirements are included); or (C) Store the firearm in a locked fireproof safe or vault in the dealer's business premises. Section 12071 (b)(15) provides that the licensing authority in less populated areas "may impose the requirements specified in paragraph (14)."

In reaching this conclusion, the court stated that it would not have found preemption in this field if Section 12071(b)(14) were less detailed in the safety standards it prescribes. However, the court found that the specificity of the statutory language indicated an intent by the Legislature to exclude local regulation in this area. In light of this holding, the court remanded the case to the trial court for a determination of whether plaintiffs were entitled to an award of attorneys' fees.

The Court of Appeal denied plaintiffs' motion for a rehearing and, in December of 1997, the California Supreme Court denied plaintiffs' petition for review. Accordingly, the Lafayette decision is now final and binding on trial courts throughout the state. As of April 1, 1998, the plaintiffs' motion for attorneys' fees had not been heard.

The *Suter* decision has provided much-needed guidance to local governments throughout the state, many of which have dealer ordinances similar to that adopted by Lafayette. As discussed in Chapter I, these ordinances have been shown to significantly reduce the number of firearms dealers in a community, particularly when those dealers are located in residential neighborhoods. Although state law does not require dealers in smaller communities to store firearms in a secure manner, those communities may, consistent with the *Suter* opinion, adopt ordinances requiring dealers to comply with Penal Code Section 12071 (b)(14).

D. SAN FRANCISCO'S GROSS RECEIPTS TAX

As discussed in the 1997 Supplement (at pp. 18-20), the San Francisco Gun Exchange filed suit against the City and County of San Francisco after it adopted a gross receipts tax on all goods sold by businesses selling firearms and ammunition.[16] The tax was adopted in May and July of 1994, through amendments to the Payroll Expense and Business Tax Ordinance. Those amendments excluded businesses selling firearms and ammunition from the Small Business Exemption and increased the gross receipts tax for those businesses to 3 percent, or $300 of the first $10,000 of gross receipts plus $30 for each additional $1,000 of gross receipts. The business tax amendments went into effect on January 1, l995.

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[16] *San Francisco Gun Exchange, Inc. v. City and County of San Francisco*, San Francisco Superior Court Case No. 975-036.

The Gun Exchange's complaint sought injunctive and declaratory relief, alleging that the business tax amendments were void because they violated the mandate of Proposition 62 (requiring voter approval for local real property transfer taxes) and were preempted by state law. The complaint alleged further that the amendments were unconstitutional because they violated the commerce clause, equal protection clause and First Amendment.

On March 14, 1996, Judge William Cahill of the San Francisco Superior Court denied plaintiff's motion for a preliminary injunction, rejecting each of the Gun Exchange's claims and finding little chance that it would prevail on the merits. On December 20, 1996, the Gun Exchange filed a First Supplemental Complaint for Injunctive and Declaratory Relief, asserting a new claim on the basis of Proposition 218, the "Right to Vote on Taxes Act." That Act requires voter approval of general taxes imposed by a local government on or after January 1, 1995, and approval by a two-thirds vote of special taxes imposed after the adoption of Proposition 218.

On February 21, I997, the court issued an order granting the City's motion for summary judgment. With respect to the issue of Proposition 218, the court found that the business tax amendments constitute general taxes which were "imposed" on January 1, I995 (the date the tax was first collected), and thus must be approved by the voters. However, the court ruled that the City could, under terms of the law, continue to collect the taxes for up to two years, until the issue could be put before the voters.

Although the Gun Exchange filed a notice of appeal of the ruling, that appeal was subsequently abandoned. In accordance with the court's order, the City has been collecting the gross receipts tax and has until November of 1998 to place the measure on the ballot.

Several other cities and counties are considering the adoption of a gross receipts tax similar to that adopted by San Francisco. The cities of Oakland and Berkeley, for example, have placed such measures on the ballot for June and November of 1998, respectively. San Leandro voters will consider a tax on firearm sales in June 1998.

E. L.A.'s BAN ON THE SALE OF HIGH-CAPACITY AMMUNITION MAGAZINES

The most recent lawsuit involving a local violence-prevention measure was filed against the City of Los Angeles on November 14, 1997. (*Hance et al. v. City of Los Angeles et al*., Los Angeles County Superior Court Case No. BC 181327.) That suit seeks to enjoin the City's enforcement of an ordinance adopted on October 8, 1997, to ban the sale or other transfer of magazines, clips or similar devices that have "a capacity of, or which can be readily restored or converted to accept, more than ten rounds of ammunition." The ordinance closes a loophole in the 1994 federal assault weapons ban, which prohibited the *future* manufacture of high-capacity ammunition magazines, but allowed the continued sale and possession of magazines manufactured prior to the law's effective date.

Plaintiffs in the *Hance* action include five individuals who allegedly own or wish to own firearms subject to the ordinance, as well as three businesses which sell firearms or supply them to the entertainment industry for use in movies, television shows and other productions. The complaint alleges that the ordinance is impermissibly overbroad because it would: a) preclude the sale of .22 caliber target rifles with fixed magazines holding more than 10 rounds; b) prohibit the sale and/or destroy the collector's value of certain used and antique firearms originally manufactured with a feeding device that takes more than 10 rounds; and c) criminalize the rental and use of fully automatic weapons for movie and television productions. The complaint also alleges that the ordinance is preempted by state law and void for vagueness with respect to its use of the terms "transfer" and "readily."

On November 24, 1997, Judge Robert H. O'Brien denied plaintiffs' motion for a temporary restraining order, finding it unlikely that plaintiffs would prevail on the merits in the action. Plaintiffs agreed not to pursue the litigation further after receiving assurances from the City that: 1) the ordinance was only intended to apply to detachable magazines, clips, or other devices, and not to firearms with fixed magazines; and 2) the City would amend the ordinance to clarify that it was inapplicable to museums and businesses involved in the entertainment industry. The City had not yet finalized amendments to the ordinance as of April 1, 1998.

CHAPTER IV

OTHER VIOLENCE-PREVENTION MEASURES CURRENTLY UNDER CONSIDERATION

The Local Ordinance Manual and 1997 Supplement discuss several types of ordinances to reduce gun-related violence, as well as non-legislative measures to increase the safety of local communities. (See Manual, pp. 22-50 and 1997 Supp., pp. 21-30.) This Chapter discusses some other violence-prevention measures currently under consideration by local officials across the state.

A. ORDINANCES PROHIBITING THE MANUFACTURE OF SATURDAY NIGHT SPECIALS

The West Hollywood ordinance, and the other Saturday Night Special ordinances modeled after that law, prohibits the *sale* of junk guns. To date, none of the ordinances prohibit the manufacture of these weapons, most of which are produced in Southern California. However, following Governor Wilson's veto of S.B. 500 (which would have banned manufacture statewide), some local officials are considering the adoption of ordinances to prohibit both the sale and manufacture of junk guns.

An opponent of an ordinance prohibiting the manufacture of Saturday Night Specials might argue that the law: a) violates the Commerce Clause of the U.S. Constitution; b) constitutes a "taking" of property without just compensation; c) violates principles of equal protection; and d) is preempted by state law. Although the outcome of a legal challenge is difficult to predict, we believe, for the reasons discussed below, that a court would reject each of these arguments.[17]

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[17] This discussion does not provide an exhaustive legal analysis of the issues in question. Rather, it is intended as a starting point for any city or county considering the adoption of such an ordinance.

1. Legal Challenges

a. The Commerce Clause

The Commerce Clause of the U.S. Constitution grants Congress the power "[t]o regulate Commerce…among the several States." U.S. Const. Art. I, §8, cl.3. The "dormant" component of the Clause prevents states and local governments from impeding the flow of interstate commerce, even absent congressional action in a particular field. *Sherwin-Williams v. City & County of San Francisco*, 857 F. Supp. 1355 (N.D. Cal. 1994).

Local legislation will prompt scrutiny under the dormant Commerce Clause if it: 1) affirmatively discriminates against interstate commerce (i.e., if it favors local economic interests to the detriment of outside interests), or 2) regulates evenhandedly, but incidentally burdens interstate commerce. *Id*.

Legislation that affirmatively discriminates against interstate commerce is virtually per se invalid. *Id.* See *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 97 S.Ct. 2434, 53 L.Ed. 2d. 383 (1977) (North Carolina produce labeling statute struck down because it discriminated against Washington apple shippers and offered the local industry "the very sort of protection against competing out-of-state products that the Commerce Clause was designed to prohibit." 432 U.S. at 351).

Ordinances that regulate evenhandedly but incidentally burden interstate commerce, in contrast, will be upheld unless the burden on interstate commerce is clearly excessive in relation to the putative local benefits. *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 90 S.Ct. 844, 25 L.Ed.2d. 174 (1970). See e.g., *Raymond Motor Transportation, Inc. v. Rice*, 434 U.S. 429, 98 S.Ct. 787, 54 L.Ed. 2d 664 (1978) (Wisconsin law prohibiting operation of trucks over 55 feet long held to violate Commerce Clause because it substantially impeded interstate highway use by out-of-state carriers and the state failed to make any showing that the regulation contributed to highway safety).

An ordinance banning the manufacture of Saturday Night Specials would not affirmatively discriminate against interstate commerce because it does not benefit local interests at the expense of competing out-of-state interests (e.g., it does not prohibit the manufacture of junk guns with component parts from out-of-state, while allowing the manufacture of those with parts produced locally). Because the law would apply

evenhandedly to prohibit the manufacture of all junk guns, regardless of where the parts were produced, it will be upheld under *Pike* if the incidental burden on interstate commerce (if any) is outweighed by the putative local benefits.

The *Pike* balancing test was applied in *Sherwin – Williams*, *supra*, in connection with a Commerce Clause challenge to a San Francisco antigraffiti ordinance. That ordinance prohibited retailers from displaying spray paint or markers for sale unless they were maintained in places accessible only with employee assistance. The District Court rejected the challenge, holding that the ordinance applied evenhandedly to all retailers and manufacturers, and the minimal burden placed on interstate commerce (i.e., an alleged decrease in sales) was outweighed by the reduction in graffiti the City expected to receive as a result of the measure

In *Minnesota v. Clover Leaf Creamery Co.,* 449 U.S. 456, 101 S.Ct. 715, 66 L.Ed. 2d 659 (1981), the Supreme Court considered a Commerce Clause challenge to a state law banning the sale of milk in plastic nonreturnable, nonrefillabe containers, but permitting such sales in other nonreturnable, nonrefillable containers, such as paperboard cartons. The court held that the law was nondiscriminatory and only incidentally burdened interstate commerce, despite the fact that the raw material used for making plastic nonreturnable containers was produced entirely by out-of-state companies. The court found no reason to suspect that the law would benefit Minnesota firms at the expense of out-of-state firms, noting that two of the three dairies, the sole milk retailer, and the sole milk container producer challenging the law were Minnesota companies. The court found that the relatively minor burden imposed on interstate commerce was not excessive in light of the substantial state interest in promoting energy conservation and easing solid waste disposal problems.

It is unclear what burden, if any, an ordinance banning the manufacture of Saturday Night Specials would have on interstate commerce. If component parts for the weapons are produced outside of California, out-of-state producers might argue that the law impermissibly burdens interstate commerce because it eliminates future sales to California manufacturers. However, *local* manufacturers (and not out-of-state companies) would be most adversely affected by the ordinance and would be the most likely plaintiffs in any lawsuit challenging the law. As noted by the Supreme Court in *Clover Leaf Creamery, supra,* the existence of adversely affected in-state interests is a powerful safeguard against legislative abuse (see footnote 17).

Because the burden of a manufacturing ban would overwhelmingly fall on local manufacturers (indeed, competing out-of-state junk gun manufacturers could benefit from the law), a court might find that interstate commerce is not implicated at all by the ordinance. See *Exxon Corp. v. Governor of Maryland*, 437 U.S. 117, 98 S.Ct. 2207, 57 L.Ed.2d 91(1978) (statute prohibiting producers and refiners of petroleum products from operating retail service stations did not cause local goods to constitute larger share of market sales and thus had no demonstrable effect on interstate commerce).

Even if the ordinance is found to incidentally burden interstate commerce, however, it will only be struck down if the burden is "clearly excessive in relation to the putative local benefits." *Pike v. Bruce Church, supra.* The term "putative," when used in this context, means only that the legislative body must be able to plausibly assert that the law was designed to effectuate some valid police purpose; it need not empirically demonstrate that the law will, in fact, succeed in furthering that purpose. *National Kerosene Heater Ass'n, Inc. v. Commonwealth of Massachusetts*, 653 F. Supp. 1079 (D. Mass. 1986).

In *National Kerosene*, *supra*, the court considered a Commerce Clause challenge to a Massachusetts law banning the use and sale of unvented liquid fired space heaters. Although the heaters were produced exclusively by out-of-state manufacturers, the court held that the law did not discriminate against interstate commerce because it did not benefit any *local* manufacturers. Applying the *Pike* balancing test, the court found that the state had plausibly shown that the ban was necessary to protect the safety of the citizenry, despite industry claims regarding the safety of a "new generation" of the heaters. The court observed that such nondiscriminatory core police power legislation has traditionally been given great deference by the courts.

The court also rejected the claimant's attempt to "portray itself as a friend of consumers" by suggesting that interstate commerce would be burdened merely because the public would be deprived of the heaters. The court stated that such an argument relates only to the wisdom of legislation, and not to its burden on interstate commerce.

On the basis of the foregoing authorities, we believe a court would also reject a Commerce Clause challenge to an ordinance banning the manufacture of Saturday Night Specials. Any local government faced with such a challenge should be able to

establish that: 1) the ordinance is nondiscriminatory (i.e., it does not benefit local economic interests at the expense of outside interests); and 2) any incidental burden on interstate commerce is outweighed by the putative local benefits of the law.

Any city or county considering a manufacturing ban should make findings demonstrating that junk guns present a plausible threat to the health and safety of persons living within and outside of the community. These findings would be similar to those made by the California Legislature in support of S.B. 500, and by the dozens of local governments that have already banned junk gun sales (e.g., that junk guns are dangerous to the user, unreliable for purposes of self-defense, disproportionately used in crime, and often stored by manufacturers in unsecured facilities).[18] Recent studies have also shown that Saturday Night Specials are favored by juveniles, and that a junk gun purchase by a young adult is a strong indicator of subsequent criminal activity by that person.[19]

Any locality considering a manufacturing ban should also make findings demonstrating that local officials reasonably believed that the ordinance would not favor local economic interests, and would have little, if any, impact on interstate commerce.

b. "Taking" of Property Without Just Compensation

An opponent of an ordinance banning the manufacture of Saturday Night Specials might also argue that the law constitutes a "taking" of property without just compensation in violation of the state and federal constitutions.[20] This argument should also fail.

The U.S. Supreme Court has held that land use regulations can effect a taking if they do not substantially advance legitimate governmental interests or if they deny an owner economically viable use of the land. *Agins v. Tiburon*, 447 U.S. 255, 100 S.Ct.

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[18] A Frontline documentary that aired on PBS on June 3, 1997, entitled "Hot Guns," reported that thousands of junk guns had been stolen from a Lorcin plant because of the company's almost nonexistent security measures.

[19] See discussion of A.T.F.'s Youth Crime Gun Interdiction Initiative, *infra,* and G.J. Wintemute, et al., *Weapons of Choice: Previous Criminal History, Later Criminal Activity, and Firearm Preference Among Legally Authorized Young Adult Purchasers of Handguns*. Journal of Trauma: Injury, Infection and Critical Care, Vol. 44, No.1 (1998).

[20] No person shall be...deprived...of...property, without due process of law; nor shall private property be taken for public use, without just compensation." U.S. Const. amend. V.; "Private property may be taken or damaged for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner." Cal. Const. art.1, § 19.

2138, 65 L.Ed.2d 106 (1980). Some cases have applied a similar, three-factor test established by the Supreme Court in *Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978). The factors considered significant to a takings analysis under that test are the character of the governmental action, the extent to which that action interferes with the claimant's reasonable, investment-backed expectations, and the economic impact of the governmental action on the claimant.[21]

In *Keystone Bituminous Coal Ass'n. v. DeBenedictis*, 480 U.S. 470, 107 S.Ct. 1232, 94 L.Ed.2d 472 (1987), the court considered a takings challenge to the Pennsylvania Subsidence Act, which required 50 percent of the coal beneath certain structures to be kept in place to prevent subsidence. The court found that the claimants had failed to establish a taking under *Agins* or *Penn Central* because the legislation was intended to advance a legitimate public interest, and the claimants had failed to show that they could not continue their mining operations.

The court in *Keystone* emphasized that the nature of the governmental action is critical to a takings analysis. The court relied heavily on earlier decisions which rejected takings claims where the government had acted to prohibit conduct perceived to be injurious to the public welfare. One of those decisions, *Mugler v. State of Kansas*, 123 U.S. 623, 8 S.Ct. 273, 31 L.Ed. 205 (1887), involved a takings challenge to a Kansas law banning the manufacture and sale of intoxicating liquors. The claimant was a distiller who had operated a brewery for several years before the ban was adopted. Although the court acknowledged that the brewery buildings and equipment would be of little remaining value because of the law, the court rejected the takings claim, holding that the governmental action was justified because it was for the public good:

> A prohibition simply upon the use of property for purposes that are declared, by valid legislation, to be injurious to the health, morals, or safety of the community, cannot, in any just sense, be deemed a taking or appropriation of property…Such legislation does not disturb the owner in the control or use of his property for lawful purposes, nor restrict his right to dispose of it, but is only a declaration by

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[21] Although *Agins* was decided only two years after *Penn Central*, the court did not acknowledge that its two-part test differed from the three-part *Penn Central* test, noting only that "no precise rule determines when property has been taken." Some cases, such as *Keystone Bituminous Coal Ass'n v. DeBenedictis, infra*, have suggested that the *Agins* test should be used when a law is challenged on its face, while the *Penn Central* test should be used when a law is challenged as applied. However*, Agins* itself made no such distinction.

the state that its use by anyone, for certain forbidden purposes, is prejudicial to the public interests. *Mugler*, 8 S.Ct. at 301.

The court in *Keystone* found that the governmental action in the case before it, like that at issue in *Mugler*, was designed to protect the public from what the government perceived to be a significant threat to the common welfare. Because the claimants had failed to show that the government's action had denied them economically viable use of the land, or interfered with their reasonable "investment-backed expectations," the court rejected the takings challenge. See also *Andrus v. Allard*, 444 U.S. 51, 100 S.Ct. 318, 62 L.Ed.2d 210 (1979) (Eagle Protection Act and Migratory Bird Treaty, prohibiting sale of protected bird artifacts, did not effect a taking where claimants failed to show deprivation of all economic benefit from ownership of the artifacts).

For similar reasons, we believe a court would reject a takings challenge to an ordinance prohibiting the manufacture of Saturday Night Specials. As discussed previously, ample evidence exists regarding the significant threat to public health and safety created by these firearms. A manufacturing ban would substantially advance the governmental interest in protecting the public from junk guns by eliminating their future production.

In addition, the ordinance would not deny junk gun manufacturers economically beneficial or productive use of their property. As a practical matter, most manufacturers would probably upgrade the design and production of their firearms to comply with the ordinance and then continue their operations (since the ban would not prohibit the production of *all* firearms). However, even if a manufacturer chose to cease operations altogether, the land and manufacturing plant could be sold or used for other purposes, and thus would still retain some economic value. Under the circumstances, a court would be unlikely to find that the ordinance effected a compensable "taking" of property.

c. Equal Protection

We believe a court is also likely to reject an equal protection claim. The state and federal constitutions guarantee equal protection of the laws. Cal. Const. art.1, § 7; U.S. Const. amend. XIV. However, equal protection is not denied simply because an ordinance treats one class of persons differently from another. *Suter v. City of*

Lafayette, supra (rejecting equal protection challenge to City's regulation of firearms dealers).

Where a law does not involve a suspect class (such as race) or a fundamental right (such as freedom of speech or religion), it will be upheld against an equal protection challenge if it is rationally related to a legitimate governmental purpose. *Id.* In the area of economics and social welfare, legislative classifications will satisfy the requirements of equal protection if they have some reasonable basis and if any set of facts can be conceived to justify them. *Sherwin-Williams v. City & County of San Francisco, supra* (rejecting equal protection challenge to ordinance regulating sale of spray paint).

Junk gun manufacturers clearly do not belong to a suspect class. Moreover, there is no fundamental right to produce firearms. Because an ordinance banning the manufacture of dangerous weapons is rationally related to a legitimate governmental purpose (i.e., the promotion of public health and safety), an equal protection challenge should be unsuccessful.

d. Preemption

Finally, any legal challenge to a manufacturing ban would undoubtedly include a claim on the basis of preemption. Although this complex area of the law is still evolving, several strong arguments can be made in response to such a claim.

The preemption doctrine is discussed in detail at pages 11 to 21 of the Manual. The analysis begins with the California Constitution, which provides that a city or county "may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general law." Cal. Const., art. XI, § 7. The courts have held that local legislation conflicts with state law, and is preempted by that law, if it duplicates, contradicts or enters an area fully occupied by general law, either expressly or by implication. *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal. 4th 893.

An ordinance banning the manufacture of Saturday Night Specials would not duplicate state law because state law does not currently prohibit the manufacture of these weapons. Nor would the ordinance contradict state law, since there are no statutes which explicitly authorize the manufacture of junk guns or any other firearms.

A challenge made on the basis of express preemption should also fail. Express preemption occurs where the Legislature explicitly expresses its intention to occupy a particular field to the exclusion of all local regulation. The only state statutes that expressly preempt local firearms regulations are Government Code Sections 53071 and 53071.5. Section 53071 would not expressly preempt an ordinance banning the manufacture of Saturday Night Specials, however, because that statute only preempts the narrow field of the regulation of "registration or licensing" of firearms. (See Manual, pp. 15-18.) Although Section 53071.5 explicitly refers to firearms manufacturing, that statute only preempts local regulation of the manufacture of "imitation firearms" (i.e., BB guns, air rifles and devices described in Penal Code Section 417.2). Because the ordinance would not involve the manufacture of imitation firearms, it would not be expressly preempted by Section 53071.5.

Unlike express preemption, implied preemption will be found where the state's intent to preclude local action is inferred from the existence of a comprehensive regulatory scheme in a particular field. The California Supreme Court established a three-pronged test for evaluating this type of preemption in *In re Hubbard* (1964) 62 Cal. 2d 119 (overruled on other grounds in *Bishop v. City of San Jose* (1969) 1 Cal. 3d 56). That test requires an analysis of whether: 1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; 2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or 3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the municipality.

In *Galvan v. Superior Court* (1969) 70 Cal. 2d 851, the Supreme Court applied the *In re Hubbard* test to the field of weapons control. With respect to the first prong of the test, the court concluded that the vast array of statutes dealing with guns and other weapons did not occupy the entire field of weapons control: "[t]he fact that there are numerous statutes dealing with guns or other weapons does not by itself show that the subject of guns or weapons control has been completely covered so as to make the matter one of exclusive state concern." *Galvin*, 70 Cal. 2d at 861.

The court also observed that the issue of "paramount state concern," identified in the second prong of the test, involves the question of whether local needs have been

adequately recognized and dealt with at the state level. The court stated: "[t]hat problems with firearms are likely to require different treatment in San Francisco County than in Mono County should require no elaborate citation to authority." *Id*. at 864. (See Manual, pp. 13-15.)

In *Suter v. City of Lafayette* (1997) 57 Cal. App. 4th 1109 (discussed *supra* at pp. 22-24), the court applied the *In re Hubbard* test to an ordinance regulating firearms dealers. With respect to the third prong of the test, the court observed that local laws designed to control the sale, use or possession of firearms in a particular community have very little impact on transient citizens. The court observed further that "the Legislature's response to cases upholding local weapons legislation against a preemption challenge itself is persuasive evidence that it has no intention of preempting areas of weapons laws not specifically addressed by state statute." *Suter*, 57 Cal. App. 4th at 1119.

Application of the *In re Hubbard* test to an ordinance banning the manufacture of Saturday Night Specials would require a preliminary identification of the relevant field. A court considering a preemption challenge would probably undertake an analysis of the broad field of "weapons control", as well as the narrower field of state law pertaining to the manufacture of firearms.

The Legislature has adopted very few laws in the area of manufacturing, however. Although firearms manufacturers must be federally licensed, state law does not impose any additional licensing requirements. Significantly, federal law contemplates regulation at both the state and local level. The Gun Control Act of 1968 provides that an application for a license to manufacture firearms shall be approved if the applicant certifies, among other things, that "the business to be conducted under the license is not prohibited by State *or local law* in the place where the licensed premise is located." 18 U.S.C. § 923 (d)(1)(F)(i).

Moreover, only a handful of state laws prohibit the manufacture of specific types of firearms. Those statutes include Penal Code Sections 12220 (machine guns), 12280 (assault weapons), 417.2 (imitation firearms), and 12020 (manufacture, importation, sale, or possession of disguised firearms or other deadly weapons).

An opponent of a local manufacturing ban might focus particular attention on Penal Code Section 12020, the broadest of the state laws pertaining to manufacturing.

That statute prohibits the manufacture, importation, sale and possession of a laundry list of weapons, including certain knives and firearms. Prohibited firearms include cane guns, wallet guns, undetectable firearms, firearms which are not immediately recognizable as firearms, short-barreled shotguns, short-barreled rifles and zip guns.

The cases that have considered implied preemption challenges to Section 12020, however, have interpreted the statute narrowly. In *Yuen v. Municipal Court* (1975) 52 Cal. App. 3d 351, for example, the court considered a preemption challenge to a San Francisco ordinance prohibiting loitering while carrying concealed weapons. The claimant argued that Section 12020 and several other provisions of the Penal Code preempted the field of the control of knives and knife-like objects as deadly weapons. The court rejected this argument, finding that state law covered only limited kinds of knives. The court observed that the Supreme Court had rejected an implied preemption challenge in *Galvan, supra*, notwithstanding the existence of a "proliferation of legislation covering gun control." Applying each prong of the *In re Hubbard* test, the court held that the ordinance was not preempted by state law.

For similar reasons, a court considering a preemption challenge to a local ban on the manufacture of junk guns might find that the Legislature's piecemeal prohibition on the manufacture of a few types of firearms is not indicative of an intent to occupy the entire field of weapons manufacturing (i.e., it does not suggest that "the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern," or that a "paramount state concern" will not tolerate further or additional local action" in this area).

A court considering a preemption challenge under Penal Code Section 12020 might also find that the underlying purpose of the statute is relevant to its analysis. If so, it would be important to note that the Legislature adopted Section 12020 in an effort to outlaw the manufacture and possession of a class of weapons that are normally used only for *criminal* purposes. *People v. Wasley* (1966) 245 Cal. App. 2d 383, *People v. Stinson* (1970) 8 Cal. App. 3d 497 (the purpose of the statute was to outlaw weapons common to the "criminal's arsenal"). Although junk guns are frequently used by criminals, particularly juveniles, one of the most serious problems with these weapons is that they are poorly made and unreliable for purposes of self-defense. Thus, unlike the weapons banned in Section 12020 and other parts of the Penal Code (e.g., machine guns, assault rifles, sawed-off shotguns and disguised firearms), Saturday Night Specials are being regulated, in substantial part, because of the risks they pose to

consumers. We are unaware of any state statutes that currently regulate firearms from a consumer-safety perspective.

Finally, an opponent of a ban on the manufacture of junk guns might argue that the ordinance is preempted by Penal Code Section 12026 (b), which prohibits the imposition of any permit or license requirements to purchase, own or possess a concealable firearm within one's home or place of business. (See Manual, pp. 14, 17-21.) A local manufacturing ban should not be found to violate Section 12026 (b), however, because the law would not impose any permit or license requirements, or otherwise materially restrict an individual's ability to purchase, own or possess a concealable handgun. Rather, it would merely prohibit the manufacture of a narrow class of handguns found to be a particular threat to public health and safety.

B. OTHER VIOLENCE-PREVENTION ORDINANCES

Local officials across the state are considering a number of other innovative measures to reduce gun violence. During 1997, for example, Los Angeles City Councilmember Mike Feuer sponsored a package of cutting-edge legislation which: 1) prohibits private sales of junk guns (previous ordinances prohibited sales by firearms dealers, but exempted private transfers); 2) requires ammunition purchasers to provide thumbprints; and 3) bans the sale of high-capacity ammunition magazines.[22] The City is currently studying an ordinance which would require ammunition purchasers to obtain a local permit and undergo a background check, so that persons prohibited from buying firearms could no longer purchase ammunition.

LCAV is interested in hearing about any other violence-prevention measures being considered by local governments statewide, including non-legislative policy options such as those discussed below.

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[22] A legal challenge to the ban on high-capacity ammunition magazine sales is discussed *supra*, at page 26.

C. NON-LEGISLATIVE APPROACHES TO REDUCING GUN VIOLENCE

1. Gun Bounty Programs

In February of 1997, the City of Monrovia (located in Southern California) began its Stop Gun Violence Bounty Program. That program is designed to reduce gun violence by encouraging responsible citizens to call the police when they have reason to believe a person is illegally carrying a gun in a public place or on a school campus. After a caller provides specific information regarding the location and identity of the suspect and gun, the caller is given a confidential identification number and asked to call back in about an hour. An officer is then dispatched to the scene for an investigation. If the officer makes an arrest related to the illegal carrying of a firearm in public or on a school campus, the caller is entitled to an immediate bounty of $100. Bounty funds are provided by private donations.

For more information about Monrovia's gun bounty program, please call Sergeant Steve Cofield at the Community Policing Bureau of the Monrovia Police Department, (626) 359-1152, ext. 220.

A similar gun bounty program is in effect in Richmond. That program, the Richmond Police Neighborhood Gun Suppression Program, was started in May of 1997. To date, the city has paid 35 bounties of $100 each. For more information about the program, please call Detective Dave Harris at (510) 620-6960.

2. Expansion of ATF's Youth Crime Gun Interdiction Initiative

During 1996, President Clinton implemented the Youth Crime Gun Interdiction Initiative, an ATF program designed to enable law enforcement to pursue illegal gun traffickers by tracing guns sold to juveniles and others. This collaborative effort among federal, state and local law enforcement initially involved 17 cities nationwide, and was begun in response to a tripling of the juvenile firearms homicide rate between 1985 and 1994. The program matches data provided by local authorities on seized firearms with information provided by other databases in an effort to trace firearms back to their original source and detect illegal trafficking patterns.

An ATF report released in July of 1997 summarized the findings of the 17-city pilot program.[23] That report, which was the first ATF age-based analysis of locally recovered crime guns, found that juvenile and youth crime guns comprised 45 per cent of the 37,000 crime guns requested for tracing. In addition, the report found that 80 per cent of the juvenile and youth crime weapons were handguns, and that junk guns manufactured by Southern California "Ring of Fire" companies were significantly more likely to be used by juveniles than by adults. ATF also reported that many recovered firearms had been rapidly diverted from first retail sales at federally licensed dealers to a black market that illegally supplies guns to juveniles and youth.

In light of the initial success of the Youth Crime Gun Interdiction Initiative, $11 million in additional funding has been allocated for a 10-city expansion of the program. California cities participating in the Initiative include Inglewood, Salinas and Los Angeles.

3. Preventive Approaches to Youth Violence

Community leaders and local officials have become increasingly aware of the need to develop preventive approaches to youth violence. As a result, several innovative, youth-related programs are being implemented across the state. Examples of three such programs are discussed below. For more information about these and other programs to reduce youth violence, please call Resources for Youth at (415) 331-5991.

a. Full-service schools

The goal of full-service schools, sometimes referred to as Beacon Centers or New Beginnings Centers, is to expand the use of a community resource that is often underutilized – the school. Full-service schools operate outside of traditional school hours to offer a broad range of services to youth, their families, and to other community members. Programs are tailored to the particular needs of the community and may include services such as academic and computer classes, job training, social services, health care clinics, sports activities and parenting classes.

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[23] Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms,The Youth Crime Gun Interdiction Initiative*, Crime Gun Trace Analysis Reports: The Illegal Youth Firearms Markets in 17 Communities (July 1997).*

Full-service schools have been successfully implemented in communities throughout the state, including San Diego, San Francisco and Modesto. These schools have been effective in providing youth with meaningful activities and a safe environment during high-risk times for crime, reducing school failures and dropouts, and improving community access to important social services.

b. Community Mapping Projects

In community mapping projects, youth are invited to identify locations in their communities that could be better used to serve the needs of young people. By plotting these places on the map, and suggesting how resources could be improved, youth are given a unique opportunity to become partners in local violence-prevention efforts.

Community mapping projects have been successful across the state. In the summer of 1997, for example, a mapping program was implemented in Riverside by People Reaching Out, a violence-prevention project sponsored by Inland Agency. Youth from the city's Eastside neighborhood identified several locations in the community that could be improved to benefit young people. As a result of their recommendations, Mayor Ron Loveridge agreed to improve the Cesar Chavez Community Center, one of the identified locations, so that young people would have a safe place to congregate.

Other community mapping projects have been effectively implemented in San Francisco and Oakland.

c. Teen courts

Many communities are addressing the problem of youth violence through the use of teen courts. Teen courts provide an early intervention option for first-time youth offenders in cases that might otherwise receive no attention from the criminal justice system, e.g., truancy, curfew violations and minor substance abuse cases. Teen courts are voluntary and the defendant must usually admit his or her guilt in order to participate in the program. A jury of six to twelve of the defendant's peers (frequently former teen court defendants) questions the defendant and then imposes an appropriate sentence.

Typical sentences include letters of apology to those harmed by the defendant's conduct, restitution, teen court jury duty and community service. Although completion of the sentence is voluntary, teen court is usually taken quite seriously by participants, who

are often more responsive to the judgment of their peers than to that of adults. Participants are also motivated to comply in order to avoid Juvenile Court charges on the original offense and the corresponding possibility of a criminal record.

Teen courts are growing in popularity and are currently in operation throughout the state and country. Because judges, attorneys, educators and other community participants volunteer their time, teen courts provide a cost-effective way to relieve the overburdened juvenile justice system. They also provide a valuable educational experience for youth involved in the program. Most importantly, by providing early intervention and guidance when teens first get into trouble, teen courts help prevent future criminal behavior by teaching young people that they will be held accountable for their actions.

CHAPTER V

WEST HOLLYWOOD'S SATURDAY NIGHT SPECIAL SALES BAN

As discussed in Chapter I, in 1996 the City of West Hollywood became the first local government in California to ban the sale of Saturday Night Specials. As of April 1, 1998, nearly 40 cities and counties across the state had adopted similar junk gun ordinances, joining West Hollywood in a historic local movement to reduce gun violence.

Because LCAV has been inundated with requests for copies of the West Hollywood ordinance, we have reprinted the ordinance here. As discussed in Chapter III, however, the law has been challenged in court. Although a trial court ruling has preliminarily upheld the ordinance, the case is now on appeal and has yet to be finally resolved.

The West Hollywood junk gun ban has three components: 1) Municipal Code Section 4122 (which provides a definition of Saturday Night Special); 2) the Roster of prohibited weapons; and 3) the Resolution establishing a procedure for manufacturers to contest the classification of a weapon as a Saturday Night Special. Copies of the findings made by the city council in support of the ordinance are available from LCAV upon request.

A. WEST HOLLYWOOD MUNICIPAL CODE SECTION 4122

Saturday Night Specials- Sale Prohibited.

a. Definition. Except as provided in subsection b. herein, the term "Saturday Night Special," as used in this Section shall mean any of the following:

1. a pistol, revolver, or firearm capable of being concealed upon the person, as those terms are defined in California Penal Code Section 12001(a), which contains a frame, barrel, breechblock, cylinder or slide that is not completely fabricated

of heat treated carbon steel, forged alloy or other material of equal or higher tensile strength.

2. a semi-automatic pistol which:

(a) is not originally equipped by the manufacturer with a locked-breech action; and

(b) is chambered for cartridges developing maximum permissible breech pressures above 24,100 Copper Units of Pressure as standardized by the Sporting Arms and Ammunition Manufacturers Institute.

(c) for purpose of this subsection (2), "semi-automatic pistol" shall mean a firearm, as defined in California Penal Code Section 12001(b), which is designed to be held and fired with one hand, and which does the following upon discharge: (i) fires the cartridge in the chamber; (ii) ejects the fired cartridge case; and (iii) loads a cartridge from the magazine into the chamber. "Semi-automatic pistol" shall not include any assault weapon designated in California Penal Code Section 12276.

3. a pistol, revolver, or firearm capable of being concealed upon the person, as those terms are defined in California Penal Code Section 12001(a), which:

(a) uses an action mechanism which is substantially identical in design to any action mechanism manufactured in or before 1898 that was originally chambered for rimfire ammunition developing maximum permissible breech pressures below 19,000 Copper Units of Pressure as standardized by the Sporting Arms and Ammunition Manufacturers Institute; and

(b) is chambered to fire either centerfire ammunition or rimfire ammunition developing maximum permissible breech pressures above 19,000 Copper Units of Pressure as standardized by the Sporting Arms and Ammunition Manufacturers Institute; and

(c) is not originally equipped by the manufacturer with a nondetachable safety guard surrounding the trigger; or

(d) if rimfire, is equipped with a barrel of less than 20 bore diameters in overall length protruding from the frame.

(e) for purpose of this subsection (3), "action mechanism" shall mean the mechanism of a firearm by which it is loaded, locked, fired and unloaded.

b. Exclusions. The term "Saturday Night Special" does not include any of the following:

1. any pistol which is an antique or relic firearm or other weapon falling within the specifications of paragraphs (5), (7) and (8) of subsection (b) of California Penal Code Section 12020; or

2. any pistol for which the propelling force is classified as pneumatic, that is, of, or related to, compressed air or any other gases not directly produced by combustion.

3. children's pop guns or toys; or

4. an "unconventional pistol" as defined in California Penal Code Section 12020(c)(12); or

5. any pistol which has been modified to either render it permanently inoperable or permanently to make it a device no longer classified as a "Saturday Night Special."

c. Roster of Saturday Night Specials. The City Manager or his/her designee shall compile, publish and thereafter maintain a Roster of Saturday Night Specials. The Roster shall list those firearms, by manufacturer and model number, which the City Manager or his/her designee determines satisfy the definition of Saturday Night Special set forth in Section 4122(a).

d. Publication. The City Manager or his/her designee shall publish the Roster of Saturday Night Specials on a semi-annual basis and shall send a copy of the Roster to every dealer within the City who is licensed to sell and transfer firearms pursuant to Section 12071 of the Penal Code of the State of California.

e. Sale prohibited. No wholesale or retail gun dealer shall sell, offer or display for sale, give, lend or transfer ownership of, any firearm listed on the Roster of Saturday Night Specials. This section shall not preclude a wholesale or retail gun dealer from processing firearm transactions between unlicensed parties pursuant to Section 12072(d) of the Penal Code of the State of California. This section shall not be

enforced until the Roster of Saturday Night Specials has been completed and published in accordance with sections (c) and (d).

f. Exemptions.

Nothing in this Section shall prohibit the disposition of any Saturday Night Special by police departments, Sheriff's offices, marshals offices, the California Highway Patrol, other local, State and Federal law enforcement agencies, or the military and naval forces of this State or the United States for use in the discharge of their official duties; nor shall anything in this Section prohibit the use of any Saturday Night Special by regular, salaried, full-time officers, employees or agents thereof when on duty and the use of such firearms is within the scope of their duties.

B. ROSTER OF SATURDAY NIGHT SPECIALS

I. Semi-Automatic Pistols:

Accu-tek: AT-9SS; AT-40SS; AT-45SS.

Bryco: 28; 48; 59.

Davis: P-380.

Hi-Point Firearms: JS-9MM; JS-40; JS-45; JS-9MM Compact; Iberia.

Intratec: Protec-22; Protec-25.

Intratec: Category 9.

Jennings: J-22; J-25.

Lorcin: L-9MM; L-22; L-25; LT-25; L-32; L-380.

Phoenix Arms: Raven 25; HP22; HP25.

Sundance: Boa; A-25.

II. Double-Action Revolvers:

E.A.A. Standard Grade Revolvers – except in caliber .357 Magnum – all steel

FIE Arminius and Titan Models.

Heritage Sentry Revolvers.

III. Single-Action Revolvers:

North American: Mini-Revolvers; Mini-Master; Black Widow Revolver.

IV. Derringers:

American Derringer: 1; 4; 6; 7; 10; 11.

American Derringer: Lady Model; Alaskan Survival;Texas Commemorative; DA 38.

Davis: Standard Model Derringers; Long-Bore Derringers; D-Series Derringers.

Feather Guardian Angel Pistols.

HJS: Frontier Four; Antigua.

New Advantage 22WMR Derringer.

Sundance: Point Blank Derringer.

Texas Armory: Defender Derringer.

(Revised 7/12/96)

C. RESOLUTION REGARDING APPELLATE PROCEDURES

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST HOLLYWOOD ESTABLISHING A PROCEDURE FOR APPEALING THE CLASSIFICATION OF A FIREARM AS A SATURDAY NIGHT SPECIAL

WHEREAS, Section 4122(c) of the West Hollywood Municipal Code (hereinafter "Municipal Code") requires the City Manager or his/her designee to compile,

publish, and maintain a Roster of Saturday Night Specials (hereinafter "Roster") consisting of firearms which said officer classifies as a Saturday Night Special within the meaning of Section 4122(a) of the Municipal Code; and

WHEREAS, Section 4122(d) of the Municipal Code requires the City Manager or his/her designee to publish the Roster on a semi-annual basis and to send a copy of the Roster to every dealer within the City who is licensed to sell and transfer firearms pursuant to Section 12071 of the Penal Code of the State of California; and

WHEREAS, Section 4122(e) of the Municipal Code prohibits any wholesale or retail gun dealer from selling, offering or displaying for sale, giving, lending or transferring ownership of any firearm listed on the Roster.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WEST HOLLYWOOD RESOLVES AND ORDERS AS FOLLOWS:

Section 1. **Intent**.

It is the intent of the City of West Hollywood to establish a procedure for appeal of the classification of a firearm as a Saturday Night Special.

Section 2. **Notification of Initial Classification**.

Upon completion of a list of firearms to be placed on the Roster for the first time, the City Manager or his/her designee shall endeavor to send written notification to: (1) the manufacturer of every firearm on said list; and (2) every dealer within the City who is licensed to sell and transfer firearms pursuant to Section 12071 of the Penal Code of the State of California. Such notification shall do the following:

a. identify the model number of the firearm which has been classified as a Saturday Night Special within the meaning of Section 4122(a) of the Municipal Code; and

b. advise the recipient that, within ten (10) days of the notice, it may apply for reconsideration of the classification of the firearm as a Saturday Night Special; and

c. advise the recipient that the burden of proving firearm does not constitute a Saturday Night Special within the meaning of Section 4122(a) of the Municipal Code shall be on the recipient.

Section 3. **Reconsideration by City Manager**.

a. Application. The form and content of an application for reconsideration shall include the following:

1. a sample of the firearm to be reconsidered, along with an affidavit that it is identical to the model(s) intended for distribution within the City of West Hollywood. The sample must be in the most powerful caliber to be offered for sale in this model;

2. all of the following documentation:

(a) full blueprints, including complete views of safety mechanisms, whether "active" or "passive." This is to include views of safety devices in "armed" and "disarmed" status;

(b) safety drop test limits as stated by the manufacturer;

(c) materials list and specifications, including tensile strengths of materials used in main assembly frame and action parts;

(d) statement of action spring weight ratings, and semi-automatic magazine spring specifications, if applicable;

(e) standard weights of semi-automatic dynamic assembly (slide) and grip frame or receiver;

(f) statement of upper safe limit of cartridge momentum with which the firearm is designed to function;

(g) statement of number and pressure levels of proof cartridges used by manufacturer in safety testing the

submitted evaluation piece, along with affidavit that this is consistent with production practice;

3. any fees as may be required by resolution of the City Council for such reconsideration; and

4. any other evidence which the applicant considers relevant to the firearm's classification as a Saturday Night Special.

If the application for reconsideration is found to be deficient, the City Clerk shall deliver or mail the applicant, by certified mail, a notice specifying how the application is deficient. If such deficiency has not been corrected within seven (7) calendar days after mailing of such notice by filing with the City Clerk a sufficient amendment to the application, the application shall be deemed to be withdrawn and the application shall be returned to the applicant.

b. Evaluation of Submitted Evidence. Upon the timely filing of one or more complete applications for reconsideration, the City Manager or his/her designee shall evaluate the evidence submitted by the applicant(s). The applicant(s) shall have the burden of demonstrating that the firearm does not constitute a Saturday Night Special within the meaning of Section 4122(a) of the Municipal Code.

c. Decision. Within twenty (20) days of receiving a timely application for reconsideration, or as soon thereafter as is feasible, the City Manager or his/her designee shall send written notification to the applicant(s) indicating the outcome of the reconsideration. If the City Manager or his/her designee determines that the firearm under reconsideration has been properly classified as a Saturday Night Special, then the applicant(s) shall have ten (10) days to appeal such decision to the Public Safety Commission.

Section 4. **Hearing before Public Safety Commission**.

a. Application. The form and content of an appeal to the Public Safety Commission shall include:

1. The specific matter being appealed; and

2. A statement of the grounds for appeal or how there is error in the decision of the matter being appealed; and

3. Any fees as may be required by resolution of the City Council for such an appeal.

If the appeal is found to be deficient, the City Clerk shall deliver or mail the appellant, by certified mail, a notice specifying how the appeal is deficient. If such deficiency has not been corrected within seven (7) calendar days after mailing of such notice by filing with the City Clerk a sufficient amendment to the appeal, the appeal shall be deemed to be withdrawn and the appeal shall be returned to the appellant.

b. Time of hearing. A hearing on an appeal of a classification of a firearm as a Saturday Night Special shall be held and action taken at the next available regularly scheduled Public Safety Commission meeting following the timely filing of a complete appeal; in no event shall the hearing on appeal take place more than sixty (60) days after the date on which a timely and complete notice of appeal is received unless the applicant requests an extension.

c. Burden of proof. The burden shall be on the appellant(s) to demonstrate that the firearm does not constitute a Saturday Night Special within the meaning of Section 4122(a) of the Municipal Code.

d. Decision. The Public Safety Commission shall hear and consider all relevant evidence. Upon the conclusion of the hearing, the Public Safety Commission shall, based on the evidence presented, determine whether the firearm constitutes a Saturday Night Special within the meaning of Section 4122(a) of the Municipal Code. The decision of the Public Safety Commission shall be final.

Section 5. **Publication of Roster**.

After all appeals have been processed, the City Manager or his/her designee shall place on the Roster those firearms which have been determined to constitute a Saturday Night Special within the meaning of Section 4122(a). The City Manager or his/her designee shall cause the Roster to be published in the following manner:

a. notification of the Roster's completion shall be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its completion; and

b a copy of the Roster, certified as a true and correct copy thereof, shall be filed in the office of the City Clerk of the City of West Hollywood; and

c. a copy of the Roster, certified as a true and correct copy thereof, shall be distributed to every dealer within the City who is licensed to sell and transfer firearms pursuant to Section 12071 of the Penal Code of the State of California.

Section 6. **Date of Effectiveness of Roster**.

The publication of the Roster shall become effective on the fifteenth day after its publication as set forth in Section 5 of this Resolution.

Section 7. **Additions to the Roster**.

a. Semi-Annual Determination. On a semi-annual basis, the City Manager or his/her designee shall determine the need to place additional firearms on the Roster. Upon identifying one or more firearms as a Saturday Night Special, the City Manager or his/her designee shall prepare a draft list of additions to the Roster.

b. Notification of Additions to Roster. In the event that a draft list of firearms to be added to the Roster is prepared, the City Manager or his/her designee shall endeavor to send written notification in accordance with the provisions of Section 2 of this Resolution.

c. Reconsideration by the City Manager. Any person who the City Manager or his/her designee notifies pursuant to paragraph (b) above may, within ten (10) days of the notice, apply for reconsideration of the classification of that firearm as a Saturday Night Special in accordance with the provisions of Section 3 of this Resolution. Upon receiving a timely and complete application for reconsideration, the City Manager or his/her designee shall reconsider the classification in accordance with the provisions of Section 3 of this Resolution.

d. Hearing before Public Safety Commission. Whenever a firearm has been determined to be properly classified as a Saturday Night Special after reconsideration, the applicant may, within 10 days of such decision, file an appeal to the Public Safety Commission in accordance with Section 4 of this Resolution. Upon receiving a timely

and complete appeal, the Public Safety Commission shall hold a hearing in accordance with the provisions of Section 4 of this Resolution.

e. Addition of Firearms to Roster. After all appeals have been processed, the City Manager or his/her designee shall place on the Roster those additional firearms which have been determined to constitute a Saturday Night Special within the meaning of Section 4122(a). The City Manager or his/her designee shall cause the Roster, as amended to include these additional firearms, to be published in accordance with the provisions of Section 5 of this Resolution.

f. Effective Date of Additions to the Roster. The addition of new firearms to the Roster shall not operate to preclude the enforcement of the Roster with respect to firearms previously listed thereon. The publication of the Roster, as amended to include new firearms, shall be effective as to those newly added firearms on the fifteenth day after its publication as set forth in Section 5 of this Resolution.

RESOURCE UPDATE

Organizational Resources

LCAV's new website is located at www.lcav.org. The website includes LCAV's Local Ordinance Manual and annual Supplements, as well as other selected materials. You can also contact LCAV at 268 Bush St., Suite 555, San Francisco, CA 94104. Phone: (415) 433-2062, Fax: (415) 433-3357.

The Local Ordinance Manual and 1997 Supplement provide a list of organizations working throughout California to prevent gun violence. For additional organizational listings, please contact The Campaign to Prevent Handgun Violence Against Kids, 454 Las Gallinas Avenue, Suite 177, San Rafael, CA 94903-3618. Phone: (415) 331-3337, Fax: (415) 331-2969.

New Publications

Johns Hopkins Center for Gun Policy and Research, *Firearm Violence: An Annotated Bibliography, A Resource for Advocates, Researchers, and Others Interested in Preventing Firearm Violence* (August 1997). Baltimore, MD (410) 955-3995.

Violence Policy Center, *License to Kill, Arrests Involving Texas Concealed Handgun License Holders* (January 1998). Washington, DC (202) 822-8200.

The Center to Prevent Handgun Violence Legal Action Project, *Guns & Business Don't Mix, A Guide to Keeping Your Business Gun-Free (*1997). Washington, DC (202) 289-7319.

The Center to Prevent Handgun Violence Law Enforcement Relations Department, *On the Front Line: Making Gun Interdiction Work, A Comprehensive Law-Enforcement Approach to Getting Guns Off the Streets* (February 1998). Washington, DC (202) 289-5774.

Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, The Youth Crime Gun Interdiction Initiative, *Crime Gun Trace Analysis Reports: The Illegal Youth Firearms Markets in 17 Communities (*July 1997). Washington, DC (202) 927-8500.

E. Robinson-Haynes, G.J. Wintemute, *Gun Confiscations: A Case Study of the City of Sacramento in 1995*. U.C. Davis Violence Prevention Research Program (1997). Davis, CA (916) 734-3539.

G.J. Wintemute et al., *Weapons of Choice*: *Previous Criminal History, Later Criminal Activity, and Firearm Preference Among Legally Authorized Young Adult Purchasers of Handguns*. The Journal of Trauma: Injury, Infection, and Critical Care, Vol. 44, No. 1 (1998). Davis, CA (916) 734-3539.