

# ADDRESSING GUN VIOLENCE THROUGH LOCAL ORDINANCES

A LEGAL RESOURCE MANUAL FOR  
CALIFORNIA CITIES AND COUNTIES

1999 SUPPLEMENT

Legal Community Against Violence

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.

*The views expressed in this publication 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.*

Copyright © 1999 Legal Community Against Violence.  
All rights reserved.

# TABLE OF CONTENTS

<b>ACKNOWLEDGMENTS</b> .....	v
<b>CHAPTER I: LOCAL ORDINANCE UPDATE</b> .....	1
<i>A. LCAV'S LOCAL ORDINANCE PROJECT</i> .....	1
<i>B. 1998 – A WATERSHED YEAR FOR CALIFORNIA'S VIOLENCE PREVENTION MOVEMENT</i> .....	2
<i>C. LOCAL ORDINANCE SURVEY HIGHLIGHTS</i> .....	4
1. Prohibiting the Sale of "Saturday Night Specials".....	4
2. Regulating Firearms Dealers.....	5
a. Explicitly Prohibiting Dealers in Residential Neighborhoods.....	5
b. Indirectly Prohibiting or Limiting Dealers in Residential Areas.....	5
c. Prohibiting Dealers from Operating Near Sensitive Areas.....	6
d. Requiring Dealers to Carry Liability Insurance.....	6
e. Requiring Dealers to Keep Records of Ammunition Sales.....	6
f. Requiring Dealer Employee Background Checks.....	6
g. Requiring Child-Safety Locks.....	7
3. Imposing a Tax on Businesses Selling Firearms.....	8
4. Prohibiting Sales of High-Capacity Ammunition Magazines.....	8
<b>CHAPTER II: DEVELOPMENTS IN FEDERAL AND STATE LAW</b> .....	9
<i>A. FEDERAL FIREARMS POLICIES</i> .....	9
1. Brady Act Instant Check System.....	9
2. Legislative Proposals.....	10
a. Closing the Gun Show Loophole.....	10
b. Banning Importation of High-Capacity Ammunition Magazines.....	13
c. Requiring the Sale of Gun Storage or Gun Safety Devices.....	13
d. Reinstating a Waiting Period for Handgun Purchases.....	14
e. Regulating Guns as Consumer Products.....	14
3. The Second Amendment.....	15
<i>B. STATE FIREARMS POLICIES</i> .....	17
1. Legislative Update.....	17

a.	1998 in Review .....	17
b.	Legislative Proposals for 1999 .....	18
2.	Assault Weapons Litigation Update .....	21
C.	<i>SELECTED DEVELOPMENTS IN OTHER STATES</i> .....	22
1.	Colorado .....	22
2.	Connecticut.....	23
3.	Idaho.....	23
4.	Massachusetts .....	23
5.	Missouri.....	24
6.	New Jersey.....	24
<b>CHAPTER III: LOCAL ORDINANCE LITIGATION UPDATE</b> .....		26
A.	<i>THE LAFAYETTE, SANTA CLARA COUNTY, SAN FRANCISCO AND LOS ANGELES CASES</i> .....	26
B.	<i>THE WEST HOLLYWOOD CASE</i> .....	28
C.	<i>NEW ORDINANCE-RELATED LITIGATION</i> .....	31
1.	Sacramento’s Saturday Night Special Sales Ban .....	31
2.	San Leandro’s Firearms Tax.....	32
3.	Union City’s Discharge Ban.....	32
<b>CHAPTER IV ..... : OTHER VIOLENCE-PREVENTION MEASURES CURRENTLY UNDER CONSIDERATION</b> .....		34
A.	<i>LIMITING HANDGUN PURCHASES TO ONE PER MONTH</i> .....	34
B.	<i>REQUIRING AMMUNITION PURCHASER PERMITS</i> .....	35
C.	<i>GUN SHOW REGULATIONS</i> .....	36
D.	<i>NON-LEGISLATIVE APPROACHES TO REDUCING GUN VIOLENCE</i> .....	37
1.	Litigation Against Firearms Manufacturers .....	37
a.	Local Government Actions .....	37
b.	The Hamilton and Dix Cases.....	39
2.	Assisting and Mobilizing Victims of Gun Violence .....	40
3.	School-Based Policies to Reduce Violence .....	41
4.	Firearm Safety Devices and Personalized Guns .....	43
a.	Add-On or After-Manufacture Safety Devices.....	44
i.	Barrel and Chamber Inserts.....	44
ii.	Removable Hammers .....	45
iii.	Storage Containers .....	45
iv.	Trigger Blocks .....	45

v.	Trigger Locks.....	47
vi.	Free Gun Lock Distribution Programs .....	47
b.	Built-in (non-personalized) Safety Devices.....	48
i.	Drop Safeties or Hammer Blocks.....	49
ii.	Grip Safeties .....	50
iii.	Internal Locks .....	50
iv.	Loading Indicators/Loaded Chamber Indicators .....	50
v.	Magazine Safeties/Disconnectors .....	50
vi.	Manual Thumb Safeties .....	51
c.	Personalized Gun Technology.....	51
i.	Remote Technology – Radio Frequency Identification.....	52
ii.	Biometrics – Unique Human Body Features Secure Access.....	52
iii.	Non-magnetic Touch Memory.....	53
	<b>CHAPTER V: COMPOSITE ORDINANCE REGULATING FIREARMS DEALERS .....</b>	<b>54</b>
	<b>RESOURCE UPDATE .....</b>	<b>68</b>
	<i>Organizational Resources .....</i>	<i>68</i>
	<i>School-Based Violence Prevention Program Resources .....</i>	<i>69</i>
	<i>New Publications.....</i>	<i>71</i>



# ACKNOWLEDGMENTS

Legal Community Against Violence (LCAV) would like to express its ongoing gratitude to Sayre Weaver of Richards, Watson & Gershon, counsel for the City of West Hollywood. Ms. Weaver drafted the City's landmark ordinance banning the sale of Saturday Night Specials and successfully defended the City in litigation challenging that ordinance. In addition, she has provided *pro bono* consultation to numerous cities and counties throughout California. LCAV gratefully recognizes Ms. Weaver's superb legal skills and dedication to the issue of violence prevention.

LCAV would also like to acknowledge Andy Stroud and Nancy Saracino of Mennemeier, Glassman & Stroud LLP, for their generous *pro bono* representation of the City of Sacramento in a lawsuit challenging the City's Saturday Night Special sales ban. Further thanks to Anita S. Mayo and Justin Hovey of Pillsbury Madison & Sutro LLP, Rick Runkel and Tyler Paetkau of Sheppard, Mullin, Richter & Hampton LLP, Philip Young and colleagues at McCutchen, Doyle, Brown & Enerson LLP, Christine Haas of Thelen Reid and Priest LLP, and Paul Krekorian for their *pro bono* assistance to LCAV over the last year.

Finally, LCAV gratefully recognizes the following individuals for the invaluable research and other assistance they provided with respect to this publication: LCAV legal interns Giancarlo Barletta and Vanessa Lawton, and Jake Rapaport.

LCAV's Local Ordinance Project is funded, in part, by The California Wellness Foundation, Columbia Foundation, Gerbode Foundation and Van Loben Sels Foundation. The Project is also made possible through the generous contributions of individuals, law firms and other entities.

Juliet Leftwich  
LCAV Managing Attorney, 1999 Supplement Author

Andrew Spafford  
LCAV Staff Attorney

Barrie Becker  
LCAV Executive Director



# CHAPTER I

## LOCAL ORDINANCE UPDATE

### A. LCAV'S LOCAL ORDINANCE PROJECT

This publication is intended for use with LCAV's 1996 Local Ordinance Manual, "Addressing Gun Violence Through Local Ordinances, A Legal Resource Manual for California Cities and Counties," and annual Supplements. LCAV has distributed these publications, without charge, to thousands of local officials statewide as part of the Local Ordinance Project, which provides free legal and technical assistance to cities and counties seeking to reduce gun violence. The project also coordinates *pro bono* litigation assistance when a local government is sued following adoption of a violence-prevention ordinance.

When LCAV began the Local Ordinance Project in 1995, a grass roots movement to reduce gun violence was just beginning to take hold in California. Firearm-related deaths had reached epidemic proportions in this country, with almost 36,000 such deaths having occurred in 1995 alone.<sup>1</sup> In addition, guns had surpassed automobile accidents and illnesses as the number one killer of children in this state.<sup>2</sup>

Frustrated by the failure of the federal and state governments to take steps to address this national tragedy, California cities and counties began to adopt innovative violence-prevention ordinances. Despite public opinion polls showing overwhelming support for such measures, local officials faced fierce opposition and threats of litigation by anti-regulatory groups such as the National Rifle Association (NRA) and the firearms industry. Moreover, although existing case law indicated that local governments had authority to regulate firearms and ammunition, the extent of that authority was unknown.

---

<sup>1</sup> Centers for Disease Control and Prevention, National Center for Health Statistics, *Monthly Vital Statistics Report, Report of Final Mortality Statistics*, 1995 (June 12, 1997).

<sup>2</sup> California Department of Health Services, Vital Statistics Section, Death Records, 1993 (March 1995 database search).

Now, just four short years later, the legal and political landscape of the local violence-prevention movement has completely changed. Several key legal rulings have made clear that local governments have a great deal of power to regulate firearm and ammunition sales in their communities. Encouraged by these cases, cities and counties across California have adopted an unprecedented number of ordinances to reduce gun violence. Although anti-regulatory groups continue to vigorously oppose efforts to regulate firearms at the local level, this opposition is now being tempered by the support of a growing coalition of diverse community members. Moreover, as evidenced by the results of the 1998 elections, California voters overwhelmingly favor elected officials who support rational firearms policies.

Sadly, despite the growth of the violence-prevention movement in California and elsewhere, gun violence continues to plague our nation. The April 20, 1999, massacre at Columbine High School near Littleton, Colorado – the worst school shooting in our country’s history – is yet another tragic reminder of how pervasive this epidemic has become, and how it is brutalizing our children.

The goal of this publication is to educate California community leaders, including members of city councils and boards of supervisors, city attorneys, county counsel, law enforcement officers and public health officials, about statewide efforts to reduce gun violence and the legal context within which those efforts exist. The remainder of this Chapter summarizes key events of the last year and the results of LCAV’s latest local ordinance survey. Chapter II discusses recent developments in federal and state law, including changes in the Brady Act and current legislative proposals before Congress and the California Legislature.

Chapter III provides an update of ordinance-related litigation. Chapter IV reports on new types of ordinances being considered at the local level, as well as non-legislative measures to reduce gun violence. Chapter V contains a composite ordinance regulating firearms dealers. This Supplement also contains a Resource Update that includes a list of new publications.

## **B. 1998 – A WATERSHED YEAR FOR CALIFORNIA’S VIOLENCE PREVENTION MOVEMENT**

Several critical events made 1998 an extraordinary year for the violence prevention movement in California. First, the Second District Court of Appeal issued its

landmark decision upholding West Hollywood’s ban on the sale of poorly made, easily concealable handguns known as “Saturday Night Specials” or “junk guns.” This long-awaited ruling, which the California Supreme Court declined to review, represents a huge legal victory for California cities and counties seeking to reduce gun violence. (See discussion *infra* pp. 29-32.)

Second, local governments across the state continued their historic adoption of ordinances to regulate the sales of firearms and ammunition in their communities. According to LCAV’s latest survey (summarized below), as of June 1, 1999, California cities and counties had adopted approximately 202 innovative firearm-related ordinances.<sup>3</sup> Some of those ordinances – such as the tax measures adopted in Berkeley, Oakland and San Leandro, and the junk gun sales ban adopted in Pleasanton – were passed by the voters in 1998.<sup>4</sup>

In addition, last year the City of Los Angeles, led by Councilmember Mike Feuer, adopted the first ordinance in California to limit handgun purchases to one per person per month. The purpose of that ordinance is to address the huge problem of gun trafficking and “straw purchases,” i.e., gun purchases by individuals legally eligible to buy firearms for resale to convicted felons or other prohibited purchasers. (See discussion *infra* pp. 35-36.) Similar legislation is currently making its way through the California Legislature.

Councilmember Feuer also collaborated with Women Against Gun Violence to form the Municipal Gun Violence Working Group, a coalition of elected officials and community organizations in Southern California dedicated to developing a regional strategy to reduce gun violence. In January of 1999, that group, including Assembly Speaker Antonio Villaraigosa and Assemblymember Jack Scott, convened a gun violence prevention summit in West Hollywood to encourage local officials to adopt region-wide ordinances to combat gun violence. That summit was attended by representatives of 24 local governments, 70 community organizations and several state legislators. Other regional efforts are currently underway in Alameda and Contra Costa counties, with the assistance of the East Bay Public Safety Corridor Partnership.<sup>5</sup>

---

<sup>3</sup> This number does not include all firearm-related ordinances in effect statewide. Many cities and counties, for example, prohibit the discharge of firearms except by law enforcement officers or in cases of self defense. LCAV tracks these common ordinances, but has not included them in the survey highlights discussed in the next section.

<sup>4</sup> See *infra* pp. 33-34 regarding a legal challenge to the San Leandro measure.

<sup>5</sup> The East Bay Public Safety Corridor Partnership is a collaborative of 16 cities, 2 counties, 18 school districts and 23 law enforcement agencies in communities located between the Carquinez Bridge and Fremont along the I-80 Corridor. The Partnership was formed to find solutions to the crime, drug and violence problems in those communities.

Another critical event in 1998 was the election of Governor Gray Davis and Attorney General Bill Lockyer, both of whom support rational efforts to regulate firearms and ammunition. Although departing Governor Pete Wilson vetoed junk gun and child-safety lock bills for the second year in a row, state legislators are optimistic that they will now have the opportunity to adopt meaningful legislation to reduce gun violence. Much of the legislation now pending before the Legislature "trickled up" from local ordinances currently in place across the state.

Finally, 1998 was notable because several cities and counties nationwide filed groundbreaking lawsuits to hold the firearms industry accountable for the public costs associated with gun violence. Local governments in California filed similar suits in May of 1999. (See discussion *infra* pp. 38-40.)

## **C. LOCAL ORDINANCE SURVEY HIGHLIGHTS**

Since 1995, LCAV and The Campaign to Prevent Handgun Violence Against Kids have conducted three annual surveys of California cities and counties to determine the type and number of firearms-related ordinances in this state. The results of those surveys, published in 1996, 1997 and 1998, have shown a dramatic increase in the number of such ordinances statewide. For example, the 1996 survey showed that just 2 local governments had adopted ordinances to ban the sale of junk guns. By August of 1998, 39 cities and counties had adopted such ordinances. As of June 1, 1999, that number had reached 45.

Although LCAV is not conducting a formal local ordinance survey in 1999, we closely track firearms-related ordinances on an ongoing basis. This section provides a description of several innovative ordinances and identifies the cities and counties that had adopted those laws as of June 1, 1999. LCAV will publish the results of the next local ordinance survey in 2000.

### **1. Prohibiting the Sale of "Saturday Night Specials"**

The following jurisdictions have enacted legislation to ban the sale of "Saturday Night Specials," or "junk guns." In addition to being poorly constructed and easily concealable, these handguns lack safety features and are disproportionately used in crime.

Alameda  
Alameda County

Inglewood  
Livermore

San Francisco City & County  
San Jose

Albany	Los Angeles	San Leandro
Belmont	Los Angeles County	San Mateo
Berkeley	Monterey Park	San Mateo County
Beverly Hills	Norwalk	San Pablo
Compton	Oakland	Santa Barbara
Contra Costa County	Piedmont	Santa Rosa
Daly City	Pinole	Santa Cruz
El Cerrito	Pleasanton	Santa Cruz County
Emeryville	Pomona	Santa Monica
Fremont	Richmond	Union City
Half Moon Bay	Rohnert Park	Walnut Creek
Hayward	Sacramento	West Covina
Huntington Park	San Carlos	West Hollywood

## 2. Regulating Firearms Dealers

### a. Explicitly Prohibiting Dealers in Residential Neighborhoods

The following jurisdictions have enacted laws **expressly** prohibiting firearms dealers from operating in residential zones or areas, or from qualifying as a "home occupation"<sup>6</sup> (i.e., a home business).

Alameda	Fremont	Pinole
Albany	Hercules	Richmond
Artesia	Lafayette	Salinas
Berkeley	Los Angeles	San Francisco City & County
Beverly Hills	Los Angeles County	San Jose
Burbank	Monterey County <sup>7</sup>	San Pablo
Contra Costa County	Oakland	Santa Ana
Daly City	Palo Alto	Santa Monica
El Cerrito	Pasadena	Stockton
Fontana	Piedmont	Vacaville

### b. Indirectly Prohibiting or Limiting Dealers in Residential Areas

The following jurisdictions have enacted ordinances that **indirectly** prohibit or limit the residential sale of firearms. Common examples of this type of regulation include those that allow only the sale of products manufactured in the residence where they are sold, or prohibit retail sales entirely as a "home occupation."

Anaheim	Merced	Porterville
Antioch	Moreno Valley <sup>8</sup>	Redding

<sup>6</sup> Pre-existing residential firearms dealers are sometimes exempted. In addition, some jurisdictions allow exceptions at the police chief's discretion.

<sup>7</sup> Monterey County's ordinance only applies to handgun sales.

<sup>8</sup> Moreno Valley's ordinance only applies to ammunition sales.

Campbell  
Colma  
Danville

Norwalk  
Pacific Grove  
Palm Desert

Solana Beach  
Walnut Creek  
West Hollywood

### **c. Prohibiting Dealers from Operating Near Sensitive Areas**

The following jurisdictions have enacted laws expressly prohibiting firearms dealers from operating near sensitive areas such as daycare facilities, schools, parks, places of worship or community/recreation centers. All of the jurisdictions listed either prohibit or limit firearms dealers in residential neighborhoods, and many others also prohibit dealers from operating near massage parlors, cardrooms, adult entertainment establishments, businesses selling alcohol, and/or other firearms dealers.

Albany  
Contra Costa County  
El Cerrito  
Hercules  
Los Angeles

Monterey County<sup>9</sup>  
Oakland  
Palo Alto  
Pinole  
Richmond

Salinas  
San Francisco City & County  
San Pablo  
West Hollywood

### **d. Requiring Dealers to Carry Liability Insurance**

The following jurisdictions have enacted legislation requiring firearms dealers to carry liability insurance, typically with a minimum coverage of at least \$1 million.

Albany  
Berkeley  
Beverly Hills  
Fremont  
Hayward  
Lafayette

Los Angeles  
Los Angeles County  
Oakland  
Palo Alto  
Pasadena  
Piedmont

Pleasanton  
Richmond  
Salinas  
San Francisco City & County  
San Pablo  
Santa Monica

### **e. Requiring Dealers to Keep Records of Ammunition Sales**

The following jurisdictions have enacted ordinances requiring dealers to keep records of all ammunition sales.

Beverly Hills  
Contra Costa County  
Hayward  
Inglewood

Los Angeles  
Oakland  
Pomona  
San Francisco City & County

Santa Ana  
Santa Monica  
West Hollywood

### **f. Requiring Dealer Employee Background Checks**

---

<sup>9</sup> Monterey County's ordinance only applies to handgun sales.

The following jurisdictions have enacted laws that generally prevent firearms dealers from obtaining (or retaining) a permit to sell firearms if they, and/or any of their agents, officers or employees who handle or control firearms, are prohibited from possessing firearms under the Penal Code.

**Jurisdictions requiring the most comprehensive background checks**

El Cerrito	Richmond	San Pablo
Fremont	Sacramento	West Hollywood
Hercules	San Leandro	

**Jurisdictions requiring moderately comprehensive background checks**

Oakland	Palo Alto	Salinas
---------	-----------	---------

**Jurisdictions requiring the least comprehensive background checks<sup>10</sup>**

Alameda	Lafayette	Pleasanton
Berkeley	Los Angeles	San Diego
Beverly Hills	Los Angeles County	San Francisco City & County
Chino	Merced <sup>11</sup>	Santa Ana
Hayward	Piedmont	Santa Monica

**g. Requiring Child-Safety Locks**

The following jurisdictions have enacted laws requiring that a trigger lock, or similar childproofing or disabling device to prevent unintentional discharge, be sold with all handguns.

Alameda County	Lafayette	Sacramento
Berkeley	Livermore	San Diego
Beverly Hills	Los Angeles	San Diego County
Calexico	Los Angeles County	San Francisco City & County
Contra Costa County	Monterey Park	San Jose
Daly City	National City	San Leandro
Escondido	Oakland	San Mateo
Fremont	Pasadena	San Mateo County

---

<sup>10</sup> Where there was doubt about the scope of a background-check provision, it was assigned to this subgroup.

<sup>11</sup> Merced’s ordinance only applies to handgun sales.

Half Moon Bay  
Hayward  
Imperial Beach

Piedmont  
Pleasanton  
Richmond

Union City  
West Hollywood

### **3. Imposing a Tax on Businesses Selling Firearms**

The following jurisdictions have enacted a tax on businesses selling firearms.<sup>12</sup>

Berkeley  
El Monte

Los Angeles  
Oakland

San Francisco City & County  
San Leandro

### **4. Prohibiting Sales of High-Capacity Ammunition Magazines**

The following jurisdictions have enacted ordinances that prohibit the sale of high-capacity ammunition magazines.

Beverly Hills  
Los Angeles

Sacramento  
San Francisco City & County

West Hollywood

---

<sup>12</sup> Pursuant to Proposition 218, adopted in November 1996, all general taxes imposed by local governments on or after January 1, 1995, require voter approval. Oakland and Berkeley voters passed gross receipts taxes (in June and November 1998, respectively) which apply to all merchandise sold by businesses that sell firearms. San Leandro voters passed a tax on firearm sales in June 1998. The remaining jurisdictions adopted gross receipts taxes prior to 1998.

# CHAPTER II

## DEVELOPMENTS IN FEDERAL AND STATE LAW

### A. FEDERAL FIREARMS POLICIES

#### 1. Brady Act Instant Check System

The interim provisions of the Brady Handgun Violence Prevention Act, implemented in February of 1994, required a five-day waiting period and background check of prospective handgun purchasers.<sup>13</sup> On November 30, 1998, the interim provisions expired and were replaced by the permanent National Instant Criminal Background Check System (NICS).<sup>14</sup> Under NICS, a federally licensed firearms dealer is required to obtain a background check of purchasers of all firearms, not just handguns. The “instant check” uses a national computerized database and is performed directly by the FBI or indirectly through a state agency serving as a FBI contact point, unless the state has a federally approved permit system. Between November 30, 1998, and May 17, 1999, NICS blocked 40,806 gun sales to criminals and other ineligible purchasers.<sup>15</sup>

In response to NRA concerns that NICS might create a national registry of gun owners, the Brady Law requires that the system destroy all records relating to background check calls.<sup>16</sup> Justice Department regulations implementing the law authorize the FBI to maintain records of approved firearms transactions for up to six months in order to ensure that NICS is functioning properly.<sup>17</sup>

---

<sup>13</sup> As discussed in the 1998 Supplement (pp. 7-8), on June 27, 1997, the U.S. Supreme Court held that the Act's background check requirement unconstitutionally obligated state officers to administer a federal regulatory program. The decision did not address the legality of the waiting period.

<sup>14</sup> 18 U.S.C. § 922(t)(1) *et seq.*

<sup>15</sup> May 17, 1999, telephone conversation with NICS Operations Manager James Jay.

<sup>16</sup> 18 U.S.C. § 922(t)(2)(C).

<sup>17</sup> 63 Fed. Reg. 58,303 (1998) (to be codified at 28 C.F.R. pt. 25).

On the day NICS went into effect, the NRA filed suit against the Justice Department, alleging that the FBI's temporary retention of NICS records violates the Brady Act.<sup>18</sup> On January 26, 1999, the U.S. District Court for the District of Columbia denied the NRA's motion for a preliminary injunction, holding that the Justice Department's interpretation of the statute was reasonable and the NRA had not demonstrated a reasonable likelihood of success on the merits. On February 5, 1999, the Department of Justice filed a motion to dismiss or, in the alternative, for summary judgment in the case. The court took the matter under submission and had not issued a ruling as of June 1, 1999.

The Brady Act exempts states that already require background checks and preserves the ability of states to require waiting periods. In California, for example, prospective firearm purchasers must wait 10 days and undergo a background check by the state Department of Justice.<sup>19</sup> As discussed below, federal legislators have already introduced legislation to reinstate a Brady Act waiting period.

## **2. Legislative Proposals**

Early in 1999, members of Congress introduced several bills to significantly strengthen federal firearms laws. These measures initially appeared to have little chance of passage due to the enormous financial clout and political influence of the firearms industry and NRA.<sup>20</sup> However, the April 20, 1999, massacre near Littleton, Colorado – the seventh school shooting in 19 months – galvanized immense public support for the adoption of common sense laws to reduce the proliferation and misuse of firearms.

As a result, in May of 1999 the U.S. Senate passed the first significant gun control legislation since the Republicans took control of Congress in 1994. As of June 1, 1999, the fate of that legislation in the House of Representatives, however, remained uncertain.

### **a. Closing the Gun Show Loophole**

---

<sup>18</sup> *National Rifle Association of America, Inc. v. Janet Reno*, U.S. District Court for the District of Columbia, Civil Action No. 98-2916.

<sup>19</sup> Penal Code § 12072(c)(1).

<sup>20</sup> Between January 1997 and June 1998, firearms manufacturers and anti-regulatory groups donated approximately \$4.2 million to political action committees, individual candidates, political parties and in "soft money." Nearly 70 percent of this money went to Republicans. In addition, these groups spent more than \$3 million lobbying members of Congress and the Clinton Administration. The Center for Responsive Politics, *Money in Politics Alert: Double-Barreled Clout: The Gun Industry and Lawsuits*, Feb. 15, 1999.

The Gun Control Act of 1968 requires firearms dealers to obtain a federal firearms license (FFL).<sup>21</sup> The Act defines the term “dealer” to include “any person engaged in the business of selling firearms.”<sup>22</sup> The definition of the term “engaged in the business,” however, excludes any person “who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms.”<sup>23</sup>

As discussed previously, federal law requires FFL holders to conduct background checks of all prospective firearm purchasers. The Brady Act requires that such background checks be performed under the new “instant check” system or in conformity with applicable state law, which may also require a waiting period. In addition, FFL holders must maintain records of all gun sales and make those records available to inspection by law enforcement.<sup>24</sup>

Non-FFL holders, however, are not required to comply with any of these federal laws. Accordingly, in most states, an individual may sell firearms from his or her “personal collection” or as “a hobby” without conducting any background checks or documenting the transaction in any way. In addition, because federal law does not require private sellers to inspect a buyer’s driver license or any other identification, there is no obligation for such sellers to confirm that a buyer is of legal age to purchase a firearm. As a result, convicted felons, minors and other prohibited purchasers can easily buy guns from unlicensed sellers throughout most of the country.

Although this huge loophole in federal law applies to all private/non-FFL sales, it is particularly problematic at gun shows. In January of 1999, the Department of the Treasury, Department of Justice and Bureau of Alcohol, Tobacco and Firearms (ATF) issued a report entitled “Gun Shows: Brady Checks and Crime Gun Traces.” That report, prepared at the request of President Clinton, found that more than 4,400 gun shows are held in this country each year, drawing an estimated attendance of 2,500-5,000 per show. The report stated that:

Together, the ATF investigations paint a disturbing picture of gun shows as a venue for criminal activity and a source of firearms used in crimes. Felons, although prohibited from acquiring firearms, have been able to purchase firearms

---

<sup>21</sup> 18 U.S.C. § 923(a).

<sup>22</sup> 18 U.S.C. § 921(a)(11).

<sup>23</sup> 18 U.S.C. § 921(a)(21)(C).

<sup>24</sup> 18 U.S.C. § 923(g)(1)(A),(B).

at gun shows. In fact, felons buying or selling firearms were involved in more than 46 percent of the investigations involving gun shows. In more than a third of the investigations, the firearms involved were known to have been used in subsequent crimes. These crimes included drug offenses, felons in possession of a firearm, assault, robbery, burglary, and homicide.<sup>25</sup>

The report recommended that federal law be amended to close the “gun show loophole.”

In response to the ATF report, President Clinton asked Congress to adopt legislation requiring background checks on all persons who purchase firearms at gun shows, regardless of whether the seller holds an FFL. That legislation was subsequently introduced by Senator Frank Lautenberg (D-N.J.) as an amendment to the Violent and Repeat Juvenile Offender Accountability and Rehabilitation Act of 1999 (the Juvenile Justice Bill), sponsored by Senator Orrin Hatch (R-UT).

Senate Republicans defeated the amendment on May 12, 1999, before approving a weaker measure providing for voluntary background checks. In response to public outcry over the NRA-backed measure, Republicans considered, then abandoned, an alternative amendment. Finally, on May 20, 1999 – one month after the Columbine High School massacre and within hours of a school shooting in Conyers, Georgia – the Senate passed the original Lautenberg measure, with Vice President Al Gore casting the tie-breaking vote.<sup>26</sup>

The State of California has already closed this loophole in federal law. Penal Code Section 12072(d) provides that all private party/non-FFL sales must be completed through a licensed dealer or, in counties of less than 200,000 persons, through a law enforcement agency in accordance with Penal Code Section 12084. Thus, all firearm sales in California are subject to the state’s background check and 10-day waiting period, regardless of where those sales occur.<sup>27</sup>

On November 3, 1998, Florida voters overwhelmingly passed a constitutional amendment to address this issue as well. That amendment authorizes counties to require criminal background checks and waiting periods for weapons sold at gun shows

---

<sup>25</sup> ATF report, at 7.

<sup>26</sup> The Lautenberg amendment also requires background checks for persons seeking to reclaim firearms at pawn shops.

<sup>27</sup> See *infra* pp. 20-21 for a discussion of proposed legislation to further safeguard against illegal activities at gun shows in this state. For other gun-show related discussions, see *infra* p. 28 (summarizing the *Nordyke* decision) and pp. 37-38 (describing gun show regulations currently being considered by California local governments).

by unlicensed dealers. Broward, Orange, Miami-Dade, Palm Beach, Pinellas and Hillsborough counties have already passed ordinances consistent with the amendment.<sup>28</sup>

### **b. Banning Importation of High-Capacity Ammunition Magazines**

On May 13, 1999, the Senate passed another significant amendment to the Juvenile Justice Bill. That measure, sponsored by Senator Dianne Feinstein (D-CA), would strengthen the 1994 federal assault weapons ban by banning the importation of high-capacity ammunition magazines. The Senate had defeated an identical bill, also introduced by Senator Feinstein, in 1998.

The 1994 assault weapons ban prohibited the future manufacture of ammunition magazines capable of holding more than 10 rounds, but permitted the sale of existing stockpiles of such magazines, including those imported from other countries. Unlike domestically-manufactured ammunition magazines, however, foreign-made magazines do not contain serial numbers which allow their date of manufacture to be determined. Accordingly, ATF currently has no way of enforcing the law and millions of imported high-capacity magazines have flooded into the United States. Senator Feinstein's amendment would address this problem by banning the importation of all high-capacity magazines, regardless of the date of manufacture.<sup>29</sup>

### **c. Requiring the Sale of Gun Storage or Gun Safety Devices**

On May 18, 1999, the Senate passed a third firearms-related amendment to the Juvenile Justice Bill. That amendment, sponsored by Senator Herb Kohl (D-WI), would require the sale of a "secure gun storage or safety device" with all handguns.<sup>30</sup> A

---

<sup>28</sup> Hillsborough resident Hank Earl Carr, a fugitive with several outstanding arrest warrants, purchased an arsenal of weapons at gun shows and later used one of them to kill his girlfriend's 4-year-old son and three law enforcement officers.

<sup>29</sup> The California Legislature is also considering legislation to prohibit the sale of high-capacity ammunition magazines. See discussion *infra* p. 19 (summarizing S.B. 23).

<sup>30</sup> S. 254 (Amendment No. 352), 106<sup>th</sup> Cong., 1<sup>st</sup> Sess. (1999). See *infra* pp. 44-54 for a further discussion of firearm safety devices and personalized guns.

handgun owner who properly uses such a device would be immune from liability in the event of an injury or death involving that handgun.<sup>31</sup>

#### **d. Reinstating a Waiting Period for Handgun Purchases**

On February 24, 1999, Senators John Chafee (R-R.I.) and Dick Durbin (D-III) introduced a bill to require a permanent three-day waiting period for handgun purchases. The waiting period would help guard against impulsive acts of violence and give the FBI sufficient time to review state and local records which are not currently accessible under NICS (i.e., those pertaining to nonfelony categories such as involuntary commitments to mental institutions, restraining orders and domestic violence misdemeanors). Representative John Porter (R-III) introduced a companion bill in the House of Representatives on March 10, 1999. As of June 1, 1999, the Senate bill remained in the Judiciary Committee and the House bill had been referred to the Subcommittee on Crime.

#### **e. Regulating Guns as Consumer Products**

Federal law does not currently set any safety or quality standards for domestically manufactured firearms. Although the Gun Control Act of 1968 sets such standards for imported handguns, that law does not extend to handguns manufactured in this country. Most consumer products are regulated by the Consumer Product Safety Commission, established in 1972 by the Consumer Product Safety Act.<sup>32</sup> The statutory definition of the term “consumer product” excludes several products that are regulated elsewhere by the federal government (e.g., food and drugs, regulated by the Food and Drug Administration, and aircraft, regulated under the Federal Aviation Act). However, the definition of “consumer product” also specifically excludes firearms and ammunition (as well as tobacco products), even though these products are not otherwise subject to federal safety or quality standards.<sup>33</sup>

---

<sup>31</sup> The Senate Juvenile Justice Bill would also, among other things, revoke the right to gun ownership for anyone convicted of a gun crime as a juvenile, provide for a study of the marketing practices of the firearms industry with respect to children, and set up a \$50 million annual grant program for state juvenile court personnel to reduce court backlog and recidivism.

<sup>32</sup> 15 U.S.C. § 2051 *et seq.*

<sup>33</sup> 15 U.S.C. § 2052(a)(1)(E). The Act’s exclusion for firearms and ammunition is not apparent from a plain reading of the statute. Rather, the exclusion applies to “any article which, if sold by the manufacturer, producer, or importer, would be subject to the tax imposed by section 4181 of the Internal Revenue Code of 1986.” Section 4181 imposes a tax on firearms, shells and cartridges.

On March 2, 1999, Representative Patrick Kennedy (D-R.I.) introduced a bill in the House of Representatives to abolish the gun industry's exclusion from regulation by the federal government. That bill, the "Firearms Safety and Consumer Protection Act of 1999," would authorize the Secretary of the Treasury to regulate the manufacture, distribution and sale of firearms and ammunition. Senator Robert Torricelli (D-N.J.) introduced a similar bill in the Senate. As of June 1, 1999, the House bill had been referred to the Subcommittee on Crime and the Senate bill remained in the Judiciary Committee.

Recent national public opinion polls show overwhelming public support for governmental regulation of the design of handguns. In fact, when respondents were told that imported handguns must meet federal safety and quality standards and then asked whether they thought "handguns made in the United States should or should not have to meet the same standards," 94 percent said domestically manufactured handguns should meet those standards.<sup>34</sup>

### **3. The Second Amendment**

The Second Amendment to the U.S. Constitution provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed."

The U.S. Supreme Court resolved any legal dispute regarding the meaning of the Second Amendment in the seminal case of *United States v. Miller*, 307 U.S. 174 (1939). In *Miller*, the court rejected a Second Amendment challenge to a law prohibiting the interstate transportation of sawed-off shotguns, holding that the "obvious purpose" of the Second Amendment was to "assure the continuation and render possible the effectiveness" of the state militia, and it "must be interpreted and applied with that end in view." *Miller*, 307 U.S. at 178. Because there was no evidence that possession or use of a sawed-off shotgun had any "reasonable relationship to the preservation or efficiency of a well regulated militia," the court found no Second Amendment violation. *Id.*

Since *Miller*, state and federal appellate courts have uniformly rejected the view that the Second Amendment is a barrier to laws regulating the sale, possession or use of firearms. Those courts have repeatedly and unequivocally held that the Amendment only protects the right to "bear arms" in the context of service to a state-operated militia. (See

---

<sup>34</sup> S.P. Teret et al., *Support for New Policies to Regulate Firearms: Results of Two National Surveys*, 339 New Eng. J. Med. 813-18 (Sept. 17, 1998).

1996 Manual, pp. 5-9.) Notwithstanding this well-established legal principle, the NRA continues to argue that the Second Amendment guarantees an individual right to purchase and possess firearms without governmental restriction. Unfortunately, this mischaracterization has been repeated so often that most Americans believe it to be true.<sup>35</sup>

Surprisingly, a March 30, 1999 opinion of the U.S. District Court for the Northern District of Texas also adopted the NRA's view of the Second Amendment. That opinion, issued by Judge Sam R. Cummings in *United States v. Timothy Joe Emerson*, considered a Second Amendment challenge to 18 U.S.C. Section 922(g)(8), prohibiting firearm possession by persons subject to restraining orders.<sup>36</sup>

Ignoring fifty years of legal precedent, the Texas court held that the statute was unconstitutional because it violated the defendant's individual rights under the Second Amendment. In support of this conclusion, the court relied heavily on recent law review articles and other scholarly commentary reflecting what the court called the "individual rights," as opposed to the "collective rights," school of thought. Although the court acknowledged that numerous federal courts have held that the Second Amendment does *not* establish an individual right to bear arms, but a right held by the states, it refused to follow those decisions on the ground that they had misinterpreted *Miller*.<sup>37</sup> The court stated that in *Miller*, the Supreme Court merely held that the defendant failed to show that sawed-off shotguns have a potential military use. Thus, the court observed, one could actually read *Miller* "as supporting some of the most extreme anti-gun control arguments; for example, that the individual citizen has a right to keep and bear bazookas, rocket launchers, and other armaments that are clearly used for modern warfare, including, of course, assault weapons."<sup>38</sup>

---

<sup>35</sup> According to a 1995 nationwide poll, 75 percent of American voters believe the Constitution guarantees their right to own a gun. U.S. News & World Report, May 22, 1995, at 28.

<sup>36</sup> *United States v. Emerson*, No. 6:98-CR-103-C, 1999 U.S. Dist. LEXIS 4700 (N.D. Tex. April 7, 1999). The case arose out of an underlying divorce proceeding. The defendant's wife had obtained a restraining order enjoining the defendant from making threatening communications or actual attacks upon his wife during the pendency of the proceedings.

<sup>37</sup> At the outset of the opinion, Judge Cummings states that the Fifth Circuit has not yet addressed the issue of whether the Second Amendment recognizes an individual right to keep and bear arms. However, the Fifth Circuit summarily rejected Second Amendment challenges to federal firearms laws in *United States v. Johnson*, 441 F.2d 1134 (5<sup>th</sup> Cir. 1971), and *United States v. Williams*, 446 F.2d 486 (5<sup>th</sup> Cir. 1971). Judge Cummings' opinion does not mention or attempt to distinguish either decision.

<sup>38</sup> *Emerson*, 1999 U.S. Dist. LEXIS 4700 at \*32-33.

The court failed to mention, however, that this view was rejected in *United States v. Hale*, 978 F. 2d 1016 (8<sup>th</sup> Cir. 1992), interpreting *Miller* as protecting only those weapons which are actively being used by a militia member for legitimate, militia-related purposes. The court also failed to mention that the Supreme Court declined to review *Hale* and the many other cases which have unanimously rejected the “individual rights” view.<sup>39</sup> Indeed, the court cited no judicial authority whatsoever for its opinion, relying instead on dicta in Clarence Thomas’ concurring opinion in *Printz v. United States*, 521 U.S. 898 (1997) (stating that *Miller* did not define the substantive rights protected by the Second Amendment and suggesting that those rights are individual in nature).<sup>40</sup>

The Government is appealing Judge Cummings’ ruling. Because the decision is that of a trial court, it has no precedential value and is not binding on other courts.

## **B. STATE FIREARMS POLICIES**

### **1. Legislative Update**

#### **a. 1998 in Review**

**Vetoed legislation.** During 1998, former Governor Pete Wilson vetoed three important firearms-related bills. The first, Senate Bill (S.B.) 1500 (Polanco), would have prohibited the manufacture and sale of junk guns by requiring that all handguns made or sold in California pass a drop-safety test and a firing performance test. The tests were based on standards developed by the National Institute of Justice for use by law enforcement agencies. Governor Wilson vetoed similar legislation in 1997.

The second vetoed bill was Assembly Bill (A.B.) 2560 (Perata), legislation to strengthen California’s assault weapons ban and prohibit the sale of large capacity ammunition magazines (those capable of holding more than 19 rounds). A.B. 2560 would have amended the Roberti-Roos Assault Weapons Control Act of 1989 (Penal Code Section 12275 *et seq.*) to include a general definition of assault weapons based on design, firepower and rapid-fire characteristics, rather than a list of banned weapons identified by name.

---

<sup>39</sup> These cases are cited in the 1996 Manual at pp. 8-9.

<sup>40</sup> The *Printz* case involved a challenge to the background check requirement of the Brady Act (see discussion at pp. 7-8 of the 1998 Supplement). The Second Amendment was not at issue in the case.

The third firearms-related bill vetoed by Governor Wilson in 1998 was S.B. 1550 (Hayden). That bill would have required gun dealers to *offer* to sell a child-safety lock with each handgun sold. In 1997 Wilson vetoed a stronger child-safety lock bill, which would have required the actual sale of a lock with each handgun.

As discussed below, each of the vetoed bills were reintroduced during the 1999 legislative session.

**Legislation Signed into Law.** During 1998, the Legislature also passed (and Governor Wilson signed) A.B. 2188 (Scott), significant legislation regulating gun manufacturers in California. Under this law, codified in Penal Code Sections 12085 and 12086, manufacturers must be licensed by the Department of Justice and meet minimum security requirements at their facilities. Manufacturers must also obtain background checks on employees, promptly report lost or stolen firearms and include tamper-resistant serial numbers on all firearms produced. This legislation was adopted, in part, in response to a theft of approximately 14,000 handguns from the Lorcin Engineering plant in Southern California. That theft went unreported for more than a year.

Former Governor Wilson also signed A.B. 2011 (Hertzberg), requiring local law enforcement agencies to report guns recovered at crime scenes to the Department of Justice so those firearms can be identified and traced. That bill is codified in Penal Code Section 11108.3.

### **b. Legislative Proposals for 1999**

Many groundbreaking firearms-related bills are currently making their way through the California Legislature.<sup>41</sup> The bills under consideration include:

- **S.B. 15 (Polanco) Handgun Safety Standards.** This bill is almost identical to the junk gun legislation vetoed in 1998. S.B. 15 includes a drop-safety test and firing performance test, and requires all handguns to include a manually operated safety device to prevent unintentional discharge. The safety device standards are taken from the federal Gun Control Act of 1968, which has banned the importation (but not the domestic production) of poorly made handguns for more than 30 years. S.B. 15 would exempt firearms that are already individually owned, as well as private sales of those weapons.

---

<sup>41</sup> LCAV is grateful to Luis Tolley of Handgun Control, Inc. for the information he provided regarding these bills.

- **S.B. 23 (Perata) Assault Weapons.** This bill is a reincarnation of A.B. 2560, the assault weapons legislation vetoed by Wilson in 1998. S.B. 23 would ban the manufacture, sale, transfer and possession of all semiautomatic assault weapons with one or more military characteristics (e.g., a folding stock or pistol grip). Persons who already own such weapons would be allowed to keep them if the weapons are properly registered. S.B. 23 would also ban the manufacture and sale of magazines capable of holding more than 10 rounds of ammunition.

During his first State of the State address, Governor Davis pledged to sign legislation strengthening the state's assault weapon ban. He reaffirmed that pledge after the April 20, 1999 Columbine High School massacre, noting that the assault weapon used in that shooting, a TEC-DC9, is a legal copycat of the TEC-9, an assault weapon already banned by the Roberti-Roos Act. The gunman in the July 1, 1993, 101 California Street massacre used two TEC-DC9s in his shooting rampage.

- **A.B. 106 (Scott and Aroner), S.B. 130 (Hayden) Child-Safety Locks.** Effective January 1, 2002, these identical bills would require all handguns manufactured in California, or imported by dealers from other states, to be equipped with a child-safety lock tested and approved by the Department of Justice. Gun owners who could prove ownership of an approved gun safe, or the purchase of an approved safety device within the previous 30 days, would be exempt.
- **A.B. 32 (Scott) Firearms Dealers - Schools.** This bill would prohibit new gun dealers from operating within 1,000 feet of a school, preschool or college and require background checks of most dealer employees who come in contact with firearms. The bill preserves the right of local governments to more rigorously regulate firearms dealers.
- **A.B. 202 (Knox) Gun Trafficking.** A.B. 202 would reduce gun trafficking by prohibiting the purchase of more than one handgun per person during any 30-day period. (See *infra* pp. 35-36 for additional discussion of one-gun-a-month laws.)
- **A.B. 988 (Lowenthal) Residential Firearms Dealers.** This bill would prohibit gun dealers from operating out of residences.
- **A.B. 1142 (Soto) Firearm Storage.** Penal Code Section 12035 holds negligent gun owners liable when a child under 16 gains access to a loaded firearm and injures or threatens a person, or carries the weapon in public. A.B. 1142 would strengthen the law to include children under the age of 18. The bill would also increase penalties

and prohibit anyone convicted of violating the law from possessing a firearm in the future.

- **A.B. 295 (Corbett) Gun Shows/Dealer Licensing**. This bill would require gun show promoters to be licensed by the Department of Justice and submit a list of vendors and a written security plan to local law enforcement for approval. The bill would also require promoters to contract for the number of law enforcement officers determined by the sheriff or police chief to be necessary to adequately monitor gun shows. The Department of Justice would provide training to those officers in applicable federal, state and local laws.

A.B. 295 would also change existing law regarding firearms dealer licensing. Currently, persons engaged in “infrequent” firearms sales are exempt from licensing requirements. The term “infrequent” is defined as less than six “transactions” per year, and the term “transaction” is defined to include the sale of multiple firearms. A.B. 295 would change this law so the sale of each firearm would constitute a separate “transaction.”

- **A.B. 1097 (Romero) Firearms Law Enforcement/Gun Shows**. This bill would create a Firearms Enforcement Unit within the Department of Justice to work with local law enforcement to investigate and prosecute gun law violations by dealers and at gun shows. Currently, the Department of Justice has no enforcement officers. In addition, as of May 26, 1999, the Department had only **eight** field representatives responsible for inspecting over **3,000** licensed firearms dealers across the state.<sup>42</sup>

A.B. 1097 would also require gun show promoters to provide law enforcement with annual notice of all shows in which the promoter will participate, a list of the vendors at each, and other data regarding gun show transactions. In addition, promoters would be required to notify vendors of applicable federal, state and local laws, and to ensure that all gun show firearms are properly secured.

During an April/May 1999 sting operation conducted by the Department of Justice at a gun show in Pomona, undercover agents were able to purchase numerous illegal weapons, including assault weapons, machine gun conversion kits and rocket launchers, without any background checks or waiting periods. Attorney General Lockyer stated that agents ran out of their \$4,000 allocation after checking only a

---

<sup>42</sup> May 26, 1999, telephone conversation with Department of Justice field representative Sally Carney.

fraction of the 5,300 tables at the show. The Attorney General strongly supports passage of A.B. 1097 and 295.<sup>43</sup>

- **A.B. 1204 (Villaraigosa) Misdemeanors to Prohibit Gun Purchases.** This bill would expand the list of misdemeanor offenses that disqualify a person from purchasing a firearm. Recent research shows that a prior misdemeanor conviction is a strong predictor of subsequent criminal activity among handgun purchasers.<sup>44</sup> A.B. 1204 is a two-year bill and will not be considered until 2000.
- **A.B. 17 (Jackson) Preemption.** This bill would repeal state preemption of the field of registration and licensing of firearms.

The results of two comprehensive national surveys, published in the September 17, 1998, issue of the *New England Journal of Medicine*, reveal enormous public support for many of the innovative gun policies currently being considered by the California Legislature. Those surveys showed that: 1) 88 percent of the respondents favored legislation to childproof handguns; 2) 81 percent favored limiting handgun purchases to one per month; 3) 82 percent supported mandatory registration of handguns; 4) 70 percent favored a ban on residential firearms dealers; and 5) 83-95 percent supported policies denying gun ownership to persons convicted of misdemeanors involving violence or illegal use of firearms.<sup>45</sup>

## 2. Assault Weapons Litigation Update

The California courts are currently considering four cases involving the Roberti-Roos Assault Weapons Control Act. The first, filed in 1997 by Handgun Control, Inc. and the Center to Prevent Handgun Violence (collectively HCI), alleges that former Attorney General Dan Lungren illegally continued to register thousands of assault weapons after the March 30, 1992, statutory deadline.<sup>46</sup>

On July 21, 1998, San Francisco Superior Court Judge Raymond Williamson granted HCI's motion for summary judgment, ruling that Lungren had no authority to register assault weapons after the deadline. Although the Attorney General's office

---

<sup>43</sup> For a discussion of gun show regulations currently being considered at the local level, see *infra* pp. 37-38.

<sup>44</sup> G.J. Wintemute et al., *Prior Misdemeanor Convictions as a Risk Factor for Later Violent and Firearm-Related Criminal Activity Among Authorized Purchasers of Handguns*, 280 J. Am. Med. Ass'n 2083-87 (Dec. 23/30, 1998).

<sup>45</sup> See *supra* note 34.

<sup>46</sup> San Francisco Superior Court Case No. 991752.

appealed the decision, Lungren's successor, Bill Lockyer, has indicated that he may dismiss the appeal.

The California Supreme Court has granted review of three other assault weapons cases. In *Kasler v. Lungren* (1998) 61 Cal. App. 4th 1237, the Court of Appeal held that the "add on" provision of the Roberti-Roos Act, which permits the Attorney General to add to the list of banned assault weapons after obtaining a court order, violates the separation of powers doctrine and principles of due process. The opinion also cast doubt on the legality of the list itself, holding that it might be vulnerable to plaintiff's equal protection claims because it allegedly included some, but not all, weapons that could be categorized as "assault weapons." (See 1998 Supp., pp. 14-15.) The Office of the Attorney General is continuing to enforce the Roberti-Roos Act pending the outcome of that review. The case may become moot, however, if S.B. 23 is signed into law, since that legislation would, as presently drafted, delete both the list of banned weapons and the add-on provision of the Act. (See *supra* p. 19.)

The Supreme Court has also granted review of two other Court of Appeal decisions with conflicting interpretations of Roberti-Roos: *Harrott v. County of Kings* (1996) 51 Cal. App. 4th 111 (holding that only the Attorney General, and not the judiciary, may add to the list of banned weapons), and *People v. Dingman* (1996) 47 Cal. App. 4th 1068 (holding that an SKS rifle converted to accept a detachable magazine is an illegal assault weapon). (See 1997 Supp., p. 8.) No dates have been set for oral argument in any of these cases.

## **C. SELECTED DEVELOPMENTS IN OTHER STATES**

### **1. Colorado**

In 1999 Colorado legislators introduced bills to: 1) liberalize the state's CCW (carrying concealed weapons) law; 2) preempt local governments from adopting firearms-related ordinances; and 3) prevent local governments from suing gun manufacturers. The bills were supported by the NRA and Governor Bill Owens.

In the wake of the April 20, 1999 massacre at Columbine High School near Littleton, all three bills were withdrawn by their sponsors. On May 1, 1999, the NRA held its annual convention in Denver, 10 miles outside of Littleton. More than 7,000 protestors demonstrated outside the convention, which had been scaled back from three days to

one after the shooting. The NRA had rejected calls by Mayor Wellington Webb to cancel the event.

## **2. Connecticut**

In 1998, the State of Connecticut adopted comprehensive legislation to reduce gun violence. That law includes provisions which:

- Require tracing of all crime guns;
- Mandate FBI fingerprint background checks for all gun permit applications;
- Require the sale of a trigger lock or similar locking device with all handguns;
- Allow persons who own or control private property to ban guns from that property;
- Prohibit firearm possession by persons convicted of serious juvenile offenses; and
- Establish strict criteria for the reporting of involuntary hospital commitments for psychiatric reasons.

## **3. Idaho**

In March of 1999, Idaho Governor Dirk Kempthorne vetoed legislation that would have allowed students to have guns at school if the weapons were locked in the students' cars. The governor reportedly received more than 1,000 calls urging him to veto the bill.

## **4. Massachusetts**

In July of 1998, Massachusetts passed sweeping legislation to regulate firearm sales. That law, hailed by chief sponsor Senator Cheryl Jacques as the toughest in the nation:

- Bans the sale of junk guns;
- Requires gun owners to store firearms in a securely locked container or with a tamper-resistant safety device;
- Creates criminal penalties for negligent firearm storage;
- Prohibits residential gun dealers;
- Requires reporting of lost or stolen firearms;
- Toughens state licensing procedures for gun buyers;
- Requires that all new firearms be sold with a mechanical lock or other safety device designed to prevent discharge by unauthorized users; and

- Adopts the federal assault weapons ban to permit state prosecution of persons violating the law.

Some of the junk gun provisions in the new state law were modeled after landmark consumer protection regulations issued in 1997 by former Attorney General Scott Harshbarger. As reported in the 1998 Supplement (p. 16), in January of 1998 the American Shooting Sports Council and three firearms manufacturers filed suit to enjoin enforcement of the laws. On July 1, 1998, the Superior Court issued an order temporarily enjoining enforcement of the state regulations, finding the regulations beyond the scope of the Attorney General's authority. The Massachusetts Supreme Court granted direct appellate review of the order and, in February of 1999, heard oral arguments in the case. The Supreme Court had not issued its decision as of May 1, 1999.

## **5. Missouri**

On April 6, 1999, Missouri voters rejected Proposition B, a NRA-backed ballot initiative to repeal the state's ban on concealed weapons. Proposition B was placed on the ballot after legislative efforts to repeal the ban repeatedly failed. The ballot measure – the first of its kind in the nation – was supported by a multi-million dollar advertising campaign by the NRA. Voter turnout set an all-time record for an April election in Missouri.

## **6. New Jersey**

On February 25, 1999, New Jersey state Senators Richard Codey and Joseph Palaia introduced landmark legislation to require the sale of "child-proof" handguns. That legislation provides that, beginning three years after the law's effective date, firearms dealers may only sell handguns that are designed and manufactured so they cannot be fired unless operated by an authorized or recognized user. Under the terms of the bill, the Superintendent of State Police will prepare a list of permissible "child-proof" handguns. During the three-year period following the bill's adoption, firearms dealers must sell trigger locking devices with all handguns that have not been identified as "child-proof." The bill was scheduled for a vote on the Senate floor the week of June 14, 1999.<sup>47</sup>

---

<sup>47</sup> See *infra* pp. 44-54 for an additional discussion of firearm safety devices and "personalized" firearms.



# CHAPTER III

## LOCAL ORDINANCE LITIGATION UPDATE

Between 1994 and 1997, five lawsuits were filed against California cities and counties following their adoption of firearms-related ordinances. Those lawsuits presented legal challenges to: 1) Lafayette's firearms dealer ordinance; 2) Santa Clara County's gun show sales ban; 3) San Francisco's gross receipts tax; 4) Los Angeles' ban on the sale of high-capacity ammunition magazines; and 5) West Hollywood's Saturday Night Special sales ban.

As discussed below, each of these lawsuits has now been finally resolved, with outcomes overwhelmingly in favor of the local government defendants. Accordingly, California cities and counties now have much clearer judicial guidelines regarding the extent of their authority to regulate firearms and ammunition. This Chapter also discusses three new ordinance-related lawsuits – those presenting legal challenges to Sacramento's Saturday Night Special sales ban, San Leandro's firearms tax and Union City's discharge ban.

### A. THE LAFAYETTE, SANTA CLARA COUNTY, SAN FRANCISCO AND LOS ANGELES CASES

The 1997 and 1998 Supplements provide a detailed discussion of the legal issues and procedural history of the Lafayette, Santa Clara County, San Francisco and Los Angeles cases. (See 1997 Supp., pp. 10-20 and 1998 Supp., pp. 19-26.) The rulings in those cases are briefly summarized below.

**Lafayette**. In *Suter v. City of Lafayette* (1997) 57 Cal. App. 4<sup>th</sup> 1109, the Court of Appeal held that state law does not preempt the broad field of firearms sales or regulation of firearms dealers. The court upheld all but one provision of the city's dealer ordinance, ruling that the city had the authority to require dealers to sell trigger locks and obtain liability insurance, operate in commercial areas with a land use permit, and prevent them from admitting minors unless accompanied by an adult. The court invalidated the

ordinance provision imposing security measures for firearm storage, holding that the provision was preempted by similar, but less stringent, provisions of state law.

**Santa Clara County.** In *Nordyke v. Santa Clara County*, 110 F.3d 707 (9<sup>th</sup> Cir. 1997), the Ninth Circuit Court of Appeals considered a challenge to a lease provision banning the sale of firearms at the County Fairgrounds. Significantly, the court rejected the argument that the sale of a gun qualifies as “speech” within the meaning of the First Amendment. However, the court held that because the lease also prohibited the “offering for sale” of guns at the Fairgrounds, it curtailed protected commercial speech. The court opined that the County would not have run afoul of the First Amendment if it had adopted an *ordinance* making gun sales at the Fairgrounds illegal, noting that the Constitution only protects proposals to engage in *lawful* commercial transactions. The court did not consider whether state law preempted the lease provision.

**San Francisco.** In *San Francisco Gun Exchange, Inc. v. City and County of San Francisco* (San Francisco Superior Court Case No. 975-036), the Superior Court rejected the plaintiff’s claim that the City’s gross receipts tax was preempted by state law and violated the commerce clause, equal protection clause, First Amendment and Proposition 62 (requiring voter approval for local real property transfer taxes). The complaint was later amended to include a cause of action based on Proposition 218, which requires voter approval of local taxes. The court granted the City’s motion for summary judgment and dismissed the complaint, holding that the tax must be approved by the voters, but was otherwise lawful. The Gun Exchange filed, but later abandoned, an appeal of the ruling.<sup>48</sup>

**Los Angeles.** *Hance v. City of Los Angeles* (Los Angeles County Superior Court Case No. BC 181327) involved a challenge to the City’s ordinance banning the sale of magazines capable of holding more than 10 rounds of ammunition. The court denied plaintiffs’ motion for a temporary restraining order, rejecting the arguments that the ordinance was preempted by state law, void for vagueness and impermissibly overbroad. Plaintiffs dismissed the case after the City agreed to amend the ordinance to exempt museums and businesses involved in the entertainment industry. Those amendments were adopted April 28, 1998.

---

<sup>48</sup> In accordance with the court’s order, the City was permitted to continue collecting taxes for two years, until November of 1998, when the gross receipts tax could be placed before the voters. As of June 1, 1999, the issue had not been put on the ballot.

## **B. THE WEST HOLLYWOOD CASE**

On October 1, 1998, the Second District Court of Appeal issued its landmark decision upholding West Hollywood's ban on the sale of Saturday Night Specials. That decision, *California Rifle and Pistol Association, Inc. v. City of West Hollywood* (1998) 66 Cal. App. 4<sup>th</sup> 1302, rejected a challenge to the ordinance based on preemption, due process and equal protection.

At the outset of the opinion, the court observed that despite well-considered policy arguments on both sides, the appeal presented "no truly controversial legal issues in the realm of preemption law." *West Hollywood*, 66 Cal. App. 4<sup>th</sup> at 1308. The court provided the following summary of its ruling on the issue:

Although it is clear that the Legislature *could* preempt all local ordinances regarding handgun sales, it is equally clear that the Legislature has not done so. Instead, the Legislature has studiously avoided comprehensive preemption of such local laws despite several legislative opportunities to enact a complete preemption. The ordinance in question here does not directly conflict with any state statute, and the question of whether to have such an ordinance is a decision within the authority of local elected legislators. *Id.* at 1308.

The court began its in-depth preemption discussion by stating that the police powers exercisable by a local government are coextensive with those exercisable by the Legislature. Accordingly, the court stated, the issue of preemption does not involve the question of whether the Legislature has *bestowed* a particular power upon a city or county, but whether it has taken that power *away*. The starting point in the case before it, therefore, was whether the Legislature has taken away the power of a local government to regulate firearm sales in the manner undertaken by the West Hollywood ordinance.

Beginning with an analysis of plaintiff's express preemption claim, the court observed that the state has expressed its intention to preempt local action in three relevant areas: 1) the licensing and registration of commercially manufactured firearms (Government Code Section 53071); 2) the manufacture, sale or possession of imitation firearms (Government Code Section 53071.5); and 3) the imposition of permitting or licensing requirements with respect to the purchase or possession of concealable firearms in the home or place of business (Penal Code Section 12026). On the basis of the plain language of the statutes, and the judicial rulings interpreting that language, the

court found it “quite clear that the Legislature has not expressly preempted the area of local regulation of handgun sales.” *Id.* at 1316.

The court then examined plaintiff’s claim of implied preemption by applying the three-prong test identified by the California Supreme Court in *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal. 4<sup>th</sup> 893. Pursuant to that test, a local ordinance is impliedly preempted if: 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 terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; and 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 locality.

Applying the first prong of the test, the court found that the very existence of Government Code Sections 53071, 53071.5 and Penal Code Section 12026, which expressly preempt narrow fields of firearm regulations, strongly suggests that the state intended to leave areas not covered by the statutes within local control. Thus, “state law does not ‘clearly indicate’ that the Legislature has intended a preemption here; in fact, it clearly indicates the opposite.” *West Hollywood*, 66 Cal. App. 4<sup>th</sup> at 1318.

The court also declined to find implied preemption under the second prong of the test, i.e., it found that the subject matter was not partially covered by state law so as to indicate clearly that further additional local action was impermissible. On the contrary, in reliance on *Suter v. City of Lafayette*, *supra*, the court observed that state law explicitly acknowledges local police powers to regulate firearm sales.<sup>49</sup> The court also easily dismissed a finding of implied preemption under the third prong of the *Sherwin-Williams* test, noting that laws designed to control the sale of firearms have very little impact on transient citizens.

The court then considered the impact of certain opinions of the Legislative Counsel and Attorney General. The first opinion of the Legislative Counsel, written in 1982, analyzed a proposed ban on the sale or possession of all handguns. The court distinguished the opinion factually and noted that several of its legal conclusions had been rejected in the *Suter* case.

---

<sup>49</sup> See Penal Code Section 12071(a)(6)(C), authorizing local licenses to sell firearms and permitting a letter from the local licensing authority to qualify as such a license if the jurisdiction “does not require any form of regulatory or business license or does not otherwise restrict or regulate the sale of firearms.”

The second Legislative Counsel opinion, written in 1995, specifically addressed the legality of an ordinance banning the sale of Saturday Night Specials. The opinion concluded that such an ordinance was impermissible because it was beyond the authority granted to local governments by the Legislature. The court rejected this analysis, stating again that the issue is not whether the Legislature has affirmatively *authorized* local regulation of firearm sales, but whether it intended “to strip local governments of their constitutional power to ban the local sale of firearms which the local governments believe are causing a particular problem within their borders.” *Id.* at 1324.

The court refused to find that Penal Code Section 12026, prohibiting permit or license requirements, created a public right to purchase any type of handgun not specifically outlawed by state law. The court held that the statute merely establishes a limitation upon local governments, and not a broad right for members of the public.

The court also rejected plaintiff’s reliance on an opinion from the Attorney General’s Office, 77 Ops. Cal. Atty. Gen. 147 (1994), relating to local ammunition regulations. Agreeing with the *Suter* decision, the court characterized the Attorney General’s gratuitous statements regarding the ability of local governments to regulate firearms sales as dicta with “little persuasive force” in the case before it.<sup>50</sup>

Finally, the court analyzed plaintiff’s contention that the West Hollywood ordinance violates constitutional guarantees of equal protection and due process. Rejecting the argument that things (as opposed to people) are entitled to equal protection, the court stated that laws which do not involve suspect classifications – such as race, sex or religion – will be upheld if they bear a rational relationship to a legitimate public purpose. Despite plaintiff’s assertion to the contrary, the court found it was not irrational for West Hollywood legislators to believe that a ban on the sale of junk guns would benefit local residents.

The court rejected plaintiff’s due process claims for similar reasons. Beginning with the proposition that legislative acts are presumed constitutional, and any doubts will be resolved in favor of their legality, the court stated that substantive due process merely requires a rational relationship between the objectives of a law and the method chosen to attain that objective. The wisdom of the legislation is not at issue in analyzing its constitutionality, nor is the availability of less drastic methods or the legislative failure to solve all related ills at once. The court found the arguments supporting plaintiff’s due process attack (e.g., that junk guns are not dangerous and provide protection to low-

---

<sup>50</sup> The Attorney General’s decision is discussed in greater detail at p. 20 of the 1996 Manual.

income individuals), went to the issue of the advisability of the ordinance and failed as a matter of law to establish that the measure was wholly irrational.

The California Supreme Court issued an order declining to review the Court of Appeal decision on December 22, 1998. Accordingly, the decision is now final and binding on all lower courts.

As noted previously, as of June 1, 1999, 45 local governments in California had adopted junk gun sales bans modeled after the West Hollywood ordinance. Chapter V of the 1997 Supplement contains answers to the mostly commonly asked questions about junk guns. Chapter V of the 1998 Supplement includes a copy of West Hollywood ordinance.

## **C. NEW ORDINANCE-RELATED LITIGATION**

### **1. Sacramento's Saturday Night Special Sales Ban**

On December 16, 1997, the City of Sacramento adopted an ordinance banning the sale of junk guns within City limits. The ordinance is almost identical to that adopted by West Hollywood. On May 28, 1998, the California Rifle and Pistol Association, the National Rifle Association, and certain residents and local gun dealers filed suit challenging the ordinance.<sup>51</sup> The complaint alleged that the ordinance was preempted by state law, violated plaintiffs' rights of due process and equal protection, and unconstitutionally delegated legislative powers to the Chief of Police. The parties agreed not to pursue the litigation pending the outcome of the West Hollywood case.

On October 13, 1998, following the favorable West Hollywood Court of Appeal decision, the City of Sacramento requested that plaintiffs voluntarily dismiss their action or stay discovery until the City could file a motion for summary judgment. Plaintiffs refused and filed a first amended complaint on February 18, 1999, adding two new plaintiffs (American Derringer and its president) and four new causes of action. The City demurred to the amended complaint, arguing that it failed to state facts constituting a valid cause of action because the claims were already decided in the West Hollywood case.

---

<sup>51</sup> *Robert B. Miller et al. v. City of Sacramento et al.*, Sacramento County Superior Court Case No. 98CS01422.

On May 14, 1999, the court sustained the City's demurrer without leave to amend as to ten of the twelve causes of action, finding that the issues of preemption, due process and equal protection had been decided in the West Hollywood case. The court also sustained the City's demurrer, but granted leave to amend, with respect to the remaining causes of action, challenging the creation of the junk gun roster by the chief of police.

## **2. San Leandro's Firearms Tax**

On June 2, 1998, the voters of San Leandro passed Measure H, an ordinance requiring firearms dealers to pay a 3 percent business license fee based on the gross sales of concealable firearms and ammunition for those firearms.

On July 16, 1998, Traders Sports, Inc., its president and two Traders customers residing outside of San Leandro filed a complaint against the City for declaratory relief, coupled with a petition for extraordinary relief, mandate and/or prohibition, and for injunctive relief.<sup>52</sup> The suit seeks relief under numerous legal theories, but essentially alleges that Measure H is unconstitutional because it: 1) interferes with fundamental rights and uses suspect classifications; 2) denies plaintiffs equal protection of the laws; 3) was placed on the ballot through the use of thinly disguised racial animosity; 4) improperly targeted plaintiffs' protected activities, rather than being developed in a neutral manner; 5) places unequal burdens on similarly situated taxpayers; 6) is a penalty in the guise of a tax measure; since its goal is to reduce firearm sales; 7) is not reasonably related to the cost of services for which the fees are charged; and 8) was placed on the ballot by a city council vote of 4 to 3, rather than the two-thirds vote required by law.

The City of San Leandro has answered the complaint, generally denying the allegations, and propounded discovery requests to plaintiffs. The City intends to move for judgment on the pleadings with respect to one or more of the claims and then for summary judgment on the remaining claims. The court has asked that all dispositive motions be filed by November of 1999.

## **3. Union City's Discharge Ban**

On June 9, 1998, the City of Union City adopted an ordinance regulating the discharge of firearms within the city limits. Shortly thereafter, two duck clubs sued the

---

<sup>52</sup> *Traders Sports, Inc. et al. v. City of San Leandro*, Alameda County Superior Court Case No. H202695-0.

City for declaratory and injunctive relief.<sup>53</sup> The City filed demurrers to the complaints, which the court sustained in part. The complaints were amended February 11, 1999.

The amended complaints allege that: 1) the ordinance criminalizes and prohibits an activity (duck hunting) which is lawful at the state and national level; 2) Union City is preempted from regulating duck hunting in this manner by state and federal law; 3) the ordinance violates a number of provisions of the state and federal Constitutions, including the commerce clause, the due process clause and the privileges and immunities sections; and 4) the ordinance conflicts with other provisions of the Union City Municipal Code, particularly regarding the discharge of “ordinary shotguns” in an “undeveloped area.”

After the duck club plaintiffs filed two additional complaints asserting related claims against Union City, all four actions were consolidated. The City has demurred to the claims; a hearing on the demurrer is scheduled for June 30, 1999.

---

<sup>53</sup> *Laughing Mallard Duck Club v. City of Union City*, Alameda County Superior Court Case No. H-203180-2, and *Ugly Duckling Duck Club v. City of Union City*, Alameda County Superior Court Case No. H-203443-0.

# CHAPTER IV

## OTHER VIOLENCE-PREVENTION MEASURES CURRENTLY UNDER CONSIDERATION

The Local Ordinance Manual and previous annual Supplements discuss several types of ordinances to reduce gun-related violence, as well as non-legislative measures to increase the safety of local communities.<sup>54</sup> This Chapter discusses other innovative violence-prevention measures currently under consideration by local officials in California and, in some cases, other states as well.

### A. LIMITING HANDGUN PURCHASES TO ONE PER MONTH

In January of 1999, the Los Angeles City Council unanimously adopted an ordinance prohibiting firearms dealers from selling a handgun to anyone who had purchased such a weapon in California during the previous 30 days. The goal of the ordinance, the first of its kind in the state, is to reduce illegal firearm sales to criminals, minors and other prohibited purchasers. The City adopted the law after considering evidence establishing that most crime guns are not stolen, but are legally obtained by “straw purchasers,” often in bulk, and then illegally resold.<sup>55</sup> Los Angeles Police Department officials strongly supported the measure.

Under the terms of the ordinance, the Department of Justice checks a state database to determine whether a prospective purchaser has bought a handgun within the previous 30 days. The ordinance exempts several categories of purchasers, including law enforcement agencies, firearms dealers, those involved in the entertainment industry and persons acquiring a handgun through bequest or intestate succession.

---

<sup>54</sup> See 1996 Manual, pp. 22-50, 1997 Supp., pp. 21-30, and 1998 Supp., pp. 27-42.

<sup>55</sup> See Julius Wachtel, *Sources of Crime Guns in Los Angeles, California*, 21 Policing: An International Journal of Police Strategies and Management 220-39, 1998.

Opponents of the Los Angeles ordinance contend it is unnecessary because federal law already requires dealers to report multiple firearm sales.<sup>56</sup> However, neither federal nor state law prohibits multiple sales or requires law enforcement agencies to investigate the legality of those transactions. Indeed, federal law currently mandates law enforcement *destruction* of all dealer records regarding multiple sales within 20 days of receipt.<sup>57</sup> Federal law also prohibits law enforcement disclosure of multiple sales information “to any person or entity.”<sup>58</sup>

As a result of these lax laws, gun trafficking is rampant nationwide. A 1999 report by ATF, analyzing over 76,000 crime gun trace requests in 27 cities, found that between 32 and 49 percent of the guns recovered from youth were illegally acquired through straw purchases.<sup>59</sup>

As discussed in Chapter II, the California Legislature is currently considering one-handgun-a-month legislation. That legislation, A.B. 202 (sponsored by Assemblyman Wally Knox), passed the California Assembly one day after the massacre at Columbine High School in Colorado. A.B. 202 is expected to pass the Senate and be signed into law by Governor Davis. One-gun-a-month laws are already in effect in Virginia, Maryland and South Carolina, and are overwhelmingly supported by the public.<sup>60</sup>

## **B. REQUIRING AMMUNITION PURCHASER PERMITS**

Under current California law, it is illegal for a person who is prohibited from owning or possessing a firearm to “own, possess, or have under his or her custody or control, any ammunition or reloaded ammunition.”<sup>61</sup> California law does not, however, require ammunition sellers to determine whether a prospective purchaser is eligible to own a firearm. Although Penal Code Section 12316(a) prohibits the sale of any ammunition to a person known by the seller to be under the age of 18, and the sale of handgun ammunition to a person known to be under the age of 21, it does not affirmatively

---

<sup>56</sup> See 18 U.S.C. § 923(g)(3)(A).

<sup>57</sup> See 18 U.S.C. § 923(g)(3)(B).

<sup>58</sup> *Id.* Disclosure and retention of multiple sales reports are only permitted where the purchaser was not eligible to buy firearms.

<sup>59</sup> Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, *Crime Gun Trace Analysis Reports: The Illegal Youth Firearms Markets in 27 Communities* (February 1999).

<sup>60</sup> See *supra* note 34.

<sup>61</sup> Penal Code § 12316(b)(1).

obligate the seller to determine the age of the purchaser. Rather, proof that the seller demanded, and was shown, bona fide evidence of majority and identity provides a defense to any criminal prosecution against the seller.<sup>62</sup> Moreover, California law establishes no mechanism whatsoever for ammunition sellers to determine whether prospective purchasers are convicted felons or otherwise prohibited from owning or possessing firearms.

In an effort to close this loophole in state law, some California cities and counties are exploring the adoption of an ordinance to require ammunition purchasers to obtain a local permit. That permit would only be issued after law enforcement officials had completed an investigation and criminal background check to confirm that the applicant's age and criminal history did not disqualify the applicant from owning or possessing a firearm under California law. The permit could be renewed annually.

This type of ordinance would facilitate the enforcement of existing state laws intended, but not presently used, to keep ammunition out of the hands of criminals and underage purchasers.

## **C. GUN SHOW REGULATIONS**

Under current federal and state law, no law enforcement agency is specifically charged with ensuring the legality of gun show activities. In addition, although Penal Code Section 12071(b)(1)(B) explicitly authorizes "local laws, regulations and fees" with respect to gun shows, most local governments have not exercised this regulatory authority. Accordingly, gun shows have traditionally provided easy opportunities for illegal gun sales and other unlawful activities. However, because of the lack of law enforcement presence at the shows, those activities, although well known anecdotally, have rarely been documented.

As discussed previously, gun shows have recently come under governmental scrutiny. Both the January 1999 report by the Bureau of Alcohol, Tobacco and Firearms and April/May undercover operation by California Attorney General Bill Lockyer (see *supra* pp. 11-12 and 21) clearly demonstrate that gun shows are a major source of illegal firearms sales in this state and nationwide. In response to these findings, California local governments are considering a variety of ways to regulate gun show activities. Some of the proposals under consideration include the adoption of ordinances to:

---

<sup>62</sup> Penal Code § 12316(a)(2).

- Ban the sale of firearms and other dangerous gun show merchandise;<sup>63</sup>
- Require gun show promoters to pay for the training and presence of a meaningful number of law enforcement officers;
- Prohibit attendance by minors unless accompanied by a parent or legal guardian;
- Require strict inventory controls, such as an accounting of all firearms brought in and out of shows; and
- Mandate other reasonable security measures (e.g., all firearms must be tied down or otherwise secured and all bags must be checked at the door and subject to search at the request of law enforcement).

The 1997 Supplement includes an analysis of many of the legal issues potentially raised by these regulations. (See pp. 22-27.)

Some local governments are also considering a total ban on gun shows in their communities. Any locality contemplating a ban should, however, obtain a careful legal analysis regarding the possible First Amendment (and other) implications of such an action.

## **D. NON-LEGISLATIVE APPROACHES TO REDUCING GUN VIOLENCE**

### **1. Litigation Against Firearms Manufacturers**

#### **a. Local Government Actions**

On October 30, 1998, the City of New Orleans filed a groundbreaking lawsuit against the firearms industry.<sup>64</sup> That action, the first of many now pending nationwide, seeks to hold firearms manufacturers, retailers and industry trade associations responsible for the enormous public health costs of gun violence.

The New Orleans complaint seeks damages under product liability and negligence theories. The complaint alleges that defendants' firearms are unreasonably dangerous in design because they fail to include safety devices that: 1) prevent firing by unauthorized users; 2) alert users when a round is in the chamber; and 3) prevent firing when the magazine has been removed. The complaint alleges further that the firearms are

---

<sup>63</sup> See *supra* p. 28 for a discussion of the *Nordyke* case.

<sup>64</sup> *Mayor Marc H. Morial and The City of New Orleans v. Smith and Wesson et al.*, Civil District Court for the Parish of New Orleans, Division M, No. 98-18578.

unreasonably dangerous because they do not include adequate warnings alerting users to the risks of guns and the importance of proper storage. The City seeks reimbursement of sums paid as a result of defendants' wrongful conduct, including millions of dollars for police, medical and emergency services, police pension benefits and lost tax revenues due to lost productivity.

In November of 1998, the City of Chicago and Cook County also filed suit against the firearms industry.<sup>65</sup> Unlike the New Orleans complaint, the Chicago action seeks relief under a public nuisance theory. The complaint alleges that defendant gun manufacturers, distributors and dealers have created a public nuisance by intentionally marketing, distributing and selling firearms to persons in the areas surrounding Chicago, knowing those weapons will be illegally brought into the City, which bans handgun possession. The suit seeks over \$400 million in damages for police, medical and legal costs attributable to gun violence since 1994.

California jurisdictions initiated litigation against the firearms industry on May 25, 1999, in simultaneous actions filed in Los Angeles and San Francisco.<sup>66</sup> Those actions are being prosecuted under California's unique consumer protection law (Business and Professions Code Section 17200 et seq.), which broadly prohibits unlawful, unfair and deceptive business practices. The complaints also allege that the defendants have engaged in conduct that has created and maintained a public nuisance. The actions seek injunctive and declaratory relief, civil penalties, disgorgement of profits and/or restitution. Plaintiffs in the Northern California case include San Francisco, Alameda County, Berkeley, Sacramento and San Mateo County. In the Southern California case, Los Angeles is joined by Compton and West Hollywood. Other local governments are expected to join both actions.

As of June 1, 1999, numerous cities and counties outside of California had also filed suit against the gun industry. Those jurisdictions include Atlanta, Georgia; Bridgeport, Connecticut; Miami-Dade County, Florida; Cleveland and Cincinnati, Ohio (separate actions); Detroit and Wayne County, Michigan (also separate actions); and St. Louis, Missouri. The Center to Prevent Handgun Violence is serving as co-counsel in many of these actions and has provided assistance to localities considering such suits nationwide.

---

<sup>65</sup> *City of Chicago and County of Cook v. Beretta U.S.A. Corp. et al.*, Cook County Circuit Court, County Department, Chancery Division, Action No. 98-CH15596.

<sup>66</sup> Los Angeles Superior Court Case No. BC210894; San Francisco Superior Court Case No. 303753.

In response to this wave of litigation, NRA-backed legislators have introduced legislation across the country to prohibit local government actions against firearms manufacturers. Such legislation has passed in many states, including Alaska, Arkansas, Georgia, Montana, South Dakota, Tennessee and Wyoming, and is pending in others.

### **b. The Hamilton and Dix Cases**

Many of the local government lawsuits include legal theories that were first litigated in two pioneering private lawsuits against the firearms industry. The first case, *Hamilton et al. v. Accu-tek et al.*, was filed in January of 1995 by the families of six people killed in New York with illegally obtained handguns and a seventh victim who survived with a bullet still lodged in his brain.<sup>67</sup> That suit alleged that the marketing and distribution practices of 25 firearms manufacturers fostered illegal gun trafficking which foreseeably led to the individual shootings. The complaint sought damages from the defendants on a market share basis.<sup>68</sup>

On February 11, 1999, after 6 days of deliberation, a federal jury found 15 of the 25 handgun manufacturers negligent in the marketing and distribution of their products, and 9 of the 15 jointly liable for 3 of the 7 shootings. Under the complex terms of the verdict, the jury awarded damages only to the surviving shooting victim, however, finding 3 of the defendants responsible for that award. The jury absolved several defendants from liability after finding they had taken reasonable steps to ensure that their weapons did not end up in the hands of criminals (e.g., their contracts with wholesale distributors banned sales to residential dealers or at gun shows). The verdict in the *Hamilton* case was significant because it marked the first time a firearms manufacturer had been found civilly liable for the criminal use of its products.

The second case that is widely viewed as a precursor to the local government/ firearms industry suits is *Dix v. Beretta*. That action arose out of the tragic death of Kenzo Dix, a 15-year-old boy who was unintentionally shot and killed on May 29, 1984, by a 14-year-old friend. While playing that day, the friend had retrieved his father's loaded Beretta 9mm handgun from his father's bedroom. The boy attempted to unload the firearm by removing the ammunition magazine and replacing it with an empty magazine. A bullet remained hidden in the gun's chamber, however, and when he aimed the weapon at Kenzo and pulled the trigger, Kenzo was unintentionally shot and killed.

---

<sup>67</sup> U.S. District Court for the Eastern District of New York Case No. CV-95-0049.

<sup>68</sup> Firearms distributors were also named in the complaint, but subsequently dismissed from the action.

On April 26, 1995, Kenzo's parents, Griffin and Lynn Dix, filed suit against Beretta U.S.A. Corp., the manufacturer of the gun.<sup>69</sup> The complaint alleged, among other things, that the gun was defectively designed because it: 1) could be fired by unauthorized users; and 2) failed to alert all users that a bullet could be housed in the firing chamber even though the ammunition magazine has been removed. The complaint also alleged that Beretta failed to adequately warn users of the serious risks of its product. Beretta moved for summary judgment in the case on June 5, 1998, arguing that it was not liable, as a matter of law, for Kenzo's death. The court rejected this argument and the case proceeded to trial.

On November 16, 1998, an Alameda County jury returned a verdict in favor of Beretta. Although a majority of the jurors found that Beretta's warnings were inadequate, they nonetheless concluded that Kenzo's friend and the friend's father were solely responsible for Kenzo's death. Significantly, however, the trial court upheld the basic legal theory underlying the case, i.e., that firearms manufacturers, like the manufacturers of other consumer goods, can be held liable for failing to incorporate feasible safety features into the design of their products and failing to provide adequate warnings regarding the dangers of those products. The *Dix* case was the first to go to trial on this theory, which is now being echoed in many of the local government actions against firearms manufacturers.<sup>70</sup>

## **2. Assisting and Mobilizing Victims of Gun Violence**

On May 25, 1999, a national alliance of gun violence victims announced the creation of a new organization – the Bell Campaign. Modeled after Mothers Against Drunk Drivers (M.A.D.D.), the Bell Campaign will reach out to victims of gun violence across the country, including families and individuals affected by homicides, suicides and accidental shootings. The goal of the grass roots organization is to provide grief support and avenues of constructive advocacy for positive change in our country's gun policies.

The initial efforts of the Bell Campaign are being financed by a \$4.3 million grant from the San Francisco-based Goldman Fund to the Trauma Foundation at San Francisco General Hospital. The Bell Campaign will begin by establishing regional offices in Atlanta, Chicago, New York, and Orange County. The organization's national

---

<sup>69</sup> Alameda County Case No. 750681-9. The action was also brought against the boy who shot Kenzo, as well as the boy's parents.

<sup>70</sup> The *Dix* case is currently on appeal.

office is in San Francisco. One day will be designated annually to toll a bell for every person killed by gun violence during the previous year. (See Resource Update, *infra* p. 69, for contact information.)

### **3. School-Based Policies to Reduce Violence**

The string of recent school shootings in our country, and intense media coverage of those tragedies, has heightened awareness about the risk of violence impacting our young people even where they least expect it – at school. Although schools generally remain very safe places for youth (compared to the degree of violence some face on the streets), many local communities are seeking ways to create school environments that encourage peaceful conflict resolution and handle threats of violence swiftly and firmly.

Fortunately, many school-based policies and programs have been shown to successfully prevent violence among children and teenagers. A few of these policies and programs are discussed below. Please refer to our Resource Update, *infra* pp. 70-71, to learn about organizations that can provide model programs, recent studies and other useful information.

**Conflict Resolution Programs.** These programs teach young people to solve problems through discussions with trained mediators, many of whom are students themselves. Training materials are available from many curriculum providers. One example of conflict resolution materials that can be incorporated into the classroom is the Aggressors, Victims and Bystanders (AVB) curriculum. AVB considers the separate but interrelated roles of aggressors, victims and bystanders, and demonstrates that all three can build skills to resolve problems nonviolently.<sup>71</sup>

**Bullying Prevention Programs.** The Center for the Study and Prevention of Violence (CPSV) at the University of Colorado is implementing a unique anti-crime program designed to deter schoolyard bullies. Research on such programs in Norway and South Carolina demonstrated a 50 percent decline in later teenage violence, and significant declines in theft, vandalism and truancy. The anti-bullying program works on three levels: school, classroom and individual. Among the school elements are better supervision of recess, more attractive facilities and a contact telephone for students to use to report bullying. At the classroom level, students develop rules to prevent or deal

---

<sup>71</sup> See Resource Update for contact information regarding the Education Development Center.

with bullying and participate in role-playing that demonstrates the negative consequences of bullying. At the individual level, curriculum staff counsel bullies and their victims.<sup>72</sup>

**Comprehensive After-School Programs.** In its 1998-99 budget, the State of California set aside \$50 million for comprehensive after-school programs in low-income areas. The legislation, known as the After School Learning and Safe Neighborhoods program, is based on three models: the *Critical Hours* program in San Diego, *LA's Best* in Los Angeles, and *Sacramento START* in Sacramento.

School-based after-school programs are becoming more comprehensive, offering a wide range of classes and services for students and their families. Extended after-school programs serve the important purpose of engaging young people in interesting, enriching activities during the critical after-school hours of 3:00 to 6:00 p.m., when many parents are still at work. Depending on the needs of each community, activities can include mentoring, physical and mental health services, recreation, counseling, leadership development and conflict resolution, as well as parenting classes and job training for families. The Foundation Consortium provides a free guide, funded by the California Wellness Foundation, for school communities to use in creating and implementing such programs.<sup>73</sup>

**Other Successful Approaches.** Many communities have created weapons tip hotlines, where students and others can anonymously report illegal weapons possession or threats of violence in the school community. Other schools have enlisted the help of student leaders who serve as liaisons between students and the administration; these students, for example, patrol common areas such as bathrooms and hallways, reporting any suspicious activity and ensuring that school grounds are safe and clean. Moreover, many communities have created youth centers, designed by students to be attractive havens for safely “hanging out” after school and on weekends.

Finally, after the Columbine High School shooting near Littleton, Colorado, some schools have begun to conduct on-site security inspections to evaluate the need for metal detectors, surveillance cameras, campus police officers, classroom phones and other security measures. Professional consultants are available to perform this service at minimal cost.<sup>74</sup>

---

<sup>72</sup> See Resource Update for contact information regarding the Center for the Study and Prevention of Violence.

<sup>73</sup> See Resource Update for contact information regarding the Foundation Consortium.

<sup>74</sup> See Resource Update for contact information regarding Protective Solutions.

#### 4. Firearm Safety Devices and Personalized Guns<sup>75</sup>

In 1996, 1,134 unintentional firearm deaths occurred in the United States, and an estimated 17,000 persons were treated for unintentional, nonfatal gunshot wounds in hospital emergency departments.<sup>76</sup> Many of these deaths and injuries may have been prevented by the use or incorporation of firearm safety devices. This section discusses several types of safety devices: add-on or after-manufacture devices, built-in (non-personalized) devices, and personalized firearms.

There are no government standards for any of the safety devices discussed below, either in California or at the federal level. However, legislation introduced on February 3, 1999 by Representative Julia Carson (D-IN) would direct the Secretary of the Treasury to “prescribe such regulations governing the design, manufacture, and performance of, and commerce in, handgun discharge protection products as are necessary to reduce or prevent unreasonable risk of injury to children from the unintentional discharge of handguns.”<sup>77</sup> As of June 1, 1999, this bill, which had 65 co-sponsors, was in the House Judiciary and Commerce Committees.

According to two national surveys conducted in 1996 and 1997-98, a substantial majority of Americans favor safety standards for new handguns.<sup>78</sup> These standards include childproofing (favored by 88 percent of respondents), personalization (71 percent), magazine safeties (82 percent), and loaded-chamber indicators (73 percent).<sup>79</sup> Although guns manufactured in the United States are not regulated by federal safety standards, 68 percent of those polled, including 64 percent of gun owners, favored “government safety regulations for the design of guns.”<sup>80</sup>

However, safety devices are not without drawbacks. Many such devices can delay the use of a gun in a self-defense situation. In addition, guns with these devices

---

<sup>75</sup> The description of specific safety devices or brand names are included for illustrative purposes only, and should not be considered an endorsement or review of the items in question. LCAV is grateful to Susan DeFrancesco, Steve Hargarten, John Milne, Jon Vernick and Garen Wintemute for their assistance in the development of this section.

<sup>76</sup> Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, *National Injury Mortality Statistics*, [www.cdc.gov/ncipc](http://www.cdc.gov/ncipc), (1996), and Sinauer et al, *Unintentional, nonfatal firearm-related injuries*, 275 J. Am. Med. Ass’n 1740-43 (1996).

<sup>77</sup> H.R. 515, 106<sup>th</sup> Cong., 1<sup>st</sup> Sess. (1999). This bill is otherwise similar to the Kohl bill discussed *supra* p. 14.

<sup>78</sup> See *supra* note 34, at 813-15.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at 814. See pp. 14-15 for a discussion of federal law and pending legislation.

could be rendered inoperative if the combination is forgotten, the keys are lost or stolen, or if the battery or electronic mechanisms fail. Nevertheless, when properly and thoughtfully designed and used, safety devices are a powerful tool to reduce the staggering number of firearm-related injuries and deaths each year.

#### **a. Add-On or After-Manufacture Safety Devices<sup>81</sup>**

There are an estimated 223 million firearms in circulation in the United States.<sup>82</sup> As the name implies, after-manufacture devices are the only category of safety devices that can be used on firearms already in circulation. Of the hundreds of such safety device styles and brands on the market, the vast majority seek to prevent the unauthorized discharge of firearms. Some, such as gun storage containers, and, to a lesser extent, obvious external devices such as trigger and barrel locks, also serve to deter or prevent theft.

A significant limitation of all after-manufacture devices, particularly external devices (which must be taken on and off with each use of the firearm), is that they require action on the part of the user – that is, they must be purchased and properly and consistently used to be effective. In addition, the quality of add-on devices varies greatly, and most of the locking mechanisms must be engaged manually because they do not default to the locked position.

#### **i. Barrel and Chamber Inserts**

Barrel and chamber inserts are designed to prevent a firearm from being loaded. Barrel inserts include metal or plastic cables, plugs, pins or rods that fit down the barrel of the gun and block the chamber. Chamber inserts differ from barrel inserts in that they are placed directly into the chamber, thus holding the action in an open position. One inexpensive model, the Safe T Claw, works both as a locking chamber insert and a magazine lock, and can be used on any firearm except a lever action rifle. It is also the preferred lock of San Diego's free gun lock distribution program (detailed below). Guns secured with a barrel or chamber insert cannot fire even if dropped because they physically prohibit a cartridge from being placed in the chamber. Those with locks also

---

<sup>81</sup> This section draws from J.S. Milne and S.W. Hargarten, Medical College of Wisconsin, Firearm Injury Center, *A Glossary of Handgun and Handgun Safety Terminology*, 1998 (accessed June 11, 1999, [www.mcw.edu/fic](http://www.mcw.edu/fic)), and Gun Tests, *Gun Locks: Don't Buy Saf T Lok, Saf-T-Hammer, or Speed Release*, June 1999, at 25.

<sup>82</sup> U.S. Department of Justice, Bureau of Justice Statistics (from ATF data), *Guns Used in Crime* (July 1995).

serve to deter theft and unauthorized use. Cable locks in particular can help prevent gun thefts if the cable is also wrapped around a fixed object (although some cable locks may be susceptible to bolt cutters). Inserts start at \$10 to \$15, but can cost \$60 or more.

## **ii. Removable Hammers<sup>83</sup>**

Saf-T-Hammer is marketing a removable firearm hammerhead which is expected to be in production by the last quarter of 1999 (although the start of production has already been delayed several times). When the top part of the hammer is removed, there is no metal to strike the firing pin, so the firearm cannot discharge. The device can be retrofitted onto most firearms with an external hammer for about \$50. The Saf-T-Hammer will be sold with the Hammer Guard, a removable piece of dense molded rubber that prevents the hammer from making contact with the firing pin or chamber, to provide a measure of extra protection while the hammer is in place. The company is also marketing a firearm for law enforcement incorporating the same device for off-duty safe storage. One potential drawback of removable hammers is that their small size may make them easy to lose or misplace.

## **iii. Storage Containers**

There are two types of gun storage devices – fixed location devices, such as gun lockers, cases, cabinets and safes, and portable devices, such as lockboxes and security bags. Of course, these categories are not absolute. Some gun cases may be considered light enough to be portable, while some lockboxes can be permanently affixed to the wall or floor. When a gun is properly secured in such a storage device (using either a key or combination lock), it is virtually impossible to unintentionally discharge the weapon. Lock boxes and security bags (which can be found for under \$25) are significantly less expensive than most of the other storage devices (which begin at around \$100), but they also offer less theft deterrence.

## **iv. Trigger Blocks**

**External.** An external trigger block is a piece of metal that fits between the rear of the trigger and the trigger guard to prevent discharge. A lock can then be mounted onto the unit for a total cost of about \$30. When placed behind the trigger, a standard key or

---

<sup>83</sup> This subsection draws from Saf-T-Hammer's promotional materials, received April 1999, and Saf-T-Hammer's May 4, 1999 press release and Hammer Guard product description, [www.saf-t-hammer.com](http://www.saf-t-hammer.com), accessed June 4, 1999.

combination lock (such as the Master Lock 1500D) may accomplish the same result for a fraction of the price. Such locks can also be used to secure the gun to a fixed object – either around the trigger guard or (with the cylinder open) the frame of the gun.

**Internal.**<sup>84</sup> An internal block prevents movement of the firing mechanism inside the gun, usually with a blocking pin. Several add-on models exist. The Boston Police Department's 2,247 officers are using Saf T Lok's grip-mounted combination lock in an effort to prevent unintentional off-duty injuries, particularly among children.<sup>85</sup> For pistols with molded grips that cannot be easily replaced, Saf T Lok also makes a lock built into the base of the magazine, which prevents discharge when the combination lock is engaged.<sup>86</sup> In both cases, the gun must be manually re-locked after use. The grip-lock costs about \$70, while the magazine-lock costs about \$90.

Another style of internal trigger block uses a type of personalized gun technology (discussed below) in an after-manufacture product. In the case of the Magloc, for example, when the gun is grasped by someone wearing a special magnetic ring, a switch moves inside the special grip cover (which replaces the original grip). This frees an internal grip lever at the rear of the gun. Normal hand pressure then unlocks the trigger bar for firing. The manufacturer of the Magloc varies the type of ring sold (middle or ring finger) and the polarity, size and strength of the internal magnets.<sup>87</sup> Conversion kits cost about \$100, and are only available for the Colt 1911A1, although other versions are expected on the market soon. With Magna-Trigger, the user also wears a magnetic ring to release a lock in the grip of the gun. However, the magnetic rings are not unique, meaning any of the company's rings will operate a Magna-Trigger converted gun. Conversions are available for certain Smith & Wesson or Ruger revolvers, but the guns must be mailed in for retrofitting at a cost of about \$300.

---

<sup>84</sup> This subsection draws from The Johns Hopkins Center for Gun Policy and Research, *Personalized Gun Technology* 1-2 (Feb. 3, 1999).

<sup>85</sup> International Union of Police Associations (AFL-CIO), Institute for Police Research, *Gun Lock Evaluation* (Saf T Lok), [www.policeresearch.org/Clearing%20House/Gunlock/Gunlock.htm](http://www.policeresearch.org/Clearing%20House/Gunlock/Gunlock.htm), accessed May 5, 1999, and *Market Expanding for Trigger Locks*, Join Together Online, Apr. 21, 1999.

<sup>86</sup> See International Union of Police Associations, *supra* note 85.

<sup>87</sup> Leslie J. Nicholson, *Making guns 'smarter' could make them safer*, The Philadelphia Inquirer, June 4, 1998.

## **v. Trigger Locks<sup>88</sup>**

The most common trigger lock design covers the trigger mechanism on either side with two metal or plastic pieces that clamp around the trigger guard and completely cover the trigger. This type of lock can be either key or combination based. One model, the Noble Guard NG900, is actually a combination trigger lock and cable lock (a type of barrel/chamber insert). More sophisticated models have lighted touchpads and auto-shutdown features (where a certain number of consecutive incorrect combinations will shut the unit down). Most manufacturers recommend that trigger locks not be used on loaded guns, because there is a significant risk of unintentional discharge when installing or removing such a lock. Poorly fitting or improperly installed locks may also slip, or otherwise allow the trigger to be pulled. The lock's primary purpose is to restrict the function of the gun, although some plastic locks can be easily broken.<sup>89</sup> Quality and price vary greatly – at least one model can be found for as little as \$3, although most are between \$10 and \$15. Battery operated versions start at around \$35.

## **vi. Free Gun Lock Distribution Programs<sup>90</sup>**

After the City of San Diego enacted an ordinance requiring the sale of devices that prevent unintentional discharge with every gun sold, the San Diego Safe Kids Coalition (SDSKC) proposed a program to distribute free gun locks to people who already own guns. This effort prompted public and private funding totaling \$23,500 (including \$1,500 from local gun shops). During the first distribution on August 15, 1998, over 2,200 locks were given away within 2 hours, despite a limit of 3 per individual. In addition to the locks, a copy of SDSKC's Safe Kids Firearms Facts was given to everyone in attendance, and education was provided regarding the importance of safe gun storage. Police weapons experts were also on hand to answer questions and demonstrate how to use the locks. SDSKC recently coordinated its efforts with a gun exchange program, where people turned in their guns for 4 free tickets to a San Diego Padres baseball game. As of June 1, 1999, a total of 8,000 locks had been given away.

---

<sup>88</sup> This subsection draws from Ron Spomer, *Loaded and Locked*, Popular Mechanics, September 1998.

<sup>89</sup> *VPC Demonstrates How Weak Senate Gun Bill Allows "Junk Locks"*, Violence Policy Center press release, June 8, 1999.

<sup>90</sup> This subsection draws from San Diego Safe Kids Coalition, *Gun Lock Program Description*, Apr. 21, 1999, and conversations with Roxanne Hoffman, San Diego Safe Kids Coalition, May 1999.

Several other cities have launched similar programs, including Naples, Florida (where almost 3,000 plastic trigger locks have been given away in the Collier County area);<sup>91</sup> Toledo, Ohio;<sup>92</sup> and Danbury, Connecticut.<sup>93</sup>

#### **b. Built-in (non-personalized) Safety Devices<sup>94</sup>**

The U.S. General Accounting Office (GAO) has estimated that 31 percent of accidental deaths caused by firearms might be prevented by the addition of two devices: a child-proof safety (8 percent) and a loading indicator (23 percent).<sup>95</sup>

The GAO report defined child-proof safeties as a built-in part of the gun's frame that automatically engages and prevents the trigger from accidentally being pulled by a child under the age of 6.<sup>96</sup> Magazine and grip safeties (described below) are the most common devices that fit the GAO description. Loading indicators, also called loaded chamber indicators, should allow the user "to determine at a glance whether a firearm is unloaded and whether a round remains in the chamber."<sup>97</sup> Based on the GAO's estimates and the number of unintentional firearm deaths in 1996, approximately 90 deaths could have been prevented by child-proof safeties, and 260 deaths could have been prevented by loading indicators. Similarly, an estimated 5,270 unintentional, nonfatal gunshot injuries could also have been avoided by the use of these devices.

Although most types of built-in (non-personalized) safety devices are designed to prevent accidental discharge, some guns are manufactured with internal locks to deter unauthorized use. In either case, these devices are generally inexpensive to incorporate and, because they are part of the firearm, are more likely to be used (and used properly) than add-on devices are.

---

<sup>91</sup> Brigid O'Malley, *Police to hand out gun locks Saturday*, Naples Daily News, Aug. 19, 1998.

<sup>92</sup> *Free Gun Locks Take Off in Toledo*, Join Together Online (from the Toledo Blade, Jan. 30, 1999), Feb. 2, 1999.

<sup>93</sup> Danbury Police Dept., [www.danbury.org/police/announce.htm](http://www.danbury.org/police/announce.htm), accessed May 7, 1999.

<sup>94</sup> See Milne & Hargarten, *supra* note 81.

<sup>95</sup> U.S. General Accounting Office, *Accidental Shootings*, GAO-PEMD-91-9, at 3-4 (March 1991).

<sup>96</sup> *Id.* at 3 and 34. Child-proof safeties should not be confused with child-safety locks (discussed at various points *supra*), which refer generally to any locking device which prevents children from discharging a firearm.

<sup>97</sup> *Id.* at 16.

### **i. Drop Safeties or Hammer Blocks**

These devices are designed to prevent unintentional discharge if a firearm is dropped on the hammer. In revolvers with drop safeties, a transfer bar is inserted between the hammer and firing pin when the trigger is pulled. Without the bar in place, the hammer cannot contact the firing pin and the gun cannot discharge. Pistols with drop safeties use a firing pin block to prevent the firing pin from striking the ammunition until the trigger is pulled. While drop safeties operate automatically, hammer blocks, which prevent the hammer from striking the firing pin, need to be actively engaged by the user. Neither device prevents the trigger from being pulled.

## **ii. Grip Safeties<sup>98</sup>**

Promoted as early as 1884 as a way of childproofing handguns, grip safeties add a lever on the grip of the gun which must be depressed simultaneously with the pulling of the trigger in order for the gun to fire. If the user releases the lever, the locking mechanism automatically re-engages. Referring to their original grip safety gun, Smith & Wesson stated that “no ordinary child under eight can possibly discharge it,” because such children lack the necessary coordination, strength and hand size. The company produced nearly 500,000 of the child-resistant guns from 1886 to 1940. The Colt 1911A, which was the standard U.S. Army pistol for much of the 20<sup>th</sup> century, also used a grip safety (because the military insisted on having it). Today, however, only a small percentage of handguns are equipped with grip safeties.

## **iii. Internal Locks**

Designed to prevent a gun from being fired by someone other than an authorized user, internal locks are generally mounted in the grip of the gun, and can be disengaged with either a key or combination. The specific locking mechanisms vary. Some lock the manual thumb safety into place, while others internally secure the hammer. Guns with an internal lock cannot be discharged when the lock is engaged (unlike external trigger locks, which can slip, causing a loaded gun to discharge).

## **iv. Loading Indicators/Loaded Chamber Indicators**

As noted above, loading indicators/loaded chamber indicators (LCIs) ideally prevent unintentional discharges by alerting the user that the gun is loaded. However, most LCIs are of poor quality (usually a loaded chamber is indicated by a color-coded display or a small, red pop-up pin), and none of the devices currently on the market would warn a person unfamiliar with guns that the weapon is loaded. Only a few of the pistols on the market have LCIs, no revolvers are manufactured with them, and there is no industry standard for those LCIs that do exist.

## **v. Magazine Safeties/Disconnectors**

Magazine safeties/disconnectors prevent a pistol from firing unless the magazine is properly in place, even if there is a bullet in the chamber. As long as the gun is

---

<sup>98</sup> This subsection draws from K.D. Robinson et al., *The Johns Hopkins Center for Gun Policy and Research, Personalized Guns: Reducing Gun Deaths through Design Changes* 5, 2<sup>nd</sup> ed. (1998).

handled with the magazine removed, it cannot be discharged. However, someone unfamiliar with the device might insert an empty magazine into the pistol, disengaging the safety, and mistakenly assume that the gun is unloaded, even though there is a round in the chamber.<sup>99</sup> Only a small percentage of pistols on the market have magazine safeties.

#### **vi. Manual Thumb Safeties**

Found on many modern pistols (but not most double-action-only pistols), manual thumb safeties are intended to reduce the likelihood of unintentional discharge. Located on the side of the gun, these devices may lock the slide, move the firing pin out of reach of the hammer, insert a block between the hammer and firing pin, or lock the hammer. Such safeties are generally easy to use, but they can also be easily disengaged, whether intentionally by a curious child, or unintentionally by an authorized user. As the variety of manual thumb safeties indicates, there is no industry standard for these devices.

#### **c. Personalized Gun Technology**

“Personalized” guns are generally defined as firearms which can only be fired by authorized users. Since minors and criminals are almost always unauthorized users, such guns can be especially effective in preventing teenage suicides, unintentional deaths and injuries of children, and shootings of police officers with their own weapons.<sup>100</sup> In addition, personalized guns may also reduce gun violence by making stolen firearms useless to criminals.<sup>101</sup>

To illustrate the potential impact such guns could have, in 1996 there were 1,308 suicides with guns among young people 10 to 19 years old, and another 376 unintentional deaths among all young people 19 and under.<sup>102</sup> Additionally, between 1979 and 1992, 182 law enforcement officers were killed with a service firearm (either the officer’s own, or that of another officer) in the hands of an adversary. This number represents 16 percent of all law enforcement officers murdered in the line of duty during that period.<sup>103</sup> Lastly, experts estimate that more than 500,000 gun thefts occur each

---

<sup>99</sup> See *supra* p. 41 for a discussion of the *Dix* case, which involved this issue.

<sup>100</sup> See *supra* note 98, at 2.

<sup>101</sup> *Id.*

<sup>102</sup> See *supra* note 76.

<sup>103</sup> D.R. Weiss, National Institute of Justice, *Smart Gun Technology Project Final Report* (February 1996).

year.<sup>104</sup> If personalized guns were to become widely available and used, they could help prevent such incidents.<sup>105</sup>

### **i. Remote Technology – Radio Frequency Identification<sup>106</sup>**

Colt's Manufacturing has a prototype radio frequency handgun that prevents unauthorized use. The prototype is operable only when the radio signal emitted from the gun is answered by a transponder worn by the authorized user (causing the gun to remove a blocking pin from the trigger mechanism). If the transponder is not in the vicinity of the gun, the gun will not fire. Colt's executives have stated that the prototype could be ready for law enforcement as early as 2000, with mass-production to follow two to three years later.

### **ii. Biometrics – Unique Human Body Features Secure Access**

**Fingerprint/handprint/palm recognition.** Oxford Micro Devices is developing a firearm grip with a microchip that stores the thermal imprint of several different fingerprints. If the user's print matches one stored in memory, the gun will function normally. If the print is not a match, the gun will not fire. A variation on this concept would use fingerprint sensors on the trigger which are coded to the owner's trigger fingerprint.

**Hand size/density recognition.** This approach has already been combined with a magnetic trigger block system (discussed above) in the Smart Gun, manufactured by Fulton Arms. These guns are custom made to fit the hand of the authorized user, and include an internal device that prevents the gun from firing without a correctly positioned magnetic ring. The ring releases the gun's internal lock and is aligned with the lock to match the hand characteristics of the owner.

**Other biometric approaches.** These include face and voice recognition, or retinal scans, and are probably the concepts furthest from mass production.

---

<sup>104</sup> M.W., Zawitz, U.S. Department of Justice, Bureau of Justice Statistics, *Guns Used in Crime: Firearms, Crime and Criminal Justice: Selected Findings*, NCJ-160093 (1996), and P.J. Cook, et al., *Regulating Gun Markets*, 86 J. Crim. L. Criminology 59, 1995.

<sup>105</sup> See *supra* p. 25 for a discussion of New Jersey's personalized gun bill. See also The Johns Hopkins Center for Gun Policy and Research, *A Model Handgun Safety Standard Act*, 2<sup>nd</sup> ed. (May 1998).

<sup>106</sup> Colt's Manufacturing Co., *Colt's Position on Personalized Weapons Technology*, [www.colt.com/colt](http://www.colt.com/colt), Nov. 19, 1998, accessed June 11, 1999.

### **iii. Non-magnetic Touch Memory<sup>107</sup>**

Touch memory works through contact between a memory device (a semiconductor chip), and a mechanism on the grip of the gun that reads this information. The chip stores a piece of data, such as a serial number, and is placed on a ring worn by the user. Before operating the gun, the chip and reader must be in contact. The reader reads the information and compares it with the gun's specified code. If the codes do not match, the gun cannot be fired.

---

<sup>107</sup> See *supra* note 98, at 7.

# CHAPTER V

## COMPOSITE ORDINANCE REGULATING FIREARMS DEALERS

As discussed in Chapter I, over the last few years an unprecedented number California cities and counties have adopted ordinances regulating firearms dealers in their communities. Many of these ordinances include provisions prohibiting dealers from operating in residential neighborhoods or near other “sensitive” areas, e.g., schools, parks, liquor stores and places of worship. Others require dealers to sell a child-safety lock with each firearm and prohibit minors from entering the business premises unless accompanied by a parent or guardian. Another common requirement is a dealer background check (in addition to that required by state law) and employee background checks (none are currently required by state law). The California Legislature is currently considering legislation that includes many of these concepts. (See *supra* pp. 18-21.)

As part of the Local Ordinance Project, LCAV has responded to numerous requests for assistance from local governments considering the adoption of dealer ordinances. Many local officials requested copies of ordinances already in effect in the state, particularly the Lafayette ordinance, which was at issue in *Suter v. City of Lafayette* (see *supra* pp. 27-28, and pp. 22-24 of the 1998 Supplement). LCAV also responded to requests to prepare a composite dealer ordinance, because: 1) the Lafayette ordinance did not include a dealer or employee background check; 2) the *Suter* decision held that the on-site security provisions of that ordinance were impliedly preempted by state law; and 3) none of the other ordinances in effect in California included all of the concepts mentioned above.

The composite ordinance is reprinted here. The provisions relating to on-site security (Section 6) are consistent with state law and the holding in the *Suter* case.<sup>108</sup> Several other provisions included in the composite ordinance were upheld in *Suter*. However, because the Lafayette ordinance did not include a dealer or employee

---

<sup>108</sup> Local governments should review their dealer ordinances, if any, to determine whether they include a Lafayette-style on-site security provision. If so, that provision should be amended to conform with the *Suter* decision.

background check requirement, that feature was not considered by the court. As in the case of any ordinance, prior to the adoption of a dealer regulation a locality should obtain carefully developed legal analysis from its own legal counsel.

# **COMPOSITE ORDINANCE REGULATING FIREARMS DEALERS**

Prohibits Dealers from Operating Near Residences & Other “Sensitive” Areas, Requires Secure Premises, Liability Insurance, Dealer & Employee Background Checks and the Sale of Trigger Locks.

## **Chapter 1 Regulation of Firearms Dealers**

### **Article 1 Sale of Firearms**

- Sec. 1 Definitions**
- Sec. 2 Law enforcement permit required**
- Sec. 3 Application**
- Sec. 4 Investigation by Chief of Police/Sheriff**
- Sec. 5 Grounds for permit denial or revocation**
- Sec. 6 Requirement of on-site security**
- Sec. 7 Liability insurance**
- Sec. 8 Other conditions of operation**
- Sec. 9 Issuance of law enforcement permit -- Duration**
- Sec. 10 Nonassignability**
- Sec. 11 Compliance by existing dealers**
- Sec. 12 Right of inspection**
- Sec. 13 Penalties**
- Sec. 14 Hearing for permit denial or revocation**
- Sec. 15 Severability clause**

### **Article 2 Land Use Permits**

- Sec. 1 Firearm sales**

### **Article 3 Nonconforming Uses**

- Sec. 1 General**
- Sec. 2 Regulations**

## **Article 1     Sale of Firearms**

### **Sec. 1         Definitions**

“Firearm” means any device, designed to be used as a weapon or modified to be used as a weapon, from which is expelled through a barrel a projectile by the force of explosion or other means of combustion.

“Firearms dealer” means any person licensed to sell, lease or transfer firearms pursuant to Penal Code Section 12071(a)(1).

“Chief of Police/Sheriff” means the Chief of Police/Sheriff or the Chief’s/Sheriff’s designated representative.

“Applicant” means any firearms dealer who applies for a law enforcement permit, or the renewal of such a permit, to sell, lease or transfer firearms.

“Permittee” means any firearms dealer who has obtained a law enforcement permit to sell, lease or transfer firearms.

### **Sec. 2         Law enforcement permit required**

(a) It is unlawful for a firearms dealer to sell, lease or transfer any firearm without a law enforcement permit.

(b) The requirement of a law enforcement permit is in addition to the requirement of a land use permit, as provided under Article 2. No firearms dealer may sell, lease or transfer any firearm without both a land use permit and a law enforcement permit.

### **Sec. 3         Application**

(a) An applicant for a permit or renewal of a permit under this chapter shall file with the Chief of Police/Sheriff an application in writing, signed under penalty of perjury, on a form prescribed by the city/county. The applicant shall provide all relevant information requested to demonstrate compliance with this chapter, including:

(1) The applicant’s name, including any aliases or prior names, age and address;

(2) The applicant’s Federal Firearms License and California Firearms Dealer numbers;

- (3) The address of the proposed location for which the permit is sought, together with the business name, and the name of any corporation, partnership, or association that has any ownership in, or control over, the business, if any;
- (4) The names, ages and addresses of:
  - (A) All persons who will have access to or control of workplace firearms, including but not limited to, the applicant's employees, agents and/or supervisors, if any;
  - (B) **[A provision could be added to include any individual possessing, directly or indirectly, the power to direct or cause the direction of the management or policies of the corporation, partnership, or association, as they relate to the firearms business (i.e., officers, directors, partners, etc.). The purpose of this provision would be to address the reality of large business entities selling firearms, and to require background checks of people who could essentially have access to or control over firearms due to their position of authority over the applicant or store manager.]**
- (5) Proof of a possessory interest in the building and property at which the proposed business will be conducted, in the form of ownership, lease, license or other entitlement to operate at such location, and, if the applicant is not the owner of record of the building within which, and the real property upon which, the applicant's business is to be located and conducted, the written consent of the owner of record of such buildings and/or real property that the applicant may sell, lease and transfer firearms;
- (6) A floor plan of the proposed business which illustrates the applicant's compliance with security provisions, as outlined in Sec. 6 of this Article;
- (7) Proof of the issuance of a land use permit at the proposed location;
- (8) Proof of compliance with all applicable federal, state and local licensing laws;
- (9) Information relating to every license or permit to sell, lease, transfer, purchase, or possess firearms which were sought by the applicant from any jurisdiction in the United States, including, but not limited to, the date of each application and whether it resulted in the issuance of a license; and the date and circumstances of any revocation or suspension;
- (10) The applicant's agreement to indemnify, defend and hold harmless the city/county, its officers, agents and employees from and against all claims, losses, costs, damages and liabilities of any kind pursuant to the operation of the business, including attorneys fees, arising in any manner out of the negligence or

intentional or willful misconduct of the applicant, or the applicant's officers, employees, agents and/or supervisors;

(11) Certification of satisfaction of insurance requirements;

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

(b) The application shall be accompanied by a nonrefundable fee for administering this chapter as established by city council/county board of supervisor resolution.

#### **Sec. 4 Investigation by law enforcement**

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

(1) The applicant;

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

(3) **[See broadened language in Sec. 3(a)(4)(B).]**

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

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

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

(a) The Chief of Police/Sheriff shall deny the issuance or renewal of a law enforcement permit, or shall revoke an existing permit, if the applicant or permittee:

(1) Is under 21 years of age;

(2) Is not licensed as required by federal and state law;

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

if the operation of the business as proposed would not comply with federal, state or local law.

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

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

(c) Notwithstanding subsection (b), where an applicant is applying for a law enforcement permit to sell, lease or transfer firearms within the first 60 days of the effective date of this chapter, and where the applicant has a pre-existing firearms dealer business which complies with all applicable federal, state and local laws:

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

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

## **Sec. 6 Requirement of on-site security**

Every firearm that is kept in the permitted place of business shall be stored using one of the following methods, as set forth in Penal Code Section 12071(b)(14). Failure to fully comply with the requirements of one of these methods is sufficient cause for denial or revocation of the law enforcement permit by the Chief of Police/Sheriff. The three permitted methods are detailed in subsections (a), (b) and (c), respectively:

(a) Store the firearm in a secure facility that is part of, or that constitutes, the permittee's business premises. A secured facility means a building that meets all of the following specifications, pursuant to Penal Code Section 12071(c)(3):

(1) All perimeter doorways shall meet one of the following:

(A) A windowless steel security door equipped with both a dead bolt and a doorknob lock; or

(B) A windowed metal door that is equipped with both a dead bolt and a doorknob lock. If the window has an opening of five inches or more measured in any direction, the window shall be covered with steel bars of at least one-half inch diameter or metal grating of at least nine gauge affixed to the exterior or interior of the door; or

(C) A metal grate that is padlocked and affixed to the permittee's premises independent of the door and door frame;

- (2) All windows are covered with steel bars;
- (3) Heating, ventilating, air-conditioning and service openings are secured with steel bars, metal grating, or an alarm system;
- (4) Any metal grates have spaces no larger than six inches wide measured in any direction;
- (5) Any metal screens have spaces no larger than three inches wide measured in any direction;
- (6) All steel bars shall be no further than six inches apart.

(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. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

(c) Store the firearm in a locked fireproof safe or vault in the permittee's business premises.

## **Sec. 7 Liability insurance**

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

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

(c) Upon expiration of the policy of insurance, and if no additional insurance is obtained, the law enforcement permit is deemed revoked.

## **Sec. 8 Other conditions of operation**

In addition to the other requirements and conditions of this chapter, a law enforcement permit is subject to the following conditions, the breach of any of which is sufficient cause for revocation of the permit by the Chief of Police/Sheriff:

- (a) The business shall be carried on only in the building located at the street address shown on the permit. This requirement, however, does not prohibit the permittee from participating in a gun show or event which is authorized by federal, state and local law upon compliance with those laws;
- (b) The law enforcement permit, or a certified copy of it, shall be displayed on the premises where it can be easily seen;
- (c) The permittee shall not permit any person under 18 years of age to enter or remain within the premises without being accompanied by his or her parent or legal guardian where firearm sales activity is the primary business performed at the site;
- (d) The permittee shall not sell, lease or otherwise transfer a firearm without also selling or otherwise providing with each such firearm a trigger lock or similar device that is designed to prevent the unintentional discharge of the firearm. Such devices shall be of a type approved by the Chief of Police/Sheriff.
- (e) **[The permittee shall mail or deliver a copy of each Dealer Record of Sale (DROS) form to the Chief of Police/Sheriff within 7 days of the transfer of any firearm.]**

## **Sec. 9 Issuance of law enforcement permit -- Duration**

- (a) A law enforcement permit expires one year after the date of issuance. A permit may be renewed for additional one-year periods if the permittee submits a timely application for renewal, accompanied by a nonrefundable renewal fee established by city council/county board of supervisor resolution. Renewal of the permit is contingent upon all the terms and conditions of the original application and permit, as detailed in this chapter. The renewal application and the renewal fee must be received by the police/sheriff's department no later than 45 days before the expiration of the current permit.
- (b) A decision regarding issuance or renewal may be appealed in the manner provided in Sec. 14 of this Article.

## **Sec. 10 Nonassignability**

A law enforcement permit issued under this chapter is not assignable. Any attempt to assign a law enforcement permit shall be void and the existing permit shall be deemed revoked.

**Sec. 11 Compliance by existing dealers**

A person engaging in firearm sales activity on the effective date of this chapter shall, within 60 days after the effective date, comply with this chapter.

**Sec. 12 Right of inspection**

Permittees shall have their places of business open to the police/sheriff's department for inspection during all hours of operations. Permittees shall maintain all records, documents, and firearms in a manner and place accessible for inspection by police/sheriff's department personnel.

**Sec. 13 Penalties**

(a) Any person violating the provisions of this chapter shall be guilty of a misdemeanor. Any person convicted of a misdemeanor under the provisions of this chapter shall be punished by a fine of not more than one thousand (\$1,000) dollars or by imprisonment for a period not exceeding six (6) months, or by both. Each such person shall be guilty of a separate offense for each and every day during any portion of which a violation of any provision of this chapter is committed or continued by such person and shall be punishable accordingly.

(b) Any person found to be in violation of this chapter shall be subject to the revocation of his or her law enforcement permit to sell, lease or transfer firearms.

(c) In addition to any other penalty or remedy, the city attorney/county counsel may commence a civil action to seek enforcement of these provisions.

**Sec. 14 Hearing for permit denial or revocation**

(a) Within ten days of the Chief of Police/Sheriff mailing a written denial of the application or revocation of the permit, the applicant may appeal by requesting a hearing before the Chief of Police/Sheriff. The request must be made in writing, setting forth the

specific grounds for appeal. If the applicant submits a timely request for an appeal, the Chief of Police/Sheriff shall set a time and place for the hearing within 30 days.

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

## **Sec. 15 Severability clause**

If any article, section, subsection, sentence, clause or phrase of this chapter is for any reason declared unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or the effectiveness of the remaining portions of this chapter or any part thereof. The city council/county board of supervisors hereby declares that it would have adopted this chapter notwithstanding the unconstitutionality, invalidity or ineffectiveness of any one or more of its articles, sections, subsections, sentences, clauses or phrases.

## Article 2 Land Use Permits

### Sec. 1 Firearm sales

- (a) Purpose. The purpose of this section is to provide for the appropriate location of firearms dealers through the permitting process.
- (b) Permit Requirement. It is unlawful for any firearms dealer to sell, lease or transfer firearms unless the dealer has obtained a land use permit pursuant to this chapter and a law enforcement permit as provided under Article 1 of this chapter. Subject to the restrictions listed below, firearms dealers are permitted in **[enumerate permitted districts, e.g., commercial, industrial, etc.]**. Firearms dealers are prohibited in all other land use districts.
- (c) Procedure. An applicant for a land use permit shall apply to the planning commission by application prescribed by the city/county in the manner provided.
- (d) Criteria. In addition to the findings required, the planning commission shall review an application for a land use permit for the sale of firearms for satisfaction of the following criteria:
- (1) Locational compatibility of the proposed use with existing sensitive uses in close proximity, including schools, pre-schools or day-care centers, parks, community centers, places of worship, other firearms dealers, liquor stores, bars, residences, and residentially zoned areas; **[or within a specified distance, e.g., 1,000 feet, of such existing uses]**;
  - (2) Architectural compatibility of the proposed use with other existing uses in close proximity.
- (e) Conditions. An approved land use permit is not effective until the applicant satisfies the following terms and conditions:
- (1) Possession of a valid law enforcement permit as required under Article 1;
  - (2) Possession of all licenses and permits required by federal and state law; and,
  - (3) Compliance with the requirements of the city's/county's building code, fire code and other technical codes and regulations which govern the use, occupancy, maintenance, construction or design of the building or structure. The use permit shall also contain a condition that the applicant obtain a final inspection from the city/county building official demonstrating code compliance before the applicant may begin business at the premises at issue.

## **Article 3     Nonconforming Uses**

### **Sec. 1         General**

A firearms dealer located in close proximity to any use described in Article 2, Sec. 1(d)(1), who is the holder of a valid seller's permit issued by the State Board of Equalization and a valid certificate of eligibility issued by the California Department of Justice, all of which were issued prior to the effective date of this ordinance, may continue to sell, lease or transfer firearms for up to (2) two years after the effective date of the ordinance, provided a law enforcement permit is obtained from the city within 60 days of the effective date of the ordinance codified in this section, and provided the operator remains fully licensed by all agencies listed above. After the (2) two year period has expired, all firearms dealers are prohibited from selling, leasing or transferring firearms in close proximity to the named uses.

### **Sec. 2         Regulations**

The following regulations apply to each nonconforming use:

- (a) No physical change in the use is permitted other than ordinary maintenance and repair, except as provided.
- (b) No increase or enlargement of the area, space or volume occupied and used is permitted.
- (c) No change in the nature or character of the nonconforming use is permitted.
- (d) If the nonconforming use discontinues active operation for a continuous period of 120 days, the nonconforming use terminates and the facilities accommodating or serving such activity shall thereafter be utilized only for uses permitted or conditionally permitted by the regulations of the applicable zoning district.

# RESOURCE UPDATE

## Organizational Resources

### **Legal Community Against Violence (LCAV)**

268 Bush St., PMB #555, San Francisco, CA 94104

Phone: (415) 433-2062, Fax: (415) 433-3357, Web site: [www.lcav.org](http://www.lcav.org)

The LCAV web site includes copies of the Local Ordinance Manual and annual Supplements. Additional resource information is contained in these publications.

### **The Bell Campaign**

San Francisco General Hospital, San Francisco, CA 94110

Phone: (415) 821-8200, Fax: (415) 821-5811, Web site: [www.bellcampaign.org](http://www.bellcampaign.org)

The Bell Campaign is a new national organization founded by the families of gunshot victims. With regional offices and chapters nationwide, The Bell Campaign provides grief counseling and mobilizes victims' families to create solutions to gun violence.

### **Handgun Control, Inc. and The Center to Prevent Handgun Violence**

P.O. Box 1174, Sacramento, CA 95812

Phone: (916) 492-9797, Fax: (916) 492-9793, Web site: [www.sactohci@quiknet.com](mailto:www.sactohci@quiknet.com)

HCI is a national grassroots lobbying organization seeking to regulate firearms. The Center to Prevent Handgun Violence is a public education and legal action organization. Both organizations are headquartered in Washington, D.C.

### **The HELP (Handgun Epidemic Lowering Plan) Network**

2300 Children's Plaza, #88, Chicago, IL 60614

Phone: (773) 880-3826, Fax: (773) 880-6615, Web site: [www.childmmc.edu/help/helphome.htm](http://www.childmmc.edu/help/helphome.htm)

The Help Network is an international network of 122 medical and allied organizations committed to reducing gun injuries.

### **Join Together**

441 Stuart St., Seventh Floor, Boston, MA 02116

Phone: (617) 437-1500, Fax: (617) 437-9394, Web site: [www.jointogether.org](http://www.jointogether.org)

Join Together provides daily news summaries, studies and feature stories on gun violence prevention issues nationwide.

## **School-Based Violence Prevention Program Resources**

### **The California Wellness Foundation**

6320 Canoga Avenue, Suite 1700, Woodland Hills, CA 91367  
Phone: (818) 593-6600, Fax: (818) 593-6614, Website: [www.tcwf.org](http://www.tcwf.org)

This foundation funds and publicizes many programs designed to prevent violence among young people throughout California.

### **The Center for the Study and Prevention of Violence**

University of Colorado at Boulder, Campus Box 442, Boulder, CO, 80309-0442 Phone: (303) 492-8465, Fax: (303) 443-3297, Web site: [www.colorado.edu/cspv](http://www.colorado.edu/cspv)

The Center's materials include Bullying Prevention Program information.

### **Education Development Center**

55 Chapel Street, Newton, MA 02158.  
Phone: (617) 969-7100, Web site: [www.edc.org](http://www.edc.org)

### **The Foundation Consortium**

2295 Gateway Oaks Dr. #100, Sacramento, CA 94833  
Phone: (916) 646-3646, Fax: (916) 922-0179, Web site: [www.wwlc.org](http://www.wwlc.org)

The publication *What Works: After School Learning and Safe Neighborhoods Partnerships* can be found at The Foundation Consortium's web site (click on Documents and select the After School Guide).

### **Office of Juvenile Justice and Delinquency Prevention**

810 Seventh St. NW, Washington, D.C. 20531  
Phone: (800) 638-8736, Web site: <http://ojjdp.ncjrs.org>

The Office of Juvenile Justice and Delinquency Prevention is a governmental agency addressing juvenile crime issues.

### **National Criminal Justice Referral Service (NCJRS)**

Box 6000, Rockville, MD, 20849-6000  
Phone: (800) 851-3420, Fax: (301) 519-5212, Web site: [www.ncjrs.org](http://www.ncjrs.org)

NCJRS has produced *Crime in the Schools: A Problem-Solving Approach*, a videotape describing a pilot School Safety Program with three components: regular meetings among faculty, administrators, and police; problem-solving classes for students; and regular reviews by police and teachers to identify high-risk students.

### **National School Safety Center (NSSC)**

141 Duesenberg Dr., Suite 11, Westlake Village, CA 91362

Phone: (805) 373-9977, Fax: (805) 373-9277, Web site: [www.nssc1.org](http://www.nssc1.org)

NSSC is a non-profit organization that produces and disseminates many valuable resources that provide practical tools for making schools safer. These include the *School Safety Workbook* (highlighting more than 100 school and community-based programs that prevent school violence and crime) and the *School Safety Checkbook* (including step-by-step instructions for implementing effective policies and procedures). NSSC also distributes the *School Safety News Service*, a subscription- supported update published nine times annually.

### **Protective Solutions**

P.O. Box 1772, San Leandro, CA 94577

Phone: (510) 352-8660, Fax: (510) 352-8659

Protective Solutions provides consultation regarding on-site security for businesses, schools and other facilities.

### **U.S. Department of Education**, Special Education and Rehabilitation Services

Room 3131, Mary E. Switzer Building, Washington, D.C. 20202-2524

Phone: (800) USA-LEARN, Fax: (202) 401-0689, Web site: [www.ed.gov/offices/OSERS](http://www.ed.gov/offices/OSERS)

In 1998, the Department of Education produced a guidebook for school communities, *Early Warning Timely Response: A Guide to Safe Schools*, available on-line at their web site.

### **Youth Today**, A Newspaper on Youth Work

1200 17<sup>th</sup> Street, N.W., 4<sup>th</sup> Floor, Washington, D.C. 20036-3006

Phone: (202) 785-0764, Fax: (202) 728-0657, E-mail: [hn2759@handsnet.org](mailto:hn2759@handsnet.org)

This newspaper, a publication of the American Youth Work Center, is published ten times per year, and provides useful profiles of promising programs and interventions that enrich young people while preventing violence and other unhealthy behavior.

## **New Publications**

Tom Diaz, *Making a Killing: the Business of Guns in America*, The New Press, [www.thenewpress.com](http://www.thenewpress.com), New York (1999).

S.P. Teret et al., *Support for New Policies to Regulate Firearms: Results of Two National Surveys*, 339 New Eng. J. of Med. 813-18 (Sept. 17, 1998).

Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, *Crime Gun Trace Analysis Report: The Illegal Youth Firearms Markets in 27 Communities* (February 1999).

Department of the Treasury, Department of Justice, Bureau of Alcohol, Tobacco and Firearms, *Gun Shows: Brady Checks and Crime Gun Traces* (January 1999).

G.J. Wintemute et al., *Prior Misdemeanor Convictions as a Risk Factor for Later Violent and Firearm-Related Criminal Activity Among Authorized Purchasers of Handguns*, 280 J. Am. Med. Ass'n 2083-87 (Dec. 23/30, 1998).