



ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE ENACTING AND ADOPTING A NEW CHAPTER 9.43 (FIREARMS SALES) OF TITLE 9 (PUBLIC PEACE, SAFETY OR WELFARE) OF THE SUNNYVALE MUNICIPAL CODE

WHEREAS, semi-automatic centerfire rifles, such as the AR-15, are a popular type of sporting rifle that can be legally used for hunting and target shooting; and

WHEREAS, semi-automatic centerfire rifles can be fired rapidly and could have large magazines that are easy to swap out; and

WHEREAS, semi-automatic rifles have been used in a number of recent mass-shooting incidents including Parkland, Florida; Las Vegas; San Bernardino; Newtown, Connecticut; and Aurora, Colorado; and

WHEREAS, the incident at Stoneman Douglas High School in Parkland, Florida, which killed 17 people, was perpetrated by a 19-year-old former student who had legally purchased the AR-15 style rifle used in the attack; and

WHEREAS, the shooting at Stoneman Douglas High School has called attention to the differing legal treatment of purchasing handguns and long guns (rifles and shotguns); and

WHEREAS, persons under 21 are restricted from purchasing handguns, but persons under 21 are generally allowed to obtain long guns, including semi-automatic centerfire rifles, unless they have a prior felony conviction, involuntary mental health commitment, or other disqualifying event in their background; and

WHEREAS, raising the age limit for purchase of semi-automatic centerfire rifles will help prevent or reduce the number of casualties in future mass shooting incidents; and

WHEREAS, nothing in the text of the Second Amendment, as interpreted authoritatively in *District of Columbia v. Heller*, suggests the Second Amendment confers an independent right to sell or trade weapons; and

WHEREAS, no contemporary commentary suggests that the right codified in the Second Amendment independently created a commercial entitlement to sell guns if the right of the people to obtain and bear arms are not compromised; and

WHEREAS, semi-automatic center fire rifle buyers under the age of 21 do not have any right to purchase such rifles in a particular location as long as their access to make such purchases are not meaningfully constrained; and

WHEREAS, in January 2018 there were 76 federal firearms licensees located in other cities within Santa Clara County, including but not limited to 3 such licensees located in the City of Cupertino, 10 in the City of Santa Clara, 7 in the City of Milpitas and 25 in the City of San Jose; and

WHEREAS, the number of federal firearm licenses located in other cities in Santa Clara County provides a sufficient number of alternative locations for semi-automatic center fire rifles buyers under the age of 21 will not be meaningfully constrained in their ability to purchase such rifles.

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

SECTION 1. CHAPTER 9.43 ADDED. Chapter 9.43 (Firearms Sales) of Title 9 (Public Peace, Safety or Welfare) of the Sunnyvale Municipal Code is hereby added to read as set forth in Exhibit A (Chapter 9.43 (Firearms Sales)) attached and incorporated by reference.

SECTION 2. CEQA - EXEMPTION. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a project which has the potential for causing a significant effect on the environment.

SECTION 3. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision or decisions shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 5. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in The Sun, the official publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

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

AYES:
NOES:
ABSTAIN:
ABSENT:
RECUSAL:

ATTEST:

APPROVED:

City Clerk
Date of Attestation: _____

Mayor

(SEAL)

APPROVED AS TO FORM:

City Attorney

EXHIBIT A

Chapter 9.43 FIREARMS SALES

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9.43.010 Definitions

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

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

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

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

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

(e) "Semiautomatic centerfire rifle" means any repeating rifle that is fired by a strike from a firing pin in the center of a flat cartridge head, which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.

9.43.020 License Required

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

9.43.030 Application – Form – Fees

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

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

9.43.040 Application – Investigation

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

9.43.050 Application - Denial.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9.43.060 License - Duration - Renewal.

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

9.43.070 License - Assignment.

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

9.43.080 License - Conditions.

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

(a) The business shall be carried on only in the building located at the street address shown on the license, except for gun shows as permitted under state and federal law.;

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

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

(d) The licensee shall comply with all provisions of California Penal Code Sections 26700 et. seq. regarding business regulations and building specifications for firearm security, as well as any other security plan or requirements imposed by the Chief of Public Safety;

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

(f) The licensee shall comply with all federal, state and local laws and ordinances;

(g) The licensee shall not sell, supply, deliver, or give possession or control of any semiautomatic centerfire rifle to any person under 21 years of age. This prohibition does not

apply to the sale, supplying, delivery, or giving possession or control of a semiautomatic centerfire rifle to any of the following persons who are at least 18 years of age:

(1) An active peace officer, as described in Penal Code Section 830 et seq. who is authorized to carry a firearm in the course and scope of his or her employment.

(2) An active federal officer or law enforcement agent who is authorized to carry a firearm in the course and scope of his or her employment.

(3) A reserve peace officer, as defined in Penal Code Section 832.6, who is authorized to carry a firearm in the course and scope of his or her employment as a reserve peace officer.

(4) A person who provides proper identification of his or her active membership in the United States Armed Forces, the National Guard, the Air National Guard, or active reserve components of the United States. For purposes of this subparagraph, proper identification includes an Armed Forces Identification Card or other written documentation certifying that the individual is an active member.

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

9.43.090 License - Grounds for Modification, Suspension or Revocation.

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

(a) The licensee has violated a condition of the license or any provision of this Code.

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

(c) The licensee has continued to operate after the license has been suspended.

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

9.43.100 License - Hearing.

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

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

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

9.43.110 License - Liability insurance.

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

9.43.120 License - Authority to inspect.

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

9.43.130 Compliance.

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