



City of Sunnyvale

Agenda Item-No Attachments (PDF)

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REPORT TO COUNCIL

SUBJECT

Introduce an Ordinance Enacting and Adopting a New Chapter 9.43 to the Sunnyvale Municipal Code to Regulate Licensed Firearms Dealers and to Prohibit Licensed Firearms Dealers from Selling, Delivering, or Giving Possession of a Semiautomatic Centerfire Rifle to any Person Under 21 Years of Age.

BACKGROUND

On March 6, 2018, the City Council directed the Office of the City Attorney to research and return to City Council with recommendations for restricting the purchase of semi-automatic centerfire rifles by persons under 21, with exemptions for active duty military and law enforcement personnel.

EXISTING POLICY

General Plan Goal SN-3: Ensure a safe and secure environment for people and property in the community by providing effective public safety response and prevention and education services.

General Plan Police SN-3.2: Control conduct recognized as threatening to life and property.

ENVIRONMENTAL REVIEW

The action being considered does not require review under the California Environmental Quality Act (CEQA) because it can be seen with certainty that there is no possibility that it may have an impact on the environment. (CEQA Guidelines Section 15061(b)(3))

DISCUSSION

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. Unlike military rifles, semi-automatic rifles do not have a fully automatic mode. That is, the rifle can only fire one round per trigger pull. Nevertheless, AR-15 style rifles can be fired rapidly and could have large magazines that are easy to swap out. These types of rifles have been used in a number of recent mass-shooting incidents including Parkland, Florida; Las Vegas, Nevada; San Bernardino, California; Newtown, Connecticut; and Aurora, Colorado. 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.

The recent shooting at Stoneman Douglas High School has called attention to the differing legal treatment of handguns and long guns (rifles and shotguns). Both state and federal law prohibit the sale or transfer of firearms to minors under age 18, with certain exceptions. Persons under 21 are also restricted from purchasing handguns. However, adults over 18 are generally allowed to obtain long guns, including semiautomatic rifles, unless they have a prior felony conviction, involuntary mental health commitment, or other disqualifying event in their background. Raising the age limit for

the purchase of semi-automatic centerfire rifles may potentially help prevent or reduce the number of casualties in future mass shooting incidents.

Summary of Firearms Age Restrictions

	FEDERAL LAW (18 U.S.C. §922)			CALIFORNIA LAW (Penal Code §§27505, 29610-29615)	
	Sale/Transfer by FFLs*	Sale/Transfer by non-FFLs	Possession	Sale/ Transfer	Possession
Handguns	21	18	18**	21	18**
Long Guns	18	--	--	18	--

*FFL = federally licensed firearms dealer.

**With exceptions for certain activities such as farming, ranching, hunting, or target practice with parental permission or consent.

Article XI, Section 7 of the California Constitution provides that “[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws. Under this constitutional provision, the City’s police power is as broad as the state Legislature’s power, and the City may act to protect the welfare of its residents. The City’s police power includes the power to regulate firearms (Galvan v. Superior Court of City & County of San Francisco, (1969) 70 Cal. 2d 851.), unless the ordinance conflicts with state law. The California Legislature has expressly preempted certain areas of gun regulation. Local agencies may adopt an ordinance with more restrictive regulations if those regulations have not been expressly or implicitly preempted by state law.

The City Attorney has researched the City Council’s ability to impose greater age restrictions on the purchase of semi-automatic centerfire rifles by persons under the age of 21, and has determined that it may be accomplished through the regulation of licensed firearms dealers.

In Teixeira v. County of Alameda, the Ninth Circuit Court of Appeal held “...that **the Second Amendment does not confer a freestanding right, wholly detached from any customer’s ability to acquire firearms, upon a proprietor of a commercial establishment to sell firearms.** Commerce in firearms is a necessary prerequisite to keeping and possessing arms for self-defense, but **the right of gun users to acquire firearms legally is not coextensive with the right of a particular proprietor to sell them.**” (emphasis added.) (Teixeira v. County of Alameda, 873 F.3d 670,682 (9th Cir. 2017)). The Court further held that “...**gun buyers have no right to have a gun store in a particular location, at least as long as their access is not meaningfully constrained**.” (emphasis added.) (*Id* at 680)

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. Based on the number of federal firearms licensees in Santa Clara County, there are a sufficient number of alternative locations for semi-automatic centerfire rifle buyers under the age of 21 to purchase such rifles and their second

amendment rights will not be meaningfully constrained.

Local Firearms Dealer Licenses

Firearms dealers are required by state law to obtain permission from the city or county where they wish to operate. Under California Penal Code Section 26705, local public agencies may either require firearms dealers to obtain a local license to operate, or may issue a letter stating that the jurisdiction does not regulate firearms dealers. Pursuant to Penal Code Section 26705, the Sunnyvale Department of Public Safety currently receives applications from prospective firearms dealers, and issues licenses after confirming the status of the applicant's federal license and conducting a background check.

Codifying the process for obtaining a Sunnyvale Firearms Dealer License in the Sunnyvale Municipal Code will allow the City to impose additional requirements on firearms dealers (such as the proposed age restriction for semi-automatic centerfire rifles) and provides DPS with legal authority to take enforcement action.

The City Council previously considered adopting a Sunnyvale Firearms Dealer License ordinance in 2011 (RTC No. 11-209) as part of a study issue on adopting zoning restrictions for firearms dealers. The City Council ultimately did not adopt the ordinance. No new zoning restrictions for firearms dealers are proposed in the present ordinance.

FISCAL IMPACT

The introduction of the proposed Ordinance enacting and adopting a new Chapter 9.43 to the Sunnyvale Municipal Code regulating licensed firearms dealers and to prohibit licensed firearms dealers from selling, delivering, or giving possession of a Semiautomatic Centerfire Rifle to any Person Under 21 Years of Age will only recover costs associated with permitting of the licensed firearm dealers and will have a minimal impact to the City's General Fund. The City's Master Fee Schedule already includes a DPS fee for local firearms dealer licenses pursuant to the authority in Penal Code Section 26705. No increase in the fee is proposed at this time as DPS will simply continue its current practice.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.

ALTERNATIVES

Alternative 1: Introduce an Ordinance Enacting and Adopting a New Chapter 9.43 to the Sunnyvale Municipal Code to Regulate Licensed Firearms Dealers and to Prohibit Licensed Firearms Dealers from Selling, Delivering, or Giving Possession of a Semiautomatic Centerfire Rifle to any Person Under 21 Years of Age.

Alternative 2: Introduce the Ordinance with modifications.

Alternative 3: Do not Introduce the Ordinance and provide alternative direction to staff.

STAFF RECOMMENDATION

Alternative 1: Introduce an Ordinance Enacting and Adopting a New Chapter 9.43 to the Sunnyvale Municipal Code to Regulate Licensed Firearms Dealers and to Prohibit Licensed Firearms Dealers from Selling, Delivering, or Giving Possession of a Semiautomatic Centerfire Rifle to any Person Under 21 Years of Age.

Reviewed by: Phan Ngo, Director, Public Safety

Reviewed by: John Nagel, City Attorney

Reviewed by: Teri Silva, Assistant City Manager

Approved by: Kent Steffens, City Manager

ATTACHMENTS

1. Proposed Ordinance