Agenda Item #3

Draft for Planning Commission review on August 22, 2011

See pp. #5, 7, 10

Council Date: September 27, 2011

SUBJECT: 2011-7071 Location and Operation of Firearm Sales Businesses (Study Issue)

REPORT IN BRIEF

The passion surrounding firearms is intense, with arguments on all sides of the issue about the effectiveness or need for additional controls and regulations. Most of these discussions, however, go well beyond Sunnyvale's purview, and are regulated by numerous existing state and federal laws.

This study originated when a gun shop opened (legally) and neighbors were concerned because of the visible location and they were not given advanced notice. These concerns led to the question of whether firearm sales businesses should be restricted as to location or should require a Sunnyvale permit (see study issue paper, Attachment A). Currently, firearm sales businesses are treated the same as most other retail uses, which means they are allowed by right in a commercial zoning district. The Department of Public Safety (DPS) also issues a permit for every firearm sales business to ensure they meet the state and federal requirements, and have received a local business license.

Sunnyvale firearms dealers have been in business for decades, with little or no incident. Although there has been no evidence of increased crime, property devaluation or land use incompatibilities as the result of the businesses, residents have expressed concerns about the potential crime and public safety risk associated with a firearm sales business located near their homes and schools. The greatest concerns appear to be who is buying and selling firearms and the potential secondary land use effects of this activity.

There are various ways to address this concern. One would be to require a planning permit for the use at a specific location, and the other would be to require a more rigorous permit from DPS for the dealer selling the products. Planning permits address typical land use concerns to ensure a use is compatible with its surroundings (e.g. buffers, hours of operation, noise controls, parking management, etc.), while a DPS permit would ensure the person selling firearms meets state and federal requirements, while also meeting local concerns, such as security.

Staff recommends the Council adopt the draft ordinance (Attachment B) to amend the Municipal Code to:

- Add a definition for "firearms sales business;"
- Prohibit these businesses in commercial and industrially-zoned districts within 200 feet of public schools in order to provide a buffer to the schools;
- Require a new DPS Firearms Dealer Permit. Each permit should include additional conditions such as requiring a security plan to be installed and then inspected by the City, and that the Federal Firearm License (FFL) holder and all employees meet the state and federal requirements regarding past criminal convictions, etc. (current requirements are limited to the dealer and not the employees).

BACKGROUND

The majority of state and federal laws regulate the person *buying* a firearm (including background checks and a 10-day waiting period) and the person or business *selling* firearms. There are several types of licenses and methods to sell or transfer firearms. In Sunnyvale, two retail operations have FFLs and five home-based businesses hold FFLs, plus there are: an auction business and a machine shop.

The locations of those holding FFLs in Sunnyvale are shown on the map in Attachment C. The two retail businesses, Big 5 and U.S. Firearms, are located on El Camino Real. Big 5 sells only long guns (or rifles), while U.S. Firearms sells all types of firearms. Four of the home-based businesses are generally located south of Caltrain tracks and have had licenses for at least 20 years and the most recently issued home-based business issued this year is located near Highway 237.

When U.S. Firearms opened for business in Sunnyvale in the fall of 2010, the owner and operator gained all the necessary permits and state and federal licenses to open. Surrounding neighbors of the business noticed the sign for the business and raised concerns to the Council, Planning Commission and staff about: the lack of notification; compatibility concerns; and the safety of children that walk by the business on the way to school. Subsequently, the Planning Commission sponsored the Study Issue, and Council ranked it number 4 of 4 for 2011

EXISTING POLICY

Land Use and Transportation

GOAL C1: Preserve and enhance an attractive community, with a positive image and a sense of place that consists of distinctive neighborhoods, pockets of interest, and human-scale development.

> *Action Statement C1.1.1:* Prepare and update land use and transportation policies, design guidelines, regulations and

engineering specifications to reflect community and neighborhood values.

GOAL C4: Sustain a strong local economy that contributes fiscal support for desired city services and provides a mix of jobs and commercial opportunities.

Action Statement C4.1.3 Promote commercial uses that respond to the current and future retail service needs of the community.

Policy C4.3: Consider the needs of business as well as residents when making land use and transportation decisions.

Title 19 (Zoning Code)
The zoning code allows many retail uses (such as firearm sales businesses) by right. Other uses, such as hotels, schools, day care centers, churches, car washes, restaurants, service stations, car sales businesses, animal hospitals, medical clinics, and the sale of alcohol at service stations requires a Planning permit such as a Miscellaneous Plan Permit (MPP) or Use Permit (UP). The sale of alcohol at a service station requires a Use Permit. The reason some uses require planning permit is because of unique aspects of the business, such as late hours, parking concerns, and possible compatibility issues. Planning permits run with the land, and not the applicant.

A Miscellaneous Plan Permit (MPP) is required for retail businesses in industrial-zoned locations to ensure the use meets site requirements, such as parking and that the industrial nature of the area is not adversely affected.

Home-based businesses do not require a separate planning permit, but home occupation requirements must be met before a business license is issued (Attachment D lists home occupation requirements). These requests are referred to the Department of Public Safety for a DPS License to Sell Firearms Permit with a requirement to be renewed annually (see discussion below).

Federal Law and State Law
Under the federal Gun Control Act of 1968 (Title 18 U.S.C. §101 et. seq.), it is unlawful for any person to engage in the business of importing, manufacturing, or dealing in firearms without obtaining a Federal Firearms License (FFL) from the Department of the U.S. Attorney General. Dealers must also obtain a state-issued firearms dealer's license from the California Attorney General under Penal Code §12071.

Licensed firearms dealers must comply with state and federal laws related to purchase and sale of firearms, such as background checks, waiting periods, handgun safety certificates, and gun registration. They are subject to inspection by the Bureau of Alcohol, Tobacco and Firearms (ATF) and the California Department of Justice. Their state and federal licenses must be

renewed periodically, and the DPS License to Sell Firearms Permit is issued annually.

Neither the federal or state gun control laws preempt the ability of cities to regulate where licensed firearms businesses may locate. The laws provide that firearms dealers must obtain a local business license and comply with all local ordinances and regulations. (18 U.S.C. §923(d)(1)(E)(i); Penal Code §12071(a)(1)(B).) In addition, cities may require that firearms dealers obtain a local permit to operate. (Penal Code §12071(a)(2).)

Examples of some requirements of buyers and sellers of firearms can be seen in Attachment E.

DISCUSSION

Overview

The Second Amendment to the U.S. Constitution states: "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." How this amendment is interpreted and regulated is a passionate discussion for all sides of the issue. This study **does not**, however, include any discussion or consideration of the larger issue of the right to keep or bear firearms. It is limited to city permitting criteria related to firearm sales businesses. This study does not consider banning future firearm sales in Sunnyvale or eliminating existing businesses that sell firearms.

Concerns

The main concern about a firearm sales business is the sale of potentially dangerous products that have a long history of public debate. Although some retail establishments sell products that are also potentially harmful, none are as heavily regulated as firearms. The obvious reason for the regulations is the danger that can result from firearms being in the wrong hands. That may be why existing regulations are more focused on the individuals buying and selling the firearms, rather than the location of the business engaged in that activity.

Factors to Consider

Sunnyvale Requirements to Sell Firearms

In all cases, there are two basic requirements for a Sunnyvale firearms sales business: A Business License and a License to Sell Firearms Permit from DPS. The business license application is reviewed by Planning for conformance with the zoning code. Once the business license is issued, a seller must then receive the DPS permit. That permit is issued once all other permit requirements are met (local, State and Federal). Basically, the DPS permit is intended to confirm

that the seller has received all federal, state and local permits necessary to operate in Sunnyvale.

Other Cities

In Santa Clara County, different approaches are used in the permit process for firearms (Attachment F). Many cities in the County have specific regulations in their municipal codes relating to the sale of firearms. Palo Alto requires a Firearms Dealer Permit issued by the Chief of Police with limitations including: prohibition of firearms sales in zoning districts in which residential use is the principal permitted or maintained use; within 250 feet of a day care center, school or residential use; and within 250 feet of another firearms dealer, a cardroom, massage establishment, or adult entertainment business. San Jose specifically prohibits the sales of firearms as a home occupation.

Bay Area cities regulate firearm sales differently: some require a Use Permit process, while others require a permit from the Chief of Police. There are a few cities that require both permit types, and all cities require a business license.

Crime Statistics

Attachment G shows a map of each business with a FFL, and the locations of crimes involving guns from January 2006 to June 2011. As can be seen in the map, there is no correlation between gun-related crimes and the location of firearms sales businesses.

Considerations

The sale of firearms near schools and homes creates uncertainty and apprehension to some members of the community. Most concerns seem to relate to firearms themselves, and not the store, per se.

It is difficult to determine the impact a *store* has on a community. During review of other cities' ordinances and regulations, most of the criteria used in determining whether or not to regulate businesses are based on the perceived danger firearm sales can introduce to an area. There is no confirmed evidence that a firearm sales store increases gun-related or other crimes in an area.

Listed below are some of the concerns raised about firearm sales businesses: *

- They can cause a decrease in nearby property values;
- They create insecurity for nearby residents about their safety;
- There may be a negative influence on children that may walk by the business;
- A violent or criminal element could be brought into a neighborhood;
- Businesses could be a source of trafficked firearms;

- State and federal inspections and requirements may not be sufficient in assuring the businesses meet all laws or cover all necessary aspects in the sale of firearms; and
- The sale of ammunition does not require a license, so ammunition can get into the wrong hands.

Staff could find no report that substantiated the concern that a firearm sales business devalues nearby properties. Determining the impact of a firearm sales business on nearby property values is difficult to assess because of the multitude of factors that influence property values. There is also no tangible evidence that a firearm sales business within a commercial district adversely affects surrounding businesses.

As the DPS map shows, in the past five years, there is no obvious relationship between firearm sales businesses and gun-related crime. These results include home-based businesses. It does not appear that the presence of a firearms sales business increases crime or introduces criminal elements into surrounding neighborhoods.

Attachment H is an article from the American Planning Association that shows a security plan is the most effective tool that can be applied through land use controls.

A goal of this study is to determine whether firearm sales businesses should require a specific permit, and, if so, what types of performance standards and conditions of approval would be included. As opposed to the medical marijuana study, where the complete lack of state and federal laws and guidelines created a situation where the City would become the regulating body in all ways, firearm sales have extensive regulations and requirements imposed by state and federal governments.

There is a similarity between the sale of firearms and the sale of alcohol from liquor stores. In both cases, a significant concern is the effect the use has on children and young adults. In 2009, in response to the concern about the location of liquor stores near schools, the Council adopted requirements that prohibit them from being located within 200 feet of public school sites. This may be a feasible option to use for commercial firearms sales businesses since the public concern over alcohol sales has a similar basis.

City Requirements and Regulations

Two options the city can use to regulate the sales of firearms in Sunnyvale would be to require a discretionary permit from Planning for the use of the property, or to expand the License to Sell Firearms Permit from DPS for the

dealer. In either case, staff has tried to avoid duplicating state and federal regulations.

Planning Permits- Permits issued through the Planning Division could include either a Miscellaneous Plan Permit (MPP) or Use Permit (UP). An MPP is a staff-level review, typically with limited or no public noticing. An MPP is commonly used to consider site issues (such as parking, landscaping and architecture) or performance measures (hours of operation, noise concerns, etc.). A UP is typically required for unique or disputed land uses, or for those that have aspects about the use that requires a higher level of discretion. A UP requires a public meeting by either the Zoning Administrator or Planning Commission and requires notification of the application to surrounding property owners and tenants. Findings for approval and conditions of approval are part of both planning permits. Planning permits "run with the land", meaning that if the business owner/operator changes, the new owner can continue the use.

DPS Permits- In contrast, a Firearms Dealer License could be required for a firearms dealer. Currently, DPS requires approval of a License to Sell Firearms Permit, although it is not required by code. This permit has been used for decades by DPS to ensure firearm sales businesses meet all state, federal and local licensing requirements before opening.

By codifying the requirement for a Firearms Dealer License, it would create a formal process to ensure that firearms sales businesses operate securely, and provides DPS with legal authority to take enforcement action should the operation not meet any requirement for the permit. City review for this permit would focus on local issues, such as on-site security measures, plans and inspections. Other cities also require background checks for employees, inventory reports, and ammunition sales records as part of this license.

A DPS permit may be a more appropriate requirement than a planning permit because public concerns center more on the sale of firearms and compliance with state and federal requirements.

Home-based Businesses - Currently, the home occupation requirements in the code prohibit the sales of items from the home where a showroom is included, or where a significant amount of area is devoted to the sale of products. Mail order and internet sales are allowed from the home, as are those types of businesses (such as firearms) where the majority of the business is not conducted in person at the home; although, with firearm sales the final transaction may be concluded where the license for the business is issued (as required by state and federal law). The existing home-based firearm sales businesses meet all of the home occupation requirements.

Distance Limitations- Some cities have distance limitations of firearms sellers from uses such as residential, schools, day care centers, and other firearm sellers. The distance limitations range from 150 feet to 1,000 feet and can include the above-mentioned uses, as well as adult businesses, card rooms, etc.

In Sunnyvale, the use of distance regulations from residentially-zoned properties would effectively prohibit all home-based businesses and almost all of the commercial properties on El Camino Real since the majority of them back up to residential properties. The result would be that firearms sales businesses could mainly locate in the industrially-zoned properties in the north of the city.

Another option is to limit firearm sales businesses near schools. This approach was used by Council in 2009 when new liquor stores were prohibited within 200 feet of a public school. Although this requirement would not affect many commercial properties, it would ensure a buffer between firearm stores and schools. The reason there would not be many properties affected is because most Sunnyvale schools are not located near commercially-zoned areas. Attachment I shows the 200 foot distance from public schools to commercial areas. Residential home-based businesses were not included in this alternative since they have little traffic and no obvious signs of being a business. No existing business would be affected by this requirement.

Prospective Application- Any proposed change is anticipated to apply only to future proposals, and would not affect existing businesses. An amortization program to bring existing businesses into current requirements would be costly and time consuming to the City.

Path to Schools- Zoning distance limitations are usually calculated using the straight line method. This technique provides the most consistent and objective method for calculating setbacks and distances between uses. The study issue paper included consideration of not allowing firearm sales by using a "path to school" method. This is a very difficult method of regulating land uses since there is not a designated path between residential areas and schools; in fact, there are likely many paths possible. After evaluating this option and realizing the difficulty of codifying this approach, staff believes that a distance buffer would meet the intent of this option and would substantially eliminate the potential of a firearms store located along a heavily used school path.

Signage Controls- The study issue paper also suggested a review of limiting the type of signs at firearm sales businesses. In general, the First Amendment of the Constitution limits the City's ability to regulate sign content, including firearm advertising. It would be difficult for the City to justify an exception to this Constitutional limit. The City must show that an enacted regulation

substantially advances the City's stated interest, with evidence in support of the effectiveness of the regulation, and that other existing alternatives are not superior in terms of effectiveness and burden on speech. As Sunnyvale does not currently have empirical evidence of a problem or how a ban on firearm advertising would reduce a perceived problem, this option was not considered feasible.

FISCAL IMPACT

Any change in permitting requirements, or the requirement for a new permit type, should include a fee to ensure cost recovery so that there is no fiscal impact to the City. Additional fee and inspection costs would create a greater financial burden on the businesses engaged in the sales of firearms.

PUBLIC CONTACT

Public Contact was made through posting of the Planning Commission agenda on the City's official-notice bulletin board, on the City's Web site, and the availability of the agenda and report in the Office of the City Clerk.

A public outreach meeting was held on June 29, 2011, at which approximately 120 people attended. Over 110 notices of the meeting were sent to neighborhood associations, the Chamber of Commerce, existing firearm sales businesses, the Legal Community Against Violence (LCAV), and all people who spoke at the September 28, 2010 City Council meeting during the Public Comment period of the meeting. Comments from the outreach meeting have been summarized and are part of this report (Attachment J). The majority of comments were against additional regulation for firearms sales businesses, and stating the importance of allowing and maintaining these businesses for Sunnyvale.

A City web page (www.FirearmSales.inSunnyvale.com) and e-mail address FirearmSales@ci.sunnyvale.ca.us have been established for the study, and all e-mails and correspondence received have been included with this report (Attachment K).

The LCAV also submitted a model ordinance for consideration in regulating firearms dealers (Attachment L).

ALTERNATIVES

1. Introduce an ordinance to amend the Municipal Code to:
    a. Create a definition in Titles 9 (Public Peace, Safety and Welfare) and 19 (Zoning) for "firearms sales" to include all firearms licensed by the state and federal governments,
    b. Amend the Zoning District Tables (Title 19) to prohibit firearm sales in any commercial and industrial zoning districts located within 200 feet of a public school,

c. Amend Title 9 to require a new Firearm Dealer Permit issued by the Director of Public Safety. Such a plan may include conditions, such as:
   i. Require a security plan subject to approval by DPS,
   ii. Require the Federal Firearms Licensee and all employees to meet all State and Federal requirements for holding a license.

2. Same as number 1, but also require a Miscellaneous Plan Permit for any new firearm sales business.
3. Adopt an alternative with modifications or further restrictions desired by Council, such as:
   a. Require a greater buffer around public schools,
   b. Require a buffer for other uses, such as residential, parks, day care centers or other uses,
   c. Require a Use Permit with noticed public hearing.
4. Make no changes to the existing code requirements.

RECOMMENDATION

Alternative 1; amend the code to define "firearm sales business", prohibit those businesses within 200 feet of a public school, and codify the requirement for a permit from Public Safety.

The greatest concern regarding firearm sales is the business operator that is engaged in buying and selling the firearms. The location is also a concern, but staff has not identified any adverse land use impacts associated with a firearms store. The focus of state and federal regulations is on the buyers and sellers of firearms. Codifying the requirements for a permit from DPS would provide additional public assurances of the safety of the operation of a firearms store. The goal of this permit would be to provide assurance that the business meets state and federal requirements, as well as local security requirements. Staff does not see a need to duplicate the strict regulations required by state and federal authorities.

Staff recommends making no changes to the land use permitting requirements for these uses, since the store itself has not shown to be an incompatible use. In order to meet community concerns about the possible impact to children, however, staff recommends prohibiting the retail sales of firearms within 200 feet of public schools. Staff also does not see the need for a MPP or UP as the DPS Firearm Dealers Permit would allow for sufficient local controls.

Until late 2010, there were seven firearm sales businesses located in Sunnyvale. The majority of these businesses, including four home-based businesses, have been operating for more than 20 years without incident. A

new firearm sales business opened in September 2010, at which time concern was raised about the safety of such a use. This business has also operated without incident. Crime statistics have not shown negative impacts tied directly to these operations. All businesses have complied with state, federal and local regulations and requirements. The proposed changes to the code would address future businesses, and not those currently existing in Sunnyvale.

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Attachments

A. Study Issue Paper
B. Draft ordinance
C. Map of existing firearm sales businesses
D. Title 19 Home Occupation requirements
E. Existing requirements to buy or sell firearms
F. Other cities regulations
G. Map of gun-related crime in Sunnyvale
H. Information from the American Planning Association
I. Map of non-residential Zoning near schools
J. Outreach meeting summary of comments
K. Correspondence received
L. Legal Community Against Violence model ordinance and discussion