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MANAGING PARTNER
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JOSEPH A. SILVOSO, III
LOS ANGELES, CA

* ALSO ADMITTED IN TEXAS AND THE
DISTRICT OF COLUMBIA

Fax Comm.
(written)



DESK ITEM #1
JAN 12, 2017
OF COUNSEL
MATTHEW M. HORECZKO
LOS ANGELES, CA

PSC Meeting

WRITER'S DIRECT CONTACT:
562-216-4444
MCUBEIRO@MICHELLAWYERS.COM

January 12, 2017

Hymanand Nellore
Gerald Tallinger, Vice Chair
Andy Huang, Chair
Neha Sahai
Robert McCoy
CUPERTINO PUBLIC SAFETY COMMISSION

Captain Rich Urena
PUBLIC SAFETY COMMISSION STAFF LIAISON
ricardo.urena@sheriff.sccgov.org

CUPERTINO CITY HALL
10300 Torre Avenue
Cupertino, CA 95014-3202
Via FAX: (408) 777-3366

Re: Proposed Amendments to Chapter 10.76, Firearms, of the Cupertino Municipal
Code—OPPOSITION

Honorable Members of the Public Safety Commission,

We write to you on behalf of our clients, the National Rifle Association of America, and the California Rifle & Pistol Association, Inc., as well as the hundreds of thousands of their members in California, including those members residing in the City of Cupertino.

Our clients oppose the adoption of the proposed amendments to Chapter 10.76 of the Cupertino Municipal Code as it relates to firearms. As drafted, the proposal seeks to: (1) require the reporting of lost or stolen firearms within 48 hours; (2) require the locked storage of firearms in the home; (3) ban

the possession of magazines capable of holding more than 10 rounds; and (4) require all ammunition sales within the City of Cupertino to be recorded.

For the following reasons, we ask the Public Safety Commission to reject the proposed amendments and recommend that the City Council not approve the proposed ordinance.

First, the proposed amendments to the Cupertino Municipal Code are duplicative of or in conflict with existing state law. They are thus preempted and unenforceable.¹ The staff report on the proposal prepared by City staff states broadly that "voters overwhelmingly passed Proposition 63 requiring background checks for ammunition purchases and banning large-capacity ammunition magazines by July 1, 2017." It also notes that Governor Brown has signed into law several measures in addition to the requirements imposed by Proposition 63. But the report is misleading. For it fails to mention that the majority of the proposed amendments are already in effect—and fully applicable to Cupertino residents—as a result of these recently enacted state laws.² Proposition 63, for example, not only bans the possession of magazines capable of holding more than 10 rounds and requires background checks for ammunition purchases, but also includes a mandatory loss/theft reporting requirement and requires all ammunition purchases to be recorded.³ Neglecting that fact, the staff report wholly ignores the proposal's clear preemption problem—a problem that, standing alone, warrants a negative recommendation from the Commission.

Second, the staff report claims that the proposed ordinance will have no fiscal impact. The assertion is wrong. In fact, the ordinance itself makes clear that it will have a significant fiscal impact on City resources. For instance, the proposed ammunition sales reporting requirement dictates that all ammunition sales "shall be recorded on a form approved by the Chief of Police," and that such logs "shall be open to reasonable inspection by peace officers . . . at all times the ammunition vendor is

¹ Under the preemption doctrine, a local regulation will be struck down if it duplicates state law, conflicts with state law, or enters into a field wholly occupied by the state to the exclusion of local regulation, either expressly or by implication. See Cal. Const., art. XI, § 7, *O'Connell v. City of Stockton*, 41 Cal.4th 1061, 1067 (2007); *Fiscal v. City and County of San Francisco*, 158 Cal. App. 4th 895, 903-04 (2008). A local law "duplicates state law when it is 'coextensive' with state law." *O'Connell*, 41 Cal.4th at 1068. A local law "contradicts state law when it is inimical to or cannot be reconciled with state law." *Id.*

² In addition to the recently enacted laws, California already enforces a comprehensive series of laws regarding the criminal storage of firearms. See Cal. Penal Code §§ 25000-25225. Among these provisions are restrictions against storing a firearm in a manner that allows a child to gain unauthorized access, with varying degrees of punishment depending on the result (such as if the child injured themselves or another). *Id.* An exception is provided when the firearm is kept in a locked container or in a location that a reasonable person would believe to be secure. Cal. Penal Code § 25205(b). Finally, California law also requires any person who owns a firearm, and who knows or has reason to know that another person residing with them is prohibited from possessing firearms, to store the firearm in a locked container or keep the firearm disabled with a firearm safety device. Cal. Penal Code § 25135.

³ *California Proposition 63, Background Checks for Ammunition Purchases and Large-Capacity Ammunition Magazine Ban* (2016), Ballotpedia, [https://ballotpedia.org/California_Proposition_63_Background_Checks_for_Ammunition_Purchases_and_Large-Capacity_Ammunition_Magazine_Ban_\(2016\)](https://ballotpedia.org/California_Proposition_63_Background_Checks_for_Ammunition_Purchases_and_Large-Capacity_Ammunition_Magazine_Ban_(2016)).

regularly open for business." In order to enforce the proposal, the Chief of Police must devote significant time and resources to both the administration and enforcement of the proposed ordinance.⁴

Third, because the City's proposed ordinance is clearly preempted by state law, its adoption merely invites litigation to have the requirements declared invalid and their enforcement enjoined. Such can be both time-consuming and costly. Recently, the City of Pleasant Hill agreed to pay over \$400,000 to settle a lawsuit challenging the City's unlawful firearms ordinance.⁵ When first proposed, our clients warned Pleasant Hill that despite being promised "pro bono" legal representation, "the City [would] remain[] liable for attorneys' fees,"⁶ and also warned of the cost for countless hours of public discussion, hundreds of pages of correspondence, internal memoranda, and other required administrative tasks. Despite these warnings, Pleasant Hill pressed on with its agenda. Now, Pleasant Hill taxpayers are paying the price for that decision. We urge Cupertino to not make the same mistake.

I. CONCLUSION

Our clients understand the need to combat the criminal misuse of firearms. To that end, they have a number of programs available to the City upon request.⁷ These include firearm safety training,⁸ the Eddie Eagle GunSafe® Program,⁹ the National School Shield Program,¹⁰ and youth-specific programs designed to teach firearm safety and responsibility.¹¹ Each of these programs have proven to reduce accidental gun deaths and promote public safety—more so than any gun-control law can hope to achieve. Instead of recommending approval of the proposed amendments, we ask the City of Cupertino to consider such alternatives.

⁴ Proposition 63, for example, appropriates \$25 million from the State's General Fund for start-up costs associated with its ammunition sales provisions. Although Proposition 63 is a state-wide program, there can be no dispute that implementing a similar program in Cupertino will have a significant fiscal impact.

⁵ *California City Pays NSSF Legal Fees in Ordinance Lawsuit Settlement*, National Shooting Sports Foundation, <http://www.nssfblog.com/california-city-pays-nssf-legal-fees-in-ordinance-lawsuit-settlement/> (Dec. 6, 2016).

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⁸ <https://explore.nra.org/interests/firearms-training/>. With roughly 1 million people attending NRA training courses annually, the NRA is recognized nationally as the Gold Standard for firearm safety training.

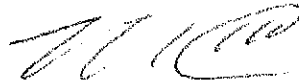
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¹¹ <http://youth.nra.org/>.

For these reasons, we strongly encourage the Public Safety Commission to reject the proposed amendments and recommend that the City Council not approve the proposed ordinance. If you have any questions or concerns regarding the content of this correspondence, please feel free to contact us at your convenience.

Sincerely,
Michel & Associates, P.C.



Matthew D. Cubeiro

Written comm

DESK ITEM #2

Jan 12, 2017
PSC meeting

FW: 01/12/2017 : Proposed Amendments to Chapter 10.76, Fir...

mailbox:///C:/Users/jerry/Documents/jerry/eMail_att.net/In..

Subject: FW: 01/12/2017 : Proposed Amendments to Chapter 10.76, Firearms, of the Cupertino Municipal code - OPPOSITION

From: Ricardo Urena <Ricardo.Urena@sheriff.sccgov.org>

Date: 1/12/2017 12:51 PM

To: Ricardo Urena <Ricardo.Urena@sheriff.sccgov.org>

CC: Marc Lehmann <Marc.Lehmann@sheriff.sccgov.org>

Please see attached:

Captain Rich Urena #1815

West Valley Patrol Division

Office of the Sheriff, Santa Clara County

Office (408)868-6610

Cell (408)421-6757

Ricardo.urena@sheriff.sccgov.org


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From: Irma L. Galeano [mailto:IGaleano@michellawyers.com]

Sent: Thursday, January 12, 2017 12:39 PM

To: Ricardo Urena

Subject: 01/12/2017 : Proposed Amendments to Chapter 10.76, Firearms, of the Cupertino Municipal code - OPPOSITION

Irma L. Galeano Administrative Assistant	Direct: (562) 216-4477 Main: (562) 216-4444 Fax: (562) 216-4445 Email: IGaleano@michellawyers.com Web: www.michellawyers.com 180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802
 MICHEL & ASSOCIATES, P.C. Attorneys at Law Environmental • Land Use • Firearms • Employment Law Civil Litigation • Criminal Defense	

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--- Attachments: ---

Proposed Amendments to Chapter 10.76.pdf

677 KB

SENIOR PARTNER
C. D. MICHEL*

MANAGING PARTNER
JOSHUA ROBERT DALE

SPECIAL COUNSEL
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January 12, 2017

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Neha Sahai
Robert McCoy
CUPERTINO PUBLIC SAFETY COMMISSION

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Sincerely,
Michel & Associates, P.C.



Matthew D. Cubeiro

Posted on: December 5, 2016

City Council settlement in attorney fee dispute

Statement by the City Council, City of Pleasant Hill

December 5, 2016

We are pleased to announce that tonight in closed session we agreed to a settlement in our attorney fee dispute with the National Shooting Sports Foundation (NSSF) and City Arms East. As we resolve this legal matter, it is important to note that we still have in place the provisions that regulate firearms dealers in Pleasant Hill, and that this past February, the challengers dismissed their lawsuit seeking to overturn those provisions.



When the City Council initially adopted the firearms ordinance, the goal was to protect the health and safety of our citizens by putting in place reasonable regulations for firearm dealers to operate safely in Pleasant Hill. After the initial ordinance was passed in 2013, it was challenged in court by the NSSF and City Arms East. During the course of the legal challenge, we were able to address many of the challengers' concerns while keeping intact the intent and requirements of the original ordinance. As a result, this past February the NSSF and City Arms East dismissed their lawsuit. Since we attempted to address some of their concerns, however, the NSSF and City Arms East filed a claim against the City for the entirety of their legal fees, approximately \$1,000,000.

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FW: California: Cupertino Public Safety Commission to Consider..

Subject: FW: California: Cupertino Public Safety Commission to Consider Anti-Gun Ordinance
From: Ricardo Urena <Ricardo.Urena@sheriff.sccgov.org>
Date: 1/12/2017 7:40 AM
To: Ricardo Urena <Ricardo.Urena@sheriff.sccgov.org>
CC: Marc Lehmann <Marc.Lehmann@sheriff.sccgov.org>

This is the last one for now.

Captain Rich Urena #1815
West Valley Patrol Division
Office of the Sheriff, Santa Clara County
Office (408)868-6610
Cell (408)421-6757
Ricardo.urena@sheriff.sccgov.org

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-----Original Message-----

From: Roger McGee [<mailto:OnaQwest@me.com>]
Sent: Wednesday, January 11, 2017 8:07 PM
To: Ricardo Urena
Subject: California: Cupertino Public Safety Commission to Consider Anti-Gun Ordinance

Dear Captain Rich Urena:

As a resident of the city of Cupertino and your constituent, I ask that you oppose the draft ordinance that seeks to amend the City's municipal code as it relates to firearms.

Over the years California has made its firearm laws stricter and stricter under the guise of safety and reducing gun violence. Those laws have yet to make California safer and similarly will not make the city of Cupertino safer.

I urge you to oppose this draft proposal and instead focus on criminals and enforcing the current laws, not placing further restrictions on law-abiding citizens.

Sincerely,
Roger McGee
3739 Fernwood Ave
Rialto, CA 92377-2725

FW: California: Cupertino Public Safety Commission to Consider..

Subject: FW: California: Cupertino Public Safety Commission to Consider Anti-Gun Ordinance
From: Ricardo Urena <Ricardo.Urena@sheriff.sccgov.org>
Date: 1/12/2017 7:39 AM
To: Ricardo Urena <Ricardo.Urena@sheriff.sccgov.org>
CC: Marc Lehmann <Marc.Lehmann@sheriff.sccgov.org>

#3

Captain Rich Urena #1815
West Valley Patrol Division
Office of the Sheriff, Santa Clara County
Office (408)868-6610
Cell (408)421-6757
Ricardo.urena@sheriff.sccgov.org

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-----Original Message-----

From: carlos marin [<mailto:carloselectrical@sbcglobal.net>]
Sent: Wednesday, January 11, 2017 8:34 PM
To: Ricardo Urena
Subject: California: Cupertino Public Safety Commission to Consider Anti-Gun Ordinance

Dear Captain Rich Urena:

As a resident of the city of Cupertino and your constituent, I ask that you oppose the draft ordinance that seeks to amend the City's municipal code as it relates to firearms.

Over the years California has made its firearm laws stricter and stricter under the guise of safety and reducing gun violence. Those laws have yet to make California safer and similarly will not make the city of Cupertino safer.

I urge you to oppose this draft proposal and instead focus on criminals and enforcing the current laws, not placing further restrictions on law-abiding citizens.

Sincerely,
carlos marin
1397 E San Antonio St
San Jose, CA 95116-2832

FW: Comments on: Ordinance amending Chapter 10.76, Firearms...

Subject: FW: Comments on: Ordinance amending Chapter 10.76, Firearms, of the Cupertino Municipal Code

From: Ricardo Urena <Ricardo.Urena@sheriff.sccgov.org>

Date: 1/12/2017 7:38 AM

To: Ricardo Urena <Ricardo.Urena@sheriff.sccgov.org>

CC: Marc Lehmann <Marc.Lehmann@sheriff.sccgov.org>

Here you go.

Captain Rich Urena #1815
West Valley Patrol Division
Office of the Sheriff, Santa Clara County
Office (408)868-6610
Cell (408)421-6757
Ricardo.urena@sheriff.sccgov.org

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-----Original Message-----

From: Jeff Chan [<mailto:webmaster@rkba.org>]

Sent: Thursday, January 12, 2017 2:28 AM

To: Ricardo Urena

Cc: contact@crpa.org

Subject: Comments on: Ordinance amending Chapter 10.76, Firearms, of the Cupertino Municipal Code

Dear Sir,

In your capacity as Commission's staff liaison, please forward these comments to the Cupertino Public Safety Commission regarding the proposed "ordinance amending Chapter 10.76, Firearms, of the Cupertino Municipal Code" to be discussed at the Commission hearings on Thursday, January 12, 2017.

To: Cupertino Public Safety Commission

From: Jeff Chan

Date: 12 January 2017

Regarding the proposed "ordinance amending Chapter 10.76, Firearms, of the Cupertino Municipal Code" DRAFT ORDINANCE NO. 17-XXX

The proposed ordinance is wrong in three major ways:

1. Practical effects: Criminals and gang members will simply ignore these new laws, just as they ignore the myriad firearms restrictions already on the books. As felon studies by the U.S. Department of Justice has shown, most criminals get their guns illegally through the black market, steal them, or acquire them in other illegal ways. In contrast, law abiding people will be made unwitting criminals, particularly since magazines over 10 rounds have been common, for example, in defensive pistols for many decades. California banned new sales, but grandfathered previously owned magazines, until the recent Prop 63 and other bills were passed in 2016. This is only one example of many ways in which these changes are counterproductive in a practical sense.

The net effect is to penalize only the law abiding. Criminals will continue to ignore them. Therefore these laws are inherently unjust.

Thomas Jefferson recognized this effect when he quoted Cesare Beccaria in his personal book of great quotes:

False is the idea of utility that sacrifices a thousand real advantages for one imaginary or trifling inconvenience; that would take fire from men because it burns, and water because one may drown in it; that has no remedy for evils, except destruction. The laws that forbid the carrying of arms are laws of such a nature. They disarm those only who are neither inclined nor determined to commit crimes. Can it be supposed that those who have the courage to violate the most sacred laws of humanity, the most important of the code, will respect the less important and arbitrary ones, which can be violated with ease and impunity, and which, if strictly obeyed, would put an end to personal liberty--so dear to men, so dear to the enlightened legislator--and subject innocent persons to all the vexations that the quality alone ought to suffer? Such laws make things worse for the assaulted and better for the assailants; they serve rather to encourage than to prevent homicides, for an unarmed man may be attacked with greater confidence than an armed man. They ought to be designated as laws not preventive but fearful of crimes, produced by the tumultuous impression of a few isolated facts, and not by thoughtful consideration of the inconveniences and advantages of a universal decree.

(The Commonplace Book of Thomas Jefferson 314 (G. Chinard ed. 1926) quoting C. Beccaria, An Essay on Crimes and Punishments 87-8 (1764).)

In addition, the changes at best interfere with the good relationship of law enforcement with the public that they serve by making unwitting criminals out of otherwise law abiding people. As Sir Robert Peel famously said, the police are the public, and the public are the police. Police powers arise from the rights of individuals to defend themselves against crime. In essence the police in

their daily work are acting on the responsibility that we all have for our own protection. Laws such as these proposed which interfere with this fundamental and long-standing relationship are at very best counterproductive to that relationship.

2. Ethics: Briefly, it is unethical to enact laws that diminish the ability of the law abiding to defend themselves against crime, as all of the proposed changes do in one form or another. To do so is to put the law abiding at a disadvantage to criminal predation and in effect to support and facilitate crime. Such a position is ethically incorrect if we recognize that individuals have a natural right to defend their lives, if necessary as a last resort using force, against criminal attack. No one wants or expects this to happen, but the right must be reserved for extreme circumstances. Every peaceful person has a right to keep his life, and firearms are statistically the safest and most effective tool for doing so.

3. Law: The U.S. Supreme Court in the Heller decision recognized a fundamental, enumerated, Constitutional, individual right to keep and bear arms in defense of life. In the McDonald decision, the Supreme court incorporated this right to the states under the Fourteenth Amendment.

At best the changes in these ordinances, which seem coordinated by an anti-self-defense-rights lobby, given that they are propagated nearly simultaneously across multiple state legislatures and local cities and counties, are an attempt to rush through unconstitutional self-defense rights infringements before they can be overturned in the higher courts.

Collectively many millions of dollars will be spent fighting these in the courts; money which practically would be much better spent on programs for the truly needy, education, and law enforcement action against common law crimes.

James Madison wrote the Bill of Rights to be understandable by the common man. The Supreme Court has commented in dicta that "the right of the people" in the Second Amendment refers to the same people in the First, Fourth, Ninth and Tenth Amendments. It is clear from the plain meaning of the Bill of Rights and existing Supreme Court precedent that the proposed ordinance infringes on our Constitutional rights in several ways.

I urge you to oppose these unconstitutional, impractical, misguided, ineffective, counterproductive, unjust and unethical changes. They do not reduce crime, increase safety or affect criminals. They do infringe on the Constitutional rights of the law-abiding and diminish their Constitutionally-recognized self-defense rights and abilities. They unnecessarily interfere with and diminish the good relationship of the police with the law-abiding public. They are bad policy and inherently unjust.

Sincerely,

Jeff Chan
1353 Garthwick Dr
Los Altos CA 94024

--

Jeff Chan
<mailto:webmaster@rkba.org>
<http://rkba.org/>

FW: Comments on: Ordinance amending Chapter 10.76, Firearms...

FW: California: Cupertino Public Safety Commission to Consider..

Subject: FW: California: Cupertino Public Safety Commission to Consider Anti-Gun Ordinance
From: Ricardo Urena <Ricardo.Urena@sheriff.sccgov.org>
Date: 1/12/2017 7:37 AM
To: Ricardo Urena <Ricardo.Urena@sheriff.sccgov.org>
CC: Marc Lehmann <Marc.Lehmann@sheriff.sccgov.org>

Good morning Commissioners,

I am forwarding a total of 4 emails I received regarding this evening's gun safety ordinance topic. I will continue to forward all of these emails to you throughout the day as I receive them.

Thanks.

Captain Rich Urena #1815
West Valley Patrol Division
Office of the Sheriff, Santa Clara County
Office (408)868-6610
Cell (408)421-6757
Ricardo.urena@sheriff.sccgov.org

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-----Original Message-----

From: Dan Joye [<mailto:lvmasheen@aol.com>]
Sent: Thursday, January 12, 2017 6:59 AM
To: Ricardo Urena
Subject: California: Cupertino Public Safety Commission to Consider Anti-Gun Ordinance

Dear Captain Rich Urena:

As a resident of the city of Cupertino and your constituent, I ask that you oppose the draft ordinance that seeks to amend the City's municipal code as it relates to firearms.

Over the years California has made its firearm laws stricter and stricter under the guise of safety and reducing gun violence. Those laws have yet to make California safer and similarly will not make the city of Cupertino safer.

I urge you to oppose this draft proposal and instead focus on criminals and enforcing the current laws, not placing further restrictions on law-abiding citizens.

Sincerely,
Dan Joye
335 Atlanta Ave

FW: California: Cupertino Public Safety Commission to Consider...

San jose, CA 95125

FW: Public Safety Commission Issue

Subject: FW: Public Safety Commission Issue
From: Ricardo Urena <Ricardo.Urena@sheriff.sccgov.org>
Date: 1/11/2017 2:52 PM
To: Ricardo Urena <Ricardo.Urena@sheriff.sccgov.org>
CC: Marc Lehmann <Marc.Lehmann@sheriff.sccgov.org>

Good afternoon Commissioners,

Please see the below email related to tomorrow's commission meeting.

Regards,

Captain Rich Urena #1815
West Valley Patrol Division
Office of the Sheriff, Santa Clara County
Office (408)868-6610
Cell (408)421-6757
Ricardo.urena@sheriff.sccgov.org

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-----Original Message-----

From: T. Cheuvront [<mailto:chevyrunnergirl@gmail.com>]
Sent: Wednesday, January 11, 2017 2:50 PM
To: Ricardo Urena
Subject: Public Safety Commission Issue

Good afternoon,

I was alerted to the fact that the Cupertino Public Safety Commission will be presented a staff report and draft ordinance regarding an amendment to the city's municipal election code as it relates to firearms.

I want to express my extreme displeasure with these actions in that they are excessive (after the passage of both Prop 63 and numerous legislation this past year). Additional ordinances are completely unnecessary as these suggested items were included in previous laws mentioned and raise serious constitutional concerns, questions of enforceability, and are detrimental to public safety. What's more, they only serve to create an environment in which gun owners cannot cooperate with law enforcement without risking prosecution. I know this is not what is intended.

Please pass this information on to the Commissioners.

Thank you for your time.

Sent from phone of Tiffany Cheuvront

FW: Cupertino emergency preparedness training update

Subject: FW: Cupertino emergency preparedness training update
From: Ricardo Urena <Ricardo.Urena@sheriff.sccgov.org>
Date: 1/10/2017 12:20 PM
To: Ricardo Urena <Ricardo.Urena@sheriff.sccgov.org>
CC: Marc Lehmann <Marc.Lehmann@sheriff.sccgov.org>

Good afternoon Commissioners,

Please see the below.

*Captain Rich Urena #1815
West Valley Patrol Division
Office of the Sheriff, Santa Clara County
Office (408)868-6610
Cell (408)421-6757
Ricardo.urena@sheriff.sccgov.org*

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From: Karen Levy [mailto:KarenL@cupertino.org]
Sent: Tuesday, January 10, 2017 12:07 PM
To: Christine Hanel; Ricardo Urena
Cc: Thomas Walters; Jason Bisely
Subject: Cupertino emergency preparedness training update

Christine and Rich—we were told the Public Safety Commission wanted information on our training program. The following is an update on our current status.

Please let us know if you have any questions.

Thank you,

Karen & Jason

In order to support the Department of Homeland Security and FEMA's goals by training all City staff to prepare for, protect against, respond to, recover from, and mitigate the potential effects of all types of disasters and emergencies, the City has taken the following actions:

In July and August of 2016, 4 sessions of IS-100: Introduction to Incident Command System (ICS) and

FW: Cupertino emergency preparedness training update

G606: An Introduction to the Standardized Emergency Management System (SEMS) were offered to City Employees. The training was conducted by Santa Clara County OES staff. 158 City employees (88%) have completed the training with 22 still needing to take the courses online.

Signups are taking place for the final two courses: IS-700: Introduction to National Incident Management System (NIMS) and
IS-800: National Response Framework (NRF), An Introduction. Classes will be held in late January and throughout February. County OES will once again conduct the trainings.

FW: California: Cupertino Public Safety Commission to Consider...

Subject: FW: California: Cupertino Public Safety Commission to Consider Anti-Gun Ordinance
From: Ricardo Urena <Ricardo.Urena@sheriff.sccgov.org>
Date: 1/12/2017 4:02 PM
To: Ricardo Urena <Ricardo.Urena@sheriff.sccgov.org>
CC: Marc Lehmann <Marc.Lehmann@sheriff.sccgov.org>

More correspondence in regards to the gun ordinance, please see below.

Captain Rich Urena #1815
West Valley Patrol Division
Office of the Sheriff, Santa Clara County
Office (408)868-6610
Cell (408)421-6757
Ricardo.urena@sheriff.sccgov.org

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-----Original Message-----

From: ROSS PARATORE [<mailto:gardenhaven@comcast.net>]

Sent: Thursday, January 12, 2017 3:56 PM

To: Ricardo Urena

Subject: California: Cupertino Public Safety Commission to Consider Anti-Gun Ordinance

Dear Captain Rich Urena:

As a resident of the city of Cupertino and your constituent, I ask that you oppose the draft ordinance that seeks to amend the City's municipal code as it relates to firearms.

Over the years California has made its firearm laws stricter and stricter under the guise of safety and reducing gun violence. Those laws have yet to make California safer and similarly will not make the city of Cupertino safer.

I urge you to oppose this draft proposal and instead focus on criminals and enforcing the current laws, not placing further restrictions on law-abiding citizens.

Sincerely,
ROSS PARATORE
3373 Allred Ln
Soquel, CA 95073-9739

WRITTEN COMM.

DESK ITEM #3
Jan 12, 2017
PSC Meeting

January, 12, 2017

Letter to the Public Safety Commission Regarding Proposed Gun Control Ordinance
17-XXX and Staff Report supporting that proposal

**AN ORDINANCE OF THE CITY OF CUPERTINO AMENDING CHAPTER 10.76
(FIREARMS) OF THE CUPERTINO MUNICIPAL CODE TO ADD GUN SAFETY
MEASURES**

Dear Cupertino Public Safety Commissioners,

Please accept this communication as written communication to the Commission regarding the subject above. I have been a resident of Cupertino for thirty years and rise in opposition to this proposal on the grounds you'll find below. This proposal lacks a compelling public purpose, is repetitive and unnecessary, and is a significant and unwarranted intrusion into the personal privacy of Cupertino residents. I strongly urge you to oppose this proposal and vigorously communicate your opposition to it to the City Staff and to the City Council.

City Staff in its report claims, "The violence and harm caused by and resulting from both the intentional and accidental misuse of guns constitutes a clear and present danger to residents." However, Staff does not offer any evidence to support this claim. How many intentional and accidental misuses of firearms have occurred in the last year in the City? In the last five years? If the Staff is going to make the sensational claim of a Harrison Ford movie of a "Clear and Present Danger," shouldn't it have some burden of evidence to support that claim so that its intellectual power can at least rise above political hyperbole? The very foundation for this ordinance is speculative at best and political hyperbole at worst. Without a clear public purpose, the City has no business creating more laws that intrude into the private lives and homes of its residents.

City staff argues further, "The proposed regulations are consistent with new state gun laws," which I think is largely true. Putting aside that those new gun laws are highly likely to be litigated at significant expense to the State of California, and that their legal status is uncertain, why does the City of Cupertino need to duplicate them within the city limits? Does not State Law apply to Cupertino? Why does the City Council need to spend its time duplicating state law? The only material affect this regulation has is to put the City of Cupertino and its resident taxpayers at risk of defending a lawsuit that this city does not need to defend. As a taxpayer, I do not want my City's treasury exposed to defending a lawsuit against an ordinance like this that serves no purpose beyond what State Law already does.

Finally, and most significantly, this law is a gross intrusion into the personal privacy and liberty of Cupertino residents. Essentially confiscating legally acquired magazines without compensation represents a taking under the Constitution. Although the California residents may have overwhelmingly approved Proposition 63, its constitutionality has not been demonstrated and will likely be challenged in court. The City of Cupertino has no business

in being complicit in advocating what I believe to be an unconstitutional law that destroys a resident's property rights and civil rights.

The proposed ordinance further demands that residents store their weapons in safes, making them unavailable for immediate access in the case of an impending threat upon that resident's life or limb within their homes. The draft ordinance represents the height of political hypocrisy when it allows a resident's unpermitted firing of a weapon within city limits only "in necessary self-defense" but still requires that all firearms not in immediate possession or control be locked in a safe. It's hard for me to fathom that a resident who has chosen the option of a firearm for personal defense within the home will ask his attacking assailant to wait until he opens his safe to get his firearm and load it in the act of self defense. Americans have the Second Amendment right as established in the Supreme Court's Heller Decision to own firearms for the purpose of self defense. The City does not have the constitutional power to intrude or diminish that right.

You know that I understand risk and cost benefit analysis better than most people. Even if the claim of the "Sheriff's Office has reviewed the proposed gun safety ordinance and believes it will aid their law enforcement efforts and offer some protection to all members of the community" is accurate, "some protection to all members of the community" is so vague, unspecified, and unmeasured that no one can evaluate whether the protection offered is worth the erosion of fundamental civil rights. Surely, if we're to let the City dictate to its residents how they should live their personal lives and how they should prepare to defend themselves, then the standard must be higher than a vague, speculative "offer of some protection."

This ordinance is an unnecessary duplication of state law, a likely a cost burden to taxpayers, and a gross intrusion into personal liberty. What residents have chosen to purchase and how they store those purchases within their homes is not the decision of five city council men and women, but the personal decisions of Cupertino's many residents. The Public Safety Commission has the opportunity here to support the residents private decision making and oppose and reject this poorly reasoned, speculatively justified, intrusive, and costly proposal.

Sincerely,

A handwritten signature in black ink that reads "Mike Jerbic". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

Mike Jerbic
10575 Merriman Rd.
Cupertino, CA

ORAL
Passed out to Comm.

DESK ITEM #4
Jan 12, 2017
PSC Meeting

PUBLIC SAFETY COMMISSION FIREARMS STAFF REPORT: FATALLY FLAWED

The Staff Report for the January 12 Public Safety Commission is fatally flawed:

1. The claim that "The Santa Clara County Sheriff's Office has reviewed the proposed gun safety ordinance and believes it will aid their law enforcement efforts and offer some protection to all members of the community." is entirely speculative, unsupported by fact, or in writing.

Ms. Guzmán advised on 10 Jan that it was "based on a conversation". A subsequent meeting with Santa Clara County Sheriff personal confirmed the absence of any supporting documentation.

2. Contrary to case law, the report claims the proposed ordinance is "is not a project within the meaning of section 15378 of the California Environmental Quality Act ("CEQA")..."

A Negative Declaration is required. Factors such as increased air pollution due to buyers shopping elsewhere, economic, social, and recreational impacts mandate a CEQA review. These impacts were not apparent when Sunnyvale's Measure C was enacted and subsequently challenged – they are now.

3. The proposed ordinance is poorly crafted and researched. It uses language evidently copied from Sunnyvale, but inapplicable to Cupertino. It fails to consider redundancies in Proposition 63 and other firearms legislation already enacted. It contains absurdities such as prohibiting unpermitted use of children's toys or the gifting of ammunition.
4. If enacted, the proposed changes needlessly exposes Cupertino to expensive and distracting litigation. California's existing legislation is being litigated. There is no urgent public safety matter faced by Cupertino that this proposal addresses.
5. Increased victimization. Fragile seniors and other vulnerable residents will be unable to defend themselves or loved ones, Access time to locked-away firearms far exceeds home invasion scenarios.

CityData reports that Cupertino public safety is worse than half of California's communities. Cupertino faces far more pressing public safety needs.



REDUCE CRIME? REDUCE DEMAND!

SINCE 1993, US FIREARM HOMICIDES HAVE DECLINED BY OVER 50% AND
NON-FATAL GUN VICTIMIZATION BY 76%¹

Introduction

The proposed Cupertino Gun Safety Ordinance is fatally flawed. It attempts to restrict supply – not demand. Experience shows the futility of this approach. Prohibition, the War On Drugs, and “blue laws” enforcement are just a few examples of failed supply reduction efforts. “We cannot police ourselves out of the problem” as noted law enforcement expert Bill Bratton observed. The proposed ordinance:

- Fails to improve public safety
- Increases enforcement burden and costs
- Reduces badly needed jobs and sales tax revenue
- Jeopardizes women, minorities, vulnerable seniors, and disabled
- Incurs expensive litigation

What Works?

Unlike the proposed ordinance, the following have proven successful and cost-effective:

1. Implement Operation Cease Fire²

OCF is a multi-agency problem-oriented initiative using a “carrot and stick” approach. Targeting about 0.3% of the population, OCF reduced homicides by 34% (Indianapolis) to 63% (Boston).

2. Reduce Recidivism

Inmates paroled in Santa Clara County reoffend within 3 years at a higher rate than the California average (65.1% v. 61.0%). Almost 3 of every 4 young adults (18-19) reoffend.³ Recidivism can be reduced by 30%-40% using more effective programs.⁴

3. Apprehend Armed Prohibited Persons

CA DOJ's recorded 257,112 APPs in April, 2015 - an 18% annual increase over 2014. Cupertino is estimated to have approximately 400 armed residents prohibited from firearms possession. “Armed persons with mental illness [constitute a] continued risk to public safety”.⁵

¹ Pew Research Center Oct 2015

² https://en.wikipedia.org/wiki/Operation_Ceasefire

³ CA DOCR Offender Information Reports, Outcome Evaluation Reports (2014)

⁴ “6 Evidence-based practices proven to lower recidivism”, Mar 2010

⁵ California State Auditor, 2015

REDUCE CRIME? REDUCE DEMAND!

4. Participation in Free Gunlock Program

SCC SO does not participate in the free gunlock Project Childsafe program. manage the free gun-lock distribution program.

5. Improve Transparency and Analytics

Cupertino public safety is opaque. No authoritative data is readily available to assess law enforcement cost, performance, or effectiveness.

6. Reduce Suicides

Suicide accounts for about 2 of every 3 gun deaths in the US.⁶ Intervention lowers suicide rates by as much as 40%.⁷ No outcome-based programs or tracking is published by Santa Clara County.

7. Audit Background Check Reporting Compliance

Audits show spotty compliance with requirements to report behaviors that prohibit firearm ownership. Background checks have little value if prohibited persons are not reported by health care providers and the criminal justice system as required by law.⁸ SJPd Ofc. Michael Johnson and Scott Dunham could be alive had there been compliance.⁹

8. Schools Safety Training

San Jose State offers annual "Run, Hide, Defend" training¹⁰, but annual training is not identified for Cupertino public school staff and students. Gun safety and active shooter training and assessment appears non-existent.

9. Coordinated Data Driven Prevention

A coordinated approach among the criminal justice system, schools, case workers, and other stake-holders using common data shows good results. Violent crime arrests were reduced by 45-50% over a two-year period while school graduation rates increased by 19%.¹¹

⁶ Harvard Public Health, 2011

⁷ National Institutes of Health, SOS Program

⁸ California State Auditor, 2015

⁹ "Report On The Fatal Shooting of Scott Irwin Dunham", SCC District Attorney

¹⁰ <http://www.sjsu.edu/police/prepare/runhidedefend/>

¹¹ University of Chicago Crime Lab Report, 201

10.76.010 CUPERTINO ORDINANCE: PERMIT REQUIRED

#	FACTORS	FACTS
1	No Measurable Impact	No data has been presented to justify this ordinance even though implemented in 1962 and effective during De Anza College's gun range operation.
2	Arbitrary and Capricious	No published criteria for acceptable or prohibited use, appeal process, or permit granting timeframe.
3	Unintended Consequences	Enforcement diminishes trust in government and public safety.
4	Neglects Cost-Benefit, Unwise Spending	Notification, enforcement, and attendant costs can be substantial. Proponents <u>omit any</u> cost-benefit data, nor explain why this is the best use of scarce public safety resources.
5	Violates Castle Principle & Common Sense	Makes unpermitted use of Nerf guns, sling-shot guns, and similar toys illegal in stores, home or elsewhere. Makes unpermitted in-home airsoft target practice illegal. Affects only law-abiding residents - criminals don't care. Eliminates church and community based organization fund raising using any type of shooting gallery using toys. Renders public safety training and resident practice using air or spring operated devices illegal. Renders any ad-hoc air or recreational paintball usage illegal.
6	Sheriff's Office Clueless	Cupertinos law enforcement was unaware of the permit when visited, nor could one be located when requested. Compliance is thwarted.

10.76.020. DUTY TO REPORT THEFT OR LOSS OF FIREARMS

#	TRUTH	FACTS
1	No Measurable Impact	<p>Prompt reporting <u>does not matter</u>. "the victimizations involving stolen firearms could have occurred from one day to up to six months before the NCVS¹ interview, the amount of time that had elapsed made no significant difference in the percentage of households for which guns had not been recovered."²</p> <p>Firearms are stolen in about 3.7% of burglaries. "Nearly 90% of burglaries involving stolen firearms are reported to the police." Recovery rates are low: 17% in reported burglaries and 15% in other property crimes. The "time to crime" i.e. interval between theft and recovery is 11 years.³</p>
2	Arbitrary, Punitive, Redundant	<p>Proponents attempt to justify 48 hours by mirroring the ATF gun dealer loss reporting threshold, yet <u>gun dealers are fundamentally different</u>. Dealers tightly control inventory, but homeowners do not. A homeowner's rarely used, but missing firearm may go undetected for years.</p> <p>DMV requires accidents be reported within 10 days. Gun control proponents have not explained why 48 hours is better than 10 days, 6 months or some other arbitrary figure.</p> <p>Federal regulations do not include "or reasonably should know [of loss]" language – only knowledge of a loss. A firearm loss victim faces punishment based on vague and arbitrary conclusions. Unlike federal law, "should know" is arbitrary and punitive.</p> <p><u>Effective July 1, 2017 Prop 63 requires reporting loss within 5 days.</u> Gun stores must report within 48 hours.</p>
3	Unintended Consequences	<p>Given the low likelihood of recovery and timeframe, victims are incentivized to remain silent upon loss discovery. Society becomes less safe and public trust erodes.</p>
4	Neglects Major Threats	<p>California DOJ recorded over 257,000 Armed and Prohibited Persons in 2015. Cupertino is estimated to have <u>approximately 400</u>.⁴ The figure is likely higher as the annual growth rate has been 18%⁵.</p> <p>The proposal fails to address this significant, grave, and immediate threat while masquerading as public safety improvement.</p>
5	Neglects Cost-Benefit, Unwise Spending	<p>Notification, enforcement, and attendant costs are substantial. Proponents <u>omit any</u> cost-benefit data, nor explain why this is the best use of scarce public safety resources to tighten state law.</p>

¹ NCVS – National Crime Victims Survey is the DOJ instrument to assess crime impact

² DOJ Bureau of Justice, *Firearms Stolen During Household Burglaries: 2005-2010*

³ DOJ Bureau of Justice, *Firearms Stolen During Household Burglaries: 2005-2010*

⁴ Census and CA DOJ data

⁵ Sacramento Bee (Mar 2015)

10.76.030. SAFE STORAGE OF FIREARMS

#	TRUTH	FACTS
1	Negligible Impact	Only 3.8% recovered guns used in CA crime ¹
2	Worse Results	Sunnyvale's violent crime rate <u>increased 11%</u> since gun control passed ² San Francisco's declined, but at <u>about 1/3rd</u> the US rate. ³
3	Ignores Major Source	Over 80% of crime guns originate from friends and family. "There are a number of myths about how criminals get their guns, such as most of them are stolen or come from dirty dealers. <u>We didn't find that to be the case.</u> " ⁴ Friends and family sources rarely prosecuted unless a high-profile case.
4	Adverse to negligible impact	CA saw a 12% increase in fatal firearm accidents after trigger locks mandated. ⁵ It's believed that fumbling with trigger locks were responsible. Firearms account for about 1% of unintentional death in children 0-9 years old. ⁶ Parental neglect and abuse account for 80% of all child deaths which dwarf gun deaths. ⁷ Parents virtually never prosecuted for firearm child injuries or deaths.
5	Effectiveness Myth	"31 of 32 models of gun locks tested by the government's Consumer Product Safety Commission could be opened without the key. According to their spokesperson, "We found you could open locks with paper clips, a pair of scissors or tweezers, or you could whack them on the table and they would open." ⁸ Safes approved by CA DOJ can be opened by young children. ⁹ Free gun locks available ¹⁰ and must be included with purchase. No evidence that gun storage laws reduce gun crime ¹¹ or will increase safe/lock usage.
6	Jeopardizes Most Vulnerable	Locks and safes disenfranchise the most vulnerable victims ¹² such as women, seniors, and disabled. Time-consuming, cumbersome access thwarts self-defense.

¹ NBC Analysis of CA crime 2010-2015. ~77,000 guns stolen, 2,655 recovered at crime scenes

² FBI Uniform Crime Reporting (Jan 2016)

³ FBI Uniform Crime Reporting statistics before and after gun control legislation enacted

⁴ Separate studies by Duke University and University of Chicago researchers. Journal of Criminal Law (2015) and Preventative Medicine (2015)

⁵ National Center for Health Statistics (1995)

⁶ Centers for Disease Control (1999-2014)

⁷ *Child Abuse and Neglect Fatalities 2012*, Child Welfare Information Gateway, U.S. Department of Health and Human Services

⁸ Washington Post (2001)

⁹ Forbes (2012) "Unsafe Gun Safes Can Be Opened By A Three-Year Old"

¹⁰ SCC Sheriff lacks a program for free locks. Many other public safety departments promote free gun locks.

¹¹ KQED Report (Apr 2016) "But experts and law enforcement can't point to any actual impact [of CA's gun laws]."

¹² FBI Uniform Crime Report (2015); 94% of domestic violence homicide victims are women (ncadc.org)

#	TRUTH	FACTS
7	No Justification	California firearm owners are subject to felony charges if a minor (under 18) gains possession, uses it, or displays it in a public place unless the firearm was "stored in a locked container or a locking device employed to temporarily keep it from functioning." ¹³ The proposal fails to provide any additional safety benefit.
8	Increased Victimization	Most have guns for personal safety. ¹⁴ Failure rates exceeding 50% have been observed performing simple tasks among trained professionals when stress is introduced. ¹⁵ Victims will be prevented from promptly defending themselves or loved ones by cumbersome procedures in high-stress situations as detailed below:
9	◆ Retrieval Time	Retrieval Time is the elapsed time to retrieve a firearm and ammunition. Example: 30 seconds might be required to travel between a living room and the firearm and ammunition storage areas.
10	◆ Ready Time	(A1) A gunlock key (smaller than a quarter) must be located and cable removed from the firearm. Alternatively, access may be achieved by a biometric reader, safe key, or combination lock employed on a California approved firearm storage container. ¹⁶ Fingerprint readers are notoriously finicky and biometric safes employ backup key access. A2) If stored in accordance with CA DOJ recommendations ¹⁷ , separately stored ammunition must be located and container unlocked. (A3) Ammunition must then be loaded and the firearm made ready.
11	◆ Access Time	Access Time is Retrieval Time + Ready Time. For example, assume 30 seconds were required to retrieve a locked firearm and ammo and an additional 90 seconds were required to put the firearm in a ready state. Access Time = 30 seconds + 90 seconds or a total of 120 seconds.
12	Under A Minute To Act	Burglars typically spend under a minute to enter. In most cases, 1 to 3 kicks (under 5 seconds) will open a door. ¹⁸ For self-defense, Access Time must be rapid.
13	Timing Studies	Only a loaded unlocked firearm provides protection. 50% of participants gave up after failing step A1. The fastest Access Time averaged 86 seconds vs. a loaded "nightstand gun" at 4 seconds.

¹³ <https://oag.ca.gov/firearms/tips> - owners responsibilities

¹⁴ Gallup poll (2013)

¹⁵ R. Nable, *Psychological Principles of Combat Training* (2012)

¹⁶ <https://oag.ca.gov/firearms/fsdcertlist>

¹⁷ <https://oag.ca.gov/firearms/tips>

¹⁸ <https://thefiringline.com/forums/showthread.php?t=443157>

10.76.040. POSSESSION OF (sic) LARGE-CAPACITY AMMUNITION MAGAZINES

#	TRUTH	FACTS
1	Redundant	Standard (> 10 rounds) magazines prohibited under Prop 63
2	No Benefit	No relationship between magazine capacity and safety.
	Neglects Research	Magazines can be replaced within 1.5 seconds ¹

¹ Joseph Green, a retired firearms instructor and agent of the federal Bureau of Alcohol, Tobacco, Firearms and Explosives

10.76.050. AMMUNITION SALES

#	TRUTH	FACTS
1	No Benefit	Proponents fail to cite any tangible benefits to evaluate merits. ATF cited no value and abandoned logging ammo sales in 1986 ¹ "Sacramento and Los Angeles [or elsewhere] have no evidence that crime has decreased because of their [ammo logging] laws." "One reason for a decrease in prohibited sales in Sacramento could be that illegal buyers were shopping elsewhere." ²
2	Criminalization of Innocents	"Ammunition vendor" language includes anyone giving away a round -- including signal flares to another. Parents and friends are prohibited from gifting ammo.
3	Redundant	AB962 (2009) requires ammunition, thumbprint logging and photo ID to purchase. AB962 has not become effective due to ongoing litigation. SB1235 (2016) places additional restrictions on ammunition sales.
4	Adverse Impacts	<u>After passage, a Sunnyvale gun store owner estimates tens of thousands of dollars in lost sales. Ammo sales have precipitously declined. A leading San Jose gun store dealer claims electronic logging "would be a logistical nightmare."</u> ³ Firearms sales provide relatively slim margins. Gun stores typically rely on ammunition, service, and accessory sales to operate viable businesses. A sharp contraction in ammo sales risks putting gun stores out of business with attendant sales tax and job loss. Others may abandon Cupertino as happened in San Francisco and Santa Cruz when draconian measures were adopted. ⁴ Cupertino risks losing vital sales tax revenue and jobs. Customers object to logging personal data and will decline to purchase from San Jose retailers that log ammo sales. 93% want control over who collects data. 90% want to control what is collected. ⁵
5	Expensive Litigation	The proposal exposes Cupertino to senseless and expensive litigation.
6	No Cost-Benefit	Proponents omit any cost-benefit data. Tax revenue loss, job loss, enforcement cost, litigation and attendant costs are substantial.
7	Ambiguous	Ammunition is "the material fired, scattered, dropped, or detonated from any weapon" ⁶ and includes pellets, BBs, signal flares, bean bags, etc.

¹ "The Bureau and the [Treasury] Department have recognized that current record keeping requirements for ammunition have no substantial law enforcement value.", ATF Director Stephen Higgins

² What's missing in U.S. gun control scramble? (2013)

³ Mercury News (Sep 2016)

⁴ Santa Cruz Sentinel (Jan 2016)

⁵ Pew Research (May 2015)

⁶ Dictionary.com