

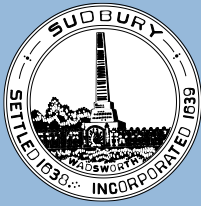
SUDBURY SELECT BOARD
TUESDAY DECEMBER 19, 2023
7:00 PM, ZOOM

Item #	Time	Action	Item
	7:00 PM		CALL TO ORDER
			Opening remarks by Chair
			Reports from Town Manager
			Reports from Select Board
			Public comments
CONSENT CALENDAR			
1.		<i>VOTE</i>	Vote to enter into the Town record and congratulate the following members of BSA Scout Troop 63 for having achieved the high honor of Eagle Scout: Walker Glin, Rik Orup, and Harry Levy.
2.		<i>VOTE</i>	Vote to approve award of contract by the Town Manager upon receipt of a favorable and acceptable bid for cleaning services at the Fairbank Community Center (ITEM TABLED TO A FUTURE MEETING)
3.		<i>VOTE</i>	Vote to accept the resignation of Dianne Baxter, 2 East Street, from the Diversity, Equity and Inclusion Commission (DEIC), and send a letter of thanks for her service to the Town.
4.		<i>VOTE</i>	Vote to accept the resignation of Elizabeth A. Struck, 655 Boston Post Rd., Apt. 1104, from the Transportation Committee and send a letter of thanks for her service to the Town.
5.		<i>VOTE</i>	Vote to appoint COD member Cheryl Wallace to the Transportation Committee for a term expiring 5/31/2024. This is to replace Elizabeth Struck who resigned.
6.		<i>VOTE</i>	Vote to appoint Adam Burney, Director of Planning and Community Development, to the Transportation Committee for a term expiring 5/31/24.
MISCELLANEOUS			
7.	7:15 PM	<i>VOTE</i>	Vote to open a joint meeting with Park & Recreation Commission regarding interim commission member. Interview applicant William Atkeson and vote whether to appoint him for a term ending March 24, 2024 (Annual Town Election).
8.		<i>VOTE</i>	Vote to approve adding vacancy to 2024 Annual Town Election ballot due to resignation from Park & Recreation Commission.

These agenda items are those reasonably anticipated by the Chair which may be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law. Some items may be taken out of order or not be taken up at all. The Chair will strive to honor timed items as best as possible. The Chair reserves the right to accept public comment on any item and may establish time limits.

Item #	Time	Action	Item
9.		<i>VOTE</i>	Vote to close joint meeting with the Park & Recreation Commission and resume Select Board meeting.
10.		<i>VOTE</i>	Update on status and next steps on the proposed firearms business use zoning bylaw.
11.			Discussion on Transportation Committee
12.		<i>VOTE / SIGN</i>	Vote, as the Licensing Authority for the Town of Sudbury, to renew the Alcoholic Beverages, Common Victualler and Entertainment licenses until December 31, 2024, and the Motor Vehicle Classes 1, 2, and 3 licenses until January 1, 2025, as shown on the attached lists.
13.		<i>VOTE</i>	Vote to review and possibly approve open session minutes of 11/20/23.

These agenda items are those reasonably anticipated by the Chair which may be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law. Some items may be taken out of order or not be taken up at all. The Chair will strive to honor timed items as best as possible. The Chair reserves the right to accept public comment on any item and may establish time limits.



SUDBURY SELECT BOARD
Tuesday, December 19, 2023

CONSENT CALENDAR ITEM
1: Eagle Scout letters of recognition

REQUESTOR SECTION

Date of request:

Requestor: BSA troop 63

Formal Title: Vote to enter into the Town record and congratulate the following members of BSA Scout Troop 63 for having achieved the high honor of Eagle Scout: Walker Glin, Rik Orup, and Harry Levy.

Recommendations/Suggested Motion/Vote: Vote to enter into the Town record and congratulate the following members of BSA Scout Troop 63 for having achieved the high honor of Eagle Scout: Walker Glin, Rik Orup, and Harry Levy.

Background Information:

Financial impact expected:

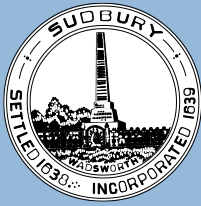
Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Select Board Office	Pending
Town Manager's Office	Pending
Town Counsel	Pending
Select Board	Pending
Select Board	Pending

12/19/2023 7:00 PM



SUDBURY SELECT BOARD
Tuesday, December 19, 2023

CONSENT CALENDAR ITEM

2: Approve Fairbank cleaning contract

REQUESTOR SECTION

Date of request:

Requestor: Sandra Duran, Combined Facilities Director

Formal Title: Vote to approve award of contract by the Town Manager upon receipt of a favorable and acceptable bid for cleaning services at the Fairbank Community Center (ITEM TABLED TO A FUTURE MEETING)

Recommendations/Suggested Motion/Vote:

Background Information:

Financial impact expected: budgeted item

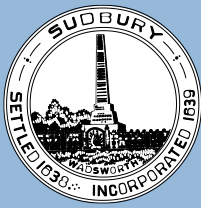
Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Select Board Office	Pending
Town Manager's Office	Pending
Town Counsel	Pending
Select Board	Pending
Select Board	Pending

12/19/2023 7:00 PM



SUDBURY SELECT BOARD
Tuesday, December 19, 2023

CONSENT CALENDAR ITEM

3: Accept resignation from DEI

REQUESTOR SECTION

Date of request:

Requestor: Dianne Baxter

Formal Title: Vote to accept the resignation of Dianne Baxter, 2 East Street, from the Diversity, Equity and Inclusion Commission (DEIC), and send a letter of thanks for her service to the Town.

Recommendations/Suggested Motion/Vote: Vote to accept the resignation of Dianne Baxter, 2 East Street, from the Diversity, Equity and Inclusion Commission (DEIC), and send a letter of thanks for her service to the Town.

Background Information:
attached resignation email

Financial impact expected:

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

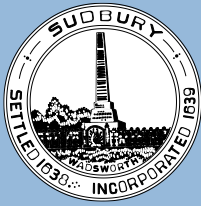
Select Board Office	Pending
Town Manager's Office	Pending
Town Counsel	Pending
Select Board	Pending
Select Board	Pending

12/19/2023 7:00 PM

From: [Dianne Baxter](#)
To: [Select Board](#)
Subject: DEI Commission
Date: Thursday, December 7, 2023 4:02:54 PM

Please accept my resignation from the DEI Commission, effective immediately.
Thank you,
Dianne Baxter

Attachment3.a: DEI Commission (6071 : Accept resignation from DEI)



SUDBURY SELECT BOARD
Tuesday, December 19, 2023

CONSENT CALENDAR ITEM

4: Accept resignation from Transportation Committee

REQUESTOR SECTION

Date of request:

Requested by: Patty Golden

Formal Title: Vote to accept the resignation of Elizabeth A. Struck, 655 Boston Post Rd., Apt. 1104, from the Transportation Committee and send a letter of thanks for her service to the Town.

Recommendations/Suggested Motion/Vote:

Background Information:
attached resignation email

Financial impact expected:

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Select Board Office	Pending
Town Manager's Office	Pending
Town Counsel	Pending
Select Board	Pending
Select Board	Pending

12/19/2023 7:00 PM

From: Elizabeth Struck <bessiestruck@yahoo.com>
Sent: Thursday, November 16, 2023 4:37 PM
To: Carty, Daniel
Subject: Transportation committee

Hi,

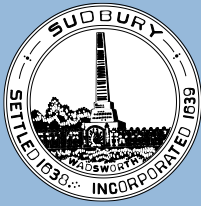
Unfortunately due to an ongoing medical issue that is unfortunately causing a scheduling conflict with the transportation committee meeting, I will not be able to attend the transportation committee going forward.

I spoke with Cameron and she told me to inform you that the Commission on Disability with work on getting another representative from the Commission on Disability to attend in my absence after the start of the new year.

I hope you and your family have a wonderful upcoming holiday season.

Kindly,
Bessie

Attachment4.a: Struck resignation (6073 : Accept resignation from Transportation Committee)



SUDBURY SELECT BOARD
Tuesday, December 19, 2023

CONSENT CALENDAR ITEM

5: Appoint COD member to Transportation Committee

REQUESTOR SECTION

Date of request:

Requestor: Member Carty

Formal Title: Vote to appoint COD member Cheryl Wallace to the Transportation Committee for a term expiring 5/31/2024. This is to replace Elizabeth Struck who resigned.

Recommendations/Suggested Motion/Vote:

Background Information:

Financial impact expected:

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Select Board Office	Pending
Town Manager's Office	Pending
Town Counsel	Pending
Select Board	Pending
Select Board	Pending

12/19/2023 7:00 PM

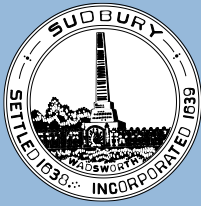
From: Liesje C <liesje.carrigan@gmail.com>
Sent: Thursday, December 7, 2023 9:45 AM
To: Carty, Daniel
Cc: Cameron LaHaise; Cheryl
Subject: Transportation Committee

Hi Dan,

Thanks for coming to our meeting last night and helping us with our Transportation Committee questions. Last night we voted to have Cheryl Wallace sit on the Transportation Committee.

Will you put her on the selectboard calendar to be officially appointed? Are there any next steps that I need to take?

Thank you,
Liesje



SUDBURY SELECT BOARD
Tuesday, December 19, 2023

CONSENT CALENDAR ITEM

6: Appoint Adam Burney to Transportation Committee

REQUESTOR SECTION

Date of request:

Requestor: Member Carty

Formal Title: Vote to appoint Adam Burney, Director of Planning and Community Development, to the Transportation Committee for a term expiring 5/31/24.

Recommendations/Suggested Motion/Vote:

Background Information:

Financial impact expected:

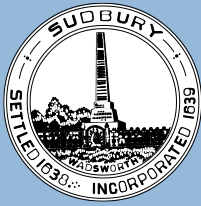
Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Select Board Office	Pending
Town Manager's Office	Pending
Town Counsel	Pending
Select Board	Pending
Select Board	Pending

12/19/2023 7:00 PM



SUDBURY SELECT BOARD
Tuesday, December 19, 2023

MISCELLANEOUS (UNTIMED)

7: Joint meeting with Park & Recreation Commission

REQUESTOR SECTION

Date of request:

Requested by: Patty Golden

Formal Title: Vote to open a joint meeting with Park & Recreation Commission regarding interim commission member. Interview applicant William Atkeson and vote whether to appoint him for a term ending March 24, 2024 (Annual Town Election).

Recommendations/Suggested Motion/Vote:

Background Information:

Financial impact expected:

Approximate agenda time requested: 20 minutes

Representative(s) expected to attend meeting:

Review:

Select Board Office	Pending
Town Manager's Office	Pending
Town Counsel	Pending
Select Board	Pending
Select Board	Pending

12/19/2023 7:00 PM

**TOWN OF SUDBURY
APPLICATION FOR APPOINTMENT**

SELECT BOARD
278 OLD SUDBURY ROAD
SUDBURY, MA 01776

FAX: (978) 443-0756
E-MAIL: selectboard@sudbury.ma.us

Board or Committee Name: Park & Recreation Commission

Name: William Atkeson

Address: 53 Firecut Lane, Sudbury, MA 01776 Email Address: _____

Home phone: _____ Work or Cell phone: _____

Years lived in Sudbury: 1.5

Brief resume of background and pertinent experience:

I am an HR & Talent Development professional with about 10 years experience and an MBA degree in service operations. I have managed logistics for large corporate events including a 200 person charity bike race and over 500 attendee conferences. I have also worked at a number of summer camps so I am familiar with coordinating high quality recreation activities.

Municipal experience (if applicable):

Educational background:

Undergraduate degree - Vanderbilt University
MBA - Emory University Goizueta Business School

Reason for your interest in serving:

I recently moved to Sudbury a little over a year ago with my wife and 3 year old son and I have been looking for a way to give back to our new community.

Times when you would be available (days, evenings, weekends):
Evenings, most days, most weekends

Do you or any member of your family have any business dealings with the Town? If yes, please explain:
none

WGA (Initial here that you have read, understand and agree to the following statement)

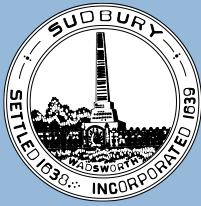
I agree that if appointed, I will work toward furtherance of the committee's mission statement; and further, I agree that I will conduct my committee activities in a manner which is compliant with all relevant State and Local laws and regulations, including but not limited to the Open Meeting Law, Public Records Law, Conflict of Interest Law, Email Policy and the Code of Conduct for Town Committees.

I hereby submit my application for consideration for appointment to the Board or Committee listed above.

Signature 

Date 12/11/2023

Attachment 7.a: William Atkeson Application_Park-Rec Commission.redact (6068 : Joint meeting with Park & Recreation Commission)



SUDBURY SELECT BOARD
Tuesday, December 19, 2023

MISCELLANEOUS (UNTIMED)

8: Town Clerk request - ATE ballot

REQUESTOR SECTION

Date of request:

Requestor: Town Clerk Beth Klein

Formal Title: Vote to approve adding vacancy to 2024 Annual Town Election ballot due to resignation from Park & Recreation Commission.

Recommendations/Suggested Motion/Vote: Vote to approve adding vacancy to 2024 Annual Town Election ballot due to resignation from Park & Recreation Commission.

Background Information:
see attached memo from Town Clerk Beth Klein

Financial impact expected:

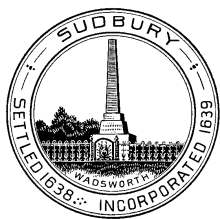
Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Select Board Office	Pending
Town Manager's Office	Pending
Town Counsel	Pending
Select Board	Pending
Select Board	Pending

12/19/2023 7:00 PM



Town of Sudbury

Town Clerk's Office

Town Hall
322 Concord Road
Sudbury, MA 01776-1843
978-639-3351
Fax: 978-639-3340
clerk@sudbury.ma.us

To: Select Board
From: Beth R. Klein, Town Clerk
Re: Add elected vacancy to Town Ballot
Date: December 12, 2023

In order for the vacant office for Park and Recreation Committee member to be added to the 2024 town ballot, the Select Board must notify the Town Clerk in writing that the vacant office should be added to the ballot for a one year term to expire May 2025. The Town Clerk's office must receive the notice by January 19, 2024 to be added to the ballot for the March 25, 2024 Annual Town Election.

Vacant Office: Park and Recreation Committee Term Expires: May 2025

MGL chapter 41, Sec. 10

If there is a resignation of a town officer creating a vacancy at some later time certain, and such resignation is filed with the town clerk in accordance with the provisions of section one hundred and nine, said town clerk shall certify a vacancy shall occur at the later time certain and the board of selectmen may call a special election as provided in this section; provided, however, that no such election may be held prior to the effective date of the resignation creating such vacancy.

No election shall be held for any office pursuant to this section unless the selectmen file with the town clerk notice of an election for such office not less than fifteen days before the last day to submit nomination papers to the registrars of voters for certification, before the election or any preceding primary, caucus, or preliminary election.

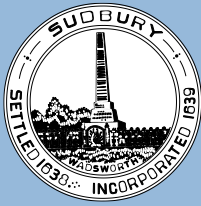
Cc: Andrew Sheehan, Town Manager
Benjamin Carmel, Chair

The Select Board hereby directs the Town Clerk to place the vacancy for the Park and Recreation Committee member on the ballot for the March 25, 2024 Annual Town Election. Said term shall expire May 31, 2025.

Select Board

Date:

Attachment 8.a: memo to BOS-add vacant office to ballot-PR (6043 : Town Clerk request - A TE ballot)



SUDBURY SELECT BOARD
Tuesday, December 19, 2023

MISCELLANEOUS (UNTIMED)

9: Close joint meeting with Park & Rec Commission

REQUESTOR SECTION

Date of request:

Requested by: Patty Golden

Formal Title: Vote to close joint meeting with the Park & Recreation Commission and resume Select Board meeting.

Recommendations/Suggested Motion/Vote:

Background Information:

Financial impact expected:

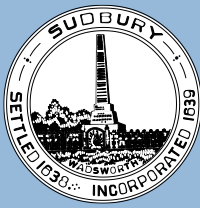
Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Select Board Office	Pending
Town Manager's Office	Pending
Town Counsel	Pending
Select Board	Pending
Select Board	Pending

12/19/2023 7:00 PM



SUDBURY SELECT BOARD
Tuesday, December 19, 2023

MISCELLANEOUS (UNTIMED)

10: Firearms bylaw discussion

REQUESTOR SECTION

Date of request:

Requestor: Charlie Russo

Formal Title: Update on status and next steps on the proposed firearms business use zoning bylaw.

Recommendations/Suggested Motion/Vote:

Background Information:

Financial impact expected:

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Select Board Office	Pending
Town Manager's Office	Pending
Town Counsel	Pending
Select Board	Pending
Select Board	Pending

12/19/2023 7:00 PM

ARTICLE ____ FIREARM BUSINESS USES

9/18/23

To see if the Town will vote to amend the Sudbury Zoning Bylaw as set forth below: or act on anything relative thereto:

2200. PRINCIPAL USE REGULATIONS

A. Insert in Section 2230, Table of Principal Use Regulations, Part C. Commercial, after “28. Marijuana Establishment” a new use category entitled “29. Firearm Business”, as shown in the table below.

PRINCIPAL USE	A-RES	C-RES	WI	BD	LBD	VBD	ID	LID	IP	RD
C. COMMERCIAL										
29. Firearm Business Use	N	N	N	N	N	N	N	ZBA	ZBA	ZBA

B. 2250. Firearm Business Use.

2251. Purpose: To establish criteria for the establishment of Firearm Business Uses in the Town of Sudbury to address public safety concerns arising from the operations of such businesses and the potential disruption of peace and quiet enjoyment of the community. This section provides for separation between Firearm Business Uses and certain uses enumerated herein to maximize protection of public health, safety, and welfare in conjunction with the protections from G.L. c. 140, ss. 122-131Y and other State laws and regulations. To the extent this section or any related section can be read to potentially conflict with G.L. c. 140 or other State laws or regulations, the section shall be interpreted to minimize any conflict with State laws or regulations while maximizing the furtherance of the public safety and other public purposes underlying this section.

2252. Compatibility with State and Federal Laws and Regulations: Firearm Business Uses shall obtain and maintain all necessary Federal, State, and other required local approvals and licenses prior to beginning operations, including but not limited to a valid current State license issued pursuant to G.L. c. 140, ss. 122, as applicable. Required State and Federal licenses must be obtained before applying for a Special Permit.

2253. Applicability: This section shall apply to all Firearm Business Uses including related buildings.

2254. The hours of operation for a Firearm Business Use shall not adversely impact nearby uses. The hours of operation shall follow all state statutory and regulatory requirements, and shall be limited to Monday-Saturday, 10:00AM-5:00PM and closed on Sundays.

Deleted: , but in no case shall any Firearm Business be open before 9:00AM or remain open later than

2255. Prior to the application for a Special Permit a Firearm Business Use shall submit a security plan to the Sudbury Police Department for review and approval. Review and approval of the security plan may include an inspection of the proposed site by the Police Department. The

Attachment 10.a: Firearms Bylaw AJS 2023-09-18 (6066 : Firearms bylaw discussion)

plan must include, but not be limited to, the following:

- a. Proposed provisions for security.
- b. A trained employee shall check identification and compliance with age restrictions prior to customers entering the establishment.
- c. The physical layout of the interior, including a demonstration that the size of the business is not so excessive so as to create issues with site security and video monitoring.
- d. After-hours storage of all Firearms in locked containers or by otherwise securing the Firearms with tamper-resistant mechanical locks.
- e. The number of employees.

2256. Prior to the application for a Special Permit a Firearm Business Use shall submit an operations and management plan to the Sudbury Police Department for review and approval.

2257. All Firearm Business Uses shall conduct criminal background checks of all employees in accordance with State law.

2258. No person under the age of 18 shall have access into or within a Firearm Business Use, with the sole exception that minors age 14 and older may accompany the minor's parent or legal guardian.

2259. Firearms Dealers shall videotape the point of sale of all firearms transactions and maintain videos for ~~three (3) years~~ to deter illegal purchases and monitor employees.

Deleted: six (6) months

2260. Firearm Business Uses shall not sub-lease space from a tenant of any building or structure and is prohibited from sub-leasing the Firearm Business Use space to another Firearm Business.

2261. Location Requirements. All distances in this section shall be measured in a straight line from the property line of the lot containing the Firearm Business Use to the nearest property line of any of the following designated uses:

- a. A Firearm Business Use shall not directly abut any property containing a residential use.
- b. A Firearm Business Use shall not be located within 500 feet of ~~a lot which contains~~ a public or private K-12 school, ~~child care facility (including family daycare homes, daycare centers, preschools, and/or nursery schools), public park and playground, establishment catering to minors or seniors, religious organization,~~ or existing Firearm Business Use.
- c. A Firearm Business Use shall not be located within a building containing a dwelling unit.

Deleted: any property containing

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Deleted: child care facility

2262. Special Permit for Firearm Business Use: In addition to the requirements of Section 6200, an application for Special Permit for Firearm Business Use shall include, at a minimum, the following information:

- a. Description of Activities: A narrative providing information about the type and scale of all activities that will take place on the premises.
- b. Lighting Analysis: A lighting plan showing the location of proposed lights on the building and the lot, and a photometric plan showing lighting levels.
- c. Context Map: A map depicting all properties and land uses within a 1,000-foot radius of the lot on which the Firearm Business is proposed to be located.
- d. Comprehensive Signage Plan in conformance with the Sign Bylaw.
- e. Report from the Police Chief or Designee: Confirming that the applicant has submitted the plans and information described in 2255 above and that those plans have been approved.

f. The Firearm Business Use shall procure and at all times while in operation maintain insurance issued by an insurance company licensed to do business in the Commonwealth, insuring the Firearm Business Use against liability for damage to property and for injury to, or death of, any person as a result of the theft, sale, lease or transfer, or offering for sale, lease or transfer of a firearm or ammunition, or any other operation of the Firearm Business Use. The limits of liability shall not be less than \$1,000,000 for each incident of damage to property or incident of injury to death to a person; provided however, that increased limits of liability may be required by the Special Permit Granting Authority upon a finding that the size of the operation warrants greater liability. Notice of termination of any applicable insurance must be given to the Special Permit Granting Authority at least 30 days prior to the effective date of the cancellation. The Town of Sudbury shall be insured under the business owner's policy and the Town shall be indemnified against any liability, claim, or loss tied to the business.

g. A Special Permit for a Firearm Business Use shall be valid for one year. The owner of a Firearm Business Use shall annually apply to the Special Permit Granting Authority for renewal of the Special Permit, which renewal shall not exceed one (1) year.

2263. Special Permit Criteria: In granting a Special Permit for a Firearm Business Use, in addition to the general criteria for granting a Special Permit, the Zoning Board of Appeals shall find that the following criteria are met:

- a. The lot is designed such that it provides convenient, safe, and secure access and egress for clients and employees arriving to and leaving from the lot.
- b. The establishment will have adequate and safe storage, security, and lighting.
- c. Loading, refuse, and service areas are designed to be secure and shielded from abutting uses.
- d. The establishment is designed to minimize any adverse impacts on abutters or pedestrians.

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- e. The location and characteristics of the proposed use will not be detrimental to the public health, safety, and welfare of the neighborhood, which may extend into an adjacent municipality, or the Town.
- f. All signage has been reviewed and approved by the Building Commissioner or Design Review Board, as applicable, as to letter size, color, and design per section 3200 to ensure mitigation of impact to the surrounding neighborhood, consistent with applicable Federal and State law.
- g. The establishment has satisfied all of the conditions and requirements in this section.

No more than two Firearm Business Uses are allowed within the Town of Sudbury at any given time. A Special Permit for Firearm Business Use is not transferable upon a sale, transfer, or assignment of the Firearms Business Use. A special permit for a Firearm Business Use shall be terminated for violation M.G.L. c. 140, ss. 122B, 130, 131N, or similar laws in other states. Upon expiration or cancellation of the policy of insurance as required herein, and if no additional insurance is obtained, the special permit shall be terminated.

2264. Severability: If any portion of this section is ruled invalid such ruling shall not affect the validity of the remainder of the section.

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C.

DEFINITIONS

Insert in Article 7000, Definitions, the following new definition:

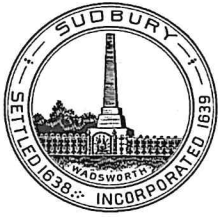
Ammunition: Cartridges or cartridge cases, primers (igniters), bullets, tear gas cartridges, or propellant powder designed for use in any Firearm.

Firearm: Any device designed or modified to be used as a weapon capable of firing a projectile using an explosive charge as a propellant, including but not limited to guns, pistols, shotguns, rifles.

Firearm Accessory: Any device designed, modified, or adapted to be inserted into or affixed onto any Firearm to enable, alter, or improve the functioning or capabilities of the Firearm or to enable the wearing or carrying about one's person of a Firearm.

Firearm Business Use:

- A. Firearm Dealer: A retail or wholesale operation involving the purchase or sale of Firearms, Ammunition, and/or Firearm Accessories.
- B. Firing Range: A commercial facility designed for Firearm(s) training and/or shooting practice.
- C. Gunsmith: Any retail operation involving the repairing, altering, cleaning, polishing, engraving, blueing, or performing of any mechanical operations on any Firearm.



Town of Sudbury

Planning & Community Development Department

Adam R. Burney, MPA, Director


Flynn Building
278 Old Sudbury Road
Sudbury, MA 01776
978-639-3387
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MEMORANDUM

Date: 20 November 2023

To: Andrew Sheehan, Town Manager

From: Adam R. Burney, MPA, Director 

RE: Firearms Business Use Potential Location Analysis

I have reviewed the draft of the Firearms Business Use Bylaw that you provided to me dated 18 September 2023. Per our conversation I have done a parcel analysis to determine where one may be able to locate a Firearms Business Use per the restrictions outlined in Section 2261 of the proposed Bylaw.

As outlined in the draft Bylaw the following Zoning Districts RD-1, IP-1, LID-1, and LID-5 permit Firearms Business Uses by Special Permit. Within these Districts I was able to identify 0 parcels where one could potentially apply to the Zoning Board of Appeals to locate a Firearms Business. Below is an outline of the reason(s) that the parcels within the reviewed Zoning Districts would be likely excluded from being the location of a Firearms Business Use.

RD-1: Every parcel in the RD-1 District is occupied by a residential use, abuts a residential use and/or is within 500 feet of a public park (the Bruce Freeman Rail Trail)

IP-1: The single parcel in IP-1 abuts a public park (the Bruce Freeman Rail Trail)

LID-1: Every parcel in the LID-1 is occupied by a residential use, abuts a residential use, is within 500 feet of an establishment catering to seniors (Sudbury Senior Housing), and/or is within 500 feet of a public park (the Mass Central Rail Trail).

LID-2: Every parcel in LID-2 is occupied or is within 500 feet of a childcare facility (Longfellow Children's Center).

As a thought exercise and to provide the Select Board with additional information to aid in the development of this Bylaw I went ahead and also analyzed, what I believed to be, the Zoning Districts that were closest in allowable uses and intensity to those above. These Districts are ID-2, ID-4, ID-6, ID-8, ID-11, and ID-12. The review of these Districts provided 2 potential parcels where one may be able to locate a Firearms Business Use. Below is an outline of the reason(s) that parcels in the reviewed Districts would likely be excluded from being the location of a Firearms Business.

- ID-2: Every parcel in the ID-2 is within 500 feet of a public park (the Bruce Freeman Rail Trail and/or the Mass Central Rail Trail).
- ID-4: There are 2 parcels (K11-0016 & 0099) in the ID-4 that would qualify as potential locations for a Firearms Business. These parcels are located adjacent to one another on Boston Post Road near the Wayland Town line. The remaining parcels in the District are within 500 feet of a public park (the Mass Central Rail Trail) and/or an establishment catering to seniors (Bear Mountain at Sudbury 136 Boston Post Road).
- ID-6: The parcel contained in ID-6 is within 500 feet of a public park (the Mass Central Rail Trail).
- ID-8: Every parcel in the ID-8 is within 500 feet of a public park (the Mass Central Rail Trail).
- ID-11: The parcel that comprises the ID-11 is within 500 feet of a facility that caters to seniors (Bear Mountain at Sudbury 136 Boston Post Road).
- ID-12: The majority of parcels in the ID-12 about a residential use. There is a parcel (K11-0401) that has no restrictions, however, it is owned by the Town of Sudbury, contains extensive wetlands and is ~ 0.25 acres, a combination of factors that make it likely that it is unbuildable.

Please let me know if you would like additional information or have any specific concerns.

MEMORANDUM

FROM: Lee S. Smith, Esq.
TO: Hon. Janie W. Dretler and Members of the Select Board
DATE: December 18, 2023
RE: Update: Draft Sudbury Firearms Zoning Bylaw and
New York State Rifle and Pistol Assn. v. Bruen 142 S.Ct. 2111 (2022)

I. INTRODUCTION

In the October, 2022 landmark case New York State Rifle and Pistol Assn. v. Bruen, 142 S.Ct. 2111 (2022), the United States Supreme Court held that the state of New York could not keep qualified applicants from obtaining a concealed handgun permit by requiring them to demonstrate proper cause like “a special need for self-protection distinguishable from that of the general community”. In the majority opinion, Justice Clarence Thomas opined that courts are not required to weigh states’ interest in public safety at all when assessing the constitutionality of gun restrictions.

Instead, the Bruen standard only considers gun restrictions constitutional in cases where the restriction at issue fits squarely within an “American tradition” of gun regulation that can be traced to sometime between when the Bill of Rights was signed and the end of the Civil War. As expected, this novel and vague standard has created uncertainty in the area of gun regulation, given that any proposed gun restriction must now be ostensibly consistent with the history and tradition of firearm regulation in the United States.

In order to determine any impact that this case may have on the authority of a municipality to regulate the zoning of gun stores, we have closely analyzed the Bruen decision and reviewed subsequent decisions which have cited Bruen. With that said, we can confirm that as of yet, there are no reported cases which discuss Bruen in the context of regulating the zoning of commercial gun stores. The overwhelming majority of cases citing Bruen involve individuals facing felony convictions who challenged the federal statute which prohibits convicted felons from possessing firearms. However, there are a few relevant cases that we discovered which will be analyzed in more detail below.

Further, we have also reviewed decisions regarding local regulation of the sale of firearms issued by the Massachusetts Office of the Attorney General’s Municipal Law Unit (“MLU”). Since Bruen was decided in October of 2022, there have been a number of MLU decisions that are particularly significant which pertain to local zoning regulations restricting commercial gun stores to

Hon. Janie W. Dretler
and Members of the Select Board
December 19, 2023
Page 2

specific zoning districts in Dedham, Westwood, Brookline, Wellesley, Plainville, Littleton, and Acton. These MLU decisions are analyzed below.

As only a little more than a year has passed since the Bruen decision was handed down, there is still a degree of uncertainty with respect to what exactly might be found to be inconsistent with the history and tradition of the regulation of firearms in the United States. However, after reviewing the relevant MLU decisions, it is clear that the MLU has held that zoning regulations involving the siting and operation of a firearms business are outside of the scope of the types of gun restrictions that might be affected by the Bruen holding. In my opinion, a zoning bylaw amendment which ties commercial gun store restrictions to health, safety, and welfare justifications will likely be approved by the Massachusetts Attorney General's MLU.

II. RELEVANT CASELAW

Brief summaries of the relevant case law pertaining to this issue are as follows:

- Barris v. Stroud Township, 257 A.3d 209 (Pa. Cmwlth. 2021)

In Barris, the issue presented was whether an ordinance that limited target shooting ranges to two specific non-residential zoning districts was facially unconstitutional under the Second Amendment of the United States Constitution. The court held that the municipality enforcing the ordinance imposed a burden on the plaintiff's Second Amendment Right to maintain proficiency in firearm use. The Township's public safety justification failed intermediate scrutiny as the Township failed to demonstrate that the ordinance did not burden more conduct than reasonably necessary.

- Oakland Tactical Supply, LLC v. Howell Township, Michigan, 2023 WL 2074298 (E.D. Mich. Feb. 17, 2023) (hereinafter "Oakland")

In Oakland, the United States District Court for the Eastern District of Michigan was tasked with determining whether the construction and use of an outdoor, open-air 1,000-yard shooting range was covered withing the plain text of the Second Amendment. Presiding Judge Bernard Friedman, found that the long-range firing of weapons is not protected activity under the history and tradition of the Second Amendment. Ultimately, the Township proposing the zoning bylaw that restricted this conduct was granted its motion to dismiss.

- Kipke v. Moore, 2023 WL 6381503, (D. Md. Sept. 29, 2023)

In Kipke, when ruling on a motion for preliminary injunction, the United States District Court for the District of Maryland indicated that the restriction of firearms at public demonstrations and places selling alcohol has no basis in the history and tradition of firearm regulation; therefore, such



Hon. Janie W. Dretler
and Members of the Select Board
December 19, 2023
Page 3

restrictions were enjoined from enforcement. Similarly, the court also enjoined a regulation requiring individuals to secure permission from a private landowner before lawfully entering their land with a firearm.

III. RELEVANT MLU DECISIONS

Brief summaries of the relevant MLU decisions pertaining to this issue are as follows:

- **Dedham, Case # 9741 (June 15, 2020)**

Bylaw Approved

The MLU approved Article 12 of the November 25, 2019 Dedham Fall Annual Town Meeting which made several changes to the Town's zoning bylaws pertaining to firearm business. In particular, the changes restricted firearm businesses from operating in the Town's "Overlay" district unless they obtained a special permit from the Town's Board of Appeals. This decision was prior to the Bruen decision and the MLU found that based on their standard of review, the amendments to Article 12 were not inconsistent with state law and the Attorney General approved it.

- **Westwood, Case # 10145 (Aug. 8, 2021)**

Bylaw Approved

This decision was also pre-Bruen and the decision itself did not give much of an analysis; however, the MLU approved Article 20 of the May 3, 2021 Westwood Annual Town Meeting which amended a zoning bylaw to make further restrictions pertaining to firearms and explosive sales and services.

- **Brookline, Case # 10476 (June 23, 2022)**

Bylaw Approved

In another pre-Bruen decision, the MLU approved Article 22 of the November 16, 2021 Brookline Special Town Meeting. Article 22 amended the Town's bylaw Table of Use Regulations to allow firearm businesses by special permit in the Town's general business district. Again, the MLU found that Article 22 was not inconsistent with state law, and therefore, approved it.

- **Wellesley, Case # 10496 (Oct. 27, 2022)**

Bylaw Approved



Hon. Janie W. Dretler
and Members of the Select Board
December 19, 2023
Page 4

This decision was issued by the MLU shortly after the Bruen decision was handed down. The MLU approved Article 40 of the March 28, 2022 Wellesley Annual Town Meeting. Under Article 40, the Town voted to amend its zoning by-law to allow commercial gun stores by special permit in the Town’s designated business and industrial district. The MLU approved Article 40 because in its opinion, it did not conflict with state law, the United States Constitution, or the Bruen decision.

The MLU reasoned that “[b]ecause Bruen involved the constitutionality of a handgun licensing law and did not limit a municipality’s zoning power to regulate the siting and operation of gun dealer businesses, the Bruen Court’s holding does not provide grounds for this Office to disapprove Article 40.”

- **Plainville, Case # 10669 (Nov. 16, 2022)**

Bylaw Approved

The MLU approved Article 31 of the June 6, 2022 Plainville Annual Town Meeting. Under Article 31, the Town voted to amend its zoning bylaw to allow firearm businesses and indoor shooting ranges by special permit to operate in the Town’s commercial districts and special and limited industrial districts. Again, the MLU determined that Article 31 did not conflict with state law, the United States Constitution, or the Bruen decision. Furthermore, the MLU reiterated that the Bruen decision does not limit a municipality’s zoning power to regulate the siting and operation of commercial gun stores and shooting ranges.

- **Littleton, Case # 10868 (May 25, 2023)**

Bylaw Approved

The MLU approved Article 10 of the February 15, 2023 Littleton Special Town Meeting. Under Article 10, the Town voted to amend its zoning bylaw to allow firearm businesses to operate in the Town’s business district and industrial district by special permit only and to restrict firearm businesses from operating in any of the Town’s other zoning districts. The MLU found that Article 10 was not inconsistent with the Bruen decision for the same reasons stated above.

- **Acton, Case # 10988 (Nov. 20, 2023)**

Bylaw Approved

In the most recent MLU decision regarding zoning restrictions on commercial gun stores, the MLU approved Article 15 of the May 1, 2023 Acton Annual Town Meeting. Under Article 15, the Town voted to amend its zoning bylaw to allow firearm businesses by special permit in two zoning



Hon. Janie W. Dretler
and Members of the Select Board
December 19, 2023
Page 5

districts and limit the number of allowed firearm businesses to no more than two at any given time. Similar to the other decisions discussed above, the MLU found that Article 15 did not conflict with the United States Constitution or the laws of the Commonwealth. Additionally, the MLU expressly stated that Bruen does not preclude the Town from imposing Article 15's cap on firearms businesses. The MLU again stated that the Bruen decision does not limit a municipality's zoning power to regulate the siting and operation of a firearm business.

IV. CONCLUSION

As stated above, the Bruen decision is still relatively new and there remains much uncertainty regarding what will be upheld as consistent with the "history and tradition of the regulation of firearms in the United States". However, the MLU decisions summarized here indicate that under Bruen, a municipality may reasonably regulate the siting, operation, and limit the number of commercial gun stores. In my opinion, a zoning bylaw amendment to regulate the districts in which a commercial gun store may operate in form and substance similar to the Acton example (as well as the others issued thus far), will likely be approved by the Massachusetts Attorney General.

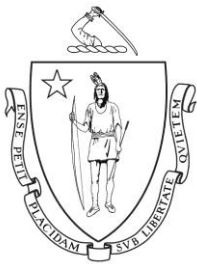
Very truly yours,

Lee S. Smith

LSS/SCJ

cc:
Andrew J. Sheehan, Town Manager

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THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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June 15, 2020

Paul M. Munchbach, Town Clerk
Town of Dedham
26 Bryant Street
Dedham, MA 02026

Re: Dedham Fall Annual Town Meeting of November 25, 2019 -- Case # 9741
Warrant Articles # 12 and 13 (Zoning)
Warrant Articles # 14 and 15 (General)

Dear Mr. Munchbach:

Article 12 - We approve Article 12 from the November 25, 2019 Dedham Fall Annual Town Meeting.¹ Our comments on Article 12 are detailed below.

Article 12 makes several changes to Section 6.1, "Adult Uses Overlay District," ("Overlay District"), of the Town's zoning by-laws pertaining to firearms businesses. More specifically, Article 12 amends Section 6.1 to allow firearm businesses in the Overlay District by special permit from the Town's Board of Appeals.

This decision briefly describes the by-law amendments adopted under Article 12; discusses the Attorney General's limited standard of review of town by-laws under G.L. c. 40, § 32; and why based on that standard, we approve Article 12.

We emphasize that our decision in no way implies any agreement or disagreement with the policy views that led to the passage of the by-law amendments. The Attorney General's limited standard of review requires her to approve or disapprove the by-law text based solely on its consistency with state law and not on any policy views she may have on the subject matter or wisdom of the by-law text. Amherst v. Attorney General, 398 Mass. 793, 795-96, 798-99 (1986). We also make no determination regarding how the by-law amendments at issue here might affect proposed or existing uses. The application of zoning by-laws to such is beyond the scope of the Attorney General's by-law review under G.L. c. 40, § 32. Nor does our analysis extend to evaluating the town meeting action based upon the alleged motive of the town. See Andrews v.

¹ In a decision dated April 9, 2020, we approved Article 13 and in a decision dated March 17, 2020, we approved Articles 14 and 15. On April 10, 2020, pursuant to G.L. c. 40, § 32, we extended our deadline for a decision on Article 12 until June 15, 2020.

Amherst, 68 Mass. App. Ct. 365, 368 (2007); *see also* W.R. Grace & Co. v. Cambridge City Council, 56 Mass. App. Ct. 559, 568 (2002) (the validity of a zoning amendment does not turn on the motives of their supporters).

I. The Attorney General's Standard of Review

Pursuant to G.L. c. 40, § 32, the Attorney General has a “limited power of disapproval,” and “[i]t is fundamental that every presumption is to be made in favor of the validity of municipal by-laws.” Amherst, 398 Mass. at 795-96. The Attorney General does not review the policy arguments for or against the enactment. Id. at 798-99 (“Neither we nor the Attorney General may comment on the wisdom of the town’s by-law.”) Rather, in order to disapprove a by-law (or any portion thereof), the Attorney General must cite an inconsistency between the by-law and the state Constitution or laws. Id. at 796. “As a general proposition the cases dealing with the repugnancy or inconsistency of local regulations with State statutes have given considerable latitude to municipalities, requiring a sharp conflict between the local and State provisions before the local regulation has been held invalid.” Bloom v. Worcester, 363 Mass. 136, 154 (1973). “The legislative intent to preclude local action must be clear.” Id. at 155. Massachusetts has the “strongest type of home rule and municipal action is presumed to be valid.” Connors v. City of Boston, 430 Mass. 31, 35 (1999) (internal quotations and citations omitted).

Article 12, as an amendment to the Town’s zoning by-laws, must be accorded deference. W.R. Grace & Co. v. Cambridge City Council, 56 Mass. App. Ct. 559, 566 (2002) (“With respect to the exercise of their powers under the Zoning Act, we accord municipalities deference as to their legislative choices and their exercise of discretion regarding zoning orders.”). When reviewing zoning by-laws for consistency with the Constitution or laws of the Commonwealth, the Attorney General’s standard of review is equivalent to that of a court. “[T]he proper focus of review of a zoning enactment is whether it violates State law or constitutional provisions, is arbitrary or unreasonable, or is substantially unrelated to the public health, safety or general welfare.” Durand v. IDC Bellingham, LLC, 440 Mass. 45, 57 (2003). Because the adoption of a zoning by-law by the voters at Town Meeting is both the exercise of the Town’s police power and a legislative act, the vote carries a “strong presumption of validity.” Id. at 51. “Zoning has always been treated as a local matter and much weight must be accorded to the judgment of the local legislative body, since it is familiar with local conditions.” Concord v. Attorney General, 336 Mass. 17, 25 (1957) (quoting Burnham v. Board of Appeals of Gloucester, 333 Mass. 114, 117 (1955)). “If the reasonableness of a zoning bylaw is even ‘fairly debatable, the judgment of the local legislative body responsible for the enactment must be sustained.’” Durand, 440 Mass. at 51 (quoting Crall v. City of Leominster, 362 Mass. 95, 101 (1972)). In general, a municipality “is given broad authority to establish zoning districts regulating the use and improvement of the land within its borders.” Andrews v. Amherst, 68 Mass. App. Ct. 365, 367-368 (2007). However, a municipality has no power to adopt a zoning by-law that is “inconsistent with the constitution or laws enacted by the [Legislature].” Home Rule Amendment, Mass. Const. amend. art. 2, § 6.

II. Description of Article 12

Article 12 amends Section 6.1, the Adult Uses Overlay District, to allow firearms businesses by special permit in the Overlay District. *See* Section 6.1.4, “Scope of Permitting

Authority.” Article 12 also adds to Section 6.1.3, “Definitions,” definitions for “Firearm” and “Firearms Business.” Further, Article 12 adds firearm businesses to Section 6.1.6’s, special permit submittal requirements and conditions, so that firearms businesses are subject to specific land use requirements pertaining to location, screening, access by minors, parking and lighting. Finally, Article 12 adds a new Section 6.1.6 (11), “Operation of Firearms Businesses,” that imposes specific operational requirements on firearms business. These new operational requirements include: (1) videotaping the point of sale for firearm transactions; (2) requiring computerized systems to log “crime gun traces”; (3) requiring purchaser declarations; (4) requiring identification checking mechanisms; (5) requiring employee background checks; (6) requiring audits of inventory; (7) requiring background checks results; and (8) requiring firearms to be secured in customer accessible areas.

Based on our standard of review, we cannot conclude that Article 12 is inconsistent with state law, and therefore, we approve it. However, there are a number of state rules and regulations that govern the safety of the premises and proper operation of gun dealers. Those rules include (but are probably not limited to) the requirements set out in G.L. c. 140, section 123, and the Governor's recent COVID-19 Order No. 33, which specifies that gun retailers may be open as of May 18, 2020, subject to the general workplace safety requirements outlined in Section 2 of the Order. The Town should consult closely with Town Counsel to ensure that the by-law amendments adopted under Article 12 are applied consistent with those state rules and regulations.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,

MAURA HEALEY
ATTORNEY GENERAL

Margaret J. Hurley

by: Margaret J. Hurley, Assistant Attorney General
Chief, Central Massachusetts Division
Director, Municipal Law Unit
Ten Mechanic Street, Suite 301
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cc: Town Counsel Lauren Goldberg



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August 25, 2021

Dorothy Powers, Town Clerk
Town of Westwood
580 High Street
Westwood, MA 02090

**Re: Westwood Annual Town Meeting of May 3, 2021 ---- Case # 10145
Warrant Articles # 17, 18, 19, 20, 21, and 22 (Zoning)**

Dear Ms. Powers:

Articles 21 and 22 - We approve Articles 21 and 22 from the May 3, 2021 Westwood Annual Town Meeting.

Articles 17, 18 19, and 20 - The Attorney General's deadline for a decision on Articles 17, 18, 19, and 20 is extended for an additional thirty days under the authority conferred by G.L. c. 40, § 32, as amended by Chapter 299 of the Acts of 2000. The agreement with Town Counsel for the thirty-day extension is attached hereto. We will issue our decision on Articles 17, 18, 19, and 20 on or before **September 25, 2021**.

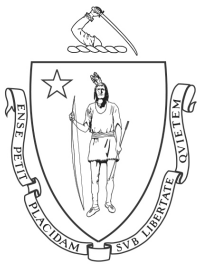
Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) **general** by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) **zoning** by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,
MAURA HEALEY
ATTORNEY GENERAL

Kelli E. Gunagan

By: Kelli E. Gunagan
Assistant Attorney General
Municipal Law Unit
10 Mechanic Street, Suite 301
Worcester, MA 01608

cc: Town Counsel Patrick Ahearn



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June 23, 2022

Benjamin Kaufman, Town Clerk
Town of Brookline
333 Washington Street
Brookline, MA 02445

Re: Brookline Special Town Meeting of November 16, 2021 -- Case # 10476
Warrant Articles # 21, 22, and 23 (Zoning)
Warrant Articles # 6, 13, 15, 28, and 29 (General)
Warrant Article # 20 (Historic)

Dear Mr. Kaufman:

Articles 13, 21, 22, 28 and 29 - We approve Articles 13, 21, 22, 28, and 29 from the November 16, 2021, Brookline Special Town Meeting.¹ Our comments on Articles 13, 22, and 28 are detailed below.

Article 23 - The Attorney General's deadline for a decision on Article 23 is extended for an additional 90 days under the authority conferred by G.L. c. 40, § 32, as amended by Chapter 299 of the Acts of 2000. The agreement with Town Counsel for a 90-day extension is attached hereto. We will issue our decision on Article 23 on or before September 21, 2022.

Article 13 - Under Article 13 the Town voted to amend two sections of its general by-laws (Section 2.1.15, "Town Meeting Committees" and Section 2.3, "Committee on Town Organization and Structure") and add a new Article 3, "Executive Branch General Matter." Together these votes require that Town Meeting Committees and elected and appointed public bodies record all votes by roll call - except for votes to approve meeting minutes and "other administrative matters at the discretion of the committee or public bodies' chair." We approve Article 13 because it is not inconsistent with G.L. c. 30A, §§ 18-25, the State's Open Meeting Law. However, the Town should consult with Town Counsel to ensure compliance with the requirements of the Open Meeting Law, as detailed below.

¹ In a decision issued on June 1, 2022, we approved Articles 6, 15, and 20.

The Open Meeting Law requires that certain types of votes be taken by a call of the roll. General Laws Chapter 30A, Section 21 (b) permits a public body to enter into executive session provided that, among other requirements, the chair of the public body takes a roll call vote of the body to enter executive session. While in executive session, the public body must keep accurate records and all votes taken must be recorded by roll call, including any votes to approve meeting minutes. G.L. c. 30A, § 22 (b). Thus, the by-law's exemption for votes to approve meeting minutes cannot be applied to such approval votes taken in executive session. The Town should consult with Town Counsel with any questions on this issue.

Further, if a member or members of the public body participate in any meeting via remote participation, certain minimum requirements must be met, including that "all votes taken during a meeting in which a member participates remotely must be by roll call vote" including votes to accept meeting minutes. 940 CMR 29.10 (7) (c). Thus, the by-law's exemption for votes to approve meeting minutes cannot be applied to such approval votes taken in a meeting utilizing remote participation. The Town should consult closely with Town Counsel when approving meeting minutes to ensure the Town does not violate the roll call vote requirements of the Open Meeting Law.

Article 22 - Under Article 22 the Town voted to amend its zoning by-laws to allow firearm businesses by special permit in the Town's General Business zoning district. We approve Article 22 because it does not present a clear conflict with state law or the Constitution. Amherst v. Attorney General, 398 Mass. 793, 795-96 (1986) (requiring inconsistency with state law or the Constitution for the Attorney General to disapprove a by-law). However, as explained below, the Town must carefully apply the by-law amendments so that they do not conflict with state law.

We briefly describe the by-law amendments adopted under Article 22; discuss the Attorney General's limited standard of review of town by-laws under G.L. c. 40, § 32; and explain why, based on that standard, we approve Article 22.²

We emphasize that our decision in no way implies any agreement or disagreement with any policy views that may have led to the passage of the by-law amendments. The Attorney General's limited standard of review requires her to approve or disapprove the by-law text based solely on its consistency with state law and not on any policy views she may have on the subject matter or wisdom of the by-law text. Amherst, 398 Mass. at 795-96, 798-99.

I. The Attorney General's Standard of Review

Pursuant to G.L. c. 40, § 32, the Attorney General has a "limited power of disapproval," and "[i]t is fundamental that every presumption is to be made in favor of the validity of municipal by-laws." Amherst, 398 Mass. at 795-96. The Attorney General does not review the policy arguments for or against the enactment. Id. at 798-99 ("Neither we nor the Attorney General may comment on the wisdom of the town's by-law.") Rather, in order to disapprove a by-law (or any

² In decisions issued to the Town of Westwood on November 23, 2021 (Case # 10145) and the Town of Dedham on June 15, 2022 (Case # 9741) we approved similar zoning by-laws that impose limitations on firearm businesses.

portion thereof), the Attorney General must cite an inconsistency between the by-law and the state Constitution or laws. Id. at 796.

Article 22, as an amendment to the Town’s zoning by-laws, must be accorded deference. W.R. Grace & Co. v. Cambridge City Council, 56 Mass. App. Ct. 559, 566 (2002) (“With respect to the exercise of their powers under the Zoning Act, we accord municipalities deference as to their legislative choices and their exercise of discretion regarding zoning orders.”). When reviewing zoning by-laws for consistency with the Constitution or laws of the Commonwealth, the Attorney General’s standard of review is equivalent to that of a court. “[T]he proper focus of review of a zoning enactment is whether it violates State law or constitutional provisions, is arbitrary or unreasonable, or is substantially unrelated to the public health, safety or general welfare.” Durand v. IDC Bellingham, LLC, 440 Mass. 45, 57 (2003). Because the adoption of a zoning by-law by the voters at Town Meeting is both the exercise of the Town’s police power and a legislative act, the vote carries a “strong presumption of validity.” Id. at 51. “Zoning has always been treated as a local matter and much weight must be accorded to the judgment of the local legislative body, since it is familiar with local conditions.” Concord v. Attorney General, 336 Mass. 17, 25 (1957) (*quoting* Burnham v. Board of Appeals of Gloucester, 333 Mass. 114, 117 (1955)). “If the reasonableness of a zoning bylaw is even ‘fairly debatable, the judgment of the local legislative body responsible for the enactment must be sustained.’” Durand, 440 Mass. at 51 (*quoting* Crall v. City of Leominster, 362 Mass. 95, 101 (1972)). However, a municipality has no power to adopt a zoning by-law that is “inconsistent with the constitution or laws enacted by the [Legislature].” Home Rule Amendment, Mass. Const. amend. art. 2, § 6.

II. Description of Article 22

Article 22 amends the Town’s Table of Use Regulations to allow firearm businesses by special permit in the Town’s General Business District subject to a report from the Police Chief and compliance with the regulations imposed under the new Section 4.14 (imposing special permit submittal requirements and use and operational requirements as described in more detail below). Firearm Business Uses are prohibited in the Town’s remaining Districts.

Article 22 also amends the Town’s zoning by-laws to add definitions for “Ammunition,” “Firearm,” “Firearm Accessory,” “Firearm Business,” and “Gunsmith.” The Town also voted under Article 22 to add a new Section 4.14, “Firearm Business Uses,” that imposes special permit submittal requirements and various use requirements, including location, screening, signage, parking, and lighting. Section 4.14 also imposes operational requirements on firearms businesses. These new operational requirements include: (1) hours of operation; (2) security plans, (3) limiting access by minors; (4) videotaping the point of sale for firearm transactions; (5) and requiring employee background checks.

Based on our standard of review, we cannot conclude that Article 22 is inconsistent with state law, and therefore, we approve it. However, there are a number of state rules and regulations that govern the safety of the premises and proper operation of gun dealers. Those rules include (but are not limited to) the requirements in G.L. c. 140, § 123 (imposing conditions on firearm sales licenses issued under G.L. c. 140, § 122). The Town should consult closely with Town Counsel to ensure that the by-law amendments adopted under Article 22 are applied consistent with those state laws.

Article 28 - Under Article 28 the Town voted to amend the Town's general by-laws to add a new Article 8.40 that prohibits the sale of fur products in the Town. We approve the by-law's ban on the sale of fur products because it is within the Town's Home Rule and statutory authority and is not preempted by or otherwise conflict with state statutes regulating the sale of fur products.³

I. Description of Article 8.40

The new Article 8.40 prohibits the sale of fur products in the Town. The by-law defines "fur product" as follows:

Any article of clothing or covering for any part of the body, or any fashion accessory, including, but not limited to, handbags, shoes, slippers, hats, earmuffs, scarves, shawls, gloves, jewelry, keychains, toys or trinkets, and home accessories and decor, that is made in whole or part of fur. "Fur product" does not include any of the following:

- a. An animal skin or part thereof that is to be converted into leather, or which in processing will have the hair, fleece, or fur fiber completely removed;
- b. Cowhide with the hair attached thereto;
- c. Lambskin or sheepskin with the fleece attached thereto; or
- d. The pelt or skin of any animal that is preserved through taxidermy or for the purpose of taxidermy.

The by-law exempts: (1) used fur products by a private party (excluding a retail transaction), non-profit, or second-hand stores, including a pawn shop; (2) fur products used in the practice of religion; (3) fur products used for traditional tribal, cultural, or spiritual purposes by a member of a federally recognized or state recognized Native American tribe; or (4) fur products where the activity is expressly authorized by federal or state law. The by-law imposes a \$300.00 penalty for violation of its provisions.

II. Article 28's Ban on the Sale of Fur Products Is Not in Conflict with State Law

A. General Municipal Authority to Adopt By-laws Banning Certain Activities

Towns have used their Home Rule powers to prohibit, within their borders, certain commercial activities that state statutes generally recognize as lawful and that are widely accepted in the remainder of the Commonwealth--for example, coin-operated amusement devices, or self-service gas stations. Amherst, 398 Mass. at 798 n.8. The Supreme Judicial Court has upheld such

³ In decisions issued to the Towns of Wellesley on May 18, 2021 (Case # 9970) and Weston on November 10, 2021 (Case # 10199), we approved similar general by-law banning the sale of fur products.

by-laws and has overturned the Attorney General's disapproval of them where they did not create any specific conflict with state law. Amherst, *id.*; see also Milton v. Attorney General, 372 Mass. 694, 695-96 (1977). The Attorney General thus has no power to disapprove a by-law merely because a town, in comparison to the rest of the state, has chosen a novel, unusual, or experimental approach to a perceived problem.

B. The Town's Ban on the Sale of Fur Products is Not Preempted by State Law

Because Article 28 bans the sale of fur products, we address Article 28's consistency with several state laws regulating fur products, including, G.L. c. 94, § 227A, c. 131, § 28, and c. 266, § 79. For the reasons provided below, we cannot conclude that Article 28's ban on the sale of fur products is in conflict with or preempted by these statutes.

As noted earlier, the Attorney General must disapprove a by-law if it conflicts with state law. Amherst, 398 Mass. at 796. Municipalities have "considerable latitude" in legislating, and so there must be a "sharp conflict" with state law before a local enactment may be disapproved. Bloom, 363 Mass. at 154. (add full cite) "The legislative intent to preclude local action must be clear." *Id.* at 155.

"This intent can be either express or inferred." St. George Greek Orthodox Cathedral of Western Massachusetts, Inc. v. Fire Dept. of Springfield, 462 Mass. 120, 125-26 (2012). Local action is precluded in essentially three instances, paralleling the three categories of federal preemption: (1) where the "Legislature has made an explicit indication of its intention in this respect"; (2) where "the State legislative purpose can[not] be achieved in the face of a local by-law on the same subject"; or (3) where "legislation on a subject is so comprehensive that an inference would be justified that the Legislature intended to preempt the field." Wendell v. Attorney General, 394 Mass. 518, 524 (1985). "The existence of legislation on a subject, however, is not necessarily a bar to the enactment of local ordinances and by-laws exercising powers or functions with respect to the same subject[, if] the State legislative purpose can be achieved in the face of a local ordinance or by-law on the same subject[.]" Bloom, 363 Mass. at 156; see Wendell, 394 Mass. at 527-28 ("It is not the comprehensiveness of legislation alone that makes local regulation inconsistent with a statute. . . . The question . . . is whether the local enactment will clearly frustrate a statutory purpose.").

Under this analysis we have considered the possible preemptive effect of several state laws regulating fur products, including, G.L. c. 94, § 227A, c. 131, § 28, and c. 266, § 79. General Laws Chapter 94, Section 227A imposes labeling requirements on natural, dyed or imitation furs, sold at retail within the state. Section 227A also prohibits misrepresentations: (1) as to the place from which the fur or other material came; (2) as to the manufacturer of the article; or (3) as to any other matter. Moreover, G.L. c. 266, § 79 makes it a crime to sell or exchange manufactured imitation furs as the genuine furs of certain animals. In addition, G.L. c. 131, § 28 requires a license from the Director of Fisheries and Wildlife before a person can purchase or receive the skins or pelts of any fur-bearing mammals from trapper or hunter. While these three statutes regulate certain aspects of the sale of fur products, we determine that they do not constitute state-wide, comprehensive legislation that preempts a local by-law prohibiting the sale of fur products.

Although these statutory requirements are broad, we find in them nothing that explicitly preempts local law, nothing that conflicts with Article 28, and no intention to “occupy the field” of fur sale regulation and thereby preclude municipal efforts towards banning fur sales. Because Article 28’s ban on the sale of fur products is not in conflict with or preempted by state law we approve it.

IV. Conclusion

The by-law’s ban on the sale of fur products is within the Town’s Home Rule and statutory authority. Moreover, we are unable to conclude that the by-law’s ban on fur sales is preempted by or otherwise conflicts with the state statutes regulating the sale of fur products. On these grounds we approve Article 28.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,

MAURA HEALEY
ATTORNEY GENERAL

Kelli E. Gunagan

By: Kelli E. Gunagan
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cc: Town Counsel Jonathan Simpson



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OFFICE OF THE ATTORNEY GENERAL

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October 27, 2022

Cathryn J. Kato, Town Clerk
Wellesley Town Hall
525 Washington Street
Wellesley, MA 02482

**Re: Wellesley Annual Town Meeting of March 28, 2022 --- Case # 10496
Warrant Articles # 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, and 43 (Zoning)
Warrant Articles # 9, 28, 29, 30, 31, and 32 (General)**

Dear Ms. Kato:

Article 40 - Under Article 40 the Town voted to amend its zoning by-laws to allow commercial gun shops by special permit in the Town's Business and Industrial Districts. We approve Article 40 because it does not conflict with state law or the Constitution, including the U.S. Supreme Court's recent decision in New York State Rifle & Pistol Association v. Bruen, 142 S.Ct. 2111 (2022) (overturning a New York state gun licensing statute because of conflict with Second and Fourteenth Amendments). See Amherst v. Attorney General, 398 Mass. 793, 795-96 (1986) (requiring inconsistency with state law or the Constitution for the Attorney General to disapprove a by-law). However, as explained below, the Town must carefully apply the by-law amendments so that they do not conflict with state law.¹

We briefly describe the by-law amendments adopted under Article 40; discuss the Attorney General's limited standard of review of town by-laws under G.L. c. 40, § 32; and explain why, based on that standard, we approve Article 40.²

We emphasize that our decision implies no agreement or disagreement with any policy views that may have led to the passage of the by-law amendments. The Attorney General's limited standard of review requires her to approve or disapprove the by-law text based solely on its consistency with

¹ In a decision issued on June 30, 2022, we approved Articles 9, 28, 29, 30, 31, 33, 34, 35, 37, 41, 42, and 43. In a decision issued on July 29, 2022, we approved Articles 32, 36, 38, and 39 and extended our deadline for a decision on Article 40 for 90 days until October 31, 2022.

² We approved similar zoning by-laws in decisions issued to the Towns of Dedham on June 15, 2020 (Case # 9741; Westwood on November 23, 2021 (Case # 10145); and Brookline on June 23, 2022 (Case # 10476).

state law and not on any policy views she may have on the subject matter or wisdom of the by-law text. Amherst, 398 Mass. at 795-96, 798-99.

I. Description of Article 40

Article 40 amends Sections 11 and 13 of the Town’s zoning by-laws to add commercial gun shops as a use allowed by special permit in the Town’s Business and Industrial Districts, subject to certain application, use and operational requirements described below. Gun shops are prohibited in the Town’s remaining Districts. Article 40 adds to Section 1B a definition for “Commercial Gun Shop” as follows:

Commercial Gun Shop – Any commercial establishment engaging in whole or in part in the business of a Gunsmith, or the manufacture, sale, or lease to the public of any Weapon, Machine Gun, Ammunition, Bump Stock, Large Capacity Feeding Device, Stun Gun, or Trigger Crank, as such terms are defined in G.L. c. 140, § 121.

Article 40 also amends the Town’s zoning by-laws to add a new Section 25.B.7, “Commercial Gun Shops,” that imposes special permit application requirements and various location, lighting, screening, and signage requirements on gun shops in the Town. In addition, Section 25.B.7 imposes operational requirements on gun shops, including (1) hours of operation; (2) security plans; (3) limiting access by minors; (4) videotaping the parking areas, building entrances and exits, and sales transactions; (5) and prohibiting convicted felons from operating or working at gun shops.

The Special Permit Granting Authority (SPGA) may grant, or grant with conditions, a special permit for a gun shop if the SPGA determines that the application meets all the requirements of Section 25.B. To grant a special permit the SPGA must find that the gun shop:

- (1) Meets all other applicable requirements of the Zoning Bylaw and the permitting requirements of all applicable agencies of the Commonwealth of Massachusetts and the Town, and will otherwise comply with all applicable state and local laws and regulations;
- (2) Is designed to minimize any adverse visual or economic impacts on abutters and other parties in interest;
- (3) Provides adequate security measures to ensure that no individual participants will pose a threat to the health or safety of other individuals; and
- (4) Adequately addresses issues of vehicular and pedestrian traffic, circulation, parking and queuing, especially during peak periods at the Commercial Gun Shop.

Section 25.B.5 (e) (ii).

II. The Attorney General’s Standard of Review of Zoning By-laws

Our review of Article 40 is governed by G.L. c. 40, § 32 and c. 40A, § 5. Pursuant to G.L. c. 40, § 32, the Attorney General has a “limited power of disapproval,” and “[i]t is fundamental that every presumption is to be made in favor of the validity of municipal by-laws.” Amherst, 398 Mass.

at 795-96. The Attorney General does not review the policy arguments for or against the enactment. Id. at 798-99 (“Neither we nor the Attorney General may comment on the wisdom of the town’s by-law.”) Rather, to disapprove a by-law (or any portion thereof), the Attorney General must cite an inconsistency between the by-law and the state Constitution or laws. Id. at 796.

Article 40, as an amendment to the Town’s zoning by-laws, must be accorded deference. W.R. Grace & Co. v. Cambridge City Council, 56 Mass. App. Ct. 559, 566 (2002) (“With respect to the exercise of their powers under the Zoning Act, we accord municipalities deference as to their legislative choices and their exercise of discretion regarding zoning orders.”). When reviewing zoning by-laws for consistency with the Constitution or laws of the Commonwealth, the Attorney General’s standard of review is equivalent to that of a court. “[T]he proper focus of review of a zoning enactment is whether it violates State law or constitutional provisions, is arbitrary or unreasonable, or is substantially unrelated to the public health, safety or general welfare.” Durand v. IDC Bellingham, LLC, 440 Mass. 45, 57 (2003). “If the reasonableness of a zoning bylaw is even ‘fairly debatable, the judgment of the local legislative body responsible for the enactment must be sustained.” Id. at 51 (*quoting* Crall v. City of Leominster, 362 Mass. 95, 101 (1972)). However, a municipality has no power to adopt a zoning by-law that is “inconsistent with the constitution or laws enacted by the [Legislature].” Home Rule Amendment, Mass. Const. amend. art. 2, § 6.

III. Section 25.B.7 (d)’s Location Requirements May Merit a Future Clarifying Amendment

Section 25.B.7 (d) (i) imposes location requirements on commercial gun shops. Section 25.B.7 (d) (i) (1) prohibits gun shops from locating within 500 feet of: (1) public or private schools; (2) childcare facilities; and (3) “[a]ny establishment catering to or providing services primarily intended for minors, as determined by the Special Permit Granting Authority.”³

The by-law does not define the phrase “establishment catering to or providing services primarily intended for minors.” Rather, the by-law authorizes the SPGA to make that determination during its review of the special permit application. However, without standards and criteria to guide the SPGA in the decision-making process, the by-law is susceptible to arbitrary or unequal enforcement. See FW/PBS, Inc. v. City of Dallas, 493 U.S. 215, 225-26 (1990) (no system of prior restraint may place “unbridled discretion in the hands of a government official or agency.”) The Town should consult with Town Counsel to determine whether a future amendment is needed to address this issue.

³ We note that the by-law’s buffer zone requirements for gun shops are similar to the buffer zone requirements imposed on other intensive land uses in the Town. For example, the Town imposes a buffer requirement of 350 feet between an adult entertainment use and a school, a park, a religious use, and the boundaries of a residential zoning district. Sections 6.3.B .5 (b) and (c). Registered marijuana dispensaries are prohibited within 500 feet of schools, childcare facilities and other places that cater to minors. Section 6.3.B.6 (d) (i). It is unclear what impact the buffer zone requirements, combined with other factors, may have on the ability of a commercial gun shop to operate within the Town. However, the Attorney General’s review of the by-law does not and cannot include the kind of factual inquiry required to make that determination.

IV. The Town Must Apply the By-law Consistent with State Laws Applicable to Firearms Dealers

There are numerous state laws and regulations governing the safety of gun shop premises and the licensing requirements for gun dealers. Those laws include (but are not limited to) the requirements in G.L. c. 140, § 123 (imposing conditions on firearm sales licenses issued under G.L. c. 140, § 122), and 940 Code Mass. Reg. 16.00 et seq. (imposing conditions on the sale of handguns in Massachusetts). The Town should consult closely with Town Counsel to ensure that the by-law amendments adopted under Article 40 are applied consistent with those state laws.

V. Article 40 Does Not Conflict with the Court’s Holding in New York State Rifle & Pistol Association v. Bruen

We have analyzed the question whether Article 40 is implicated by the United States Supreme Court’s decision in New York State Rifle & Pistol Association v. Bruen, 142 S.Ct. 2111 (2022). In Bruen, the Court held that New York’s handgun licensing law requiring individuals to show “proper cause” before they could be licensed to carry a concealed weapon in most public places violated the Second and Fourteenth Amendments of the United States Constitution. Bruen, 142 S.Ct. at 2156. Justice Kavanaugh’s concurring opinion, joined by Chief Justice Roberts, also reaffirmed the Court’s prior holdings in District of Columbia v. Heller, 554 U.S. 570, 626-27 & n.26 (2008), and McDonald v. City of Chicago, 561 U.S. 742, 786 (2010) (plurality opinion), that certain gun regulations, including those that: (1) prohibit the possession of firearms by felons and the mentally ill; (2) forbid the carrying of firearms in sensitive places such as schools and government buildings; and (3) impose conditions and qualifications on the commercial sale of arms, are presumptively lawful. Id. at 2162.

Because Bruen involved the constitutionality of a handgun licensing law and did not limit a municipality’s zoning power to regulate the siting and operation of gun dealer businesses, the Bruen Court’s holding does not provide grounds for this Office to disapprove Article 40. The Town should consult with Town Counsel with any questions on the scope of the Court’s holding in Bruen.⁴

⁴ The Town may also wish to consult the advisory issued by the AGO and the Executive Office of Public Safety and Security that includes guidance on how to apply the state’s firearms licensing laws in light of the Bruen decision. The advisory may be found here: [download \(mass.gov\)](#). The Town should consult with Town Counsel with any questions on this advisory.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,

MAURA HEALEY
ATTORNEY GENERAL

Margaret J. Hurley

By: Margaret J. Hurley
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Director, Municipal Law Unit
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cc: Town Counsel Thomas J. Harrington

Attachment10.d: KP-#895720-v1- Relevant_MLU_Decisions_as_of_12-18-23 (6066 : Firearms bylaw discussion)



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November 16, 2022

Ellen Robertson, Town Clerk
Town of Plainville
190 South Street
Plainville, MA 02762

**Re: Plainville Annual Town Meeting of June 6, 2022 --- Case # 10496
Warrant Articles # 28, 29, 30, and 31 (Zoning)
Warrant Articles # 25 and 27 (General)**

Dear Ms. Robertson:

Article 31 - Under Article 31 the Town voted to amend its zoning by-laws to allow firearm businesses and indoor shooting ranges by special permit in the Town's Commercial Districts and Special and Limited Industrial Districts. Under Article 31 the Town also voted to allow outdoor shooting ranges by special permit in the Town's Special Industrial District. We approve Article 31 because it does not conflict with state law or the Constitution, including the U.S. Supreme Court's recent decision in New York State Rifle & Pistol Association v. Bruen, 142 S.Ct. 2111 (2022) (overturning a New York state gun licensing statute because of conflict with Second and Fourteenth Amendments). See Amherst v. Attorney General, 398 Mass. 793, 795-96 (1986) (requiring inconsistency with state law or the Constitution for the Attorney General to disapprove a by-law). However, as explained below, the Town must carefully apply the by-law amendments so that they do not conflict with state law.¹

We briefly describe the by-law amendments adopted under Article 31; discuss the Attorney General's limited standard of review of town by-laws under G.L. c. 40, § 32; and explain why, based on that standard, we approve Article 31.²

¹ In a decision issued on September 12, 2022, we approved Articles 25, 27, 28, 29, and 30. By agreement with Town Counsel as authorized by G.L. c. 40, § 32 we extended our deadline for a decision on Article 31 by 90 days through December 18, 2022.

² We approved similar zoning by-laws in decisions issued to the Towns of Dedham on June 15, 2020 (Case # 9741; Westwood on November 23, 2021 (Case # 10145); Brookline on June 23, 2022 (Case # 10476); and Wellesley on October 27, 2022 (Case # 10496).

We emphasize that our decision implies no agreement or disagreement with any policy views that may have led to the passage of the by-law amendments. The Attorney General’s limited standard of review requires her to approve or disapprove the by-law text based solely on its consistency with state law and not on any policy views she may have on the subject matter or wisdom of the by-law text. Amherst, 398 Mass. at 795-96, 798-99.

I. Description of Article 31

Article 31 amends the Use Regulation Schedule of the Town’s zoning by-laws to add: (1) “Firearm Business Uses and Indoor Shooting Ranges,” as uses allowed by special permit in the Town’s Commercial Districts and Limited and Special Industrial Districts and prohibited in the Town’s other zoning districts; and (2) “Outdoor Shooting Ranges” as a use allowed by special permit in the Town’s Special Industrial District and prohibited in the Town’s other zoning districts.

Article 31 also amends the Town’s zoning by-laws to add a new Section 500-44, “Firearm Business Uses” that imposes special permit application requirements and various location, lighting, screening, and signage requirements on firearm businesses and shooting ranges. Section 500-44 (E) also imposes operational requirements on firearm businesses, including (1) hours of operation; (2) background checks for employees; (3) security, operation, and management plans; (4) limiting access by minors; and (5) videotaping sales transactions.³

The Special Permit Granting Authority (SPGA) may grant a special permit for a firearm business if the SPGA determines that the application meets all the requirements of Section 500-44. To grant a special permit the SPGA must find as follows:

Special Permit Criteria. In granting a special permit for a Firearm Business Use, in addition to finding that the general criteria for issuance of a special permit are met, the SPGA shall find that the following criteria are met:

- a. The lot is designed such that it provides convenient, safe and secure access and egress for clients and employees arriving to, and leaving from, the lot.
- b. The establishment will have adequate and safe storage, security, and lighting.
- c. Loading, refuse and service areas are designed to be secure and shielded from abutting uses.
- d. The establishment is designed to minimize any adverse impacts on abutters or pedestrians.
- e. All signage has been reviewed and approved by the SPGA as to letter size, color and design to ensure mitigation of impact to the surrounding neighborhood, consistent with applicable federal and State law. All signage shall also conform to the requirements of §500-29.
- f. The establishment has satisfied all of the conditions and requirements listed in all sections of §500-44.

Section 500-44 (G).

³ Shooting ranges are generally subject to the same requirements as firearm businesses. See Section 500-44 (C) (c).

II. The Attorney General's Standard of Review of Zoning By-laws

Our review of Article 31 is governed by G.L. c. 40, § 32 and c. 40A, § 5. Pursuant to G.L. c. 40, § 32, the Attorney General has a “limited power of disapproval,” and “[i]t is fundamental that every presumption is to be made in favor of the validity of municipal by-laws.” Amherst, 398 Mass. at 795-96. The Attorney General does not review the policy arguments for or against the enactment. Id. at 798-99 (“Neither we nor the Attorney General may comment on the wisdom of the town’s by-law.”). Rather, to disapprove a by-law (or any portion thereof), the Attorney General must cite an inconsistency between the by-law and the state Constitution or laws. Id. at 796.

Article 31, as an amendment to the Town’s zoning by-laws, must be accorded deference. W.R. Grace & Co. v. Cambridge City Council, 56 Mass. App. Ct. 559, 566 (2002) (“With respect to the exercise of their powers under the Zoning Act, we accord municipalities deference as to their legislative choices and their exercise of discretion regarding zoning orders.”). When reviewing zoning by-laws for consistency with the Constitution or laws of the Commonwealth, the Attorney General’s standard of review is equivalent to that of a court. “[T]he proper focus of review of a zoning enactment is whether it violates State law or constitutional provisions, is arbitrary or unreasonable, or is substantially unrelated to the public health, safety or general welfare.” Durand v. IDC Bellingham, LLC, 440 Mass. 45, 57 (2003). “If the reasonableness of a zoning bylaw is even ‘fairly debatable, the judgment of the local legislative body responsible for the enactment must be sustained.” Id. at 51 (quoting Crall v. City of Leominster, 362 Mass. 95, 101 (1972)). However, a municipality has no power to adopt a zoning by-law that is “inconsistent with the constitution or laws enacted by the [Legislature].” Home Rule Amendment, Mass. Const. amend. art. 2, § 6.

III. Section 500-44’s Requirements for Shooting Ranges Cannot Impermissibly Interfere with the Operation of Governmental Entities

Section 500-44 (B) defines “Shooting Range” to include facilities designed for firearm usage operated by the military and law enforcement agencies as follows (emphasis added):

A specialized facility designed specifically for firearm usage, qualifications, training, practice or competition. Shooting ranges can be operated by *military or law enforcement agencies*, be privately owned by civilians or sporting clubs, or be operated by a Firearm Business.

We approve the definition of “Shooting Range.” However, the Town’s authority to regulate federal and state entities is limited. “The doctrine of essential governmental functions prohibits municipalities from regulating entities or agencies created by the Legislature in a manner that interferes with their legislatively mandated purpose, absent statutory provisions to the contrary.” Greater Lawrence Sanitary Dist. v. Town of North Andover, 439 Mass. 16 (2003). See also Teasdale v. Newell & Snowling Const. Co., 192 Mass. 440 (1906) (local board of health could not require state park commissioners to obtain license to maintain stable on park land). “The immunity [provided by the doctrine] extends beyond the ‘essential governmental function’ to cover ‘action reasonably related to that function’ so that the agency’s or entity’s public mission is not ‘prevented by a zoning statute applicable to one municipality or by a local zoning ordinance or by-law.’” Bourne v. Plante, 429 Mass. 329, 332 (1999) (quoting Village on the Hill, Inc. v. Massachusetts Turnpike Auth., 348 Mass. 107, 118 (1964)), cert denied, 380 U.S. 955 (1965). Although the doctrine “does not...[confer]

absolute immunity from all local regulations,” it does apply to municipal actions that in fact “interfere with [the agency’s] essential governmental purposes” and have more than “a negligible effect on its operations.” Greater Lawrence, 439 Mass. at 22. The doctrine also protects federal agencies from municipal regulation to a certain extent. Municipalities may not regulate federal governmental entities in a manner that impedes their purpose. Cf. First Nat’l Bank v. Missouri, 263 U.S. 640, 656 (1926) (state laws may not regulate federal entities if “such laws interfere with the purposes of their creation [or] tend to impair or destroy their efficiency as federal agencies”); Palfrey v. City of Boston, 101 Mass. 329 (1869) (federal internal revenue stamps not subject to state or local property tax). The Town’s application of Section 500-44 cannot impermissibly interfere with the operation of federal and state entities. The Town should discuss any questions regarding the proper application of Section 500-44 with Town Counsel.

IV. The Town Must Apply the By-law Consistent with State Laws Applicable to Firearms Dealers

There are numerous state laws and regulations governing the safety of firearm businesses and the licensing requirements for gun dealers. Those laws include (but are not limited to) the requirements in G.L. c. 140, § 123 (imposing conditions on firearm sales licenses issued under G.L. c. 140, § 122), and 940 Code Mass. Regs. 16.00 et seq. (imposing conditions on the sale of handguns in Massachusetts). The Town should consult closely with Town Counsel to ensure that Section 500-44 is applied consistent with those state laws.

V. Article 31 Does Not Conflict with the Supreme Court’s Holding in New York State Rifle & Pistol Association v. Bruen

We have analyzed the question whether Article 31’s validity is affected by the United States Supreme Court’s decision in New York State Rifle & Pistol Association v. Bruen, 142 S.Ct. 2111 (2022). In Bruen, the Court held that New York’s handgun licensing law requiring individuals to show “proper cause” before they could be licensed to carry a concealed weapon in most public places violated the Second and Fourteenth Amendments of the United States Constitution. Bruen, 142 S.Ct. at 2156. Justice Kavanaugh’s concurring opinion, joined by Chief Justice Roberts, also reaffirmed the Court’s prior holdings in District of Columbia v. Heller, 554 U.S. 570, 626-27 & n.26 (2008), and McDonald v. City of Chicago, 561 U.S. 742, 786 (2010) (plurality opinion), that certain gun regulations, including those that: (1) prohibit the possession of firearms by felons and the mentally ill; (2) forbid the carrying of firearms in sensitive places such as schools and government buildings; and (3) impose conditions and qualifications on the commercial sale of arms, are presumptively lawful. Id. at 2162.

Because Bruen involved the constitutionality of a handgun licensing law and did not limit a municipality’s zoning power to regulate the siting and operation of gun dealer businesses and shooting ranges, the Bruen Court’s holding does not provide grounds for this Office to disapprove Article 31. The Town should consult with Town Counsel with any questions on the scope of the Court’s holding in Bruen.⁴

⁴ The Town may also wish to consult the advisory issued by the AGO and the Executive Office of Public Safety and Security that includes guidance on how to apply the state’s firearms licensing laws in light of the Bruen

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,

MAURA HEALEY
ATTORNEY GENERAL

Margaret J. Hurley

By: Margaret J. Hurley
Chief, Central Massachusetts Division
Director, Municipal Law Unit
10 Mechanic Street, Suite 301
Worcester, MA 01608
(508) 792-7600 ext. 4402

cc: Town Counsel Jeffrey T. Blake

decision. The advisory may be found here: [download \(mass.gov\)](#). The Town should consult with Town Counsel with any questions on this advisory.



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION
10 MECHANIC STREET, SUITE 301
WORCESTER, MA 01608

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

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May 25, 2023

Diane Crory, Town Clerk
Town of Littleton
P.O. Box 1305
Littleton, MA 01460

Re: Littleton Special Town Meeting of February 15, 2023 --- Case # 10868
Warrant Article # 10 (Zoning)
Warrant Article # 2 (General)

Dear Ms. Crory:

Articles 2 and 10 - We approve Articles 2 and 10 from the Littleton Special Town Meeting of February 15, 2023. Our comments on Article 10 are provided below.

Article 10 - Under Article 10 the Town voted to amend its zoning by-laws to allow firearm businesses by special permit in the Town. We approve Article 10 because it does not conflict with state law or the Constitution, including the U.S. Supreme Court's recent decision in New York State Rifle & Pistol Association v. Bruen, 142 S.Ct. 2111 (2022) (overturning a New York state gun licensing statute because of conflict with Second and Fourteenth Amendments). See Amherst v. Attorney General, 398 Mass. 793, 795-96 (1986) (requiring inconsistency with state law or the Constitution for the Attorney General to disapprove a by-law). However, as explained below, the Town must carefully apply the by-law amendments so that they do not conflict with state law.

We briefly describe the by-law amendments adopted under Article 10; discuss the Attorney General's limited standard of review of town by-laws under G.L. c. 40, § 32; and explain why, based on that standard, we approve Article 10.¹

We emphasize that our decision implies no agreement or disagreement with any policy views that may have led to the passage of the by-law amendments. The Attorney General's limited standard of review requires her to approve or disapprove the by-law text based solely on its consistency with state law and not on any policy views she may have on the subject matter or

¹ We approved similar zoning by-laws in decisions issued to the Towns of Dedham on June 15, 2020 (Case # 9741); Westwood on November 23, 2021 (Case # 10145); Brookline on June 23, 2022 (Case # 10476); Wellesley on October 27, 2022 (Case # 10496); and Plainville on November 16, 2022 (Case # 10496).

wisdom of the by-law text. Amherst, 398 Mass. at 795-96, 798-99.

I. Description of Article 10

Article 10 amends Section 173-26.A, the Town’s Use Regulation Schedule (Schedule), to add “Firearm Business” as a use allowed by special permit in the Town’s Business District and I-A Industrial District and prohibited in the Town’s other zoning districts.² Article 10 amends Section 173-2, “Definitions” to add definitions for the words “Ammunition;” “Firearm;” “Firearm Accessory;” “Firearm Business;” and “Gunsmith.” Article 10 also amends the Town’s zoning by-laws to add a new Article XXXIII, “Firearms Business” that imposes special permit application requirements and various location, lighting, screening, and signage requirements on firearms businesses. The new Article XXXIII also imposes operational requirements on firearm businesses, including (1) hours of operation; (2) background checks for employees; (3) security, operation, and management plans; (4) limiting access by minors; and (5) videotaping sales transactions.

Under the new Article XXXIII, the Special Permit Granting Authority (SPGA) may grant a special permit for a firearm business if the SPGA determines that the application meets the requirements applicable to special permits generally under Section 173-7 and if the SPGA finds that the firearms business:

- 1) Meets all other applicable requirements of the Zoning Bylaw and the permitting requirements of all applicable agencies of the Commonwealth of Massachusetts and the Town, and will otherwise comply with all applicable state and local laws and regulations;
- 2) Is designed to minimize any adverse visual or economic impacts on abutters and other parties in interest;
- 3) Provides adequate security measures to ensure that no individual participants will pose a threat to the health or safety of other individuals. In making this determination the SPGA shall consider input from the Littleton Police Department, if any; and
- 4) Adequately addresses issues of vehicular and pedestrian traffic, circulation,

² Under Article 10 the Schedule was amended to allow firearms businesses in the Town’s Business District and I-A Industrial District. The new Article XXXIII states that “[n]o special permit for a Firearms Business use shall be issued unless the use is located in the Industrial A or Industrial B Districts.” Section 173-237 (C). Section 173-239 (A) states further that “[a] Firearms Business may be allowed in locations set forth in § 173-26, Use Regulations Schedule by special permit” According to Town Counsel, the amendments to the Schedule are incorrect due to a scrivener’s error that occurred during the printing of the Town Meeting Warrant. The Town intends to amend the Schedule at its Fall Town Meeting to fix the error and allow firearms businesses by special permit in the Town’s Industrial B District and prohibit the use in the Business District, which will match the text of Section 173-237 (C). See Email from Atty. Harrington to AAG Gunagan dated May 4, 2023. The Town should discuss the application of the Schedule and Section 173-237 (C) with Town Counsel before it takes action on a special permit application for a firearms business.

parking, and queuing, especially during peak periods at the Firearms Business.

Section 173-242 (B)

II. The Attorney General's Standard of Review of Zoning By-laws

Our review of Article 10 is governed by G.L. c. 40, § 32 and c. 40A, § 5. Pursuant to G.L. c. 40, § 32, the Attorney General has a “limited power of disapproval,” and “[i]t is fundamental that every presumption is to be made in favor of the validity of municipal by-laws.” Amherst, 398 Mass. at 795-96. The Attorney General does not review the policy arguments for or against the enactment. Id. at 798-99 (“Neither we nor the Attorney General may comment on the wisdom of the town’s by-law.”). Rather, to disapprove a by-law (or any portion thereof), the Attorney General must cite an inconsistency between the by-law and the state Constitution or laws. Id. at 796. As a general proposition the cases dealing with the repugnancy or inconsistency of local regulations with State statutes have given considerable latitude to municipalities, requiring a sharp conflict between the local and State provisions before the local regulation has been held invalid.” Bloom v. Worcester, 363 Mass. 136, 154 (1973). “The legislative intent to preclude local action must be clear.” Id. at 155. Massachusetts has the “strongest type of home rule and municipal action is presumed to be valid.” Connors v. City of Boston, 430 Mass. 31, 35 (1999) (internal quotations and citations omitted).

Article 10, as an amendment to the Town’s zoning by-laws, must be accorded deference. W.R. Grace & Co. v. Cambridge City Council, 56 Mass. App. Ct. 559, 566 (2002) (“With respect to the exercise of their powers under the Zoning Act, we accord municipalities deference as to their legislative choices and their exercise of discretion regarding zoning orders.”). When reviewing zoning by-laws for consistency with the Constitution or laws of the Commonwealth, the Attorney General’s standard of review is equivalent to that of a court. “[T]he proper focus of review of a zoning enactment is whether it violates State law or constitutional provisions, is arbitrary or unreasonable, or is substantially unrelated to the public health, safety or general welfare.” Durand v. IDC Bellingham, LLC, 440 Mass. 45, 57 (2003). “If the reasonableness of a zoning bylaw is even ‘fairly debatable, the judgment of the local legislative body responsible for the enactment must be sustained.’” Id. at 51 (quoting Crall v. City of Leominster, 362 Mass. 95, 101 (1972)). However, a municipality has no power to adopt a zoning by-law that is “inconsistent with the constitution or laws enacted by the [Legislature].” Home Rule Amendment, Mass. Const. amend. art. 2, § 6.

III. Section 173-244, “Termination of Special Permits,” Must be Applied Consistent with the Special Permit Granting Authority’s Authority to Revoke Special Permits

Section 173-244 authorizes a firearms business special permit to “terminate” in three instances: (1) if there is a change in the identity of the manager of the firearms business and the Town is not notified of the change; (2) if there are violations of G.L. c. 140, §§ 12B, 130, or 131N; or (3) if the required insurance is cancelled or lapses. See Sections 173-44 (B), (C) and (D). It is not clear what the Town means by the special permit shall “terminate” and whether it refers to the revocation of a special permit. A SPGA has the power to revoke a special permit. See e.g.,

Copeland v. Town of Nantucket, 24 Mass. L. Rptr. 268, * 4 (2008) (Planning Board could revoke a special permit for failure to comply with intensity regulations); White Sands Beach Club, Inc. v. Board of Appeal for the Town of Truro, 18 Mass. L. Rptr. 621, * 3 (2004) (Board of Appeals had inherent authority to revoke a 1996 special permit); and Hinchliffe v. Koning, 3 Mass. L. Rptr. 229, * 3 n.1 (1994) (Board of Appeals and not the Building Commissioner had power to revoke a special permit). However, a by-law cannot require the “termination” or revocation of a special permit in the absence of action by the SPGA. In addition, the by-law is silent as to any notice and hearing process prior to revoking a special permit or otherwise rendering a special permit “terminated.” The Town should consult with Town Counsel regarding the proper application of Section 173-244.

IV. The Town Must Apply Article 10 Consistent with State Laws Applicable to Firearms Dealers

There are numerous state laws and regulations governing the safety of firearm businesses and the licensing requirements for gun dealers. Those laws include (but are not limited to) the requirements in G.L. c. 140, § 122 (licenses to sell firearms), § 122B (licenses to sell ammunition), § 123 (imposing conditions on firearm sales licenses issued under G.L. c. 140, § 122), and 940 Code Mass. Regs. 16.00 et seq. (imposing conditions on the sale of handguns in Massachusetts). As discussed in more detail below, the Town should consult closely with Town Counsel to ensure that Article XXXIII is applied consistent with those state laws, including Sections 112 and 122B.³

General Laws Chapter 140, Section 122 requires a license to sell firearms and Section 122B requires a license to sell ammunition. A license issued under Section 122 and 122B must “specify the street and number of the building where the business is to be carried on.” It is not clear whether the denial of a special permit or the revocation of a special permit previously granted might have the unintended effect of invalidating a dealer’s license if the dealer no longer has the right to operate at the address included on their license. The Town should discuss this “as applied” issue in more detail with Town Counsel and should consult closely with Town Counsel when it applies Article XXXIII’s special permit process.

V. Article 10 Does Not Conflict with the Supreme Court’s Holding in New York State Rifle & Pistol Association v. Bruen

We have analyzed the question whether Article 10’s validity is affected by the United States Supreme Court’s decision in New York State Rifle & Pistol Association v. Bruen, 142 S.Ct. 2111 (2022). In Bruen, the Court held that New York’s handgun licensing law requiring individuals to show “proper cause” before they could be licensed to carry a concealed weapon in most public places violated the Second and Fourteenth Amendments of the United States Constitution. Bruen, 142 S.Ct. at 2156. Justice Kavanaugh’s concurring opinion, joined by Chief

³ Existing firearms businesses may enjoy zoning protections under G.L. c. 40A, § 6. General Laws Chapter 40A, Section 6 provides that a zoning by-law “shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing” for the by-law change. In light of the Section 6’s protections for existing uses and structures, the Town should consult closely with Town Counsel regarding the application of Article 10.

Justice Roberts, also reaffirmed the Court's prior holdings in District of Columbia v. Heller, 554 U.S. 570, 626-27 & n.26 (2008), and McDonald v. City of Chicago, 561 U.S. 742, 786 (2010) (plurality opinion), that certain gun regulations, including those that: (1) prohibit the possession of firearms by felons and the mentally ill; (2) forbid the carrying of firearms in sensitive places such as schools and government buildings; and (3) impose conditions and qualifications on the commercial sale of arms, are presumptively lawful. Id. at 2162.

Because Bruen involved the constitutionality of a handgun licensing law and did not limit a municipality's zoning power to regulate the siting and operation of firearms business, the Bruen Court's holding does not provide grounds for this Office to disapprove Article 10. The Town should consult with Town Counsel with any questions on the scope of the Court's holding in Bruen.⁴

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

Kelli E. Gunagan

By: Kelli E. Gunagan
Municipal Law Unit
10 Mechanic Street, Suite 301
Worcester, MA 01608
(508) 792-7600

cc: Town Counsel Thomas J. Harrington

⁴ The Town may also wish to consult the advisory issued by the AGO and the Executive Office of Public Safety and Security that includes guidance on how to apply the state's firearms licensing laws in light of the Bruen decision. The advisory may be found here: [download \(mass.gov\)](#). The Town should consult with Town Counsel with any questions on this advisory.



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November 20, 2023

Eva K. Szkaradek, Town Clerk
Town of Acton
472 Main Street
Acton, MA 01720

**Re: Acton Annual Town Meeting of May 1, 2023 --- Case # 10988
Warrant Articles # 15, 16, and 17 (Zoning)
Warrant Articles # 12, 13, 18, and 20 (General) ¹**

Dear Ms. Szkaradek:

Article 15 - Under Article 15 the Town voted to amend its zoning by-laws to allow Firearm Businesses (as defined in the by-law) by special permit in two zoning districts but limit the number of allowed Firearm Businesses to no more than two at any given time. We approve Article 15 because it does not conflict with the Constitution or laws of the Commonwealth. See Amherst v. Attorney General, 398 Mass. 793, 795-96 (1986) (requiring inconsistency with state law or the Constitution for the Attorney General to disapprove a by-law). We have also analyzed how such a limit on Firearms Businesses may be impacted by the U.S. Supreme Court's decision in New York State Rifle & Pistol Association v. Bruen, 142 S.Ct. 2111 (2022) (overturning New York state gun licensing statute because of conflict with Second and Fourteenth Amendments). As explained below, we determine that Bruen does not preclude the Town from imposing Article 15's cap on Firearms Businesses.

In this decision we briefly describe the by-law amendments adopted under Article 15; discuss the Attorney General's limited standard of review of town by-laws under G.L. c. 40, § 32; and explain why, based on that standard, we approve Article 15. ²

¹ In a decision issued to the Town on August 21, 2023, we approved Articles 12, 16, 17, and 20; took no action on Article 18 because it was a personnel by-law amendment that is exempt from the Attorney General's review; by agreement with Town Counsel under G.L. c. 40, § 32, extended our deadline for a decision on Article 13 for an additional thirty days until September 20, 2023; and by agreement with Town Counsel under G.L. c. 40, § 32, we extended our deadline for a decision on Article 15 for an additional ninety days until November 19, 2023. In a decision issued on September 20, 2023, we approved Article 13.

² Although this is the first decision involving a limit on the number of special permits for firearm

We emphasize that our decision implies no agreement or disagreement with any policy views that may have led to the passage of the by-law amendments. The Attorney General’s limited standard of review requires her to approve or disapprove the by-law text based solely on its consistency with state law and not on any policy views she may have on the subject matter or wisdom of the by-law text. Amherst, 398 Mass. at 795-96, 798-99.

I. Description of Article 15

Under Article 15 the Town amended Section 3.5, “Business Uses” to add a new subsection 3.5.26 that defines “Firearm Business” as follows:

3.5.26 Firearm Business - An indoor retail or wholesale operation involving the purchase or sale of Firearms and Ammunition. Accessory sale of Firearm Accessories including but not limited to bags, siting systems, slings and scabbards, or maintenance kits; any retail or manufacturing operation involving the repairing, altering, cleaning, polishing, engraving, bluing or performing of any mechanical operation on any Firearm. Sale of conversion devices such as an auto sear, fuel filters or solvent filters, trigger switches or similar products that when combined create an illegal weapon are not allowed.

Under Article 15 the Town also amended Section 3’s “Table of Principal Uses,” to insert a new line for “Firearm Business” that allows such businesses by special permit in the Town’s SM and TD Districts and prohibit firearm businesses in all other districts.

Article 15 further amends Section 3 to add a new subsection 3.13, “Special Provisions for Firearm Business,” that imposes special permit application requirements and various location, lighting, screening, and signage requirements. The new subsection 3.13 also imposes operational requirements on Firearm Businesses, including (1) imposing limits on the hours of operation (8 a.m. to 8 p.m.); (2) prohibiting subleases between firearm businesses; (3) imposing insurance requirements; (4) requiring security, operation, and management plans; and (5) limiting access to minors. See subsection 3.13.4.2.

Under the new subsection 3.13, the Special Permit Granting Authority (SPGA) may grant a special permit for a firearm business if the SPGA determines that the application meets the: 1) generally applicable special permit requirements in Section 10.3 of the Town’s existing by-laws; and 2) additional requirements of subsection 3.13. Subsection 3.13.4.4, “Limitation and Termination of Special Permit,” limits the number of special permits the SPGA may grant for firearm businesses as follows:

businesses, we have approved other firearm business zoning by-laws in decisions issued to the Towns of: Littleton on May 25, 2023 (Case # 10868); Plainville on November 16, 2022 (Case # 10669); Wellesley on October 27, 2022 (Case # 10496); Brookline on June 23, 2022 (Case # 10476); Westwood on November 23, 2021 (Case # 10145); and Dedham on June 15, 2020 (Case # 9741).

No more than two Firearm Businesses are allowed within the Town of Acton at any given time. A Special Permit for Firearm Business is not transferable upon a sale, transfer, or assignment of the Firearm Business. A special permit for a Firearm Business shall be terminated for violation M.G.L. c. 140 SS 122B, 130, 131N, or similar laws in other states. Upon expiration or cancellation of the policy of insurance as required by Section 3.13.4.2.c, and if no additional insurance is obtained, the special permit shall be terminated.

II. The Attorney General’s Standard of Review of Zoning By-laws

Our review of Article 15 is governed by G.L. c. 40, § 32. Under G.L. c. 40, § 32, the Attorney General has a “limited power of disapproval,” and “[i]t is fundamental that every presumption is to be made in favor of the validity of municipal by-laws.” Amherst, 398 Mass. at 795-96. The Attorney General does not review the policy arguments for or against the enactment. Id. at 798-99 (“Neither we nor the Attorney General may comment on the wisdom of the town’s by-law.”) “As a general proposition the cases dealing with the repugnancy or inconsistency of local regulations with State statutes have given considerable latitude to municipalities, requiring a sharp conflict between the local and State provisions before the local regulation has been held invalid.” Bloom v. Worcester, 363 Mass. 136, 154 (1973). “

Article 15, as an amendment to the Town’s zoning by-laws, must be accorded deference. W.R. Grace & Co. v. Cambridge City Council, 56 Mass. App. Ct. 559, 566 (2002) (“With respect to the exercise of their powers under the Zoning Act, we accord municipalities deference as to their legislative choices and their exercise of discretion regarding zoning orders.”). When reviewing zoning by-laws for consistency with the Constitution or laws of the Commonwealth, the Attorney General’s standard of review is equivalent to that of a court. “[T]he proper focus of review of a zoning enactment is whether it violates State law or constitutional provisions, is arbitrary or unreasonable, or is substantially unrelated to the public health, safety or general welfare.” Durand v. IDC Bellingham, LLC, 440 Mass. 45, 57 (2003). However, a municipality has no power to adopt a zoning by-law that is “inconsistent with the constitution or laws enacted by the [Legislature].” Home Rule Amendment, Mass. Const. amend. art. 2, § 6.

III. Article 15 Does Not Conflict with the Supreme Court’s Holding in New York State Rifle & Pistol Association v. Bruen

We have analyzed the question whether Article 15’s validity is affected by the United States Supreme Court’s decision in New York State Rifle & Pistol Association v. Bruen, 142 S.Ct. 2111 (2022). In Bruen, the Court held that New York’s handgun licensing law requiring individuals to show “proper cause” before they could be licensed to carry a concealed weapon in most public places violated the Second and Fourteenth Amendments of the United States Constitution. Bruen, 142 S.Ct. at 2156. Justice Kavanaugh’s concurring opinion, joined by Chief Justice Roberts, also reaffirmed the Court’s prior holdings in District of Columbia v. Heller, 554 U.S. 570, 626-27 & n.26 (2008), and McDonald v. City of Chicago, 561 U.S. 742, 786 (2010) (plurality opinion), that certain gun regulations, including those that: (1) prohibit the possession of firearms by felons and the mentally ill; (2) forbid the carrying of firearms in sensitive places such as schools and government buildings; and (3) impose conditions and qualifications on the commercial sale of arms, are presumptively lawful. Id. at 2162. Because Bruen involved the

constitutionality of a handgun licensing law and did not limit a municipality's zoning power to regulate the siting and operation of a firearm business, the Bruen Court's holding does not provide grounds for this Office to disapprove Article 15. The Town should consult with Town Counsel with any questions on the scope of the Court's holding in Bruen.³

We have also considered the question whether the limit on the number of Firearm Businesses that can operate in Town poses any conflict with state or federal law and determine that it does not. The limitation does not amount to a complete ban on Firearm Businesses in the Town and thus cannot be said to constrain any resident's ability to purchase firearms in the Town. See Teixeira v. County of Alameda, 873 F.3d 670, 680 (9th Cir. 2017) ("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.") see also Second Amendment Arms v. City of Chicago, 135 F. Supp.3d 743, 754 (N.D. Ill. 2015) ("[A] slight diversion off the beaten path is no affront to . . . Second Amendment rights."). Moreover, courts have consistently upheld municipalities' authority to impose traditional zoning restrictions on firearms-related land uses. See, e.g., Ezell v. City of Chicago, 651 F.3d 684 (7th Cir. 2011) (although a complete ban on firing ranges was unconstitutional, City retained power to adopt zoning and safety regulations governing operation of firing ranges); see also Teixeira, 873 F.3d 670 (upholding a 500-foot buffer restriction between gun store and various other uses because it was not a total ban on gun sales or purchases). Although we determine that the limitation on special permits for Firearm Businesses in the Town does not conflict with state or federal law, we encourage the Town to consult closely with Town Counsel during the special permit application process to ensure the by-law is applied in a lawful manner.

IV. The Town Must Apply Article 15 Consistent with State Laws Applicable to Firearm Dealers

In applying the by-law, the Town should also be mindful of the various state laws and regulations governing the safety of firearm businesses and the licensing requirements for gun dealers. Those laws include (but are not limited to) the requirements in G.L. c. 140, § 122 (licenses to sell firearms), § 122B (licenses to sell ammunition), § 123 (imposing conditions on firearm sales licenses issued under G.L. c. 140, § 122), and 940 CMR 16.00 *et seq.* (imposing conditions on the sale of handguns in Massachusetts).⁴

General Laws Chapter 140, Section 122 requires a license to sell firearms and Section 122B requires a license to sell ammunition. A license issued under Section 122 and 122B must "specify the street and number of the building where the business is to be carried on." It is not clear whether

³ The Town may also wish to consult the advisory issued by the AGO and the Executive Office of Public Safety and Security that includes guidance on how to apply the state's firearms licensing laws in light of the Bruen decision. The advisory may be found here: <https://www.mass.gov/doc/ago-eopss-ltc-guidance/download>. Town should consult with Town Counsel with any questions on this advisory.

⁴ There is also pending legislation regarding firearms and firearm businesses that the Town should discuss with Town Counsel. See, e.g., HB 4135 <https://malegislature.gov/Bills/193/H4135/Amendments/House>

the denial of a special permit or the revocation of a special permit previously granted might have the unintended effect of invalidating a dealer's license if the dealer no longer has the right to operate at the address included on their license. The Town should discuss this issue in more detail with Town Counsel and should consult closely with Town Counsel when it applies subsection 3.13's special permit requirements.⁵

V. Subsection 3.13.4.4's Provisions Regarding the Termination of Special Permits Must be Applied Consistent with the Special Permit Granting Authority's Authority to Revoke Special Permits

Subsection 3.13.4.4 authorizes a firearm business' special permit to "terminate" in two instances: (1) if there are violations of G.L. c. 140, §§ 122B, 130, or 131N or similar laws in other states or (2) if the required insurance is cancelled or expires. See subsection 3.13.4.4.

A special permit granting authority does have the power to revoke a special permit. See, e.g., Copeland v. Town of Nantucket, 24 Mass. L. Rptr. 268, * 4 (2008) (Planning Board could revoke special permit for failure to comply with intensity regulations); White Sands Beach Club, Inc. v. Board of Appeal for the Town of Truro, 18 Mass. L. Rptr. 621, * 3 (2004) (Board of Appeals had inherent authority to revoke 1996 special permit); and Hinchliffe v. Koning, 3 Mass. L. Rptr. 229, * 3 n.1 (1994) (Board of Appeals and not the Building Commissioner had power to revoke special permit). However, a by-law cannot require the "termination" or revocation of a special permit in the absence of a vote to do so by the SPGA. In addition, the by-law is silent as to any notice and hearing process prior to revoking a special permit or otherwise rendering a special permit "terminated." The Town should consult with Town Counsel regarding the proper application of subsection 3.13.4.4.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

⁵ Existing firearm businesses may also have zoning protections under G.L. c. 40A, § 6. General Laws Chapter 40A, Section 6 provides that a zoning by-law "shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing" for the by-law change. In light of the Section 6's protections for existing uses and structures, the Town should consult closely with Town Counsel regarding the application of Article 15.

Very truly yours,

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

Kelli E. Gunagan

By: Kelli E. Gunagan
Municipal Law Unit
10 Mechanic Street, Suite 301
Worcester, MA 01608
(508) 792-7600

cc: Town Counsel Nina Pickering-Cook

Attachment10.d: KP-#895720-v1- Relevant_MLU_Decisions_as_of_12-18-23 (6066 : Firearms bylaw discussion)

MEMO

To: Select Board, Town Manager Sheehan

From: Len Simon

Re: Permitting gun shops in Sudbury

Date: December 18, 2023

A SUBCOMMITTEE IS NECESSARY TO STUDY THE ISSUE OF GUN SHOPS IN SUDBURY, AND PROVIDE RECOMMENDATIONS, BEFORE THE SELECT BOARD CONSIDERS A TOWN MEETING ARTICLE

The full Select Board should not consider a town meeting article that would permit gun shops to open in Sudbury until the Select Board has appointed a subcommittee that holds noticed public meetings, takes into account citizens' concerns, and makes recommendations regarding permitting of gun shops in Sudbury.

Mr. Russo, acting as a committee of one, is no substitute for an open and transparent process when it comes to permitting gun shops in Sudbury.

UNANSWERED QUESTIONS

I have a number of questions and concerns regarding Mr. Russo's proposal for a zoning regulation to permit the opening of gun shops in Sudbury. These questions should be answered at an open meeting of the Select Board before it takes up the highly controversial matter of permitting gun shops in Sudbury.

1. Who appointed Mr. Russo a committee of one to investigate a bylaw allowing a gun shop in Sudbury?
2. Shouldn't question involving a major public issue, one involving public safety, with the potential for a mass shooting be dealt with by the Select Board as a whole, or at least a subcommittee which would be subject to the Open Meeting Law, and have minutes for the residents to read?
3. Who gave Mr. Russo authorization to communicate with the Giffords Law Center on his own?
4. Mr. Russo's communications and actions have been conducted out of public view, and are non-transparent. What did he tell the Giffords Law Center, or other such organizations, and what he represent the town's positions to be?
5. What representations has Mr. Russo made to the Giffords law center, or any other such group, regarding the position of the Select Board, Town Manager, or residents of the Town of Sudbury.

REQUEST FOR DOCUMENTS IS PENDING

A request for documents regarding Mr. Russo's communications with the Giffords Law Center and any other such group he may have communicated with has been made to the Office of the Select Board. To date, there has been no response to this request. Any discussion about gun shops should wait until the request has been answered and the documents made available for review discussion.

LEGAL ISSUES REGARDING GUN SHOPS PERMITTING ARE UNRESOLVED

The legal questions regarding guns shops are still working their way through the courts. It would be prudent to wait until the issues are clearer regarding permitting gun shops, because once a right is given, it is virtually impossible to take away. That is one of the lessons from Newton. Sudbury would lose nothing by waiting for further clarification from the courts and legislative bodies.

SUDBURY AND NEWTON ARE NOT COMPARABLE

Newton's gun shop and gun control situation is not comparable to Sudbury's because Newton already allowed gun shops, and it was merely trying to control the damage and their locations. The situations are not comparable. Trying to compare Sudbury with Newton is like comparing apples and oranges. It doesn't work.

Every Newton resident who talked about gun shops was opposed to them, and was choosing the lesser of two evils: an outright ban or limiting locations.

NO THREAT TO SUDBURY BY MAINTAINING THE STATUS QUO

The issue in Sudbury is different: No one has tried to open a gun shop in Sudbury for at least 10 years. The real question is: Should Sudbury continue on its present course and leave the issue of gun shops alone? OR, Should Sudbury throw out the welcome mat and say to a prospective gun shop –'You are welcome to open up in Industrial District 4. There are 2 parcels there that would be just fine for a gun shop.'

The proposed gun shop location in ID-4 is across Route 20 from Alta Oxbow, the largest residential development in Wayland, with over 200 residences. Is Mr. Russo saying, 'OK for a gun shop in your neighborhood, but not in mine? Too bad for Wayland.'

CONCLUSIONS

It would be premature for the Select Board to discuss and debate permitting gun shops at its December 19 meeting until these questions have been answered by Mr. Russo, other Select Board members, and an open and transparent discussion can be had. Having an important policy discussion affecting the entire town, with safety ramifications for our children, on a highly controversial subject should only be done when the issues have a fair opportunity for debate. For now, only Mr. Russo's position is on the agenda.

Opinions and statements are only useful when you know what the question was. We don't know what Mr. Russo's conversations were, and how they were couched. Therefore, we are unable to assess the accuracy of the responses he is alleged to have received. Mr. Russo's communications and methodology remain unclear.

Does the Select Board genuinely wish to take a position on a high-profile town meeting article, involving lethal weapons and children's safety, without having heard from a subcommittee?

December 14, 2023

Memo from Select Board member Charlie Russo recapping a line-by-line review of Sudbury's proposed firearm business regulation bylaw with Allison Anderman, senior counsel and director of local policy for the Gifford Law Center to Prevent Gun Violence.

Regarding the proposed firearm business zoning bylaw, I reviewed it with Allison Anderman, senior counsel and director of local policy for the Gifford Law Center to Prevent Gun Violence. Overall, she thought it well done - kudos to Town Manager Andy Sheehan for putting something together so quickly on his own. She provided the attached model dealer local bylaw "template" which is specific to California, but has some requirements we might want to incorporate. She gave four main pieces of feedback:

1. Suggested keeping the opening times (now limited to Monday-Saturday, 10:00AM-5:00PM and closed on Sundays) consistent with what is available to other businesses in Town.
2. Suggested 2255.d. - after hours storage - could be and should be made stronger, using the Gifford Center template as a base, although that cites some state-specific standards. This was the area she most recommended strengthening.
3. Suggested 2258 - minimum ages - be specified for businesses where 51% or more of revenue is generated from firearm sales. Dick's Sporting Goods is an example of a store where kids would be prohibited from entering under this wording.
4. 2261.b. - places with minimum offsets from firearm stores – she suggested the list of locations might include stores that sell alcohol.

Other feedback was to note that the insurance requirements are kind of a red herring, as there are federal laws giving firearm sellers immunity from being sued after a sale in case of a tragedy, but she didn't see any harm in leaving it in.

(<https://giffords.org/lawcenter/gun-laws/policy-areas/other-laws-policies/gun-industry-immunity/>)

Importantly, she didn't think the geography/placement of the stores mattered so much, so long as they were out of residential areas and the signage was controlled. She notes that the firearm shops themselves aren't radioactive or contagious, and crime doesn't generally occur in firearm shops during business hours. In terms of reducing violence/enhancing public safety, it's the after-hours lock up she emphasized, to prevent stolen firearms, which are much more likely to be used in crimes. Combined with operational and inspectional requirements as proposed, the potential for sales that result in a tragedy are tremendously decreased.

And while she noted that municipalities can act to enhance public safety, she stressed that overt discrimination against a particular kind of business, however distasteful, opens us up to risk – it is legal to regulate to improve public safety, but cautioned against overt animus against any kind of business.

She emphasized that if we instituted a special permit requirement, reserve the right to conduct frequent inspections, require strong after-hours storage requirements, and combine with all the other requirements, then a cost-conscious businessperson might consider other locations to site their business, while anyone willing/able to meet the stringent requirements set forth probably won't present a public safety issue. Having a special permit requirement, compared to by-right zoning, is the strongest defense we can have to ensure public safety.

Charlie Russo

**MODEL LAW
REGULATING FIREARMS DEALERS AND AMMUNITION SELLERS
(LOCAL GOVERNMENTS IN CALIFORNIA)**

March 2023¹

About Giffords Law Center and Our Model Laws

Giffords Law Center to Prevent Gun Violence (“Giffords Law Center”) is a non-profit organization focused on ending the epidemic of gun violence in America. Formed in the wake of the July 1, 1993 assault weapon massacre at a law firm in San Francisco, and renamed Giffords Law Center in 2017 after joining forces with former congresswoman Gabby Giffords, the organization is now the premier clearinghouse for information about federal, state, and local firearms laws and Second Amendment litigation nationwide.

Giffords Law Center serves governmental entities and activists throughout the United States. Our services include legal and technical assistance in the form of legal research and analysis, development of regulatory strategies, legislative drafting, and in certain circumstances, calling upon our network of attorney members to help secure *pro bono* litigation assistance. We also engage in educational outreach and advocacy, producing reports, analyses and model laws. Our website, giffordslawcenter.org, is the most comprehensive resource on U.S. firearm laws in either print or electronic form.

Model laws provide a starting point: a framework from which state or local legislation can be drafted, reviewed, debated, and ultimately adopted. California jurisdictions using this model must integrate it with existing ordinances as appropriate.

This report and model law do not offer, and are not intended as, legal advice, and should not be regarded as such. Any jurisdiction considering the adoption of this model law should consult with counsel.

Executive Summary

Giffords Law Center has developed a model law for California jurisdictions to regulate firearms

¹ Please contact Giffords Law Center to obtain information about any changes to state firearm laws that have occurred since this model law was last updated.

dealers and ammunition sellers. As detailed in the findings below, federal and state regulation of these entities is currently inadequate to protect the public safety.

Although federal law requires firearms dealers to obtain a license from the Bureau of Alcohol, Tobacco, Firearms & Explosives (“ATF”), ATF does not have the resources or authority to properly oversee the more than 134,000 firearms dealers, manufacturers, collectors, and others that it licenses (“FFLs”).² Multiple research reports have concluded that routine inspections of gun dealers can reduce the number of guns sold by FFLs that end up being used in crimes. According to a former ATF director, the agency’s goal is to inspect each FFL at least once every three years.³ Yet, on average, ATF is only able to inspect each FFL once every seven years.⁴

In addition, federal law is silent regarding many important aspects of the dealer’s business, such as its location (leaving dealers free to operate out of their homes and near schools and other places children frequent) and on-site security requirements. Although California law is stronger than federal law in this area it, too, fails to adequately ensure that gun dealers operate responsibly.

ATF has found that FFLs are the largest source of trafficked firearms nationwide. Between 2016 and 2020, FFLs reported 39,147 stolen and 6,052 lost firearms from their inventories.⁵ Of the total FFL firearms reported lost during that period, only 2.6% (1,210) have been recovered.⁶

Unfortunately, problems with funding and understaffing have contributed to a significant lag in ATF inspections and subsequent compliance issues. In FY 2022, there were only 816 investigators responsible for inspecting 136,563 active FFLs, with ATF ultimately finding a compliance rate of less than 55%. Nevertheless, in that same year ATF revoked only .01% of all

² U.S. Dep’t of Justice, Bureau of Alcohol, Tobacco, Firearms & Explosives, *Report of Active Firearms Licenses - License Type by State Statistics* (March 2023), <https://www.atf.gov/firearms/docs/undefined/0323-ffl-list-type-statepdf/download>.

³ U.S. Office of the Inspector General, Report No. I-2004-005, *Inspections of Firearms Dealers by the Bureau of Alcohol, Tobacco Firearms and Explosives* iii (July 2004), available at: <https://oig.justice.gov/reports/ATF/e0405/final.pdf>.

⁴ Brian Freskos et al., *The ATF Catches Thousands of Lawbreaking Gun Dealers Every Year. It Shuts Down Very Few*, The Trace & USA TODAY (May. 26, 2021), at <https://www.usatoday.com/in-depth/news/investigations/2021/05/26/gun-dealers-let-off-hook-when-atf-inspections-find-violations/7210266002/>.

⁵ U.S. Dep’t of Justice, Bureau of Alcohol, Tobacco, Firearms & Explosives, *National Firearms Commerce and Trafficking Assessment; Firearms in Commerce* 104 (May 2022), available at <https://www.atf.gov/firearms/docs/report/national-firearms-commerce-and-trafficking-assessment-firearms-commerce-volume/download>.

⁶ *Id.* at 109.

licenses.⁷

As of March 2023, there were 2,559 dealers, manufacturers, and pawnbrokers federally licensed to sell firearms in California.⁸ California is among a minority of states that impose additional licensing requirements on firearms dealers⁹, but even there the standards are minimal. As confirmed by a California Court of Appeal in *Suter v. City of Lafayette*, 67 Cal. Rptr. 2d 420 (Cal. Ct. App. 1997), California law authorizes local regulation in this area. The California Penal Code also emphasizes the authority of local jurisdictions to regulate firearms dealers. Dozens of local governments in California have exercised this authority and now require firearms dealers to obtain a license or permit and impose additional requirements on dealers.

This model law is intended to fill the gaps in the federal and state regulatory oversight of firearms dealers and ammunition sellers. More specifically, the goals of this model law are to help: 1) ensure that dealers' operations will not be detrimental to the public health and safety; 2) prevent and detect illegal trafficking of firearms and ammunition by dealers and their employees; 3) prevent the loss and theft of firearms and ammunition from dealers; and 4) prevent and detect the sale of firearms and ammunition by dealers to persons who are prohibited by law from possessing these items.

The principal elements of this model law include:

- Findings. Findings describe the legal background and policy basis for the law.
- Law Enforcement Permit. Anyone selling firearms or ammunition is required to obtain a local law enforcement permit.
- On-site Security. Security standards for the business premises include the maintenance of an alarm system and surveillance cameras, and requirements for the safe storage of firearms when the store is both open and closed for business.
- Inventory Reports. Firearms dealers must submit a report to law enforcement detailing their inventory every six months.
- Land Use Permit. Firearms dealers and ammunition sellers must obtain a land use permit to ensure that the location of the business complies with the jurisdiction's general plan and the

⁷ U.S. Dep't of Justice, Bureau of Alcohol, Tobacco, Firearms & Explosives, *Fact Sheet – Facts and Figures for Fiscal Year 2022* (January 2023), <https://www.atf.gov/resource-center/fact-sheet/fact-sheet-facts-and-figures-fiscal-year-2022>.

⁸ U.S. Dep't of Justice, Bureau of Alcohol, Tobacco, Firearms & Explosives, *State Federal Firearms Listings: California* (March 2023), https://www.atf.gov/firearms/listing-federal-firearms-licensees/state?field_ffl_date_value%5Bvalue%5D%5Byear%5D=2023&field_ffl_date_month%5Bvalue%5D%5Bmonth%5D=3&field_state_value=CA (the number given above does not include Type 03 or Type 06 licenses).

⁹ See *Gun Dealers in California*, Giffords Law Center (last updated Jan. 5, 2023), <https://giffords.org/lawcenter/state-laws/gun-dealers-in-california/>.

- business operations will not be detrimental to the public health and safety of those nearby.
- Prohibition on Operating in Sensitive Areas. To qualify for a land use permit, firearms dealers and ammunition sellers may not operate in residential neighborhoods or near other sensitive areas, such as schools, daycare centers, or parks.¹⁰

This report is based on Giffords Law Center’s review of existing laws, judicial decisions, policy research, studies, and other gun violence prevention data, and it should answer many questions about the options available to communities regarding firearms dealers and ammunition sellers.

This report contains our nonpartisan analysis, study, and research on gun violence prevention case law and policies and is intended for broad distribution to the public. Our presentation of this report is based upon our independent and objective analysis of the relevant law and pertinent facts and should enable public readers to form their own opinions and conclusions about the merits of this sample legislation.

Part I of these materials provides the text of the model law. Part II provides examples of legal challenges typically brought against firearms laws and explains that in the majority of cases, courts reject these arguments. Part III describes and responds to anticipated opposition arguments.

Giffords Law Center is available to provide additional legal research, analysis, and drafting assistance to those seeking to enact a law regulating firearms dealers and ammunition sellers, or other laws to reduce gun violence. Please see giffordslawcenter.org for more information about our services and contact us at aanderman@giffords.org if we can be of assistance.

¹⁰ As discussed in Article 2, jurisdictions enacting this element of the model law should concurrently amend their local zoning codes pursuant to Cal. Gov’t Code §§ 65850-65861.

TABLE OF CONTENTS

About Giffords Law Center and Our Model Laws.....	page 1
Executive Summary.....	page 1
I. Text of Model Law.....	page 6
II. Common Legal Challenges to Gun Violence Prevention Laws.....	page 31
A. The Second Amendment	page 31
B. Equal Protection.....	page 33
C. Due Process.....	page 35
D. The Fourth Amendment.....	page 37
E. Preemption and Local Authority to Regulate Firearms.....	page 38
1. Federal Preemption.....	page 38
2. State Preemption.....	page 40
III. Issues Related to the Regulation of Existing Firearms Dealers.....	page 42
A. Non-Zoning Regulations.....	page 42
B. Zoning Regulations.....	page 44
Conclusion	page 45

I. Text of Model Law
**CHAPTER 1 REGULATION OF FIREARMS DEALERS AND AMMUNITION
SELLERS**
ARTICLE 1 SALE OF FIREARMS AND AMMUNITION

- Sec. 1 Definitions**
- Sec. 2 Law enforcement permit**
- Sec. 3 Application for permit**
- Sec. 4 Investigation by Chief of Police/Sheriff***
- Sec. 5 Grounds for permit denial or revocation**
- Sec. 6 On-site security**
- Sec. 7 Restricted admittance of minors and other prohibited purchasers**
- Sec. 8 Inventory reports**
- Sec. 9 Display of law enforcement permit**
- Sec. 10 Issuance of law enforcement permit – Duration**
- Sec. 11 Nonassignability**
- Sec. 12 Compliance by existing businesses**
- Sec. 13 Law enforcement inspections**
- Sec. 14 Posted warnings**
- Sec. 15 Violations**
- Sec. 16 Report of permit revocation to federal and state authorities**
- Sec. 17 Hearing for permit denial or revocation**
- Sec. 18 Severability clause**

ARTICLE 2 LAND USE PERMITS

- Sec. 1 Firearm and ammunition sales**
- Sec. 2 Nonconforming uses**
- Sec. 3 Severability clause**

Findings

[Findings regarding the need for and benefits of these regulations should be included. Findings in support of a law are most effective when they are specific and localized. When possible, local data from law enforcement, the public health community, and the media should be added.

* Where the words “Chief of Police/Sheriff,” “City/County” or similar variations appear, simply select the appropriate designation for your jurisdiction.

General findings are provided below.]

Findings Regarding Gun Violence in General

Whereas, between 2016 and 2021, an average of 3,232 people died from firearm-related injuries in California a year.¹¹ According to the California Department of Public Health’s online injury data center (EpiCenter), between 2016–2021, there were 20,746 non–fatal hospitalizations and an additional 28,894 emergency department visits.¹²

Whereas, in 2021, 1,863 homicides were committed with a firearm in California, comprising 74.6% of all homicides committed that year.¹³ Of those victims, 209 were 19-years-of-age or less.¹⁴

Findings Regarding Current Federal Regulation of Firearms Dealers

Whereas, federal regulation of firearms dealers and ammunition sellers is currently inadequate to protect the public safety.

Whereas, although federal law requires firearms dealers to obtain a license from the Bureau of Alcohol, Tobacco, Firearms & Explosives (“ATF”),¹⁵ ATF does not have the resources or authority to properly oversee the nearly 134,000 firearms dealers, manufacturers, collectors, and others that it licenses (“FFLs”).¹⁶

Whereas, ATF faces numerous obstacles that limit its ability to enforce the law; for example, ATF may conduct only one unannounced inspection of each FFL per year, the burden of proof for ATF’s prosecution and revocation of licenses is extremely high, serious violations of firearms law have been classified as misdemeanors rather than felonies, and ATF has historically been grossly understaffed.¹⁷

¹¹ Cal. Dep’t of Pub. Health, *EpiCenter: California Injury Data Online* (Last updated Dec. 15, 2022), available at <https://skylab4.cdph.ca.gov/epicenter/>.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ 18 U.S.C. § 922(a)(1)(A).

¹⁶ U.S. Dep’t of Justice, Bureau of Alcohol, Tobacco, Firearms & Explosives, *Complete Federal Firearms Listings* (as of March 2023), https://www.atf.gov/firearms/listing-federal-firearms-licensees/complete?field_ffl_date_value%5Bvalue%5D%5Byear%5D=2023&ffl_date_month%5Bvalue%5D%5Bmonth%5D=3.

¹⁷ U.S. Dep’t of Justice Office of the Inspector General Evaluation and Inspections Division, *Firearms & Explosives, Inspections of Firearms Dealers by the Bureau of Alcohol, Tobacco, Firearms & Explosives*, (July 2004), available at <https://oig.justice.gov/reports/ATF/e0405/final.pdf>.

Whereas, despite an over 800% increase in workload volume since 2005, ATF has only seen staffing needs increased to address their FY 2013 volume.¹⁸ In 2022 ATF employed only 816 field Independent Operations Investigators (“IOIs”) who were responsible for regulating 88,302 active FFLs (ratio of one IOI for every 135 FFLs).

Whereas, as a result of inadequate staffing, ATF has been unable to inspect the majority of all FFL dealers for the last decade, inspecting just 15% of active dealers annually between 2010 and 2019, which averages to one visit every seven years.¹⁹ Despite massive surges in gun sales during the COVID-19 pandemic in the US,²⁰ the number of FFLs inspected decreased to a historic low of less than 6% of active licensees in 2020.²¹

Whereas, in 2004, the Office of the Inspector General (“OIG”) found that inspections by ATF are not fully effective for ensuring that FFLs comply with federal firearms laws.²² This has remained true. According to recent federal data, at least a third of all inspections between 2010–2019 (approximately 35,000) found that dealers had broken state or federal firearms law.²³

Whereas, a 2021 joint report by *USA Today* and *The Trace*, which analyzed over 2,000 ATF inspections between 2015-2017, found that ATF reports revealed flagrant dealer violations—such as selling weapons to convicted felons and domestic abusers, lying to investigators and fudging records to mask their unlawful conduct—that would in many cases have provided sufficient grounds for immediate license revocation.²⁴ In fact, reporters identified 138 reports in which ATF officials acknowledged that a dealer’s violations were severe enough for them to lose their licenses.²⁵ Yet, the agency revoked only 56 of those licenses and a majority were instead granted lesser penalties, ranging from temporary license suspensions to warning letters.²⁶

Whereas in 2022 there were 136,563 active FFLs, yet ATF conducted only 6,979 compliance inspections.²⁷ Despite a compliance rate under 55%, ATF revoked only 90 licenses—a rate of

¹⁸ U.S. Dep’t of Justice, Bureau of Alcohol, Tobacco, Firearms & Explosives, *Congressional Budget Submission: FY 2019* (Feb. 2018), at 46, available at <https://www.atf.gov/file/147951/download>.

¹⁹ Brian Freskos et al., *The ATF Catches Thousands of Lawbreaking Gun Dealers Every Year. It Shuts Down Very Few*, *The Trace & USA TODAY* (May. 26, 2021), at <https://www.usatoday.com/in-depth/news/investigations/2021/05/26/gun-dealers-let-off-hook-when-atf-inspections-find-violations/7210266002/>.

²⁰ Edward Helmore, *US Gun Sales Spiked During Pandemic and Continue to Rise*, *The Guardian* (May 21, 2021), <https://www.theguardian.com/us-news/2021/may/31/us-gun-sales-rise-pandemic>.

²¹ *National Firearms Commerce and Trafficking Assessment; Firearms in Commerce*, *supra* note 5 at 132.

²² *Inspections of Firearms Dealers by the Bureau of Alcohol, Tobacco, Firearms & Explosives*, *supra* note 3.

²³ Brian Freskos et al, *supra* note 4.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Fact Sheet - Facts and Figures for Fiscal Year 2022*, *supra* note 7.

less than .01% of all FFL's inspected.²⁸ Historically, even recommendations to revoke licenses are rare, with less than 1% (202) of such recommendations made during the five-year period between 2016-2020.²⁹

Whereas, ATF data indicates that FFLs are a major source of trafficked firearms nationwide. According to a recent analysis by the Center for American Progress, ATF reports show that between 2010-2020, more than 600,000 guns recovered by law enforcement originated out of state, a strong indication that the firearms were trafficked.³⁰ This same study found that between 2019-2020, the number of firearms purchased and used to perpetrate a crime within a relatively short period of time—usually within six months or less—increased by 90%.³¹

Whereas, between 2016 and 2020, FFLs reported 45,346 lost and 39,147 stolen firearms from their inventories.³² To reduce and prevent inventory losses and theft, ATF recommends educating dealers on how to secure their inventory and conducting inspections of FFL records. ATF stresses the importance of regular audits of FFL inventories.³³

Whereas, federal laws are silent regarding many important aspects of the dealer's business, such as its location (leaving dealers free to operate out of their homes and near schools and other places children frequent) and security requirements during business hours.

Whereas, an investigation by USA TODAY and The Trace from May 28, 2021, estimates that home dealers comprise around 60% of FFLs.³⁴

Findings Regarding Current State and Local Regulation of Firearms Dealers

Whereas, as of March 10, 2023, there were 9,672 individuals federally licensed to sell firearms in California.³⁵

²⁸ *Id.*

²⁹ *National Firearms Commerce and Trafficking Assessment; Firearms in Commerce*, *supra* note 5 at 133.

³⁰ Eugenio Weigend Vargas & Alex Barrio, *The United States Must Address Its Gun Trafficking Crisis*, Center for American Progress (June 16, 2022), <https://www.americanprogress.org/article/the-united-states-must-address-its-gun-trafficking-crisis/>.

³¹ *Id.*

³² *Id.*

³³ U.S. Dep't of Justice, Bureau of Alcohol, Tobacco, Firearms & Explosives, *Crime Guns Recovered and Traced Within the United States and Its Territories* 6 (January 2023), <https://www.atf.gov/firearms/docs/report/nfcta-volume-ii-part-iii-crime-guns-recovered-and-traced-us/download>.

³⁴ Nick Penzenstadler, 'Kitchen-Table' Gun Dealers Rack Up ATF Violations, *The Trace & USA TODAY* (May 28, 2021), <https://www.thetrace.org/2021/05/atf-inspections-kitchen-table-home-based-ffl/>.

³⁵ *Report of Active Firearms Licenses – License Type by State Statistics*, *supra* note 2.

Whereas, California is among a minority of states that impose licensing requirements on firearms dealers, but the standards are minimal.³⁶

Whereas, the Court of Appeals in *Suter v. City of Lafayette*, 67 Cal. Rptr. 2d 420, 428 (Cal. Ct. App. 1997) held that state law authorizes local governments in California to impose additional licensing requirements on firearms dealers.³⁷

Whereas, the California Penal Code requires local jurisdictions to accept applications for firearms dealer licenses and emphasizes the authority of cities and counties to regulate firearms dealers.³⁸

Whereas, FFLs are required by federal law to comply with all state and local dealer laws as a condition for retaining their federal licenses.³⁹

Whereas, the International Association of Chiefs of Police recommends that local governments impose their own licensing requirements on firearms dealers because local requirements can respond to specific community concerns, and local review of licensees provides additional resources to identify and stop corrupt dealers.⁴⁰

Whereas, a September 2010 report by Mayors Against Illegal Guns concluded that routine inspections of gun dealers provide law enforcement with more opportunities to “detect potential indications of illegal gun activity, including improper recordkeeping or a dealer whose gun inventory does not match their sales records.”⁴¹ The report presented data showing that states that do not permit or require inspections of gun dealers are the sources of crime guns recovered in other states at a rate that is 50% greater than states that do permit or require such inspections.

Whereas, recent studies have found that higher concentrations of gun dealers in and surrounding urban areas are associated with increased rates of violence, homicide, and robbery, which in turn disproportionately affect racial minorities.⁴²

³⁶ See Penal Code §§ 26500-26700.

³⁷ The court in *Suter* struck down a provision of Lafayette’s ordinance imposing additional security requirements on firearms dealers. That part of the opinion has been superseded by the adoption of Cal. Penal Code § 26890(b).

³⁸ See Penal Code § 26705.

³⁹ 18 U.S.C. § 923(d)(1)(F).

⁴⁰ International Association of Chiefs of Police (IACP), *Taking a Stand: Reducing Gun Violence in Our Communities* p. 14 (Sept. 2007), available at: http://www.theiacp.org/Portals/0/pdfs/GVR_A-page-iii_IACP-Taking-A-Stand.pdf.

⁴¹ Mayors Against Illegal Guns, *Trace the Guns: The Link Between Gun Laws and Interstate Gun Trafficking* 26-27 (Sept. 2010), at <http://www.tracetheguns.org/report.pdf>.

⁴² See Trent Steidley, David M. Ramey, Emily A. Shrider, Gun Shops as Local Institutions: Federal Firearms Licensees, Social Disorganization, and Neighborhood Violent Crime, 96 *Social Forces* 1, 265-298 (September

Whereas, no federal or California law imposes security requirements on firearms dealers during business hours or requires firearms dealers or ammunition sellers to install burglar alarms. California law explicitly allows local jurisdictions to impose security requirements on firearms dealers that are stricter or at a higher standard than those imposed by state law.⁴³

Whereas, violence in neighborhoods around schools continues to be a major public health problem among urban students. In one study of Boston neighborhoods, researchers noted that a significantly greater number of shootings were clustered within short distances from schools than would be expected and that 56% of schools in Boston had at least one shooting incident within 400 m, a distance that would take about 5 min to walk if traveling by foot.⁴⁴

Whereas, at least one academic study suggests that firearms dealers may attract individuals engaged in criminal activity to the communities in which they are located, not only because they are a high-value target for theft, but also because of firearms dealers' willingness to sell to "straw purchasers" who illegally buy for others.⁴⁵

Whereas, no federal or California law prohibits firearms dealers or ammunition sellers from operating in residential neighborhoods or near schools, daycare centers, parks, or other places children frequent, or requires firearms dealers or ammunition sellers to obtain a land use permit.

Whereas, California law requires firearms dealers to report the loss or theft of any firearm within 48 hours of discovery to the local law enforcement agency where the dealer's business premises are located but does not otherwise require dealers to provide inventory reports to local law enforcement agencies.⁴⁶

2017), <https://doi.org/10.1093/sf/sox039>. *See also*, Daniel C. Semenza, Richard Stansfield & Nathan W. Link, The Dynamics of Race, Place, and Homicide Context in the Relationship between Firearm Dealers and Gun Violence, *Justice Quarterly* (2020), DOI: 10.1080/07418825.2019.1707858 (finding "...a greater concentration of firearm dealers in surrounding counties increases the risk for firearm homicide with white victims. However, a greater concentration of firearm dealers within counties increases the risk for intimate partner homicide when the victim is Black").

⁴³ Cal. Penal Code § 26890(b).

⁴⁴ Gia Barboza, "A Secondary Spatial Analysis of Gun Violence Near Boston Schools: a Public Health Approach," *Journal of Urban Health* 95, no. 3 (2018): 344-360.

⁴⁵ Garen Wintemute, "Firearm Retailers' Willingness to Participate in an Illegal Gun Purchase," *Journal of Urban Health* 87, no. 5 (2010): 865-878.

⁴⁶ Cal. Penal Code § 26885.

Whereas, according to data from Giffords Law Center:⁴⁷

- 104 jurisdictions require firearms dealers to obtain a license or permit.
- Over 80 jurisdictions expressly prohibit firearms dealers from operating as a home occupation.
- 28 cities and six counties prohibit firearms dealers from being located near sensitive areas, such as daycare facilities, schools, parks, places of worship and community/recreation centers, and other places children frequent.

Findings Regarding Restricting Firearms Dealers in Residential Zones and Sensitive Areas

Whereas, the California Constitution gives cities and counties the power to pass zoning regulations by providing that they may “make and enforce within its limits all police, sanitary, and other ordinances and regulations not in conflict with general laws.”⁴⁸

Whereas, the California legislature has found that “the diversity of the state’s communities and their residents” requires that zoning policies “accommodate local conditions.”⁴⁹ Courts have held that “localities have been constitutionally endowed with wide-ranging discretion” to make zoning rules in light of particular community circumstances and concerns,⁵⁰ including public safety and aesthetic considerations.⁵¹

Whereas, the U.S. Supreme Court has held that localities enacting zoning laws must be given the chance to “experiment with solutions to admittedly serious problems.”⁵² Localities considering an “innovative solution” to reduce crime “may not have data” to directly prove “the efficacy of [their] proposal[s] because the solution would, by definition, not have been implemented previously.”⁵³

⁴⁷ *Communities on the Move*, Giffords Law Center (last visited April 2023),

<https://giffords.org/lawcenter/report/communities-on-the-move-local-gun-safety-legislation-in-california/>.

⁴⁸ Cal. Const. Art. XI, § 7; *see also DeVita v. County of Napa*, 9 Cal. 4th 763, 781-782 (Cal. 1995).

⁴⁹ Gov. Code, § 65300.7.

⁵⁰ *DeVita*, 9 Cal. 4th at 781-82.

⁵¹ *See, e.g., Teixeira v. Cnty. of Alameda*, 822 F.3d 1047, 1061 (9th Cir. 2016), *vacated by* 854 F.3d 1046 (9th Cir. 2016), *superseded by* 873 F.3d 670 (9th Cir. 2017) (en banc) (“reducing violent crime is without question a substantial interest” and “[p]reserving the appearance of a neighborhood may also be characterized fairly as a substantial interest”).

⁵² *Renton v. Playtime Theatres*, 475 U.S. 41, 52 (1986) (quoting *Young v. American Mini Theatres, Inc.*, 427 U.S. 50 (1976) (plurality opinion)).

⁵³ *City of L.A. v. Alameda Books*, 535 U.S. 425, 439-40 (2002) (plurality opinion).

Whereas, firearms dealers are a high-value target for criminals, and have often been magnets for break-ins, theft, and destruction of property.⁵⁴ According to ATF, a total of 4,060 firearms were reported as stolen (burglary, larceny, and robbery) from gun dealers in 2021.⁵⁵ And between 2017-2021, almost 34,000 were lost as the result of theft.⁵⁶

Whereas, ATF data revealed that over that same five-year period between 2017-2021, the total number of firearms stolen from California dealers was 887.⁵⁷

Whereas, in 2020, ATF Los Angeles Field Division Special Agent in Charge Monique Villegas stated “Firearms stolen from FFLs pose a threat to community safety as well as our law enforcement partners...Stolen firearms are crime guns. They fuel illicit trafficking and are used by violent criminals to terrorize our communities.”⁵⁸

Whereas, between 2020-2023, there were numerous reports of attempted and actual robberies and burglaries of firearms dealers in California. A sampling of incidents includes:

- 29 firearms stolen from Richardson Tactical in Hayward, CA. June 2020.⁵⁹
- 70 firearms, including 13 pistols stolen from Guns, Fishing and Other Stuff in Vacaville, CA. June 2020.⁶⁰
- Nine “long guns” were stolen from Alex Imports Gun Shop in La Mesa, CA. June 2020.⁶¹

⁵⁴ According to the Special Agent in Charge of ATF’s Sacramento office, “When people break into homes or businesses, guns are often the target. ... [O]f the commodities that we find that people that are involved in criminal activity are looking for, guns are very high on the list.” Lynn Walsh, Dave Manoucheri and Mari Payton, *Stolen Guns Fuel Underground Market For Criminals in California*, NBC7 San Diego, Aug. 9, 2016, <http://www.nbcsandiego.com/investigations/Stolen-Guns-Fuel-Underground-Market-For-Criminals-in-California-389352802.html>.

⁵⁵ U.S. Dep’t of Justice, Bureau of Alcohol, Tobacco, Firearms & Explosives, *Federal Firearms Licensee Theft/Loss Report - 2021* (last accessed Apr. 11, 2023), <https://www.atf.gov/resource-center/federal-firearms-licensee-theft-loss-report-2021>.

⁵⁶ U.S. Dep’t of Justice, Bureau of Alcohol, Tobacco, Firearms & Explosives, *Data and Statistics* (last accessed Apr. 11, 2023), <https://www.atf.gov/resource-center/data-statistics>.

⁵⁷ *Federal Firearms Licensee Theft/Loss Report – 2021*, *supra* note 56.

⁵⁸ KUSI Newsroom, *\$10,000 Reward for Information on Gun Store Burglary in La Mesa*, KUSI, Jun. 9, 2020, <https://www.kusi.com/10000-reward-for-information-on-gun-store-burglary-in-la-mesa/>.

⁵⁹ Jake Sheridan, *Amid Bay Area looting, Hayward gun store is robbed of 29 firearms*, LA Times, Jun. 4, 2020, <https://www.latimes.com/california/story/2020-06-04/amid-bay-area-looting-hayward-gun-store-robbed-of-29-firearms>.

⁶⁰ Rick Hurd, *Feds Indict Five Bay Area Residents with Stealing 70 Guns from North Bay Gun Store*, East Bay Times, Jun. 26, 2020, <https://www.eastbaytimes.com/2020/06/26/feds-indict-five-with-stealing-70-guns-from-bay-area-gun-store/>.

⁶¹ *\$10,000 Reward for Information on Gun Store Burglary in La Mesa*, *supra* note 59.

- Attempted smash-and-grab at Marin County Arms in Novato, CA. One rifle stolen. March 2021.⁶²
- Several handguns stolen during a burglary of The Gun Shop in El Centro, CA. June 2022.⁶³
- 40 firearms stolen in a smash-and-grab robbery from Whitten Sales in Garden Grove, CA. December 2021.⁶⁴
- Six loaded firearms stolen during burglary of gun store in San Diego County. January 2023.⁶⁵

Whereas, even one stolen gun can destroy many lives - one gun stolen from an FFL in Chicago was used to shoot 24 individuals - two fatally - in 27 separate shootings over the course of less than two years.⁶⁶

Whereas, a 2009 study found that gun homicide rates in major cities were higher in areas where firearm dealers were more prevalent, with the report's authors concluding that "it is possible that regulating the locations and activities of stores where firearms are sold is a way to curb homicide."⁶⁷

Whereas, the same study analyzed ATF data showing that guns "are often found to have been used for criminal purposes not far from the gun dealer where they were first obtained, and recent ATF data affirms that over one-third of traced crime guns are recovered by police within 10 miles of the FFL dealer where they were first purchased."⁶⁸ Firearms dealers' impact on the

⁶² *Car Driven Into Novato Gun Store in Attempted Robbery*, KPIX-CBS, Mar. 4, 2021, <https://sanfrancisco.cbslocal.com/2021/03/04/car-driven-into-novato-gun-store-in-apparent-robbery-attempt/>.

⁶³ *Read Offered for Info on El Centro Gun Store Thieves*, Holtville Tribune (June 22, 2022), <https://holtvilletribune.com/2022/06/22/reward-offered-for-info-on-el-centro-gun-store-thieves/>.

⁶⁴ Hayley Smith, *Thieves Make Off with 40 Guns in Late-Night Smash-and-Grab at Garden Grove Shop*, LA Times (Dec. 9, 2021), <https://www.latimes.com/california/story/2021-12-09/40-firearms-stolen-in-smash-grab-at-garden-grove-gun-shop>.

⁶⁵ Amber Coakley, *Suspected Gun Store Robber Arrested After Standoff with Law Enforcement*, Fox5 (Jan. 19, 2023), <https://fox5sandiego.com/news/local-news/suspected-gun-store-robber-arrested-after-standoff-with-law-enforcement/>.

⁶⁶ Jeremy Gorner, et al., *A gun was stolen from a small shop in Wisconsin. Officials have linked it to 27 shootings in Chicago*, Chicago Tribune (Sept. 21, 2021), <https://www.chicagotribune.com/news/criminal-justice/ct-stolen-gun-multiple-crimes-chicago-20210921-aiqhedihtnhrbnikogk26vgdcu-story.html>.

⁶⁷ *Id.* at 2 (observing that it is "helpful to adopt an urban planning perspective when considering the possibility that [federally licensed firearms dealers] could be impacting local homicide rates").

⁶⁸ Jeremy Gorner, *supra* note 67 at 7. See also, U.S. Dep't of Justice, Bureau of Alcohol, Tobacco, Firearms & Explosives, *Crime Guns Recovered and Traced Within the United States and Its Territories* (Jan. 11, 2023) at 36, available at <https://www.atf.gov/firearms/docs/report/nfcta-volume-ii-part-iii-crime-guns-recovered-and-traced-us/download>.

homicide rate thus “appears most likely to have an effect in the home or surrounding counties.”⁶⁹

Whereas, firearms dealers may attract individuals engaged in criminal activity to the communities in which they are located, not only because they are a high-value target for theft, but also because of firearms dealers’ willingness to sell to “straw purchasers” who illegally buy for others who are unauthorized to possess a gun.⁷⁰

Whereas, based on the above evidence, the presence of firearms dealers in residential neighborhoods and sensitive areas may endanger the public (and decrease the public’s sense of safety⁷¹) by increasing the risk of criminal activity, such as gun thefts, “smash-and-grab” robberies, trafficking, and straw buying, as well as violent crime, including gun homicide.

Findings Regarding Restricting Firearms Dealers in School Zones

Whereas, under the federal Gun-Free School Zones Act, the possession of firearms is generally prohibited in K-12 schools (including public, private, and parochial schools), and on public property located within school zones, defined to mean within 1,000 feet from the grounds of a school.⁷²

Whereas, federal law does not prohibit firearms dealers from operating on private property within 1,000 feet of the grounds of a school.⁷³ However, such a business location would mean that any customer who purchases a firearm from that business would likely (unless they fall within a statutory exception⁷⁴) be in violation of federal law immediately upon exiting the dealer’s property, because they would be entering a public sidewalk in a school zone with a firearm.⁷⁵

⁶⁹ Jeremy Goner, *supra* note 67.

⁷⁰ Garen Wintemute, *Firearm Retailers’ Willingness to Participate in an Illegal Gun Purchase*, 87 J. URB. HEALTH 865, 867, 872 (2010) (in a survey of California handgun dealers, 20.1% agreed to assist a potential buyer with a transaction that had many attributes of a straw purchase); *see also, supra* Freskos at note 16 (ATF data shows that licensed dealers are associated with the largest number of trafficked guns diverted from lawful commerce into the illegal market).

⁷¹ *See Friedman v. City of Highland Park*, 784 F.3d 406, 412 (7th Cir. 2015) (law that reduces the “perceived risk from a mass shooting, and mak[es] the public feel safer as a result” provides “a substantial benefit”).

⁷² 18 U.S.C. § 922(q)(2). *See also, id.* § 921(a)(25) (defining “school zone”).

⁷³ *See* 18 U.S.C. § 922(q)(2)(B) (firearm prohibition “does not apply to the possession of a firearm ... on private property not part of school grounds”).

⁷⁴ *See* 18 U.S.C. § 922(q)(2)(B)(ii) (exempts carriers who have a concealed carry weapon (CCW) license). *See also*, 18 U.S.C. § 922(q)(2)(B)(iii) (exempts firearms that are unloaded *and* in a locked container or locked firearms rack).

⁷⁵ Courts have recognized that sidewalks in front of private property are public spaces for purposes of the Gun Free School Zones Act. *E.g., United States v. Redwood*, 2016 U.S. Dist. LEXIS 109735, *6 (N.D. Ill. Aug. 18, 2016).

Whereas, the federal and state laws deeming K-12 schools and surrounding areas to be gun-free zones have successfully reduced gun violence in schools. School-associated student homicide rates decreased significantly after the federal laws restricting guns in schools were adopted in the early 1990s,⁷⁶ and fewer students are carrying guns.⁷⁷

Whereas, zoning regulations that prohibit firearms dealers within 1,000 feet of a school help ensure that the Gun-Free School Zones Act is appropriately enforced, and that dealers are not permitted to operate in a location where their customers would be violating federal law upon exiting the store. Such zoning regulations also protect the significant reductions in gun violence that the Gun-Free School Zones Act, and similar state laws, have achieved in America’s schools.

Therefore, the jurisdiction/governing body hereby adopts the following:

ARTICLE 1 SALE OF FIREARMS AND AMMUNITION

Sec. 1 Definitions

“Ammunition” means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm, and any component thereof, but shall not include blank cartridges or ammunition that can be used solely in an “antique firearm” as that term is defined in section 921(a)(16) of Title 18 of the United States Code.

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

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

To “engage in the business of selling, leasing, or otherwise transferring any firearm or ammunition” means to conduct a business by the selling, leasing or transferring of any firearm or ammunition, or to hold one’s self out as engaged in the business of selling, leasing or otherwise

⁷⁶ Centers for Disease Control & Prevention: Morbidity & Mortality Weekly Report, *School-Associated Student Homicides – United States, 1992-2006* (Jan. 18, 2008),

<http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5702a1.htm> (The rates decreased from 0.07 per 100,000 students to 0.03 per 100,000 students).

⁷⁷ Between 1993 and 1999, the percentage of students who carried a gun, regardless of location, decreased from 8% to 5%. This lower percentage did not change significantly over the years 1999–2007. Danice K. Eaton et al., Centers for Disease Control & Prevention, *Youth Risk Behavior Surveillance – United States, 2007*, Morbidity & Mortality Weekly Report, (June 6, 2008), at <http://www.cdc.gov/mmwr/preview/mmwrhtml/ss5704a1.htm> (surveying students in grades 9 – 12 about their behaviors throughout 2007).

transferring any firearm or ammunition, or to sell, lease or transfer firearms or ammunition in quantity, in series, or in individual transactions, or in any other manner indicative of trade.

“Firearm” means any device, designed to be used as a weapon or modified to be used as a weapon, from which is expelled through a barrel a projectile by the force of explosion or other means of combustion, provided that the term “firearm” shall not include an “antique firearm” as defined in section 921(a)(16) of Title 18 of the United States Code.

“Permittee” means any person, corporation, partnership or other entity engaged in the business of selling, leasing, or otherwise transferring any firearm or ammunition, which person or entity has obtained a law enforcement permit to sell, lease or transfer firearms or ammunition.

Sec. 2 Law enforcement permit

[This model requires both firearms dealers and ammunition sellers to obtain a land use permit as well as a law enforcement permit. Alternatively, jurisdictions may choose to make the land use permit requirement in Article 2 of this model applicable only to firearms dealers, and not to persons and entities that sell only ammunition.]

It is unlawful for any person, corporation, partnership or other entity to engage in the business of selling, leasing, or otherwise transferring any firearm or ammunition within City/County without a law enforcement permit, as required by this Article, and a land use permit, as required by Article 2.

Sec. 3 Application for permit

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

- (1) The applicant’s name, including any aliases or prior names, age and address;
- (2) The applicant’s federal firearms license and California firearms dealer numbers, if any;
- (3) The address of the proposed location for which the permit is sought, together with the business name, and the name of any corporation, partnership or other entity that has any ownership in, or control over, the business;
- (4) The names, ages and addresses of all persons who will have access to or control

of workplace firearms or ammunition, including but not limited to, the applicant's employees, agents and/or supervisors, if any;

(5) A certificate of eligibility from the state Department of Justice under Penal Code Section 26710 for each individual identified in that section demonstrating that the person is not prohibited by state or federal law from possessing firearms or ammunition;

(6) Proof of a possessory interest in the property at which the proposed business will be conducted, as owner, lessee or other legal occupant, and, if the applicant is not the owner of record of the real property upon which, the applicant's business is to be located and conducted, the written consent of the owner of record of such real property to the applicant's proposed business;

(7) A floor plan of the proposed business which illustrates the applicant's compliance with security provisions, as outlined in Sec. 6 of this Article;

(8) [Proof of the issuance of a land use permit at the proposed location] or [Proof that the proposed location complies with all applicable zoning laws⁷⁸];

(9) Proof of compliance with all applicable federal, state and local licensing and other business laws;

(10) Information relating to every license or permit to sell, lease, transfer, purchase, or possess firearms or ammunition which was sought by the applicant from any jurisdiction in the United States, including, but not limited to, the date of each application and whether it resulted in the issuance of a license, and the date and circumstances of any revocation or suspension;

(11) The applicant's agreement to indemnify, defend and hold harmless the City/County, its officers, agents and employees from and against all claims, losses, costs, damages and liabilities of any kind pursuant to the operation of the business, including attorneys fees, arising in any manner out of the negligence or intentional or willful misconduct of:

(A) The applicant;

(B) The applicant's officers, employees, agents and/or supervisors; or

⁷⁸ The second alternative language should be used if a jurisdiction choose not to require proposed businesses to obtain a land use permit.

(C) If the business is a corporation, partnership or other entity, the officers, directors or partners.

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

(b) The application shall be accompanied by a nonrefundable fee for administering this Article as established by City Council/County Board of Supervisors resolution.

Sec. 4 Investigation by Chief of Police/Sheriff

(a) The Chief of Police/Sheriff shall conduct an investigation of the applicant to determine, for the protection of the public health and safety, whether the law enforcement permit may be issued or renewed.

(b) Prior to engaging in in the business of selling, leasing, or otherwise transferring any firearm or ammunition, the applicant must first submit directly to the Chief of Police/Sheriff a complete set of fingerprints and a signed authorization for release of records pertinent to the investigation.

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

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

Sec. 5 Grounds for permit denial or revocation

(a) The Chief of Police/Sheriff shall deny the issuance or renewal of a law enforcement permit, or shall revoke an existing permit, if the operation of the business would not or does not comply with federal, state or local law, or if the applicant or permittee:

(1) Is under 21 years of age;

(2) Is not licensed as required by all applicable federal, state and local laws; [*A jurisdiction may choose to replace this language with: “(2) Is not licensed as a dealer in firearms under all applicable federal, state and local laws.” This option would prohibit the sale of ammunition by persons not engaged in the business of selling firearms, such as hardware and convenience stores.*]

- (3) [Does not have an approved land use permit for the proposed location] or [The proposed location violates applicable zoning laws⁷⁹];
- (4) Has made a false or misleading statement of a material fact or omission of a material fact in the application for a law enforcement permit, or in any other documents submitted to the Chief of Police/Sheriff pursuant to this Article. If a permit is denied on this ground, the applicant is prohibited from reapplying for a permit for a period of five years;
- (5) Has had a license or permit to sell, lease, transfer, purchase or possess firearms or ammunition from any jurisdiction in the United States revoked, suspended or denied for good cause within the immediately preceding five years;
- (6) Has been convicted⁸⁰ of:
- (A) An offense which disqualifies that person from owning or possessing a firearm under federal or California law, including, but not limited to, the offenses listed in Penal Code Sections 29800-29875 and 29900-29905;
- (B) An offense relating to the manufacture, sale, possession or use of a firearm or dangerous or deadly weapon or ammunition therefor;
- (C) An offense involving the use of force or violence upon the person of another;
- (D) An offense involving theft, fraud, dishonesty or deceit;
- (E) An offense involving the manufacture, sale, possession or use of a controlled substance as defined by the state Health and Safety Code;
- (7) Is within a class of persons defined in Welfare and Institutions Code Sections 8100 or 8103; or
- (8) Is currently, or has been within the past five years, an unlawful user of or addicted

⁷⁹ The second alternative language should be used if a jurisdiction choose not to require proposed businesses to obtain a land use permit.

⁸⁰ In order to ensure compliance with Cal. Labor Code § 432.7(a), convictions are included as a basis for denial or revocation of a permit, but arrests that did not lead to conviction are not.

to a controlled substance as defined by the Health and Safety Code.

(b) The law enforcement permit of any person or entity found to be in violation of any of the provisions of this Article may be revoked.

Sec. 6 On-site security

(a) If the proposed or current business location is to be used at least in part for the sale of firearms, the permitted place of business shall be a secure facility within the meaning of Penal Code Section 17110.⁸¹

(b) If the proposed or current business location is to be used at least in part for the sale of firearms, all heating, ventilating, air-conditioning, and service openings shall be secured with steel bars or metal grating.

(c) Any time a permittee is not open for business, every firearm shall be stored in one of the following ways:

(1) In a locked fireproof safe or vault in the licensee's business premises that meets the standards for a gun safe implemented by the Attorney General pursuant to Penal Code Section 23650; or

(2) Secured with a hardened steel rod or cable of at least one-fourth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a boltcutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises. No more than five firearms may be affixed to any one rod or cable at any time.

(d) Any time a permittee is open for business, every firearm shall be unloaded, inaccessible to the public and secured using one of the following three methods, except in the immediate presence of and under the direct supervision of an employee of the permittee:

(1) Secured within a locked case so that a customer seeking access to the firearm

⁸¹ A "secure facility" is defined by Penal Code § 17110 as a building that meets certain specifications, including: certain types of locks on all doorways; steel bars on all windows; and steel bars, metal grating, or an alarm system on all heating, ventilating, air-conditioning, and service openings. State law allows a firearms dealer to avoid these requirements by utilizing other security features. *See* Penal Code §26890(a). Penal Code § 26890(b) explicitly allows local jurisdictions to impose security requirements on firearms dealers that are stricter or at a higher standard than those imposed by state law.

must ask an employee of the permittee for assistance;

(2) Secured behind a counter where only the permittee and the permittee's employees are allowed. During the absence of the permittee or a permittee's employee from the counter, the counter shall be secured with a locked, impenetrable barrier that extends from the floor or counter to the ceiling; or

(3) Secured with a hardened steel rod or cable of at least one-fourth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a boltcutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises. No more than five firearms may be affixed to any one rod or cable at any time.

(e) Any time a permittee is open for business, all ammunition shall be stored so that it is inaccessible to the public and secured using one of the methods mentioned in subsection (d)(1) or (2), except in the immediate presence of and under the direct supervision of an employee of the permittee.

(f) The permitted business location shall be secured by an alarm system that is installed and maintained by an alarm company operator licensed pursuant to the Alarm Company Act, Business & Professions Code Sections 7590 *et seq.* The alarm system must be monitored by a central station listed by Underwriters Laboratories, Inc., and covered by an active Underwriters Laboratories, Inc. alarm system certificate with a #3 extent of protection.⁸²

(g) The Chief of Police/Sheriff may impose security requirements in addition to those listed in this section prior to issuance of the law enforcement permit. Failure to fully comply with the requirements of this section shall be sufficient cause for denial or revocation of the law enforcement permit by the Chief of Police/Sheriff.

Sec. 7 Restricted admittance of minors and other prohibited purchasers

(a) Where firearm sales activity is the primary business performed at the business premises, no permittee or any of his or her agents, employees, or other persons acting under the permittee's

⁸² Underwriters Laboratories, Inc. uses the term "extent of protection" to refer to the amount of alarm protection installed to protect a particular area, room or container. Systems with a #3 extent of protection include complete protection for all accessible openings, and partial motion and sound detection at certain other areas of the premises. For more information, see Central Station Alarm Association, *A Practical Guide to Central Station Burglar Alarm Systems* (3rd ed. 2005).

authority shall allow the following persons to enter into or remain on the premises unless accompanied by his or her parent or legal guardian:

- (1) Any person under 21 years of age, if the permittee sells, keeps or displays only firearms capable of being concealed on the person, provided that this provision shall not prevent a supervisory agent or employee who has the authority to control activities on the business premises from keeping a single firearm capable of being concealed on the person on the business premises for purposes of lawful self-defense; or
 - (2) Any person under 18 years of age, if the permittee sells, keeps or displays firearms other than firearms capable of being concealed on the person.
- (b) Where firearm sales activity is the primary business performed at the business premises, the permittee and any of his or her agents, employees, or other persons acting under the permittee's authority shall be responsible for requiring clear evidence of age and identity of persons to prevent the entry of persons not permitted to enter the premises pursuant to subsection (a) by reason of age. Clear evidence of age and identity includes, but is not limited to, a motor vehicle operator's license, a state identification card, an armed forces identification card, or an employment identification card which contains the bearer's signature, photograph and age, or any similar documentation which provides reasonable assurance of the identity and age of the individual.
- (c) Where firearm sales activity is the primary business performed at the business premises, no permittee or any of his or her agents, employees, or other persons acting under the permittee's authority shall allow any person to enter into or remain on the premises who the permittee or any of his or her agents, employees, or other persons acting under the permittee's authority knows or has reason to know is prohibited from possessing or purchasing firearms pursuant to federal, state, or local law.

Sec. 8 Inventory reports

Within the first five business days of April and October of each year, the permittee shall cause a physical inventory to be taken that includes a listing of each firearm held by the permittee by make, model, and serial number, together with a listing of each firearm the permittee has sold since the last inventory period. In addition, the inventory shall include a listing of each firearm lost or stolen that is required to be reported pursuant to Penal Code § 26885. Immediately upon completion of the inventory, the permittee shall forward a copy of the inventory to the address specified by the Chief of Police/Sheriff, by such means as specified by the Chief of Police/Sheriff. With each copy of the inventory, the permittee shall include an affidavit signed by an authorized agent or employee on behalf of the permittee under penalty of perjury stating that within the first five business days of that April or October, as the case may

be, the signer personally confirmed the presence of the firearms reported on the inventory. The permittee shall maintain a copy of the inventory on the premises for which the law enforcement permit was issued for a period of not less than five years from the date of the inventory and shall make the copy available for inspection by federal, state or local law enforcement upon request.

Sec. 9 Display of law enforcement permit

The law enforcement permit, or a certified copy of it, shall be displayed in a prominent place on the business premises where it can be easily seen by those entering the premises.

Sec. 10 Issuance of law enforcement permit – Duration

(a) A law enforcement permit expires one year after the date of issuance. A permit may be renewed for additional one-year periods if the permittee submits a timely application for renewal, accompanied by a nonrefundable renewal fee established by City Council/County Board of Supervisors resolution. Renewal of the permit is contingent upon the permittee's compliance with the terms and conditions of the original application and permit, as detailed in this Article. Police/Sheriff's department personnel shall inspect the permitted business premises for compliance with this Article prior to renewal of the permit. The renewal application and the renewal fee must be received by the Police/Sheriff's department no later than 45 days before the expiration of the current permit.

(b) A decision regarding issuance, renewal, or revocation of the law enforcement permit may be appealed in the manner provided in Sec. 18 of this Article.

Sec. 11 Nonassignability

A law enforcement permit issued under this Article is not assignable. Any attempt to assign a law enforcement permit shall result in revocation of the permit.

Sec. 12 Compliance by existing businesses

A person engaged in the business of selling, leasing, or otherwise transferring any firearm or ammunition on the effective date of this Article shall, within 90 days of the effective date, comply with this Article. However, any person whose business is located in any location [that makes them ineligible to obtain a land use permit] or [which violates applicable zoning laws⁸³] may continue to sell, lease, or transfer firearms and ammunition for up to one year after the

⁸³ The second alternative language should be used if a jurisdiction choose not to require proposed businesses to obtain a land use permit.

effective date of this Article, provided that they comply with all other provisions of this Article. After the one-year grace period has expired, all such persons are prohibited from selling, leasing or transferring firearms or ammunition in the named locations. A person affected by this provision may apply for a one-year extension to the grace period, conditioned upon a sufficient showing of undue hardship.

Sec. 13 Law enforcement inspections⁸⁴

Permittees shall have their places of business open for inspection by federal, state and local law enforcement during all hours of operation. The Police/Sheriff's department shall conduct periodic inspections of the permittee's place of business without notice to assess the permittee's compliance with this Article. The inspections shall be of the parts of the permittee's place of business that are used to store or sell firearms, ammunition, records, and/or documents. The Police/Sheriff's department shall conduct no more than two inspections of a single place of business during any six-month period, except that the Police/Sheriff's department may conduct follow-up inspections that exceed two in a six-month period if they have good cause to believe that a permittee is violating this Article. Permittees shall maintain all records, documents, firearms and ammunition in a manner and place accessible for inspection by federal, state and local law enforcement.

Sec. 14 Posted warnings

(a) A permittee shall comply with California Penal Code section 26835 and post all signs required by that section. A permittee shall also post conspicuously the following warnings in block letters not less than one inch in height:

- (1) Within the licensed premises: "WITH FEW EXCEPTIONS, IT IS A CRIME TO SELL OR GIVE A FIREARM TO SOMEONE WITHOUT COMPLETING A DEALER RECORD OF SALE (DROS) FORM AT A LICENSED FIREARMS DEALERSHIP."
- (2) Within the licensed premises: "IF YOU ARE STRUGGLING EMOTIONALLY OR THINKING OF SUICIDE, CALL 1-800-273-TALK (1-800-273-8255). FREE AND CONFIDENTIAL."

(b) If a permittee sells, keeps or displays only firearms capable of being concealed on the person, the permittee shall post a sign stating: "FIREARMS ARE KEPT, DISPLAYED OR OFFERED ON THE PREMISES, AND PERSONS UNDER THE AGE OF 21 ARE EXCLUDED UNLESS ACCOMPANIED BY A PARENT OR LEGAL GUARDIAN."

⁸⁴ See Part II.D for a discussion of the law enforcement inspection provision.

(c) If a permittee sells, keeps or displays firearms other than firearms capable of being concealed on the person, the permittee shall post a sign stating: “FIREARMS ARE KEPT, DISPLAYED OR OFFERED ON THE PREMISES, AND PERSONS UNDER THE AGE OF 18 ARE EXCLUDED UNLESS ACCOMPANIED BY A PARENT OR LEGAL GUARDIAN.”

Sec. 15 Violations

(a) The Police/Sheriff’s department may revoke the permit of any permittee found to be in violation of any of the provisions of this Article.

(b) In addition to any other penalty or remedy, the City Attorney/County Counsel may commence a civil action to seek enforcement of these provisions.

Sec. 16 Report of permit revocation to federal and state authorities

In addition to any other penalty or remedy, the City Attorney/County Counsel shall report any person or entity whose law enforcement permit is revoked pursuant to this Article to the Bureau of Firearms of the California Department of Justice and the Bureau of Alcohol, Tobacco, Firearms & Explosives within the U.S. Department of Justice.

Sec. 17 Hearing for permit denial or revocation

(a) Within ten days of the Chief of Police/Sheriff mailing a written denial of the application or revocation of the permit, the applicant may appeal by requesting a hearing before the Chief of Police/Sheriff. The request must be made in writing, setting forth the specific grounds for appeal. If the applicant submits a timely request for an appeal, the Chief of Police/Sheriff shall set a time and place for the hearing within 30 days.

(b) The Chief of Police/Sheriff shall provide a written decision regarding the appeal within 14 calendar days of the hearing. An applicant may appeal the decision of the Chief of Police/Sheriff to the **[appropriate government body. The appeal process should also be detailed or referenced here]**.

Sec. 18 Severability clause

If any section, subsection, sentence or clause of this Article is for any reason declared unconstitutional or invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the constitutionality, validity or enforceability of the remaining portions of this Article or any part thereof. The City Council/County Board of Supervisors hereby declares that it would have adopted this Article notwithstanding the unconstitutionality,

invalidity or unenforceability of any one or more of its sections, subsections, sentences or clauses.

ARTICLE 2 LAND USE PERMITS

[This model requires both firearms dealers and ammunition sellers to obtain a land use permit as well as a law enforcement permit. Alternatively, jurisdictions may choose to make the land use permit requirement in Article 2 of this model applicable only to firearms dealers, and not to persons and entities that sell only ammunition.]

Cal. Gov't Code §§ 65850-65861 sets forth the procedures for enacting new zoning regulations in a jurisdiction, including changes of uses and restrictions and distance limitations. We recommend that jurisdictions enacting this element of the model law concurrently amend their zoning codes pursuant to the procedure described in §§ 65850-65861, in order to specifically identify "firearms dealers and ammunition sellers" as entities subject to zoning regulations and to incorporate the location restrictions outlined in Sec. 1(d) below.

Jurisdictions may also choose to amend only their zoning codes, and not to require any firearms dealers or ammunition sellers to obtain a land use permit. A jurisdiction that chooses this option does not need to enact Article 2 of this model, but can use Sec. 1(d) below as a guide when enacting zoning regulations for firearm dealers and ammunition sellers.]

Sec. 1 Firearm and ammunition sales

- (a) Purpose. The purpose of this section is to provide for the appropriate location of any person, corporation, partnership or other entity engaging in the business of selling, leasing, or otherwise transferring any firearm or ammunition (hereinafter "firearms dealer or ammunition seller") through the permitting process.
- (b) Procedure. An applicant for a land use permit shall apply to the planning commission by application prescribed by the City/County in the manner provided.
- (c) Permit Requirement. It is unlawful for any firearms dealer or ammunition seller to sell, lease or transfer firearms or ammunition unless the dealer or seller has obtained a land use permit pursuant to this chapter and a law enforcement permit as provided under Article 1 of this chapter. Subject to the restrictions listed below, firearms dealers and ammunition sellers are permitted in **[enumerate permitted districts, e.g., commercial, industrial, etc.]**. Firearms dealers and ammunition sellers are prohibited in all other land use districts.
- (d) Location. A land use permit for the sale of firearms or ammunition will not be issued if

the proposed business premises are located in a residence, or within [250 – 1,000] feet⁸⁵ of any school, pre-school, day-care facility, park, community center, place of worship, youth center, or residentially zoned district or area.⁸⁶ In appropriate circumstances, the City/County may grant a variance and issue a land use permit even if the location of the proposed business premises does not comply with this paragraph.

(e) **Other Criteria.** The planning commission shall approve or conditionally approve a land use permit application only if, on the basis of the application, plans, materials, testimony, and other facts submitted at the hearing, the planning commission finds:

(1) The location of the proposed land use is in accordance with the general plan of City/County; and

(2) The location, size, design, and operating characteristics of the proposed use will be compatible with and will not be detrimental to the public health, safety or welfare of persons residing or working in or adjacent to the proposed land use and the surrounding neighborhood.

(f) **Public Hearing and Notice Required.** A public hearing shall be held with reference to an application for a land use permit. Notice for the public hearing shall be set forth as follows:

(1) The contents of a public notice must include the following:

(A) Date, time, and place of the public hearing;

(B) Identity of the hearing body or hearing officer;

(C) General explanation of the matter to be considered and where more specific information may be obtained;

(D) General description in text or by diagram of the location of the real

⁸⁵ We recommend that jurisdictions decide on an appropriate location restriction between 250 and 1,000 feet by assessing the size and specific needs of their community, the availability of suitable land parcels compliant with the location restriction, and other relevant factors.

⁸⁶ Jurisdictions may choose to modify these location restrictions based on business or other needs of their community, including by grandfathering in existing firearms dealers, expressly allowing permittees to sell their business to a new owner, or allowing permittees to expand or relocate a business within the same shopping center or site. Jurisdictions may also choose to clarify how land parcels that are partly within and partly outside the location restrictions will be treated, and/or to specify what will happen if a school, pre-school, day-care facility, etc. locates within the distance limitations of a dealer already in operation.

property/parcel or building which is the subject of the hearing; and

(E) A statement that any interested party or agent may appear and be heard.

(2) **[Insert any additional desired notice provisions.]**

(g) Conditions. An approved land use permit is not effective until the applicant satisfies the following terms and conditions:

- (1) Possession of a valid law enforcement permit as required under Article 1;
- (2) Possession of all licenses and permits required by federal, state and local law; and
- (3) Compliance with the requirements of the City's/County's building code, fire code and other technical codes and regulations which govern the use, occupancy, maintenance, construction or design of the building or structure. The use permit shall require that the applicant obtain a final inspection from the City/County building official demonstrating code compliance before the applicant may begin business at the premises at issue.

Sec. 2 Nonconforming uses

A firearms dealer or ammunition seller located in any location described in Sec. 1(d) may continue to sell, lease or transfer firearms and ammunition for up to one year after the effective date of this Article, provided the dealer or seller complies with all other requirements of Article 1 pertaining to eligibility for a law enforcement permit, within 90 days of the effective date of Article 1. After the one-year period has expired, all firearms dealers and ammunition sellers are prohibited from selling, leasing or transferring firearms and ammunition in the named locations. A person affected by this provision may apply for a one-year extension to the grace period, conditioned upon a sufficient showing of undue hardship.

Sec. 3 Severability clause

If any section, subsection, sentence or clause of this Article is for any reason declared unconstitutional or invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the constitutionality, validity or enforceability of the remaining portions of this Article or any part thereof. The City Council/County Board of Supervisors hereby declares that it would have adopted this Article notwithstanding the unconstitutionality, invalidity or unenforceability of any one or more of its sections, subsections, sentences or clauses.

II. Common Legal Challenges to Gun Violence Prevention Laws

Litigation challenging firearm laws has become a routine strategy of the gun industry, the National Rifle Association and other “gun rights” groups. These challenges sometimes raise the following issues: (1) the Second Amendment to the U.S. Constitution and state right to bear arms provisions; (2) equal protection; (3) due process; (4) the Fourth Amendment to the U.S. Constitution; and (5) in the context of local gun regulations, preemption and local authority to regulate firearms. This section provides an overview of these issues.

A. The Second Amendment

The Second Amendment is often raised as a bar to gun violence prevention laws and regulations. In fact, the Second Amendment permits a broad range of gun violence prevention measures.⁸⁷

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.” Until recently, the courts, including the United States Supreme Court, interpreted and applied the Amendment to protect a right to keep and bear arms only in relation to service in a well-regulated militia.⁸⁸ However, in 2008, the Supreme Court issued a historic decision in *District of Columbia v. Heller*, holding that the Second Amendment confers, on responsible, law-abiding citizens, an individual right to possess handguns in the home for self-defense, unrelated to service in a well-regulated state militia.⁸⁹ On June 28, 2010, the Supreme Court in *McDonald v. City of Chicago*, held that the [Second Amendment](#) as interpreted in *Heller* applies to state and local governments in addition to the federal government.⁹⁰

In *Heller*, the Court struck down the District’s ban on handgun possession, finding that “the inherent right of self-defense has been central to the Second Amendment” and that handguns are “overwhelmingly chosen by American society” for self-defense in the home, “where the need for

⁸⁷ Sometimes, similar challenges are raised under state “right to bear arms” provisions rather than the federal Constitution. However, although the constitutions of most states recognize a “right to bear arms,” California’s does not. In *Kasler v. Lockyer*, 2 P.3d 581, 586 (Cal. 2000), the California Supreme Court confirmed that “no mention is made in [the California Constitution] of a right to bear arms.”

⁸⁸ Prior to June 2008, the U.S. Supreme Court last addressed the scope of the Second Amendment in *United States v. Miller*, 307 U.S. 174 (1939). In that case, the Court rejected a Second Amendment challenge brought by two individuals charged with violating a federal law prohibiting the interstate transportation of sawed-off shotguns. The Court held that the “obvious purpose” of the Amendment is to “assure the continuation and render possible the effectiveness” of the state militia, and the Amendment “must be interpreted and applied with that end in view.” *Id.* at 178. After *Miller*, the scope of the Second Amendment was addressed in more than 200 federal and state appellate cases. These decisions overwhelmingly rejected Second Amendment challenges to firearm laws.

⁸⁹ *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008).

⁹⁰ *McDonald v. City of Chicago*, 561 U.S. 742 (2010),

defense of self, family, and property is most acute.”⁹¹ The Court also struck down the District’s requirement that firearms in the home be stored unloaded and disassembled or bound by a trigger lock or similar device, because the law contained no exception for self-defense.

Although the *Heller* decision established a new individual right to “keep and bear arms,” the opinion made it clear that the right is not unlimited, and should not be understood as “a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.”⁹² The Court provided examples of gun laws that it deems “presumptively lawful” under the Second Amendment, including:

- Longstanding prohibitions on the possession of firearms by felons and the mentally ill;
- Laws forbidding firearm possession in sensitive places such as schools and government buildings; and
- Laws imposing conditions and qualifications on the commercial sale of firearms.

The Court made clear that this list is not exhaustive.⁹³ The Court in *Heller* also concluded that the Second Amendment is consistent with laws banning “dangerous and unusual weapons” not “in common use at the time,” such as M-16 rifles and other firearms that are most useful in military service.⁹⁴ Finally, the Court declared that its analysis should not be read to suggest “the invalidity of laws regulating the storage of firearms to prevent accidents.”⁹⁵ After holding that the Second Amendment applied against the states, the Court in *McDonald* repeated *Heller*’s list of “presumptively lawful” gun regulations that are consistent with the Second Amendment, stating, “incorporation [against the states] does not imperil every law regulating firearms.”⁹⁶

The *Heller* and *McDonald* decisions failed to articulate a legal standard of scrutiny, or test, to be applied in evaluating other laws under the Second Amendment. However, these decisions leave no doubt that regulation of firearms remains legally permissible. Even after *Heller* and *McDonald*, most common sense gun violence prevention measures, such as those contained in this model law, are likely to be upheld.

Indeed, in a 2017 decision in *Teixeira v. County of Alameda*, the U.S. Court of Appeals for the Ninth Circuit decisively rejected a Second Amendment challenge to a California county’s gun

⁹¹ *Heller*, 128 S. Ct. at 2817.

⁹² *Id.* at 2816.

⁹³ *Id.* at 2817 n.26.

⁹⁴ 128 S. Ct. at 2817.

⁹⁵ *Id.* at 2820. In addition, the *Heller* Court did not invalidate D.C.’s requirement that firearm owners be licensed. Mr. Heller’s attorney conceded that the licensing scheme was not, in itself, unlawful. Therefore, the Court did not address this requirement. *Id.* at 2819.

⁹⁶ *McDonald*, 561 U.S. at 786.

dealer zoning ordinance, after applying *Heller* and the court’s other Second Amendment precedents.⁹⁷ The court was sitting *en banc*, which means a larger panel of 11 judges considered the challenge; that panel voted 9-2 that the dealer zoning provisions were constitutional.

The Alameda County ordinance at issue in the *Teixeira* case requires that firearm dealers be located at least 500 feet from residentially zoned districts, schools and day-care centers, other firearm retailers, and liquor stores.⁹⁸ Prospective firearm dealers who wished to open a store in a location off-limits under the zoning ordinance filed a Second Amendment challenge, arguing that Alameda County’s ordinance infringes the rights of their potential customers to acquire firearms, and their own claimed right to sell firearms. The Ninth Circuit rejected both arguments. On the first argument, the court concluded that since there were already about ten gun stores in Alameda County, the challengers failed to show that any potential customers were unable to buy firearms as a result of the zoning ordinance.⁹⁹ On the second argument, the court conducted a comprehensive historical review and determined that the Second Amendment right to bear arms does not “independently protect the ability to engage in gun sales” if prospective customers are still able to procure firearms.¹⁰⁰ Because residents of Alameda County could still obtain firearms elsewhere, this means the prospective sellers in *Teixeira* could not advance a separate claim that their “right to sell” firearms was infringed by Alameda County’s ordinance.

The *Teixeira* decision demonstrates that it is permissible and constitutional for local jurisdictions to regulate gun dealers, and that the Second Amendment is no obstacle to reasonable zoning laws that apply specifically to firearm retailers. The Ninth Circuit’s decision is binding law in the state of California and the other states within the court’s jurisdiction. As it represents the only decision by a federal circuit court on a Second Amendment challenge to a gun dealer zoning law, it is likely to be persuasive authority in other federal circuits as well.

For more information about the Second Amendment, including summaries of federal appellate cases decided after *Heller*, see our [Second Amendment materials](#).

B. Equal Protection

The Fourteenth Amendment provides that no state shall “deny to any person within its jurisdiction the equal protection of the laws.” However, when a law makes a classification neither “involving fundamental rights nor proceeding along suspect lines,” the law will withstand

⁹⁷ *Teixeira v. Cty. of Alameda*, 873 F.3d 670, 2017 U.S. App. LEXIS 19795 (9th Cir. 2017) (en banc).

⁹⁸ *Teixeira*, 2017 U.S. App. LEXIS 19795 at *8.

⁹⁹ *Id.* at *16–*21. The court also noted that firearms were easily available in neighboring jurisdictions, and suggested that it might be appropriate to take this into account when determining if customers in Alameda County are unable to easily buy firearms. *Id.* at *17 n.9.

¹⁰⁰ *Id.* at *36, 42–43.

constitutional scrutiny so long as it bears a rational relationship to a legitimate governmental interest.¹⁰¹

In *Suter v. City of Lafayette*, 67 Cal. Rptr. 2d 420 (Cal. Ct. App. 1997), a firearms dealer brought an equal protection challenge against a law prohibiting minors from entering premises where the sale of firearms is the primary business performed at the site. The court held that “[b]ecause minors have a legitimate reason for entering sports or department stores that sell merchandise other than weapons or weapons-related goods, a rational basis exists for distinguishing between such businesses and those that primarily sell weapons.”¹⁰² The dealer also claimed that the requirement that firearms dealers carry liability insurance was a denial of equal protection because it discriminates between firearms dealers and other businesses selling products that can and do cause injury, and because it fails to discriminate between firearms dealers on the basis of size and probable volume of sales. The court also rejected these claims.¹⁰³

In *Koscielski v. Minneapolis*, 435 F.3d 898 (8th Cir. 2006), a firearms dealer brought an equal protection challenge against the City of Minneapolis’s zoning ordinance requiring firearms dealers to obtain conditional use permits and locate within particular zones and only in locations sufficiently distant from day care centers and churches. The court first held that the dealer’s claim involved neither a suspect classification nor a fundamental right. Therefore, the law would be found constitutional if it bore a rational relationship to a legitimate governmental interest. Upholding the law, the court concluded, “the implications for public safety warrant regulating and zoning firearms dealerships differently than other retail establishments.”¹⁰⁴

The majority of cases also have rejected equal protection challenges to firearms laws under the U.S. Constitution and analogous state constitutional provisions.¹⁰⁵

¹⁰¹ *Heller v. Doe*, 509 U.S. 312, 320 (1993), *see also* *Schweiker v. Wilson*, 450 U.S. 221, 230 (1981). Classifications along “suspect lines” can include a suspect class (e.g., race) or quasi-suspect class (e.g., gender). *See, e.g., Lavia v. Pennsylvania*, 224 F.3d 190, 200 (3d Cir. 2000).

¹⁰² *Suter*, 67 Cal. Rptr. 2d at 434.

¹⁰³ *Id.* at 435-436.

¹⁰⁴ *Koscielski*, 435 F.3d at 902.

¹⁰⁵ *See, e.g., United States v. Lewitzke*, 176 F.3d 1022 (7th Cir. 1999) (rejecting equal protection challenge to federal law banning possession of firearm by person convicted of domestic violence misdemeanor); *United States v. McKenzie*, 99 F.3d 813 (7th Cir. 1996) (rejecting equal protection challenge to federal law banning possession of firearm by felon); *California Rifle and Pistol Ass’n v. City of West Hollywood*, 78 Cal. Rptr. 2d 591, 605-606 (Cal. Ct. App. 1998) (rejecting equal protection challenge to ban on the sale of “junk guns”); *Olympic Arms v. Buckles*, 301 F.3d 384 (6th Cir. 2002) (rejecting equal protection challenge to the definition of “assault weapon” in the 1994 federal assault weapon ban, which expired in 2004). *But see Fraternal Order of Police v. United States*, 152 F.3d 998 (D.C. Cir. 1998) (upholding equal protection challenge against federal law banning possession of firearms by government employees convicted of domestic violence misdemeanors but allowing possession by government employees convicted of domestic violence felonies).

Note that the decisions in *Heller* and *McDonald* did not address equal protection claims, but the Court’s *dicta* suggests that the rational basis test is not appropriate for reviewing firearms regulation under the Second Amendment.¹⁰⁶ The Court did not set a standard for reviewing firearms laws. Although the Court in *McDonald* called the right “fundamental” for other purposes, the Court did not consider whether the Second Amendment right is a fundamental right for purposes of equal protection review. It is likely that future cases will resolve these issues.

C. Due Process

The due process clause of the Fourteenth Amendment to the U.S. Constitution provides that no person shall be deprived of “life, liberty, or property, without due process of law....” Courts have held that the due process clause includes both substantive and procedural guarantees.

Substantively, a law failing to give a person of ordinary intelligence a reasonable opportunity to know what is prohibited, or failing to provide explicit standards for those who apply the law, violates due process under the federal constitution. As the U.S. Supreme Court has explained, “[i]t is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined.”¹⁰⁷ Note, however, that clearly written laws also can violate due process when they are overbroad, impinging on constitutionally-protected conduct.¹⁰⁸

Procedural due process imposes constraints on governmental decisions which deprive individuals of “liberty” or “property” interests within the meaning of the due process clause of the Fifth or Fourteenth Amendment.¹⁰⁹ Courts have held that the due process clause generally requires the government to provide the affected person with the opportunity to be heard at a meaningful time and in a meaningful manner, before the deprivation of the liberty or property interest.¹¹⁰

In *Suter v. City of Lafayette*, 67 Cal. Rptr. 2d 420, 433 (Cal. Ct. App. 1997), a firearms dealer challenged the City of Lafayette’s requirements that firearms dealers obtain land use and police permits, and the city’s zoning ordinance, which limited firearms dealers to areas zoned for retail or general commercial uses. The court held that these restrictions do not violate the substantive due process clause, noting that:

As the operation of a firearms dealership is a commercial enterprise, there is a rational basis for confining that operation to commercially zoned areas. In addition, because

¹⁰⁶ *Heller*, 128 S.Ct. at 2818 n.27.

¹⁰⁷ *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

¹⁰⁸ *Id.* at 114-15.

¹⁰⁹ *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

¹¹⁰ *Id.*

dealerships can be the targets of persons who are or should be excluded from possessing weapons, it is reasonable to insist that dealerships be located away from residential areas, schools, liquor stores and bars.¹¹¹

The court also noted that substantive due process allows for imprecise zoning or licensing ordinances, because of the need for government “in large urban areas to delegate broad discretionary power to administrative bodies.”¹¹²

In *Baer v. Wauwatosa*, 716 F.2d 1117 (7th Cir. 1983), a licensed gun dealer brought an action against a city, mayor, and council members, alleging that by taking away his license to sell guns, the defendants had deprived him of property without due process of law. The city had revoked the license when the dealer was convicted of a felony. The court held that the dealer was deprived of “property” within the meaning of the due process clause when the city revoked his license, but that the procedures used for the revocation were adequate.¹¹³ The court also held that the revocation of the license did not violate the substantive due process clause, stating:

The sale of guns is fraught with both short-term and long-term danger to the public -- or so at least the Wauwatosa authorities could rationally conclude, and no more is required to uphold the substantive validity of their action under the due process clause. The short-term danger is that the guns will be sold to criminals, children, and others who are, for excellent reasons, forbidden by law to have them; the long-term danger is that the circumstances of sale will encourage people to think of guns as weapons of aggression.¹¹⁴

Most courts have rejected due process challenges to firearms laws under the U.S. Constitution and analogous state constitutional provisions.¹¹⁵

Note that the decisions in *Heller* and *McDonald* did not address due process claims, but the

¹¹¹ *Suter*, 67 Cal. Rptr. 2d at 433.

¹¹² *Id.* at 431.

¹¹³ *Baer*, 716 F.2d at 1122-1123.

¹¹⁴ *Id.* at 1123.

¹¹⁵ See, e.g., *United States v. Hutzell*, 217 F.3d 966 (8th Cir. 2000) (rejecting due process challenge to federal law prohibiting possession of firearms by persons convicted of misdemeanor crimes of domestic violence); *United States v. Lim*, 444 F.3d 910 (7th Cir. 2006) (rejecting due process challenge to federal law requiring registration of sawed-off shotguns); *United States v. Edwards*, 182 F.3d 333 (5th Cir. 1999) (rejecting due process challenge to federal law banning possession of firearm by an unlawful user of a controlled substance); *City of Cincinnati v. Langan*, 640 N.E.2d 200 (Ohio Ct. App. 1994) (rejecting due process challenge to local assault weapon ban). But see *Robertson v. City & County of Denver*, 874 P.2d 325 (Colo. 1994) (upholding a due process challenge to portions of the definition of “assault weapon” in local assault weapon ban); *United States v. Vest*, 448 F. Supp. 2d 1002 (S.D. Ill. 2006) (upholding as applied due process challenge to law enforcement exception to federal laws restricting transfer and possession of machine guns).

Court’s *dicta* suggests that the rational basis test is not appropriate for reviewing firearms regulation under the Second Amendment.¹¹⁶ The Court did not set a standard for reviewing firearms laws. It is likely that future cases will resolve these issues.

D. The Fourth Amendment

The Fourth Amendment to the U.S. Constitution provides: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” Opponents of this model law may argue that the provision authorizing local law enforcement officers to inspect firearms dealers without first obtaining a warrant violates the Fourth Amendment.

The Supreme Court has held that when searches of closely regulated businesses, like firearms dealers, are part of a broader regulatory scheme, such searches may be conducted without a warrant. *United States v. Biswell*, 406 U.S. 311, 313 (1972) (upholding warrantless inspection of firearms dealer’s physical property and business records); *see also City of Los Angeles v. Patel*, 135 S. Ct. 2443, 2454-55 (2015) (citing *Biswell* for the proposition that firearms dealing is a closely regulated industry for Fourth Amendment purposes). That is because, with respect to a firearms regulatory scheme, “if inspection is to be effective and serve as a credible deterrent, unannounced, even frequent, inspections are essential. In this context, the prerequisite of a warrant could easily frustrate inspection; and if the necessary flexibility as to time, scope, and frequency is to be preserved, the protections afforded by a warrant would be negligible.” *Biswell*, 406 U.S. at 316. The Supreme Court has also observed that the firearms industry has “such a history of government oversight” that “no reasonable expectation of privacy” exists; if “an entrepreneur embarks upon such a business, he has voluntarily chosen to subject himself to a full arsenal of governmental regulation.” *Marshall v. Barlow’s, Inc.*, 436 U.S. 307, 313 (1978).

When addressing warrantless inspection programs aimed at closely regulated industries other than firearms, the Supreme Court has held that such a program should provide, “in terms of the certainty and regularity of its application,” “a constitutionally adequate substitute for a warrant.” *Donovan v. Dewey*, 452 U.S. 594, 603 (1980). One way an inspection law provides a “constitutionally adequate substitute for a warrant” is by limiting the number of inspections that may occur within a given time period. *See, e.g., Donovan*, 452 U.S. at 603-04 (law specifying the annual frequency of inspections was constitutional because it established a “predictable and guided” “regulatory presence”). Conversely, the Ninth Circuit invalidated a warrantless inspection law pertaining to in-home day care facilities that purported to authorize inspections at

¹¹⁶ *Heller*, 128 S.Ct. at 2818 n.27.

any time of day “to secure compliance with, or to prevent a violation of, *any* applicable statute.” *Rush v. Obledo*, 756 F.2d 713, 721 (9th Cir. 1985) (emphasis in original). In the same decision, however, the Ninth Circuit upheld a different law requiring unannounced inspection of specified areas within day care facilities in specified circumstances, concluding that the law was “sufficiently precise and restrictive so as to preclude general searches by state officials.” *Id.*

Under these precedents, a provision authorizing warrantless inspection of firearms dealers is permissible under the Fourth Amendment because firearms dealers have a reduced expectation of privacy as participants in a closely regulated industry, and because “unannounced, even frequent inspections” of dealers serve an important government purpose. *Biswell*, 406 U.S. at 315-16. Even if a court were to require that a firearms dealer inspection law contain a “constitutionally adequate substitute for a warrant,” that requirement would be satisfied by a provision that identifies who may conduct inspections and where and what time of day they will take place, thereby incorporating adequate limitations on the inspections’ frequency and scope.

Section 14 of the model law comports with the precedents discussed above by specifying who will conduct inspections (the Police/Sheriff’s department), what they will inspect (firearms, ammunition, documents, and records), when they will inspect (hours of operation), and also by placing a limit of two searches during any six month period—unless an inspector has good cause to believe a violation has occurred.¹¹⁷ Further, rather than authorizing inspectors to check for compliance with “*any* applicable statute” (like the law invalidated in *Rush*), the model law states that the inspection is for the purpose of assessing “the permittee’s compliance with this Article.”

E. Preemption and Local Authority to Regulate Firearms

Preemption occurs when a higher level of government removes regulatory power from a lower level of government. For example, Congress may remove legislative authority from the states in certain areas. Likewise, state governments may, in some cases, remove local legislative authority.

1. Federal Preemption

Under the Supremacy Clause of Article VI of the U.S. Constitution, a federal law is binding on all state and local governments so long as Congress duly enacted the law pursuant to one of its limited powers. When federal law removes state authority (and thus local authority) to regulate a

¹¹⁷ See *Donovan*, 452 U.S. at 604 (requirement that inspecting official “conduct follow-up inspections” where “violations of the Act have previously been discovered” weighed in favor of constitutionality of inspection scheme); *Rush*, 756 F.2d at 716, 722-723 (upholding law that authorized warrantless inspection “on the basis of a complaint and a follow-up visit to assure any violation has been corrected”).

specific subject matter, the process is called “federal preemption.” Federal preemption of state law is uncommon in the area of firearms regulation.

Congress may make its intention to preempt an area of state law clear by expressly stating its intent in the language of a statute. Absent such a statement, when considering a challenge to a state or local law based on the claim that regulation of the subject has been preempted by Congress, courts presume that the federal government does not intend to preempt state and local authority.¹¹⁸ When the challenged law is within an area of traditional state authority, the reviewing court will find preemption only when the court is “absolutely certain” that Congress intended to take away that authority.¹¹⁹ Courts look for the existence of a pervasive scheme of federal legislation of the particular subject, or an irreconcilable conflict between the federal regulation and the challenged law, to determine congressional intent.¹²⁰

Congress has not expressly preempted the broad field of firearms regulation.¹²¹ Furthermore, courts have held that congressional regulation of firearms does not create a scheme so pervasive that it leaves no room for state and local law.¹²² Thus, absent a specific, irreconcilable conflict between a challenged state or local firearm law and a federal enactment, there is no federal preemption of that state or local law.

¹¹⁸ *Richmond Boro Gun Club, Inc. v. City of New York*, 896 F. Supp. 276, 285 (E.D.N.Y. 1995), *aff’d*, 97 F.3d 681 (2d Cir. 1996) (upholding New York City’s assault weapon ban against a federal preemption challenge).

¹¹⁹ *Gregory v. Ashcroft*, 501 U.S. 452, 464 (1991) (rejecting a federal preemption challenge to a Missouri constitutional provision setting mandatory retirement age for state judges).

¹²⁰ *Richmond*, 896 F. Supp. at 285.

¹²¹ Rather, courts have cited 18 U.S.C. § 927 for the proposition that Congress has expressed an intent *not* to preempt the field of firearms. *See, e.g., Oefinger v. Zimmerman*, 601 F.Supp. 405 (W.D. Pa. 1984) (rejecting a federal preemption challenge to a state law banning machine guns and sawed-off shotguns); *C.D.M. Products, Inc., v. City of New York*, 350 N.Y.S.2d 500 (N.Y. Sup. Ct. 1973) (rejecting a federal preemption challenge to a local ordinance requiring licensing of wholesale firearm manufacturers and assemblers). 18 U.S.C. § 927 provides that “No provision of this chapter [18 U.S.C. § 921 *et seq.* which contains provisions regulating the licensing of firearms manufacturers and dealers, firearms possession, the carrying of weapons, and armor piercing ammunition] shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.” Note, however, that 18 U.S.C. § 926A provides that, notwithstanding state or local law, a person may transport firearms “from any place where he may lawfully possess and carry such firearm to any other place where he may lawfully possess and carry such firearm” so long as he or she complies with the specified safety standards. Courts have found this provision to supersede local laws regulating transportation of firearms. *See, e.g., Bieder v. United States*, 662 A.2d 185 (D.C. 1995) (reversing conviction for multiple violations of District firearms laws on grounds that trial court failed to allow defense based on 18 U.S.C. § 926A); *Arnold v. City of Cleveland*, 1991 Ohio App. LEXIS 5246 (Ohio Ct. App. 1991) (upholding federal preemption challenge to local law banning transportation of assault weapons). *But see Fresno Rifle & Pistol Club, Inc. v. Van de Kamp*, 746 F. Supp. 1415 (E.D. Cal. 1990) (rejecting federal preemption challenge to state law banning transportation of assault weapons).

¹²² *Richmond*, 896 F. Supp. at 285.

2. State Preemption

Most state constitutions allocate authority to local governments to regulate in the interests of the public health, safety and welfare (which generally includes regulation of firearms). “State preemption” occurs when a state government removes a portion of a local government's legislative authority. States differ considerably in how and to what extent they preempt the regulation of firearms.

Article XI, § 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.” A local government's police power under this provision includes the power to regulate firearms.¹²³ Ordinances enacted pursuant to the police power are valid unless they conflict with state law.¹²⁴ A conflict exists if the ordinance contradicts, duplicates, or enters an area occupied by general law, either expressly or by legislative implication.¹²⁵

The California Legislature has expressly preempted the following areas of firearms law: 1) licensing or registration of commercially manufactured firearms; 2) licensing or permitting with respect to the purchase, ownership, possession or carrying of a concealable firearm in the home or place of business; and 3) regulation of the manufacture, sale or possession of “imitation firearms.”

California Government Code § 53071 provides:

It is the intention of the Legislature to occupy the whole field of regulation of the registration or licensing of commercially manufactured firearms as encompassed by the provisions of the Penal Code, and such provisions shall be exclusive of all local regulations, relating to registration or licensing of commercially manufactured firearms, by any political subdivision as defined in section 1721 of the Labor Code.

California Penal Code § 25605(b) provides:

No permit or license to purchase, own, possess, keep, or carry...shall be required of any citizen of the United States or legal resident over the age of 18 years who resides or is temporarily within this state, and who is not within the excepted classes prescribed by Chapter 2 (commencing with 29800) or Chapter 3 (commencing with Section 29900) of

¹²³ *Galvan v. Superior Court of San Francisco*, 452 P.2d 930 (Cal. 1969).

¹²⁴ *Sherwin-Williams Co. v. City of Los Angeles*, 844 P.2d 534, 536 (Cal. 1993).

¹²⁵ *Id.* at 536-7.

Division 9 of this title or Section 8100 or 8103 of the Welfare and Institutions Code, to purchase, own, possess, keep, or carry, either openly or concealed, a pistol, revolver, or other firearm capable of being concealed upon the person within the citizen's or legal resident's place of residence, place of business, or on private property owned or lawfully possessed by the citizen or legal resident.

California Government Code § 53071.5 provides:

By the enforcement of this section, the Legislature occupies the whole field of regulation of the manufacture, sale, or possession of imitation firearms, as defined in subdivision (a) of Section 16700 of the Penal Code, and that subdivision shall preempt and be exclusive of all regulations relating to the manufacture, sale, or possession of imitation firearms, including regulations governing the manufacture, sale, or possession of BB devices and air rifles described in Section 16250 of the Penal Code.¹²⁶

In addition, while California generally permits local regulation of sport shooting ranges, local jurisdictions are barred from enforcing new or amended noise control laws on shooting ranges that are in operation and not in violation of existing law at the time of the enactment of the new or amended noise control ordinance, if there has been no substantial change in the nature or use of the range.¹²⁷

Courts will not infer preemption unless the circumstances clearly indicate the Legislature intended to preempt the field.¹²⁸

Suter v. City of Lafayette, 67 Cal. Rptr. 2d 420 (Cal. Ct. App. 1997) involved a preemption challenge to an ordinance regulating the location and operation of firearms dealers, and requiring firearms dealers to obtain local land use and police permits. The court of appeal dismissed the action, holding that local governments are not generally excluded by state law from imposing additional requirements on firearms dealers.¹²⁹ In fact, the court noted that California Penal Code § 26705 explicitly contemplates local regulation of firearms dealers, including local licensing requirements.

¹²⁶ In addition, California generally permits local regulation of sport shooting ranges, but provides that local jurisdictions may not enforce new or amended noise control laws on shooting ranges that are in operation and not in violation of existing law at the time of the enactment of the new or amended noise control ordinance, if there has been no substantial change in the nature or use of the range. Cal. Civ. Code § 3482.1(d).

¹²⁷ Cal. Civ. Code § 3482.1(d).

¹²⁸ *California Rifle and Pistol Ass'n, Inc. v. City of West Hollywood*, 78 Cal. Rptr. 2d 591, 600 (Cal. Ct. App. 1998) (holding that state law did not preempt a local ordinance banning the sale of Saturday Night Specials).

¹²⁹ *Suter*, 67 Cal. Rptr. 2d at 427.

The court in *Suter* found that the ordinance did not conflict with, duplicate, or enter into a field fully occupied by state law and was not, therefore, preempted, with one exception. The court struck down the portion of the ordinance regulating firearm storage, stating that it was preempted by the storage requirements in Penal Code § 26890(a). However, subsequent to that case, the Legislature added Penal Code § 26890(b), which states, “The licensing authority in an unincorporated area of a county or within a city may impose security requirements that are more strict or are at a higher standard than those specified in subdivision (a).” Hence, California law does not preempt local governments from imposing requirements on firearms dealers, including licensing and security requirements, to supplement state law.¹³⁰

The California Legislature has not expressly preempted any field related to ammunition sellers or sales. In 2016, California voters approved Proposition 63, a ballot initiative to regulate certain aspects of ammunition sales and transfers. Proposition 63 will require ammunition sellers to obtain a state license (starting July 1, 2018) and create and maintain records of ammunition sales and transfers (starting July 1, 2019). However, there is no evidence that the People intended through the enactment of Proposition 63 to remove local authority to regulate ammunition sales. To the contrary, Proposition 63 expressly states that nothing in it “shall preclude or preempt a local ordinance that imposes additional penalties or requirements in regard to the sale or transfer of ammunition.” Therefore, we believe strong legal arguments exist in support of a variety of local ammunition-related ordinances.

III. Issues Related to the Regulation of Existing Firearms Dealers

Opponents of the regulations proposed in this Model Law may argue that local government cannot regulate firearms dealers already in existence before new regulations are adopted. However, for the reasons discussed below, local governments have broad authority to regulate existing dealers and may even require such dealers to relocate as long as sufficient time is given.

A. Non-Zoning Regulations

As a general principle, a local government may enact new regulations that apply both to prospective and existing businesses as long as the regulations are rationally related to the promotion of the public welfare. The right to operate a legitimate business “is subject to the state’s police power to subject individuals to reasonable regulation for the purpose of achieving governmental objectives such as public safety, health, morals and public welfare.” *Stewart v. County of San Mateo*, 246 Cal. App. 2d 273, 285 (1966). A regulation restricting the operation of

¹³⁰ Note that, in *Fiscal v. City and County of San Francisco*, 70 Cal. Rptr. 3d 324 (Cal. Ct. App. 2008), a court of appeal held that Proposition H, a municipal ordinance prohibiting all handgun possession and the sale, distribution, transfer and manufacture of all firearms and ammunition in San Francisco, was preempted by state law.

a business will be upheld by the courts “when any fact or facts appear, or may be hypothesized, which the Legislature might rationally have accepted as the basis for a finding of public interest.” *Varanelli v. Structural Pest Control Board*, 1 Cal. App. 3d 217, 221 (1969) (upholding act requiring certain salesman to submit to new licensing requirements).

California Penal Code section 26705 requires firearms dealers to obtain and maintain, in addition to other state and federal licenses, “a local license granted by the duly constituted licensing authority, valid for one year from the date of issuance...” This license may be in one of three forms: 1) the form prescribed by the Attorney General; 2) a regulatory or business license that states on its face, "Valid for Retail Sales of Firearms" and endorsed by the signature of the issuing authority; or 3) a letter from the licensing authority stating that the jurisdiction does not require any form of regulatory or business license or does not otherwise restrict or regulate the sale of firearms.

California case law suggests that local government may impose new regulations on businesses that have properly obtained a license to operate, including firearms dealers. As stated by the California Court of Appeals, a business takes a license to operate “subject at all times to the paramount right of the state at any time that the public good demand[s], to further restrict his activities thereunder.” *Rosenblatt v. California State Board of Pharmacy*, 69 Cal. App. 2d 69, 74-75 (1945); see also *Stewart*, 246 Cal. App. 2d 273 (upholding local regulation of existing, licensed private patrol services which resulted in the revocation of plaintiff’s existing license). A license “permitting the doing of that which without the license would be unlawful, is not a contract and does not convey a vested right...but [rather] a personal privilege to be exercised under existing restrictions and such as may thereafter be reasonably imposed.” *Id.* at 74 (emphasis added).

In the *Suter* case, for example, the court upheld a local ordinance which gave existing residential firearms dealers 60 days in which to comply with new regulations requiring dealers to obtain a police permit and requisite liability insurance.¹³¹ The cities of San Francisco, Richmond, Palo Alto and Fremont, among others, have imposed a variety of regulations on firearms dealers, such as requiring police permits, security measures, and liability insurance, and these regulations also all gave existing dealers 60 days in which to comply.

Even if a properly licensed firearms dealer could establish that new local regulations affect a right conferred by their current license, vested property rights may nonetheless be affected by local regulations where necessary to protect the public safety. “Vested rights, of course, may be impaired ‘with due process of law’ under many circumstances. The state’s inherent sovereign power includes the so-called ‘police power’ right to interfere with vested property rights

¹³¹ *Suter*, 57 Cal. App. 4th at 1117.

whenever reasonably necessary to the protection of the health, safety, morals, and general well-being of the people.” *Davidson v. County of San Diego*, 49 Cal. App. 4th 639, 648 (1996) (retroactive regulations valid if reasonably necessary to prevent business from being a danger to the public). The public safety threat posed by under-regulated firearms dealers likely justifies new regulations even if they are viewed as affecting existing property rights.

Finally, it is well settled that a licensed business does not have a vested property right to a renewal license.¹³² Accordingly, while it does not appear necessary based on the above, a local government could enact new regulations on existing firearms dealers that apply only upon application by a dealer for a renewal license.

B. Zoning Regulations

Local governments may also impose new zoning requirements on existing businesses as long as sufficient time is given to comply. New local zoning requirements—such as prohibiting firearms dealers from operating within a home or within a certain distance of schools—could prevent a business from operating in its current location. However, “California cases have firmly held [that] zoning legislation may validly provide for the eventual termination of nonconforming property uses without compensation if it provides a reasonable amortization period commensurate with the investment involved.” *Castner v. City of Oakland*, 129 Cal. App. 3d 94, 96 (1982).

For example, in *World Wide Video of Wash., Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004), the Ninth Circuit rejected a constitutional challenge to local regulations which restricted adult book stores from operating in close proximity to certain areas such as schools. The local regulations gave existing businesses a one-year period within which to comply with the new standards and allowed for a brief extension, if needed. In finding this one-year compliance period sufficient, the Ninth Circuit noted that “an amortization period is insufficient only if it puts a business in an impossible position due to a shortage of relocation sites.” *Id.* at 1200.

There are many other examples of courts upholding new zoning requirements that provide impacted businesses a reasonable amount of time in which to comply or relocate.¹³³ In addition,

¹³² See, e.g., *Ficarra v. Dep’t of Regulatory Agencies, Div. of Ins.*, 849 P.2d 6 (Co. 1993) (finding no vested property right to renewal of bail bondsman license which expired annually); *Nev. Rest. Servs. v. Clark County*, 2012 U.S. Dist. LEXIS 135947 (Dist. Nev. 2012) (no vested property rights are affected when County imposes reasonable conditions in order to renew a license); *Rosenblatt v. Cal. St. Bd. of Pharmacy*, 69 Cal. App. 2d 69 (1945) (rejecting constitutional challenge brought by licensee denied of a renewal license after conditions for renewal were changed by the legislature).

¹³³ See, e.g., *City of Vallejo v. Adult Books*, 167 Cal. App. 3d 1169 (1985) (upholding ordinance regulating adult bookstores and theatres providing a one-year amortization period allowing them to apply for an extra year upon a

the cities of San Francisco and Palo Alto, among others, have limited the locations in which firearms dealers can operate and gave existing dealers 60 days in which to comply. In sum, these authorities indicate that existing firearms dealers must comply with new local zoning requirements as long as they are given a reasonable time in which to comply. In the words of the Ninth Circuit, “[n]othing in the Constitution forbids municipalities from requiring non-conforming uses to close, change their business, or relocate within a reasonable time period.” *World Wide Video of Wash., Inc.*, 368 F.3d at 1199-1200.

Conclusion

Giffords Law Center hopes that this report will be useful to local jurisdictions in California considering the adoption of ordinances to regulate firearms dealers and/or ammunition sellers. Giffords Law Center is available to provide additional legal research, analysis, and drafting assistance to those seeking to enact this or other laws to reduce gun violence. Please see giffordslawcenter.org for more information about our services, and contact us at (415) 433-2062 if we can be of assistance.

showing of extreme hardship); *County of Cook v. Renaissance Arcade & Bookstore*, 122 Ill. 2d 123 (1988) (upholding six month amortization period with six month optional extension); *Northend Cinema, Inc. v. City of Seattle*, 90 Wash. 2d 709 (1978) (upholding ordinance providing a 90-day amortization period for preexisting nonconforming adult theaters); *Los Angeles v. Gage*, 127 Cal. App. 2d 442, 460 (1954) (noting that “[a] legislative body may well conclude that the beneficial effect on the community of the eventual elimination of all nonconforming uses by a reasonable amortization plan more than offsets individual losses.”).

April 26, 2021

Mayor Fuller and the Members of the Newton City Council
Newton, MA

Sent via email

Dear Mayor Fuller and the Members of the City Council,

On behalf of Giffords Law Center to Prevent Gun Violence, the gun violence prevention organization led by former Congresswoman and survivor, Gabby Giffords, I write to offer our perspective on an ordinance that would prohibit gun dealers from operating in the City of Newton. For nearly 30 years, the organization now known as Giffords Law Center to Prevent Gun Violence has been providing advice and assistance to federal, state, and local legislators and attorneys on gun violence prevention.

We are aware that Newton is contemplating an ordinance that would prohibit gun dealers from operating in the city and that such an ordinance has garnered significant public support. Given our decades of expertise in gun violence prevention policy and Second Amendment litigation, we write to offer the following perspective.

Regardless of the constitutionality of a law banning gun dealers, gun advocates will surely sue the city for such an ordinance. In light of the fact that former President Trump filled the federal judiciary, including the Supreme Court, with gun extremists, even a law fully consistent with existing constitutional precedent could face a serious threat. A bad ruling in this case could jeopardize reasonable, constitutional, and effective laws that regulate dealers around the country. Zoning and other regulatory measures, on the other hand, are effective tools which other cities have successfully employed. Pursuing a ban at this time with the current makeup of the federal judiciary is not an effort that Giffords recommends.

If you would like to discuss this further, please do not hesitate to contact me at aanderman@giffords.org.

Sincerely,



Allison Anderman
Senior Counsel

Attachment10.f: Russo firearms bylaw docs (6066 : Firearms bylaw discussion)

June 1, 2021

To the Mayor of Newton and the City Council
citycouncil@newtonma.gov

Dear Mayor Fuller and City Councilors,

We write to you as longtime Newton residents, as lawyers, and as leaders of the Massachusetts Coalition to Prevent Gun Violence, to address the zoning issues surrounding the gun shop seeking to open on Washington Street near Newton North High School. As co-founders and leaders of the Board of the Massachusetts Coalition to Prevent Gun Violence, we have each dedicated more than a decade to reducing gun violence, including securing the passage of laws requiring background checks on private guns sales and the Extreme Risk Protection order law, which permits the removal of guns from those who pose a risk to themselves or others. We have built a Coalition of more than 100 member organizations statewide, all devoted to reducing gun violence, and pursued every avenue possible to reduce what we see as a scourge on this country.

In our view, taking into account our experience as gun violence prevention advocates and as lawyers, the current proposal to amend Newton's zoning to dramatically restrict gun shops is the most effective way to prevent gun violence and keep this city safe. The proposal keeps gun shops away from schools, churches, residences and other vulnerable sites, which due to the current land use in Newton appropriately makes it very difficult to open a gun shop in the City.

Some well-intentioned citizens are instead pressing for a ban on gun shops. While the underlying motivation of this proposal is laudable, a ban is more emotional than practical. The choice between tough zoning restrictions and a ban on gun shops is a matter of the risks and the benefits of each approach. The tough zoning restrictions have almost the same benefit as a ban, without the risks. Zoning has been repeatedly upheld as valid to protect public health and safety. On the other hand, the risks of a ban are dramatic and may well set back the effort to reduce gun violence in Newton and nationwide. A ban will almost certainly result in a lawsuit by the radical gun lobby, which is funded by the manufacture and sale of guns. Regardless of what the lower courts in this jurisdiction may do (and keep in mind that the U.S. District Court of *Massachusetts* just last year prevented Governor Baker from classifying gun shops as non-essential during the pandemic on the grounds that doing so unnecessarily infringed on the Second Amendment) any such case is likely to end up in the United States Supreme Court, a likelihood acknowledged even by the advocates for the ban. The gun lobby has succeeded in its long campaign to pack the courts, and the Supreme Court in particular, with sympathetic judges. If offered the opportunity, there is a distinct possibility that the Supreme Court will dramatically expand gun rights and restrict good-faith efforts to prevent the proliferation of guns and the trauma and deaths which inevitably result.

As longtime activists for gun violence prevention, we see terrible risks in a gun shop ban, and little practical benefit over a tough zoning ordinance.

We urge you to vote in favor of the strict zoning ordinance rather than the ban, as emotionally satisfying as a ban might seem. In the long-term, a ban is likely to make all of us less safe.

Janet Goldenberg
President, MA Coalition to Prevent Gun Violence

Edward Notis-McConarty
Board member, MA Coalition to Prevent Gun Violence

Below is a list of additional Newton lawyers, many with respected expertise in zoning matters, who have expressed their support for the views expressed in this letter:

Diane Tillotson
Alan Schlesinger
Emily Murphy
David Banash
Mary K. Ryan
Kurt Kusiak
Theresa Banash
Richard Goldenberg
Lori Silver
Peter Lefkowitz
Lucy Heenan Ewins
Michael Chinitz
Laura Rees Acosta
Naomi Bass Grace
Steven J. Buchbinder
Leonard M. Davidson

STATEMENT OF CITY SOLICITOR ALISSA GIULIANI, ESQ.
ZONING & PLANNING COMMITTEE MEETING

May 13, 2021

7:00 P.M.

Good evening Councilors:

Tonight I am joined by Attorneys Maura O’Keefe and Andrew Lee and we are pleased to be with you again as you consider the important zoning amendment before you. I hope information that the Planning and Law Departments have shared with you helps in your decision making. The Law Dept. specifically has fielded questions from many of you individually or from residents and we have updated the Frequently Asked Questions to share some of those answers with the public. One of the questions that we have answered here and in the FAQs is why can’t the City go more restrictive and just ban gun sales all together.

I understand that a number of Councilors have docketed a separate item proposing such a ban on gun shops in the City. Under open meeting law, your deliberations tonight are limited to the docket item before you and the separate item will be the subject of another committee discussion such as this. But I would like to address in general the question of “Why not ban all gun retail in the City and see how the Courts decide the issue?”

As I stated during this Committee’s initial meeting on this item, any act by local government to completely prohibit the sale and purchase of firearms within the City will be challenged and will likely be found unconstitutional. Our office has reviewed the statutes, federal and state case law, and consulted with experts in firearm regulation at both the state and federal level. Based on our research, our legal analysis and guidance from experts, we stand by our conclusion that a complete ban on the sale of guns in Newton would not withstand a legal challenge.

Some have said “But the law is unsettled and we should give it a try.” Our advice against pursuing this in the courts is not just based on the law but on the adverse impacts that a lost battle could very likely bring to bear not just on Newton, but on communities across the country.

If the City decides to fight for a ban, and the City loses - it will create bad law and an unfortunate precedent with wide-ranging impact.

Given the current state of 2nd Amendment jurisprudence in this country, litigation of a local ban on gun sales could set the stage for a legal decision that limits the broad authority that localities now have to regulate business of this nature or, even more broadly, finds that selling guns is indeed a constitutionally protected right. A decision along those lines would put Newton and other cities in the position of having to ensure protections and opportunities for those who sell guns within their borders. The overturning of a ban would also likely result in a greater number of firearm stores within the City as there would be no strict regulation and zoning buffers to fall back on. And with such a decision, it is unlikely the City would enjoy the same authority it has now to enact reasonable restrictions on the sale of guns to protect its citizens from a proliferation of commercial firearms businesses within the community.

Put bluntly, when considering the risks of litigation in the name of fighting the good fight, the real risk here is that the City's ability to regulate gun stores could be diminished, if not removed entirely, and that decision would impact every community in the country.

So what we continue to advise, is that the Council work within the constraints of the law and create reasonable yet stringent restrictions that protect the community. As you have seen, our office has heard the concerns of the City Council and, along with the Planning Department, we have offered a zoning amendment that pushes boundaries of regulation and limited opportunity to the greatest extent defensible without placing the City of Newton in a position that could see these boundaries eradicated by a difficult decision of a higher court.

We look forward to hearing your deliberations on this tonight and we will be listening for questions that we can respond to here or at a later date.

Thank you.

LAW DEPARTMENT RESPONSES TO QUESTIONS FROM CITY COUNCILORS
FOR MONDAY 5/17 COUNCIL MEETING

1. How much time does the City Council have to act on the current proposed zoning amendment, commonly referred to as the restrictive zoning ordinance?

The City Council must vote to adopt the proposed ordinance within 90 days after the close of the public hearing. As the public hearing was closed on May 10, 2021, the deadline to act on the ordinance is August 9, 2021. In accordance with state law, if the ordinance is passed within this 90 day period, it will apply retroactively to any use or business that had not commenced prior to the publication of the first notice of the public hearing, which was published on April 23, 2021. As the proposed firearms store at 709 Washington Street had not commenced operation by that date, adoption of the restrictive zoning ordinance will apply to that store so long as it is passed within 90 days. A charter objection does not alter the 90-day deadline.

While the restrictive ordinance, if adopted within 90 days, will apply to the proposed firearms store, the store may still be allowed to open prior to such adoption if it is issued the required permits under the state building code. If the City Council fails to vote on the proposed zoning amendment on or before August 9, 2021, the Council cannot act on the item without holding another public hearing. However, if the City Council waits, holds another public hearing, and votes to pass the restrictive zoning ordinance, the effective date would be the date of the publication notice for the new public hearing, not April 23, 2021.

To be clear, the only zoning amendment or ordinance that will have an effective date of April 23, 2021 is the current proposed zoning amendment approved by ZAP on May 14th and before the Full Council on May 17th. The City Council may make minor amendments to the proposal. All other zoning measures considered by the Council, including a ban, will not apply to any use or business that has commenced prior to the publication of the first notice of the public hearing for that specific item. And any general ordinance measure will not take effect until after the date of adoption. Therefore, the Law Department recommends that the City Council act on the restrictive zoning as soon as possible so that the City will have in place strong regulations for firearms businesses while the Council deliberates on other proposed measures.

2. If the current proposed restrictive zoning ordinance is not adopted, but a complete ban of firearm stores is subsequently adopted, will the proposed firearms store at 709 Washington Street be allowed to open?

If the proposed restrictive zoning ordinance is not adopted, firearms stores will continue to be permitted by right in the City until an ordinance is passed regulating such businesses. If the City Council adopts a zoning amendment that completely bans firearm stores, the effective date of the ban would be the date of publication of the first notice of the required public hearing. If a firearms store commences operations before the notice of the public hearing for the proposed ban is first published, the ban would not apply to the operating firearms store. At this time, a public hearing date for the proposed ban has not been assigned and no draft ordinance language for the ban exists.

Given these variables and uncertainties, the Law Department recommends that the City Council act on the proposed restrictive zoning ordinance as soon as possible in order to give the City immediate protection as to the regulation of firearm uses. The longer the delay to enact any firearm zoning increases the risk that it will not apply to firearm uses that may be seeking to open under the current permissive zoning.

Acting on the restrictive zoning now also does not preclude discussion, deliberation, and possible adoption of the proposed zoning ban that has recently been submitted to the City Council.

3. Can the City Council adopt both a ban of firearm uses and the restrictive zoning so that the restrictive zoning will go into place only in the event that the ban is overturned by a legal challenge?

The City Council cannot adopt an alternative zoning ordinance without any effective date. The Law Department also anticipates that any potential legal challenge would attempt to overturn all forms of firearm regulation at the same time. Notwithstanding these points, the Law Department is currently evaluating whether restrictive zoning could co-exist in the zoning ordinance as an extraordinary exception to the ban, rather than as alternative zoning. As the form of the ban has not been discussed, the drafting process for the proposed ban ordinance has not started, and the public hearing has not yet been assigned, discussion of the structure and terms of the ban are premature at this time and can be addressed as the process continues for that separate proposed zoning amendment.

Again, the Law Department recommends that the City Council act on the restrictive zoning now so that the City will have in place strong regulations for firearms businesses while the Council deliberates on a complete ban. As previously noted, enacting the restrictive zoning will not have any impact on the City Council's options regarding a ban on firearms businesses.

4. Why does the restrictive zoning ordinance allow minors between ages 14 and 18 to access firearm stores when accompanied by an adult?

Under state law, minors older than 14 are allowed to purchase and possess certain types of rifles and shotguns with parental consent. The proposed ordinance is meant to be consistent with this requirement. The Law Department has no issue with amending the final language to say that minors must be accompanied by a "parent or guardian" rather than simply an "adult."

5. Does Cambridge ban firearm stores?

In 1986, Cambridge enacted a general ordinance banning the transaction of gun sales. The ordinance exempted persons that were already licensed to sell firearms under state law, but banned the issuance of any additional licenses to sell. The ordinance effectively capped the number of firearm stores operating at the time it was adopted in 1986. The Law Department has drafted a similar proposed general ordinance that caps the number of firearm licenses issued in Newton to one. This proposed Newton ordinance would have a similar effect as the Cambridge ordinance in that it would not allow for the issuance of a firearms dealer license beyond the one current license that was issued to the store at 709 Washington Street so long as that license remains active. Unlike

Cambridge, the Newton general ordinance would allow for the issuance of future firearm dealer licenses, but never more than one active license. The proposed Newton ordinance has been drafted to withstand a legal challenge under the current state of federal and state law—which has progressed significantly since 1986.

6. Is the City Council allowed to go into Executive Session to discuss litigation strategy concerning the proposed restrictive zoning ordinance?

The City Council may enter into executive session under Purpose 3 of the Open Meeting Law “to discuss strategy with respect to . . . litigation if an open meeting may have a detrimental effect on the . . . litigating position of the public body.” M.G.L. c. 30A § 21(a)(3). General discussions with counsel are not an appropriate use of Purpose 3. *Plymouth Dist. Atty. V. Selectmen of Middleborough*, 395 Mass. 629 (1985). While this exemption is not meant as a catchall to discuss potential litigation, it may apply if a lawsuit is “imminently threatened or otherwise demonstrably likely.” *Open Meeting Law Guide*, p. 13 (2020). The City Council must have a defined litigation position to protect to invoke the exception. OML 2019-164; OML 2012-116. The *Open Meeting Law Guide* is clear that public declarations about bringing suit do not necessarily amount to a threat of imminent litigation. *Open Meeting Law Guide*, p. 13.

Here it would be premature to enter into an executive session to discuss legal strategy for a lawsuit that does not yet exist. While the Law Department continues to advise that a complete ban on the sale of guns in the City will likely invite litigation, any discussion about strategy and how to defend against such a lawsuit at this stage would be so theoretical that it would fall outside the bounds of Purpose 3.

7. Why not enact a complete ban of firearm uses in the City if so many people in the public are saying Newton can or should give it a try?

As the Law Department has stated before, any act by local government to completely prohibit the sale and purchase of firearms within the City will be challenged and will likely be found unconstitutional. Our office has reviewed the statutes, federal and state case law, and consulted with experts in firearm regulation at both the state and federal level. Based on our research, our legal analysis and guidance from experts, we stand by our conclusion that a complete ban on the sale of guns in Newton would not withstand a legal challenge.

It is ultimately up to the City Council whether it wants to follow the Law Department’s advice or whether it decides it is “worth the fight.” Some of the significant risks associated with enacting a ban were set forth in City Solicitor Giuliani’s written statement distributed on Thursday, May 13. While there are many reasons that the Law Department counsels against a complete ban, consideration of City staff time and resources is not one of them. The Law Department is fully capable, both in terms of staffing levels and in expertise, of defending any lawsuit that may arise from these efforts to regulate firearm uses in the City.

The Law Department acknowledges that some Newton residents, including those who are lawyers, appear to disagree with the Department’s legal analysis. We also appreciate the passion residents have for fighting against something they do not want in their hometown. Please be assured, that

the advice of the Law Department is based on our research of the law, knowledge of municipal law, and free of any vested interest that could undermine the basis for the City's ultimate action. Our advice is also not informed in any way by who can or will represent the City in a legal challenge. Finally, the Law Department's analysis is consistent with that of national experts in gun regulation at the local level.

STOP GUN STORES IN NEWTON FREQUENTLY ASKED QUESTIONS

When we learned about a gun store opening at 709 Washington Street, each of us was shocked and outraged. We could not believe that having a gun store in Newton was even possible, and we wanted to change that. So, we founded Stop Gun Stores in Newton (SGS).

As a group and as individuals, we have done a lot of research and listening; we have engaged with experts in gun violence prevention locally, nationally, and at the state level; and we have debated and discussed this issue. While we all fervently wish the current landscape were different, we are in unanimous agreement that the proposed ordinance, with its zoning restrictions and a stringent special permitting process, is the best option moving forward. We further agree that a ban at this time is ill-advised, dangerous, and irresponsible, not just for Newton, but for the country as a whole.

This FAQ explains why we are opposed to a ban at this time. We hope you will take the time to read it in its entirety and carefully consider whether continuing to push for a ban is the right thing to do right now. We do not. We all hope that the City Council will act expeditiously to keep our city safe.

1. Who is SGS?

We are six Newton moms who connected over our shared concern upon hearing that a gun store was planning to open on Washington Street in Newtonville. Three of us have worked extensively in gun violence prevention advocacy as group leads for a local branch of a national gun violence prevention organization. Two of us are lawyers. Two are veterinarians. Two are researchers and work in the field of public health. We all want to eradicate gun violence in our country. Right now, this means supporting common sense gun reform to make our communities safer for our families, friends and neighbors.

2. What is the mission of SGS?

As stated in the “About” section of our Facebook page: *Our goal is to create effective, constitutional zoning laws to prevent gun sales near the most vulnerable populations and to prevent the normalization of gun culture among our children.* Our Mission, as stated on our website: *Stop Gun Stores in Newton harnesses the passion and commitment of Newton residents to advocate for effective zoning laws in opposition to gun stores in our city. We are making our voices heard to protect our most vulnerable citizens from gun violence.*

3. Why have you turned off commenting?

As the administrators of this group, we are unified in our opposition to the proposed ban. When we started SGS, our goal was to make sure no gun stores could open in Newton; the proposed ordinance accomplishes this.

Given the current interpretation of the Second Amendment and the extremely conservative make-up of the Supreme Court, enacting a ban now is too risky. We hope there is time when this type of bold action makes sense, but a court decision striking down a ban risks protecting gun stores and stripping away the ability of municipalities like ours to enact restrictive zoning. Frankly, by pursuing a ban we believe it is *more likely* that a gun store will open (and stay open) in Newton.

4. Why is it so important to pass the ordinance?

Newton Firearms could open any day. The proposed ordinance is currently the only barrier preventing Newton Firearms from opening at 709 Washington Street. There are NO other gun stores currently seeking permits within our city's borders. If voted into law by our City Council, this restrictive ordinance will prevent Newton Firearms from opening on Washington Street and will give the City Council the capacity to prevent other gun stores from opening. In addition, passing this ordinance does nothing to prohibit further restrictions when the risks and benefits of those restrictions have been properly weighed.

5. Are you saying Rumford, The Street, and North Street are OK locations for a gun store?

Some have said we are being disingenuous when we say we want to prevent gun stores but support an ordinance that allows for their establishment in three zones. To be clear, this zoning ordinance does not allow gun stores to simply open in these three zones. Any potential firearms dealer would need to apply for a special permit, meet all the requirements in the ordinance, and successfully demonstrate to the City Council that "the location and operating characteristics of the proposed [store] promotes, and will not be detrimental to, the public health, safety and welfare of the neighborhood or the City." These requirements make Newton extremely inhospitable for a gun store, which is appropriate given that we have numerous schools, medical centers and other recognized sensitive uses spread throughout the City.

Newton residents have been loud and clear that we do not want a gun store, as demonstrated by the nearly 10,000 petition signatures, hundreds of letters, and the general unease of the last few weeks. In the unlikely event a store tries to open in the future, this group will activate. The current zoning ordinance gives the City Council ample tools to act on the will of the people.

6. Why are you so afraid of litigation? Can't the zoning ordinance be challenged in court too?

Any restrictions the City of Newton enacts can be challenged in court. We are not afraid of litigation, but unnecessarily inviting a lawsuit by enacting the proposed ban is irresponsible when there is a strong and effective alternative.

The proposed zoning ordinance is effective, justifiable, and readily defensible given the existing case law, the precedent for zoning, and the impact gun store locations have on public health and safety. While the gun lobby may well still challenge it, Newton will be on solid ground when defending it.

Enacting a ban is baiting the gun lobby when we have a Supreme Court that has indicated it is looking for ways to expand the Second Amendment and might even go so far as to include, for the first time, the right to sell firearms—no doubt exactly what the gun lobby—funded by the manufacture and sale of guns—wants: <https://www.cnn.com/2021/05/20/politics/clarence-thomas-abortion-guns/index.html>. The conservative justices on the court have made clear their intentions to strengthen gun rights. And they now have the votes to do so.

An unfriendly court could simply strike down a ban, leaving existing zoning in place; but they could also go further and rule that the right to sell firearms is constitutionally protected and regulations of gun stores are unconstitutional. This would mean that gun stores would be protected, even enjoying rights beyond those of other businesses, with few allowable restrictions. This would apply to Newton, but also to the entire country.

We are unwilling to stand by while some city councilors promote an imprudent and unnecessary ban, without considering the very real and serious ramifications of this action for Newton and the country.

7. What did Gifford’s Law Center say about this ordinance?

The Gifford’s Law Center, arguably the nation's leading expert in the Second Amendment and a powerful force fighting the gun lobby, has been advising the City Council and supports the proposed ordinance:

<https://static1.squarespace.com/static/607dcfc00edb457d9c26721c/t/6099427be5ecc16e1c16a437/1620656764308/Newton+MA+Ltr+in+Support+Dealer+Reg+Ordinance+05.2021.pdf>

8. But what about that lawyer letter? They say we can enact a ban and they are constitutional experts

Several lawyers from reputable law firms have signed a letter in support of pursuing a full ban. Their letter is a compelling piece of persuasive writing, but it is not the type of thorough risk analysis that a law firm, engaged by a client, would need to complete. A risk analysis would lay out the likelihood of success based on the merits in the current Supreme Court, would share the potential legal challenges and the potential plaintiffs who would bring those challenges, and

would lay out arguments on both the merits and weaknesses of prior rulings in related cases. For instance, while the letter from these lawyers cited cases in support of our argument—these *very same cases* will likely be used by the gun lobby in support of their argument that a ban is unconstitutional. To read more about why the City’s Law Department is recommending against a ban, visit FAQ #7 here:

<https://www.newtonma.gov/home/showpublisheddocument/69983/637569509635100000>

Before pursuing a ban, we would need to understand the likelihood of success in litigation, as well as the substantial costs involved in defending the case, including not only time and money, but also the diversion of resources from other city priorities.

We do not doubt the intentions or motivations of these lawyers; these are excellent lawyers who share our desire to stop gun stores in Newton, but they are only presenting one opinion—and it is just that—an opinion. No one can predict the outcome of litigation.

9. What about New Jersey and California? I thought localities in these states enacted bans and they haven’t been challenged?

Both Piscataway, New Jersey and Alameda County, California, enacted restrictive zoning, *not a ban*. Piscataway has similar buffer zones as Newton’s proposed zoning ordinance (1000 ft from sensitive uses such as schools, parks and playgrounds, and religious institutions). You can read this zoning ordinance here: <https://ecode360.com/34887069> at sec. 21-1018.3

The Alameda county ordinance was challenged in Court and went up to the Ninth Circuit where a 3-judge panel found in favor of Alameda County’s restrictive zoning ordinance. You can read this decision here: <https://cdn.ca9.uscourts.gov/datastore/opinions/2017/10/10/13-17132.pdf>

The Newton Law Department and Giffords Law Center have also cited other examples of successful restrictive zoning ordinances.

10. Why can’t we propose a ban, with a zoning ordinance as a backup?

If a ban is challenged and a Court holds that there is a constitutional right to sell firearms, then there is no backup—zoning here and elsewhere could be considered unconstitutional and could be rescinded. This is why we believe it is imperative for the City Council to be well informed before they take such a drastic step.

If the City Council is intent on passing a ban, they should pass the zoning ordinance *first*. If the ban is challenged and struck down for other reasons (not as unconstitutional), then the zoning ordinance would be a backup. While this is procedurally confusing, it is important that the zoning ordinance pass *first* and not be included as part of a ban ordinance. See the Law

Department's FAQ #2 and #3 on this topic here:

<https://www.newtonma.gov/home/showpublisheddocument/69983/637569509635100000>

11. Why are members of the City Council trying to push a ban through so quickly?

We understand the desire to ban gun stores from Newton. That is our desire as well. However, as described above, we believe a ban at this time is an extremely risky and dangerous option that should only be considered if there are no other options and after very careful consideration.

We applaud the City Council's newfound zeal for gun violence prevention. Indeed, had the City Council engaged in this issue prior to the threat of a gun store, we may have avoided this situation. We encourage the City Council to invest the time and energy needed to develop a thoughtful approach to keep Newton safer from gun violence and advance state and national gun violence prevention efforts in a thoughtful, strategic way. Ramming through an ill-advised ban in response to an imminent threat in our city without considering the broader impact, however, is careless and irresponsible.

12. Don't you want to keep Newton safe? Why aren't you willing to take a stand?

We are taking a stand, and will continue to do so as long as there is a threat of a gun store in Newton, now or in the future. We believe that a ban makes Newton and other communities *less safe* and *more likely* to end up with a gun store. The zoning ordinance has the tools necessary to prevent gun stores anywhere in Newton. As long as we are surrounded by other communities and states with ample guns, we are at risk of gun violence. In fact, a ban has the potential to set back progress and divert attention away from the important, strategic work being done by knowledgeable and effective state and national gun violence prevention advocacy groups.

13. Where can I find a copy of the ordinance?

The zoning ordinance has been changing, but to our knowledge the most recent draft as of 5/24 can be found here:

<https://www.newtonma.gov/home/showpublisheddocument/69837/637566088200199871?fbclid=IwAR2AQelTDFsfWRPYLRlhNylmom08s9pyWxhsbPYEP53dj0evYW4gO5S6Cuk>

The Zoning and Planning Committee page also has many documents related to this issue:

<https://www.newtonma.gov/government/city-clerk/city-council/council-standing-committees/zoning-planning-committee>

14. I didn't realize that Newton was at risk from gun violence until now and how much more work needs to be done to address this issue. What else can I do to fight gun violence in our country to make us all safer?

The location of gun stores is in some ways a proxy for a much larger problem in America that is currently being addressed by gun violence prevention organizations at both the State and Federal level. We believe the best approach is to support this thoughtfully drafted ordinance that will stop gun stores here and will not erode gun protection laws elsewhere. To be morally and ethically consistent, we need to take what we've learned in Newton and apply it to other cities and towns, especially those that are less resourced than Newton, encouraging them to take proactive steps to enact thoughtful zoning before gun stores try to open in their towns.

We also need to get involved with one of many organizations currently working to prevent gun violence and support federal efforts to regulate “ghost guns” and close the loop on background checks at a federal level. Progress in the gun control fight can feel slow, but diverting resources away from the state and federal efforts that have been in the works for years and have hopes in success to pursue an ill-advised ban is also not moral.

The following organizations are working to make real change and make our country safer from gun violence. We encourage you to research them and choose the one that most closely aligns with your approach.

[Massachusetts Coalition to Prevention Gun Violence](#)

[Moms Demand Action for Gun Sense in America](#)

[Brady Campaign to Prevent Gun Violence](#)

[Giffords](#)

Thank you for your continued advocacy!

Newton Gun Violence Prevention Collaborative Gun Store Ordinance Resources

Tips

- Make it as easy as possible for citizens to take action. Create templates for letters; provide email addresses/contact information
- Post information on how to submit op-eds, including deadlines, word limits, where to submit
- Take advantage of talents in community (e.g. graphic designers, web developers, marketing folks, lawyers, writers)
- Don't be afraid to call your elected officials - they are just people and they want to hear from you
- FB - Make sure you approve everyone rather than let everyone in. This takes more time, but is worth it so you can avoid pro-gun activists. Consider setting the page up so you approve posts.
- Amplify. If people put up lawn signs, have them post a picture of them on FB. Post letters, wins, etc. on FB.
- Inundate decision makers with emails, calls, etc.

Zoning:

- Set up districts
- Establish buffer zones - schools, playgrounds, houses of worship, parks, library, nursing home, residences
- Require special permit that has criteria specific to gun store - must find that the proposed use at the proposed location will do no harm (define neighborhood as including "across our border"); also lighting, security

GIFFORDS CAMPAIGN POLICY ASSISTANCE REQUEST FORM

<https://giffords.org/lawcenter/action/request-policy-assistance/>

aanderman@giffords.org

415-433-2062, x311

NEWTON GUN VIOLENCE PREVENTION COLLABORATIVE RESOURCES

WEBSITE

<https://www.newtongunviolenceprevention.org/>

FACEBOOK PAGE

<https://www.facebook.com/groups/2982003588700581>

PETITION

Here is a [link](#) to our original petition that got 10,000 signatures. We primarily shared it on a page we created on FB, but also sent emails to everyone we knew, as well as other organizations, houses of worship, etc..

GOFUNDME PAGE

https://www.gofundme.com/f/stop-gun-stores-in-newton-yard-sign-appeal-fund?member=10189726&utm_campaign=p_cp+share-sheet&utm_medium=copy_link_all&utm_source=customer

Newton's Ordinance:

<https://www.newtonma.gov/home/showpublisheddocument/70791/637588551929453499>

AN EMAIL WE SENT OUT TO EVERYONE AND ANYONE 3 DAYS AFTER WE HEARD ABOUT THE POTENTIAL GUN STORE

Hi all,

You may have heard that a gun store is planned to open at 709 Washington Street between Cabot's and Marty's Liquor in 2021. There are currently no zoning laws against this, despite the close proximity to schools and homes. It has already been approved by the Newton Police Department and the City Council has no authority in this matter. We are gathering information about what CAN be done to prevent this gun store from opening and to change our zoning laws to prevent it in the future.

Please if you have a moment, [sign the petition](#) and write a letter to the Mayor and City Councilors (addresses and template below). You can also join our Facebook Group: [Stop Gun Sales in Newton](#) to hear the latest.

Please share this email to as many people as you can, especially to Newton friends who may not be on Facebook.

Sign the Petition:

<http://chnq.it/rMnfCTDWMw>

Email the Mayor and City Councilors:

Ruthanne Fuller's email: rfuller@newtonma.gov

City council's email: citycouncil@newtonma.gov

List of individual city council members:

https://www.newtonma.gov/home/showpublisheddocument?id=67495&fbclid=IwAR220ckB1En0jadcs5xg0q1UV99-Hr09cRG3Nb8wNu42N_vkhHmYZPBQfkY

Here is a Template Letter:

https://docs.google.com/document/d/1L_FXoQZ0i_TzPYRbedJN6pb4IW-ajGyKkdhl_73HxFU/edit?fbclid=IwAR07tnO8mEValBh_hEjnXKIPeGE5GyLTbSJEoblxt3xOMsq6bhlljCtcAxx

Join our Facebook Group, Stop Gun Sales in Newton:

<https://www.facebook.com/groups/2982003588700581>

Sample Letters/Emails

- *Template Letter Opposing Gun Shop to Mayor and City Councilors (same as above)*
https://docs.google.com/document/d/1L_FXoQZ0i_TzPYRbedJN6pb4IW-ajGyKkdhl_73HxFU/edit
- *Letter written from Mental Health Professionals*
https://docs.google.com/document/d/1_DCKH7jQeE6Rd6JM4Uy9BgIZ17YqUDYx/edit
- *Template Letter Urging City Councilors to Vote in Favor of Ordinance (and not pursue a ban)*
<https://docs.google.com/document/d/1gwzCf9w7672dqa58xXPVVtdGq02mZESsfveH20nyjBQ/edit>
- Physicians
<https://static1.squarespace.com/static/607dcfc00edb457d9c26721c/t/60881a4646f6b314619684de/1619532358330/physician+letter+with+signatures.pdf>

Sample Letters to the Editor:

- Early letter against store
<https://docs.google.com/document/d/1LYmYqWyejCXwohgkwisqKU-Sak6-mYskypbbnZGHHsU/edit>
- Ordinance vs. Ban
<https://docs.google.com/document/d/1chTAHXL55IbNBqCfhcr5ERQozqW2m10NWBovCss2hBc/edit>

Public Hearing Testimony (initial public hearing on ordinance)

<https://docs.google.com/document/d/1f7f7rt4oMzqD5IO2muJzBJhdqFjgRVyi09nbshAy4XY/edit>

FAQs (from our website, largely focused on ordinance v. ban)

<https://docs.google.com/document/d/1aqxMknqeeMfH2sFm8eIjRqARvGKLCvSaAOBsXInaSI/edit>

Deb Crossley NewTV

<https://newtv.org/newto-news/6896-councilor-crossley-talks-about-gun-shop-zoning-ordinance-and-ban>

CITY OF NEWTON DOCS

Here is a link to all of the documents the city produced related to the gun store zoning ordinance. I know it looks overwhelming, but I would spend a few minutes skimming through all this info:

<https://www.newtonma.gov/government/planning/plans-policies-strategies/firearms-zoning-amendment>

You can see all of the proposed maps and also the Planning Memos. I think this one is particularly informative and goes through the rationale for certain decisions: (ZAP is our Planning and Zoning Committee)

<https://www.newtonma.gov/home/showpublisheddocument/68846/637547934492900000>

[Statement from our City Solicitor Opposing a Ban](#)**Zoning Retroactive**

However, the State Zoning Act, Chapter 40A, does state that any approved zoning amendment will apply to any use/business that has not commenced prior to the publication of notice of the public hearing for the zoning amendment. It is expected that the City Council will provide notice of the public hearing in the newspaper on April 26 and May 3, 2021. Practically speaking, if there is a proposed firearm dealer use that has not started operating by those dates, it will be subject to the proposed zoning amendments whenever those amendments are passed.

In the News

<https://www.newtongunviolenceprevention.org/in-the-news>

MISC LETTERS TO THE EDITOR AND STATEMENTS**[Our Op-Ed on Why to Choose Zoning Over a Ban](#)****[Giffords Letter Opposing a Ban](#)**

political, and charitable events, hosting numerous so-
ing with the American Legion to serve veterans and

support of Tom Mountain and the Newton GOP; more
than a few came several times. Scott Brown launched

See MOUNTAIN, Page 3B

LETTERS TO THE EDITOR

**Newton Interfaith Clergy Association
opposes firearms retailer in Newton**

As members of the Newton Interfaith Clergy Association, we feel compelled to speak out in concern about the possibility of a firearm retail store opening in our city. We are committed to cultivating and strengthening a safe and inclusive city for all who live and work here. We are convinced that this retailer will undermine the quality of life here in Newton.

Our country is awash in firearms. In America firearms cause roughly 45,000 deaths including suicides each year; 9,000 die on the highway during the same period. Due to much stricter gun control legislation, every death is a tragedy, but only about 39 people in Canada die from gun-related deaths each year. As leaders of diverse religious communities, we know first-hand the toll that our nation's alarming rate of gun violence has on our citizens. Our children, who grow up under the threat of mass shootings are particularly affected. That this store would be located close to not only one, but several schools causes us even graver concern.

Several years ago, in cooperation with our city's police department and the support of Mayor Ruthanne Fuller, we participated in a county-wide gun buy-back effort to remove unwanted firearms from homes. We did this because as clergy, we understood and continue to understand that one of our most important roles is to be peacemakers in our community. We work to create sanctuaries of refuge that are free from violence and hate. Our involvement in the gun buy-back program was an actualization of the teachings of our diverse faith traditions. We now ask all residents of our community to join us and commit to doing what is right and just.

What can we do? We urge you to attend the public hearing on this issue on May 10 and speak out. It is not only our faith traditions that demand we lift up our voices. It is a moral imperative.

We hope you will join us.

*The Newton Clergy Association Leadership Team:
The Rev. Ken Baily, Rabbi Allison Berry, the Rev. Alicia Johnson and the Rev. Devlin Scott*

See LETTERS, Page 11A


ION FOR THE NEWTON TAB

**For questions about management
of our newspaper or this website:**

- We only publish letters written specifically for the Tab.
- You must include a daytime telephone number, street, but

Wanted: Real Estate, Merchants, Services, Classified Advertising

Weighing limits on gun stores



Councilor-at-Large Josh Krintzman
Guest columnist

Like the hundreds of residents who have written to the City Council, I was shocked and appalled to learn that a gun store planned to open in Newton. I was outraged because I believe that Newton would be a better place if there were no guns.

Unfortunately, the reality of the United States in 2021 is that guns are legal and the "right to bear arms" has been extended to individuals. [See *District of Columbia v. Heller*, 554 U.S. 570 (2008)].

In addition, courts seem to be expanding interpretations of Second Amendment rights. (See *Texeira et al. v. County of Alameda*, No. 13-17132 (9th Cir. 2016); *Illinois Association of Firearms Retailers v. City of Chicago*, 916 F. Supp. 2d 928 (N.D. Ill. 2014)).

Although the city of Newton cannot prohibit all individuals from owning or possessing guns, I believe that the city need not facilitate the proliferation of additional guns in our community. Rather, as a city councilor, I have sought ways to protect the safety of all residents through the strictest zoning possible, in order to protect the safety of all residents.

Many city councilors would like to ban gun shops from operating in Newton. Frankly, I would be happy if Massachusetts could prohibit gun sales entirely. But the reality is that the City Council's options are limited - both constitutionally, but also by virtue of the fact that our jurisdiction stops at the city border. One tool available to the city is zoning. There is no dispute that traditional municipal zoning powers may regulate the placement of various land uses across the city. Newton can place conditions and qualifications on the commercial sale of arms.

The zoning proposal adopted by the Zoning and Planning Committee (and possibly approved by the City Council by the time you read this in print) is written to provide buffers between firearms business and other uses.

For example, it prohibits the placement of a firearms business within 1,000 feet of a school or within 150 feet of any residential use. It also establishes buffers between libraries, playgrounds, day cares, parks and preschools. Because a person seeking to open a gun store must comply with all of the zoning requirements, the layers of protection results in a map leaving very few parcels available for a firearms business.

But zoning also presents a problem of perception. The zoning rules clearly state where firearms business are prohibited, but the current interpretation of the

See KRINTZMAN, Page 3B

had held for a period of time, along with other books. Then, staff set up in the side entry, to dispense re-

Krintzman

Continued from Page 10A

Second Amendment requires that the city not eliminate all locations in the city. Therefore, despite the fact that the zoning eliminates the vast majority of locations in the city, inevitably, some will interpret the zoning to have "created" certain areas of the city which are "appropriate" for a firearms business. But there are no such appropriate locations. Therefore, the optimal zoning remains unsatisfactory. I am hopeful, however, that the council's limitations are so stringent, but constitutionally defensible, that no proprietor will seek to locate a gun store in Newton.

In addition to eliminating most locations as ineligible for a firearms business, the zoning will also require any person seeking to open a firearms business to obtain a special permit from the City Council. This is a reasonable and ordinary practice.

For example, buildings over a certain height, large scale residential and mixed-use projects, and any marijuana use all require a special permit. The zoning also establishes the criteria for a petitioner to receive a special permit.

The City Council must make the following findings before granting any special permit:

- The specific site is an appropriate location for such use, structure
- The use as developed and operated will not adversely affect the neighborhood
- There will be no nuisance or serious hazard to vehicles or pedestrians
- Access to the site over streets is appropriate for the types and numbers of vehicles involved.

In addition, the zoning approved by the Zoning and Planning Committee adds the following criteria for firearm businesses:

- The lot is designed such that it provides convenient, safe and secure access and egress for clients and employees arriving to and leaving from the lot
- The location will have adequate and safe storage, security, and a lighting system
- Loading, refuse, and service areas are designed to be secure and shielded from abutting uses
- The establishment is designed to minimize any adverse impacts on abutters and pedestrians
- The location and operating characteristics of the proposed use promotes, and will not be detrimental to, the public health, safety and welfare of the neighborhood or the city.
- The establishment has satisfied all of the conditions and requirements of this section.

These reasonable and enhanced criteria will hopefully result in proprietors choosing other, less restrictive locations in which to open their business.

Josh Krintzman is a city councilor-at-large in Ward 4.

Attachment 10.f: Russo firearms bylaw docs (6066 : Firearms bylaw discussion)

A ban on gun stores in Newton — right ends, wrong means

The proposed issues around zoning and regulations of gun stores have galvanized our city in ways I have never seen. I respect my fellow citizens' right to own guns. Period. I have no interest in disarming law-abiding gun owners. At the same time, I am vehemently opposed to gun stores in Newton. I am no more comfortable with a gun store on Rumford, North Avenue, or The Street than anywhere else in the city. While I am thrilled the tough new zoning ordinance (145-21) limiting firearms stores passed, I am opposed to an outright ban.

A ban is risky and will certainly garner national attention. While there are no protections for a right to sell guns under the constitution, the present 6-3 conservative SCOTUS majority would likely strike down our ban — and yes, I fully expect that there will be outside money financing the lawsuits. Experts such as the Giffords Law Center have written as much.

Further, this is not where Newton should jump into the national spotlight.

Stopping gun stores in Newton

I joined the Stop Gun Stores in Newton Facebook page the day it became public that a gun store was proposed at 709 Washington St. because I wanted Newton to do everything it could to stop any gun stores from coming to the city, let alone any within walking distance to so many schools and daycares. I was inspired by the activism of hundreds of residents and the city council's swift response. By enacting a restrictive zoning ordinance, the city has done the right thing to keep Newton safe now and down the road.

However, despite the warnings of local, state, and national gun violence prevention experts and advocates, some city councilors are continuing to push for a ban. They argue that the ordinance does not go far enough, and will simply put gun stores in certain locations in Newton. While I can empathize with the anxiety of residents close to those locations, the reality is that the zoning ordinance strikes a perfect balance between providing ample protections and avoiding the risks. City councilors continuing to stoke fears about theoretical and unlikely gun stores in our city,

while failing to take into account the ramifications of this action, are risking a loss of safety for us all down the road. As others have explained, a Supreme Court ruling on a ban could lead to protections of gun dealers across the country, invalidating our ban and ordinance, and making it more likely for gun stores to open anywhere in Newton. This would also apply to cities across America. That is not a risk worth taking.

Newton's citizens have been awakened to the fact that no city or town is immune to the impact of guns in our society. It's natural that we want to do more, but we need to do it in a way that is not in conflict with the ultimate goal of making Newton, and our country, safer from gun violence. Our zoning ordinance keeps Newton safe from gun stores; I hope the city councilors will keep it that way by voting No on 182-21.

Rakesh Das, Pulsifer Street, Newtonville

No on a total ban in Newton

I have lived in Auburndale for the past 21 years with my husband and children. To put it briefly, I don't want a gun shop in my neighborhood. I totally understand why my

other Newton neighbors want to enact a TOTAL BAN for the city. In my mind, more available guns in an area means more gun violence, either domestic, suicidal or accidental.

Although we are against having a gun shop in our neighborhood, let alone, our city, we believe that the Restrictive Zoning Ordinance that recently passed will, technically, make it very hard for a gun business to operate here. I'm concerned that the noble idea of a TOTAL BAN on gun shops, if passed, will open the door for a lengthy lawsuit against the city. A lawsuit that could drag on for years and replace the time and energy the City can put to use in other endeavors. Implementing a Total Ban on gun shops is very risky.

Do we really want to take that risk? The Massachusetts Coalition to Prevent Gun Violence, in its June 1, 2021 op-ed to the mayor and city councilors, thinks it's a dangerous risk to take. I agree with them.

This past year, there has been an increase in gun violence. Too numerous to count, it seems. I see it in the news every day in all parts of this nation. According to the article: "A Neighborhood-Level Analysis of the Economic Impact of Gun Violence", published in June of 2017, "surges in gun violence can significantly reduce the growth of new retail and service busi-

June 1, 2021

To the Mayor of Newton and the City Council
citycouncil@newtonma.gov

Dear Mayor Fuller and City Councilors,

We write to you as longtime Newton residents, as lawyers, and as leaders of the Massachusetts Coalition to Prevent Gun Violence, to address the zoning issues surrounding the gun shop seeking to open on Washington Street near Newton North High School. As co-founders and leaders of the Board of the Massachusetts Coalition to Prevent Gun Violence, we have each dedicated more than a decade to reducing gun violence, including securing the passage of laws requiring background checks on private guns sales and the Extreme Risk Protection order law, which permits the removal of guns from those who pose a risk to themselves or others. We have built a Coalition of more than 100 member organizations statewide, all devoted to reducing gun violence, and pursued every avenue possible to reduce what we see as a scourge on this country.

In our view, taking into account our experience as gun violence prevention advocates and as lawyers, the current proposal to amend Newton's zoning to dramatically restrict gun shops is the most effective way to prevent gun violence and keep this city safe. The proposal keeps gun shops away from schools, churches, residences and other vulnerable sites, which due to the current land use in Newton appropriately makes it very difficult to open a gun shop in the City.

Some well-intentioned citizens are instead pressing for a ban on gun shops. While the underlying motivation of this proposal is laudable, a ban is more emotional than practical. The choice between tough zoning restrictions and a ban on gun shops is a matter of the risks and the benefits of each approach. The tough zoning restrictions have almost the same benefit as a ban, without the risks. Zoning has been repeatedly upheld as valid to protect public health and safety. On the other hand, the risks of a ban are dramatic and may well set back the effort to reduce gun violence in Newton and nationwide. A ban will almost certainly result in a lawsuit by the radical gun lobby, which is funded by the manufacture and sale of guns. Regardless of what the lower courts in this jurisdiction may do (and keep in mind that the U.S. District Court of Massachusetts just last year prevented Governor Baker from classifying gun shops as non-essential during the pandemic on the grounds that doing so unnecessarily infringed on the Second Amendment) any such case is likely to end up in the United States Supreme Court, a likelihood acknowledged even by the advocates for the ban. The gun lobby has succeeded in its long campaign to pack the courts, and the Supreme Court in particular, with sympathetic judges. If offered the opportunity, there is a distinct possibility that the Supreme Court will dramatically expand gun rights and restrict good-faith efforts to prevent the proliferation of guns and the trauma and deaths which inevitably result.

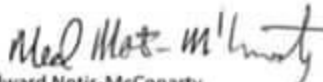
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As longtime activists for gun violence prevention, we see terrible risks in a gun shop ban, and little practical benefit over a tough zoning ordinance.

We urge you to vote in favor of the strict zoning ordinance rather than the ban, as emotionally satisfying as a ban might seem. In the long-term, a ban is likely to make all of us less safe.



Janet Goldenberg
President, MA Coalition to Prevent Gun Violence



Edward Notis-McConarty
Board member, MA Coalition to Prevent Gun Violence



May 7, 2021

Newton City Council
citycouncil@newtonma.gov
fuller@newtonma.gov

Dear Mayor Fuller and Members of the City Council,

On behalf of Giffords Law Center to Prevent Gun Violence, the nonprofit gun violence prevention organization led by former congresswoman and survivor, Gabby Giffords, **I write to offer our support for the proposed ordinance regulating gun dealers that seek to operate in the community.** This ordinance would zone gun dealers to safe locations in the city, and impose other measures to deter and detect illegal gun sales and thefts. It will undoubtedly improve the public safety of the residents of Newton and surrounding communities.

We support the approach the city is taking to zone dealers to areas where their presence poses a lower risk. Despite the claims of gun extremists, firearms dealers do present risks to a community. They are high-value targets for criminals, and have often been magnets for break-ins, theft, and destruction of property. According to an [ATF Special Agent](#), "When people break into homes or businesses, guns are often the target. ... [O]f the commodities that we find that people that are involved in criminal activity are looking for, guns are very high on the list." Gun thefts have been on the rise nationally, and while [Massachusetts has lower rates of gun thefts](#) from dealers than most other states thanks, in part, to its comprehensive statewide regulations, after years of declines, gun thefts from dealers in 2020 reached [peak levels](#) not seen since 2014.

The presence of gun dealers is incompatible with places where children and families frequent as well as other locations that have been targets of violence, such as houses of worship. One academic study suggests that firearms dealers may attract individuals engaged in criminal activity to the areas in which they are located, not only because they are a high-value target for theft, but also because of firearms dealers' willingness to sell to "straw purchasers" who illegally buy for others.¹ Another [study](#) analyzed ATF data showing that guns "are often found to have been used for criminal purposes not far from the gun dealer where they were first obtained." Based on the above evidence, the presence of firearms dealers in residential neighborhoods and near sensitive areas may endanger the public (and decrease the public's sense of safety) by increasing the risk of criminal activity and violent crime.²

¹ Garen Wintemute, "Firearm Retailers' Willingness to Participate in an Illegal Gun Purchase," *Journal of Urban Health* 87, no. 5 (2010): 865-878.

² See *Friedman v. City of Highland Park*, 784 F.3d 406, 412 (7th Cir. 2015) (law that reduces the "perceived risk from a mass shooting, and mak[es] the public feel safer as a result" provides "a substantial benefit").



Parents should have the freedom to determine when and how to expose their children to guns. If a gun store is located along a walking route to a school, playground, child care facility, library, or park, this becomes impossible. Zoning gun dealers away from these areas and ensuring that unsupervised minors may not enter gun stores puts these decisions back in the hands of parents, not gun dealers.

Finally, this ordinance will help ensure that guns sold by dealers in the community do not end up in the hands of people who commit crimes. Requiring guns to be safely stored during non-business hours will help prevent gun store burglaries after-hours. Unlike jewelers who routinely lock up their inventory at night, many dealers leave their guns unsecured which enables criminals to drive their cars into storefronts and make off with numerous guns quickly, before law enforcement arrives. Stolen guns are often used in subsequent crimes. An analysis of more than 23,000 stolen firearms recovered by police between 2010 and 2016 found that the majority of these weapons were recovered in connection with crimes, including more than 1,500 violent acts such as murder, kidnapping, and armed robbery.

For the foregoing reasons, Giffords Law Center strongly supports the proposed ordinance which would enact reasonable and effective regulations of gun dealers.

Sincerely,

Allison Anderman
Senior Counsel

ABOUT GIFFORDS LAW CENTER

For over 25 years, the legal experts at Giffords Law Center to Prevent Gun Violence have been fighting for a safer America by researching, drafting, and defending the laws, policies, and programs proven to save lives from gun violence.

NEWTON-TAB

Opinion: Newton gun violence prevention advocates urge city keep zoning, not ban firearms dealers

Wicked Local
Published 5:00 p.m. ET July 2, 2021



On June 2, 2021 the City Council responded to an overwhelming public outcry and passed strong and effective zoning to regulate firearms dealers in our city. This legislation, strategically crafted with the help of the [Giffords Law Center to Prevent Gun Violence](#) —a leader in the fight against the gun lobby — both protects Newton from new gun stores and has the ability to withstand a legal challenge.

More: [Newton gun shop ban not recommended by committees](#)

However, some city councilors are seeking to go further and have proposed a ban on all firearm sales in Newton. As founders of the [Newton Gun Violence Prevention Collaborative](#) (formerly Stop Gun Stores in Newton), we are unified in our opposition to a ban.



The City Council is left with a choice on July 12. Will they rely on the strong, legally defensible zoning that gives them the tools they need to keep Newton safe from gun stores? Or, will they go further and enact a ban? Wicked Local Staff Photo/Abby Patkin

A ban baits the gun lobby at a time when we have six Supreme Court justices who have openly stated their intentions to strengthen the [Second Amendment](#). Indeed, they are looking for opportunities to do so and just took up a major gun rights case for the first time in a decade. A negative ruling on a ban has the potential to erode firearms zoning throughout the entire country. Essentially, by banning firearms

The City Council is left with a choice on July 12. Will they rely on the strong, legally defensible zoning that gives them the tools they need to keep Newton safe from gun stores? Or, will they go further and enact a ban? Wicked Local Staff Photo/Abby Patkin

A ban baits the gun lobby at a time when we have six Supreme Court justices who have openly stated their intentions to strengthen the [Second Amendment](#). Indeed, they are looking for opportunities to do so and just took up a major gun rights case for the first time in a decade. A negative ruling on a ban has the potential to erode firearms zoning throughout the entire country. Essentially, by banning firearms sales, Newton would be providing the Supreme Court the opportunity to rule, for the first time, that not only is the right to bear arms protected, but so too is the right to sell arms.

Advertisement

Attachment10.f: Russo firearms bylaw docs (6066 : Firearms bylaw discussion)

More: Gun shops limited to three areas in Newton: The Street, Rumford Ave., North St.

Let that sink in for a minute. Newton's actions could lead to other communities more severely affected by gun violence losing the right to regulate firearms sales. Newton — considered one of the safest cities in America — which currently has no prospective firearms stores and remarkably little gun violence — is considering rolling the dice for cities all across the country. Cities like Oakland, Calif., that suffered 84 gun homicides in 2020 and has zoned firearms dealers from operating near sensitive uses, would lose this protection if the Supreme Court ruled that the right to sell firearms is constitutionally protected. So would San Jose, Calif., which was recently the site of a high-profile mass shooting and just passed regulations on gun dealers. And Piscataway, N.J. and Alameda County, Calif. — which have been called out as models to follow as we address this matter in Newton. All of these places — and more — would lose their zoning protection if Newton rolls the dice and loses.

More: Gun-rights advocates against proposed Newton Firearms dealership zoning

Morally, that is a tough pill to swallow.

We have the privilege in Newton of having the majority of citizens opposed to firearm stores, a City Council unanimous in its desire to enact restrictions, and the resources to fight a lawsuit. But with privilege comes responsibility. And we have a responsibility to ensure that our actions — even when guided from a strong moral place — will not cause unnecessary harm to our fellow Americans.

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So the City Council is left with a choice on July 12. Will they rely on the strong, legally defensible zoning that gives them the tools they need to keep Newton safe from gun stores? Or, will they go further and enact a ban, which is emotionally satisfying in the moment but is unlikely to stand up in court and could lead to an expansion of Second Amendment rights, eroding decades of hard fought gun protections around the country from communities that need it more than Newton.

Which reflects your morals?

Advertisement

The Leadership of the Newton Gun Violence Prevention Collaborative (previously Stop Gun Stores in Newton),

Lucy Ewins, Moreland Avenue

Emily Murphy, Ellison Road

Heather Tausig, Garland Road

Laura Towvim, Islington Road

Kate Wissel, 300 Homer Street

Alexandra Wolf, Moffat Street



Attachment10.f: Russo firearms bylaw docs (6066 : Firearms bylaw discussion)

Dear friends and family,

As you may have heard, the Newton City Council is currently debating potential ordinances to restrict and/or ban firearm stores from Newton. This came about after a group of citizens--which became "Stop Gun Stores in Newton"-- learned that a firearm dealer was ready to set up shop a few doors down from Cabot's ice cream.

While Newton is overwhelmingly in opposition to a gun store in our midst, rather than enact smart and restrictive zoning to restrict and discourage gun stores, as many other communities have successfully done, several City Councilors are adamant about pursuing a ban of all firearm stores from Newton. No national gun violence prevention groups support this effort at this time because the federal judiciary is so pro-gun that such an action is likely to be struck down and **erode** gun protection laws across the country. Essentially, in trying to do the morally right thing, we could **significantly harm** our own and other communities and seriously set back the national gun violence prevention effort.

We can accomplish what we want and protect the safety and well-being of Newton without unnecessarily baiting the gun lobby. Zoning can and will accomplish the goal of protecting Newton. Piscataway, NJ is a perfect example. They also enacted restrictive zoning with 1000 foot buffer zones around schools, parks, and religious institutions; they have not faced a legal challenge to date, nor have they had a firearms shop open in their city.

I urge you to email your City Council at citycouncil@newtonma.gov. Below is an email my fellow organizers sent to the City Council, which you are free to use. I am also attaching an FAQs about this issue should you wish to learn more about why we do not support a ban at this time.

Most urgently, to stop the firearms shop from being able to operate a few doors down from Cabot's, the City Council **MUST** vote in favor of the zoning ordinance on June 7. Please write to the City Council and ask that they vote in favor of this ordinance on June 7.

Thank you!

Dear City Councilors,

We are writing to urge you to please vote down the proposed gun store ban and vote instead for the proposed zoning ordinance.

The zoning ordinance you have proposed related to gun stores is already an effective tool to stop 709 Washington Street and prevent future gun stores. As demonstrated by the nearly 10,000 petition signatures, hundreds of letters, and the general unease of the last few

weeks, the residents of Newton have made clear they do not want a gun store anywhere in our city. In the unlikely event a store tries to open anytime in the future, this group will activate, make giant waves, and provide a tsunami of opposition to any store in our city. The current zoning ordinance gives the city council ample tools to act on the will of the people.

This proposed ban tempts the gun lobby at a time when we have extremely unfriendly Supreme Court that is poised to take this type of case in an effort to expand gun rights:

<https://www.cnn.com/2021/05/20/politics/clarence-thomas-abortion-guns/index.html> They now have the votes to do so. Even if a ban case does not make it to the Supreme Court, a protracted legal battle will cost our city dearly. Do we really want to practically beg for legal action that has little likelihood of success and has the potential to protect gun rights nationally?

A ban does nothing more than the zoning proposal to keep Newton safer. As long as we are surrounded by other communities and states with ample guns, we are at risk of gun violence. In fact, **a ban has the potential to set back progress by diverting attention away from the important, strategic work being done by knowledgeable and effective state and national gun violence prevention advocacy groups.**

Pushing forward an ill-advised policy as a knee-jerk reaction to something happening in our city is careless and irresponsible. **Please put a stop to this recklessness by voting AGAINST the proposed ban and voting FOR the proposed zoning ordinance.** It is the right thing to do for Newton, and frankly, the country.

Thank you



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THE ISSUE GUN LAWS INTERVENTION RESOURCES TAKE ACTION ABOUT

AMICUS BRIEF

Teixeira v. County of Alameda: Supporting Zoning Laws That Keep Gun Stores Out Of Sensitive Areas

AUGUST 1, 2016

DOWNLOAD PDF

Update: On May 14, 2018, after an 11-judge panel of the Ninth Circuit ruled in favor of Alameda County and the position Giffords Law Center advocated for in our amicus brief, the US Supreme Court denied review—leaving the Ninth Circuit’s favorable decision in place.

Case Information: *Teixeira v. County of Alameda*, No. 13-17132 (Ninth Circuit brief filed Aug. 1, 2016).

At Issue: This case involves a Second Amendment challenge to Alameda County’s gun dealer ordinance, which prohibits gun stores within 500 feet of any school, liquor store, or residence. The district court upheld the ordinance, but a divided Ninth Circuit panel vacated the district court’s opinion and remanded for further proceedings. The County filed a petition for rehearing or rehearing en banc, which is currently pending before the Ninth Circuit.

The Law Center’s Brief: Our brief explains that Alameda County’s modest dealer law provides a safe distance between new gun dealers and sensitive areas such as schools, and is a lawful exercise of the County’s authority to regulate the commercial sale of guns. Our brief urges the Court to rehear *Teixeira* because the panel’s opinion disregarded the Supreme Court’s determination in *Heller* that laws imposing conditions on the commercial sale of firearms are presumptively lawful, and also broke with Ninth Circuit precedent by requiring the County to demonstrate that its dealer ordinance is “longstanding.”

[Read the full text of our amicus brief here.](#)

Attachment10.g: 10_Teixeira Case Summary (6066 : Firearms bylaw discussion)

No. 13-17132

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

JOHN TEIXEIRA, ET AL.,
Plaintiffs-Appellants

v.

COUNTY OF ALAMEDA, ET AL.,
Defendants-Appellees

On Appeal from the United States District Court of the Northern
District of California, No. 3:12-cv-03288-WHO (Orrick, J.)

**BRIEF OF *AMICI CURIAE* THE LAW CENTER TO PREVENT GUN
VIOLENCE AND YOUTH ALIVE! IN SUPPORT OF DEFENDANTS-
APPELLEES' PETITION FOR REHEARING OR REHEARING EN BANC**

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*Counsel for Amici Curiae the Law
Center to Prevent Gun Violence and
Youth ALIVE!*

Attachment10.h: 11_Teixeira-Gifford-Amicius-Brief-in-Support-of-En-Banc-Reivew (6066 : Firearms bylaw discussion)

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, the Law Center to Prevent Gun Violence and Youth ALIVE! state they are non-profit organizations, have no parent companies, and have not issued shares of stock.

Attachment10.h: 11_Teixeira-Gifford-Amicius-Brief-in-Support-of-En-Banc-Reivew (6066 : Firearms bylaw discussion)

TABLE OF CONTENTS

	Page
CORPORATE DISCLOSURE STATEMENT	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES	iii
INTEREST OF <i>AMICI CURIAE</i>	1
INTRODUCTION	3
REASONS WHY REHEARING SHOULD BE GRANTED	6
I. ALAMEDA COUNTY HAS THE AUTHORITY TO REGULATE THE COMMERCIAL SALE OF GUNS AND ITS ORDINANCE IS CONSTITUTIONAL.....	6
II. THE PANEL’S OPINION CONFLICTS WITH <i>HELLER</i> AND BREAKS WITH NINTH CIRCUIT PRECEDENT	9
III. THE PANEL’S OVERLY RESTRICTIVE INTERPRETATION OF “LONGSTANDING” IS CONTRARY TO <i>HELLER</i> AND THIS CIRCUIT’S PRECEDENT.....	13
CONCLUSION	16

Attachment10.h: 11_Teixeira-Gifford-Amicius-Brief-in-Support-of-En-Banc-Reivew (6066 : Firearms bylaw discussion)

TABLE OF AUTHORITIES

	Page
CASES	
<i>Bauer v. Harris</i> , 94 F. Supp. 3d 1149 (E.D. Cal. 2015), <i>appeal docketed</i> , No. 15-15428 (9th Cir. Mar. 9, 2015)	12
<i>Bonidy v. U.S. Postal Serv.</i> , 790 F.3d 1121 (10th Cir. 2015)	10
<i>Commonwealth v. McGowan</i> , 982 N.E.2d 495 (Mass. 2013)	10
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008).....	<i>passim</i>
<i>Drake v. Filko</i> , 724 F.3d 426 (3d Cir. 2013)	14
<i>Fyock v. City of Sunnyvale</i> , 779 F.3d 991 (9th Cir. 2015)	12, 14
<i>Great Western Shows, Inc. v. County of Los Angeles</i> , 27 Cal. 4th 853 (2002)	6
<i>Heller v. District of Columbia</i> , 670 F.3d 1244 (D.C. Cir. 2011).....	11, 14
<i>Jackson v. City & Cty. of San Francisco</i> , 746 F.3d 953 (9th Cir. 2014)	9, 10, 11
<i>McDonald v. City of Chicago</i> , 561 U.S. 742 (2010).....	1
<i>National Rifle Ass’n of Am. v. Bureau of Alcohol, Tobacco, Firearms, and Explosives</i> , 700 F.3d 185 (5th Cir. 2012)	14
<i>Nordyke v. King</i> , 681 F.3d 1041 (9th Cir. 2012)	12

Attachment 10.h: 11_Teixeira-Gifford-Amicus-Brief-in-Support-of-En-Banc-Reivew (6066 : Firearms bylaw discussion)

Pena v. Lindley,
 No. 09 Civ. 1185, 2015 WL 854684 (E.D. Cal. Feb. 26, 2015),
appeal docketed, No. 15-15449 (9th Cir. Mar. 11, 2015)12

Suter v. City of Lafayette,
 57 Cal. App. 4th 1109 (1997)6

Town of Los Altos Hills v. Adobe Creek Properties, Inc.,
 32 Cal. App. 3d 488 (1973)7

United States v. Barton,
 633 F.3d 168 (3d Cir. 2011)10, 11

United States v. Booker,
 644 F.3d 12 (1st Cir. 2011).....13, 14

United States v. Castro,
 No. 10-50160, 2011 WL 6157466 (9th Cir. Nov. 28, 2011).....12

United States v. Chovan,
 735 F.3d 1127 (9th Cir. 2013)12

United States v. Dugan,
 657 F.3d 998 (9th Cir. 2011)10

United States v. Skoien,
 614 F.3d 638 (7th Cir. 2010)13, 14

United States v. Vongxay,
 594 F.3d 1111 (9th Cir. 2010)10, 12

CONSTITUTIONAL PROVISIONS

U.S. Const., amend. II.....*passim*

Cal. Const. art. XI, 76

STATUTES

Federal Firearms Act of 1938,
 Pub. L. No. 75-785, § 2(a), 52 Stat. 1250 (1938).....15

Gun Control Act of 1968,
 Pub. L. No. 90-618, 82 Stat. 1213 (1968)15

Nonmailable Firearms Act of 1927,
 Pub. L. No. 69-583, § 1, 44 Stat. 1059 (1927)15

1911 Colo. Laws 408, ch. 136, § 315

26 Del. Laws 28, ch. 15, § 2 (1911).....15

1837 Ga. Laws 90 § 115

1921 Mo. Laws 691, ch. 2, § 1.....15

1913 Or. Laws 497, ch. 256, §§ 1, 3.....15

1901 S.C. Acts 748, No. 435, § 115

1879 Tenn. Pub. Acts 135, ch. XCVI § 115

CITY AND COUNTY ORDINANCES

Alameda Cty., CA, Mun. Code § 17.54.131.....*passim*

Albany, CA, City Code § 8.19.6(i)7

Burbank CA, Mun. Code § 10-1-673.1(A)(5)7

Carver, MN, City Code § 50.118.....7

Cathedral City, CA., Mun. Code § 5.32.0407

Columbia Heights, MN, City Code § 9.107(c)(21)7

Contra Costa Cty., CA., Code § 82-36.6047

Culver City, CA, Mun. Code § 17.400.0507

Diamond Bar, CA, Mun. Code § 5.08.060(c).....7

East Palo Alto, CA, Mun. Code § 5.28.110(I).....7

El Cerrito, CA, Mun. Code § 6.70.1007

Grass Valley, CA, Mun. Code § 5.48.040(I)7

Hercules City, CA, Mun. Code, title 14, § 4-14.06(i)7

Laurel, MD, Land Dev. Code § 20-7.8(o)7

Monterey Cty., CA, Code § 7.70.0607

New Haven, CT, Zoning Ordinance § 42.47

Oakland, CA, Mun. Code § 5.26.070(I)7

Pacifica, CA, Mun. Code, title 9, ch. 4, § 9-4.2316(d).....7

Palo Alto, CA, Mun. Code § 4.57.050.....7

Pinole, CA, Mun. Code § 17.63.140.....7

Pleasant Hill, CA, Mun. Code § 18.25.1607

Salinas, CA, Mun. Code, § 12A-6(i)7

San Bruno, CA, Mun. Code, § 6.08.070(H)7

San Francisco, CA, Police Code, art. 9 § 613.3(i).....7

San Pablo, CA, Mun. Code, § 9.10.140.....7

San Rafael, CA, Code,§ 14.17.075(C)(4)7

Santa Cruz Cty., CA, Code § 5.62.0807

Santa Cruz, CA, Mun. Code, § 9.26.080(a).....7

West Hollywood, CA, Mun. Code, § 5.60.030(6).....7

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Attachment 10.h: 11_Teixeira-Gifford-Amicus-Brief-in-Support-of-En-Banc-Reivew (6066 : Firearms bylaw discussion)

Law Center to Prevent Gun Violence, <i>The California Model: Twenty Years of Putting Safety First</i> , available at http://smartgunlaws.org/resources/publications/	8
Public Health, <i>County Health Status Profiles 2016</i> , available at http://www.cdph.ca.gov/programs/ohir/Documents/OHIRProfiles2016.pdf	3
U.S Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, <i>Web-Based Injury Statistics Query & Reporting System (WISQARS), Fatal Injury Report, 1981-1998</i> , available at http://webappa.cdc.gov/sasweb/ncipc/mortrate9.html	8
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Violence Policy Center, <i>Lost Youth, A County-by-County Analysis of 2013 California Homicide Victims Ages 10 to 24</i> , available at http://www.vpc.org/studies/cayouth2015.pdf	3
WISQARS <i>Injury Mortality Reports, 1999-2010, for National, Regional, and States</i> (Feb. 2013), available at http://webappa.cdc.gov/sasweb/ncipc/dataRestriction_inj.html	8

INTEREST OF *AMICI CURIAE*

Amicus curiae the Law Center to Prevent Gun Violence (“Law Center”) is a national, non-profit organization dedicated to reducing gun violence. Founded after an assault weapon massacre at a San Francisco law firm in 1993, the Law Center provides comprehensive legal expertise in support of common sense gun laws. The Law Center tracks and analyzes federal, state, and local firearms legislation, monitors Second Amendment litigation nationwide, and provides support to jurisdictions facing legal challenges to their gun laws. The Law Center has provided informed analysis as an *amicus* in a wide variety of important firearm-related cases nationwide, including the Supreme Court cases *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

For more than twenty years, the Law Center has worked with California cities and counties on the development of local laws to reduce gun violence and has a substantial interest in ensuring that localities retain the authority to enact and enforce such laws. The Law Center submits this brief to assist the Court in developing the appropriate jurisprudence for local laws regulating the commercial sale of guns, such as Alameda County Municipal Code § 17.54.131 (the “Ordinance”). The Ordinance provides a safe distance between gun dealers and sensitive areas such as residential neighborhoods and school zones.

Amicus curiae Youth ALIVE! is an Alameda County-based non-profit agency dedicated to preventing violence and developing youth leaders who advocate for smart anti-violence policies. A public health worker and a group of East Oakland high school students founded Youth ALIVE! in 1991 in response to shootings that were happening on and around their campus. Youth experience significant stress daily from gun violence and the threat of gun violence. A large part of Youth ALIVE!'s work is ministering directly to youth who have suffered firearm injuries and to families who have lost loved ones to gun violence. Youth ALIVE! stands with victims of gun violence, who are members of the organization's board, staff, and youth leadership and whose voices must be heard in legal challenges to common sense gun laws to help prevent future suffering by Alameda County residents.

Pursuant to Federal Rule of Appellate Procedure 29(c)(5), no party's counsel authored this brief in whole or part. No party's counsel contributed money that was intended to fund the preparation or submission of this brief. No person – other than the amici curiae, its members, or its counsel – contributed money that was intended to fund the preparation or submission of this brief. All parties have consented to the filing of this brief.

INTRODUCTION

Alameda County suffers from unacceptably high levels of gun violence. Between 2012 and 2014, the County had the second highest firearm-related death rate in California for counties with populations over one million, averaging 145.7 firearm-related homicides per year.¹ In 2013, the County had one of the highest homicide rates among youth and young adults ages 10-24 – a rate of 19.51 per 100,000 population – more than double the statewide rate.² For homicides in which the weapon could be identified, 97 percent of the victims ages 10-24 in the County were shot and killed with guns.³

In 1998, the County enacted a local zoning ordinance to provide a safe distance between new gun dealers and sensitive areas such as residential neighborhoods and school zones. The Ordinance requires new gun dealers to be located 500 feet away from residentially-zoned districts, schools, day care centers, and liquor stores. The Ordinance does not prohibit gun dealers or gun sales in the County, either directly or indirectly. Nor does it limit in any way a person's ability

¹ See California Department of Public Health, *County Health Status Profiles 2016*, at 38, available at <http://www.cdph.ca.gov/programs/ohir/Documents/OHIRProfiles2016.pdf>.

² See Violence Policy Center, *Lost Youth, A County-by-County Analysis of 2013 California Homicide Victims Ages 10 to 24*, at 4-5, available at <http://www.vpc.org/studies/cayouth2015.pdf>.

³ *Id.* at 26.

to purchase, possess, or use firearms for self-defense. As of 2011, there were ten gun dealers in the County, including a Big 5 Sporting Goods store operating only 607 feet from plaintiffs' proposed site for their dealership.⁴ (Excerpt of Record (ER) 120-21.) The Ordinance merely regulates the distance between gun dealers and sensitive areas.

A divided panel of this Court refused to affirm the constitutionality of the County's local zoning ordinance even though the majority conceded it is a law imposing conditions and qualifications on the commercial sale of guns – one of the categorical limits to the Second Amendment the Supreme Court identified in *Heller*. The majority's decision, if allowed to stand, would constitute an unwarranted expansion of *Heller* and substantially increase the burden on governments seeking to enact and defend constitutional limitations on the commercial sale of guns. Rehearing is necessary to realign this Circuit's jurisprudence on a matter of exceptional importance.

⁴ The Bureau of Alcohol, Tobacco, Firearms and Explosives' list of federal firearms licensees in Alameda County as of June 2016 shows 30 firearms dealers currently operating in the County. See Bureau of Alcohol, Tobacco, Firearms and Explosives, *List of Federal Firearms Licensees, California*, June 2016, available at <https://www.atf.gov/firearms/listing-federal-firearms-licensees-ffls-2016>. Alameda County is licensed county "001." See US. Environmental Protection Agency, *County FIPS Code Listing for the State of California*, available at <https://www.epa.gov/enviro/county-fips-code-listing-state-california>.

The majority's decision disregarded the Supreme Court's determination in *Heller* that laws imposing conditions on the commercial sale of guns are presumptively lawful. It also failed to follow binding Circuit precedent that if a challenged law falls into one of *Heller*'s categorical exceptions to the Second Amendment, the court's Second Amendment analysis is complete. Instead, the majority required the County to demonstrate not only that the Ordinance was a law imposing a condition or qualification on the commercial sale of guns, but also that the regulation was "longstanding." Under this Circuit's framework for analyzing Second Amendment claims, however, the County was not required to make an independent showing that the Ordinance is longstanding. As a presumptively lawful regulatory measure falling within one of *Heller*'s enumerated categories and outside the scope of the Second Amendment, the Ordinance is constitutional.

The majority further compounded its errors by applying an overly restrictive interpretation of "longstanding." *Heller* demonstrates – and this Circuit has recognized – that gun regulations can be deemed "longstanding" even if they cannot boast a founding era analogue. It was not necessary for the Court to engage in a historical analysis of the Ordinance because it falls within one of *Heller*'s enumerated categories of presumptively lawful regulations. But even if a historical analysis were required, the Ordinance is sufficiently "longstanding" to withstand scrutiny, as it is a zoning law akin to those on the books since the early twentieth

century and is heir to a longstanding class of federal and state regulations on the sale of guns.

Gun regulations are effective in reducing gun violence and gun-related deaths. Protecting the ability of local governments to enact sensible laws regulating the commercial sale of guns is a matter of increasing urgency, particularly in light of recent firearm tragedies. Rehearing is warranted.

REASONS WHY REHEARING SHOULD BE GRANTED

I. ALAMEDA COUNTY HAS THE AUTHORITY TO REGULATE THE COMMERCIAL SALE OF GUNS AND ITS ORDINANCE IS CONSTITUTIONAL

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.” Cal. Const. art. XI, 7. It is well settled that a local government’s police power includes the power to enact zoning ordinances and also to regulate the sale of guns. *See Great Western Shows, Inc. v. County of Los Angeles*, 27 Cal. 4th 853, 866-70 (2002) (upholding county authority to regulate gun sales on its property); *Suter v. City of Lafayette*, 57 Cal. App. 4th 1109, 1117-31 (1997) (recognizing county’s authority to restrict gun dealers to certain commercially zoned areas). California courts have recognized that local zoning ordinances “constitute a justifiable exercise of police power,” and the

courts presume these ordinance to be valid. *Town of Los Altos Hills v. Adobe Creek Properties, Inc.*, 32 Cal. App. 3d 488, 508 (1973).

Twenty-five California cities and counties have exercised their legal authority to enact local zoning ordinances regulating the location of gun dealers.⁵ In *Heller*, the Supreme Court specifically identified laws that “impose conditions and qualifications on the commercial sale of arms” as “presumptively lawful regulatory measures” that do not burden conduct within the Second Amendment. *Heller*, 554 U.S. at 626-27 & n.26. These local zoning ordinances impose exactly the type of reasonable condition on the commercial sale of guns the Supreme Court endorsed in *Heller*.⁶

⁵ See Albany, CA, City Code § 8.19.6(i); Burbank CA, Mun. Code § 10-1-673.1(A)(5); Cathedral City, CA., Mun. Code § 5.32.040; Culver City, CA, Mun. Code § 17.400.050; Diamond Bar, CA, Mun. Code § 5.08.060(c); East Palo Alto, CA, Mun. Code § 5.28.110(I); El Cerrito, CA, Mun. Code § 6.70.100; Grass Valley, CA, Mun. Code § 5.48.040(I); Hercules City, CA, Mun. Code, title 14, § 4-14.06(i); Oakland, CA, Mun. Code § 5.26.070(I); Pacifica, CA, Mun. Code, title 9, ch. 4, § 9-4.2316(d); Palo Alto, CA, Mun. Code § 4.57.050; Pinole, CA, Mun. Code § 17.63.140; Pleasant Hill, CA, Mun. Code § 18.25.160; Salinas, CA, Mun. Code, § 12A-6(i); San Bruno, CA, Mun. Code, § 6.08.070(H); San Francisco, CA, Police Code, art. 9 § 613.3(i); San Pablo, CA, Mun. Code, § 9.10.140; San Rafael, CA, Code, § 14.17.075(C)(4); Santa Cruz, CA, Mun. Code, § 9.26.080(a); West Hollywood, CA, Mun. Code, § 5.60.030(6); Alameda Cty., CA, Mun. Code, § 17.54.131; Contra Costa Cty., CA., Code § 82-36.604; Monterey Cty., CA, Code § 7.70.060; Santa Cruz Cty., CA, Code § 5.62.080.

⁶ Similar ordinances are in effect in cities nationwide. See, e.g., Carver, MN, City Code § 50.118; Columbia Heights, MN, City Code § 9.107(c)(21); Laurel, MD, Land Dev. Code § 20-7.8(o); New Haven, CT, Zoning Ordinance § 42.4.

Local gun laws in California have had a tremendous impact. Since the mid-1990s, California cities and counties have enacted more than 300 local firearm ordinances in an effort to reduce gun-related deaths and injuries.⁷ Those legislative efforts have “trickled up” to the state level, and California now has the strongest gun laws in the nation.⁸ As a result, over the last two decades, California’s gun death rate has been cut by 56% – a reduction that translates to thousands of lives saved every single year.⁹

The majority ignored the County’s authority to enact local zoning ordinances, including those regulating where guns may be sold. As the dissent emphasized, “what we’re dealing with here is a mundane zoning dispute dressed up as a Second Amendment challenge.” (Dissent 35.) Rehearing should be granted to protect the ability of local governments to enact sensible and effective laws, including zoning ordinances, that regulate the commercial sale of guns.

⁷ See Law Center to Prevent Gun Violence, *The California Model: Twenty Years of Putting Safety First*, at 3, available at <http://smartgunlaws.org/resources/publications/>.

⁸ *Id.*

⁹ *Id.* at 4 (citing U.S Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, *Web-Based Injury Statistics Query & Reporting System (WISQARS), Fatal Injury Report, 1981-1998*, available at <http://webappa.cdc.gov/sasweb/ncipc/mortrate9.html> (accessed on July 11, 2013) and *WISQARS Injury Mortality Reports, 1999-2010, for National, Regional, and States* (Feb. 2013), available at http://webappa.cdc.gov/sasweb/ncipc/dataRestriction_inj.html.)

II. THE PANEL'S OPINION CONFLICTS WITH *HELLER* AND BREAKS WITH NINTH CIRCUIT PRECEDENT

In *Heller*, the Supreme Court held for the first time that the Second Amendment protects the individual right of responsible, law-abiding citizens to possess an operable handgun in the home for self-defense purposes. However, the Court was careful to emphasize that this right is “not unlimited.” *Heller*, 554 U.S. at 626. It is not “a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purposes.” *Id.* The Court identified specific limitations on the Second Amendment right, including prohibitions on dangerous and unusual weapons and “presumptively lawful regulatory measures.” *Id.* at 626-27 & n. 26. Among the categories of “presumptively lawful regulatory measures” the Court enumerated are “laws imposing conditions and qualifications on the commercial sale of arms.” *Id.* These laws do not burden conduct protected by the Second Amendment and fall outside its scope. *See Jackson v. City & Cty. of San Francisco*, 746 F.3d 953, 960 (9th Cir. 2014).

This Circuit has adopted a two-pronged approach to determining whether a challenged law falls outside the scope of Second Amendment. A challenged law does not burden conduct protected by the Second Amendment if *either*: (1) “the regulation is one of the ‘presumptively lawful regulatory measures’ identified in *Heller*,” *or* (2) “the record includes persuasive historical evidence establishing that the regulation at issue imposes prohibitions that fall outside the historical scope of

the Second Amendment.” *Id.* If a challenged law falls within one of Heller’s categorical exceptions under the first prong, the court’s Second Amendment analysis is complete. *Id.* at 960, 962-63. Following the Supreme Court’s instruction, this Circuit treats each of *Heller*’s enumerated categories as a discrete class of laws that do not burden conduct within the scope of the Second Amendment. *See Jackson*, 746 F.3d at 960; *United States v. Dugan*, 657 F.3d 998, 999-1000 (9th Cir. 2011); *United States v. Vongxay*, 594 F.3d 1111, 1115 (9th Cir. 2010).¹⁰

The majority’s decision conceded, as it must, that “the Ordinance is a law[] imposing conditions and qualifications on the commercial sale of arms.” (Maj. Op. 22 (internal quotations and citation omitted).) Under binding Circuit precedent, the court’s Second Amendment analysis was complete. As the dissent noted, the Ordinance is “quite literally a ‘law[] imposing conditions and qualifications on the commercial sale of arms’” and falls squarely into one of Heller’s enumerated

¹⁰ The Ninth Circuit is not alone in this approach. Other courts treat laws falling within *Heller*’s enumerated categories as outside the scope of the Second Amendment. *See, e.g., Bonidy v. U.S. Postal Serv.*, 790 F.3d 1121, 1125-26 (10th Cir. 2015); *United States v. Barton*, 633 F.3d 168, 172 (3d Cir. 2011); *Commonwealth v. McGowan*, 982 N.E.2d 495, 500 (Mass. 2013).

categories of presumptively lawful regulatory measures. (Dissent 36.) No further inquiry was required.¹¹

The majority also broke with Ninth Circuit precedent by requiring the County to make an additional showing – to demonstrate, independently, that the Ordinance is “longstanding.” (Maj. Op. 22.) This Circuit rejects any inquiry into the historical background of laws falling within *Heller*’s categorical exceptions. The Court’s decision in *Jackson* makes clear that a law regulates conduct outside the scope of the Second Amendment if it *either* falls into an enumerated category *or* if “persuasive historical evidence” shows that the law affects conduct outside the Amendment’s traditional scope. *Jackson*, 746 F.3d at 960.

When this Circuit has determined that a law is within one of *Heller*’s identified categories, it has not addressed whether the law independently is longstanding because the “Supreme Court has made it clear that the government

¹¹ Several courts have stated that a plaintiff may rebut the presumption of lawfulness by showing that the regulation has more than a *de minimis* effect upon his or her right. *See, e.g., Heller v. District of Columbia*, 670 F.3d 1244, 1253 (D.C. Cir. 2011) (*Heller II*); *Burton*, 633 F.3d at 172-73. To the extent a plaintiff has a right to rebut the presumption of lawfulness, it would be an as-applied challenge. The district court determined that plaintiffs failed to make the requisite showing. (*See* ER 19-21.) The Ordinance is not total ban on gun sales or purchases in the County. It merely regulates *where* guns may be sold. Plaintiffs’ complaint, as the district court noted, “makes quite clear that there *are* existing retail establishments operating in Alameda County that provide guns.” (ER 23 (emphasis in original).) The district court thus concluded that any barrier to the purchase or sale of guns is *de minimis*. (*See* ER 20; *see also* Supp. Excerpts of Record (SER) 009.)

can continue to regulate commercial gun dealing.” *United States v. Castro*, No. 10-50160, 2011 WL 6157466, at *1 (9th Cir. Nov. 28, 2011). *See, e.g., Vongxay*, 594 F.3d at 1115; *Nordyke v. King*, 681 F.3d 1041, 1044 (9th Cir. 2012); *accord Bauer v. Harris*, 94 F. Supp. 3d 1149, 1154-55 (E.D. Cal. 2015), *appeal docketed*, No. 15-15428 (9th Cir. Mar. 9, 2015); *Pena v. Lindley*, No. 09 Civ. 1185, 2015 WL 854684, at *13 (E.D. Cal. Feb. 26, 2015), *appeal docketed*, No. 15-15449 (9th Cir. Mar. 11, 2015). When this Circuit has undertaken a historical analysis, it has examined the historical record separately from *Heller*’s enumerated categories or only after concluding that the challenged law did not fall within one of the categories. *See, e.g., Fyock v. City of Sunnyvale*, 779 F.3d 991, 997 (9th Cir. 2015); *United States v. Chovan*, 735 F.3d 1127, 1137 (9th Cir. 2013).

This Circuit’s rejection of an independent “longstanding” requirement is consistent with *Heller*. Under *Heller*, a law falling within the enumerated categories is not required to meet a minimum standard of historical vintage. The Court in *Heller* already concluded that each enumerated exception is historically justified: “there will be time enough to expound upon the historical justifications for the exceptions we have mentioned if and when those exceptions come before us.” *Heller*, 554 U.S. at 635. Indeed, the enumerated exceptions in *Heller* are from a wide range of eras. It is thus impossible to discern from *Heller* any specific time period against which such laws should be measured.

The Seventh Circuit has also pointed out the arbitrariness of using a law's age to determine whether it falls into one of *Heller*'s categorical limits on the possession of guns: "It would be weird to say that [the prohibition on misdemeanants convicted of domestic violence crimes possessing firearms] is unconstitutional in 2010 but will become constitutional by 2043, when it will be as 'longstanding' as [the prohibition on felons possessing firearms] was when the Court decided *Heller*." *United States v. Skoien*, 614 F.3d 638, 641 (7th Cir. 2010). *See also United States v. Booker*, 644 F.3d 12, 24 (1st Cir. 2011) ("Nor can it be that the relative age of a regulation is the key to its constitutionality.").

Rehearing is necessary to realign this Circuit's jurisprudence with the Supreme Court's decision in *Heller*.

III. THE PANEL'S OVERLY RESTRICTIVE INTERPRETATION OF "LONGSTANDING" IS CONTRARY TO *HELLER* AND THIS CIRCUIT'S PRECEDENT

A historical analysis of the Ordinance was not required because it falls squarely within *Heller*'s categorical exception for laws imposing conditions on the sale of guns. The panel further broke from *Heller* and this Circuit's precedent by requiring the County to show that the Ordinance "is a type of regulation that Americans at the time of the adoption of the Second Amendment or the Fourteenth Amendment . . . would have recognized as a permissible infringement of the traditional right" to bear arms. (Maj. Op. 22-23.) This Circuit recently recognized

that a firearm regulation can be “longstanding” regardless of whether it existed around the time of the adoption of the Second and Fourteenth Amendments. *See Fyock*, 779 F.3d at 997.

This Circuit’s recognition that a firearm regulation can be deemed “longstanding” even if it lacks a direct connection to the founding era is derived directly from *Heller*. Courts applying *Heller* have consistently observed that *Heller*’s examples of “longstanding” “presumptively lawful” regulations have their origins in the mid-twentieth century. *See, e.g., Drake v. Filko*, 724 F.3d 426, 434 n.11 (3d Cir. 2013); *Booker*, 644 F.3d at 23-24; *Heller II*, 670 F.3d at 1253; *Skoien*, 614 F.3d at 640-41. *Heller* and its progeny thus demonstrate that “a regulation can be deemed ‘longstanding’ even if it cannot boast a precise founding-era analogue.” *National Rifle Ass’n of Am. v. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 700 F.3d 185, 196 (5th Cir. 2012). As the Seventh Circuit declared, “we do take from *Heller* the message that exclusions need not mirror limits that were on the books in 1791.” *Skoien*, 614 F.3d at 641.

The majority recognized that zoning laws have existed since at least the early twentieth century. (Maj. Op. 22-23.) Zoning laws, like the County’s Ordinance, have been in effect longer than *Heller*’s examples of “longstanding” “presumptively lawful” regulations, whose origins date back only to the mid-

twentieth century. Thus, even if a historical analysis were required – which is not the case here – under *Heller* and its progeny, the Ordinance is “longstanding.”

The Ordinance is also the heir to a longstanding class of federal and state regulations on the sale of guns. Georgia regulated gun sales as early as 1837, limiting the type of pistols that could be sold. *See* 1837 Ga. Laws 90 § 1. Tennessee and South Carolina followed. *See* 1879 Tenn. Pub. Acts 135, ch. XCVI § 1; 1901 S.C. Acts 748, No. 435, § 1. At the beginning of the twentieth century, states began licensing gun dealers and imposing recording and reporting requirements on dealers and manufacturers. *See* 26 Del. Laws 28, ch. 15, § 2 (1911); 1911 Colo. Laws 408, ch. 136, § 3; 1913 Or. Laws 497, ch. 256, §§ 1, 3; 1921 Mo. Laws 691, ch. 2, § 1. The federal government began regulating gun sellers with the passage of the Nonmailable Firearms Act of 1927, Pub. L. No. 69-583, § 1, 44 Stat. 1059 (1927). In 1938, Congress created a licensing scheme for gun sellers, *see* Federal Firearms Act of 1938, Pub. L. No. 75-785, § 2(a), 52 Stat. 1250 (1938), which it expanded in 1968. *See* Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat. 1213 (1968).

The majority’s approach represents an unwarranted expansion of *Heller* and a misreading of binding Ninth Circuit precedent. The majority’s refusal to follow *Heller* and its progeny will make it significantly more difficult for governments to show that a regulation is “longstanding” and therefore outside the scope of the

Second Amendment. This increased burden will detrimentally affect the ability of governments to defend legislation regulating the commercial sale of guns, which the Supreme Court has deemed “presumptively lawful.” Rehearing is warranted to address this issue of exceptional importance.

CONCLUSION

The Ordinance does nothing to prevent law-abiding residents of Alameda County from possessing firearms in the home for self-defense. In refusing to affirm the constitutionality of the Ordinance, the majority applied the wrong test to determine whether the Ordinance falls outside the scope of the Second Amendment. It also erred in requiring an overly demanding showing that the Ordinance is “longstanding.”

For the foregoing reasons, *amici curiae* Law Center to Prevent Gun Violence and Youth ALIVE! respectfully request that the County of Alameda's petition for rehearing or rehearing en banc be granted.

Respectfully submitted,

STEPTOE & JOHNSON LLP

Dated: August 1, 2016

/s/ Laura J. Edelstein

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*Counsel for Amici Curiae the Law
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Youth ALIVE!*

Attachment10.h: 11_Teixeira-Gifford-Amicius-Brief-in-Support-of-En-Banc-Reivew (6066 : Firearms bylaw discussion)

CERTIFICATION OF COMPLIANCE

I hereby certify that:

1. This brief complies with the type-volume limitation of Ninth Circuit Rule 29-2(c)(2) because this brief contains 3,795 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Times New Roman font.

STEPTOE & JOHNSON LLP

Dated: August 1, 2016

/s/ Laura J. Edelstein

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*Counsel for Amici Curiae the Law
Center to Prevent Gun Violence and
Youth ALIVE!*

CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2016, I electronically filed the foregoing Brief of *Amici Curiae* Law Center to Prevent Gun Violence and Youth ALIVE! in Support of the Petition of Defendants-Appellees for Rehearing or Rehearing En Banc with the Clerk of the Court of the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

STEPTOE & JOHNSON LLP

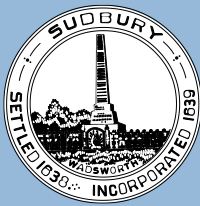
Dated: August 1, 2016

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SUDBURY SELECT BOARD
Tuesday, December 19, 2023

MISCELLANEOUS (UNTIMED)

11: Discussion on Transportation Committee

REQUESTOR SECTION

Date of request:

Requested by: Patty Golden

Formal Title: Discussion on Transportation Committee

Recommendations/Suggested Motion/Vote: Discussion on Transportation Committee

Background Information:

Discuss initiatives the committee is working on with MWRTA to ensure they're in line with SB. Also review current and future state of finances for the committee and whether or not the Transportation Committee is something the SB desires to continue supporting.

Financial impact expected:

Approximate agenda time requested:

Representative(s) expected to attend meeting: Member Carty

Review:

Select Board Office	Pending
Town Manager's Office	Pending
Town Counsel	Pending
Select Board	Pending
Select Board	Pending

12/19/2023 7:00 PM



SUDBURY TRANSPORTATION COMMITTEE

Voted to establish by the Sudbury Board of Selectmen April 10, 2018

Updated October 30, 2018

Updated October 24, 2019

Updated July 21, 2021

Updated May 31, 2022

Mission Statement

The Sudbury Transportation Committee was created by the Selectmen to address a key feature of livable communities: transportation. A livable community is defined as

...one that is safe and secure, has affordable and appropriate housing and transportation options, and offers supportive community features and services. ...Well-designed, livable communities promote health and sustain economic growth, and they make for happier, healthier residents — of all ages (<http://www.aarp.org/livable-communities/net-work-age-friendly-communities/info-2014/an-introduction.html>).

With the exception of specialized transportation provided by the Council on Aging, Sudbury is currently car-dependent, putting a number of residents at risk of isolation, loss of work, inability to access medical care, etc. There is no public transportation within town boundaries; parking space for commuter rail in adjoining towns is limited; and, there are few pedestrian-friendly routes from residences to likely destinations (e.g., town buildings, library, houses of worship, etc.).

Thus, the purpose of the Transportation Committee includes the following:

- To undertake specific assessments/studies of transportation and evaluate pilot experiments, both locally and regionally, at the direction of the Town Manager or their designee
- To consider all functional elements of transportation: public, specialized, traffic congestion, paths and walkways (as distinct from recreational facilities) for all residents—inclusive of but not solely focused on senior residents and residents with disabilities
- To review published assessments/studies to inform the Select Board, Town Manager, and relevant offices and departments (e.g., the Traffic Safety Coordinating Committee) regarding, especially, opportunities to expand transportation options
- To advise the Select Board, Town Manager and other town entities about the transportation implications of both residential and business development.
- To consider the sustained attractiveness of the town for businesses and residents and contribute to the environmental goals defined by the Energy and Sustainability Green Ribbon Committee in any recommendations.
- To accomplish other transportation-related tasks requested by the Select Board.

- To advise the Town Manager how to transition the duties of the Transportation Committee to Town staff or other elected or appointed bodies.

The Transportation Committee will take a proactive role in addressing transportation challenges affecting the town and may establish *pro tem* subcommittees as needed and approved by the Board.

The Select Board will review the contributions of the Transportation Committee prior to May 31, 2023 to assess how the Committee has fulfilled its role and to decide whether this structure should be continued until spring of 2024. It is envisioned that the Committee's purpose and tasks will become part of the responsibilities of town departments or bodies at some future date. The Transportation Committee, in cooperation with the Town Manager or their designee, will provide recommendations on how to integrate these responsibilities within Town Government.

Membership and Structure

The Transportation Committee consists of a small group of Core and a larger roster of Advisory members. Core members are voting members and must be available and willing to attend the majority of scheduled meetings. They may draw upon the expertise of advisory members, who will be requested to attend meetings and/or discuss topics for which their expertise is needed. The Core group will elect a Chair and a Clerk from among these members. The Chair will run meetings, be the designated communications link with the Town Manager and other Town staff, and schedule committee meetings. The Clerk will ensure that full minutes and a list of members in attendance are kept of each meeting and promptly submitted to the Core for approval, filing with the Town Clerk, posting to the Town's website, and disseminating to the Advisory membership within 15 days of the meeting.

Quorum consists of a majority of serving Core members.

Recommended roles and individuals for membership are listed in the table, below.

Compliance With State and Local Laws and Town Policies

The Transportation Committee is responsible for conducting its activities in a manner which is in compliance with all relevant state and local laws and regulations, including but not limited to the Open Meeting Law, Public Records Law, and Conflict of Interest Law, as well as all Town policies which affect committee membership. In particular, all appointments are subject to the following:

The Code of Conduct for Select Board-Appointed Committee. A resident or employee who accepts appointment to a Town committee by the Select Board agrees that s/he will follow this code of conduct.

The Town's Email Communication for Committee Members Policy. Anyone appointed to serve on a Town committee by the Select Board agrees that s/he will use email communication in strict compliance with the Town of Sudbury's email policy, and further understands that any use of email communication outside of this policy can be considered grounds for removal from the Committee by the Select Board.

Use of the Town's Website. The Committee will keep minutes of all meetings and post them on the Town's website. The Committee will post notice of meetings on the Town's website as well as at the Town Clerk's Office.

Sudbury Transportation Committee: Recommended Examples (updated May 31, 2022)

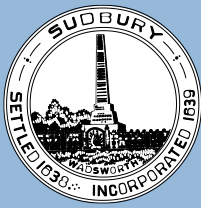
CORE GROUP

Representation	Individual	Contributions
Select Board	Dan Carty	Liaison for Select Board; industrial engineering/operations research and economics; CQI
Council on Aging	Robert Lieberman	One of key stakeholders for extended transportation services
Town Planner	Adam Duchesneau	Link to regional (e.g., Minuteman Advisory Group on Interlocal Co-ordination), state, and local agencies involved in land use and transportation
Commission on Disability	Kay Bell	Link to residents with disabilities to provide perspective of transportation options
Metrowest Regional Transit Authority (MWRTA)	Debra Galloway	Director Sudbury Sr. Center; liaison with MetroWest Regional Transit Authority; co-liaison Cross Town Connect (CTC); senior/disabled transportation
Sudbury AARP Age-Friendly/Livable Communities Ambassador (Town Manager Appointee)	Alice Sapienza	Harvard MBA, DBA

ADVISORY GROUP (To be expanded as Needed)

Public Safety	Police (Chief Nix)	Impact of transportation options on and/or by Sudbury Public Safety
Department of Public Works	Dan Nason	Responsible for infrastructure elements related to all modes of transportation
Chamber of Commerce	Martha Welsh	Business needs for employment transit; impact of transportation options on retail sales, etc.
Board of Health	Bethany Hadvab	Town Social Worker; link to residents in most need of transportation services

Planning Department, CrossTown Connect (CTC)	Beth Suedmeyer	Sudbury Planning Department; co-liaison Cross Town Connect (CTC)
Sudbury Public Schools	TBD; to be assigned by SPS School Committee Ad Hoc/as needed	Liaison for Sudbury Public School Committee
Lincoln-Sudbury Regional High School	Mary Warzynski	Liaison for Lincoln-Sudbury Regional High School (LSRHS) School Committee
State Representative	Carmine Gentile	Link to state, regional (e.g., MWRTA, and local agencies in-volved in transportation
Clergy Association	Rotating individuals (leaders of town faith communities)	Transportation identified by this group as a major need
Citizen(s)	TBD	various



SUDBURY SELECT BOARD
Tuesday, December 19, 2023

MISCELLANEOUS (UNTIMED)
12: 2024 Annual License Renewals

REQUESTOR SECTION

Date of request:

Requested by: Leila S. Frank

Formal Title: Vote, as the Licensing Authority for the Town of Sudbury, to renew the Alcoholic Beverages, Common Victualler and Entertainment licenses until December 31, 2024, and the Motor Vehicle Classes 1, 2, and 3 licenses until January 1, 2025, as shown on the attached lists.

Recommendations/Suggested Motion/Vote: Vote, as the Licensing Authority for the Town of Sudbury, to renew the Alcoholic Beverages, Common Victualler, and Entertainment licenses until December 31, 2024; and the Motor Vehicle - Classes 1, 2, and 3 licenses until January 1, 2025, as shown on the "2024 License Renewal Applications," attached and incorporated herein; and to forward the appropriate renewal forms to the Alcoholic Beverages Control Commission where applicable; said licenses to be held subject to payment of the required license fees, compliance with the Select Board's Alcohol Training Policy, correction of any/all outstanding health, safety or zoning violations, receipt of verification of Workers' Compensation Insurance for the licensing period, and the payment of all outstanding personal property taxes, real estate taxes and state taxes; said licenses shall also be subject to all previous restrictions.

Background Information:
Please see attached.

Financial impact expected:Application Fees

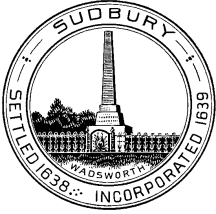
Approximate agenda time requested: 10 minutes

Representative(s) expected to attend meeting:

Review:

- Select Board Office Pending
- Town Manager's Office Pending
- Town Counsel Pending
- Select Board Pending
- Select Board Pending

12/19/2023 7:00 PM



Town of Sudbury

Select Board Office
www.sudbury.ma.us

Flynn Building
278 Old Sudbury Rd
Sudbury, MA 01776-1843
978-639-3381
Fax: 978-443-0756

Email: sbadmin@sudbury.ma.us

December 14, 2023

TO: Select Board
FROM: Leila S. Frank
RE: **2024 Alcohol, Common Victualler & Motor Vehicle License Renewals**

Please see attached the list of all licenses that have been submitted for renewal in 2023. Applications which have been submitted and paid in full are listed as "Complete," applications which have outstanding payments or requirements to be met are listed as "Partial," and current licensees who have not yet submitted renewal materials are listed as "Pending."

The information is current as of 12/14/23, and licensees with outstanding requirements are working to resolve any issues as expediently as possible. If changes in application status arise, an update will be provided to the Board prior to the license renewal agenda item scheduled for discussion on 12/19/23.

Licenses in the Partial and Pending categories will *not be issued* by the Select Board's Office *until all outstanding requirements are met*.

Building and Fire Department inspections are nearly complete. Licensees are required to address all issues, concerns and deficiencies identified by Building and Fire Department prior to issuance of their license.

There were no infractions reported by the Police Department in 2023.

Please also find attached a memo from the Treasurer's Office regarding tax balances.

Sincerely,

Leila S. Frank
Office Supervisor/Information Officer

2024 License Renewal Applications

Business Name (DBA)	Address	License Type(s)	Application Status
Danny's Wine & Spirits	474 Boston Post Road	AA Package	COMPLETE
Duck Soup	365 Boston Post Road, Suite 106 & 107	AA Package	COMPLETE
Stony Brook Market	29 Hudson Road	AA Package	COMPLETE
Sudbury Craft Beer	365 Boston Post Road, Suite 103	WM Package	COMPLETE
Sudbury Farms	439 Boston Post Road	WM Package	PARTIAL
Sudbury Wine, Spirits and Provisions	410 Boston Post Road	AA Package	COMPLETE
American Legion Post #191	676 Boston Post Road	AA Club; CV; Pool Table	COMPLETE
Bullfinch's	730 Boston Post Road	AA Restrnt; CV; Ent	COMPLETE
Chili Basil	385 Boston Post Road	WM & Cordials; CV	COMPLETE
Da Vinci Bistro	457 Boston Post Road	AA Restrnt; CV	COMPLETE
El Basha Grill & Bar	423 Boston Post Road, Suite 3	AA Restrnt; CV; Ent	COMPLETE
Franco's Trattoria	365 Boston Post Road	WM & Cordials; CV	COMPLETE
Fugakyu Café	621 Boston Post Road	AA Restrnt; CV; Ent	PARTIAL
Lavender Asian Cuisine	519A Boston Post Road	AA Restrnt; CV; Ent	COMPLETE
Lotus Blossom	394 Boston Post Road	AA Restrnt; CV	COMPLETE
Max and Leo's Artisan Pizza	470 North Road	AA Restrnt; CV	COMPLETE
Oak Barrel Tavern	528 Boston Post Road	AA Restrnt; CV	COMPLETE
Oishii Too Sushi Bar	365 Boston Post Road	WM Restrnt; CV; Ent	COMPLETE
Paani-Pure Indian Cuisine	Meadow Walk, Building 5, Unit 530A	AA Restrnt; CV; Ent	COMPLETE
Riceberry	621 Boston Post Road	AA Restrnt; CV	COMPLETE
Rossini's	418 Boston Post Road	WM Restrnt; CV	COMPLETE
Sobre Mesa	29 Hudson Road, Suite 150	AA Restrnt; CV	COMPLETE
Soul of India	103 Boston Post Road	AA Restrnt; CV	COMPLETE
Sudbury Point Grill	120 Boston Post Road	AA Restrnt; CV	COMPLETE
The Farmer's Daughter	534 Boston Post Rd, Building 2, Suite 201	AA Restrnt; CV; Ent	COMPLETE
Victory Cigar Bar	615 Boston Post Road, Store A, 102	AA Restrnt; CV	PARTIAL
Wayside Inn	72 Wayside Inn Road	AA Restrnt; CV/Innkeeper; Ent	COMPLETE
CJ's Gourmet Pizza & Grill	29 Hudson Road, Suite 100	CV	COMPLETE
Dunkin' Donuts	378 Boston Post Road	CV	COMPLETE
Fairfield Inn by Marriott	738 Boston Post Road	CV/Innkeeper	COMPLETE
Karma Coffee	100C Boston Post Road	CV	COMPLETE
Mooyah	526C Boston Post Road	CV	COMPLETE
New City Microcreamery	534 Boston Post Rd, Building 2, Suite 201	CV; Ent	COMPLETE
Papa Gino's	104 Boston Post Road	CV	COMPLETE
Shaw's	509 Boston Post Road	CV	COMPLETE
Starbucks	513 Boston Post Road	CV	COMPLETE
Sudbury Coffee Works	15 Union Avenue	CV	COMPLETE
Sudbury Pizza	426 Boston Post Road	CV	COMPLETE
Wayside Pizza	730 Boston Post Road	CV	COMPLETE
Whole Foods	536 Boston Post Road	CV	COMPLETE
BMW of Sudbury	68 Old County Road	New/Used Car Class 1	COMPLETE
Jaguar Sudbury	83 Boston Post Road	New/Used Car Class 1	COMPLETE
Land Rover Sudbury	83 Boston Post Road	New/Used Car Class 1	COMPLETE
Mosher Auto Body	34 Station Road	Junk Car Class 3	COMPLETE
Station Road Auto Body	40 Station Road	Used Car Class 2	COMPLETE
Sudbury Sundries, Inc.	100 Boston Post Road	Used Car Class 2	COMPLETE

AA = All Alcohol
 WM = Wine & Malt
 CV = Common Victualler
 Ent = Entertainment (M-Sat)

updated 12/19/23

Package Store
 Restaurant with Alcohol License
 Restaurant (No Alcohol)
 Auto Dealership

Attachment 12.b: Licensee Report 2023_SB_v4 (6031 : 2024 Annual License Renewals)

Licensee Tax Memo 2023

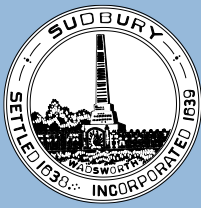
December 14, 2023

Outstanding Tax Amounts:

DBA	ADDRESS	REAL ESTATE TAX OWED	AMOUNT OWED AS OF 12/14/2023
VICTORY CIGAR	615 Boston Post Road	FY22 – Q4	\$321.89
<i>Taxes owed by VTT Dudley Square LLC</i>		FY23 – Q4	\$10,687.15
		FY24 – Q1	\$343.85
		FY24 – Q2	\$11,155.35
		TOTAL	\$22,508.24

Kathy LaPorte
Assistant Treasurer/Collector
Town of Sudbury
278 Old Sudbury Road
Sudbury MA 01776

Attachment 12.c: Tax Memo 2023 (6031 : 2024 Annual License Renewals)



SUDBURY SELECT BOARD
Tuesday, December 19, 2023

MISCELLANEOUS (UNTIMED)

13: Minutes review

REQUESTOR SECTION

Date of request:

Requested by: Patty Golden

Formal Title: Vote to review and possibly approve open session minutes of 11/20/23.

Recommendations/Suggested Motion/Vote: Vote to review and possibly approve open session minutes of 11/20/23.

Background Information:
attached draft joint meeting with Planning Board

Financial impact expected:

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Select Board Office	Pending
Town Manager's Office	Pending
Town Counsel	Pending
Select Board	Pending
Select Board	Pending

12/19/2023 7:00 PM

SUDBURY SELECT BOARD
JOINT MEETING WITH PLANNING BOARD
MONDAY NOVEMBER 20, 2023

7:30 PM - ZOOM

(Meeting can be viewed at www.sudburytv.org)

Present: Chair Janie Dretler, Vice-Chair Lisa Kouchakdjian, Select Board Member Daniel Carty, Select Board Member Jennifer Roberts, Select Board Member Charles Russo, Town Manager Andrew Sheehan

Present: Planning Board Members - Chair Stephen Garvin, Vice-Chair Justin Finnicum, Clerk John Sugrue, Julie Perlman, Director of Planning and Community Development Adam Burney

The statutory requirements as to notice having been compiled with, the meeting was convened at 7:31 PM, via Zoom telecommunication mode.

Select Board Chair Dretler announced the recording of the meeting and other procedural aspects included in the meeting.

Mr. Garvin opening the Planning Board meeting

Call to Order

Select Board Roll Call: Kouchakdjian-present, Carty-present, Russo-present, Roberts-present, Dretler-present

Mr. Garvin called the Planning Board to order with a Planning Board Roll Call: Finnicum-present, Sugrue-present, Perlman-present, Garvin-present

Opening Remarks by Chair

- Thanked staff and residents for making Sudbury the great community it is, and wished everyone a joyful and peaceful Thanksgiving holiday
- Acknowledged false information was being spread on social media in Sudbury, and stressed that the Sudbury Select Board continues to condemn all atrocities, terrorist attacks, all forms of hate and antisemitism all over the world; the Select Board continues to voice concern about such acts, and as a Jew from a Jewish family – she upholds this sentiment
- Asked Select Board Members to step forward and address any further inaccurate media messages, or the like.

Public Comments

None

Vote to open a joint meeting with the Planning Board to discuss MBTA Communities and the Master Plan

Vice-Chair Lisa Kouchakdjian motioned to open a joint meeting with the Planning Board to discuss MBTA Communities and the Master Plan. Board Member Roberts seconded the motion.

SUDBURY SELECT BOARD
 JOINT MEETING WITH PLANNING BOARD
 MONDAY NOVEMBER 20, 2023
 PAGE 2

It was on motion 5-0; Kouchakdjian-aye, Roberts-aye, Carty-aye, Russo-aye, Dretler-aye

VOTED: To open a joint meeting with the Planning Board to discuss MBTA Communities

Mr. Garvin opened the meeting of the Planning Board and requested Board Roll Call; Finnicum-present, Sugrue-present, Perlman-present, Garvin-present

Mr. Sugrue motioned that the Planning Board join the Select Board in a joint meeting to discuss MBTA Communities and the Master Plan. Mr. Finnicum seconded the motion.

It was on motion 4-0; Finnicum-aye, Sugrue-aye, Perlman-aye, Garvin-aye

VOTED: That the Planning Board join the Select Board in a joint meeting to discuss MBTA Communities and the Master Plan

Town Manager Sheehan welcomed Adam Burney to Sudbury. Town Manager Sheehan provided an overview of the 177 MA communities participating in the MBTA Communities Housing Program, also known as 3A Housing. He opinioned about creating housing near transportation modes and how such housing applies to Sudbury.

Mr. Burney acknowledged that 3A Housing regulations require that Sudbury must develop a district which can provide for 750 units.

Mr. Burney reviewed the timeline associated with the proposed legislation. He stated that the Twon had received a grant for technical assistance from VHB to provide consulting with the MBTA Communities regulations and with a related Warrant Article to be presented at Annual Town Meeting. Mr. Burney stressed the importance of outreach and educating the community.

Mr. Garvin mentioned that two 3A development areas, Cold Brook Crossing and Meadow Walk could present possible #A units. Mr. Sugrue agreed with examining Cold Brook Crossing and Meadow Brook for future 3A development, and how these existing developments might be modified to qualify under MBTA Communities regulations.

Chair Dretler asked if VHB had worked with other communities. Mr. Burney offered to provide the Select Board with the names of communities that VHB is working with. Chair Dretler asked if an informational web page could be offered to the community. Mr. Burney stated there were many related outreach materials which could be included on the Planning Board website.

Mr. Burney presented related MBTA Communities topics, which included:

- Basic Requirements of Section 3A Compliance
- 3A Reasonable Size Requirements: Contiguity
- Gross Density
- Unit Capacity
- Compliance Guidelines for Multi-Family Zoning Districts under Section 3A of the Zoning Act

Board Member Roberts inquired about suitability of Cold Brook Crossing and Meadow Walk. Mr. Garvin indicated that between Meadow Walk and Cold Brook Crossing 50 acres of 3A housing could be created.

Board Member Russo detailed aspects related to “by-right” MBTA housing already in place.

Board Member Carty stressed that education would be critical. He mentioned that Lincoln has a good model.

Mr. Garvin stressed the public must be educated as soon as possible and proposed development does not have to be constructed in the near future, but does need to be planned for.

Vice-Chair Kouchakdjian mentioned that VHB would confirm if the current developments in Town would be acceptable and hoped that VHB would provide a related report. Mr. Burney stated that the compliance model provides calculations with input of given bylaws and how the Town might adjust zoning, if necessary.

Vice-Chair Kouchakdjian asked if the Planning Board would be scheduling a MBTA Communities charette and forum. Mr. Garvin stated that the Planning Board has scheduled similar events in the past, and could collaborate with the Select Board.

Chair Dretler stressed that residents must understand that this housing legislation would not be a choice and participation was regulated.

Continue joint meeting with Planning Board for discussion and review on progress of Master Plan

Mr. Burney shared the “Master Plan Implementation Update for Select Board,” PowerPoint, dated November 20, 2023. He reviewed main topics within the presentation:

- Master Plan Action Items: Ongoing Work
- High Priority Items in Master Plan – “High Impact” Action Items: Bruce Freeman Rail Trail Construction; Comprehensive Wastewater Management Plan
- High Priority Items in Master Plan – “Critical Path” Action Items: Route 20 Corridor Visioning Study (based on CWMP), Historic Preservation Plan, Facilities Assessment and Maintenance Plan, Housing Strategy
- Planning Board High Priorities: Town Facilities, Services, and Infrastructure; Historic and Cultural Identity; Economic Development (\$35,000 of ARPA funds allocated to hiring an economic development position; Transportation & Connectivity (related to goals of reducing congestion on Route 20).
- Priorities Needing Select Board Assistance – Town Facilities, Services and Infrastructure; develop a comprehensive Facilities Assessment and Maintenance Plan that includes a Capital Needs Assessment for every municipal building; complete the assessment and populate the Brightly Software.
- Potential Opportunities – Multi-Family Zoning Requirement for MBTA Communities; Town Meeting Approved Hiring a Sustainability Director who has been hired – the Planning Board will work with the Sustainability Director on scheduling sustainability goals and actions for 2024.

Planning Board Members advocated for a Master Plan webpage to track and update related goals and measure progress of various committees advancing such goals.

An interactive discussion regarding advancement of goals took place.

Board Member Carty asked if the Planning Board could provide the Select Board with areas that might need assistance from the Select Board.

SUDBURY SELECT BOARD
JOINT MEETING WITH PLANNING BOARD
MONDAY NOVEMBER 20, 2023
PAGE 4

Chair Dretler stated the more the Select Board and the Planning Board work together, the more successful the Town will be with all goals mentioned, including the MBTA Communities Housing plan.

Vote to close joint meeting with Planning Board regarding the Master Plan and the MBTA Communities and resume the Select Board meeting

Mr. Garvin closed the Planning Board meeting at 9:27 PM.

Vice-Chair Kouchakdjian motioned to close the joint meeting with the Planning Board regarding the Master Plan and the MBTA Communities and resume the Select Board meeting. Board Member Roberts seconded the motion.

It was on motion 5-0; Kouchakdjian-aye, Roberts-aye, Carty-aye, Russo-aye, Dretler-aye

VOTED: To close joint meeting with Planning Board regarding the Master Plan and the MBTA Communities and resume the Select Board meeting.

Adjourn

Vice-Chair Kouchakdjian motioned to adjourn the Select Board meeting. Board Member Roberts seconded the motion.

It was on motion 5-0; Kouchakdjian-aye, Roberts-aye, Carty-aye, Russo-aye, Dretler-aye

VOTED: To adjourn the Select Board meeting

There being no further business. The meeting adjourned at 9:29 PM.