



**City of Long Beach**

*Working Together to Serve*

**Office of the City Attorney**

**DATE:** August 12, 2008

**TO:** Members of the City Council Public Safety Committee

**FROM:** Gary J. Anderson, Deputy City Attorney, Ext. 82218

**SUBJECT:** Registration of Ammunition Sales

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***PRIVILEGED ATTORNEY-CLIENT COMMUNICATION***

On May 6, 2008, the Law Firm of Trutanich and Michel presented a written legal opinion to the Public Safety Committee in opposition to a proposed City ordinance that would require the recordation of ammunition sales in the City of Long Beach. The Public Safety Committee requested that the City Attorney's Office review the opposition papers and prepare a response.

The primary argument articulated by Trutanich and Michel is that the area of ammunition regulation is preoccupied by the State and therefore the City is pre-empted from passing an ordinance regulating the sales of ammunition. To support their argument the Trutanich firm cites two legal cases, (Fiscal v. City and County of San Francisco and District of Columbia v. Heller). However, the cases relied upon by the Trutanich firm, do not address the issue of ammunition regulation. Both cases address whether the respective city, county and district could regulate *firearm* sales/possession. Thus, the Trutanich firm's reliance on these cases is totally misplaced. Research reveals that the area of ammunition regulation that the City is contemplating is not pre-occupied by the State or Federal Government. Therefore, the City is not pre-empted from adopting the proposed ordinance.

There are several California cities that have already adopted ammunition ordinances of the kind the City is considering; (i.e.) Oakland, Sacramento, and Los Angeles. Oakland and Sacramento's ammunition ordinances are attached. The Oakland ordinance was adopted in 1995 while the Sacramento ordinance was adopted in 2007. Earlier this year, California Assemblyman Kevin De Leon, introduced Assembly Bill 2062, "the ammunition background check bill," which would regulate handgun ammunition in a similar fashion as the City's proposed ordinance. Unfortunately, this bill has been unable to survive committee review. Nevertheless, at the present time, there are no legal impediments that prohibit the City of Long Beach from enacting an ordinance regulating the sale of ammunition.

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**CONFIDENTIAL**

Title 9 PUBLIC PEACE, MORALS AND WELFARE**Chapter 9.20 AMMUNITION SALES REGISTRATION**9.20.010 Title.9.20.020 Findings and purpose.9.20.030 Definitions.9.20.040 Record of ammunition sales.9.20.050 Violation--Penalty.9.20.060 Severability.**9.20.010 Title.**

This chapter shall be known as the ammunition sales registration ordinance. (Ord. 11848 § 1 (part), 1995; prior code § 2-12.01)

**9.20.020 Findings and purpose.**

The City Council finds that the state of California has not preempted the enactment of a municipal ordinance requiring the registration of ammunition sales in Oakland, and further finds that the availability of such ammunition sales records can aid the police department in investigations of major crimes involving the use of firearms. The intent of the City Council in enacting the ordinance codified in this chapter is to implement a requirement that ammunition vendors within the city record and maintain records with respect to each individual purchase of ammunition, so that the purchaser can be traced in the event the ammunition were used in the commission of criminal activity. (Ord. 11848 § 1 (part), 1995; prior code § 2-12.02)

**9.20.030 Definitions.**

As used in this chapter: "Ammunition" means a projectile designated to be expelled by force of an explosion, and intended for use in any firearm, including pistols, revolvers, rifles, and shotguns. "Vendor" means any individual, person, gun dealer, store, firm or corporation selling ammunition within the city of Oakland. (Ord. 11848 § 1 (part), 1995; prior code § 2-12.03)

**9.20.040 Record of ammunition sales.**

Every vendor who sells ammunition in the city shall maintain a record of ammunition sales as prescribed by this chapter. The record shall be maintained on the vendor's premises, on forms supplied by, or approved by, the Oakland Police Department (OPD). An ammunition purchaser must provide to the vendor and the vendor shall record the following information:

- A. The date of the transaction;
- B. The purchaser's name, address and date of birth;
- C. The purchaser's valid driver's license number or other identification number from a valid photographic I.D. such as a passport;
- D. The brand of ammunition purchased;
- E. The type and amount of ammunition purchased; and
- F. The purchaser's signature and vendor's initials.

The information required to be recorded shall be maintained in chronological order by date of sale of the ammunition and shall be retained on the business premises of the vendor for a period not less

than two years following the date of the recorded sale of the ammunition.

Oakland police officers may enter a vendor's premises during regular business hours for the purpose of examining, inspecting or copying records required by this chapter. (Ord. 11848 § 1 (part), 1995; prior code § 2-12.04)

#### **9.20.050 Violation--Penalty.**

It is unlawful for any vendor engaged in the retail sale of ammunition in Oakland to knowingly make a false entry in, or fail to make appropriate entry, or fail to properly maintain any such record, or refuse to immediately provide the ammunition sales log for inspection to a police officer upon request.

Violation of any provision of this chapter shall be a misdemeanor, subject to fines and penalties as provided by law. Additionally, failure to abide by the requirements of this chapter shall be grounds for the revocation of a vendor's firearms dealer license, pursuant to Chapter 5.26 of this code. (Ord. 11848 § 1 (part), 1995; prior code § 2-12.05)

#### **9.20.060 Severability.**

This chapter shall be enforced to the full extent of the authority of the city. If any section, subsection, paragraph, sentence or word of this chapter is deemed to be invalid or beyond the authority of the city, either on its face or as applied, the remaining sections, subsection, paragraphs, sentences, or words of this chapter shall remain in full force and effect, and to that end the provisions of this shall be deemed severable. (Ord. 11848 § 1 (part), 1995; prior code § 2-12.06)

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## Sacramento City Code

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Title 5 BUSINESS LICENSES AND REGULATIONS

**Chapter 5.66 FIREARM AMMUNITION SALES LOGS**

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**5.66.010 Definitions.**

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For the purpose of this chapter, the following words and phrases are defined as follows:

“Ammunition sales log” means the written or electronic record of a firearms ammunition sale as required under Section 5.66.020.

“Ammunition vendor” means any person, firm, corporation, dealer, or any other business enterprise that is engaged in the retail sale of any firearm ammunition; or that prepares for such conduct of business as evidenced by the securing of applicable federal, state or local licenses; or that holds itself out as engaged in the business of selling or otherwise transferring any firearm ammunition.

“Firearm” means any device, designed to be used as a weapon or modified to be used as a weapon, that expels a projectile through a barrel by the force of an explosion or other form of combustion.

“Firearm ammunition” means any cartridge or encasement containing a bullet or projectile, propellant or explosive charge, and a primer which is used in the operation of a firearm.

“Sale” means the sale, barter, transfer or any means of providing goods to a transferee, including the provision of ammunition in conjunction with any firearm sale. (Ord. 2007-065 § 1)

**5.66.020 Ammunition sales log required.**

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An ammunition vendor shall maintain an ammunition sales log which records all firearm ammunition sales as required by this chapter. The transferee shall provide, and the ammunition vendor shall record on the ammunition sales log, at the time of sale, the following information for each sale of firearms ammunition:

- A. The name, address, and date of birth of the transferee;
- B. The date of the sale;
- C. The transferee’s driver’s license number, state identification card number, passport number, or other valid government-issued photographic identification;
- D. The brand, type, and quantity of firearms ammunition transferred;
- E. The identity of the person transferring the firearms ammunition on behalf of the ammunition vendor;
- F. The transferee’s signature and right thumbprint. (Ord. 2007-065 § 1)

**5.66.030 Maintenance and inspection of ammunition sales log at location of sale.**

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The ammunition sales log required in Section 5.66.020 shall be recorded on a form approved by the chief of police. In addition to the requirements of Section 5.66.040, all ammunition sales logs shall be kept at the location of the firearms ammunition sale for a period of not less than two years from the date of the sale. Ammunition sales logs shall be open to reasonable inspection by peace officers at all times the ammunition vendor is regularly open for business. (Ord. 2007-065 § 1)

**5.66.040 Electronic transmission of sale record to police department.**

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Within five calendar days of a firearms ammunition transfer, the ammunition vendor shall electronically transmit to the Sacramento police department all of the information set forth in subsections A to F of Section 5.66.020. The electronic transmittal shall be by a method, and in a format, approved by the chief of police. (Ord. 2007-065 § 1)

#### **5.66.050 False information—False recordation.**

No person shall knowingly provide false, inaccurate, or incomplete information to an ammunition vendor for the purpose of purchasing firearms ammunition. No ammunition vendor shall knowingly make a false, inaccurate, or incomplete entry in any ammunition sales log, nor shall any ammunition vendor refuse any reasonable inspection of an ammunition sales log subject to inspection under Section 5.66.030. (Ord. 2007-065 § 1)

#### **5.66.060 Grace period.**

Any ammunition vendor lawfully engaging in the business of selling or otherwise transferring any firearm ammunition on the effective date of the ordinance codified in this chapter shall have a period of ninety (90) days after such effective date to comply with the provisions of this chapter. (Ord. 2007-065 § 1)

#### **5.66.070 Severability.**

This chapter shall be enforced to the full extent authorized by law. If any section, subsection, paragraph, sentence, clause, or word of this chapter is deemed invalid or beyond the authority of the city, either on its face or as applied, the remainder of this chapter shall remain in full force and effect, and to that end the provisions of this chapter shall be deemed severable. (Ord. 2007-065 § 1)

#### **5.66.080 Exemptions.**

A. The provisions of this chapter shall not apply if the firearms ammunition transferee is any person described in Section 12302 or 12322 of the Penal Code of the state of California; any off-duty peace officer who displays proper agency identification which identifies him or her as an active peace officer; any person who has been issued a permit to carry a concealed weapon under the authority of Section 12050 of the Penal Code of the state of California; or any security guard licensed under the authority of Section 12033 of the Penal Code of the state of California.

B. The provisions of this chapter shall not apply to shotgun ammunition containing projectiles (shot) of a diameter less than twenty-four hundredths of an inch. (Ord. 2007-065 § 1)

#### **5.66.090 Violation—Penalty.**

A. A violation of this chapter shall constitute a misdemeanor. The penalty for a first violation is a five-hundred-dollar (\$500.00) fine or imprisonment not to exceed six months, or both. The penalty for each additional violation within one year is a one-thousand-dollar (\$1,000.00) fine or imprisonment not to exceed six months, or both.

B. Violation of this chapter also constitutes grounds for revocation of a license issued under Chapter 5.64. (Ord. 2007-065 § 1)