

Admin.

December 13, 2013

Second Supplement to Memorandum 2013-54

New Topics and Priorities: Comments From the City of Sunnyvale

The Commission¹ has received a letter from the City of Sunnyvale regarding large-capacity magazines as a nuisance. The letter is attached as an Exhibit. The City of Sunnyvale urges the Commission not to undertake a study of the topic.

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.



CITY OF SUNNYVALE
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December 12, 2013

Via E-Mail

Barbara Gaal
Chief Deputy Counsel for the Commission
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Re: Large Capacity Magazines as a Nuisance

Dear Ms. Gaal:

The City of Sunnyvale ("Sunnyvale") endorses the Staff's approach to the issue raised in the Law Revision Commission's Staff Memorandum 2013-54 regarding the wording of the statute declaring large capacity ammunition magazines to be a nuisance. On November 5, 2013, the voters of Sunnyvale decisively passed (with more than 65% of the vote) Measure C, a ballot measure to promote reasonable gun violence prevention. Among other things, Measure C prohibits, subject to enumerated exceptions, the possession of large-capacity magazines (defined as magazines designed to accept more than 10 rounds) within the City of Sunnyvale.

The Commission's Staff Memorandum describes a letter the Commission received from C.D. Michel, attorney for the NRA, in October 3, 2013 ("the NRA letter"). The letter advocates for a change in the wording of Penal Code § 32390, which declares large capacity ammunition magazines to be nuisances, and claims that the Commission's 2010 reorganization of the deadly weapons statutes "inadvertently" changed the scope of this statute.

Mr. Michel and the NRA have repeatedly threatened to sue the City of Sunnyvale, both before and after the passage of Measure C, to attempt to overturn the large-capacity magazine possession ban. The NRA letter impermissibly requests a substantive change in the Penal Code, which is transparently designed to strengthen its litigation position. It notes that Penal Code section 18010(a)(20)(b) provides that "[p]ossession of items classified as nuisances may be *enjoyed by . . . city attorney[s]*" and "are subject to confiscation and summary destruction" (at p. 4)(emphasis added). The NRA letter is incorrect.

As a starting point, as noted by the Staff (p. 48), "unless there is a good reason for doing so, the Commission will not recommend to the Legislature changes in laws that have been enacted on Commission recommendation" (citing CLRC Handbook Rule 3.5.) The NRA letter requests just that—while it apologizes for waiting for more than three years to make the request, an apology cannot supply the requisite good cause for changing a revision made as part of the 2010 recommendations. Nor does anything else in the NRA letter provides justification for its requested change.

EX 1

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Barbara Gaal

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Former section 12029 expressly declared certain items to be nuisances, including “any other item which is listed in subdivision (a) of Section 12020.” Large capacity magazines are listed in section 12020(a). Consequently, the Commission included within its reorganization section 32390’s declaration that large capacity magazines are nuisances. Section 32390 did not alter the scope of existing law, but simply tracks the language of former section 12029.

The NRA letter points out that state law does not impose a criminal penalty for possession of large capacity magazines, and argues that such magazines can therefore not be nuisances if they were acquired before the state ban on their sale was enacted thirteen years ago in 2000. However, as the Staff Memorandum recognizes (page 48), there is a distinction between criminalizing possession of an item and authorizing state and local law enforcement to seize and destroy the item, as occurs for nuisances.

As the Staff Memorandum also notes (page 49), the Legislature did not expressly limit the circumstances in which large capacity magazines could be considered a nuisance in former section 12029, although it did so for certain other weapons. If the Legislature had wanted (illogically) only large capacity magazines obtained after the state ban to be considered nuisances, it could have said so expressly.

Importantly, ammunition magazines do not carry a serial number or any other indication of when they were manufactured or sold. There is therefore no way for law enforcement to trace a particular magazine or determine when it was manufactured or sold. This is part of the reason why Measure C provides an important investigative tool to Sunnyvale’s law enforcement and gun violence prevention efforts. For the same reason, the NRA’s proposed limitation would make section 32390 significantly more difficult to enforce.

The NRA neglected to raise this issue during the Commission’s multi-year study of the deadly weapons statutes or during the entire legislative process. The NRA letter also does not explain why it did not raise this issue earlier, except that the “problems caused by the language only recently surfaced.” No doubt it is raising the issue at this late date in an attempt to garner support from the Law Revision Commission for a change in existing law that suits its anticipated litigation positions. More specifically, the NRA is responding to the efforts of certain local governments, including Sunnyvale and the City of Los Angeles, to strengthen their local ordinances regarding large capacity ammunition magazines. The NRA wants to frustrate those efforts by suggesting that state law strictly limits local authority to regulate in this area, when in fact it does not.

The voters of Sunnyvale have decided to bar the possession of large capacity magazines within Sunnyvale, regardless of when they were obtained. The NRA has pledged to fight this part of Measure C in the courts. We respectfully urge the Commission to reject the NRA’s attempt to change the law. Thank you.

Barbara Gaal

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Sincerely,



Rebecca L. Moon
Assistant City Attorney
City of Sunnyvale