

MIKE FEUER  
CITY ATTORNEY

REPORT NO. R 1 3 - 0 2 0 8  
JUL 2 6 2013

REPORT RE:

**DRAFT ORDINANCE AMENDING SECTION 55.11 OF THE LOS ANGELES  
MUNICIPAL CODE TO REQUIRE ELECTRONIC TRANSMISSION OF RECORDS  
REGARDING AMMUNITION SALES**

The Honorable City Council  
of the City of Los Angeles  
Room 395, City Hall  
200 North Spring Street  
Los Angeles, California 90012

Council File No. 13-0241

Honorable Members:

This Office has prepared and now transmits for your action the enclosed draft ordinance, approved as to form and legality. This draft ordinance would amend Section 55.11 of the Los Angeles Municipal Code (LAMC) to require ammunition vendors to electronically transmit all records of ammunition transactions to the Los Angeles Police Department.

Background

LAMC Section 55.11 requires all ammunition vendors in the City to record specified categories of information regarding ammunition transactions, including the name, address and right thumbprint of the purchaser, and amount and type of ammunition sold. This information is captured on forms known as "Ammo Logs," which must be maintained at the ammunition vendor's business and made available for inspection by Los Angeles Police Department personnel. The requested amendment would not change or add to any of the categories of required information. Rather, it would simply require ammunition vendors to electronically transmit the information

within five (5) days, thus obviating the need for LAPD personnel to regularly visit the vendors and manually inspect the Ammo Logs.<sup>1</sup>

### Preemption

We have considered the possibility that the proposed ordinance might be challenged on the ground that it is preempted by State law. As a general rule, a local ordinance will be upheld against constitutional challenge if it is reasonably related to promoting the health, safety, and welfare of the public, and if the means adopted to that promotion are reasonably appropriate to the purpose. In our view, the proposed ordinance meets this standard. However, if otherwise valid local legislation conflicts with state law, it is preempted by such law and is void. A conflict exists if the local legislation duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication.<sup>2</sup>

While the proposed ordinance may be legally defensible, the possibility of preemption does exist, based on principles of duplication and implied occupation of the field by State law.

The current version of LAMC Section 55.11 became operative in 2009. Shortly thereafter, the California legislature enacted SB 962, which added the Handgun Ammunition Act to the Penal Code. Penal Code Section 30352 (originally numbered 12061) is part of that Act, and requires all ammunition vendors in the state to collect and maintain, for inspection by law enforcement, the same ammunition sales information required under LAMC Section 55.11. Therefore, it could be argued that Section 55.11, either as presently constituted or amended as proposed, is duplicative of state law and, thus, preempted. In opposition to this argument, the City could point to Penal Code Section 30365, also part of the Handgun Ammunition Act, which provides in pertinent part that the “provisions of this section are cumulative, and shall not be construed as restricting the application of any other law.” The reference to “any other law” could be interpreted as encompassing local ordinances. On the other hand, it could be argued that the language of this provision is insufficiently clear to constitute express legislative intent to allow local regulation in this area. In the absence of such express intent, a court might find that the state legislative scheme regulating ammunition vendors and sales is comprehensive and occupies the field.

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<sup>1</sup> LAPD personnel have recently informed this Office that they have encountered technical difficulties in their efforts to ensure effective implementation of an electronic transmittal system. Specifically, Information Technology personnel have, according to LAPD, been unable, to date, to effectively capture thumbprints electronically. Because this is an essential component of an electronic transmittal system, LAPD has indicated that successful resolution of this issue is critical to ensure the requested ordinance would have the intended effect of obviating or significantly reducing the need to manually inspect vendors' Ammo Logs.

<sup>2</sup> See *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4<sup>th</sup> 893, 897-898; *Viacom Outdoor, Inc. v. City of Arcata* (2006) 140 Cal. App. 4<sup>th</sup> 230, 236.

The preemption analysis of the requested ordinance is also affected by Senate Bill 53 (De Leon), currently pending in the State legislature. SB 53 would, if enacted, amend several existing ammunition laws and add new ones. Of particular relevance, it would (1) require all ammunition vendors to submit the information required under Penal Code Section 30502 (the same information required under LAMC Section 55.11) to the California Department of Justice (DOJ); (2) require all ammunition vendors to be licensed by DOJ; and (3) require, with few exceptions, those who purchase ammunition to undergo a DOJ background check and hold an ammunition purchase permit issued by DOJ. The role of the State, in particular the Department of Justice, would be greatly expanded in ensuring that all ammunition sales meet stringent uniform requirements and that purchasers are not prohibited from possessing ammunition under State law. According to the author, SB 53 "expands upon and strengthens the ammunition regulation scheme established under AB 962... Under this proposal a **statewide standard** on ammunition sales would be created, providing law enforcement with clear information on who is selling and buying ammunition." (Emphasis added.) Thus, the passage of SB 53 would likely strengthen the argument that State law fully occupies the field in this area, leaving no room for local regulation of ammunition vendors, such as the proposed ordinance.


Council Rule 38

Pursuant to Council Rule 38, copies of the draft ordinance were sent to the Los Angeles Police Department and the Board of Police Commissioners with a request that all comments, if any, be presented directly to your Honorable Body at the time this matter is considered.

If you have any questions regarding this matter, please contact Deputy City Attorney Heather Aubry at 213.978.8393. She or another member of this Office will be present when you consider this matter to answer any questions you may have.

Sincerely,

MICHAEL N. FEUER, City Attorney

By   
PEDRO B. ECHEVERRIA  
Chief Assistant City Attorney

PBE:HA:pg

**ORDINANCE NO. \_\_\_\_\_**

An ordinance amending Section 55.11 of the Los Angeles Municipal Code to require ammunition vendors to electronically transmit ammunition sales records.

**THE PEOPLE OF THE CITY OF LOS ANGELES  
DO ORDAIN AS FOLLOWS:**

Section 1. Subsection (e) of Section 55.11 of the Los Angeles Municipal Code is amended to read as follows:

(e) The records required by this section shall be maintained on the premises of the vendor for a period of not less than two (2) years from the date of the recorded transfer. Said records shall be subject to inspection at any time during normal business hours in accordance with the provisions of Section 103.14 of this Code. In addition, said records shall, within five (5) calendar days of a firearm ammunition transfer, be electronically transmitted to the Los Angeles Police Department in a format and manner approved by the Chief of Police.

Sec. 2. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of \_\_\_\_\_.

JUNE LAGMAY, City Clerk

By \_\_\_\_\_ Deputy

Approved \_\_\_\_\_

\_\_\_\_\_  
Mayor

Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney

By Heather Aubry (ASE)  
HEATHER AUBRY  
Deputy City Attorney

Date July 26, 2013

File No. 13-0241