

ORDINANCE NO 25170

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 10 OF THE SAN JOSE MUNICIPAL CODE BY ADDING NEW SECTIONS 10.32.112 AND 10.32.115 TO PART 3 OF CHAPTER 10.32 TO MAKE THE PROVISION OF TRIGGER LOCKS AND PRINTED SAFE STORAGE PRACTICE LITERATURE AND THE "SATURDAY NIGHT SPECIAL" SALE BAN REQUIREMENTS OF A CONCEALABLE FIREARMS DEALERS LICENSE, AND GROUNDS FOR REVOCATION OF SUCH LICENSE; AND TO ADD A NEW CHAPTER 10.33 TO BAN THE SALE OF "SATURDAY NIGHT SPECIALS", ALSO KNOWN AS "JUNK GUNS"

WHEREAS, handguns commonly referred to as "Saturday Night Specials," also known as "junk guns", are poorly constructed, and not suitable for or readily adaptable to sporting purposes; and

WHEREAS, in recent years, firearms manufacturers have grafted improvised safety devices onto the core design of those handguns commonly known as Saturday Night Specials including fragile half-cock hammer notches in derringers and single-action revolvers, manual pistol slide locks; rudimentary hammer or trigger locks that act by simple interference; and crude grip safety levers; and

WHEREAS, such cosmetic remodeling by firearms manufacturers does not ameliorate the core design deficiencies of Saturday Night Specials; and

WHEREAS, Saturday Night Specials continue to be dangerous products due to their low quality of manufacture and metallurgy, so as to be unacceptable in commerce; and

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WHEREAS, a firearm's frame, barrel, breechblock, cylinder and slide must be completely fabricated of heat treated carbon steel, forged alloy or other material of equal or higher tensile strength in order to reliably contain the weapon's ballistic power, and any firearm in which all of these components do not meet this standard is an inherently unsafe product; and

WHEREAS, firearms manufacturers have increased the ballistic power of many semi-automatic pistols by chambering them to fire high pressure ammunition, yet have not changed the materials used in the firing chamber, slide or breechface so as to contain the peak pressures generated by such ballistic power and prevent parts breakage from overstress which can result in injury to the user; and

WHEREAS, the action mechanism contained in many currently produced derringers and single-action revolvers is based upon century-old designs, so that chambering such weapons for high pressure ammunition results in a ballistic pressure which exceeds the pressure levels the design is originally intended to withstand; and

WHEREAS, in recent years, firearms manufacturers have made token modifications to Saturday Night Specials, including: carbon steel breechface inserts; solid steel barrel tubes; a greater number of steel linings incorporated in soft castings; but these modifications have resulted in no advancement, or only marginal advancement, in the durability of these handguns; and

WHEREAS, the small size and light weight of Saturday Night Specials makes them easy to conceal, thereby creating an increased threat to the public health, safety and welfare of the public and law enforcement officers; and

WHEREAS, Saturday Night Specials are disproportionately used in crimes as demonstrated in studies conducted by the Federal Bureau of Alcohol, Tobacco and Firearms and others

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which have shown that well over half the guns confiscated by police are worth less than \$50, have barrel lengths of three inches or less, or are .32 caliber or smaller; and

WHEREAS, according to the Bureau of Alcohol and Tobacco and Firearms, eight of the ten firearms most frequently traced nationally to crime scenes in 1995 were Saturday Night Specials; and

WHEREAS, the Federal Centers for Disease Control and Prevention have projected that firearms will become the primary cause of injury-related mortality nationwide by the year 2003; and

WHEREAS, the Federal Government has already prohibited the importation of foreign manufactured Saturday Night Specials but has not yet taken steps to prohibit the sale of similar, domestically manufactured handguns; and

WHEREAS, according to a University of California Davis Violence Prevention Research Program, Saturday Night Specials are 3.4 times more likely to be involved in crimes than are other firearms; and

WHEREAS, gunshot fatalities and care of gunshot victims in California cost \$703 million in direct medical costs in 1993 alone; and

WHEREAS, firearms are the leading killer of Californians under the age of 24, killing more Californians in that age group than motor vehicle injuries, AIDS, heart disease, and cerebrovascular disease combined; and

WHEREAS, more Californians now die from gun shootings than from car accidents; and

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WHEREAS, there are more than twice as many gun dealers as public schools in California;
and

WHEREAS, a San Jose Police Department study analyzing Department records and other sources of information discloses that ten percent of the victims of handgun-related crime in San Jose are physically injured in the commission of the crime; and

WHEREAS, a San Jose Police Department study analyzing Department records and other sources of information discloses that in 1995 juveniles were involved as the offender or victim in 27 percent of all handgun related crimes, and that 75 percent of the crimes (249 crimes) in which juveniles were involved, were classified as violent crimes; and

WHEREAS, of the 1,234 reported handgun-related crimes in San Jose in 1995, 926 (approximately 75 percent) were classified as violent crimes and included 20 homicides, 415 robberies, 288 aggravated assaults, 194 simple assaults, and 9 rapes; and

WHEREAS, between August 1995 and April 1996, when a firearm was used to commit a crime, a handgun was the weapon most frequently selected in homicide (95 percent), robbery (96 percent), aggravated assault (90 percent), rape (100 percent) and kidnapping (93 percent); and

WHEREAS, firearms have been used in 127 of the 221 homicides (57 percent) reported in San Jose from January 1991 through April 1996 and handguns accounted for 109 of the homicides (90 percent) in which a firearm was the weapon; and

WHEREAS, an analysis of San Jose Police Department evidence logs of the 108 homicides committed between January 1, 1993 and December 31, 1995 revealed that in the 31 homicides in which handguns were recovered and positively identified, 4 (13 percent) were Saturday Night Specials; and

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WHEREAS, the San Jose Police Department study also showed that in approximately 30 percent of the total homicide cases the type of firearm used was not identified beyond its apparent caliber; however, the small calibers used could be associated with Saturday Night Specials; and

WHEREAS, during 1995 there were 3,447 legal sales of handguns in San Jose that were registered with the Department of Justice; ninety-seven (97%) percent or 3,358 of these sales took place in retail outlets and only three (3%) percent or 89 took place through secondhand gun dealers; and

WHEREAS, two (2%) percent of these sales or 79 firearms were purchases of Saturday Night Specials;

WHEREAS, in 1995 the San Jose Police Department received approximately 942 handguns into custody and 142 (15%) percent of these were Saturday Night Specials; and

WHEREAS, in San Jose in 1995, of the 387 handgun cases in which at least one arrest was made, approximately 238 handguns were recovered and 59 (23 percent) of these were Saturday Night Specials; and

WHEREAS, the above figures demonstrate that there is a disproportionate use of Saturday Night Specials in the commission of crimes in San Jose as compared to the number legally sold; and

WHEREAS, the availability of Saturday Night Specials therefore constitutes a severe threat to public health and safety in San Jose; and

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WHEREAS, the proposed ban on the sale of Saturday Night Specials in San Jose addresses the severe threat to the public health, safety and welfare of San Jose residents posed by Saturday Night Specials by reducing the availability of these handguns in San Jose;

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Part 3 of Chapter 10.32 of Title 10 of the San Jose Municipal Code is hereby amended to add a new section to be numbered and entitled and to read as follows:

10.32.112 Prohibition on the Sale of Saturday Night Specials and Junk Guns

- A. The Licensee shall strictly comply with the requirements of Chapter 10.33 of this Title.
- B. Any failure to so comply shall be grounds for revocation of the license.

SECTION 2. Part 3 of Chapter 10.32 of Title 10 of the San Jose Municipal Code is hereby amended to add a new section to be numbered and entitled and to read as follows:

10.32.115 Trigger Lock and Safety Notice Requirements

- A. No Licensee shall sell, give, lend, or transfer ownership of any firearm, capable of being concealed upon a person, without first equipping the firearm with a trigger lock or similar locking mechanism, that is designed to prevent the unintentional discharge of the firearm; and
- B. No Licensee shall sell, give, lend, or transfer ownership of any firearm capable of being concealed upon a person without providing to the person to whom the gun is transferred printed material, either provided or approved by the Chief of Police, that advises the user on safe storage practices.

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- C. Any failure to strictly comply with the requirements of this Section shall be grounds for revocation of the license.

SECTION 3. Title 10 of the San Jose Municipal Code is hereby amended to add a new Chapter to be numbered and entitled and to read as follows:

CHAPTER 10.33

SATURDAY NIGHT SPECIAL/JUNK GUN SALE BAN

10.33.010 Sale of Certain Guns Prohibited

- A. No concealable firearms dealer required to be licensed by the City in Part 3 of Chapter 10.33 of this Code shall sell, offer or display for sale, give, lend or transfer ownership of any firearm listed on the Roster of Saturday Night Specials.
- B. This Section shall not preclude a concealable firearms dealer from processing firearm transactions between unlicensed parties pursuant to Section 12072 (d) of the Penal Code of the State of California.

10.33.020 Exemptions

- A. Nothing in this Chapter shall prohibit the disposition of any firearm by sheriffs, constables, marshals, police officers, or other duly appointed peace officers in the performance of their official duties.
- B. Nothing in this Chapter shall prohibit the disposition of any firearm by persons who are authorized by the United States Government to use firearms in the performance of their official duties.

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10.33.030 Definition of Saturday Night Special

Except as provided in Section 10.33.040, for purposes of this Chapter, the term "Saturday Night Special" or "Junk Gun" shall mean each of the following:

- A. A pistol, revolver, or firearm capable of being concealed upon the person, as those terms are defined in California Penal Code Section 12001(a), which contains a frame, barrel, breechblock, cylinder or slide that is not completely fabricated of heat treated carbon steel, forged alloy or other material of equal or higher tensile strength.
- B. A semi-automatic pistol which:
 - 1. Is not originally equipped by the manufacturer with a locked-breech action; and
 - 2. Is chambered for cartridges developing maximum permissible breech pressures above 24,100 Copper Units of Pressure as standardized by the Sporting Arms and Ammunition Manufacturers Institute.
 - 3. For purpose of this Section, "semi-automatic pistol" means a firearm, as defined in California Penal Code Section 12001(b), which is designed to be held and fired with one hand, and which does the following upon discharge:
 - a. fires the cartridge in the chamber; and
 - b. ejects the fired cartridge case; and
 - c. loads a cartridge from the magazine into the chamber.

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4. For purpose of this Section, "semi-automatic pistol" shall not include any assault weapons designated in California Penal Code Section 12276.
- C. A pistol, revolver, or firearm capable of being concealed upon the person, as those terms are defined in California Code Section 12001(a), which:
1. Uses an action mechanism which is substantially identical in design to any action mechanism manufactured in or before 1898 that was originally chambered for rimfire ammunition developing maximum safe permissible breech pressure below 19,000 Copper Units of Pressure as standardized by the Sporting Arms and Ammunition Manufacturers Institute; and
 2. Is chambered to fire either centerfire ammunition or rimfire ammunition developing maximum permissible breech pressures above 19,000 Copper Units of Pressure as standardized by the Sporting Arms and Ammunition Manufacturers Institute; and
 3. Is not originally equipped by the manufacturer with a nondetachable trigger guard; or
 4. If rimfire, is equipped with a barrel of less than 20 bore diameters in overall length protruding from the frame.
- D. For purposes of subsection (C), above, "action mechanism" means the mechanism of a firearm by which it is loaded, locked, fired and unloaded, commonly known as the cycle of operation.

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10.33.040 Exclusions From Coverage

The term "Saturday Night Special" does not include any of the following:

- A. Any pistol which is an antique or relic firearm or other weapon falling within the specifications of paragraphs (5), (7) and (8) of subsection (b) of California Penal Code Section 12020; or
- B. Any pistol for which the propelling force is classified as pneumatic, that is, of, or related to, compressed air or any other gases not directly produced by combustion; or
- C. Children's pop guns or toys; or
- D. An "unconventional pistol" as defined in California Penal Code Section 12020(c)(12); or
- E. Any pistol which has been modified to render it permanently inoperable.

10.33.050 Roster of Saturday Night Specials

- A. The Chief of Police shall issue a Roster of Saturday Night Specials.
- B. The Roster shall list those firearms, by manufacturer and model number, which the Chief of Police determines fit the definition of Saturday Night Special or Junk Gun.

10.33.060 Initial Notice of Proposed Roster

- A. Upon formulation of a list of firearms to be placed on the Roster for the first time, the Chief of Police shall send an Initial Notice of Proposed Roster to:

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1. The manufacturer of every firearm on the list; and
2. Every dealer within the City who is licensed to sell and transfer firearms pursuant to Section 12071 of the Penal Code of the State of California and Part 3 of Chapter 10.32 of this Code.

B. Such notice shall:

1. Identify the model number of the firearm which has been classified as a Saturday Night Special or junk gun; and
2. Advise the recipient that the recipient may apply for reconsideration of the classification of the firearm as a Saturday Night Special or Junk Gun, and
3. Advise the recipient that the burden of proving a firearm does not constitute a Saturday Night Special or Junk Gun shall be on the recipient.
4. Advise the recipient that he/she has thirty (30) days from the date of service of the initial notice in which to apply for reconsideration of the classification of the firearm as a Saturday Night Special or Junk Gun.

- C. If an application for reconsideration of the classification of a firearm is not received by the Chief of Police within thirty (30) days of service of the initial notice, then the recipient's right to reconsideration of the classification of that firearm as a Saturday Night Special or Junk Gun shall be deemed waived and the firearm shall be placed upon the Roster unless another recipient timely applies for reconsideration with respect to that firearm.

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10.33.070 Reconsideration by the Chief of Police

- A. The recipient shall have thirty (30) days from the date of service of the Initial Notice of Proposed Roster in which to serve upon the Chief of Police an application for reconsideration.
- B. The Chief of Police shall schedule a hearing which shall be held no later than thirty (30) days after the close of the time period for application for reconsideration.
- C. The Chief of Police shall serve a notice of hearing on the recipient requesting reconsideration not later than ten (10) days prior to the scheduled date of the hearing.
- D. At the hearing, the recipient may appear or may be represented by any other person and shall be given the opportunity to offer testimony, present witnesses and offer documentary and tangible evidence.
- E. The hearing will be conducted informally and the technical rules of evidence shall not apply. Any and all evidence which the Chief of Police deems reliable, relevant and not unduly repetitious shall be considered.
- F. The recipient shall have the burden of proving that a firearm does not constitute a Saturday Night Special or Junk Gun.

10.33.080 Determination of the Chief of Police

- A. Within thirty (30) days after the close of the reconsideration hearing, the Chief of Police shall issue a written determination to keep or delete a firearm from the Initial Notice of Proposed Roster.

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- B. The determination by the Chief shall be final and shall constitute the Roster.

10.33.090 Issuance of the Roster

- A. When all reconsideration of the Initial Notice of Proposed Roster is completed and all determinations have been made by the Chief of Police pursuant to Section 10.33.080, the Chief of Police shall issue the Roster listing those firearms which have been determined to constitute a Saturday Night Special or Junk Gun.
- B. Notice of the issuance of the Roster shall be given in the following manner:
1. The Roster issued by the Chief of Police shall be published at least once in a newspaper of general circulation in the City.
 2. A copy of the Roster shall be filed in the Office of the City Clerk.
 3. A copy of the Roster, shall be distributed to every dealer within the City who is licensed to sell and transfer firearms pursuant to Section 12071 of the Penal Code of the State of California and Part 3 of Chapter 10.32 of this Code.

10.33.100 Effective Date of the Roster

The Roster shall become effective on the fifteenth (15th) day after the first publication of the issued Roster.

10.33.110 Additions to the Roster

- A. Additions to the Roster shall be made in accordance with the following procedure:

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1. Semi-Annual Determination

- a. On a semi-annual basis, the Chief of Police shall review the need to place additional firearms on the Roster.
- b. Upon identifying one or more firearms as a Saturday Night Special, the Chief of Police shall prepare a draft list of the additions to the Roster.

2. Notification of Additions to Roster

In the event that a proposed list of firearms to be added to the Roster is prepared, the Chief of Police shall provide notification of the list of additions to the Roster in accordance with Section 10.33.060.

3. Reconsideration by the Chief of Police

Any person who is notified by the Chief of Police pursuant to paragraph (2) above may apply for reconsideration of the classification of that firearm as a Saturday Night Special in accordance with the provisions of Section 10.33.070.

B. Additions of Firearms to Roster.

1. After the Chief of Police makes a determination pursuant to Section 10.33.080, the Chief of Police shall place on the Roster those additional firearms which have been determined to constitute a Saturday Night Special.
2. The Chief of Police shall cause the Roster, as amended to include these additional firearms, to be issued in accordance with Section 10.33.090.

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C. Effective Date of Additions to the Roster.

1. The previously published Roster shall remain in effect respecting all firearms listed on such Roster until a new Roster, as amended to include new firearms, takes effect.
2. The issuance of the Roster, as amended to include new firearms, shall be effective as to those newly added firearms on the fifteenth (15th) day after issuance pursuant to Sections 10.33.090 and 10.33.100.

SECTION 4.

This Ordinance shall become effective January 1, 1997.

PASSED FOR PUBLICATION OF TITLE this 17th day of September,

1996, by the following vote:

AYES: DIAZ, FERNANDES, JOHNSON,
POWERS, WOODY; HAMMER

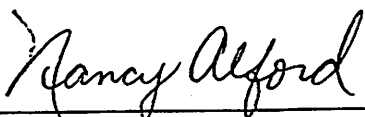
NOES: DANDO, FISCALINI, PANDORI,
SHIRAKAWA

ABSENT: DIQUISTO



SUSAN HAMMER, Mayor

ATTEST:



PATRICIA L. O'HEARN, City Clerk
BY: Nancy Alford, Assistant City Clerk