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16 IN THE UNITED STATES DISTRICT COURT
17 FOR THE EASTERN DISTRICT OF CALIFORNIA

18	Ivan Peña, et al.,)	Case No. 2:09-CV-01185-FCD-KJM
19	Plaintiffs,)	
20)	<u>EXHIBIT M</u>
21	v.)	
22)	In Support of Plaintiffs' Motion
23	Wilfredo Cid,)	For Summary Judgment
24	Defendant.)	
25	_____)	

26 Respectfully Submitted on Sept. 1, 2009

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By: /s/ Donald E.J. Kilmer, Jr.
Donald E. J. Kilmer, Jr., Attorney for Plaintiffs

CHIEF, METROPOLITAN POLICE DEPARTMENT

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Chief of the Metropolitan Police Department, pursuant to subsections 504(e)(4), 504(f), and section 712 of the Firearms Regulations Control Act of 1975 (Act), effective March 31, 2009 (D.C. Law 17-0372; 56 DCR 1365), hereby gives notice of the adoption on an emergency basis of an amendment to add sections 2323 and 2324 to Chapter 23 (Guns and Other Weapons) of Title 24 (Public Space and Safety) of the District of Columbia Municipal Regulations (DCMR). The rulemaking: 1) revises the roster of handguns determined not to be unsafe prescribed by subsection 504(a) of the Act, and establishes which single action revolvers are permissible pursuant to subsection 504(e) of the Act, by adding suitable firearms, including single action revolvers, to the newly created District Roster of Handguns Determined Not to be Unsafe; and 2) interprets the term “assault weapons”, pursuant to § 101(3A) of the Act. The creation of the District Roster and the additions to it were made based upon: 1) recognition that California permits sale of firearms that have superficial differences to those firearms on its roster; 2) recognition that some handguns that have been placed on the California roster as safe handguns have been removed for administrative reasons not related to the handguns’ safety; and 3) review of similar safe gun rosters maintained by Maryland and Massachusetts.

Emergency rulemaking action is necessary to interpret and implement the provisions of sections 101(3A) and 504 of the Act and to add suitable weapons to the District’s Roster of Handguns Determined Not to be Unsafe. Emergency rulemaking will immediately clarify those firearms that should be added to the list to continue the District’s compliance with the Supreme Court’s decision and mandate in *District of Columbia v. Heller* concerning a person’s constitutional right to legally possess a firearm in a person’s home for the purpose of self-defense.

This emergency rulemaking was adopted on June 17, 2009, and became effective immediately. The emergency rulemaking will expire after one hundred and twenty (120) days, or upon publication of a Notice of Final Rulemaking in the D.C. Register, whichever occurs first.

The Chief also gives notice of her intent to take final rulemaking action to adopt the proposed rulemaking in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

Chapter 23 of Title 24 DCMR is amended to add section 2323 and 2324 to read as follows:

2323 DISTRICT ROSTER OF HANDGUNS DETERMINED NOT TO BE UNSAFE

2323.1 The Metropolitan Police Department shall establish the District Roster of Handguns Determined Not to be Unsafe (District Roster). Pursuant to subsections 504(e)(4) and 504(f) of the Firearms Regulations Control Act of 1975 (Act), effective March 31, 2009 (D.C. Law 17-0372; 56 DCR 1365), the District Roster shall constitute the roster of pistols that may be manufactured, sold, given, loaned, exposed for sale, transferred, or imported into the District of Columbia notwithstanding subsection 504(a) of the Act, and that may be owned or possessed within the District of Columbia notwithstanding subsection 504(b) of the Act.

2323.2 The District Roster shall include:

- (a) Any pistol that is on the California Roster of Handguns Certified for Sale (also known as the California Roster of Handguns Determined Not to be Unsafe) (California Roster), pursuant to California Penal Code § 12131, as of January 1, 2009, unless such pistol is an unregistrable firearm pursuant to section 202 of the Firearms Regulations Control Act of 1975, effective March 31, 2009 (D.C. Law 17-0372; 56 DCR 1365);
- (b) Any pistol that was listed on the California Roster prior to January 1, 2009, which was, or is subsequently, removed from the California Roster for any reason not related to the pistol's safety;
- (c) Any pistol listed on the January 1, 2009, Maryland Department of State Police Official Handgun Roster, as of January 1, 2009, published as Attachment A to this section, unless such pistol is an unregistrable firearm pursuant to section 202 of the Firearms Regulations Control Act of 1975, effective March 31, 2009 (D.C. Law 17-0372; 56 DCR 1365); and
- (d) Any pistol listed on the Commonwealth of Massachusetts Executive Office of Public Safety and Security Approved Firearms Roster, as of April 2, 2009, published as Attachment B to this section, unless such pistol is an unregistrable firearm pursuant to section 202 of the Firearms Regulations Control Act of 1975, effective March 31, 2009 (D.C. Law 17-0372; 56 DCR 1365).

2323.3 A pistol shall be deemed to be included on the District Roster if another pistol made by the same manufacturer is already listed and the unlisted pistol differs from the listed firearm only in one or more of the following features:

- (a) Finish, including, but not limited to, bluing, chrome-plating, oiling, or engraving.

- (b) The material from which the grips are made.
- (c) The shape or texture of the grips, so long as the difference in grip shape or texture does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the pistol.
- (d) Any other purely cosmetic feature that does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the pistol.

2323.4 Any applicant seeking to have a pistol registered under subsection 2323.3 shall provide to the Chief all of the following:

- (a) The model designation of the listed firearm.
- (b) The model designation of each firearm that the applicant seeks to have registered under this section.
- (c) A statement, under oath, that each unlisted pistol for which registration is sought differs from the listed pistol only in one or more of the ways identified in subdivision (a) and is in all other respects identical to the listed pistol.

2323.5 Any decision refusing registration pursuant to this section may be appealed to the Chief pursuant to section 210 of the Firearms Regulations Control Act of 1975, effective March 31, 2009 (D.C. Law 17-0372; 56 DCR 1365), and thereafter to the Office of Adjudication and Hearings pursuant to subsection (b-2) of section 6 of the Office of Administrative Hearings Establishment Act of 2001, effective March 31, 2009 (D.C. Law 17-0372; 56 DCR 1365). In any such appeal, the applicant shall bear the burden of demonstrating that the Chief's decision should be reversed and registration permitted.

2323.6 The make and model of any pistol registered pursuant to §§ 2323.3 through 2323.5 shall be recorded by the Metropolitan Police Department in such a manner to allow the Chief to waive the requirements of § 2323.4 in the event an additional applicant seeks registration for an identical pistol.

2324 INTERPRETATION OF ASSAULT WEAPONS DEFINITION

- 2324.1 Section 101 paragraph 3A of the Firearms Regulations Control Act of 1975 (Act), effective March 31, 2009 (D.C. Law 17-0372; 56 DCR 1365.), defined the term “assault weapon”, and section 202(a)(6) of the Act declared that “assault weapons” may not be registered in the District.
- 2324.2 In those instances where the definition of “assault weapon” refers to a firearms manufacturer or description without including a specific model reference, the term “assault weapon” shall be interpreted to include only those firearms produced by such manufacturer, or possessing such description, that share characteristics similar to other enumerated firearms in section 101 paragraph 3A(A)(i)(I) through (III) of the Act, or possess any of the enumerated characteristics listed in section 101 paragraph 3A(A)(i)(IV) through (VIII) and 3A(A)(ii) through (iii) of the Act.
- 2324.3 A firearm that is produced by a manufacturer or possesses a description that is included in the definition of “assault weapon” referred to in § 2324.1, but which does not share characteristics similar to the enumerated firearms, or the enumerated characteristics described in § 2324.2, may be registered, provided that the firearm is not otherwise prohibited from registration under District or Federal law or regulation.

All persons interested in commenting on the subject matter of this proposed rulemaking action may file comments, in writing, with: Terrence D. Ryan, General Counsel, Metropolitan Police Department, Suite 4125, 300 Indiana Avenue, N.W., Washington, D.C. 20001. Comments must be received no later than thirty (30) days after the date of publication of this notice in the D.C. Register. Copies of this proposal may be obtained, at cost, by writing to the above address.