

COUNCIL AGENDA MATERIAL
MTG. DATE 3-21-00 ITEM NO. 11.4
FROM: CITY CLERK'S OFFICE

RESOLUTION NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

A RESOLUTION AUTHORIZING THE CITY ATTORNEY TO EXECUTE, ON BEHALF OF THE CITY OF SACRAMENTO, THE PROPOSED SETTLEMENT AGREEMENT BETWEEN FEDERAL, STATE AND LOCAL GOVERNMENTAL ENTITIES AND SMITH AND WESSON CORPORATION AND TO TAKE APPROPRIATE STEPS TO DISMISS SMITH AND WESSON CORPORATION FROM THE CASE OF PEOPLE VS. ARCADIA MACHINE & TOOL, INC., ET. AL. UPON BEING SATISFIED THAT THE PROPOSED AGREEMENT ACCOMPLISHES THE OBJECTS SOUGHT BY THE CITY OF SACRAMENTO IN INITIATING SAID LITIGATION

WHEREAS, on or about January 21, 1999, several City Attorneys and County Counsels for cities and counties located within the State of California formed a task force to track, review, share information and provide legal advice regarding law and facts which might give rise to civil liability against the firearms industry for gun violence within the respective cities and counties represented by said legal counsel; and

WHEREAS, on March 23, 1999, the City of Sacramento adopted staff's recommendation to initiate civil liability litigation against the firearms industry based upon research conducted by the City Attorney's Office in conjunction with other municipalities; and

WHEREAS, in adopting such recommendation, as articulated by the late Mayor Joe Serna, Jr., the Council's intent was not to promote gun control, seek money damages or destroy otherwise legitimate businesses, but rather to foster gun safety and safer communities; to give children the opportunity to grow up knowing what it is like to play outdoors without gunfire erupting and bullets finding their way to the playgrounds; and to compel gun makers to understand that their products leave in their wake, unnecessary death and destruction, pain, bereavement, grief, fear, and shattered neighborhoods and communities in every city in America; and

WHEREAS, Smith and Wesson Corporation, one of the defendants in the lawsuit to which the City of Sacramento is a plaintiff, has demonstrated its willingness to enter into

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RESOLUTION NO. _____

DATE ADOPTED: _____

an agreement that promotes gun safety and safer communities and to terminate the City's lawsuit against it; and

WHEREAS, the proposed agreement is attached to this resolution as **Exhibit A**.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SACRAMENTO that:

SECTION 1. The City Council hereby authorizes the City Attorney to review the proposed settlement offer by Smith and Wesson Corporation for compliance with the general objectives of the City Council in initiating litigation; upon satisfaction that the proposed settlement meets those objectives to execute the proposed settlement agreement on behalf of the City of Sacramento and to immediately take all steps reasonably necessary to dismiss Smith and Wesson from the above-referenced litigation.

SECTION 2. The City Clerk shall prepare a properly executed copy of resolution to be forwarded to HUD and to Smith and Wesson.

SECTION 3. The Mayor shall forward a letter to the President, HUD and Smith and Wesson expressing the City Council's appreciation of their work with and on behalf of the City of Sacramento in reaching the historic agreement.

MAYOR

ATTEST:

CITY CLERK

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A. Each firearm make and model sold by each manufacturer party to this Agreement shall be tested by ATF or an agreed upon proofing entity against the following standards. Existing makes and models shall meet these standards within 60 days of execution of this Agreement unless a longer period is specified in the standard. New makes and models shall not be manufactured and sold after the execution of this Agreement unless they conform to these standards.

1. Standards applicable to all handguns:

- a. **Second "hidden" serial number.** The gun must have both a visible serial number on the exterior of the frame or receiver, as well as a second serial number hidden on the interior of frame or receiver (e.g., under the grips) or visible only with the aid of an optical instrument.
- b. **External locking device.** As an interim measure, until the implementation of I.A.1.c, within 60 days of execution of the Agreement, each firearm shall be supplied with an external locking device that effectively prevents the operation of the firearm when locked.
- c. **Internal locking device.** Within 24 months of execution of the Agreement, each firearm shall have a built-in, on-board locking system, by which the firearm can only be operated with a key or combination or other mechanism unique to that gun.
- d. **Authorized user technology.** The manufacturer parties to this Agreement shall each commit two percent of annual firearms sales revenues to the development of a technology that recognizes only authorized users and permits a gun to be used only by authorized persons. Within 36 months of the date of execution of this Agreement, this technology shall be incorporated in all new firearm designs, with the exception of curios and collectors' firearms. This requirement does not apply to existing designs currently in production.

" EXHIBIT "

capacity before continuing. For any gun that loads other than with a detachable magazine, the tester shall pause every 50 rounds for ten minutes. The tester shall use the ammunition recommended in the user's manual, or if none is recommended, any standard ammunition of the correct caliber in new condition. A gun shall pass this test if it fires the first 20 rounds without a malfunction and the full 600 rounds with no more than 6 malfunctions and without any crack or breakage of an operating part of the gun that increases the danger of injury. Malfunctions caused by failure to clean and lubricate, or by defective ammunition, shall not be counted.

- h. **Drop test.** Pass the more rigorous of: (a) the SAAMI Standard drop test in effect on the date the firearm is sold; or (b) the following test: The gun shall be test-loaded, set such that it is ready to fire and dropped onto a steel plate or equivalent material of similar hardness from a height of one meter from each of the following positions: (1) normal firing position; (2) upside down; (3) on the grip; (4) on the muzzle; (5) on either side; and (6) on the exposed hammer or striker (or, if no exposed hammer or striker, on the rearmost part of the gun). If the gun is so designed so that its hammer or striker may be set in other positions, it shall be tested with the hammer or striker in each such position (but otherwise ready to fire).

2. **Additional standards for pistols:**

- a. **Safety device.** The pistol must have a positive manually operated safety device as determined by standards relating to imported guns promulgated by ATF.
- b. **Minimum length and height standards.** The pistol's combined length and height must not be less than 10" with the height being at least 4" and the length being at least 6", unless it has an average group diameter test result of 1.7" or less at seven yards, 3.9" or less at 14 yards, and 6.3" or less at 21 yards. The average group diameter test result is the arithmetic mean of the results of three separate trials, each performed on a different sample firearm of the make and model

B. Law enforcement and military exception. An exception to a requirement of paragraph A may be granted for firearms manufactured or imported for sale to a law enforcement agency or the military if the law enforcement agency or military organization certifies to the manufacturer party to this Agreement that the exception is necessary for official purposes. Where a law enforcement agency authorizes or requires its officers to purchase firearms individually for official use, an appropriate certification from the agency will be permitted to apply to sales to a number of individual officers. The manufacturer party to this Agreement shall maintain the certification in its records and provide a copy to the Oversight Commission. Firearms sold to law enforcement or the military pursuant to this exception, which do not comply with the design standards of this Agreement, will be accompanied by a statement:

1. "On [date], [manufacturer parties to this Agreement] and [governmental parties to this Agreement] entered into an Agreement establishing certain design standards for firearms sold to civilians. Pursuant to that Agreement, we are obliged to inform you that this firearm does not comply with all of the design standards of the Agreement. We are further obliged to request that you not resell this firearm to civilians. This statement is not intended to suggest that there are any design flaws with this firearm, and you remain entitled to dispose of it in any lawful manner."

C. Warnings about safe storage and handling. Within 6 months of execution of this Agreement, manufacturer parties to this Agreement shall include in the packaging of each firearm sold a warning on risk of firearms in the home and proper home storage. At a minimum, these warnings shall state in 14 point type, bold face:

"This handgun is not equipped with a device that fully blocks use by unauthorized users. More than 200,000 firearms like this one are stolen from their owners every year in the United States. In addition, there are more than a thousand suicides each year by younger children and teenagers who get access to firearms. Hundreds more die from accidental discharge. It is likely that many more children

authorized distributor or authorized dealer, the distributor or dealer must agree in writing to:

- a. Possess a valid and current federal firearms license, and all other licenses and permits required by local, state or federal law, and certify on an annual basis, under penalty of perjury, compliance with all local, state and federal firearms laws.
- b. Execute in the presence of the purchaser the following elements of all firearms transactions at the premises listed on its federal firearms license: completion of the forms and related requirements under the Brady Act and the Gun Control Act and physical transfer of the firearm.
- c. Where available, carry insurance coverage against liability for damage to property and for injury to or death of any person as a result of the sale, lease, or transfer of a firearm in amounts appropriate to its level of sales, but at a minimum no less than \$1 million for each incident of damage, injury or death.
- d. Make no sales at gun shows unless all sales by any seller at the gun show are conducted only upon completion of a background check.
- e. Within 24 months of the date of execution of this Agreement, maintain an inventory tracking plan for the products of the manufacturer parties to this Agreement that includes at a minimum the following elements:
 - (1) Electronic recording of the make, model, caliber or gauge, and serial number of all firearms that are acquired no later than one business day after their acquisition and electronic recording of their disposition no later than one business day after their disposition. Monthly backups of these records shall be maintained in a secure container designed to prevent loss by fire, theft, or other mishap.

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warnings with firearms, as specified in Section I above, and sell only firearms that comport with the design criteria of this Agreement.

- i. Provide law enforcement, government regulators conducting compliance inspections, and the Oversight Commission, for purposes of determining compliance with conditions imposed as a result of this Agreement, or for any other authorized purpose, full access to any documents related to the acquisition and disposition of firearms deemed necessary by one of those parties.
- j. Participate in and comply with all monitoring of firearms distribution by manufacturers, ATF or law enforcement.
- k. Maintain an electronic record of all trace requests initiated by ATF, and report those trace requests by make, model and serial number of firearm, date of trace, and date of sale to the manufacturer of the firearm on a monthly basis, unless ATF, for investigative reasons, directs the licensee not to report certain traces.
- l. Agree to cooperate fully in the oversight mechanism established in Section III of this Agreement, including providing access to all necessary documents, and to be subject to the jurisdiction of the court enforcing this Agreement.
- m. Require all employees to attend annual training developed by manufacturers in consultation with ATF and approved by the Oversight Commission. The training shall cover at a minimum: the law governing firearms transfers by licensees and individuals; how to recognize straw purchasers and other attempts to purchase firearms illegally; how to recognize indicators that firearms may be diverted for later sale or transfer to those not legally entitled to purchase them; how to respond to those attempts; and the safe handling and storage of firearms. New employees will receive training on the above topics, based on materials developed for the annual training, before handling or selling firearms and shall attend annual training thereafter. Such training may be delivered by electronic medium.

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- (2) After demonstrating to the purchaser how to load, unload, and safely store the firearm, and how to engage and disengage all safety devices on the firearm.
 - (3) After providing the purchaser with a copy of the ATF Disposition of Firearms Notice.
 - (4) After obtaining the purchaser's signature on a form certifying that the purchaser has received the instruction described in subparagraph (2) and the notice described in subparagraph (3) and maintaining that form in its files.
 - (5) After providing the purchaser with a written record of the make, model, caliber or gauge, and serial number of each firearm transferred to enable the purchaser to accurately describe the firearm to law enforcement in the event that it is subsequently lost or stolen.
2. The manufacturer parties to the Agreement shall incorporate into any distribution or agency agreement with their authorized distributors and authorized dealers, including franchisees, procedures for terminating distributors, dealers or franchisees that engage in conduct in violation of this Agreement. Distributors and dealers shall agree to this enforcement system as a condition of becoming authorized. The manufacturer parties to this Agreement shall require annual certification by their authorized dealers and distributors that they are in compliance with the requirements in II.A.1(a-r) of this Agreement and applicable provisions of B. and C., below. If the manufacturer parties to this Agreement receive actual notice of a violation of the Agreement through their course of dealing with their authorized dealers and distributors, from ATF, state or local law enforcement, the Oversight Commission, another dealer or distributor, a customer or other credible source, the manufacturer parties to this Agreement will either immediately terminate sales to the dealer or distributor in violation or take the following actions. The manufacturer(s) that have authorized the dealer or distributor to sell its/their firearms will, individually or collectively, notify the dealer or

3. To adhere to the following procedure for multiple handgun sales. If a purchaser wants to purchase more than one handgun, the purchaser may take from the dealer only one handgun on the day of sale. The dealer at that point will file a Multiple Sales Report with ATF. The purchaser may take the additional handguns from the dealer 14 days thereafter. This provision shall not apply to sales to qualified private security companies licensed to do business within the State where the transfer occurs for use by the company in its security operations.

D. Manufacturers.

Each manufacturer must:

1. Provide quarterly reports of its own sales data and downstream sales data, with the volume of sales by make, model, caliber and gauge, to ATF's National Tracing Center.
2. Not market any firearm in a way that would make the firearm particularly appealing to juveniles or criminals, such as advertising a firearm as "fingerprint resistant."
3. Refrain from selling any modified or sporterized semi-automatic assault pistol of a type that cannot be imported into the United States.
4. Reaffirm their longstanding policy and practice of not placing advertisements in the vicinity of schools, high crime zones, or public housing.
5. Verify the validity of a license against an ATF database before transferring a firearm to any licensee.
6. Forgo any transfer of a firearm to a licensee if the manufacturer knows the licensee to be under indictment violations of the Gun Control Act or any violent felony or serious drug offense as defined in 18 U.S.C. § 924(e)(2).

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If ATF or the Oversight Commission informs the manufacturer parties to this Agreement that a disproportionate number of crime guns have been traced to a dealer or distributor within three years of the gun's sale, the manufacturer(s) that have authorized the dealer or distributor to sell guns will either immediately terminate sales to the dealer or distributor or take the following actions. The manufacturers will, individually or collectively, notify the dealer or distributor of the disproportionate number within seven (7) days and demand an explanation and proposal to avoid a disproportionate number of traces in the future. The dealer or distributor will have fifteen (15) days to provide the explanation and proposal. If the manufacturer(s) determine that the explanation and proposal are not satisfactory, the manufacturer(s) will terminate supplies to the dealer or distributor. If the manufacturer(s) determine that the explanation and proposal are satisfactory, the manufacturer will continue supplies, but will closely monitor traces to the dealer or distributor in question. If disproportionate traces continue, the manufacturer(s) will terminate supplies to the dealer or distributor.

The manufacturer(s) shall inform the Oversight Commission and ATF of its/their notifications and decisions and provide them with the information provided by the dealer or distributor. If the Oversight Commission determines that suspension or termination of the dealer or distributor is warranted, and the manufacturer(s) did not take this action, the Oversight Commission shall direct the manufacturer(s) to do so.

Disproportionate number of crime guns: Upon execution of this Agreement, the Oversight Commission will convene to determine a formula to identify what constitutes a disproportionate number of crime guns. In determining the formula, the Oversight Commission shall consider the available data and establish procedures to ensure that the relevant data is obtained. This provision will not take effect until the Oversight Commission sets the formula and a mechanism for its implementation.

III. Oversight

A. Oversight Commission.

B. Role of ATF. -- ATF will continue to issue, regulate and inspect federal firearms licensees, collect multiple sales forms, conduct firearms traces, investigate firearms traffickers and straw purchasers, enforce the Gun Control Act and the National Firearms Act and fulfill its other statutory responsibilities. To the extent consistent with law and the effective accomplishment of its law enforcement responsibilities, ATF will work with the manufacturer parties to the Agreement and the Oversight Commission to assist them in meeting their obligations under the Agreement. In particular, to the extent that ATF uncovers violations of the following provisions in its inspections or other contacts with federal firearms licensees, it will inform the Oversight Commission: II(A)(1)(a), (b), (e), (h), (i), (j), (k), (o), (p), and (q), (C)(2) and (D)(1) and (5). Nothing in this paragraph shall diminish the obligation of the manufacturer parties to this Agreement to make reasonable efforts to identify noncompliance and respond to notifications of violations from parties other than ATF.

C. Manufacturer cooperation.

1. Each manufacturer shall designate an executive level manager to serve as a compliance officer and shall provide the compliance officer with sufficient resources and staff to fulfill the officer's responsibilities under this agreement.
2. The compliance officer shall be responsible for
 - a. Ensuring that the manufacturer fulfills its obligations under this agreement;
 - b. Training the manufacturer's officers and employees on the obligations imposed by this agreement; and
 - c. Serving as the liaison to the Oversight Commission.
3. Each manufacturer shall commit to full cooperation in the implementation and enforcement of this Agreement.

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In addition, if firearms manufacturers that are not party to this Agreement agree to design or distribution reforms that are more expansive than any of the above-enumerated items, and if the manufacturers who are party to the other agreement(s) with more expansive terms, in combination with the manufacturer parties to this Agreement, account for fifty percent or more of United States handgun sales, manufacturer parties to this Agreement will agree to abide by the same design and distribution measures.

VIII. Enforcement.

The Agreement will be entered and is enforceable as a Court order and as a contract.

Dated this ____ day of March, 2000.

Approved and Authorized by:

Manufacturer parties to this Agreement:

Smith & Wesson

...
...

Governmental parties to this Agreement:

Department of the Treasury

Department of Housing and Urban Development

11.4

RESOLUTION NO. 2000-123

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

A RESOLUTION AUTHORIZING THE CITY ATTORNEY TO EXECUTE, ON BEHALF OF THE CITY OF SACRAMENTO, THE PROPOSED SETTLEMENT AGREEMENT BETWEEN FEDERAL, STATE AND LOCAL GOVERNMENTAL ENTITIES AND SMITH AND WESSON CORPORATION AND TO TAKE APPROPRIATE STEPS TO DISMISS SMITH AND WESSON CORPORATION FROM THE CASE OF PEOPLE VS. ARCADIA MACHINE & TOOL, INC., ET. AL. UPON BEING SATISFIED THAT THE PROPOSED AGREEMENT ACCOMPLISHES THE OBJECTS SOUGHT BY THE CITY OF SACRAMENTO IN INITIATING SAID LITIGATION

WHEREAS, on or about January 21, 1999, several City Attorneys and County Counsels for cities and counties located within the State of California formed a task force to track, review, share information and provide legal advice regarding law and facts which might give rise to civil liability against the firearms industry for gun violence within the respective cities and counties represented by said legal counsel; and

WHEREAS, on March 23, 1999, the City of Sacramento adopted staff's recommendation to initiate civil liability litigation against the firearms industry based upon research conducted by the City Attorney's Office in conjunction with other municipalities; and

WHEREAS, in adopting such recommendation, as articulated by the late Mayor Joe Serna, Jr., the Council's intent was not to promote gun control, seek money damages or destroy otherwise legitimate businesses, but rather to foster gun safety and safer communities; to give children the opportunity to grow up knowing what it is like to play outdoors without gunfire erupting and bullets finding their way to the playgrounds; and to compel gun makers to understand that their products leave in their wake, unnecessary death and destruction, pain, bereavement, grief, fear, and shattered neighborhoods and communities in every city in America; and

WHEREAS, Smith and Wesson Corporation, one of the defendants in the lawsuit to which the City of Sacramento is a plaintiff, has demonstrated its willingness to enter into

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an agreement that promotes gun safety and safer communities and to terminate the City's lawsuit against it; and

WHEREAS, the proposed agreement is attached to this resolution as **Exhibit A**.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SACRAMENTO that:

SECTION 1. The City Council hereby authorizes the City Attorney to review the proposed settlement offer by Smith and Wesson Corporation for compliance with the general objectives of the City Council in initiating litigation; upon satisfaction that the proposed settlement meets those objectives to execute the proposed settlement agreement on behalf of the City of Sacramento and to immediately take all steps reasonably necessary to dismiss Smith and Wesson from the above-referenced litigation.

SECTION 2. The City Clerk shall prepare a properly executed copy of resolution to be forwarded to HUD and to Smith and Wesson.

SECTION 3. The Mayor shall forward a letter to the President, HUD and Smith and Wesson expressing the City Council's appreciation of their work with and on behalf of the City of Sacramento in reaching the historic agreement.

MAYOR

ATTEST:

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