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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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10 DAVID ZAITZEFF,

11 Plaintiff,

12 v.

13 CITY OF SEATTLE, et al.,

14 Defendants.

CASE NO. C17-0184JLR

ORDER DENYING
MOTION FOR PRELIMINARY
INJUNCTION

15 **I. INTRODUCTION**

16 Before the court is Plaintiff David Zaitzeff's motion for a preliminary injunction.
17 (Mot. (Dkt. # 14).) Mr. Zaitzeff seeks to enjoin Defendants City of Seattle ("the City")
18 and King County Prosecutor Dan Satterberg (collectively, "Defendants") from enforcing
19 Chapter 12A.14 of the Seattle Municipal Code ("SMC"), which proscribes certain uses of
20 certain types of weapons. *See* SMC ch. 12A.14. The City opposes Mr. Zaitzeff's motion
21 (Resp. (Dkt. # 20).) Mr. Satterberg has not filed a response. (*See* Dkt.) The court has
22 reviewed the parties' filings in support of and in opposition to the motion, the relevant

1 portions of the record, and the applicable law. Considering itself fully advised,¹ the court
2 DENIES Mr. Zaitzeff's motion.

3 II. BACKGROUND

4 This action arises out of Mr. Zaitzeff's desire to carry a katana, nunchucks, a
5 fixed-blade knife, or a spring-assisted opening knife at multiple street fairs and other
6 public events in the Seattle area. (*See* Am. Compl. (Dkt. # 5) ¶¶ 8-46; Mot. at 1; *see also*
7 1st Zaitzeff Aff. (Dkt. # 15) at 2-5 (describing several instances in 2016 in which Mr.
8 Zaitzeff openly carried a knife without incident); 2d Zaitzeff Aff. (Dkt. # 19) at 2-3
9 (identifying a subsequent encounter with Seattle police when Mr. Zaitzeff was "wearing a
10 knife in a sheath held on a lanyard/necklace [sic] type item".) He alleges that Chapter
11 12A.14 of the SMC and RCW 9.41.250 prohibit him from such action in violation of his
12 Second Amendment rights. (*See, e.g.*, Am. Compl. ¶¶ 101-43.) Mr. Zaitzeff therefore
13 sues Defendants to have those laws declared unconstitutional. (*See generally id.*)

14 Because the University District Street Fair occurs on May 20-21, 2017, Mr.
15 Zaitzeff seeks to preliminarily enjoin Defendants from enforcing Chapter 12A.14 of the
16 SMC.² (*See* Mot. at 1-3, 5-6.) He also references several subsequent street fairs and
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18 ¹ Neither Mr. Zaitzeff nor the City request oral argument, and the court finds oral
19 argument unnecessary to its disposition of Mr. Zaitzeff's motion. *See* Local Rules W.D. Wash.
LCR 7(b)(4).

20 ² Mr. Zaitzeff specifically seeks preliminary injunctive relief regarding Chapter 12A.14
21 of the SMC and not RCW 9.41.250. (Mot. at 5-6 ("Plaintiff Zaitzeff therefore asks the court for
22 preliminary injunction forbidding the Seattle police department from enforcing SMC 12A.14
against plaintiff for his walks done while bearing the katana, fixed-bladed knife or nunchucks
while at the u-district Street fair and/or on downtown sidewalks for weapons education walks of
plaintiff."))

1 similar neighborhood events that he hopes to attend. (*See, e.g.*, Am. Compl. ¶ 86.) His
2 motion for a preliminary injunction is now before the court. (*See Mot.*)

3 III. ANALYSIS

4 A. Legal Standard

5 To obtain a preliminary injunction relief, Mr. Zaitzeff must establish that (1) he is
6 likely to succeed on the merits, (2) he is likely to suffer irreparable harm in the absence of
7 preliminary relief, (3) the balance of equities tips in his favor, and (4) an injunction is in
8 the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

9 Preliminary injunctive relief is also “appropriate when a plaintiff demonstrates that
10 serious questions going to the merits were raised and the balance of hardships tips sharply
11 in the plaintiff’s favor,” provided the plaintiff also demonstrates that irreparable harm is
12 likely and that the injunction is in the public interest. *All. for the Wild Rockies v. Cottrell*,
13 632 F.3d 1127, 1134-35 (9th Cir. 2011).

14 B. Mr. Zaitzeff’s Motion

15 Mr. Zaitzeff’s motion fails to address the elements necessary for preliminary
16 injunctive relief and warrants denial on that basis alone. (*See generally Mot.*) However,
17 the court has independently reviewed the motion and the related submissions.³ (*See 1st*
18 *Zaitzeff Aff.*; *2d Zaitzeff Aff.*) Based on that review, the court concludes that Mr.
19 Zaitzeff fails satisfy the *Winter* and *Cottrell* standards and denies his motion.

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22 ³ Mr. Zaitzeff did not file a reply brief. (*See Dkt.*); Local Rules W.D. Wash. LCR 7(d)(3)
 (“Any reply papers shall be filed and served no later than the noting date.”).

1 At a minimum, Mr. Zaitzeff must raise “serious questions going to the merits” of
2 his claim. *See Cottrell*, 632 F.3d at 1134-35. Instead, he bases his claim on a legally
3 unsupported reading of the Second Amendment and related precedent. (*See* Am. Compl.
4 ¶¶ 66-76, 101-58; Mot. at 3.) Contrary to Mr. Zaitzeff’s expansive reading of *District of*
5 *Columbia v. Heller*, that case expressly limits the Second Amendment to “certain types of
6 weapons,” 554 U.S. at 623, and acknowledges that the right to bear arms, like the First
7 Amendment’s protection of free speech, is “not unlimited,” *id.* at 595.

8 Mr. Zaitzeff has neither demonstrated that Chapter 12A.14 of the SMC burdens
9 his Second Amendment rights, as historically understood, nor shown that the City’s
10 interest in public safety is insufficient to justify any attendant Second Amendment
11 burden. *See Silvester v. Harris*, 843 F.3d 816, 820-22 (9th Cir. 2016) (synthesizing this
12 two-step inquiry based on the Ninth Circuit’s post-*Heller* case law).⁴ Instead, he excerpts
13 language from *Heller* and related opinions and omits important context that diminishes
14 the likelihood of his success on the merits. (*See, e.g.*, Mot. at 5; Am. Compl. ¶¶ 104-05;
15 *see also* Mot. at 3 (expressly basing his claim “on the dicta of” *Heller* and “the reasoning
16 of” *Caetano v. Massachusetts*, --- U.S. ---, 136 S. Ct. 1027, 1027 (2016), a per curiam
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18 ⁴ *See also City of Seattle v. Evans*, 366 P.3d 906, 912-14 (Wash. 2015) (rejecting the
19 argument that all fixed-blade knives are constitutionally protected “arms”); *Maloney v. Singas*,
20 106 F. Supp. 3d 300, 312-14 (E.D.N.Y. 2015) (declining to conclude as a matter of law whether
21 the Second Amendment protects nunchucks because both parties presented only anecdotal
22 evidence of their modern usage); *Silvester*, 843 F.3d at 823 (“The case law in our circuit and our
sister circuits . . . clearly favors the application of intermediate scrutiny in evaluating the
constitutionality of firearms regulations, so long as the regulation burdens to some extent
conduct protected by the Second Amendment. Critical to that analysis is identifying an
important legislative objective and determining whether the regulation reasonably fits with the
objective.”).

1 opinion relating to stun guns).) At best, Mr. Zaitzeff's claim stretches the bounds of
2 Second Amendment jurisprudence regarding the definition of "arms." (See Am. Compl.
3 ¶¶ 101-59 (discussing the various weapons Mr. Zaitzeff seeks to carry and their historical
4 use).) However, even assuming his weapons constitute arms, he makes no showing that
5 the city's ordinance is likely to fail Second Amendment scrutiny. See *Silvester*, 843 F.3d
6 at 821-22. Based on these numerous apparent flaws in the merits of Mr. Zaitzeff's
7 claims, the court concludes that he has not shown serious questions going to the merits of
8 the claim. See *Cottrell*, 632 F.3d at 1134-35.

9 For related reasons, the court concludes that Mr. Zaitzeff fails to demonstrate the
10 balance of equities tip in his favor or that an injunction is in the public interest. See
11 *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v.*
12 *Holder*, 556 U.S. 418, 435 (2009)) (reasoning that when the government is a party, the
13 balance of equities and public interest factors merge). Chapter 12A.14 serves a public
14 safety interest. See SMC § 12A.14. Absent a showing that raises serious questions
15 regarding whether the law violates the Second Amendment, which Mr. Zaitzeff has not
16 made here, the balance of equities and public interest favor enforcing, not enjoining, the
17 provision. See *Winter*, 555 U.S. at 20.

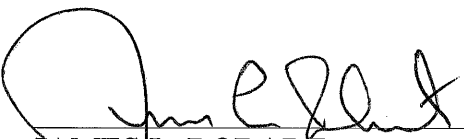
18 Finally, any injury Mr. Zaitzeff would face from enforcement of Chapter 12A.14
19 is speculative. Cf. *id.* at 22 (requiring that a plaintiff seeking preliminary injunctive relief
20 show that the irreparable injury is "likely"); see also *Caribbean Marine Servs. Co. v.*
21 *Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *L.A. Mem'l Coliseum Comm'n v.*
22 *Nat'l Football League*, 634 F.2d 1197, 1202 (9th Cir. 1980); *Goldie's Bookstore, Inc. v.*

1 *Superior Court*, 739 F.2d 466, 472 (9th Cir. 1984)) (“At a minimum, a plaintiff seeking
2 preliminary injunctive relief must demonstrate that it will be exposed to irreparable harm.
3 Speculative injury does not constitute irreparable injury sufficient to warrant granting a
4 preliminary injunction.” (internal citation omitted)). Mr. Zaitzeff concedes that he will
5 only attend the University District Street Fair in fair weather. (Mot. at 1.) He lists
6 several other contingencies on which his attendance depends, including whether he is
7 near Seattle, his health, and whether he has other commitments. (Am. Compl. ¶ 10.)
8 And despite attending the University District Street Fair “dozens” of times (Mot. at 1; *see*
9 *also* Am. Compl. ¶¶ 8-10, 12), he has “never borne the katana or any other weapon” there
10 (Am. Compl. ¶ 57). Based on these contingencies, the court concludes that Mr. Zaitzeff
11 has not demonstrated that he will “likely” incur irreparable injury in the absence of
12 preliminary injunctive relief. *See Caribbean Marine*, 844 F.2d at 674.

13 IV. CONCLUSION

14 For the foregoing reasons, the court DENIES Mr. Zaitzeff’s motion for a
15 preliminary injunction (Dkt. # 14).

16 Dated this 16th day of May, 2017.

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19 JAMES L. ROBART
20 United States District Judge
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