

File No. 230736

Committee Item No. 3

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

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Committee: Public Safety and Ngbh Services

Date: July 13, 2023

Board of Supervisors Meeting:

Date: \_\_\_\_\_

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Prepared by: John Carroll

Date: July 7, 2023

Prepared by: \_\_\_\_\_

Date: \_\_\_\_\_

Prepared by: \_\_\_\_\_

Date: \_\_\_\_\_

1 [Administrative Code - Firearms - Prohibited Places]

2

3 **Ordinance amending the Administrative Code to prohibit firearm possession, with**  
 4 **exceptions for designated concealed carry license holders, in childcare facilities, City**  
 5 **property, election facilities, medical facilities, and private parks and playgrounds, and**  
 6 **in places of worship and private commercial establishments unless the owner provides**  
 7 **express consent.**

8 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
 9 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
 10 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
 11 **Board amendment additions** are in double-underlined Arial font.  
 12 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
 13 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
 14 subsections or parts of tables.

12

13 Be it ordained by the People of the City and County of San Francisco:

14 Section 1. Findings.

15 On June 23, 2022, the U.S. Supreme Court issued its decision in *New York State Rifle*  
 16 *and Pistol Association v. Bruen*, 142 S.Ct. 2111 (2022), holding that requiring a person to  
 17 show "proper" or "good" cause to obtain a license to carry concealed weapons in public  
 18 places is unconstitutional. As such, laws that require that an individual have a justifiable need  
 19 to carry a handgun are no longer viable.

20 Importantly, however, the *Bruen* decision also recognized that individuals who are not  
 21 "law-abiding, responsible citizens" may be prohibited from carrying firearms in public and that  
 22 carrying of firearms in sensitive places can "be prohibited consistent with the Second  
 23 Amendment." This is consistent with the *Heller v. District of Columbia*, 554 U.S. 570 (2008),  
 24 which established that "laws forbidding the carrying of firearms in sensitive places such as  
 25

1 schools and government buildings” are valid public safety regulations under the Second  
2 Amendment.

3 Over the past several years, a wealth of empirical studies indicate that crime is higher  
4 when more people carry firearms in public places. While the City and County of San Francisco  
5 and the State of California and other states have decided to limit the places and conditions  
6 under which residents may carry firearms, other states have decided to allow most people to  
7 carry firearms in most public places. Those states have seen markedly higher crime rates.  
8 According to one study, in the 33 states that adopted these “right-to-carry” laws, violent crime  
9 was substantially higher—13 to 15 percent higher—10 years after the laws were adopted than  
10 it would have been had those states not adopted those laws. That same study acknowledged  
11 that crime had dropped in both “right-to-carry” states and other states over the past several  
12 decades, but concluded that the violent crime reduction in states that did not adopt “right-to-  
13 carry” laws was an order of magnitude higher than those that did—a 42.3 percent drop in  
14 violent crime for states that did not adopt “right-to-carry” laws compared to just a 4.3 percent  
15 drop for those that did.

16 Those studies overwhelmingly support the conclusion that carrying firearms in public  
17 leads to an increase in crime: of the 35 social science studies looking at this issue since the  
18 National Research Council issued its report in 2005, 23 found an increase in crime, 7 found  
19 no effect, and 5 found a decrease in crime. A 2014 study from the Harvard Injury Control  
20 Research Center concluded that a sizable majority of firearms researchers disagree with the  
21 statement that the change in state-level concealed carry laws in the United States over the  
22 past few decades from more restrictive to more permissive has reduced crime rates.

23 San Francisco Police Code Article 36C prohibits firearms at certain public gatherings.  
24 The national and statewide statistical information available from numerous sources  
25 overwhelmingly demonstrates that the incidence of gunshot fatalities and injuries has reached

1 alarming and thus unacceptable proportions since 2018, when the Board of Supervisors (the  
2 “Board”) adopted Article 36C.

3 When the Article was codified, the Board found that “[t]he presence of concealed  
4 firearms in crowds of people at large public gatherings has the potential to present public  
5 safety risks associated with the accidental or intentional discharge of a weapon.”

6 The City has a substantial and continued interest in protecting people from those who  
7 acquire guns illegally and use them to commit crimes resulting in injury or the death of their  
8 victims. To address the potential consequences of widespread gun carrying, it is appropriate  
9 to expand upon and clearly identify sensitive places where carrying a firearm is not  
10 permissible.

11 Moreover, 75% of gun homicides nationwide affect Black and Latino men living in  
12 historically disadvantaged neighborhoods.

13 Recent events throughout the City have generated additional fears of random usage of  
14 guns to commit violence on unsuspecting residents, children and adults alike. Between 2020  
15 and 2021, fatal and nonfatal shooting incidents rose by 33% and contributed to the majority of  
16 the City’s homicides. Nationally, gun homicides increased by 37% in 2020 as compared to  
17 2019.

18 The Board finds that crimes and injuries committed with a firearm are prevalent in San  
19 Francisco, with local statistics showing a 36% increase in firearm-related incidents between  
20 2018 and 2022. Total shooting incidents increased by 74% between 2018 and 2022, and total  
21 gun violence homicides increased by 48% over the same period. In 2022, the San Francisco  
22 Police Department seized 217 illegally privately manufactured firearms, aka Ghost Guns, a  
23 334% increase from 2018.

24 Gun crimes in and around schools and on buses carrying students to and from school  
25 have become increasingly common. Gun violence is now the leading cause of death for

1 children. Black children are five times more likely than white children to die from gun violence.  
2 Between 2013 and 2019, there have been at least 549 incidents of gunfire on school grounds.  
3 This resulted in 129 deaths and 270 people hurt. Between 2015 and 2022, over 19,000  
4 people were killed or injured in mass shooting event.

5 The Board has authority over the management and control of City property, and it may  
6 regulate, by ordinance, the manner in which members of the public access and use the  
7 property.

8 Prohibiting the possession or sale of firearms and/or ammunition on City property will  
9 promote the public health and safety by contributing to the reduction in the presence of  
10 firearms and the potential for gunshot fatalities and injuries. It will increase the confidence of  
11 members of the public that they are not at risk of injury from firearms when they seek to use  
12 the property and facilities of the City. In particular, this Board finds that an enormous number  
13 of the general public utilizes the parks, playgrounds and squares of San Francisco. Each year,  
14 24 million visitors alone visit Golden Gate Park. A substantial number of those visitors are  
15 children.

16 This Board finds that prohibiting the possession of firearms and ammunition on City  
17 property will help to ensure the safety of the general public and specifically children who are  
18 among the most vulnerable in our society.

19 The Board has compelling interests in protecting both individual rights and public  
20 safety. The intent and purpose of this ordinance is to protect its residents' rights to keep and  
21 bear arms while also protecting the public's health and safety by reducing the number of  
22 people killed, injured, and traumatized by gun violence; protecting the exercise of other  
23 fundamental rights, including the right to worship, attain an education, vote, and peaceably  
24 assemble and demonstrate; and ensuring that law enforcement is able to effectively do its job.

25

1           While the United States Supreme Court has made clear that the Second Amendment  
2 to the United States Constitution imposes some restrictions on states' ability to regulate  
3 firearms, it has recognized that the Second Amendment to the United States Constitution is  
4 not a "regulatory straightjacket." And when it comes to restrictions on carrying firearms in  
5 public, the United States Supreme Court has recognized three times that states may restrict  
6 the carrying of firearms in "sensitive places."

7           Broadly allowing individuals to carry firearms in most public areas increases the  
8 number of people wounded and killed by gun violence. Among other things, pervasive  
9 carrying increases the lethality of otherwise mundane situations, as we have seen shots fired  
10 in connection with road rage, talking on a phone in a theater, playing loud music at a gas  
11 station, a dispute over snow shoveling, and a dispute over the use of a disabled parking spot.  
12 Importantly, in many of these incidents, the shooters held permits that allowed them to carry  
13 firearms in public, meaning that they met the criteria necessary to secure a permit, which  
14 often include a requirement that the person not previously have been convicted of a serious  
15 crime.

16  
17           Widespread carrying of firearms also impedes the exercise of other fundamental rights.  
18 When firearms are present in public spaces, it makes those places less safe, which  
19 discourages people from attending protests, going to school, peacefully worshiping, voting in  
20 person, and enjoying other activities.

21           Widespread carrying can also affect the ability to learn in primary and secondary  
22 schools. One study concluded that students exposed to school shootings have an increased  
23 absence rate, are more likely to be chronically absent and repeat a grade in the two years  
24 following the event, and suffer negative long-term impacts on high school graduation rates,  
25 college enrollment and graduation, and future employment and earnings. Another study

1 looked at longer term consequences of school shootings, finding that exposure to shootings at  
2 schools resulted in lower test scores, increased absenteeism, and increased subsequent  
3 mortality for those students, and particularly boys, who are exposed to the highest-  
4 victimization school shootings.

5 Widespread public carry also intimidates those who hope to peacefully worship. Places  
6 of worship already experience serious incidents or threats of violence. According to one study,  
7 the percentage of mass shootings motivated by religious hate escalated from one percent  
8 between 1966 and 2000 to nine percent between 2000 to 2014 to 18 percent between 2018 to  
9 February 2020. A review of the Federal Bureau of Investigation’s National Incident-Based  
10 Reporting System data—which covers only 20 percent of the country’s population—from 2000  
11 through 2016 found that 1,652 incidents of “serious violence” occurred at places of worship,  
12 including aggravated assaults, shootings, stabbings, and bombings, with 57 percent involving  
13 the use of a firearm. Extrapolating those figures to the entire country would suggest that there  
14 are about 480 incidents of serious violence at places of worship in the United States each  
15 year. Allowing more people to carry in places of worship threatens to make these incidents  
16 more likely.

17 Allowing unlimited carrying of firearms impedes the exercise of other rights in the First  
18 Amendment to the United States Constitution, including the right to protest and vote. In a  
19 nationally representative survey, 60 percent responded that they would be “very unlikely” to  
20 attend a protest if guns were present, whereas only seven percent said they would be “very  
21 likely” to attend such a protest. Another study concluded that 16 percent of demonstrations  
22 where firearms were present turned violent, as compared to less than three percent of  
23 demonstrations where firearms were not present.

24 Overly permissive public carry laws also impede the ability of law enforcement to  
25 ensure the public’s safety.

1  
2 Section 2. The Police Code is hereby amended by revising Article 9, Section 617, to  
3 read as follows:

4 **SEC. 617. PROHIBITION AGAINST ~~POSSESSION OR SALE OF FIREARMS OR~~**  
5 **AMMUNITION ON CITY PROPERTY; PROHIBITION AGAINST FIREARM POSSESSION IN**  
6 **DESIGNATED PUBLIC AND PRIVATE PLACES CONTROLLED BY THE CITY AND COUNTY**  
7 **OF SAN FRANCISCO.**

8 *A. Legislative Findings.*

9 *(1) The national and statewide statistical information available from numerous sources*  
10 *overwhelmingly demonstrates that the incidence of gunshot fatalities and injuries has reached alarming*  
11 *and thus, unacceptable proportions; and*

12 *(2) Government at all levels has a substantial interest in protecting the people from those who*  
13 *acquire guns illegally and use them to commit crimes resulting in injury or death of their victims; and*

14 *(3) Recent events throughout the City and County have generated additional fears of random*  
15 *usage of guns to commit violence on unsuspecting residents, children and adults alike; and*

16 *(4) The Board of Supervisors finds that crimes and injuries committed with the use of a firearm*  
17 *are prevalent in San Francisco, with local statistics showing an increase in homicides by use of a gun*  
18 *increasing from 39 gun homicides out of 63 total homicides in 2001, which is a 63 percent increase, to*  
19 *68 gun homicides out of 85 total homicides in 2006, which is an 80 percent increase. Local statistics*  
20 *also show that San Francisco Police Department has seized 1,158 guns in 2005, and 1,104 guns in*  
21 *2006. In 2007, there have already been 25 gun homicides.*

22 *(5) In the City and County of San Francisco, the number of nonfatal injuries from guns has*  
23 *steadily increased. While, in 2001, 81 patients were admitted to SF General Trauma Center for serious*  
24 *injuries resulting from gun shots, the number of patients admitted for serious injuries rose to 228 by*  
25



1 ~~2006. Similarly, the total number of shootings that resulted in nonfatal injuries documented by SFPD~~  
2 ~~was 269 in 2005, 303 in 2006, and in 2007 this number has already reached 105 by May 10; and~~

3 ~~(6) Gun crimes in and around schools and on buses carrying students to and from school have~~  
4 ~~become increasingly common; and~~

5 ~~(7) In 2003 and 2004, 52 percent of the City's gun violence victims were under the age of 25.~~

6 ~~(8) Homicides committed with handguns are the leading cause of firearms related injuries and~~  
7 ~~death in California; and~~

8 ~~(9) The widespread availability of illegally obtained firearms has resulted in a significant rise~~  
9 ~~in the number of shooting incidents across the County; and~~

10 ~~(10) The Board of Supervisors has authority over the management and control of City and~~  
11 ~~County property, and it may regulate, by ordinance, the manner in which the property of the City and~~  
12 ~~County is accessed and used by members of the public; and~~

13 ~~(11) Prohibiting the possession or sale of firearms and/or ammunition on City and County~~  
14 ~~property will promote the public health and safety by contributing to the reduction in the presence of~~  
15 ~~firearms and the potential for gunshot fatalities and injuries in the county. It will increase the~~  
16 ~~confidence of members of the public that they are not at risk of injury from firearms when they seek to~~  
17 ~~use the property and facilities of the City and County. In particular, this Board of Supervisors finds that~~  
18 ~~an enormous number of the general public utilizes the parks, playgrounds and squares of San~~  
19 ~~Francisco. This Board finds that prohibiting the possession or sale of firearms and ammunition on City~~  
20 ~~and County property will help to ensure the safety of the general public and specifically children who~~  
21 ~~are among the most vulnerable in our society; and~~

22 ~~(12) The California Supreme Court has ruled that State Law does not preempt local laws~~  
23 ~~banning the possession and sale of firearms and ammunition on their property. In Nordyke v. King~~  
24 ~~(2002) 27 Cal.4th 875, the Supreme Court upheld an Alameda County ordinance banning the~~  
25 ~~possession of firearms and ammunition on county owned property and in Great Western v. County of~~

1 ~~Los Angeles (2002) 27 Cal.4th 853, the Supreme Court upheld a Los Angeles County Ordinance~~  
2 ~~prohibiting all sales of firearms and ammunition on county property. These rulings uphold the legal~~  
3 ~~ability of the Board of Supervisors to ban the possession and sale of firearms and ammunition on City~~  
4 ~~and County property.~~

5 ~~B. Legislative Intent. With passage of this ordinance, the City and County seeks to ensure that~~  
6 ~~its property and facilities are used in a manner consistent with promoting the health, safety and welfare~~  
7 ~~of all of its residents.~~

8 ~~(a)C. Definitions.~~

9 ~~"Ammunition" means one or more loaded cartridges consisting of a primed case, propellant,~~  
10 ~~and one or more projectiles. "Ammunition" includes any bullet, cartridge, magazine, clip, speed~~  
11 ~~loader, autoloader, ammunition feeding device, or projectile capable of being fired from a firearm with~~  
12 ~~a deadly consequence. "Ammunition" does not include blanks.~~

13 ~~"Childcare Facility" means any real property, including but not limited to a building, room, or~~  
14 ~~parking area, under the control of a daycare, preschool, nursery school, after-school program, or other~~  
15 ~~childcare provider. "Childcare Facility" does not include locations where Firearm possession is~~  
16 ~~prohibited by Penal Code Section 626.9 or any successor State law.~~

17 ~~—(1) City and County Property.~~

18 ~~—(a) As used in this section, the term "City property" means real property, including~~  
19 ~~any buildings thereon, owned or leased, or held in trust by the City and County of San~~  
20 ~~Francisco and its agencies or departments (hereinafter, collectively "City"), and in the City's~~  
21 ~~possession, or in the possession of a public or private entity under contract with the City to~~  
22 ~~perform a public purpose including but not limited to the following property: recreational and park~~  
23 ~~property including but not limited to Golden Gate Park, the San Francisco zoo, Hilltop Park and San~~  
24 ~~Francisco's parks and playgrounds, plazas including but not limited to United Nations Plaza and~~

1 ~~Hallidie Plaza, community centers such as Ella Hill Hutch Community Center, and property of the~~  
2 ~~Department of Recreations and Parks, the Port, and the Public Utilities Commission.~~

3 ~~——(b)2 The term "City property" does not include any "local public building" as~~  
4 ~~defined in Penal Code Section Subsection 171b(c), where Firearm the state regulates possession~~  
5 ~~is prohibited by of firearms pursuant to Penal Code Section 171b or any successor State law.~~

6 ~~——(c) The term "City property" also does not include the public right-of-way owned by~~  
7 ~~the City and County of San Francisco including any area across, along, on, over, upon, and~~  
8 ~~within the dedicated public alleys, boulevards, courts, lanes, roads, sidewalks, streets, and~~  
9 ~~ways within the City or any property owned by the City that is outside the territorial limits of the~~  
10 ~~City and County of San Francisco.~~

11 ~~"Election Facility" means a location where a voter casts a ballot. "Election Facility" does not~~  
12 ~~include locations where Firearm possession is prohibited by Elections Code Section 18544 or any~~  
13 ~~successor State law.~~

14 ~~——(2) Firearms. As used in this section the term "Firearm" is means any gun, pistol,~~  
15 ~~revolver, rifle, or any device, designed or modified to be used as a weapon, from which is~~  
16 ~~expelled through a barrel a projectile by the force of an explosion or other form of combustion.~~  
17 ~~"Firearm" does not include imitation firearms or BB guns and air rifles as defined in~~  
18 ~~Government Penal Code Section 53071.516250 or any successor State law.~~

19 ~~(3) Ammunition. "Ammunition" is any ammunition as defined in California Penal Code~~  
20 ~~Section 12316(b)(2).~~

21 ~~"Lock box" shall have the same meaning as defined in subdivision (y) of Section 4082 and~~  
22 ~~subdivision (b) of Section 4094 of Title 11 of the California Code of Regulations, and shall be a firearm~~  
23 ~~safety device, as defined in Penal Code Section 16540.~~

1 “Medical Facility” means a building, real property, and parking area under the control of a  
2 public or private hospital or hospital affiliate, mental health facility, nursing home, medical office,  
3 urgent care facility, or other place at which medical services are customarily provided.

4 “Parks and Playgrounds” means privately owned or leased outdoor space utilized for  
5 children’s outdoor recreation.

6 “Place of Worship” means a church, synagogue, mosque, or other place of worship, including  
7 any parking area immediately adjacent thereto, unless the operator of the place of worship clearly and  
8 conspicuously posts a sign at the entrance of the building or on the premises indicating that concealed  
9 carry license holders are permitted to carry Firearms on the property.

10 “Private Establishment” means a commercial establishment owned or operated by one or more  
11 private persons or entities that is open to the public, unless the owner or operator of the establishment  
12 clearly and conspicuously posts a sign at the entrance of the building or on the premises indicating that  
13 concealed carry license holders are permitted to carry Firearms on the property. “Private  
14 Establishment” does not include Childcare Facilities, Medical Facilities, or Parks and Playgrounds.

15 “Prohibited Places” means Childcare Facilities, City Property, Election Facilities, Medical  
16 Facilities, Parks and Playgrounds, Places of Worship, and Private Establishments.

17 (b) ~~C. Possession or~~ **Sale of Firearms or Ammunition on ~~County~~ City Property**  
18 **Prohibited.**

19 \_\_\_\_\_ No person shall:

20 ~~— (1) Bring onto or possess on county property a firearm, loaded or unloaded, or~~  
21 ~~ammunition for a firearm.~~

22 ~~— (2) Sell on ~~county property~~ City Property a ~~Firearm~~firearm, loaded or unloaded, or~~  
23 ~~Ammunition~~ammunition for a ~~Firearm~~firearm. This prohibition shall not apply to the following:

24 (1) The purchase or sale of a Firearm or Ammunition for a Firearm by a federal, state  
25 or local law enforcement agency or by any other Federal, State or local governmental entity.

1                    (2) The public administrator in the distribution of a private estate, or the sale of  
2 Firearms by its auctioneer to fulfill its obligation under State law.

3                    (3) The sale of Ammunition at a target range for use at the target range.

4                    **(c) Possession of Firearms in Prohibited Places.**

5                    No person shall knowingly possess a Firearm in a Prohibited Place. This prohibition shall not  
6 apply to:

7                    ~~D. Exceptions, Ban on Possession.~~

8                    ~~Section (C) above shall not apply to the following:~~

9                    (1) A peace officer, retired peace officer ~~or person assisting a peace officer~~ when  
10 authorized to carry a concealed weapon, ~~under Penal Code Section 12027(a) or a loaded firearm~~  
11 ~~under Penal Code Section 12031(b)(1)~~ and persons authorized to carry a concealed firearm under 18  
12 U.S.C. 926B or 926C.

13                    (2) Active members ~~Members~~ of the armed forces when on duty ~~or other~~  
14 ~~organizations~~ and when authorized to carry a concealed weapon under Penal Code Section  
15 ~~12027(e)25620~~ or a loaded ~~Firearm~~ firearm under Penal Code Section ~~12031(b)(4)26000~~.

16                    (3) Military or civil organizations carrying unloaded weapons while parading or  
17 when going to and from their organizational meetings and when authorized to carry a  
18 concealed weapon under Penal Code Section ~~12027(d)25625~~.

19                    (4) Guards or messengers of common carriers, banks and other financial  
20 institutions when authorized to carry a concealed weapon under Penal Code Section  
21 ~~12027(e)25630~~ and armored vehicle guards when authorized to carry a loaded weapon under  
22 Penal Code Section ~~12031(b)(7)26015~~.

23                    (5) Persons who are at a target range.

1           ~~(6) Honorably retired Federal officers or agents of Federal law enforcement agencies~~  
2 ~~when authorized to carry a concealed weapon under Penal Code Section 12027(i) or a loaded weapon~~  
3 ~~under Penal Code Section 12031(b)(8).~~

4           (7) The public administrator in the distribution of a private estate or to the sale  
5 of firearms by its auctioneer to fulfill its obligation under State Law.

6           (8) Patrol special police officers, animal control officers or zookeepers, and  
7 harbor police officers, when authorized to carry a loaded Firearm~~firearm~~ under Penal Code  
8 Section ~~12031(e)~~26025.

9           (9) A guard or messenger of a common carrier, bank or other financial  
10 institution; a guard of a contract carrier operating an armored vehicle; a licensed private  
11 investigator, patrol operator or alarm company operator; a uniformed security guard or night  
12 watch person employed by a public agency; a uniformed security guard or uniformed alarm  
13 agent; a uniformed employee of private patrol operator or private investigator when any of the  
14 above are authorized to carry a loaded Firearm~~firearm~~ under Penal Code Section  
15 ~~12031(d)~~26030.

16           (9) Any authorized participant in a motion picture, television or video production  
17 or entertainment event when the participant lawfully uses an unloaded Firearm~~firearm~~ as part of  
18 that production or event.

19           (10) The possession of a Firearm in a Private Establishment by, or with the permission  
20 of, the owner, operator, or lessee of that Private Establishment.

21           (11) The possession of a Firearm by the owner or operator of a Childcare Facility in the  
22 owner or operator's home if either (A) no child receiving child care at the home is present in the home  
23 or (B) the Firearm in the home is unloaded, stored in a locked container, and stored separately from  
24 Ammunition, when a child receiving child care at the home is present in the home so long as the  
25 Childcare Facility notifies all clients in writing that there is a Firearm in the home.

1 (12) Carrying a Firearm while traveling along a public right-of-way that touches or  
2 crosses a Prohibited Place if the Firearm is carried on the person or is being transported in a vehicle,  
3 in accordance with all other applicable provisions of law.

4 (13) Carrying a Firearm into the parking area of a Prohibited Place, so long as the  
5 Firearm is locked in a Lock Box, or transporting a Firearm in the immediate area surrounding the  
6 holder's vehicle within the parking lot area of Prohibited Place only for the limited purpose of storing  
7 or retrieving a Firearm within a locked Lock Box in the vehicle's trunk or other place inside the vehicle  
8 that is out of plain view. This exception shall not apply to the parking areas of Childcare Facilities,  
9 Medical Facilities, and Parks and Playgrounds.

10 (14) The possession of a firearm at a firearm buy-back event sponsored by a law  
11 enforcement agency.

12 ~~E. Exception, Ban on Sale. Section C.(2)1 above shall not apply to the following:~~

13 ~~— (1) Purchase or sale of a firearm or ammunition for a firearm by a federal, state or local~~  
14 ~~law enforcement agency or by any other Federal, State or local governmental entity.~~

15 ~~— (2) The public administrator in the distribution of a private estate or to the sale of firearms~~  
16 ~~by its auctioneer to fulfill its obligation under state law.~~

17 ~~— (3) Sale of ammunition at a target range for use at the target range.~~

18 (d) Nothing in this Article 9, Section 617 shall prohibit the sale or possession of a Firearm  
19 where prohibited by State law.

20 (e)F. **Penalty for Violation.** Any person who violates any of the provisions of  
21 subsections ~~this Section~~ 617(e)3(b) and (c) above shall be deemed guilty of a misdemeanor and  
22 upon conviction shall be punished by a fine not to exceed \$1,000.00 or by imprisonment in the  
23 county jail not to exceed six months, or by both.

24 (f) G. **Severability.** If any provision, clause or word of this Section or the application thereof  
25 to any person or circumstance is held invalid, such invalidity shall not affect any other provision,

1 ~~clause, word or application of this Section which can be given effect without the invalid provision,~~  
2 ~~clause or word, and to this end the provisions of this chapter are declared to be severable. If any~~  
3 section, subsection, sentence, clause, phrase, or word of this ordinance, or any application thereof to  
4 any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of  
5 competent jurisdiction, such decision shall not affect the validity of the remaining portions or  
6 applications of the ordinance. The Board of Supervisors hereby declares that it would have passed this  
7 ordinance and each and every section, subsection, sentence, clause, phrase, and word not declared  
8 invalid or unconstitutional without regard to whether any other portion of this ordinance or application  
9 thereof would be subsequently declared invalid or unconstitutional.

10  
11 Section 3. Effective Date. This ordinance shall become effective 30 days after  
12 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
13 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
14 of Supervisors overrides the Mayor's veto of the ordinance.

15  
16 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
17 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
18 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
19 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
20 additions, and Board amendment deletions in accordance with the "Note" that appears under  
21 the official title of the ordinance.

22  
23 Section 5. Undertaking for the General Welfare. In enacting and implementing this  
24 ordinance, the City is assuming an undertaking only to promote the general welfare. It is not  
25 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it



1 is liable in money damages to any person who claims that such breach proximately caused  
2 injury.

3 Section 6. No Conflict with Federal or State Law. Nothing in this ordinance shall be  
4 interpreted or applied so as to create any requirement, power, or duty in conflict with any  
5 federal or state law.

6

7 APPROVED AS TO FORM:  
8 DAVID CHIU, City Attorney

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9 By:  /s/ Jana Clark  
10 JANA CLARK  
Deputy City Attorney

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**LEGISLATIVE DIGEST**

[Administrative Code - Firearms – Prohibited Places]

**Ordinance amending the Administrative Code to prohibit firearm possession, with exceptions for designated concealed carry license holders, in childcare facilities, City property, election facilities, medical facilities, and private parks and playgrounds, and in places of worship and private commercial establishments unless the owner provides express consent.**

Existing Law

Local law prohibits firearm possession on City property defined to include real property and any buildings, owned or leased by the City, and in the City's possession, or in the possession of a public or private entity under contract with the City to perform a public purpose. City property is defined to exclude the public right-of-way owned by the City or any property owned by the City that is outside the territorial limits of the City. Under existing law, the prohibition does not apply to: (1) A peace officer, retired peace officer or person assisting a peace officer when authorized to carry a concealed weapon or a loaded firearm; (2) Members of the armed forces when on duty or other organizations when authorized to carry a concealed weapon or a loaded firearm; (3) Military or civil organizations carrying unloaded weapons while parading or when going to and from their organizational meetings when authorized to carry a concealed weapon; (4) Guards or messengers of common carriers, banks and other financial institutions when authorized to carry a concealed weapon and armored vehicle guards when authorized to carry a loaded weapon; (5) Persons who are at a target range; (6) Honorably retired Federal officers or agents of Federal law enforcement agencies when authorized to carry a concealed weapon or a loaded weapon; (7) The public administrator in the distribution of a private estate or to the sale of firearms by its auctioneer to fulfill its obligation under state law; (8) Patrol special police officers, animal control officers or zookeepers, and harbor police officers, when authorized to carry a loaded firearm; (9) A guard or messenger of a common carrier, bank or other financial institution; a guard of a contract carrier operating an armored vehicle; a licensed private investigator, patrol operator or alarm company operator; a uniformed security guard or night watch person employed by a public agency; a uniformed security guard or uniformed alarm agent; a uniformed employee of private patrol operator or private investigator when any of the above are authorized to carry a loaded firearm; and (10) Any authorized participant in a motion picture, television or video production or entertainment event when the participant lawfully uses a firearm as part of that production or event.

Under existing law, any person who violates the prohibition is guilty of a misdemeanor.

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Amendments to Current Law

This ordinance would prohibit firearm possession in designated “Prohibited Places” including Childcare Facilities, Election Facilities, Medical Facilities, Private Parks and Playgrounds, Places of Worship, and Private Establishments. The prohibition would not apply to Places of Worship or Private Establishments where the owner has expressly permitted firearm possession.

This ordinance would define those places as follows:

“Childcare Facility” - any real property, including but not limited to a building, room, or parking area, under the control of a daycare, preschool, nursery school, after-school program, or other childcare provider.

“Medical Facility” - a building, real property, and parking area under the control of a public or private hospital or hospital affiliate, mental health facility, nursing home, medical office, urgent care facility, or other place at which medical services are customarily provided.

“Parks and Playgrounds” - privately owned or leased outdoor space utilized for children’s outdoor recreation.

“Place of Worship” - a church, synagogue, mosque, or other place of worship, including any parking area immediately adjacent thereto, unless the operator of the place of worship clearly and conspicuously posts a sign at the entrance of the building or on the premises indicating that concealed carry license holders are permitted to carry Firearms on the property.

“Private Establishment” - a commercial establishment that is open to the public, unless the owner or operator of the establishment clearly and conspicuously posts a sign at the entrance of the building or on the premises indicating that concealed carry license holders are permitted to carry Firearms on the property. Under the ordinance, “Private Establishment” would not include Childcare Facilities, Financial Institutions, Medical Facilities, or Parks and Playgrounds.

The firearm possession prohibition would not apply to (1) Possession of a Firearm in a Private Establishment by, or with the permission of, the owner, operator, or lessee of that Private Establishment; (2) Possession of a Firearm by the owner or operator of a Childcare Facility in the owner or operator’s home if either (A) no child receiving child care at the home is present in the home or (B) the Firearm in the home is unloaded, stored in a locked container, and stored separately from Ammunition, when a child receiving child care at the home is present in the home so long as the Childcare Facility notifies all clients in writing that there is a Firearm in the home; (3) Carrying a Firearm while traveling along a public right-of-way that touches or crosses a Prohibited Place if the Firearm is carried on the person or is being transported in a vehicle, in accordance with all other applicable provisions of law; or (4) Carrying a Firearm into the parking area of a Prohibited Place, so long as the Firearm is

FILE NO. 230736

locked in a Lock Box, or transporting a Firearm in the immediate area surrounding the holder's vehicle within the parking lot area of Prohibited Place only for the limited purpose of storing or retrieving a Firearm within a locked Lock Box in the vehicle's trunk or other place inside the vehicle that is out of plain view.

This ordinance would remove the exception to the prohibition on firearm possession for those assisting peace officers and authorized to carry a concealed weapon.

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June 27, 2023

**VIA U.S. CERTIFIED MAIL**

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City Attorney David Chiu  
City Hall, Room 234  
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**Re: Proposed Ordinance on “Sensitive Places” (File No. 230736)**

Hon. Supervisors and City Attorney Chiu:

We represent the California Rifle & Pistol Association and the Second Amendment Foundation. These two organizations have been fighting for the civil rights of Californians for decades. With members in the tens of thousands and over six million gun owners in California, some of those law-abiding citizens are in the City and County of San Francisco.

Our clients oppose the proposed “sensitive places” ordinance (File No. 230736, and hereinafter referred to as “the Ordinance”). A member of the board, who recently announced that she is running for State Assembly, brought forward the Ordinance.

The Ordinance attempts to undermine the fundamental right to obtain a license to carry a firearm for self-defense, confirmed by the Supreme Court in the landmark case *N.Y. State Rifle & Pistol Association v. Bruen*. The Ordinance is unconstitutional because it effectively denies the right to carry a firearm in most places in San Francisco, and the Ordinance inappropriately designates nearly every place in the City as a “sensitive place.” Several federal court rulings since *Bruen* examined New York and New Jersey laws enacting similar “sensitive place” restrictions and found most of what the Ordinance would do to be unconstitutional.

Because the Ordinance is unconstitutional, our clients strongly oppose it and intend to challenge it in federal court if passed.

Aside from being unconstitutional, the Ordinance is also pointless. The same style of unconstitutional state-level legislation<sup>1</sup> is expected to pass this year and will ban carrying a firearm even with a concealed firearms license (CCW) in the same places that the Ordinance does. Numerous law enforcement organizations oppose Senate Bill 2, and CRPA and SAF already have a lawsuit ready to file should it become law. San Francisco should wait and see how the inevitable litigation over SB 2 plays out instead of passing a duplicative Ordinance that exposes San Francisco to significant legal expense for its own legal costs and to reimburse our clients' fees when we prevail in court.

## I. Current Second Amendment Precedent from the Supreme Court

### A. Historical References and the Second Amendment

In 2008, the United States Supreme Court held that the Second Amendment protects an individual right to keep and bear arms.<sup>2</sup> *Heller* described the right to self-defense as the “central component” of the Second Amendment right. *Id.* at 628. Two years later, the Supreme Court confirmed that said right is fundamental and then, through the Fourteenth Amendment, incorporated it to protect against state and local infringement.<sup>3</sup>

Most critically, the *Heller* Court established a “text, history, and tradition” framework for evaluating the constitutionality of a law under the Second Amendment questions. The Court assessed historical evidence to determine the prevailing understanding of the Second Amendment at the time of its ratification in 1791, and thereafter. Based on that assessment, the Court concluded that the District of Columbia statute prohibiting possession of the most commonplace type of firearm in the nation (the handgun) lacked a historical analog, did not comport with the historical understanding of the scope of the right, and therefore violated the core Second Amendment right.<sup>4</sup>

Last year, the Supreme Court reaffirmed the validity of the “text, history, and tradition” approach for analyzing Second Amendment challenges and recognized that the Second Amendment protects the right to armed self-defense in public just as much as in the home. *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. \_\_\_, 142 S. Ct. 2111, 2134-35 (2022) (“*Bruen*”).<sup>5</sup> The *Bruen* Court expressly rejected the “means-ends” interest balancing test that courts in some jurisdictions had been applying.<sup>6</sup> Instead, the *Bruen* analysis concludes that courts must inspect the historical records of the ratification era and then apply analogical analysis to determine whether the modern-day restriction infringes on Second Amendment rights.<sup>7</sup>

The *Bruen* court clarified in crystal-clear language how proper Second Amendment analysis shall be applied:

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<sup>1</sup> [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=202320240SB2](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB2)

<sup>2</sup> *District of Columbia v. Heller*, 554 U.S. 570 (2008).

<sup>3</sup> *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

<sup>4</sup> *Heller*, 554 U.S. at 629.

<sup>5</sup> This case did speak to self-defense, but the main crux of the case was about the right to carry outside of the person's home.

<sup>6</sup> *Id.* at 2129.

<sup>7</sup> *Id.* at 2129-30.

We reiterate that the standard for applying the Second Amendment is as follows: When the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation. Only then may a court conclude that the individual’s conduct falls outside the Second Amendment’s “unqualified command.”<sup>8</sup>

Examining the proposed Ordinance under the Bruen test is straightforward. “[W]hen a challenged regulation addresses a general societal problem that has persisted since the 18th century, the lack of a distinctly similar historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment.”<sup>9</sup>

People carrying firearms is not novel in American history and there is no history or tradition of banning public carry for firearms. As New York found when a federal court struck down its attempt to designate nearly every place as “sensitive”, “[G]enerally, a historical statute cannot earn the title “analogue” if it is clearly more distinguishable than it is similar to the thing to which it is compared.”<sup>10</sup>

### **B. The Supreme Court’s Discussion of “Sensitive Places” in Bruen, and the New York and New Jersey Federal District Court Rulings that Followed**

Under *Bruen*, the burden of proof would be on San Francisco to establish that the Ordinance’s limitations on where people can legally carry are historically justified. Speaking to the issue of “sensitive places” where the right to bear arms may be restricted, the Court explained that “the historical record yields relatively few 18th- and 19th-century ‘sensitive places’ where weapons were altogether prohibited . . . .”<sup>11</sup> So far, the Supreme Court has only provided the examples of schools and certain government buildings such as “legislative assemblies, polling places, and courthouses” as truly being such “sensitive places.”<sup>12</sup> The Supreme Court also warned that “there is no historical basis for New York to effectively declare the island of Manhattan a ‘sensitive place’ simply because it is crowded and protected generally by the New York City Police Department.”<sup>13</sup> This aversion to allowing huge arbitrary areas of land in a state to be designated as “sensitive places” is exactly what the Supreme Court warned against in *Bruen*.

Following the *Bruen* decision, New York moved quickly to undermine the ruling by passing a law that made acquiring a permit more difficult and made most places “sensitive” where carry was prohibited. The first Federal District court judges to look at New York’s law have all ruled against it as contrary to *Bruen*. Besides *Antonyuk I*, other rulings include: *Antonyuk v. Hochul*, No. 1:22-CV-0986 (GTS/CFH), 2022 U.S. Dist. LEXIS 201944 (N.D.N.Y. Nov. 7, 2022) (“*Antonyuk II*”); *Hardaway v. Nigrelli*, No. 22-CV-771 (JLS), 2022 U.S. Dist.

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<sup>8</sup> *Id.* at 2126.

<sup>9</sup> *Id.* at 2131.

<sup>10</sup> .” *Antonyuk v. Hochul*, No. 1:22-CV-0986 (GTS/CFH), 2022 U.S. Dist. LEXIS 182965, at \*20 (N.D.N.Y. Oct. 6, 2022) (“*Antonyuk I*”).

<sup>11</sup> *Bruen*, 142 S. Ct. at 2133.

<sup>12</sup> *Bruen*, 142 S. Ct. at 2133.

<sup>13</sup> *Id.* at 2118-19.

LEXIS 200813 (W.D.N.Y. Nov. 3, 2022) (“*Hardaway*”); *Christian v. Nigrelli*, No. 22-CV-695 (JLS), 2022 U.S. Dist. LEXIS 211652 (W.D.N.Y. Nov. 22, 2022) (“*Christian*”); and *Spencer v. Nigrelli*, No. 22-CV-6486 (JLS), 2022 U.S. Dist. LEXIS 233341 (W.D.N.Y. Dec. 29, 2022).

New Jersey followed New York by passing a very similar law that also designated many areas as “sensitive places.” Predictably, just like New York’s law, New Jersey’s version has thus far struck out in federal courts. *See Koons v. Reynolds*, No. 22-7464 (RMB/EAP), 2023 U.S. Dist. LEXIS 3293 (D.N.J. Jan. 9, 2023) (“*Koons*”); *Siegel v. Platkin*, No. 22-7464 (RMB/AMD), 2023 U.S. Dist. LEXIS 15096 (D.N.J. Jan. 30, 2023) (“*Siegel*”); and *Koons v. Platkin*, No. CV 22-7463 (RMB/AMD), 2023 WL 3478604 (D.N.J. May 16, 2023) (*Koons II*).

Each of these rulings went into tremendous detail about why New York’s “sensitive places” laws (which San Francisco now seeks to largely copy) are unconstitutional under *Bruen*.

## II. The Ordinance Violates *Bruen*

Several of the “sensitive places” in the Ordinance violate *Bruen* and consequently are unconstitutional under the Second Amendment.

In *Bruen*, the Supreme Court cautioned that “expanding the category of ‘sensitive places’ simply to all places of public congregation that are not isolated from law enforcement defines the category of ‘sensitive places’ far too broadly . . . [it] would in effect exempt cities from the Second Amendment and would eviscerate the general right to publicly carry arms for self-defense.”<sup>14</sup> That is the Ordinance’s obvious goal.

At a minimum, the following places are not “sensitive” and cannot be designated as areas where a permit to carry in public would be invalid.

### A. City Property Restrictions

The Ordinance would make all City-owned or controlled property off-limits for carry, with only a few exceptions (mainly streets and sidewalks). But public property is simply not a default “sensitive area.” For example, the Tennessee Court of Appeals ruled that tenants in public housing did not forfeit their Second Amendment rights.<sup>15</sup> (“The regulation banning the use of handguns on Corps’ property by law-abiding citizens for self-defense purposes violates the Second Amendment. . .”).

Similarly, the *Antonyuk II* court ruled that New York may not ban public carry of firearms in a variety of public property, such as public parks and buses.<sup>16</sup> And the *Siegel* and *Koons II* court held the same when referring to government-owned property: “[W]hat is clear is that the fact that whether the Government is the proprietor is not relevant before and after *Bruen*. Under the State’s theory, any property it owned could be designated as gun-free. Yet, no one

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<sup>14</sup> *Bruen*, 142 S. Ct. at 2133-34.

<sup>15</sup> *Columbia Hous. & Redevelopment Corp. v. Braden*, No. M2021-00329-COA-R3-CV, 2022 Tenn. App. LEXIS 395, \*10 (Ct. App. Oct. 13, 2022); *see also Morris v. United States Army Corps of Eng’rs*, 60 F. Supp. 3d 1120, 1125 (D. Idaho 2014)

<sup>16</sup> *Antonyuk II*, 2022 U.S. Dist. LEXIS 201944, at \*190-192, 197-203.



could seriously contend, for example, that the State could impose a gun-free highway system simply because it owns the infrastructure.” *Siegel*, 2023 U.S. Dist. LEXIS 15096, at \*37; “[T]he Second Amendment cases that the State cites do not support the sweeping proposition that carrying for self-defense in public does not extend to any location in which the government owns the land. In each of the cases cited, the courts found that the government property was integrally connected to a government building that it regarded as a “sensitive place” where prohibition on carrying firearms is presumptively lawful.”<sup>17</sup>

In the speech context, the City would never suggest that all of its property is off limits for free speech, yet the Ordinance does just that for the equally fundamental right to bear arms. In light of *Bruen*, the Second Amendment is no longer a “disfavored right.”<sup>18</sup> The plain text of the Second Amendment protects the right to carry a firearm on most city property.

Crucially, there is a distinction between the Supreme Court’s discussion of *government buildings*<sup>19</sup> and the Ordinance’s prohibition of carrying in government-owned, leased, or used *real property*. Maybe San Francisco can restrict firearm carry at certain sensitive government buildings where legislative business is conducted. For example, San Francisco City Hall is perhaps analogous to the “legislative assemblies” mentioned in *Heller* and *Bruen*. But the distinction between government buildings where the business of government is conducted, and all public property generally, is critical. *Bruen* suggested that restrictions on the former had a historical basis, while the latter did not.

## B. Parks Restrictions

The Ordinance defines “Parks” to include all “privately owned or leased outdoor space utilized for children’s outdoor recreation” (presumably because the ban on carrying on all City Property already covers public parks). Of course, any parks that adults use for recreation may be used for children’s recreation as well. Restricting carry just because *some* children may be present does not make it a constitutional restriction. The *Antonyuk II* court already rejected this argument as contrary to *Bruen*. For example, in discussing why a law prohibiting carry in libraries would not be acceptable, the court explained: “[T]he Court acknowledges the frequent presence and activities of children in libraries (and the general analogousness of this regulation to historical laws prohibiting firearms in schools). However, the regulation does not limit the ban to ‘school libraries’ or the ‘children’s sections of libraries;’ and public libraries are also commonly patronized by adults.”<sup>20</sup>

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<sup>17</sup> *Koons II*, 2023 WL 3478604, at \*54.

<sup>18</sup> *Peruta v. California*, 137 S. Ct. 1995, 1999 (2017) (Thomas, J., dissenting from denial of certiorari).

<sup>19</sup> Even being a government building doesn’t mean the building is automatically sensitive: “Thus, this Court reads the *Bruen* discussion for the proposition that prohibitions on carrying firearms at government buildings tend not to violate the Second Amendment, but to the extent that a dispute arises concerning a prohibition at a particular government building, resolution will turn on whether analogies to historical regulations can justify the challenged law. In his seemingly prescient concurring opinion, Judge Tymkovich essentially adopted this position, noting that a prohibition’s presumption of lawfulness depends on the nature of the government property at issue.” *Koons II*, 2023 WL 3478604, at \*55 (referencing concurrence in *Bonidy v. U.S. Postal Serv.*, 790 F.3d 1121, 1135 (10th Cir. 2015)).

<sup>20</sup> *Antonyuk II*, 2022 U.S. Dist. LEXIS 201944, at \*42 n.24.

As to public parks and other places of recreation, the *Antonyuk I* court explained that aside from “the lack of historical analogues supporting these particular provisions, in the Court's view, the common thread tying them together is the fact that they all regard locations where (1) people typically congregate or visit and (2) law-enforcement or other security professionals are—presumably—readily available. This is precisely the definition of ‘sensitive locations’ that the Supreme Court in [*Bruen*] considered and rejected.”<sup>21</sup> In *Antonyuk II*, the same court only allowed specific restrictions on carrying within playgrounds to stand, but not all parks or recreation facilities generally because adults used them too.<sup>22</sup> The *Siegel* court similarly upheld the restriction on playgrounds, but not parks, beaches, and recreation facilities more generally, where it said carry must be allowed.<sup>23</sup> The *Koons II* ruling from that court likewise explained “the State has failed to come forward with any laws from the 18th century that prohibited firearms in areas that today would be considered parks. Consistent with the *Koons* Plaintiffs’ findings, this Court has only uncovered colonial laws that prohibited discharging firearms in areas that were the forerunners of today's public park.”<sup>24</sup>

### C. Places of Worship Restrictions

The fact that places of worship have been frequent targets of attack should lead any sane person to desire more law-abiding people to carry within them. Many houses of worship of all denominations are in fact moving towards more lawful carry to protect their congregants. After all, it’s not as if laws like the Ordinance will stop such crimes, because someone bent on mass murder isn’t going to desist from his violent plans just because he might violate a local ordinance. Moreover, we’ve seen that people who carry can stop attacks on churches before more people are harmed. For example, on December 29, 2019, two people were killed in a crowded church in Texas when an attacker opened fire. A congregant, Jack Wilson, quickly killed the assailant with his legally concealed handgun, stopping the deadly attack in seconds. Other armed congregants were also present and quickly responded as well.<sup>25</sup> San Francisco, through this Ordinance, would charge a hero like Jack Wilson with a crime, while empowering violent criminals through the knowledge that it is unlikely anyone will be armed to resist them.

Luckily for these would-be good Samaritans, the Ordinance’s restriction on carry in places of worship is unconstitutional. There is no relevant historical tradition of restricting carry in churches. In the founding period, there were “statutes all over America that required bringing guns into churches, and sometimes to other public assemblies.” D. Kopel & J. Greenlee, *supra*, at p. 244; *see also Koons*, 2023 WL 3478604, at \*21 (“several colonial governments passed laws requiring colonists to bring arms to church”). Additionally, these places are not government buildings, or government organizations—they are private groups of citizens who have the right to defend themselves and others outside of the home.

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<sup>21</sup> *Antonyuk I*, 2022 U.S. Dist. LEXIS 182965, at \*47.

<sup>22</sup> *Antonyuk II*, 2022 U.S. Dist. LEXIS 201944, at \*183-192.

<sup>23</sup> *Siegel*, 2023 U.S. Dist. LEXIS 15096, at \*37.

<sup>24</sup> *Koons II*, 2023 WL 3478604, at \*83.

<sup>25</sup> Travis Fedschun, *Texas church shooting: Gunman kills 2, 'heroic' congregants take down shooter*, Fox News, (December 29, 2019, 7:47 PM), <<https://www.foxnews.com/us/texas-church-shooting-texas-injured-active>> (as of June 7, 2023); Fox News Editors, *Texas man who stopped church shooting says he 'had to take out' gunman because 'evil exists'*, Fox News (December 30, 2019, 2:39 PM), <<https://www.foxnews.com/us/texas-church-shooting-man-take-out-gunman-west-freeway-church>> (as of June 7, 2023).

#### **D. Private Establishment Signage Requirements**

The prohibition against the public carry of firearms on private businesses' premises without consent is perhaps the most cynical provision in the Ordinance. It would have the effect of stamping out the right to carry for all practical purposes. Like New York and New Jersey, this bad-faith attempt by the City to undermine a fundamental right will also be struck down by the courts.

The private establishment provision flips directly on its head the traditional practice for private property, especially property belonging to businesses which serve the general public. Usually, if a private property owner wants to exclude people, they must post signs letting everyone know who or what actions are *prohibited*. While it is true that some spaces are so private that there need not be signage to announce they exclude people, that does not apply to places of business open to the general public because they are "by positive law and social convention, presumed accessible to members of the public unless the owner manifests his intention to exclude them."<sup>26</sup>

Moreover, while businesses open to the public do have a broad right to exclude people from their establishments<sup>27</sup>, the Ordinance involves the government deciding to exclude people, unless the business owner says otherwise. This is something that would never be acceptable in the First Amendment context.

Entirely separate from the Second Amendment discussion, the private establishment provision also violates the First Amendment rights of business owners. Even those that *do* support the right to carry may decide not to affirmatively consent to patrons carrying a firearm out of fear of public backlash that may hurt their business. In this way, the Ordinance unconstitutionally compels speech for business owners. The Constitution protects them against such compelled speech. Freedom of thought and expression "includes both the right to speak freely and the right to refrain from speaking at all."<sup>28</sup> "Just as the First Amendment may prevent the government from prohibiting speech, the Amendment may prevent the government from compelling individuals to express certain views."<sup>29</sup> And just because business owners are motivated to oppose putting up a sign in part out of fear of lost profits, that doesn't make it any less unacceptable for the State to compel speech.

The *Antonyuk* court agreed, also separately enjoining New York's mirror provision on First Amendment grounds for those property owners that did not want to put up a sign, but also could not feasibly give consent to each individual.

#### **III. CCW Permit Holders Are Overwhelmingly Law-Abiding and Pose No Threat to the Public**

The Ordinance is based on the incorrect assumption that people who go through the process of getting a CCW permit are likely to commit crime. The findings preceding the

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<sup>26</sup> *Oliver v. United States*, 466 U.S. 170, 193 (1984) (Marshall, J., dissenting).

<sup>27</sup> *Carrillo v. Penn Nat'l Gaming, Inc.*, 172 F. Supp. 3d 1204, 1217 (D.N.M. 2016)

<sup>28</sup> *Wooley v. Maynard*, 430 U.S. 705, 714 (1977).

<sup>29</sup> *United States v. United Foods*, 533 U.S. 405, 410 (2001).

Ordinance's operative text assert that "Over the past several years, a wealth of empirical studies indicate that crime is higher when more people carry firearms in public places." The findings also state that "[b]etween 2020 and 2021, fatal and nonfatal shooting incidents rose by 33% and contributed to the majority of the City's homicides."

Of course, the studies referenced did not find that *people with CCW permits* committed any of this increased crime. Nor do the findings state that San Francisco's crime problems are caused by people with CCW permits. But CCW permit holders are overwhelmingly law-abiding. Even before the *Bruen* ruling, over 40 states were either "shall issue," where a permit must be issued to all citizens who apply and qualify for one, or "constitutional carry," where anyone who is legally allowed to own a gun may carry a pistol concealed or openly without a permit. Millions of law-abiding Americans have legally carried firearms for years.


When California recently tried to pass a law similar to the Ordinance (called Senate Bill 918, which was last year's version of this year's SB 2), it was opposed by the California State Sheriffs Association partially because people with CCW permits almost never commit crimes and are not a problem for law enforcement. The Association stated in a letter to all members of the California State Assembly that SB 918 "greatly restricts when and where licensees may carry concealed and could severely restrict the exercising of [the right to bear arms]...*individuals who go through the process to carry concealed legally are exceedingly unlikely to violate the law, yet SB 918 turns much of the state into 'no-carry' zones that will do nothing to foster public safety.*" (Italics added.)

Currently, to get a CCW permit in San Francisco applicants must spend hundreds of dollars, pass an extensive background check, take a training course and psychological exam, and typically must wait a year on top of all of that. The people you should worry about are the criminals already carrying illegally, they don't bother with permits.

#### **IV. Conclusion**

If the Ordinance is passed our clients will immediately file a lawsuit to stop it. When we prevail, San Francisco taxpayers will pay dearly for this unconstitutional effort.

Sincerely,  
**Michel & Associates, P.C.**



Konstadinos T. Moros

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BOARD of SUPERVISORS



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## MEMORANDUM

TO: Sheriff Paul Miyamoto, Sheriff's Department  
Chief William Scott, Police Department

FROM: Victor Young, Assistant Clerk *Victor Young*

DATE: June 21, 2023

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Rules Committee received the following proposed legislation:

**File No. 230736**

**Ordinance amending the Administrative Code to prohibit firearm possession, with exceptions for designated concealed carry license holders, in childcare facilities, City property, election facilities, medical facilities, and private parks and playgrounds, and in places of worship and private commercial establishments unless the owner provides express consent.**

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: [victor.young@sfgov.org](mailto:victor.young@sfgov.org).

cc: Johanna Saenz, Sheriff's Department  
Katherine Johnson, Sheriff's Department  
Tara Moriarty, Sheriff's Department  
Rich Jue, Sheriff's Department  
Christian Kropff, Sheriff's Department  
Lisa Ortiz, Police Department  
Lili Gamero, Police Department  
Rima Malouf, Police Department  
Diana Oliva-Aroche, Police Department

BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. (415) 554-5184  
Fax No. (415) 554-5163  
TDD/TTY No. (415) 554-5227

# MEMORANDUM

TO: Alondra Esquivel-Garcia, Director, Youth Commission  
FROM: Victor Young, Assistant Clerk,  
Rules Committee  
DATE: June 21, 2023  
SUBJECT: LEGISLATIVE MATTER INTRODUCED

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The Board of Supervisors' Rules Committee has received the following Ordinance. This item is being referred for comment and recommendation.

**File No. 230736**

**Ordinance amending the Administrative Code to prohibit firearm possession, with exceptions for designated concealed carry license holders, in childcare facilities, City property, election facilities, medical facilities, and private parks and playgrounds, and in places of worship and private commercial establishments unless the owner provides express consent.**

Please return this cover sheet with the Commission's response to Victor Young, Assistant Clerk, Rules Committee.

\*\*\*\*\*

RESPONSE FROM YOUTH COMMISSION      Date: \_\_\_\_\_

\_\_\_\_ No Comment  
\_\_\_\_ Recommendation Attached

\_\_\_\_\_  
Chairperson, Youth Commission

President, District 3  
BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689  
Tel. No. 554-7450  
Fax No. 554-7454  
TDD/TTY No. 544-6546

Aaron Peskin

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

2023 JUL -5 PM 1:47  
BY

**PRESIDENTIAL ACTION**

Date: 07/05/23  
To: Angela Calvillo, Clerk of the Board of Supervisors

Madam Clerk,  
Pursuant to Board Rules, I am hereby:

Waiving 30-Day Rule (Board Rule No. 3.23)

File No. \_\_\_\_\_  
(Primary Sponsor)

Title. \_\_\_\_\_

Transferring (Board Rule No 3.3)

File No. 230736 Stefani  
(Primary Sponsor)

Title. Ordinance amending the Administrative Code to prohibit firearm possession, with exceptions for designated concealed carry license +

From: Rules \_\_\_\_\_ Committee

To: Public Safety & Neighborhood Services \_\_\_\_\_ Committee

Assigning Temporary Committee Appointment (Board Rule No. 3.1)

Supervisor: \_\_\_\_\_ Replacing Supervisor: \_\_\_\_\_

For: \_\_\_\_\_ Meeting  
(Date) (Committee)

Start Time: \_\_\_\_\_ End Time: \_\_\_\_\_

Temporary Assignment:  Partial  Full Meeting

Aaron Peskin, President  
Board of Supervisors

**From:** [Bell, Tita \(BOS\)](#)  
**To:** [BOS Legislation, \(BOS\)](#)  
**Cc:** [StefaniStaff, \(BOS\)](#); [Young, Victor \(BOS\)](#)  
**Subject:** Co-sponsorship File No. 230736  
**Date:** Friday, June 30, 2023 4:42:58 PM

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Dear Clerks,

Supervisor Engardio would like to be added as co-sponsor to File No. 230736 [Administrative Code - Firearms - Prohibited Places].

Thank you,  
Tita

**Tita Bell**  
Chief of Staff  
Office of Supervisor Joel Engardio  
City Hall, Room 256  
415-554-7460



**From:** [Gee, Natalie \(BOS\)](#)  
**To:** [Young, Victor \(BOS\)](#); [BOS Legislation, \(BOS\)](#)  
**Cc:** [Donovan, Dominica \(BOS\)](#)  
**Subject:** Please add Sup. Walton to 230736 & 230746  
**Date:** Friday, June 16, 2023 11:12:38 AM

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Good morning Victor and Clerk Team,

Please add Supervisor Walton as a co-sponsor to the following files:

- 230736 [Administrative Code - Firearms - Prohibited Places]
- 230746 [Supporting the Proposed 28th Amendment to the United States Constitution by California Governor Newsom]

Thank you!

**Natalie Gee** 朱凱勤, Chief of Staff

**Supervisor Shamann Walton, District 10**

1 Dr. Carlton B. Goodlett Pl, San Francisco | Room 282

**Direct:** 415.554.7672 | **Office:** 415.554.7670

**District 10 Community Events Calendar:** <https://bit.ly/d10communityevents>

# Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp  
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor  inquiries"
- 5. City Attorney Request.
- 6. Call File No.  from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.**

Sponsor(s):

Subject:

The text is listed:

Signature of Sponsoring Supervisor: