

1 [Police Code - Gun Violence Restraining Orders]

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3 **Ordinance amending the Police Code to require the Police Department to obtain Gun**
4 **Violence Restraining Orders in certain circumstances.**

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

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

14 Section 1. The Police Code is hereby amended by adding Article 36D, consisting of
15 Sections 3600D, 3601D, 3602D, and 3603D, to read as follows:

16 **ARTICLE 36D: GUN VIOLENCE RESTRAINING ORDERS**

17 **SEC. 3600D. BACKGROUND; STATEMENT OF POLICY.**

18 (a) California Penal Code section 18100 et seq. allows local law enforcement agencies to
19 use Gun Violence Restraining Orders (“GVRO”) as a tool for prohibiting and enjoining an individual
20 from having custody or control, owning, purchasing, possessing, or receiving any firearms or
21 ammunition when that individual poses an immediate and present danger of causing personal injury to
22 self or others. Assembly Bill No. 12 (AB 12) and Assembly Bill No. 61 (AB 61), each approved by the
23 Governor on October 11, 2019, expanded the circumstances, procedures, and scope under California
24 law for the issuance of GVROs. Both AB 12 and AB 61 are operative on September 1, 2020.

25 (b) There are three types of GVROs available in California:

1 (1) the temporary emergency protective order, available to peace officers where there is
2 reasonable cause to believe the subject of the GVRO poses an immediate and present danger of causing
3 personal injury to self or others;

4 (2) the temporary ex parte GVRO, available to peace officers, family members, and
5 other authorized persons, where there is a showing of a substantial likelihood that the individual who is
6 the subject of the GVRO poses a significant danger of causing personal injury to self or others; and

7 (3) the one-to-five-years ban, available to law enforcement, family members, and other
8 authorized persons, which may be imposed after notice and a hearing where there is a finding by clear
9 and convincing evidence that the individual who is the subject of the GVRO poses a significant danger
10 of personal injury to self or others.

11 All three types of GVROs require a finding that the GVRO is necessary to prevent personal
12 injury to self or others because less restrictive alternatives either have been tried and found to be
13 ineffective, or have been determined inadequate or inappropriate for the circumstances.

14 The foregoing description in this subsection (b) of the three types of GVROs reflects California
15 law as amended by AB 12 and AB 61.

16 (c) It is the policy of the City to use GVROs in circumstances where there is a nexus
17 between the use or threat of use of a firearm or ammunition by the individual who is the subject of the
18 GVRO and the danger presented to self or others, and the GVRO is necessary to prevent an injury to
19 self or others. This tool is not intended to be used in circumstances where there would be no value in
20 obtaining a GVRO, such as when an individual is already prohibited from obtaining or having access
21 to a firearm, for the same period of time, or more, that a GVRO could be in effect.

22 **SEC. 3601D. GUN VIOLENCE RESTRAINING ORDERS.**

23 (a) Temporary Emergency Protective Orders. The Police Department (“SFPD”) shall seek to
24 obtain a temporary emergency protective order when one or more officers are on the scene of an
25 incident and there is reasonable cause to believe that: (1) the subject of the prospective GVRO poses an

1 immediate and present danger of causing personal injury to self or others by having custody or control,
2 owning, purchasing, possessing, receiving, or attempting to purchase or receive, a firearm or
3 ammunition; and (2) the GVRO is necessary to prevent personal injury to self or others because less
4 restrictive alternatives either have been tried and found to be ineffective, or have been determined to be
5 inadequate or inappropriate for the circumstances.

6 (b) Temporary Ex Parte GVROs. SFPD shall seek to obtain a temporary ex parte GVRO when
7 one or more officers believe that: (1) there a substantial likelihood that the individual who is the
8 subject of the GVRO poses a significant danger, in the near future, of causing personal injury to self or
9 others by having custody or control, owning, purchasing, possessing, or receiving a firearm or
10 ammunition as determined by considering the factors listed in California Penal Code 18155; and (2)
11 the GVRO is necessary to prevent injury to self or others because less restrictive alternatives either
12 have been tried and found to be ineffective, or have been determined to be inadequate or inappropriate
13 for the circumstances.

14 (c) One-to-Five-Years Bans. SFPD shall seek to obtain a court order for one-to-five years,
15 when there is a finding by clear and convincing evidence that: (1) the subject of the GVRO poses a
16 significant danger of causing personal injury to self or others by having custody or control, owning,
17 purchasing, possessing, or receiving a firearm or ammunition; and (2) A GVRO is necessary to prevent
18 personal injury to self or others because less restrictive alternatives either have been tried and found to
19 be ineffective, or have been determined to be inadequate or inappropriate for the circumstances. SFPD
20 shall re-examine every such court order at least two months prior to its expiration to determine
21 whether re-petitioning the court to extend the ban is warranted.

22 (d) Subsections (a)-(c) shall be implemented in a manner that is consistent with California law.
23 Accordingly, before September 1, 2020 (i.e., before the provisions of AB 12 and AB 61 are operative),
24 subsections (a)-(c) are operative only to the extent permitted by California law before September 1,
25 2020. As of September 1, 2020, subsections (a)-(c) are fully operative.

1 **SEC. 3602D. UNDERTAKING FOR THE GENERAL WELFARE.**

2 In enacting and implementing this Article 36D, the City is assuming an undertaking only to
3 promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an
4 obligation for breach of which it is liable in money damages to any person who claims that such breach
5 proximately caused injury.

6 **SEC. 3603D. SEVERABILITY.**

7 If any section, subsection, sentence, clause, phrase, or word of this Article 36D, or any
8 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
9 decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining
10 portions or applications of the Article. The Board of Supervisors hereby declares that it would have
11 passed this Article and each and every section, subsection, sentence, clause, phrase, and word not
12 declared invalid or unconstitutional without regard to whether any other portion of this Article or
13 application thereof would be subsequently declared invalid or unconstitutional.

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15 Section 2. Effective Date. This ordinance shall become effective 30 days after
16 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
17 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
18 of Supervisors overrides the Mayor's veto of the ordinance.

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21 APPROVED AS TO FORM:
22 DENNIS J. HERRERA, City Attorney

23 By: _____
24 ALICIA CABRERA
25 Deputy City Attorney

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