

File No. 110961

Committee Item No. 7

Board Item No. 4

COMMITTEE/BOARD OF SUPERVISORS AGENDA PACKET CONTENTS LIST

Committee PUBLIC SAFETY

Date 9/15/11

Board of Supervisors Meeting

Date 10/4/11

Cmte Board

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Completed by: Gail Johnson

Date 9/9/11

Completed by: JG

Date 9/21/11

* An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

1 [Police Code - Safe Storage and Enhanced-Lethality Ammunition Findings]

2
3 Ordinance amending the San Francisco Police Code by adding Sections 4511 and
4 613.9.5 to add findings to ordinances: 1) requiring a handgun to be kept in a locked
5 container or disabled with a trigger lock; and 2) prohibiting the sale of enhanced-
6 lethality ammunition.

7 NOTE: Additions are single-underline italics Times New Roman;
8 deletions are ~~strike-through italics Times New Roman~~.
9 Board amendment additions are double-underlined;
Board amendment deletions are ~~strikethrough-normal~~.

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

11 Section 1. The San Francisco Police Code is hereby amended by adding Sections
12 4511 and 613.9.5, to read as follows:

13 **SECTION 4511. FINDINGS.**

14 1. Firearm injuries have a significant public health impact both nationally and locally.

15 a. In the United States, firearm injuries accounted for 6.6 percent of premature
16 deaths from 1999-2007. Shootings are a leading cause of injury deaths in the nation, second only to
17 motor vehicle crashes. On average, there were 30,125 firearm deaths in the United States annually
18 between 2000 and 2007, inclusive. In 2007, 31,224 Americans died in firearm-related homicides,
19 suicides, and unintentional shootings – the equivalent of 85 deaths each day and more than three
20 deaths each hour.

21 b. Nationally, more than two thirds of homicides and over half of all suicides are
22 committed with firearms.

23 c. Unintentional shootings killed over 5,700 people in the U.S. between 2000 and
24 2007. In 2009, over 18,000 people were treated for unintentional gunshot wounds in the United States.

1 d. The firearm-related homicide, suicide, and unintentional death rates for children
2 5-14 years old in the United States are significantly higher than those other industrialized nations.

3 e. Over the last five years, firearm injuries have ranked third of all causes of injury
4 death in San Francisco, after pedestrian fatalities and falls, respectively. Almost two thirds of these
5 firearm deaths were homicides. In addition, gunshot wounds were the third most common reason for
6 injury-related hospitalizations in San Francisco from 2005 to 2008 and fourth in 2009. Firearm-
7 related suicides accounted for 16.2 percent of the suicide deaths in San Francisco in Fiscal Year 2009-
8 2010.

9 f. San Francisco General Hospital, as the only trauma center in San Francisco,
10 treats approximately 98 percent of the city's shooting victims annually. Approximately 80 percent of
11 the individuals treated for violent injuries at San Francisco General Hospital are uninsured.

12 2. Having a loaded or unlocked gun in the home is associated with an increased risk of
13 gun-related injury and death.

14 a. A firearm stored loaded or unlocked increases the risk of an accidental shooting.

15 b. All U.S. case control studies (12 to date) have found that people who die by
16 suicide are more likely to have lived in a home with a gun than similar people who did not die by
17 suicide. Studies have also shown that the risk of suicide increases in homes where guns are kept loaded
18 or unlocked.

19 c. A 2007 study compared the 40 million people who live in the states with the
20 lowest firearm prevalence (Hawaii, Massachusetts, Rhode Island, New Hampshire, Connecticut, and
21 New York) to about the same number living in the states with the highest firearm prevalence (Wyoming,
22 South Dakota, Alaska, West Virginia, Montana, Arkansas, Mississippi, Iowa, North Dakota, Alabama,
23 Kentucky, Wisconsin, Louisiana, Tennessee, and Utah). Although non-firearm suicides were about
24 equal in the two groups, total suicides were almost twice as high in the high-gun states.

1 d. Keeping unsecured guns in the home increases the flow of illegal guns into the
2 community. More than half a million firearms are stolen each year in the United States and many are
3 subsequently sold illegally.

4 3. Children are particularly at risk of injury and death, or causing injury and death, when
5 they can access guns in their own homes or homes that they visit.

6 a. The authors of a 2005 study found that an estimated 1.69 million children age 18
7 and under are living in households with loaded and unlocked firearms. Many young children,
8 including children as young as three years old, are strong enough to fire handguns.

9 b. A significant majority of the guns used in youth suicide attempts and
10 unintentional injuries were stored in the residence of the victim, a relative, or a friend. Of youths under
11 18 who died by firearm suicide, the vast majority used a family member's gun, usually a parent's. And
12 more than two thirds of school shooters obtained their gun(s) from their own home or that of a relative.

13 c. Quick access to loaded firearms heightens the risk that a young person's
14 impulsive decision to commit suicide will be carried out without reflection or seeking help, and that the
15 impulsive attempt will be fatal. One third of youths who died by suicide had faced a crisis within the
16 previous 24 hours. Among people who nearly died in a suicide attempt, almost a quarter indicated that
17 fewer than five minutes had passed between deciding on suicide and making the attempt. While fewer
18 than 10 percent of suicide attempts by other means are fatal, at least 85 percent of firearm suicide
19 attempts end in death.

20 4. Guns kept in the home are most often used in suicides and against family and friends
21 rather than in self-defense.

22 a. Guns kept in a home are more likely to be involved in an unintentional shooting,
23 criminal assault, or suicide attempt than to kill or injure in self-defense.

24 b. Only one in ten firearm homicides in the shooter's home is considered justifiable,
25 meaning the shooter was not the assailant. Of every ten firearm homicide victims killed at the shooter's

1 residence, six were intimate partners or family members of the shooter, three were friends or
2 acquaintances of the shooter, and only one was a stranger to the shooter.

3 5. Applying trigger locks or using lock boxes when storing firearms in the home reduces
4 the risk of firearm injury and death.

5 a. Keeping a firearm locked when it is not being carried ensures that it cannot be
6 accessed and used by others without the owner's knowledge or permission. This simple measure
7 significantly decreases the risk that the gun will be used to commit suicide, homicide, or inflict injury,
8 whether intentionally or unintentionally.

9 b. Safe storage measures have a demonstrated protective effect in homes with
10 children and teenagers where guns are stored.

11 6. There is a wide consensus among medical professionals, police chiefs, gun control
12 advocates and gun rights groups that applying trigger locks or using lock boxes to store unsupervised
3 guns in the home promotes health and safety.

14 a. The International Association of Chiefs of Police recommends that state and
15 local governments mandate safe storage of firearms.

16 b. The American Academy of Pediatrics recommends that if families must have
17 firearms in their homes, the firearms should be stored locked, unloaded, and separate from locked
18 ammunition.

19 c. Both gun control and gun rights advocates endorse the use of locking devices
20 when storing guns to ensure that unauthorized or untrained persons cannot use the gun to inflict injury
21 or death. For example, the National Rifle Association's Home Firearm Safety Handbook, developed
22 and used as part of the National Rifle Association (NRA) Basic Firearm Training Program, emphasizes
23 that "there is one general rule that must be applied under all conditions: Store guns so they are not
24 accessible to untrained or unauthorized persons." The NRA Guide To The Basics Of Personal
25

1 Protection In The Home further explains that "all storage methods designed to prevent unauthorized
2 access utilize some sort of locking method."

3 7. Requiring unsupervised firearms stored to be secured with trigger locks or in a locked
4 container does not substantially burden the right or ability to use firearms for self-defense in the home.

5 a. The locking requirements apply only to handguns that are not being carried.
6 Gun owners and adults over 18 may carry loaded and unlocked handguns in the home at any time. The
7 safe storage requirements also permit owners who wish to do so to store their handguns fully loaded.

8 b. Gun security does not preclude quick access. For example, affordable lockboxes
9 using Simplex-type locks, which pop open immediately when several keys or pushbuttons are touched in
10 a preset sequence, are widely available. Users report that they can retrieve a loaded weapon in just
11 two to three seconds, and that the locks are also easy to open in the dark. The NRA describes this type
12 of lockbox as providing "a good combination of security and quick access." Some lockboxes also
13 feature biometric locks, which provide immediate access when they scan the owner's fingerprint.

14 c. Portable lockboxes can store loaded weapons such that they are always within
15 easy reach on counters, tables or nightstands. Such safely stored weapons are more quickly and easily
16 retrieved for use in self-defense than unlocked guns that have been hidden away in seldom-used
17 locations.

18
19 **SECTION 613.9.5. FINDINGS.**

20 1. "Enhanced-lethality ammunition" means the ammunition that licensees may not sell,
21 lease or otherwise transfer under Police Code Sec. 613.10 (g).

22 2. Enhanced-lethality ammunition is designed to tear larger wounds in the body by
23 flattening and increasing in diameter on impact and/or exploding and dispersing shrapnel throughout
24 the body. These design features increase the likelihood that the bullet will hit a major artery or organ,
25 that it will take a more circuitous path through the body to create more widespread damage, and that it

1 will release all of its propulsive force inside the body to cause maximum injury. Accordingly,
2 enhanced-lethality ammunition is more likely to cause severe injury and death than is conventional
3 ammunition that does not flatten or fragment upon impact.

4 3. Enhanced-lethality ammunition has been used in shooting massacres both in San
5 Francisco and abroad. On July 1, 1993, heavily armed gunman Gian Luigi Ferri shot and killed eight
6 people, then himself, in the 101 California Street high-rise in San Francisco using hollow-point bullets.
7 Most recently, on July 24, 2011, Anders Behring Breivik used lethality-enhanced bullets designed to
8 fragment inside the body and cause maximum internal damage to kill and grievously wound dozens of
9 children at a youth camp in Norway.

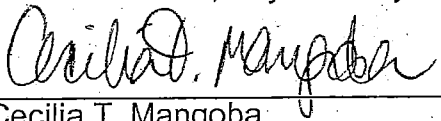
10 4. Banning the sale of enhanced-lethality ammunition in San Francisco does not
11 substantially burden the right to self defense. The right to use firearms in self defense can be fully
12 exercised using conventional, non-collapsing, non-fragmenting ammunition. Enhanced-lethality
13 ammunition is not in general use, and this unusually injurious ammunition has been banned outside the
14 United States. For example, the Hague Convention of 1899, Declaration III, has for more than a
15 century prohibited the use in warfare of bullets that easily expand or flatten in the body.

16 5. Personal firearms kept in the home are more likely to be used against family and friends
17 than intruders. Home firearms may also be used in suicide attempts, accidental shootings and criminal
18 assaults.

19 6. The City and County of San Francisco has a legitimate, important and compelling
20 governmental interest in reducing the likelihood that shooting victims in San Francisco will die of their
21 injuries by reducing the lethality of the ammunition sold and used in the City and County of San
22 Francisco.

1 Section 2. Effective Date. This ordinance shall become effective 30 days from the
2 date of passage.

3 APPROVED AS TO FORM:
4 DENNIS J. HERRERA, City Attorney

5 By: 
6 Cecilia T. Mangoba
7 Deputy City Attorney

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LEGISLATIVE DIGEST

[Police Code – Safe Storage and Enhanced-Lethality Ammunition Findings]

Ordinance adding Sections 4511 and 613.9.5 to the San Francisco Police Code to add findings to ordinances 1) requiring a handgun to be kept in a locked container or disabled with a trigger lock; and 2) prohibiting the sale of enhanced-lethality ammunition.

Existing Law

On February 14, 1994 (approved February 25, 1994), the San Francisco Board of Supervisors passed Ord. No. 91-94, which imposed certain restrictions on persons selling, leasing, or otherwise transferring firearms, firearms ammunition, and firearms ammunition components. Among those conditions was a prohibition against the sale, lease or transfer of ammunition designed to expand upon impact. Following several amendments over the years, Police Code Sec. 613.10(g) now provides:

SEC. 613.10. LICENSE – CONDITIONS.

In addition to all other requirements and conditions stated in this Article, each license shall be subject to all of the following conditions, the breach of any of which shall be sufficient cause for revocation of the license by the Chief of Police:

(g) The licensee shall not sell, lease or otherwise transfer to any person any ammunition that:

- (1) Serves no sporting purpose;
- (2) Is designed to expand upon impact and utilize the jacket, shot or materials embedded within the jacket or shot to project or disperse barbs or other objects that are intended to increase the damage to a human body or other target (including, but not limited to, Winchester Black Talon, Speer Gold Dot, Federal Hydra-Shok, Hornady XTP, Eldorado Starfire, Hollow Point Ammunition and Remington Golden Sabre ammunition; or
- (3) Is designed to fragment upon impact (including, but not limited to, Black Rhino bullets and Glaser Safety Slugs).

This subsection does not apply to conventional hollow-point ammunition with a solid lead core when the purchase is made for official law enforcement purposes and the purchaser is authorized to make such a purchase by the director of a public law

enforcement agency such as the Chief of the San Francisco Police Department or the Sheriff of the City and County of San Francisco.

On July 24, 2007 (approved August 1, 2007), the Board passed Ord. No. 193-07, which required handguns located in a residence to be kept in a locked container or disabled with a trigger lock whenever that handgun is not carried on a person over 18 or under the control of a peace officer. San Francisco Police Code Sec. 4512 provides, in relevant part:

SEC. 4512. HANDGUNS LOCATED IN A RESIDENCE TO BE KEPT IN A LOCKED CONTAINER OR DISABLED WITH A TRIGGER LOCK.

(a) Prohibition. No person shall keep a handgun within a residence owned or controlled by that person unless the handgun is stored in a locked container or disabled with a trigger lock that has been approved by the California Department of Justice.

(b) Definitions.

(1) "Residence." As used in this Section, "residence" is any structure intended or used for human habitation including but not limited to houses, condominiums, rooms, in law units, motels, hotels, SRO's, time-shares, recreational and other vehicles where human habitation occurs.

(2) "Locked container." As used in this Section, "locked container" means a secure container which is fully enclosed and locked by a padlock, key lock, combination lock or similar locking device.

(3) "Handgun." As used in this Section, "handgun" means any pistol, revolver, or other firearm that is capable of being concealed upon the person, designed to be used as a weapon, capable of expelling a projectile by the force of any explosion or other form of combustion, and has a barrel less than 16 inches in length.

(4) "Trigger lock." As used in this Section, a "trigger lock" means a trigger lock that is listed in the California Department of Justice's list of approved firearms safety devices and that is identified as appropriate for that handgun by reference to either the manufacturer and model of the handgun or to the physical characteristics of the handgun that match those listed on the roster for use with the device under Penal Code Section 12088(d).

(c) Exceptions. This Section shall not apply in the following circumstances:

(1) The handgun is carried on the person of an individual over the age of 18.

(2) The handgun is under the control of a person who is a peace officer under Penal Code Section 830.

Amendments to Current Law

The current law is amended to add updated findings to these two provisions.

Background Information

These findings clarify the Board's intent and reflect updated research and statistics regarding injuries and death caused by firearms and enhanced-lethality ammunition to ensure that the existing Police Code sections are fully enforceable under current case law.



ROSS MIRKARIMI

September 12, 2011

Angela Calvillo
Clerk of the San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102

Regarding File No. 110901

Madame Clerk:

I enclose for the Board's consideration copies of and/or links to the following studies and other materials that support the proposed findings for Police Code section 4512 and 613.10(g), which are currently under consideration by the Public Safety Committee.

American Academy of Pediatrics, *Firearm-related Injuries Affecting Pediatric Population*, 105 Pediatrics 370 (2000).

Cummings, et al., *State Gun Safe Storage Laws and Child Mortality Due to Firearms*, 278 JAMA 1084 (1997), full text available at <http://jama.ama-assn.org/content/278/13/1084.full.pdf+html>.

EpiCenter, California Injury Data Online, *Firearm Injuries in 2000* (2004), <http://www.apps.cdph.ca.gov/epicdata/firearms/gun2000.htm>.

EpiCenter, California Injury Data Online, *Firearm Ownership and Storage* (2004), <http://www.apps.cdph.ca.gov/epicdata/firearms/gunownstore.htm>.

Fackler, Martin L., International Wound Ballistics Ass'n, *Gunshot Wound Review*, 28 Ann. Emerg. Med. 194 (Aug. 1996), full text available at <http://www.sciencedirect.com/science/article/pii/S0196064496700628>.

Farjo, Laith A. and Theodore Mclau, *Ballistics and Mechanisms of Tissue Wounding*, 28 Injury C12 (Supp. 3 1997), full text available at <http://www.sciencedirect.com/science/article/pii/S0020138397900887>.

Grossman, David C., et al., *Gun Storage Practices and Risk of Youth Suicide and Unintentional Firearm Injuries*, 293 JAMA 707 (Feb. 2005).

Grossman, David C., Donald T. Reay & Stephanie A. Baker, *Self-Inflicted and Unintentional Firearm Injuries Among Children and Adolescents: The Source of the Firearm*, 153 Arch. Pediatr. Adolesc. Med. 875 (1999).



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Harvard School of Public Health: Means Matter, <http://www.hsph.harvard.edu/means-matter/means-matter/risk/index.html> (last visited June 9, 2011).

Harvard University, Harvard School of Public Health, *Means Matter*, <http://www.hsph.harvard.edu/means-matter/means-matter/risk/index.html> (last visited June 9, 2011).

International Association of Chiefs of Police, *Taking a Stand: Reducing Gun Violence in Our Communities* 16 (2007)
<http://www.theiacp.org/LinkClick.aspx?fileticket=%2Fs0LiOkJK5Q%3D&tabid=87>.

Klatt, E.C., D.L. Tschirhart and T.T. Noguchi, *Wounding Characteristics of .38 Caliber Revolver Cartridges*, 34:6 *Journal of Forensic Sciences* 1387 (Nov. 1989), full text available at http://www.astm.org/DIGITAL_LIBRARY/JOURNALS/FORENSIC/PAGES/JFS12780J.htm.

Legal Community against Violence, Gun Violence Statistics, http://www.lcav.org/statistics-polling/gun_violence_statistics.asp#f92 (last visited June 29, 2011).

Miller, Matthew, et al, *Household Firearm Ownership and Rates of Suicide Across the 50 United States*, 62 *Journal of Trauma* 1029 (2007).

Miller, Matthew, et al., *Firearm Availability and Unintentional Firearm Deaths, Suicide, and Homicide Among 5-14 Year Olds*, 52 *Journal of Trauma* 267 (2002).

Miller, Matthew & David Hemenway, *The Relationship Between Firearms and Suicide: A Review of the Literature*, 4 *Aggression & Violent Behavior* 59 (1999).

National Violent Injury Statistics Sys., Youth Suicide Fact Sheet, <http://www.sprc.org/library/YouthSuicideFactSheet.pdf> (last visited June 29, 2011).

Naureckas, Sara M., et. al, *Children's and Women's Ability to Fire Handguns*, 149 *Archives of Pediatric and Adolescent Medicine*, 1318 (1995).

National Rifle Ass'n of America, *NRA Basic Personal Protection in the Home Course* (Rev. ed. 2009).

National Rifle Ass'n of America, *Home Firearm Safety* (First ed. 1990)

National Rifle Ass'n of America, *NRA Guide to the Basics of Personal Protection in the Home* (First ed. 2000).

Okoro, Catherine A., et al., *Prevalence of Household Firearms and Firearm-Storage Practices in the 50 States and the District of Columbia: Findings from the Behavioral Risk Factor Surveillance System* 116 *Pediatrics* 370 (2005).

Petersen, Julie, *This Bullet Kills You Better*, *Mother Jones* (Sept/Oct. 1993).



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Pogatchnik, Shawn, *Doc: Gunman used special bullets in Norway to cause maximum damage*, Detroit Free Press, July 24, 2011, available at <http://www.freep.com/article/20110724/NEWS07/110724010/Doc-Gunman-used-special-bullets-Norway-cause-maximum-damage>.

Rivera, F.P. and Kellermann, A.L., *Reducing the Misuse of Firearms*, Handbook of Violence and Injury Prevention, New York: Springer (2007).

San Francisco Medical Examiner, *Annual Report FY 2009-2010* (2011):

San Francisco Medical Examiner, *The 101 California Shooting: The Black Talon Bullet*, 1994 IWBA Wound Ballistics Conference (Sacramento, CA).

Simon, T.R., et. al, *Characteristics of Impulsive Suicide Attempts and Attempters*, 32 Suicide & Life Threat. Behavior 49 (2001).

Somashekhar, Sandya and Nick Miroff, *Injuries Heal, but Mental Scars May Last Much Longer*, The Washington Post (Apr. 22, 2007).

U.S. Dep't of Health & Human Servs., Centers for Disease Control & Prevention, Nat'l Center for Injury Prevention & Control, Web-Based Injury Statistics Query & Reporting System (WISQARS), *WISQARS Years of Potential Life Lost (YPLL) Reports, 1999 - 2007* (2011), at <http://webappa.cdc.gov/sasweb/ncipc/ypll10.html>.

U.S. Dep't of Health & Human Servs., Centers for Disease Control & Prevention, Nat'l Center for Injury Prevention & Control, Web-Based Injury Statistics Query & Reporting System (WISQARS), *10 Leading Causes of Death 2007* (2011), at <http://webappa.cdc.gov/sasweb/ncipc/leadcaus10.html>.

U.S. Dep't of Health & Human Servs., Centers for Disease Control & Prevention, Nat'l Center for Injury Prevention & Control, Web-Based Injury Statistics Query & Reporting System (WISQARS), *WISQARS Injury Mortality Reports 1999-2007* (2011), at http://webappa.cdc.gov/sasweb/ncipc/mortrate10_sy.html.

U.S. Dep't of Health & Human Servs., Centers for Disease Control & Prevention, Nat'l Center for Injury Prevention & Control, Web-Based Injury Statistics Query & Reporting System (WISQARS), *WISQARS Unintentional Firearm Deaths and Rates per 100,000* (2011), at http://webappa.cdc.gov/sasweb/ncipc/mortrate10_sy.html.

U.S. Dep't of Health & Human Servs., Centers for Disease Control & Prevention, Nat'l Center for Injury Prevention & Control, Web-Based Injury Statistics Query & Reporting System (WISQARS), *WISQARS Nonfatal Injury Reports 1999-2007* (2011), at <http://webappa.cdc.gov/sasweb/ncipc/nfirates2001.html>.

U.S. Secret Service and U.S. Dep't of Educ., *The Final Report and Findings of the Safe Schools Initiative: Implications for the Prevention of School Attacks in the United States*, 27. (2002).



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University of Pennsylvania, Firearm & Injury Center, *Firearm Injury in the U.S.* 5 (2009) at <http://www.uphs.upenn.edu/ficap/resourcebook/Final%20Resource%20Book%20Updated%2009%20Section%201.pdf> (last visited July 12, 2011).

User Reviews of the Barska biometric gun safe, at <http://biometricgunsafereviews.net/barska-biometric-gun-safe.html> (last visited Sept. 12, 2011).

User Reviews of the Biobox biometric gun safe, at <http://biometricgunsafereviews.net/biobox-biometric-gun-safe.html> (last visited Sept. 12, 2011).

Wiebe, Douglas J., *Firearms in U.S. Homes as a Risk Factor for Unintentional Gunshot Fatality*, 35 *Accident Analysis & Prevention* 711 (2003).

www.nragunsafe.com (last visited Sept. 12, 2011).

Sincerely,

A handwritten signature in black ink that reads "Ross Mirkarimi".

Ross Mirkarimi
San Francisco District 5 Supervisor

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SPECIAL COUNSEL:
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W. LEE SMITH

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Public Safety
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DAVID T. HARDY
TUCSON, AZ

September 13, 2011

Angela Calvillo, Clerk of the Board of Supervisors
CITY AND COUNTY SAN FRANCISCO
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689
VIA OVERNIGHT MAIL

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2011 SEP 14 PM 4:15
PN

Re: **BOS File No. 110901: Police Code - Safe Storage and Enhanced-Lethality
Ammunition Findings – OPPOSITION**

Dear Ms. Calvillo:

We write on behalf of our clients the California Rifle and Pistol Association Foundation ("CRPAF"), in opposition to proposed ordinance, File No. 110901 [Police Code - Safe Storage and Enhanced-Lethality Ammunition Findings], which is currently scheduled to be heard by the Public Safety Committee on Thursday, September 15, 2011, and to lodge materials relevant to the Committee's consideration.

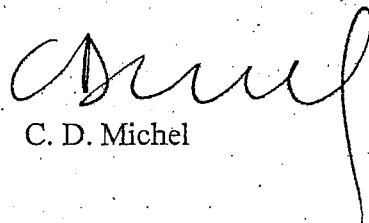
Although CRPAF intends to provide additional materials for the Board of Supervisors' (BOS) consideration should this ordinance be voted out of committee and referred for consideration by the BOS, we have enclosed copies of the following books at this time for the Committee's consideration which address the effectiveness of firearms use in self-defense.

Bob Irwin, THE REALITY OF ARMED SELF DEFENSE: SURVIVING THE ATTACK AND THE AFTERMATH (2010).

John R. Lott, Jr., MORE GUNS, LESS CRIME: UNDERSTANDING CRIME AND GUN CONTROL (3d ed., 2010).

We urge the committee to review these resources and hope they are helpful in its consideration of File No. 110901.

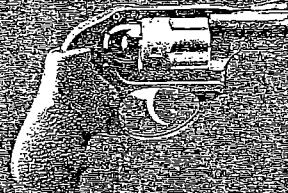
Sincerely,
MICHEL & ASSOCIATES, P.C.



C. D. Michel

CDM/ca
Enc.

*
**THE REALITY
OF ARMED
SELF DEFENSE**



Surviving The Attack And The Aftermath



Bob Irwin

JOHN R. LOTT, JR.

THE GUNS
LESS CRIME

THIRD EDITION

UNDERSTANDING CRIME
AND GUN CONTROL LAWS

"Lott turns conventional wisdom
concerning violent crime and
handguns on its head."

—*Chicago Tribune*





Public Hearing Sept 15th
Jake McGuigan to: gail.johnson

09/14/2011 12:02 PM

Gail,

Thank you very much for your email address. Attached is a letter so that we can record our opposition to the ordinance amendments dealing with safe storage and hollow-point bullets. I know these proposals are just amendments to an already established code but NSSF would still like to submit our letter.

Please let me know if you have any questions.

Thank you and have a wonderful day.

Jake McGuigan
Director, Government Relations/State Affairs
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Newtown, CT 06470-2359
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The National Shooting Sports Foundation is the trade association for the firearms industry.



SanFran Board of Supervisors Ordinance (9-15-11).doc



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JAKE MCGUIGAN
DIRECTOR,
GOVERNMENT RELATIONS

September 15, 2011

San Francisco Board of Supervisors
Public Safety Committee
City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Position: OPPOSE

Re: Police Code - Safe Storage and Enhanced-Lethality Ammunition Findings

Dear Public Safety Committee Members:

The National Shooting Sports Foundation ("NSSF") is the non-profit trade association for America's firearms, ammunition, hunting and recreational shooting sports industry. Our manufacturer members make the firearms used by law-abiding California sportsmen, the U.S. military and law enforcement agencies throughout California. This letter is to express our **opposition** to the proposed amendments to the San Francisco Police Code. There is no basis upon which to justify the enactment of these proposals, especially given the fact that they will decrease public safety.

Before we address our substantive concerns with the ordinance, NSSF would like to take a moment to call to your attention the positive downward trend in accidental deaths involving firearms. They are at their lowest level since recordkeeping began in 1903. In fact, in the last two decades there has been more than a 55% decrease in accidents¹ as a result of firearms safety efforts by industry, such as the industry supported *Project ChildSafe*, and the educational and safety programs of groups like the National Rifle Association, 4-H and the Boy Scouts of America, among others. Firearms are involved in less than 1% of all accidental deaths in the United States. Between 1997 and 2007, accidental firearms deaths involving children have decreased by 54%.

NSSF does not believe that a city or state has the right to tell law-abiding gun-owners the proper way to store their firearms. This should be an individual's choice based upon his or her living arrangements. Given the *District of Columbia v. Heller* decision, which struck down storage requirements as being unconstitutional, many storage ordinances have been challenged.

The firearms industry and law-abiding gun owners in California continue to be the most heavily regulated population in the nation. California residents are required to comply with the nation's most stringent set of rules and regulations governing the lawful commerce in firearms. The financial burden that is created with each new measure makes it increasingly more difficult for law-abiding retailers to continue their livelihood and create jobs and tax revenue for the state. The proposed amendments now under consideration do nothing except add some outlandish and untrue facts to the police code. These regulations like many before will do nothing to decrease violent crime in the city.

¹ *Injury Facts*, National Safety Council's Injury Facts, 2010

If your intent is to curb firearms violence, in lieu of adopting ineffective and burdensome ordinances, we suggest another route which everyone supports. NSSF for years has been sponsoring programs to reduce gun violence and accidents, and partnering with the Department of Justice (DOJ) on a number of effective programs that assist law enforcement in combating the misuse of firearms by criminals and safety. *Project ChildSafe* (www.projectchilidsafe.org) is the nation's largest and most comprehensive firearms safety program.

Project ChildSafe promotes the safe handling and storage of firearms by providing free firearms safety kits and safety educational materials to gun owners through partnerships with the nation's 15,000 law enforcement agencies. This program, funded by the Department of Justice (DOJ) – Office of Justice Programs (OJP) and firearms and shooting sports industry members through NSSF, is designed to help prevent tragic firearms-related accidents, particularly among children.

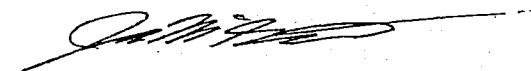
Project ChildSafe has formed partnerships with nearly every law enforcement agency in the country, plus elected officials such as governors, lieutenant governors and mayors, U.S. Attorneys, hunter education teachers and concerned civic groups, all of who help advance the program's message and distribute firearm safety kits to gun owners across America. Over the last ten years, approximately 35,000,000 *Project ChildSafe* safety kits have been distributed nationwide, establishing *Project ChildSafe* as a leading go-to resource for firearm safety. Additionally, program partners used press conferences and other media outreach to achieve a broader public awareness about the importance of safe handling and storage of firearms in the home.

Unfortunately, there have been many misconceptions about hollow-point ammunition created over the years and used to lead to bans on it. These bans have done nothing to reduce crime and could in fact put the general public in a more dangerous situation. The entire premise of hollow-point ammunition is to reduce the risk of bystanders being hit by over-penetrating or ricocheted bullets, which is why it is the most common ammunition for civilian and police use. Law enforcement officers are required to wear body armor and hollow-point ammunition is much less likely to penetrate than a regular full metal jacket. There is, of course, an exemption for law enforcement in the ordinance, which begs the question, are ordinary citizens worthy of less protection than police officers.

A ban on hollow-point ammunition does not only impact the firearms owners, but also the sportsmen who in many instances have to hunt with expanding/hollow point ammunition in order to ethically take an animal.

The National Shooting Sports Foundation opposes these proposals because they will only serve to increase the regulatory burden on law-abiding licensed firearms owners without benefiting public safety.

Sincerely,



Jake McGuigan

✓ Public Safety Committee
File # 110901

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September 14, 2011

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Public Safety Committee Members
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VIA OVERNIGHT MAIL

RECEIVED
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2011 SEP 14 PM 4:03
JK

Re: **BOS File No. 110901: Police Code - Safe Storage and
Enhanced-Lethality Ammunition Findings – OPPOSITION**

Dear Public Safety Committee Member,

We write on behalf of our client the National Rifle Association (“NRA”) in opposition to proposed ordinance, File No. 110901 [Police Code - Safe Storage and Enhanced-Lethality Ammunition Findings], scheduled to be heard by the Public Safety Committee on Thursday, September 15, 2011.

Our client opposes the adoption of these “findings” because they are merely an effort to manufacture an artificial legal record to support the San Francisco ordinances mandating so-called “safe” storage of firearms and prohibiting the sale of “non-sporting” ammunition. These self-serving “findings” are an attempt to retroactively justify those so-called public safety ordinances because they face constitutional challenges in the case of *Jackson v. San Francisco*, Case No. C09-2143 (N.D. Cal.).

Aside from being factually wrong, you should consider that the City’s “findings” do not warrant San Francisco’s infringement on the exercise of the core fundamental right of armed self-defense through the challenged ordinances, and that, in any event, the Court cannot consider these “findings” in the *Jackson* case.

In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the District sought to rely on similar legislative “findings” to justify banning the possession of handguns. Without *any* consideration or even mention of the legislative findings, *Heller* took the following categorical approach:

The handgun ban amounts to a prohibition of an entire class of “arms” that is overwhelmingly chosen by American society for that lawful purpose. . . . Under any of the standards of scrutiny that we have applied to enumerated constitutional rights, banning from the home “the most preferred firearm in the nation to ‘keep’ and use for protection of one’s home and family,” . . . would fail constitutional muster.

Id. at 628-29.

Heller rejected Justice Breyer’s “judge-empowering ‘interest-balancing inquiry’ that ‘asks whether the statute burdens a protected interest in a way or to an extent that is out of proportion to the statute’s salutary effects upon other important governmental interests.’” *Id.* at 634. *Such a test would allow “arguments for and against gun control” and the upholding of a handgun ban “because handgun violence is a problem.” See id.* (emphasis added).

The District’s findings stated that the goal of the ban was “to reduce the potentiality for gun-related crimes and gun-related deaths from occurring within the District of Columbia.” *Id.* at 693. (Breyer, J., dissenting). Justice Breyer unsuccessfully sought to rely on the committee report proposing the handgun ban which recited statistics on firearm-related violence and murder. *Id.* at 693-95. *Heller* nonetheless rejected the dissent’s conclusions based on the legislative findings, remarking:

We know of no other enumerated constitutional right whose core protection has been subjected to a freestanding “interest-balancing” approach. The very enumeration of the right takes out of the hands of government – even the Third Branch of Government – the power to decide on a case-by-case basis whether the right is *really worth* insisting upon.

Id. at 634 (emphasis original).

Similarly, *McDonald v. City of Chicago*, __ U.S. __, 130 S. Ct. 3020 (2010), made one bare mention of Chicago’s legislative finding and accorded it no discussion at all. 130 S. Ct. at 3026 (quoting Journal of Proceedings of the City Council, p. 10049 (Mar. 19, 1982) (stating that the handgun ban was enacted to protect residents “from the loss of property and injury or death from firearms”). *McDonald* upheld the right of residents to enhance their safety by having firearms for their defense, noting that “the Second Amendment right protects the rights of minorities and other residents of high-crime areas whose needs are not being met by elected public officials.” *Id.* at 3049.

Generally speaking, the Courts do not allow legislative fact-finding to undermine fundamental rights. "Deference to a legislative finding cannot limit judicial inquiry when First Amendment rights are at stake." *Landmark Commc'ns. v. Virginia*, 435 U.S. 829, 843 (1978). Moreover, even under the relatively relaxed scrutiny that applies to indirect impositions on relatively less protected speech rights (such as regarding the location of an adult bookstore) the Court has emphasized that a municipality cannot "get away with shoddy data or reasoning." *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425, 438 (2002). And, if those opposed "cast direct doubt on this rationale, either by demonstrating that the municipality's evidence does not support its rationale or by furnishing evidence that disputes the municipality's factual findings," then "the burden shifts back to the municipality to supplement the record with evidence renewing support for a theory that justifies its ordinance." *Id.* at 438-39.

In addition to the legal obstacles that make the adoption of these biased findings inappropriate, the "factual findings" included in the ordinance's proposed language rely on studies conducted with an anti-gun bias, or constitute inappropriate conclusions lacking factual support in the studies. To provide some balance, we submit copies of the journal articles and studies listed on the attached appendix for your consideration. There is much more research available, but we were unable to submit such further materials in the limited time since we received notice of the committee's consideration of this ordinance. We encourage the committee to, at a minimum, postpone consideration of this ordinance to allow it to research and review the full wealth of data that is available to the committee and relevant to its adoption of the proposed findings.

Frankly, we find San Francisco politicians' continued resistance to acknowledging Second Amendment rights to be philosophically inconsistent. Rather than acknowledge its residents' broad constitutional right to self-defense, San Francisco has been aggressively pushing the legal limits of gun control for years. San Francisco politicians reacted hostilely to the U.S. Supreme Court's rulings affirming that the Second Amendment protects an individual civil right to keep and bear arms from infringement by any level of government. Then, while the *Jackson* case was being litigated, San Francisco amended its firearm discharge prohibition ordinance (which the *Jackson* case challenged) on March 15, 2011, acknowledging in the process that local governments cannot prohibit the right of citizens to discharge a firearm in self-defense. But now, rather than repeal these remaining ordinances, you are being asked to use biased science to retroactively justify them.

San Francisco's latest effort reflects its inclination to resist and limit the fundamental civil right to self-defense and the right to choose to own a gun to defend oneself or one's family. Considering that San Franciscans have historically embraced and zealously defended the concepts of freedom and individual rights, no matter how controversial, it is particularly ironic that San Francisco refuses to embrace the People's fundamental civil right to keep and bear arms to defend themselves and their families – even within the sanctity of their own homes. This approach reflects the same prejudice and hostility to the rights of others that San Francisco officials are so quick to condemn in other civil rights contexts.

Committee Members
September 14, 2011
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We understand that San Francisco's officials may find themselves conflicted, because they have been handed a constitutional civil right that does not fit in with their personal notions of what constitutes one. But the Constitution does not allow you to pick and choose. The only honest, unbigoted choice is to embrace that newly confirmed right and defend it adamantly – like every other.

In light of the foregoing, we urge the Committee to recommend the Board of Supervisors repeal the unconstitutional ordinances the current "findings" ordinance purports to justify.

If you have any questions, or if you would like any additional information, please do not hesitate to contact our office.

Sincerely,
MICHEL & ASSOCIATES, P.C.



C. D. Michel

CDM/ca
Enc.

Appendix

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Thursday, 18 September 2008 22:14

Mar 2004

by Gun Owners Foundation 8001 Forbes Place, Suite 102 Springfield, VA 22151

1. Highlights

* *Guns are used 2.5 million times a year in self-defense. Law-abiding citizens use guns to defend themselves against criminals as many as 2.5 million times every year—or about 6,850 times a day.*¹ This means that each year, firearms are used more than 80 times more often to protect the lives of honest citizens than to take lives.²

* *Even anti-gun Clinton researchers concede that guns are used 1.5 million times annually for self-defense. According to the Clinton Justice Department, there are as many as 1.5 million cases of self-defense with a firearm every year. The National Institute of Justice published this figure in 1997 as part of "Guns in America"—a study which was authored by noted anti-gun criminologists Philip Cook and Jens Ludwig.*³

* *Concealed carry laws have reduced murder and crime rates in the states that have enacted them. According to a comprehensive study which reviewed crime statistics in every county in the United States from 1977 to 1992, states which passed concealed carry laws reduced their rate of murder by 8.5%, rape by 5%, aggravated assault by 7% and robbery by 3%.*⁴

* *Anti-gun journal pronounces the failure of the Brady law. One of the nation's leading anti-gun medical publications, the Journal of the American Medical Association, found that the Brady registration law has failed to reduce murder rates. In August 2000, JAMA reported that states implementing waiting periods and background checks did "not [experience] reductions in homicide rates or overall suicide rates."*⁵

* *Twice as many children are killed playing football in school than are murdered by guns. That's right. Despite what media coverage might seem to indicate, there are more deaths related to high school football than guns. In a recent three year period, twice as many football players died from hits to the head, heat stroke, etc. (45), as compared with students who were murdered by firearms (22) during that same time period.*⁶

* *More guns, less crime. In the decade of the 1990s, the number of guns in this country increased by roughly 40 million—even while the murder rate decreased by almost 40% percent.*⁷ *Accidental gun deaths in the home decreased by almost 40 percent as well.*⁸

* *CDC admits there is no evidence that gun control reduces crime. The Centers for Disease Control (CDC) has long been criticized for propagating questionable studies which gun control organizations have used in defense of their cause. But after analyzing 51 studies in 2003, the CDC concluded that the "evidence was insufficient to determine the effectiveness of any of these [firearms] laws."*⁹

* *Gun shows are NOT a primary source of illegal guns for criminals. According to two government studies, the National Institute of Justice reported in 1997 that "less than two percent [of criminals] reported obtaining [firearms] from a gun show."¹⁰ And the Bureau of Justice Statistics revealed in 2001 that less than one percent of firearm offenders acquired their weapons at gun shows.¹¹*

* *Several polls show that Americans are very pro-gun. Several scientific polls indicate that the right to keep and bear arms is still revered—and gun control disdained—by a majority of Americans today. To mention just a few recent polls:*

* *In 2002, an ABC News poll found that almost three-fourths of the American public believe that the Second Amendment of the U.S. Constitution protects the rights of "individuals" to own guns.*¹²

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