

File No. 130040

Committee Item No. 1

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

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: City Operations

Date 02/21/13

Board of Supervisors Meeting

Date \_\_\_\_\_

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/> | Motion                                       |
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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Analyst Report                   |
| <input type="checkbox"/>            | <input type="checkbox"/> | Youth Commission Report                      |
| <input type="checkbox"/>            | <input type="checkbox"/> | Introduction Form (for hearings)             |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
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| <input type="checkbox"/>            | <input type="checkbox"/> | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
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**OTHER** (Use back side if additional space is needed)

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Completed by: Andrea Ausberry Date 02/14/13

Completed by: \_\_\_\_\_ Date \_\_\_\_\_

An asterisked item represents the cover sheet to a document that exceeds 25 pages.  
The complete document can be found in the file.

1 [Police Code - Possession or Sale of Law Enforcement or Military Ammunition]

2  
3 **Ordinance amending the Police Code, by adding Section 618, to prohibit the**  
4 **possession or sale of certain ammunition, including Black Talon ammunition and**  
5 **ammunition intended exclusively for law enforcement and military purposes.**

6 NOTE: Additions are *single-underline italics Times New Roman*;  
7 deletions are *strike through italics Times New Roman*.  
8 Board amendment additions are double-underlined;  
9 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 Section 618,  
12 to read as follows:

13 **SEC. 618. PROHIBITED AMMUNITION.**

14 (a) Definition. For purposes of this Section, "Prohibited Ammunition" shall mean:

15 (1) Ammunition sold under the brand name "Winchester Black Talon," or that has  
16 physical properties resulting in ballistics performance identical to ammunition presently or formerly  
17 sold under the brand name Winchester Black Talon; or,

18 (2) Ammunition designated by its manufacturer for purchase by law enforcement or  
19 military agencies only, unless other ammunition is available to the general public that has physical  
20 properties resulting in ballistics performance identical to such ammunition.

21 (b) Possession Prohibited; Exceptions. No person, firm, corporation or other entity may  
22 possess Prohibited Ammunition within the City and County of San Francisco, except that this  
23 subsection shall not apply to the otherwise-lawful possession of Prohibited Ammunition by the  
24 following:

1                   (1) Peace officers in possession of Prohibited Ammunition issued to them by their  
2 employing agency;

3                   (2) Federal law enforcement officers or other federal employees in possession of  
4 Prohibited Ammunition issued to them by their employing agency;

5                   (3) Members of the armed forces of the United States in possession of Prohibited  
6 Ammunition issued to them by the military agency to which they belong;

7                   (4) Patrol special police officers, animal control officers or zookeepers, harbor police  
8 officers, sheriff's security officers, or police security officers in possession of Prohibited Ammunition  
9 issued to them by their employing agencies; or,

10                   (5) Businesses licensed as firearms dealers under this Article in possession of  
11 Prohibited Ammunition for sale to law enforcement and military agencies. Agencies employing  
12 persons listed in subsection (b)(4) are considered law enforcement agencies for purposes of this  
13 Section.

14                   (c) Sale or Transfer. No business licensed as a firearm dealer under this Article may sell,  
15 lease or otherwise transfer Prohibited Ammunition except to law enforcement and military agencies.

16                   (d) Police Database. The San Francisco Police Department shall prepare or cause to be  
17 prepared a public database of brands and product lines of ammunition meeting the definition of  
18 "Prohibited Ammunition" in subsection (a). Failure of the Police Department to create or maintain  
19 such a database, or the omission from the database of a particular brand or product line of ammunition  
20 otherwise qualifying as "Prohibited Ammunition" under subsection (a), shall not be a defense to or  
21 otherwise excuse a violation of this Section.


22                   (e) Penalty. Violation of any of the provisions of this Section is a misdemeanor and upon  
23 conviction the violator may be punished by a fine not to exceed \$1,000.00 or by imprisonment in the  
24 county jail not to exceed six months, or by both.

1           (f) Severability. If any provision, clause or word of this Section 618 or the application thereof  
2 to any person or circumstance is held invalid, such invalidity shall not affect any other provision,  
3 clause, word or application of this Section which can be given effect without the invalid provision,  
4 clause or word, and to this end the provisions of this Section are declared to be severable.

5  
6           Section 2. Effective Date. This ordinance shall become effective 30 days from the  
7 date of passage.

8  
9           Section 3. This section is uncodified. In enacting this Ordinance, the Board intends to  
10 amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,  
11 punctuation, charts, diagrams, or any other constituent part of the Police Code that are  
12 explicitly shown in this legislation as additions, deletions, Board amendment additions, and  
13 Board amendment deletions in accordance with the "Note" that appears under the official title  
14 of the legislation.

15  
16  
17 APPROVED AS TO FORM:  
18 DENNIS J. HERRERA, City Attorney

19  
20 By:   
21       THOMAS J. OWEN  
22       Deputy City Attorney

23  
24 originated at : n:\govern\as2013\1300252\00817412.doc  
25 revised on: 1/14/2013 - n:\govern\as2013\1300252\00817412.doc

## LEGISLATIVE DIGEST

[Police Code - Possession or Sale of Law Enforcement or Military Ammunition]

**Ordinance amending the San Francisco Police Code by adding Section 618 to prohibit the possession or sale of certain ammunition, including Black Talon ammunition and ammunition intended exclusively for law enforcement and military purposes.**

### Existing Law

Article 9 of the Police Code prohibits the sale (but not the possession) of "enhanced-lethality ammunition" within the City. "Enhanced-lethality ammunition" is defined in Police Code Section 613.10(g) as firearms ammunition that:

- Serves no sporting purpose;
- 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; or
- Is designed to fragment upon impact.

This prohibition does not apply to the sale of conventional hollow-point ammunition with a solid lead core when the purchase is made for official law enforcement purposes and by someone authorized to make such a purchase by the Chief of Police or the Sheriff.

### Amendments to Current Law

The proposal is an ordinance that would add a new Section 618 to Article 9 of the Police Code to regulate "Prohibited Ammunition." The ordinance defines "Prohibited Ammunition" as:

- Ammunition sold under the brand name "Winchester Black Talon," or any other ammunition having the same ballistic characteristics; and
- Ammunition designated by its manufacturer for sale to law enforcement or military agencies only, unless other ammunition having the same ballistic characteristics is sold to the general public.

The ordinance would bar any person or business from possessing Prohibited Ammunition within the City. This prohibition would not apply to peace officers, federal law enforcement officers, members of the armed forces, and certain other categories of official security personnel who otherwise lawfully possessed Prohibited Ammunition issued by their employing agency.

The ordinance would prohibit any business licensed as a firearm dealer under Police Code Article 9 from selling, leasing or otherwise transferring Prohibited Ammunition except to law enforcement or military agencies.

Violation of the ordinance would be a misdemeanor, punishable by a fine of up to \$1,000.00 or by imprisonment in the county jail for up to six months, or by both.

The Ordinance would also require the Police Department to create a public database of brands and product lines of ammunition meeting the definition of "Prohibited Ammunition." But the fact that the database had not been prepared, or that a particular brand or product line of ammunition otherwise qualifying as "Prohibited Ammunition" was not included in the database, would not be a defense to or otherwise excuse a violation of the ordinance.

#### Background Information

"Winchester Black Talon" ammunition is listed as a type of "enhanced-lethality ammunition" in Police Code Section 613.10(g), as part of the category of ammunition "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." Therefore, the sale of Black Talon ammunition or of other ammunition having the same ballistic characteristics is already prohibited under the Police Code, but possession currently is not.

Robert Green  
2994 Pine Street  
San Francisco, CA 94115

February 8, 2013

Clerk and Members of the Public Safety Committee  
Board of Supervisors  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, CA 94102-4689

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2013 FEB - 8 PM 12:31  
6

Re: File 130040 (Prohibiting possession of certain ammunition)

I write in the hopes that this might be circulated to the Committee members for consideration before the file comes before the committee for action.

Dear Committee Members:

San Francisco is already embroiled in litigation regarding its ordinances prohibiting the sales of certain types of ammunition<sup>1</sup>. I would suggest that it might be prudent to wait until that litigation is resolved before moving forward with the next step of prohibiting possession of some types of ammunition.

Even should San Francisco prevail in the litigation and sales of certain types of ammunition would be allowed to be prohibited allowing San Francisco to move forward with prohibiting possession of certain ammunition, I am concerned that the wording of the proposed ordinance referenced above is likely, at the minimum, to lead to a legal battle regarding whether it is unconstitutionally vague. Unlike the ordinances at issue in Jackson v. San Francisco which use clear language to describe the prohibited characteristics,<sup>2</sup> this proposed ordinance would require a member of the general public to have:

- 1) expert knowledge in ballistics in order to determine whether two rounds of ammunition have "physical properties resulting in ballistics performance identical to"<sup>3</sup> otherwise prohibited ammunition
- 2) expert knowledge in the history of all ammunition ever marketed "under the brand name Winchester Black Talon"<sup>4</sup>

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<sup>1</sup> Jackson et al v. City and County of San Francisco et al

<sup>2</sup> Police Code 613.10(g)(2) and (3) prohibit the sale within San Francisco of ammunition that "[i]s 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; . . . or . . . is designed to fragment upon impact"

<sup>3</sup> Proposed ordinance Police Code 618(a)(1) and again in (2)

- 3) expert knowledge in all procurement contracts for ammunition executed by any law enforcement or military agency so that the purchaser may know which ammunition has ever been “designated by its manufacturer for purchase by law enforcement or military agencies only”<sup>5</sup> so that they may compare it to “ammunition [that] is available to the general public”<sup>6</sup>

While the Police Department is directed by this proposed ordinance to prepare a “public database of brands and product lines of ammunition meeting the definition of ‘Prohibited Ammunition’”,<sup>7</sup> it is not required to do so. Indeed, “[f]ailure of the Police Department to create or maintain such a database, or the omission from the database of a particular brand or product line of ammunition otherwise qualifying as ‘Prohibited Ammunition’ under [this ordinance] shall not be a defense to or otherwise excuse a violation of this Section.”<sup>8</sup> This appears to put the burden squarely back on the shoulders of the general public to have expert knowledge in ballistics, the history of Winchester Black Talon ammunition, and all military and law enforcement ammunition procurement contracts.

The stated intent of one of the co-authors is to prohibit possession of “especially lethal forms of ammunition such as hollow-point bullets or any other type restricted to military use”.<sup>9</sup> As written, however, a “plain language” interpretation of this proposed ordinance would lead one to believe that all ammunition available to the general public—except that which is or was marketed as “Winchester Black Talon” or has “ballistics characteristics identical to” any ammunition so marketed—would be legal for the general public to possess even if it is identical to law enforcement or military ammunition. That interpretation is directly at odds with the stated intent of the co-authors, but it is the only one that can be reached with the wording of the proposed ordinance as available in the legislative file on February 4, 2013.

While expanding and frangible ammunition do cause greater injury than traditional ammunition, they are safer for innocent bystanders. Expanding and frangible ammunition are less likely to pass through the intended target with enough force to cause severe injury to anyone else, and they are generally thought to be safer for an innocent bystander on the other side of a wall, floor, or ceiling beyond the intended target.

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<sup>4</sup> Proposed ordinance Police Code 618(a)(1)

<sup>5</sup> Proposed ordinance Police Code 618(a)(2)

<sup>6</sup> *ibid*

<sup>7</sup> Proposed ordinance Police Code 618(d)

<sup>8</sup> *ibid*

<sup>9</sup> Supervisor Malia Cohen, oral remarks during Roll Call for Introduction, San Francisco Board of Supervisors meeting, January 15, 2013



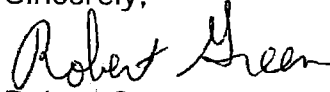
As San Francisco Police Code 613.9.5.4 states, "[T]he Hague Convention of 1899, Declaration III, has for more than a century prohibited the use in warfare of bullets that easily expand or flatten in the body." The U.S. military does not generally use expanding or fragmenting ammunition. Instead, it uses traditional ammunition. If it is truly the intent of the authors to prohibit possession of any ammunition that resembles that which a military has used, then traditional ammunition may be prohibited as well; such an action would leave little available for the general public to use in self-defense.

While there is an exception made in the proposed ordinance for the possession of prohibited ammunition by, among others, zookeepers,<sup>10</sup> there is no exception made for armored vehicle personnel or other civilian jobs which may require the use of otherwise-prohibited ammunition.

There also appears to be no exception provided for persons merely travelling through San Francisco. Someone travelling from Daly City to Sausalito with prohibited ammunition would be forced to travel an additional 60 miles or more to avoid the possibility of being stopped in San Francisco and being found in violation of this ordinance.

I urge due consideration on your part in determining whether to pass this proposed ordinance out of committee.

Sincerely,



Robert Green

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<sup>10</sup> Proposed ordinance Police Code 618(b)(4)



**EDWIN M. LEE**  
MAYOR

POLICE DEPARTMENT  
**CITY AND COUNTY OF SAN FRANCISCO**

THOMAS J. CAHILL HALL OF JUSTICE  
850 BRYANT STREET  
SAN FRANCISCO, CALIFORNIA 94103-4603



**GREGORY P. SUHR**  
CHIEF OF POLICE

January 24, 2013

Mr. Derek Evans, Assistant Committee Clerk  
Public Safety Committee  
Board of Supervisors  
City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4694

Dear Mr. Evans:

RE: File No. 130040 – Ordinance Prohibiting Possession or Sale of Certain Ammunition

The intent of this letter is to express the full support of the San Francisco Police Department for Ordinance 130040, which seeks to prohibit the possession and sale of certain ammunition, including Black Talon, intended exclusively for law enforcement and military purposes.

Winchester Ammunition began production of the hollow-point ammunition known as Black Talon in 1991, which was intended for use by law enforcement only. The ammunition was manufactured for use in a variety of different caliber weapons including 9 mm, 10 mm, .40 caliber, and .357 and .44 magnum. On July 1, 1993, Gian Luigi Ferri used a TEC-9 loaded with a mix of standard and Black Talon ammunition to carry out a deadly assault at 101 California Street in San Francisco, leaving eight people dead and six others wounded.

Following this incident, California implemented some of the toughest gun laws in the United States. In 1994, led by Senator Dianne Feinstein, the Federal government passed the Violent Crime Control and Law Enforcement Act which, in addition to banning certain types of semi-automatic weapons, banned large-capacity magazines. This ban expired on September 13, 2004.

However, at no time has the manufacture, sale, or possession of hollow-point ammunition intended for use for law enforcement or military purposes been regulated and/or banned. Basically there is no law that prohibits the sale of hollow-point ammunition specifically designed and marked for use by law enforcement to the general public. Although Winchester no longer makes the Black Talon, a similar ammunition that expands on impact is manufactured for sale. And it is a fact that the law enforcement-specific ammunition has been and continues to be used in the commission of criminal acts, including officer involved shootings, due to its capability of piercing body armor worn by sworn peace officers.

It is the opinion of the San Francisco Police Department that passing this Ordinance will provide officers on the street the means to seize this extremely dangerous type of ammunition thereby reducing the possibility for its use by criminals.

If I can be of further assistance, please contact my office.

Sincerely,

  
**GREGORY P. SUHR**  
Chief of Police

/cf

Public Safety Cons Clerk  
COB, Reg Dep

President, Board of Supervisors  
District 3



City and County of San Francisco

DAVID CHIU

邱信福  
市參事會主席

TO: Angela Calvillo, Clerk of the Board  
FROM: Supervisor David Chiu  
DATE: February 14, 2013  
RE: Transferring Files Nos. 130039, 130040, and 091225 from Public Safety to CON

*David Chiu*

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
FEB 14 PM 3:02

Madame Clerk,

Please transfer the following three files from the Public Safety Committee to the City Operations and Neighborhood Services Committee.

- No. 130039 - Ordinance - requiring firearms dealers to report sale of 500 or more rounds of ammunition in a single transaction
- No. 130040 - Ordinance - Possession or sale of certain ammunition
- No. 091225 - Hearing - Violence and public safety incidents associated with entertainment venues

Thank you for your prompt assistance in this matter.

###

BOARD of SUPERVISORS



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

## MEMORANDUM

TO: Sheriff Ross Mirkarimi, Sheriff's Department

FROM: Derek Evans, Assistant Committee Clerk

DATE: January 25, 2013

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors Public Safety Committee has received the following proposed legislation, which is being referred to your department for informational purposes.

**File No. 130040**

Ordinance amending the Police Code, by adding Section 618, to prohibit the possession or sale of certain ammunition, including black talon ammunition and ammunition intended exclusively for law enforcement and military purposes.

If you wish to submit any comments or reports, please forward those to the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

This item is tentatively scheduled to appear on the February 21, 2013, Regular Meeting of the Public Safety Committee.

Attached is a copy of the legislation for your review.

cc: Ellen Brin, Sheriff's Department  
Paul Miyamoto, Sheriff's Department

BOARD of SUPERVISORS



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

## MEMORANDUM

TO: Chief Greg Suhr, Police Department  
FROM: Derek Evans, Assistant Committee Clerk  
DATE: January 18, 2013  
SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors Public Safety Committee has received the following proposed legislation, which is being referred to your department for informational purposes.

**File No. 130040**

Ordinance amending the Police Code, by adding Section 618, to prohibit the possession or sale of certain ammunition, including black talon ammunition and ammunition intended exclusively for law enforcement and military purposes.

If you wish to submit any comments or reports, please forward those to the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

This item is tentatively scheduled to appear on the February 21, 2013, Regular Meeting of the Public Safety Committee.

Attached is a copy of the legislation for your review.

cc: Christine Fountain, Police Department  
Insp. John Monroe, Police Department

OFFICE OF THE MAYOR  
SAN FRANCISCO



RECEIVED  
EDWIN M. LEE  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
MAYOR

2013 JAN 15 PM 2:33

TO: Angela Calvillo, Clerk of the Board of Supervisors  
FROM: *EW* Mayor Edwin M. Lee *EL*  
RE: Police Code - Possession or Sale of Law Enforcement or Military  
Ammunition  
DATE: January 15, 2013

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Attached for introduction to the Board of Supervisors is the Ordinance amending the San Francisco Police Code by adding Section 618 to prohibit the possession or sale of certain ammunition, including Black Talon ammunition and ammunition intended exclusively for law enforcement and military purposes.

Please note this item is cosponsored by Supervisor Cohen.

I request that this item be calendared in Public Safety Committee on February 21, 2013.

Should you have any questions, please contact Jason Elliott (415) 554-5105.

cc. Supervisor Malia Cohen

130240