

BOARD of SUPERVISORS



City Hall
1 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: William Scott, Police Chief
Vicki Hennessy, Sheriff
Suzy Loftus, Interim District Attorney
Manohar Raju, Public Defender

FROM: John Carroll, Assistant Clerk,
Public Safety and Neighborhood Services Committee

DATE: November 27, 2019

SUBJECT: ORDINANCE MATTER INTRODUCED

The Board of Supervisors' Public Safety and Neighborhood Services Committee has received the following resolution, introduced by Supervisor Stefani on November 19, 2019:

File No. 191184

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

If you have any 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.

c: Rowena Carr, Police Department
Asja Steeves, Police Department
Deirdre Hussey, Police Department
Racheal Kilshaw, Police Commission
Johanna Saenz, Sheriff's Department
Katherine Johnson, Sheriff's Department
Nancy Crowley, Sheriff's Department
Christine Soto DeBerry, Office of the District Attorney
Maxwell Szabo, Office of the District Attorney

[Police Code - Gun Violence Restraining Orders]

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

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

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

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

ARTICLE 36D: GUN VIOLENCE RESTRAINING ORDERS

SEC. 3600D. BACKGROUND; STATEMENT OF POLICY.

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

(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.

14
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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20
21 APPROVED AS TO FORM:
22 DENNIS J. HERRERA, City Attorney

23 By:

24 
ALICIA CABRERA
Deputy City Attorney

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LEGISLATIVE DIGEST

[Police Code - Gun Violence Restraining Orders]

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

Existing Law

City law does not currently address the subject of GVROs. California Penal Code section 18100 et seq. allows local law enforcement agencies to use Gun Violence Restraining Orders (“GVRO”) as a tool for prohibiting and enjoining an individual from having custody or control, owning, purchasing, possessing, or receiving any firearms or ammunition when that individual poses an immediate and present danger of causing personal injury to self or others. Under existing California law, there are three possible types of GVROs: (1) the temporary emergency protective order, available to peace officers to address an immediate and present danger of causing personal injury to self or other; (2) the temporary ex parte GVRO, available to peace officers and family members, where there is a showing of a substantial likelihood that the individual poses a significant danger to self or others; and (3) the one-year ban, which may be imposed after notice and a hearing where there is a showing by clear and convincing evidence that the individual poses a significant danger of injury to self or others and there is no less restrictive alternative to protect against that danger. All three types of GVROs require a showing that the GVRO is necessary to prevent personal injury to self or others because less restrictive alternatives either have been tried and found to be ineffective, or have been determined to be inadequate or inappropriate for the circumstances.

Assembly Bills 12 and 61, enacted in 2019, become operative on September 1, 2020. Those bills expand the circumstances, procedure, and scope for the issuance of GVROs. The key changes are:

Expands the category of individuals who may seek a GVRO to employer, a coworker who has substantial and regular interactions with the person and approval of their employer, or an employee or teacher of secondary or postsecondary school, with the approval of a school administrator staff member with a supervisory role.

Expands the duration of the gun violence restraining order from one year to a period of time between one and five years.

Amendments to Current Law

The proposed ordinance would require the Police Department to seek GVROs as authorized by state law.

FILE NO. 191184

It is the policy of the City to use GVROs in circumstances where there is a nexus between the use or threat of use of a firearm or ammunition and the danger presented to self or others, and the GVRO is necessary to prevent an injury. This tool is not intended to be used in circumstances where there would be no value in obtaining a GVRO, such as when an individual is already prohibited from obtaining or having access to a firearm.

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Print Form

Introduction Form

By a Member of the Board of Supervisors or Mayor

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2019 NOV 19 PM 4:31

BY JS 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):

Catherine Stefani, Yee, Brown

Subject:

Police Code - Gun Violence Restraining Orders

The text is listed:

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

Signature of Sponsoring Supervisor: [Signature]

For Clerk's Use Only